

The Colorado River Commission of Nevada (Commission) meeting was held at 1:30 p.m. on Tuesday, April 14, 2020 via teleconference, pursuant to Emergency Directive 006, section 1.

COMMISSIONERS IN ATTENDANCE

Chairwoman
Vice Chairwoman
Commissioner
Commissioner
Commissioner
Commissioner

Puoy K. Premsrirut
Kara J. Kelley
Dan H. Stewart
Cody T. Winterton
James B. Gibson
Allen J. Puliz

COMMISSIONERS NOT IN ATTENDANCE

Commissioner

Marilyn Kirkpatrick

DEPUTY ATTORNEY GENERAL

Special Counsel, Attorney General

Christine Guerci

COMMISSION STAFF IN ATTENDANCE

Executive Director
Senior Assistant Director
Chief of Finance and Administration
Assistant Director, Hydropower
Assistant Director, Engineering and Operations
Assistant Director, Energy Information Systems
Manager, Natural Resources Program
Senior Energy Accountant
Natural Resource Analyst
Natural Resource Analyst
Senior Energy Accountant
Senior Energy Accountant
Office Manager
Administrative Assistant IV
Administrative Assistant IV

Eric Witkoski
Sara Price
Douglas N. Beatty
Gail Bates
Robert Reese
Kaleb Hall
Angela Slaughter
Gail L. Benton
Warren Turkett Ph.D.
Peggy Roefer
Stefani Salleroli
Richard Sanders
Gina L. Goodman
Kathryn Aguilar
Kira Bakke

OTHERS PRESENT; REPRESENTING

Fennemore Craig, P.C.
NV Energy
Self
Southern Nevada Water Authority
Southern Nevada Water Authority
State of Nevada Purchasing Division

Lauren Caster
Michael Hulin
Aleta Dupree
Jordan Bunker
Laura Browning
Ryan Vradenburg

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF APRIL 14, 2020**

INDEX

| <u>Agenda Item</u> | <u>Subject</u> | <u>Page No.</u> |
|---------------------------|--|------------------------|
| A. | Conformance to Open Meeting Law | 1 |
| B. | Comments from the public. (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 may be taken) | 1 |
| C. | <i>For Possible Action:</i> Approval of minutes of the February 11, 2020 meeting. | 1 |
| D. | <i>For Possible Action:</i> Consideration of and possible action to approve an Amendment No. 6 to Contract for Services of Independent Contractor among Fennemore Craig, P.C., the Office of the Attorney General, and the Colorado River Commission of Nevada (Commission) for legal services in the United States Court of Appeals for the 9th Circuit. | 1 |
| E. | <i>For Possible Action:</i> Consideration of and possible action to approve a four-year contract in the amount of \$259,600 for services of independent contractor among Energized Electric System Safety Training and Compliance Services (ESCI) and the Commission to provide ongoing energized electric safety training and compliance service for the Power Delivery Group. | 4 |
| F. | <i>For Information Only:</i> Executive Director update on operations. | 6 |
| G. | <i>For Information Only:</i> Update on pending legal matters, including Federal Energy Regulatory Commission or Public Utilities Commission of Nevada filings..... | 7 |
| H. | <i>For Information Only:</i> Status update from Staff on the hydrological conditions, drought, and climate of the Colorado River Basin, Nevada's consumptive use of Colorado River water, the drought contingency plan, impacts on hydropower generation, electrical construction activities and other developments on the Colorado River | 8 |

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF APRIL 14, 2020**

INDEX (continued)

| <u>Agenda Item</u> | <u>Subject</u> | <u>Page No.</u> |
|---------------------------|--|------------------------|
| I. | Comments from the public. (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 may be taken.) | 8 |
| J. | Comments and questions from the Commission members | 8 |
| K. | Selection of the next possible meeting date | 9 |
| L. | Adjournment | 9 |

The Colorado River Commission of Nevada (Commission) meeting was called to order by Vice Chairwoman Kelley at 1:30 pm followed by the pledge of allegiance.

A. Conformance to Open Meeting Law.

Executive Director Eric Witkoski confirmed that the meeting was posted in compliance with the Open Meeting Law.

B. Comments from the public. (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.)

Vice Chairwoman Kelley asked if there were any comments from the public.

There were none.

C. For Possible Action: Approval of minutes of the February 11, 2020 meeting.

Commissioner Gibson moved for approval of the minutes. The motion was seconded by Commissioner Puliz and approved by a unanimous vote.

D. For Possible Action: Consideration of and possible action to approve an Amendment No. 6 to Contract for Services of Independent Contractor among Fennemore Craig, P.C., the Office of the Attorney General, and the Colorado River Commission of Nevada (Commission) for legal services in the United States Court of Appeals for the 9th Circuit.

Executive Director Eric Witkoski explained that this amendment refers to a possible extension of a contract currently in place between the Commission and Fennemore Craig, P.C., that expires on June 30, 2020.

Special Counsel Christine Guerri further explained that the Commission is presently engaged in litigation with the Navajo Nation as to their claims to main stem Lower Basin Colorado River water. The pending lawsuit was initiated in 2003, and challenged Colorado River operations, including the Guidelines, Federal banking regulations (which permit us to bank Nevada's water in Arizona and California) and potentially the agreements and associated river operations relating to Minute 319 with Mexico. In addition, this significant litigation threatens the stability of the Law of the River that the Seven Basin States rely on, and may ultimately result in a water adjudication in the District Court or the United States Supreme Court. Mr. Caster has undertaken representation of the State of Nevada, and also represents the Commission and the Southern Nevada Water Authority (SNWA).

On March 12, 2013, the Commission approved a contract between the Commission and Fennemore Craig, P.C., primary attorney Mr. Caster to engage his services to provide legal representation in *The Navajo Nation v. U.S.*, CV-03-

00507 PCT PGR, in the United States District Court, For the District of Arizona, and related matters. Prior to contract approval by the Board of Examiners, the Attorney General met with the Commission's Executive Director and Senior Deputy Attorney General Jennifer Crandell and requested that she be made a party to the contract, and that Mr. Caster's appointment as a special deputy attorney general be specifically written into the contract. The Amendment to the Contract reflects these changes. The Board of Examiners approved the Amendment to the Contract on June 11, 2013.

The original contract with Fennemore Craig, P.C. had a two-year term, although the contract covered months in fiscal years 2013, 2014 and 2015. The contract had a not-to-exceed amount of \$300,000. The First Amendment to the original contract was approved January 14, 2014, which completed funding on the contract through fiscal year 2014. That amendment changed the contract amount for fiscal years 2013 and 2014 to \$239,000, and reflected approximately \$24,000 billed in fiscal year 2013, \$150,000 billed in fiscal year 2014, and approved additional funds of \$65,000 for legal fees and costs to cover the remaining legal work on the Motion to Dismiss and oral argument, only, through fiscal year 2014 (June 30, 2014).

The \$65,000 increase in funding to the first amendment was due to the fact that the majority of the work anticipated under the contract (preparation of a Motion to Dismiss) occurred shortly after the beginning of the first full fiscal year (July 2013-14). This work included serving as coordinating counsel for the Defendant Intervenor with the Department of Justice, coordinating defense strategy among the numerous Defendant Intervenor, and the research and preparation of a potentially dispositive motion for *The Navajo Nation v. United States Department of Interior, et. al.*, Case No. CV-03-00507-PCT-GMS.

A second amendment to the contract provided for funding for legal fees and disbursements for fiscal year 2015, in the amount of \$20,000, to cover litigation costs until such time as the District Court ruled on pending dispositive motions. Work under this amendment included monitoring the case, legal research to support supplemental authority filings, coordinating with co-defendants, reviewing the Court's decision, making initial strategy recommendations, and preparing any initial filing that may be required to move the case forward. The total not-to-exceed amount for the two-year term of the contract was amended to \$259,000. It was anticipated by the Commission that once the Court ruled, the Contract would require further amendment to provide funds to continue the case.

On July 22, 2014, the District Court granted the Federal Defendants Motion to Dismiss without prejudice and terminated the case. This made the case appealable to the Ninth Circuit Court of Appeals. Subsequently on August 18, 2014, the Navajo Plaintiffs filed a Motion For Specific Relief Pursuant to Rule 60(b)(6) seeking leave to set aside the judgment and amend the Complaint. Based on this new motion, and the Navajo potential appeal to the Ninth Circuit, Fennemore Craig proposed a budget to cover three possible courses of action or any combination of elements from one or more alternatives: 1) if the District Court granted the Navajo request for an amendment and the Complaint is then amended, resulting in the necessity to prepare new Motions to Dismiss in the District Court; 2) the District Court granted

the Navajo motion in part, certifies the dismissal of one or more claims for immediate appeal to the Ninth Circuit, while simultaneously the Complaint is amended in part and litigation continues in the District Court; or 3) if the District Court denied the Navajo motion and the Navajo file an appeal in the Ninth Circuit, requiring Fennemore Craig, P.C. to prepare an appellate brief.

The Navajo Nation appealed to the 9th Circuit Court, and the case was fully briefed before that court. Oral argument was heard on November 13, 2017. A decision of the Court was issued November 6, 2017, with the decision published on December 4, 2017.

The Ninth Circuit directed the District Court “to consider fully the Nation’s breach of trust claim in the first instance, after entertaining any request to amend the claim more fully to flesh it out.” *Navajo Nation v. Department of Interior*, 876 F.3d at 1173. On remand, the District Court authorized the Nation to file a motion for leave to amend its complaint by April 13, 2018.

On August 23, 2019, the Arizona District Court issued its Order denying the Navajo’s request to amend its complaint and terminated the case. *Navajo Nation v. Department of Interior*, 2019 Westlaw 3997370 (D.Az. 2019). The District Court specifically addressed the Navajo’s trust claims and stated: “Since none of these substantive sources of law create the trust duties the Nation seeks to enforce, and the Nation “cannot allege a common law cause of action for breach of trust that is wholly separate from any statutorily granted right”, its breach of trust claim must fail, and amendment would be futile (citation omitted)”. The case has now been appealed to the 9th Circuit Court of Appeals on the trust issue and on February 26, 2020, the Navajo filed their opening brief.

It is anticipated that the Commission, as an intervener in this action, will timely file an Answering Brief and participate in litigation related meetings and oral arguments. This Contract Amendment #6 is to amend the contract to extend its term to allow Fennemore to continue to defend the case on behalf of the State of Nevada, the Colorado River Commission of Nevada, and the Southern Nevada Water Authority.

Staff recommends the Commission approve an Amendment No. 6 to Contract for Services of Independent Contractor among Fennemore Craig, P.C., primary attorney Lauren Caster, Esq.; the Office of the Attorney General; and the Commission for legal services; and authorize the Executive Director to sign it on behalf of the Commission. Amending the contract as recommended will extend the term to June 30, 2022, with expenditures occurring in FY 2021-2022. No additional funding is requested for the extended term.

Vice Chairwoman Kelley asked Staff to clarify that this amendment would simply extend the contract and that no additional funds were requested, and to state the total amount that was originally approved for this contract.

Mr. Witkoski stated that \$100,000 was added to the contract two years ago and affirmed that Amendment No. 6 did not necessitate further funding.

Commissioner Gibson moved for approval of Amendment No. 6 to Contract for Services of Independent Contractor among Fennemore Craig, P.C. and authorization for the Executive Director to sign it on behalf of the Commission. The motion was seconded by Commissioner Puliz and approved by unanimous vote.

E. *For Possible Action:* Consideration of and possible action to approve a four-year contract in the amount of \$259,600 for services of independent contractor among Energized Electric System Safety Training and Compliance Services (ESCI) and the Commission to provide ongoing energized electric safety training and compliance service for the Power Delivery Group.

Assistant Director Bob Reese explained that the Commission owns and operates high-voltage transmission and distribution facilities in southern Nevada. The Commission employs a staff of managers, engineers, technicians, and electricians and desires to ensure these employees are trained in the hazards associated with the operation and maintenance of the energized electric system and on proper mitigation measures, procedures and tools. The Commission's contract for energized electric system safety training and compliance services that meet the requirements established by OSHA 29 CFR 1910 expired in December 31, 2019. In 2020, Energized Electric System Safety Training and Compliance Services (ESCI) was selected through a Request for Proposal (RFP) process carried out by Nevada State Purchasing to provide safety training and compliance services.

The Commission has utilized the services of ESCI to:

1. Develop and implement a safety and wellness training program. The program is based upon the requirements of OSHA 29 CFR 1910 and the latest edition of the American Public Power Association's Safety Manual. The program includes such topics as first aid, CPR, equipotential grounding, hot stick use and care, electrical safety, confined space entry, and hazardous material communication. ESCI will implement the program by providing monthly training sessions at the Commission's Newport Substation office complex.
2. Develop and implement a high-voltage switchman certification program. The program is based upon the Commission's Switching and Clearance Procedures, the American Public Power Association's Safety Manual, and the Western Area Power Administration's Power System Switching Procedure. ESCI will provide classroom instruction, hands-on practice, and a written exam in order to ensure the Commission's personnel are properly qualified and trained to carryout high-voltage switching.
3. Provide commercial driver license (CDL) training and CDL records maintenance. ESCI will provide training to allow the Commission's operation and maintenance personnel to receive a CDL issued by the State of Nevada. ESCI will provide follow-up services including a drug testing program that meets the requirements of State of Nevada Department of Motor Vehicles.

4. Provide safety equipment and materials as requested up to \$10,000 per year as identified and directed by the Commission. Equipment may include automated external defibrillators (AEDs) as required for electrical workers by OSHA and outdoor gas cylinder storage cages.

Staff recommends the Commission approve a four-year contract in the amount of \$259,600 for services of an independent contractor among Energized Electric System Safety Training and Compliance Services (ESCI) and the Commission, as well as authorizing the Executive Director to sign the contract on behalf of the Commission.

Vice Chairwoman Kelley expressed recognition for the hard work of Mr. Reese and his team. Vice Chairwoman Kelley then clarified that the contract in question was procured through the State of Nevada Purchasing Division and recognized that ESCI meets all OSHA standards.

Commissioner Puliz asked whether any Nevada-based companies were eligible for this contract.

Ryan Vradenburg, representing the State of Nevada Purchasing Division, explained that 86 independent vendors were approached for this contract and ESCI was one of two who submitted bids.

Commissioner Gibson asked if ESCI has been performing the “safety and wellness program” component of the contract for the Commission in the past.

Mr. Reese answered that ESCI has been in contract with the Commission at various times since 1999. Additionally, ESCI contracts with other power delivery entities in the area for this program.

Commissioner Gibson asked if Staff does not have its own safety and wellness program.

Mr. Reese responded that Staff utilizes ESCI’s expertise on the subject in order to add new or updated regulations into Staff’s existing program and policies.

Commissioner Gibson asked whether ESCI should continue to be contracted rather than allowing the Commission to hire a safety officer to perform the same function.

Mr. Reese explained that through ESCI, the Commission can verify that Staff is in compliance with all OSHA regulations as well as the American Power Association’s safety manual. Additionally, ESCI provides training on a wide variety of topics.

Commissioner Gibson asked whether Mr. Reese was of the opinion that a single safety officer could not be found to fill this role within the monetary bounds of the contract.

Mr. Reese agreed, and clarified that this is an “enabling” contract, meaning that the only the task at hand was what was paid for. Mr. Reese stated that an on-staff safety

compliance officer might be advantageous in the future, however at this time it was more fiscally sound to engage in an enabling contract with an outside entity.

Commissioner Stewart, following up on Commissioner Gibson's question, asked for an approximate amount spent from the allotted funds in past years.

Mr. Reese answered that in his estimation, the Commission had not expended more than \$85,000 per year in the last 16 years in contract with ESCI, with an average between \$50,000 and \$65,000 per year.

Commissioner Winterton moved for approval of the four-year contract and authorization for the Executive Director to sign the contract on behalf of the Commission. The motion was seconded by Commissioner Gibson and approved by unanimous vote.

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| F. <i>For Information Only:</i> Executive Director update on operations. |
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Chairwoman Premsrirut joined the meeting at this time.

Executive Director Eric Witkoski gave an update on the operations of Staff under current conditions. The Commission is continuing to operate normally under Executive Order 006 through tele-conferencing and minimal in-office contact and there have been no interruptions or complications for power delivery. All communications and billing procedures have been adapted for Staff's current needs but remain functional. Mr. Witkoski thanked Staff for their continued hard work under the circumstances.

Chief of Finance and Administration Douglas Beatty further explained that the customer budget was being drafted in accordance with current operating procedures. A draft of this budget is expected to be presented to customers before the end of April 2020 for comment, and will then be presented to the Commission at the June 2020 meeting for Commissioner comment. Staff will also convert the customer budget into the State budget system pursuant to the Nevada Revised Statutes.

Mr. Beatty clarified that the budget had been drafted in accordance with Governor Sisolak's February 2020 instruction of a "flat" budget, but that Staff was aware that current and future conditions may necessitate changes.

Additionally, Mr. Beatty explained that while the revenues of the State at large will likely be affected by ongoing health and safety concerns, the Commission is fee-driven rather than reliant on the State's General Fund.

Vice Chairwoman Kelley asked Mr. Beatty to work with others in Staff and on the Commission to develop contingency plans in advance of any potential mandated budgetary reductions.

Mr. Beatty stated that Mr. Witkoski and himself have begun discussing potential reductions to Commission expenditures.

Commissioner Gibson asked if the agency could be categorized as enterprise funded.

Mr. Beatty agreed, explaining that the Commission's two largest funds were enterprise funds.

Commissioner Gibson asked for a projection of the total ending-fund balance in terms of the operating budget for Fiscal Year 2020.

Mr. Beatty replied that his prediction would be approximately \$2 million, which would be approximately 30-40% of the Commission's administrative or operating fund budget.

Commissioner Gibson asked whether the State of Nevada has the authority to redistribute money from an enterprise fund belonging to an individual agency.

Mr. Beatty answered that most of the Commission's funds containing monies were beholden to inter-state, federal, and customer contractual obligations.

Chairwoman Premsrirut asked if any late payments from customers were anticipated for April 2020.

Mr. Witkoski stated that all payments were expected to be received in a timely manner.

Chairwoman Premsrirut asked if there were any further questions or comments from the Commission.

There were none.

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| <p>G. For Information Only: Update on pending legal matters, including Federal Energy Regulatory Commission (FERC) or Public Utilities Commission of Nevada (PUCN) filings.</p> |
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Special Counsel Christine Guerri presented an update on pending legal matters involving the Commission.

Counsel for all Basin States (with the exception of New Mexico) have filed a Joint Motion for Intervention in the *Save the Colorado River et. al. vs. U.S. Department of the Interior* case. This motion is pending before the District Court in Prescott, Arizona.

Additionally, a joint answering brief from Commission legal staff and the other intervening states is due April 27th, 2020 for *Navajo Nation vs. U.S. Department of the Interior*.

There has been no change for the two FERC matters that the Commission has intervened in.

Chairwoman Premsrirut asked if there were any further questions or comments from the Commission.

There were none.

H. For Information Only: Status update from Staff on the hydrological conditions, drought, and climate of the Colorado River Basin, Nevada's consumptive use of Colorado River water, the drought contingency plan, impacts on hydropower generation, electrical construction activities and other developments on the Colorado River.

Dr. Warren Turkett, Natural Resource Analyst, gave a status update on the hydrological conditions, drought, and climate of the Colorado River Basin, Nevada's consumptive use of Colorado River water, and other developments on the Colorado River.

- Summary of Lake Powell, Lake Mead, and Nevada Water Supply
- Precipitation and Temperature
- Upper Basin Snowpack Accumulation
- Water Use in Southern Nevada
- Unregulated Inflow, Current and Projected Reservoir Status

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

I. Comments from the public. (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 may be taken.)

Chairwoman Premsrirut asked if there were any other comments or questions from the from the public.

There were none.

J. Comments and questions from the Commission members.

Chairwoman Premsrirut asked if there were any other comments or questions from the commission members.

There were none.

K. Selection of the next possible meeting date.

The next meeting is tentatively scheduled for 1:30 p.m. on Tuesday, June 9, 2020 at the Grant Sawyer State Office Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada.

L. Adjournment.

The meeting was adjourned at 2:29 pm.




Eric Witkoski, Executive Director

APPROVED:



Puoy K. Premssirut, Chairwoman



Colorado River Commission of Nevada

Hydrology and Water Use Update

Warren Turkett

April 14, 2020

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Summary

Lake Powell

- Upper Basin snowpack reached the seasonal average in April.
- Below average precipitation from June to September 2019 has caused dry soil conditions in the Upper Basin.
- Water Year 2020 unregulated inflow is forecasted to be 78% of average.

Lake Mead

- Lower Basin rainstorms in March reduced the releases from Hoover Dam, resulting in Lake Mead's elevation about three feet higher than projected.
- Reclamation has essential staff continuing to operate the reservoirs water releases and hydropower generation.

Nevada Water Supply

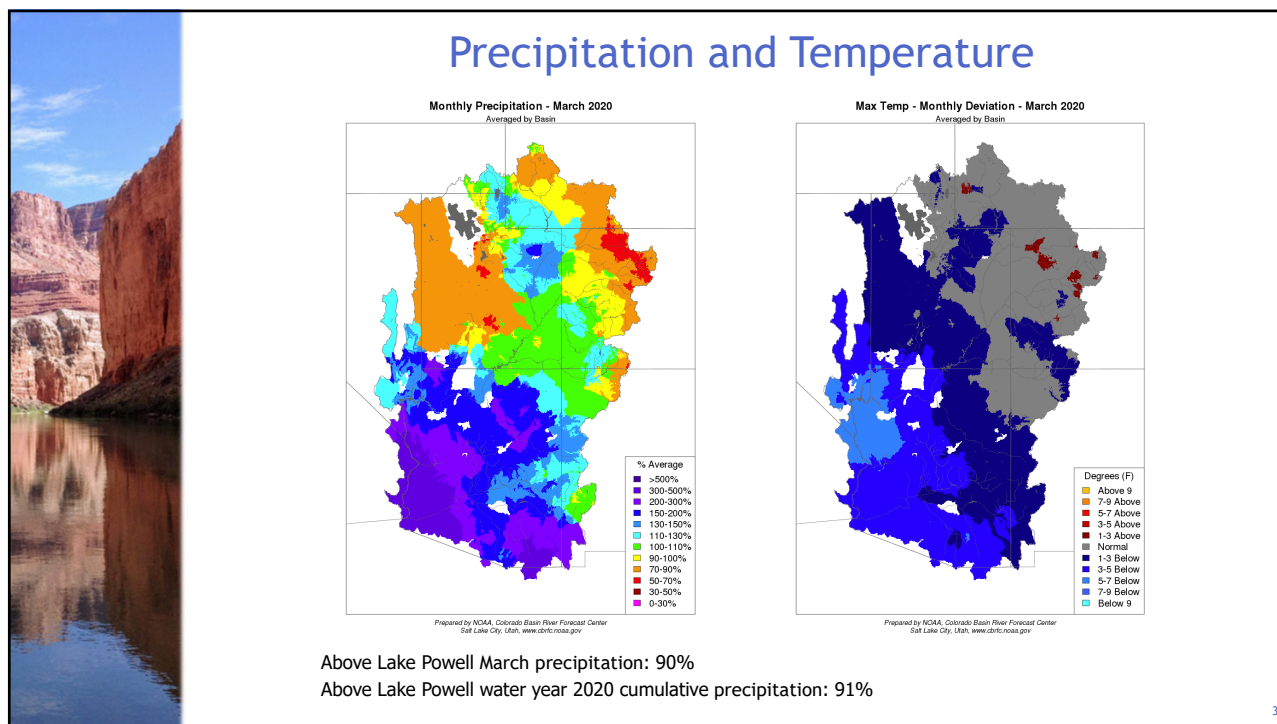
- Southern Nevada has 7 years of water supply banked. ¹
- In 2018, Southern Nevada used 19% less than its annual allocation.**

| Storage | Elevation (f) | % Capacity | Change since last year |
|-------------|---------------|------------|------------------------|
| Lake Mead | 1,097.5 | 44% | 7.8 ft |
| Lake Powell | 3,600.3 | 48% | 31.6 ft |

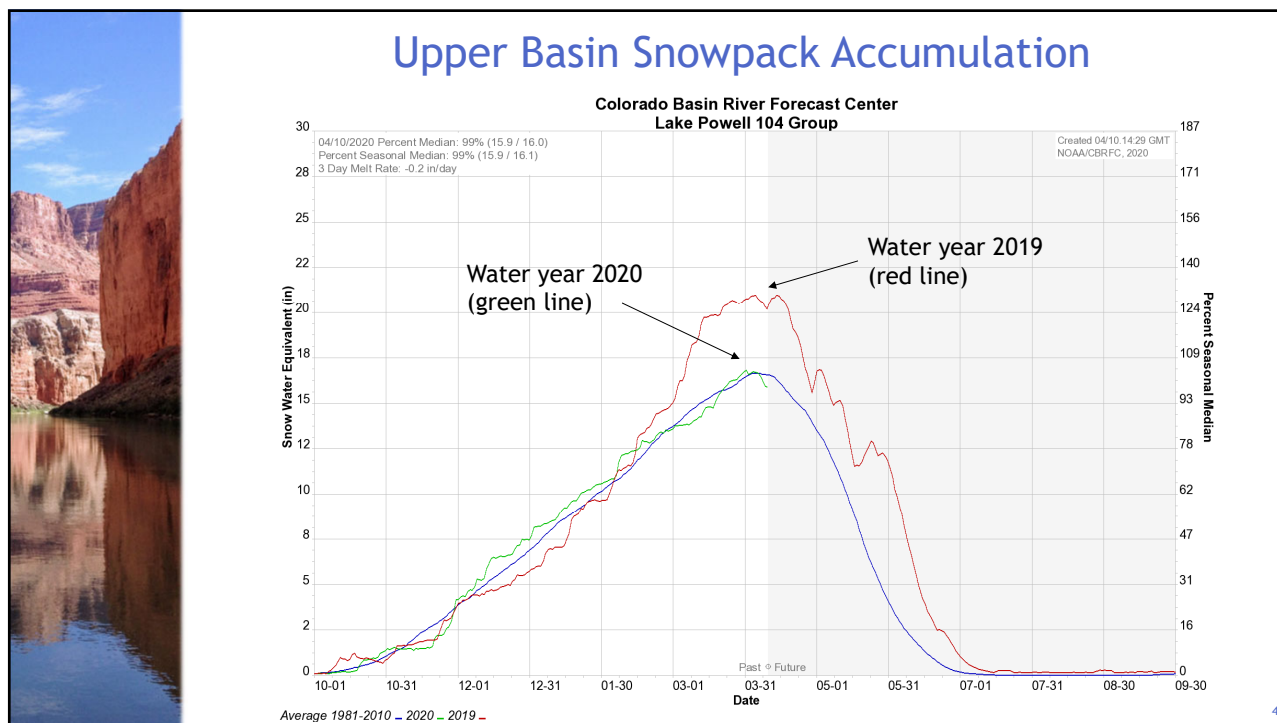
Data retrieved April 9, 2020
¹ Based on historical Southern Nevada water use.

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Unregulated Inflow, Current and Projected Reservoir Status

Projected unregulated inflow to Lake Powell Acre-Feet % Average

| | | |
|----------------------|-----------|------|
| Water Year 2020 | 8,417,000 | 78%* |
| April thru July 2020 | 5,600,000 | 78%* |

* 2020 forecast reduced due to below average precipitation and dry soil conditions.

| Reservoir | Current Elevation | Current Storage Acre-Feet | Current % Capacity | Projected Elevation on 1/1/2021 ¹ |
|-------------|-------------------|---------------------------|--------------------|--|
| Lake Mead | 1,097.5 | 11,510,000 | 44% | 1,082.9 |
| Lake Powell | 3,600.3 | 11,776,000 | 48% | 3,609.9 |

Data retrieved April 9, 2020

¹ Based on Reclamation's March 2020 24 Month Study Most Probable Inflow.

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Water Use In Southern Nevada

Southern Nevada Water Use

2018 Actual Use in Acre-Feet

| | |
|---|--------------|
| Nevada Annual Allocation | 300,000 |
| Diversion | 479,279 |
| Return Flows | 235,176 |
| Consumptive Use | 244,103 |
| Unused Allocation Available for Banking | 55,897 (19%) |

Southern Nevada Water Use

Diversions

Return Flows

Consumptive Use

| | | | |
|-----------------------|--------|--------|--------|
| January-February 2020 | 59,561 | 41,292 | 18,269 |
|-----------------------|--------|--------|--------|

Banked Water (through end of 2018)

Acre-Feet

| | |
|-------------------------------------|-----------|
| Ground Water Recharge in So. Nevada | 358,045 |
| Banked in Lake Mead | 700,448 |
| Banked in California and Arizona | 943,821 |
| Total | 2,002,314 |

6

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