

Minutes of Regular Meeting  
COLORADO RIVER BOARD OF CALIFORNIA  
Wednesday, October 11, 2006

A Regular Meeting of the Colorado River Board of California (Board) was held in Grand Ballroom Salon 1 of the Ontario Airport Marriott Hotel, at 2200 East Holt Avenue, Ontario, California, on October 11, 2006.

Board Members and Alternates Present

Dana Bart Fisher, Jr., Chairman  
James H. Bond  
John W. McFadden  
Terese Marie Ghio  
John Pierre Menvielle

Bill D. Wright  
  
Jeanine Jones, Designee  
Department of Water Resources

Board Members and Alternates Absent

Thomas M. Erb  
John V. Foley  
James B. McDaniel

Henry Merle Kuiper  
Christopher G. Hayes, Designee  
Department of Fish and Game

Others Present

Steven B. Abbott  
Mark D. Beuhler  
John Penn Carter  
William I. DuBois  
David Fogerson  
Cliff Hurley  
Michael L. King  
Russell Kitahara  
Brad Luckey  
Jay W. Malinowski  
Dirk S. Marks  
Jan P. Matusak  
Douglas B. Noble  
Roger K. Patterson  
McClain Peterson

Steven B. Robbins  
John L. Scott  
Peter S. Silva  
Ed W. Smith  
William H. Swan  
Peter E. von Haam  
Loralee "Lee" Willer  
  
William S. Abbey  
Abbas Amir-Teymoori  
J.C. Jay Chen  
Christopher S. Harris  
Mark Van Vlack  
Gerald R. Zimmerman

**CALL TO ORDER**

Chairman Dana B. Fisher, Jr., announced the presence of a quorum, called the meeting to order at 10:10 a.m.

## **OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD**

Chairman Fisher asked if there was anyone in the audience who wanted to address the Board on items on the agenda or matters related to the Board. Mr. Cliff Hurley of El Centro delivered comments associated with the current U.S. Bureau of Reclamation (Reclamation) process related to the environmental impact statement preparation for interim shortage guidelines and coordinated reservoir management strategies for Lakes Mead and Powell. Mr. Hurley also stated that he believed that there was a distinction between ‘real water conservation’ and fallowing programs to create ‘wet water’ for the Intentionally Created Surplus (ICS) program. Mr. Hurley further stated that “fallowing of farmland” is not “conservation.” He distributed a written description of his perception of the current Reclamation EIS-development process.

## **ADMINISTRATION**

### Approval of Minutes

Chairman Fisher noted that approval of the August 29<sup>th</sup> meeting minutes was required. Upon the motion of Mr. Wright, seconded by Ms. Jones, and unanimously carried, the Board approved the August 29<sup>th</sup> meeting minutes.

## **PROTECTION OF EXISTING RIGHTS**

### Colorado River Water Report

Mr. Harris reported that as of October 2nd, the storage in Lake Powell was 11.9 million acre-feet (maf), or 49 percent of capacity. The water surface elevation was 3,602 feet. The storage in Lake Mead was 13.88 maf, or 54 percent of capacity, and water surface elevation of 1,125 feet. Total System storage was about 33.5 maf, or 56 percent of capacity. Last year at this time, there was 34.92 maf in storage, or 58 percent of capacity. Storage is down about 1.4 maf from this time last year.

Mr. Harris reported that precipitation is about 100 percent of normal, and the snowpack is virtually nil at this time of year. The actual April through July runoff into Lake Powell for Water Year 2006 was about 5.32 maf, or 67 percent of normal. The provisional water year unregulated inflow into Lake Powell is about 8.71 maf, or about 72 percent of normal.

Mr. Harris added that the Reclamation forecast of consumptive use (CU) for the State of Nevada is about 302,000 acre-feet, and for Arizona the CU is forecast to be 2.762 maf, and for California the consumptive use is forecast to be 4.26 maf. Overall CU in the Lower Basin is expected to be about 7.33 maf.

## State and Local Water Reports

Mr. Wright reported that Diamond Valley Lake storage is about 780,000 acre-feet, or 96 percent of capacity; and the overall storage in the MWD reservoir system is about 94 percent of capacity. Ms. Jeanine Jones, of the Department of Water Resources, reported that there had been some new snow in the Sierras, and that overall reservoir storage was good within California.

## Colorado River Operations

### *Senate Confirmation of Robert W. Johnson as Commissioner of the Bureau of Reclamation*

Mr. Zimmerman reported that on October 2<sup>nd</sup>, the United States Senate confirmed Lower Colorado Regional Director, Robert W. Johnson, as the Commissioner of the Bureau of Reclamation (Reclamation). He briefly summarized Bob Johnson's long career, nearly thirty-one years, with Reclamation. Mr. Johnson replaced former Commissioner John Keys III, who retired several months ago. A draft letter congratulating Mr. Johnson on being confirmed as Commissioner of Reclamation was included in the Board's handout material for the Board's consideration. Upon the motion of Ms. Jones, seconded by Ms. Ghio, and unanimously approved, Mr. Zimmerman was authorized to finalize the letter and send it to Commissioner Johnson.

Mr. Zimmerman also reported that along with Bob Johnson's confirmation, the Senate confirmed the appointment of Ms. Mary A. Bomar as the new Director of the National Park Service; Mr. David L. Bernhardt as the new Solicitor for the Department of the Interior; and Mr. C. Stephen Allred as the new Assistant Secretary for Lands and Minerals Management. A news release from the Department of the Interior providing background information on the confirmations was included in the handout materials.

### *Draft 2007 Annual Operating Plan*

Mr. Zimmerman reported that on September 21<sup>st</sup> Reclamation hosted the final consultation meeting of the Colorado River Management Work Group related to the development of the 2007 Annual Operating Plan for the Colorado River System Reservoirs (2007 AOP). During the meeting, Reclamation provided overviews of Upper and Lower Basin hydrology and river system operations. Additionally, Reclamation provided an updated version of the proposed 2007 AOP for review and discussion. The draft 2007 AOP is available for review and comment on Reclamation's internet webpage. Mr. Zimmerman stated that based upon the draft 2007 AOP, operations at Lake Powell will result in the objective minimum release of 8.23 million acre-feet. Operations at Lake Mead and Hoover Dam are expected to result in a Partial Domestic Surplus and Mexico can schedule the delivery of 1.5 million acre-feet of mainstream water during calendar year 2007.

*Reclamation's Proposed Rule-Making Process Regarding Non-Contract Mainstream Water Use in the Lower Basin*

Mr. Zimmerman provided an overview of the August 18<sup>th</sup>, *Federal Register* notice published by Reclamation regarding the initiation of a proposed rule-making process addressing the non-contract use of Colorado River mainstream water in the Lower Basin. Based upon the *Federal Register* notice, Reclamation estimates that approximately 10,000 acre-feet per year is diverted and used by non-contract water users in the three Lower Basin states. Reclamation anticipates establishing a process that will result in identifying these non-contract water uses, and where possible, legalize the non-contract use, or require that non-contract water users cease the use of mainstream water. Mr. Zimmerman stated that copies of a Reclamation press release, a letter from Reclamation's Boulder Canyon Operations Office, and the *Federal Register* notice were included in the Board folder. Comments from interested parties are to be received by Reclamation on or before October 17<sup>th</sup>.

Mr. Zimmerman went on and reported that Board staff had prepared a comment letter to Reclamation. The draft letter addresses the proposed rule-making process and several issues that should be addressed by Reclamation during that process. He reported that the draft letter was circulated among the Agency Managers and agency technical staff for their review and comment. Upon receiving comments from the agencies, a revised draft of the letter was prepared and sent to the Board members for their review prior to the Board meeting. Mr. Zimmerman asked for Board approval to finalize the letter and send it to Reclamation's Lower Colorado Regional Office.

Upon a motion of Mr. Bond, seconded by Mr. Menvielle, and unanimously approved by the Board with the abstention of the Department of Water Resources, Mr. Zimmerman was authorized to send the Board's comment letter.

*Gila Monster Farms Inadvertent Overrun of 2004 Colorado River Entitlement*

Mr. Zimmerman reported that on September 13<sup>th</sup>, Reclamation notified an Arizona contract holder, Gila Monster Farms, that it had inadvertently overrun its 2004 mainstream entitlement by 16.6 percent. He stated that Gila Monster Farms is entitled to divert up to 9,156 acre-feet annually, but in 2004 diverted 10,677 acre-feet, 1,521 acre-feet over its entitlement. Consequently, Reclamation is requiring that Gila Monster Farms initiate a payback program, beginning in 2007, of a minimum of 33.3 percent of the overrun each year for the next three years. Further, in order to demonstrate the ability to make the overrun payback, Reclamation has requested Gila Monster Farms to prepare an Extraordinary Water Conservation Plan by October 1, 2006, that identifies how the overrun payback water will be generated and repaid to the System. A copy of Reclamation's letter to Gila Monster Farms was been included in the Board folder.

*Lower Division States' Letter to Secretary of the Interior Kempthorne Regarding the 2006 Upper Basin Hydrologic Determination and New Mexico Water Use*

As discussed at the last Board meeting, Mr. Zimmerman reported that the three Lower Division states had finalized the draft letter to Secretary Kempthorne regarding the proposed 2006 Upper Basin Hydrologic Determination and New Mexico Water Use from Navajo Reservoir. He indicated that the letter was sent to the Secretary of the Department of the Interior, Dirk Kempthorne, on September 7<sup>th</sup>. The primary issues identified in the letter include the following: 1) the lack of coordination with the Lower Basin states as the Hydrologic Determination was being prepared; 2) the inclusion of only the Upper Basin's position on its water delivery obligation to the Lower Basin; 3) the inclusion of, and assumptions regarding, reservoir storage in addition to the Colorado River Storage Project initial units; and 4) the technical adequacy of Reclamation's analysis and conclusion. The letter also indicated that the review and approval of the Hydrologic Determination should be by both the Assistant Secretaries for Water and Science and Indian Affairs. Mr. Zimmerman informed the Board that a copy of the finalized letter had been included in the Board folder. There was some discussion among audience members about whether or not the Department of the Interior had responded to the letter. Mr. Zimmerman indicated that the Lower Basin states were still waiting for an official response from Interior and Reclamation. There was also some discussion about the relative positions of the various Basin states with regard to the hydrologic determination. Chairman Fisher indicated that Mr. Zimmerman had done a good job of articulating the concerns of the Lower Basin states, particularly those of California.

*All-American Canal Lining Lawsuit*

Mr. Zimmerman updated the Board regarding the status of the All-American Canal Lining lawsuit. He reminded the Board that a coalition of business and environmental groups had filed a lawsuit challenging the All-American Canal Lining Project on the grounds that it would negatively affect business opportunities in the cross-border region and damage environmental resources and species in both countries. On July 3<sup>rd</sup>, U.S. District Court Judge Philip M. Pro issued an order in the case. The Judge's order was entered in favor of the defendants. On July 24<sup>th</sup>, the plaintiffs filed a notice of motion for an injunction to stop the proposed canal lining project in the interim while the appeal of the Court's decision moves forward with the Ninth U.S. Circuit Court of Appeals. Mr. Zimmerman noted that a copy of the motion to enjoin the project and memorandum of points and authorities had been included in the Board folder.

Mr. Zimmerman reported that on August 24<sup>th</sup> a two-judge panel of the Ninth U.S. Circuit Court of Appeals granted the plaintiffs motion to enjoin the canal-lining project pending the appeal being heard by the first available panel of the Court of Appeals. The order stated that the case would be calendared with the panel during the week of December 4<sup>th</sup>. Mr. Zimmerman stated that a copy of the August 25<sup>th</sup> Imperial Irrigation District press release discussing the potential impacts of the temporary injunction on the project had been included in the Board folder. Mr. Zimmerman asked Mr. John Carter and Mr. Bill Swan, representing the Imperial Irrigation District, if they had any additional information to share with the Board. Messrs. Carter and Swan indicated that other states or organizations may be planning to file amicus curiae briefs in the case. Finally, Mr. Mike King, of the IID, provided an update of the status of the canal-lining construction project.

## Basin States Discussions

### *Seven Basin States Representatives Meetings*

Mr. Zimmerman provided an overview of the current status of the seven Basin States negotiations and discussions. He indicated that discussions among representatives of the Colorado River Basin states were continuing, and that discussions among the Lower Basin states continue to focus on: 1) shortage sharing between Arizona and Nevada; 2) accounting for water use of Non-Colorado River System water, e.g., Nevada's non-system groundwater; and 3) accounting for Nevada's conserved water on the Virgin and Muddy Rivers that is associated pre-Colorado River Compact water rights. The major issue continues to be the shortage sharing between Arizona and Nevada.

Mr. Zimmerman reported that a meeting among the Lower Basin states was held on August 31<sup>st</sup> in San Diego, California. During that meeting Reclamation provided an update on the status of its NEPA/EIS process regarding the development of Shortage Guidelines for the Lower Basin and Coordinated Operations for Glen Canyon and Hoover Dams. According to Reclamation, the schedule for publication of the draft EIS has slipped about two months. Now the draft EIS is expected to be released in February 2007; however, publication of the Record of Decision is still on schedule and is expected to be issued in December 2007.

During the August 31<sup>st</sup> meeting, the Lower Basin states also discussed the letter to the Department of the Interior Secretary, Dirk Kempthorne, commenting on the Upper Basin's May 2006 draft Hydrologic Determination regarding the Water Available from Navajo Reservoir and the Upper Colorado River Basin for Use in New Mexico. Based upon the discussions at the meeting the draft letter to Secretary Kempthorne was finalized and transmitted to him on September 6, 2006.

Mr. Zimmerman indicated that on September 28, 2006, representatives from the seven Basin states met in Salt Lake City, Utah. He stated that the primary items of discussion were: 1) the status of Reclamation's NEPA/EIS process regarding the development of Shortage Guidelines for the Lower Basin and Coordinated Operations for Glen Canyon and Hoover Dams; and 2) the status of the ongoing discussions in the Lower Basin. During the meeting, updates were provided on: 1) the weather modification and tamarisk control efforts in 2007; 2) the Intentionally Created Surplus and System Conservation demonstration programs in 2007; 3) the test operation of the Yuma Desalting Plant in 2007; 4) the Long-Term System Augmentation study being conducted by the Southern Nevada Water Authority; and 5) litigation associated with the All-American Canal and the Operations of Glen Canyon Dam.

Finally, Mr. Zimmerman reported that the Lower Basin states met again on October 3, 2006, in an attempt to reach agreement on: 1) shortage sharing between Arizona and Nevada; 2) the accounting for water use of Non-Colorado River System water and conserved tributary water from pre-Colorado River Compact water rights on the Virgin and Muddy Rivers. During the meeting, progress was made on reaching agreement on each of the issues. General agreement was reached on the water use accounting issues for both the Non-Colorado River System water and conserved tributary water on the Virgin and Muddy Rivers; however, further discussion is needed on the shortage sharing between Arizona and Nevada. Arizona needed to take the proposal that came out of the meeting back to its Colorado River Advisory Committee, which

will meet on October 10<sup>th</sup>. Assuming that Arizona and Nevada can reach general agreement on the shortage sharing, a draft document will be prepared outlining the terms of agreement. That draft document will be brought to the Board for its consideration.

There was a brief discussion regarding the calculation of return flow credit associated with Nevada's water uses in the Las Vegas metropolitan region. Mr. McClain Peterson, of the Colorado River Commission of Nevada, provided a brief overview of the return flow calculation methodology, and stated that he would provide Board members with a copy of a brief whitepaper explaining the calculations and general water budget situation for the Las Vegas area.

Mr. Zimmerman informed the Board that the next meeting of the Basin states was scheduled for October 30-31, 2006, in Las Vegas, Nevada.

#### *Status of the Development of the Shortage Guidelines and Coordinated Reservoir Management Strategies Environmental Impact Statement*

Regarding the development of Lower Colorado River Basin shortage guidelines and coordinated management strategies for Lakes Powell and Mead, Mr. Zimmerman briefed the Board that Reclamation announced on September 18<sup>th</sup> that the schedule for the release of the draft environmental impact statement (EIS) was being postponed to February 28, 2007. He stated that the draft EIS was slated to be released on December 31, 2006. Based upon the revised schedule, Reclamation plans to publish a final EIS in September 2007, and a record of decision in December 2007. For those wishing further information associated with development of the strategies and the EIS, Reclamation has information posted at its webpage at <http://www.usbr.gov/lc/region/programs/strategies.html>. Mr. Zimmerman indicated that a copy of Reclamation's memorandum announcing the revised schedule had been included in the Board folder.

#### *Colorado River Long-Term Augmentation Options Project Status Report*

Mr. Zimmerman provided a brief status report and proposed completion schedule for the Colorado River Long-Term Augmentation Options Project. He reminded the Board members that this was an effort initiated by the Southern Nevada Water Authority, and supported by the other six Colorado River Basin states, to develop options and opportunities for augmenting the water supplies available for use in the Basin. Mr. Zimmerman reported that the consultants continue to meet with interested stakeholders in each of the Basin states to identify options and alternatives for developing additional water supplies. He indicated that a meeting would be held between the consultants and the Basin states' Technical Committee on October 20<sup>th</sup> in Las Vegas, Nevada. The project is expected to be completed in late-February 2007.

## Colorado River Environmental Activities

### *Status of the Glen Canyon Dam Operations Lawsuit*

Mr. Harris briefed the Board on the current status of the Glen Canyon Dam operations lawsuit in the United States District Court in the District of Arizona. He indicated that on August 30<sup>th</sup>, U.S. District Court Judge David G. Campbell signed an order dismissing the lawsuit initiated by Center for Biological Diversity, and others, against the Bureau of Reclamation and Secretary Kempthorne regarding Glen Canyon Dam operations and impacts to listed species. Mr. Harris reported that the cause for the Court's dismissal of the law suit was the acceptance of a proposed settlement agreement entered into by the Department of the Interior and the plaintiffs. Under the terms of the settlement agreement, Reclamation will initiate documentation activities pursuant to NEPA and ESA with respect to current and proposed Glen Canyon Dam operations by January 31, 2007. Also, Reclamation will prepare a biological assessment and submit the assessment to the U.S. Fish and Wildlife Service (USFWS) by May 1, 2008.

The expectation of the parties to the agreement is that by September 30, 2008, Reclamation will have completed any relevant NEPA analysis; and if required, the USFWS will have prepared a biological opinion. Mr. Harris indicated that a copy of the Court's order and the settlement agreement had been included in the Board folder.

Mr. Harris and Mr. Zimmerman reported that there are several important meetings of the Adaptive Management Work Group and Technical Work Group coming up in the near future, and that these meetings are focusing on proposed experimental flow regimes and potential revisions to Glen Canyon Dam operations. Mr. Zimmerman and Mr. Harris assured Board members that they will continue to carefully monitor these discussions and participate, as appropriate, to protect California's long-term water supply interests.

### *Status of the Lower Colorado River Multi-Species Conservation Program*

Mr. Zimmerman updated the Board on the recent testimony he provided at a field hearing held by the House Subcommittee for Water and Power in Scottsdale, Arizona, on October 10<sup>th</sup> regarding the proposed legislation that has been developed for the LCR MSCP. Mr. Zimmerman stated that this legislation, H.R. 5180, and its companion in the Senate, S. 3841, is intended to address the following issues: 1) provide a long-term authorization related to Reclamation's funding of the federal government's share of LCR MSCP implementation; 2) establish a process for acquiring and using water supplies related to habitat restoration and species conservation purposes; and 3) provide an exemption to the Federal Advisory Committee Act for the LCR MSCP Steering Committee. Mr. Zimmerman indicated that on behalf of California's interests in the LCR MSCP, he provided testimony regarding the proposed legislation at the field hearing. He stated that a copy of the proposed legislation, both Senate and House versions, had been included in the Board folder. A copy of the written testimony that he delivered to the Subcommittee on October 10<sup>th</sup> was also included in the handout materials. Finally, he reported that copies of the Department of the Interior's testimony as well as Mr. Zimmerman's oral testimony responding to the Department of the Interior's testimony were included in the handout material. Mr. Zimmerman also indicated that the Board would provide formal written follow-up testimony to the subcommittee regarding H.R. 5180.



### *Status of Perchlorate Remediation Efforts at Las Vegas Wash*

Mr. Amir-Teymoori provided an update on the perchlorate remediation efforts in the Las Vegas Wash near Las Vegas, Nevada. He stated that the Tronox perchlorate remediation and treatment system, Fluidized Bed Reactor (FBR), continues to operate and perform as expected. The flow to FBR is about 1,000 gpm and the perchlorate concentration to the FBR system varies from between 200 to 250 parts-per-million (ppm). Mr. Amir-Teymoori reported that the Nevada Department of Environmental Protection (NDEP) had determined that the effluent concentration continues to be consistently below the permit condition of 18 parts-per-billion (ppb) and is generally below 4 ppb.

Mr. Amir-Teymoori continued, that according to NDEP, the perchlorate load to Las Vegas Wash had been reduced to approximately 100 pounds per day. The perchlorate removal was between 1,700-2,000 pounds-per-day. As of October 1, 2006, approximately 2,068 tons of perchlorate had been removed from the environment. Mr. Amir-Teymoori indicated that the perchlorate concentration at the Willow Beach monitoring station was about 2 ppb.

He reported that Tronox continues to make adjustments to its remediation system to further optimize its operation. A new well was constructed to capture more perchlorate-contaminated water, and the FBR treatment system has been expanded for more perchlorate removal by adding an additional biological reactor. Also, Tronox has installed a filtration system to reduce the turbidity of the treatment system's effluent that enters the Las Vegas Wash.

At the last update provided by Mr. Amir-Teymoori, he had reported that AMPAC had obtained a permit for its bioremediation system and constructed its first remediation system, which included two extraction well fields and two injection well fields to capture the leading edge of the plume. Total flow from this system would be about 300-330 gallons-per-minute (gpm) at this time, and would expand to approximately 450 gpm with all of the wells online. The AMPAC *in situ* bioremediation system is operating in an interim mode with full-scale operation expected in January 2007.

Finally, on a related issue, Mr. Amir-Teymoori reported that the California Department of Health Services had proposed to adopt a Maximum Contaminant Load (MCL) of 6 ppb for perchlorate in drinking water. A copy of the proposed Notice is included in the Board folder. A public hearing will be held on October 30<sup>th</sup> in Sacramento. Written comments are due by November 3<sup>rd</sup>.


### *State Water Resources Control Board's Notice of Opportunity for Public Comment on the proposed Federal Clean Water Act Section 303(d) List of Water Quality Limited Segments for California*

Mr. Amir-Teymoori also provided an overview of the recent State Water Resources Control Board (SWRCB) action that resulted in the publication of a Notice on a proposed revision to the Clean Water Act Section 303(d) list of water quality limited segments for California. He stated that a copy of the SWRCB's Notice and the List had been included in the Board folder. Related to the Colorado River, the SWRCB recommends the listing of the Colorado River (Imperial Dam to California-Mexico) as water quality limited for selenium, and the All-American Canal as water quality limited for specific conductance, sulfate, and total

dissolved solids. Mr. Amir-Teymoori indicated that the SWRCB expected to consider the list for adoption at its meeting on October 25<sup>th</sup>. Comments are due by October 20<sup>th</sup>. Mr. Amir-Teymoori reported that Board staff had prepared a draft comment letter, which was forwarded to the Agency Managers and agency technical staff for review and comment. The draft letter included in the handout materials reflects those comments received from several of the agencies. Mr. Zimmerman requested authorization to send the letter to the SWRCB before the October 20<sup>th</sup> deadline. Upon a motion of Mr. Bond, seconded by Mr. Menvielle, and unanimously approved by the Board, Mr. Zimmerman was authorized to finalize the letter to the SWRCB and submit it prior to the expiration of the comment deadline.

Other Business/Next Board Meeting

There being no further business to be brought before the Colorado River Board of California, Chairman Fisher indicated that the next regular meeting of the Board would be held at 10:00 a.m. in Ontario, California, on November 15<sup>th</sup>. Chairman Fisher then entertained a motion for adjournment. Upon a motion of Mr. McFadden, seconded by Mr. Wright, and unanimously approved, the regular meeting of the Board was adjourned at 11:57 a.m., October 11, 2006.



Gerald R. Zimmerman  
Executive Director