

Minutes of Meeting
COLORADO RIVER BOARD OF CALIFORNIA
Wednesday, November 9, 2022

A meeting of the Colorado River Board of California (Board) was held on Wednesday, November 9, 2022, at the Sheraton Ontario Airport Hotel, 429 North Vineyard Avenue, Ontario, California 91764.

Board Members and Alternates Present:

David De Jesus (MWD Alternate)
Dana B. Fisher, Jr. (PVID)
John B. Hamby (IID)
Jeanine Jones (DWR Designee)
Peter Nelson, Chairman (CVWD)

Glen D. Peterson (MWD)
David R. Pettijohn, Vice Chairman (LADWP)
Jack Seiler (PVID Alternate)
David Vigil (DFW Alternate)

Board Members and Alternates Absent:

Gary Croucher (SDCWA Alternate)
Castulo Estrada (CVWD Alternate)
James Hanks (IID Alternate)
Christopher Hayes (DFW Designee)

Delon Kwan (LADWP Alternate)
Jim Madaffer (SDCWA)

Others Present:

Steve Abbott
Nick Bahr
Robert Cheng
Dennis Davis
JR Echard
Javier Gonzalez
Chris Harris
Bill Hasencamp
Ned Hyduke
Rich Juricich
Tom Levy
Aaron Mead
Jessica Neuwerth

Shana Rapoport
Brad Robinson
Kelly Rodgers
Alexi Schnell
Tina Shields
Gary Tavetian
Petya Vasileva
Mena Westford
Nathan Wu
Jerry Zimmerman

CALL TO ORDER

Chairman Nelson announced the presence of a quorum and called the meeting to order at 10:09 a.m.

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD

Chairman Nelson invited members of the audience to address the Board on items on the agenda or matters related to the Board. Hearing none, Chairman Nelson moved to the next item on the agenda.

ADMINISTRATION

Chairman Nelson asked for a motion to approve the September 14th and October 12th, 2022, Board meeting minutes. Mr. Hamby moved that the minutes be approved, seconded by Mr. Pettijohn. By roll-call vote, the minutes were unanimously approved.

Chairman Nelson reviewed the 2023 Board meeting schedule and stated it will be approved during the December Board meeting.

COLORADO RIVER BASIN WATER REPORTS

Colorado River Basin Report

Mr. Juricich reported that as of November 7th, the water level at Lake Powell was 3,529.70 feet with 5.82 million-acre feet (MAF) of storage, or 25% of capacity. The water level at Lake Mead was 1,045.29 feet with 7.35 MAF of storage, or 28% of capacity. The total system storage was 19.36 MAF, or 33% of capacity, which is 3.15 MAF less than system storage at this time last year.

Mr. Juricich reported that as of November 1st, for Water Year-2023 (WY-2023), the observed October inflow to Lake Powell was 0.44 MAF, or 97% of normal. The November inflow forecast to Lake Powell is 0.36 MAF, or 85% of normal.

Mr. Juricich reported on the current storm activity in northern and southern California, and in the Colorado River Basin. He also presented a graphic showing the calculated soil moisture

anomaly across the country. He noted the summer monsoon activity improved soil conditions in the Arizona and New Mexico.

Mr. Juricich reported that through the beginning of November, the Brock and Senator Wash regulating reservoirs captured 91,811 AF and 67,301 AF, respectively. He also reported that the excess deliveries to Mexico were 8,082 AF, compared to 28,025 AF this time last year. Finally, the total amount of saline drainage water bypassed to the Cienega de Santa Clara in Mexico was 125,456 AF.

October 24-Month Study

Mr. Juricich presented the October 24-Month Study results for Lakes Powell and Mead. He noted that the most probable projected release from Lake Powell in 2023 will be 7.0 MAF and an 8.19 MAF release in 2024. He added that the most probable projected elevations for Lakes Powell and Mead at the end of December 2023 is 3,525 feet and 1,025 feet, respectively.

Mr. Hasencamp commented that MWD is currently examining the impact of the 400 KAF plan that California proposed to the Bureau of Reclamation, noting that analyses show that by 2026 Lake Mead's elevation will be twenty feet higher because of the cumulative impacts of the California's DCP contribution and the 400 KAF plan.

State and Local Report

Board Member Jones, representing the California Department of Water Resources (DWR), reported that the recent storm activity was better than usual for this time of the year, noting that it is still early in the water year.

Board Member Peterson, representing The Metropolitan Water District of Southern California (MWD), reported that as of November 1st, MWD's reservoir storage is 62% of capacity and Colorado River aqueduct is operating on an eight-pump flow. He also noted that conservation in MWD's service area has been increasing.

Chairman Nelson, representing the Coachella Valley Water District (CVWD), reported that CVWD took three actions related to the Colorado River. The first action included signing a memorandum of understanding (MOU) between MWD, Southern Nevada Water Authority (SNWA), and Denver Water Authority on urban best management practices. He stated that in September CVWD started reducing groundwater recharge as part of its obligation toward the

500-plus plan. He stated that this action resulted in a documented savings of just over 9,000 AF. Lastly, he reported that the CVWD Board approved to submit a proposal under Reclamation's Inflation Reduction Act (IRA) program under item 1A, to conserve up to 35,000 AF of water a year for the next three years.

Board Member Jones reported that receiving regular reports about the status of the agencies' activities and programs during the CRB meeting is important to demonstrating activities in California and should be featured on the CRB website.

Colorado River Basin States Activities

Colorado River Basin Salinity Control Forum Work Group Meeting

Mr. Juricich summarized the outcomes of the Colorado River Basin Salinity Control Forum's (Forum) October 24-26 meeting held in South Lake Tahoe, California. The Forum provided policy feedback on several program topics including proposals on management and funding for the Lower Colorado River Basin Development Fund, Reclamation's proposed next steps for the Paradox Valley Unit (PVU), and the 2023 Triennial Review of Water Quality Standards for Salinity in the Colorado River System.

One of the key topics discussed at the October meeting was efforts to partially address a long-term shortfall of required cost-share dollars generated by the Lower Colorado River Basin Development Fund (LCRBDF). The Program Funding Committee recommended that the Forum authorize the exploration of reducing the required cost share in the Natural Resources Conservation Service EQIP Program expenditures from 30% to somewhere around 15%. The Forum directed the Funding Committee to further explore if the 15% value is sufficient to address the problem. Related to the LCRBDF, the Forum endorsed a proposal by the Work Group that recommends Reclamation use the latest information from the CRMMS and CRSS operations models when projecting future power revenue from Hoover, Parker, and Davis dams. Power revenue is currently the only source of funding to support the states cost share requirements under the Salinity Control Program and is deposited through the LCRBDF.

Mr. Harris asked if the Forum is considering how changes to the LCRBDF will affect long-term Program funding. Mr. Juricich responded that there is still a need for the Forum to address the long-term program funding. The cost-share adjustment proposed is not intended to be the final solution to the LCRBDF challenges.

Board Member Petersen asked if Arizona is paying into the Program. Mr. Juricich stated that having Arizona pay into the fund is part of the long-term solution. Right now, Arizona is not required to pay into the salinity program until after they pay back the CAP, which is not until around 2043 and that it may require legislation to allow CAP to put in funding to the LCRBDF.

Mr. Juricich also summarized activities by Reclamation regarding the PVU salinity control project, and next steps beyond the functional end of the existing brine deep injection well. Reclamation restarted injection of brine at PVU on June 1st as part of a six-month test injection plan. Five months into the test there have been no significant operational issues or seismic events. The injection test program will end on December 1st, and it is anticipated that Reclamation will shut down the injection well for several weeks to evaluate the effectiveness of the test and determine next steps. During the Forum meeting Reclamation outlined a process for moving forward with salinity control in Paradox Valley before the existing injection well has reached its end of life, which could be within the next several years. Reclamation is proposing to release a Statement of Objectives that would highlight the program goals and objectives for salinity control at Paradox Valley and solicit private industry to make proposals to provide a solution. Reclamation stated that a new Environmental Impact Statement would likely be needed to implement any new salt control activities in Paradox Valley. Reclamation has not provided a schedule for releasing the Statement of Objectives and the Forum requested to be part of the process.

Mr. Juricich summarized feedback from the Forum regarding key modeling assumptions for the 2023 Triennial Review of Water Quality Standards for Salinity in the Colorado River System. Modeling assumptions include projected cost effectiveness of program implementation, program implementation rates, program funding, future hydrology, and operations of the Paradox Valley Unit. Assumptions include a PVU operation at 65,000 tons/year through 2027 and would consider both full operation and no operation of PVU beyond 2027. Section 303 of the Clean Water Act amendments to the Federal Water Pollution Control Act requires that water quality standards are reviewed every three years by the Forum and are adopted by the water quality agencies of the seven basin states for inclusion in their state water quality standards.

Status of the Glen Canyon Dam Adaptive Management Program

Ms. Neuwerth reported that Technical Work Group of (TWG) of the Glen Canyon Dam Adaptive Management (GCDAMP) met virtually in October.

Ms. Neuwerth reported that smallmouth bass, a non-native predator in the Upper Basin, has been detected below Glen Canyon Dam to approximately 15 miles below the dam. There is much concern about the fish spreading throughout the Grand Canyon ecosystem. There are a number of activities going on to limit their spread and there may be a NEPA update for the LTEMP.

Ms. Neuwerth reported that releasing water through the bypass tubes at Glen Canyon Dam would yield cooler water and less entrainment of fish through the dam; however, this would have an impact on hydropower.

Ms. Neuwerth reported that spike flows, similar to ones that have been attempted in the Upper Basin, are being considered, as a means to disrupt smallmouth bass reproduction. Installation of nets and bubble nets to deter fish passage through the dam are also being considered.

Ms. Neuwerth reported that the National Park Service is conducting biweekly electrofishing throughout the Lees Ferry Region and there was a chemical treatment of a backwater where smallmouth bass were known to be located.

Ms. Neuwerth reported that monsoons brought enough sediment to trigger a potential high flow experiment (HFE); however, there were concerns that such an experiment would distribute smallmouth bass further downstream. Ms. Neuwerth reported that consideration of experiments will likely be conservative until more is learned about the potential effect on the non-native fish.

Status of the Lower Colorado River Multi-Species Conservation Program

Ms. Neuwerth reported that the Steering Committees of the Lower Colorado River Multi-Species Conservation Program (LCR MSCP) met on October 26.

Ms. Neuwerth reported that Reclamation provided an update regarding work with the U.S. Fish and Wildlife Service to increase coverage for reductions in flow to 1.574 MAF in areas covered by the LCR MSCP that currently have coverage for 800 KAF. The 800 KAF limit on reductions has not been reached in the past; however, more coverage could be needed to reduce flows to meet goals being considered. The coverage is necessary to account for environmental implications of leaving water in Lake Mead that would otherwise be flowing down the river. A Biological Opinion is currently being finalized.

Ms. Neuwerth reported that the Southern California Public Power Authority (SCPPA) is intending to withdraw from the LCR MSCP. SCPPA represents smaller power contractors but is not a power contractor itself. The smaller agencies will need to join the LCR MSCP's funding agreement. The withdrawal will be evaluated over the next six months.

Mr. Harris stated that The Metropolitan Water District of Southern California helped prepare the initial funding agreement and that he thinks we need to get the California parties together to figure out how to proceed. Ms. Neuwerth agreed and added that there are different pieces including the CESA permit, federal permit, and federal funding.

Ms. Neuwerth reported that there will be a Financial Work Group meeting in February to talk about future budgets for the program.

Mr. Harris inquired if there is a new program manager. Ms. Neuwerth responded that there is not yet a program manager and the program currently doesn't have a deputy program manager.

GENERAL ANNOUNCEMENTS AND UPDATES

Department of Interior Notice of Intent to Prepare a Supplemental Environmental Impact Statement

Mr. Harris discussed the October 28, 2022, Notice of Intent (NOI) published by the Department of Interior to Prepare a Supplemental Environmental Impact Statement (SEIS) for the December 2007 Record of Decision entitled Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead. The NOI includes proposed alternatives to revise the December 2007 Record of Decision associated with the Colorado River Interim Guidelines. The 2007 Interim Guidelines provide operating criteria for Lake Powell and Lake Mead, including provisions designed to provide a greater degree of certainty to water users about timing and volumes of potential water delivery reductions for the Lower Basin States, and additional operating flexibility to conserve and store water in the system. The NOI outlines that, in order to ensure that Glen Canyon Dam continues to operate under its intended design, Reclamation may need to modify current operations and reduce annual Glen Canyon Dam downstream releases, thereby impacting downstream riparian areas and reservoir elevations at Lake Mead. Additionally, in order to protect Hoover Dam operations, system integrity, and public health and safety, Reclamation may need to also modify current operations,

potentially including additional water use reductions for the three Lake Mead shortage tiers and reducing annual Hoover Dam downstream releases.

Board Member Fisher stated that what is being proposed under the NOI may be what is used for the Post-2026 framework. Mr. Harris responded that he received feedback that the activities under the NOI could guide operations for the next decade. Mr. Harris stated that Board staff will work closely with the California agencies to develop a very thoughtful, comprehensive comment response package that California submits to Interior and provide our recommendations, suggested guidance, suggested activities, and alternatives. Comments are due by December 20th. Mr. Harris stated that he expects the other states to provide individual comments to the NOI.

Board Member Petersen asked what role Mexico will have in responding to the NOI. Mr. Harris stated that Mexico is not directly subject to the NOI, but that there are separate discussions going on with Mexico under the Treaty. Mr. Harris stated the intention is not to bring Mexico into this NEPA process, or the domestic basin states process, but that Reclamation would start now, or shortly after the first of the year, a similar parallel process with Mexico. A new minute to the treaty will probably be required, following on the heels of Minute 323, and is liable to take longer to work out than this NEPA process, for which Reclamation is contemplating having a ROD by summer 2023.

Mr. Harris stated that Western Area Power Administration has been asked by Reclamation to evaluate Glen Canyon Dam releases below seven million acre-feet as early as 2023. There's a desire on the part of Reclamation to adjust the tier of determinations for Lake Powell operations. Changes could be implemented as soon as summer of 2023, with releases out of Glen that could be less than seven million acre-feet.

Chairman Nelson asked what the potential low range of Glen Canyon Dam released could be. Mr. Harris responded that it could be as low as 5 million acre-feet. Reclamation is profoundly concerned about going on the river outlet works twenty-four/seven at Glen Canyon Dam. Mr. Harris stated that a 5 million acre-feet release would have a tremendous negative impact on storage downstream at Lake Mead.

Board Member Fisher asked if the Record of Decision needs to be completed by mid-2023. Mr. Harris responded that Reclamation is seeking to have a Record of Decision by the end of June 2023. Mr. Harris stated that if there is going to be a reduction of Glen Canyon Dam releases in 2023 it will be difficult to do that at the end of the water year.

Board Member Fisher stated that he is concerned about the likelihood of litigation by the Upper Basin states if Reclamation closely follows the Law of the River.

Chairman Nelson stated that California's response is to follow the Law of the River and follows the priority system, and not consider an ad hoc application of evaporative losses to the Lower Basin. Mr. Harris responded that there is full authority for the Secretary of Interior to manage losses under the existing framework of the Law of the River.

Mr. Hasencamp asked why Reclamation is only looking for authority to cover 2023 and 2024. Mr. Harris responded that the NOI lays out three time frames: 2023 and 2024, 2023 through 2026, and post-2026 for some period of time. Mr. Harris stated that while the focus is on Lake Powell, Lake Mead is facing significant challenges. Part of this is the uncertainty that of reaching consensus between the seven states. That is why Reclamation is proposing its own solution.

Mr. Cheng stated that this looks like it may be a more prescriptive solution and asked how that contrasts with California's voluntary proposal. Mr. Harris responded that within the current framework of the Law of the River, mandatory water use reductions to California are limited in their application. California has stepped up for this interim period at 400 KAF of additional water use reductions per year. Mr. Harris stated he believes Reclamation is supportive of the actions being taken by California. He stated that there is the possibility that someone would seek a legislative solution, and that California is watching that closely. Mr. Harris stated California's voluntary proposal dovetails quite nicely with the water supply reliability that California will end up with at the end of the day. California has an obligation to share the Lower Basin treaty burden with Arizona equally, as described in the Boulder Canyon Project Act. Ms. Neuwerth stated that Reclamation may support a combination of voluntary and mandatory actions. Mr. Harris stated that the proposed Reclamation alternative would consider how the Secretary's authority could complement a consensus-based alternative that may not sufficiently mitigate current and projected risks to the Colorado River System reservoirs. Mr. Harris stated that it doesn't appear that Arizona is able to implement additional voluntary cuts.

Mr. Harris stated he will schedule a time to work with the California agencies to discuss the NOI and California's response.

Supreme Court will reconsider Navajos' claim for more water from the Colorado River

Mr. Harris discussed that the U.S. Supreme Court has agreed to consider a dispute between the Navajo Nation and state and federal governments over the Tribe's claim for an annual Colorado River water supply. The Court agreed on November 4th, 2022, to review a 9th Circuit Court decision that held the Navajo Nation has a right to take more water from the Colorado River. The question presented by the Tribe is whether, given the United States' promise to provide the Navajo Nation sufficient water by entering into the treaties establishing the Navajo Reservation, coupled with the government's nearly exclusive statutory and regulatory control over the Colorado River, the United States has a fiduciary responsibility to the Navajo Nation to assess the Nation's water needs and develop a plan to meet them. The federal government and the states of Arizona, Colorado and Nevada argued in an October filing that the river's water is not an explicitly enumerated responsibility of the government regarding reservations. The case law "has made clear that Indian tribes may sue to enforce only those trust responsibilities that the United States has 'expressly accept[ed],'" they wrote.

Mr. Harris asked Mr. Abbott to provide additional background on the case. Mr. Abbott responded that this lawsuit began in 2003 when the Navajo Nation sued to challenge the interim surplus guidelines under NEPA and also sued the United States under a breach of trust claim asserting that the Navajo have a reserved right to water from the mainstream Colorado River in the Lower Basin and that the federal government needs to come up with a plan to figure out how much water the nation needs, and a plan to deliver it to them.

The Navajo amended their complaint to challenge the 2007 Interim Guidelines as well. The federal agencies moved to dismiss that claim. Many of the states, and in California, the agencies who have contracts, intervened in the case. Judge Snow dismissed the case saying they had no standing under NEPA because the Tribe had shown no injury. Judge Snow also dismissed the breach of trust claim saying there is no "there there" under the law and that the Supreme Court has exclusive jurisdiction to determine whether there is a reserved right to the Navajo reservation.

The case went back to the Ninth Circuit. The Ninth Circuit firmly dismissed any of the claims but sent it back to the district court to give the Navajo one last chance to plead a breach of trust finding. The Navajo proposed an amended complaint that focused exclusively on the Lower Colorado River Basin and asserting reserved water rights. Judge Snow dismissed the claim again saying the U.S. is not liable for breach of trust and that the Supreme Court has exclusive jurisdiction. The Navajo appealed. The Ninth Circuit ruled that the Navajo have stated a claim

for breach of trust and the Supreme Court doesn't have exclusive jurisdiction, the district court can decide these issues.

The Solicitor General's Office, on behalf of the federal defendants, petitioned for challenging the ruling on the breach of trust that it is contrary to Supreme Court cases as well to all of the other federal courts of appeal that have ruled on that issue. The state party intervenors filed a petition challenging the breach of trust ruling and also raised the issue that the Supreme Court has exclusive jurisdiction retained under the Arizona v. California decree to decide that issue. The U.S. filed a reply saying, that the latter issue doesn't need to be decided now, but agreed that the way the decree is written, water cannot be delivered to the Navajo Reservation out of the Colorado River unless the decree is amended. The Supreme Court granted both petitions, did not limit the issues to both the breach of trust and the exclusive jurisdiction of the Supreme Court will be briefed. The cases have been consolidated for briefing and oral argument. Opening briefs are due on December 19 for the federal defendants, and for the state party intervenors, the answering briefs are due in mid-January. The reply briefs are due in early February. Oral argument will be calendared for the March sitting. A decision from the Supreme Court is expected by the end of June 2023.

Washington, DC Updates

Inflation Reduction Act Implementation

Mr. Harris reported that on October 12th, the Department of the Interior (DOI) announced a funding opportunity through the IRA which includes \$4 billion for water management and conservation efforts in the Colorado River Basin and other areas experiencing similar levels of drought. Mr. Harris added that CVWD recently participated in this opportunity. He added that the announcement included the creation of Lower Colorado River Basin System Conservation and Efficiency program. He noted that system conservation proposal must create wet water in Lake Mead and will be funded at a set price based on the length of the agreement. Mr. Harris stated that the DOI will also solicit longer-term durable system efficiency projects in 2023, such as canal lining, re-regulating reservoirs, turf removal, salinity projects and other infrastructure.

Arizona Senator Kelly's Letter to DOI

Mr. Harris reported that on October 25th, Senator Mark Kelly (D-AR) wrote a letter urging the DOI to outline actions it can take to compel a Basin-wide agreement that ensures the stability of the Colorado River system. Mr. Harris stated that Senator Kelly also urged the DOI to withhold money for the Salton Sea drought mitigation until California agrees to use less of its share of the

Colorado River and to examine water losses in California due to evaporation and the state's reliance on surplus water credits to meet its conservation goals. California Natural Resources Agency (CNRA) Secretary Crowfoot responded to the Mr. Kelly's letter in an October 27 letter.

Reclamation Bipartisan Infrastructure Law Quarterly Update

Mr. Harris reported that Reclamation is hosting two information sessions on its implementation of the Bipartisan Infrastructure Law.

ADJOURNMENT

With no further items to be brought before the Board, Chairman Nelson adjourned the meeting at 11:24 a.m.