

The meeting was held at 1:30 p.m. on Tuesday, April 11, 2017, at the Clark County Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada.

COMMISSIONERS IN ATTENDANCE

Vice Chairwoman
Commissioner
Commissioner
Commissioner
Commissioner
Commissioner

Kara J. Kelley
Marilyn Kirkpatrick
Duncan R. McCoy
Steve Sisolak
Dan H. Stewart
Cody T. Winterton

COMMISSIONERS NOT IN ATTENDANCE

Chairwoman

Puoy Premsrirut

DEPUTY ATTORNEY GENERAL

Special Counsel, Attorney General
Special Counsel, Attorney General

Christine Guerci-Nyhus
Jennifer Crandell

COMMISSION STAFF IN ATTENDANCE

Executive Director
Chief of Finance and Administration
Hydropower Manager
Assistant Director of Engineering and Operations
Natural Resource Manager
Natural Resource Analyst
Natural Resource Analyst
Senior Accountant
Office Manager
Administrative Assistant IV
Administrative Assistant III
Administrative Assistant II

Jayne Harkins, P.E.
Douglas N. Beatty
Craig Pyper
Robert D. Reese
Angela Slaughter
Peggy Roefer
Warren Turkett, Ph.D.
Gail L. Benton
Gina Goodman
Kathryn Aguilar-Logan
Kristina Perry
Alison M. Otero

OTHERS PRESENT; REPRESENTING

Consultant, Colorado River Commission
Southern Nevada Water Authority

Sara A. Price, Esq.
Mitch Bishop

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF APRIL 11, 2017**

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 March 14, 2017 meeting	1
D.	<i>For Possible Action:</i> Consideration of and possible action to approve Amendment #2 to Contract for Personal Services of Independent Contractor Between the Colorado River Commission of Nevada and Sara A. Price, Esq	1
E.	<i>For Possible Action:</i> Consideration of and possible action to approve an agreement among the Colorado River Commission of Nevada, the Southern Nevada Water Authority, and Nevada Power Company d/b/a NV Energy to terminate the Business Accord Master Agreement, dated May 19, 2005	2
F.	<i>For Information Only:</i> Status Update on Navajo Lawsuit.....	3
G.	<i>For Information Only:</i> Status Update 2017 Legislative Session.....	5
H.	<i>For Information Only:</i> Status update on the hydrologic conditions, drought, and climate of the Colorado River Basin, Nevada’s consumptive use of Colorado River water, and other developments on the Colorado River	5
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.).....	6
J.	Comments and questions from the Commission members.....	6
K.	Selection of the next possible meeting date	6
L.	Adjournment.....	6

The Colorado River Commission meeting was called to order by Vice Chairwoman Kara Kelley at 1:30 p.m.

A. Conformance to Open Meeting Law.

Executive Director Jayne Harkins, P.E., confirmed that the meeting was 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 may 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 March 14, 2017 meeting.

Vice Chairwoman Kelley indicated that there were some minor administrative changes that she made and submitted to Ms. Harkins.

Commissioner McCoy moved for approval of the minutes. The motion was seconded by Commissioner Sisolak, and approved by a unanimous vote.

D. For Possible Action: Consideration of and possible action to approve Amendment # 2 to Contract for Personal Services of Independent Contractor Between the Colorado River Commission of Nevada and Sara A. Price, Esq.

Ms. Harkins provided a summary of the Amendment.

Sara A. Price, Esq. has over 14 years of experience with the Commission on water and power matters, the last 10 have been under contract as an Independent Contractor with the Commission for consulting services on water and power matters. She has been a licensed attorney in Nevada since 1996.

On June 11, 2013, the Commission approved a four-year contract for services from Ms. Price to advise on issues relating to the Lower Colorado River Multi-Species Conservation Program (LCR MSCP), the interfacing of the LCR MSCP and the new requirements under the Hoover Power Allocation Act of 2011, and other environmental, water, tribal, and power-related issues as requested by the Executive Director.

In December 2013, the Commission began critical drought contingency planning negotiations in the Lower Basin and amongst the Seven Basin States and later, bi-nationally with Mexico. The Executive Director directed Ms. Price to represent the Commission in these negotiations because of the sensitivity of the issues. Ms. Price has extensive background on Colorado River matters. She is well-established and has respected working relationships with key personnel in federal, state, and municipal agencies, particularly the Southern Nevada Water Authority.

Moreover, under the LCR MSCP, more concentrated work developed on a potential large, complicated land purchase agreement for the program. Several critical program and funding issues arose under the Colorado River Basin Salinity Control Program for which the Executive Director sought Ms. Price's expertise. These assignments were more extensive than Ms. Price's routine contracted work and accordingly increased her hours of service and compensation.

To continue to benefit from Ms. Price's expertise in on-going river negotiations and projects under her existing contract, the Commission approved Amendment # 1 to Ms. Price's contract. This Amendment approved a compensation increase of \$310,000.00 for a total not-to-exceed of \$510,000.00 with a rate of \$262.50 per hour for the remainder of the contract.

The Commission's approval of Amendment # 2 will extend the term of the Contract to June 30, 2021. This will not result in any additional increase in expenditures, other than that approved in April 2015.

Commissioner Kirkpatrick inquired if this was the same contract that the Commission reviewed 4 or 5 months previously.

Ms. Harkins replied in the negative and stated that the original contract was approved by the Commission on June 11, 2013. On April 24, 2015, Amendment # 1 increased the total of the contract for a total not-to-exceed amount of \$580,000.

Commissioner Sisolak expressed that he remembered as Commissioner Kirkpatrick and restated her question.

Ms. Harkins responded that there were other contracts addressed recently but not this specific contract.

Ms. Price confirmed the dates stated by Ms. Harkins had recounted were correct.

Staff recommended the Commission approve Amendment # 2 to Contract for Services of Independent Contractor between the State of Nevada, Acting through Its Colorado River Commission and Sara A. Price, Esq.; and authorize the Executive Director to sign on behalf of the Commission.

Commissioner McCoy made a motion to approve the term extension for Amendment # 2 to Contract for the Personal Services of Independent Contractor Between the Colorado River Commission of Nevada and Sara A. Price, Esq. This was seconded by Commissioner Stewart and approved by a unanimous vote.

<p>E. <i>For Possible Action: Consideration of and possible action to approve an agreement among the Colorado River Commission of Nevada, the Southern Nevada Water Authority, and Nevada Power Company d/b/a NV Energy to terminate the Business Accord Master Agreement, dated May 19, 2005.</i></p>

Ms. Harkins gave a summary of the Business Accord Master Agreement.

In 2005, the Southern Nevada Water Authority (SNWA), Nevada Power Company d/b/a NV Energy (NV Energy), and the Commission entered into a Business Accord Master Agreement (“Accord Agreement”) which resolved past disputes among the Parties. The Accord Agreement provided for certain power supply, scheduling, and balancing services associated with SNWA’s and NV Energy’s joint ownership of the Silverhawk Generating Station, an operating, natural gas-fired combined cycle generation plant located near Apex, NV.

As part of the Accord Agreement, SNWA and NV Energy entered into a Power Exchange Agreement pertaining to the operation of the Silverhawk Generating Station. The Commission and NV Energy entered into a Confirmation Agreement and an Administrative Service Agreement which provided for NV Energy to provide the Commission with certain power supply and scheduling services necessary to manage the SNWA’s electrical loads.

The Confirmation Agreement and the Administrative Services Agreement expired by their respective terms. The Power Exchange Agreement and the Second Power Exchange Agreement which succeeded it are being terminated in connection with the sale of SNWA’s 25% ownership interest in the Silverhawk Generating Station to NV Energy.

The Termination Agreement terminates the Accord Agreement and provides for the Parties to release one another from all past claims arising from the litigation that gave rise to the Accord Agreement.

Ms. Harkins explained, with the sale of the ownership by SNWA, the Accord Agreement becomes moot and irrelevant. The SNWA and NV Energy have terminated their Agreement and have asked the Commission to do the same.

Staff recommended that the Commission approve the Termination Agreement and authorize the Executive Director to sign the agreement on behalf of the Commission.

Commissioner Sisolak made a motion to approve. This was seconded by Commissioner Stewart and approved by a unanimous vote.

F. For Information Only: Status Update on Navajo Lawsuit

Jennifer Crandell, Special Counsel Attorney General, updated the Commission on the Navajo Lawsuit issued in 2003. The 9th Circuit Court of Appeals in San Francisco heard oral arguments on February 14, 2017, in Case No. 14-16864 Navajo Nation v. Department of the Interior. Navajo Nation (Navajo) had appealed the district court’s dismissal for lack of subject matter jurisdiction of their action, alleging that the United States failed in its tribal trust obligation to protect the Navajo’s water rights to the Colorado River. It is challenging all of the operational procedures established to govern the Colorado River including Water Banking, National Environmental Policy Act (NEPA) violations and a Breach of Trust claim against the United States / Bureau of Reclamation. No decision was rendered at the time, with the expectation of one being delivered by the end of this summer.

The States of Nevada, Arizona, Colorado, and several water districts including the Southern Nevada Water Authority, the Metropolitan Water District of Southern California (MWD), Central Arizona Project, and Coachella Water District joined the lawsuit in opposition to the Navajo's claims.

The lawsuit had been stayed while trying to negotiate a water settlement on the Little Colorado River, a tributary to the Colorado River. To understand this issue a little more, in 1963, the Navajo tried to intervene in Arizona v. California. However, the Special Master ruled that the Navajo's water interest lay in the Little Colorado River, and recommended to the Supreme Court that the Navajo's case should be heard outside of Arizona v. California. There is currently an adjudication proceeding in Arizona to determine the Navajo's water rights on the Little Colorado River.

The fear is that the Navajo are using the federal lawsuit to be heard before the Supreme Court to gain standing for water rights to the main stem of the Colorado River. The district court in Arizona dismissed the case because of lack of jurisdiction in the case. Since the Navajo do not have current water rights to the main stem Colorado River, they cannot show injury to those rights and lack standing under Article 3 of the U.S. Constitution. The Navajo appealed the dismissal to the Ninth Circuit Court of Appeals.

The judge hearing the case wanted to understand if a "needs assessment" had been performed by the Federal Government as part of the NEPA or Breach of Trust claims. The attorneys present were unsure how the Court would rule.

The worst case scenario would be for the Court to remand the case back to the District level where the 2007 Guidelines would be stayed until a "needs assessment" could be performed by the Federal Government.

The best scenario would be for the Court of Appeals to uphold the District court's decision in dismissing the case.

G. <i>For Information Only: Status Update on 2017 Legislative Session.</i>

Ms. Harkins provided a report on the 2017 Legislative Session:

- Assembly Bill 11
- CRC Budget
- AJR4
- AB206

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

H. For Information Only: Status update on the hydrologic conditions, drought, and climate of the Colorado River Basin, Nevada's consumptive use of Colorado River water, and other developments on the Colorado River.

Warren Turkett, Ph.D., Natural Resource Analyst, provided a report on the following:

- Lake Mead Storage as of 4/10/2017
- Water Year 2017 Recap
- March Precipitation and Temperature
- Colorado Basin River Forecast Center
- Unregulated Inflow Forecast
- Lake Powell Projections March 2017 24-Month Study
- Lake Mead Projections based on March 2017 24-Month Study
- Water Use in Southern Nevada as of January – February 2017

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

Dr. Turkett reported that Lake Mead is at 1,087.2 feet and Lake Powell is at 3,598.1 feet of elevation. This is good news for the water levels in Lake Powell and Lake Mead due to the amount of precipitation received so far this year. However, the lack of precipitation and higher temperatures in March caused a large amount of lower elevation and mid-elevation snowpack melting and run-off.

Commissioner Kelley asked Dr. Turkett to explain how the snow melt amount is forecasted and the amount of moisture in the ground is measured.

Dr. Turkett replied that the Basin Forecast Center relies on the Ensemble Streamflow Prediction (ESP) Model in which information is inputted on a daily basis. This information includes the level of precipitation, temperatures, freezing points, ground moisture, and 5-day forecast. The numbers generated from the ESP Model are what are used in the 24-month study. Side Inflows and Banking have also helped the Lake Mead elevations.

Dr. Turkett continued his presentation and reported that the water year forecast is still good for the year. Unfortunately, since March was so dry, equalization will not occur in 2017. Thusly, only 9 million acre feet will be released from Lake Powell to Lake Mead. If equalization would have been achieved 11 million acre feet would have been released instead.

Commission Kirkpatrick complimented Dr. Turkett on his presentation and wanted a simpler explanation on the elevation of Lake Mead.

Dr. Turkett replied that the level of Lake Mead increases and decreases as we move through the year. Lake Mead will be at a higher elevation overall but if we would have reach equalization and the 11 million acre feet release, the change in elevation would have been quite noticeable.

Dr. Turkett added that if we have a similar moisture year in 2018, we should be able to achieve equalization and the higher release from Lake Powell.

Commission Stewart asked Dr. Turkett about the impact of the record-setting snowfall amounts in the Sierra Mountains in regards to the Lake Mead levels.

Dr. Turkett confirmed that with the additional snowfall in California, the State Water Project is releasing more water for California users. MWD will be able to conserve roughly three feet of elevation in Lake Mead.

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.)

Vice Chairwoman Kelley asked if there were any comments from the public. There were none.

J. Comments and questions from the Commission members.

Vice Chairwoman Kelley asked if there were any 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, May 9, 2017, at the Clark County Government Center, Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada.

L. Adjournment.

The meeting adjourned at 2:01 p.m.

Jayne Harkins, P.E., Executive Director

APPROVED:

for Kara J. Kelley, Vice Chairwoman
Puoy K. Premsrirut, Chairwoman