

The meeting was held at 11:00 a.m. on Tuesday, November 9, 2004, at the State of Nevada Sawyer Building, 555 East Washington Avenue, Suite 4412, Las Vegas, Nevada.

COMMISSIONERS IN ATTENDANCE

Acting Chairman
Commissioner
Commissioner
Commissioner
Commissioner

Roland D. Westergard
Andrea Anderson
Oscar B. Goodman
Myrna Williams
Ace I. Robison

COMMISSIONERS NOT IN ATTENDANCE

Chairman
Vice Chairman

Richard W. Bunker
Jay D. Bingham

DEPUTY ATTORNEYS GENERAL

Senior Deputy Attorney General

Sara A. Price

COMMISSION STAFF IN ATTENDANCE

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

George M. Caan
Gail A. Bates
James D. Salo
Douglas N. Beatty
James H. Davenport
Bob Reese
Malvin R. Ware
Phillip S. Lehr
Nicole Everett
Anthony Miller
Deanna Bruno
Janet Nuszbaum
Lisa Ray

OTHERS PRESENT; REPRESENTING

AMPAC
Boulder City, City of
Individual
Kerr McGee Chemical LLC
Kummer, Kaempfer, Bonner & Renshaw
Las Vegas Valley Water District/So. Nevada Water Authority
Nevada Power Company
Nevada Power Company/Sierra Pacific Power
Overton Power District No. 5
Overton Power District No. 5
TIMET

Jack Stonehocker
Ned Shamo
Isaac Henderson
John Holstrom
Rose Oram
Sandy Reed Bottino
Bill Carner
Judy Stokey
Kent Bloomfield
Delmar Leatham
Kurt Euteneier

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF NOVEMBER 9, 2004**

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The Colorado River Commission meeting was called to order by Acting Chairman Westergard at 11:00 a.m. followed by the pledge of allegiance.

A. Conformance to Open Meeting Law.

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

B. Approval of minutes of the October 12, 2004 Meeting.

Commissioner Anderson moved for approval of the minutes of the October 12, 2004, meeting as written. The motion was approved by a unanimous vote of those present. Commissioner Williams was not present for this vote.

C. Consideration of and possible action to adjust the amount of collateral the Commission's retail industrial customers are required to post pursuant to their contracts with the Commission.

Mr. Caan reported that each year the Commission reviews the collateral requirements for CRC's industrial power customers who are located in Henderson, Nevada. NAC 538.744 requires the Commission to conduct an annual review of the creditworthiness of its retail industrial customers during October of each operating year. Based on that review, the Commission established the amount and prescribed the manner in which the customer is required to furnish collateral pursuant to its contracts with the Commission. Staff recommended the Commission adjust the amount of the required collateral for each retail industrial customer as shown below.

| | Gross Annual | Proposed Collateral | Present |
|----------------------------------|--------------------------------|-----------------------|-----------------------|
| Contractor | Purchases* | 25% | Collateral |
| | 10/1/03 through 9/30/04 | of previous column | |
| American Pacific Corporation | \$3,897,349.63 | \$974,337.41 | \$955,044.29 |
| Basic Water Company | \$325,385.72 | \$81,346.43 | \$66,703.29 |
| Chemical Lime Company of Arizona | \$56,867.01 | \$14,216.75 | \$8,773.48 |
| Kerr-McGee Chemical, L. L. C. | \$277,611.22 | \$69,402.81 | \$44,069.66 |
| Pioneer Americas, L. L. C. | \$14,638,303.88 | \$3,659,275.97 | \$3,837,004.42 |
| Titanium Metals Corporation | \$5,188,623.10 | \$1,297,155.78 | \$581,879.92 |
| | | | |
| Total | \$24,384,140.56 | \$6,096,035.14 | \$5,493,475.05 |

Chairman Westergard asked if there were any questions and if the issue had been discussed with the customers.

Mr. Caan stated that the customers had received the information.

Chairman Westergard stated that it was important to note that NAC 538.744(2) provides that “[i]n no case will the amount of collateral established by the commission be less than one-fourth of the contractor’s gross annual purchases” and, where necessary to protect the State from potential loss, the amount of the required collateral may be greater than this minimum.

Mr. Caan replied that was correct, and that the proposed collateral has been adjusted to meet that minimum standard.

Chairman Westergard asked if there were any comments from the customers. There were none.

Chairman Westergard asked if there were any further questions by the Commission.

Commissioner Robison noted that the present collateral versus the proposed collateral for a couple of the customers changed significantly, particularly Titanium Metals; and asked if that adjustment was expected.

Mr. Caan reported that to determine the allowable minimum collateral required of each industrial customer for Operating Year 2004, staff calculated 25 percent of that customer’s Gross Annual Purchases during the test period, October 1, 2003, through September 30, 2004. This is a calculation that is based on actual invoices, would be adjusted based on both an increase in production (more kilowatt hours being used) and the lack of sufficient hydropower (a reduction of hydropower generated because of low lake levels); the combination of increased production and having to purchase more expensive additional supplemental power would increase those invoices over the previous year. Should CRC be in a position over the next year or two, and if hydropower availability goes up, the customer’s cost, even at current production levels will go down, and therefore, the collateral would be reduced accordingly.

Commissioner Westergard asked if there were further questions. There were none.

Commissioner Westergard stated that he would like to entertain a motion on this item.

Commissioner Anderson moved for approval to adjust the amount of the required collateral for each retail industrial customer as recommended by staff.

The motion was approved by a unanimous vote.

D. Consideration of and possible action on Amendment No. 1 to Service Agreement ("DOS-SNWA") between Nevada Power Company, the Southern Nevada Water Authority ("SNWA"), and the Colorado River Commission of Nevada to provide electrical transmission service to SNWA facilities.

Deputy Executive Director Mrs. Bates reported that during the last meeting, the Commission approved a transmission service agreement related to Senate Bill 211. That agreement was needed for the CRC to provide service to SNWA's Phase II loads. Staff considered Phase I to be the switchover of Pumping Plants 4 and 5 owned by SNWA, which occurred in September of this year. Phase II involves the remaining SNWA loads. SNWA gave notice to Nevada Power Company, requesting that these loads be switched to CRC service. The agreement that was signed previously was related to the use of Nevada Power's transmission system. Amendment No. 1 makes the existing distribution-only service agreement applicable to the remaining SNWA loads which SNWA intends to switch from Nevada Power service to CRC service. Amendment No. 1 is necessary for the CRC to provide service to the remaining SNWA loads. The most significant thing about Amendment No. 1 is the required deferred energy payment of approximately \$1.3 million to Nevada Power Company. This "exit fee" represents SNWA's share of past energy-related expenses incurred by Nevada Power in providing service to its customers, including SNWA. The CRC reviewed the calculations and are in agreement. Staff recommended that the Commission approve Amendment No. 1 and that the Executive Director be authorized to sign the amendment.

Commissioner Anderson asked if this was an expected fee when negotiating the entire agreement, and if staff anticipated that the fee would be a part of it.

Mrs. Bates replied yes.

Commissioner Williams moved for approval and the motion was carried by a unanimous vote.

E. Consideration of and possible action on a Storage and Interstate Release Agreement between the United States of America, acting through the Secretary of Interior, the Metropolitan Water District of Southern California, the Southern Nevada Water Authority and the Colorado River Commission of Nevada.

F. Consideration of and possible action on an Operational Agreement for Interstate Water Banking between the Metropolitan Water District of Southern California, the Southern Nevada Water Authority and the Colorado River Commission of Nevada.

Division Chief of Water James. Davenport requested that the Commission proceed with matters E and F together as they relate to the same matter, and also as both agreements were considered and approved by the Southern Nevada Water Authority Board of Directors at a recent meeting.

Mr. Davenport stated that a similar water banking transaction had been done in previous years with Arizona. These agreements are premised on a regulation of the Secretary of Interior which allows the banking of unused Colorado River apportionment in one state for another. The proposed Storage and Release Agreement ("SIRA") establishes a cooperative relationship between the Metropolitan Water District of Southern California ("MWD"), the SNWA, and the Commission pursuant to the Bureau of Reclamation ("BOR") off-stream storage regulation. The SIRA addresses the obligation of the Secretary of the Interior, upon a request from the SNWA, to deliver portions of Nevada's unused annual apportionment of Colorado River water to MWD for storage until such time as it is needed in Nevada to meet Nevada's needs. The Operational Agreement, as its title suggests, addresses the operational details of the relationship between the MWD, the SNWA and the Commission in which the Secretary has no direct involvement. The MWD will use its best efforts to divert and store the amount of unused apportionment requested by the SNWA in each year through 2010 without harming MWD's own operational requirements. After 2010, MWD and the SNWA will confer over the quantity of water available for storage, the amounts MWD will be able to store, and related costs. Provisions requiring notice to the Commission will ensure the Commission's ability to determine that the State of Nevada's annual Colorado River apportionment will remain secure. These documents put that agreement in place.

Commissioner Westergard asked if there were any questions by the Commission.

Commissioner Goodman stated that the agreements were good and that a lot of progress had been made as a result of the relationship with the Metropolitan Water District of Southern California. Furthermore, he indicated that SNWA Director Mulroy had characterized this as being an important event in the history of water discussions with California. Additionally, he indicated that this is a big step in assuring that Nevada will have sufficient water in the future as a result of being able to store and recover water both in Arizona, and by agreement in California.

Commissioner Robison stated that he is in agreement with what is being done and considers it a big step forward.

Commissioner Anderson stated that this is a win-win situation for both Nevada and California, and requested clarification that the CRC is banking water for future use and MWD will use Nevada's current water to improve their water quality until MWD can upgrade their water treatment facility.

Mr. Davenport replied that was correct.

Commissioner Westergard said that on Page 2 of 12 of the first agreement, paragraph F indicating that this is the statutory authority for entering into the agreement, by Nevada Agencies. It references NRS 538.186 and that authority relates to supplemental water, and the definition of supplemental water under NRS 538.041 means water from any sorts, which acquired would allow water to be used consumptively from the main stream of the Colorado River in excess of Nevada's apportionment, pursuant to the Boulder Canyon

Act. He asked that staff define and explain to the Commission specifically how this agreement deals with supplemental water.

Mr. Davenport replied that if Nevada elects not to use water, for example in 2004, Nevada would be under its apportionment of 300,000 acre feet per year. If Nevada gets that water back and uses it in a later year, Nevada would be using more water from the main stream than the 300,000 allowed. Water available in that year would be supplemental water. So it's contemplating that in later years when Nevada gets the water back, Nevada would be getting more water than allowed under the standard 300,000 acre foot apportionment.

Commissioner Westergard asked whether there is any question that this meets the definition of supplemental water.

Mr. Davenport replied that he believes that there is none.

Commissioner Westergard indicated that water stored will be within the State of Nevada's unused basic or surplus apportionment under certain provisions.

Mr. Davenport replied yes.

Commissioner Westergard asked if water stored pursuant to this agreement will not include the State of California's unused basic or surplus apportionment.

Mr. Davenport replied it will not include the State of California's unused basic or surplus apportionment.

Commissioner Westergard asked whether this conflicts with article 4.4.2 of the agreement which deals with intentionally created unused apportionment (ICUA).

Mr. Davenport clarified paragraph 2.1 which deals with water stored (the water going into storage). California is not volunteering to store its own water under this agreement, but it would store Nevada's water. Paragraph 4.2 on the other hand deals with the creation of the credits by which water will be recovered for Nevada, ICUA is created by MWD's use of their water that they have available to them in storage or directly available to them in a given year.

Commissioner Westergard asked again if paragraph 2.1 and 4.2 were in conflict.

Mr. Davenport said no.

Commissioner Westergard said o.k., and that he was satisfied. Referring to page 7, paragraph 511, he stated that he thought that it was interesting because of some of the issues that the Truckee Carson system (the Truckee River and Carson River systems), have faced regarding use of federal facilities to convey privately owned stored water, and the government said no. He asked for clarification of the federal act.

Mr. Davenport replied it was the Warren Act.

Commissioner Westergard asked if this paragraph intended to make it clear that Nevada will not be faced with that kind of confrontation in this process.

Mr. Davenport stated that the regulations which the Secretary of Interior adopted for interstate banking several years ago had a requirement that the contract set out particular facilities that would be used; the anticipation being that if federal facilities were going to be used, there would need to be unique environmental compliance with respect to those facilities, or perhaps some additional costs or reimbursement for those facilities. This makes it clear that there are no federal facilities involved.

Commissioner Westergard stated that this caught his attention and thought that it was a good paragraph to include in there.

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

Commissioner Williams moved to approve the Storage and Interstate Release Agreement and authorize the chairman to sign it. The motion was carried with a unanimous vote.

Commissioner Williams moved to approve the Operational Agreement and authorize the chairman to sign it. The motion was carried with a unanimous vote.

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|---|
| G. Comments and questions from the public. |
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Isaac Henderson asked if the Commission was going to build a pipeline to bring this water in, or how is the Commission going to facilitate that from California to here.

Mr. Davenport replied that the water would be banked in California and would be made available through the Colorado River system. Recovered water would be removed directly from Lake Mead.

Commissioner Westergard asked if there were any other comments from the public. There were none.

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| H. Comments and questions from the Commission members. |
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Commissioner Westergard asked if the Commission was going to request any legislation for the upcoming sessions, other than the budget process.

Mr. Caan replied that the Commission is not requesting any legislation for the upcoming session.

Commissioner Goodman asked if we anticipate anyone else proposing any legislation affecting the Commission.

Mr. Caan stated that he did not know and would not speculate, but would keep a very close eye on any issues in the legislature that involve both water and power. The CRC will be present in the legislature and be very actively involved in issues that affect the CRC.

Commissioner Williams asked if anyone would be watching the bill drafts.

Mr. Caan replied yes.

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| I. Next meeting date selection. |
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Commissioner Westergard asked if the staff anticipates the necessity for a meeting in December.

Mr. Caan replied that at this time he does not have any items that require a December meeting, but would still like to note that the meeting date of December 14, 2004, be made available should there be an item that needs Commission action.


Commissioner Westergard stated that if a December meeting is not required, the next scheduled meeting would be the second Tuesday in January.

Executive Director George Caan indicated that was correct.

The meeting adjourned at 11:25 a.m.


George M. Caan, Executive Director

APPROVED:


Richard W. Bunker, Chairman