

The meeting was held at 10:00 a.m. on Tuesday, November 8, 2005, at the North Las Vegas City Council Chambers, 2200 Civic Center Drive, North Las Vegas, Nevada.

COMMISSIONERS IN ATTENDANCE

Vice Chairman
Commissioner
Commissioner
Commissioner
Commissioner

Jay D. Bingham
Myrna Williams
Shari Buck
Andrea Anderson
Ace I. Robison

COMMISSIONERS NOT PRESENT

Chairman
Commissioner

Richard W. Bunker
Marybel Batjer

DEPUTY ATTORNEYS GENERAL

Senior Deputy Attorney General

Jennifer Crandell

COMMISSION STAFF IN ATTENDANCE

Executive Director
Energy Services Group Manager
Manager of Regulatory and Intergovernmental Affairs
Division Chief, Finance and Administration
Manager of Planning & Analysis
Hydropower Program Manager
Natural Resource Specialist
Natural Resources Analyst
Senior Energy Accountant
Office Manager
Administrative Assistant II

George M. Caan
Gail A. Bates
James D. Salo
Douglas N. Beatty
Damon Dade
Craig Pyper
McClain Peterson
Nicole Everett
Gail Benton
Deanna Bruno
Brenda Haymore

OTHERS PRESENT; REPRESENTING

Boulder City, City of
Bunker & Associates
Tronox, L.L.C.
Kummer, Kaempfer, Bonner and Renshaw, Ltd.
Las Vegas Valley Water District
Overton Power District No. 5

Ned Shamo
Melissa Trammell
John Holmstrom
Mark Alvarez
Sandra Reed Bothio
Delmar Latham

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF NOVEMBER 8, 2005**

INDEX

<u>Agenda Item</u>	<u>Subject</u>	<u>Page No.</u>
A.	Conformance to Open Meeting Law.....	1
B.	Approval of minutes of the October 11, 2005, meeting.....	1
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 for electrical power	1-3
D.	Consideration of and possible action to approve and ratify the State of Nevada, Colorado River Commission's joinder in an amicus brief filed in the 9 th Circuit to support the Environmental Protection Agency in seeking a rehearing by the entire 9 th Circuit court of appeals.....	3-4
E.	Report on perchlorate contamination in Arizona, California, and Nevada.....	4
F.	Update on the status of discussions regarding shortage criteria and other developments on the Colorado River.....	4-5
G.	Comments and questions from the public.....	5
H.	Comments and questions from the Commission members.....	5
I.	Next meeting date selection.....	5

The Colorado River Commission meeting was called to order by Vice Chairman Bingham at 10:00 a.m. followed by the pledge of allegiance.

A. Conformance to Open Meeting Law.

Mr. Caan confirmed that the meeting was in compliance with the Open Meeting Law.

B. Approval of minutes of the October 11, 2004, meeting.

Commissioner Williams moved for approval of the minutes. The motion was seconded by Commissioner Robison and approved by a unanimous vote. Commissioner Buck was not present for the vote.

Commissioner Buck arrived at 10:04 a.m.

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 for electrical power.

Craig Pyper, the Commission's Hydropower Program Manager, explained that NRS 538.181(2) requires that CRC's power customers, except a federal or state agency or political subdivision, provide an indemnifying bond or other collateral approved by the Nevada State Board of Examiners "in such sum and in such manner as the commission may require, conditioned on the full and faithful performance" of their power contracts. Accordingly, every contract by which CRC sells power to customers affected by this statute contains provisions for collateral in the form of a surety bond, cash deposit or other approved collateral. NAC 538.744 requires the Commission to conduct an annual review of the creditworthiness of its retail industrial customers ("contractors") during October of each operating year. Based on that review, the Commission establishes the amount and prescribes the manner in which the customer is required to furnish collateral pursuant to its contracts with the Commission.

NAC 538.744 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. "Gross annual purchases" is defined in the regulation as "the total amount of a contractor's actual purchases of power, transmission and other related services, if any, under all its contracts with the commission, invoiced by the commission during the test period," that is, "the 12 consecutive months immediately preceding the month containing the date of review." Given the present date of review as October 1, 2005, the test period runs from October 1, 2004, through September 30, 2005.

Mr. Pyper reported that staff continuously monitors the stock value and credit rating of the Commission's contractors and reviews the financial press for information that may be of value in

determining their credit risk. Based on its evaluation of this data, staff has concluded that increases in the gross annual purchases of these customers warrants a recommendation that the Commission adjust the respective amounts of their required collateral to the minimum allowable by NAC 538.744.

To determine the allowable minimum collateral required of each industrial customer for Operating Year 2005, staff calculated 25 percent of that customer's Gross Annual Purchases during the test period, October 1, 2004, through September 30, 2005. The results are as follows:

Contractor	Gross Annual Purchases* 10/1/04 through 9/30/05	Proposed Collateral 25% of previous column	Present Collateral	Difference Increase or (Decrease)
American Pacific Corporation	\$4,801,760.10	\$1,200,440.03	\$974,337.41	\$226,102.62
Basic Water Company	\$568,712.08	\$142,178.02	\$81,346.43	\$60,831.59
Chemical Lime Company of Arizona	\$89,245.49	\$22,311.37	\$14,216.75	\$8,094.62
Tronox, L. L. C.	\$800,326.28	\$200,081.57	\$69,402.81	\$130,678.76
Pioneer Americas, L. L. C.	\$17,343,522.31	\$4,335,880.58	\$3,732,782.16	\$603,098.42
Titanium Metals Corporation	\$8,354,012.27	\$2,088,503.07	\$1,297,155.78	\$791,347.29
Total	\$31,957,578.53	\$7,989,394.64	\$6,169,241.34	\$1,820,153.30

*The "Gross Annual Purchase" is based on the total Monthly Invoices plus the total Parker-Davis Advance Fund Invoices and then adjusting for the following charges or credits: 1) Reversed credit to Pioneer of \$177,428.45 for prior year Collateral decrease that appeared in Invoice; 2) reversed two charges to Pioneer of \$117,194.47 each for anticipated Collateral increase.

Under NAC 538.744, the Commission may prescribe the manner in which a contractor is required to furnish collateral pursuant to its contracts with the Commission.

Staff recommended :

- (1) that the Commission adjust the respective amounts of the required collateral to the minimum allowable by NAC 538.744;
- (2) that the executive director be authorized to determine the manner in which each contractor is required to furnish collateral consistent with law and the requirements of the State Board of Examiners; and
- (3) that contractors with cash as collateral be allowed to furnish the additional required collateral in six equal monthly installments.

Commissioner Anderson asked how many of the power customers have furnished a cash bond.

Mr. Pyper said two of the customers have a cash bond, the others have furnished a letter of credit.

Commissioner Robison asked if all the power customers were aware of this action the Commission is considering.

Mr. Pyper said they were aware of the proposed adjustments.

Commissioner Williams moved to accept staff recommendation. The motion was seconded by Commissioner Robison and approved by a unanimous vote.

D. Consideration of and possible action to approve and ratify the State of Nevada, Colorado River Commission's joinder in an amicus brief filed in the 9th Circuit to support the Environmental Protection Agency in seeking a rehearing by the entire 9th Circuit court of appeals.

Mr. Caan said Jennifer Crandell, the Commission's new Senior Deputy Attorney General, will present this item to the Commission.

Ms. Crandell explained that the Defenders of Wildlife ("DOW") had sued the Environmental Protection Agency ("EPA") for delegating to the State of Arizona responsibility for a pollution permitting program under the Clean Water Act. DOW alleged that the Endangered Species Act ("ESA") precluded the EPA from delegating the program because of impacts to endangered species. Under the Clean Water Act, EPA was mandated to delegate the program provided a state applicant met nine criteria, all of which Arizona met, and none of which included impacts to species.

In August 2005, a three-judge panel of the 9th Circuit court of appeals issued a decision that delegation of the NPDES permit program to Arizona is invalid for failure to comply with the ESA. The 9th Circuit took a bold position with respect to EPA's obligations under Section 7 of the ESA by holding that the ESA imposed a separate, independent obligation on the part of EPA to ensure against jeopardy, regardless that under EPA's own statutes it was obligated to perform the federal action to transfer the permitting program. The effect of the decision gives the ESA an independent source of authority beyond that conferred by the agency's governing statutes.

This position is directly counter to the position the CRC took in *Defenders of Wildlife v. Norton* as well as elsewhere. The Commission, along with the other stakeholders on the Colorado River, have always maintained that the ESA cannot confer any additional authority on a federal agency than that which its own statutes provide. That is, the ESA applies only to discretionary federal actions, not nondiscretionary actions such as water deliveries under the Section 5 contracts. The 9th Circuit ruling deminimized 50 C.F.R. 402.03, which is the regulation relieving a federal agency of its consulting obligations for nondiscretionary actions—a regulation the Commission has consistently relied on.

The State of Arizona along with the National Association of Home Builders and Arizona Chamber of Commerce are intervenors in the case and are filing for rehearing of this case by the full 9th Circuit court. The EPA is also filing for a rehearing. The Commission was asked to join in the amicus brief by counsel for the Central Arizona Project. The Southern Nevada Water Authority, Central Arizona Water Conservation District, Imperial Irrigation District,

Metropolitan Water District of Southern California, Arizona Power Authority, and San Diego County Water Authority have also joined in the brief.

The Commission's joinder in the brief was required by October 27, 2005. Therefore staff is asking for ratification of the joinder.

Commissioner Williams moved to approve and ratify the joinder in the amicus brief. The motion was seconded by Commissioner Robison and approved unanimously.

E. Report on perchlorate contamination in Arizona, California, and Nevada.

Mr. Caan explained that a number of years ago perchlorate contamination in the Colorado River became an issue. CRC undertook the task of researching how pervasive the perchlorate contamination was with respect to Arizona, California and Nevada. This presentation is a result of nearly a year's worth of research by Nicole Everett, the Commission's Natural Resource Specialist.

Mrs. Everett provided a presentation on the background, research findings and impacts of perchlorate contamination in Arizona, California and Nevada. A copy of the presentation is attached and made a part of these minutes. (See Attachment A)

Vice Chairman Bingham asked what the Commission's role is with respect to soil or water contaminated by perchlorate.

Mr. Caan explained that the Commission is not a regulatory agency and therefore has no jurisdiction to instruct individuals to remove perchlorate. But, it is important to understand the effects of perchlorate and what is being done within our state to mitigate the contamination. That allows us to respond to criticism from other states or parties. The point of this report is to help understand the perchlorate issue rather than providing solutions for fixing the problem.

F. Update on the status of discussions regarding shortages criteria and other developments on the Colorado River.

McClain Peterson, Natural Resources Analyst for the Commission, provided a report on storage conditions on the Colorado River, water use in Nevada, forecasted water use in the lower basin states and drought conditions in the west. A copy of the report is attached and made part of the minutes. (See Attachment B)

Regarding discussions among the lower basin states, Mr. Caan explained that Nevada continues to bring forward augmentation proposals with respect to the Colorado River. There has not been much movement toward acceptance of the proposals, but discussions continue.

Mr. Caan reported that the Nevada meeting regarding the National Environmental Policy Act (NEPA) process for shortage criteria was scheduled for tonight in Henderson. This meeting is the beginning of the public process by the Secretary of the Interior for the development of a shortage

criteria for the Colorado River. He said he planned to attend the meeting on behalf of the Commission.

G. Comments and questions from the public.

Vice Chairman Bingham asked if there were any comments or questions from the public. There were none.

H. Comments and questions from the Commission members.

Vice Chairman Bingham asked if there were any comments or questions from the Commission members.

Commissioner Robison thanked Mr. Caan and Kay Brothers, of the Southern Nevada Water Authority, for providing briefings on the in-state water resources. As discussed at the Commission's previous meeting, he said he would favor a resolution on this issue.

Mr. Caan said staff will prepare a resolution in support of SNWA's northern water resources plan.

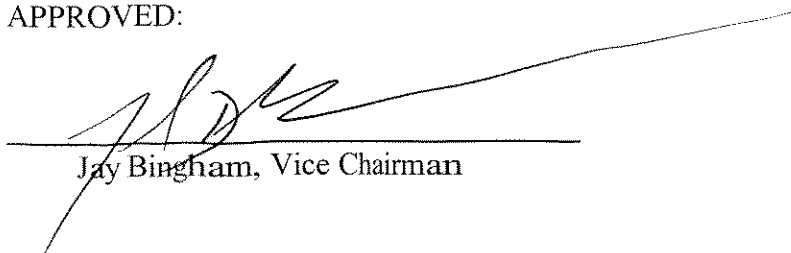
I. Next meeting date selection.

The next meeting was tentatively scheduled for December 13, 2005, at the Sawyer State Office Building.

The meeting adjourned at 11:00 a.m.


George M. Caan, Executive Director

APPROVED:


Jay Bingham, Vice Chairman