

The meeting was held at 10:00 a.m. on Tuesday, October 14, 2008, at the Grant Sawyer Building, 555 East Washington Avenue, Suite 4401, Las Vegas, Nevada.

#### **COMMISSIONERS IN ATTENDANCE**

Chairman	Jay D. Bingham
Vice Chairman	Ace I. Robison
Commissioner	Andrea Anderson
Commissioner	Marybel Batjer
Commissioner	George F. Ogilvie III
Commissioner	Lois Tarkanian

#### **COMMISSIONERS IN ATTENDANCE VIA TELEPHONE CONFERENCE**

Commissioner	Chip Maxfield
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#### **DEPUTY ATTORNEYS GENERAL**

Senior Deputy Attorney General	Jennifer T. Crandell
Senior Deputy Attorney General	Ann C. Pongracz

#### **COMMISSION STAFF IN ATTENDANCE**

Executive Director	George M. Caan
Deputy Executive Director	James D. Salo
Chief, Finance and Administration	Doug Beatty
Manager, Energy Services	Gail A. Bates
Assistant Director, Engineering and Operations	Robert Reese
Hydropower Program Manager	Craig N. Pyper
Assistant Hydropower Program Manager	Jason Thiriot
Hydropower Program Specialist	Lisa M. Ray
Manager, Natural Resources Group	McClain L. Peterson
Natural Resource Analyst	Nicole Everett
Natural Resource Analyst	Esther Valle
Senior Energy Accountant	Gail L. Benton
Energy Accountant	Celta Hannig
Office Manager	Judy K. Atwood
Administrative Assistant III	Janet L. Nuszbaum
Administrative Assistant II	Donna Banks

#### **OTHERS PRESENT; REPRESENTING**

American Pacific Corporation	Jack Stonehocker
Consultant	James H. Davenport
Consultant	Sara A. Price, Esq.
Kapex LLC, and Apex Industrial Park, Inc.	Adam Titus
NV Energy	Bill Carner
Titanium Metals Corporation	Charlie Thomas
Tronox Incorporated	John Holmstrom

**COLORADO RIVER COMMISSION  
OF NEVADA  
MEETING OF OCTOBER 14, 2008**

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The Colorado River Commission meeting was called to order by Chairman Bingham at 10:01 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 the minutes of the September 9, 2008 meeting.**

**Commissioner Tarkanian moved for approval of the minutes of the September 9, 2008 meeting as written. Commissioner Batjer seconded the motion, and the motion was approved by a unanimous vote of those present. Commissioner Anderson was not present for the vote.**

**C. Consideration of and possible action to approve the Partial Assignment of the U.S. Bureau of Reclamation's Contract with Basic Management, Inc.**

Natural Resources Group Manager McClain Peterson introduced Natural Resource Analyst Esther Valle to the Commissioners.

Mr. Peterson explained that Kapex LLC (Kapex) is the successor in interest to a contractual right to delivery of 400 acre-feet per year (afy) of Colorado River water. Kapex's right to delivery of this water was secured through a succession of agreements and amendments, starting with a September 18, 1969 Bureau of Reclamation (BOR) contract, and concluding with an August 9, 2006 Assignment by U.S. Avestor, LLC, to Kapex. The right to delivery of this water is subject to the terms and conditions of the September 18, 1969 BOR contract with the Basic Management, Inc. group of companies (BMI), as amended.

If approved, this Partial Assignment Contract would reduce BMI's rights to utilize Colorado River water by 400 afy and increase the Southern Nevada Water Authority's (SNWA) right to use the 400 afy. While transfer of this water to the SNWA will not increase Nevada's 300,000 afy basic apportionment of Colorado River water, it will ensure that the SNWA is the sole entity authorized to receive this water. This partial assignment is contingent upon termination of the Water Service and Settlement Agreement among Dry Lake Water, LLC, Apex Industrial Park, Inc., and the Las Vegas Valley Water District; as well as execution of the Garnet Valley water service agreement among the City of North Las Vegas, the Las Vegas Valley Water District, and the SNWA.

Staff recommends the Commission approve and authorize the executive director to sign on behalf of the Commission a partial assignment contract, in substantially the same form, with Kapex LLC, the Basic Management Inc. group of companies, the United States of America, and the SNWA, for the partial assignment of the Basic Management

Inc. companies' right, title, and interest in and to the contractual rights for delivery of Colorado River water, and authorize the executive director to execute such ministerial documents as may be necessary to effectuate the transaction.

Commissioner Ogilvie stated that he did not understand the contingency that is contained in the last paragraph of staff's recommendation.

Mr. Peterson explained that the contingency is related to a 2002 agreement regarding water operations among Dry Lake Water LLC, Apex Industrial Park Inc., and the Las Vegas Valley Water District. Terminating this contingency allows the Garnet Valley Water Service Agreement to take effect so water will be delivered to the Apex area.

Commissioner Ogilvie asked if the Garnet Valley Water Service Agreement is contingent upon the termination of the first contingency; and Mr. Peterson agreed that it is.

Commissioner Ogilvie then asked Mr. Peterson to explain paragraph 2.13 that begins on the bottom of page 3.

Instead, Commission Consultant James Davenport explained that paragraph 2.13 recites the contract number W0266, which is the current contract the SNWA holds to secure the remainder interest in the rest of the water that isn't otherwise contracted in Nevada. He stated that the remaining water is secured to the SNWA by that contract. The execution documents include this agreement and the other agreements necessary to complete the deal. Subsequent documents that are yet to be presented, are the ones in which the rights will actually move from one BOR contract to another. Mr. Davenport concluded that, from a lawyer's perspective, this could be done more simply, but it is being done in this manner because of the history and tradition of the way that the BOR and U.S. Department of the Interior do their contracts.

Chairman Bingham asked who holds title to this water now.

Mr. Davenport stated that Kapex holds the title to this water now.

Chairman Bingham asked if this is part of their allotment that they have had.

Mr. Davenport replied that they have a right that has been assigned down from the 1969 Basic Management Inc. (BMI) contract through a number of assignments over the years. The business deal is that they are going to assign that right to the SNWA.

Chairman Bingham asked if the SNWA would then transfer that right to the Apex area.

Mr. Davenport stated that the SNWA will have a full menu of rights and will continue to serve its current customers. The actual service to the BMI customers is still being done pursuant to the direct contract from the BOR to BMI and BMI to the Basic Industries.

Chairman Bingham asked if anyone knew the date that Apex was created, approximately 17 years ago. He noted that he was the lone opponent in the six to one vote on the Clark County Commission. Chairman Bingham stated the deal was struck when those plants blew up to move all the industrial companies out to that area, noting that Kerr McGee Chemical LLC (Kerr-McGee) was the main company. At the very last minute, they decided not to take water to this area. He then recommended the Clark County Commission not vote for this unless they took water because they were going to need the water out there for these plants. Now that area is finally going to get some water so many years later.

Mr. Davenport stated that this document is part of that overall workout of how they are going to get that water out there.

Chairman Bingham stated that would have been a lot simpler if they had put the water out there in the first place. It would have blossomed by now. Chairman Bingham then asked if there was anyone who wanted to be heard on this item.

Commissioner Ogilvie added that July 31, 1989 was the date that the original bill was signed into law.

Charlie Thomas, representing Titanium Metals Corporation (TIMET) in Henderson, Nevada, wanted to understand the history. He asked whether the water was assigned by BMI to Apex, but the assignment was never executed.

Chairman Bingham replied that the problem was due to Kerr McGee.

Mr. Thomas stated that Kerr McGee built the plant out there.

Chairman Bingham agreed but added that they were moving some plants and that was part of the deal, that they would take some of their water out to this area. At the very last minute, about two weeks or three weeks before it was brought to the Board, Kerr McGee decided not to take any of their water allocation out there. When it came up for a vote, Chairman Bingham voted against this because it would not be possible to develop an industrial park without water. The basins out there did not have enough water with some of the test wells that had been done. They went ahead and moved without any allocation of water.

Mr. Davenport stated that Kerr McGee is in the chain of title of these documents. It is clear from those documents that Kerr McGee was successful in accomplishing the change in their right so that it was expanded so that it could include Apex, but they were never able to obtain a change in point of use with the BOR so that the water could in fact be used at Apex. So they moved the project forward to a certain extent, but they did not complete it.

Chairman Bingham then asked if there were any questions from the Commissioners.

Commissioner Robison asked Mr. Caan to track the history on this just a little bit better.

Mr. Davenport stated that in 1969 you have a contract between the BOR and the Basic Industries Management Group. That contract provides enough water to serve the industrial facilities at the Basic complex. The Commission is a party to that agreement. Over the years, that agreement has been amended several times. At first, 100% of the water in that contract was subcontracted to all of the industrial users at the site. Some of those subcontract rights were then reassigned down a cascade of transactions, which ultimately resulted in Kapex holding a piece of the 1969 contract to the extent of 400 afy.

This transaction basically moves the water right from Kapex to the SNWA. There is a provision in the old 1969 contract that says that if ever a party that is not one of the Basic Industries becomes a contract holder of those rights, that party should go back and get the Secretary of the Interior to look at it again. When we began to structure this transaction and took it back to the BOR to have them look at it, they said, "we have no problems with doing this, but you have to do it the way we want to set it up". And that is to have a new contract with BMI, which has a smaller number in it and a new contract with the SNWA that has a bigger number in it. This agreement says that the parties will participate in those documents, which are yet to be signed and yet to be presented to you. Those are the ones that are in paragraph 5.1 and 5.2. That is the contract history.

With respect to the place of use, we have already covered that. Mr. Davenport then asked if Commissioner Robison had any other questions.

Commissioner Robison asked whether the 400 afy reduces the allocation to the BMI complex in favor of allocating it to SNWA and to Apex.

Mr. Davenport responded that the reallocation to the SNWA will go into SNWA's general water rights for use within its service area, wherever that might be, and that this will be defined by these other instruments that the SNWA has engaged in with their purveyor members as to what water gets delivered where.

Mr. Caan then added that this is a complicated way to accomplish this, but this is the requirement to go in and get these agreements in place. In the partial assignment agreement and the 1969 agreement, you will notice that the Commission is there, but many of the industries have changed. He added that he is working with the industries to determine what issues they may have with the agreement and the appropriate names that need to be on this agreement. Mr. Caan further stated that Commission staff will be meeting with them to discuss how we move this forward. It is possible, depending on the outcome, that this agreement may come back to the Commission if the industries propose acceptable changes.

Mr. Caan stated that the industries do have the agreement. They have been reviewing it and discussing it and we plan to meet with them in the very near future to see what kind of comments or concerns they may have. Also, he stated that this agreement was approved at the last SNWA meeting.

**Chairman Bingham moved to approve the Partial Assignment of the U.S. Bureau of Reclamation's Contract with Basic Management, Inc. Commissioner Robison seconded the motion, and the motion was approved by a unanimous vote.**

**D. Briefing on Silver State Energy Association activities.**

Energy Services Manager Gail A. Bates gave a briefing on Silver State Energy Association activities. A copy of the report is attached and made a part of these minutes. (See Attachment A.)

**E. Status update on the hydrologic conditions, drought, and climate of the Colorado River Basin and Nevada's consumptive use of Colorado River water.**

Natural Resource Analyst Nicole Everett gave an update on the hydrologic conditions, drought, climate of the Colorado River Basin, and Nevada's consumptive use of Colorado River water. A copy of the report is attached and made a part of these minutes. (See Attachment B).

Mr. Caan explained that the U.S. Bureau of Reclamation does presentations for a variety of groups that go over what is being discussed. We may consider asking one of them to come to explain some of these larger trends. They will do a comprehensive job of understanding how they work and a lot of the material we base our projections on are based on both the art and science that they practice in terms of modeling.

Mr. Caan added that at the last Commission meeting a question was asked by Mr. Latham from Overton Power District regarding the flows from Glen Canyon Dam and the effects on power production. Mr. Caan has talked to Mr. Latham and he is familiar with the issue. The flow chart was brought up on screen and Mr. Caan stated that in March of this year there was a high flow test conducted at Glen Canyon Dam. This is a high-flow experiment and is part of the Adaptive Management Program. The program is designed to look at ways to operate Glen Canyon Dam in order to protect resources. The humpback chub causes the most concern. This high-flow experiment will eventually lead to management plans for Glen Canyon to determine how best to create sandbars, backwater habitat, and other things to benefit the resources. They do these experiments every couple of years, depending on the input of sand into the system. Mr. Caan reminded the Commission that this test was conducted this year, so part of the volumes and the flows for this year had to do with the fact that the high flow releases were made. He added that he was surprised to see that it actually had less impact on the distribution of volumes released.

Glen Canyon Dam releases are cited each year by the Annual Operation Plan. Prior to this year, those releases were based on a minimum objective release of 8.23 million acre-feet. Based on the Record of Decision that was signed last December, we entered into equalization for water year 2008, which is based on water elevation levels in Lakes Mead

and Powell. This year was the first time that we released more than the minimum objective release in order to meet an equalization target. So at the end of the water year 8.9 million acre-feet was released from Lake Powell, an additional 600,000 acre-feet.

Mr. Caan then returned to Mr. Latham's question: "why don't we use those releases into the summer months when power production is needed more". He stated that there are a couple of answers to that question.

The first answer is that given that this was the first year under the Interim Guidelines, the BOR was learning how to operate the dam to meet those goals, and until they knew that they had release water in order to meet that target, they did not have a full year to plan. So you can see the end result of that was more releases were made to accommodate the equalization.

Another issue was that because the high-flow releases in March were used to create sandbars, there was a restriction on how fast you could release water during the summer so that you didn't interfere with the experiment.

There are also environmental restraints on releases from Glen Canyon Dam. Mr. Caan added that he had talked to Mr. Latham about this and the bottom line is that there will be more emphasis placed on insuring that those flows are made in a way of accommodating power production as the BOR gains more experience in operating the dam for equalization. What is important is that although we want to see as much power production as we can get from both Glen Canyon Dam and Hoover Dam, power production is not the primary purpose of these facilities. Among others, flood control, water delivery and power production all are on the list, so we always have to keep that in mind.

<b>F. Comments and questions from the public and discussion. (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 will be taken.)</b>
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Chairman Bingham asked if there were any comments or questions from the public. There were none.

<b>G. Comments and questions from the Commission members.</b>
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Chairman Bingham asked if there were any comments or questions from the Commission members. There were none.



<b>H.      Selection of the next possible meeting date.</b>
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The next Commission meeting is tentatively scheduled for Wednesday, November 12, 2008, at the Grant Sawyer State Office Building.

<b>I.      Adjournment.</b>
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The meeting adjourned at 10:44 a.m.

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George M. Caan, Executive Director

APPROVED:

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Jay D. Bingham, Chairman