

The meeting was held at 10:00 a.m. on Tuesday, February 13, 2007, at the Clark County Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada.

COMMISSIONERS IN ATTENDANCE

Chairman	Richard W. Bunker
Commissioner	Andrea Anderson
Commissioner	Shari Buck
Commissioner	Lois Tarkanian

COMMISSIONERS NOT PRESENT

Vice Chairman	Jay D. Bingham
Commissioner	Ace I. Robison
Commissioner	Marybel Batjer

DEPUTY ATTORNEYS GENERAL

Senior Deputy Attorney General	Gerald A. López
Senior Deputy Attorney General	Jennifer Crandell

COMMISSION STAFF IN ATTENDANCE

Executive Director	George M. Caan
Manager of Regulatory and Intergovernmental Affairs	James D. Salo
Division Chief, Finance and Administration	Douglas N. Beatty
Assistant Director for Engineering and Operations	Bob Reese
Manager of Information Systems and Technology	Joe Dabrowski
Hydropower Program Manager	Craig Pyper
Program Officer III	Jason Thiriot
Program Officer II	Lisa Ray
Natural Resource Specialist	Nicole Everett
Natural Resource Specialist	McClain Peterson
Senior Energy Accountant	Gail Benton
Office Manager	Judy Atwood
Administrative Assistant IV	Brenda Haymore
Administrative Assistant II	Donna Banks

OTHERS PRESENT; REPRESENTING

AMPAC	Jack Stonehocker
Boulder City, City of	Ned Shamo
Boulder City, City of	Steve Koon
Bunker & Associates	Melissa Trammell
Consultant	Sara Mason

OTHERS PRESENT; REPRESENTING (continued)

James H. Davenport, LLC
Kummer, Kaempfer, Bonner, Renshaw & Ferrario, Ltd.
Las Vegas, City of
Nevada Power Company
Overton Power District No. 5
Overton Power District No. 5
Overton Power District No. 5
Pioneer Americas, L.L.C.

James H. Davenport
Rose Ozmon
Robin Munieo
Edgar Pattino
Delmar Latham
Mendis Cooper
Larry Moses
Gary Sellers

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF FEBRUARY 13, 2007**

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

Chairman Bunker introduced and welcomed the newest member of the Colorado River Commission, Councilwoman Lois Tarkanian from the City of Las Vegas, who has been appointed to the Commission by the Southern Nevada Water Authority. He expressed the Commission's appreciation for her willingness to serve.

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 January 9, 2007, meeting.

Commissioner Anderson moved for approval of the minutes. The motion was approved by a unanimous vote.

C. Consideration of and possible action to approve an Independent Contractor Services Agreement between the Colorado River Commission of Nevada and the Nevada Water Resources Association for conference planning support.

Chairman Bunker introduced Nicole Everett, the Commission's Natural Resources Specialist, and noted that her undergraduate work and her master's degree were in environmental planning.

Ms. Everett reported that the Colorado River Commission of Nevada is sponsoring a one and a half day conference in April 2007, the theme of which is, "*The Colorado River: Conflicts, Concerns, and Challenges.*" As the title suggests, the purpose of this conference is to share information with the general public, stakeholders, and other interested parties regarding the Colorado River, its importance as a multi-purpose resource, and some of the challenging and conflicting issues with which it is currently being faced. The conference will provide a forum for discussions to occur between panelists and the audience on important topics such as perspectives from the Basin States, Mexico, and the Indian Tribes; operation and management of the Colorado River under varying hydrologic conditions; accounting for Nevada's use of Colorado River water; stakeholders' perspectives on urban demand management; and other water quantity/quality-related topics.

Staff desires to contract with the Nevada Water Resources Association (NWRA) to provide conference planning support. The NWRA is a non-profit organization whose mission is to provide education, training, and networking opportunities for those interested in understanding, developing, conserving and protecting Nevada's water resources. The NWRA has significant experience in organizing events of this type and the staff believes they will be instrumental in developing and coordinating this conference.

Staff requested approval of a one-year contract with the NWRA with expenditures not to exceed \$9,000 (including reimbursement of expenses). NWRA will submit an itemized invoice for services rendered base on actual time spent on work assignments directed by the CRC. For

services performed by the NWRA's executive director, a billing rate of \$45 per hour will apply; for services performed by a clerical assistant, a billing rate of \$25 per hour will apply. In addition to these labor fees, the Commission would reimburse NWRA personnel for all out-of-pocket expenses directly chargeable to the work performed in accordance with this agreement. NWRA personnel will work at the direction of the Executive Director or his duly appointed designee.

Chairman Bunker felt this conference was the perfect forum for providing an opportunity for stakeholders and the general public to keep informed of issues and conditions on the Colorado River. As the drought continues it will become of more interest to more people.

Commissioner Anderson moved to approve the contract with the NWRA. The motion was approved unanimously.

D. Consideration of and possible action to approve Amendatory, Supplementary, and Restating Contract No. P03-62A3 between the Colorado River Commission of Nevada and Pioneer Americas, L.L.C., for electric power supply.

Mr. Caan reminded the Commission that on February 11, 2003, the Commission approved Contract No. P03-62 between the Colorado River Commission of Nevada and Pioneer Americas, L.L.C., for Electric Power Supply ("the Original Contract"). The Original Contract was part of a settlement agreement that ended litigation between CRC and Pioneer regarding certain long-term forward contracts for supplemental power CRC had purchased for Pioneer on the open market. The Original Contract was later supplemented and twice amended with regard to certain purchasing and pricing procedures. The initial term of the Original Contract expired on December 31, 2006, but by its terms the contract is renewed for additional terms of one year on the same terms and conditions unless either party gives notice of termination. Thus, the Original Contract is still in effect as previously supplemented and amended.

During the term of the Original Contract, staff has made power purchases on the open market in excess of 1,221,000 MWH for Pioneer's operations, and Pioneer has been current in all payments, which have totaled more than \$51 million. All power purchased under the Original Contract have been for deliveries of only one month in duration and made no more than one month in advance. These purchases have been collateralized by a cash reserve retained by CRC in the state treasury as a result of the settlement agreement. Since then, the initial cash reserve of \$3 million has grown to nearly \$4.75 million in response to Pioneer's increasing load requirements. Pioneer's current collateral requirement, recently approved by the Commission, stands at \$5,291,507.96. Under that approval, Pioneer is increasing its cash collateral in installments over a six-month period.

Pioneer has now asked the Commission to amend the Original Contract to allow staff to purchase power on the market for longer than one month ahead at a time. Staff carefully reviewed its power purchasing and risk management procedures and recommended purchasing power for Pioneer up to a total of three months in advance, if Pioneer prepays for any month that is more than one month in advance. This new procedure is detailed in Exhibit 3A of the Amendatory Contract. The required collateral would remain in place to cover the current month's and the first advance month's purchases.

Pioneer also asked that it be allowed to furnish all or some portion of its required collateral in a form other than cash. Staff reviewed the current cash-only collateral requirement in the Original Contract and recommended that the Commission continue to retain the original \$3,000,000 cash reserve, but allow any additional collateral requirement in excess of that amount to be met by cash, letter of credit or surety bond. Interest generated on the cash reserve and any surplus in the cash reserve in excess of the full amount of the then required collateral would be returned to Pioneer in the form of credits on its monthly power bills. An insufficiency of collateral must be paid in cash, except where the cash reserve is \$3 million or more, exclusive of interest.

Chairman Bunker complimented Pioneer, L.L.C. on its excellent payment record and asked if there were any questions. There were none.

Commissioner Anderson moved to accept staff's recommendation for approval of this contract. The motion was approved by a unanimous vote.

E. Consideration of and possible action to authorize the Chairman to execute, in substantially the same form, an agreement among the Arizona Department of Water Resources, the Colorado River Board of California, the State of Colorado, the New Mexico Interstate Stream Commission, the Utah Division of Water Resources, the State of Wyoming, the Southern Nevada Water Authority, and the Colorado River Commission of Nevada regarding Colorado River reservoir operations and management.

Mr. Davenport, special counsel to the Commission, reminded the Commission that on June 15, 2005, the Secretary of the Interior noticed her intention to engage in a decision-making process pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321 through 47, 70 Fed. Reg. 34794. The process was intended to develop Lower Basin shortage guidelines and explore management options for the coordinated operation of Lakes Powell and Mead. The process would culminate in a Record of Decision, to be published in December 2007, 70 Fed. Reg. 57322 (September 30, 2005). In response to this notice, the Governors' Representatives of the seven Colorado River Basin states began discussion of a common proposal to be made to the Secretary regarding shortage guidelines and reservoir management.

The existing practice of the seven Colorado River Basin states, although not specifically defined by federal or state statutes, is conducted in accordance with Section 602(b) of the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1552(b), and the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act. Those federal enactments contemplate that the Secretary of the Interior will consult with the "Governors' Representatives" of the seven states in the operation of Lakes Powell and Mead. Nevada's Governors' Representatives are the Chairman of the Colorado River Commission and the General Manager of the Southern Nevada Water Authority. Through this practice, the Governors' Representatives have in the past reached agreements among themselves and with the Secretary on various aspects of Colorado River reservoir operation.

In order to reach accord between the seven states' representatives regarding shortage guidelines and reservoir management, it became necessary to resolve certain other issues of importance between the states. These issues do not require action by the Secretary of the Interior.

Accordingly, the representatives have set forth their agreements regarding these matters in several other documents, including a multiparty agreement including state agencies and political subdivisions, including the Commission and the Southern Nevada Water Authority, from the several states addressing future commitments to the Secretary's action and agreement to consult before litigation. That is the agreement now under consideration by the Commission. It is not known at this time whether additional agreements may be required.

This agreement is not intended to be an interstate compact, entered pursuant to the Compact Clause of the U.S. Constitution, Art I, Section 10, Cl. 3.

Mr. Davenport provided a slide presentation (See Attachment A) and reviewed the following elements of the agreement:

I. States' "Agreement"

A. Parties:

1. Arizona: Arizona Department of Water Resources
2. California: Colorado River Board of California
3. Colorado: Office of the Governor, Colorado Water Conservation Board
4. Nevada: Colorado River Commission of Nevada, Southern Nevada Water Authority
5. New Mexico: New Mexico Interstate Stream Commission
6. Utah: Utah Interstate Stream Commission, Utah Division of Water Resources
7. Wyoming: Wyoming State Engineer

B. Term

Effective as of the date when the first two parties sign, and effective as to any additional party as of the date of its signing. Any one party may withdraw from the agreement and its effect as to that party, but the agreement will stay in effect as to the remaining parties. The agreement remains effective for so long as there are at least two parties and the Secretary's Record of Decision and Interim Surplus Guidelines are in effect, or until December 31, 2025.

C. Stated Purpose

1. "improve cooperation and communication among [the States]; provide additional security and certainty in the water supply of the Colorado River System for the benefit of the people served by water from the Colorado River System"
2. "avoid circumstances which could otherwise form the basis for claims or controversies over interpretation or implementation of the Colorado River Compact and other applicable provisions of the law of the river"

D. Substantive Mutual Promises

1. Support the Secretary's adoption of the "Parties' Recommendation" (the Governors' Representatives' February 3, 2006, proposal to the Secretary) in a Secretarial Record of Decision regarding shortage guidelines and reservoir management.

2. Consult between the parties regarding the Secretary's operation of Lakes Powell and Mead pursuant to the Record of Decision as necessary, but at least annually, to assess those operations. Any party may request consultation with the other parties on a proposed adjustment or modification of such operations, based on changed circumstances, unanticipated conditions, or other factors. The parties must consult with each other in good faith to resolve any such issues, and based thereon may request consultation by the States with the Secretary on adjustments to or modifications of operations under the Record of Decision. The parties will initiate consultations before December 31, 2020, to determine whether to extend the Agreement and recommend that the Secretary continue operations under the Record of Decision for an additional period.
3. Diligently pursue interim water supplies, system augmentation, system efficiency and water enhancement projects within the Colorado River system.
4. Cooperatively pursue an interim water supply of at least a cumulative amount of 280,000 acre-feet for use in Nevada while long-term augmentation projects are being pursued. It is anticipated that this interim water supply will be made available in return for Nevada's funding of the Drop 2 Reservoir currently proposed for construction by the Bureau of Reclamation. Annual recovery of this interim water supply by Nevada will not exceed 40,000 acre-feet.
5. The Southern Nevada Water Authority (SNWA) will withdraw its right-of-way application filed with the Bureau of Land Management for the purpose of developing Permit No. 58591 issued by the Nevada State Engineer in Ruling No. 4151 (Virgin River rights), subject to conditions.
6. Meet in good faith in order to resolve claims or controversies concerning the agreement, the Record of Decision, Article III(a)-(e), inclusive, of the Colorado River Compact, or Sections 601 and 602(a) of the Colorado River Basin Project Act of 1968 (43 U.S.C. §§ 1551 and 1552(a)), and all applicable rules and regulations promulgated thereunder, by mutual agreement prior to initiating any judicial or administrative proceeding.
7. Comply with any request by the Secretary for consultation in order to resolve any claim or controversy. In addition, any State may invoke the provisions of Article VI of the Colorado River Compact.

It is evident from the ongoing nature of the Secretary's issuance of decisional documents, the breadth and variety of issues important to the several states, and the consequent requirement for flexibility in Nevada's negotiating position, that some adjustments to the proffered agreement may be required. Even so, it is appropriate in the opinion of Commission staff, that Nevada evidence its commitment to the negotiation process through authorization of the Chairman to execute the agreement in substantial conformity with that presented at the meeting. Staff therefore recommended that the Commission authorize the Chairman of the Commission to execute the agreement when, in his judgment, Nevada's best interests are thereby served.

Regarding the interim water supply associated with the Drop 2 Reservoir, Commissioner Buck asked where the water would go if more than 280,000 acre-feet was recovered.

Mr. Davenport said that water would be left in Lake Mead and would benefit the system, since the more water that is left in the system means the less likely there will be a shortage. Mr. Davenport reiterated that this water is an interim supply only. The states are looking at other augmentation ideas. Those ideas and proposals are currently being reviewed by a technical committee.

Chairman Bunker said there are projects in both the public and private sector that may have viable answers for augmenting the river. One such project is desalination, which is expensive but may become feasible if the drought continues for awhile. He complimented the SNWA board members on the proactive approach they have taken with regard to future water supplies. Through conservation and innovative planning, the SNWA has become the premiere forward-planning agency in the West.

Chairman Bunker reported that the Arizona Department of Water Resources has already approved this agreement.

Commissioner Anderson moved to approve the agreement. The motion was approved unanimously.

F. Update on Nevada's Colorado River water consumption, the status of discussions regarding shortages criteria and other developments on the Colorado River.

Chairman Bunker introduced McClain Peterson, Natural Resources Specialist for the Commission, and noted that McClain's undergraduate studies were in environmental policy and his master's degree is in environmental science.

McClain provided a report on the following:

- invasive species found in Lake Mead
- the closure and relocation of the Overton Marina
- storage conditions on the Colorado River
- water use in Nevada
- drought conditions in the west
- forecasted water use in the lower basin states

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

G. 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.)

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

H. Comments and questions from the Commission members.

Chairman Bunker asked if there were any comments or questions from Commission members.

Commissioner Tarkanian thanked staff for the thorough briefing they provided on all the issues before the Commission. She said it made complicated issues easy to understand.

I. Selection of next possible meeting date.

The next meeting was tentatively scheduled for 10:00 a.m. on March 13, 2007, at the Clark County Commission Chambers.

J. Adjournment.

The meeting adjourned at 10:37 a.m.

George M. Caan, Executive Director

APPROVED:

Richard Bunker, Chairman