

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM A  
FOR MEETING OF NOVEMBER 8, 2022**

<b>SUBJECT:</b> Roll Call / Conformance to Open Meeting Law.
<b>RELATED TO AGENDA ITEM:</b> None.
<b>RECOMMENDATION OR RECOMMENDED MOTION:</b> None.
<b>FISCAL IMPACT:</b> None.

**STAFF COMMENTS AND BACKGROUND:**

Announcement of actions taken to conform to the Open Meeting Law will be reported at the meeting.

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM B  
FOR MEETING OF NOVEMBER 8, 2022**

<b>SUBJECT:</b> Comments from the public. (Comments can be made in person or by remote technology. However, 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.)
<b>RELATED TO AGENDA ITEM:</b> None.
<b>RECOMMENDATION OR RECOMMENDED MOTION:</b> None.
<b>FISCAL IMPACT:</b> None.

**STAFF COMMENTS AND BACKGROUND:**

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM C  
FOR MEETING OF NOVEMBER 8, 2022**

<b>SUBJECT:</b> <i>For Possible Action:</i> Approval of minutes of the June 14, 2022, and August 9, 2022, meetings.
<b>RELATED TO AGENDA ITEM:</b> None.
<b>RECOMMENDATION OR RECOMMENDED MOTION:</b> None.
<b>FISCAL IMPACT:</b> None.

**STAFF COMMENTS AND BACKGROUND:**

The minutes of the June 14, 2022, and August 9, 2022, meetings are enclosed for your review.

**The Colorado River Commission of Nevada (Commission) meeting was held at 1:31 p.m. on Tuesday, June 14, 2022, at the Clark County Government Center, Commission Chambers, 500 South Grand Central Parkway, Las Vegas, NV 89155.**

**COMMISSIONERS IN ATTENDANCE**

Vice Chairwoman  
Commissioner  
Commissioner  
Commissioner

Kara J. Kelley  
Marilyn Kirkpatrick  
Justin Jones  
Allen J. Puliz

**COMMISSIONERS PRESENT VIA TELECONFERENCE**

Commissioner

Cody T. Winterton

**COMMISSIONERS NOT PRESENT**

Chairwoman  
Commissioner

Puoy K. Premsrirut  
Dan H. Stewart

**DEPUTY ATTORNEY(S) GENERAL**

Special Counsel, Attorney General  
Senior Deputy Attorney General

Christine Guerci  
David W. Newton

**COMMISSION STAFF IN ATTENDANCE**

Executive Director  
Senior Assistant Director  
Chief of Finance and Administration  
Assistant Director, Energy Information Systems  
Assistant Director, Engineering and Operations  
Assistant Director, Hydropower  
Hydropower Program Manager  
Natural Resources Program Manager  
Senior Energy Accountant  
Senior Energy Accountant  
Senior Energy Accountant  
Hydropower Engineering  
Natural Resources Specialist  
System Coordinator  
Office Manager  
Administrative Assistant IV  
Administrative Assistant III  
Administrative Assistant II

Eric Witkoski  
Sara Price  
Douglas N. Beatty  
Kaleb Hall  
Robert D. Reese  
Gail Bates  
Craig Pyper  
Angela Slaughter  
Gail L. Benton  
Stephanie Salleroli  
Ha N. Tran  
Stevie Espinosa  
Laura Dye  
Chris Smith  
Gina L. Goodman  
Katie Aguilar  
Saira Castillo  
Joshua Cleveland



**OTHERS PRESENT; REPRESENTING**

City of Boulder City  
Fennemore Craig, P.C.  
Legislative Counsel Bureau  
Legislative Counsel Bureau  
Legislative Counsel Bureau  
Overton Power District No. 5  
Overton Power District No. 5  
Southern Nevada Water Authority

Joseph Stubit  
Lauren J. Caster  
Bailie Hall  
Justin Luna  
Scott Jones  
MeLisa Garcia  
Mendis Cooper  
Tom Maher

# COLORADO RIVER COMMISSION OF NEVADA

## MEETING OF

June 14, 2022

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**COLORADO RIVER COMMISSION OF NEVADA**

**MEETING OF**

**JUNE 14, 2022**

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The Colorado River Commission of Nevada (Commission) meeting was called to order by Vice Chairwoman Kelley at 1:31 p.m., followed by the pledge of allegiance.

**A. Conformance to Open Meeting Law.**

Executive Director Eric Witkoski confirmed that the meeting was posted 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 will 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 8, 2022, meeting.**

Commissioner Justin Jones moved for approval the minutes of the March 8, 2022, meeting. The motion was seconded by Commissioner Puliz and approved by unanimous vote.

**D. *For Possible Action:* Consideration of and possible action to approve Amendment No. 3 to Contract SA-12-01, extending the contract term to June 30, 2025, for Substation Automation System Support Services between Schweitzer Engineering Laboratories, Inc., and the Colorado River Commission of Nevada.**

Assistant Director of Engineering and Operations, Robert Reese presented.

**A. Request for Amendment of Contract:**

The requested Amendment No. 3 is an extension of the contract for three more years to June 30, 2025, and there is no request to add any additional amount authorized under the contract. The current balance remaining on the contract is \$279,532 and that is expected to sufficient for the term of the extension.

**B. Background on Operations and Contract**

The Commission uses an automation system to operate its transmission and distribution facilities, monitor equipment status and to respond to operational events in providing electric services to its customers including the Southern Nevada Water Authority, the Clark County Water Reclamation District, and the Basic Substation Project.

The services of an outside vendor are needed from time-to-time for the routine operation and maintenance of the system such as troubleshooting, programming, and modifying the computer systems associated with the automation system. These services include

updating of Human-Machine Interface (HMI) screens or updates utilizing the installed software on the system development node and updating those HMI screens to operating nodes; updating communication processor settings; updating substation automation system database and set points; troubleshooting from remote locations; and restoration of the automation system in the event software or a server is temporarily or permanently rendered inoperable.

Staff anticipates the continued need for these substation automation system support services and, therefore, asks the Commission to approve an amendment to the contract with Schweitzer Engineering Laboratories, Inc. (SEL), in order to enable the Commission and its electric customers to continue to benefit from Schweitzer's proprietary software and to avoid the additional costs that would result from obtaining these services from a different contractor.

The contract with Schweitzer is an enabling type of contract which allows the Commission to use none, or all of the services listed above. The work is authorized on an individual task basis. If the Commission requires the company to perform work, a "Task Authorization" is prepared and submitted for approval. A task authorization must contain a description of the work to be performed, a list of deliverables, a schedule for completing the assignment, and a budget for the task.

Mr. Reese stated the Colorado River Commission of Nevada (Commission) has the responsibility and assets of 17 high voltage substations and about 34 miles of transmission line that are operated and maintained on behalf of the Southern Nevada Water Authority (SNWA) to make up the communication and our SCADA system. There are components that must interface with the existing surveillant SCADA system, which is the HMI platform. Schweitzer Engineering Laboratories, Inc., is the backbone of the intelligent devices, protection scheme and data collector that interfaces with the HMI the Human Machine Interface, which we have discussed during Agenda Item E.

Mr. Reese further stated, currently there is a contract with SEL however the contract term is due to end. The Commission would like to extend the contract for another three years. There are sufficient funds in the existing contract to suffice for any foreseen activity needed; this contract is strictly for a three-year extension on the existing contract extending the term to June 30, 2025.

Vice Chairwoman Kelley asked a procedural question about the amendment process and if the Commission is allowed to amend contracts and add amendments in perpetuity or if at one point it is required by law or regulation to readdress them.

Special Counsel Attorney General, Christine Guerri, commented that the Commission works in conjunction with the State's purchasing system and the State's Administrative Manual therefore it's not in perpetuity. Contracts can be extended for a certain period of time but eventually contracts will need to go back out. Ms. Guerri continued that some of the Commission's contracts, particularly Mr. Reese's contracts, as well as some of the outside counsel contracts, are sole source, therefore sole source contracts are allowed

to be extended and amended for greater periods of time than other types of contracts that would have more vendors.

**Commissioner Kirkpatrick moved for approval. The motion was seconded by Commissioner Jones and approved by unanimous vote.**

**E.     *For Possible Action: Consideration of and possible action to approve Amendment No. 3 to Contract SA-12-02, extending the contract term to June 30, 2025, for Substation Automation System Support Services between Survalent Technology Inc., and the Colorado River Commission of Nevada.***

Assistant Director of Engineering and Operations, Robert Reese presented.

**A. Request for Amendment of Contract:**

The requested Amendment No. 3 is an extension of the contract for three more years to June 30, 2025, and there is no request to add any additional amount authorized under the contract. The current balance remaining on the contract is \$280,715 and that is expected to sufficient for the term of the extension.

**B. Background on Operations**

The Power Delivery Project's existing supervisory control and data acquisition system (SCADA) for its substations is separated into two key components: the automation system and the business enterprise system. The automation system enhances the Commission's ability to operate its transmission and distribution facilities, monitor equipment status and to respond to operational events.

The services of an outside vendor are needed from time to time for the routine operation and maintenance of the system such as programming, troubleshooting, and modifying the computer systems associated with the automation system. Types of services that may be required include updating of Human-Machine Interface (HMI) screens or updates utilizing the installed software on the system development node and updating those HMI screens to operating nodes; updating communication processor settings; updating substation automation system database and set points; troubleshooting from remote locations; and restoration of the automation system in the event software or a server is temporarily or permanently rendered inoperable.

Staff anticipates the continued need for these substation automation system support services and therefore asks the Commission to approve an amendment to the contract with Survalent, to enable the Commission and its electric customers to continue to benefit from Survalent's proprietary software and to avoid the additional costs that would result from obtaining these services from a different contractor.

The contract with Survalent is an enabling type of contract which allows the Commission to use none, or all of the services listed above. The work is authorized on an individual task basis. If the Commission requires the company to perform work, a "Task

Authorization” is prepared and submitted for approval. A task authorization must contain a description of the work to be performed, a list of deliverables, a schedule for completing the assignment and a budget for the task.

Mr. Reese stated this is the second major component in our SCADA system. The HMI side, which is the interface and actual read-write operations of our system. Schweitzer Engineering Laboratories, Inc., which is all the intelligence gathering, puts the information into the proper protocol for Survalent, which is the SCADA system to display it, so the operators can see what is happening in the system Contract SA-12-02 was a sole-source contract, and the Commission requested a three-year extension of this contract while utilizing the existing funds in the contract.

**Commissioner Kirkpatrick moved for approval. The motion was seconded by Commissioner Puliz and approved by unanimous vote.**

**F. *For Possible Action: Consideration of and possible action to approve an Amendment No. 7 to Contract for Services of Independent Contractor among Fennemore Craig, P.C., the Office of the Attorney General, and the Colorado River Commission of Nevada (Commission) extending the contract term to June 30, 2024, for legal services.***

Special Counsel, Attorney General, Christine Guerici, presented.

**A. Request for Amendment of Contract:**

The requested Amendment No. 7 is an extension of the contract for two more years and is not requesting any additional amount be authorized on the contract. The current balance remaining on the contract is \$65,606 and that is expected to last for the near term. After a ruling from the United States Supreme Court, expected this fall, the Staff can better evaluate whether a further extension or funds need to be added.

**B. For Reference Below Is a More Detailed History of the Case:**

The pending lawsuit was initiated in 2003, and challenged current Colorado River operations, including the 2007 Guidelines, Federal banking regulations (which permit us to bank Nevada’s water in Arizona and California) and potentially the agreements and associated river operations relating to Minute 319 with Mexico. In addition, this significant litigation threatens the stability of the Law of the River that the Seven Basin States rely on and may ultimately result in a water adjudication in the District Court or the United States Supreme Court.

The Navajo Nation appealed to the 9<sup>th</sup> Circuit Court, and the case was fully briefed before that court. Oral argument was heard on November 13, 2017. A decision of the Court was issued November 6, 2017, with the decision published on December 4, 2017.

The Ninth Circuit directed the District Court “to consider fully the Nation’s breach of trust claim in the first instance, after entertaining any request to amend the claim more fully to flesh it out.” *Navajo Nation v. Department of Interior*, 876 F.3d at 1173. On remand, the District Court authorized the Nation to file a motion for leave to amend its complaint by April 13, 2018. Responses to that motion are due by May 29, 2018. The Nation may file a reply in support of its motion by June 19, 2018. Civil Minutes (filed Feb. 13, 2018). Rule 15.1, Local Rules of Civil Procedure (D. Ariz.), requires that the Nation attach the proposed third amended complaint to its motion, indicating by redlining how it differs from the Second Amended Complaint.

On August 23, 2019, the Arizona District Court issued its Order denying the Navajo’s request to amend its complaint and terminated the case. *Navajo Nation v. Department of Interior*, 2019 Westlaw 3997370 (D.Az. 2019). The District Court specifically addressed the Navajo’s trust claims and stated: “Since none of these substantive sources of law create the trust duties the Nation seeks to enforce, and the Nation “cannot allege a common law cause of action for breach of trust that is wholly separate from any statutorily granted right”, its breach of trust claim must fail, and amendment would be futile (citation omitted)”. The case was appealed to the 9th Circuit Court of Appeals on the trust issue.

The 9<sup>th</sup> Circuit reversed the dismissal of the lawsuit by the Arizona court and instructed the District Court to address the Navajo’s breach of trust claims. The Federal defendants and the Intervener states filed separate Motions for Rehearing En Banc Earlier this month, which were denied.

On May 17, 2022, the Intervener States including Nevada filed a Petition for Certiorari with the United States Supreme Court focused on two questions:

I. Does the Ninth Circuit Opinion, allowing the Nation to proceed with a claim to enjoin the Secretary to develop a plan to meet the Nation’s water needs and manage the Colorado River so as not to interfere with that plan, inherently and necessarily infringe upon this Court’s retained and exclusive jurisdiction over the allocation of water from the LBCR mainstream in *Arizona v. California*

II. Can the Nation state a cognizable claim for breach of trust consistent with this Court’s holding in *Jicarilla* based solely on unquantified implied rights to water under the *Winters* Doctrine?

This Contract Amendment No. 7, is to amend the contract to extend its term to allow Fennemore Craig to continue to defend the case on behalf of the State of Nevada, the Colorado River Commission of Nevada, and the Southern Nevada Water Authority.

Ms. Guerri, stated that Fennemore Craig and Mr. Caster have been the Commission’s outside counsel on the Navajo litigation for approximately 15 years.

Mr. Caster was present via teleconference.



Ms. Guerici continued to report that Senior Deputy, Attorney General, David Newton will report on the litigation update, but we are still ongoing in the Navajo litigation. The intervenor states have filed their writ of certiorari to the Supreme Court after the 9th Circuit remanded the case that had been up there. This was the second time up at the 9th Circuit. Therefore, this is a long way of saying Mr. Caster had a lot of knowledge, as he has been on this case for a very long time and is somebody that is vital for Nevada to keep retaining.

**Commissioner Jones moved for approval. The motion was seconded by Commissioner Kirkpatrick approved by unanimous vote.**

<b>G. <i>For Information Only:</i> Introduction of budget recommendations for the Commission's budget for Fiscal Years 2024 and 2025.</b>
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Chief of Finance and Administration, Douglas Beatty provided a presentation on upcoming budget recommendations.

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

- Commission's Budget Process
- Colorado River Commission Accounts
- Colorado River Commission Budget Highlights
- Review of Draft Budget for Fiscal Years 2024 and 2025

Vice Chairwoman Kelley asked if there were any questions.

Commissioner Marilyn Kirkpatrick expressed her concern over the overall adequacy of the initial budget request since the legislature is likely to reduce the budget and there are very important issues surrounding the drought and other inflationary pressures that will need to be dealt with in the upcoming biennium. Commissioner Kirkpatrick stated her concern with being overly financially conservative and the difficulties of requesting additional funds in the future. Commissioner Kirkpatrick requested a meeting with Executive Director, Eric Witkoski and Mr. Beatty to review further questions.

Mr. Beatty stated the budget is still being discussed and that there is time to make adjustments as needed and additionally that the Governor's Finance office will also likely have changes to the budget before it is introduced to the legislature. Mr. Beatty acknowledged Commissioner Kirkpatrick's concerns, expressed the importance of potential budgeting for emergency or inflationary items and agreed to review the adequacy of key items and continue the discussion prior to the August Commission meeting.

Vice Chairwoman Kelley thanked Commissioner Kirkpatrick for her questions and encouraged Mr. Beatty to meet with Commissioner Kirkpatrick to address her suggestions. Vice Chairwoman Kelley added to inform the other Commission members of the meeting for informational purposes.

**H. *For Information Only:* Update on pending legal matters, including Federal Energy Regulatory Commission or Public Utilities Commission of Nevada filings.**

Senior Deputy Attorney General, David W. Newton provided an update on legal matters.

Mr. Newton stated the Commission is waiting to find out if the Federal Government is going to intervene in the matter on the writ for certiorari. They have applied for that and have been granted 2 extensions to continue to examine that question, therefore we are not sure on that yet.

Mr. Newton continued the second matter is the LTEMP Litigation (*Long Term Experimental and Management Plan Final Environmental Impact Statement*) which were dealing with operations at the Glen Canyon Dam, the parties are in the briefing stage in this matter. The brief, along with the other state interveners, is due Friday. The draft has been completed. We are also waiting on the Feds for this one too. They do not like to share ahead of time, so we are not sure exactly what they are arguing, therefore there may be some tweaks to the finalized version.

**I. *For Information Only:* Status update from Staff on the hydrological conditions, drought, and climate of the Colorado River Basin, Nevada's consumptive use of Colorado River water, the drought contingency plan, impacts on hydropower generation, electrical construction activities and other developments on the Colorado River.**

Laura Dye, Natural Resources Specialist provided a presentation with the latest hydrological conditions report:

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

- Upper Basin Precipitation and Temperature
- Upper Basin Snowpack and Runoff
- Current Reservoir Status
- 2022 Reservoir Operations and Drought Operations
- Water Use in Southern Nevada
- Reclamation's Lake Mead Projection

**Vice Chairwoman Kelley asked if there were any questions. There were none.**

**J.     *For Possible Action: Consideration of and possible action by the Colorado River Commission of Nevada to recognize the Southern Nevada Water Authority's (SNWA) acknowledgement and demonstration of appreciation to the Commission for the excellent work by Robert Reese, Assistant Director of Engineering and Operations, and his staff, on SNWA's Low Lake Level Pumping Station.***

Executive Director, Eric Witkoski presented Assistant Director of Engineering and Operations, Robert Reese and his Staff with a plaque in recognition of SNWA's Low Lake Level Pumping Station.

Vice Chairwoman Kelley, congratulated Robert Reese for his great work and expressed her appreciation for the partnership with the Southern Nevada Water Authority. Vice Chairwoman Kelley encouraged commission members to take a tour to see how everything intertwines and how power is managed.

**K.     *For Possible Action: Consideration of and possible action by the Colorado River Commission of Nevada to commend Christine Guerci for her service as Special Counsel to the Colorado River Commission of Nevada and acknowledge her retirement from State service.***

Executive Director, Eric Witkoski presented Special Counsel Christine Guerci with a plaque, commending Ms. Guerci for her service as Special Counsel to the Colorado River Commission of Nevada and acknowledged her retirement from State service. Mr. Witkoski added that Ms. Guerci has worked through a lot of the contract issues with us with WAPA, she has been a great help to the Commission and Ms. Guerci's contributions have been felt and are appreciated.

**L.     **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.

**M.     **Comments and questions from the Commission members.****

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

**N.     **Selection of the next possible meeting date.****

The next meeting is tentatively scheduled for 1:30 p.m. on Tuesday, August 9, 2022, at the Clark County Government Center, Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.

<b>O. Adjournment.</b>
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**The meeting was adjourned at 2:13 p.m.**

\_\_\_\_\_  
Eric Witkoski, Executive Director

APPROVED:

\_\_\_\_\_  
Puoy K. Premsrut, Chairwoman

**The Colorado River Commission of Nevada (Commission) meeting was held at 1:30 p.m. on Tuesday, August 9, 2022, at the Clark County Government Center, Commission Chambers, 500 South Grand Central Parkway, Las Vegas, NV 89155.**

**COMMISSIONERS IN ATTENDANCE**

Chairwoman	Puoy K. Premsrirut
Commissioner	Justin Jones
Commissioner	Dan H. Stewart
Commissioner	Allen J. Puliz
Commissioner	Cody T. Winterton

**COMMISSIONERS PRESENT VIA TELECONFERENCE**

Vice Chairwoman	Kara J. Kelley
Commissioner	Marilyn Kirkpatrick

**DEPUTY ATTORNEY(S) GENERAL**

Special Counsel, Attorney General	David W. Newton
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**COMMISSION STAFF IN ATTENDANCE**

Executive Director	Eric Witkoski
Senior Assistant Director	Sara Price
Chief of Finance and Administration	Douglas N. Beatty
Assistant Director, Energy Information Systems	Kaleb Hall
Assistant Director, Engineering and Operations	Robert D. Reese
Hydropower Program Manager	Craig Pyper
Natural Resources Program Manager	Angela Slaughter
Environmental Program Manager	Warren Turkett, Ph.D.
Chief Accountant	Gail L. Benton
Senior Energy Accountant	Ha N. Tran
Hydropower Engineering	Stevie Espinosa
Natural Resources Specialist	Laura Dye
System Coordinator	Chris Smith
Office Manager	Gina L. Goodman
Administrative Assistant IV	Katie Aguilar
Administrative Assistant III	Saira Castillo
Administrative Assistant II	Joshua Cleveland

## **OTHERS PRESENT; REPRESENTING**

City of Boulder City  
City of Henderson  
College of Southern Nevada  
Electrical Power Products, Inc.  
Hitachi Energy USA Inc.  
Lato and Petrova CPAs  
Legislative Counsel Bureau  
Legislative Counsel Bureau  
NV Energy  
Overton Power District No. 5  
Peak Substation Services  
Self  
Self  
Southern Nevada Water Authority

Joseph Stubit  
Becky Risse  
Tina Dobbs  
Joshua England  
Andrew Cyprian  
Martha Ford  
Bailie Hall  
Scott Jones  
Michael Hulin  
MeLisa Garcia  
Jason Harris  
Brock Reesberg  
Colton Lochhead  
Annalise Porter

**COLORADO RIVER COMMISSION OF NEVADA**

**MEETING OF**

**AUGUST 9, 2022**

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**COLORADO RIVER COMMISSION OF NEVADA**

**MEETING OF**

**AUGUST 9, 2022**

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R.	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.) .....	19
S.	Comments and questions from the Commission members. ....	19
T.	Selection of the next possible meeting date.....	21
U.	Adjournment. ....	21

The Colorado River Commission of Nevada (Commission) meeting was called to order by Chairwoman Premsrirut at 1:30 p.m., followed by the pledge of allegiance.

**A. Conformance to Open Meeting Law.**

Executive Director Eric Witkoski confirmed that the meeting was posted 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 will be taken.)**

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

**C. *For Possible Action:* Approval of minutes of the June 14, 2022, meeting.**

Commissioner Puliz moved for approval the minutes of the June 14, 2022, meeting. The motion was seconded by Commissioner Jones and approved by unanimous vote.

**D. *For Possible Action:* Public Hearing to Act Upon a Regulation including the consideration of and possible action to approve, modify, or reject, in whole or in part, the proposed revised regulation NAC 538.610, LCB File No. R071-22.**

**Adoption Hearing**

**LCB File No. R071-22**

**August 9, 2022**

Executive Director Eric Witkoski introduced Agenda Item D, the Public Hearing on the proposed changes to Nevada Administrative Code chapter 538.610 contained in LCB File No. R071-22.

Chairwoman Premsrirut opened the adoption hearing with announcing that Staff confirmed that the Notice of Intent to Act Upon a Regulation was properly posted, Staff would be presenting a brief overview of the changes proposed and the process that Staff has engaged in to date. When Staff has finished, Chairwoman will invite comments from the public. Chairwoman Premsrirut asked Commissioners to hold questions until after the public has commented.

Mr. Witkoski went over the proposed regulation changes to be considered, the summary of the administrative rulemaking process and comments for the Public Hearing to Act Upon a Regulation including the consideration of and possible action to approve, modify, or reject, in whole or in part, the proposed revised regulation NAC 538.610, LCB File No. R071-22.

**Posting:**

Notice of Intent to Act upon a Regulation for LCB File No. R071-22 was properly posted on July 7, 2022, in accordance with NRS 233B.060.

**Overview of proposed changes:**

Staff is proposing to amend NAC 538.610 (3) involving rates, charges, and costs; This regulation involves how the administrative charge costs are projected and how the costs are charged to the customers on a kilowatt basis.

The first proposed change involves the projection of costs to be included – from considering the average of two years of costs, to allow for using an average of costs of not less than three years and adjusted for known and measurable changes. The change gives the Commission more flexibility to forecast the costs more accurately for the administrative charge.

The second proposed change to the regulation is to the method of how the costs are collected.

Currently the costs are collected on a kilowatt basis, and the regulation would retain that method. However, the change would add a second option where the Commission could decide to charge the costs associated with the administrative charge, in whole or in part, on a fixed charge basis or on an allocation basis.

This change would give the Commission an option to consider in the future, to collect the costs associated with the administrative fee on a more certain basis.

Currently, the administrative revenue is dependent on the amount of hydropower delivered and the amount of non-hydropower delivered to the Commission's customers. The hydropower delivered is subject to the fluctuations due to hydrology and corresponding reductions of hydropower generation.

Second, the revenue is dependent on market purchases made on behalf of its industrial customers that can fluctuate depending on the current demands of the industrial customers.

By changing the regulation, the Commission would have a tool available to stabilize the administrative revenue on a more fixed basis.

The idea is to have the tool available, if in the future, the Commission wants to choose such an approach.

**Process**

At the March 8, 2022, Commission meeting, Staff brought the proposed regulation changes for approval to initiate the administrative rulemaking process.

On March 28, 2022, Staff issued a Notice of Workshop to Solicit Comments on the Proposed Regulation Change to all its customers and followed the State Notice requirements.

Subsequently following the notice, Staff received some comments from a customer. Staff suggested an alternative language that allayed the customer's concern.

On April 5, 2022, Staff issued a revised regulation for consideration with the new language.

On April 19, 2022, Staff went through the updated proposed regulation change and answered questions about the proposal. The Workshop was held in person with the option to attend remotely. The opportunity to submit further questions was offered by Staff. Further questions were received and answered by Staff.

On July 7, 2022, Staff issued Notice of the possible Adoption of the Regulation giving notice of the possible adoption hearing scheduled for August 9, 2022.

In the Notice of July 7, 2022, Staff asked that written comments be submitted to the Commission by August 2, 2022, in order to provide the written comments to the Commission and stated comments could be made at the Hearing on August 9, 2022 in person or remotely.

No written comments were received on the proposed regulation change by August 2, 2022, or up until the date of the Commission meeting.

Mr. Witkoski commented, that on the morning of the Commission meeting, Staff did receive a call from a representative of the City of Henderson regarding the regulation change. Mr. Witkoski and Doug Beatty answered questions and explained the regulation change. After the discussion the person was satisfied with the explanation.

Chairwoman Premsrirut opened the Hearing for Public Comment on the proposed regulation changes and asked anyone wishing to comment to come forward and state their name for the record. There were none.

Chairwoman Premsrirut asked Commissioners if they had any questions or comments.

Commissioner Puliz asked if the Commission is charged that percentage fee from the state, would this regulation change help cover the cost for the Attorney General for purchasing, and other expenses.

Mr. Beatty responded to Commissioner Puliz that the Commission will be paying the costs no matter what happens. Mr. Beatty added that the regulation change would put it in par with the way the Commission charges the rest of the customers.

Chairwoman Premsrirut added that is also her understanding of the genesis of this proposed regulation. This proposed regulation change is a necessary contingency tool, especially during times of volatility. The proposed regulation change does not necessarily have to be called on at this moment, but given what has been happening with river operations, it is important. Chairwoman Premsrirut commended Staff for being clairvoyant in putting this in front of the Commission and it is reflected not only in the Executive Director's outline of the administrative process that has been Noticed, also the Workshops that were conducted, and should be reflected that the dialogue has been established among the customers has been responded to, well received, and reacted to by the Commission Staff.

**Commissioner Jones moved for approval to adopt the proposed revised regulation NAC 538.610, LCB File No. R071-22. The motion was seconded by Commissioner Puliz and approved by unanimous vote.**

**E. *For Possible Action: Consideration of and possible action to adopt the Colorado River Commission of Nevada's fiscal year 2024 and 2025 budget request.***

Chief of Finance and Administration, Douglas Beatty provided a revised presentation on upcoming budget recommendations.

Staff reviewed the budget following the June 14, 2022, Commission meeting and pursuant to comments received, Staff made a few adjustments to the budget to increase the request and provide adequate resources for the biennium. The changes made are as follow:

- 1) Account 4490 - the administrative fund for the Commission:
  - a) Out-of-state travel has been increased by \$17,155 to \$74,154 in both years of the biennium. This reflects both inflationary pressure on costs to travel and the anticipated need for increased travel to deal with the drought and related issues.
  - b) In-state travel has been increased in the second year of the biennium by \$697 to \$16,797.
  - c) Gasoline expense has been increased by approximately \$895 in each year of the biennium. This change is a small increase in the operating expense category.
  - d) Computer purchases have been increased by \$22,314 in the second year of the biennium, the year for scheduled replacement of most office hardware.
- 2) Account 4501 - the Power Delivery Project and market energy purchases fund:
  - a) Gasoline expense has been increased by \$7,393 to \$12,505 in each year of the biennium.
  - b) Market power purchases expense has been increased by \$3,278,224 to \$15,091,775 in the first year of the biennium and by \$7,521,508 to \$19,335,059 in the second year of the biennium. This reflects both rising market prices and projected increases in customer demand by industrial customers as production



returns to pre-COVID levels.

Mr. Beatty stated that a revised draft of the budget reflecting these changes was sent to the customers on July 21, 2022, for review and comment. At this time no comments have been received.

Mr. Beatty went over the budget that was revised pursuant to direction given by the Commission at the June 14, 2022, Commission Meeting. Due to the current inflationary environment, some budget changes were made due to anticipated increases in activity on the river, dealing with the drought and the dire situation, while taking into consideration anticipated future expenses, planning ahead and considering other expenses collectively the Commission will be covered, and be prepared.

Mr. Beatty added the budget was shared during the Budget Workshop, reviewed the budget with a few people that were unable to attend, and all were satisfied.

Chairwoman Premsrirut commented it is always great to hear customer satisfaction has been achieved. Chairwoman Premsrirut asked about pre-levels versus post level COVID and if the Commission has experienced a return to “normal” or has there been any deviations from pre versus post.

Mr. Beatty answered that for 2020 there were travel expenses, but the staff is beginning to travel again. Mr. Beatty added that while more meetings are returning to in person, he is uncertain how soon things will be reverted to what in his opinion, is the more productive pre-COVID period.

Chairwoman Premsrirut commented that while reviewing the travel increase, it appeared reasonably necessary, due to the river operations and the underscore of volatility necessitates more meetings and essentially being in person.

Chairwoman Premsrirut stated that she did not find it unreasonable and added, with respect to the account 4501, the market power purchases are necessitated by the customers and their demands. Chairwoman Premsrirut further commented the Commission was not unilaterally making purchases, the customers instruct or require the Commission to make the purchases on the customers behalf.

Mr. Beatty agreed and added that account 4501 is an enterprise fund, therefore, technically speaking these are called authorizations. Mr. Beatty clarified it allows the Commission to buy the power on the market, but the customers must fund the power as the Commission buys it. Mr. Beatty further added the Commission does not charge the revenue and build up a reserve, the Commission can only charge the customers as the power is bought.

Chairwoman Premsrirut asked if the adjustments made to the budget result in an increase in the Hydropower Administrative rate

Mr. Beatty responded no, Staff does not anticipate an increase during the biennium at this time.

Chairwoman Premsrirut asked if there were any comments or questions from members of the Commission or any questions or comments from the Commissioners appearing remotely.

Commissioner Kirkpatrick thanked staff for accommodating her request to review the budget to ensure that the Commission could cover their costs and that everything was where it needed to be. Commissioner Kirkpatrick is very pleased with the outcome of the revised budget.

Vice Chairwoman Kelley commented that she wanted to recognize Commissioner Kirkpatrick and show appreciation for bringing terrific knowledge of the state budgeting process and how the state works. She also wanted to ask another question not related to this Item, but it was decided the question to be reserved and moved it to Agenda Item S, under questions or comments from Commissioners.

**Commissioner Stewart moved for approval to adopt the Colorado River Commission of Nevada's fiscal year 2024 and 2025 budget request. The motion was seconded by Commissioner Winterton and approved by unanimous vote.**

<p><b>F. <i>For Possible Action: Consideration of and possible action to approve Amendment No. 1 to Contract SA-18-01, extending the contract term to August 31, 2026, for Materials Purchasing Services between Anixter Inc., and the Colorado River Commission of Nevada.</i></b></p>
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Assistant Director, Engineering and Operations Robert Reese explained the amendment for materials purchasing services contract.

Mr. Reese stated over the years it has been found very valuable to have these material vendors on contract. It allows the Commission to utilize one sole source to find components that are needed quickly, use the RFP process, select a vendor for a component and then bring it to the Commission. Otherwise, the project would probably be out about seven to eight months, therefore having these material contractors under contract allows the Commission's utility to operate in a real time fashion. The Commission has had material contractors since 1997. These suppliers provide a very valuable resource to the staff. Staff recommended an extension to this particular contract for four years with Anixter Inc.

Anixter Inc., was on previous contracts with the Commission, several years ago, under the HD Electric Supply vendor name, there was a name change. Anixter Inc., has exceeded our expectations and Staff would recommend approval of extending the contract term for an additional four years. Funds are not being asked to be increased because the Commission currently has sufficient funds in the contract, to facilitate the next four years.

Chairwoman Premsrirut thanked Mr. Reese and asked if there were any questions or comments from members of the Commission or any Commissioners appearing remotely. There were none.

Chairwoman Premsrirut added to let the record to reflect that Amendment No. 1 to Contract SA-18-01 to approve the extension contract term August 31, 2026, with Anixter Inc., and the Colorado River Commission of Nevada, is an extension of time only and not a fiscal note increase.

**Commissioner Winterton moved for approval of Amendment No. 1 to Contract SA-18-01, extending the contract term to August 31, 2026, for Materials Purchasing Services between Anixter Inc., and the Colorado River Commission of Nevada. The motion was seconded by Commissioner Puliz approved by unanimous vote.**

**G. *For Possible Action:* Consideration of and possible action to approve Amendment No. 1 to Contract SA-18-02, extending the contract term to August 31, 2026, for Materials Purchasing Services between Peak Substation Services and the Colorado River Commission of Nevada.**

Assistant Director, Engineering and Operations Robert Reese presented.

#### **A. Background on Operations**

The requested Amendment No. 1 is an extension of the contract for four years to August 31, 2026, and there is no request to add any additional amount authorized under the contract. The current balance remaining on the contract is \$1,140,957 and that is expected to be sufficient for the term of the extension.

#### **B. Background of Contract/Contract Amendment for Consideration**

On June 13, 2018, Contract No. SA-18-02 for Materials Purchasing Services between Peak Substation Services and the Colorado River Commission of Nevada was approved to provide the Commission's Power Delivery Group (PDG) with the ability to obtain replacement equipment and material costing in excess of \$5,000, and to replace the previous purchasing contracts that were expired.

This contract is an enabling type of contract that allows the Commission's PDG to receive a quotation each time a purchase is to be made. If the Commission has contracts with multiple vendors, quotations will be solicited from each vendor and compared. The vendor offering the most favorable terms will be issued a purchase order to furnish the required items.

Under the proposed amendment to Contract No. SA-18-02, an extension of an additional four years is requested, extending the contract to August 31, 2026.

Mr. Reese explained that this the contract amendment was a similar materials purchasing contract. The advantage of having two material contractors available is it gives the ability to be a little competitive, and the resources for finding the legacy components are maximized. The vendors are able to tap into their resources to provide materials to our utility as soon as possible and with a reasonable cost. Peak Substation has been with



the agency on and off for many years. Staff recommended extending the contract for four years with no increase in funding.

Mr. Reese added there are three customers that provide funding for the Power Delivery Project, which are, Southern Valley Water Authority, Clark County Water Reclamation District and Basic Industrial customers.

Chairwoman Premsrut thanked Mr. Reese and asked if there were any questions or comments regarding Agenda Item G from members of the Commission or any Commissioners appearing remotely.

Chairwoman Premsrut additionally commended Mr. Reese and stated it is very important that the Commission has different vendors available for purposes of pricing competitiveness and also for availability.

**Commissioner Stewart moved for approval approve Amendment No. 1 to Contract SA-18-02, extending the contract term to August 31, 2026, for Materials Purchasing Services between Peak Substation Services and the Colorado River Commission of Nevada. The motion was seconded by Commissioner Puliz and approved by unanimous vote.**

**H. *For Possible Action:* Consideration of and possible action to approve bid solicitation 69CRC-S2077 to Boulder Flats Solar Interconnection Project for High Voltage Circuit Breakers to contract CRCBF-01 between Hitachi Energy USA Inc. and the Colorado River Commission of Nevada.**

**I. *For Possible Action:* Consideration of and possible action to approve bid solicitation 69CRC-S2079 to Boulder Flats Solar Interconnection Project for Control Enclosure to contract CRCBF-02 between Electrical Power Products Inc. and the Colorado River Commission of Nevada.**

**J. *For Possible Action:* Consideration of and possible action to approve bid solicitation 69CRC-S1961 to Boulder Flats Solar Interconnection Project for Insulators to contract CRCBF-03 between Peak Substation Services and the Colorado River Commission of Nevada.**

**K. *For Possible Action:* : Consideration of and possible action to approve bid solicitation 69CRC-S1962 to Boulder Flats Solar Interconnection Project for Station Service Transformer to contract CRCBF-04 between Peak Substation Services and the Colorado River Commission of Nevada.**

**L. *For Possible Action:* Consideration of and possible action to approve bid solicitation 69CRC-S1963 to Boulder Flats Solar Interconnection Project for Instrument Transformer to contract CRCBF-05 between Peak Substation Services and the Colorado River Commission of Nevada.**

**M. *For Possible Action: Consideration of and possible action to approve bid solicitation 69CRC-S1964 to Boulder Flats Solar Interconnection Project for High Voltage Disconnect Switches to contract CRCBF-06 between Peak Substation Services and the Colorado River Commission of Nevada.***

**N. *For Possible Action: Consideration of and possible action to approve bid solicitation 69CRC-S1965 to Boulder Flats Solar Interconnection Project for Steel to contract CRCBF-07 between Peak Substation Services and the Colorado River Commission of Nevada.***

Executive Director, Eric Witkoski addressed the Commission to explain that the following Agenda Items H-N, CRCBF-01-CRCBF-07 are for a capital project and sought guidance on the agenda items and whether to vote individually or collectively.

Chairwoman Premsrirut explained Agenda items H-N are all contracts that are related to the Boulder Flat Solar Interconnection Project. Chairwoman Premsrirut asked that Assistant Director, Engineering and Operations, Robert Reese present an overview of the project and a primer on each item and then the Commission would make an omnibus motion to approve Agenda Items H-N, CRCBF-01-CRCBF-07.

Mr. Reese presented a background on operations.

Pursuant to NRS 538.161, the Commission may execute contracts, for the planning, and development of any facilities for the generation or transmission of electricity for the greatest possible benefit to the state. Additionally, the Commission has a Facilities Development Agreement with the Southern Nevada Water Authority (SNWA) for the purpose of “creating a cooperative relationship to jointly develop, operate, maintain, use and replace a Power System” for SNWA and its members.

SNWA has requested the Commission design, procure, and construct a new 230kV switchyard and ten-mile long 230kV transmission line in Boulder City, Nevada for SNWA’s Boulder Flats Solar Project.

The proposed purchase contract is put forward for approval as part of the work the Commission will perform for SNWA for the electrical support system for the Boulder Flats Solar project. It is anticipated that no one single supplier can provide a bid for all items, thus the Contracts may be awarded in parts.

Mr. Reese continued that typically, the Commission does a major component package and presents that to the Commission, however, due to the lead times that are now out in the industry, SNWA and Staff have identified certain components of the project that are extending their lead time. For example, some of these components would typically be receive anywhere from 8 to 16 weeks. These components are now estimated at 48 to 52 weeks. Therefore, the components of the contracts that are before you today are those components that are necessary to procure in advance to meet our schedule.

Executive Director, Eric Witkoski, asked Mr. Reese if he could comment on the background on the bid/procurement process.

On March 28, 2022, 8 bids were posted on the NevadaEPro website for the Boulder Flats Solar Interconnection Project. Bid solicitations 69CRC-S1959 and 69CRC-S1960 were reposted on June 3, 2022, after receiving no bids from vendors from the first solicitation request. The new solicitation number for 69CRC-S1959 for CRCBF-01 for Control Enclosure is 69CRC-S2077. Each bid solicitation request period was 8 weeks long. The bid solicitation was sent to multiple vendors registered in NevadaEPro, and additional independent vendors directly via email.

During the evaluation period, the contractors are evaluated based off a matrix on experience and ability to provide these components: Circuit Breakers, Station Service Transformers, Insulators, Disconnects, and High Voltage Disconnect. Once evaluated, each vendor is scored and then intent to awards are issued.

The deadline for the first round of bid solicitation requests: CRCBF-03, CRCBF-04, CRCBF-05, CRCBF-06, CRCBF-07 closed at 5:00 p.m. on May 18, 2022. The evaluation period for the first round of bid solicitations on May 23, 2022 – June 1, 2022. Peak Substation Services was the only responding vendor.

The deadline for the second round of bid solicitation requests CRCBF-01 and CRCBF-02 closed at 5:00 p.m. on July 13, 2022. The evaluation period took place from July 15, 2022 – July 25, 2022. Hitachi Energy USA, Inc. was the only responding vendor for CRCBF-01. There were two responding vendors for CRCBF-02. Electrical Power Products, Inc., is the intent to award vendor.

These contracts are to engineer, manufacture, assemble, test, ship, and provide ancillary services relating to procurement.

Item H is to approve bid solicitation - 69CRC-S2077 for High Voltage Circuit Breakers and is recommended for award to Hitachi Energy USA, Inc.

Item I is to approve bid solicitation - 69CRC-S2079 for Control Enclosures and is recommended for award to Electric Power Products Inc.

Item J is to approve bid solicitation - 69CRC-S1961 for Insulators and is recommended for award to Peaks Substation Services.

Item K is to approve bid solicitation - 69CRC-S1962 for Station Service Transformer and is recommended for award to Peak Substation Services.

Item L is to approve bid solicitation-69CRC-S1963 for Instrument Transformer is recommended for award Peak Substation Services

Item M is to approve bid solicitation-69CRC-S1964 for High Voltage Disconnect Switches and is recommended for award to Peak Substation Services.

Item N is to approve bid solicitation-69CRC-S1965 for Steel and is recommended for award to Peak Substation Services.

Chairwoman Premsrirut noted Peak Substation Services has done consistent business for quite some time and not only proven reliability, but overall satisfaction therefore, Chairwoman Premsrirut is pleased to see them as part of our agenda today.

Mr. Reese added that, that was an excellent point. Pointing out that even though Peak Substation Services is a bidder for the capital items on Agenda Items J-N, this is not on the materials purchasing contract for Agenda Item G. Material purchasing contracts are utilized for the operation and maintenance requirements.

Chairwoman Premsrirut thanked Bob and asked if there were any questions.

Commissioner Puliz applauded Mr. Reese. Commissioner Puliz commented that those items need to be ordered as soon as possible, for project completion within a year and a half. Commissioner Puliz spoke about the difficulty in obtaining big commercial and capital project electrical items.

Chairwoman Premsrirut asked Mr. Reese if this is a function of the ongoing supply chain issues from the COVID era or is this more the rule than the exception now with these extensive lead times.

Mr. Reese responded no that the business model has changed quite a bit. Mr. Reese believes that the vendors are not keeping as much inventory and added vendor may not have the Staff to manufacture these components in a timely manner, reflecting the long lead times on these components.

Chairwoman Premsrirut wanted to confirm the Boulder Flats Solar Interconnection Project is necessitated by SNWA, procured in conjunction with the constituents of both SNWA and the Commission.

Mr. Reese replied SNWA requested the Commission to do the design, procurement, and construction management for this project. Staff does not initiate any projects until there is a request from Commission customers.

These contracts are enabling type of contracts that allow the Commission's PDG to receive a quotation each time a purchase is to be made. The Equipment will be purchased by the Commission pursuant to NRS 538.161 (2) and the Commission's established Procedures for Purchasing Electrical Materials for the Power Delivery Project.

Chairwoman Premsrirut thanked Mr. Witkoski and asked if there were any questions or comments on the Agenda Items H through N. There were none.

Staff recommended the Commission approve Agenda Items H-N and authorize the Executive Director to sign it on behalf of the Commission.



**Commissioner Puliz moved for approval of the Boulder Flats Solar Interconnection Project capital project Agenda Items H-N. The motion was seconded by Vice Chairwoman Kelley and approved by unanimous vote.**

**O. *For Possible Action:* Consideration of and possible action to approve Amendment No. 1, to increase the contract by \$10,000 to a not-to-exceed amount of \$58,500, between Lato & Petrova CPAs, LTD (dba Lato, Petrova & Pearson CPAs) and the Colorado River Commission of Nevada for accounting services to assist with the year-end closing and preparation of the Annual Comprehensive Financial Report.**

Chief of Finance and Administration, Douglas Beatty explained the Lato & Petrova CPAs, LTD (dba Lato, Petrova & Pearson CPAs) and the Colorado River Commission of Nevada for the accounting services contract.

This contract was approved by the Commission at the April 13, 2021, meeting and provided for the assistance of Ms. Ford in the creation of the template for the Annual Comprehensive Financial Report (ACFR). Ms. Ford worked closely with the accounting Staff, and Staff successfully completed the first in-house annual financial report for the year ended June 30, 2021.

The contract originally anticipated modification of the existing template but as the work started it became clear that creating a completely new template was necessary. The old template was overly complicated and would require unnecessary effort to roll the balances forward and make changes needed in succeeding years. As a result, the original contract amount of \$48,500 was almost completely exhausted in the effort and now as Staff is moving forward with the new fiscal year the full amount has been used.

The roll forward of last fiscal year's ending balances to 'the new year has now been completed and the work to date has gone smoothly with the new streamlined template. Staff anticipates some additional changes and formatting effort may be needed to complete the Fiscal 2022 ACFR, but not to the level needed last year. Staff and Ms. Ford have determined that an additional \$10,000 would be adequate for the effort this year.

Additionally, Ms. Ford reduced her billing rate, originally set at \$450/hour to \$250/hour to accommodate this amendment. This is pursuant to Staff's request and due to the less intense nature of the anticipated changes needed to the ACFR. Based on the results of the work last year Staff anticipates a much smoother and less stressful annual audit and Financial Report for this fiscal year.

Mr. Beatty continued stating that previously there was a procurement with the state controller's office for the software package called CaseWare that produces Annual Financial Reports. The Commission joined this procurement and found the process with the software cumbersome and extremely difficult to maneuver through. Therefore, when Staff issued the request for proposals for auditors, experience with CaseWare was requested. No bidders had expertise with CaseWare.

Staff started looking for assistance elsewhere. Piercy, Bowler, Taylor, and Kern (PBTK), had expertise on CaseWare, but PBTK declined to submit a proposal. Ms. Ford had been a partner with PBTK but had left the firm. Staff asked Ms. Ford to assist with the CaseWare software and Ms. Ford agreed, in conjunction with Lato & Petrova CPAs, LTD.

April 13, 2021, the Commission approved a contract between Lato & Petrova CPAs, LTD (dba Lato, Petrova & Pearson CPAs) and the Colorado River Commission of Nevada for accounting services to assist with the year-end closing and preparation of the ACFR for \$48,500 to assist in closing the books, aggregating the information, and fully utilizing the CaseWare printing and production system.

Ms. Ford had to develop a more compatible template to try and get the CaseWare system to actually work, allowing the agency to produce a full ACFR in house for the first time in the Commissions history. Moss Adams our current internal auditors were pleased with the results. The contract funds have been exhausted due to the tremendous effort in producing a successful ACFR.

The contract will expire May 1, 2023, and Staff does not anticipate an extension of time. Staff recommended an amendment to contract for an additional \$10,000, due to a couple of changes with Governmental Accounting Standards Board standards, footnote presentations, and a few other changes that will have to be implemented. Staff has spoken with Ms. Ford and reached an agreement in reducing her billing rate from \$450 an hour to \$250.

Staff recommended to approve Amendment No. 1, to increase the contract by \$10,000 to a not-to-exceed amount of \$58,500, between Lato & Petrova CPAs, LTD (dba Lato, Petrova & Pearson CPAs) and the Colorado River Commission of Nevada for accounting services to assist with the year-end closing and preparation of the Annual Comprehensive Financial Report.

Chairwoman Premsrirut thanked Mr. Beatty and made a quick point of clarification for the request of additional \$10,000 to add to the already original contract amount of 48,500 and that it is not a new \$58,500.

Chief of Finance and Administration, Douglas Beatty confirmed that it is just a request for an additional \$10,000.

Vice Chairwoman Kelley provided some additional context for the Commissioners and the public. The Commission voted to choose CaseWare software after an exhaustive search by Staff. The software search is mentioned at this particular meeting because there are multiple extension contracts on the August 9, 2022, agenda to clarify for the record.

The Commission created the Financial and Audit Subcommittee after the completion of 2017 annual audit. The auditors recommended that the agency strengthen the internal controls over the year-end financial reporting by maintaining complete reconciliations of material account balances and all supporting documents including calculations,

schedules, and other items that tie to the final ACFR amounts. When this change happened there were some extreme difficulties in implementation because of the brand-new system and professional expertise was limited. Quite a bit training was invested however there were still implementation issues.

Ms. Ford's services were obtained to address implementation issues and to build a compatible template. It was the simplest adaptation to the ongoing situation. Mr. Beatty, his team, and Mr. Witkoski have certainly managed any third-party funds extremely well. Vice Chairwoman Kelley reiterated what Mr. Beatty said about being able to participate in a successful completion of the ACFR without any significant auditor involvement in this recent audit, it is amazing based on the challenging history.

Vice Chairwoman Kelley added that Ms. Ford has been very generous with her billing time because there is a real commitment to the execution of CaseWare. After many years, the system does what it is meant to do.

Chairwoman Premsrut expressed her gratitude, thanked Vice Chairwoman Kelley along with the Financial and Audit Subcommittee (Subcommittee) members Chairwoman Kelley, Vice Chairwoman Kirkpatrick, and Commissioner Stewart for their commitment and time spent in the Committee stating that it is not every day that the proverbial wheel must be reinvented.

Chairwoman Premsrut thanked Ms. Ford for staying on to persevere through this challenging obstacle and to do so at such an efficient rate, while also thanking Staff for their commitment expressing appreciation to all of them on behalf of herself and the Commission for their time and diligence. It has shown tremendous improvement in progress and is always a positive reflection on the Commission at large.

**Vice Chairwoman Kelley moved for approval of Amendment No. 1, to increase the contract by \$10,000 to a not-to-exceed amount of \$58,500, between Lato & Petrova CPAs, LTD (dba Lato, Petrova & Pearson CPAs) and the Colorado River Commission of Nevada for accounting services to assist with the year-end closing and preparation of the Annual Comprehensive Financial Report. The motion was seconded by Commissioner Stewart and approved by unanimous vote.**

<p><b>P. <i>For Information Only:</i> Update on pending legal matters, including Federal Energy Regulatory Commission or Public Utilities Commission of Nevada filings.</b></p>
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Special Counsel Attorney General, David Newton stated that there are two items that have current outstanding litigation.

Save the Colorado v. Dept. Of the Interior (LTemp):

The briefing has been completed. Nevada and the other intervenors are awaiting instructions from the court as to what the next step is going to be. There was some

commentary made by the judge at one point about a year ago that he was not very familiar with this area of the law, therefore expectations are that it will not move quickly.

Navajo Nation v. Dept. Of the Interior:

The federal government filed the intervention on this matter, asking that the states matters be put aside. There is one matter that deals specifically with the federal government, and that is whether or not there is a fiduciary duty that runs between the federal government and the Navajo Nation regarding water right. If that is found to be the case, then the states' matters and the other interveners matters would go forward. If that is found not to be the case, at least based on the federal government's arguments than the rest of the case is moot. The parties are waiting for further instructions from the court. The court could ask for briefings or simply deny or accept. The request is up to the court as to how it will be handled.

Chairwoman Premsrirut thanked Special Counsel Attorney General, David Newton and asked if there were any questions or comments regarding the legal matters that were explained.

Commissioner Puliz asked if Staff is preparing for a lot more action of the seven Colorado River states and he stated that this could get ugly in the next couple years.

Special Counsel Attorney General, David Newton replied that yes, the Intervener states, Commission's attorney, and Staff are preparing. There are on-going conversations with Executive Director, Eric Witkoski and Senior Assistant Director, Sara Price probably two or three times a week at least. Preparation is complicated as one can imagine and/or anticipate to the best of our ability.

Chairwoman Premsrirut thanked Mr. Newton and asked if there were any additional questions or comments. There were none.

<p><b>Q.    <i>For Information Only: Status update from Staff on the hydrological conditions, drought, and climate of the Colorado River Basin, Nevada's consumptive use of Colorado River water, the drought contingency plan, impacts on hydropower generation, electrical construction activities and other developments on the Colorado River.</i></b></p>
--

Environmental Program Manager, Dr. Warren Turkett and Senior Assistant Director Sara Price presented.

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

- Precipitation and Temperature
- Unregulated Inflow, Current and Projected Reservoir Status
- Water Use In Southern Nevada
- Historical and Forecast of Hydropower Generation at Hoover



- Summary

Vice Chairwoman Kelley asked Dr. Turkett about the 62% and up of the projected unregulated inflow to Lake Powell for Water Year 2022 had a significant change over the last couple of months.

Dr. Warren Turkett, Natural Resource Analyst replied stating that unfortunately he did not have reports for those months available at the moment but stated that over the last few months more precipitation increased anywhere from 2 to 3%. It is helpful, but it has not really moved the needle a whole lot as far as the total runoff. It is important to note that getting that precipitation helped the soil moisture. At this time of year and in the previous years there has been really warm conditions with no precipitation leaving Southern Nevada in a really bad spot as far as runoff this year. Dr. Turkett stated that hopefully next year, with good precipitation will result in at least near average runoff which would be very helpful.

Vice Chairwoman Kelley requested a briefing after the August 16, 2022, on the Bureau of Reclamation's decision and its application.

Dr. Turkett agreed to provide an updated report per Vice Chairwoman Kelley's request.

Senior Assistant Director, Sara Price stated that there is a lot of activity on the Colorado River. She stated there has been a tremendous number of meetings regarding the current issues of drought and response actions. Back in mid-June, the Bureau of Reclamation Commissioner Camille Touton testified before Congress that the basin needed an additional 2-to-4,000,000-million-acre feet of reductions. To just be clear, that is on top of everything else the states are already doing, including shortage requirements under the Interim Guidelines, contribution requirements under the Drought Contingency Plan, and new, additional contributions under the "500 Plus Plan," which was to come up with another million-acre feet of reductions over the next two years.

That 2-to-4,000,000-million-acre feet of reduction is obviously a very stark number. You have probably seen news reports every which way on this issue. Commissioner Touton directed the basin states to come up with a plan to address the need for those huge reductions within 60 days before the announcement of the August 24 month study. The deadline is a week away. The situation is very trying and very stressful and unfortunately, at this time, at this time there is not a lot to report. The Commission received a letter from the Upper Basin to Commissioner Touton which outlines a number of conservation efforts the Upper Basin is willing to do, but it does not include any new water reductions. Arizona and California in the Lower Basin are working hard with the federal government to try and determine whether they can come together and agree on how to come up with those reductions.

Not surprisingly, there is a lot of tension in the Basin. Here in Nevada, our allocation/water use is not significant enough to make an impact. A recent news report stated that whatever Nevada can contribute is like couch change, a drop in the bucket. Nevertheless, the Southern Nevada Water Authority (SNWA) receives a tremendous amount of credit for really working hard and robustly to reduce our southern Nevada water use. While

recognizing some of the Colorado River Commission of Nevada Commissioners are on the SNWA Board of Directors understand that, but for those who may not be as clear, the water use in our urban area really comes from three sources: outdoor irrigation, septic tanks, and evaporative cooling systems. These three sources are where southern Nevada loses most of its water. The outdoor irrigation is lost and unable to qualify for return flow. The evaporative coolers are a really big source of water use. That is another targeted area. Septic tanks is another area of concern. The water authority is working hard to connect those who are not yet connected to the Southern Nevada Water System.

SNWA's water conservation efforts are quite aggressive. There is a nonfunctional turf bill which requires the removal of all nonfunctional turf by 2026. There are new requirements that would prohibit decorative grass. There are new requirements on pool sizes reduced to 600 square feet, limits on outdoor fountains, and artificial lakes. This includes the Las Vegas Strip.

Even though some consider southern Nevada a drop in the bucket or couch change, we have a role, a very serious and significant role. Southern Nevada must do everything possible to reduce our water use in our urban areas which is successfully being done. We are committed to doing more of that. We will continue to wrestle with the other Basin States to come up with a plan and if not, we will wait anxiously to see what the federal government will be willing to do.

Chairwoman Premsrut thanked Ms. Price and stated that she requested from Staff to have sort of a two-pronged report on this Agenda Item given the status of the hydrology and river operations and hoped that this is not too redundant for our Commission members who serve on the Southern Nevada Water Authority. Chairwoman Premsrut expressed a concern for continuing to educate one another on the current situation and staying informed on conservation matters while not necessarily on the ground floor doing the work that SNWA and John Entsminger are doing.

Chairwoman also stated she was fortunate enough to speak on a panel for University of Denver Water Law Review Symposium conducted by her alma mater. The Members on that panel looked to southern Nevada as a role model in conservation. Chairwoman Premsrut added while the efforts may not seem large in the overall contribution of our contemporaries who have such greater allocations than us, our efforts are not unnoticed, and we are leading by example.

Commissioner Jones echoed that sentiment. He stated that we have been the leader for a long time on these conservation measures and Councilman Stewart, Commissioner Kirkpatrick and himself have been through these discussions over the last year, in particular in adopting these aggressive and sometimes painful conservation measures.

Commissioner Jones commented that he had a homeowner crying in his office right before this meeting because she cannot build her house because of our sewer restrictions. These are painful, but as a result of our efforts here, other jurisdictions are taking notice. Many of us have pointed at St George as the model for how not to do things, and as you have seen in the last two weeks St George, Utah and Washington

County of Utah as a whole has adopted many of the same conservation measures as we have adopted. Same thing for Phoenix, Arizona, and State of Colorado communities. Therefore, it is working concluded Commissioner Jones.

Ms. Price, agreed southern Nevada tends to be very collaborative as it is beneficial in reaching our goals.

Vice Chairwoman Kelley asked about the delineation between well water rights and those who are on the system. Regarding fountains, she knows Bellagio uses greywater and would like to know how all that plays out and is addressed. She is certain that that has been a continuous conversation at the Southern Nevada Water Authority level. Vice Chairwoman Kelley stated that she is unfamiliar with this topic. Therefore, depending on what is appropriate, she requested staff to help educate her in a quick memo, something that can be explained and just included in a future Agenda Item. This would help educate the public as well. She would be greatly appreciative. Vice Chairwoman Kelley also echoed both the Chairwoman and Commissioner Jones's comments about the terrific job that SNWA and its participating partners are doing.

Ms. Price responded stating a good starting place is to look at the SNWA's resource plan, which is updated regularly on [www.snwa.com](http://www.snwa.com). The Executive Summary has the current planning environment, supply and demand, plans for uncertainty, adaptive management, and current priorities along with other pertinent and useful information. The Commission also provides a link to that resource plan on its website, public access is available at <http://www.crc.nv.gov/index.php>. At the March 8, 2022 Commission Meeting, Colby Pellegrino, Deputy General Manager of Resources of SNWA provided a presentation on the current water resource plan. From that time to today more aggressive actions are taking place within SNWA and member agencies.

Vice Chairwoman Kelley stated should she have any questions she will address them after reading the information provided at this meeting.

Chairwoman Premsrirut thanked Dr. Turkett and Ms. Price for taking the time in this Agenda Item to share the status of the Hydrology and river operations.

Commissioner Stewart followed up on Commissioner Jones' comment to provide further context. Right now, about 112 gallons per day per person is used in the valley. The goal is for 86 gallons per day per person in the next 5-6 years. This is the kind of conservation efforts and regulations that is going to take place over the next few years. Commissioner Jones and Commissioner Stewart agreed that although painful these aggressive conservations are necessary.

Chairwoman Premsrirut thanked Commissioner Stewart and Commissioners and asked if there were any final comments or questions on this informational Agenda Item. There were none.

<b>R. 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.)</b>
--

Chairwoman Premsrirut asked if there were any comments from any member of the public present in the Chambers or any member of the public participating remotely that wish to address the Commission. There were none.

<b>S. Comments and questions from the Commission members.</b>
---

Vice Chairwoman Kelley proposed a few comments:

1. Vice Chairwoman Kelly is interested in understanding more of the unique projection, hydropower generation, and how that affects our contracts with our customers stating it would be helpful either in future meetings or personal briefing if appropriate.
2. Vice Chairwoman Kelley stated for the record that Staff received an audit communication letter from Moss Adams dated July 18, 2022. During the planning of the audit Moss Adams identified several significant risks, of which Vice Chairwoman Kelley asked for a response to those risks from Mr. Beatty. Vice Chairwoman Kelly would like Mr. Beatty to share his response with the Commissioners.
3. Vice Chairwoman Kelley wanted to go over the June 14, 2022, Minutes, on page 6, the last paragraph where it says Vice Chairman Kelly thanked Commissioner Kirkpatrick for her questions and encouraged Mr. Beatty to meet with Commissioner Kirkpatrick and heed her suggestions. Vice Chairwoman Kelley stated that she meant for Staff just to address Commissioner Kirkpatrick's suggestions.

Chairwoman Premsrirut informed Vice Chairwoman Kelley that all Items should be addressed.

Chairwoman Premsrirut stated for comment number one, Dr. Turkett could footnote the Hydropower and what levels impact our specific outstanding contracts and obligations in his presentations moving forward.

Chairwoman Premsrirut stated for comment number two, Mr. Beatty can address that today or place on the Agenda for the next Commission meeting.

Chairwoman Premsrirut stated for comment number three, changes will be made to the approved June 14, 2022, Minutes and resubmitted for approval at the next Commission meeting.



Mr. Witkoski stated Mr. Beatty could explain today why the letter received from Moss Adams is standard although it seems ominous.

Mr. Beatty stated the letter received from Moss Adams outlined their methodology and their areas of focus in the current audit. Generally, there is an entrance conference with discussion on what the auditors will focus on, some of their efforts, and what they think are the significant risks that need to be addressed. Moss Adams did not choose to do an entrance conference because essentially things have not changed. Therefore, they are going to address the same areas that they did in the past.

Mr. Beatty further explained about the planning letter that was sent. The planning letter is the required communication from the external auditors when they do not conduct an audit planning conference. The letter is to inform all parties of the areas of focus for the upcoming audit, as they would have informed us in the planning conference (as they did the first year of audit). The significant risks identified are the same ones that they focused on in last year's audit. The terminology "significant risk" refers to those areas that will require specific audit procedures that will produce adequate evidence of the accuracy of the reported information and or evidence of control compliance. In other words, these are areas that they cannot satisfy with purely analytical procedures. They will have to do testing and see documentation. The letter does not require any specific action on your part or on our part, it is designed to be informative and allow the parties to provide any additional input.

Mr. Beatty went over the inquired concerns following the letter, power sales revenue, year-end legal requirements journal entry, pension and other post-employment benefits, IT security and user access controls.

Another reason for the auditor communication letter is that the letter is required as part of Moss Adams' peer review process. An external peer review firm will come in, look at these audits, look at the work papers, and be able to see that Moss Adams did obtain or see the evidence to support their conclusion.

Chairwoman Premsrirut thanked Mr. Beatty for the clarification and asked for further understanding. The significant risks are not necessarily black marks on the Commission's proverbial report card. They are highlighted areas so that the auditors can pay more attention and gather evidence to support conclusions.

Mr. Douglas Beatty stated that, that is exactly correct. In actuality the audit communication letter sent by Moss Adams did not require any response from the Commission. The auditors are just stating where they are going to be doing their testing.

Chairwoman Premsrirut thanked Mr. Beatty, for providing that assurance and thanked Commissioner Kelley for prompting further clarification to alleviate any concerns that may have arisen from Moss Adams communication letter.

**T. Selection of the next possible meeting date.**

The next meeting is tentatively scheduled for 1:30 p.m. on Tuesday, October 11, 2022, at the Clark County Government Center, Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.

**U. Adjournment.**

The meeting was adjourned at 3:00 p.m.

\_\_\_\_\_  
Eric Witkoski, Executive Director

APPROVED:

\_\_\_\_\_  
Puoy K. Premsrut, Chairwoman

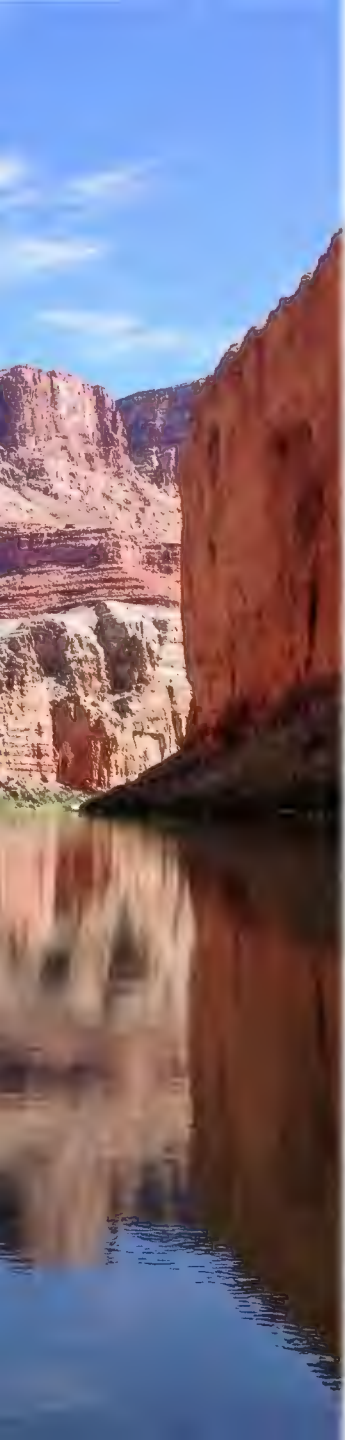
# Colorado River Commission of Nevada

## Hydrology and Water Use Update

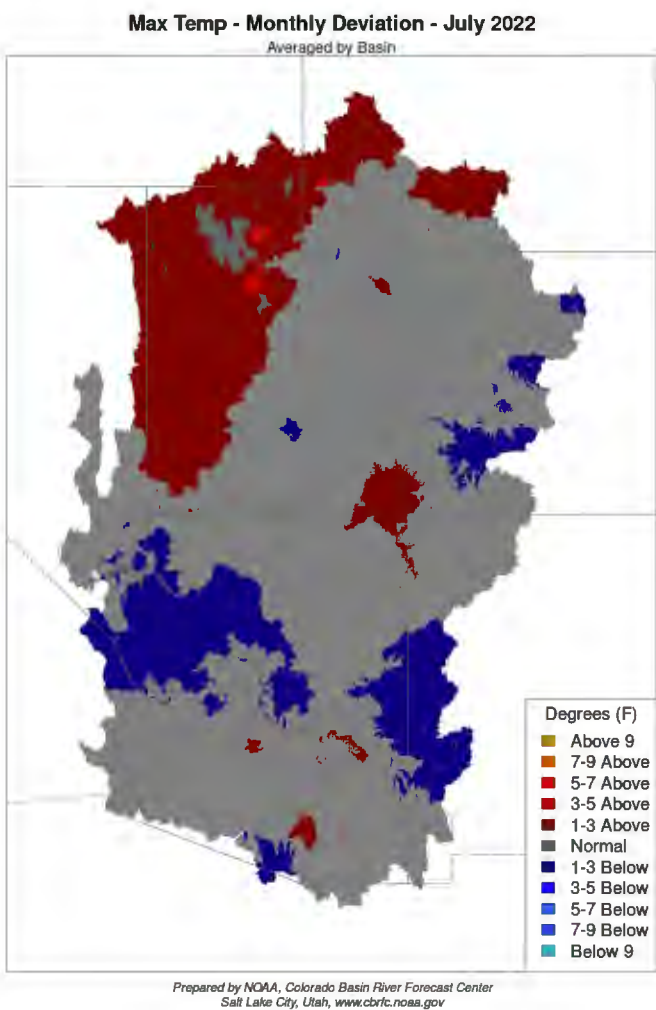
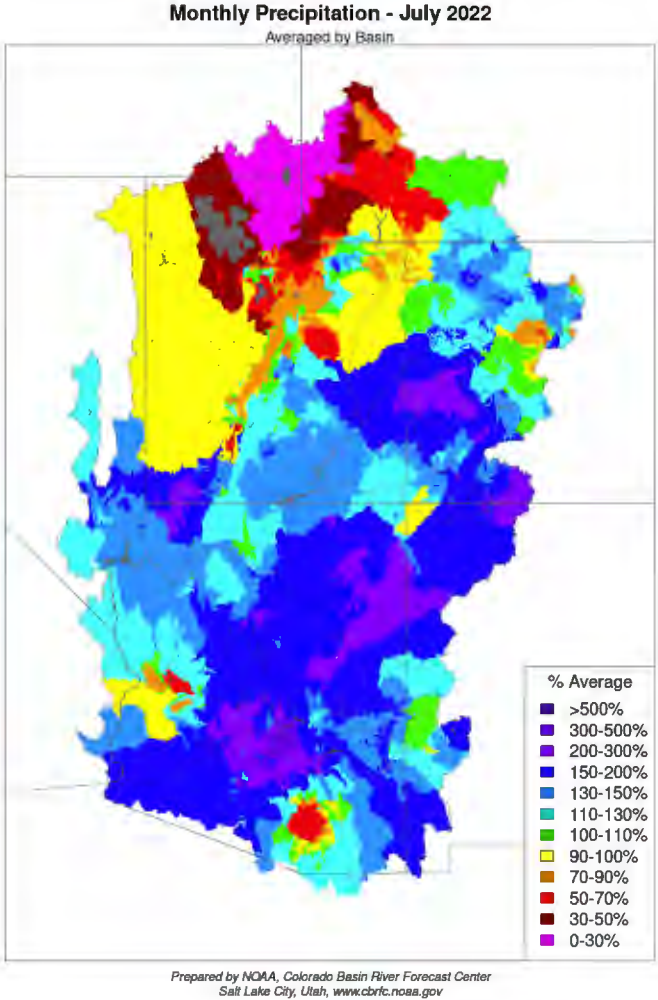
Warren Turkett

August 9, 2022





# Precipitation and Temperature



Lake Powell %Average Precipitation Water Year 2022

Area	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Water Year
UC-Powell	127	45	206	51	62	84	68	76	146	136	97





# Unregulated Inflow, Current and Projected Reservoir Status

Projected unregulated inflow to Lake Powell      Acre-Feet      % Average

Water Year 2022	5,961,000	62%
April thru July 2022	3,751,000	59%

Reservoir	Current Elevation	Current Storage Acre-Feet	Current % Capacity	Projected Actual Elevation on 1/1/2023 <sup>1</sup>
Lake Mead	1,040.9	7,041,000	27%	1,039.5
Lake Powell	3,536.2	6,212,000	27%	3,520.3

Data retrieved August 1, 2022

<sup>1</sup> Based on Reclamation's July 2022 24 Month Study Most Probable Inflow.

# Water Use In Southern Nevada

## 2021 Southern Nevada Water Use

Acre-Feet

Nevada Annual Allocation	300,000
2021 Drought Contingency Plan contribution	-8,000
Diversions	481,079
Return Flow Credits	238,911
Consumptive Use	242,168
Unused Allocation Available for Banking	49,832 (17%)

## 2022 January - June Southern Nevada Water Use

Acre-Feet

Nevada Annual Allocation	300,000
2022 Drought Contingency Plan contribution	-8,000
Interim Guidelines Shortages	-13,000
Diversions	227,959
Return Flow Credits	116,652
Consumptive Use	111,306

Banked Water (through end of 2021)

2,250,684

# 2007 Interim Guidelines, Minute 323, Lower Basin Drought Contingency Plan, and Binational Water Scarcity Contingency Plan

## Total Volumes (kaf)

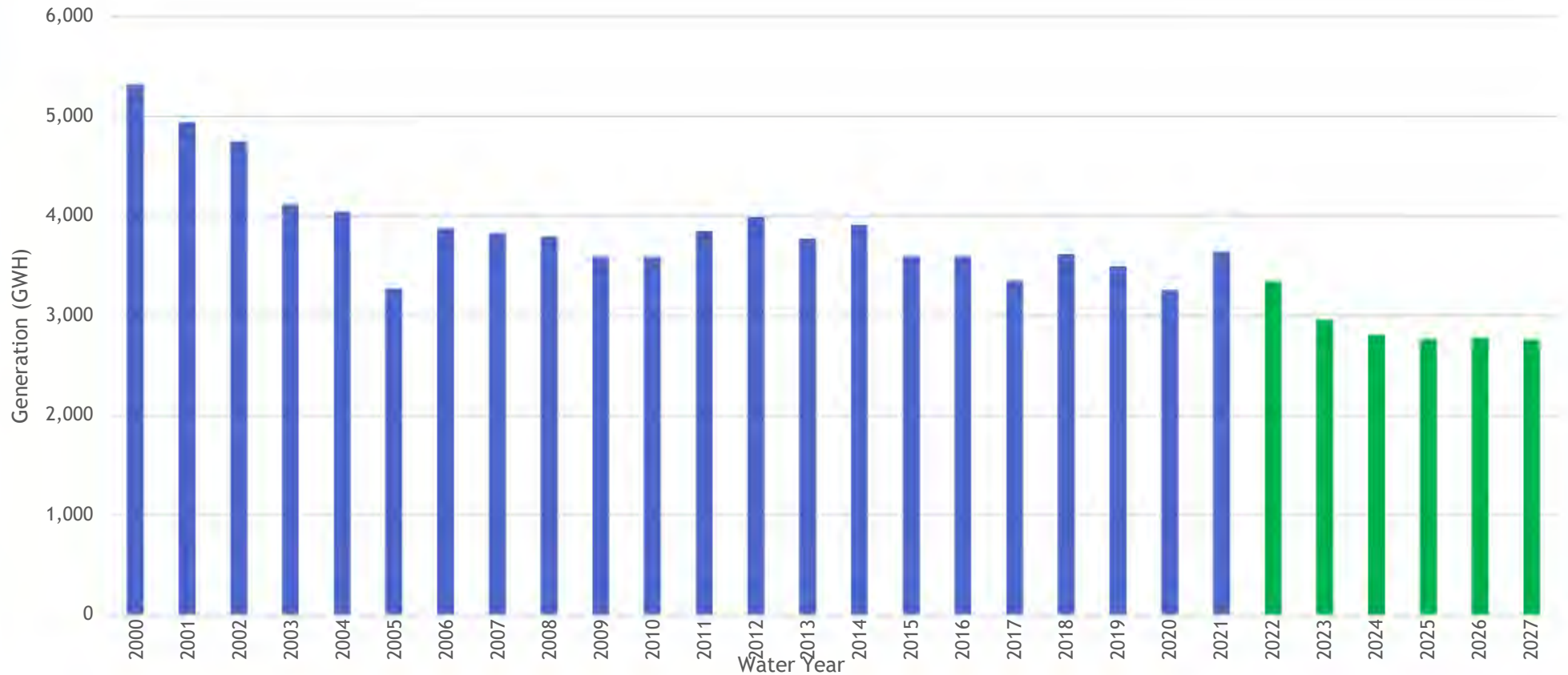
➔  
Projected 2023  
Reductions +  
Contributions

Lake Mead Elevation (feet msl)	2007 Interim Guidelines Shortages		Minute 323 Delivery Reductions	Total Combined Reductions	DCP Water Savings Contributions			Binational Water Scarcity Contingency Plan Savings	Combined Volumes by Country US: (2007 Interim Guidelines Shortages + DCP Contributions) Mexico: (Minute 323 Delivery Reductions + Binational Water Scarcity Contingency Plan Savings)					Total Combined Volumes
	AZ	NV	Mexico	Lower Basin States + Mexico	AZ	NV	CA	Mexico	AZ Total	NV Total	CA Total	Lower Basin States Total	Mexico Total	Lower Basin States + Mexico
1,090 - 1,075	0	0	0	0	192	8	0	41	192	8	0	200	41	241
1,075 - 1,050	320	13	50	383	192	8	0	30	512	21	0	533	80	613
1,050 - 1,045	400	17	70	487	192	8	0	34	592	25	0	617	104	721
1,045 - 1,040	400	17	70	487	240	10	200	76	640	27	200	867	146	1,013
1,040 - 1,035	400	17	70	487	240	10	250	84	640	27	250	917	154	1,071
1,035 - 1,030	400	17	70	487	240	10	300	92	640	27	300	967	162	1,129
1,030 - 1,025	400	17	70	487	240	10	350	101	640	27	350	1,017	171	1,188
<1,025	480	20	125	625	240	10	350	150	720	30	350	1,100	275	1,375

On August 16, Reclamation will release the August 24 Month Study to determine the upcoming years operations.



# Historical and Forecast of Hydropower Generation at Hoover



Historical generation at Hoover Dam in blue and forecasted generation from Reclamation's July 2022 CRMMS model in green.



# Summary

## Lake Powell

- Water Year 2022<sup>1</sup> has received 97% of average precipitation in the Upper Basin.
- Upper Basin snowpack peaked at 88% of the seasonal median.
- Unregulated inflow for water year 2022 is forecasted to be 62% of average.

## Lake Mead

- On August 16, Reclamation will announce the operations for the upcoming year.
- There are significant ongoing negotiations occurring to meet the Commissioner’s requested emergency plan to reduce water use.

## Nevada Water Supply

- Southern Nevada has about 9 years of water supply banked. <sup>2</sup>
- **In 2021, Southern Nevada used 57,832 af less than our annual allocation.**

Storage	Elevation (f)	% Capacity	Change since last year
Lake Mead	1,040.9	27%	-26.9 ft
Lake Powell	3,536.2	27%	-17.6 ft

Data retrieved August 1, 2022.  
<sup>1</sup> Water year is defined as October through September.  
<sup>2</sup> Based on 2021 consumptive use and storage volumes through 2021.

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM D  
FOR MEETING OF NOVEMBER 8, 2022**

<b>SUBJECT:</b> <i>For Possible Action:</i> Consideration of and possible action to approve the First Amendment to the Agreement for Power Supply and Scheduling Services Between the Colorado River Commission of Nevada and Tenaska Power Services Co. (“TPS”).
<b>RELATED TO AGENDA ITEM:</b>
<b>RECOMMENDATION OR RECOMMENDED MOTION:</b> Staff recommends that the Commission authorize the Executive Director to execute the Amendment.
<b>FISCAL IMPACT:</b> None.

**STAFF COMMENTS AND BACKGROUND:**

**A. Background on Extension:**

The requested Amendment No. 1 to the Power Supply and Scheduling Services Between the Colorado River Commission (Commission) and Tenaska Power Services (TPS) would extend the contract until December 31, 2028 and allows either party the ability to terminate the agreement with 12-months written notice. The original contract started on October 1, 2017 and is currently scheduled to terminate on September 30, 2023.

**B. Background on Need for Contract:**

The CRCNV is the full requirements energy supplier for the Contractors located at the Black Mountain Industrial (BMI) Complex and currently has a Power Supply and Scheduling Agreement in place with TPS to provide certain services to the Commission on behalf of those Contractors.

As part of its energy supply responsibilities, the Commission must ensure that the loads and resources of the BMI Contractors remain balanced. That requires power supplies must be sufficient to serve load at all times. When there is a large enough deviation between the load and the hydropower resources available to serve the load, energy from the market is purchased or sold, sometimes on an hourly basis, to restore balance. Once power resources are acquired, they must also be “scheduled.” The scheduling requires arrangements for the generation and transmission of electricity must be made in advance of when the electricity is to be consumed.

The energy balancing and scheduling functions occurs 24 hours a day, seven days a week. All energy buyers and sellers must be able to perform these functions on a 24-hour basis or contract with a provider that is capable of performing this function. The CRCNV does not have staff available on a 24-hour basis and has historically contracted with others to perform these functions.

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM D  
FOR MEETING OF NOVEMBER 8, 2022**

**C. Recommendation:**

Staff recommends the Amendment No. 1 be approved for the following reasons:

- TPS has reliably performed these services for the Commission since October 1, 2017;
- Staff's analysis shows that the TPS contract has been beneficial for the Commission's Black Mountain Industrial Contractors;
- TPS is an experienced energy trading company and has been transacting in the Nevada market for ten years;
- Silver State Energy Association, that purchase and hedges energy for the Southern Nevada Water Authority (SNWA), has recently approved TPS as long-term trading partner; and
- If for some reason in the future, the Commission desired to make a change, the contract allows for termination with 12 months' notice.

Staff recommends the Commission approve the Amendment and authorize the Executive Director to execute the Amendment.

**STATE OF NEVADA  
COLORADO RIVER COMMISSION OF NEVADA**

**FIRST AMENDMENT TO THE AGREEMENT FOR POWER SUPPLY  
AND SCHEDULING SERVICES**

**CONTRACT NO. P18-PSAS-TPS**

**COLORADO RIVER COMMISSION OF NEVADA**

555 East Washington Avenue, Suite 3100  
Las Vegas, NV 89101  
(702) 486-2670

**AND**

**TENASKA POWER SERVICES CO.**

300 E. John Carpenter Frwy, Suite 1100  
Irving, TX 75062  
(817) 462-1521

**INTRODUCTION**

This First Amendment to the Agreement for Power Supply and Scheduling Services, Contract No. P18-PSAS-TPS is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022, the Effective Date for this First Amendment, by and between the Colorado River Commission of Nevada (CRCNV) and Tenaska Power Services Co. (TPS).

CRCNV and TPS may be referred to collectively as "Parties" to this First Amendment.

WHEREAS, CRCNV and TPS are parties to the Agreement for Power Supply and Scheduling Services dated June 13, 2017 (Contract); and

WHEREAS, CRCNV and TPS desire to amend the Contract to extend the Agreement until December 31, 2028.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, CRCNV and TPS hereby agree as follows:



## **AMENDMENT**

1. The Parties agree to amend Section 4 of the Contract (“Effective Date and Termination”) in accordance herewith.
2. Section 4.2 of the Contract currently states as follows:

“This Scheduling Agreement shall remain in effect through September 30, 2020 (“Initial Term”). At the end of each Contract Year, the term of the Scheduling Agreement will be extended by one year (each contract extension year shall constitute a “Renewal Term”) until a full six-year term has been reached, i.e., through September 30, 2023.”
3. Section 4.2 of the agreement is amended as follows:

“4.2 This Scheduling Agreement shall remain in effect through December 31, 2028.”
4. Section 4.3 of the Contract currently states as follows:

“After the Initial Term, either party may terminate this Contract by providing written notice to the other party no less than 12 months in advance of the desired termination date.”
5. Section 4.3 of the agreement is amended as follows:

“4.3 Either party may terminate this Contract by providing written notice to the other party no less than 12 months in advance of the desired termination date.”
6. Unless expressly changed by this First Amendment, all other terms of the Contract shall remain in full force and effect.
7. This First Amendment may be executed in multiple counterparts, including facsimile(s) or emails, each one which will be considered an original Agreement, but all of which together will constitute on and the same instrument.
8. This First Amendment contains the entire agreement between the Parties with respect to the subject matter of this First Amendment and supersedes any previous understandings, commitments, or agreements, oral or written, with respect to the subject matter of this First Amendment.

WHEREFORE, the Parties acknowledge and agree to this First Amendment effective as of the Effective Date.

Tenaska Power Services Co.

Date November 3, 2022

  
\_\_\_\_\_

Kevin R. Smith  
President

Colorado River Commission of Nevada

Date \_\_\_\_\_

\_\_\_\_\_

Approved as form:

\_\_\_\_\_

Date: \_\_\_\_\_

Original

**STATE OF NEVADA**  
**COLORADO RIVER COMMISSION OF NEVADA**



**CONTRACT NO. P18-PSAS-TPS**  
**BETWEEN THE**  
**COLORADO RIVER COMMISSION OF NEVADA**  
**AND**  
**TENASKA POWER SERVICES CO.**  
**FOR POWER SUPPLY AND SCHEDULING SERVICES**

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**AGREEMENT FOR POWER SUPPLY AND  
SCHEDULING SERVICES  
BETWEEN  
COLORADO RIVER COMMISSION OF NEVADA  
AND  
TENASKA POWER SERVICES CO.**

1. **PARTIES.** This Agreement for Power Supply and Scheduling Services ("Contract") is made between the Colorado River Commission of Nevada, an agency of the State of Nevada acting in its own behalf as well as on behalf of the State of Nevada pursuant to Nevada Revised Statutes ("NRS") 538.041 to 538.251, inclusive, hereinafter referred to as "CRC", and Tenaska Power Services Co., a wholly-owned subsidiary of Tenaska Energy, Inc., a privately-held energy company headquartered in Omaha, NE., hereinafter referred to as "TPS" or "Contractor". CRC and TPS are hereinafter referred to as the "Parties" or individually as a "Party".

2. **EXPLANATORY RECITALS.**

2.1 The CRC is authorized under NRS Chapter 538 and Nevada Administrative Code ("NAC") Chapter 538 to provide its contractors with electric power and transmission, including federal hydropower which the CRC receives pursuant to CRC's contracts with Western Area Power Administration ("WAPA").

2.2 Section 11.5 of CRC's Boulder Canyon Project Electric Service Contract with WAPA requires that all Boulder Canyon Project contractors secure a

Scheduling Entity to schedule their Boulder Canyon Project power effective October 1, 2017, and Section 6.4 of the CRC's Contracts with the BMI Contractors, as defined in section 3.2, provides for the designation of a Scheduling Entity.

2.3 The CRC is the full requirements energy supplier for the BMI Contractors and currently has power scheduling arrangements in place to schedule both hydropower and purchased power resources.

2.4 The CRC's agreement for Power Scheduling with Nevada Power Company to provide hydropower scheduling services to the CRC on behalf of the BMI Contractors expires on September 30, 2017.

2.5 TPS is qualified and willing to provide Scheduling Entity Services to the CRC on behalf of the BMI Contractors effective October 1, 2017.

2.6 CRC and TPS desire to enter into an agreement under which TPS will provide Scheduling Entity Services to the CRC on behalf of the BMI Contractors.

2.7 This Scheduling Agreement is entered into for the mutual benefit of the Parties.



**NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants contained herein, the Parties agree as follows:

3. **DEFINITIONS.** The following terms, when used herein with initial capitalization, whether in the singular or in the plural, shall have the meanings specified in this Section 3.

3.1 **Balancing Authority (BA):** The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a balancing authority area, and supports interconnection frequency in real time.

3.2 **BMI Contractors:** The CRC contractors located at the BMI Complex and listed in Exhibit 1 on whose behalf the CRC is securing Scheduling Entity Services.

3.3 **BMI Complex:** The Black Mountain Industrial Complex located near Henderson, NV.

3.4 **BMI Complex Load:** The integrated, hourly electrical demand of the BMI Contractors as measured at the low side of the transformers at the CRC Substation.

3.5 **Boulder Canyon Project (BCP):** All works and real property associated with such works authorized by the Boulder Canyon Project Act, as amended, the

Boulder Canyon Project Power Plant Act of 1984, as amended, and any future additions authorized by Congress, to be constructed and owned by the United States, but exclusive of the main canal and its related appurtenances authorized by the Boulder Canyon Project Act, known as the All-American Canal. For clarity, for purposes of the CARB, the Boulder Canyon Project is the specified source registered as "Hoover Dam, ARB ID. 500066" on the CARB's registry of specified sources.

3.6 Business Day(s): Monday through Friday excluding Federal and State of Nevada holidays.

3.7 CAISO: The California Independent System Operator.

3.8 CARB: The California Air Resources Board.

3.9 CARB Process: The meaning given in Section 11.1.2

3.10 Contract Year: The twelve consecutive calendar month period commencing on October 1, 2017, and each succeeding twelve consecutive calendar month period.

3.11 CRC's Boulder Canyon Project Electric Service Contract: The contract between the CRC and the United States of America for electric service from the

Boulder Canyon Project to be provided beginning October 1, 2017, and all exhibits, attachments, and amendments, thereto.

3.12 CRC Power Resources: The generation, transmission, and ancillary service resources, including power purchases and sales, listed in Exhibit 2 that are owned or purchased by the CRC and provided to the BMI Contractors.

3.13 CRC Substation: The three 230 kV to 14.4 kV substations and associated facilities that are owned by the CRC and are located at the BMI Complex.

3.14 Due Date: The meaning given in Section 11.2.

3.15 EIM: The energy imbalance market applicable to CAISO. The EIM extends the CAISO real time market to other balancing authorities within the WECC.

3.16 Environmental Attributes: The environmental characteristics that are attributable to a renewable energy resource, or to renewable energy from such a renewable energy resource, which shall include, but not be limited to, renewable energy or tax credits, offsets and benefits; green tags (regardless of how any present or future law or regulation attributes or allocates such characteristics); credits toward achieving renewable portfolio standard or emissions standards, and any reporting rights associated with any of the foregoing.

3.17 Governing Rules: All rules, market guides, tariffs, protocols, business practice manuals, and any applicable rules or directives of CAISO, CARB, or WECC, which may be amended from time to time.

3.18 Interest Rate: For any date, the per annum rate of interest equal to the "Prime Rate" as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day, on the most recent preceding day on which published).

3.19 Market Power Resources: Those CRC Power Resources identified in Exhibit 2 that are purchased month-ahead by the CRC pursuant to the WSPP, Inc. Agreement.

3.20 Metering & Scheduling Instructions (MSI's): Metering and Scheduling Instructions issued by WAPA detailing the operating arrangements and scheduling and accounting procedures to be used in the scheduling of the CRC's hydropower resources CRC receives from WAPA.

3.21 MW: Megawatt.

3.22 Net Optimization Benefit or NOB: The meaning given in Section 8.3.

3.23 NOB Reports: The meaning given in Section 5.1.4.

3.24 Optimization Resources: Those CRC Power Resources identified in Exhibit 2 that can be exchanged with other resources provided by TPS to serve the BMI Complex Load.

3.25 Parker Davis Project: The consolidated project of the Davis Dam and Powerplant and the Parker Dam and Powerplant, their appurtenances, and associated transmission facilities, as authorized by law.

3.26 Pass-Through Costs: Any transmission charges, imbalance charges, EIM or CAISO charges, or related third party costs that TPS incurs, and in the event TPS is required to purchase Environmental Attributes or make payments to CARB in order to satisfy CARB requirements related to delivery into California of energy provided to TPS by CRC, TPS's cost of such Environmental Attribute purchases and payments to CARB.

3.27 Performance Assurance: Either (1) the posting of a Letter of Credit, (2) a cash prepayment, (3) a Guarantee Agreement executed by a creditworthy entity; or (4) the posting of other collateral or security or some other mutually agreeable method of satisfying the creditworthiness concerns of CRC under Section 9.5, or the Non-Defaulting Party under Section 15.5.

3.28 Projection: The meaning given in Section 5.1.6.

3.29 Replacement Power Resources: Those resources scheduled by TPS in exchange for Optimization Resources.

3.30 Scheduling Entity: The entity designated by the CRC on behalf of the BMI Contractors to schedule their power, in accordance with WAPA's Metering & Scheduling Instructions (MSI's) and CRC's scheduling requirements.

3.31 Scheduling Entity Services: Those services described in Section 5 of this Contract that TPS will provide to the CRC.

3.32 Scheduling Fee: The meaning given in Section 8.2.

3.33 Transmission Provider: An entity that owns, controls, or operates the facilities used for the transmission of electric energy to the BMI Complex.

3.34 Western Electricity Coordinating Council (WECC): The Western Electricity Coordinating Council, or successor(s) organization.

3.35 WSPP: WSPP, Inc., a corporation organized in 1995 and duly existing under the Utah Revised Nonprofit Corporation Act.

3.36 WSPP Agreement: The WSPP, Inc. Agreement, a standardized, enabling, agreement that is commonly used to purchase and sell electric power.

3.37 WSPP Schedule C Power: Schedule C of the WSPP, Inc. Agreement.

#### **4. EFFECTIVE DATE AND TERMINATION.**

4.1 This Scheduling Agreement shall be effective when executed by the Parties for power to be delivered beginning October 1, 2017.

4.2 This Scheduling Agreement shall remain in effect through September 30, 2020 ("Initial Term"). At the end of each Contract Year, the term of the Scheduling Agreement will be extended by one year (each contract extension year shall constitute a "Renewal Term") until a full six-year term has been reached, i.e., through September 30, 2023.

4.3 After the Initial Term, either party may terminate this Contract by providing written notification to the other party no less than 12 months in advance of the desired termination date.

#### **5. SERVICES TO BE PROVIDED BY TPS.**

5.1 TPS will perform the following services for CRC on behalf of the BMI Contractors:



5.1.1 Subject to constraints imposed by the MSI's and CRC's hydropower contracts with WAPA, TPS will schedule and tag CRC Power Resources into the receiving BA at each specified delivery point, in the most economic manner possible.

5.1.2 Subject to constraints imposed by the MSI's and CRC's hydropower contracts with WAPA, CRC will exchange its Optimization Resources for Replacement Power Resources provided by TPS to serve the BMI Complex Load and TPS will sell Optimization Resources to third parties. A Net Optimization Benefit ("NOB") will be calculated pursuant to Section 8.3 for these resource exchanges.

5.1.2.1 CRC will exchange its Optimization Resources for Replacement Power Resources provided by TPS and TPS will sell Optimization Resources to third parties each month unless CRC notifies TPS seven calendar days prior to the beginning of the month that it does not want TPS to optimize its resources and load. Once CRC makes its election for an operating month and directs TPS not to optimize quantities in the upcoming operating month, that election cannot be rescinded in that month.

5.1.3 TPS will provide CRC with daily transaction reports, one for CAISO transactions and one for all other transactions ("NOB Reports"). Such

reports will be sent electronically or made accessible through an electronic portal that will provide CRC with transactional data per hour from the previous flow day. For optimization transactions, such reports will show the resulting NOB for such transactions. TPS shall include, in its daily NOB Reports, an estimate of TPS's credit exposure against the CRC Credit limit identified in Section 9.2.

5.1.4 In the event CRC is exchanging Optimization Resources for Replacement Power Resources and TPS is selling Optimization Resources in a month and CRC in its sole reasonable opinion determines that the NOB Reports provided by TPS pursuant to Section 5.1.4 are showing an unacceptable level of negative NOB for the month, CRC may notify TPS to cease the exchange for the balance of the month. Upon such notice, TPS shall cease optimizing for the balance of the month as soon as reasonably practicable; provided, however TPS shall not be obligated to terminate or breach an ongoing transaction with a third party entered prior to TPS's receipt of CRC's notice. For the balance of the month, TPS will charge CRC the Scheduling Fee in Section 8.2 prorated for the number of days that TPS did not provide optimization services.

5.1.5 TPS will monitor the loads and resources of the BMI Complex and purchase or sell WSPP Schedule C energy and associated transmission,

as needed, to the CRC to balance the BMI Complex Load and CRC Power Resources and to minimize energy imbalances in the receiving BA.

5.1.6 CRC shall provide TPS with data concerning its historic system operations to enable TPS to develop load forecasts and generation projections ("Projection"). CRC will keep TPS updated through each operating month of changes in actual operations from the Projection. CRC shall provide TPS with as much advanced notice as practicable of expected load and resource changes. TPS will use commercially reasonable efforts to respond to these load and resource changes.

5.1.7 TPS will sell all surplus quantities of CRC Market Power Resources when CRC's Power Resources exceed the CRC load requirements in day ahead or real time markets, depending upon the notice TPS receives that there are available surplus quantities to market, and CRC will convey title to TPS of such surplus quantities. TPS will use commercially reasonable efforts to sell surplus quantities into those market(s) that provide the most economic benefit to the CRC.

5.1.7.1 TPS will not calculate a NOB on these sales of surplus supplies.

5.1.7.2 TPS will pass through to CRC what TPS receives from selling the surplus quantities net of any Pass-Through Costs.

5.1.7.3 In the event TPS has to sell the surplus products at a loss, CRC will reimburse TPS for the loss.

5.1.8 If, on a day ahead and real time basis, CRC Power Resources are insufficient to meet loads, TPS will purchase resources in the day ahead or real time markets, depending upon the notice TPS receives that resources are needed. TPS will use commercially reasonable efforts to purchase quantities from those market(s) that minimize the CRC's cost of purchased power.

5.1.8.1 TPS will not calculate a NOB on these purchases.

5.1.8.2 TPS will pass through to CRC what TPS pays to purchase these resources plus any Pass-Through Costs.

5.1.9 TPS will settle the CRC's accounts with CRC's suppliers for Market Power Resources purchased by the CRC in accordance with the provisions in the WSPP Agreement, provided TPS has received sufficient information from CRC to do so.

5.1.10 When CRC is not exchanging Optimization Resources for Replacement Power Resources, TPS will solely schedule power from the CRC Power Resources to CRC's load, and will not exchange volumes with CRC. CRC will grant TPS digital certificates or other access to CRC's

transmission service accounts to enable TPS to schedule CRC's quantities when TPS is not in the chain of title.

5.2 Compliance Requirements: In performing services provided under this Scheduling Agreement, TPS will comply with:

5.2.1 The CRC's contracts with WAPA and the United States Bureau of Reclamation, including Western's MSI's attached to this Contract as Exhibit 6.

5.2.2 The terms of the WSPP Agreement for purposes of TPS fulfilling its requirement under Section 5.1.10.

5.2.3 Regional scheduling requirements, including those contained in the receiving BA's Open Access Transmission Tariff and related business practices.

5.2.4 The tariffs and/or market rules for any entities with whom TPS engages in transactions.

5.2.5 All applicable laws and regulatory requirements.

5.3 Certification: If required, TPS shall apply for and maintain, throughout the

term of this Scheduling Agreement, Scheduling Entity certification with each BA receiving power under this Scheduling Agreement.

5.4 Transmission: TPS shall utilize the transmission owned by CRC, listed on Exhibit 2, as required, to serve the BMI Complex Load under this Scheduling Agreement. Subject to firm transmission availability, TPS may deliver to CRC or receive energy from CRC at alternate delivery points that are available to CRC, as mutually agreed to by the Parties.

**6. DUTIES TO BE PERFORMED BY CRC UNDER THIS SCHEDULING ENTITY AGREEMENT.**

6.1 The CRC will carry out the following functions to facilitate TPS's provision of services to CRC under this Scheduling Agreement;

6.1.1 Authorize strategies to be employed by TPS in the scheduling of CRC Power Resources, including the scheduling of Replacement Power Resources. Such authorization shall be documented electronically.

6.1.2 Work with TPS to develop real-time metering, data exchange protocols, and SCADA connections needed by TPS to carry out its responsibilities under this Scheduling Agreement.

6.1.3 Appoint TPS to act as its Scheduling Entity under CRC's Boulder Canyon Project Electric Service Contract with WAPA to carry out TPS's responsibilities defined herein, effective October 1, 2017

6.1.4 Provide to TPS annual and monthly forecasts of BMI Complex Load and CRC Power Resources;

6.1.5 Notify TPS of anticipated changes in the BMI Complex Load and CRC Power Resources as soon as possible after CRC is made aware of such changes.

6.1.6 Notify TPS of anticipated transmission outages that may affect the delivery of resources to the BMI Contractors as soon as possible after CRC is made aware of such changes.

6.1.7 The Parties agree that the CRC's Boulder Canyon Project Electric Service Contract does not establish CRC's share of metered output from the Boulder Canyon Project on an hourly basis. Therefore, the parties understand imports from the Boulder Canyon Project into California may not require the reporting of hourly meter data to CARB to document the zero emissions quality of the energy sourced from the Boulder Canyon Project. If, however, this reporting requirement changes or TPS is otherwise required by CARB to provide such data, CRC will make



commercially reasonable efforts to cause WAPA to provide TPS with such hourly meter data required to satisfy CARB requirements.

6.1.8 For power that is available from the Boulder Canyon Project, the CRC warrants that: CRC has the contractual right to acquire energy and accompanying Environmental Attributes for each MW sourced from Boulder Canyon Project, and CRC will transfer such energy and Environmental Attributes to TPS for exchanges hereunder free and clear of all liens, claims and encumbrances arising or attaching prior to the delivery point.

## **7. THE PARTIES' JOINT DUTIES.**

7.1 Each Party, by written notice to the other, shall designate a representative, and any alternate, who is authorized to act in its behalf with respect to those matters contained in the Contract ("Authorized Representative"). Either Party may change the designation of its Authorized Representative, and any alternate, upon oral notice given to the other and confirmed promptly by written notice within thirty (30) days thereafter. The names of the Authorized Representatives of the Parties shall be set forth in Exhibit 5.

7.2 The Parties will meet periodically to:

7.2.1 Review any proposed changes to scheduling strategies to be employed by TPS in the scheduling of CRC Power Resources and Replacement Power Resources;

7.3.2 Coordinate with each other and work together in a collaborative manner to address issues which arise in the course of implementation of this Agreement.

**8. COMPENSATION FOR SERVICES.**

8.1 For transactions under Section 5.1.8 and 5.1.9, TPS will pass through, at TPS's actual cost, all power that is purchased by TPS and sold to CRC, net of any Pass-Through Costs and credit CRC with all power sales made on the CRC's behalf at the actual price obtained by TPS, net of any Pass-Through Costs.

8.2 If, in any month, the CRC does not exchange Optimization Resources for Replacement Power Resources, then the CRC will pay TPS a fee of \$10,000 to schedule CRC Power Resources during that month ("Scheduling Fee"). For any month in which TPS provided optimization for part of the month pursuant to Section 5.1.5, the Scheduling Fee will be prorated for the number of days that TPS did not optimize power resources.

8.3 For optimization transactions performed in accordance with Section 5.1.2, TPS will charge CRC a monthly fee equal to fifty percent (50%) of the Net Optimization Benefit ("NOB") calculated for that month. ("Monthly Optimization Fee"). For purposes of this Agreement, the NOB for a month shall equal the net difference between (i) the revenue received by TPS or otherwise resulting from the sale of physical and financial energy, capacity, resource adequacy, and ancillary services from or pertaining to the sale of Optimization Resource, Environmental Attributes, minus the sum of: (ii) the total Replacement Power Resources costs for the month, and (iii) the Pass-Through Costs. If the NOB for the month is a negative number, the CRC will pay TPS a monthly fee for that month which is the lower of (a) fifty percent (50%) of the negative NOB for the month or (b) the total amount CRC has been paid in NOB payments for the prior six (6) months under the Contract.

## **9. BILLING AND PAYMENT FOR SERVICES.**

9.1 The billing period under this Scheduling Agreement shall be one (1) calendar month.

9.2 During the term of this Scheduling Agreement, TPS will calculate its credit exposure by netting its accounts payable and its accounts receivable and adding its mark-to-market exposure on forward market transactions, if any, that are authorized by the CRC. As long as TPS's credit exposure does not exceed

\$1,000,000 (CRC Credit Limit), the CRC will not be required to pre-pay for any power expenses under this Contract. If TPS's credit exposure exceeds the CRC Credit Limit, TPS may request pre-payment for some or all of the CRC's purchased power to reduce its credit exposure below the CRC Credit Limit. TPS shall not seek any form of credit support other than pre-payments. Notwithstanding anything to the contrary herein, if an Event of Default has occurred and is occurring with respect to CRC, TPS shall have the right to request pre-payment for any amounts to be delivered under this Contract, regardless of whether or not TPS's credit exposure exceeds the CRC Credit Limit.

9.3 In the event that TPS requests pre-payment of amounts due pursuant to Section 9.2, TPS shall invoice the CRC using its best estimate of the amount required to reduce and maintain TPS's credit exposure below the CRC Credit Limit, and CRC shall pay such invoice within 20 calendar days.

9.4 TPS shall true-up prepaid amounts against actual expenses incurred during the month and shall adjust, in a subsequent invoice, the amount of the invoice by the difference between the prepaid amount and the actual expenses incurred.

9.5 CRC reserves the right to seek adequate Performance Assurance from TPS if CRC has reasonable grounds for insecurity regarding TPS performance of

its obligations under this Contract.

**10. NETTING.**

10.1 The Parties agree to net payments for transactions hereunder.

10.2 Netting shall be accomplished in accordance with the following provision:  
If both Parties are each required to pay an amount to the other on the payment due date in the same month for transactions under this Agreement, then such amounts with respect to each Party will be aggregated and the Parties will discharge their obligations to pay through netting, in which case the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed consistent with the payment deadlines in Section 11.

**11. POWER ACCOUNTING AND TRANSACTION SUPPORT.**

11.1 TPS will issue invoices and itemized monthly transaction statements to CRC for the service provided under this Agreement, and for all transactions hereunder. Each monthly invoice TPS sends to CRC will document the amount owed by either Party after netting amounts due in accordance with Section 10.2. Where TPS is the net payer, TPS will pay CRC along with the invoice by the end of the month following the month in which transactions and services occurred.

Where CRC is the net payer, CRC will make payment of amounts owed by CRC within twenty (20) days of receipt of TPS's invoice.

11.1.1 TPS will shadow settle all CAISO settlement statement versions regarding the CRC Power Resources. TPS will analyze discrepancies found between TPS's internally generated settlements statements and CAISO's settlement statements affecting the Resources and will report any significant discrepancies to CRC. CRC will provide TPS parameters for further investigation of such discrepancies and filing of disputes with CAISO. For discrepancies falling within CRC's parameters, TPS will file disputes with CAISO, manage these disputes with CAISO, and regularly provide CRC a status report on all filed disputes. TPS will also review all additional CAISO settlement statements to verify CAISO has made requested changes to prior statements and to verify the accuracy of any additional CAISO charges and credits.

11.1.2 In addition, the Parties understand and agree that CAISO issues, revises, and restates its settlement statements in accordance with the Governing Rules, the ("Settlement Process"). The Parties further understand and agree that CARB conducts annual reviews of TPS's energy deliveries into California to verify the carbon emissions associated with such deliveries, and in the event any claim of zero carbon emission status for delivered energy is not verified to CARB's satisfaction, CARB

may require TPS to acquire Environmental Attributes or pay amounts to CARB related to such unverified deliveries ("CARB Process"). To accommodate the Settlement Process, and the CARB Process, no invoice rendered by TPS to CRC under this Contract will be final until and unless CAISO has determined that no further restatement or resettlement of such month will occur, and the CARB Process applicable to such month has been completed. In each month's invoice to CRC, TPS will include any revisions or corrections to prior months' invoices arising from CAISO's Settlement Process and the CARB Process. CAISO's Settlement Process could result in CRC owing additional payments to TPS or being owed payments by TPS, and the CARB Process could result in CRC owing additional Pass-Through Costs. Any adjustments to prior invoices caused by CAISO Settlement Process and the CARB Process will be invoiced and paid in accordance with Section 11.1.

11.2 The power accounting and billing period for this Contract will be one (1) calendar month, unless otherwise specified. Invoices shall be due and payable when received by the CRC and shall become delinquent if payment has not been received by TPS within 20 calendar days of CRC's receipt of the invoice ("Due Date"). Amounts owed, but not paid on or before the Due Date will be payable with interest at the Interest Rate calculated daily from the Due Date until payment is received.



11.3 CRC may dispute the correctness of any invoice issued by TPS under this Contract within twenty-four (24) months after CRC's receipt of the itemized monthly transaction statements. CRC shall provide written notice of any dispute, explaining the basis for disputing the invoice(s). In the event a portion of any invoice is disputed, the undisputed amount of the invoice shall be paid by the due date, but the disputed portion shall be paid under protest within 90 days of the date of the invoice containing the amount being protested, unless the amount in dispute pertains to Pass-Through Costs. All Pass-Through costs paid by TPS to CAISO or third party suppliers shall be paid on the due date. TPS will pursue collection of Pass-Through Costs disputed by CRC from CAISO or other third party suppliers and refund to CRC any of the disputed amounts collected by TPS.

11.4 Unless alternative invoicing procedures are agreed to by both Parties, TPS shall submit all invoices to CRC via electronic mail.

11.5 By the 20<sup>th</sup> day of the month following the month in which transactions occurred, TPS will provide preliminary supporting statements to document transactions that occurred during the billing month and shall provide updated statements that support each invoice issued by TPS. All settlement statements shall include the data set forth in Exhibit 3, attached hereto.

**12. NOTICES.**

12.1 Any notice, demand, or request required or authorized by this Contract to be served, given or made shall be deemed properly served, given or made if delivered in person or sent by certified mail, postage prepaid, to the persons specified in Exhibit 4.

12.2 Either Party may at any time, by written notice to the other Party, designate different or additional persons or different addresses for the giving of notices, demands or requests hereunder.

**13. COVER DAMAGES.** If either Party fails to deliver or receive energy in accordance with its obligations under this Agreement, then the other Party shall have a right to recover its actual costs and damages, including imbalance costs, associated with either purchasing replacement energy or selling excess energy. A Party's recovery of damages for failure to deliver or receive energy shall be limited to these cover damages.

**14. EXHIBITS MADE PART OF CONTRACT.** Exhibits 1-6 are hereby made a part of this Contract with the same effect as if they had been expressly set forth herein. Exhibit 1 may be revised and issued by CRC to identify the BMI Contractors on whose behalf the CRC is securing Scheduling Entity Services under this Contract. Exhibit 2 may be revised and issued by CRC to modify the CRC Power Resources that are being

scheduled by TPS under this Contract. Exhibit 3 may be revised and issued by CRC to identify power settlements data that is needed by the CRC to verify the dollar amount of the invoices issued by TPS under this Contract. Exhibit 4 shall be revised and issued by CRC whenever there is a change in either Party's Notice designation under this Contract. Exhibit 5 shall be revised and issued by the CRC whenever there is a change to either Party's Authorized Representative. Exhibit 6 shall be revised and issued by the CRC whenever there is a change to WAPA's MSI's. The initial Exhibit 1, 2, 3, 4, 5, and 6 shall remain fully in effect until superseded by subsequent exhibits issued by the CRC in compliance with this Contract.

**15. EVENTS OF DEFAULT.**

15.1 An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

15.1.1 The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice;

15.1.2 Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

15.1.3 The failure to perform any material covenant or obligation set forth

in this Agreement if such failure is not remedied within five (5) Business Days after written notice, provided that failures to deliver or accept energy, for which Cover Damages are available under Section 13, shall only be an Event of Default if they occur on three (3) or more days during any month;

15.1.4 Such Party becomes Bankrupt;

15.1.5 The failure of such Party to satisfy the creditworthiness /performance assurance requirements under Section 9 hereof; and

15.1.6 Such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

15.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early

termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

15.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Section Nine, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other.

15.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within ten (10) Business Days after such notice is effective.

15.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

15.6 Suspension of Performance and Remedies. Notwithstanding any other provision of this Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless an early Termination Date shall

have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

**16. INDEMNIFICATION, LIABILITIES, AND WARRANTY DISCLAIMER**

16.1 INDEMNIFICATION. Each party understands and agrees that it shall defend, release, indemnify, and hold the other party (including such party's owners, affiliates, and representatives) harmless from all third party liabilities, costs, claims, losses, or causes of action to the extent caused by the indemnifying party's fraud, willful misconduct, or gross negligence.

16.2 LIMITATION OF LIABILITY. The parties confirm that the express remedies and measures of damages provided in this agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein or in a transaction, the obligor's liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Except as specifically provided in this agreement, neither party shall be liable to



the other party for any consequential, indirect, punitive, lost profit, lost opportunity, business interruption, or exemplary damages for any claim or cause of action related to this agreement, whether arising from breach of contract, warranty, tort (including negligence and strict liability), statute, or otherwise. Moreover, notwithstanding anything to the contrary in this agreement, excluding any liability for payments or credits due to crc under sections 8 or 13, unless the claims or obligations are caused by tps's willful misconduct, fraud, or gross negligence, for each month of service, the liability of tps to crc for any obligations, including indemnities, under this agreement shall be limited to a maximum of the applicable monthly fee, either the scheduling fee pursuant to section 8.2, or the monthly optimization fee pursuant to section 8.3 charged to crc by tps, for services for the month in which the event giving rise to the claim occurred. None of the above limitations apply to claims and damages relating to a party engaging in fraud, market manipulation, willful misconduct, gross negligence or rules violations that affect the relevant transactions or market(s).

16.3 WARRANTY DISCLAIMER. Except for the express warranties set forth in this agreement, the communications, settlement, and scheduling services which TPS provides through automated systems, third party systems, or through computer software and hardware systems are provided on an "as is" basis, and CRC's use of the services is at its own risk. TPS does not make, and hereby disclaims, any and all other express or implied warranties, or liability for the operation of computer software or hardware systems, programs or automated

systems whether programmed by TPS or third parties used to provide communications, settlement, or scheduling services. TPS does not warrant that the services provided through these systems will be uninterrupted, error-free, or completely secure, or that the provision of such services will always be executed without human errors or omissions in the programming or operation of these systems.

**17. FORCE MAJEURE.**

17.1 No Party shall be considered to be in breach of this Contract to the extent that a failure to perform its obligations under this Contract is due to a Force Majeure. The term "Force Majeure" means causes that are beyond the control of the Party affected which, by exercise of due diligence, such Party could not reasonably have been expected to avoid and which, by exercise of due diligence, it has been unable to overcome and not the result of the fault or negligence of such Party including, but not limited to: strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms; sabotage; restraint, order, rule, or regulation of any court, governmental body, or public authority (whether valid or invalid); equipment malfunction or failure not caused by the Party claiming Force Majeure (including computer hardware or software malfunction); loss or disruption of essential office equipment and services, such as loss or disruption of electric power, telephone service, internet, or satellite

communications. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

17.2 No Party shall be relieved by the operation of this Section of any obligation to pay all of the charges set out in Section 8.

17.3 Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability to fulfill any of its obligations with all reasonable dispatch.

18. **GENERAL LEGAL REQUIREMENTS APPLICABLE TO THIS SCHEDULING AGREEMENT.**

18.1 Dispute Resolution Procedures.

18.1.1 If a dispute arises between the Parties, that is not resolved through discussions of their Authorized Representatives, any Party may, by written notice identifying the matter with particularity, submit the matter to the Senior Executives for resolution.

18.1.2 In the event that a dispute is not resolved to the satisfaction of the Senior Executives, the Parties may pursue any and all legal remedies. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to the laws of the State of Nevada, without giving effect to any principle of conflict of laws that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of a court of competent jurisdiction in Clark County, Nevada for enforcement of this Contract.

18.1.3 If in any such court proceeding, an amount paid by TPS on the demand or bill of the CRC is held not to have been due; it shall be refunded with no interest.

18.2 Existing Agreements Preserved: Nothing in this Contract will be interpreted to supersede the requirements of any existing agreement unless otherwise expressly stated herein.

18.3 Amendments and modifications. This Contract may be amended or modified only by an amendment or modification duly and lawfully executed by the Parties, with the exception of amendments to Exhibits 1 through 6.

18.4 Change in Law. If after the effective date of this Contract, any statute, ordinance, decree or other law or regulation shall become effective that affects

the ability of either Party to perform its obligations under this Contract, the Parties will negotiate in good faith to make appropriate changes to this Contract that meet the needs of the Parties and satisfy the new legal requirement in a manner that places each Party in substantially the same economic position under this Contract as enjoyed prior to the change in law. In the event that the Parties are not able to reach mutual agreement after thirty (30) days, then the affected Party may terminate this Contract upon ten (10) Business Days' written notice, without liability to the other Party other than the obligation to make payment of accrued amounts due.

18.5 Waiver. Any waiver at any time by a Party of its right with respect to a default under this Contract, or with respect to any other matter arising in connection therewith or with this Contract, or any failure of a Party to insist on strict performance of any obligation hereunder, shall not be deemed a waiver with respect to any subsequent default or matter or be deemed to reflect an intent by the Parties to modify this Contract, or any obligations hereunder. Any delay, short of the statutory period of limitation, in asserting or enforcing any right, shall not be deemed a waiver of such right.

18.6 Severability. If any provision of this Contract for any reason shall be held invalid, illegal, or unenforceable by any governmental authority, then such holding shall not invalidate or render unenforceable any other provision hereof and such other portions shall remain in full force and effect as if this Contract had

been executed without the invalid, illegal, or unenforceable portion. If any provision of this Contract is declared invalid, illegal, or unenforceable, then the Parties shall promptly negotiate in good faith to restore this Contract as near as possible to its original intent and effect. In the event that such negotiations are unsuccessful after thirty (30) day, then either Party may terminate this Contract upon ten (10) Business Days' written notice, without liability to the other Party other than the obligation to make payment of accrued amounts due.

18.7 Not Construed Against Either Party. Both Parties were involved in the negotiation of this Contract, and no ambiguity in this Contract shall be construed against either Party on the basis that such Party was the drafter of this Contract.

18.8 Non-dedication of Facilities. No undertaking by one Party to the other under any provision of this Contract shall constitute the dedication of the system or any portion thereof of either Party to the public or to the other Party, and it is understood and agreed that any such undertaking by one Party shall cease upon the termination by such Party of its obligations hereunder.

18.9 Limitation on Rights of Others. No person other than a Party shall have any legal or equitable right, remedy or claim under or in respect of this Contract.

18.10 Assignment. Contractor may assign this Contract, pursuant to NAC 538.550, only with the prior written approval of the CRC, which shall not be

unreasonably withheld or delayed. Such assignment shall take effect only upon satisfaction of all requirements for the assignment including the assumption by the assignee of all obligations and liabilities under the Contract.

18.11 Third Party Beneficiaries. This Contract shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Contract or of any duty, obligation, or undertaking established herein.

18.12 Successors and Assigns. This Contract shall inure to the benefit of, be binding upon, and be enforceable by and against the Parties and their respective successors and permitted assigns.

18.13 Captions, Titles, and Headings. Captions, titles and headings which appear in this Contract, are inserted for convenience only and shall not be construed as interpretations of the text of the Contract.

18.14 Entire Agreement. This Contract supersedes all prior agreements and understandings among the Parties with respect to the subject matter hereof. To the extent lawful, the provisions of this Contract shall govern the relationship of the Parties among themselves.

18.15 Other Agreements: No provision of this Contract shall preclude any Party from entering into other agreements or conducting transactions under existing



agreements with other Parties or third parties. This Contract shall not be deemed to modify or change any rights or obligations under any prior contracts or agreements between or among any of the Parties.

18.16 Execution in Counterpart: This Contract may be executed in any number of counterparts and, upon execution and delivery by each Party, the executed and delivered counterparts together shall have the same force and effect as an original instrument as if both Parties had signed the same instrument. Any signature page of this Contract may be detached from any counterpart of this Contract without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Contract identical in form hereto, by having attached to it one or more signature pages.

18.17 Reference to Section, Subsection, Paragraph, or Subparagraph. A reference to a section, subsection, paragraph, or subparagraph shall include all the subparts of such referenced section, subsection, paragraph, or subparagraph.

18.18 Contract Records. The Parties, as signatories to the WSPP Agreement, agree to make all transactions related to this Contract subject to Section 30 of the WSPP Agreement, however, the CRC is subject to the Nevada Public Records Act (NRS 239.010 et seq.) and may be required by law to disclose information. In the event CRC is requested to disclose information under the

Nevada Public Records Act about the transactions related to the Contract, CRC will provide TPS with notice and TPS will have five (5) Business Days to initiate any legal remedies available to TPS to protect against such disclosure.

18.19 Recordings. Each Party consents to the recording and retention of any telephone conversations, e-mail or electronic message between the Parties ("Recording"), and each Party will obtain any required consents to such recordings from such Party's affected personnel, contractors, or agents. Subject to other applicable rules of evidence, such as the rule of relevance, the contents of such telephone recording, or any email or electronic message transmitted between the Parties concerning this Agreement, may be utilized to determine the intent of the Parties in any dispute arising under this Agreement, and such telephone or electronic record will be deemed a written business record of any information, confirmation, consent, bid, authorization, instruction, notice or transaction under this Agreement, which may be submitted in evidence in any proceeding or action related to this Agreement. Each Party waives objection to the admission in court of such recording or electronic message based on the "Best Evidence Rule" or other legal principles. Such telephone recording or electronic message will be the controlling evidence of the Parties' agreement with respect to any particular information, confirmation, consent, notice, or transaction in the event a written confirmation of that information, confirmation, consent, or other transaction is not fully executed or accepted by both Parties. A fully, executed written confirmation agreed to by both Parties will prevail over a

recording or electronic message of a transaction. Each Party waives any further notice of monitoring or recording and agrees to notify its officers and employees and obtain any required consent to any such monitoring or recording.

18.20 Imaged Agreement. Any original executed Agreement, confirmation or other related document, or telephonically recorded transaction, or transaction tape may be digitally recorded, photocopied and stored on computer tapes and disks (the "**Imaged Agreement**"). The Imaged Agreement, if introduced as evidence on paper, the confirmation if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party will object to the admissibility of the Recording, the confirmation or the Imaged Agreement (or photocopies of the transcription of the recording, the confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.

19. **ACCESS TO BOOKS AND RECORDS.**

19.1 The Authorized Representative(s) of the CRC shall have the right to inspect

at all reasonable times during normal business hours, the books and records of Contractor related to the services provided hereunder, with the right to make copies of those books and records.

19.2 The Authorized Representative of Contractor shall have the right to inspect at all reasonable times during normal business hours, the books and records of the CRC-related to the services purchased by CRC hereunder, with the right to make copies of those books and records, which access will be provided in compliance with NRS Chapter 239.

19.3 Each Party shall keep complete and accurate records related to the services and transactions under this Agreement, and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of all relevant data, settlement statements, or invoices submitted under Section 11 hereof for a period of two (2) years from the date the invoice was delivered.

20. **REPRESENTATIONS AND WARRANTIES.** On the Effective Date and throughout the term of this Agreement, each Party represents and warrants to the other Party that:

- (i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) It has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and each transaction thereunder;
- (iii) The execution, delivery and performance of this Agreement and each transaction thereunder are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) This Agreement, each transaction thereunder, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;
- (v) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) There is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement and each transaction thereunder; and

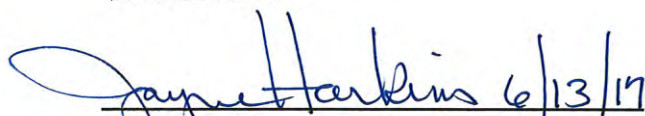
- (vii) No Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement and each transaction thereunder.

**IN WITNESS WHEREOF**, the Parties signing below have caused this Contract to be executed this 13<sup>th</sup> day of June, 2017.

State of Nevada, acting by and through its

**COLORADO RIVER COMMISSION  
OF NEVADA**

Approved as to form:

  
Jayne Harkins, P.E.      6/13/17  
Executive Director      Date

  
Christine Guerri-Nyhus      6/13/17  
Special Counsel      Date

**TENASKA POWER SERVICES CO.**


  
Kevin R. Smith      6/7/17  
President      Date





Exhibit 1  
Contract No. P18-PSAS-TPS  
CRC-TPS SE Agreement

## **EXHIBIT 1**

### **Contract No. P18-PSAS-TPS**

#### **BMI Contractors**

1. This Exhibit A, effective under and as a part of Contract No. P18-PSAS-TPS (Contract), will become effective upon the effective date of the Contract and will remain in effect until superseded by another Exhibit A; provided this Exhibit A or any superseding Exhibit A will terminate upon expiration of the Contract.
2. The BMI Contractors receiving service under this Contract are:
  - Pioneer Americas LLC dba Olin Chlor Alkali Products
  - Lhoist North America of Arizona, Inc.
  - Titanium Metals Corporation
  - Tronox, LLC
  - Basic Water Company

Exhibit 2  
Contract No. P18-PSAS-TPS  
CRC-TPS SE Agreement

## EXHIBIT 2

### Contract No. P18-PSAS-TPS

#### CRC POWER RESOURCES AND POINTS OF DELIVERY

1. This Exhibit 2, effective under and as a part of Contract No. P18-PSAS-TPS (Contract), will become effective upon the effective date of the Contract and will remain in effect until superseded by another Exhibit 2; provided this Exhibit 2 or any superseding Exhibit 2 will terminate upon expiration of the Contract.
2. Optimization Resources: The following is a list of CRC Power Resources that the CRC can exchange for Replacement Power Resources supplied by TPS in accordance with Section 5.1.2 of the Contract:
  - 2.1 Market Power Resources: Prompt month WSPP power purchase and sale agreements that CRC enters into and communicates monthly to TPS which are available to serve the BMI Complex Load and can be optimized pursuant to section 5.1.2.
  - 2.2 Generation: Hydroelectric energy and capacity made available by WAPA to the CRC in accordance with Boulder Canyon Project (BCP) Contract No. 16-DSR-12669 and allocated by the CRC to the BMI Contractors listed in Exhibit 1:

Exhibit 2  
Contract No. P18-PSAS-TPS  
CRC-TPS SE Agreement

2.2.1: BCP Capacity Allocation: 57,173 kW.

2.2.2: BCP Annual Energy Allocation: 241,780,489 kWh.

3. Power Resources Not Available for Optimization: The following is a list of CRC Power Resources that are not available for exchange with TPS and must be delivered to the BMI Complex Load:

- 3.1 Generation: Hydroelectric energy and capacity made available by WAPA to the CRC in accordance with Parker-Davis Project (P-DP) Contract No. 87-BCA-10086 and allocated by the CRC to the BMI Contractors listed in Exhibit 1:

3.1.1: P-DP Winter Capacity Allocation: 24,074 kW

3.1.2: P-DP Winter Energy Allocation: 40,837,785 kWh

<u>Months</u>	<u>kWh</u>
October	8,384,000
November	8,114,000
December	8,384,000
January	8,384,000
February	7,571,785

3.1.3: P-DP Summer Capacity Allocation: 34,123 kW

3.1.4: P-DP Summer Energy Allocation: 114,522,990 kWh

<u>Months</u>	<u>kWh</u>
March	16,674,000
April	16,137,000
May	16,674,000
June	16,137,000
July	16,674,000
August	16,674,000
September	15,552,990

Exhibit 2  
Contract No. P18-PSAS-TPS  
CRC-TPS SE Agreement

4. Transmission: The following is a list of transmission resources that may be used by TPS to deliver energy to the BMI Complex Load:

4.1 Firm transmission service over the Parker-Davis Project Transmission System that is utilized to deliver the CRC's allocation of Parker-Davis Project energy and capacity as provided for in Contract No. 87-BCA-10086:

4.1.2: P-DP Winter Transmission Capacity: 24,074 kW

4.1.3: P-DP Summer Transmission Capacity: 34,123 kW

4.1.4: Point of Delivery: Henderson 230 kV Switchyard

4.2 Firm transmission service over the Parker-Davis Project Southern Nevada Facilities (SNF) provided by WAPA to the CRC in accordance with Contract No. 93-PAO-10553 and allocated by the CRC to the BMI Contractors listed in Exhibit 1:

4.2.1: SNF Transmission Capacity: 115,000 kW

4.2.2: Point of Receipt: Mead 230 kV Substation

4.2.2: Point of Delivery: Henderson 230 kV Substation

5. Ancillary Services: Ancillary Services will be purchased by the CRC from NV Energy.

Exhibit 3  
Contract No. P18-PSAS-TPS  
CRC-TPS SE Agreement

### **EXHIBIT 3**

#### **Contract No. P18-PSAS-TPS**

#### **BILLING AND POWER ACCOUNTING DATA**

1. This Exhibit 3, effective under and as a part of Contract No. P18-PSAS-TPS (Contract), will become effective upon the effective date of the Contract and will remain in effect until superseded by another Exhibit 3; provided that this Exhibit 3 or any superseding Exhibit 3 will terminate upon expiration of the Contract.
2. Each month, TPS will provide the CRC with the following billing and settlements data for the prior month in accordance with subsection 11.1 of the Contract:
  - 2.1 Hourly breakdown of settlement statement, in dollars and megawatthours (MWh), showing all purchase and sale transactions made under this Contract.
  - 2.2 Hourly quantity of energy in MWh, tagged for delivery to the BA where the BMI Contractor Load resides.
3. This Exhibit 3 may be modified in accordance with Section 14 of the Contract.

Exhibit 4  
Contract No. P18-PSAS-TPS  
CRC-TPS SE Agreement

## EXHIBIT 4

### Contract No. P18-PSAS-TPS

#### NOTICES

1. This Exhibit 4, effective under and as a part of Contract No. P18-PSAS-TPS (Contract), will become effective upon the effective date of the Contract and will remain in effect until superseded by another Exhibit 4; provided that this Exhibit 4 or any superseding Exhibit 4 will terminate upon expiration of the Contract.
2. For purposes of this Contract, all notices and official communications from the Contractor to the Commission will be addressed and sent to:

Colorado River Commission of Nevada  
555 E. Washington Avenue, Suite 3100  
Las Vegas, NV 89101  
Attn: Hydropower Department  
Email: [CRCPower@crc.nv.gov](mailto:CRCPower@crc.nv.gov)

***Statements and bills shall be sent to CRC at:***

Colorado River Commission of Nevada  
555 E. Washington Avenue, Suite 3100  
Las Vegas, NV 89101  
Attn: Accounts Payable  
Telephone: 702-486-2692 / Fax: 702-486-2695  
Email: [invoices@crchydro.org](mailto:invoices@crchydro.org)

***Payments to CRC shall be ACH or wire transferred to:***

Wells Fargo Bank  
State of Nevada Treasurer  
ABA No: 121000248  
Account No: 4000101030  
DUNS No: 94-745-5309

Exhibit 4  
Contract No. P18-PSAS-TPS  
CRC-TPS SE Agreement

3. For purposes of this Contract, all notices and official communication from the

Commission to the Contractor will be addressed and sent to:

Tenaska Power Services Co.  
1701 E. Lamar Blvd., Suite 100  
Arlington, TX 76006  
Attn: Contract Administration  
Email: [TPSContractAdmins@tnsk.com](mailto:TPSContractAdmins@tnsk.com)

***Statements and bills shall be sent to TPS at:***

Tenaska Power Services Co.  
1701 E. Lamar Blvd., Suite 100, Arlington, Texas 76006  
Attn: Accounts Payable  
Telephone: (817) 462-1521 / Fax: (817) 462-1038  
Email: [tpscheckout@tnsk.com](mailto:tpscheckout@tnsk.com)

***Payments to TPS shall be ACH or wire transferred to:***

US Bank, Omaha, Nebraska  
Tenaska Power Services Co.  
ABA No: 042000013  
Account No: 130111671306  
DUNS No: 01-501-6913

Exhibit 5  
Contract No. P18-PSAS-TPS  
CRC-TPS SE Agreement

## EXHIBIT 5

### Contract No. P18-PSAS-TPS

#### AUTHORIZED REPRESENTATIVES

1. This Exhibit 5, effective under and as a part of Contract No. P18-PSAS-TPS (Contract), will become effective upon the effective date of the Contract and will remain in effect until superseded by another Exhibit 5; provided that this Exhibit 5 or any superseding Exhibit 5 will terminate upon expiration of the Contract.

2. For purposes of this Contract, the Commission's Authorized Representative as designated pursuant to Section 7.1 shall be:

Colorado River Commission of Nevada  
Attn: Gail Bates (Primary)  
Phone: (702) 691-5228  
Email: [gbates@crc.nv.gov](mailto:gbates@crc.nv.gov)

Colorado River Commission of Nevada  
Attn: Ken Mayer (Alternate)  
Phone: (702) 691-5235  
Email: [kmayer@crc.nv.gov](mailto:kmayer@crc.nv.gov)

3. For purposes of this Contract, the Contractor's Authorized Representative as designated pursuant to Section 7.1 shall be:

Tenaska Power Services Co.  
Attn: Andrew Heinle (Primary)  
Phone: (817) 462-8055  
Email: [aheinle@tnsk.com](mailto:aheinle@tnsk.com)

Attn: Bill Horton (Alternate)  
Phone: (817) 462-1519  
Email: [bhorton@tnsk.com](mailto:bhorton@tnsk.com)



Exhibit 6  
Contract No. P18-PSAS-TPS  
CRC-TPS SE Agreement

**EXHIBIT 6**

**Contract No. P18-PSAS-TPS**

**WAPA METERING AND SCHEDULING INSTRUCTIONS**

**CONTRACT NO. 16-DSR-12669**

Metering and Scheduling Instructions Between the United States Western Area Power  
Administration Desert Southwest Customer Service Region Boulder Canyon Project and  
Colorado River Commission of Nevada

Attachment No. 6  
Contract No. 16-DSR-12669  
Colorado River Commission of Nevada

**CONTRACT NO. 16-DSR-12669**

**METERING AND SCHEDULING INSTRUCTIONS**

**BETWEEN**

**THE UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
Desert Southwest Customer Service Region  
Boulder Canyon Project**

**AND**

**COLORADO RIVER COMMISSION OF NEVADA**

**CONTRACT NO. 16-DSR-12669**

**METERING AND SCHEDULING INSTRUCTIONS**

**BETWEEN**

**THE UNITED STATES  
WESTERN AREA POWER ADMINISTRATION  
Desert Southwest Customer Service Region  
Boulder Canyon Project**

**AND**

**COLORADO RIVER COMMISSION OF NEVADA**

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**METERING AND SCHEDULING INSTRUCTIONS**

**BETWEEN**

**THE UNITED STATES  
WESTERN AREA POWER ADMINISTRATION  
Desert Southwest Customer Service Region Office  
Boulder Canyon Project**

**AND**

**COLORADO RIVER COMMISSION OF NEVADA**

1. **PARTIES**: The Parties to these Metering and Scheduling Instructions (MSI) are Western Area Power Administration (Western) and the Colorado River Commission of Nevada (Contractor) or their Authorized Representative, each sometimes individually called Party and collectively called Parties.
2. **PURPOSE**: This MSI is written to implement the metering, scheduling, and accounting contractual requirements in accordance with subsection 6.12.2 of Contractor's Boulder Canyon Project (BCP) Electric Service Contract No. 16-DSR-12669 (Contract), as well as Implementation Agreement No. 95-PAO-10616, as amended and restated (Restated Agreement), associated with the BCP. If there are any conflicts between the terms of the Contract and the terms of this MSI, the terms of the Contract shall prevail. If there are conflicts between the terms of the Restated Agreement and the terms of this MSI, the terms of the Restated Agreement shall prevail.
3. **TERM**: This MSI shall become effective on October 1, 2016, for power provided on October 1, 2017, and shall remain in effect through September 30, 2067, until superseded by revised instructions or termination of the Contract and Restated Agreement listed in section 2, herein.
4. **REVISION**: The Parties intend that this MSI shall be reviewed periodically, and revised as necessary by agreement of the Parties, or as determined necessary by Western.
5. **POINT(S) OF DELIVERY**: Western shall deliver capacity and energy to the Contractor through the Contractor's authorized Scheduling Entity(ies) at the Mead 230-kV Bus listed in Exhibit B to the Contract.

6. **DEFINITIONS:** Terms, when used herein and in the Attachments, hereto, whether in singular or plural, shall have the meanings set forth in section 5 (Definitions) of the Contract.
7. **GENERATION SCHEDULING:**
  - 7.1 **Scheduling:** Schedules associated with capacity and energy deliveries will be established and confirmed on Mountain Standard Time (MST) in advance as outlined in this MSI.
    - 7.1.1 The Scheduling Entity is designated to implement schedules with Western on behalf of Contractor. Each Party shall provide its scheduling point(s) of contact and other information for this MSI as indicated on Attachment Nos. 1 and 2, attached hereto. In accordance with subsection 6.11.5 of the Contract, each Party agrees to provide the other Party, at least sixty (60) Days advance written notification, of any modifications to contact information or Scheduling Entity. Western will provide a revised Attachment No. 1 as confirmation of the change.
    - 7.1.2 The Scheduling Entity will schedule and Western will deliver Contractor's Schedule A, Schedule B, and Schedule D Contingent Capacity and associated Firm Energy; and will schedule and deliver Excess Energy in accordance with the Contract and subsection 7.7 and 7.8, herein.
    - 7.1.3 Contingent Capacity is based on Hoover Powerplant generating capacity which may be changed to the extent the output capability of the designated unit(s) has been changed due to a new unit rating or outage of the designated unit(s) in accordance with section 6 of the Contract.
    - 7.1.4 Changes in Available Capacity shall be shared pro rata among Schedule A, Schedule B, and Schedule D Contingent Capacity and each Contractor's change in Available Capacity shall be based upon the Contractor's allocation percentages in Attachment No. 1 of the Contract. Notifications of changes in Available Capacity will be made as soon as practicable after unit capacity ratings have been determined by the Bureau of Reclamation (Reclamation).
    - 7.1.5 Notice of changes in Available Capacity will be made in accordance with North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) outage reporting requirements and in accordance with the coordination procedure with the Western Area Lower Colorado Balancing Authority (WALC) and Reclamation. The WALC-Reclamation coordination procedure includes:

7.1.5.1 Planned Outage Scheduling: Planned removal of equipment from service currently requires four (4) business days minimum advance notice with no bulk electric system (BES) impact, and ten (10) business days if the BES is impacted or as required by NERC and WECC.

7.1.5.2 Emergencies: Unplanned outages requiring emergency restoration response do not require any advance minimum outage notification period.

7.1.5.3 Emerging Actions: Emerging or pressing equipment issues requiring an outage or preventive action by either Reclamation or WALC, are to be responded to as determined by the WALC system operator, the Reclamation generator operator, or the WECC Reliability Coordinator to avoid an imminent adverse impact to the BES, to prevent generator or transmission damage, or to avoid injury.

7.1.6 Scheduling practices will comply with current North American Electric Standards Board, (NAESB), NERC, WECC, and applicable Federal Energy Regulatory Commission (FERC), or successor(s) requirements. Contractor shall have the option to schedule statically in accordance with subsection 7.7, herein or to schedule dynamically in accordance with subsection 7.8, herein. All scheduling shall follow the electronic interchange transaction information (e-Tag) requirements in accordance with subsection 7.7, 7.8, and 7.9, herein.

7.1.7 The Contractor may request a change in schedule type (static or dynamic). Any changes will be in effect for a minimum twelve (12) month period, unless a more expedient change is agreed to by Western and the Contractor. Preference for schedule type will be made by submitting a written request to Western to evaluate implementation of the change in schedule type. Attachment No. 6, herein describes steps for establishing dynamic scheduling with Western.

7.2 Master Schedule: Western will use MST as the timing basis for the determination of the monthly breakdown of estimated energy and capacity allocation as shown in the annual Master Schedule and any revisions. As stated in subsection 6.8.1 of the Contract, the Master Schedule shall be for a sixteen (16) month period, beginning on June 1 of the current year and extending through September 30 of the next year for each of the Contractors. An example of a Master Schedule showing Schedule A, Schedule B, Schedule D Contingent Capacity and Firm Energy, and Schedule C, Excess Energy are shown in Attachment No. 3, herein.

- 7.3 Energy Allocations (Target Schedule): The Target Schedule is a report that documents the energy allocations that may be scheduled by the Scheduling Entity for the current or next month including sub-monthly period schedules within a month. The Target Schedule is comprised of the following components:
- 7.3.1 Contractor's Energy Percentage: Contractor's percentage of Schedule A, Schedule B, and Schedule D Firm Energy.
- 7.3.2 Transformer and Transmission Losses: Transformer and transmission line losses to the point of delivery at the Mead 230-kV Substation. The current value is 0.9355%.
- 7.3.3 Adjustment: Adjustment represents the energy deviations as well as Motoring Losses ( $M_L$ ) and Unloaded Synchronized Generation Losses ( $S_L$ ) assessments less  $M_L$  and  $S_L$  returns from the previous month's accounting as calculated in the monthly energy accounting process. These adjustments are intended to minimize over and under deliveries of energy during the Fiscal Year.
- 7.3.4 Interchange: Interchange represents the Resource Integration Exchange programs values either between Contractors or between Western resources. The monthly and yearly net value between Contractors will be zero (0).
- 7.3.5 Returned Energy for use of  $M_L$  and  $S_L$ : Energy to be scheduled as repayment of assessments from previous month's accounting process.
- 7.3.6 Miscellaneous Energy: Miscellaneous energy may be used for a return or delivery of energy associated with a Contractor's energy usage, past month's power accounting, or the reconciliation of the deviations from the prior Fiscal Year. A notation describing the application will be communicated to the Scheduling Entity upon issuance of the Target Schedule.
- 7.3.7 Firming Energy: Supplemental energy purchased by Western at the request of a Contractor to meet any deficiency in Firm Energy in accordance with subsection 6.9.4 of the Contract. At the request of the Contractor and at the Contractor's expense, Western shall purchase, schedule, and account for requested Firming Energy separately from energy deemed to be from the Hoover Powerplant in order to meet that Contractor's Firm Energy deficiency.

- 7.3.8 Excess Energy: As defined in section 5 of the Contract.
- 7.3.9 Contractor's Available Energy: As defined in section 5 of the Contract.
- 7.4 Notification of Target Schedule: The Scheduling Entity shall be notified of its original monthly and sub-monthly period Target Schedule no later than one (1) week before the beginning of such period unless a shorter notification period is deemed necessary to meet urgent water conditions. Routine changes in Target Schedules shall be electronically communicated to Scheduling Entities on a pre-scheduling basis. The modification of the Target Schedule and the implementation or removal of energy restrictions due to special circumstances shall be communicated via voice or electronic means.
- 7.5 Monthly Energy Excursions: The Scheduling Entity or Contractor, when in need of a monthly energy excursion of more than +/- two (2) percent, but within +/- five (5) percent of Contractor's Available Energy from the Target Schedule, must request approval from the Western Scheduling Point of Contact (POC). The Western Scheduling POC will communicate to the Scheduling Entity approval or disapproval of the excursion requested based on power and hydro system conditions at the time of request and record the request. Contractor will forfeit energy for under-runs on unapproved excursions beyond the two (2) percent monthly window and five (5) percent Western approved window. Overruns in excess of two (2) percent that are not pre-approved or any overrun in excess of five (5) percent shall be assessed a penalty in accordance with Attachment No. 5, Schedule of Rates for Power Service, of the Contract.
- 7.6 Sub-Monthly Energy Requirement: The Scheduling Entity or Contractor is required to schedule within +/- two (2) percent of the Contractor's Available Energy for the first sub-monthly period identified on the Target Schedule each month. For each subsequent sub-monthly period, the Scheduling Entity or Contractor is required to schedule within +/- five (5) percent of the Contractor's Available Energy identified on the Target Schedule each month. Deviations outside of the applicable percentage requirements will be calculated for each period and are subject to forfeiture of energy and/or penalties in accordance with Attachment No. 5, Schedule of Rates for Electric Service, of the Contract.



7.7 Static Scheduling:

7.7.1 Capacity: Western will notify Scheduling Entities of hourly Contractor's Available Capacity according to the normal pre-scheduling calendar.

7.7.2 Energy: The Scheduling Entity will pre-schedule anticipated energy on a daily and hourly basis as follows:

7.7.2.1 Electronic-Tagging (e-Tag): Contractor will submit normal type e-Tags for its static schedule and adhere to NAESB, NERC, WECC, and FERC Interchange Standards and Requirements for normal type interchange schedules. Specific Western e-Tag requirements are provided in subsection 7.9, herein.

7.7.2.2 Sub-hourly Static Schedules: Contractor will submit sub-hourly normal type e-Tags as defined in subsection 7.7.2.1, herein and must include a separate capacity schedule. The Contractor will confirm the pre-scheduled hourly capacity schedule with Western's Scheduling POC by 1400 hours MST on the business day prior to execution, unless a later time is agreed to by Western and Contractor.

By 2300 hours MST each day, Contractor's Scheduling Entity Real Time Scheduling Desk will confirm the next day's hourly capacity schedule with Western's Real Time Marketer Desk.

Changes to any hourly capacity schedule must be communicated to Western thirty (30) minutes prior to the hour, excluding emergencies.

7.7.2.3 Inefficiencies for sub-hourly Static Schedules will be assessed for losses as described in subsection 7.8.9, herein.

7.7.2.4 The daily sum of tagged energy for Static Schedules in MST will be used by Western to assure that energy deliveries conform to monthly Contractor's Available Energy.

7.7.2.5 The daily sum of tagged energy for Static Schedules in MST will be the basis to establish energy deviation between Contractor and Western in section 10, herein.

7.8 Dynamic Scheduling:

7.8.1 Capacity: Western will notify Scheduling Entities of hourly Contractor's Available Capacity according to the normal pre-scheduling calendar. Scheduling Entities will pre-schedule required on-line capacity with Western on a daily and hourly basis as follows:

7.8.2 Daily: Contractor will communicate the pre-schedule hourly on-line capacity to Western's Scheduling POC by 1400 hours MST on the business day prior to execution, unless a later time is agreed to by Western and Contractor.

By 2300 hours MST each day, Contractor's Scheduling Entity Real Time Marketer Desk will confirm the next day's hourly capacity schedule with the WALC Dispatch POC.

7.8.3 Hourly Scheduled Capacity: Changes to capacity schedules will be communicated to the WALC Dispatch POC. Changes to any hourly schedule must normally be communicated (30) minutes prior to the hour.

7.8.4 Hourly Unscheduled Capacity: A Scheduling Entity may increase its capacity schedule and request up to its full Contractor's Available Capacity four (4) times per month outside of the hourly requirement of subsection 7.8.3. Western and Reclamation, at their determination, will make their best effort to supply Contractor's full capacity request within ten (10) minutes of the request. Western or Reclamation shall not be liable for costs incurred by Contractor if the capacity cannot be supplied or ramped to full load to meet reserve requirements as may be defined in a reserve sharing group or by WECC or NERC. Western may alter the number of unscheduled capacity changes per month allowed under this Section by written notice to Contractor.

- 7.8.5 Emergency Capacity Request: Following an emergency, determined by the Contractor based on standard utility practice, Contractor is entitled to increase the capacity schedule with the WALC Dispatch POC by verbal communication, up to the Contractor's Available Capacity and to the extent capacity is available, for up to twelve (12) consecutive hours, in accordance with subsection 6.11.3 of the Contract.

Western and Reclamation will make their best effort to supply energy associated with the requested Emergency Capacity, but shall not be liable for costs incurred by Contractor if the capacity cannot be supplied or ramped to full load to meet reserve requirements as may be defined in a reserve sharing group or by WECC or NERC.

- 7.8.6 Energy: Contractor will schedule energy on a daily and hourly basis as follows:

7.8.6.1 Energy Forecast: Contractor shall provide Western's scheduling POC by 1500 hours each day with an hourly forecast of dynamic energy to be scheduled for the following day.

7.8.6.2 Dynamic Schedules (Real Time): Contractor shall transmit an electronic signal of its Dynamic Schedule request to Western, within pre-scheduled Contractor's Available Capacity limits, once each Automatic Generation Control (AGC) cycle. Western will receive Contractor's Dynamic Schedule request and will reply with Western's electronic signal indicating that Contractor's schedule is accepted and confirmed. When either Party is unable to transmit or receive an electronic signal with the other Party, the Parties will voice request changes in hourly Hoover Powerplant generation.

7.8.6.3 Dynamic Schedules (Integrated): The hourly integral of Western's dynamic energy schedule signal, as provided by Western, is the Dynamic Schedule representing Contractor's energy delivery. The energy profile of the Dynamic Schedule e-Tag must be updated with this energy integration in accordance with WECC, NERC, FERC, and NAESB Dynamic Schedule e-Tagging Requirements.

7.8.6.4 Electronic-Tagging (e-Tag): The Scheduling Entity will submit e-Tags for its dynamic schedule and adhere to NAESB, NERC, WECC, and FERC Interchange Standards and Requirements for Dynamic Interchange Schedules. Specific Western e-Tag requirements are provided in subsection 7.9, herein.

- 7.8.7 The daily sum of integrated energy for Dynamic Schedules in MST will be used by Western to assure that energy deliveries conform to monthly Contractor's Available Energy.
- 7.8.8 The daily sum of integrated energy for Dynamic Schedules in MST will be the basis to establish energy deviation between Contractor and Western in section 10, herein.
- 7.8.9 Inefficiency:  $M_L$  and  $S_L$  as defined in Exhibit D of the Contract will accumulate hourly each month. The total inefficiency accumulated monthly shall be assessed monthly as part of the Energy Delivered which is billed the applicable LCRBDF rate and used to reduce the Target Schedule two (2) months after occurrence. Contractors may also select to return such energy from sources available to the Contractor other than the Hoover Powerplant during On-Peak Hours in the following Billing Period, or as soon thereafter as practicable.
- 7.8.10 Western will provide Ancillary Services in accordance with Attachment No. 3 of the Contract to Contractor as the Scheduling Entity schedules the energy dynamically.
- 7.8.11 Operating Reserves: Operating Reserves-Spinning, and Operating Reserves-Supplemental will be provided through hourly scheduled capacity. Western is not responsible for immediate full load response, such as from partial to full load increases without consideration for ramping in the requested energy component. The Contractor and Western will coordinate to establish acceptable ramp rates.

7.9 e-Tag Requirements:

- 7.9.1 The Scheduling Entity will submit requests for interchange (e-Tags) for its schedules and adhere to NAESB, NERC, WECC, and FERC Interchange Standards and Requirements for Interchange Schedules. Per e-Tag specifications, all e-Tags will have whole megawatt values and contain the following:
  - 7.9.1.1 DSWM01 shall be the first Purchasing Selling Entity (PSE) listed in the Market Path.
  - 7.9.1.2 WALC shall be the Source Balancing Authority (BA) with DSWM01 as the source PSE, and Hoover Powerplant as the Generating Source in the Physical Path.

- 7.9.1.3 The first Physical Segment (1) shall have the Point of Receipt (POR) and Point of Delivery (POD) as MEAD230 with DSWM01 as the PSE and WALC as the Transmission Provider.
- 7.9.1.4 The Scheduling Entity shall be the second PSE listed in the Physical Path with MEAD230 as the POR on the second Physical Segment (2).
- 7.9.2 All e-Tags submitted shall comply with NAESB Timing Requirements. Due to Western not having adequate time to perform a reliability assessment, all late requested e-Tags will not be approved.
- 7.9.3 If an Emergency type e-Tag is submitted and the Sink BA approves the e-Tag, Western will approve the transaction as the Source BA.
- 7.9.4 Sufficient firm transmission shall be required to schedule from MEAD230 to the Sink/Load. In addition, Dynamic and Sub-hourly Static Schedules normal type e-Tags must have sufficient firm transmission to transfer the maximum instantaneous generation for any hour.
8. **METERING:** Deliveries of capacity and energy are based upon scheduled quantities, therefore no meters are necessary for billing and accounting purposes.
9. **ENERGY AND CAPACITY CALCULATIONS:**
- 9.1 **Hourly Minimum Rate of Delivery of Energy:** Minimum power system and water release requirements are in accordance with subsection 6.9.3 of the Contract.
- 9.1.1 Contractor's hourly power system minimum schedule will be up to ten (10) percent of the Contractor's Available Capacity for current hour energy deliveries and next hour if requested by the WALC Dispatch POC.
- 9.1.2 Contractors hourly water minimum energy schedule will not exceed twenty-five (25) percent of Contractor's monthly energy allocation.
- 9.1.3 Contractor's Proportional share of total Firm Energy and Excess Energy for the Billing Period X Overall minimum rate of delivery of energy for required minimum water releases

- 9.2 Contractor's Available Energy: The Contractor's Available Energy is in accordance with Exhibit C of the Contract and shall be determined by the following formula:

9.2.1  $CAE = (P \times B) - A + M + C + D$

Where (values deemed to be in thousands of kWh),

CAE = Contractor's Available Energy for the applicable period.

P = Contractor's percentage of total Schedule A, Schedule B, and Schedule D Firm Energy

B = Projected Hoover Firm Energy generation for the applicable period, including transformer and transmission line losses and projected integration with the Parker-Davis Project

A = Adjustments from previous month's accounting process including schedule deviation and  $M_L$  and  $S_L$  assessments

M =  $M_L$  and  $S_L$  return energy

C = Excess Energy for the applicable period available to the Contractor in accordance with Schedule C of the Contract

D = Contractor's requested Firming Energy purchase in accordance with subsection 6.9.4 of the Contract which are scheduled and accounted for separately from energy deemed to be from Hoover Powerplant

- 9.2.2 Contractor's Available Energy will then be rounded to the nearest whole megawatt hour for scheduling purposes.

9.3 Contractor's Energy Deemed Delivered: The Contractor's Energy Deemed Delivered shall be determined by the following formula:

9.3.1  $CEDD = S + (M_L)_C + (S_L)_C - (M_L)_C \text{ return} - (S_L)_C \text{ return}$   
Where (values deemed to be in thousands of kWh),

$CEDD$  = Contractor's Energy Deemed Delivered for the applicable period

$S$  = Contractor's actual energy scheduled, delivered, calculated, and received for the applicable period

$(M_L)_C$  = Contractor's share of the Motoring Loss for the applicable period

$(S_L)_C$  = Contractor's share of the Unloaded Synchronized Generation Loss for the applicable period

$(M_L)_C \text{ return}$  =  $(M_L)_C$  from two (2) months previous

$(S_L)_C \text{ return}$  =  $(S_L)_C$  from two (2) months previous

9.3.2 Contractor's Energy Deemed Delivered will then be rounded to the nearest whole megawatt hour for energy accounting purposes.

9.4 Contractor's Available Capacity: Contractor's Available Capacity is in accordance with Exhibit C of the Contract and shall be determined by the following formula:

9.4.1  $CAC = (P \times B)$

Where (values deemed to be kW),

$CAC$  = Contractor's Available Capacity for the applicable period

$P$  = Contractor's percentage of total Schedule A, Schedule B, and Schedule D Contingent Capacity

$B$  = Available Capacity

9.4.2 Contractor's Available Capacity will then be rounded to the nearest whole megawatt for scheduling purposes.



10. **POWER ACCOUNTING:**

10.1 Excess Energy Allocation and Accounting Process:

10.1.1 Prior to the start of the Fiscal Year or after receiving the latest Reclamation Hoover forecast energy availability above 4,501,001 MWh for the Fiscal Year, Western will compute the total estimated energy for the BCP and determine the amount of total estimated energy, including Excess Energy, if any, available in the coming or current Fiscal Year. Reclamation may update such studies on a frequent basis and will provide such information to Western. Western may recalculate the total estimated energy as deemed appropriate.

10.1.2 The total estimated Excess Energy declared for a Fiscal Year will be equally distributed over the number of months remaining in such Fiscal Year based on the following principles:

10.1.2.1 The priority rights of Schedule C entitlement will be determined based on Exhibit A of the Contract and an equal division of estimated Excess Energy will be added to the applicable Contractor's monthly Target Schedule, with adjustments for transformer and transmission line losses. The Excess Energy entitlement in the Target Schedule, once provided by Western to the Contractors prior to each month, will not be adjusted during the month of delivery unless: a water emergency is declared by Reclamation; a significant change in Colorado River regulating conditions occurs; an uncontrollable force impacts the Hoover Powerplant generation capability; or in order to deliver each Contractor's total entitlement.

10.1.3 During the Fiscal Year, estimated Excess Energy entitlement, based on the best available information, will be adjusted for actual deliveries and for changes in Reclamation's projected availability of Hoover Powerplant energy as determined by Western. The adjustment in energy will occur to the Target Schedule provided by Western prior to the month of delivery in an attempt to minimize over/under deliveries of energy.



- 10.1.4 During the Annual Energy Reconciliation process, the actual values of Schedule A, Schedule B, Schedule C, and Schedule D will be computed. Any deviations in Schedule A, Schedule B, Schedule C, and Schedule D between what was scheduled and received to the actual values will be returned or delivered the following Fiscal Year. A proposed schedule for return or delivery of deviation will be sent to each Contractor with the draft Annual Energy Reconciliation. The Contractor can provide written comments on the proposed schedule. These comments will be used to determine the schedule for returns or deliveries of deviation as adjustments to the Target Schedules during the current Fiscal Year.
- 10.1.5 Once the Annual Energy Reconciliation Report is final, the Annual Energy Reconciliation results will be used for the development of the Calculated Energy Rate. The Total Energy Delivered value (column K of Attachment No. 5, herein) in the Annual Energy Reconciliation Report will be used as the Energy Deemed Delivered value for the purposes of calculating the Calculated Energy Rate in accordance with section 7.8 of the Contract.
- 10.2 Capacity and Energy Delivery Verification: The data to be exchanged between Western and Scheduling Entity(ies) during and following each month is in MST as follows:
  - 10.2.1 Daily Schedule Checkout – For Contractors who schedule dynamically, Western will verify the hourly scheduled totals equal Western's totals of hourly integrated energy delivered. Any required adjustments will be requested by Western to the Scheduling Entity.
  - 10.2.2 Sub-monthly Period Schedule Checkouts – Western will provide to the Scheduling Entity on a weekly basis the total energy and capacity used by Contractor cumulative for the month-to-date and by sub-monthly period.
  - 10.2.3 Previous Month Data – Western will provide to the Scheduling Entity, by the first working day of each month, the following data for the previous month:
    - 10.2.3.1 Actual hourly energy delivered for the entire month.
    - 10.2.3.2 Hourly capacity for the entire month.
    - 10.2.3.3 Sub-monthly period(s) energy total.

10.2.4 Concurrence of Monthly Schedules – The Scheduling Entity and Western will concur to the amount of energy and capacity scheduled by the fifth (5<sup>th</sup>) business day in accordance with subsection 10.2.3 (10.2.3.1 - 10.2.3.3).

10.3 Monthly Accounting: Monthly accounting reports will be distributed to the Contractor by the twenty-fifth (25<sup>th</sup>) day of the following month. These reports will include a monthly accounting report; a summary of schedules, losses and loss apportionment; Energy Deemed Delivered calculations per Contractor; Target Schedules for current and the next month; forecasted capacity entitlement for the next month; updated Master Schedule for the current Fiscal Year; and the projected operating schedule.

10.4 Deviation Accounting: Deviation accounting will be maintained between Contractor and Western to accommodate energy accounting adjustments. Monthly deviations are applied as adjustments in the Target Schedule two (2) months after occurrence. Any accumulated deviation remaining at the end of the Fiscal Year will be determined in the Annual Energy Reconciliation Report. Example provided in Attachment No. 5, herein.

Deviation accounts may include:

10.4.1 Delivery Concurrence: Agreed to under/over deliveries from energy

10.4.2 Losses: Transformer and transmission line losses

10.4.3 Any adjustments or reallocations of  $M_L$  and  $S_L$

10.4.4 Other Deviation: Any additional deviation accounting will be mutually agreed upon

10.5 Annual Energy Reconciliation: The Annual Energy Reconciliation for each Fiscal Year will account for the accumulated deviation for each Contractor on an annual basis. This accounting confirms that each MWh of energy generated at BCP for each month in the Fiscal Year is allocated to the Contractors.

10.5.1 Monthly Accumulated Deviation: The components and calculation for the Monthly Accumulated Deviation will be printed on each Contractor's BCP Reconciliation sheet.

- 10.5.2 End Notes: Billing discrepancies or special adjustments will be listed, as needed, in the Annual Energy Reconciliation document.
- 10.5.3 Distribution: Within six (6) weeks after the end of the Fiscal Year, a draft Annual Energy Reconciliation Report (Report) will be distributed by Western to the Contractors. The Contractors shall make every effort to review and provide comments to Western's draft Report no later than four (4) weeks of receipt. Western shall address, resolve comments, and issue the final Report within four (4) weeks after the Contractors' comment period.

Attachment No. 1 to  
Metering and Scheduling Instructions  
Contract No. 16-DSR-12669  
Colorado River Commission of Nevada

**CONTRACTOR'S SCHEDULING ENTITY AND  
POINT OF CONTACTS**

Contractor agrees to designate and provide contact information, identified herein, of its Scheduling Entity for scheduling Contractor's Contract capacity and energy. Modifications to Contractor's Scheduling Entity contact information shall provide notification to the other Party, in accordance with subsection 7.1.1, herein by submitting a revised Attachment No. 1.

**Contractor's Balancing Authority for  
Energy Deliveries**

**Contractor's Scheduling Entity**

Company Name:

Attn:

Mailing Address:

**Pre-Scheduling Contact Information**

Name:

Position:

Phone:

Fax:

E-mail:

**Real Time Scheduling Desk Contact**

Primary Phone:

Alternate Phone:

Fax:

E-mail:

**Settlements Contact Information**

Name:

Position:

Phone:

E-mail:

**Invoicing Point of Contact**

Name:

Phone:

E-mail:

Attachment No. 2 to  
Metering and Scheduling Instructions  
Contract No. 16-DSR-12669  
Colorado River Commission of Nevada

**WESTERN'S POINT OF CONTACTS**

Western agrees to designate and provide scheduling Point of Contact (POC) information, identified herein, for scheduling the Contractor's Contract capacity and energy. Modifications to Western's scheduling POC information shall be immediately communicated to the other Party by a revised Attachment No. 2.

**Western's Scheduling POC**

Company Name:	Western Area Power Administration
Attn:	G0200 Desert Southwest Region (DSW) Energy Management and Marketing Office
Mailing Address:	P.O. Box 6457 Phoenix, AZ 85005-6457
Street Address:	615 South 43rd Avenue Phoenix, AZ 85009
Scheduling Desk:	(602) 605-2712
Real Time Marketer Desk:	(602) 605-2666
Scheduling Fax:	(602) 605-2831
Target Excursion Requests:	(602) 605-2666

**WALC Dispatch POC**

Name:	J4900 Operations Reliability & Balancing Authority
Real Time Desk Phone:	(602) 605-2512

**Western's Settlements POC**

Name:	G6300 Settlements Staff
Phone:	(602) 605-2947
E-Mail:	walcpostschedule@wapa.gov

**Invoicing Point of Contact**

**For billing inquiries and address changes refer to the contact information printed on Western's invoice.**

Attachment No. 3 to  
Metering and Scheduling Instructions  
Contract No. 16-DSR-12669  
Colorado River Commission of Nevada

**EXAMPLE MASTER SCHEDULE**

Pending insertion of  
example Master Schedule.

Attachment No. 4 to  
Metering and Scheduling Instructions  
Contract No. 16-DSR-12669  
Colorado River Commission of Nevada

**EXAMPLE TARGET SCHEDULE**

Pending insertion of  
example Target Schedule.

Attachment No. 5 to  
Metering and Scheduling Instructions  
Contract No. 16-DSR-12669  
Colorado River Commission of Nevada

**EXAMPLE ANNUAL ENERGY RECONCILIATION REPORT**

Pending insertion of  
example annual energy  
reconciliation report.



Attachment No. 6 to  
Metering and Scheduling Instructions  
Contract No. 16-DSR-12669  
Colorado River Commission of Nevada

### **ESTABLISHING A DYNAMIC SCHEDULE**

The Contractor may request to establish a dynamic schedule, or request to change from a static to a dynamic schedule type as provided in subsection 7.1.7. This option is also available to Tribal Benefit Crediting Partners. The following steps describe the work necessary to establish a dynamic schedule with WALC.

1. The Contractor must send a written request to evaluate establishing a dynamic schedule to Western's Vice President of Power Marketing for DSW.
2. Western will respond with instructions to advance fund the costs to evaluate the project.
3. Once the project has been funded, Western will coordinate with the Contractor and/or its Scheduling Entity and the sink balancing authority to evaluate the labor hours and equipment required to implement a dynamic schedule, including but not limited to:
  - 3.1 Western Power Marketing contract or letter agreement coordination and development
  - 3.2 Communications, network, firewall equipment or software installations, configuration, and testing
  - 3.3 Inter-Control Center Communication Protocol (ICCP) servers, data associations, objects, and testing
  - 3.4 Supervisory Control and Data Acquisition (SCADA) development, programming, testing, and implementation
  - 3.5 SCADA historian modifications
  - 3.6 Energy accounting and reporting modifications
  - 3.7 Capacity allocation and scheduling program modifications
  - 3.8 Procedure updates and training
  - 3.9 Program and test dispatch phone contacts
  - 3.10 e-Tag coordination and testing
  - 3.11 Project coordination
4. Western will send a letter agreement that describes responsibilities for work to be completed, a timeline for completion, and instructions to advance fund costs of the project if the Contractor decides to implement the dynamic schedule.
5. Once funds are received and the project is established, Western will assign a project manager and commence coordination of the project to implement the dynamic schedule.

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM E  
FOR MEETING OF NOVEMBER 8, 2022**

**SUBJECT:**

*For Possible Action:* Consideration of and possible action to approve a contract for legal services between the Colorado River Commission of Nevada, Office of Attorney General and Holley Driggs, LTD.

**RELATED TO AGENDA ITEM:**

**RECOMMENDATION OR RECOMMENDED MOTION:**

Staff recommends that the Commission authorize the Executive Director to execute the contract.

**FISCAL IMPACT:**

None.

**STAFF COMMENTS AND BACKGROUND:**

On September 10, 2022 Basic Water Company (Basic Water), contractor of hydropower with the Commission, filed for Chapter 11 bankruptcy. Currently, Basic Water is current with its obligations with the Commission, but the bankruptcy case needs to be monitored and participated in, to address issues that could arise that would affect the Commission or the hydropower resource that is allocated to Basic Water.

The Director consulted with the Commission's Special Counsel from the Attorney General's office and after consultation with the Attorney General's office, it was recommended that the Commission in coordination with the Attorney General's office, hire bankruptcy counsel to advise and participate in the Basic Water bankruptcy case as needed.

The firm selected, Holley Driggs, has experienced bankruptcy attorneys and are not already involved in the Basic Water bankruptcy case.

Staff recommends the Commission approve the contract for legal services.

# CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada

Acting by and Through its

Agency Name:	Office of the Attorney General	Colorado River Commission of Nevada
Address:	555 E. Washington Ave, Suite 3900	555 E. Washington Ave, Suite 3100
City, State, Zip Code:	Las Vegas, Nevada, 89101	Las Vegas, Nevada, 89101
Contact:	David Newton	Eric Witkoski
Phone:	702-486-2670	702-486-2670
Fax:		702-486-2695
Email:	<a href="mailto:dwnewton@crc.nv.gov">dwnewton@crc.nv.gov</a>	<a href="mailto:ewitkoski@crc.nv.gov">ewitkoski@crc.nv.gov</a>

Contractor Name:	Holley Driggs, LTD.
Address:	300 S. 4th Street, Suite 1600
City, State, Zip Code:	Las Vegas, NV, 89101
Contact:	Mary Langsner
Phone:	702-791-0308
Fax:	702-791-1912
Email:	<a href="mailto:MLangsner@nevadafirm.com">MLangsner@nevadafirm.com</a>

WHEREAS, NRS 333.700 authorizes officers, departments, institutions, boards, commissions, and other agencies in the Executive Department of the State Government which derive their support from public money in whole or in part to engage, subject to the approval of the Board of Examiners (BOE), services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada.

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.
2. **DEFINITIONS.**
  - A. **"State"** – means the State of Nevada and any State agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
  - B. **"Contracting Agency"** – means the State agency identified above.
  - C. **"Contractor"** – means the person or entity identified above that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract.
  - D. **"Fiscal Year"** – means the period beginning July 1st and ending June 30th of the following year.
  - E. **"Contract"** – Unless the context otherwise requires, "Contract" means this document entitled Contract for Services of Independent Contractor and all Attachments or Incorporated Documents.
  - F. **"Contract for Independent Contractor"** – means this document entitled Contract for Services of Independent Contractor exclusive of any Attachments or Incorporated Documents.

3. **CONTRACT TERM.** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 10, Contract Termination*. **Contract is subject to Board of Examiners' approval.**

Effective from:	November 8, 2022	To:	November 30, 2024
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4. **NOTICE.** All communications, including notices, required or permitted to be given under this Contract shall be in writing and directed to the parties at the addresses stated above. Notices may be given: (i) by delivery in person; (ii) by a nationally recognized next day courier service, return receipt requested; or (iii) by certified mail, return receipt requested. If specifically requested by the party to be notified, valid notice may be given by facsimile transmission or electronic mail to the address(es) such party has specified in writing.
5. **INCORPORATED DOCUMENTS.** The parties agree that this Contract, inclusive of the following attachments, specifically describes the scope of work. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA:	SCOPE OF WORK / FEE AGREEMENT FOR LEGAL REPRESENTATION
ATTACHMENT BB:	INSURANCE SCHEDULE
ATTACHMENT CC:	SPECIAL COUNSEL GUIDELINES AND BILLING PRACTICES AND PROCEDURES

Any provision, term or condition of an Attachment that contradicts the terms of this Contract for Independent Contractor, or that would change the obligations of the State under this Contract for Independent Contractor, shall be void and unenforceable.

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in *Section 5, Incorporated Documents* at a cost as noted below, subject to and including the provisions of Attachment AA hereto:

Total Contract or installments payable at:	Upon Invoice
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Total Contract Not to Exceed:	\$97,000.00
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The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

7. **ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.
8. **BILLING SUBMISSION: TIMELINESS.** The parties agree that timeliness of billing is of the essence to the Contract and recognize that the State is on a Fiscal Year. All billings for dates of service prior to July 1 must be submitted to the state no later than the first Friday in August of the same calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the state of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to Contractor.
9. **INSPECTION & AUDIT.**
- A. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all State and federal regulations and statutes.

- B. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant State agency or its contracted examiners, the department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the state Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this Section.
- C. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the state, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

#### 10. CONTRACT TERMINATION.

- A. Termination Without Cause. Regardless of any terms to the contrary, this Contract may be terminated upon written notice by mutual consent of both parties. The State unilaterally may terminate this contract without cause by giving not less than thirty (30) days' notice in the manner specified in *Section 4, Notice*. If this Contract is unilaterally terminated by the State, Contractor shall use its best efforts to minimize cost to the State and Contractor will not be paid for any cost that Contractor could have avoided. The Contractor may terminate this Contract without cause on **not less than thirty (30) days' notice in the manner specified in Section 4, Notice**. Special Counsel's termination of the Contract will not waive or abrogate its obligation to follow applicable Nevada Rules of Professional Conduct and to seek and obtain court approval permitting withdrawal as specified in the Local Rules of Practice for the U.S. Bankruptcy Court, District of Nevada.
- B. State Termination for Non-Appropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claims(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the **contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired**.
- C. Termination with Cause for Breach. A breach may be declared with or without termination. A notice of breach and termination shall specify the date of termination of the Contract, which shall not be sooner than the expiration of the Time to Correct, if applicable, allowed under subsection 10D. This Contract may be terminated by either party upon written notice of breach to the other party on the following grounds:
- 1) If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
  - 2) If any state, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
  - 3) If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the Bankruptcy Court; or
  - 4) If the State **materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform**; or
  - 5) If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with

respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or

- 6) If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

D. Time to Correct. Unless the breach is not curable, or unless circumstances do not permit an opportunity to cure, termination upon declared breach may be exercised only after service of formal written notice as specified in *Section 4, Notice*, and the subsequent failure of the breaching party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared breach has been corrected. Upon a notice of breach, the time to correct and the time for termination of the contract upon breach under subsection 10C, above, shall run concurrently, unless the notice expressly states otherwise.

E. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this Section survive termination:

- 1) The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- 2) Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
- 3) Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
- 4) Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with *Section 21, State Ownership of Proprietary Information*.

11. **REMEDIES.** Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a **prevailing party reasonable attorneys' fees and costs.** For purposes of an award of **attorneys' fees to either party, the parties stipulate and agree that a reasonable hourly rate of attorneys' fees shall be one hundred and fifty dollars (\$150.00) per hour.** The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190. In the event that Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.
12. **LIMITED LIABILITY.** The State will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the **Fiscal Year budget in existence at the time of the breach. Contractor's tort liability shall not be limited.**
13. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.
14. **INDEMNIFICATION AND DEFENSE.** To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or alleged willful acts or omissions of Contractor, its officers, employees and agents. **Contractor's obligation to indemnify the State shall apply in all cases except for claims arising solely from the State's own negligence or willful misconduct. Contractor waives any rights of subrogation against the State. Contractor's duty to defend begins**

when the State advises Contractor in a writing copied to all Parties hereto specifically requesting defense of any claim arising from this Contract.

15. **REPRESENTATIONS REGARDING INDEPENDENT CONTRACTOR STATUS.** Contractor represents that it is an independent contractor, as defined in NRS 333.700(2) and 616A.255, warrants that it will perform all work under this contract as an independent contractor, and warrants that the State of Nevada will not incur any employment liability by reason of this Contract or the work to be performed under this Contract. To the extent the State incurs any employment liability for the work under this Contract; Contractor will reimburse the State for that liability.
16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in *Attachment BB*, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

Contractor shall not commence work before Contractor has provided the required evidence of insurance to the Contracting Agency. The **State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition** subsequent to this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

- A. Insurance Coverage. Contractor shall, at Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in *Attachment BB*, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by Contractor and shall continue in force as appropriate until:

- 1) Final acceptance by the State of the completion of this Contract; or
- 2) Such time as the insurance is no longer required by the State under the terms of this Contract; whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of and non-contributing with, any insurance **required from Contractor. Contractor's insurance policies shall apply on a primary basis.** Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

- B. General Requirements.

- 1) Additional Insured: By endorsement to the general liability insurance policy, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- 2) Waiver of Subrogation: Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of Contractor.
- 3) Cross Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- 4) Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.
- 5) Policy Cancellation: Except for ten (10) days notice for non-payment of premiums, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and/or limits reduced or materially altered,

and shall provide that notices required by this Section shall be sent by certified mail to the address shown on page one (1) of this contract.

6) Approved Insurer: Each insurance policy shall be:

- a) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
- b) **Currently rated by A.M. Best as "A-VII" or better.**

C. Evidence of Insurance.

Prior to the start of any work, Contractor must provide the following documents to the contracting State agency:

- 1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized by the insurer to bind coverage on its behalf. The State project/Contract number; description and Contract effective dates shall be noted on the certificate, and upon renewal of the policies listed, Contractor shall furnish the State with replacement certificates as described within *Section 16A, Insurance Coverage*.

**Mail all required insurance documents to the State Contracting Agency identified on Page one of the Contract.**

- 2) Additional Insured Endorsement: An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85), signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per *Section 16B, General Requirements*.
- 3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the underlying Schedule from the Umbrella or Excess insurance policy may be required.
- 4) Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its subcontractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

- 17. **COMPLIANCE WITH LEGAL OBLIGATIONS.** Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor shall provide proof of its compliance upon request of the Contracting Agency. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.
- 18. **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.
- 19. **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

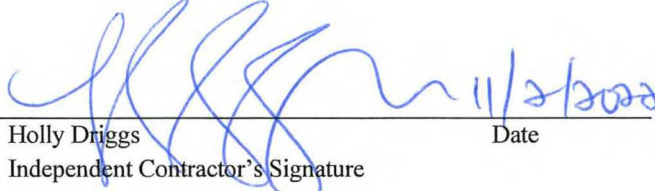


20. **ASSIGNMENT/DELEGATION.** To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.
21. **STATE OWNERSHIP OF PROPRIETARY INFORMATION.** Any data or information provided by the State to Contractor and any documents or materials provided by the State to Contractor in the course of this Contract ("State Materials") shall be and remain the exclusive property of the State and all such State Materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract.
22. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.
23. **CONFIDENTIALITY.** Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.
24. **FEDERAL FUNDING.** In the event federal funds are used for payment of all or part of this Contract, Contractor agrees to comply with all applicable federal laws, regulations and executive orders, including, without limitation the following:
  - A. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to Executive Orders 12549 and 12689 and Federal Acquisition Regulation subpart 9.4, and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
  - B. Contractor and its subcontracts shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. § 12101, as amended, and regulations adopted thereunder, including 28 C.F.R. Section 35, inclusive, and any relevant program-specific regulations.
  - C. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964 (P.L. 88-352), as amended, the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions).
25. **LOBBYING.** The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:
  - A. Any federal, state, county or local agency, legislature, commission, council or board;
  - B. Any federal, state, county or local legislator, commission member, council member, board member, or other elected official; or
  - C. Any officer or employee of any federal, state, county, or local agency; legislature, commission, council, or board.
26. **GENERAL WARRANTY.** Contractor warrants that all services, deliverables, and/or work products under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.
27. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time

specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. **DISCLOSURES REGARDING CURRENT OR FORMER STATE EMPLOYEES.** For the purpose of State compliance with NRS 333.705, Contractor represents and warrants that if Contractor, or any employee of Contractor who will be performing services under this Contract, is a current employee of the State or was employed by the State within the preceding 24 months, Contractor has disclosed the identity of such persons, and the services that each such person will perform, to the Contracting Agency.
29. **ASSIGNMENT OF ANTITRUST CLAIMS.** Contractor irrevocably assigns to the State any claim for relief or cause of action which Contractor now has or which may accrue to Contractor in the future by reason of any violation of State of Nevada or federal antitrust laws in connection with any goods or services provided under this Contract.
30. **GOVERNING LAW: JURISDICTION.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties' consent to the exclusive jurisdiction of and venue in the First Judicial District Court, Carson City, Nevada, for enforcement of this Contract, and consent to personal jurisdiction in such court for any action or proceeding arising out of this Contract.
31. **ENTIRE CONTRACT AND MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners. This Contract, and any amendments, may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.


  
 Holly Driggs \_\_\_\_\_ Date 11/2/2022 Attorney \_\_\_\_\_  
 Independent Contractor's Signature Independent Contractor's Title

Eric Witkoski \_\_\_\_\_ Date \_\_\_\_\_  
 Colorado River Commission of Nevada Executive Director

Jessica L. Hoban \_\_\_\_\_ Date \_\_\_\_\_  
 Office of the Attorney General Chief Financial Officer

APPROVED BY BOARD OF EXAMINERS

\_\_\_\_\_  
 Signature – Board of Examiners

On:

\_\_\_\_\_  
 Date

Approved as to form by:

On:

Homa S. Woodrum – Senior Deputy Attorney General \_\_\_\_\_ Date \_\_\_\_\_

**ATTACHMENT AA**  
**Scope of Work / Fee Agreement for Legal Representation**

**I. SCOPE OF WORK**

Holley Driggs, LTD (“Special Counsel”) is retained by the State of Nevada (“State”), by and through the Office of the Attorney General (“OAG”), to provide legal representation to the Colorado River Commission of Nevada (“Commission”) as “Special Counsel” under NRS 41.03435.

The OAG has determined that the Attorney General and the deputies of the Attorney General lack qualification to provide legal services to Commission in this matter. *See* NRS 228.110(1)(b). Pursuant to NRS 41.03435, the OAG has thus retained Special Counsel, subject to the approval of the State Board of Examiners and the Commission, and fixed compensation in the Contract for Services of Independent Contractor (“Contract”); this Attachment AA, Scope of Work/Fee Agreement for Legal Representation; and Attachment CC, Special Counsel Guidelines and Billing Practices and Procedures (“Guidelines”).

Special Counsel shall, in cooperation and coordination with the OAG, provide legal counsel to the Commission in the bankruptcy matter filed on September 10, 2022, *In re: Basic Water Company*, Case No. 22-13252-mkn, and any bankruptcy matters related thereto. Legal counsel and advice includes the impacts of a bankruptcy filing and proceeding on the **Commission’s contracts and operations** with the respective contractor, financial implications for the Commission and courses of action needed to navigate the bankruptcy proceedings, and related issues that may arise. In providing legal counsel, Special Counsel may be called upon on to:

1. Appear at procedural and substantive hearings before the bankruptcy court, trustee, or other related forums.
2. Participate in and support the Commission in formal or informal discussions and settlement conferences.
3. Prepare, draft, and file appropriate pleadings, as necessary in coordination with the **Commission’s Counsel**.
4. Research questions of law and provide appropriate memorandum to reflect its conclusions and recommendations.
5. Perform such other services consistent with this Contract as specifically authorized in writing by the Executive Director **or the Commission’s Counsel**.

The Commission agrees to pay Special Counsel’s **attorney fees and costs in accordance** with the Contract, the Guidelines, and this Scope of Work/Fee Agreement for Legal Representation. State fiscal policy requires the OAG to carefully scrutinize Special Counsel’s billing submissions pursuant to the Guidelines.<sup>1</sup> Thus, efforts by the OAG to monitor or limit costs

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<sup>1</sup> “It is the policy of the State of Nevada to limit and monitor costs associated with the hiring of professional and expert services, including private attorneys who provide services to the State as independent contractors.” State Administrative Manual § 0325 (State Agencies, Boards,

must not be construed as an attempt to influence Special Counsel's representation. The State will not interfere with Special Counsel's independence of professional judgment or with the attorney-client relationship. *See* Nev. R. Pro. Conduct 1.8(f).

This is a non-exclusive agreement to provide legal services to Commission. The OAG may augment these services with another law firm or law firms or select to terminate Special Counsel's services in a manner consistent with the Contract. *See* Contract § 10.

## II. FEE AGREEMENT FOR LEGAL REPRESENTATION

Special Counsel will be compensated for time spent on the engagement according to the following hourly billing rates:

Mary Langsner, Ph.D., Lead Counsel:	\$335/hour
F. Thomas Edwards:	\$455/hour
Thomas D. Driggs:	\$410/hour
Kandy Halsey:	\$270/hour

Special Counsel is authorized to bill for expenses as specifically authorized in the Guidelines or preapproved by General Counsel or Commission Counsel. *See* Guidelines § VIII. All billing submissions, including claims for expense reimbursement, must follow the OAG's Guidelines.

The State is not obligated to pay Special Counsel any amount in excess of the "Total Contract Not to Exceed" amount stated in the Contract. *See* Contract § 6. Special Counsel must notify the Commission and OAG whenever total billing will exceed 80% of the stated Total Contract Not to Exceed amount (*i.e.*, \$77,600) to facilitate timely obligation of additional funding or notification to Special Counsel that additional funding will not be forthcoming. In the event additional funding will not be forthcoming, Special Counsel is authorized to terminate the Contract and effectuate Special Counsel's withdrawal from representation of the Commission in any and all proceedings, hearings, and cases including before the Bankruptcy Court. Special Counsel's termination of the Contract will not waive or abrogate its obligation to follow applicable Nevada Rules of Professional Conduct and to seek and obtain court approval permitting withdrawal as specified in the Local Rules of Practice for the U.S. Bankruptcy Court, District of Nevada. However, the OAG should be notified as soon as reasonably possible whenever Special Counsel identifies a need to increase the Total Contract Not to Exceed amount to complete the scope of work stated herein.

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and Commissions with Independent Contracts for Outside Legal or Professional Services).

## **ATTACHMENT BB**

### **Insurance Schedule**

#### **INDEMNIFICATION CLAUSE:**

Contractor shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State, its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs, (hereinafter referred to collectively as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State.

#### **INSURANCE REQUIREMENTS:**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the Indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

- A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

**ATTACHMENT BB**  
**Insurance Schedule**

1. **Worker's Compensation and Employers' Liability**

Worker's Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

2. **Professional Liability (Errors and Omissions Liability)**

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to:

**Eric Witkoski, Executive Director**  
**Colorado River Commission of Nevada**  
**555 East Washington Ave., Suite 3100**  
**Las Vegas, Nevada 89101**

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A-VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

**ATTACHMENT CC**  
**Special Counsel Guidelines and Billing Practices and Procedures**

**I. INTRODUCTION**

The State of Nevada (“State”), by and through the Office of the Attorney General (“OAG”), is pleased that Holley Driggs, LTD. has agreed to represent the State and the Colorado River Commission of Nevada (“Commission”) as “Special Counsel” under NRS 41.03435. The following are Special Counsel Guidelines and Billing Practices and Procedures (“Guidelines”) for providing legal services to the State or its agencies. *See* NRS 41.0339, 228.110.

The relationship between a client and law firm must be a somewhat flexible one in order to respond to the idiosyncrasies of each matter in a manner that will best serve the client’s goals and provide a fair fee for the law firm’s legal services. The high cost of modern litigation in both time and money, however, requires that the relationship have a basic structure that is understood by both client and the law firm. As explained in the State Administrative Manual (“SAM”), “[i]t is the policy of the State of Nevada to limit and monitor costs associated with the hiring of professional and expert services, including private attorneys who provide services to the State as independent contractors.” SAM § 0325 (State Agencies, Boards, and Commissions with Independent Contracts for Special Legal or Professional Services).<sup>1</sup>

The State is willing to discuss deviations from these Guidelines if such deviations will further the chances for success in the matter or will prevent an unduly harsh financial burden on Special Counsel. The State must require, however, that any such deviation be approved by the OAG’s General Counsel in advance. The State may periodically modify these Guidelines in its sole discretion. The State will provide Special Counsel reasonable notice prior to the effective date of any modifications.

**These Guidelines are not intended to interfere with Special Counsel’s ethical obligations, including the obligation to exercise independent legal judgment during the course of the representation, or to conflict with applicable federal or state laws, court rules, administrative rules, etc.** At all times, Special Counsel will provide professional legal advice and services at the highest level expected of law firms providing legal services in Nevada and the representation will be performed in a professional manner consistent with the professional rules governing the legal profession.

**II. ORIGINATION OF LEGAL WORK**

All legal work related to the matter for which Special Counsel has been engaged originated through the OAG. Special Counsel must not seek or accept direction for any new matters except through the OAG.

**III. GENERAL CONDUCT AND COMMUNICATIONS**

The matter for which you have been retained will be supervised by the Deputy Attorney General designated by the OAG to conduct actions, proceedings, and hearings for the Commission under NRS 538.151 (“Commission Counsel”). We have found it is helpful to have one attorney designated as Special Counsel’s principal contact with Commission Counsel. That “lead counsel” will work with Commission Counsel to decide what tasks need to be undertaken.

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<sup>1</sup> These Guidelines are intended to summarize and/or supplement the State’s policy under SAM § 0325 regarding contracts for outside legal services to a State agency. If a provision herein conflicts with SAM § 0325 or any other relevant State or OAG policy, then the relevant SAM or OAG policy controls.



Notification of Commission Counsel and/or the OAG Regarding Significant Changes or Developments: Special Counsel must notify and consult with Commission Counsel and/or the OAG promptly regarding all significant developments related to the legal services provided under this contract or any potential new legal matters. SAM § 0325(1). Should litigation involving potential liability for the State be threatened, commence, or significantly change during the term of this contract, Special Counsel must immediately inform the OAG in writing. *Id.* Additionally, Special Counsel must promptly advise the Risk Management Division of the Department of Administration regarding changes in litigation status that may have a fiscal impact on the State. *Id.*

Copies of Work Products: Special Counsel will promptly provide Commission Counsel with electronic copies of final versions of the written work product relevant to any legal matter, including correspondence and executed counterparts of any original pleadings or other matters of importance. SAM § 0325(2).

Work Product the Property of the State: All work products of Special Counsel resulting from the Contract are the exclusive property of the State. SAM § 0325(3). Upon completion, termination, or cancellation of the Contract, Special Counsel will surrender originals of all documents, including any work product in progress or draft form, objects, or other tangible items related to the work to the OAG. Contract §§ 10(E)(4), 21.

#### IV. CONFLICTS OF INTEREST

For purposes of employing special counsel under NRS 228.110, the OAG generally views a particular State agency, department, or subdivision as **Special Counsel's client, and not the entire State** as contemplated by Rule 1.13 of the Nevada Rules of Professional Conduct. With respect to the engagement described in the Scope of Work/Fee Agreement for Legal Representation, Attachment AA, the parties agree that the Commission is Special Counsel's client for purposes of conflicts of interest. However, as the legal adviser on all state matters arising within the Executive Branch, the Attorney General has the **responsibility and authority to protect and secure the State's interests and must oversee Special Counsel's** employment accordingly. NRS 228.110, 228.170, *see also* MODEL RULES OF PRO CONDUCT R. 1.13 cmt. 9 (Am. Bar Ass'n).

Conflicts of interest must be disclosed to the OAG and waived in writing prior to beginning a matter. SAM § 0325(4). Prior to engagement, the OAG expects Special Counsel to investigate and resolve any potential conflicts of interest, including any **"issue" conflicts of a more philosophic or policy-driven** basis that may compromise the position taken by the State or the Commission. The OAG expects Special Counsel to promptly discuss these issues with **the OAG's General Counsel** and the OAG will provide you with any additional information, if needed. Special Counsel has confidentially provided the OAG a written disclosure, which identifies active matters that involve the State.

Special Counsel must be sensitive both to direct conflicts of interest that representation of the Commission and other clients poses, and to the less direct, but nevertheless serious, conflicts that may arise from the Special Counsel's **advocacy, on behalf of other clients, of positions conflicting with** important State interests, particularly with respect to clients in the water and energy industries. Prior to engagement, Special Counsel should carefully review whether any conflicts of either type exist and, if so, bring those conflicts to General Counsel's attention. Although issue conflicts may not necessarily result

in a disqualification of Special Counsel, Special Counsel shall promptly advise the OAG of an engagement that will require the firm to advocate a position that may be adverse to **the Commission's** or State's legal interest or otherwise prejudicial to the **Commission's** or State's interests. The OAG in its sole discretion will, after consultation with Special Counsel, determine whether an impermissible conflict exists, or **whether other circumstances exist that would undermine the public's confidence if your representation continued.**

As the representation continues, the OAG expects that Special Counsel will bring to Commission Counsel's and General Counsel's immediate attention any change in the conflict review or inform Commission Counsel and General Counsel of any activity which might be viewed as, or trigger, a conflict of interest.

## **V. STAFFING**

The State expects that staffing levels will be appropriate for the complexity of the issues and the expertise of Special Counsel. Law firm management must provide controls so that the State is not billed for unnecessary work or for necessary work at an inappropriate rate.

### **A. Attorneys**

The State requires that one experienced lawyer have ultimate responsibility for staffing and other decisions for the matter. The lead counsel at the firm must identify, in advance, the other lawyers who will be working on the case and explain the role of each. She or he should always be aware of who is working on the matter, personally approving all assignments, and should also be aware at all times of what work is being done and how much time is being spent. She or he should ensure that all work is useful and done efficiently. She or he is expected to review and be able to explain all of Special Counsel's **time** charges and expense reimbursement requests. Further, she or he must ensure that the other lawyers and paralegals who work on the case are informed of and follow these Guidelines.

The number of additional lawyers will depend on the range and complexity of the issues. Care must be taken to ensure that the matter is not used as a training or proving ground for young lawyers.<sup>2</sup> If it becomes necessary to substitute an attorney or add additional attorneys (other than on an occasional basis), Special Counsel should consult with Commission Counsel before doing so. The same personnel should be assigned to the case throughout its course to eliminate the time necessary to acquaint new people with the facts and issues involved in the case and thereby avoid billing deductions.<sup>3</sup>

**Special Counsel's** attendance at meetings, hearings, depositions, or other case-related events should be handled by no more than one attorney.<sup>4</sup> Deviations from this general rule should be kept to a minimum. The State will not pay for the attendance of more than one attorney at such appearances without

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<sup>2</sup> SAM § 0325(6)(d) (explaining that "the State **will not pay** ... [f]ees for time spent educating junior professionals or associates").

<sup>3</sup> SAM § 0325(6)(c) (excluding "[f]ees for the training of personnel incurred as a result of staffing changes or increases during the term of the contract").

<sup>4</sup> SAM § 0325(6)(a) ("**Unless otherwise agreed in advance, it is expected that only one professional from contractor's organization will attend meetings, depositions and arguments and other necessary events, although a second person may be needed for trials and major hearings or meetings**").

prior approval. Staffing for trials and attendance at major hearings or depositions must be discussed in advance and approved by Commission Counsel.

The level of expertise of the attorney must be appropriate to the complexity of the task. Partners should not bill for tasks that can be performed competently by associates at a lower cost; similarly, associates should not bill for tasks that can be performed competently and more economically by paralegals. We expect that you will minimize legal expenses by assigning less senior attorneys or paralegals to less demanding tasks.

Both parties recognize that the appointment of Special Counsel is personal in nature and does not extend to any law firm that Special Counsel is associated with, a partner of, or for which Special Counsel serves as “of counsel.”

#### **B. Paralegals**

The appropriate use of paralegals is encouraged; however, payment for paralegal time is limited to those activities requiring their special expertise and does not extend to administrative, clerical, or technical tasks including but not limited to: photocopying, compiling, organizing, collating, or sorting documents; Bates stamping; picking up or making deliveries; database set up and maintenance; etc. that do not require any legal skill or acumen and are considered part of Special Counsel’s non-billable overhead.

#### **C. Other Personnel**

The State will not pay for the services of librarians, file clerks, data entry clerks, photocopy operators, secretaries, word processors, docket clerks, computer personnel, computer support personnel, messengers, and like staff. Time submitted by unapproved personnel on a matter will not be compensated.

#### **D. Contract or Temporary Labor**

We request that you notify us in advance before using any non-law firm personnel and let us participate in the arrangements with the vendor, including ensuring that there is no markup for services beyond the best rate that the State is able to negotiate.

#### **E. Getting Up-to-Speed**

We will not pay for substituted personnel or restart-up costs due to law firm attrition or some other cause other than at State’s behest. SAM § 0325(6)(c). Accordingly, activities including but not limited to file/material reviews or conferencing resulting from change of staff are considered part of Special Counsel’s non-billable overhead.

#### **F. Conferences and Intra-Firm Memoranda**

The State will pay only for necessary consultations and/or team strategy meetings relating to significant legal events concerning the State client. Although some degree of in-firm consultation is often necessary in large or complex matters, the average case does not require routine intra-office conferences and meetings. The State will not pay for such conferences and meetings in the ordinary course and requests

that discretion be exercised in the degree to which such consultations take place.

Where time reflects a written intra-office communication (*i.e.*, preparation and/or review of intra-firm memoranda) that appears to be for giving or receiving assignments, for bringing a timekeeper up to speed, or for the transmission of administrative, supervisory, or instructional content, the time is considered non-billable overhead.

#### **G. Duplication of Effort**

Special Counsel should not duplicate research, drafting, or other written work product previously performed and should take maximum advantage of model documents and appropriate documents from other similar matters. The State will not compensate Special Counsel for one professional or paraprofessional redoing the work of another.

#### **H. Legal Research**

Special Counsel was selected for its expertise in particular areas of law and practice and expects counsel to be well versed and current with the laws and procedures in the relevant specialty. Accordingly, the State does not expect to be charged for research relating to discovery and procedural motions or for research on issues that are typical or routine to the specialty. Similarly, we expect Special Counsel to maintain and use central research depositories. The State will pay for research to update prior work that will benefit the case or for issues that are novel or unique to the case. All attorney or paralegal research time in excess of seven (7) hours per month must be preapproved by Commission Counsel.

### **VI. BILLING REQUIREMENTS**

#### **A. Alternative Fee Arrangements**

The OAG encourages Special Counsel to consider fee arrangements other than hourly rates. On an ongoing basis, the OAG asks that Special Counsel propose arrangements, in appropriate circumstances, such as flat fees, fixed fees for phases of matters, result-oriented formulas or additional approaches other than a pure hourly rate method.

#### **B. Hourly Billing Rates**

Hourly billing rates for all personnel must be agreed upon in writing prior to the inception of the engagement. *See* Contract § 5 (incorporating Attachment AA, Scope of Work/Fee Agreement for Legal Representation). The State expects to pay the lowest rate offered to any other similarly situated non-pro bono client.

Any changes in billing rates for attorneys and other personnel must be approved by the OAG in writing and in advance of any work performed under the proposed new rates. Special Counsel should carefully consider the size of any proposed increase in billing rates.

Hourly billing rates should include all items of overhead. Overhead includes all administrative or general costs incidental to the operation of the firm. Overhead expenses will not be separately

reimbursable, absent prior approval.

### **C. Minimum Billing Increment/Maximum Hours Per Day/Travel Time**

All time records must represent the actual time required to perform the task or activity and must be kept in time increments of 1/10th of an hour or 6 minutes. SAM § 0325(6).

Timekeepers should not routinely work more than ten hours per day, although this may occur if counsel is in trial or working around-the-clock on an acquisition. SAM § 0325(6)(e). If a timekeeper works more than 10 hours a day for any other reason, a separate explanation is required. *See id.*

Most forms of transportation, with the exception of automobile travel, allow the performance of various forms of legal work. Charges for professional time during travel will not be reimbursable unless the time is actually used performing professional services or as otherwise arranged in advance. SAM § 0325(6)(b).

### **D. Billing Format**

Special Counsel is generally expected to submit monthly invoices within 30 days of the conclusion of the billing period, absent the OAG's prior consent to a longer delay. *See* Contract § 8. All charges must reflect the work performed within the billing period or a reasonable time before the billing period. Absent good cause, as defined by the OAG, the State will not pay for services or expenses incurred more than 90 days prior to the date the invoice is submitted.

Special Counsel's billing invoices must include a chronological listing of services, the name of each timekeeper whose work is being billed, the date of service, the number of hours expended by each timekeeper on each item, a description of the item of work and the rate at which those hours are billed. A copy of your internal computer printout may accompany the bill if that is most convenient.

Each task or activity must be separately itemized showing the date performed, the timekeeper performing the task, a descriptive explanation of the task or activity performed, the time spent on the specific task, and the dollar amount billed for each individual task or activity.<sup>5</sup>

To avoid payment delay, the Commission prefers that Special Counsel's **billing invoices** be submitted via email to Commission Counsel and cc: Admin Services Officer, Doug Beatty (dbeatty@crc.nv.gov), and Office Development Manager, Gina Goodman (ggoodman@crc.nv.gov).

**Blocked or combined billing will not be approved for payment.** The invoice containing such charges and descriptions will be returned to you for correction. Blocked or combined billing is defined as a billing entry that assigns one amount of time to more than one task or activity. Examples of blocked billing entries are:

- "Prepare for and attend deposition of Dr. Jones – 1.50 hours."
- "Receipt and review of co-defendants' reply to Allied World's motion to compel production of documents of 06/22/08; Conference with C. Thomas to prepare for her deposition on 11/09/08; Draft answers to plaintiffs' interrogatories of 01/02/08 – 3.00 hours."

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<sup>5</sup> See SAM § 0325(6) ("In every case all billings shall *describe all work performed with particularity* and by whom it was performed.") (emphasis added).

In the case of time charges that are written off, please include this information in the applicable invoice, including the amount of time written off and the personnel whose time is written off.

Task descriptions must identify each task in sufficient detail to permit the State to ascertain the benefit derived from such service.

Generic descriptions such as the following (without additional detail as described above) are not acceptable for billing purposes:

- attention to matter
- review case and issues
- conference
- review correspondence
- arrangements
- telephone call
- discovery
- meeting
- update strategy
- motion work
- work on project or case
- pleadings
- work on file
- prepare for meeting
- work on discovery
- receive/review documents
- research
- analysis

All third-party expenses from experts, vendors, consultants, court reporters, etc. paid by Special Counsel and billed with the monthly invoice as an itemized expense must comply with these guidelines, absent specific prior approval to the contrary, including the requirements of an itemized statement of work performed and substantiation of all expenses over \$500.

#### **E. Review of Monthly Invoices and Deductions of Fees and Charges**

The OAG will promptly review each invoice upon submission. A reviewer will apply deductions for billing entries that are inconsistent with or violate (1) a specific provision of the Contract, (2) SAM § 0325, and/or (3) these Guidelines. A reviewer may also apply additional deductions for charges that are otherwise inappropriate. The OAG will notify Special Counsel in writing of the deductions. If Special Counsel wishes to discuss and potentially ask the OAG's General Counsel or Commission Counsel to reconsider deductions, they may do so within 30 calendar days from the date on which the invoice is returned to Special Counsel by contacting Commission Counsel. On the 31<sup>st</sup> day after a reduced invoice is returned to Special Counsel, the OAG will consider the deductions final. Alternatively, Special Counsel may contact the Commission Counsel to indicate acceptance of the deductions. Special Counsel will be asked to resubmit a new or corrected invoice reflecting the deductions, and OAG will process payment upon receipt.

When the OAG representative and Special Counsel discuss deductions, Special Counsel will be asked, once the discussion has concluded, to resubmit a new or corrected invoice reflecting the agreed amounts. Although an OAG representative will discuss deductions with Special Counsel and give due consideration to Special Counsel's views, the OAG's determinations with respect to deductions are final. If Special Counsel does not appeal deductions or does not timely submit a new or corrected invoice

reflecting the OAG's final determinations and the reduced amount, the OAG reserves the right to remit payment at the reduced amount.

The State reserves the right to audit all fee and disbursement details that Special Counsel submits, as well as the corresponding legal file. *See* Contract § 9.

The State will promptly terminate the services of any Special Counsel whose billing practices raise questions about Special Counsel's **integrity, honesty, or compliance** with the applicable rules of professional conduct or these Guidelines.

## **VII. ADMINISTRATIVE AND CLERICAL WORK<sup>6</sup>**

Unless specifically authorized in advance, the State will not pay for administrative tasks, including but not limited to:

1. Preparing or reviewing billing statements.
2. Scheduling firm personnel.
3. Preparing budgets of time, staffing, or total costs of projected legal work.
4. Complying with these practices and procedures.
5. Maintaining a calendar or tickler system.
6. Researching general client or industry trends.
7. Researching issues of a generic nature.
8. Investigating conflicts of interest.
9. Opening and closing of files.

Additionally, the State will not pay for secretarial, summer associate, or law clerk time or overtime; or charges for **"file management," or word processing, without prior approval**. Further, the State does not pay for administrative work performed by lawyers, such as managing attorneys, without prior approval.

Unless specifically authorized in advance by Special Counsel, clerical charges are not acceptable, including but not limited to:

1. Routine copying, filing, or retrieving from the files; organization; and/or indexing of pleadings, updating case captions, preparing bills, invoices, correspondence, or other documents prepared by or received by Special Counsel.
2. Scheduling appointments, depositions, and meetings, making travel arrangements, and contacting court reporters.
3. Surcharged rates by paralegals or other support personnel (*e.g.*, an individual working on State matters in the evening and charging overtime, even though he or she could have performed this work during the day without a surcharge added to the rates.)
4. Cost of subscriptions or education expenses.
5. Professional association or other membership fees.

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<sup>6</sup> *See* SAM § 0325(7)(a), (d).

6. Storage charges.

As further explained below, the State considers administrative and clerical work to be part of Special Counsel's **office overhead** and will not pay such charges, unless otherwise authorized in advance. *See* SAM § 0325 (7)(a), (d).

## **VIII. DISBURSEMENTS**

### **A. Billing Requirements for Expense Reimbursement**

Each expense item must be separately itemized, showing the date the expense was incurred, an explanation of the charge, the amount of the charge, and the timekeeper who incurred the charge.

Reimbursable expenses will be compensated at actual cost. Actual cost is defined as the amount paid, net of any discounts, to a third-party provider of goods or services.

### **B. Internal Expenses**

Office Overhead: Items of expense considered overhead are part of the professional's hourly rate and are *not reimbursable*, unless otherwise agreed in advance. The term overhead includes, but is not limited to, office rent, conference rooms, furniture, equipment rental, computer software, office supplies, utilities (including heating and air conditioning on weekends), local transportation, mobile devices and data charges, billing activities, file opening and closing activities, data entry and storage, scanning, budget creation, commuting expenses, completion of conflicts checks, telephone and fax, books, bates numbering, docket systems (other than PACER), subscription services (*e.g.*, Westlaw, Lexis-Nexis, or other legal database charge), bar dues, professional associations, educational expenses, routine postage, entertainment, and local/overtime meals. *See* SAM § 0325(7)(a), (d), (e).

Photocopies: Special Counsel is expected to limit the making of photocopies. Photocopying will be reimbursed at Special Counsel's actual cost at a rate not to exceed 10 cents per page. SAM § 0325(7)(b), (c). For jobs greater than 400 pages, the work may be performed by an outside vendor or inside at actual cost at a rate that cannot, in any event, exceed seven (7) cents per page.

### **C. Outside Vendors and Other Expenses**

Retention of Experts and Consultants: Commission Counsel must be consulted prior to the retention of all experts or consultants. The State will reimburse Special Counsel for all pre-approved expert or consultant expenses at the actual cost of these services but will not reimburse Special Counsel for any such expenses where Commission Counsel was not consulted.

Computerized Legal Research: Upon prior approval from Commission Counsel, the State will reimburse Special Counsel at actual cost for necessary computerized legal research that goes beyond Special Counsel's **ordinary subscription services** (*e.g.*, Westlaw, Lexis-Nexis, or other legal database charge). An itemized bill must be submitted with appropriate documentation. SAM § 0325(7)(e).



Overnight Delivery and Messenger Services: Actual cost will be reimbursed for expenditures where the necessity can be demonstrated.

Extraordinary Expenses: Approval must be obtained from Commission Counsel prior to incurring extraordinary expenses such as computerized litigation support services, videotaping of depositions, and extraordinary travel.

#### **D. Travel Expenses**

NRS 281.160 outlines the State's policies regarding travel and subsistence for State officers, board and commission members, employees, and contractors, which includes Special Counsel. Special Counsel's travel expenses are restricted to the "same rates and procedures allowed State employees." SAM § 0320(6).<sup>7</sup> The SAM provides guidance on travel expenses and instructs State agencies to adopt detailed policies based on agency-specific needs. *See also* SAM §§ 0200 (addressing travel generally), 0206 (agency policies regarding travel). Accordingly, the OAG adopted a Travel Policy as part of the Nevada Attorney General Policy Manual. *See also* § 7.0, Travel Policy, revised July 2016. The travel provisions set forth herein are intended to summarize and/or supplement the State and OAG's travel policies. If a provision herein conflicts with the SAM or OAG's Travel Policy, then the relevant SAM or OAG travel provision controls.

Local Travel: Expenses, such as parking and tolls, incurred will be reimbursed at actual cost. However, the State will not pay for local travel, commuting, and/or transportation, which is defined as any form of transit to/from/between places of official business, such as travel to a court appearance or offsite meeting location, within 50 miles of Special Counsel's business address.

Out-of-Town Travel: Necessary out-of-town travel will be reimbursed at actual cost.

Air Transportation: The State will reimburse Special Counsel for the actual cost of air transportation, not to exceed coach/economy fare. Copies of flight coupons and itineraries must be submitted as appropriate documentation.

Hotels: The State requires Special Counsel to exercise discretion and prudence in connection with hotel expenditures. Itemized hotel bills must be submitted as appropriate documentation.

Meals: The State will reimburse Special Counsel for the reasonable costs of meals, supported by appropriate documentation. It is not appropriate to charge for lavish meals, and alcohol will not be reimbursed in conjunction with any travel. Group business meal charges at restaurants should include the number of individuals in attendance, their names, the name of their firm, and the purpose of the meeting.

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<sup>7</sup> However, certain portions of the State and OAG's travel guidelines are inapplicable to Special Counsel as an independent contractor. *E.g.*, SAM §§ 0216 (Use of Rental Cars), 0222 (Travel Advances from the Agency Budget Account), 0224 (State Sponsored Credit Cards for Official Travel Only), 0226 (Claims and Payments When Credit Cards Have Been Used); OAG Policy Manual §§ 7.2.1 (addressing use of a State vehicle), 7.4 (State charge cards).

Itemized bills must be submitted as appropriate documentation.

Rental Car, Taxis and Airport Parking: The State will reimburse Special Counsel for necessary rental cars and/or taxis at actual cost, not to exceed a standard or mid-size car rental rate. Airport parking costs for business purposes are also reimbursable at cost. Itemized bills must be submitted as appropriate documentation.

Amenities: Charges of a personal nature (such as entertainment, pay TV, minibar charges, and dry cleaning) will not be reimbursed.

## **IX. MEDIA REQUESTS AND PUBLIC RELATIONS**

Any media inquiry relating to the State of Nevada, including the State's relationship with Special Counsel, should be referred to Commission Counsel immediately. Special Counsel should not make statements to the media without securing advance approval.

We are aware that many law firms engage in comprehensive marketing. The State does not permit you to advertise or promote the fact of your relationship with the State or the Commission in your marketing efforts unless the OAG specifically agrees otherwise. Special Counsel may, however, list the Commission as a representative client.

SIGNATURE PAGE TO FOLLOW

## X. CLOSING

The OAG continually reviews and updates these Guidelines and welcomes any suggestions Special Counsel may have to limit and control costs while providing exceptional legal representation. Please acknowledge below the receipt and circulation of the Guidelines.

Once again, we appreciate your agreement to represent the Commission and we look forward to the successful conclusion of this matter.



Digitally signed by Leslie Nino  
Piro  
Date: 2022.11.02 13:05:24 -07'00'

.....  
**Leslie Nino Piro**

General Counsel  
State of Nevada  
Office of the Attorney General

Date: November 2, 2022  
.....

.....  
**Mary Langsner**

Lead Counsel  
Holley Driggs, LTD.

Date:  
.....

.....  
**David W. Newton**

Special Counsel to the  
Colorado River Commission  
State of Nevada  
Office of the Attorney General

Date:  
.....

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.....  
**Leslie Nino Piro**  
General Counsel  
State of Nevada  
Office of the Attorney General

Date: .....

.....  
**Mary Langsner**  
Lead Counsel  
Holley Driggs, LTD.

Date: 11/2/2022 .....

*David Newton*  
.....  
**David W. Newton**  
Special Counsel to the  
Colorado River Commission  
State of Nevada  
Office of the Attorney General

Date: 11/2/22 .....

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM F  
FOR MEETING OF NOVEMBER 8, 2022**

<b>SUBJECT:</b> <i>For Information Only:</i> Status update from Staff on the hydrological conditions, drought, and climate of the Colorado River Basin, Nevada’s consumptive use of Colorado River water, the drought contingency plan, impacts on hydropower generation, electrical construction activities and other developments on the Colorado River.
<b>RELATED TO AGENDA ITEM:</b> None.
<b>RECOMMENDATION OR RECOMMENDED MOTION:</b> None.
<b>FISCAL IMPACT:</b> None.

**STAFF COMMENTS AND BACKGROUND:**

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM G  
FOR MEETING OF NOVEMBER 8, 2022**

<b>SUBJECT:</b> <i>For Information Only:</i> Update on pending legal matters, including Federal Energy Regulatory Commission or Public Utilities Commission of Nevada filings.
<b>RELATED TO AGENDA ITEM:</b> None.
<b>RECOMMENDATION OR RECOMMENDED MOTION:</b> None.
<b>FISCAL IMPACT:</b> None.

**STAFF COMMENTS AND BACKGROUND:**

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM H  
FOR MEETING OF NOVEMBER 8, 2022**

**SUBJECT:**

*For Information and Possible Action:* Go into closed session, pursuant to NRS 241.015(3)(b)(2) to receive information from the Commission's Special Counsel regarding potential or existing litigation involving a matter over which the Commission has supervision, control, jurisdiction, or advisory power and to deliberate toward a decision on the matter or both and direct staff accordingly.

**RELATED TO AGENDA ITEM:**

None.

**RECOMMENDATION OR RECOMMENDED MOTION:**

**FISCAL IMPACT:**

None.

**STAFF COMMENTS AND BACKGROUND:**

Item H, included on the agenda to give the option for the Commission to have a closed session to address or ask questions of Special Counsel on specific legal matters.

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM I  
FOR MEETING OF NOVEMBER 8, 2022**

<b>SUBJECT:</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.)
<b>RELATED TO AGENDA ITEM:</b> None.
<b>RECOMMENDATION OR RECOMMENDED MOTION:</b> None.
<b>FISCAL IMPACT:</b> None.

**STAFF COMMENTS AND BACKGROUND:**



**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM J  
FOR MEETING OF NOVEMBER 8, 2022**

<b>SUBJECT:</b> Comments and questions from the Commission members.
<b>RELATED TO AGENDA ITEM:</b> None.
<b>RECOMMENDATION OR RECOMMENDED MOTION:</b> None.
<b>FISCAL IMPACT:</b> None.

**STAFF COMMENTS AND BACKGROUND:**

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM K  
FOR MEETING OF NOVEMBER 8, 2022**

<b>SUBJECT:</b> Selection of the next possible meeting date.
<b>RELATED TO AGENDA ITEM:</b> None.
<b>RECOMMENDATION OR RECOMMENDED MOTION:</b> None.
<b>FISCAL IMPACT:</b> None.

**STAFF COMMENTS AND BACKGROUND:**

The next meeting is tentatively scheduled for 1:30 p.m. on Tuesday, December 13, 2022, at the Clark County Government Center, Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM L  
FOR MEETING OF NOVEMBER 8, 2022**

<b>SUBJECT:</b> Adjournment.
<b>RELATED TO AGENDA ITEM:</b> None.
<b>RECOMMENDATION OR RECOMMENDED MOTION:</b> None.
<b>FISCAL IMPACT:</b> None.

**STAFF COMMENTS AND BACKGROUND:**