

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM A
FOR MEETING OF APRIL 11, 2023**

SUBJECT: Roll Call / Conformance to Open Meeting Law.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: None.
FISCAL IMPACT: 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 APRIL 11, 2023**

SUBJECT:

Comments from the public. Members of the public are invited to comment on items on the meeting agenda or on items not contained therein. No action may be taken on a matter raised during public comment until the matter itself has been specifically included on an agenda as an item for possible action.

RELATED TO AGENDA ITEM:

None.

RECOMMENDATION OR RECOMMENDED MOTION:

None.

FISCAL IMPACT:

None.

STAFF COMMENTS AND BACKGROUND:

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM C
FOR MEETING OF APRIL 11, 2023**

SUBJECT: <i>For Possible Action:</i> Approval of minutes of the February 14, 2023, meeting.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: None.
FISCAL IMPACT: None.

STAFF COMMENTS AND BACKGROUND:

The minutes of the February 14, 2023, meeting is enclosed for your review.

The Colorado River Commission of Nevada (Commission) meeting was held at 1:31 p.m. on Tuesday, February 14, 2023, at the Clark County Government Center, Commission Chambers, 500 South Grand Central Parkway, Las Vegas, NV 89155.

COMMISSIONERS IN ATTENDANCE

Chairwoman	Puoy K. Premsrirut
Vice Chairwoman	Kara J. Kelley
Commissioner	Justin Jones
Commissioner	Marilyn Kirkpatrick
Commissioner	Cody T. Winterton

COMMISSIONERS PRESENT VIA TELECONFERENCE

Commissioner	Allen J. Puliz
Commissioner	Dan H. Stewart

DEPUTY ATTORNEY(S) GENERAL

Special Counsel, Attorney General	David W. Newton
Special Counsel, Attorney General	Michelle D. Briggs

COMMISSION STAFF IN ATTENDANCE

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

OTHERS PRESENT: REPRESENTING

City of Boulder City
City of Henderson
Clark County Water Reclamation District
College of Southern Nevada
Governor's Office
Las Vegas Review Journal
Legislative Counsel Bureau Fiscal Division
Moss Adams
NV Energy
Overton Power District No.5
Southern Nevada Water Authority
Southern Nevada Water Authority

Joseph Stubitz
Becky Risse
Peter Beaulieu
Tina Dobbs
Sonia Joya
Colton Lochhead
Bailey Hall / Scott Jones
Keith Simovic
Jana Stewart
Mendis Cooper
Jordan Bunker
Laura Browning

DRAFT

COLORADO RIVER COMMISSION OF NEVADA

MEETING OF

February 14, 2023

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COLORADO RIVER COMMISSION OF NEVADA

MEETING OF

February 14, 2023

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The Colorado River Commission of Nevada (Commission) meeting was called to order by Chairwoman Premsrirut 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. Members of the public are invited to comment on items on the meeting agenda. (No action may be taken on a matter raised during public comment until the matter itself has been specifically included on an agenda as an item for possible action).

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

C. For Possible Action: Approval of minutes of the December 13, 2022, meeting.

Commissioner Kirkpatrick moved for approval the minutes of the December 13, 2022, meeting. The motion was seconded by Vice Chairwoman Kelley and approved by unanimous vote.

D. For Possible Action: Selection of Vice Chair of the Commission.

NRS 538.111 provides: "At the first meeting of the Commission in each calendar year, the Commission shall select the Vice Chair for the ensuing calendar year."

Commissioner Kirkpatrick moved to retain Commissioner Kara J. Kelley as the Vice Chair for the Commission. The motion was seconded by Commissioner Stewart and approved by unanimous vote.

E. For Possible Action: Consideration of and possible acceptance of the Commission's Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2022, and a report or comments from the Finance and Audit Subcommittee members regarding the report.

Chief, Finance and Administration, Doug Beatty presented the Annual Comprehensive Financial Report (ACFR) for Fiscal Year Ended June 30, 2022. The ACFR was reviewed by the Financial and Audit Subcommittee at the meeting held on December 13, 2022. At that point in time, Staff was awaiting confirmation on a couple of numbers that had been supplied by the State Controller's office. Within a week Staff received confirmation that those numbers were accurate.

During the Financial and Audit Subcommittee meeting, Moss Adams provided a presentation which showed no audit adjustments noted, nor any reportable, findings, or material weaknesses.

Mr. Beatty provided a copy of the Communications Letter which detailed the summary of the audit. He also provided a copy of the financial statements. Mr. Beatty announced that Mr. Keith Simovic with Moss Adams was present via remotely in this meeting for any questions.

Vice Chairwoman Kelley thanked Mr. Beatty, Gail Benton, Stephanie Salleroli, and Staff for their hard work. She further thanked the auditors, Moss Adams LLP for their commitment to be collaborative and recognition not only for their responsibilities to the Commission but also for their accuracy and excellent work with the agency Staff.

Vice Chairwoman Kelley stated the following for the record. Under the significant findings and issues which is part 2 of the Moss Adams "Communications with Those Charged with Governance" note that there are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred. The main significant accounting estimates relates to the pension and other post-employment benefits. This represents the amount of annual expense recognized for pensions and related pension liability and how they determine that it is reasonable. On page 3 there were no unusual transactions. There were no significant difficulties encountered in performing the Audit. There were no disagreements with management. There were no circumstances that affected the form and content of the auditor's report. They found no material corrected or uncorrected misstatements during the course of the engagement.

Vice Chairwoman Kelley believes it is important to point out the mentioned Items in a way that allows the public to understand when viewing our minutes in the shorthand that it was a positive audit for the Colorado River Commission of Nevada. She also believes this is the type of audit that is expected because of the support of our qualified Staff, but we are always welcome as a Commission to any input that would allow us to operate more efficiently, more responsibly or more in accordance with the regulatory measures.

Mr. Beatty added that this was the first year that Staff implemented GASB-87, the leases standards, which was a major new pronouncement and has had material effects on almost every government entity, as it did with the Commission, the calculations were very complex. The state controller's office got involved, but Moss Adams worked with Staff to ensure that the implementation was smooth, walking Staff through all the steps and being supportive. Staff were appreciative of the approach of the auditors to make sure that the standard was accurately implemented.

Chairwoman Premsrirut thanked Mr. Beatty and asked for clarification to read into the record if GASB statement 87 pertains to leases and its essentially lease assets and liabilities recorded at present value.

Mr. Beatty responded yes. Historically, many leases were not recorded as liabilities but now are recognized for the commitment that they are. GASB 87 New Lease Standard established a single lease accounting model based on the principle that leases are financings of the right to an underlying asset. Therefore, it creates an asset and then it creates a liability which is then amortized over the lease period.

Mr. Witkoski acknowledged Mr. Beatty, Gail Benton, and Stephanie Salleroli for doing a nice job with the audit in spite of having to do more work and despite losing one of our accountants in October 2022.

Chairwoman Premsrirut added that she had one point, and that was wanting to just highlight this primarily because it dispelled something that she had always been thinking, but despite the decreased levels where our hydropower has only production, it has only decreased slightly from last year. She was expecting it to be a lot more, and she stated that maybe that was just her misapprehension of the impact of the lower water levels. However, based on the audit and the financial highlights, it is actually only a slight decrease, so she was pleased to read that.

Commissioner Kirkpatrick moved for approval the consideration of and possible acceptance of the Commission's Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2022. The motion was seconded by Commissioner Jones and approved by unanimous vote.

F. *For Possible Action:* Consideration and possible action regarding the Governor's Executive Order 2023-003 (the "Executive Order"), to review executive agency regulations to streamline, clarify, reduce, or improve and report to the Governor's Office on or before May 1, 2023. Delegate authority to Executive Director to hold public hearing required by Executive Order.

Mr. Witkoski presented the Executive Order. In January, Governor Lombardo issued Executive Order 2023-003 *Order Freezing the Issuance of New Regulations and Requiring a Review of Existing Regulations by All Executive Branch Agencies, Departments, Boards and Commissions*. The Executive Order requires the Commission to;

- "Undertake a comprehensive review of the regulations subject to its enforcement."
- "On or before May 1, 2023, each department, agency, board and commission shall provide a report to the Governor's office detailing how the regulation subject to its enforcement can be streamlined, clarified, reduced or otherwise improved to ensure those regulations provide for the general welfare of the State without unnecessarily inhibiting economic growth."
- The Commission, "...shall provide a list of not less than ten (10) regulations recommended for removal."

The Executive Order does allow for some exceptions to the requirement for the preference for reduced regulation that is outlined in Section 5 of the Executive Order. The exceptions include regulations that affect public health, public safety and security, regulations that affect the powers, functions, and duties essential to the operation of the Commission.

Mr. Witkoski further spoke about history and recommendation. The Commission completed a rulemaking in June of 2018 and repealed 11 regulations and modified eight

regulations. Thus, there may be a case to be made the Commission was ahead of the curve on reducing regulations. However, there may be some other regulations that can be repealed to meet the Governor's request while maintaining other regulations would fit under the exceptions outlined in the Executive Order.

Staff recommended that the Commission allow the Executive Director to notice and preside over the public hearing to solicit comments consistent with the Executive Order regarding input on the Commission's regulations and prepare a report to send to the Governor's office on or before May 1, 2023, consistent with the Executive Order. At this time, an April Commission meeting is being planned and the Executive Director expects to report to the Commission in April the results of the review of the regulations.

Chairwoman Preamsrit asked if there were any discussions on this.

Mr. Witkoski responded, yes. The Executive Director plans on holding a Notice of Public Hearing to Solicit Comments on Regulations of the Commission, to obtain input from the public. Staff will probably have some proposals and after looking at the regulations, there are about five that could be repealed. Once Staff has feedback, there will be further internal discussions. The plan is to come back to the Commission on April 11, 2023, to present the findings. Mr. Witkoski acknowledged that Commissioner Kelley suggested the Commission hold a second public hearing in April as part of the Commission's meeting that would allow an opportunity for additional comments. Staff plans to include on the Commission's agenda in April a second public hearing on the regulations.

After the Commission meeting in April, Staff will compile a report to send to the Governor's office by May 1, 2023. Chairwoman Preamsrit commented that essentially, she construes this agenda item as establishing a protocol for issuing notices, receiving comments for rulemaking and proposed regulations. It also allows the Executive Director to issue those Notices and preside over the public hearings.

Mr. Witkoski agreed. However, it is his belief that the Colorado River Commission is not the target audience but will comply with the Executive Order. To save the Commissioners' time Staff recommended to delegate authority to the Executive Director to review the Commission's regulations in accordance with the Governor's Executive Order 2023-003, hold a public hearing for comment regarding such regulations, and respond to the Governor's Office by May 1, 2023.

Chairwoman Preamsrit commented that prior to this, she recalls the similar process, the comments and any agenda items or anything germane to what we were discussing with respect to the rules would be packaged and presented to the Commission. She asked if Staff would have that same reporting and transparency in this.

Mr. Witkoski responded, yes.

Commissioner Kirkpatrick commented that although it says 10 regulations, there are a lot of departments that will not be able to do that recommendation. She hopes that Staff could ask for other things that can actually have benefits for our Staff in areas of efficiency, like Human Resource (HR) processes and purchasing processes, things that they can

look at, some overall regulations that can maybe change. She believes this is a great opportunity to think outside the box.

Mr. Witkoski responded that Commissioner Kirkpatrick brought up a good point and added that Mr. Beatty and Ms. Goodman have been involved in this process to request procedure changes. There is an effort going on, to do some things on HR and some of the regulations. Some of them may require statute changes, which already have bills drafted. The state has a high vacancy rate; therefore, it is trying to simplify the hiring process and some of those changes are statutes or regulations.

Vice Chairwoman Kelley moved for approval the consideration and possible action regarding the Governor's Executive Order 2023-003 (the "Executive Order"), to review executive agency regulations to streamline, clarify, reduce, or improve and report to the Governor's Office on or before May 1, 2023 delegating authority to Executive Director to hold public hearing required by Executive Order, with the exception Staff will report back to the Commission on April 11, 2023, to present the findings during which the Commission will also accept additional comments from the public as attendees see fit. If the Commission is deluded with interest, it will be managed appropriately to make sure the Commission gets the information to the Executive Department as requested, with the caveat that as this process happens, the Commission will take into account regulations that if repealed or changed that might affect the ability for the Colorado Commission of Nevada to exercise in a more efficient way. The motion was seconded by Commissioner Jones and approved by unanimous vote.

G. <i>For Information Only: Status update on 2023 Legislative Session and related budget matters submitted for approval for Fiscal Years 2024 and 2025.</i>
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Mr. Witkoski commented that the Commission's budget was submitted as part of the governor's recommendation. It was pretty much unchanged, and the Commission's budget hearing has not yet been scheduled by the Legislature.

Chief of Finance and Administration, Douglas Beatty provided a status update on the 2023 Legislative Session and related budget matters submitted for approval for Fiscal Years 2024 and 2025. The budget was submitted, as the Commission had approved in their August 9, 2022, meeting, however there were some technical changes made by the Governor's Finance Office.

The Governor's Finance Office pulled a couple of contracts out for the Legislature to look at as enhancement units. The Commission got all the other enhancement units that were asked for in this budget with the exception of one, which was a contingency unit in case the Commission was removed from the Grant Sawyer State Office Building (GSB). However, it is unclear of what the actual plans are in terms of repairing or replacing the GSB, so that was not included in the Governor's Budget as a funded item.

Chairwoman Premsirut asked if there were any questions for Mr. Beatty. There were none.

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

Special Counsel Attorney General David Newton provided an update on three pending legal matters. He also introduced Michelle Briggs, the new Special Counsel to the Commission.

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

The order dismissing that matter was entered December 23, 2022. They have 60 days if they are going to appeal it. We have about a week, maybe 10 days, that they could still file an appeal in that matter.

Basic Water Company bankruptcy:

The bankruptcy matter is proceeding as expected. They have set a tentative date for the sale to be June 7, 2023, or something close to that date.

Navajo Nation v. Dept. Of the Interior:

The Navajo matter is currently set to be heard at the Supreme Court, March 20, 2023. We have been doing moot courts to prepare the Arizona attorneys who are handling the oral argument.

Chairwoman Premsrirut asked if the Commission has the same counsel representing our interests.

Mr. Newton answered, yes. The counsel is Fennemore Craig.

Chairwoman Premsrirut asked regarding the dismissal for Save the Colorado, if she could get a copy of that order for her review.

Mr. Newton responded, yes. A copy of that order will be provided to Chairwoman Premsrirut per her request. Mr. Newton added that it was dismissed with prejudice, which is somewhat unusual.

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.

Environmental Program Manager, Warren Turkett, Ph.D., and Senior Assistant Director, Sara Price presented:

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

Hydrology and River Updates

- Precipitation and Temperature
- Colorado Basin River Forecast Center – Lake Powell 104 Group
- Lake Powell End-of-Month Elevations
- Lake Mead End-of-Month Elevations
- Water Use In Southern Nevada
- Negotiations and Updates

Supplemental Environmental Impact Statement for 2007 Guidelines

- Six Basin States (Nevada, Arizona, Colorado, Utah, New Mexico, Wyoming) submitted a Consensus Based Modeling Alternative (CBMA) to Reclamation on January 31, 2023, proposing a robust set of modeling assumptions for Reclamation to evaluate and incorporate in the development of the SEIS.
- California submitted a separate alternative for Reclamation to consider on January 31, 2023, that differs from the above six state proposal most particularly in the absence of approximately 1.5 MAF of infrastructure protection volume assessments based on evaporation and system losses in the lower basin.
- Both the Six-State CBMA and the California alternative seek to protect Lake Powell and Lake Mead at 3500 and 1000 feet respectively.
- Reclamation plans to consider the submitted proposals and issue a draft SEIS in April, allow for a public comment period and publish a Record of Decision to be released over the summer.
- Despite the current proposal differences, the Seven Basin States are still continuing to negotiate towards a Seven-state consensus alternative.

Chairwoman Premsrirut asked Ms. Price if the primary distinction with the California alternative is that they do not want consideration of evaporation and those factors to be part of the process in determining the operations now.

Ms. Price responded that right now the evaporation system loss assessment that is part of the six states proposal has a formula. It is a formula that was originally proposed by SNWA and was vetted to the seven states. In the lower basin it has everything to do with the orientation of how far down the reaches you are. California being at the end of the line, those agricultural communities would take the biggest hit under the proposed formula. This is included in the six states' modeling proposal. California continues to maintain that runs amok of the priority system, and that is where the rub is. Now, whether evaporation losses get calculated as such or whether it is called something different, or whether we can make up those differences in reductions somewhere else, or whether we can get California to participate in a way that is more comfortable for them is really what is to be seen.

J. Comments from the public. Members of the public are invited to comment on items on the meeting agenda or on items not contained therein. No action may be taken on a matter raised during public comment until the matter itself has been specifically included on an agenda as an item for possible action.

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

K. Comments and questions from the Commission members.

Chairwoman Premsrirut asked if there were any comments or questions from any Commission members.

Chairwoman Premsrirut commented that she had one token of gratitude for Staff as well as the area manager of Hoover Dam, Glen Canyon Dam, Len Shilling. Mr. Schilling was kind enough to take time out of his busy schedule and take us on one of the most in-depth tours that she has ever been on, not just of Hoover Dam, but on any type of machine infrastructure construction. It was soup to nuts one of the most informative, thorough, really shocking things to see, and the fact that he was able to accommodate us. She also thanked Mr. Witkoski and Staff for carving time and accommodating this tour. If anyone ever has the chance to do that, she strongly recommends they do.

L. Selection of the next possible meeting date.

The next meeting is tentatively scheduled for 1:30 p.m. on Tuesday, March 14, 2023, at the Clark County Government Center, Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.

M. Adjournment.

The meeting was adjourned at 2:13 p.m.

Eric Witkoski, Executive Director

APPROVED:

Puoy K. Premsrirut, Chairwoman



Colorado River Commission of Nevada

Hydrology and River Updates

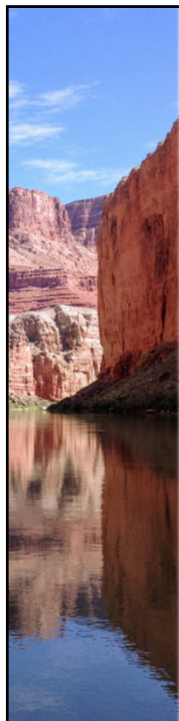
Warren Turkett

February 14, 2023

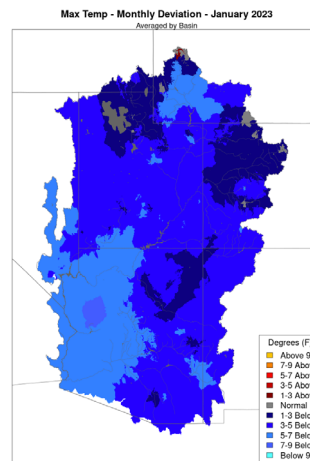
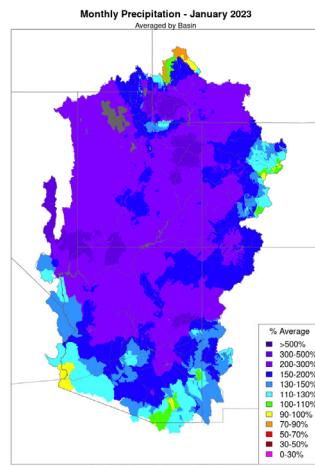


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Precipitation and Temperature

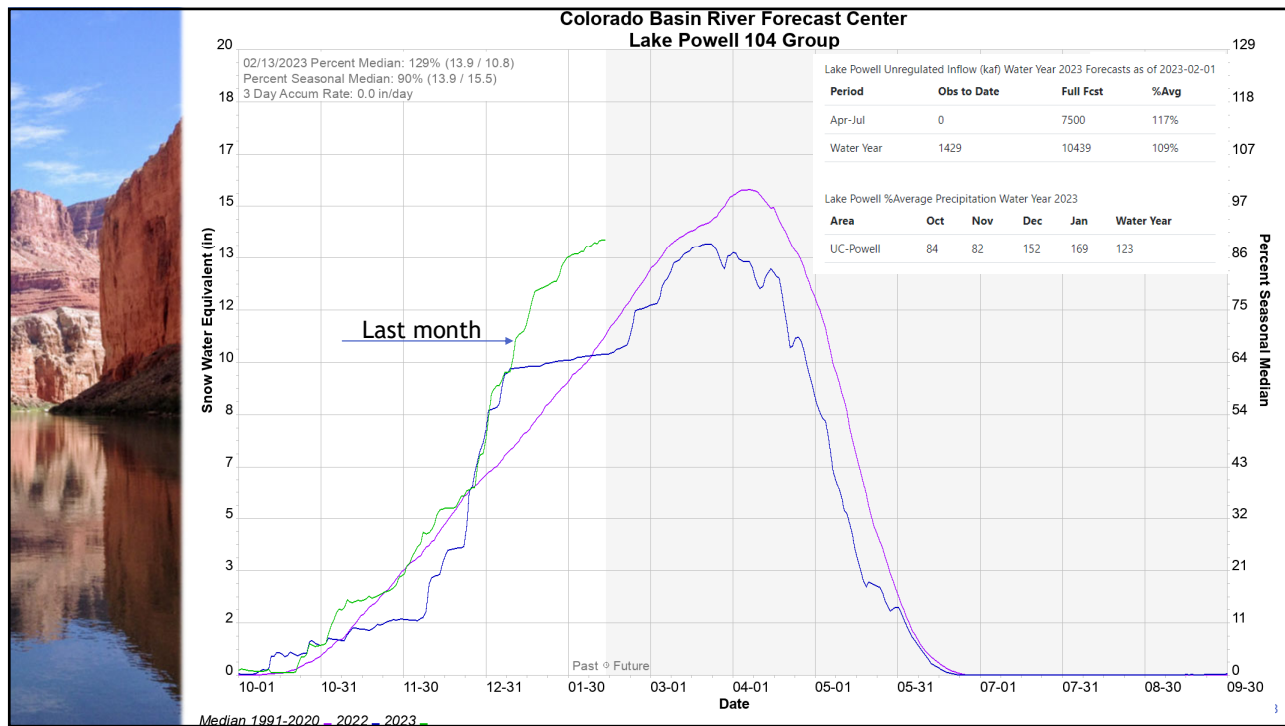


Lake Powell %Average Precipitation Water Year 2023

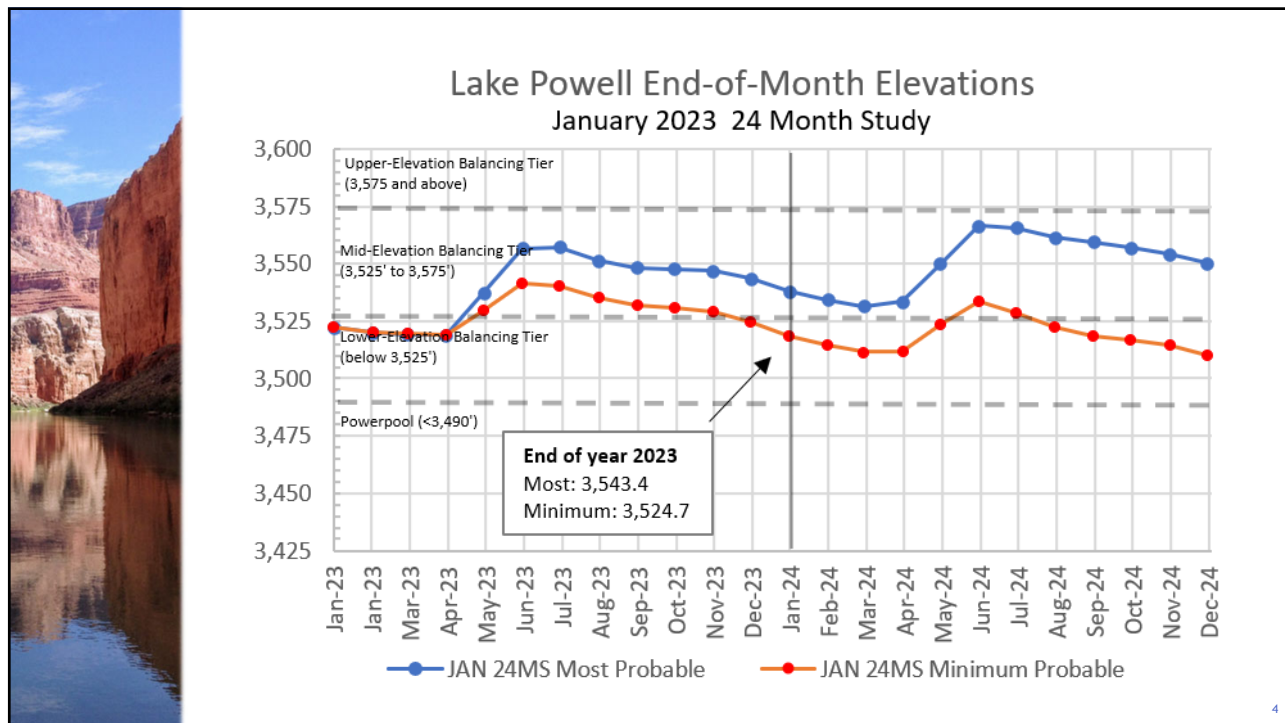
Area	Oct	Nov	Dec	Jan	Water Year
UC-Powell	84	82	152	166	122

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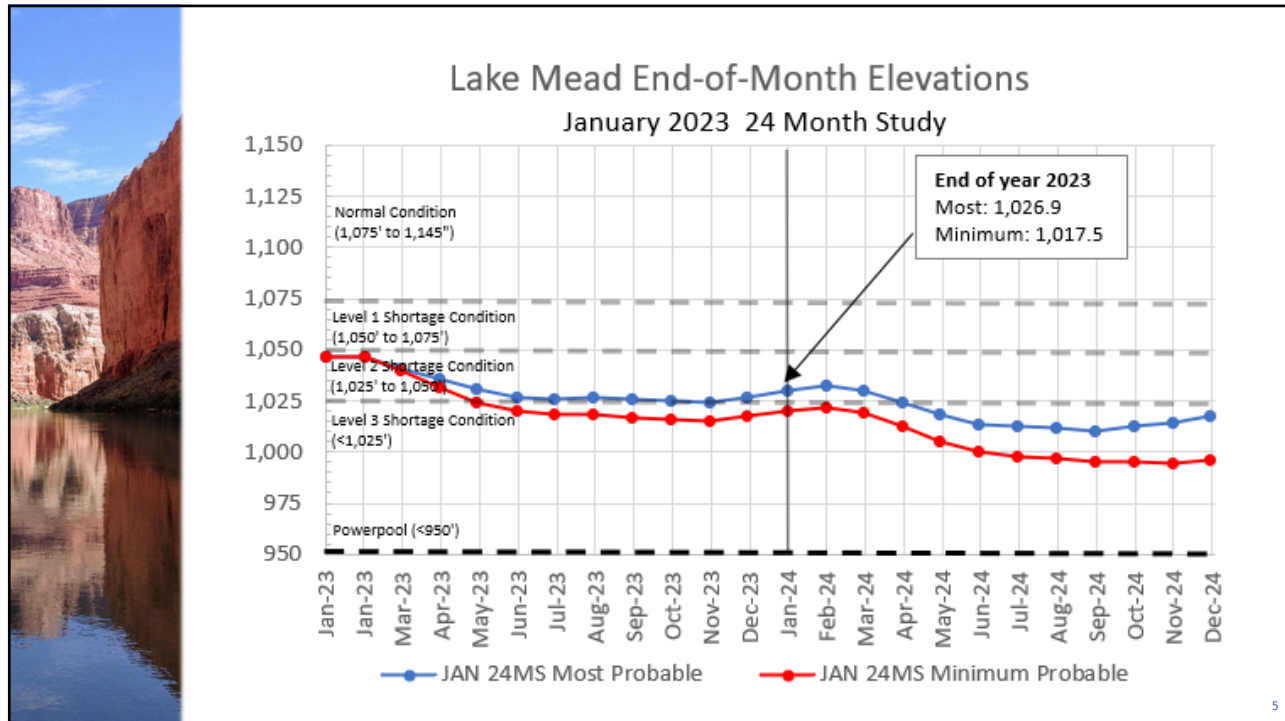
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Water Use In Southern Nevada

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
Remaining		49,832 (17%)

2022 Southern Nevada Water Use ¹		Acre-Feet
Nevada Annual Allocation		300,000
2022 Drought Contingency Plan contribution		-8,000
Interim Guidelines Shortages		-13,000
Diversions		465,691
Return Flow Credits		242,083
Consumptive Use		223,607
Remaining		55,393 (18%)

¹ Water use data for 2022 is provisional.

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Negotiations and Updates

Supplemental Environmental Impact Statement for 2007 Guidelines

- 6 Basin States (Nevada, Arizona, Colorado, Utah, New Mexico, Wyoming) submitted a Consensus Based Modeling Alternative (CBMA) to Reclamation on January 31, 2023, proposing a robust set of modeling assumptions for Reclamation to evaluate and incorporate in the development of the SEIS.
- California submitted a separate alternative for Reclamation to consider on January 31, 2023, that differs from the above 6 state proposal most particularly in the absence of approximately 1.5 MAF of infrastructure protection volume assessments based on evaporation and system losses in the lower basin.
- Both the 6-State CBMA and the California alternative seek to protect Lake Powell and Lake Mead at 3500 and 1000 feet respectively.
- Reclamation plans to consider the submitted proposals and issue a draft SEIS in April, allow for a public comment period and publish a Record of Decision to be released over the summer.
- Despite the current proposal differences, the 7 Basin States are still continuing to negotiate towards a 7-state consensus alternative.

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**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM D
FOR MEETING OF APRIL 11, 2023**

SUBJECT: <i>For Possible Action:</i> NOTICE OF PUBLIC HEARING AND WORKSHOP PURSUANT TO THE GOVERNOR’S EXECUTIVE ORDER 2023-03 AND NRS 233B TO SOLICIT COMMENTS ON REGULATIONS OF THE COLORADO RIVER COMMISSION OF NEVADA (COMMISSION), NEVADA ADMINISTRATIVE CODE 538 (NAC 538) including the consideration of and possible action to approve, modify, or reject, in whole or in part, the proposed revised regulation NAC 538.
RELATED TO AGENDA ITEM: None.
RECOMMENDATION OR RECOMMENDED MOTION: Staff recommends the Commission direct Staff to submit to the Governor’s office a report showing the proposed changes and include any comments the Commission receives on the proposed changes.
FISCAL IMPACT: None.

STAFF COMMENTS AND BACKGROUND:

A. Process

The Commission is holding a Public Hearing pursuant to the Governor’s Executive Order 2023-003 that froze the issuance of new regulations and required a review of existing regulations pursuant to 233B. The purpose of the Public Hearing is to take comment from the public regarding the Commissions’ regulations, the proposed changes submitted by staff in the notice and to take further comment for any other suggested changes. Following the Public Hearing, a report will be compiled and submitted to the Governor’s Office by May 1, 2023, indicating what regulations the Commission recommends for approval and modification.

The Public Hearing is also noticed as a Workshop that meets the requirements of NRS 233B for the regulation change process. Staff recommends the Public Hearing also be viewed as a Workshop so that the step of regulation change has been met. Later this year, if it is determined to go forward with the changes outlined in the notice, the Commission may next hold an adoption hearing without having to hold another Workshop.

B. Proposed Changes

The Staff is proposing five changes to the Commission’s regulations. They are as follows:

NAC 538.025 - Move to follow NAC 538.385. - The regulation defines Schedule D Hoover Power, and the move places the regulations where Schedule A, B and C are defined.

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM D
FOR MEETING OF APRIL 11, 2023**

NAC 538.370 – Repeal – This regulation is associated with the uprating at Hoover Dam that occurred in the 1980s. The regulation is no longer necessary.

NAC 538.460 – Repeal – this regulation involves minimum reserves that a contractor of hydropower must maintain. The regulation is not necessary. Reliability standards are no longer voluntary and under the enforcement authority of the North American Electric Reliability Corporation (NERC).

NAC 538.470 – The regulation references capacity for various load factors from the hydropower projects. The regulation is not needed since the load factors made available from the Western Area Power Administration for the hydropower projects is covered in the respective contracts.

NAC 538.495 – The regulation involved offering new contracts from the Boulder Canyon Project (Hoover) prior to October 1, 2017. The requirement was met, and the regulation is no longer required.

C. Results of the March 15, 2023, Public Hearing

The proposed changes cited above were discussed at the Public Hearing that was held by staff as directed at the February Commission meeting. No public comments were received at the Public Hearing and no follow-up comments were received.

STATE OF NEVADA

JOE LOMBARDO, *Governor*
PUOY K. PREMSRIRUT, *Chairwoman*
KARA J. KELLEY, *Vice Chairwoman*
ERIC WITKOSKI, *Executive Director*



JUSTIN JONES, *Commissioner*
MARILYN KIRKPATRICK, *Commissioner*
ALLEN J. PULIZ, *Commissioner*
DAN H. STEWART, *Commissioner*
CODY T. WINTERTON, *Commissioner*

**COLORADO RIVER COMMISSION
OF NEVADA**

**NOTICE OF PUBLIC HEARING TO
SOLICIT COMMENTS ON REGULATIONS OF
THE COLORADO RIVER COMMISSION OF NEVADA
NEVADA ADMINISTRATIVE CODE 538 (NAC 538)**

The Executive Director for the Colorado River Commission of Nevada ("Commission") is holding a public hearing pursuant to the Governor's Executive Order 2023-03 (Executive Order), that froze the issuance of new regulations and required a review of existing regulations by the Commission. The Public Hearing will take place on **March 15, 2023, at 11:00 a.m.**

The public may attend this hearing via videoconference by Webex link: www.crc.nv.gov, under the meeting tab or in person at the Grant Sawyer State Office Building, Room 1100, 555 E. Washington Avenue, Las Vegas, NV 89101.

The purpose of this hearing is to gather public comment on the Commission's regulations under NAC 538, to discuss changes the Commission Staff is considering to NAC 538, and to gather public comment on those potential changes and other possible changes pursuant to the Executive Order.

A copy of the Commission's regulations and recent changes to the regulations is available on the Commission's website at: <http://www.crc.nv.gov/index.php?p=info&s=auth>.

Persons wishing to propose changes to NAC 538 may provide oral and/or written comments at the hearing or submit written comments no later than 5 p.m. on Tuesday, March 14, 2023 to the Commission via email at crcadmin@crc.nv.gov, or by mail to the Commission's office at 555 E. Washington Avenue, Suite 3100, Las Vegas, NV 89101.

NOTICE: The Commission is pleased to make reasonable accommodations for persons who are disabled and wish to attend the hearing. If special arrangements are required, please notify the Colorado River Commission of Nevada in writing, 555 E. Washington Avenue, Suite 3100, Las Vegas, NV 89101 or by calling (702) 486-2670 at least 48 business hours prior to the meeting.

Notice of Public Hearing to Solicit Comments on the Regulations of the Colorado River Commission of Nevada, Nevada Administrative Code 538 (NAC 538) has been sent to all persons on the Commission's mailing list and has been posted at the following locations:

Commission website: www.crc.nv.gov

Nevada Public Notice website: <http://notice.nv.gov>

Legislative Counsel Bureau website: www.leg.state.nv.us

Dated: February 28, 2023

STATE OF NEVADA

JOE LOMBARDO, *Governor*
PUOY K. PREMSRIRUT, *Chairwoman*
KARA J. KELLEY, *Vice Chairwoman*
ERIC WITKOSKI, *Executive Director*



JUSTIN JONES, *Commissioner*
MARILYN KIRKPATRICK, *Commissioner*
ALLEN J. PULIZ, *Commissioner*
DAN H. STEWART, *Commissioner*
CODY T. WINTERTON, *Commissioner*

**COLORADO RIVER COMMISSION
OF NEVADA**

**NOTICE OF PUBLIC HEARING AND WORKSHOP
TO SOLICIT COMMENTS ON REGULATIONS OF
THE COLORADO RIVER COMMISSION OF NEVADA
ADMINISTRATIVE CODE 538 (NAC 538)**

The Colorado River Commission of Nevada ("Commission") is holding a workshop and public hearing pursuant to the Governor's Executive Order 2023-03 (Executive Order), that froze the issuance of new regulations and required a review of existing regulations pursuant to NRS 233B. The Workshop and Public Hearing will take place on April 11, 2023, at 1:30 p.m. during the Commission's regularly scheduled meeting.

The public may attend this workshop and public hearing via videoconference by Webex link: www.crc.nv.gov, under the meeting tab or in person at the Clark County Government Center, Commission Chambers, 500 S. Grand Central Parkway, Las Vegas, NV 89155.

The purpose of this workshop and public hearing is to gather public comment on the Commission's regulations under NAC 538, to discuss changes the Commission Staff is proposing to NAC 538, and to gather public comment on those potential changes and other possible changes pursuant to the Executive Order.

A copy of the Commission's current regulations and recent changes made to the regulations in 2018, 2021, and 2022 is available on the Commission's website at: <http://www.crc.nv.gov/index.php?p=info&s=auth>.

A copy of the Staff's recommended changes to the regulations in response to the Executive Order is attached hereto and is available for view or printing at the Commission's website at the link above.

Persons wishing to comment on or propose changes to NAC 538 may provide oral and/or written comments at the hearing or submit written comments no later than 5 p.m. on Monday, April 10, 2023 to the Commission via email at crcadmin@crc.nv.gov, or by mail to the Commission's office at 555 E. Washington Avenue, Suite 3100, Las Vegas, NV 89101.

NOTICE: The Commission is pleased to make reasonable accommodations for persons who are disabled and wish to attend the hearing. If special arrangements are required, please notify the Colorado River Commission of Nevada in writing, 555 E. Washington Avenue, Suite 3100, Las Vegas, NV 89101 or by calling (702) 486-2670 at least 48 business hours prior to the meeting.

Notice of Public Hearing to Solicit Comments on the Regulations of the Colorado River Commission of Nevada, Nevada Administrative Code 538 (NAC 538) has been sent to all persons on the Commission's mailing list and has been posted at the following locations:

Commission website: www.crc.nv.gov

Nevada Public Notice website: <http://notice.nv.gov>

Legislative Counsel Bureau website: www.leg.state.nv.us

Dated: March 24, 2023

**Administrative Code Chapter 538
Regulation Review pursuant to Executive Order 2023-03**

Name of department, agency, board, or commission: Colorado River Commission of Nevada

Address: 555 E. Washington, Suite 3100

City: Las Vegas, NV

Zip: 89101

Telephone: 702-486- 2670

Name of Director: Eric Witkoski

Director Email: ewitkoski@crc.nv.gov

Section 1 - Comprehensive Review of Regulations / Section 3 – Mandatory Meeting and Report

The above-named department, agency, board, or commission conducted a comprehensive review of the regulations subject to its enforcement that can be streamlined, clarified, reduced, or otherwise improved to ensure those regulations provide for the general welfare of the State without unnecessarily inhibiting economic growth. The regulations identified for Section 1 of Executive Order 2023-03 are listed below with the information as required on page 1 of the instruction sheet on the following pages of the report:

Regulation/ Information as required on page 1	Page number
1.NAC 538.025 move for organization clarity	
2.	
3.	
4.	
5. ** The Commission in LCB File No. R033-18, the Commission clarified 8 regulations, and LCB File No. 071-22A revised and clarified one regulation.	
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**Administrative Code Chapter 538
Regulation Review pursuant to Executive Order 2023-03**

Section 2 – Regulation for Removal / Section 3 – Mandatory Meeting and Report

The above-named department, agency, board or commission conducted a comprehensive review of the regulations subject to its enforcement and identified the following ten (10) or more regulations recommended for removal. The regulations identified for Section 2 of Executive Order 2023-03, ranked in descending order of priority, are listed below with the information as required on page 1 of the instruction sheet on the following pages of the report:

Regulation/Information as required on page 1	Page number
1. NAC 538.370	
2. NAC 538.460	
3. NAC 538.470	
4. NAC 538.495	
5.	
6. ** In 2018 in LCB File R033-18, the Commission repealed 11 regulations.	
7. In 2020 in LCB File R156-20A repealed one regulation.	
8.	
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PROPOSED REGULATION CHANGES PURSUANT TO GOVERNOR'S EXECUTIVE ORDER 2023-03

Effective/ Revised	Recommendation	Regulation
Eff. 2014	Move to "Marketing of Power" section to follow NAC 538.385 where definitions of other Schedule A, B and C power are defined.	<p>NAC 538.025 "Schedule D" defined. (NRS 538.181, 538.201) "Schedule D" means the schedule appearing at 43 U.S.C. § 619a(a)(2)(A) which specifies the amount of:</p> <ol style="list-style-type: none"> 1. Contingent capacity of the Hoover power plant; and 2. Associated firm energy, allocated in that schedule for allocation to new allottees.
Eff. 1985	Repeal - associated with the uprating of Hoover in the 1980s. No longer needed.	<p>NAC 538.370 "Program for increasing capacity" defined. (NRS 538.201) "Program for increasing capacity" means the program for increasing the capacity of existing generating equipment and appurtenances at the Hoover power plant authorized by 43 U.S.C. § 619. This is equivalent to the uprating program referred to in Public Law 98-381.</p>
Eff. 2014	Repeal - not needed. Compliance with all reliability standards, including minimum reserve requirements, is no longer voluntary. Northern Electric Reliability Organization (NERC) has enforcement authority to ensure compliance.	<p>NAC 538.460 Minimum reserves of contractor; exception. (NRS 538.181, 538.201) Each contractor must meet the minimum recommendation for reserves set by the Western Electricity Coordinating Council unless the contractor receives power from the Commission over the facilities of a utility that meets the minimum recommendation for reserves set by the Western Electricity Coordinating Council.</p>
Eff. 2001	Repeal - not needed. The CRC markets the products it receives from WAPA. Product parameters, including load factors are addressed in WAPA's contract with the CRC and the CRC's contracts with its customers.	<p>NAC 538.470 Capacity offered at varying load factors; identification. (NRS 538.181, 538.201) Capacity from the Boulder Canyon Project, Parker-Davis Project and Salt Lake City Area Integrated Projects will be:</p> <ol style="list-style-type: none"> 1. Offered by the Commission at varying load factors; and 2. Identified by the Commission in an exhibit to the contract to purchase power.

Eff. 2014	Repeal requirements for October 1, 2017 have been met	NAC 538.495 New contracts. (NRS 538.181 , 538.201) Before the expiration of a contract for the delivery of long-term power from the Boulder Canyon Project designated in Schedule A or Schedule B pursuant to subsection 1 of NAC 538.500 , the Commission will offer the contractor a new contract for the delivery of such power for the period commencing on October 1, 2017, and ending on September 30, 2067.
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CHAPTER 538 - COLORADO RIVER COMMISSION OF NEVADA

GENERAL PROVISIONS

<u>538.005</u>	Definitions.
<u>538.010</u>	“Commission” defined.
<u>538.025</u>	“Schedule D” defined.
<u>538.030</u>	Construction.
<u>538.040</u>	Deviation from regulations.
<u>538.050</u>	Severability.
<u>538.070</u>	Communications.

PRACTICE AND PROCEDURE BEFORE COLORADO RIVER COMMISSION
OF NEVADA

General

<u>538.075</u>	Scope; power of Executive Director.
<u>538.080</u>	Classification of parties.
<u>538.090</u>	Staff of Commission may be party to proceeding.
<u>538.100</u>	Appearances.
<u>538.103</u>	Service lists.
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<u>538.130</u>	Pleadings: Style; verification.
<u>538.140</u>	Pleadings: Construction.
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<u>538.160</u>	Pleadings: Amendments.
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<u>538.180</u>	Complaints: General requirements.
<u>538.190</u>	Complaints: Answer.
<u>538.195</u>	Presiding officers: Appointment; draft orders; review of decisions.
<u>538.200</u>	Prehearing conference.
<u>538.210</u>	Hearings: Notice; location.
<u>538.220</u>	Hearings: Continuances.
<u>538.230</u>	Hearings: Failure of party to appear.
<u>538.240</u>	Hearings: Conduct.
<u>538.250</u>	Hearings: Presentation of evidence.
<u>538.260</u>	Hearings: Consolidation.

<u>538.270</u>	Hearings: Stipulations.
<u>538.280</u>	Hearings: Official notice.
<u>538.290</u>	Hearings: Decision by Commission.
<u>538.300</u>	Hearings: Rehearings.
<u>538.310</u>	Hearings: Records.
<u>538.320</u>	Petitions for declaratory orders and advisory opinions.
<u>538.330</u>	Petition for adoption, filing, amendment or repeal of regulation.

Allocation of Schedule D Power

MARKETING OF ELECTRIC POWER

General Provisions

<u>538.340</u>	Definitions.
<u>538.350</u>	“Contractor” defined.
<u>538.358</u>	“Operating year” defined.
<u>538.360</u>	“Power” defined.
<u>538.370</u>	“Program for increasing capacity” defined.
<u>538.375</u>	“Schedule A” defined.
<u>538.380</u>	“Schedule B” defined.
<u>538.385</u>	“Schedule C” defined.
<u>538.390</u>	“Western” defined.
<u>538.395</u>	Applicability.
<u>538.400</u>	Marketing area for resources.
<u>538.410</u>	Requirements of applicant seeking to contract with Commission for delivery of Schedule A, B or C power from Boulder Canyon Project and for delivery of power from Parker-Davis Project and Salt Lake City Area Integrated Projects.
<u>538.420</u>	Seasons to be defined by Western.
<u>538.430</u>	Transmission of power for delivery beyond designated points of delivery.
<u>538.440</u>	Reallocation of power if contractor loses or surrenders entitlement to power.
<u>538.455</u>	Procedures for reallocation of power: Notice requirements; application and review; hearing; Commission decision.
<u>538.460</u>	Minimum reserves of contractor; exception.
<u>538.470</u>	Capacity offered at varying load factors; identification.

[538.480](#) Offer of certain energy when available to certain entities; observance of restrictions.

General Terms and Conditions

[538.495](#) New contracts.

[538.500](#) Terms of contracts; expiration.

[538.505](#) Provisions required to be included in contract for delivery of Schedule A, B or D power from Boulder Canyon Project on or after October 1, 2017.

[538.510](#) Transfer of excess power; observance of restrictions; proceeds credited to contractor; obligation not relieved.

[538.520](#) Firming energy.

[538.530](#) Establishment and maintenance of program for integrated resource planning or similar program.

[538.540](#) Limitations on resale; certain electric utilities and Nevada Power Company to pass benefits through to certain customers.

[538.550](#) Assignment or other transfer of rights.

[538.560](#) Reduction of allocation of power to contractor.

[538.570](#) Meters; disconnection of certain contractor's power for failure to pay invoice.

[538.590](#) Capacity and energy available each month; scheduling and accounting procedures; patterns of usage; allowance for certain reductions in capacity.

[538.610](#) Rates, charges and costs; requirement to notify Commission of certain decreases in load.

[538.620](#) Scheduling, accounting and delivery of power procedures.

[538.630](#) Maximum rate of delivery.

[538.640](#) Minimum rate of delivery.

[538.650](#) Points of delivery and voltages.

[538.660](#) Losses.

[538.670](#) Points of receipt; charge for transmission.

Contractors

[538.744](#) Requirements for collateral, payments to cash working capital fund or prepayment; determination of creditworthiness.

[538.746](#) Nonperformance: Notice; suspension of allocation of power; temporary reallocation of power;

reinstatement of allocation of power; termination of allocation and reallocation of power.

WATER OF THE COLORADO RIVER

Federal Contracts for Delivery of Water

- [538.750](#) **Applicability of provisions to applications for federal contracts.**
- [538.755](#) **Policy of Commission.**
- [538.760](#) **Quantifiable present and future demand for water required.**
- [538.765](#) **Required and prohibited uses of water.**
- [538.770](#) **Access to adequate facility for transportation of water.**
- [538.775](#) **Program for conservation of water.**
- [538.780](#) **Factors Commission required to consider.**
- [538.785](#) **Factors Commission authorized to consider.**
- [538.790](#) **Rejection of application which conflicts with state or federal statute or contract.**
- [538.795](#) **Recommendations to Secretary of the Interior.**

Original Appropriations of Water

- [538.800](#) **Filing of applications regarding original appropriations.**
- [538.805](#) **Application for original appropriation: Contents.**
- [538.810](#) **Application to change place of diversion, manner of use or place of use: Contents.**
- [538.815](#) **Submission of additional information concerning application.**
- [538.820](#) **Availability, inspection and copying of applications, objections and comments.**
- [538.825](#) **Application, amendment or supplement filed before August 12, 1991.**
- [538.830](#) **Applicability of provisions to applications for extensions of certain contracts for delivery of water.**

GENERAL PROVISIONS

NAC 538.005 Definitions. ([NRS 538.201](#)) As used in this chapter, unless the context otherwise requires, the words and terms defined in [NAC 538.010](#) and [538.025](#) have the meanings ascribed to them in those sections.

(Added to NAC by Colorado River Comm'n by R148-13, eff. 6-23-2014)

NAC 538.010 “Commission” defined. (NRS 538.201) “Commission” means the Colorado River Commission of Nevada.

(Supplied in codification) — (NAC A by Colorado River Comm’n by R148-13, 6-23-2014)

~~— NAC 538.025 “Schedule D” defined. (NRS 538.181, 538.201) “Schedule D” means the schedule appearing at 43 U.S.C. § 619a(a)(2)(A) which specifies the amount of:~~
~~— 1. Contingent capacity of the Hoover power plant; and~~
~~— 2. Associated firm energy,~~
~~→ allocated in that schedule for allocation to new allottees.~~
~~— (Added to NAC by Colorado River Comm’n by R148-13, eff. 6-23-2014)~~

NAC 538.030 Construction. (NRS 538.201) The Commission intends that the provisions of this chapter be liberally construed to secure the just, speedy and economical determination of all issues presented to the Commission and to carry out the purposes of [chapters 233B](#) and [538](#) of NRS.

[Colorado River Comm’n, Practice Rule 1 § 1.2, eff. 1-14-82]

NAC 538.040 Deviation from regulations. (NRS 538.201) In special cases, where good cause appears, the Commission will permit deviation from the provisions of this chapter if it finds compliance to be impracticable or unnecessary.

[Colorado River Comm’n, Practice Rule 1 § 1.3, eff. 1-14-82]

NAC 538.050 Severability. (NRS 538.201) If any provision of this chapter is held invalid, it is intended that such invalidity not affect the remaining provisions to the extent they can be given effect.

[Colorado River Comm’n, Practice Rule 1 § 1.5, eff. 1-14-82]

NAC 538.070 Communications. (NRS 538.201)

1. All formal written communications and documents being sent to the Commission must be addressed to the Executive Director of the Commission.

2. A person may seek clarification of these rules by filing a written request with the Executive Director of the Commission. The Director will reply in writing within a reasonable time.

[Colorado River Comm’n, Practice Rule 2 §§ 2.2 & 2.3, eff. 1-14-82]

RACTICE AND PROCEDURE BEFORE COLORADO RIVER COMMISSION OF NEVADA

General

NAC 538.075 Scope; power of Executive Director. (NRS 538.181, 538.201)

1. The provisions of [NAC 538.075](#) to 538.330 inclusive, govern all practice and procedure before the Commission.

2. To the extent that any action before the Commission is not covered by the provisions of [NAC 538.075](#) to 538.330 inclusive, the Executive Director may determine the proceedings to apply to the action, including, without limitation, the use of workshops for rulemaking.

[Colorado River Comm'n, Practice Rule 1 § 1.1, eff. 1-14-82] — (NAC A 9-13-85; R148-13, 6-23-2014) — (Substituted in revision for NAC 538.020)

NAC 538.080 Classification of parties. ([NRS 538.201](#))

1. A person who applies for any right or authority from the Commission must be styled the “applicant.”

2. A person who complains to the Commission of any act or of any person must be styled the “complainant.” In any proceeding which the Commission brings on its own motion, it must be styled the “complainant.”

3. A person, other than a complainant, who petitions for affirmative relief must be styled the “petitioner.”

4. A person against whom any complaint is filed or investigation initiated must be styled the “respondent.”

5. Any person who is not an original party to a proceeding but who makes a showing that the person is directly and substantially affected by it, must, upon securing an order from the Executive Director granting him or her leave to intervene, be styled the “intervener.” The granting of leave to a person to intervene or otherwise appear in any matter or proceeding does not constitute a finding or determination of the Executive Director or the Commission that the person is, for judicial review or appeal, a party aggrieved by a ruling, order or decision of the Commission.

6. Any person who believes that he or she may be affected by a proceeding but does not seek to participate in it, must be styled an “interested party.”

[Colorado River Comm'n, Practice Rule 3 §§ 3.1-3.6, eff. 1-14-82]

NAC 538.090 Staff of Commission may be party to proceeding. ([NRS 538.201](#))
Members of the Commission’s staff may appear at any proceeding and exercise all rights of participation as parties to the proceeding.

[Colorado River Comm'n, Practice Rule 3 § 3.7, eff. 1-14-82]

NAC 538.100 Appearances. ([NRS 538.201](#)) A party may enter his or her appearance at the beginning of a hearing, or at any other time designated by the Commission or its presiding officer, by giving the party’s name and address and stating his or her position or interest to the Commission or its presiding officer. The information must be recorded in the transcript of the hearing.

[Colorado River Comm'n, Practice Rule 4 § 4.1, eff. 1-14-82]

NAC 538.103 Service lists. ([NRS 538.201](#))

1. The Commission will maintain a service list for each case for which a hearing will be held.

2. A person may submit to the Executive Director a written request to be placed on the service list maintained by the Commission pursuant to subsection 1. If a person makes such a request, the Commission will send the person either copies or electronic mail notification of all notices and orders issued by the Commission or a presiding officer in the case to which the service list applies.

3. A person placed on the service list maintained by the Commission pursuant to subsection 1 is responsible for notifying the Executive Director in writing of any changes in the electronic or physical address contact information for that person.

(Added to NAC by Colorado River Comm'n by R148-13, eff. 6-23-2014)

NAC 538.106 Receipt of documents by Commission. ([NRS 538.201](#)) A document is considered officially received by the Commission only if it is:

1. Delivered to the Commission's office in Las Vegas in person or by United States mail;

2. Presented to the Commission during a hearing;

3. Filed electronically through the Commission's website, if an electronic filing system is available, and by United States mail; or

4. Filed with the Commission in any other manner directed by the Executive Director.

(Added to NAC by Colorado River Comm'n by R148-13, eff. 6-23-2014)

NAC 538.110 Service of process on attorney. ([NRS 538.201](#)) Following the entry of an appearance by an attorney for a party, all notices, pleadings and orders to be served thereafter upon the party must be served upon his or her attorney and the service is valid service for all purposes upon the party represented.

[Colorado River Comm'n, Practice Rule 4 § 4.2, eff. 1-14-82]

NAC 538.120 Withdrawal of attorney. ([NRS 538.201](#)) Any attorney of record who wishes to withdraw from a proceeding before the Commission must immediately give written notice of the withdrawal to the party he or she has represented and to the Commission or its presiding officer.

[Colorado River Comm'n, Practice Rule 4 § 4.3, eff. 1-14-82]

NAC 538.130 Pleadings: Style; verification. ([NRS 538.201](#))

1. Pleadings before the Commission must be styled applications, petitions, complaints or answers.

2. All pleadings must be verified.

[Colorado River Comm'n, Practice Rule 5 §§ 5.1 & 5.2, eff. 1-14-82]

NAC 538.140 Pleadings: Construction. ([NRS 538.201](#)) The Commission will construe all pleadings liberally to effect justice between the parties and will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings which do not affect the substantial rights of the parties.

[Colorado River Comm'n, Practice Rule 5 § 5.4, eff. 1-14-82]

NAC 538.150 Pleadings: Applications. ([NRS 538.201](#))

1. Each pleading which requests a right or authority from the Commission must be styled an “application.”
2. An application must set forth the applicant’s full name and mailing address and must contain any facts and exhibits required by statute.
3. The applicant must sign the application.
[Colorado River Comm’n, Practice Rule 5 § 5.5, eff. 1-14-82]

NAC 538.160 Pleadings: Amendments. ([NRS 538.201](#)) The Commission may allow a pleading to be amended or corrected or any omission to be supplied.

[Colorado River Comm’n, Practice Rule 5 § 5.3, eff. 1-14-82]

NAC 538.170 Pleadings: Petitions. ([NRS 538.201](#))

1. Each pleading which prays for affirmative relief, excluding an application, complaint or answer, but including a request for a declaratory order, an advisory opinion or the adoption, filing, amendment or repeal of a regulation, must be styled the “petition.”
2. A petition must contain the full name and mailing address of the petitioner and must be signed by the petitioner.
[Colorado River Comm’n, Practice Rule 5 § 5.6, eff. 1-14-82]

NAC 538.180 Complaints: General requirements. ([NRS 538.201](#))

1. Upon the initiative of any interested person, a complaint may be made alleging one or more causes of action based on subsection 4 of [NRS 538.181](#) and [NRS 538.221](#). Facts constituting acts or omissions must be stated with such particularity as to enable the respondent to prepare a defense to the complaint.
2. All applicable statutes, regulations and orders of the Commission must be cited, together with the dates on which the acts or omissions occurred.
3. If more than one cause of action is alleged, each cause of action must be stated and numbered separately.
4. Two or more complainants may join in one complaint if their respective causes of action are against the same person and deal with substantially the same violation of a statute, regulation or order of the Commission.
5. Every complaint must be in writing, signed and verified by the person making it, and filed with the Commission.
6. A complaint will be set for hearing at the earliest convenience of the Commission unless the Commission receives notice of satisfaction of the complaint.

[Colorado River Comm’n, Practice Rule 5 § 5.7, eff. 1-14-82] — (NAC A by R148-13, 6-23-2014)

NAC 538.190 Complaints: Answer. ([NRS 538.201](#))

1. Within 20 days after a complaint is served upon a respondent, he or she must file an answer with the Commission.
2. Affirmative defenses must be separately stated and numbered.

3. If the respondent fails to answer within the time prescribed, the respondent shall be deemed to have denied generally the allegations of the complaint and is precluded, except with the consent of opposing parties and the Commission, from setting up any affirmative defense in the hearing.

4. The Commission will proceed with the matter solely upon the issues set forth in the complaint.

[Colorado River Comm'n, Practice Rule 5 § 5.8, eff. 1-14-82]

NAC 538.195 Presiding officers: Appointment; draft orders; review of decisions. ([NRS 538.201](#))

1. The Commission may appoint one or more presiding officers to preside over and conduct hearings or other proceedings, or any portion thereof, in any matter pending before the Commission. The Commission, in its discretion, may appoint an employee of the Commission or any other person to serve as a presiding officer.

2. If the Commission appoints a presiding officer to preside over and conduct any hearing or proceeding, within 30 days after the close of all evidentiary hearings in the matter, the presiding officer shall file with the Commission a draft order that sets forth the findings and conclusions of the presiding officer and the reasons and bases for those findings and conclusions. The draft order must be served promptly on each party of record.

3. Any party of record may file comments to the draft order of a presiding officer. Any such comments must be filed with the Commission within 30 days after the issuance of the draft order.

4. Upon review of a draft order filed with the Commission by a presiding officer and any comments to the draft order filed by a party of record, the Commission may affirm or modify the draft order, in whole or in part, remand the draft order to the presiding officer for further proceedings or take any other just and reasonable action with regard to the draft order, including, without limitation, replacing the draft order with an order of the Commission.

(Added to NAC by Colorado River Comm'n by R148-13, eff. 6-23-2014)

NAC 538.200 Prehearing conference. ([NRS 538.201](#)) The Chair of the Commission, the Executive Director or the presiding officer may, upon written notice to all parties of record, hold a prehearing conference to:

1. Formulate or simplify the issues;
2. Obtain admissions of fact and documents in order to avoid unnecessary proof;
3. Arrange for the exchange of proposed exhibits or prepared expert testimony;
4. Identify and limit the number of witnesses, specify the subject matter of witnesses' testimony and consolidate the examination of witnesses;
5. Establish a procedure for the hearing; and
6. Consider any other matters which may promote orderly conduct and expedite the disposition of the proceedings or achieve a settlement.

[Colorado River Comm'n, Practice Rule 6, eff. 1-14-82] — (NAC A by R148-13, 6-23-2014)

NAC 538.210 Hearings: Notice; location. ([NRS 538.201](#), [538.221](#))

1. Hearings will be held before the Commission or its designated presiding officer.
2. Notice of a hearing will be served at least 20 days before the time set for the hearing.
3. A hearing which has previously been continued may be reset on notice of not less than 10 days.
4. Hearings will be held at the time and place designated by the notice.

[Colorado River Comm'n, Practice Rule 7 § 7.1, eff. 1-14-82] — (NAC A by R148-13, 6-23-2014)

NAC 538.220 Hearings: Continuances. ([NRS 538.201](#), [538.221](#)) The Commission or presiding officer may, either before or during a hearing, upon a proper showing, grant a continuance for the submission of additional proof.

[Colorado River Comm'n, Practice Rule 7 § 7.9, eff. 1-14-82]

NAC 538.230 Hearings: Failure of party to appear. ([NRS 538.201](#), [538.221](#))

1. If a party fails to appear at a scheduled hearing and no continuance has been granted, the Commission or presiding officer will hear the evidence of the witnesses who have appeared and will proceed to consider the matter and dispose of it on the basis of the evidence before it.

2. If, because of accident, sickness or other reasonable cause, a person fails to appear for a hearing and fails to request a continuance of the hearing, the person may within a reasonable time, but not more than 15 days, apply to the Commission to reopen the proceedings.

3. Upon finding a cause sufficient and reasonable, the Commission or presiding officer will immediately fix a time and place for a hearing and give notice of the hearing to all parties. At the time and place fixed, a hearing will be held at which the person may testify in the person's own behalf and present such other evidence as may be beneficial to his or her cause.

4. Witnesses who have previously testified are not required to appear at the second hearing unless so directed by the Commission or presiding officer.

[Colorado River Comm'n, Practice Rule 7 § 7.2, eff. 1-14-82]

NAC 538.240 Hearings: Conduct. ([NRS 538.201](#), [538.221](#)) All parties to hearings, their counsel and spectators shall conduct themselves in a respectful manner.

[Colorado River Comm'n, Practice Rule 7 § 7.3, eff. 1-14-82]

NAC 538.250 Hearings: Presentation of evidence. ([NRS 538.201](#), [538.221](#))

1. The Commission or presiding officer will call the proceeding to order, take appearances and act upon any pending motions or petitions. The parties may then make opening statements.

2. Except as otherwise provided in subsection 3, the applicant, petitioner or complainant shall present his or her evidence first and then such parties as may be opposing the application, petition or complaint may present their evidence. The Commission or presiding officer will determine the order in which any intervener may present the intervener's evidence.

3. Evidence will ordinarily be received from the parties in the following order:

(a) Upon applications and petitions:

- (1) Applicant or petitioner.
- (2) Commission's staff.
- (3) Intervener.
- (4) Applicant or petitioner in rebuttal.

(b) Upon complaints:

- (1) Complainant.
- (2) Respondent.
- (3) Commission's staff.
- (4) Complainant in rebuttal.

(c) Upon complaints by Commission:

- (1) Commission's staff.
- (2) Respondent.
- (3) Commission's staff in rebuttal.

↪ The listed order may be modified by the Commission or presiding officer.

4. The Commission or presiding officer may allow closing statements to be made by the parties.

[Colorado River Comm'n, Practice Rule 7 §§ 7.6 & 7.7, eff. 1-14-82]

NAC 538.260 Hearings: Consolidation. ([NRS 538.201](#), [538.221](#)) The Commission or presiding officer may consolidate two or more proceedings whenever it appears that the issues are substantially the same and the interests of the parties will not be prejudiced by the consolidation. The Commission or presiding officer will determine the order of procedure at a consolidated hearing.

[Colorado River Comm'n, Practice Rule 7 § 7.4, eff. 1-14-82]

NAC 538.270 Hearings: Stipulations. ([NRS 538.201](#), [538.221](#)) With the approval of the Commission or presiding officer, the parties may stipulate to any fact at issue, either by a written stipulation introduced into evidence as an exhibit or by an oral statement shown in the record. Any stipulation is binding upon all parties to it, and it may be treated as evidence at the hearing. The Commission or presiding officer may require evidential proof of the stipulated facts.

[Colorado River Comm'n, Practice Rule 7 § 7.5, eff. 1-14-82]

NAC 538.280 Hearings: Official notice. ([NRS 538.201](#), [538.221](#)) The Commission or presiding officer may take official notice of standards, rules, regulations,

official reports, decisions, orders and other records of its own and of any other regulatory agency of this State or any court of record.

[Colorado River Comm'n, Practice Rule 7 § 7.8, eff. 1-14-82]

NAC 538.290 Hearings: Decision by Commission. ([NRS 538.201](#), [538.221](#))

1. The Commission's order or decision will be rendered within 180 days after the completion of its hearing.

2. A proceeding stands submitted for decision by the Commission after the taking of evidence, the filing of briefs and the presentation of any oral argument permitted by the Commission.

[Colorado River Comm'n, Practice Rule 8, eff. 1-14-82] — (NAC A by R148-13, 6-23-2014)

NAC 538.300 Hearings: Rehearings. ([NRS 538.201](#), [538.221](#))

1. Within 20 days after the Commission renders a decision or order following a hearing, the aggrieved party may apply for a rehearing, setting forth the grounds for the petition.

2. The Commission will act upon such a petition within 30 days after the effective date of the order or decision upon which the rehearing is requested, but if the Commission does not take action on the petition within that time, the petition shall be deemed denied.

3. The Commission or presiding officer on his or her own motion may order a rehearing within 30 days after the rendering of the decision if a mistake, fraud or a misconception of facts led to the original decision.

4. The filing of a petition for a rehearing upon an order or decision does not excuse compliance with it or suspend its effectiveness unless otherwise ordered by the Commission.

[Colorado River Comm'n, Practice Rule 10, eff. 1-14-82] — (NAC A by R148-13, 6-23-2014)

NAC 538.310 Hearings: Records. ([NRS 538.201](#), [538.221](#)) Any person desiring a copy of the record of a contested case before the Commission may obtain a copy from the office of the Commission upon payment of the cost of the copy.

[Colorado River Comm'n, Practice Rule 7 § 7.10, eff. 1-14-82]

NAC 538.320 Petitions for declaratory orders and advisory opinions. ([NRS 538.201](#))

1. Any member of the public may petition the Commission for a declaratory order or an advisory opinion on the applicability of any statutory provision or regulation within the jurisdiction of the Commission.

2. A petition for a declaratory order or an advisory opinion must be in writing.

3. The Commission will issue a declaratory order or render an advisory opinion in writing within 90 days after its receipt of the petition in proper form.

[Colorado River Comm'n, Practice Rule 9, eff. 1-14-82] — (NAC A by R148-13, 6-23-2014)

NAC 538.330 Petition for adoption, filing, amendment or repeal of regulation. (NRS 538.201)

1. A petition for the adoption, filing, amendment or repeal of a regulation of the Commission must be in writing and be delivered to the offices of the Commission.

2. A petition filed pursuant to subsection 1 will not be classified as a petition for the purposes of applying the procedures set forth in [NAC 538.075](#) to [538.330](#), inclusive.

3. The Commission will send any statement denying such a petition or correspondence concerning the petition to the petitioner by certified mail.

[Colorado River Comm'n, Practice Rule 11, eff. 1-14-82] — (NAC A by R148-13, 6-23-2014)

MARKETING OF ELECTRIC POWER

General Provisions

NAC 538.340 Definitions. (NRS 538.181, 538.201) As used in [NAC 538.340](#) to [538.746](#), inclusive, unless the context otherwise requires, the words and terms defined in [NAC 538.350](#) to [538.390](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87; R123-00, 2-15-2001; R112-02, 9-20-2002; R148-13, 6-23-2014)

NAC 538.350 “Contractor” defined. (NRS 538.201) “Contractor” means any entity that contracts with the Commission to purchase power.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87; R123-00, 2-15-2001; R112-02, 9-20-2002)

NAC 538.358 “Operating year” defined. (NRS 538.201) “Operating year” means a 12-month period that coincides with the 12-month period designated by federal law as a fiscal year. Until changed by federal law, the term means the period that commences October 1 of each year, immediately following midnight of September 30 of that year, and ends at midnight of September 30 of the following year.

(Added to NAC by Colorado River Comm'n by R123-00, eff. 2-15-2001; A by R108-06, 6-28-2006)

NAC 538.360 “Power” defined. (NRS 538.201) “Power” includes both capacity and energy.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85)

~~NAC 538.370 “Program for increasing capacity” defined. (NRS 538.201) “Program for increasing capacity” means the program for increasing the capacity of existing generating equipment and appurtenances at the Hoover power plant authorized by 43 U.S.C. § 619. This is equivalent to the uprating program referred to in Public Law 98-381.~~

~~—(Added to NAC by Colorado River Comm'n, eff. 9-13-85)~~

NAC 538.375 “Schedule A” defined. (NRS 538.181, 538.201) “Schedule A” means the schedule appearing at 43 U.S.C. § 619a(a)(1)(A) which specifies the amount of:

1. Contingent capacity of the Hoover power plant; and
2. Associated firm energy,

↪ allocated in that schedule.

(Added to NAC by Colorado River Comm'n by R148-13, eff. 6-23-2014)

NAC 538.380 “Schedule B” defined. (NRS 538.201) “Schedule B” means the schedule appearing at 43 U.S.C. § 619a (a)(l)(B) which specifies the amount of:

1. Contingent capacity of the Hoover power plant resulting from the program for increasing capacity; and

2. Associated firm energy, allocated to the Commission.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85)

NAC 538.385 “Schedule C” defined. (NRS 538.181, 538.201) “Schedule C” means the schedule appearing at 43 U.S.C. § 619a(a)(1)(C) which specifies the priority of entitlement of the states of Arizona, California and Nevada to excess energy generated at the Hoover power plant.

(Added to NAC by Colorado River Comm'n by R148-13, eff. 6-23-2014)

~~**NAC 538.025 “Schedule D” defined. (NRS 538.181, 538.201)** “Schedule D” means the schedule appearing at 43 U.S.C. § 619a(a)(2)(A) which specifies the amount of:~~

- ~~1. Contingent capacity of the Hoover power plant; and~~

- ~~2. Associated firm energy.~~

~~↪ allocated in that schedule for allocation to new allottees.~~

~~(Added to NAC by Colorado River Comm'n by R148-13, eff. 6-23-2014)~~

- **NAC 538.390 “Western” defined. (NRS 538.201)** “Western” means the Western Area Power Administration of the United States Department of Energy.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85)

NAC 538.395 Applicability. (NRS 538.181, 538.201)

1. The provisions of [NAC 538.340](#) to [538.670](#), inclusive, apply to power allocated or reallocated by the Commission from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects.

2. The provisions of [NAC 538.744](#) and [538.746](#) apply to power allocated or reallocated by the Commission from any source.

(Added to NAC by Colorado River Comm'n by R123-00, eff. 2-15-2001; A by R112-02, 9-20-2002)

NAC 538.400 Marketing area for resources. ([NRS 538.181](#), [538.201](#)) The Commission's marketing area for the resources of the Boulder Canyon Project, Parker-Davis Project and Southern District of the Salt Lake City Area Integrated Projects is the same as Western's marketing area in this State for those resources.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87; R123-00, 2-15-2001)

NAC 538.410 Requirements of applicant seeking to contract with Commission for delivery of Schedule A, B or C power from Boulder Canyon Project and for delivery of power from Parker-Davis Project and Salt Lake City Area Integrated Projects. ([NRS 538.181](#), [538.201](#)) An applicant seeking to contract with the Commission for the delivery of power from the Boulder Canyon Project designated in Schedule A, Schedule B or Schedule C commencing before October 1, 2017, or power from the Parker-Davis Project or the Salt Lake City Area Integrated Projects must supply information as requested by the Commission and must:

1. Be an entity to which the Commission is authorized by law to sell electricity or provide transmission service or distribution service, or both;
2. Be able to receive energy from one or more of the points of delivery authorized by the Commission;
3. Be able to maintain a ratio between "real power" in kilowatts and "apparent power" in kilovoltamperes ("power factor") within at least 95 percent, if called upon to do so;
4. Meet the requirements for a program for integrated resource planning or a similar program, however designated, set forth as a condition to the purchase of power by:
 - (a) Regulations adopted by Western pursuant to 42 U.S.C. § 7276;
 - (b) Federal statute; or
 - (c) The Commission; and
5. If the applicant is an electric utility:
 - (a) Have a load that:
 - (1) Has a peak demand of at least 8 megawatts; and
 - (2) Is located within Western's defined marketing area in this State for the Boulder Canyon Project, Parker-Davis Project or Southern Division of the Salt Lake City Area Integrated Projects; and
 - (b) Be qualified to receive preference power under the applicable provisions of federal law relating to preference power when applying for electric power from the Parker-Davis Project or Salt Lake City Area Integrated Projects.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87; R123-00, 2-15-2001; R108-06, 6-28-2006; R148-13, 6-23-2014)

NAC 538.420 Seasons to be defined by Western. ([NRS 538.181](#), [538.201](#)) Power from the Boulder Canyon Project, the Parker-Davis Project and the Salt Lake City Area Integrated Projects will be marketed by the Commission during the seasons as defined by Western.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87; R123-00, 2-15-2001; R148-13, 6-23-2014)

NAC 538.430 Transmission of power for delivery beyond designated points of delivery. ([NRS 538.181](#), [538.201](#)) The transmission of power, including costs and losses, for delivery of power beyond the Commission's designated points of delivery are the responsibility of the contractor.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85)

NAC 538.440 Reallocation of power if contractor loses or surrenders entitlement to power. ([NRS 538.181](#), [538.201](#)) If a contractor loses or surrenders its entitlement to power allocated to it by the Commission pursuant to [NAC 538.340](#) to [538.670](#), inclusive, the Commission will reallocate that power in the manner provided in [NAC 538.455](#).

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A by R123-00, 2-15-2001; R148-13, 6-23-2014)

NAC 538.455 Procedures for reallocation of power: Notice requirements; application and review; hearing; Commission decision. ([NRS 538.181](#), [538.201](#))

1. The Commission will allocate or reallocate power that becomes available for allocation or reallocation in accordance with the provisions of this section and to achieve the greatest possible benefit to this State.

2. As soon as practicable after power becomes available for allocation or reallocation by the Commission, the Commission's staff shall prepare a draft notice for the approval of the Commission which informs the public that applications will be accepted for the allocation or reallocation of power. The draft notice must:

- (a) Describe the power to be allocated or reallocated;
- (b) Set forth the proposed criteria to be used by the Commission for the allocation or reallocation of the power;
- (c) Include a proposed form for applying for an allocation or reallocation of the power;
- (d) Set forth the date on which the Commission's staff will begin taking applications and
- (e) Set forth the date by which an application must be submitted.

3. Before presenting the draft notice to the Commission for approval, the Commission's staff shall conduct a public meeting to review the draft notice and solicit comments from the public. To conduct the public meeting, the Commission's staff shall provide public notice of the meeting at least 15 days before the meeting by:

- (a) Posting a cop of the draft notice of the meeting:
 - (1) At the principal office of the Commission;

- (2) On the Internet website of the State; and
 - (3) On the Internet website of the Commission; and
 - (b) Providing a copy of the draft notice of the meeting to any person who has requested notice of the meeting of the Commission and all potential applicants identified by the Commission's staff. The notice must be delivered by regular mail or, if feasible for the Commission, transmitted by electronic mail.
4. Comments on the draft notice prepared pursuant to subsection 2 must be received not later than 10 days after the public meeting held pursuant to subsection 3. The Commission's staff shall review the comments received at the meeting and any comments submitted in writing and may revise the draft notice in response to the comments.
5. After the Commission's staff has complied with the requirements of subsections 3 and 4, the draft notice must be placed on the agenda of the Commissioner for the review of the Commission. The Commission may revise, approve or reject the draft notice, in whole or in part. If the Commission approves the draft notice, the Commission's staff shall post that approved notice in accordance with the requirements of paragraphs (a) and (b) of subsection 3.
6. Any entity that wishes to apply for an allocation or reallocation of power from the Commission pursuant to this section must submit an application to the Commission's staff by the date set forth in the draft notice pursuant to subsection 2. The application must:
- (a) Be on the form approved by the Commission.
 - (b) Set forth the applicant's full name and mailing address and any required facts and exhibits.
 - (c) Be signed by the applicant.
7. The Commission's staff shall review any application submitted pursuant to subsection 6 and prepare a draft order which must:
- (a) Address each application submitted; and
 - (b) Include recommendations for the Commission's allocation or reallocation of the power.
8. The Commission's staff shall provide a copy of the draft order prepared pursuant to subsection 7 to each applicant. An applicant must file any comments on the draft order with the Commission within 20 days after the date the Commission's staff sends, by regular mail, electronic mail or hand delivery the draft order to the applicant. The Commission's staff may revise the draft order in response to any comments received from an applicant.
9. The Commission will conduct a hearing and issue a decision on the draft order prepared by the Commission's staff pursuant to subsection 7. The Commission may revise, approve or reject, in whole or in part, the draft order. The Commissioner's staff shall prepare a notice of the hearing on the draft order, which must include, without limitation, a copy of the draft order prepared by the Commission's staff pursuant to subsection 7 and, if applicable, revised by the Commission's staff pursuant to subsection 8. The notice of the hearing must be posted at least 20 days before the date set for the hearing and in accordance with the requirements of paragraphs (a) and (b) of subsection 3
10. After the issuance of the Commission's decision on the draft order, the Commission's staff must advertise the notice required by subsection 4 of [NRS 538.181](#). If

the Commission receives an objection to its decision on an application addressed in the draft order or the notice required by subsection 4 of NRS 538.181 within 10 days after the date of the last publication of the notice required by subsection 4 of [NRS 538.181](#), the Commission will conduct a hearing on the objection not later than 30 days after the date of the last publication of the notice.

11. If an applicant that has been offered an allocation or reallocation of power from the Commission pursuant to this section fails to enter into a contract with the Commission within 90 days after being offered the allocation or reallocation of power, the Commission may reallocate the amount of power offered to that applicant to:

- (a) Other existing applicants or
- (b) New applicants in accordance with the requirements of this section.

12. Except for a hearing conducted pursuant to subsection 10, the proceedings described in this section are not a contested case as defined in [NRS 233B.032](#).

(Added to NAC by Colorado River Comm'n by R148-13, eff. 6-23-2014)

~~NAC 538.460 Minimum reserves of contractor; exception. (NRS 538.181, 538.201) Each contractor must meet the minimum recommendation for reserves set by the Western Electricity Coordinating Council unless the contractor receives power from the Commission over the facilities of a utility that meets the minimum recommendation for reserves set by the Western Electricity Coordinating Council.~~

~~(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 11-24-87; R148-13, 6-23-2014)~~

~~NAC 538.470 Capacity offered at varying load factors; identification. (NRS 538.181, 538.201) Capacity from the Boulder Canyon Project, Parker Davis Project and Salt Lake City Area Integrated Projects will be:~~

- ~~1. Offered by the Commission at varying load factors; and~~
- ~~2. Identified by the Commission in an exhibit to the contract to purchase power.~~

~~(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87; R123-00, 2-15-2001)~~

NAC 538.480 Offer of certain energy when available to certain entities; observance of restrictions. ([NRS 538.181](#), [538.201](#)) All energy from the Boulder Canyon Project designated in Schedule C at 43 U.S.C. § 619a(a)(1)(C) and any additional power from the Parker-Davis Project or Salt Lake City Area Integrated Projects offered to the Commission may be accepted by the Executive Director of the Commission on behalf of the Commission and will be offered by the Executive Director of the Commission on behalf of the Commission at the time those resources become available and in the most equitable manner as determined by the Executive Director of the Commission, first, to entities that hold contracts for hydroelectric power from the Commission, and then, to any other entity to which the Commission is authorized by law to sell electricity. All entities must observe whatever restrictions are placed on that power.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 9-10-87; R123-00, 2-15-2001)

General Terms and Conditions

~~NAC 538.495 New contracts. (NRS 538.181, 538.201) Before the expiration of a contract for the delivery of long term power from the Boulder Canyon Project designated in Schedule A or Schedule B pursuant to subsection 1 of NAC 538.500, the Commission will offer the contractor a new contract for the delivery of such power for the period commencing on October 1, 2017, and ending on September 30, 2067.~~

~~—(Added to NAC by Colorado River Comm'n by R148-13, eff. 6-23-2014)~~

NAC 538.500 Terms of contracts; expiration. (NRS 538.181, 538.201)

1. Except as otherwise provided in this subsection, contracts for the delivery of long-term power from the Boulder Canyon Project allocated under [NAC 538.340](#) to [538.670](#), inclusive, for the period ending on September 30, 2017, become effective on the day they are executed and expire on the last day of the billing period for September 2017, unless terminated before that date by the contractor or the Commission in accordance with the terms of the contract.

2. Contracts for the delivery of long-term power from the Boulder Canyon Project allocated under [NAC 538.340](#) to [538.670](#), inclusive, for the period commencing on October 1, 2017, become effective on the day they are executed and expire on the day specified in the contract, unless terminated before that date by the contractor or the Commission in accordance with the terms of the contract. The Commission will determine the term of each contract for the delivery of power from the Boulder Canyon Project for a term of less than 50 years commencing on or after October 1, 2017.

3. Contracts for the delivery of long-term power from the Parker-Davis Project allocated under [NAC 538.340](#) to [538.670](#), inclusive, become effective on the day they are executed and expire on the last day of the billing period for September 2028, unless terminated before that date by the contractor or the Commission in accordance with the terms of the contract.

4. Contracts for the delivery of long-term power from the Salt Lake City Area Integrated Projects allocated under [NAC 538.340](#) to [538.670](#), inclusive, become effective on the first day of the billing period for October 1989 and expire on the last day of the billing period for September 2024, unless terminated before that date by the contractor or the Commission in accordance with the terms of the contract.

5. Except as otherwise provided in subsection 2, the term of contracts for short-term power will be determined by the Executive Director of the Commission for each contract.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 11-24-87; 12-17-87; R123-00, 2-15-2001; R108-06, 6-28-2006; R148-13, 6-23-2014)

NAC 538.505 Provisions required to be included in contract for delivery of Schedule A, B or D power from Boulder Canyon Project on or after October 1, 2017. (NRS 538.181, 538.201)

1. A contract for the delivery of power from the Boulder Canyon Project designated in Schedule A or Schedule B commencing on or after October 1, 2017, must include a provision requiring the contractor to pay:

(a) A proportionate share of this State’s contribution to the cost of the Lower Colorado River Multi-Species Conservation Program, as defined in section 9401 of the Omnibus Public Land Management Act of 2009, Public Law 111-11; and

(b) Applicable tariff rates and charges pursuant to paragraph (a) of subsection 4 of [NRS 704.787](#) if the contractor obtains electric distribution services from an electric utility that primarily serves densely populated counties, and is a customer of the Commission pursuant to paragraph (a) or (b) of subsection 1 of [NRS 704.787](#).

2. A contract for the delivery of power from the Boulder Canyon Project designated in Schedule D commencing on or after October 1, 2017, must include provisions requiring the new allottee to:

(a) Pay a proportionate share of this State’s contribution to the cost of the Lower Colorado River Multi-Species Conservation Program, as defined in section 9401 of the Omnibus Public Land Management Act of 2009, Public Law 111-11;

(b) Participate through the Commission in the Boulder Canyon Project Implementation Agreement;

(c) Pay a pro rata share of Hoover Dam repayable advances required to be paid by contractors who entered into contracts for the delivery of power from the Boulder Canyon Project before October 1, 2017;

(d) Meet the requirements for any program for integrated resource planning or a similar program, however designated, set forth as a condition to the purchase of power by federal or state law, or receive power from the Commission over the facilities of an electric utility that meets the requirements for such a program;

(e) Pay applicable fees, tariff rates and charges pursuant to subsections 2 and 3 of [NRS 704.787](#) and paragraph (b) of subsection 4 of [NRS 704.787](#), if the contractor:

(1) Is located in the service area of an electric utility that primarily serves densely populated counties;

(2) Is a customer of the Commission pursuant to paragraph (c) of subsection 1 of [NRS 704.787](#); and

(3) Will receive power from Schedule D at delivery points that are not served pursuant to an existing Distribution Only Service Agreement; and

(f) Pay applicable tariff rates and charges for its allocation of power from Schedule D pursuant to paragraph (a) of subsection 4 of [NRS 704.787](#) if the contractor:

(1) Is located in the service area of an electric utility that primarily serves densely populated counties;

(2) Is a customer of the Commission pursuant to paragraph (b) of subsection 1 of [NRS 704.787](#);

(3) Will receive power from Schedule D at delivery points that are served pursuant to an existing Distribution Only Service Agreement; and

(4) Has not previously paid such rates and such charges.

3. As used in this section, “electric utility that primarily serves densely populated counties” has the meaning ascribed to it in [NRS 704.787](#).

(Added to NAC by Colorado River Comm’n by R148-13, eff. 6-23-2014)

NAC 538.510 Transfer of excess power; observance of restrictions; proceeds credited to contractor; obligation not relieved. ([NRS 538.181](#), [538.201](#)) If a contractor cannot use a portion of the power allocated to it by the Commission in any month, the Commission will, in cooperation with the contractor, endeavor to find markets for that power and arrange for the necessary transfer of delivery. Purchasers of that power must observe whatever restrictions are placed on the use of that power. The money received by the Commission from the sale of that power to others will be credited to the contractor, except that the Commission will collect no more than the contractor's cost of the power. The failure by the Commission in whole or in part to make such an arrangement does not relieve the contractor of its obligation to pay the Commission for the full amount of the power for which it contracted, whether the power is delivered to the contractor or to others.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 11-24-87; R123-00, 2-15-2001)

NAC 538.520 Firming energy. ([NRS 538.181](#), [538.201](#)) If the actual generation at the Hoover power plant in any year is less than that needed to fulfill the contractual entitlement of any contractor, the Commission will, at the request of the contractor, purchase energy to meet the deficiency at the contractor's expense. If the contractor can provide firming energy from its own resources, the Commission will, annually, allow it to provide its own firming energy and will reduce proportionately the Commission's obligation to the contractor for energy. The cost of firming energy that is provided by the Commission must be paid for in the year in which it is incurred.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 11-24-87)

NAC 538.530 Establishment and maintenance of program for integrated resource planning or similar program. ([NRS 538.181](#), [538.201](#))

1. Except as otherwise provided in subsection 3, each contractor shall, within 1 year after entering into a contract with the Commission pursuant to [NAC 538.340](#) to [538.670](#), inclusive, establish and maintain a program for integrated resource planning or a similar program, however designated, set forth as a condition to the purchase of power by:

- (a) Regulations adopted by Western pursuant to 42 U.S.C. § 7276;
- (b) Federal statute; or
- (c) The Commission.

2. When requested, the Commission, with the help of Western and to the extent possible, will guide and assist the contractor in the development of its program.

3. The provisions of subsection 1 do not apply if Western accepts a program for integrated resource planning or a similar program, however designated, established and maintained by the Commission on behalf of the contractor.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87; R123-00, 2-15-2001; R108-06, 6-28-2006)

NAC 538.540 Limitations on resale; certain electric utilities and Nevada Power Company to pass benefits through to certain customers. ([NRS 538.181](#), [538.201](#))

1. A contractor that is not an electric utility and that purchases power provided by the Commission from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects may not share, resell, pool, lease or change the point of use of that power without the prior approval of the Commission. The Commission may approve the sharing, reselling, pooling, leasing or changing the point of use of power pursuant to this subsection for a term of not more than 3 years.

2. An electric utility that contracts with the Commission for power from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects:

(a) Must receive that power at a location in this State within Western's defined marketing area for the project from which the power is obtained.

(b) May not resell that power outside this State or outside Western's defined marketing area for the project from which the power is obtained without the prior approval of the Commission.

(c) May resell that power to serve customers within its service area in this State and within Western's defined marketing area for the project from which the power is obtained, without the prior approval of the Commission.

3. An electric utility that contracts with the Commission for power from the Boulder Canyon Project must:

(a) Use the full power resource available to them, including energy, capacity and the dynamic signal and other ancillary services and, except as otherwise provided in subsection 4, pass through to its customers located within Western's defined marketing area for the Boulder Canyon Project the economic benefits of the energy, capacity, and dynamic signal and other ancillary services used by the customers; and

(b) Upon the request of the Commission, provide to the Commission's staff information demonstrating compliance with the requirements of this subsection.

4. The Nevada Power Company shall pass through to its residential class of ratepayers the economic benefits of power from Schedule B.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87; R123-00, 2-15-2001; R148-13, 6-23-2014)

NAC 538.550 Assignment or other transfer of rights. ([NRS 538.181](#), [538.201](#)) No contractor may assign or otherwise transfer its rights under its contract with the Commission without the prior written approval of the Commission. Before approval will be granted by the Commission, the transfer must be consistent with the provisions of [NAC 538.340](#) to [538.670](#), inclusive.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A by R123-00, 2-15-2001)

NAC 538.560 Reduction of allocation of power to contractor. ([NRS 538.181](#), [538.201](#)) Except as otherwise provided in this section, if, for 3 consecutive operating years, a contractor does not use the full allocation of power made available to it by the Commission, the Commission, after notifying the contractor, may reduce its allocation to that contractor to the extent of the contractor's failure to use that full allocation. A reduction will not be made if the contractor's failure to use that full allocation

is caused by the implementation of a program for integrated resource planning or a similar program, however designated, described in [NAC 538.530](#) and approved for the contractor by Western or the Commission.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 11-24-87; R123-00, 2-15-2001; R108-06, 6-28-2006; R148-13, 6-23-2014)

NAC 538.570 Meters; disconnection of certain contractor's power for failure to pay invoice. ([NRS 538.181](#), [538.201](#))

1. A contractor that is not a utility and that purchases power provided by the Commission for its own use shall provide the Commission with meter data and other information necessary for the provision and billing of electric service by:

(a) Using suitable equipment for metering power delivered to it by the Commission that meets all applicable standards of the electric utility industry or such other standards as may be approved by the Executive Director; or

(b) Obtaining interconnection to the transmission system through an electric distribution provider that has metering which meets all applicable standards of the electric utility industry or such other standards as may be approved by the Executive Director.

2. Upon the request of the Commission's staff and at any time specified by the Commission's staff, a contractor must provide the Commission's staff with such revenue quality meter data as may be required by the Executive Director.

3. Upon the request of the Commission's staff and at any time specified by the Commission's staff, a contractor that is not a utility and that purchases power provided by the Commission must provide the Commission's staff with physical access to the metering equipment used by the contractor to measure the contractor's load for the purpose of inspection and verification of the accuracy of the metering equipment.

4. The Executive Director of the Commission shall provide for the just resolution of claims between the Commission and a contractor arising from the inaccuracy of a meter.

5. On or before September 30, 2017, each contractor, or an agent of a contractor, that obtains all of its electric power from the Commission, must provide the Commission with the ability to physically disconnect the contractor's power for failure to pay a power invoice from the Commission in a timely manner, without adversely impacting the delivery of power to other contractors.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 11-24-87; R123-00, 2-15-2001; R148-13, 6-23-2014)

NAC 538.590 Capacity and energy available each month; scheduling and accounting procedures; patterns of usage; allowance for certain reductions in capacity. ([NRS 538.181](#), [538.201](#))

1. The capacity and energy available to the contractors for each month by the Commission will be shown by an annual report or by exhibits to the contracts for power from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects.

2. Scheduling and accounting procedures will be established by the Commission to adjust for any variations between the contractual energy available for delivery and the actual deliveries.

3. If requested by the contractor, the Commission, in preparing the exhibits, will endeavor to approximate that contractor's seasonal and monthly pattern of usage of energy. The extent to which the Commission is able to accommodate these patterns is contingent upon the monthly availability of energy.

4. The Commission will, in the contracts for power from the Boulder Canyon Project, allow for a reduction in capacity due to loss of head or flow or to outages of generating units or other factors. Such a reduction will be apportioned by the Commission among the contractors for capacity from the Boulder Canyon Project. The Commission will not discriminate between the capacity designated in Schedule A, Schedule B and Schedule D in apportioning the shortages. The pro rata share of any contractor is the proportion its capacity bears to the total capacity available under Schedule A, Schedule B and Schedule D.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87; 2-18-88; R123-00, 2-15-2001; R148-13, 6-23-2014)

NAC 538.610 Rates, charges and costs; requirement to notify Commission of certain decreases in load. ([NRS 538.181](#), [538.191](#), [538.201](#))

1. The rates or charges payable by a contractor to the Commission for capacity or energy from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects and for wheeling energy from the Parker-Davis Project or Salt Lake City Area Integrated Projects must be Western's effective rates or charges for those resources. These rates or charges, the Commission's administrative charge and any other costs associated with the contracted resource will be shown by a periodic report or by exhibits to the contracts for power from these projects. These rates, charges and costs may vary due to changing conditions. Some rates or charges may be estimated for a portion of an operating year with an adjustment, for the months the estimate is used, in the month the actual rate or charge is established.

2. At the time the Commission is notified by Western of any change in the rates or charges, the Commission will notify its contractors of the change.

3. The administrative charge is based on a projection of the Commission's costs of operations relating to the contractors, which must be calculated using an average of the costs incurred by the Commission for operations relating to the contractors during a period of not less than 3 years immediately preceding the operating year in which the administrative charge is to be levied and adjusted for future known and expected changes to the annual operating costs of the Commission. The administrative charge may be collected, in whole or in part:

- (a) As a rate per kilowatt-hour, which is determined by dividing the projected costs by the total estimated number of kilowatt-hours of all energy, including both hydroelectric and nonhydroelectric, to be delivered to contractors.

- (b) As a fixed charge, whereby a contractor is charged a portion of the operating costs of the Commission in an amount based on the amount of hydroelectric energy allocated to the contractor pursuant to the contract entered into by the contractor with the Commission and the amount of energy to be delivered to that contractor by the Commission.

Except as otherwise provided in subsection 4, the administrative charge may be increased or decreased after the Commission notifies the contractors of the grounds for the increase or decrease and the effective date of the increase or decrease, which must be not less than 90 days after the Commission sends the notice of the increase or decrease.

4. The Commission may use the expedited procedure set forth in this subsection to increase or otherwise revise the administrative charge if actual revenue from the administrative charge is equal to or less than 70 percent of the revenue projected in accordance with subsection 3. The Commission's staff may develop a proposed increase or other revision to the administrative charge and, not later than 30 days before the Commission meeting at which the Commission will make a determination on the proposed increase or other revision, notify the contractors in writing of the proposed increase or other revision. The notice must contain a statement of the amount of, and the grounds for, the proposed increase or other revision and the date of the Commission meeting at which the Commission will make a determination on the proposed increase or other revision. The Commission will accept written comments from contractors regarding the proposed increase or other revision which are submitted not later than 15 days before the Commission meeting at which the Commission will make a determination on the proposed increase or other revision. In determining whether to increase or otherwise revise the administrative charge, the Commission will review the proposed increase or other revision to the administrative charge proposed by the Commission's staff, comments submitted by contractors in accordance with this subsection and any other relevant information.

5. As soon as practicable, a contractor planning, projecting or experiencing a decrease in its load of 30 percent or more for 90 consecutive days or more, in any 12 month period, shall notify the Commission of the decrease in its load.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A by R123-00, 2-15-2001; R148-13, 6-23-2014)

NAC 538.620 Scheduling, accounting and delivery of power procedures. ([NRS 538.181](#), [538.201](#))

1. The Commission, in cooperation with the contractor, will establish scheduling, accounting and delivery procedures for the receipt of power from the Commission that meet the needs of the contractor. These procedures must be set forth in an agreement approved by the Executive Director of the Commission.

2. Deliveries of power from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects will be scheduled by the Commission in advance in accordance with the procedures set forth in separate scheduling instructions which will provide for schedules to meet the needs of day-to-day or hour-by-hour operations. The

instructions must include procedures for determining amounts of power from the Boulder Canyon Project, Parker-Davis Project and Salt Lake City Area Integrated Projects delivered to the contractor at each point of delivery and procedures for delivery of losses. The procedures must also specify the conditions under which actual deliveries, which are greater or less than scheduled deliveries during the month of a particular season, will be adjusted in later deliveries in subsequent months of that season.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87; R123-00, 2-15-2001; R148-13, 6-23-2014)

NAC 538.630 Maximum rate of delivery. ([NRS 538.181](#), [538.201](#))

1. Each contractor will have a maximum rate of delivery for its point of receipt set out in an exhibit to its contract. If a contractor has more than one point of receipt, a maximum rate of delivery will be set out for each. This maximum rate of delivery will be determined by the Commission.

2. The setting of maximum rates of delivery at more than one point of receipt which results in a total rate of delivery higher than the contractual rate of delivery does not obligate the Commission to increase the availability of capacity to the contractor. The contractor is limited to the contractual rate of delivery.

3. The method for determining the maximum rate of delivery at each point of receipt is included in the scheduling and accounting procedures.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85)

NAC 538.640 Minimum rate of delivery. ([NRS 538.181](#), [538.201](#)) If the Commission requires, a contractor must schedule a minimum rate of delivery during off-peak hours of load, as defined in the contract. The percentage of energy to be taken by the contractors at the minimum scheduled rate of delivery will be established by the Commission on a seasonal basis and may be increased or decreased as conditions dictate. The monthly minimum rate of delivery for each contractor is computed by dividing the number of kilowatt-hours to be taken during the month by a contractor at the minimum rate of delivery by the number of off-peak hours of load in the month. The number of kilowatt-hours to be taken during off-peak hours of load at the minimum rate of delivery from the Boulder Canyon Project must not exceed 25 percent of the contractor's monthly entitlement of energy. The minimum hourly rate of delivery for capacity scheduled from the Salt Lake City Area Integrated Projects must be 35 percent of the contractor's scheduled rate of delivery. At no time may the required minimum rate of delivery be greater than the contractor's actual load.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87; R123-00, 2-15-2001)

NAC 538.650 Points of delivery and voltages. ([NRS 538.181](#), [538.201](#))

1. The points of delivery and voltages for Western's defined marketing area for the Boulder Canyon Project, Parker-Davis Project and Salt Lake City Area Integrated Projects are:

Location	Kilovolts
Boulder Canyon Project	
Mead substation	69.0
Mead substation	230.0

Location	Kilovolts
Parker-Davis Project	
Amargosa substation	138.0
Clark tie	230.0
Henderson substation	230.0
Mead substation	230.0

Location	Kilovolts
Salt Lake City Area Integrated Projects	
Amargosa substation	138.0
Boulder City tap	230.0
Clark tie	230.0
Henderson substation	230.0
Mead substation	230.0
Pinnacle Peak/Rogers substation	230.0

2. Delivery will be made at designated points on Western’s “Parker-Davis Project Southern Nevada Facilities” at rates of delivery not to exceed the available capability of the facilities. The designated points of delivery and Western’s “Parker-Davis Project Southern Nevada Facilities” may be modified as required.

3. The designation of a point of delivery does not imply any obligation on the Commission’s part to furnish additional facilities or to increase the capabilities of transmission or of the transformer at the designated points. Each contractor must obtain the permission of the Commission for any modification to existing facilities and alternate or additional points of delivery. Requests for taps on Western’s “Parker-Davis Project Southern Nevada Facilities” will be considered by the Commission individually.

4. Any cost associated with obtaining points of delivery or voltage at other than those set forth in subsection 1 is the obligation of the contractor.

5. Power from the Boulder Canyon Project will be delivered at the Mead substation. If a contractor cannot accept delivery of power from the Boulder Canyon Project at the Mead substation, arrangements for transmission service to other points of delivery are the obligation of the contractor.

6. Notwithstanding the provisions of this section, the Commission may designate any other points of delivery and voltages for points of delivery for the marketing area for the Boulder Canyon Project, Parker-Davis Project and Salt Lake City Area Integrated Projects.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87; R123-00, 2-15-2001; R108-06, 6-28-2006; R148-13, 6-23-2014)

NAC 538.660 Losses. ([NRS 538.181](#), [538.201](#))

1. Losses for the system will be determined for each contractor by the Commission and will be set out in exhibits to each contract or in a separate agreement.
2. Losses may be accounted for by determining the contractor's load at its meters and then increasing that load by an assigned factor for losses, back to the contractual point of delivery or by using other methods agreed to by the Commission and the contractor.
3. The assigned factor for losses will be reviewed periodically by the Commission and may be increased or decreased if it is determined to be necessary to meet actual losses.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87)

NAC 538.670 Points of receipt; charge for transmission. ([NRS 538.181](#), [538.201](#))

1. The contractor shall, in its application, designate the point or points of receipt required to service its load and any facilities for transmission from point of receipt to the point or points for metering the load.
2. The contractor is financially responsible for acquiring any rights of transmission between its designated point of receipt and its points for metering the load.
3. A charge for transmission may be imposed on deliveries of power from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects to the contractor's designated points of receipt.

(Added to NAC by Colorado River Comm'n, eff. 9-13-85; A 12-17-87; R123-00, 2-15-2001)

Contractors

NAC 538.744 Requirements for collateral, payments to cash working capital fund or prepayment; determination of creditworthiness. ([NRS 538.181](#), [538.201](#))

1. The Commission may require a contractor to pay collateral, make payments to a cash working capital fund or prepay for power pursuant to this section.
2. During October in each operating year, and at any other time it deems necessary, the Commission will conduct a review to determine the creditworthiness of each of its contractors.
3. After the creditworthiness review conducted pursuant to subsection 2, the Commission will establish the amount of collateral which a contractor is required to furnish and prescribe the manner in which the contractor is required to furnish that collateral pursuant to its contracts with the Commission. In no case will the amount of collateral established by the Commission be less than one-fourth of the contractor's gross annual purchases. The Commission will not require any of the following to furnish collateral:
 - (a) A federal or state agency or political subdivision.
 - (b) The Nevada Power Company or any other entity regularly engaged in the business of buying and selling electric power.

4. In addition to requiring a contractor to furnish collateral pursuant to subsection 3, the Commission may require a contractor to make payments to a cash working capital fund established by the Commission or prepay for power purchased from the Commission in accordance with requirements established by the Commission, or both, as deemed necessary by the Commission to:

- (a) Reflect the results of the creditworthiness review conducted pursuant to subsection 2;
- (b) Implement sound risk management policies; and
- (c) Protect the financial health of the Commission and the State of Nevada.

5. If a contractor does not provide and maintain the full amount of the collateral required by subsection 3 or make payments to a cash working capital fund as required by the Commission pursuant to subsection 4, the Commission may, in addition to its other remedies and in the course of its normal invoicing, bill the contractor for an amount necessary to furnish the required collateral or fund working capital within a period established by the Commission, but not to exceed 6 months.

6. Notwithstanding any other provision of [NAC 538.340](#) to [538.746](#), inclusive, if a contractor fails to provide and maintain the full amount of required collateral within the period authorized by the Commission, fails to make payments to a cash working capital fund as required by the Commission or fails to comply in a timely manner with any prepayment requirements established by the Commission, the Commission may at any time require a contractor to furnish collateral within 30 days after written demand in an amount that is greater than the minimum amount set forth in subsection 3, as may be necessary to protect the State of Nevada from any loss that it might suffer as a result of the contractor's breach of any covenant or condition of any contract with the Commission. That amount of the collateral which is greater than the minimum amount set forth in subsection 3 will be calculated on any rational and appropriate basis as determined by the Commission.

7. As used in this section:

(a) "Date of review" means the date in any operating year on which the Commission establishes the amount of collateral a contractor must furnish pursuant to its contracts with the Commission.

(b) "Gross annual purchases" means the total amount of a contractor's actual purchases of power, transmission and other related services, if any, under all its contracts with the Commission, invoiced by the Commission during the test period.

(c) "Test period" means the 12 consecutive months immediately preceding the month containing the date of review.

(Added to NAC by Colorado River Comm'n by R112-02, eff. 9-20-2002; A by R148-13, 6-23-2014)

NAC 538.746 Nonperformance: Notice; suspension of allocation of power; temporary reallocation of power; reinstatement of allocation of power; termination of allocation and reallocation of power. ([NRS 538.181](#), [538.201](#))

1. If a contractor fails or refuses to perform any of its obligations under any of its contracts with the Commission, including, without limitation, any agreement confirming

the purchase of supplemental power from any source, and the Executive Director determines that the failure or refusal may expose the Commission to liability or expose this State to financial risk, the Executive Director shall provide written notice of the nonperformance to the contractor.

2. If the contractor fails or refuses to cure the nonperformance within 15 days after the date of the written notice, the Executive Director may, after giving 3 days' notice in writing to the contractor, suspend the contractor's allocation of hydroelectric power under [NAC 538.340](#) to [538.746](#), inclusive, and discontinue furnishing electric service specified in its contracts with the contractor pending any further action taken by the Commission pursuant to this section.

3. After the suspension of the contractor's allocation of hydroelectric power pursuant to subsection 2, the Executive Director may reallocate the power to any other contractor or contractors on a short-term basis. A contractor receiving an allocation of power pursuant to this subsection shall comply with all terms and conditions applicable to that power under the contract between the Commission and the contractor whose allocation was suspended.

4. Within 30 days after the suspension of the contractor's allocation of hydroelectric power, the contractor may petition the Commission for the reinstatement of the allocation. The Commission will hold a hearing on the petition within 10 days after providing notice of the hearing as required by [NAC 538.075](#) to [538.330](#), inclusive.

5. If the contractor fails to file a petition for reinstatement in a timely manner or if, after a hearing on such a petition, the Commission denies the petition, the Commission may permanently terminate the contractor's allocation of hydroelectric power and permanently discontinue electric service to the contractor.

6. Upon the permanent termination of a contractor's allocation of hydroelectric power, the Commission will reallocate the hydroelectric power pursuant to [NAC 538.455](#).

7. This section does not preclude the Commission from pursuing at any time any other remedy for breach of contract that is available to the Commission.

(Added to NAC by Colorado River Comm'n by R112-02, eff. 9-20-2002; A by R148-13, 6-23-2014)

WATER OF THE COLORADO RIVER

Federal Contracts for Delivery of Water

NAC 538.750 Applicability of provisions to applications for federal contracts. ([NRS 538.181](#), [538.201](#)) The Commission will use the criteria set forth in [NAC 538.755](#) to [538.795](#), inclusive, in its consideration of an application for a federal contract for the delivery of water of the Colorado River described as follows:

1. The uncommitted remainder of the State's apportionment of the water pursuant to federal law.

2. Any amount of water available because of the expiration of federal contracts for the delivery of water of the Colorado River with users in this State.

3. Any surplus of water which the State is entitled to receive by law.

4. Any amount of water which is temporarily available because persons who hold rights to that water are not using their whole entitlements.

(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.755 Policy of Commission. ([NRS 538.181](#), [538.201](#)) It is the policy of the Commission to ensure the widest possible distribution of water so as to serve the greatest number of people. To further this policy, contracts for the water should be made only with public suppliers of municipal and industrial water.

(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.760 Quantifiable present and future demand for water required. ([NRS 538.181](#), [538.201](#)) There must be a quantifiable present and future demand for the water requested by the applicant.

(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.765 Required and prohibited uses of water. ([NRS 538.181](#), [538.201](#))

1. The water must be put exclusively to municipal and industrial uses.
2. The Commission should not approve an allocation for water for a specific development or industrial use.
3. The proposed use must not conflict with existing rights or threaten to prove detrimental to the public interest.

(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.770 Access to adequate facility for transportation of water. ([NRS 538.181](#), [538.201](#))

1. The applicant must have access or demonstrate that it will be able to obtain access to a facility which is adequate to transport the water requested from the proposed point of diversion to the proposed place of use.

2. If the facility has not been constructed or is not in operation when the application is submitted to the Commission, the applicant must demonstrate:

(a) Its ability to finance the construction of the facility; and

(b) That the facility will be constructed and in operation at such time as to ensure the applicant's present or future demand for the water.

(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.775 Program for conservation of water. ([NRS 538.181](#), [538.201](#)) The applicant, or if the applicant includes more than one entity, each entity which is a public supplier of municipal and industrial water must have established and be able to carry out a program for the conservation of water which complies with the applicable ordinances and state and federal laws when the contract for the delivery of water is executed. The program must be approved by the governmental body which has jurisdiction over the program.

(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.780 Factors Commission required to consider. ([NRS 538.181](#), [538.201](#))
The Commission will consider the extent to which:

1. The applicant will be able to make the water delivered pursuant to the contract available for return to the Colorado River.
2. Other sources of water are available to the applicant for the uses proposed.
(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.785 Factors Commission authorized to consider. ([NRS 538.181](#), [538.201](#)) The Commission may consider any other factors relevant to an examination of an application for water of the Colorado River.
(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.790 Rejection of application which conflicts with state or federal statute or contract. ([NRS 538.181](#), [538.201](#)) The Commission will reject any part of an application which conflicts with any state or federal statute or contract.
(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.795 Recommendations to Secretary of the Interior. ([NRS 538.181](#), [538.201](#)) The Commission may, with respect to any application, recommend to the Secretary of the Interior such terms and conditions for a federal contract for the delivery of water of the Colorado River as it determines to be appropriate.
(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

Original Appropriations of Water

NAC 538.800 Filing of applications regarding original appropriations. ([NRS 538.171](#), [538.181](#), [538.201](#)) An application for an original appropriation of water held in trust for the State of Nevada by the Colorado River Commission of Nevada pursuant to subsection 1 of [NRS 538.171](#), or to change the place of diversion, manner of use or place of use of water covered by the original appropriation, may be made in a letter filed with the Commission or on a form provided by the Commission. The application must be filed with the Commission in person or by mail or facsimile machine.
(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.805 Application for original appropriation: Contents. ([NRS 538.171](#), [538.181](#), [538.201](#)) An application for an original appropriation of water of the Colorado River must include:

1. The name and address of the applicant.
2. A request for a contract with the Commission and the Secretary of the Interior for the delivery of the water and a statement declaring that the applicant is ready, willing and legally able to enter into the contract.

3. An identification of the amount of water requested and a statement declaring that there is unappropriated water legally available to the State of Nevada from the Colorado River in the amount requested by the applicant.

4. An explanation of the applicant's need for the water, including data which quantifies its present and future demand for that water to the extent that the demand can be reasonably determined.

5. A description of the points and means of diversion and the metering of the water including:

(a) A substantially accurate description of the location where the water is proposed to be diverted and metered; and

(b) A description of each facility which will transport the water requested from the proposed point of diversion to the proposed place of use and the name of the owner and operator of that facility. If the facility is not constructed and in operation at the time the application is submitted to the Commission, the application must include a description of the applicant's ability to finance construction, operation and maintenance of that facility, and include a statement of the estimated date when it will be completed and in operation.

6. A statement specifying the proposed place of use and whether it is located within the service area of a public supplier of municipal and industrial water. If the applicant is a public supplier of municipal and industrial water or a group of such suppliers, the application must include a description of the area served by the supplier or the group, where the water is proposed to be used. If the applicant is not a public supplier of municipal and industrial water or a group of such suppliers, the application must include an accurate description of the property where the water is proposed to be used and the name of the owner and, if applicable, the lessee of the property.

7. A description of the use to which the water is proposed to be put and a statement whether the proposed use:

(a) Is a beneficial use under the laws of this State.

(b) Conflicts with existing rights or with any state or federal statute or contract.

(c) Threatens to prove detrimental to the public interest.

8. The estimated date the water will be applied to the proposed use and a schedule of the projected use of that water, if applicable.

9. A statement whether the applicant, or if the applicant includes more than one entity, each entity which is a public supplier of municipal and industrial water, will have, at the time the contract for the delivery of water is executed, established and be able to carry out a program for the conservation of the water available to the applicant or each such entity. The program must comply with all applicable ordinances and state and federal laws, and must be approved by the governmental body which has jurisdiction over the program.

10. A description of the extent to which the applicant will be able to make the water delivered pursuant to the contract available for return to the Colorado River. If any of the water will be available for return to the Colorado River, the application must provide an accurate description of the location where the water will be returned and metered and identify the method for the return of that water. The application must also include any

available information concerning the subsurface flows of the water which is returned to the Colorado River.

11. An identification of any other sources of water available to the applicant for the uses proposed and at the proposed place of use.

12. A description of the applicant's ability to comply with the applicable requirements of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq., as amended, and any other applicable environmental laws and regulations.

(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.810 Application to change place of diversion, manner of use or place of use: Contents. ([NRS 538.171](#), [538.181](#), [538.201](#)) An application to change the place of diversion, manner of use or place of use of water covered by an original appropriation of the water of the Colorado River must include:

1. The name and address of the applicant.
 2. An identification of the contract which the applicant entered into with the Commission and the Secretary of the Interior for the original appropriation of the water of the Colorado River.
 3. A description of the change in the place of diversion, manner of use or place of use of the water covered by the original appropriation by identifying the present place of diversion or the manner or place of use and:
 - (a) If the change is in the place of diversion, an accurate description of the location of the place where the water is proposed to be diverted and metered.
 - (b) If the change is in the manner of use, a description of the proposed manner of use and a statement whether the proposed use:
 - (1) Is a beneficial use under the laws of this State.
 - (2) Conflicts with existing rights or with state or federal statutes or contracts.
 - (3) Threatens to prove detrimental to the public interest.
 - (4) Affects the applicant's ability to make the water delivered pursuant to the contract available for return to the Colorado River.
 - (c) If the change is in the place of use, a statement which specifies the proposed place of use and describes each facility which will transport the water to the applicant's proposed place of use. If the facility is not constructed and in operation at the time the application is submitted to the Commission, the application must include a description of the applicant's ability to finance the construction, operation and maintenance of the facility and a statement which sets forth the date when it will be completed and in operation.
 - (d) If the change is in the manner of use or place of use, the application must include the estimated date when the water will be applied to the proposed use and a schedule of the projected use of that water, if applicable.
 - (e) A description of the applicant's ability to comply with any applicable requirements of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq., as amended, and any other applicable environmental laws and regulations.
- (Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.815 Submission of additional information concerning application. ([NRS 538.171](#), [538.181](#), [538.201](#))

1. The Commission may require an applicant to submit such additional information as it deems necessary for an examination of the application.

2. An applicant may submit additional information concerning its application until the Commission submits its recommendation concerning the application to the Secretary of the Interior of the United States.

(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.820 Availability, inspection and copying of applications, objections and comments. ([NRS 538.171](#), [538.181](#), [538.201](#))

1. The Commission shall make the applications and any objections to or comments concerning the applications which are filed with the Commission available for inspection or copying during the business hours of the Commission.

2. Any person who wishes to receive a copy of those applications, objections, comments or any public notices related thereto must notify the Commission. The Executive Director of the Commission may charge a fee to cover the cost to copy those materials.

(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.825 Application, amendment or supplement filed before August 12, 1991. ([NRS 538.171](#), [538.181](#), [538.201](#)) Any application or amendment or supplement thereto described in [NAC 538.800](#) which is filed with the Commission before August 12, 1991, shall be deemed to be complete and in compliance with the provisions of [NAC 538.800](#) to [538.830](#), inclusive, if:

1. It complied with the procedural requirements of the Commission in effect at the time it was filed with the Commission and the application contains information which is substantially similar to the information required by [NAC 538.805](#) or [538.810](#); or

2. A contract for the delivery of water was executed by the applicant and the Secretary of the Interior of the United States or the Commission as a result of the application.

(Added to NAC by Colorado River Comm'n, eff. 8-12-91)

NAC 538.830 Applicability of provisions to applications for extensions of certain contracts for delivery of water. ([NRS 538.171](#), [538.181](#), [538.201](#))

1. Except as otherwise provided in this section, the provisions of [NAC 538.800](#) to [538.830](#), inclusive, apply to an application for the extension of a contract for the delivery of water of the Colorado River which expires or terminates on a day certain.

2. The application must contain the information required by [NAC 538.805](#), except for the purposes of subsection 2 of that section, the request must be for an extension of the existing contract for the delivery of water.

3. If the application for an extension of a contract for the delivery of water of the Colorado River includes a request for a change in the place of diversion, manner of use or

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place of use of the water covered by the contract, the application must also contain the information for that change required by [NAC 538.810](#).

(Added to NAC by Colorado River Comm'n, eff. 8-12-91)