

The meeting was held at 1:00 p.m. on Tuesday, January 10, 2012, at the Grant Sawyer State Office Building, Suite 4401, Las Vegas, Nevada.

COMMISSIONERS IN ATTENDANCE

Vice Chairwoman
Commissioner
Commissioner
Commissioner
Commissioner

Marybel Batjer
Tom Collins
J. Brin Gibson
Duncan McCoy
Berlyn D. Miller

COMMISSIONERS NOT IN ATTENDANCE

Chairman
Commissioner

George F. Ogilvie III
Bob Coffin

DEPUTY ATTORNEYS GENERAL

Senior Deputy Attorney General
Senior Deputy Attorney General

Jennifer T. Crandell
Ann C. Pongracz

COMMISSION STAFF IN ATTENDANCE

Executive Director
Chief of Finance and Administration
Assistant Director of Engineering and Operations
Manager of Energy Services
Manager of Natural Resources Group
Assistant Hydropower Program Manager
Hydropower Program Specialist
Natural Resource Analyst
Natural Resource Analyst
Senior Energy Accountant
Senior Energy Accountant
Office Manager
Administrative Assistant III
Administrative Assistant II
Administrative Assistant II

Jayne Harkins, P.E.
Douglas N. Beatty
Robert D. Reese
Gail A. Bates
McClain L. Peterson
Lisa M. Ray
Michael S. Harris
Jason Thiriot
Kimberly E. Maloy
Gail L. Benton
Richard M. Sanders
Judy K. Atwood
Carol L. Perone
Gina L. Goodman
Rebecca K. Miller

OTHERS PRESENT; REPRESENTING

American Pacific Corporation
Piercy, Bowler, Taylor, and Kern
Overton Power District No. 5
Self
Southern Nevada Water Authority

Jack Stonehocker
Ryan C. Whitman
Mendis Cooper
Sara Price
Scott Krantz

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF JANUARY 10, 2012**

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The Colorado River Commission meeting was called to order by Vice Chairwoman Batjer at 1:00 p.m. followed by the pledge of allegiance.

A. Conformance to Open Meeting Law.

Jayne Harkins, Executive Director, confirmed that the meeting was in compliance with the Open Meeting Law.

B. Comments and questions from the public. (No action may be taken on a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action will be taken.)

Vice Chairwoman Batjer asked if there were any other comments or questions from the public. There were none.

C. For Possible Action: Approval of minutes of the November 8, 2011 meeting.

Commissioner Gibson moved for approval of the minutes. The motion was seconded by Commissioner Miller and approved by a unanimous vote.

D. For Possible Action: Selection of Vice Chairman.

Commissioner Miller moved for approval of the reappointment of Vice Chairwoman Batjer. The motion was seconded by Commissioner McCoy and approved by a unanimous vote.

E. For Information Only: Presentation of Colorado River Commission of Nevada's Annual Financial Report for Year ended June 30, 2011.

Ryan C. Whitman, the Commission's external auditor, reported that the audit of the financial statement of the Colorado River Commission of Nevada for the year ended June 30, 2011, was complete. The audit did not produce any comments of findings that need to be reported to the Commission. Mr. Whitman said that he would be happy to answer any questions.

Vice Chairwoman Batjer asked if there were any other comments or questions from the Commissioners. There were none.

F. For Information Only: Status update on the Silver State Energy Association.

Gail A. Bates, Manager of Energy Services, provided a presentation on the status of the Silver State Energy Association (SSEA). A copy of the presentation is attached and made a part of the minutes. (See Attachment A.)

Vice Chairwoman Batjer asked if there were any other comments or questions from the Commission members.

Commissioner Gibson asked how the SSEA is considered a political subdivision.

Mrs. Bates replied that SSEA was formed under the body of law that allows governments to join forces called the Inter-Local Cooperation Act. It allows joint action agencies to form among government entities in the State of Nevada.

Vice Chairwoman Batjer asked if there are any liabilities or risks that don't exist now for the Commission that could possibly exist under the SSEA formation.

Mrs. Bates replied that, at this point the Commission does not plan to be a participant in the Project Service Agreement #3 (PSA #3), because of the potential liabilities that could result from participation. There could be some risk implications if the Commission does decide to enter into the PSA #3 Agreement in the future; but as long as the Commission is not a PSA #3 participant there shouldn't be any additional liability to the State or the Commission. If anything the Commission is reducing, or laying off, risk because today we have counterparty credit risk that would be laid off to the SSEA and shared among the participants.

Vice Chairwoman Batjer asked if the loaned staff labor agreement will entail only current staff or if any additional staff has been contemplated.

Mrs. Bates replied that only current labor has been contemplated. The existing people that are providing services today will continue to provide services tomorrow. No additional staff need has been contemplated at this point.

Vice Chairwoman Batjer asked if additional staff is needed would it be used in the same type of framework where it would be a borrowed or loaned person from one of the members of the SSEA.

Mrs. Bates replied it might be used that way, or at some point the organization could become large enough where it would need to hire its own staff. There may be some things in the future that would cause the SSEA to need to hire its own staff.

Commissioner Collins asked if the Commission and Southern Nevada Water Authority (SNWA) provide most of the staff that are utilized under the interlocal cooperative agreement.

Mrs. Bates replied that yes the program built for SNWA and the members is now being extended to other agencies like Lincoln County Power District No. 1, Overton Power District No. 5, and the City of Boulder City, and is contemplating using the current staff.

Commissioner Collins asked whether the loaned staff handled the metering, monitoring and so forth for the City of Boulder City once they received full requirements service; and, whether the SNWA is going towards that goal as a wholesale or retail customer.

Mrs. Bates replied that the SNWA is a retail customer of the Commission today and will become a retail customer of the SSEA tomorrow.

Commissioner Collins asked if the Commission and SSEA are the same.

Mrs. Bates replied that the SSEA is considered a different power supplier.

Mrs. Harkins stated that if the Commission had any further questions to let her know and Staff could get the answers for them.

G. For Information Only: Status update on the hydrologic conditions, drought, and climate of the Colorado River Basin, Nevada's consumptive use of Colorado River water, and other developments on the Colorado River.

Kimberly Maloy, the Commission's Natural Resources Analyst, provided a report on the following:

- Unregulated Inflow into Lake Powell
- 2011 Hydrology Summary
- Storage Conditions
- Storage Conditions Comparison
- Precipitation – Colorado River Basin
- Lake Mead Daily Water Levels
- Lake Powell Daily Water Levels
- Colorado River Basin above Lake Powell
- GIS Snow Conditions
- Record of Precipitation at McCarran International Airport
- U.S. Drought Monitor
- U.S. Seasonal Drought Outlook
- Water Use in Southern Nevada
- Nevada's Consumptive Use of the Colorado River Water (2010 and 2011)

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

Jennifer T. Crandell, Senior Deputy Attorney General, provided an update on the Grand Canyon Trust lawsuit.

Ms. Crandell stated that the Grand Canyon Trust case against the U.S. Bureau of Reclamation in which the Commission is an intervener, is now in the Ninth Circuit Court of Appeals. In October 2011 the substantive briefing began in this case.

The Grand Canyon Trust filed their brief in October and argued that the 2009 Biological Opinion that was issued by the U.S. Fish and Wildlife Service and the 2010 Incidental Take Statement violate the Endangered Species Act. The Grand Canyon Trust believes that the best available science wasn't used in determining the Modified Low Fluctuating Flow (MLFF) regime that is now implemented at Glen Canyon Dam. The Plaintiff's stated concerns are the impacts on the humpback chub's reproduction, numbers and distribution in the Colorado River.

The Plaintiffs also assert the U.S. Fish and Wildlife Service and U.S. Bureau of Reclamation ignore the fact that while the chub are thriving in the Little Colorado River, the habitat of the chub is being destroyed in the main stem of the Colorado. The Grand Canyon Trust also asserts that the Annual Operating Plan (AOP), which is an annual report prepared by the U.S. Bureau of Reclamation in accordance with law, which reports on the past flow regime and releases and projected releases, requires Endangered Species Act (ESA) and National Environmental Protection Act (NEPA) compliance. They are claiming that the AOP report is a decisional document that can change the flows. Our concern is if NEPA/ESA compliance were required, it would interfere with the scheduling of water deliveries. Furthermore, ESA and NEPA compliance could not be produced every year based on a report that simply could not be completed annually.

The federal government filed their brief December 23, 2011, explaining that it appears from the latest scientific data, that the modified low fluctuating flow benefits the humpback chub. The brief explained how the cold water releases help to increase the population of the chub by combating increasing populations of non-native predatory warm water fish.

The interveners filed an additional brief on January 4, 2012 joining the federal government and supplementing the defense of the AOP. Again the interveners are comprised of the Seven Basin States; the Colorado River Commission, SNWA, Colorado River Energy Distributors Association, the Metropolitan Water District of Southern California, and Imperial Irrigation District.

Ms. Crandell stated that on Friday, January 4, the Grand Canyon Trust asked for a stay on all proceedings and asked for discovery to find out if a new Biological Opinion that was released by the U.S. Fish and Wildlife Service on December 23, 2011, which is in support of the MLFF flow regime, was produced to interfere with the appellate process.

Vice Chairwoman Batjer asked how different are the 2009 and the 2011 Biological Opinions.

Ms. Crandell stated that she has not had a chance to read the full Biological Opinion, but from what she has read of the Biological Opinion, it supports the current modified low fluctuating flow regime as the preferred regime and states that MLFF does not jeopardize the chub. This Biological Opinion is much different than the 2005 Biological Opinion, because it incorporates new science and data.

Ms. Crandell stated that once she has completed her review of the Biological Opinion, she can return and report on it to the Commission.

Commissioner Miller requested a brief executive report from Ms. Crandell.

Commissioner McCoy asked if the humpback chub are still being counted.

Ms. Crandell stated that the chub are still being counted and that they have improved on methodology in how they are counted. The numbers have improved to the point where they are close to being delisted from endangered to threatened on the endangered species list.

Vice Chairwoman Batjer asked if the cold water is a positive for the humpback chub.

Ms. Crandell replied that this is what the science has shown. The argument in the past has been that modified low fluctuating flow pattern releases such cold water that the chub cannot breed in the cold water. In this new Biological Opinion it says that one of the main reasons the number of chub has been is due to the predation of warm water fish like bass, and some catfish that compete for food as well as eat the humpback chub guppies. One of the largest threats to the chub has been the warm water non-native predators.

Vice Chairwoman Batjer asked if there were any other comments or questions from the Commissioners. There were none.

Ann Pongracz, Senior Deputy Attorney General, provided an update regarding the Hoover Power Allocation Act.

Ms. Pongracz stated that on December 20, 2011 President Obama signed H.R. 470, following three years of work among Hoover contractors in Nevada, California, and Arizona, and work with members of Congress and their staffers.

Under H.R. 470, the Commission will continue receiving an allocation of affordable, renewable hydropower allocations from Hoover Dam for an additional 50 years after the current contracts expire in 2017.

Now, we move onto the implementation of H.R. 470. Staff has been meeting within the Commission to identify Nevada statutory and regulatory changes that will need to be reformed in order to move forward. A meeting is scheduled with Western Area Power Administration and the Arizona Power Authority to discuss how to organize our respective proceedings for allocation of the resource pool; there is also a meeting scheduled with tribal representatives to brief them on the pool.

Commissioner Miller asked what the time frame is for the applicants on the new allocations.

Ms. Pongracz replied that the timeframe has not been set yet but everything must be finalized before the expiration of the existing contracts in 2017.

Commissioner Miller asked whether we have any indication of how many applicants might apply for the allotments.

Ms. Pongracz replied that Staff is trying to determine who is out there who may qualify for the allotments.

Commissioner Gibson asked how the House and Senate bills were different and how were they reconciled.

Ms. Pongracz replied that the both the House and the Senate passed the House bill, H.R. 470. Senator Reid agreed to take the House bill through the Senate. During the Senate's deliberations on H.R. 470, one of the Senate staff counsel proposed some changes to the House bill. Therefore, when voting to approve H.R. 470, the Senate also passed a correcting resolution that was sent to the House for approval (S. Con. Res. 32). As noted above, President Obama signed H.R. 470 on December 20, 2011.

Mrs. Harkins stated that more updates will follow as the implementation takes place.

H. Comments and questions from the public. (No action may be taken on a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action will be taken.)

Vice Chairwoman Batjer asked if there were any other comments or questions from the public. There were none.

I. Comments and questions from the Commission members.

Vice Chairwoman Batjer asked if there were any comments or questions from the Commission members. There were none.

J. Selection of the next possible meeting date.

The next meeting was tentatively scheduled for 1:00 p.m. on Tuesday, February 14, 2012, at the Grant Sawyer State Office Building, Suite 4401, Las Vegas, Nevada.

K. Adjournment.

The meeting adjourned at 1:51 p.m.

Jayne Harkins, P.E., Executive Director

APPROVED:

Marybel Batjer, Vice Chairwoman