

**Colorado River Commission's Land Responsibilities and the Fort Mohave
Development Fund**

**Prepared Statement of James D. Salo
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Good morning Mr. Chairman, Members of the Committee. My name is James D. Salo and I am the Manager, Governmental Affairs of the Colorado River Commission of Nevada, which I will refer to as the "CRC." I appreciate your invitation today to speak to you today. I will try to keep my remarks brief and I look forward to your comments and questions.

The CRC has numerous responsibilities related to resource management on the Colorado River on behalf of the State of Nevada. Of course, the CRC performs a vital role, shared with the Southern Nevada Water Authority, in managing the State's water interests from the Colorado River system, but my focus today is on the CRC's role as a holder of State lands in Laughlin.

I am here to describe the CRC's land responsibilities in Laughlin and the CRC's decision to expend monies from the Fort Mohave Valley Development Account for purposes not associated with Laughlin. Since these expenditures were related to energy expenses let me begin by discussing CRC's role as an electric utility.

**EXHIBIT K - LANDS
Document consists of 8 pages.
Entire Exhibit Provided
Meeting Date: 08-24-06**

THE CRC AS A PROVIDER OF ELECTRICITY

The CRC has long had a role in the state as the manager of Nevada's share of the federal hydropower provided by Hoover Dam and other federal dams on the Colorado River. We purchase approximately 475 MW of federal hydropower and in turn sell that power, under long-term contracts, to 12 customers consisting of municipal and investor owned utilities, cooperatives, public utility districts, industrial customers and water and wastewater agencies. We also purchase supplemental, non-hydro power resources for the BMI Industrial complex to meet their electricity needs that cannot be met with available hydropower. In addition, since 1998 we have provided retail electricity service to the new water treatment and transmission facilities constructed by the Southern Nevada Water Authority.

CRC's service responsibilities are very limited – our customer base is fixed by statute (NRS 704.787) and our combined federal and non-federal loads are approximately 750 MW, a very small amount in the interconnected electricity grid.

LITIGATION BETWEEN THE CRC AND A CUSTOMER

One of the statutorily identified retail customers of the CRC at the Basic complex in Henderson has been for decades and is today a company now known as Pioneer Americas, LLC, a manufacturer of industrial chemicals. Industrial concerns like Pioneer of course desire a low cost power supply but they typically also require predictability of power prices over time. In the face of the uncertainty in market power prices in 2000 – 2001 and the huge price increases that were then in effect,

the CRC pursued a path of entering into long-term power purchases for future delivery through calendar year 2006 on behalf of Pioneer, effectively 'locking-in' the prices for Pioneer's future power needs. Pioneer unexpectedly filed for bankruptcy in 2001. Pioneer attempted to reject or disavow those contracts under the bankruptcy laws. Pioneer was unsuccessful in that effort but later sued the CRC in an attempt to get out of those future delivery contracts. Early estimates of the value of the future CRC obligations under the contracts approximated \$120 million.

In February, 2003, the CRC and Pioneer settled the lawsuit. CRC was left with a cash reserve to pay the remainder of the contracts as deliveries occurred through 2006. Although the CRC managed to pay down most of these contracts, it was left with a \$5 million residual liability, mostly during calendar year 2006, that could not be funded from the depleted cash reserves. As I discuss the CRC's role as a holder of State land in Laughlin, I will describe how this \$5 million residual liability impacted the use of proceeds from the sale of land.

THE CRC ROLE AS A HOLDER OF STATE LAND IN LAUGHLIN

By 1960, both the United States Congress and the Nevada Legislature passed compatible legislation providing for the transfer of 15,000 acres of federal land in Laughlin to the CRC at an appraised valuation for development or for subsequent sale for development. By 1989, the CRC was able to acquire all 15,000 acres by using the proceeds of the CRC's sale of some of the acreage to pay for the full acquisition cost. [For example, sale of the 2,000 acre site for the Mohave

Generating Station was an early sale that generated revenues which were applied toward the total purchase price from the federal government.]

In addition to the Mohave Generating Station site, a variety of other sales or other transfers of CRC land occurred over the years including several hundred acres for residential housing, a hotel-casino development, the creation of the 2,000 acre Big Bend of the Colorado River State Recreation Area, and 15 acres for a Boy Scout Camp. Other transfers supported the Big Bend Water District and various utility easements.

A large, 985-acre phased-development known as the Emerald River Project began in 1983 and resulted in a substantial amount of residential and commercial development. A successor-in-interest to the original developer declared bankruptcy in 1992. As a result of that bankruptcy, the CRC retained ownership of 110 acres largely fronting on the Colorado River.

Between 2001 and 2003, a different private developer sought to acquire the 110 acres from the CRC to complete a holding with adjoining land it already owned. This transfer was strongly supported by the Town of Laughlin and its Chamber of Commerce. While the CRC initially decided not to sell the 110 acres at an appraised value of approximately \$4 million, it did sell the land over a year later for \$13 million based on updated appraisals.

FORT MOHAVE VALLEY DEVELOPMENT LAW – General Provisions (NRS 321.480 – 321.536)

The Fort Mohave Development Law, and related regulations, govern the CRC's management and disposition of the remaining approximately 9,000 acres held by the CRC in Laughlin. Key elements in the statutory framework include: (1) the CRC determines whether and when it is in the public interest to develop or dispose of any of the land for development, (2) the Clark County Commission must concur that any proposed development is consistent with its master plan, (3) the land cannot be sold for less than fair market value plus certain costs, and (4) the net proceeds from any sale go into the Fort Mohave Valley Development Account. Pursuant to its regulations, the CRC also consults with the Laughlin Town Advisory Board before approving any proposed development or sale for development.

If a proposal submitted by a prospective developer is determined by the CRC to be the particular type of development it desires to see occur, and if the development is supported by the Laughlin Town Advisory Board and concurred in by the County Commissioners, a formal Request for Proposals is issued and publicized by the CRC. The purpose of the RFP process is to allow other potential developers to submit competing proposals for that particular type of development for the CRC's consideration. After evaluating all proposals, the CRC makes its final determination considering the development or proposed sale.

FORT MOHAVE VALLEY DEVELOPMENT LAW – Use of Proceeds

NRS 321.536 establishes a ‘tiered’ list of permitted uses for funds deposited in the Fort Mohave Valley Development Account (“FMDA”). Primarily, that statute requires the available funds to be used:

- first, to pay all purchase-related obligations to the federal government, which were all paid by 1989,
- second, to “administer the provisions of (the Act), **and any other expenditures authorized by law.**” (Emphasis Added), and
- next, to support local government capital improvements identified and approved jointly by the CRC and Clark County Commission. [Lower-tier permitted uses of funds are identified in the statute but not summarized here.]

USE OF FUNDS FROM THE FMDA BY CRC

By approximately 2003, the CRC disbursed about \$15,000,000 over the years, which when combined with other funds available to Clark County, constructed a number of public facilities in Laughlin including the government center, fire house, the public swimming pool, etc.

The CRC receives no appropriations from the state general fund; the CRC is a self-supporting agency totally funded by its customers, primarily through an administrative fee added to the cost of resources sold to those customers. As noted earlier, the CRC was left with an approximately \$5 million obligation to pay residual power purchase costs during 2006 resulting from the settlement of the Pioneer litigation; an obligation for which funds in the reserve had been

exhausted. The CRC evaluated all options available to it to potentially secure the funds necessary to pay these obligations as they became due. Default was not viewed as a viable option. In the process of evaluating options, the CRC focused on the language in NRS 321.536(2), quoted above, which authorized the CRC to use funds in the FMDA for “any expenditures authorized by law.” The CRC’s analysis of that provision concluded that the phrase “any expenditures authorized by law” encompassed expenditures unrelated to the land in Laughlin because the phrase is *in addition to* the phrase addressing expenses associated with administering the act. Thus the phrase could not refer to such land-administration expenses nor could it refer to expenses associated with capital improvements since they are expressly addressed separately in the statute.

After informal consultation with its assigned Deputy Attorney General, and receiving an informal memorandum of law, the CRC decided to hold-back \$5 million of the \$13 million proceeds from the most recent sale of land in Laughlin. Those held-back monies have been and will continue to be used to pay the residual obligations arising under the Pioneer Settlement.

Mr. George Caan, Executive Director of the CRC, informed appropriate officials in Clark County government of this decision and publicly briefed the Laughlin Town Advisory Board as well.

The Town of Laughlin sought and received an opinion from the office of the Clark County District Attorney which concluded the CRC improperly used funds from the FMDA to pay power-related obligations. After a series of meetings between the CRC and Clark County personnel at which the possibility of litigation was

raised, culminating in a meeting attended by both Senator Warren Hardy and Assemblyman Joe Hardy, the CRC and Clark County entered into a written agreement forestalling any litigation in favor of jointly supporting legislation in the 2007 session of the Legislature to (1) amend the Fort Mohave Valley Development Law to preclude any future use of FMDA proceeds for purposes not associated with the land in Laughlin, and, (2) to seek a non-reimbursable legislative appropriation to replace the \$5 million in the FMDA.

That completes my presentation. I'd be happy now to answer any questions you may have.