

The meeting was held at 1:00 p.m. on Tuesday, November 26, 2013 at the Grant Sawyer State Office Building, 555 East Washington Avenue, Suite 3100, Las Vegas, Nevada.

COMMISSIONERS IN ATTENDANCE

Commissioner Steve Sisolak

COMMISSIONERS IN ATTENDANCE VIA TELECONFERENCE

Chairman	George F. Ogilvie III
Vice Chairman	Berlyn D. Miller
Commissioner	Bob Coffin
Commissioner	J. Brin Gibson
Commissioner	Duncan R. McCoy
Commissioner	Puoy K. Premririt

DEPUTY ATTORNEY GENERAL

Special Counsel, Attorney General Ann C. Pongracz

DEPUTY ATTORNEY GENERAL IN ATTENDANCE VIA TELECONFERENCE

Special Counsel, Attorney General Jennifer T. Crandell

COMMISSION STAFF IN ATTENDANCE

Executive Director	Jayne Harkins, P.E.
Deputy Executive Director	James D. Salo
Chief of Finance and Administration	Douglas N. Beatty
Assistant Hydropower Program Manager	Lisa M. Ray
Natural Resource Analyst	Jason Thiriot
Natural Resource Analyst	Warren Turkett
Senior Accountant	Gail L. Benton
Senior Energy Accountant	Kalora E. Snyder
Office Manager	Judy K. Atwood
Administrative Assistant IV	Brenda L. Haymore
Administrative Assistant III	Carol L. Perone
Administrative Assistant II	Gina L. Goodman

OTHERS PRESENT; REPRESENTING

Consultant Sara Price, Esq.
Southern Nevada Water Authority Natalia Londono

OTHERS ATTENDING VIA TELECONFERENCE; REPRESENTING

Fennemore Craig, P.C. Lauren Caster, Esq.

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF NOVEMBER 26, 2013**

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

A. Conformance to Open Meeting Law.

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

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

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

C. For Possible Action: Consideration of and possible action to approve an Amendment No. 1 to Contract for Services of Independent Contractor among Fennemore Craig, P.C., the Office of the Attorney General, and the Colorado River Commission of Nevada (Commission) for legal services.

Ms. Harkins explained that the Commission is presently engaged in litigation with The Navajo Nation as to their claims to main stem Lower Basin Colorado River water. The pending lawsuit was initiated in 2003, which challenges current Colorado River operations, including the Guidelines, Federal banking regulations (which permit us to bank our water in Arizona and California) and potentially the agreements and associated river operations relating to Minute No. 319 with Mexico. In addition, this significant litigation threatens the stability of the Law of the River that the Seven Basin States rely on, and may ultimately result in a water adjudication in the District Court or the United States Supreme Court. Mr. Caster has undertaken representation of the Sovereign State of Nevada, and with the Attorney General's consent, is serving as a Special Deputy Attorney General. He also represents the Commission and the Southern Nevada Water Authority.

On March 2013, the Commission approved a contract between the Commission and Fennemore Craig, P.C., primary attorney Lauren Caster, Esq., to engage his services to provide legal representation in The Navajo Nation v. U.S., CV-03-00507 PCT PGR, in the United States District Court, For the District of Arizona, and related matters. Prior to contract approval by the Board of Examiners, the Attorney General met with the Executive Director and Senior Deputy Attorney General Crandell and requested that she be made a party to the contract, and that Mr. Caster's appointment as a special deputy attorney general be specifically written into the contract. The Amendment to the Contract reflects these changes. The Board of Examiners approved the Amendment to the Contract on June 11, 2013.

The current contract with Fennemore Craig, P.C. is for \$150,000 per fiscal year, for the two-year contract, with a not-to-exceed amount of \$300,000. Amendment No. 1 reduces

the amount for the two-year contract, to a not-to-exceed amount of \$241,000 total, for the two-year contract. The Contract price includes a budgeted amount of \$65,000 for work to be completed on the Reply to Motion to Dismiss and oral argument, with most of the work scheduled to be performed during current fiscal year 2014. Work on the oral argument for the Motion to Dismiss may be completed in fiscal year 2015.

The majority of the work anticipated under the contract occurred shortly after the beginning of the first full fiscal year 2014 (July 1, 2013 through June 30, 2014), which included serving as coordinating counsel for the Defendant Interveners with the Department of Justice, coordinating defense strategy among the numerous Defendant Interveners, and the research and preparation of a potentially dispositive motion for *The Navajo Nation v. United States Department of Interior, et. al.*, Case No. CV-03-00507-PCT-GMS. Currently, the Defendant and Defendant Interveners have filed various Motions to Dismiss the case, which are pending before the Court. It is anticipated that opposition and reply briefs as well as oral argument will be filed and/or occur during the current fiscal year 2014, however the Court has not scheduled the oral argument, which could extend into fiscal year 2014 or 2015 (the fiscal year starting July 1, 2014).

If the potentially dispositive motions currently on file with the Court are unsuccessful, the case will then proceed to a second round of motions which may include extensive research and discovery. Additional funding to complete the work on the case may then be requested at that time.

Fennemore Craig, P.C. has exhausted current approved funding available for 2013-14 fiscal year. It should be noted that during the accounting period for prior fiscal year 2013, only \$24,000 was billed under the contract, leaving a balance of \$126,000. No provision in the existing contract permits a carry-over of approved but unused funds to the next fiscal year.

Staff recommended the Commission approve the Amendment No. 1 to the contract with Fennemore Craig, P.C., primary attorney Lauren Caster; and authorize the Executive Director to sign it on behalf of the Commission.

Ms. Harkins asked Special Counsel, Attorney General Jennifer Crandell if there was anything further to added.

Ms. Crandell replied that she believed that everything was stated very well.

Chairman Ogilvie commented that this Amendment is styled as a reduction in the not-to-exceed two year contract – a reduction of \$59,000. However, he saw it as increase in the fiscal year of 2013 in the amount of \$65,000. It was not anticipated that the additional funding from fiscal year 2012 would be carried over or that the excess funding of fiscal year 2013 would be carried over to Fiscal Year 2014.

Knowing that there were ongoing discussions that would possibly result in a resolution short of litigation, short of the Commission having to respond to the complaint or file a

Motion to Dismiss; it was anticipated that the Commission would learn of the central resolution in late May, early June 2013. It was not anticipated that the Commission would be spending any amount even close to \$150,000 in fiscal year 2013.

The original Contract approved on May 24, 2013 was not-to-exceed \$300,000 from June 2013 to May 2015. The Chairman understands that does not coincide with the State fiscal years, and based on this understanding was his willingness to approve that contract. Therefore as stated on the outset, he does not see this Amendment as a reduction of that not-to exceed but an increase for fiscal year 2013 of \$65,000 for a total of \$215,000.

Chairman Ogilvie indicated that having reviewed the billings issued thus far from Fennemore Craig, P.C., there is nothing to nit-pick in terms of the individual costs incurred; and his concern is with the cost of what the Commission have to-date with the progress of the litigation. He is not saying that the Commission has not gotten anything for the \$150,000 incurred for fiscal year 2013.

Chairman Ogilvie addressed Mr. Caster with concern about the overall cost of the research and getting the Motion to Dismiss on file; particular concern with consideration of Agenda Item E of the Commission meeting held on November 12, 2013 to increase the funding an additional \$100,000 in Fiscal Year 2014. He objected to that sum, and for that reason reviewed the billings and discussed with Staff a potential alternative. Having taken the opportunity to discuss with Staff, the different proposed Amendment with the not-to-exceed with an additional \$65,000 for Fiscal Year 2013 is being considered today. The substantial concerns were balanced against where the Commission is at in the litigation today, what the Commission needs to do with the litigation, and its continued engagement of Fennemore Craig, P.C. through the conclusion of the Motion-to-Dismiss phase.

The Commission will need to regroup, determine where it stands depending on the outcome of the Motion-to-Dismiss, and what response to the request it will have for litigation budget in the event that the Motion-to-Dismiss is not granted; including whether the Commission wants to approve additional funding at that time. This will have to be determined at a later date. However, he wanted to provide Mr. Caster and the other Commissioners with his thoughts about where the Commission is at and what we can anticipate in terms of procedure after the Motion-to-Dismiss.

Chairman Ogilvie asked if there were any comments from the other Commissioners.

Commissioner Sisolak commented that on November 12, 2013 this agenda item was not worded as a reduction. How did Staff get into this rewording?

Ms. Harkins replied that the Commission has a specific budget. Staff has calculated what is currently owed to Mr. Caster and the budget through the oral argument. After that point, as stated by the Chairman, Staff would have to get another budget for anything after oral argument and bring it back to Commission for approval.

Commissioner Sisolak asked Mr. Caster how he came up with the budget of \$65,000 through the oral argument.

Mr. Caster replied that it is based on reviewing the response that The Navajo Nation has filed, determining what work would be required to present the reply, and the oral argument which as the Chairman stated we do not really know when the oral argument is going to occur.

Commissioner Sisolak asked what if the \$65,000 is exceeded.

Mr. Caster replied that the Commission would not be billed in excess of \$65,000. The agreement with Staff is that Fennemore Craig, P.C. would complete the reply and oral argument for a figure not-to-exceed \$65,000.

Commissioner Sisolak confirmed that the work is guaranteed through and including the oral argument.

Mr. Caster stated that that is correct.

Chairman Ogilvie commented that after reviewing the fees and expenses incurred thus far and discussing with Staff, it was his estimation that the completion of the work as discussed with Mr. Caster could be completed within that \$65,000. There was a request made of Mr. Caster to agree to that sum.

Commissioner Sisolak said okay.

Chairman Ogilvie asked are there any comment or questions from the Commissioners. There were none.

Chairman Ogilvie entertained a motion.

Commission Coffin asked that the motion be framed as needed. It is a different motion from the last meeting.

Chairman Ogilvie stated the motion to approve the Amendment No. 1 to Contract for Services of Independent Contractor among Fennemore Craig, P.C., the Office of the Attorney General, and the Colorado River Commission of Nevada for legal services to increase the not-to-exceed amount for Fiscal Year 2013 from \$150,000 to \$215,000.

Commissioner Coffin made the motion.

Commissioner Sisolak asked that the motion include that it is guaranteed that representation being made by Mr. Caster that all work will be completed and included in the \$215,000.

Chairman Ogilvie stated that is a valid point.

Commissioner Coffin added that it includes the oral argument.

Commissioner Coffin motioned to approve the Amendment No. 1 to Contract for Services of Independent Contractor among Fennemore Craig, P.C., the Office of the Attorney General, and the Colorado River Commission of Nevada for legal services to increase the not-to-exceed amount for Fiscal Year 2013 from \$150,000 to \$215,000. This motion includes guaranteed representation by Mr. Caster for all remaining work on the Motion to Dismiss including the oral argument. The motion was seconded by Commissioner Miller and approved by a unanimous vote.

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

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

E. Comments and questions from the Commission members.

Chairman Ogilvie asked if there were any comments or questions from the Commission members. There were none.

F. Selection of the next possible meeting date.

The next meeting is tentatively scheduled for 1:00 p.m. on Tuesday, December 10, 2013, at the Grant Sawyer State Office Building, 555 East Washington Avenue, Suite 4412, Las Vegas, Nevada.

G. Adjournment.

The meeting adjourned at 1:15 p.m.

Jayne Harkins, P.E., Executive Director

APPROVED:

George F. Ogilvie III, Chairman