

The meeting was held at 1:30 p.m. on Tuesday, March 13, 2018 at the Grant Sawyer State Office Building, 555 East Washington Avenue, Suite 4412, Las Vegas, Nevada.

### **COMMISSIONERS IN ATTENDANCE**

Chairwoman  
Vice Chairwoman  
Commissioner  
Commissioner  
Commissioner  
Commissioner  
Commissioner

Puoy Premsrirut  
Kara J. Kelley  
Marilyn Kirkpatrick  
John F. Marz  
Steve Sisolak  
Cody Winterton  
Dan H. Stewart

### **DEPUTY ATTORNEY(S) GENERAL**

Special Counsel, Attorney General  
Special Counsel, Attorney General

Christine Guerci  
Jennifer Crandell

### **COMMISSION STAFF IN ATTENDANCE**

Executive Director  
Deputy Executive Director  
Chief of Finance and Administration  
Assistant Director of Energy Services  
Hydropower Manager  
Assistant Director of Engineering and Operations  
Natural Resources Program Manager  
Natural Resource Analyst  
Natural Resource Analyst  
Senior Energy Accountant  
Senior Energy Accountant  
Senior Energy Accountant  
Office Manager  
Administrative Assistant IV  
Administrative Assistant IV

Jayne Harkins, P.E.  
Eric Witkoski  
Douglas N. Beatty  
Gail A. Bates  
Craig Pyper  
Robert D. Reese  
Angela K. Slaughter  
Peggy Roefer  
Warren Turkett, Ph.D.  
Gail L. Benton  
Richard M. Sanders  
Stephanie A. Salleroli  
Gina L. Goodman  
Kathryn Aguilar  
Kira Bakke

### **OTHERS PRESENT; REPRESENTING**

Clark County Water Reclamation District  
College of Southern Nevada  
Overton Power District No. 5  
Overton Power District No. 5  
Self

David Stoff  
Tina Dobbs  
Randall Ozaki  
Melisa Garcia  
Sara Price

**COLORADO RIVER COMMISSION  
OF NEVADA  
MEETING OF MARCH 13, 2018**

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The Colorado River Commission of Nevada 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 Jayne Harkins, P.E., confirmed that the meeting was posted in compliance with the Open Meeting Law.

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

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

**C. For Possible Action: Approval of minutes of the December 12, 2017 meeting.**

**Commissioner Sisolak moved for approval of the minutes. The motion was seconded by Vice Chairwoman Kelley and approved by a unanimous vote.**

**D. For Possible Action: Selection of Vice Chair.**

NRS 538.111 provides that “at the first meeting of the Commission in each calendar year, the Commission shall elect the Vice Chair for the ensuing calendar year.”

**Commissioner Sisolak moved to retain Commissioner Kara Kelley as the Vice Chairwoman for the Commission. The motion was seconded by Commissioner Stewart and approved by a unanimous vote.**

**E. For Possible Action: Consideration of and possible action to approve filing a Petition for Leave to Intervene (PLTI) with the Public Utilities Commission of Nevada (PUCN) to participate in the PUCN proceeding concerning the deferred energy filing made by Nevada Power Company d/b/a NV Energy (NVE) on March 01, 2018.**

Gail Bates explained that in 2017, the PUCN approved a Hoover D tariff rider to facilitate the ability of the Commission’s Hoover Schedule D contractors to utilize their post-2017 Hoover allocations.

Under the terms of the Hoover D tariff rider, the Commission’s Hoover Schedule D Contractors will allow NVE to use their Hoover power allocations and they will receive a credit from NVE reflecting the value of this power. The credits received by the contractors are determined, in part, from NVE’s marginal energy costs that

are filed with the PUCN annually in NPC's deferred energy filings. On March 01, 2018, NVE made such a filing.

In order for the Commission to validate the credits received by the Hoover Schedule D Contractors, the Commission must have the underlying data and assumptions that went into the calculations. Such data is filed by NVE under confidential seal and cannot be obtained without intervening in the filing. Additionally, should the Commission determine that the calculations were not made in accordance with the provisions of the tariff rider or otherwise dispute the underlying data, an intervention by the Commission would allow it to present its case before the PUCN.

Under the rules of the PUCN, the Commission must submit a PLTI in order to have the opportunity to participate in the PUCN's proceeding which will consider the Hoover D tariff rates proposed by NVE. Staff recommended that the Commission participate in this proceeding to protect the interests of the Commission and of its Schedule D Hoover Contractors. As required by the rules of the PUCN, the Commission has a direct and substantial interest in these proceedings which cannot be protected adequately by any other party. Accordingly, the Commission Staff requests that the Commission approve its request to file a PLTI in this proceeding.

Chairwoman Premsrirut requested clarification on the possibility of being subject to a confidentiality agreement.

Ms. Bates clarified that the Commission will have to follow standard guidelines for the Commission and the PUCN.

Commissioner Sisolak asked about costs associated with the PUCN proceeding.

Ms. Bates stated that there are no external costs.

**Vice Chairwoman Kelley made a motion for approval to file a Petition for Leave to Intervene (PLTI) with the Public Utilities Commission of Nevada (PUCN) to participate in the PUCN proceeding concerning the deferred energy filing made by Nevada Power Company d/b/a NV Energy (NVE) on March 01, 2018. The motion was seconded by Commissioner Winterton and approved by a unanimous vote.**

***F. For Possible Action: Consideration of and possible action to approve an Amendment No. 5 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 in Arizona Federal District Court.***

Special Counsel Jennifer Crandell provided background on the Commission's present litigation in Federal Court in Arizona with the Navajo Nation as to their claims to main stem Lower Basin Colorado River water. The pending lawsuit was

initiated in 2003, and challenged current Colorado River operations, including the Guidelines, Federal banking regulations (which permit us to bank Nevada's water in Arizona and California) and potentially the agreements and associated river operations relating to Minute 323 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 water adjudication in the District Court or the United States Supreme Court.

Attorney Lauren Caster of Fennemore Craig, P.C. (Fennemore) 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 (SNWA).

On July 22, 2014, the District Court granted the Federal Defendants Motion to Dismiss without prejudice, and terminated the case.

Subsequently on August 18, 2014, the Navajo Plaintiffs filed a Motion for Specific Relief Pursuant to Rule 60(b)(6) seeking leave to set aside the judgment and amend the Complaint. The District Court denied the Navajo motion and the Navajo filed an appeal in the Ninth Circuit, requiring Fennemore to prepare an appellate brief.

A decision of the Court was issued November 6, 2017, with the decision published on December 4, 2017. The Ninth Circuit directed the District Court "to consider fully the Nation's breach of trust claim in the first instance, after entertaining any request to amend the claim more fully to flesh it out." *Navajo Nation v. Department of Interior*, 876 F.3d at 1173.

On remand, the District Court authorized the Nation to file a motion for leave to amend its complaint by April 13, 2018. Responses to that motion are due by May 29, 2018. The Nation may file a reply in support of its motion by June 19, 2018. Civil Minutes (filed Feb. 13, 2018). Rule 15.1, Local Rules of Civil Procedure (D. Ariz.), requires that the Nation attach the proposed third amended complaint to its motion, indicating by redlining how it differs from the Second Amended Complaint. Only when the Navajo files its motion for leave to amend and the proposed amended complaint will it be clear as to whether the Navajo continues to target the Surplus and Shortage Guidelines on the basis of the alleged breach of trust.

The term for the current contract with Fennemore will expire on June 30, 2018. The Commission Staff and AG Counsel are recommending continued legal representation of Fennemore, by extending the contract term to June 30, 2020 as identified in Amendment No. 5 to Contract. The total amount authorized under the Amendment No. 5 to Contract is a not-to-exceed amount of \$100,000. The current contract amount will cover a potential joinder to an opposition to Navajo Nation's motion to amend the complaint, and \$20,000 for a potential motion to dismiss. The balance will be available to address the needs of the case, including potential discovery. However, it should be noted that a trial could be protracted.

This cost estimate does not include funding if the Navajo Nation moves to intervene in Arizona v. California and then move to reopen the Consolidated Decree in that case.

Staff has consulted with SNWA General Counsel regarding the proposed Amendment No. 5 to Contract.

Staff recommended amending the contract to extend the term to June 30, 2020, with expenditures occurring in FY 2013-2020. Additional funding of not-to-exceed \$100,000 was requested for the extended term.

Commissioner Stewart asked if the Commission is initially responsible for the cost and the Commission is reimbursed.

Ms. Crandell confirmed that the Commission is responsible and will pay the cost. SNWA will reimburse the Commission.

Jayne Harkins explained that in order for the contractor, Lauren Caster, to represent the State of Nevada the contract needs to be with a State of Nevada entity.

Ms. Crandell stated that Lauren Caster has been deputized by the Attorney General to represent the Sovereign State and the Commission.

Chairwoman Premsrirut asked how many remaining defendants are involved in the case.

Ms. Crandell stated that the defendants involved in the case are the same. The main defendant is the Department of the Interior and the intervenors are the State of Arizona; Central Arizona Water Conservation District; Arizona Power Authority; Salt River Project Agricultural Improvement and Power District; Salt River Valley Water Users' Association; Imperial Irrigation District; Metropolitan Water District of Southern California; Coachella Valley Water District; State of Nevada; Colorado River Commission of Nevada; Southern Nevada Water Authority; State of Colorado.

Chairwoman Premsrirut asked if the \$100,000 proposed allocation is irrespective to the kind of complaint that was filed or does Staff envision having to seek additional funds.

Ms. Crandell confirmed that the amount is an estimation. Staff hopes that with general counsel for SNWA and herself actively working with this case it will be enough to keep the cost down and within the predicted amount requested.

Commissioner Sisolak asked for improved transparency for the public in regard to Commission Meeting agenda items that have expenditures of money be included in the titles.

Ms. Crandell responded that all guidelines had been followed and that supporting material is supplied when requested. However, it is a good point to raise.

Ms. Harkins replied that anyone who makes a request can get the backup information. Posting the material is not a requirement of the State. The point will be taken that the Commission would like more detail and transparency requested by Commissioner Sisolak in the agenda items.

Chairwoman Premsrirut noted that the amount remaining on this contract is less than \$1000, the agenda does allow for inquiries and provides agency contact information should any member of the public wish to obtain not only a copy of the agenda but supporting materials. To lessen the burden of the public to do any further investigation, the Commission could adopt a procedure to include monetary amounts should an expenditure be subject to an agenda item.

**Commissioner Kirkpatrick made a motion for approval of Amendment No. 5 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 involving the Navajo Nation Matter in Arizona Federal District Court in the amount of \$100,000 and extending the term to June 30, 2020. Commissioner Stewart seconded the motion and it was approved by a unanimous vote.**

**G. For Information Only: Update on Comm. on Ethics v. Hansen, S.Ct. Case No. 69100.**

Special Counsel Christine Guerci provided an update and background information on the Commission of Ethics v. Hansen, S. Ct. Case No. 69100.

**Background:**

Underlying ethics complaints against State Assemblyman Ira Hansen and Jim Wheeler. Hansen had received misdemeanor citations from the Nevada Department of Wildlife for placing snare traps near a roadway. Wheeler, on behalf of Hansen, asked Legislative Counsel Bureau (LCB) legal for an opinion on the statute under which Hansen was cited whether it applied to snare traps or just steel traps. LCB Legal opined that the statute did not apply to snare traps. Ethics complaints were filed against both for using government resources to benefit their personal interest. The Assemblymen filed in District Court for an Order terminating the Ethics proceedings asserting Legislative immunity. District Court entered an order directing that Ethics terminate its proceedings. Counsel for the Ethics Commission met with the Executive Director and Chair and filed a timely Notice of Appeal. After filing the appeal, the Ethics Commission ratified the filing.

**Supreme Court Case:**

Counsel for the Assemblymen assert that there was an open meeting law violation because filing the Notice of Appeal was action which the body needed to take and that the subsequent ratification only worked prospectively not retroactively. Meaning that the Commission needed to vote on the appeal before it was filed.



The case was heard by a 3-person panel and in a 2-1 decision, the Court held that “an attorney for a public body must have authorization from the client in a public meeting prior to filing a notice of appeal.” Justice Hardesty authored the opinion with Justice Parraguirre concurring. Justice Pickering dissented.

Ethics filed a Petition to have the case reheard before the entire panel. The Reno City Attorney’s office, the Board of Contractors and the Medical Board all filed amicus briefs supporting the Petition and citing the far-reaching consequences of the ruling. The Court granted the Petition in an order signed by Justice Cherry and vacated the previous decision.

Oral arguments were held before the entire court on Monday March 5, 2018. Ethics argued first – and was questioned by Hardesty about having specific authorization for a specific action and whether filing a notice of appeal constitutes an action under the OML. Pickering made some comments about the sloppiness of the way Ethics had proceeded and a subsequently filed affidavit.

LCB argued on behalf of the Assemblymen –

Justice Stiglich questioned LCB about an attorney’s obligations and dereliction of duty if Notice of Appeal timely filed. Also asked why it wasn’t sufficient for a body to vote on the appeal after the Notice was filed because if the body voted no – the attorney could simply withdraw the Notice.

Justice Pickering asked where in the law was the requirement that a vote be taken before a notice was filed. LCB did not cite a specific section but said that counsel had to have authority from the Board before taking material steps. Pickering again asked where was that requirement in the law. LCB said it was the intent of the Legislature. Pickering then said she doesn’t see such a requirement.

Justice Cherry then asked how was a Board like the Contractor’s or Medical Board who do not meet monthly going to deal with such a requirement. LCB said they could hold an emergency meeting – after further questioning by Cherry about schedules for professionals who sit on Boards – LCB said they could decide by email – (which would be a violation of the OML.)

Justices Parraguirre, Douglas, and Gibbons were quiet.  
Awaiting final ruling – Hardesty appears to support, Stiglich, Cherry, and Pickering appear to disagree – will depend on Parraguirre, Douglas, and Gibbons.

**Ms. Guerci concluded that when the opinion is available Staff will make certain that the Commission is briefed and Staff will take whatever appropriate steps to comply.**

Commissioner Kirkpatrick asked about the expectations of the Commission for the duration of the case, even if it is vacated there is still case that was heard and while it is still pending, the Commission should err on the side of caution.

Ms. Guerci stated that is her advice to her client. The Commission meets frequently and an example for today would be that Staff brought the petition to intervene in the PUCN case for Agenda Item E and did not seek a ratification. Another example would be filed letters at Federal Energy Regulatory Commission which are not actual interventions. However, when instituting an action Staff will certainly bring it to the Commission first, which is the conservative view for Staff.

Chairwoman Premsrirut asked has the court defined precisely what Instituting an Action is or is it something left for argument or grey area.

Ms. Guerci explained there was no question that initiating a case in District court would be something that would need Commission approval before it started. There was a lot of discussion by the courts, as to whether filing the notice of appeal, is this a continuation of the same case or was it instituting a new action. If you hire counsel for the appeal you would have to first get approval but if it was your regular public attorney who was filing, the question being reviewed by the Court was whether that authorization was already encompassed in the decision to institute the preceding or to defend against the preceding.

Chairwoman Premsrirut asked for further explanation of the issue of the case to correctly understand that what is before the Supreme court is a procedural issue and the need for counsel to a board or agency to have board approval prior to the appeal of an action not the substantive issues that occurred with the legislators.

Ms. Guerci clarified the court has not gotten to the merits of the underlying case but the issue on appeal is whether filing a notice of appeal, not filing an initiating complaint but, filing a notice of appeal in an action that has already been authorized whether there is a need to go back and have a subsequent vote before filing the notice of appeal.

Chairwoman Premsrirut stated at least in this moment in time if the Colorado River Commission of Nevada (Commission) is to institute an action it must absolutely unequivocally need to hold a public meeting and authorize that first. What still remains open is if the Commission were to have some subsequent matter, perhaps in the same action whether it be a notice of appeal or otherwise, if counsel for the Commission will need that same type of prior approval or will be able to initiate that without a meeting and come back and ratify.

Vice Chairwoman Kelley commended Ms. Guerci on the background and explanation of the case. It was explained well.

Commissioner Sisolak asked if a telephonic meeting is acceptable.

Ms. Guerci confirmed telephonic meetings are acceptable alternatives as long as there is a place for the public to come, hear the conversation and make public comment. She added that Email is not an acceptable alternative.

Commissioner Sisolak asked if the Commission has the necessary technology.

Ms. Harkins answered that the Commission does have the necessary communication and supportive technology capabilities. The Commission has held posted public Commission meetings in the main office conference room located at the Grant Sawyer State Office Building with participation by telephone with call-in numbers provided to Commissioners allowing public participation and public comment.

Ms. Guerci added that the Open Meeting Law must be followed. A standard Notice of Appeal would not be considered an emergency meeting because it allows 30-days and would follow the regular public meeting protocol. Emergency meetings are acceptable for meetings that require an emergency writ or temporary restraining order, for an example.

<b>H. <i>For Information Only: Presentation on Water Supplies in Lake Mead Reservoir.</i></b>
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Jayne Harkins explained that this presentation is in response to several questions relating to water supplies in the Colorado River Reservoirs, and the relationship between the actual water supply that accrues to the reservoir(s) on an annual basis, and water supplies stored in Lake Mead because of various conservation actions. This presentation explains the types of other water supplies stored in Lake Mead, for purposes of avoiding a shortage declaration in a particular year, for water users in Nevada, California, and Arizona as follows:

- 2017 Interim Guidelines for Operation of Lakes Powell and Mead
- As Drought Continues
- Categories of Conserved Water in Lake Mead
- 2017 ICS Creation
- 2007 Extraordinary Conservation Intentionally Created Surplus (ICS)
- ICS for Nevada (2017)
- Mexico's Water Reserve Under Minute 323
- Pilot System Conservation Program
- Lower Basin Drought MOU Voluntary Protection
- Impact on Conservation Water Supplies in Lake Mead 2017 Volumes
- Impact on Conservation Water Supplies in Lake Mead

A copy of the report was provided and made a part of the minutes. (See Attachment A)

**I. 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.**

Natural Resource Analyst Warren Turkett gave a 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 as follows:

- Precipitation
- Colorado Basin River Forecast Center Lake Powell 104 Group
- Lake Powell Unregulated Inflow Water Year 2018 Forecast (issued Mar 2)
- Unregulated Inflow & Storage as of March 12, 2018
- Lake Powell Projections Reclamation's February 2018 24-Month
- Water Use in Southern January 2018
- Hydropower Capacity
- March Reservoir Conditions (Summary)

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

The Commission made a request to Staff to simplify the presentation while addressing all audiences expressing how well Nevada manages its allocation of 300,000-acre feet of water.

Staff agreed to balance the needs of all audiences; members of the Commission, business leaders, and the public to simplify and meet the Commission request.

**J. 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 may be taken.)**

Chairwoman Premsrirut asked if there were any other comments or questions from the public.

There were none.

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

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

There were none.

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

The next meeting was tentatively scheduled for 1:30 p.m. on Tuesday, April 10, at the Grant Sawyer State Office Building, 555 East Washington Avenue, Suite 4412, Las Vegas, Nevada.

**M. Adjournment.**

The meeting adjourned at 2:50 p.m.

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Jayne Harkins, P.E., Executive Director

APPROVED:

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Puoy Premsrirut, Chairwoman