

The meeting was held at 1:10 p.m. on Tuesday, June 11, 2013, at the Clark County Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada.

**COMMISSIONERS IN ATTENDANCE**

|                 |                       |
|-----------------|-----------------------|
| Chairman        | George F. Ogilvie III |
| Vice Chairwoman | Marybel Batjer        |
| Commissioner    | Bob Coffin            |
| Commissioner    | Duncan R. McCoy       |
| Commissioner    | Berlyn D. Miller      |
| Commissioner    | Steve Sisolak         |

**COMMISSIONERS NOT IN ATTENDANCE**

|              |                |
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| Commissioner | J. Brin Gibson |
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**DEPUTY ATTORNEYS GENERAL**

|                                |                      |
|--------------------------------|----------------------|
| Senior Deputy Attorney General | Jennifer T. Crandell |
| Senior Deputy Attorney General | Ann C. Pongracz      |

**COMMISSION STAFF IN ATTENDANCE**

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| Executive Director                               | Jayne Harkins, P.E. |
| Deputy Executive Director                        | James D. Salo       |
| Assistant Director of Engineering and Operations | Robert D. Reese     |
| Manager, Hydropower Program                      | Craig N. Pyper      |
| Manager, Natural Resources Group                 | McClain L. Peterson |
| Natural Resource Analyst                         | Jason Thiriot       |
| Natural Resource Analyst                         | Warren Turkett      |
| 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                      | Carla Miguel        |

**OTHERS PRESENT; REPRESENTING**

|                                 |                     |
|---------------------------------|---------------------|
| Consultant                      | Sara A. Price, Esq. |
| Overton Power District No. 5    | Mendis Cooper       |
| Self                            | Todd Farlow         |
| Southern Nevada Water Authority | Jordan Bunker       |

**COLORADO RIVER COMMISSION  
OF NEVADA  
MEETING OF JUNE 11, 2013**

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**COLORADO RIVER COMMISSION  
OF NEVADA  
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The Colorado River Commission meeting was called to order by Vice Chairwoman Batjer at 1:10 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 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.)**

Vice Chairwoman Batjer asked if there were any comments or questions from the public.

Todd Farlow, 240 North 19<sup>th</sup> Street, Las Vegas, Nevada, 89101, had comments. Mr. Farlow asked in reference to Agenda Item D if there is an anticipated date of when a report on the Lower Colorado River Multi-Species Conservation Program (LCR MSCP) would be ready. He asked whether this report addresses the issue of how the lower lake elevation and increased temperature is affecting the fish population. He also asked if this will be addressed in that report.

Ms. Harkins stated that Agenda Item D is a contract for an independent contractor, there is no report being presented.

Vice Chairwoman Batjer clarified that Mr. Farlow was referring to the Multi-Species report.

Ms. Harkins stated that no report is being presented; only an independent contractor contract with Sara A. Price Esq. is to be considered.

Mr. Farlow stated that Agenda Item D says that the Commission will be advised on what the report is going to address.

**C. *For Possible Action:* Approval of minutes of the May 14, 2013 and May 24, 2013 meetings.**

**Commissioner Sisolak moved for approval of the minutes. The motion was seconded by Commissioner McCoy and approved by a unanimous vote of those present. Chairman Ogilvie was not present for the vote.**

**D. For Possible Action: Consideration of and possible action to approve a contract for services from independent contractor Sara A. Price, Esq., to advise on issues relating to the Lower Colorado River Multi-Species Conservation (LCR MSCP) Program, the interfacing of the LCR MSCP and the new requirements under the Hoover Power Allocation Act of 2011, and other environmental, water, Tribal, and power-related issues as directed.**

Chairman George Ogilvie arrived at this time.

Ms. Harkins provided a summary of the contract for services from independent contractor Sara A. Price, Esq., and the Colorado River Commission of Nevada (Commission).

A Request for Proposal (RFP) was issued on April 5, 2013, for a consultant to provide services to advise on: (1) issues relating to the LCR MSCP; (2) the interfacing of the LCR MSCP and the new requirements under the Hoover Power Allocation Act of 2011; and (3) other environmental, water, Tribal and power issues, as directed by the Executive Director. The RFP required 5-10 years of legal experience involving the “Law of [Colorado] River,” federal environmental statutes and regulations, federal statutes and regulations concerning the production and allocation of hydropower from the Colorado River, Nevada Statutes and regulations relating to the Commission and its duties and responsibilities, and domestic and international matters pertaining to water, power and environmental issues on the Colorado River, particularly as such matters relate to Nevada’s interests on the River.

The RFP was published in accordance with Nevada State Purchasing Division (Purchasing) requirements, which includes posting on the Purchasing website and a newspaper. An advertisement was placed in the *Las Vegas Review-Journal* on April 14, 21, 28, 2013. To locate the largest possible pool of candidates, Staff additionally posted the RFP on the Commission’s website, as well as on the Clark County Bar Association of Nevada’s website, from April 5, 2013 to May 3, 2013.

The Commission received only one proposal and that proposal was submitted by Sara A. Price. Her proposal was opened on May 5, 2013. The Executive Director interviewed her on May 10, 2013. On May 21, 2013, she was notified of the Commission’s intent to negotiate a contract and thereafter worked with Staff to develop the proposed contract.

Sara A. Price has worked for the Commission in the development and implementation of the LCR MSCP by negotiating and drafting Program Documents, including the original founding documents and subsequent implementing documents, such as the Water Accounting Agreement, Habitat Credit Performance Standard Guidelines, Remedial Measure Fund Agreement, and other land purchase and management agreements. She also assisted in efforts made in Washington D.C. to have Congress authorize the program, which it did in 2009. Ms. Price has been a Nevada licensed attorney since 1996 and has over 13 years of legal experience with the Commission on water and power matters, and on matters concerning the LCR MSCP and other environmental, water and power matters as directed by the Executive Director. Her current contract expires June 30, 2013.

Ms. Price has extensive experience working on water and hydropower issues. She has developed excellent working relationships with key personnel in federal and state agencies and with many of the water and power stakeholders on the River.

Under the terms of the proposed contract, Sara A. Price will continue to serve as a special consultant to the Commission on issues related to the environment, such as species and habitat conservation. She will continue to advise on and assist in policy development and implementation of the 50 year LCR MSCP, currently in its seventh year of operation, including negotiating and drafting transactional documents and providing the on-going review, oversight of and participation in the completion of technical, financial and work plan documents. Further, she will continue to advise on and assist in the interfacing of the LCR MSCP and the new requirements under the Hoover Power Allocation Act of 2011, including developing policies and procedures and will continue to be available to the Commission on other environmental, water, Tribal and power-related matters as needed.

Staff recommends and believes that it is in the best interest of the Commission and the State of Nevada to retain the continuing service and expertise of Sara A. Price.

Ms. Harkins asked if there were any questions.

Commissioner Sisolak asked if the RFP was too restrictive, could that be why only one response was received.

Ms. Harkins stated that there are other attorneys in the area that could have met the requirements and chose not to respond to the RFP at this time. Staff is aware that there are additional attorneys around that are familiar with the LCR MSCP program.

Commissioner Sisolak asked if the RFP could have been too onerous and if that kept other attorneys from applying. Why would no one else bother to put in a proposal?

Ms. Jennifer Crandell, Senior Deputy Attorney General stated that the Commission is looking for five years' experience in the LCR MSCP and related laws. The agency is aware of lawyers in town that could probably qualify in the area or even outside of the State, but for whatever reason only one response was received. The standards were lowered to try to broaden the applicant pool. Initially eight year experience was the requirement and it was lowered to five.

Ms. Crandell further stated that this area of policy is very complicated and that it is comprised of many inter-related laws. The Commission is looking for an individual who has the knowledge of all the different laws and how they relate to each other, and who can attend meetings and hit the ground running. The requirements were originally eight to ten years and were lowered to five years to see if anyone would be interested in applying. Only one response was received.

Commissioner Sisolak stated that he understood why Ms. Price was selected and did not question her qualifications, but said it would be nice if more than one RFP response was received.

Commissioner Sisolak asked if there is a reason why there is no disclosure statements included in the RFP's. Disclosure statements are required by the County to disclose that there is no prior relationship with any board members or any of the entities, staff members etc., just in the spirit of transparency that there is no potential conflict of interests.

Vice Chairwoman Batjer stated that this contract was done in the format prescribed by the State Purchasing standards.

Ms. Crandell stated that the contract was handled by following the State rules and what the State requires to get a contract executed. Staff can certainly look to incorporate disclosure statements if that is something the Commission would like to do.

Commissioner Sisolak stated that in just requiring the disclosure if a person has some sort of relationship with the Commission so that the Commission is aware of it when voting.

Commissioner Coffin stated that the issue here is that sometimes experience helps because you don't have to teach someone. This contractor has an extensive background in the issues as he looked through the references submitted on behalf of Ms. Price. The only time there is concern is when a contractors work is if it is so specialized that maybe there is no other place to go and the Commission is not receiving enough qualified bids that maybe at some point it became less expensive to hire the individual rather than have a contract with them. Although \$270,000.00 over the term of a four year contract is not a great deal, but in terms of per hour if we are looking for someone more specialized it may be more cost effective to hire her and save a lot of money in the long run.

Commissioner McCoy stated that this is a not-to-exceed contract, for legal services retention, to help assist with administrative and legal complexities relating to various federal programs. The way these things work is that over a period of time the types of programs the Commission is involved in will change and so the need for the particular kinds of expertise will change. It makes more sense to hire the expertise needed on a contract basis as opposed to bringing the person in-house. The needs for expertise are going to be different fifteen to twenty years from now.

Chairman Ogilvie asked if there were any complaints from any other potential bidders who felt that the criteria were too restrictive.

Ms. Harkins answered no.

**Vice Chairwoman Batjer moved for approval of the contract for services between independent contractor Sara A. Price, Esq. and the Commission, and authorized the**

**Executive Director to sign it on behalf of the Commission. The motion was seconded by Commissioner McCoy and approved by a unanimous vote.**

**E. *For Possible Action:* Consideration of and possible action to approve an engineering services agreement between Burns & McDonnell Engineering Company Inc., and the Colorado River Commission of Nevada.**

Robert D. Reese, Assistant Director of Engineering and Operations gave a summary of the engineering services agreement between Burns & McDonnell Engineering Company Inc. and the Commission.

The Commission owns, operates and maintains a high-voltage transmission and distribution system staffed by six Commission employees in the Commission's Power Delivery Project. In addition, the Commission is responsible for the operation and maintenance of six additional substations owned by the Southern Nevada Water Authority and three owned by the Clark County Water Reclamation District.

In 2001, the Commission hired its first in-house electrical engineer to provide engineering support for the system. As a result, Commission staff is capable of performing many routine engineering support functions. However, the Commission occasionally requires further engineering support for its operation and maintenance functions and an engineering firm to assist with the preparation of designs and specifications for upcoming projects. One such project is the Boulder Bypass Project.

Required areas of expertise periodically include civil engineering for foundation, grading and structural design, and communication engineering for assistance with the Commission's fiber optic and microwave radio communication system and system studies. On a less frequent basis, the Commission requires expertise in environmental engineering and structural engineering for minor projects and problems.

In order to have a ready source of engineering expertise, the Commission began the process of recruiting qualified engineering firms through a Request for Proposals (RFP) process which was handled by the Nevada State Purchasing Division (Purchasing). Proposals were submitted by four firms: Burns & McDonnell Engineering Company, Inc. (Burns & McDonnell), Building Technology Associates, Inc., Finley Engineering Company, and Sargent & Lundy, LLC (Sargent & Lundy).

State Purchasing selected two firms with whom it has engaged in contract negotiations, Burns & McDonnell and Sargent & Lundy. Purchasing has concluded its negotiations with Burns & McDonnell. Purchasing is continuing its negotiations with Sargent & Lundy, with the support of Commission staff and staff of the Attorney General.

The agreement for Commission consideration today is with Burns & McDonnell. Burns & McDonnell is a multi-discipline engineering company with expertise in all areas that

may be required by the Commission's operation and maintenance functions and for construction projects.

The agreement proposes to retain the services of Burns & McDonnell for an initial contract term of two years, anticipated to begin August 13, 2013, subject to Board of Examiners approval, with an option to renew for two additional years. Work under the agreement will be authorized by Commission staff as needed through the development and execution of written task authorizations. The total combined value of task authorizations under this agreement shall not exceed \$450,000.00 over the term of the contract.

Staff believes Burns & McDonnell is well qualified and fully capable of providing engineering support to the Commission and recommends approval of this agreement.

Mr. Reese asked if there were any questions.

Chairman Ogilvie asked why Staff recommended two contractors.

Mr. Reese stated that if at least two vendors or engineering firms are on contract, it gives the Staff the ability to react in a more efficient manner. For example with today's activities with the high-voltage systems, if one vendor cannot meet the schedule, there is an alternate vendor to go to meet scheduling needs. It also gives Staff the ability to mix resources if necessary, and more flexibility to operate.

Chairman Ogilvie asked what would be Staff's recommendation if there is a contract award to Burns & McDonnell, and the Commission is unable to come to terms with Sargent & Lundy.

Mr. Reese replied that if Staff is unable to come to terms with Sargent & Lundy they will be considered non-responsive and be removed from the bidding process. The top two candidates at the time have been Burns & McDonnell and Sargent & Lundy.

Chairman Ogilvie asked if Finley Engineering Company is next in order.

Mr. Reese stated they are, and that some of the challenges Staff wants to look at is the vendor ability or past experience in transmission distribution systems. Two of the vendors were lower on expertise in those facilities. A lot of vendors have a lot of civil buildings, and things of that nature. Staff is not looking for facility building expertise but more of the transmission and distribution infrastructure, and more of the electrical design.

Chairman Ogilvie stated that it appears that the two bidders that are intended to enter contracts with were very close in the average weighted score; whereas Finley Engineering Company was significantly lower in the average weighted score. Do they have enough of the expertise that would then lead to negotiations to enter into a contract with them, or would the contract be sole sourced to Burns & McDonnell?

Mr. Reese stated that it would be his opinion that the Commission enter into a sole contract with Burns & McDonnell, and at such time Burns & McDonnell was not able to meet Staff's requirements, then Staff would proceed to go through the RFP process again, to seek another engineering firm.

Commissioner Sisolak stated that it would be helpful if there were disclosure forms and maybe Staff could look into that. Commissioner Sisolak asked if there would be an additional \$450,000.00 if the Commission contracts with the second company.

Mr. Reese stated that would be correct.

Commissioner Sisolak asked if the second company is not contracted, would the Burns & McDonnell contract be raised to \$900,000.00.

Mr. Reese stated no, the contract would still only be \$450,000.00. In the event that services required exceed that amount, then Staff would come before the Commission and request to enter into a new agreement with Burns & McDonnell for either an extension of funds or a new contract.

Commissioner Sisolak asked when was this evaluation or when did the contract negotiation begin, and is it at an impasse.

Mr. Reese asked if the question was regarding Sargent & Lundy. The negotiations with Burns & McDonnell have been finalized. There are still some negotiations ongoing in the terms and conditions portion of the contract with Sargent & Lundy. If they become non-responsive then they would be eliminated from this process.

Commissioner Sisolak asked if there is an anticipated date.

Mr. Reese answered that he anticipates the negotiations to be finalized within the next three weeks one way or the other.

Commissioner Sisolak asked if the fourth bidder was not on the same page as the other three vendors, and is that why the score came back so low.

Mr. Reese stated that there are matrixes that are in place and different components have different weights to the matrix. The evaluation is very heavy on the electrical side for the weighted portion of the matrix. When an RFP for different services is advertised, there may be entities who apply who are not qualified. The process of the matrix helps to eliminate those companies, or put the appropriate qualifications aside. The fourth bidder had little electrical expertise.

Commissioner Sisolak asked if the RFP's were weighted based on oral presentation or written proposals.

Mr. Reese stated written proposals.

Commissioner Sisolak asked if the submissions were evaluated independently by the evaluators or were they evaluated in a group setting and then the evaluators scored them.

Mr. Reese stated that there were a group of three evaluators that did the evaluations in an independent review. Then the weighted scores were tallied, and the list was submitted.

Commissioner Coffin stated that the weighted scores of the top two selections were remarkably close. That is the kind of bidding you want to see, and is very tempting to see that they are both kept busy working for the Commission. Is either one of the companies smaller than the other, or does one of them possess an expertise that didn't show in the weighted scores?

Mr. Reese stated that both Sargent & Lundy and Burns & McDonnell are quite large firms, and they have the multiple disciplines in civil and electrical to support the activities that the Commission may require. The Commission does not have a civil engineer on staff, so if foundations or modifications to foundations, then civil expertise is needed. Both Sargent & Lundy and Burns & McDonnell have tremendous amount of experience in the areas of transmission design and construction facilities throughout the United States and Internationally. It would be nice to have an engineering firm based out of Nevada or someplace local where it makes scheduling easier. Neither Burns & McDonnell, nor Sargent & Lundy are based in Nevada; however they are licensed in the State of Nevada.

**Vice Chairwoman Batjer moved for approval of the engineering services agreement between Burns & McDonnell Engineering Company Inc., the Commission and authorized the Executive Director to sign it on behalf of the Commission. The motion was seconded by Commissioner McCoy and approved by a unanimous vote.**

**F. *For Information Only:* Presentation of the Colorado River Commission of Nevada Power Delivery Group's annual Safety Report.**

Robert D. Reese, Assistant Director of Engineering and Operations presented a report for the Power Delivery Group's annual Safety Report.

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

Mr. Reese stated that the Commission owns and operates seventeen high-voltage substations and maintain another twelve for our customers. When there is a new build or modifications to the facilities, the Power Delivery Group is actually doing design, construction and implementing components in an energized facility. When those engineers come into our property we are directly responsible for their safety. It is very important that we have firms and vendors that are well-versed and have expertise and qualifications in high-voltage facilities.

Mr. Reese reported that for the thirteenth straight year the Commission and its Power Delivery staff have received the American Public Power Association's (APPA) Safety Award recognizing continued accident-free operations. There have been no accidents or incidents for the fifteen years that the facilities have been energized. He gave great credit to the Power Delivery Group staff, and the philosophy of the Commission.

Mr. Reese noted the extensive safety training that all Power Delivery personnel receive such as CPR, job briefing, grounding, hearing conservation, heat stress, safety in substations, switching, personal protective equipment, defensive driving, fire safety, fall protection, and use of specialized tools and equipment.

Chairman Ogilvie asked the about the APPA award, the category is over 15,000 man hours?

Mr. Reese stated that it is under 15,000 man hours. There are several categories and the Power Delivery Group falls into Group A.

Chairman Ogilvie asked about the number of years the Power Delivery Group has participated in the award.

Mr. Reese stated that the total number of years is thirteen, and had to participate two years before being able to receive an award. The total number of years of participation is fifteen years, or since April 1997. The group has operated without incident since 1997.

Chairman Ogilvie stated that it is a tremendous achievement and the Power Delivery Group deserves to be congratulated. It is a tribute to Mr. Reese and a factor of his professionalism.

Mr. Reese stated that the congratulations should go to the Commission, because the Commission allows the Power Delivery Group the resources and philosophy to the job in a safe and efficient manner. It all starts from the top and it works all the way down to the janitor. Everyone has a part in safety, because when it comes to safety there is no compromise in the facilities. Complacency is the biggest downfall for safety concerns. It can be very challenging to align the attitude when you are doing the same thing over and over again but the Power Delivery Group does a tremendous job and deserve all the credit for doing a great job.

**G. For Information Only: Status update on the Colorado River Commission of Nevada's efforts to implement the provisions in the Hoover Power Allocation Act of 2011 (H.R. 470) passed by Congress.**

Craig N. Pyper, Manager, Hydropower Program, provided a status update on the Commission's efforts to implement the provisions in the Hoover Power Allocation Act of 2011 (Act) passed by Congress.

There have been a couple of developments with the passage of Assembly Bill 199 (A.B. 199), renamed Chapter 134. It has been signed by the Governor. Now that the law is being implemented, Staff is reviewing the Commission's regulations to see how it will impact the agency. Staff is also taking into consideration the potential of the fifty year contracts for Hoover Allocation to be allocated in 2017. Staff is taking a long term view of what this could possibly mean.

There is still no information on the new criteria proposed by Western Area Power Administration (Western). Through verbal contact Western has indicated that in approximately August 2013 they should be presenting something else; unknown, whether this is their final criteria or something else Staff is unaware of. All Commission customers and potential new allottees are being kept informed as to any developments.

Vice Chairwoman Batjer asked if Staff has predicted or have set a timeframe to promulgate the regulations, or is there a timeframe?

Mr. Pyper stated that a timeframe has not been set.

Ms. Harkins stated that there will have to be changes made to the regulations to implement A.B. 199. Staff is looking at starting later this year. The changes may have to be done in two separate regulatory processes. The first change in regards to A.B. 199 and what changes it has made. It is unknown when Western will make their changes and whether it will lead to additional changes for the Commission. Some of the timing is a question, but for A.B. 199 the goal is to get the changes done in 2013-2014.

Ms. Harkins introduced a new staff member Carla Miguel, and stated that she will be providing administrative support to the Hydropower Program Group.

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| <p><b>H. <i>For Information Only:</i> 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.</b></p> |
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McClain L. Peterson, Manager of the Natural Resources Group, provided a report on the following:

- Unregulated Inflow into Lake Powell
- Storage Conditions
- Lake Mead End of Month Elevation Projections
- Precipitation – Colorado River Basin
- Record of Precipitation, Las Vegas, NV, Recorded Value
- Record of Precipitation, Las Vegas, NV, Cumulative Received
- U.S. Drought Monitor
- U.S. Seasonal Drought Outlook
- SNWA Water Diversion
- Remaining Nevada Diversion

- Total Nevada Diversion
- Water Use in Southern Nevada

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

Ms. Harkins provided an update on the Navajo complaint. The Commission approved a contract with Fennemore Craig, P.C., and primary attorney, Lauren Caster, to represent the State of Nevada, the Commission, and the Southern Nevada Water Authority (SNWA). That contract was approved by the Board of Examiners on June 11, 2013. On May 28, 2013 the Navajo Nation filed a motion to amend the complaint.

Ms. Crandell thanked the Commission for approving the amended contract to include the Attorney General. Mr. Caster was named a Special Deputy Counsel and that means that he will be able to enter appearances on behalf of the sovereign State of Nevada which that is a key piece to defending this litigation.

The original complaint was filed in 2003, and the law has changed significantly since the original filing. The amended complaint lists seven causes of action. First, it challenges the legality of the 2007 Guidelines, which was a cutting edge change to management and operations of the River that balances the contents of Lake Powell, and Lake Mead, and implements shortage criteria. The operational changes also implement the ability to create Intentionally Created Surplus and, and quantifies surplus. That is being challenged as a violation of National Environmental Policy Act, as well as the Administrative Procedures Act. Second, the Navajo Nation is asking the court to set aside the law and challenging the Implementation Agreement Final Environmental Impact Statement (FEIS), which was in accordance with the quantification settlement that took place in California. As part of that agreement there is a requirement that people that over-use the Colorado River pay back the water. These regulations are called Inadvertent Overrun and Payback Policy (IOPP). This lawsuit now challenges the FEIS that gave the ability to quantify and require payback of overruns.

Third, the lawsuit challenges the banking regulations as being in violation of the Administrative Procedures Act, the Storage and Interstate Release Agreement (SIRA), under which the Commission entered into agreements with Arizona and California. The Navajo Nation is challenging the Federal regulations that permit banking, as well as the agreements that allows us to do so, as again violating the law and asking that law to be set aside.

Fourth, the lawsuit claims a breach of fiduciary duty against the Secretary of the Interior (Secretary) for failing to protect the Navajo's rights, and to quantify their water out of the Lower Basin as required under the Winter's Doctrine.

The Winter's case requires that the United States develop a permanent homeland for Tribes and to provide them the necessary water to develop a permanent homeland. So there is a breach of trust claim against the Secretary.

Fifth, there is a significant change in the claim- a new claim- regarding the Administrative Procedures Act and the Central Arizona Project (CAP). The Secretary is able to enter into contracts with Tribes for delivery of water out of the CAP and currently there is in excess of 400,000 acre-feet that has been contracted to various Tribes in Arizona that comes out of the 2.8 million acre-feet of Arizona's allocation amount.

The Navajo Nation is claiming that those contracts with other Tribes violate the Navajo's rights, because the Navajo might have superior rights to those contracted entities. That is a targeted claim against the State of Arizona.

The bottom line is all of the laws have been challenged are those that have been created on the Colorado River over about the last fifteen years. The ability to have flexible management in terms of banking water, moving water, storing water, whether it is Lake Mead or storing water in Arizona, is being challenged. The Navajo Nation is asking the court to set aside all of those laws as violation of a number of different laws.

They are also asking for an injunction to enjoin operations, to enjoin additional diversions and contracts, and other relief that the court would see fit.

They are asking for quantification ultimately in the Lower Basin.

It is our position that quantification of the Navajo's claim, if any, has to come out of Arizona's allocation. The way that the Navajo Nation has pled the complaint is that they continued to say it has to come out of the Lower Basin. This raises the issue of whether this is the correct forum. A number of attorneys have raised that question whether this is the correct forum, or whether this case should have been filed in the United States Supreme Court and reopen Arizona vs. California. So we will see how this plays out.

The response to their motion to amend their complaint is due July 3, 2013. Ms. Crandell and Ken Slowinski, who is general counsel for Arizona are Coordinating Counsel for the Defendant Intervenors. There are numerous attorneys representing the Defendant Intervenors, and we suspect that there will be many more Intervenors. The State of Colorado will be moving to intervene. The Sovereign State of California will be moving to intervene. All the Lower Basin States will be involved in the case.

The State of Utah is not going to intervene, because they have entered into an agreement with the Tribe on quantifying Utah's obligation to the Navajo. Their settlement has not been approved. They just got a federal settlement team so they do not want to intervene. We are still waiting to hear from Wyoming and New Mexico from the Upper Basin.

We will be leading the charge, and suspect that a number of the Arizona Tribes are going to want to intervene since their contracts are specifically under attack. There will be a huge amount of entities involved in the case.

Since becoming involved in water law in the Colorado River, this is the most significant challenge to our water quantity, our allocation, and the operations which provide the

flexibility on the river. It is a significant case, and I'm certainly glad to have the help of Mr. Caster who does quantifications in Arizona.

Ms. Crandell stated that if there are any questions please hold them, because this is now an active litigation and non-meetings can be held to discuss strategy and provide updates to how the case is progressing.

Chairman Ogilvie asked who the Defendants are.

Ms. Crandell stated the United States, Secretary of the Interior. The Department of Justice is defending the case, with Solicitor Bob Snow.

Chairman Ogilvie asked to the extent that the other Tribes intervene, would they be intervening adverse to the Navajo Nation?

Ms. Crandell answered yes. The Defendant Intervenors have agreed not to have a Joint Defense Agreement at this time. All parties have stated what their position is publicly and there is no any big secret as to positions. Right now there is complete unison among the Defendant Intervenors, but there is recognition that at a later point in time, if there is a fight among the States as to a split of water between the Lower Basin States or with respect to all Seven States, obviously there would be a conflict and the parties would diverge at that point. But as long as we can, we will be filing joint briefs for the convenience of the court.

Chairman Ogilvie asked what prompted the Motion for Leave to Amend?

Ms. Crandell stated that there have been significant changes since 2003, and the 2007 guidelines were implemented. More banking has taken place, IOPP, has just finished up, so there are a lot of changes to the law. There is not a huge way to oppose the Motion, although there are some parties looking into opposing the Amendment.

Commissioner Coffin stated is it possible where it could exceed the budget?

Ms. Crandell stated it could exceed, but anticipates keeping costs down for the Commission since she will be writing and drafting, as well as the other Defendant Intervenors and their staff that are working on this. There will be an attempt to coordinate through writing teams to keep costs down. That is one of the purposes of coordinating.

Commissioner Coffin asked if the Commission would have access to the emergency funds of the State should it need to have additional legal expenses paid.

Ms. Harkins stated that the Commission is funded by our customers so this is primarily a water administrative charge that is funded by SNWA plus the other water users. But primarily SNWA would be funding this and it has been budgeted for this year, and can manage the next two years.

**I. 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.)**

Chairman Ogilvie asked if there were any other comments or questions from the public.

Todd Farlow, 240 North 19<sup>th</sup> Street, Las Vegas, Nevada, 89101, had comments. Mr. Farlow noted that he appreciated the safety report provided by Mr. Reese. Mr. Farlow mentioned that during the presentation Mr. Reese indicated that the cleaning process was to remove buildup from the environment on the facilities, one of the byproducts being oil and he would like to know if the oil cleaned off is carcinogenic.

Mr. Farlow indicated that on Agenda Item D his question at the beginning of the meeting was not clear and he wanted to clarify. The agency hired a person to represent the Commission on issues, those issues are based upon reports; the reports are somewhere. Are they in a library someplace, or are they hidden in some government bureaucracy?

Mr. Farlow said he brings this up because is some years ago Lake Powell water was used to flush the riverbed of the Colorado River. The reason is there was a lawsuit because of the quality of water in the riverbed. So is this going to happen again? Who did the reports, is it the government that did the reports or a university that did the reports. Where are these reports hidden? Thank you very much.

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

Chairman Ogilvie asked if there were any comments or questions from the Commission members.

Chairman Ogilvie had comments regarding A.B. 199 and Senate Bill 438; he stated that he would like to thank Jayne, and the Commissioners that participated in supporting the Commissions efforts in Carson City, but particularly Jayne and offered her congratulations on doing a wonderful job on a very important piece of legislation for the Commission. It was a very big learning experience and she performed admirably and he thanks her.

Vice Chairwoman Batjer seconded Chairman Ogilvie's comments and added that Ann Pongracz was a faithful servant through the whole process as well as to the Commission and to Jayne. Jayne was early into the legislative building and many late nights to leave, and represented the Commission very, very well, and it is appreciated very much.

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

The next meeting was tentatively scheduled for 1:00 p.m. on Tuesday, August 13, 2013, at the Grant Sawyer State Office Building, Suite 4401, Las Vegas, Nevada.

**L. Adjournment.**

The meeting adjourned at 2:21 p.m.

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Jayne Harkins, P.E., Executive Director

APPROVED:

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George F. Ogilvie III, Chairman