

The meeting was held at 1:03 p.m. on Tuesday, September 9, 2014 at the Grant Sawyer State Office Building, 555 East Washington Avenue, Suite 4401, Las Vegas, Nevada.

COMMISSIONERS IN ATTENDANCE

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

COMMISSIONER IN ATTENDANCE VIA TELECONFERENCE

Commissioner	Steve Sisolak
--------------	---------------

COMMISSIONER NOT IN ATTENDANCE

Chairman	George F. Ogilvie III
----------	-----------------------

DEPUTY ATTORNEYS GENERAL

Special Counsel, Attorney General	Jennifer T. Crandell
Special Counsel, Attorney General	Ann C. Pongracz

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 Director of Engineering and Operations	Robert D. Reese
Manager, Energy Services	Gail A. Bates
Manager, Hydropower Program	Craig N. Pyper
Assistant Hydropower Program Manager	Lisa M. Ray
Hydropower Program Specialist	Sarah Ritchie
Natural Resource Analyst	Warren Turkett
Senior Accountant	Gail L. Benton
Senior Energy Accountant	Richard M. Sanders
Senior Energy Accountant	Kalora E. Snyder
Office Manager	Judy K. Atwood
Administrative Assistant III	Carol L. Perone
Administrative Assistant II	Gina L. Goodman

OTHERS PRESENT; REPRESENTING

Consultant	Sara A. Price, Esq.
Fennemore Craig, P.C. (via teleconference)	Lauren J. Caster, Esq.
Southern Nevada Water Authority	Jordan Bunker

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF SEPTEMBER 9, 2014**

INDEX

<u>Agenda Item</u>	<u>Subject</u>	<u>Page No.</u>
A.	Conformance to Open Meeting Law	1
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.).....	1
C.	<i>For Possible Action:</i> Approval of minutes of the August 12, 2014 meeting	1
D.	<i>For Possible Action:</i> Consideration of and possible action to approve an Amendment No. 3 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	1
E.	<i>For Information Only:</i> Status update on Staff’s implementation of the provisions in the Hoover Power Allocation Act of 2011 (H.R. 470) passed by Congress	5
F.	<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.....	6
G.	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.).....	8
H.	Comments and questions from the Commission members	8
I.	Selection of the next possible meeting date	8
J.	Adjournment.....	8

The Colorado River Commission meeting was called to order by Vice Chairman Miller at 1:03 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.)

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

C. For Possible Action: Approval of minutes of the August 12, 2014 meeting.

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

D. For Possible Action: Consideration of and possible action to approve an Amendment No. 3 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.

Jennifer T. Crandell, Special Counsel, Attorney General, gave a summary of Amendment No. 3 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.

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, which was initiated in 2003, challenges current Colorado River operations, including the Interim 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 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 United States 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 (SNWA).

Ms. Crandell provided a more in-depth explanation of a portion of the challenge to the Interim Guidelines involving Intentionally Created Surplus (ICS). ICS allows for

creation of additional water which can then be stored in Lake Mead. Since the implementation of the Guidelines in 2007, when you include Minute 319 with Mexico, ICS has allowed us to create an additional 16 feet of water in Lake Mead. So, without ICS, Interim Surplus Guidelines and Shortage Guidelines, there would not be that additional 16 feet of water in the lake.

In addition, the Guidelines developed criteria for coordinated operations between Lake Powell and Lake Mead. Under that scenario, during the coming year there will be 9 million acre feet delivered from Lake Powell to Lake Mead rather than the usual 8.23 million acre feet, which will benefit Lake Mead. This is another benefit directly related to the Interim Guidelines.

The Navajo case also challenges the banking regulations and contracts that permit us to bank water in Arizona. Nevada has banked over 600,000 acre-feet of water in Arizona. Ms. Crandell said in her opinion, this case represents the biggest threat we have seen on the river in terms of litigation.

On March 12, 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. United States*, 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 Commission's Executive Director and Senior Deputy Attorney General Jennifer 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 original contract with Fennemore Craig, P.C. had a two-year term, although the contract covered months in fiscal years 2013, 2014 and 2015. The contract had a not-to-exceed amount of \$300,000. The First Amendment to the original contract was approved January 14, 2014, which completed funding on the contract through fiscal year 2014. That amendment changed the contract amount for fiscal years 2013 and 2014 to \$239,000, and reflected approximately \$24,000 billed in fiscal year 2013, \$150,000 billed in fiscal year 2014, and approved additional funds of \$65,000 for legal fees and costs to cover the remaining legal work on the Motion to Dismiss and oral argument, only, through fiscal year 2014 (June 30, 2014).

The \$65,000 increase in funding to the first amendment was due to the fact that the majority of the work anticipated under the contract (preparation of a Motion to Dismiss) occurred shortly after the beginning of the first full fiscal year (July 2013-14). This work included serving as coordinating counsel for the Defendant Intervenor with the Department of Justice, coordinating defense strategy among the numerous Defendant Intervenor, 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.

A second amendment to the contract provided for funding for legal fees and disbursements for fiscal year 2015, in the amount of \$20,000, to cover litigation costs until such time as the District Court ruled on pending dispositive motions. Work under this amendment included monitoring the case, legal research to support supplemental authority filings, coordinating with co-defendants, reviewing the Court's decision, making initial strategy recommendations, and preparing any initial filing that may be required to move the case forward. The total not-to-exceed amount for the two-year term of the contract was amended to \$259,000. It was anticipated by the Commission that once the Court ruled, the Contract would require further amendment to provide funds to continue the case.

On July 22, 2014, the District Court granted the Federal Defendants' Motion to Dismiss without prejudice, and terminated the case. This decision made the case appealable to the Ninth Circuit Court of Appeals. 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. Based on this new motion, and the likelihood that the Navajo will appeal to the Ninth Circuit, Fennemore Craig has proposed a budget to cover three possible courses of action or any combination of elements from one or more alternatives: 1) if the District Court grants the Navajo request for an amendment and the Complaint is then amended, resulting in the necessity to prepare new Motions to Dismiss in the District Court; 2) if the District Court grants the Navajo motion in part and certifies the dismissal of one or more claims for immediate appeal to the Ninth Circuit, while simultaneously the Complaint is amended in part and litigation continues in the District Court; or 3) if the District Court denies the Navajo motion and the Navajo file an appeal in the Ninth Circuit, requiring Fennemore Craig, P.C. to prepare an appellate brief.

The Commission staff recommended continued legal representation of Fennemore Craig, P.C. and approval of expenditures as identified in Contract Amendment #3, in this significant on-going litigation through fiscal year 2016. Based on these three possible litigation tracks, Fennemore Craig, P.C. has developed a budget for continuing its representation of the Commission. Based on this budget, the Contract has been amended (Amendment #3 to Contract) to provide an additional amount of \$260,000 for legal fees and costs for the balance of fiscal year 2015 through fiscal year 2016 (July 1, 2014 - June 30, 2016). The two-year Contract is extended an additional year, for a total of three-years. Total amount authorized under the Contract, with a not-to-exceed amount, is \$519,000 for the term of the contract.

The cost estimate provided by Fennemore Craig, P.C. includes disputes regarding the administrative records, if one needs to be created by the Federal Government.

The cost estimate also includes \$35,000 for Mr. Caster to represent the Defendant Intervenors at the Ninth Circuit appeals argument. This also assumes that any moot court would be accomplished among counsel for the Defendant Intervenors and travel to San Francisco, California or a venue other than Phoenix, Arizona.

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

Vice Chairman Miller asked whether the SNWA is coordinating with the Commission and Fennemore Craig, P.C.; and whether SNWA as CRC's customer ultimately pays the cost of the contract.

Ms. Crandell answered that is correct. The additional steps to work with both sets of clients to coordinate efforts may lead to additional costs.

Ms. Harkins stated that the SNWA's General Counsel reviewed the contract amendment and the contract budget and was okay with the amount.

Vice Chairman Miller stated okay.

Ms. Crandell stated that she would be happy to answer any additional questions and that Mr. Caster was also available via teleconference to answer any questions.

Commissioner Premsrirut questioned the funding that was requested previously for filing the Motion to Dismiss, with the understanding that the Court denied the filings as Moot because the complaint itself could not stand. How much of that work product can be used in subsequent Motions to Dismiss in the event the court does permit the Navajo Nation to amend the complaint?

Ms. Crandell stated that it would depend on the amended complaint and what kind of new claims are presented. Assuming that the Navajo Nation amends the National Environmental Protection Act claim, Staff hopes to be able to reuse the research previously completed, depending upon how the Navajo Nation amends. The Navajo Nation did not supply a proposed amended complaint because this is not a 15(e) Motion, it is a 60(b) Motion which is a Motion to amend the judgment.

Commissioner Premsrirut stated that the only comment would be to recycle or reuse some of the work product that was already done to avoid incurring additional costs.

Ms. Crandell stated that she agreed.

Commissioner McCoy moved for approval of Amendment No. 3 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. The motion was seconded by Commissioner Premsrirut and approved by a unanimous vote.

E. *For Information Only:* Status update on Staff's implementation of the provisions in the Hoover Power Allocation Act of 2011 (H.R. 470) passed by Congress.

Craig N. Pyper, Hydropower Program Manager, provided an update regarding Staff's implementation of the provisions in the Hoover Power Allocation Act of 2011 (H.R. 470) passed.

Western Area Power Administration (Western) published its Boulder Canyon Project Post 2017 Resource Pool Proposed Allocation of Power and held Public Information Forums which Staff attended. Public Comment Forums are scheduled the week of September 15, 2014. Staff is evaluating steps that may need to be taken to provide any public comments. Western is planning to publish its final allocations in October 2014.

Staff briefed the Commission during the August meeting regarding the process that the Commission went through in the 1980's when the previous allocations took place. New different criteria is needed for the Commission's new allocations. Staff prepared proposed allocation criteria for marketing Nevada's share of Hoover Schedule D Power. Public Meetings are scheduled in Las Vegas, Pahrump, and Overton, Nevada on September 11-12, 2014. Several interested parties are planning to attend these meetings. Staff will present the proposed criteria and receive the public's feedback to help develop recommendations regarding what will be the greatest possible benefit to the State. Staff will formalize the recommendations and develop a draft order, setting forth proposed criteria for the allocation to present to the Commission in October 2014. Once a draft order is adopted by the Commission, Staff will call for applications from interested parties which meet the criteria that is developed. The criteria will be used to make recommendations to the Commission from the applicants who qualify. Staff hopes that by the beginning of next year the Commission will know who the new customers will be and be able to start working on the contracts with Western and the new customers.

Commissioner Gibson asked when the Commission will be able to discuss the process by which Staff is going through the applications and make recommendations.

Mr. Pyper stated that is part of the criteria that is being developed. The criteria may mandate that consideration be spread out among a wider range, for targeting a certain entity, a type of governmental entity, or an enterprise for business development. It will depend on the criteria. Staff will review the applicants and rate the applicants according to the criteria. Staff will present the rankings to the Commission as either a draft order or recommendations. It will be up to the Commission to evaluate whether Staff has done the ranking correctly to determine what is in the best interest of the State.

Commissioner Gibson asked if Staff is going to assign numbers one through ten or is there going to be a narrative description that highlights the strengths and weaknesses of the applicants. How is Staff going to rank the applicants?

Mr. Pyper stated that Staff will likely rank in a narrative form, due to some of the subjective items, such as what is in the best interest to the State. Staff has asked the applicants to include what is in the best interest for the State, and if those arguments can be made the applicant will be considered.

Vice Chairman Miller asked if Staff knows what criteria Western used.

Mr. Pyper stated yes, Staff is aware of what criteria Western used.

Ms. Harkins stated that at Western's Public Information Forum more information was provided. Western will not release the applications because Western considers the application information to be proprietary and only for Western's use. Western did provide background information on how the calculations were done.

Mr. Pyper stated that for the State of Nevada, Western is allowing Staff to view information regarding the State of Nevada, but not the information for Arizona or California. Staff has also requested that Western provide a written version of how the calculations were done. As an example, if a utility applied for allocations as well as a customer of a utility, how were these two applications treated. There were many variables that went into the determination so it may be difficult to write the calculations out. Since Western is not providing the numbers, Staff has asked that Western write out the explanation.

Vice Chairman Miller stated in looking at the allocations, it was not clear how the determinations were decided upon.

Ms. Harkins stated that when Staff receives the rest of the information from Western, Staff will be able to sit down with the Commission and walk through Western's process.

Vice Chairman Miller stated that it would be helpful if Staff could get the information to the Commission.

Ms. Harkins agreed to do so.

F. *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.

Commissioner Sisolak disconnected from the meeting.

Warren Turkett, Natural Resource Group Analyst, provided a report on the following:

- Unregulated Inflow into Lake Powell
- Storage Conditions
- Reservoir Storage as of September 4, 2014
- Lake Powell End of Month Elevations Based on August 2014, 24-month Study

- Lake Mead End of Month Elevation Projections
- Precipitation – Colorado River Basin as of September 2, 2014
- U.S. West Drought Monitor
- U.S. Seasonal Drought Outlook
- Monthly Precipitation for August 2014
- Seasonal Precipitation, October 2013 – August 2014
- Monthly Precipitation, Las Vegas, NV as of August 31, 2014
- Cumulative Precipitation, Las Vegas, NV as of August 31, 2014
- Clark County Regional Flood Control District Rain Gages
- Water Use in Southern Nevada
- Las Vegas Wash Weirs
- Las Vegas Wash Weirs Completed
- USGS Flow Calculations
- USGS Acoustic Doppler
- Return Flow Credit Calculations

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

Commissioner Coffin expressed his thanks to Staff for the presentation, which reflects the historic record of what has happened in the past.

Mr. Turkett stated that water returned from houses and treated is returned to the Lake for return flow credits. The Bureau of Reclamation (Bureau) does not allow the Commission to receive credit for rain water since it is not technically being used and returned to the Lake.

Commissioner Coffin asked does the Bureau know how much water is returned, is there a weir below each water treatment plant that gauges how much has been treated and then put into the wash at that location.

Mr. Turkett stated that there are fairly good measurements of what has been treated. There are different USGS stream gauges and flow meters when water leaves the plants. Staff uses the furthest point on the Las Vegas Wash, which is pretty accurate, but the majority of water being measured is highly treated effluent. There are other flows in the wash such as a groundwater and storm water, but the main contributor to return flow credits is waste water. The additional flows are removed from the calculations because the Commission does not get credit for storm water. The Commission does benefit slightly from storm water because the flow eventually travels to Lake Mead.

Commissioner Gibson asked whether the rain gauges around the county are used to calculate rain flows and whether it is separated out of the return flow.

Mr. Turkett stated no, it is based on a calculation of base flow for the month and then if it deviates more than 15 percent, Staff subtracts the difference from the base flow. This calculation gives credit for the average flow for that day, but not the additional storm flow.

Vice Chairman Miller asked if a chart showing the Commission's return flow credit could be provided similar to the chart provided on the storm flow.

Mr. Turkett said yes.

Ms. Harkins introduced a new staff member, Sarah Ritchie, who is the new Hydropower Program Specialist.

G. 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.)

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

H. Comments and questions from the Commission members.

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

I. Selection of the next possible meeting date.

The next meeting is tentatively scheduled for 1:00 p.m. on Tuesday, October 14, 2014, at the Grant Sawyer State Office Building, 555 East Washington Avenue, Suite 4412, Las Vegas, Nevada.

J. Adjournment.

The meeting adjourned at 1:45 p.m.

Jayne Harkins, P.E., Executive Director

APPROVED:

George F. Ogilvie III, Chairman