WESTERN REGIONAL WATER COMMISSION (“WRWC”)
AGENDA
Friday, June 10, 2011 @ 1:30 p.m.
Sparks Council Chambers, Legislative Building,
745 Fourth St., Sparks, Nevada

NOTICE OF POSSIBLE QUORUM OF THE BOARD OF DIRECTORS OF THE TRUCKEE MEADOWS WATER AUTHORITY (“TMWA”), BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY (“BCC”), AND BOARD OF TRUSTEES OF THE SOUTH TRUCKEE MEADOWS GENERAL IMPROVEMENT DISTRICT (“STMGID”)

(See ‘Notes’)

Notes: Because several of the WRWC Trustees are also members of the Board of Directors of TMWA, it is possible that a quorum of the TMWA Board may be present. Such members will not take action at this meeting as members of the TMWA Board, but may take action solely in their capacity as WRWC Trustees. A quorum of the BCC and STMGID may also be in attendance but will not be taking action.

1. Public comment will be taken on agenda items upon request by submittal of a Speaker Information Card. There is a three-minute time limit per person.
2. Items on the agenda without a time designation may not necessarily be considered in the order in which they appear. The WRWC may take action on any of the action items listed.
3. Facilities in which this meeting is being held are accessible to the disabled. Persons with disabilities who require special accommodations or assistance (e.g. sign language interpreters or assisted listening devices) at the meeting should notify TMWA at 775-834-8002 at least 24 hours prior to the meeting.
4. In accordance with NRS 241.020, this agenda has been posted at the following locations: Reno City Hall (1 East First Street), Sparks City Hall (431 Prater Way), Sparks Justice Court (630 Greenbrae Dr), Sun Valley GID (5000 Sun Valley Blvd.), TMWA (1355 Capital Blvd.), Washoe County Administration Building (1001 E. 9th Street), Washoe County Clerk's Office (Court and Virginia Streets), Washoe County Central Library (301 South Center St.), Washoe County Department of Water Resources (4930 Energy Way), Galena Market (19990 Thomas Creek Rd.), Galena High School (3600 Butch Cassidy Way), South Valleys Library (15650A Wedge Parkway), and the WRWC website: http://wrwc.us.

1. Roll Call and Determination of presence of a Quorum*
2. Pledge of Allegiance*
3. Approval of Agenda (ACTION)
4. Public Comment* (Three-minute time limit per person)
5. Approval of the minutes of the May 19, 2011 meeting (ACTION)
6. Discussion and possible approval of funding in an amount not to exceed $262,500 from the Regional Water Management Fund to support the Truckee Meadows Regional Stormwater Quality Management Program, and activities related to the implementation of the storm water drainage provisions of the Comprehensive Regional Water Management Plan; and, if approved, authorize the Chairman to execute an Interlocal Agreement with the City of Reno for that purpose — Jim Smitherman, WRWC Water Resources Program Manager (ACTION)
7. Discussion and possible approval of an Amendment No. 2 to the Attorney-Client Fee Contract with Somach Simmons & Dunn, to extend the expiration date to June 30, 2012, for specialized legal services required in connection with the Truckee River Total Maximum Daily Load (“TMDL”) process; and, if approved, authorize the Chairman to execute the Amendment — Jim Smitherman (ACTION)

8. Discussion and possible approval of a First Amendment to the Interlocal Agreement among the WRWC, TMWA and Washoe County for reimbursement of certain expenses incurred in evaluating and implementing recommendations regarding consolidation of the County’s Department of Water Resources and TMWA; and, if approved, authorize the Chairman to execute the Amendment — Jim Smitherman (ACTION)

9. Report on legislative activities, including Bills pending in the 2011 Nevada Legislature that may affect the WRWC; and, possible direction to staff — John Rhodes, WRWC Legal Counsel (ACTION)

10. Discussion and possible direction to staff regarding agenda items for the July 8, 2011 meeting and other future meetings (ACTION)

11. Commission Comments*

12. Staff Comments*

13. Public Comment* (Three minute time limit per person)

14. Adjournment (ACTION)

*Indicates a non-action item
The regular meeting of the Western Regional Water Commission (WRWC) Board of Trustees was held on Thursday, May 19, 2011, at Sparks Council Chambers, 431 Prater Way, Sparks, Nevada.

1. **Roll Call and Determination of presence of a Quorum** – Chairman Carrigan called the meeting to order at 9:00 a.m. There was a quorum present.

   **Commissioners Present:**
   - Mike Carrigan, Chair
   - Bob Larkin, Vice-Chair (arrived at 9:03 a.m.)
   - Dave Aiazzi (arrived at 9:07 a.m.)
   - Steve Cohen
   - Geno Martini
   - Margaret Reinhardt
   - Ron Smith

   **Representing:**
   - Truckee Meadows Water Authority (TMWA)
   - Truckee Meadows Water Authority
   - City of Reno
   - South Truckee Meadows General Improvement District (STMGID)
   - Truckee Meadows Water Reclamation Facility (TMWRF)
   - Sun Valley General Improvement District (SVGID)
   - City of Sparks

   **Commissioners Absent:**
   - John Breternitz
   - Bob Cashell

   **Representing:**
   - Washoe County
   - Truckee Meadows Water Authority

2. **Pledge of Allegiance**

   Chairman Carrigan asked Commissioner Smith to lead the Western Regional Water Commission in the Pledge of Allegiance.

3. **Approval of Agenda**

   Commissioner Martini made a motion to approve the May 19, 2011 WRWC agenda as posted. Commissioner Smith seconded the motion, which carried unanimously.

4. **Public Comment**

   Chairman Carrigan called for public comments and hearing none, closed the public comment period.

5. **Approval of the Minutes of the March 11, 2011 meeting.**

   The minutes of the March 11, 2011 Western Regional Water Commission meeting were submitted for approval. Commissioner Smith made a motion to approve the minutes as submitted. Commissioner Martini seconded the motion, which carried unanimously.

   *Open Public Hearing – 9:02 a.m.*

6. **Public Hearing on the WRWC Tentative Budget for Fiscal Year 2011/2012; discussion and**
adoption of the WRWC Final Budget for Fiscal Year 2011/2012.

Chairman Carrigan invited Jim Smitherman to present this item. Mr. Smitherman reported that he provided a very detailed report on the WRWC Budget at the last meeting. He stated that the final budget is the same as the tentative budget; however, $1.7 million set aside for possible water rights purchase was moved because it should not have been classified as “capital outlay”. He summarized that was the only change.

Chairman Carrigan called for comments for the public regarding the budget and hearing none, closed the Public Hearing at 9:05 a.m.

Close Public Hearing – 9:05 a.m.

Commissioner Martini made a motion to adopt and certify the WRWC final budget for fiscal year 2011/2012 and direct staff to transmit a copy of it to the Nevada Tax Commission, together with an affidavit of proof of publication of the notice of the public hearing in accordance with law. Commissioner Larkin seconded the motion, which carried unanimously.

7. Discussion and possible approval of a First Amended Cooperative Agreement with Washoe County to provide staff services for the WRWC and the Northern Nevada Water Planning Commission (NNWPC); and, if approved, authorize the Chairman to execute the Amendment.

Chairman Carrigan invited Mr. Smitherman to present this item. Mr. Smitherman referred to the staff report and stated that staff’s recommendation is to approve an amendment to the existing Agreement with one modification. He reported that the original Agreement assigns three full-time employees to the WRWC and NNWPC for three years. He stated that the existing Agreement expires June 30, 2011. He added that the Amendment would cover the next three years.

Mr. Smitherman stated that the Agreement also specifies that employees can perform work for Washoe County as necessary, as long as it does not conflict with duties for the WRWC or NNWPC.

Commissioner Smith made a motion to approve the First Amended Cooperative Agreement with Washoe County to provide staff services for the WRWC and the NNWPC, and authorize the WRWC Chairman to execute the Amendment. Commissioner Larkin seconded the motion, which carried unanimously.

8. Discussion and possible designation of Jim Smitherman as the WRWC agent authorized to advise and instruct the Washoe County Treasurer concerning matters of the Interlocal Agreement between the WRWC and Washoe County for pooling and investment of WRWC funds; and, if approved, authorize the Chairman to sign a letter advising the Treasurer of the designation.

Chairman Carrigan invited John Rhodes, Legal Counsel, to present this item. Mr. Rhodes stated that this item is simply a “housekeeping item” related to the Interlocal Agreement. He explained that the original agreement did not designate a “contract administrator”. He recommended that Jim Smitherman be designated for the position. He explained that Mr. Smitherman would not make investment decisions and his role would not change.

Commissioner Cohen made a motion to designate Jim Smitherman, WRWC Water Resources Program Manager, as the WRWC agent authorized to advise and instruct the Washoe County Treasurer concerning matters of the Interlocal Agreement between the WRWC and Washoe
County for pooling and investment of WRWC funds, and authorize the Chairman to sign a letter advising the Treasurer of the designation. Commissioner Larkin seconded the motion, which carried unanimously.

9. Report on legislative activities, including Bill Draft Requests and Bills pending in the 2011 Nevada Legislature that may affect the WRWC; and, possible direction to staff.

Mr. Rhodes stated that the two bills supported by the WRWC presented by the Legislative Committee to Oversee the WRWC (LOC) were Assembly Bills (AB) 237 and 238. He explained that AB 237 would allow the issuance of bonds to assist those required to hook up to the municipal water or sewer systems; and AB 238 would allow issuance of County Bond Bank bonds for refinancing securities. He reported that AB 237 is scheduled to go to the Senate Committee for a vote today.

Mr. Rhodes reported that AB 238 met unexpected opposition after having first been amended to apply to Washoe County only but now is being directed to only apply to water projects.

Mr. Rhodes stated that other than support of the two above Assembly Bills, the WRWC would maintain a neutral position on all other bills, with the exception of AB 59, submitted by the Attorney General (AG), which makes various changes to the Open Meeting Law. The WRWC subcommittee closely watched the Bill because the last provision stated that, “Each member of a public body who attends a meeting of that public body where action is taken in any violation of provision of Open Meeting Law, regardless of knowledge of the violation, is subject to a civil penalty in an amount not to exceed $500.” The bill language was amended that the violator must have knowledge of the violation.

10. Discussion and possible direction to staff regarding agenda items for the June 10, 2011 meeting and future meetings.

Chairman Carrigan asked if pending items were scheduled for the June meeting. Mr. Smitherman stated yes and added that the June meeting would include extending interlocal agreements that will expire June 30, 2011, including the Stormwater Permit Coordinating Committee ($262,500). He clarified that he will bring forward three Interlocal Agreements for extension.

11. Commission Comments

None

12. Staff Comments

None

13. Public Comment

Chairman Carrigan called for public comments and hearing none, closed the public comment period.

14. Adjournment

With no further business, the meeting was adjourned at 9:12 a.m.

Respectfully submitted by,

Niki Linn, Recording Secretary
Approved by Commission in session on__________ 2011.

____________________________
Mike Carrigan, Chairman

Note: DRAFT Minutes not approved by Board.
Western Regional Water Commission

STAFF REPORT

DATE: June 6, 2011
TO: Chairman and Members, Western Regional Water Commission
FROM: Jim Smitherman, Water Resources Program Manager
SUBJECT: Discussion and possible approval of funding in an amount not to exceed $262,500 from the Regional Water Management Fund ("RWMF") to support the Truckee Meadows Storm Water Management Program, and activities related to the implementation of the storm water drainage provisions of the Comprehensive Regional Water Management Plan; and if approved, authorize the Chairman to execute an Interlocal Agreement with the City of Reno for that purpose

SUMMARY
On January 14, 2011, the Western Regional Water Commission (‘‘WRWC’’) directed staff to include $262,500 from the RWMF in the fiscal year WRWC 2011-2012 budget, to support the Truckee Meadows Storm Water Management Program, and Storm Water Permit Coordinating Committee (‘‘SWPCC’’) activities related to the implementation of the storm water drainage provisions of the Comprehensive Regional Water Management Plan. The SWPCC has indicated that for the past five years the total annual budget for the SWPCC has been $262,500, with the City of Reno, the City of Sparks and Washoe County contributing $87,500 each.

This Report requests approval of the previously budgeted funding, and a proposed Interlocal Agreement with the City of Reno for the above purpose.

BACKGROUND:
The SWPCC is charged with implementing the requirements of the National Pollutant Discharge Elimination System (‘‘NPDES’’) permit issued jointly to the City of Reno, the City of Sparks, and Washoe County for storm water discharges to the Truckee River and its tributaries.

In 1990, the City of Reno, the City of Sparks and Washoe County were identified collectively as an urbanized area subject to the federal Clean Water Act storm water management requirements. Consequently, the Nevada Division of Environmental Protection ("NDEP") issued a NPDES permit for the Truckee Meadows with Reno, Sparks and Washoe County as co-permittees. The NPDES permit is to manage the quality of storm water discharges to the Truckee River and its tributaries and has a term of five years. To manage the multiple agency permit, the Agreement Regarding National Pollutant Discharge Elimination Storm Water Permit Implementation (‘‘Storm Water ILA’’), was developed and executed among the parties in 1990 and amended in 2004. The Storm Water ILA establishes the SWPCC and outlines the intergovernmental responsibilities, including cost sharing, to implement the requirements of the NPDES permit. The SWPCC is staffed by two representatives from each of the permitted agencies. The City of
Reno serves as the lead agency on the permit; therefore, consultant agreements and interlocal agreements are presented only to the City of Reno’s governing body.

Per the existing Storm Water ILA, the SWPCC has the responsibility to prepare an annual work program and budget. For the past five years, the annual budget from each entity has been $87,500 for a total SWPCC annual budget of $262,500. The Storm Water ILA also provides that each co-permittee will budget shared costs for each fiscal year and ensuing fiscal years with their respective governing bodies. Approval of the requested funding and proposed Interlocal Agreement will provide Reno, Sparks and Washoe County an alternative to the practice of funding the storm water program from each entity’s annual budget, but will not relieve any of those entities from their respective duties and responsibilities under the Storm Water ILA. The SWPCC is prepared to come before the WRWC to provide regular program updates, and formally request additional annual funding.

PREVIOUS ACTION
On January 14, 2011, the WRWC approved an increase in funding from $75,000 to an amount not to exceed $218,000 from the RWMF for fiscal year 2010-2011 to reimburse expenses of the SWPCC, including consultant services to update the Truckee Meadows Storm Water Management Program and other expenses as described in the Storm Water ILA, and directed staff to include in the fiscal year 2011-2012 WRWC budget, $262,500 from the RWMF to support the Truckee Meadows Storm Water Management Program, and SWPCC activities related to the implementation of the storm water drainage provisions of the Comprehensive Regional Water Management Plan.

On November 12, 2010 the WRWC approved funding in an amount not to exceed $75,000 from the RWMF for consultant services to assist in updating the Storm Water Management Program, and authorized the Chairman to execute an Interlocal Agreement with the City of Reno for that purpose. The action also included direction to staff to bring an agenda item back to request the remainder of funding from the RWMF.

FISCAL IMPACT
The fiscal impact to the RWMF will not exceed the amount of $262,500 for fiscal year 2011-2012. Budget authority is located in Fund Group 766, Fund 7066, Account Number 710100, Professional Services, and Cost Object WP310300.3.

RECOMMENDATION
It is recommended that the WRWC approve funding in an amount not to exceed $262,500 from the Regional Water Management Fund ("RWMF") to support the Truckee Meadows Storm Water Management Program, and activities related to the implementation of the storm water drainage provisions of the Comprehensive Regional Water Management Plan; and if approved, authorize the Chairman to execute an Interlocal Agreement with the City of Reno for that purpose.

POSSIBLE MOTION
“Move to approve the requested funding in an amount not to exceed $262,500, and authorize the Chairman to execute the proposed Interlocal Agreement”.
INTERLOCAL AGREEMENT

1) PARTIES

This Interlocal Agreement ("Agreement") is entered into between the Western Regional Water Commission (the “Commission”), a political subdivision of the State of Nevada created pursuant to Chapter 531, Statutes of Nevada 2007, the Western Regional Water Commission Act (the “Act”) and Cooperative Agreement, and the City of Reno (“Reno”), collectively, the “Parties” or, as the context requires, “Party”. In consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

2) RECITALS

2.1 The Parties are public agencies as defined in NRS 277.100(1)(a).

2.2 NRS 277.180 provides that any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any public agency, entering into the contract, is authorized to perform.

2.3 On January 14, 2011, the Commission, at its regular meeting held that date, directed staff to include in its fiscal year 2011-2012 budget, $262,500 from the Regional Water Management Fund (“RWMF”), to support the Truckee Meadows Storm Water Quality Management Program, and Storm Water Permit Coordinating Committee activities related to the implementation of the storm water drainage provisions of the Comprehensive Regional Water Management Plan, (the “Project”).

2.4 The Scope of work for the Project is attached hereto as Exhibit "A". Other expenses related to the implementation of the Project for fiscal year 2011-2012, which will assist in implementation of the storm water drainage provisions of the Comprehensive Regional Water Management Plan, will be paid as provided for in this Agreement.

2.5 This Agreement is subject to that certain First Amended Agreement Regarding National Pollutant Discharge Elimination Storm Water Permit Implementation, entered into
between Reno, the City of Sparks, and Washoe County, dated June 22, 2004 (the "Storm Water Interlocal Agreement"), which Agreement shall remain in full force and effect.

3) RIGHTS & DUTIES

3.1 Reno

3.1.1 Reno shall submit invoices on a monthly basis for reimbursement of shared costs as approved pursuant to the terms of the Storm Water Interlocal Agreement. Reno shall prepare and verify all invoices and then submit invoices to the Storm Water Permit Coordinating Committee ("SWPCC") for approval. After SWPCC approval, Reno shall submit invoices for reimbursement to the Commission, through its Contract Administrator, on a monthly basis. Work on the Project will progress and be completed by June 30, 2012.

3.1.2 Reno will provide or contract for all services required to complete the Project.

3.1.3 For contracted services, Reno’s Contract Administrator will hold payment of the final invoice until final deliverables are received and accepted. Reno’s Contract Administrator will have sole authority to accept or reject final deliverables based on completeness and consistency with the Project’s scope of work and will be responsible for final payment.

3.1.4 Reno’s Contract Administrator will be provided from all contract service providers, when appropriate, electronic versions of final deliverables. All work product deliverables shall, at a minimum, be provided to Reno as follows:

One (1) copy of each deliverable element in its current native file format. Native formats for deliverables will be provided as follows: Text in Microsoft Word format; Spreadsheets in Excel format; Databases in Microsoft Access format; graphics in AutoCAD format, all native pre-modeling and post-modeling files and Global Information Systems data in ESRI ArcMap/ArcInfo compatible file formats. Additionally, any and all native file formats as specified in contract scopes of work.
3.1.5 Reno shall, through its designated representative or Contract Administrator, provide to the Commission any information requested by the Commission’s Contract Administrator, relating to any invoice submitted for payment.

3.1.6 Reno shall set up a separate account for the Project, if not already existing, so that check numbers along with copies of cancelled checks for all expenditures can be submitted, as well as an exact itemization of Project expenditures, copies of itemized invoices, and properly documented timesheets.

3.1.7 To the extent authorized by Nevada law, Reno will save, hold harmless, and indemnify the Commission from and against any and all liability incurred in relation to the Project.

3.2 The Commission

3.2.1 The Commission’s Water Resources Program Manager, Jim Smitherman, is hereby designated as the Commission’s Contract Administrator.

3.2.2 Upon the submission of an invoice for payment, pursuant to Paragraph 3.1.1 above, the Contract Administrator shall promptly review the invoice, request any further information or documentation required, and process the invoice for payment within thirty (30) days following his approval.

3.2.3 The Commission’s Contract Administrator will hold payment of the final invoice until the final deliverable is received and accepted. The Commission’s Contract Administrator will have sole authority to accept or reject final deliverables based on completeness and consistency with the Project’s scope of work and will be responsible for final payment.

3.2.4 The Commission, at its discretion, may conduct an audit of compliance with this Agreement and the funding provided for herein, relating to performance of this Agreement and compliance with all applicable State, Federal and local laws, policies and procedures. Such audit shall be at the Commission’s expense.
3.2.5 The total amount of invoices paid pursuant to this Agreement shall not exceed the sum of $262,500 from the RWMF.

3.3 Joint Rights and Responsibilities

3.3.1 Either Party may terminate this Agreement with a thirty (30) - day advance written notice to the other.

3.3.2 This Agreement may be extended for one or more years by mutual written Agreement duly executed by the Parties.

3.3.3 Both Parties agree to coordinate and use their best efforts to complete the Project and to collaborate in a timely manner in order to maximize the efficient use of funding and other resources.

4) INDEMNIFICATION

4.1 Each Party agrees to be responsible for any liability or loss that may be incurred as a result of any claim, demand, cost, or judgment made against that Party arising from any negligent act or negligent failure to act by any of that Party’s employees, agents in connection with the performance of obligations assumed pursuant to this Agreement.

4.2 Each Party further agrees, to the extent allowed by law pursuant to Chapter 41 of the Nevada Revised Statutes (“NRS”), to hold harmless, indemnify and defend the other from all losses, liabilities or expenses of any nature to the person or property of another, to which the indemnified party may be subjected as a result of any claim, demand, action or cause of action arising out of the negligent acts, errors or omissions on the part of employees or agents of the indemnifying party in relation to this Agreement.

5) MISCELLANEOUS PROVISIONS

5.1 This Agreement is binding upon and inures to the benefit of the Parties and their respective heirs, estates, personal representatives, successors and assigns.

5.2 This Agreement is made in, and shall be governed, enforced and construed under the laws of the State of Nevada.
5.3 This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof, and supersedes and replaces all prior understandings and agreements, whether verbal or in writing, with respect to the subject matter hereof.

5.4 This Agreement may not be modified, or amended in any respect, except pursuant to an instrument in writing duly executed by the Parties.

5.5 In the event the Commission fails to appropriate or budget funds for the purposes as specified in this Agreement, Reno hereby consents to the termination of this Agreement. In such event, the Commission shall notify Reno in writing and the Agreement will terminate on the date specified in the notice. The Parties understand that this funding out provision is required under NRS 244.320 and NRS 354.626.

5.6 In the event either Party brings any legal action or other proceeding with respect to the breach, interpretation, or enforcement of this Agreement, or with respect to any dispute relating to any transaction covered by this Agreement, the losing Party or Parties in such action or proceeding shall reimburse the prevailing Party or Parties therein for all reasonable costs of litigation, including reasonable attorneys' fees.

5.7 No delay or omission by either Party in exercising any right or power under this Agreement shall impair any such right or power or be construed to be a waiver thereof, unless this Agreement specifies a time limit for the exercise of such right or power or unless such waiver is set forth in a written instrument duly executed by the person granting such waiver. A waiver of any person of any of the covenants, conditions, or agreements hereof to be performed by any other Party shall not be construed as a waiver of any succeeding breach of the same or any other covenants, agreement, restrictions or conditions hereof.

5.8 All notices, demands or other communications required or permitted to be given in connection with this Agreement, shall be in writing, and shall be deemed delivered when personally delivered to a Party or, if mailed, three (3) business days after deposit in the United States mail, postage prepaid, certified or registered mail, addressed to the Parties as follows:
To Commission:  Jim Smitherman, Water Resources Program Manager
Western Regional Water Commission
4930 Energy Way
Reno, Nevada 89502

To Reno:  John Flansberg, P.E., Director of Public Works
City of Reno
P.O. Box 1900
Reno, Nevada 89505

5.9 This Agreement shall be effective July 1, 2011, regardless of the date each Party
signs this Agreement ("Effective Date").

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

WESTERN REGIONAL WATER COMMISSION
Dated this ___ day of __________, 2011

By __________________________
Mike Carrigan, Chairman
Western Regional Water Commission

APPROVED AS TO FORM:
Rhodes Law Offices, Ltd.

By __________________________
John B. Rhodes, Legal Counsel

CITY OF RENO
Dated this ___ day of __________, 2011

By __________________________
Robert A. Cashell, Sr., Mayor
City of Reno

ATTEST:

____________________________
Lynnette Jones
Reno City Clerk

ARPROVED AS TO FORM :

____________________________
Deputy City Attorney
Western Regional Water Commission

STAFF REPORT

DATE:       June 6, 2011

TO:         Chairman and Members, Western Regional Water Commission

FROM:       Jim Smitherman, Water Resources Program Manager

SUBJECT:    Discussion and possible approval of Amendment No. 2 to the Attorney-Client Fee Contract with Somach Simmons & Dunn, to extend the expiration date to June 30, 2012, for specialized legal services required in connection with the Truckee River Total Maximum Daily Load ("TMDL") process; and, if approved, authorize the Chairman to execute the Amendment

SUMMARY
On March 13, 2009, the Western Regional Water Commission ("WRWC") approved an Attorney-Client Fee Contact (the "Contract") with Somach Simmons & Dunn, LLP for specialized legal services in connection with the Truckee River third party TMDL process. The Contract was amended in May 2010 for an additional $50,000 to cover legal services during fiscal year 2010-2011. The TMDL staff working group recommends a second amendment to extend the Contract through fiscal year 2011-2012. Additional funding is not required at this time, as approximately $50,000 remains available from fiscal year 2010-2011.

BACKGROUND
Chapter 531, Statutes of Nevada 2007, Section 30, provides the WRWC with the powers to prepare, adopt, update and oversee the implementation of the Comprehensive Regional Water Management Plan (the "Plan"). Section 42 requires the Plan to, among other things, address the quality of surface water including compliance with water quality standards, locations and capacities of wastewater treatment plants, intended quantity and quality of discharge from those plants and programs to attain protection from pollution by both concentrated and diffuse sources.

Somach Simmons & Dunn is a California law firm that has considerable expertise and experience in Clean Water Act issues. The firm currently provides legal services to the Cities of Reno and Sparks with regard to the Truckee Meadows Water Reclamation Facility’s permit with the State.

As has previously been described for the Commission, an effort is now underway to revise the nutrient standards and TMDL for nitrate and phosphate in the Truckee River. This effort is being undertaken jointly by Reno, Sparks, Washoe County, and the Truckee Meadows Water Authority (sometimes referred to as the “Third Parties,” i.e., not regulators).

Because of the complexity of the Truckee River system, the development of this TMDL presents many unique issues. Staff has concluded that continuing to engage Somach Simmons & Dunn to provide legal services in connection with the TMDL process will be a necessary and cost-
effective step to ensure that the Third Parties and the WRWC are proceeding in a direction consistent with the constraints and requirements of the Clean Water Act.

Amendment No. 1 to the Contract: designated Terri Svetich to replace Greg Dennis as the WRWC liaison; broadened the scope of representation to include beneficial use designations and water quality standards revisions; and, provided for an additional $50,000 in funding with a 5% credit on all legal fees billed.

The proposed Amendment No. 2 extends the expiration date of the Contract to provide for services in fiscal year 2011-2012. The budget for the TMDL process for the 2011-2012 fiscal year is adequate to cover this amendment.

**PREVIOUS ACTION**
On May 20, 2010, the WRWC approved Amendment No. 1 to the Contract with Somach Simmons & Dunn, in an amount not to exceed $50,000 from the Regional Water Management Fund to cover services during fiscal year 2010-2011.

On March 13, 2009, the WRWC approved a Contract in an amount not to exceed $50,000 from the Regional Water Management Fund with Somach Simmons & Dunn, LLP for specialized legal services in connection with the Truckee River third party TMDL process.

**FISCAL IMPACT**
There is no fiscal impact.

**RECOMMENDATION**
Staff recommends that the WRWC approve the proposed Amendment No. 2 to the Contract with Somach Simmons & Dunn.

**POSSIBLE MOTION**
Should the WRWC agree with the staff recommendation, a possible motion is: “Move to approve the proposed Amendment No. 2 to the Attorney-Client Fee Contract with Somach Simmons & Dunn, to extend the expiration date to June 30, 2012, for specialized legal services required in connection with the Truckee River TMDL process, and authorize the Chairman to execute the Amendment.”

JS:jd

Attachment: Amendment No. 2 to Attorney-Client Fee Contract
June 6, 2011

Roberta Larson, Attorney at Law
Somach Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA  95814

Re: Amendment No. 2 to Attorney-Client Fee Contract

Dear Ms. Larson:

The WRWC desires to extend your existing Contract through fiscal year 2011-2012. Please indicate your consent and agreement by signing this letter below and returning it to me. Please retain the enclosed duplicate original letter for your records.

The undersigned parties agree that Paragraphs 3 and 4 of Amendment No. 1 to their Attorney-Client Fee Contract are hereby modified to provide that the Contract, and the 5 percent credit on legal fees, will remain in effect until June 30, 2012 unless extended by further modification.

All other terms and conditions of the original Attorney-Client Fee Contract, and Amendment No. 1, shall remain in full force and effect.

Sincerely,

Jim Smitherman
Water Resources Program Manager

AGREED AND APPROVED:

Date: ___________________________  By: _______________________________
Roberta Larson

AGREED AND APPROVED:

Date: ___________________________  By: _______________________________
Mike Carrigan, Chairman
Western Regional Water Commission

STAFF REPORT

DATE: June 6, 2011

TO: Chairman and Members, Western Regional Water Commission

FROM: Jim Smitherman, Water Resources Program Manager

SUBJECT: Discussion and possible approval of a First Amendment to the Interlocal Agreement among the Western Regional Water Commission (“WRWC”), the Truckee Meadows Water Authority (“TMWA”) and Washoe County (the "County") for reimbursement of certain expenses incurred in evaluating and implementing recommendations regarding integration/consolidation of the County’s Department of Water Resources (“DWR”) and TMWA; and, if approved, authorize the Chairman to execute the Amendment.

SUMMARY
Since September 2008, TMWA and DWR staff have, at the request of the WRWC, engaged in a process including a multi-part analysis, evaluation, planning, recommendations, and preliminary implementation of integration/consolidation of the two water utilities. Certain contracted services, and considerable staff time and resources have been, and will be, required to complete these efforts. The analysis, evaluation, and recommendations are mandated by state statute, and are a required element of the Comprehensive Regional Water Management Plan (the “Plan”).

The WRWC entered into a two-year Interlocal Agreement with TMWA and the County, for funding in the amount of $550,000, to partially reimburse them for necessary integration/consolidation related costs. That Agreement expires on June 30, 2011, however, TMWA and the County will continue to incur consolidation-related costs into the next fiscal year.

In March 2011, the Northern Nevada Water Planning Commission recommended that $300,000 be included in the WRWC budget for fiscal year 2011-2012, so that partial reimbursements of integration/consolidation related costs could be made in the coming fiscal year. The fiscal year 2011-2012 budget, including the $300,000 described above, was approved by the WRWC on May 19, 2011.

The proposed First Amendment to the existing Interlocal Agreement provides for up to $300,000 from the Regional Water Management Fund for reimbursement of necessary integration/consolidation related costs, including consultant costs, incurred by TMWA and the County in fiscal year 2011-2012.
**BACKGROUND**

Section 42(9) of the Western Regional Water Commission Act (the "Act"), Chapter 531, Statutes of Nevada 2007, requires the Plan to include: “Evaluation and recommendations regarding the consolidation of public purveyors in the planning area, which must include costs and benefits of consolidation, the feasibility of various consolidation options, analysis of water supplies operations, facilities, human resources, assets, liabilities, bond covenants, and legal and financial impediments to consolidation and methods, if any for addressing such impediments.”

In furtherance of the requirements of Section 42(9) of the Act, the WRWC, at its September 12, 2008 meeting, requested staff from TMWA and DWR to “Conduct a focused financial analysis to assess the feasibility of some form of utility integration using their joint bond counsel and financial advisors, Swendseid & Stern and PFM, respectively”.

After nearly a year of extensive study and review, staff presented their conclusions to the WRWC. On August 14, 2009, the WRWC made a formal recommendation to the governing boards of TMWA and the County to proceed with the development of an interlocal agreement to implement the integration/consolidation of the functions of TMWA and DWR. The governing boards of both TMWA and the County subsequently approved the recommendation, and are proceeding accordingly.

Both TMWA and the County have incurred considerable expense, in contracted services and dedicated staff time, in the analysis, evaluation, planning, recommendations, and preliminary implementation of the requirements of Section 42(9) of the Act.

The WRWC has realized considerable cost savings by utilizing the expertise available from the respective staff of TMWA and the County, as opposed to contracting with additional outside consultants for the required services.

Both TMWA and the County requested, and the WRWC agreed to partially reimburse them for consulting services and staff time and services that have been required and paid for, and that will be required, on an ongoing basis, in the consolidation process, in a collective amount not to exceed $300,000 for the 2009-2010 fiscal year, and a collective amount not to exceed $250,000 for the 2010-2011 fiscal year.

Section 30(2) of the Act specifically authorizes the WRWC to enter into agreements with the County and TMWA to accomplish the purposes of the Act.

**PREVIOUS ACTION**

On May 20, 2010, the WRWC approved an Interlocal Agreement among the WRWC, TMWA, and Washoe County, for up to $300,000 in fiscal year 2009-2010 and $250,000 in fiscal year 2010-2011 from the Regional Water Management Fund, for reimbursement of certain expenses incurred in evaluating and implementing the recommendations regarding integration/consolidation of TMWA and DWR.
**FISCAL IMPACT**
The fiscal impact to the Regional Water Management Fund will not exceed the amount of $300,000 for fiscal year 2011-2012. Budget authority for $300,000 is located in Fund Group 766, Fund 7066, Account Number 710100, Professional Services, and Cost Object WP310600.

**RECOMMENDATION**
Staff recommends that the WRWC approve the requested funding, and authorize the Chairman to execute the proposed First Amendment to the Interlocal Agreement among the WRWC, TMWA and the County for the purposes stated above.

**POSSIBLE MOTION**
Should the WRWC agree with the staff recommendation, a possible motion is: “Move to approve the requested funding, and authorize the Chairman to execute the proposed First Amendment to the Interlocal Agreement among the WRWC, TMWA, and Washoe County for reimbursement of certain expenses incurred in evaluating and implementing the recommendations regarding integration/consolidation of TMWA and DWR.”

Attachment: First Amendment to Interlocal Agreement
Interlocal Agreement
FIRST AMENDMENT TO INTERLOCAL AGREEMENT

The INTERLOCAL AGREEMENT (the “Agreement”), dated May 20, 2010, entered into among the Western Regional Water Commission (the "Commission"), the Truckee Meadows Water Authority ("TMWA"), and Washoe County (the “County”), is hereby amended by adding thereto the following subsection:

2.10 Both TMWA and the County have requested the Commission to reimburse them for Reimbursable Expenses, as defined in subsection 2.9 above, in a collective amount not to exceed $300,000 for the 2011/2012 fiscal year. The Commission has agreed to do so, upon the following terms and conditions.

The following subsections are hereby amended to provide as follows:

3.1.2 During the 2010/2011 and 2011/2012 fiscal years, TMWA and the County will, prior to either Party’s entering into any contract in excess of $25,000 for which either Party intends to claim Reimbursable Expenses and prior to either Party's making any payment on any existing contract which would exceed a cumulative amount in excess of $25,000 for which either Party intends to claim Reimbursable Expenses, TMWA and the County shall jointly seek and obtain prior approval and authorization from the Commission. If prior approval and authorization is not practicable due to scheduling constraints, any such contract shall be presented to the Commission as soon as possible for ratification, and confirmation of contract payments as eligible Reimbursable Expenses.

3.1.3 During the 2010/2011 and 2011/2012 fiscal years, TMWA and the County shall, within thirty (30) days of the end of each quarter, jointly submit an itemized invoice, with detailed supporting documentation, to the Commission’s contract administrator, for their
respective requested Reimbursable Expenses for the preceding quarter. The jointly submitted itemized invoice shall be agreed upon between and signed by TMWA’s General Manager and the County’s Director of DWR.

3.2.3 The total amount of invoices paid from the Regional Water Management Fund pursuant to the terms of this Agreement shall not exceed the sum of $300,000 for the 2009/2010 fiscal year, $250,000 for the 2010/2011 fiscal year, and $300,000 for the 2011/2012 fiscal year.

The Agreement as amended to include the revisions set forth above is incorporated herein by reference, and all other terms and conditions of the Agreement shall remain in full force and effect.

This Amendment is effective July 1, 2011, regardless of the dates of execution by the Parties ("Effective Date").

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment.

Western Regional Water Commission

Dated this ___ day of June 2011

By ________________________________

Mike Carrigan, Chairman
Board of Trustees

APPROVED AS TO FORM:
Rhodes Law Offices, Ltd.

By ________________________________

John B. Rhodes, Legal Counsel

Truckee Meadows Water Authority

Dated this ___ day of __________ 2011

By ________________________________

Mike Carrigan, Chairman
Board of Directors

APPROVED AS TO FORM:

Michael Pagni, Legal Counsel
Washoe County

Dated this ___ day of __________ 2011

By ________________________________
   John Breternitz, Chairman
   Board of Commissioners

APPROVED AS TO FORM:

_____________________________
Peter C. Simeoni, Deputy District Attorney
INTERLOCAL AGREEMENT

1) PARTIES

This Interlocal Agreement ("Agreement") is entered into among the Western Regional Water Commission (the "Commission"), a Joint Powers Authority and political subdivision of the State of Nevada created pursuant Chapter 531, Statutes of Nevada 2007, the Western Regional Water Commission Act (the "Act") and cooperative agreement under Chapter 277, Nevada Revised Statutes ("NRS"), the Truckee Meadows Water Authority ("TMWA"), a Joint Powers Authority created under Chapter 277, Nevada Revised Statutes, and Washoe County ("the County"), a political subdivision of the State of Nevada, on behalf of its Department of Water Resources ("DWR"), collectively the "Parties", or, as context requires, "Party". In consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

2) RECITALS

2.1 The Parties are public agencies as defined in NRS 277.100(1)(a).

2.2 NRS 277.180 provides that any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any public agency, entering into the contract, is authorized to perform.

2.3 Section 30(2) of the Act specifically authorizes the Commission to enter into agreements with the County and TMWA to accomplish the purposes of the Act.

2.4 Section 42(9) of the Act requires the Comprehensive Regional Water Management Plan to include: "Evaluation and recommendations regarding the consolidation of public purveyors in the planning area, which must include costs and benefits of consolidation, the feasibility of various consolidation options, analysis of water supplies operations, facilities, human resources, assets, liabilities, bond covenants,
and legal and financial impediments to consolidation and methods, if any for addressing such impediments."

2.5 In furtherance of the requirements of Section 42(9) of the Act, the Commission, at its September 12, 2008 meeting, requested staff from TMWA and DWR to “Conduct a focused financial analysis to assess the feasibility of some form of utility integration using their joint bond counsel and financial advisors, Swendseid & Stern and PFM, respectively”.

2.6 After nearly a year of extensive study and review, staff presented their conclusions to the Commission. On August 14, 2009, the WRWC made a formal recommendation to the governing boards of TMWA and the County to proceed with the development of an interlocal agreement to implement the integration/consolidation of the functions of TMWA and DWR. The governing boards of both TMWA and the County subsequently approved the recommendation, and are proceeding accordingly.

2.7 Both TMWA and the County have incurred, and will continue to incur significant expense, for consulting services, and staff time and services, in the analysis, evaluation, planning, recommendations, and preliminary implementation of the requirements of Section 42(9) of the Act (the “Consolidation Process”).

2.8 The Commission has realized significant cost savings by utilizing the expertise available from the respective staff of TMWA and the County, as opposed to contracting with additional outside consultants for the required services.

2.9 Both TMWA and the County have requested the Commission to reimburse them for certain respective expenses for consulting services, and staff time and services, including the cost of benefits, that have been required and paid for, and that will be required, on an ongoing basis, directly related to the Consolidation Process (“Reimbursable Expenses”), in a collective amount not to exceed $300,000 for the 2009/2010 fiscal year, and a collective amount not to exceed $250,000 for the 2010/2011
fiscal year. The Commission has agreed to do so, upon the following terms and conditions.

3) **RIGHTS & DUTIES**

3.1 **TMWA and the County**

3.1.1 TMWA and the County shall, within forty-five (45) days of the end of the 2009/2010 fiscal year, jointly submit an itemized invoice, with detailed supporting documentation, to the Commission’s contract administrator, for their respective requested Reimbursable Expenses for the 2009/2010 fiscal year. The jointly submitted itemized invoice shall be agreed upon between and signed by TMWA’s General Manager and the County’s Director of DWR.

3.1.2 During the 2010/2011 fiscal year, prior to either Party’s entering into any contract in excess of $25,000 for which either Party intends to claim Reimbursable Expenses and prior to either Party’s making any payment on any existing contract which would exceed a cumulative amount in excess of $25,000 for which either Party intends to claim Reimbursable Expenses, TMWA and the County shall jointly seek and obtain prior approval and authorization from the Commission. If prior approval and authorization is not practicable due to scheduling constraints, any such contract shall be presented to the Commission as soon as possible for ratification, and confirmation of contract payments as eligible Reimbursable Expenses.

3.1.3 During the 2010/2011 fiscal year, TMWA and the County shall, within thirty (30) days of the end of each quarter, jointly submit an itemized invoice, with detailed supporting documentation, to the Commission’s contract administrator, for their respective requested Reimbursable Expenses for the preceding quarter. The jointly submitted itemized invoice shall be agreed upon between and signed by TMWA’s General Manager and the County’s Director of DWR.
3.1.4 TMWA and the County shall, through their respective designated representatives or contract administrators, provide to the Commission any information requested by the Commission’s contract administrator, relating to any invoice submitted for payment. TMWA’s and the County’s respective designated representatives or contract administrators shall keep the Commission’s contract administrator reasonably advised as to the status of the Consolidation Process at all times.

3.1.5 To the extent authorized by Nevada law, TMWA and the County shall save, hold harmless, defend, and indemnify the Commission from and against any and all claims and liability arising out of the activities for which expenses are reimbursed.

3.2 The Commission

3.2.1 The Commission’s Water Resources Program Manager is hereby designated as the Commission’s contract administrator.

3.2.2 Upon the submission of an invoice for payment, pursuant to Section 3.1 above, the Commission’s contract administrator will promptly review the invoice, request any further information or documentation required, and process the invoice for payment within thirty (30) days following his approval.

3.2.3 The total amount of invoices paid from the Regional Water Management Fund pursuant to the terms of this Agreement shall not exceed the sum of $300,000 for the 2009/2010 fiscal year, and $250,000 for the 2010/2011 fiscal year.

3.3 Joint Rights and Responsibilities

3.3.1 Any Party may terminate this Agreement with thirty (30) days advance written notice to the other Parties.

3.3.2 The Parties agree to coordinate and use their best efforts to complete the Consolidation Process and to collaborate in a timely manner in order to maximize the efficient use of funding and other resources.
4) MISCELLANEOUS PROVISIONS

4.1 This Agreement is binding upon and inures to the benefit of the Parties and their respective heirs, estates, personal representatives, successors and assigns.

4.2 This Agreement is made in, and shall be governed, enforced and construed under the laws of the State of Nevada.

4.3 This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof, and supersedes and replaces all prior understandings and agreements, whether verbal or in writing, with respect to the subject matter hereof.

4.4 This Agreement may not be modified, or amended in any respect, except pursuant to an instrument in writing duly executed by the Parties.

4.5 In the event the Commission fails to appropriate or budget funds for the purposes as specified in this Agreement, TMWA and the County hereby consent to the termination of this Agreement. In such event, the Commission shall notify TMWA and the County in writing and the Agreement shall terminate on the date specified in the notice. The Parties understand that this funding out provision is required under NRS 244.320 and NRS 354.626.

4.6 In the event any Party brings any legal action or other proceeding with respect to the breach, interpretation, or enforcement of this Agreement, or with respect to any dispute relating to any transaction covered by this Agreement, the prevailing Party or Parties in such action or proceeding shall be entitled to recover all reasonable costs of litigation, including reasonable attorneys' fees.

4.7 No delay or omission by either Party in exercising any right or power hereunder shall impair any such right or power or be construed to be a waiver thereof, unless this Agreement specifies a time limit for the exercise of such right or power or unless such waiver is set forth in a written instrument duly executed by the person granting such waiver. A waiver by any Party of any of the covenants, conditions, or
agreements hereof to be performed by any other Party shall not be construed as a waiver of any succeeding breach of the same or any other covenants, agreements, restrictions or conditions hereof.

4.8 All notices, demands or other communications required or permitted to be given in connection with this Agreement, shall be in writing, and shall be deemed delivered when personally delivered to a Party (by personal delivery to an officer or authorized representative of a corporate Party) or, if mailed, three (3) business days after deposit in the United States mail, postage prepaid, certified or registered mail, addressed to the Parties as follows:

To Commission: Jim Smitherman, Water Resources Program Manager
Western Regional Water Commission
4930 Energy Way
Reno, NV 89502

To TMWA: Mark Foree, General Manager
1355 Capital Blvd.
Reno, NV 89502

To County: Rosemary Menard, Director
Department of Water Resources
4930 Energy Way
Reno, NV 89502

4.9 This Agreement shall be effective May 20, 2010 ("Effective Date"), regardless of the date each Party signs it.
IN WITNESS WHEREOF, the Parties have executed this Agreement.

Western Regional Water Commission
Dated this 20th day of May 2010
By
Mike Carrigan, Chairman
Board of Trustees

Truckee Meadows Water Authority
Dated this 20th day of May 2010
By
Mike Carrigan, Chairman
Board of Trustees

APPROVED AS TO FORM:
Rhodes Law Offices, Ltd.
By
John B. Rhodes, Legal Counsel

Washoe County
Dated this 23rd day of June 2010
By
David Humke, Chair
Board of Commissioners

APPROVED AS TO FORM:

Peter C. Simeoni, Deputy District Attorney
Western Regional Water Commission

STAFF REPORT

DATE: June 6, 2011
TO: Chairman and Members, Western Regional Water Commission
FROM: John Rhodes, Legal Counsel
SUBJECT: Report on legislative activities, including Bills pending in the 2011 Nevada Legislature that may affect the Western Regional Water Commission ("WRWC") / Northern Nevada Water Planning Commission ("NNWPC")

The following report lists Bills pending in the 2011 Nevada Legislature, as of June 6, 2011, that may affect or are of interest to the WRWC and NNWPC. Pending Bills are noted with an "AB" (Assembly) or "SB" (Senate) designation. Selected updates on certain Bills will be presented at the WRWC meeting on June 10, 2011.

Pending Bills

Water Issues

<table>
<thead>
<tr>
<th>AB</th>
<th>Sponsor</th>
<th>Description</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>AB115</td>
<td>Legislative Committee on Public Lands (NRS 218E.510)</td>
<td>Revises provisions governing certain notices and hearings concerning applications to appropriate water for beneficial use. (8/04/2010)</td>
<td></td>
</tr>
<tr>
<td>AB114</td>
<td>Legislative Committee on Public Lands (NRS 218E.510)</td>
<td>Revises the amount of the fees collected for issuing a permit to appropriate water for agricultural use. (8/04/2010)</td>
<td></td>
</tr>
<tr>
<td>AB237</td>
<td>Legislative Committee to Oversee the Western Regional Water Commission (SB 487)</td>
<td>Authorizes the issuance of bonds to finance loans made to provide financial assistance to persons to connect to the public water or sewer system in certain counties. (8/19/2010)</td>
<td></td>
</tr>
<tr>
<td>AB238</td>
<td>Legislative Committee to Oversee the Western Regional Water Commission (SB 487)</td>
<td>Allows issuance of County Bond Bank bonds for refunding of securities previously issued to an entity other than the County Bond Bank. (8/19/2010)</td>
<td></td>
</tr>
<tr>
<td>SB361</td>
<td>Senator Rhoads</td>
<td>Provides for temporary water use for restoration of burned areas. (8/30/2010)</td>
<td></td>
</tr>
<tr>
<td>AB419</td>
<td>Assemblyman Goicoechea</td>
<td>Revises provision relating to ground water basins. (8/31/2010)</td>
<td></td>
</tr>
<tr>
<td>AB329</td>
<td>Assemblyman Goicoechea</td>
<td>Revises provisions relating to stock water. By Request (8/31/2010)</td>
<td></td>
</tr>
</tbody>
</table>
Assemblyman Goedhart

Revises provisions relating to the filing of a protest to an application to appropriate water. (9/01/2010)

Assemblywoman Kirkpatrick

Allows for public water agencies to lease water. (12/12/2010)

Assemblyman Goedhart

ACR: Urges the Federal Government to enter into discussions with the State of Nevada and Nye County concerning mitigation for contamination of certain waters in the State. (12/15/2010)

Assembly Committee on Government Affairs

Makes various changes relating to the regulation and use of water. (12/15/2010) By Request