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The Commission convened by teleconference at 10:01 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

PATRICIA TIMMONS-GOODSON, Vice Chair

ROBERTA ACHTENBERG, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLABDNEY, Commissioner

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director
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STAFF PRESENT:
ANGELA FRENCH-BELL
ALFREDA GREENE
TINALOUISE MARTIN
DAVID MUSSATT
MAUREEN RUDOLPH, General Counsel & Parliamentarian

COMMISSIONER ASSISTANTS PRESENT:
SHERYL COZART
JASON LAGRIA
CARISSA MULDER
ALISON SOMIN
KIMBERLY TOLHURST
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CHAIRMAN CASTRO: Thank you, everyone.
This is Chairman Marty Castro, and I want to announce
that this is the telephonic meeting of the U.S.
Commission on Civil Rights. We'll come to order.
This meeting is taking place today, December 28, 2015.
It is now 10:00 a.m. Eastern Time. This meeting is
taking place telephonically.

I wanted to go over -- excuse me, I'm
fighting off a little bit of a cold here. I want to
go over a few logistical matters just to ensure that
we have a readable transcript and a meeting that flows
well. Since we're doing this telephonically, there's
obviously a few little hurdles we have to make sure we
overcome.

So whenever anyone speaks, if you could
please identify yourself, not just the first time, but
every time because the court reporter will need to
identify who we are, and he or she may not necessarily
recall the tone of your voice. When you aren't
speaking, please make sure you mute the phone,
particularly if you're in a public place, so that we
don't get a lot of feedback or static background noise.
And also, try not to speak over one another because when someone is speaking, we can't hear the other person anyway. Aside from, you know, obvious courtesy reasons, but we just want to make sure we have as accurate and complete a transcript as possible.

So in terms of commissioners that are joining us telephonically, myself, Commissioner Kirsanow, Commissioner Heriot, Vice Chair Timmons-Goodson, Commissioner Kladney, Commissioner Narasaki, Commissioner Achtenberg, and Commissioner Yaki are all participating. We have a quorum present.

Is the court reporter present?

COURT REPORTER: I am.

CHAIRMAN CASTRO: Court reporter, can you answer please?

COURT REPORTER: Yes, I'm present.

CHAIRMAN CASTRO: Sheryl, are you on the line?

MS. COZART: Yes, I am.

CHAIRMAN CASTRO: What's the problem?

MS. COZART: I am not sure. The operator, Angela, said that the court reporter is on the line, but I have not heard the court reporter's voice.

CHAIRMAN CASTRO: Is there a way we can get
COURT REPORTER: I'm present. I don't know why they can't hear me.

MS. COZART: I just heard something.

OPERATOR: And I did open up the lines of all the participants in the room.

CHAIRMAN CASTRO: Okay.

COURT REPORTER: I'm on the line. Can anyone hear me?

MS. COZART: Yes.

CHAIRMAN CASTRO: Who is this?

COURT REPORTER: This is the court reporter.

CHAIRMAN CASTRO: Okay, good, all right.

COURT REPORTER: Okay.

CHAIRMAN CASTRO: Thank you. Is the staff director present?

DIRECTOR MORALES: I am present. This is Mauro Morales.

CHAIRMAN CASTRO: Okay, then I think the meeting will come to order. The first item is the approval of the agenda.

I. APPROVAL OF AGENDA

CHAIRMAN CASTRO: I have moved that we
approve the agenda. I do have additional amendments as well, and that is to add the discussion vote on the 2016 enforcement report discovery plan. So I'll make a motion that we approve the agenda with that amendment. Are there any other amendments? Hearing none, is there a second?

VICE CHAIR TIMMONS-GOODSON: Mr. Chair, I'll second.

CHAIRMAN CASTRO: And that was the Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Vice Chair.

CHAIRMAN CASTRO: Okay, so all those in favor, say, aye.

(Chorus of aye.)

CHAIRMAN CASTRO: Any opposed? Any abstentions? Okay, the motion passes unanimously. So that gives us four items on our agenda today.

II. PROGRAM PLANNING

PRESENTATION ON TOWN HALL BUDGET ESTIMATES FOR THE ENVIRONMENTAL JUSTICE REPORT

CHAIRMAN CASTRO: The first is a presentation on the town hall meeting budget estimates for the environmental justice report, so for that I'll ask our Director of OCRE, Angela French-Bell, to please
come to her mic and discuss the budget estimates for us.

MS. FRENCH-BELL: Good morning, Chairman Castro, Vice Chair Timmons-Goodson, Commissioners, special assistants, and staff, and happy holidays. Our budget for the town hall meetings that we are proposing in Alabama on either February 26 or March 4 come to a total of $36,000. We estimate $10,000 for the operating travel budget. There would be approximately eight employees, mostly staff -- I'm sorry, was there a question?

CHAIRMAN CASTRO: No, go ahead. There may be one when you're done, but please continue.

MS. FRENCH-BELL: Okay, they would stay approximately three nights. We're hoping to have this be a late afternoon event from 5:00 to 7:00 p.m. so that we can get the most people to be able to attend and not have them be at work. So the extra day would be helping to set up and also ensuring that everything runs smoothly.

We will anticipate that there would be approximately 19 employees who would stay for two nights at a total cost of $19,000, and that would include commissioners as well as special assistants.
It would be $1,000 for sign language interpreters, $3,000 for transcription services, $2,500 for the facility and equipment rental, and $500 for shipping materials, supplies, and printing costs.

Of course these are estimates. It's not entirely accurate. It's just a rough estimate. Are there any questions regarding this estimate?

CHAIRMAN CASTRO: So you've broken it down. This is Chairman Castro. You've got a line that says $10,000 for a three-night stay with eight employees, and then a line that's got $19,000 for a two-night stay for 19 employees.

MS. FRENCH-BELL: Right.

CHAIRMAN CASTRO: Are these two separate proposals or is this -- there's going to be a group of us staying two days and a group staying three days?

MS. FRENCH-BELL: Well, we thought there would be a group staying three days and a group staying two days.

CHAIRMAN CASTRO: Okay, so the $29,000 is the total for the --

MS. FRENCH-BELL: Exactly.

CHAIRMAN CASTRO: -- travel, okay.

MS. FRENCH-BELL: Right.
COMMISSIONER Kladney: This is Commissioner Kladney. Is there a court reporter budgeted?

MS. FRENCH-BELL: That's part of transcription services.

COMMISSIONER Kladney: Okay, and why are all OCRE employees going, all five of them?

MS. FRENCH-BELL: When it comes to an event like this, we typically bring most of OCRE to come along. We help do timing. We help to ensure that events run smoothly. We help to do printing. So it's really a team effort, so that's normally what we do.

COMMISSIONER Kladney: So they're actually doing the administrative duties?

MS. FRENCH-BELL: Absolutely.

CHAIRMAN CASTRO: Any other questions?

Okay, I think we need a vote on this.

MS. FRENCH-BELL: Okay.

CHAIRMAN CASTRO: So, I'm sorry, was there somebody who wanted to ask a question? This is Chairman Castro again. Sorry, I forgot to use my own rule here. Did I hear a question from anybody? If not, then I will entertain a motion to approve this budget. Is there such a motion?
COMMISSIONER NARASAKI: This is Karen, Commissioner Narasaki. I so move.

CHAIRMAN CASTRO: Do we have a second?

VICE CHAIR TIMMONS-GOODSON: Vice Chair Timmons-Goodson, I second it.

CHAIRMAN CASTRO: Okay, any additional discussion? If not, let me take a roll call vote on this. Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: I vote yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLANDNEY: I'll pass for a minute.

CHAIRMAN CASTRO: Okay, Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: And Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?
COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I think I abstain.

CHAIRMAN CASTRO: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: And I vote yes. We have one, two, three, four, five, six yeses, an abstention, and a no, so the plan passes. Next, we have on the agenda the review of the town hall meeting plan itself.

II. PROGRAM PLANNING

DISCUSSION AND VOTE ON TOWN HALL MEETING PLAN

CHAIRMAN CASTOR: Again, Angela, would you please proceed to discuss that?

MS. FRENCH-BELL: Thank you, Chairman Castro. There is an update to the environmental town hall plan. We wanted to make sure that we were clear that although staff will be able to conduct the January 22 briefing on environmental justice and a town hall meeting in Alabama in late February, tentatively we have it scheduled for February 26.

The proposed Commissioners' subcommittee briefing for Nevada, Chicago, or North Carolina would be too onerous at this time in terms of staff time and
resources. As a consequence, we are proposing that we do not undertake briefings in those three cities. As an alternative, we would like to work with the State Advisory Committees to hold state committee meetings instead. We just can't accommodate an additional briefing for environmental justice at this time. We would also be willing to send OCRE staff members to either of those three locations to conduct additional research. So --

CHAIRMAN CASTRO: Questions, Commissioners? Oh, go ahead.

DIRECTOR MORALES: Mr. Chair, this is Staff Director Mauro Morales. I just wanted to add a little bit to what Angela has stated. What -- because of the -- it's not just the cost factor that we're looking at. It is also the demand on staff time in terms of, you know, trying to get out to the field to find sites, to work with, you know, folks out in the field when we try to pull this together.

Given the other reports and the other hearings we have scheduled in February, March, April, and May, to do additional town halls would place undue stress on our resources and our staff.

So what Angela has -- and we've been in
discussions with SAC chair David Mussatt in terms of
the SAC in Illinois doing a hearing for the SAC on
environmental justice and coal ash for the state of
Illinois, and then the other two proposals to go out
to Nevada and to North Carolina would be to send OCRE
staff or investigators or the individuals writing the
reports to do additional field hearing out there, and
so that's what we're looking at more to be able to
accomplish all that we -- that they proposed.

CHAIRMAN CASTRO: You don't mean a field
hearing, do you? Do you mean a fact finding?

DIRECTOR MORALES: I'm sorry, yes, a fact
finding. I misspoke.

VICE CHAIR TIMMONS-GOODSON: This is Vice
Chair Timmons-Goodson. I support the decision by OCRE
for us not to conduct the subcommittee briefings or
meetings as originally proposed. I think that it makes
good sense for us to scrap that notion. I would even
be open to further discussion on whether we even want
to go the SAC route.

Perhaps it's Commissioner Heriot in my ear
all the time, or perhaps it's my experience as a jurist,
but I do believe the more narrowly we focus our efforts,
the more likely it is that we'll be able to handle the
issue or issues comprehensively, and so I support the withdrawal of that subcommittee plan.

CHAIRMAN CASTRO: Any other questions or comments from Commissioners?

COMMISSIONER HERIOT: Mr. Chair, this is Gail. I just -- I'm getting a little mixed up here about whether or not at any point we specifically voted to do this. Is this a proposal to the Commission or is this a decision by OCRE? And I guess the answer to that question depends upon what we adopted earlier.

CHAIRMAN CASTRO: This is Chairman Castro. I don't believe we voted on a plan for this. We talked about it, but I don't think we ever really voted on it. That's why the plan was to vote on it at our last attempted meeting, and when we weren't able to do that, we put it on the agenda for today, so what is being presented today is for Commissioners to vote upon. It's not a --

COMMISSIONER HERIOT: Okay, okay, I support it, by the way, for the same reasons that the Vice Chair just gave.

CHAIRMAN CASTRO: Yes, so this is for us to vote on once we're done questioning, or asking, or discussing it. Any additional questions or comments?
COMMISSIONER YAKI: This is Commissioner Yaki. I -- while I understand the -- some of the reasons behind this, I would hope that -- one of the things I think drew support for this topic was the fact that it had broader implications beyond just the one facility in Alabama that we're talking about, and especially the impact on differential minority communities, not just one specific one.

So I would hope that if we're going to be doing this revised -- I don't know if it's going to be called revised, but somewhat revised plan, that if the SAC's -- that the SAC should not only be encouraged but requested to engage in these activities, and that the OCRE staff give them as much support as may be needed in order for them to be helpful to the Commission in performing these tasks, and that if there are Commissioners who wish to be present at these SAC meetings, that they be allowed to attend because I think this is a very important topic.

It has broad ramifications beyond just one location in one state in this country, and if we're -- As I talked to Sue, I just wonder is this really going to be so different than if we did subcommittees if we are going to be tasking OCRE with field investigations
as well as assisting SACs in putting together possible
field hearings of their own on this particular subject?

So I would support it. I would support
this modification or this proposal, whatever you want
to call it, if there are those kind of resources being
present, and if Commissioners who are interested are
allowed to attend those meetings. But if it's just to
ask them to do it, and if they don't do it, that's fine,
I have some problems with that.

COMMISSIONER ACHTENBERG: Mr. Chairman?

CHAIRMAN CASTRO: I'm in agreement with
what Commissioner Yaki just said. Who else wanted to
speak?

COMMISSIONER ACHTENBERG: It was
Achtenberg. I concur with what Commissioner Yaki just
said. I think that's the right way to go. That gives
us the breadth that this topic demands, and presumably
accommodates the concerns of the OCRE director as well
as the staff director, so I support Commissioner Yaki.

COMMISSIONER HERIOT: Mr. Chairman?

CHAIRMAN CASTRO: Yes, Commissioner
Heriot?

COMMISSIONER HERIOT: I just wanted to
comment a little bit on a controversy over the law here.
Commissioner Yaki had said that he thought that SAC should be encouraged — I think maybe he even used a stronger word than that — to pick this as a topic.

I know that back a few years back with Staff Director Marcus, he was under the impression that FACA was — did not allow us to try to get the facts to look at particular topics. I have never known whether his interpretation of the law is correct or whether he even firmly had that interpretation. That was his working interpretation.

It always struck me as rather strange that we couldn't request a SAC to undertake a particular topic, that we had to be so very standoffish on this. So I just want to point out there is that possible legal issue if it comes to actually requesting SACs to do this.

And personally, I would like it if we had the time to look into whether or not that's what the law is, if the General Counsel could look into this, because I think it's something we need to settle.

CHAIRMAN CASTRO: Is our General Counsel on the line?

MS. RUDOLPH: This is Maureen Rudolph, the General Counsel. Yes, I am.
CHAIRMAN CASTRO: Go ahead.

MS. RUDOLPH: I would be happy to look into that and report back to the Commissioners as to what I find.

COMMISSIONER HERIOT: Thank you.

COMMISSIONER KLADNEY: This is Dave Kladney. I think that's a very important issue to get resolved because in my office's research on this, North Carolina specifically exhibits many of the problems brought forward with this coal ash problem, especially recently, where instead of taking all 36 coal ash sites and cleaning them up and capping them, lining them and capping them, they are deciding only to do 24, and the current state of the law is that only active plants have to clean up their coal ash sites.

So I think this is very important, and I would support Commissioner Yaki, and I would also -- I also feel that if the SAC does not do this -- these hearings, that we should actually follow-up in the future and do this because it's a very important and pertinent issue. Thank you.

CHAIRMAN CASTRO: Any other questions or comments?

MS. FRENCH-BELL: Good morning, this is
Angela French-Bell. I just want to say that we stand in support of Commissioner Yaki's proposal as stated today, and that we will work cooperatively with -- actively with David and with Commissioner Yaki and Kim to come up with the best plan forward to incorporate that changes that we see here.

COMMISSIONER NARASAKI: Mr. Chair, this is Commissioner Narasaki.

CHAIRMAN CASTRO: Yes.

COMMISSIONER NARASAKI: So I do support the plan to cut back, particularly since we did not get the President's full requested budget, and also because we do have a lot on our plate and on OCRE's plate for the first six months of this year as we continue to try to catch up with all of the reports, so I think that's important.

And I do agree with Commissioner Yaki and others that I think it's important to go beyond Alabama if we can because, you know, Alabama is a situation where the EPA is actually doing something, and I think they're concerned about where they're not. If we're really looking at the EPA, I think we need to look at those types of situations.

So I do want to note, Mr. Chair, that I
think we were supposed to also vote on the date, or at
least confirm the date for the Alabama town hall, so
I want to make sure we do that --

CHAIRMAN CASTRO: Right.

COMMISSIONER NARASAKI: -- before we get
off the phone.

CHAIRMAN CASTRO: Yes, thanks for
reminding me about that, yeah.

VICE CHAIR TIMMONS-GOODSON: This is Vice
Chair Timmons-Goodson. I think that those that have
spoken have offered compelling reasons for why we
should take a look at these others, in some way take
a look at the others, and so you have indeed had the
discussion that I wanted as we're looking at those other
sites, and so I would support Commissioner Yaki's
notion.

CHAIRMAN CASTRO: Any other Commissioners
have a comment or a question? If not, then I will
entertain a motion to approve the modified proposal as
clarified by Commissioner Yaki, subject to our General
Counsel making sure that we are inviting the SACs to
participate in an appropriate manner. Do I have a
motion on that?

COMMISSIONER NARASAKI: This is
Commissioner Narasaki. I so move.

CHAIRMAN CASTRO: Do we have a second?

COMMISSIONER ACHTENBERG: I second.

CHAIRMAN CASTRO: Who is that?

COMMISSIONER ACHTENBERG: Commissioner Achtenberg.

CHAIRMAN CASTRO: Okay, thank you. Any additional discussion? If not, let me call the roll.

Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I'm a little unsure as to what the proposal is, so I guess I'm going to abstain now.

CHAIRMAN CASTRO: Would you like it to be clarified?

(Simultaneous speaking.)

COMMISSIONER KLADNEY: Mr. Chairman, Commissioner Yaki also spoke about attendance, and I don't think he asked about participation of other Commissioners at those meetings as well, and we were also getting an opinion from General Counsel, so I'm not exactly sure how clear we are.
CHAIRMAN CASTRO: I said that though. I said that it would be subject to the General Counsel clarifying how we can appropriately engage the SACs.

COMMISSIONER HERIOT: Mr. Chairman? Mr. Chairman, this is Gail again. What I wasn't sure of, Commissioner Yaki had mentioned that this would -- allowing Commissioners to participate, I think our rule is that Commissioners can always participate, but I think what isn't clear is whether or not the Commission's budget could be used for travel in order to facilitate that participation.

CHAIRMAN CASTRO: And I think he said we can participate, which implies that we could ask questions, which we cannot, so we would be like observers.

COMMISSIONER HERIOT: Yes, I think that we can always do that, but what's really unclear to me is whether or not the Commission's budget can be used for the travel. Part of our problem here is lack of money.

CHAIRMAN CASTRO: I'll ask Mr. Staff Director.

DIRECTOR MORALES: You raise a good point. I think we can look at this in terms of Commissioners traveling to a SAC hearing. I think they've done that
in the past. I don't see a problem with them attending
and our paying for it, within reason, and maybe we can
-- I can send out an email, you know, when we do get
-- because I know Illinois is doing a SAC hearing on
environmental justice. Now --

COMMISSIONER HERIOT: I just wonder if
it's not going to become more expensive than the
original plan.

COMMISSIONER YAKI: This is Commissioner
Yaki. It can't be more expensive because we're not
setting up the whole Commission, U.S. Commission on
Civil Rights apparatus when we're going over it to --
when the SACs are performing these tasks. So I think
that it would be very -- I think the cost would be pretty
minor compared to the overall costs of bringing the
whole road show.

COMMISSIONER HERIOT: I thought the plan
was subcommittees.

COMMISSIONER YAKI: Yes, but even with the
subcommittee, there are certain things that we can't
get out of in terms of the kind of -- well, this is
Commissioner Yaki. I'll let the staff explain, but I
believe that even if you're a subcommittee, there are
certain things that we cannot waive in terms of the
process and machinery that must be brought along.

COMMISSIONER HERIOT: I think that's true for SACs too.

COMMISSIONER Kladney: This is Commissioner Kladney. You know, this was originally proposed by OCRE and the staff, and they are not objecting to it because of cost. They are objecting to it because of manpower, or person power, or employee power. They are not objecting to it because of cost. They've already budgeted all of that, and they proposed it to begin with. So --

COMMISSIONER HERIOT: I thought part of it was cost. I thought it was both.

COMMISSIONER Kladney: Well, I think they clearly said that they were unable to do it because of not having sufficient powers.

DIRECTOR Morales: This is Staff Director Morales. I just wanted to make sure we clarify. One, the town hall in Alabama is a headquarters commission event where we're in charge of it. We're taking all of the resources. We're taking all of it on. The SAC events are things that the State Advisory Committee puts on themselves.

And the view, I believe, from OCRE, and you
can correct me if I'm wrong, was that we would go as participants, and then those SACs would provide us with the information they gather. So the resources from the national headquarters is limited to just a commissioner attending and/or maybe an OCRE staff attending. We're not running those SAC hearings.

The SACs themselves are running them, and they run them through their own budget, and they run them through their own staff, and they run them through their own SAC committee members who, you know, get the public to attend and so forth. So we were coming as just observers and participants from the Commission standpoint, the National Commission standpoint.

MS. FRENCH-BELL: That's correct, Staff Director Morales. That's correct.

COMMISSIONER HERIOT: But it all comes out of the same budget in the end.

DIRECTOR MORALES: Well, that's true, but the SACs are budgeted to -- they have to have a hearing, and if they're interested in the project because of the community being impacted by environmental justice issues, then all the better that we piggyback.

But then again, the costs to the SACs are also very different because the SAC members themselves
attend. They're local people. The SAC staff that works on these are also local, so the costs go phenomenally down compared to transporting all of the national staff out there and the apparatus that --

COMMISSIONER HERIOT: Again, this is going to be subcommittees.

VICE CHAIR TIMMONS-GOODSON: Okay, this is Vice Chair Timmons-Goodson. We have a motion on the floor, and I believe the motion is that OCRE, that we follow OCRE's recommendation that we no longer go with the subcommittee, but in the alternative, that we request SACs to engage in hearings in those three states, I believe it is, subject to a legal research by our General Counsel that it's permitted, and that those -- and that at least a couple of OCRE folks be involved at these -- at the SAC meeting, to the extent that they're needed or warranted, and that any commissioners that wanted to attend in those three locations be permitted to go, and so I'd like for us to vote on it if that is, in fact, what we're voting on.

CHAIRMAN CASTRO: That was my understanding, yeah.

COMMISSIONER KLADNEY: Madam Vice Chair,
I thought it was any commissioner could attend.

VICE CHAIR TIMMONS-GOODSON: Well, I think -- I hope that's what I said.

COMMISSIONER KLADNEY: Oh, no, I thought you said, "in those areas." That's okay. If that's what you mean, that's fine with me.

VICE CHAIR TIMMONS-GOODSON: If I did, I misspoke. But it's my understanding anybody who wanted to go, any commissioner who wanted to attend in those three -- those states that the SACs would be looking at, could go.

CHAIRMAN CASTRO: All right, let me start again on the roll call vote now that we had additional discussion. Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I still abstain. I have no idea what anybody's talking about here.

CHAIRMAN CASTRO: Okay, Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: I vote yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?
COMMISSIONER Kladney: Yes.

Chairman Castro: Commissioner Achtenberg, how do you vote?

Commissioner Achtenberg: Yes.

Chairman Castro: Commissioner Yaki, how do you vote?

Commissioner Yaki: Yes.

Chairman Castro: Madam Vice Chair, how do you vote?

Vice Chair Timmons-Goodson: Yes.

Chairman Castro: And I vote yes. We have one, two, three, four, five, six yeses, one no, and one abstention. Okay, before I move on, I want to confirm the date for the Alabama town hall. Now, the primary date that has been discussed and circulated was February 26. I think there's also a backup date, if we don't have a quorum, for March 4. So does February 26 work for the commissioners or not?

Commissioner Narasaki: This is Commissioner Narasaki. It works for me.

Commissioner Achtenberg: This is Commissioner Achtenberg. I had originally asked that it not be the 26th because I had a trip planned. I have now changed that plan to great inconvenience, so it's
my hope now that we can stick with the 26th because I absolutely could not do March 4.

CHAIRMAN CASTRO: Okay, that's a good point. Does February 26 work for everybody else or the majority of everybody else?

COMMISSIONER HERIOT: This is Gail. It works for me.

CHAIRMAN CASTRO: All right, silence is acceptance, folks. We'll entertain a motion then that we do the hearing, I'm sorry, the town hall in Alabama on February 26, 2016. Do I have a second?

VICE CHAIR TIMMONS-GOODSON: I'll move it.

CHAIRMAN CASTRO: And who was that? Okay, Yaki moved. Who seconded?

VICE CHAIR TIMMONS-GOODSON: Timmons-Goodson.

CHAIRMAN CASTRO: Okay, I'm going to do a voice vote on this unless people want to roll call. But all those in favor, say aye.

(Chorus of aye.)

CHAIRMAN CASTRO: Any opposed? Any abstentions?

COMMISSIONER KIRSANOW: Kirsanow.
CHAIRMAN CASTRO: Kirsanow abstains, okay, so it passes with seven yeses and one abstention. Next, we have the environmental justice discovery plan that was circulated about a week ago in your folders, and I will ask the head of OCRE to discuss that, and then we'll vote on it.

MS. FRENCH-BELL: Good morning. I thought we had on here to discuss a Quiet Crisis. Do you want to discuss the Quiet Crisis after the discovery plan?

CHAIRMAN CASTRO: We'll discuss it afterward because let's just keep -- we're still talking about the environmental justice report, so let's just keep it consistent.

MS. FRENCH-BELL: Okay, so pursuant to Administrative Instruction 1-6, Section 8, OCRE submitted a discovery plan for the 2016 statutory enforcement report. Even though we're submitting this, we are aware of a possibility that we may issue more than one set of interrogatories and documents or additional questions that may arise during the course of our research.

But essentially what we're proposing are formal and informal meetings with EPA to talk about
their Title VI enforcement and enforcement of Executive Order 12898, their final coal ash rule and clear water act rule, the location of coal ash generating and disposal facilities, and along with that, we're heavily looking at the ways and social economic level of individuals that surround each of those facilities.

We're also seeking information pertaining to the status of the EPA and Department of Interior's Surface Mining Bureau's joint rule developing offsite coal ash disposal and storage facilities. We're also interested in obtaining information from the Census Bureau that will help us to track demographics for communities where coal ash is generated and disposal facilities are located.

We're also interested in setting up formal and informal meetings with relevant DOJ offices. Among other things, we would like to discuss how they make the decision to start an in-court action that involves environmental justice issues, specifically when it comes to doing interrogatories, document requests, and subpoenas.

We're seeking EPA's handbook for the complaint process, data regarding their current and historic Title VI compliance docket, how they developed
the coal ash rule. We're also looking at whatever
census, and housing, and job availability data that
they have, information on their environmental justice
impact study in their final coal ash rule.

We also will work with the commission's
advisory committee to obtain additional information.
As we've already stated, we are also holding the January
22 briefing to question EPA officials regarding Title
VI and Executive Order 12898, and we also submitted the
town hall meeting proposal to obtain additional
information as well.

CHAIRMAN CASTRO: Okay, any questions for
OCRE? Any comments?

COMMISSIONER NARASAKI: This is
Commissioner Narasaki. I had a question about what
kind of investigation will be done in terms of the issue
over whether there is sufficient resources for this
enforcement work.

MS. FRENCH-BELL: So one of --

COMMISSIONER NARASAKI: And --

MS. FRENCH-BELL: Oh, I'm sorry.

COMMISSIONER NARASAKI: Particularly,
are we going to be talking to members of Congress or
not?
MS. FRENCH-BELL: We are working now to work with members of -- or to obtain members of Congress to attend the briefing. Another thing that we're doing is we're looking at EPA's budget for conducting Title VI investigations, resolving complaints, and monitoring any settlements. So one of our goals is to see whether or not this budget is sufficient based on the work that's been allocated to them. That's a good question. Thank you for that.

CHAIRMAN CASTRO: Any other questions?

COMMISSIONER KLADNEY: This is Dave Kladney. I was wondering if OCRE had a timeline on each of these pieces of discovery?

MS. FRENCH-BELL: Our timeline is rather vague because we get information at various points. We hope to have all of it by the end of March to enable us to meet our April 25 deadline.

COMMISSIONER KLADNEY: And how many people in OCRE are working on this discovery?

MS. FRENCH-BELL: The discovery part?

Three.

COMMISSIONER KLADNEY: And your deadline is -- your self-imposed deadline is the end of March? How late can you go on the discovery and still get the
report out by the end of September?

MS. FRENCH-BELL: If we get additional items, and we've already submitted the rough draft to you, there still might be an option to either make an addendum to the report, or if there is sufficient time, to include it in the report itself, but it would depend upon the volume of information, and the type of information, and the time that we still have after we've received the information.

So, I mean, there are opportunities if it comes to that, but we are hoping since we started early with them, that it does not come to that, but your point is well taken.

COMMISSIONER NARASAKI: So this is Commissioner Narasaki again. I have an additional request. I found it very difficult last year because we got the testimony for the hearings so late, and I know that it's not -- it's the fact that the witnesses don't meet the deadlines.

I'm wondering if we could push up the deadlines for testimony so that we could have the testimony a week before the hearing, because it just becomes, particularly I think in this area of inquiry, it just becomes very difficult to be trying to figure
out what the focus of questions should be when we get
the testimony, like two days before the actual hearing.

    MS. FRENCH-BELL: Thank you for that
request. We can definitely request the information
sooner. We may not be able to do that since we're
already giving them timelines that are maybe two weeks
out from the date of the hearing, but we will do our
best to meet your request.

    COMMISSIONER NARASAKI: Yes, and I would
request for all of the hearings. So as you move
forward, to move that date up so we have some hope of
getting at least most of the testimony in a time that
makes it more useful for us to prepare.

    MS. FRENCH-BELL: Thank you, will do.

    CHAIRMAN CASTRO: Any other questions?
Do I have a motion to approve the discovery schedule,
or discovery plan, I should say? Do I have a motion?

    COMMISSIONER NARASAKI: This is
Commissioner Narasaki. I so move.

    VICE CHAIR TIMMONS-GOODSON: This is Vice
Chair Timmons-Goodson. I second the motion.

    CHAIRMAN CASTRO: Any additional
discussion? Hearing none, I will call the roll. Oh,
yes, go ahead? Okay, Commissioner Kladney?

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COMMISSIONER Kladney: Yes.

Chairman Castro: No? Oh, go ahead.

COMMISSIONER Kladney: I said yes.

Chairman Castro: Are you going to vote?

Oh, okay, I thought you were going to ask a question. I'm going to take the roll now, so Commissioner Kirsanow?

COMMISSIONER Kirsanow: Abstain.

Chairman Castro: Pardon me?

COMMISSIONER Kirsanow: Abstain.

Chairman Castro: Abstain, okay.

Commissioner Heriot?

COMMISSIONER Heriot: Now I'm going to be the no vote. No.

Chairman Castro: Commissioner Narasaki?

COMMISSIONER Narasaki: I vote yes.

Chairman Castro: Commissioner Kladney?

COMMISSIONER Kladney: I pass.

Chairman Castro: You pass, okay.

Commissioner Achtenberg?

COMMISSIONER Achtenberg: Yes.

Chairman Castro: Commissioner Yaki?

Commissioner Yaki?

COMMISSIONER Yaki: Sorry, I couldn't hit
the unmute button. Yes.

CHAIRMAN CASTRO: Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: I vote yes.

Commissioner Kladney, going back to you.

COMMISSIONER KLADNEY: I'm concerned that this is an awful lot to do, but I will vote yes.

CHAIRMAN CASTRO: Okay, so we have one, two, three, four, five, six yeses, an abstention, and a no, so the plan passes. The fourth and final item of the agenda for today is a discussion on the plan for the revision of the Native American Quiet Crisis report.

II. PROGRAM PLANNING

DISCUSSION ON PLAN FOR REVISION OF THE NATIVE AMERICAN QUIET CRISIS REPORT

CHAIRMAN CASTRO: Madam French-Bell, you're still up.

MS. FRENCH-BELL: Thank you, Chairman Castro.

CHAIRMAN CASTRO: You're welcome.

MS. FRENCH-BELL: What we're proposing is holding a mini briefing. That would accomplish a couple of things. One, it would give the commissioners
an opportunity to question potential advocacy groups and the federal agencies about issues related to housing, health, and infrastructure for Native American communities.

The last time that we did this was 2003, so the information is old and stale. The reason that we want it to be a mini briefing is because we do not want to use up all of our resources to do that. We do have a busy schedule, and so we want to make sure that we're able to propose a mini briefing that would actually accomplish our goals, but yet not overtax the staff.

The third thing that it would accomplish is to give us a chance to learn additional information that we could use for the report. So what we're proposing is holding the mini briefing on February 19, 2016. It would consist of only two panels. A federal agency panel, it would include invitations to DOI, the Department of Justice, HHS, and HUD.

There would also be an advocacy panel as well. We would have no more than five people per panel. We would want it to be short, and we would want it to definitely be focused, but it would be something that would be useful for our report.
CHAIRMAN CASTRO: Okay, any questions, Commissioners?

COMMISSIONER NARASAKI: This is Commissioner Narasaki. I had actually suggested that we do a short hearing. When we had -- the Commission voted to update these reports, I think the initial thinking was that at least for some of them we would be able -- the staff would be able to just look at the data.

This report is a fairly large undertaking, and I think this would give an opportunity for Commissioners and special assistants to be able to dig in so that when we get the actual draft, we will have sufficient foundation to be able to work with the staff on the final report. That was at least my thinking.

CHAIRMAN CASTRO: Okay.

COMMISSIONER HERIOT: Mr. Chairman?

CHAIRMAN CASTRO: Yes, Commissioner Heriot?

COMMISSIONER HERIOT: Are we sure we want to do this on as quick a schedule as we're talking about? It sounds like this updating has turned into a real report. I'm kind of surprised at this notion of a mini briefing. Two panel briefings used to be our norm.
Now we've gotten into doing much, much larger briefings. I think this is more of a standard briefing. Do we really want to do it in February?

COMMISSIONER NARASAKI: So, Commissioner Heriot, the challenge on timing is -- the Commission has hired a consultant who appears to be doing a very good job and has actually been working for several months now laying the groundwork for the initial draft.

And so, that contract runs out in April, and also we want to do it in time for that person to be able to help us identify which things need to be resolved at that particular hearing. So as our OCRE director noted, one of the differences we hope will be that this will not be sort of wide-ranging questions, but hopefully more focused inquiries so that we can do it in half a day.

COMMISSIONER KIRSANOW: Mr. Chair?

CHAIRMAN CASTRO: Yes, Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Thank you. I am a little concerned about work load here. Just last month, we -- or maybe it was a month-and-a-half ago, we had a discussion related to the timing of the statutory enforcement report for 2016, and we were led
to believe that more time was necessary because of the congested schedule of OCRE and the rest of the staff in timely discharging all of their other functions, plus the statutory enforcement report.

I'm concerned that the introduction of even a mini briefing, which Commissioner Heriot characterizes as, by any other term, a briefing, will impinge upon the ability of staff to address other matters, including the statutory enforcement report.

CHAIRMAN CASTRO: Okay, does OCRE have any comment? My understanding is I believe you already had this contemplated when you were making those other proposals, but I'll let you speak to that.

MS. FRENCH-BELL: That's exactly the issue. One of the things that we did was to ensure that we could handle the schedule by doing our best to kind of narrow and focus what we were doing with the environmental justice report.

As we stated, we do have a contractor to help us to locate panelists and to assist with this mini briefing as well, so it's not quite the same issue that we would have with the other briefings. So definitely your point is well taken, but we have definitely put that into consideration as a part of the plan that we
have proposed.

CHAIRMAN CASTRO: Any other questions or comments from Commissioners?

COMMISSIONER ACHTENBERG: Mr. Chairman?

CHAIRMAN CASTRO: Yes, Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Will the contractor be assisting in the drafting as well?

MS. FRENCH-BELL: I'm sorry, the drafting of the report, Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes, the drafting of the update, yes.

MS. FRENCH-BELL: Yes, that's correct.

COMMISSIONER ACHTENBERG: So there will be a writing component as well, is that correct?

MS. FRENCH-BELL: Absolutely.

COMMISSIONER ACHTENBERG: Okay, thank you.

COMMISSIONER KLANDNEY: This is Dave Kladney. So with this -- what you're saying is with this hearing in February, and he completes his work, when was it, in April?

MS. FRENCH-BELL: Correct.

COMMISSIONER KLANDNEY: So you will have a
completed report before he leaves?

MS. FRENCH-BELL: A draft, yes.

COMMISSIONER KLADNEY: A draft, okay, thank you.

MS. FRENCH-BELL: Thank you.

COMMISSIONER HERIOT: Mr. Chairman?

CHAIRMAN CASTRO: Yes, Commissioner Heriot?

COMMISSIONER HERIOT: We'll have a draft. Well, there could be quite a lot of work in the second draft, and there usually is. Is the contractor going to be in charge of that as well?

MS. FRENCH-BELL: It depends on how extensive the changes are. As we said, he's slated to leave us in April. So after that time, it would be dependent upon OCRE to finish any other additional changes.

COMMISSIONER HERIOT: Is there some possibility of extending the contract?

MS. FRENCH-BELL: Definitely we'll talk to the staff director and consult with him about that.

COMMISSIONER KLADNEY: This is Dave Kladney again. How much was the contract to begin with and what was the period of time, just six months, or
eight months, or what were the -- what were the basic terms?

MS. FRENCH-BELL: The time was six months.

I'm sorry, I can't give you an exact figure right now on the amount, but I can get that to you.

COMMISSIONER KLADNEY: Thank you.

CHAIRMAN CASTRO: Any other questions?

COMMISSIONER YAKI: This is Commissioner Yaki. Although I won't -- although this won't affect my vote, I will add an observation which is Commissioner Heriot is actually correct in characterizing this briefing as more like what the briefings we used to have versus what we have right now.

This -- we -- I always thought a mini briefing was going to be more along the lines of two or three people on one single panel. That being the case -- not being the case, for purposes of ensuring an adequate report, this is really more of a briefing.

CHAIRMAN CASTRO: Any other comments or questions? Hearing none, I entertain a motion to approve this plan.

COMMISSIONER NARASAKI: Can I actually -- this is Commissioner Narasaki. Sorry, it took me a while to get off mute. So Commissioner Yaki, are you
suggesting that we should try to just do it in one panel instead of two?

COMMISSIONER YAKI: No, I'm saying that the numbers of speakers are such that it would lend itself to two, and that's fine with me. I would just say that, I mean, I think it almost diminishes what we're doing for the report by even calling it a mini briefing. We should just call it a briefing.

COMMISSIONER NARASAKI: Okay, I just wanted to understand where you were coming from. Thank you.

CHAIRMAN CASTRO: Okay, do I have a motion?

COMMISSIONER NARASAKI: This is Commissioner Narasaki. I move that we adopt the plan as presented for the hearing for the Quiet Crisis report.

CHAIRMAN CASTRO: Is there a second?

VICE CHAIR TIMMONS-GOODSON: Vice Chair Timmons-Goodson, I'll second it.

CHAIRMAN CASTRO: Any additional discussion? Hearing none, I will call the roll. Commissioner Kirsanow, do you abstain or vote no?

COMMISSIONER KIRSANOW: No.
CHAIRMAN CASTRO: Okay, Commissioner Heriot?

COMMISSIONER HERIOT: I vote no. I don't see how we're going to be able to get all of this done in that short amount of time.

CHAIRMAN CASTRO: Commissioner Narasaki?

COMMISSIONER NARASAKI: I vote yes.

CHAIRMAN CASTRO: Commissioner Kladney?

COMMISSIONER Kladney: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And I vote yes, so we have six yeses, a no, actually two nos -- six yeses and two nos, so the motion passes, and that is our agenda today, folks, so thank you, everyone, for participating by phone today. There being nothing further, I hereby adjourn the meeting at 10:55 a.m. Eastern Daylight Time. Thank you.
(Whereupon, the above-entitled matter went off the record at 10:55 a.m.)