



P.O. Box 43020 • Phoenix, AZ 85080-3020
23636 North Seventh Street • Phoenix, AZ 85024
623-869-2333 • www.cap-az.com

August 31, 2011

VIA ELECTRONIC MAIL: Post2017BCP@wapa.gov

Mr. Darrick Moe
Desert Southwest Regional Manager
Western Area Power Administration
P.O. Box 6457
Phoenix, AZ 85005-6457

RE: Written Comments of the Central Arizona Water Conservation District (CAWCD) on the Boulder Canyon Project – Post 2017 Application of the Energy Planning and Management Program (EPAMP) Power Marketing Initiative (PMI) to the Boulder Canyon Project

Dear Mr. Moe:

CAWCD hereby submits its written comments on Western's post-2017 marketing proposals for the Boulder Canyon Project (BCP), in response to the Notice of Decision and Notice of Proposal published on April 27, 2011 at 76 Fed Reg. 23583.

CAWCD has previously commented on Western's proposals for post-2017 marketing of BCP power and energy, as published in Western's November 20, 2009 Federal Register notice (FRN). CAWCD has also participated in and submitted comments at Western's public information and public comment forums, both with respect to the 2009 FRN and the current 2011 FRN. CAWCD is a member of the Irrigation & Electrical Districts Association of Arizona (IEDA). CAWCD receives Hoover power pursuant to a long-term contract with the Arizona Power Authority (APA). CAWCD has supported comments previously made by both IEDA and APA in response to the FRNs.

Many of the comments previously made by CAWCD, IEDA, APA and others remain applicable to the proposals made in the 2011 FRN or to matters raised in the 2009 FRN (such as whether Western has authority to apply the PMI to its marketing of BCP resources) that Western has already decided, but for which it did not provide a robust explanation or response. CAWCD commends those prior comments to Western, to the extent they pertain to the current proposals or to several important issues that Western has indicated will not be addressed or decided until after one or more subsequent FRNs are published.

The Hoover resource is important to CAWCD and its customers. Through CAWCD's contract with the APA, the BCP provides a significant amount of the electric power and energy needed by CAWCD to fulfill its critical mission of delivering over 1.5 million acre-feet of Colorado River water annually over the Central Arizona Project's 336 mile long canal system to CAP water customers in Maricopa, Pinal and Pima Counties. Hoover power is an important component in the electrical

resources available to CAWCD, providing not only energy but flexibility in our ability to operate the system.

During years when Hoover C energy was available in addition to CAWCD's Hoover B capacity and energy, the Hoover C resource provided substantial amounts of economical energy to the benefit of all CAP water users. We will continue to need the Hoover resource well past the September 2017 expiration of the existing contracts.

Recognizing the need to bring certainty to the continuing availability of Hoover power, CAWCD worked closely with other Hoover customers in Arizona, California, and Nevada to develop the legislation to allocate post-2017 Hoover power that is now pending before Congress as the "Hoover Power Allocation Act of 2011" (H.R. 470/S. 519). The U.S. Congress has been the sole body to allocate Hoover Power since Hoover Dam was first authorized by the Boulder Canyon Project Act in 1928 (the 1928 Act) and in subsequent reallocations. We believe that should continue.

Both the House and Senate versions of the Hoover legislation have been reported out of the committees of reference and are ready for action by Congress. Given the status of the legislation, CAWCD suggests that Western should suspend further action in this matter at least through the current session of Congress. Such suspension would avoid substantial efforts by both Western and interested parties that will be unnecessary if Congress acts.

CAWCD offers its comments in response to Western's specific requests in its Federal Register notice, concerning the quantity of resources to be extended to existing contractors, the size of the proposed resource pool, and excess energy provisions. In addition, CAWCD requests that Western provide a more detailed explanation of its decision to apply PMI to its marketing process and to reconsider its decision to limit the term of contracts to 30 years.

Western has approached the various issues involved in its marketing of Hoover power and energy in a piecemeal manner. Thus Western's responses to questions raised by various parties in the current 2011 FRN public process concerning matters such as the role of the Arizona Power Authority (APA) in Western's allocation process, and comments that new allottees should be required to participate in the costs of the Lower Colorado River Multi-Species Conservation Program (MSCP) and agree to the Boulder Canyon Implementation Agreement were that such matters are beyond the scope of the current FRN process, but may be addressed in future proceedings. Such an approach makes it difficult to comment on Western's overall marketing approach for the BCP, since several important pieces are still missing from the overall package.

The proposed legislation addresses or resolves all of those issues. If CAWCD had to summarize its response to Western's proposal in a single sentence, it would be that we think Western should follow the provisions outlined in the legislation.

CAWCD's specific comments are as follow:

1. **Quantity of the resources to be extended to existing customers.** CAWCD believes that Western should allocate 100% of the capacity and energy that is potentially available from the BCP. Therefore, CAWCD supports Western's proposal to market the entire 4,527,001 MWh of energy currently allocated, rather than the amount of 4,116,000 MWh as originally

proposed. However, we suggest that Western should market the full rated capacity of 2074 MW, rather than the 2044 MW proposed in the notice. Although CAWCD fully supports the creation of a power pool for new allottees, including tribes, through passage of the current Hoover legislation, unless we can be convinced that Western has authority to apply the PMI, we see no basis for Western to make any allocations to customers other than as specifically provided in the 1928 Act.

2. **Excess energy provisions.** The creation of Schedules A, B, and C pursuant to the Hoover Power Plan Act of 1984 represented the results of both recognition of the financial contributions made by the parties that agreed to finance the upgrading of the generation facilities at Hoover and the negotiated settlement of claims by Arizona, California and Nevada to the Hoover generation, including the rights to excess generation.

CAWCD supports Western's retention of the current first priority for excess energy to Arizona. In addition, CAWCD urges Western to continue using the existing allocation methodology and retain all three schedules with the current capacity factors associated with the Schedule A and B power and energy. CAWCD urges Western to consider using a blended capacity factor for allocations of Hoover for the proposed new power pool, based on power and energy coming into the pool pro rata from current Schedule A and B contract amounts, similar to the Schedule D pool that the pending Hoover legislation would create.

The excess energy provisions should track the provisions in Section 2(c) of the pending Hoover bills. In particular, the final priority for excess energy should continue to allocate such excess energy equally among the three states, as both the 1984 Act and the current Hoover bills do.

3. **The role of the APA in Western's allocation process.** Although Western has stated that the roles of APA and CRC in Western's allocation process are beyond the scope of the current FRN, we believe it is of critical importance.

Section 5 of the 1928 Act gave first preference to Hoover power to the States of Arizona, California, and Nevada. The State of Arizona designated the APA as the entity to receive Arizona's allocation of Hoover power. In Section 105 of the Hoover Power Plant Act of 1984, Congress recognized that the APA is "the agency specified by State law as the agency of [Arizona] for purchasing power from the Boulder Canyon Project". Western should continue to respect these designations by both Arizona and Congress with respect to any allocations of post-2017 Hoover power. CAWCD would expect to continue receiving a portion of the post-2017 APA allocation just as it does now, through a contract with the APA.

4. **MSCP costs.** Western has stated that questions regarding suggested requirements that MSCP costs should be allocated to allottees of post-2017 Hoover power are beyond the scope

of this proceeding. CAWCD continues to request that Western include in any contracts for post-2017 Hoover power a requirement that the contractor pay an appropriate share of the MSCP costs, as allocated within each state in accordance with each state's MSCP obligations. We believe that it is essential that all recipients of Hoover power contribute their fair share to this important program. Such a requirement is in the 2011 Hoover bill.

5. **BCP Implementation Agreement.** CAWCD agrees with Western's proposal that new Hoover contractors should be required to reimburse replacement capital advances as set forth in the 2009 FR notice. We would suggest that all new contractors also be required to participate in the BCP Implementation Agreement by making such participation a prerequisite to a contract. Both requirements are contained in the 2011 bill.

6. **Term.** CAWCD requests Western to reconsider its decision to limit the term of the post-2017 Hoover contracts to 30 years. Existing Hoover customers have committed to contributing approximately \$150 million to fund their share of MSCP costs over the 50 year term of the program. The term of the post-2017 Hoover contracts should be 50 years, as specified in the Hoover bills, consistent with the 50 year MSCP commitment.

Thank you for the opportunity to comment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David V. Modeer", with a long horizontal flourish extending to the right.

David V. Modeer
General Manager