



Grand Canyon State Electric Cooperative Association, Inc.

Your Touchstone Energy® Cooperatives 

January 9, 2013

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

Re: Boulder Canyon Project – Post 2017 Resource Pool Market

Dear Mr. Moe;

On behalf of Grand Canyon State Electric Cooperative Association (“GCSECA”) and its electric cooperative members, I am providing the following comments in response to the proposed marketing criteria published in the Federal Register on October 30th, 2012. In addition to this letter, I am attaching three attachments that I would ask to be included in the administrative record.

At the outset, GCSECA does not believe that the proposed marketing criteria reflects the intent of Congress when the Hoover Power Allocation Act of 2011 (“HPAA”) was passed. The legislative history supporting the HPAA reflects intent of Congress to ensure that rural electric cooperatives are provided access to the power made available under Schedule D. However, that intent is not brought forth in the proposed marketing criteria because the Western Area Power Administration (“Western”) has stated that it will consider an allocation for an electric cooperative *after* considering an allocation for federally recognized Native American tribes, municipal corporations, political subdivisions, irrigation or other districts, and other governmental organizations that have electric utility status.

The history of the HPAA can be traced through two bills that were introduced in the 112th and 111th Congress. In hearings before the House Natural Resources Committee on H.R. 470 the bill that was passed and enacted into law, Congress heard testimony expressing intent by the parties supporting the bill for electric cooperatives to receive power from the pool or power made available under Schedule D. (See attachment A, Testimony of John Sullivan “Passage of H.R. 470 is necessary to secure power allocations for those entities that have invested in and rely on Hoover power, but is also important so that Indian Tribes, *electric cooperatives* and other eligible entities not currently benefiting from Hoover power can receive allocations.”)(Emphasis added).

The sentiment supporting electric cooperative access to Schedule D power can also be traced back to the legislation that preceded H.R. 470 in the 111th Congress, H.R. 4349. In testimony before the House Natural Resources Committee, the Chairman of the Arizona Power

Authority (“APA”) at that time, Commissioner Richard Walden testified on the need to work with electric cooperatives so that they could receive an allocation from the Schedule D pool of power. (See attachment D, testimony of Richard Walden). While Commissioner Walden’s comments may be construed as applicable only to the APA’s process, his testimony captures a common understanding of the parties supporting the legislation allocating the Hoover power; cooperatives were to benefit from the Schedule D power.

The House Natural Resources Committee clearly listened to the parties when it approved H.R. 470 and explained in the report to accompany the bill that

H.R. 470 mandates that each Schedule A and B power user give up five percent of its Hoover power resource so that a new pool is set aside (called Schedule D) for new allottees in the Hoover Dam region. Eligible new allottees can include *rural electric cooperatives*, municipal power users, irrigation districts and Indian tribes.

See House Report 112-159 Part 1.(Emphasis Added)

The ordering of the parties in the Committee’s report is worth noting, cooperatives are listed first in potential new allottees and Indian tribes are listed last. Yet, Western has inverted the Committee’s drafting to place the tribes ahead of all other parties and relegate the cooperatives to a third tier status. Indeed, the priority criteria could be read to exclude all other parties in order to satisfy the demands of only the tribes. A review of the legislative history of both bills demonstrates the error of this ranking.

When the House Natural Resources Committee held hearings on H.R. 4349, the bill that preceded H.R. 470, Native American tribal representatives testified in favor of an exclusive right to Schedule D power. (See attachment C, testimony of Louis J. Manuel). The Committee did not adopt this suggested change, leaving intact language that gave federally recognized tribes status equal to existing preference entities in the consideration of applications for an allocation. However, Western’s priority criteria overlooks Congressional intent when it elevates federally recognized tribes ahead of all other potential customers. Congress did not intend for the federally recognized tribes to have exclusive rights to the Schedule D power and the priority criteria will operate as such if there are sufficient applications for allocations.

The legislative history of H.R. 470 and predecessor bills makes clear that there was an understanding and intent by Congress to offer Schedule D power to electric cooperatives and other preference entities on an equal basis with federally recognized tribes. GCSECA asks Western to revise the priority criteria in Subsection E of the proposed marketing criteria to reflect Congressional intent and treat all preference entities, including electric cooperatives on equal footing with federally recognized tribes.

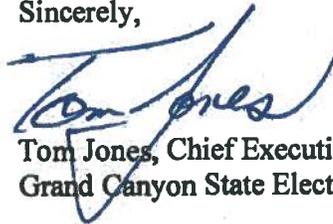
Mr. Darrick Moe – 1/9/13 – page 3

The electric cooperatives also remain concerned that Western could choose to provide a financial payment to federally recognized tribes if a tribe is unable to take physical delivery of Hoover power. This would be inconsistent with the statutory language of the HPAA which only provides for the Secretary to provide contingent capacity and firm energy. The HPAA makes no separate provision for cash payments in lieu of an allocation. The final marketing criteria should reflect this restriction.

As a final point, GCSECA asks Western to clarify in the final marketing criteria that the revised marketing criteria for Post 2017 applies solely to the allocation of Schedule D resources made available by the HPAA. Although introductory materials allude to the fact that the proposed marketing criteria apply only to the allocation of power from the HPAA Schedule D power pool, the record would benefit from this additional clarification.

I appreciate the opportunity to offer comments. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Tom Jones". The signature is stylized with a large, sweeping initial "T" and a cursive "Jones".

Tom Jones, Chief Executive Officer
Grand Canyon State Electric Cooperative Association

Attachments (3)

John F. Sullivan
Associate General Manager
Salt River Project
Testimony before the House Subcommittee on Water and Power
Committee on Natural Resources
on
H.R. 470,
A Bill to Extend the Allocation of Hoover Dam Power to Existing Customers and to
Establish Allocations to New Customers

May 12, 2011

Chairman McClintock, Ranking Member Napolitano and Members of the Subcommittee, thank you for the opportunity to submit testimony in support of H.R. 470, a bill to allocate Hoover Dam power to existing customers and also to establish allocations to new customers. My name is John F. Sullivan. I am the Associate General Manager of the Water Group at the Salt River Project ("SRP"), a large multi-purpose federal reclamation project providing water and power service in the Phoenix, Arizona metropolitan area.

SRP fully supports H.R. 470, which will both allocate and expand the availability of hydroelectric power generated at Hoover Dam. Hydropower from Hoover Dam is an important, emission-free, renewable resource to SRP and to the State of Arizona, as well as the States of California and Nevada. H.R. 470 will ensure that this clean, affordable and reliable source of electricity will continue to be available to our region, and will set aside a portion of the available electricity to benefit Indian Tribes and other eligible entities which do not currently receive Hoover power.

Hoover power allocations were initially authorized for 50 years under the Boulder Canyon Project Act of 1928. The Hoover Power Plant Act of 1984 extended those allocations and authorized customer funding to upgrade the turbines at Hoover, creating an additional 500 MW of capacity. Hoover Dam power has been critical to the development of the region and continues to be a vital source of low-cost, renewable power for 29 million people in Arizona, California and Nevada, helping to keep our energy costs to consumers as low as possible. Substantial investments have been made by the Hoover contractors to improve and utilize the Hoover resource, including a commitment to fund a portion of the Lower Colorado River Multi-Species Conservation Program for 50 years.

Arizona currently receives 377 MW of Hoover power through a contract between the United States and the Arizona Power Authority ("APA") as authorized by federal law. The APA has subsequently allocated Hoover power to 30 eligible entities, including SRP, within the State under provisions of Arizona law. Hoover power allocations help these cost-based entities, including municipal utilities, irrigation districts and electrical districts, supply power to their customers at rates that help support Arizona agriculture and local economies. Hoover power also plays a critical role in supplying Colorado River water to central and southern Arizona through an APA contract with the Central Arizona Water Conservation District, the operator of the Central Arizona Project.

Passage of H.R. 470 is necessary to secure power allocations for those entities that have invested in and rely on Hoover power, but is also important so that Indian Tribes, electric cooperatives and other eligible entities not currently benefiting from Hoover power can receive allocations. SRP looks forward to working with the APA and these new entrants in the State allocation process. In an effort to promote certainty, SRP has offered to sell a “backstop” product with the same operational and price characteristics as Hoover to certain entities within Arizona, in the event they do not receive an allocation through the State process.

H.R. 470 is supported by existing customers in all three states, who worked for two years to negotiate and come to agreement on the legislation. In the 111th Congress, an identical bill (H.R. 4349) passed the House of Representatives as well as the Senate Energy and Natural Resources Committee with strong bipartisan support and without opposition. The current contracts for Hoover power expire in 2017; and, given the need for certainty and the time required to develop alternate power supply plans if necessary, along with the time required to develop federal power contracts and administer the State allocation and contract process, early passage of this bill is essential.

The clean, renewable energy generated at Hoover Dam is vital to SRP and the other customers in the region and passage of H.R. 470 is necessary to secure continued access to the power and to provide the opportunity for access by new customers. We urge your support and prompt passage of this important bill.

Chairman McClintock and Members of the subcommittee, thank you again for the opportunity to testify before you today. I would be happy to answer any questions.

**UNITED STATES HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE
WATER AND POWER SUBCOMMITTEE
GRACE F. NAPOLITANO, CHAIR**

Madam Chairwoman and Members of the Subcommittee, my name is Richard S. Walden. I am the Commission Chairman of the Arizona Power Authority (APA), which is the state agency designated by federal and state law to receive and distribute Arizona's share of Hoover power within the state of Arizona. I have been a Commissioner for 25 years.

Who are we?

The State of Arizona created APA in 1944 to take and receive on behalf of the state, electric power developed from the waters of the mainstream of the Colorado River including Hoover Dam. Arizona's model of creating a state-based authority for distribution of federal preference power is similar to that used by the State of Nevada, in that both manage their Hoover power through a public power entity.

APA currently purchases the Hoover power it receives pursuant to a 30-year contract with the Western Area Power Administration (Western). Western is a power marketing agency of the United States Department of Energy. APA operates on a cost-of-service basis and sells the Hoover power it receives to 30 wholesale, non-profit customers within the state. (See Exhibit RSW-1.) This distribution is governed by strict adherence to the terms of the Boulder Canyon Project Act of 1928, subsequent applicable federal statutes and regulations, including the Hoover Power Plant Act of 1984, as well as Titles 30 and 45 of the Arizona Revised Statutes. As

a member of the APA's Commission during the last time we deliberated upon the allocation of Hoover Power in the 1980's, I can personally attest to the fact that APA employed a fair, transparent and forward looking process to negotiate contracts in the best interest of our region, the State of Arizona and the taxpayers of this country.

APA's largest customer is the Central Arizona Water Conservation District (CAWCD) which uses Hoover power to pump Colorado River water to supply 3.2 million consumers, including Native Americans, with water for home consumption, agriculture, and manufacturing in the desert communities of Arizona. CAWCD receives 42.86% of the Hoover power allocated to Arizona. APA also sells power to the Salt River Project, which serves the electric power needs of approximately 964,000 customers in Arizona and uses Hoover power to provide the needs of 152,000 residential, agricultural and industrial water users. The remaining one-half of APA's Hoover power is sold to irrigation districts, electrical districts and municipalities throughout Arizona. This power is absolutely essential to the customers of the APA because it provides efficient electric energy to the people of Arizona. It is important to understand that the people of Arizona have been receiving this power for approximately 65 years; and they have developed an economic infrastructure based on its use. Their livelihood depends on this resource.

As Chairman of the APA, I can attest that APA makes every effort to receive, transmit and deliver the Hoover power to its customers in an efficient and cost effective manner. In a normal water year, APA receives 377 megawatts of power and more than one million megawatt hours of energy on behalf of the state. APA has eight full-time employees who carry out their responsibilities on an efficient and expeditious schedule and report, on a monthly basis to the

APA Commission, citizens appointed by the Governor. APA ensures that the Hoover power is used in the most efficient manner for load-following and meeting the peak loads of the state of Arizona. This accomplishes two very important goals. First, it provides power to the customers of the APA at a reasonable cost. Secondly, it reduces the use of fossil fuel for electric generation and associated pollution. This is important to understand because by using Hoover power for peaking and load-following purposes, APA minimizes the amount of pollution that would otherwise be emitted into the atmosphere by fossil fuel generating plants.

That is why APA strongly endorses H.R. 4349, the Hoover Power Allocation Act of 2009. We believe that this forward-looking initiative is fair, reasonable and essential to Arizona, the people of the southwest and conforms to the energy policy of the United States.

What does this bill do?

Hoover power was first allocated by the Bureau of Reclamation pursuant to the Boulder Canyon Project Act of 1928. In 1984, Congress again allocated Hoover power through contracts with state, municipal and utility contractors. These contracts will expire in 2017. The 1984 Hoover Power Plant Act distributed Hoover power to contractors under three different schedules – Schedules A, B, and C.

Under H.R.4349, Congress would distribute Hoover power pursuant to Schedules A, B and C ; however, each of the current Hoover contractors would contribute 5% of their Schedules A and B power to a pool that would be distributed under a new Schedule D. Schedule D power

would be allocated to federally recognized Indian Tribes and other eligible entities that do not currently purchase Hoover power.

Two-thirds of the Schedule D pool would be allocated through the Western Area Power Administration; the remaining one-third of the Schedule D pool would be distributed in equal shares through the Arizona Power Authority (for new contractors in Arizona), through the Colorado River Commission of Nevada (for new contractors in Nevada), and through Western (for new contractors in California).

Why we support the bill?

H.R. 4349 offers a forward-thinking and visionary approach that enables parties who do not now have direct access to Hoover power in Arizona, Nevada and California to receive significant amounts of that power through the creation of a new Schedule D. This proposed new schedule allocates 5% of the actual capacity (103.7 megawatts annually) and energy from Hoover Dam to new customers in the designated marketing region for Hoover power.

H.R. 4349 preserves the best of the governance structure which has enabled the people of Arizona, Nevada and California to obtain access to critical power generated on the lower Colorado River resulting in regional economic growth that benefits the overall economy. At the same time, the bill recognizes the changes within the marketplace and allows for the inclusion of new customers to have access to power, through a fair and open process, without devastating those current users whose livelihoods and jobs depend upon access to Hoover power.

Finally, the bill maintains the important regional balance in distributing public power in the southwestern United States. Efforts to dramatically change the terms of reference of this measure could – however well intentioned – severely and adversely affect this balance, injuring consumers and private and public enterprises that depend upon Hoover power to sustain their livelihood and use it to create jobs and economic growth. We recognize that Native American tribes and regionally based electric cooperatives – who do not now have direct access to Hoover power because they did not seek access to it when the APA’s existing customer contracts were established in the 1980’s -- have raised concerns with this legislation. The APA has met separately with each group to listen to their concerns, better understand their needs and assure them that the Authority will work with them to use a fair, deliberative and transparent public process to allocate power from the proposed new Schedule D pool should H.R. 4349 be enacted. We recognize that our role is one that requires a continued commitment to the public trust and we intend to maintain our vigilance to this principle.

I want to take this opportunity to thank Chairwoman Napolitano for her leadership in sponsoring this legislation, as well as Representatives Miller, Grijalva, Costa, and Baca for their co-sponsorship of H.R. 4349. We respectfully urge you to pass this legislation expeditiously so that it can be enacted before the end of the 111th Congress. We stand ready to work with you and your colleagues, along with any interested parties, to help expedite H.R. 4349’s timely consideration.

**ALLOCATION OF HOOVER POWER TO
ARIZONA POWER AUTHORITY CUSTOMERS**

Exhibit RSW-1

Company	Total kW @ Gen.	Total kW @ Del.	Allocation %
Aguila I.D.	6,290	6,101	1.6684%
Avra Valley I.& D.D.	630	611	0.1671%
Buckeye W.C.D.	2,980	2,891	0.7905%
C.A.W.C.D.	161,600	156,752	42.8647%
Chandler Heights C.I.D.	930	902	0.2467%
Cortaro-Marana I.D.	6,440	6,247	1.7082%
E D #2, Pinal	19,450	18,867	5.1592%
E D #3, Pinal	15,900	15,423	4.2175%
E D #4, Pinal	19,450	18,867	5.1592%
E D #5, Maricopa	350	340	0.0928%
E D #5, Pinal	14,770	14,327	3.9178%
E D #6, Pinal	8,010	7,770	2.1247%
E D #7, Maricopa	10,500	10,185	2.7851%
E D #8, Maricopa	24,200	23,474	6.4191%
Harquahala P.D.	2,490	2,415	0.6605%
Maricopa W.D.	8,840	8,575	2.3448%
McMullen Vly W.C.&D.D	9,090	8,817	2.4111%
Ocotillo W.C.D.	2,390	2,318	0.6340%
Page	1,040	1,009	0.2759%
Queen Creek I.D.	1,770	1,717	0.4695%
Roosevelt I.D.	3,220	3,123	0.8541%
Roosevelt W.C.D.	6,760	6,557	1.7931%
Safford	2,080	2,018	0.5517%
Salt River Project	38,790	37,626	10.2891%
San Tan I.D.	520	504	0.1379%
Silverbell I.D.	710	689	0.1883%
Thatcher	1,050	1,019	0.2785%
Tonopah I.D.	1,550	1,504	0.4111%
Wellton-Mohawk I.D.	2,910	2,823	0.7719%
Wickenburg	2,290	2,221	0.6074%
Total	377,000	365,690	100.0000%

Testimony Before The
Subcommittee on Water and Power,
Committee on Natural Resources
House Bill HR 4349
March 18, 2010

Presented By
Mr. Louis J. Manuel, Jr.,
Chairman, Ak-Chin Indian Community,
on behalf of the
Inter Tribal Council of Arizona

1. Introduction

My name is Louis Manuel. I am Chairman of the Ak-Chin Indian Community ("Ak-Chin"). Ak-Chin is a member of the Inter Tribal Council of Arizona ("ITCA"). ITCA was established in 1952 to provide a unified voice for tribes in Arizona on common issues and concerns. The organization established a corporation in 1975 with twenty member tribes to provide a unified effort to promote Indian self-reliance through public policy at all levels. ITCA provides an independent capacity to obtain, analyze and disseminate information vital to Indian community self-development.

ITCA is comprised of 20 tribal governments in Arizona, including: Ak-Chin Indian Community, Cocopah Tribe, Colorado River Indian Tribes, Fort McDowell Yavapai Nation, Fort Mojave Tribe, Gila River Indian Community, Havasupai Tribe, Hopi Tribe, Hualapai Tribe, Kaibab-Paiute Tribe, Pascua Yaqui Tribe, Pueblo of Zuni, Quechan Tribe, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, Tohono O'odham Nation, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai-Apache Nation, and Yavapai Prescott Indian Tribe.

On behalf of ITCA and Ak-Chin, I thank the Committee for allowing us to come before you and share our concerns with respect to HR4349. This is the first formal opportunity for tribes to be involved in a discussion regarding the proposed solution presented in this legislation for addressing the remarketing of Boulder Canyon Project ("BCP" or "Hoover") power. Tribal governments appreciate the Committee's recognition that all parties affected by the remarketing of BCP power should have a place at the table and that their concerns should be heard. The tribes understand that existing BCP customers felt that a legislative solution to the remarketing of BCP power was appropriate. However, existing customers did not seek to include tribes in the development of the legislation.

I am submitting this written statement on behalf of ITCA and its members, including Ak-Chin, to address certain concerns that we have with respect to HR4349. My written comments will address the following specific sections of HR4349:

- Sec. 2. ALLOCATION OF CONTRACTS FOR POWER., (c) Schedule C Power (pages 3 – 4)
- Sec. 2. ALLOCATION OF CONTRACTS FOR POWER., (d) Schedule D Power (pages 4 - 6)

In addition, I will provide comments addressing issues relating to the allocation process and procedures that have not been addressed in HR4349. These issues are listed below:

- “Utility Responsibility” requirement
- Kilowatt allocations
- Tribes’ ability to receive the benefit of an allocation of Boulder Canyon Project power

ITCA has been working with a number of tribes in Arizona, California and Nevada regarding the remarketing of BCP. We have been unable to determine the exact number of tribes that fall within the BCP marketing area from the map that has been provided by the Western Area Power Administration (“Western”) (See Attachment A). We have requested from Western the list of tribes that are within the BCP marketing area but to date Western is still developing that list. In lieu of something more definitive from Western, we estimate that there are approximately 60 tribes located within the boundaries of Arizona and California as well as in southern Nevada and western New Mexico.

2. Federal-Tribal Government-to-Government Relationship

2.1. Law and Policy Background

The United States has a long history of government-to-government relations with Native American sovereigns dating from the founding of the nation. Among the United States’ first government-to-government acts was the signing of the Hopewell Treaties with the Cherokee Nation in 1785 and the Choctaw and Chickasaw Nations in 1786.

The Federal-tribal government-to-government relationship was affirmed by the United States Congress in the passage of the Indian Intercourse Act of 1790 and the Indian Trade and Intercourse Acts from 1790 to 1847, as well as the United States Supreme Court affirmation of the political relationship among the

United States and Indian governments in *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823), *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831), and *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832). The Federal/tribal government-to-government relationship remains the bedrock principle underlying Federal/tribal interactions to this day.

In 1970, President Nixon set out a "national policy of self-determination for Indian tribes." In 1975, this policy became Federal law in the form of the Indian Self-Determination and Education Assistance Act.

In 1983, President Reagan announced an American Indian policy "reaffirming" the government-to-government relationship between tribes and the United States.

The Federal-tribal government-to-government relationship was again reaffirmed through the Presidential memorandum of President Clinton on April 29, 1994. On May 14, 1998 the President executed Executive Order 13084, formalizing policies for consultation and coordination with Indian tribal governments. President Clinton last acted on the issue by Executive Order 13175 on November 6, 2000.

On September 23, 2004, President George W. Bush issued the Executive Memorandum on Government-to-Government Relationship with Tribal Governments recommitting the Federal government to work with Federally-recognized Native American tribal governments on a government-to-government basis and strongly supporting and respecting tribal sovereignty and self-determination.

On November 5, 2009, President Obama signed a *Memorandum on Tribal Consultations* directing each Federal agency to submit an action plan detailing how the agency will meet the consultation requirements set out in Executive Order 13175.

Federal agencies including the Department of Energy have implemented their own policies in compliance with these directives. On January 20, 2006, Energy Secretary Bodman issued a memorandum to all DOE division heads establishing the agency's government-to-government policy directing its dealings with the nation's tribes. Section II of that policy specifically provides:

“The DOE recognizes Tribal governments as sovereign entities with primary authority and responsibility for the protection of the health, safety and welfare of their citizens. The Department will recognize the right of each Indian nation to set its own priorities and goals in developing, protecting, and managing its natural and cultural resources. This recognition includes separate and distinct authorities that are independent of state governments.”

2.2. Issues with Legislation

HR 4349 provides that federally-recognized tribes, if they receive any Hoover output, must receive that power in Arizona and Nevada through two state entities instead of directly from Western.

Section 2(d)(2)(C) provides that:

“(ii) In the case of Arizona and Nevada, Schedule D contingent capacity and firm energy for new allottees shall be offered through the Arizona Power Authority and the Colorado River Commission of Nevada, respectively.

“(iii) In performing its allocation of Schedule D power provided for in this subparagraph, Western shall apply criteria developed in consultation with the States of Arizona, Nevada and California.”

2.3. Recommended Language Changes

These provisions must be redrafted to allow tribal governments to contract directly with Western for any power they receive and to also develop any “criteria” in direct consultation with Western. We suggest that the section be modified to read as follows:

“(ii) In the case of Arizona and Nevada, Schedule D contingent capacity and firm energy for new allottees, **except federally-recognized Indian tribes which shall be allocated directly through Western**, shall be offered through the Arizona Power Authority and the Colorado River Commission of Nevada, respectively.

“(iii) In performing its allocation of Schedule D power provided for in this subparagraph, **except with respect to federally-recognized Indian**

tribes, Western shall apply criteria developed in consultation with the States of Arizona, Nevada and California. For federally-recognized Indian tribes, Western will apply criteria developed in direct consultation with the federally-recognized Indian tribes."

3. Tribal-Only Pool

3.1. Precedent for Tribal Pool

Assuring Native American governments opportunities to contract for hydroelectric power output from Hoover is consistent with each Federal hydroelectric power project for which contracts have been offered since 1995. Western has specifically recognized the specific need to provide public power project output to tribes in its most recent reallocations of the Pick-Sloan and Colorado River Storage Projects in 2001 and 2004, respectively.

Furthermore, tribes inhabited the lands utilized by and contiguous to the Boulder Canyon Project long before it was even conceptualized.

No tribes currently receive Hoover power and only two have ever historically received this power; even these deliveries were small-scale and for a brief period. On this additional basis, tribes in the BCP service area are long overdue to receive a share of Hoover power output.

Finally, tribes operating their own utilities have load-serving obligations, creating the same resource planning and management demands as exist for any current BCP contractor. In the absence of a tribal-only pool, tribal utilities and tribes within the BCP service area will remain at a disadvantage to other entities historically receiving BCP power.

3.2. Issues with Legislation: No Tribal Set Aside

Although Section 2(d)(2)(C)(i) of the proposed legislation provides for allocations to "new [customers] located within the marketing area," the definition set out for those to be considered potential "new" customers does not ensure allocations to federally-recognized tribes. It instead provides for new allocations to:

"new allottees located within the marketing area for the Boulder [Canyon] Project and that are --

- (I) eligible to enter into contracts under section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d); *OR*
- (II) "federally recognized Indian tribes" (emphasis added).

Section 5 of the Boulder Canyon Project Act references

"States, municipal corporations, political subdivisions and private corporations of electrical energy generated . . ."

3.3. Recommended Language Changes

These provisions must be redrafted to specifically establish a tribal pool that would direct BCP power output to new tribal customers through a contract solely with Western. We propose that the section be modified to read as follows:

- (I) ~~eligible to enter into contracts under section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d); *OR*~~
- (II) "**federally recognized Indian tribes**".

4. Size of Tribal Pool

4.1. Need for Larger Tribal Pool

To allow tribes to truly benefit from Hoover after so many years of being denied that opportunity in any meaningful way, we seek a dedicated 10 percent BCP power set aside for tribes, which is an increase of 6.67 percent over the 3.33 percent proposed in the legislation. This percentage is within range of percentages made available by Western in other public power projects in the last decade. On this basis and given that there could be as many as 60 tribes within the BCP marketing area, a 10 percent Hoover set aside for new tribal customers is warranted.

Attachment B displays the allocations and the percent changes from the 1984 allocations to existing customers and new allottees based upon the tribal proposal. The size of the pool based upon the proposed language in the

legislation is approximately 69 MWs. Assuming, only for example, that this was fully directed to tribes without regard to load, each tribe would receive on average only approximately 1 MW of capacity. This 1 MW average allocation is much too small to adequately address the future economic needs of tribes. In comparison, there are currently about 56 entities that receive BCP power either directly or through the Arizona Power Authority (“APA”) or the Colorado River Commission (“CRC”). Of these 56 entities approximately 50 receive a capacity allocation greater than 1 MW; in fact, the average capacity allocation to each entity is about 35 MWs.

4.2. Issues with Legislation: Tribal Share Very Small

Section 2(d)(2)(A) of the proposed legislation provides for a “...resource pool equal to 5 percent of the full rated capacity.. .” Of this 5 percent, in Section 2(d)(2)(C) “...66.7 percent of Schedule D...” would be allocated to “new allottees located within the marketing area...” We have addressed the issue of “new allottees” in Item 3 above; here we are only addressing the size of the pool.

Table 1 below compares the Schedule D capacity of the tribal pool to the legislation. It should be noted that under the proposed legislation, existing customers see about a 1 percent increase in capacity and a 5 percent reduction in energy.

Table 1			
Comparison of Schedule D Capacity Pool Size Per Legislation and Per Tribal Proposal			
	Legislation	Tribal Proposal	Tribal Proposal Compared To Legislation - Increase / (Decrease)
Schedule D - Capacity	103,700 kW	241,930 kW	138, 230 kW
New Entities (Tribes Only) Allocated by the Secretary of Energy	3.33 % or 69,170 kW	10.00 % or 207,400 kW	6.67 % or 138,230 kW
New Entities Allocated by the States of Arizona, California and Nevada	1.67 % or 34,530 kW	1.67 % or 34,530 kW	0.00 % or 0 kW
Total Pool Percentage or Capacity	5.00 % or 103,700 kW	11.67 % or 241,930 kW	6.67 % or 138,230 kW

We are recommending that in addition to creating a 10 percent “tribal pool,” the language contained in HR4349 establishing a 1.67 percent non-tribal pool be retained. The impact to existing customers would be a capacity reduction of approximately 6 percent and an energy reduction of approximately 11.7 percent. The capacity for the “tribal pool” would be about 207 MWs or, averaged across

every tribe equally, approximately 3.3 MWs for each. The existing customers' average would then reduce from 35 MWs to about 32 MWs.

4.3. Recommended Language Changes

This provision must be redrafted to create a more equitable "tribal pool." We suggest that the sections noted below within Section 2(d) should be modified to read as follows:

(2)(A) "... Schedule A and Schedule B, as modified by the Hoover Power Allocation Act of 2009, a resource pool equal to ~~5~~ **11.67** percent of the full capacity of 2,074,000 kilowatts and associated firm energy...."

and

(C)(i) "...for delivery commencing October 1, 2017, for use in the marketing area for the Boulder City Area Projects ~~66.7~~ **10.0** percent of the ~~total Schedule D contingent BCP~~ capacity and firm energy to **federally-recognized Indian tribes new allottees...**"

5. Tribal Allocation Procedure

5.1. Relationship with Western

As addressed in Item 2, tribal governments must have the opportunity to participate directly with Western in criteria formulation in accordance with DOE's tribal policy and to ensure that the allocations are managed consistent with tribal authority and Reservation circumstances such as the presence or lack of a utility, tribe-only power pooling, etc. Western has honored these considerations in all prior Federal hydropower reallocations and no deviation from such an approach is justified in the present instance.

5.2. Allocation Procedure Guidelines

Tribal governments suggest that the legislation incorporate specific guidelines for Western to follow as part of the process for contracting with tribes for an allocation of BCP power. The tribes have enjoyed a good relationship with Western and would expect that it would continue. As such, the tribes look forward to working with Western to address any process issues that may arise

during the allocating and contracting process. The tribes suggest the following guidelines be incorporated into HR4349:

- Follow the “Colorado River Storage Project (CRSP) approach” that no “utility responsibility” is required of tribes to receive a BCP allocation.
- Allocate based upon energy sold at the customer meter for tribal and/or Electric Tribal Utility Authority (ETUA) (referred to as “Tribal Load”) with no tribe’s percent of the total Tribal Load exceeding 10.0 percent, irrespective of other Federal resources contracted for by a Tribe and/or ETUA.
- Establish a Tribal Benefit Credit Pool (Tribal Pool) comprised of ETUA’s. Tribes without an ETUA will enter into a Tribal Benefit Credit Agreement (TBCA) with the Tribal Pool to ensure that the BCP benefits remain within the tribal community.
- Any tribe that creates an ETUA automatically becomes a member of the Tribal Pool and becomes a participant in the TBCA.
- Allocate in kilowatts and not whole megawatts to allow tribes with smaller loads to participate

6. Schedule C - Excess Energy

6.1. Tribes Left Out of Sharing in Excess

In HR4349 on pages 3 and 4, Section 2(c)(2) addresses how excess energy will be allocated. However, it fails to explicitly address tribes. Excess energy is made available to the states of Arizona, California and Nevada. Tribal governments believe that the language should be modified to specifically address tribal participation in obtaining excess energy when it becomes available. It is difficult to identify any rationale for excluding tribes from excess power allocations.

If the assumption is that tribal governments would fall under the “state authority umbrella”, then the error of that assumption is clearly established in law and precedent (See, Item 1 above). If the assumption is that the tribes are not eligible for excess power because they are not paying for such power, then the requirements of Sections 2(d)(E) and 2(g)(4) contradict such an assumption.

Section 2(d)(E) requires each "new allottee" to pay: "...a proportionate share of its State's respective contribution . . .to the cost of the Lower Colorado River Multi-Species Conservation Program . . . and to execute the Boulder Canyon Project Implementation Contract No. 95-PAO-10616. . ."

Section (2)(g)(4) of HR4349 requires that new customers pay a "pro rata share of . . . repayable advances paid for by contractors prior to October 1, 2017."

If tribal contractors are required to pay proportionate shares of the wildlife conservation costs identified under Section 2(d)(E), and to pay a pro rata of Hoover Dam repayable advances under Section 2(g)(4), then the tribes should receive a proportionate share of any excess energy available through Hoover. No prior rights in time should be awarded to current contractors, as tribes have not previously had the opportunity to receive Hoover power and would only continue to be penalized by such a grandfather privilege.

6.2. Recommended Language Change

We recommend that the existing language found in the chart on page 4 titled Schedule C, Excess Energy, be amended as shown below. This language change will ensure that tribes are treated fairly and equitably:

First: [no change proposed]

Second: [no change proposed]

Third: Meeting the energy requirements of the three States and **the federally-recognized Indian tribes**, such available energy to be divided **proportionately equally** among the States and **the federally recognized Indian tribes.**"

7. Non-Contracted Tribal Pool Allocations

7.1. Tribes Not Include In Non-Contracted Tribal Pool Allocation

As addressed in Item 3, we have recommended a tribal only pool. Should the Committee adopt this recommendation, the language found in Section 2(d)(2)(F) (page 8) would need to be modified to maintain the integrity of the tribal pool.

Any legislation adopted must provide that any non-contracted tribal pool allocation remain within the tribal pool and be distributed proportionately to the remaining tribal contractors.

7.2. Recommended Language Change

We recommend that the language be amended to specify that non-contracted tribal pool resources remain in the tribal pool and be allocated proportionately to the remaining tribal pool contractors. Below is the suggested change to the language:

“(F) Any of the ~~66.7~~ the tribal only pool of Schedule D contingent capacity and firm energy that is to be allocated by Western that is not allocated and placed under contract by October 1, 2017 shall remain in the tribal only pool and shall be allocated proportionately to the remaining tribal contractors, such that any tribe that did not execute a contract by October 1, 2017 will be allowed to recapture its allocation by executing a contract with Western with at least one year’s notice. ~~be returned to those contractors shown in Schedule A and Schedule B in this same proportion as those contractors’ allocations of Schedule A and Schedule B contingent capacity and firm energy....”~~”

8. Conclusion

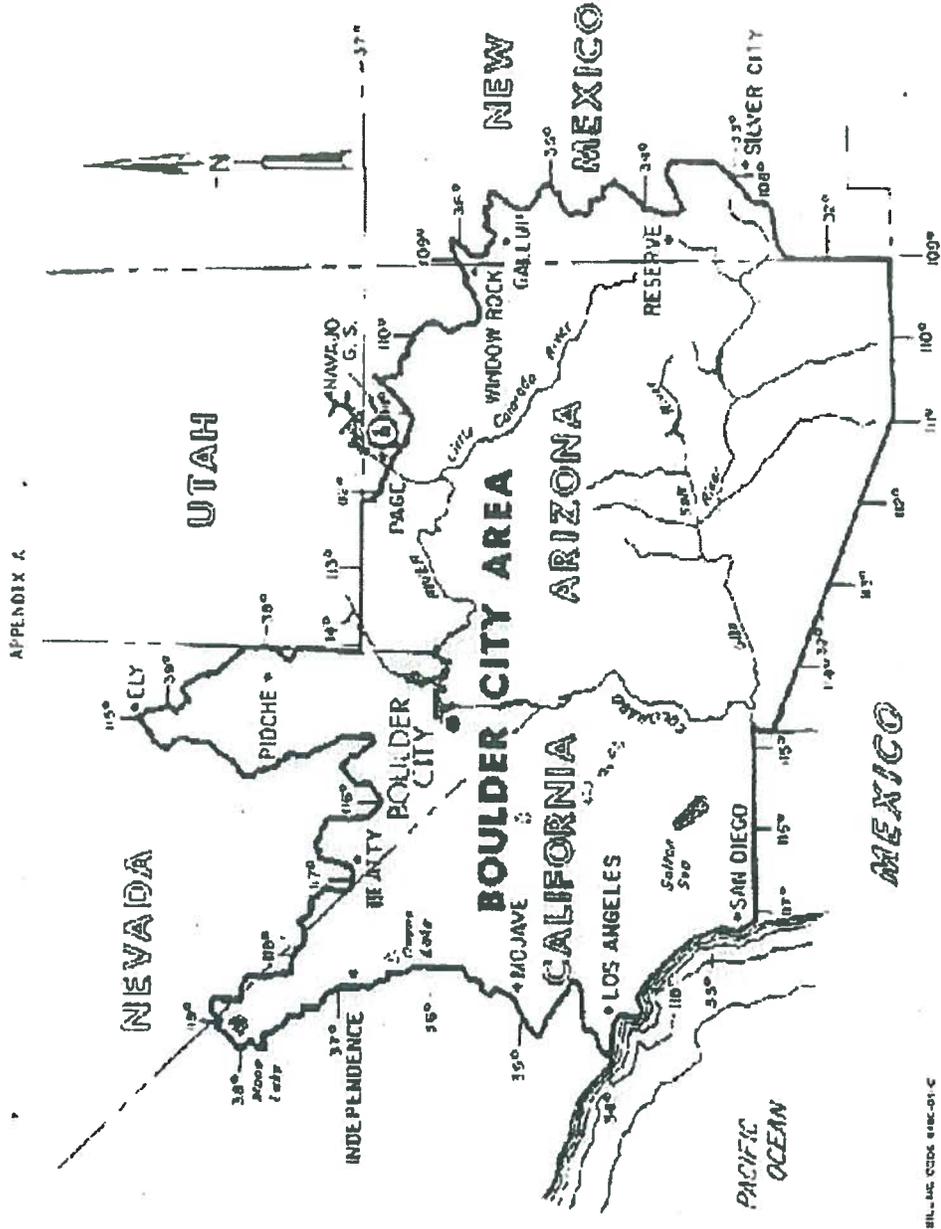
On behalf of ITCA and its members, including Ak-Chin, I again thank the Committee for allowing tribal governments to have a role in this dialogue and to share our concerns. Tribes are seeking a fair and equitable allocation of BCP power. Tribes have not been beneficiaries of BCP power although its generation has impacted many tribal lands. Allocations of BCP power will help to address the disparately impacted economic interests of new tribal customers and their members while also affording tribal governments a new opportunity to become energy sector participants, truly honoring principles of self-determination and allowing younger tribal members important future professional opportunities. Providing an equitable allocation of BCP power should accordingly take priority over the desire of the existing customers to almost completely insulate themselves in the reallocation process.



WESTERN AREA POWER ADMINISTRATION
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Desert Southwest Region

ATTACHMENT A

Boulder Canyon Project Marketing Area [1]



[1] Source - Western Presentation At The Boulder Canyon Project Post-2017 Remarketing, Application of the Energy Planning and Management Program Marketing Initiative, Public Information Forum, December 1, 2009 Las Vegas, Nevada; December 2, 2009 Ontario, California; and December 3, 2009 Phoenix, Arizona.

ATTACHMENT B
Tribal Proposal

ATTACHMENT B Tribal Proposal SCHEDULE A LONG TERM SCHEDULE A CAPACITY AND ASSOCIATED FIRM ENERGY FOR CONTRACT OFFERS TO BOULDER CANYON PROJECT CONTRACTORS									
Contractor	Contingent capacity (kW)	Firm Energy (thousands of kWh)		Total	Annual Load Factor	Percent To Each State	Percent Changes From 1984 Allocations		Percent To Each State
		Summer	Winter				Firm Energy (thousands of kWh)	Annual Load Factor	
Metropolitan Water District of Southern California	232,413	798,871	342,373	1,141,244	56.05%		-11.67%	-11.67%	
City of Los Angeles	460,952	431,539	185,198	616,737	15.27%		-11.67%	-11.67%	
Southern California Edison Company	260,584	155,013	66,434	221,446	9.70%		-11.67%	-11.67%	
City of Glendale	16,903	41,868	17,943	59,811	40.39%		-11.67%	-11.67%	
City of Pasadena	10,329	35,912	15,391	51,303	56.70%		-11.67%	-11.67%	
City of Burbank	4,813	13,083	5,607	18,690	44.33%		-11.67%	-11.67%	
Subtotal California	985,984	1,476,286	632,945	2,109,231	24.42%	72.51%	-11.67%	-11.67%	0.00%
Arizona Power Authority	177,479	399,436	171,187	570,624	36.70%	17.18%	-11.67%	-11.67%	0.00%
Colorado River Commission of Nevada [1]	18,781	49,467	21,200	70,667	42.95%	1.39%	-11.67%	-11.67%	0.00%
United States, for Boulder City	1,359,732	2,324,625	996,520	3,321,145	27.88%	100.00%	-11.67%	-11.67%	0.00%
Total									

[1] CRC's hydropower customers include Lincoln County Power District No. 1, Nevada Power Company, Overton Power District No. 5, Valley Electric Association, the Southern Nevada Water Authority and the industries comprising the Basic Management Industrial Complex near Henderson, Nevada.

SCHEDULE B LONG TERM SCHEDULE B CAPACITY AND ASSOCIATED FIRM ENERGY FOR CONTRACT OFFERS TO BOULDER CANYON PROJECT CONTRACTORS									
Contractor	Contingent capacity (kW)	Firm Energy (thousands of kWh)		Total	Annual Load Factor	Percent To Each State	Percent Changes From 1984 Allocations		Percent To Each State
		Summer	Winter				Firm Energy (thousands of kWh)	Annual Load Factor	
City of Glendale	1,878	2,556	1,110	3,667	22.29%		-11.67%	-11.67%	
City of Pasadena	6,451	2,230	968	3,199	4.32%		-11.67%	-11.67%	
City of Burbank	14,086	3,351	1,456	4,807	3.90%		-11.67%	-11.67%	
City of Anaheim	37,562	32,025	13,908	45,933	13.96%		-11.67%	-11.67%	
City of Azusa	3,756	3,079	4,417	13,424	13.42%		-11.67%	-11.67%	
City of Banning	1,878	1,231	535	1,767	10.74%		-11.67%	-11.67%	
City of Colton	2,817	2,464	1,070	3,533	14.32%		-11.67%	-11.67%	
City of Riverside	28,171	24,019	10,431	34,450	13.96%		-11.67%	-11.67%	
City of Vernon	20,659	17,244	7,489	24,733	13.67%		-11.67%	-11.67%	
Subtotal California	119,258	88,201	38,305	126,506	12.11%	25.25%	-11.67%	-11.67%	0.00%
Arizona Power Authority	176,540	130,733	56,533	187,267	12.11%	37.35%	-11.67%	-11.67%	0.00%
Colorado River Commission of Nevada [1]	176,540	254,400	109,533	363,933	23.53%	53.70%	-11.67%	-11.67%	0.00%
Total	472,338	473,334	204,372	677,706	16.38%	100.00%	-11.67%	-11.67%	0.00%

[1] CRC's hydropower customers include Lincoln County Power District No. 1, Nevada Power Company, Overton Power District No. 5, Valley Electric Association, the Southern Nevada Water Authority and the industries comprising the Basic Management Industrial Complex near Henderson, Nevada.

SCHEDULE D LONG TERM SCHEDULE D RESOURCE POOL OF CAPACITY AND ASSOCIATED FIRM ENERGY FOR BOULDER CANYON PROJECT CONTRACTORS									
State	Contingent capacity (kW)	Firm Energy (thousands of kWh)		Total	Annual Load Factor	Percent To Each State	Percent Changes From 1984 Allocations		Percent To Each State
		Summer	Winter				Firm Energy (thousands of kWh)	Annual Load Factor	
New Entities (Tribes Only) Allocated by the Secretary of Energy	207,400	316,750	135,950	452,700	24.92%				
New Entities Allocated by State		69,97%	30.03%			85.73%			
Arizona	11,510	17,580	7,533	25,113	24.91%	4.76%			
California	11,510	17,580	7,533	25,113	24.91%	4.76%			
Nevada	11,510	17,580	7,533	25,113	24.91%	4.76%			
Total New Entities Allocated By State	34,530	52,740	22,599	75,339	24.91%	14.27%			
		70.00%	30.00%						
Total	241,930	369,490	158,549	528,039	24.92%	100.00%	0.00%	0.00%	0.00%
Total	2,074,000	3,167,449	1,359,441	4,526,890	24.92%		0.00%	0.00%	-5.93%