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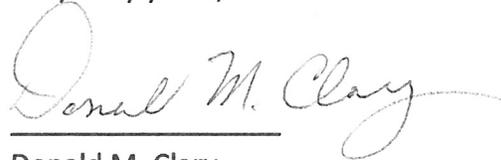
Mr. Darrick Moe  
Desert Southwest Regional Manager  
Western Area Power Administration  
P.O. Box 6457  
Phoenix, AZ 85005-6457

Re: Comments of the Pechanga Band of Luiseño Indians;  
Boulder Canyon Project Post-2017 Marketing

Dear Mr. Moe,

This firm represents the Pechanga Band of Luiseño Indians in the matter of Western's Boulder Canyon Project Post-2017 Marketing Proposal. The Tribe's comments on Western's Proposed Marketing Criteria (as published in the Federal Register on October 30, 2012) are attached. The Tribe appreciates the opportunity to provide these comments.

Very truly yours,



Donald M. Clary

Cc: John L. Macarro, Esq.

## Comments of the Pechanga Band of Luiseño Indians

### On the Western Area Power Administration's

### Notice of Proposed Marketing Criteria

### Boulder Canyon Project Post-2017 Marketing

The Pechanga Band of Luiseño Indians ("the Tribe" or "Pechanga") appreciates the opportunity to provide the following comments regarding the Western Area Power Administration's Notice of Proposed Marketing Criteria ("Criteria"), published in the Federal Register on October 30, 2012 ("Notice"). The Notice concerned the addition of marketing criteria to be utilized to allocate the Post-2017 Boulder Canyon Project ("Project") Resource Pool that will become available October 1, 2017.

#### Introduction

The Tribe occupies a 5,500-acre reservation located near Temecula, California. It is a federally recognized Native American Tribe (as defined in the Indian Self Determination Act of 1975, 25 U.S.C. 450b, as amended) with governmental authority over its reservation, land and people. It has substantial business enterprises. In the summer of 1999, the Tribe's Development Corporation unveiled a five-year master plan calling for the construction of a permanent casino, hotel, meeting and convention center, 18-hole championship golf course, 170-space recreational vehicle resort, and a new maintenance-administration building. Together, these facilities complement surrounding tourist attractions, and help to develop southwest Riverside County as a major regional visitor destination. The Tribe has plans for further significant economic expansion.

The Tribe has made substantial efforts to provide for its energy future. These efforts include the construction of a modern electric interconnection with the Tribe's enterprises, the operation of a cogeneration plant, and securing an allocation of power from the Parker-Davis Project. Pechanga also anticipates applying for a portion of the post- 2017 BCP pool. The Tribe is managing its own energy resources and is planning to expand its capacity in this area.

#### Discussion

Western has requested comments regarding the proposed marketing criteria. The Tribe has the following comments in response to those criteria:

1. The Tribe strongly agrees that in determining allocations, Western should give first priority to federally recognized Native American tribes. In enacting the Hoover Power Allocation Act of 2011 (the "Act") Congress expressly provided for the extension of contracts to tribes. It further provided that such contracts should be entered into directly between Western and the tribes. The Tribe believes that these specific

provisions reflect the intent of the Congress that tribes (which have been greatly underserved by federal resources), receive meaningful allocations of Hoover power. No other group was singled out in this manner in the Act.

Western's expressed intent, to give first priority for allocations to federally recognized Native American tribes (which had previously been prevented from participating in any Project allocations), promotes the fair and equitable distribution of Hoover Power, and constitutes an effort to redress the historic lack of tribal access to the Project. The Tribe believes that Western's proposed prioritization is a reasonable action to achieve this goal.

It should further be noted that while the Act identifies certain classes of applicants that may ultimately qualify for allocations, it does not identify any mandatory criteria for Western to utilize in prioritizing those allocations. At some point, Western must make such decisions. The Tribe believes that Western's proposed prioritization is a reasonable one.

2. Some of those making comments at the public meetings have suggested that entities (including tribes) that currently hold federal resource contracts should be excluded from consideration for an allocation of Project power. The Tribe believes that this is a misreading of the Criteria, which merely states that, "In determining allocations, Western will *consider* existing Federal power resource allocations of the applicants (emphasis added)."

This proposed language does not state that receiving a current allocation of federal power would place an applicant in a lower priority level for allocations. We therefore read this provision as merely indicating that Western may take existing allocations into account (in addition to other factors that may be weighed) when Western is determining allocations for applicants of the same priority class. Further, it does not indicate that an applicant that is otherwise qualified should be disqualified from applying or receiving an allocation if they are currently receiving federal power. It also does not indicate that an applicant will be eliminated or penalized (in comparison to an applicant of the same priority level that is not receiving federal power) if other factors indicate an allocation to that party is appropriate.

As stated above, tribes have been precluded from competing for the Hoover resource for decades. Moreover, if a tribe were to be prevented from obtaining a Project allocation at this time, they would be blocked from participation in the Project for fifty years. Therefore, any attempt to block a tribe from receiving a Project allocation (by disqualification or reprioritization) on the basis of a prior federal resource allocation (which could be smaller and would definitely be much shorter than a Project allocation) would be unfair and inequitable.

In this regard, it also should be considered that it would be extremely difficult for any tribe that is attempting to develop its electrical infrastructure to do so without some aid or assistance from Western. Tribes have had few allies or options in attempting such development, and the resources and assistance that Western provides is often critical to them. Pechanga has found Western's assistance (including the power allocation it receives from Parker-Davis) extremely helpful and hopes that its relationship with Western will continue to develop.

Consequently, while it might be appropriate for Western to weigh (in the case of two competing tribal applications) the equity of providing a greater allocation to a tribe that is already obtaining a large amount of federal power than to a tribe that is receiving none, such a criteria would not be appropriate to disqualify or reprioritize a tribe's application. Such a position would put tribes in the untenable position of having to guess or "time" when to seek resources and assistance from Western, as the existence of any prior contracts might unfairly preclude them from future substantial benefits.

The Tribe also believes that many entities (including some current Hoover contractors) have multiple resource contracts with Western. Implementation of a procedure that would penalize or prevent new applicants (who possess federal allocations) while enabling those existing allottees to continue with their other allocations would be discriminatory on its face. The Tribe cannot believe this to be Western's intent.

We also note that there is nothing in the Act that supports such a policy. No portion of the Act supports discrimination against new Project applicants that hold existing federal resource allocations. If this had been the intent of Congress, we suggest that it would have been stipulated in the eligibility requirements for new applicants.

3. Although it expects that its application (when tendered) will exceed the 1,000 kW limit specified in the Notice, Pechanga would like to suggest that this limit is probably unnecessary as it applies to tribes. Although the Tribe understands that there are operational reasons why Western may wish to impose such a threshold, in all probability, tribes obtaining allocations that are smaller than this amount will find it necessary to enter into "benefit crediting" arrangements with third parties that will lead to the aggregation of these allocations into amounts that will satisfy Western's operational concerns. For this reason, the Tribe believes such a threshold should not be required for tribal entities.
4. The Tribe is aware that other comments have been raised by tribes belonging to the Inter Tribal Council of Arizona relating to such issues as the tribes' contracting status and operational procedures for allocations to tribes. Although some of these concerns do not apply directly to Pechanga, the Tribe believes that the tribes' comments have great merit and should be considered by Western.

The Tribe would appreciate it if, in the future, you would forward any communication regarding this matter to:

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Again, the Tribe appreciates the opportunity to provide these comments, and looks forward to participating with Western as it continues to market post-2017 BCP Power.