Department of Energy – Western Area Power Administration
Public Comment Forums, January 19, 20, and 21, 2010

Boulder Canyon Project - Post-2017 Application of the Energy Planning and Management Program Power Marketing Initiative Notice of Proposal 74 FR 60256-7, November 20, 2009

Comments of the Central Arizona Water Conservation District (CAWCD)

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Thank you for the opportunity to comment on Western's post-2017 remarketing effort for the Boulder Canyon Project (BCP). Through CAWCD's contract with the Arizona Power Authority, the BCP provides a significant amount of the electric power and energy needed by CAWCD to fulfill its critical mission in delivering Colorado River water over the Central Arizona Project's 336 mile long canal system to 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. We will continue to need this resource well past 2017.

Recognizing the need to bring certainty to the continuing availability of Hoover power, CAWCD has worked closely with other Hoover customers in Arizona, California and Nevada to develop legislation to allocate the post-2017 Hoover power that is now pending before Congress as the "Hoover Power Allocation Act of 2009" (H.R. 4349/S. 2891). 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.

CAWCD suggests that Western should suspend further action in this matter at least though the current session of Congress. We believe that, in addition to avoiding substantial efforts by Western that will be unnecessary if Congress acts, the interim time could be productively used by Western to address the threshold question of whether Western has authority to apply the Power Marketing Initiative (PMI) to the proposed allocation process.

Nonetheless, CAWCD offers its comments in response to Western's specific requests in its Federal Register notice, concerning the applicability of the PMI to the BCP, the quantity of resources to be extended to existing contractors, the size of the proposed resource pool, excess energy provisions, and the term of contracts, and the role of the Arizona Power Authority (APA) in Western's allocation process. In addition, we have comments regarding use of the existing Schedules A, B and C, and requirements that new allottees participate in the costs of the Lower Colorado River Multi-Species Conservation Plan (MSCP) and agree to the Boulder Canyon Implementation Agreement.

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

We commend Western's decision to include provisions in its proposal that are generally consistent with some of the approaches taken in the Hoover legislation. However, we think that the types of entities and political subdivisions eligible to receive Hoover power are clearly defined in the 1928 Act. Those entities do not include Native American tribes. That is a principal reason why CAWCD and other Hoover customers support the current legislation to create a power pool and add Native American tribes as authorized allottees under the new law.

Turning to the specific comment areas:

1. **Applicability of the PMI to the BCP.** Simply put, CAWCD believes that there is a substantial legal question whether Western has any authority to apply PMI to the post-2017 Hoover allocations. Unlike other projects where Western has applied its PMI, the allocation of Hoover power has been the sole province of Congress. As suggested above, Western should explain its legal theories that may support the application of the PMI before it makes its threshold determination whether to apply it in this case.

2. **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. Thus, we suggest that Western should market the full rated capacity of 2074 MW, rather than the 2044 MW proposed in the notice, and should also market the entire 4,527,001 MWh currently allocated, rather than the proposed amount of 4,116,000 MWh. Western should continue to apply its time-tested methods for adjusting available capacity to match current water conditions at Lake Mead, but when lake levels allow it, Hoover customers should get the full benefit of the power generation facilities that they have paid for. Although CAWCD fully supports the creation of a power pool for new allottees, including tribes, in the current 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 provided in the 1928 Act.

3. **Excess energy provisions.** The creation of Schedules A, B, and C pursuant to the Hoover Power Plant 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 urges Western to continue using the existing allocation methodology and retain all 3 schedules.

4. **The term of the contracts.** Western has proposed a 30 year contract term. CAWCD requests that Western instead use the 50 year term set forth in the H.R. 4349/S. 2891. Among other things, a 50 year term is consistent with the 50 year commitment made by the Hoover contractors to fund the MSCP. A 50 year term was authorized in the 1928 Act.

5. **The role of the APA in Western's allocation process.** The State of Arizona has designated the APA as the entity to receive Arizona's allocation of Hoover power. Western should continue to respect the State's choice 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.

6. **MSCP costs.** Western has not addressed the allocation of MSCP costs to allottees of post-2017 Hoover power. CAWCD requests 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. Such a requirement is in the 2009 Hoover bill.

7. **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 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 2009 Hoover bill.

CAWCD intends to submit further comments by the written comment deadline of January 29, 2010 and reserves all rights to participate further in this proceeding.

CAWCD appreciates the opportunity afforded by Western to participate in these public comment forums