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**COLORADO RIVER COMMISSION
OF NEVADA**

January 28, 2010

Mr. Darrick Moe
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Subj: Boulder Canyon Project - Post-2017 Application of the Energy Planning and Management Program Power Marketing Initiative [74 FR 60256-7]

Dear Mr. Moe:

The Colorado River Commission of Nevada respectfully submits these written comments in the above-referenced proceeding. The CRC has the statutory responsibility to receive electric power generated by Hoover Dam and other federal hydroelectric projects on the Colorado River through contracts with the Western Area Power Administration. The Commission contracts to deliver this electric power to the Southern Nevada Water Authority, five power utilities that serve southern Nevada, and the companies comprising the Basic Industries in Henderson, Nevada.

The CRC is one of the Hoover contractors that have participated in the efforts over the past two years to develop legislation to address post-2017 Hoover power allocation issues. We believe that Congress should allocate post-2017 Hoover power as it has done each time allocation has been necessary since the construction of Hoover Dam.

Therefore, the CRC supports the legislation that has been introduced in the U.S. Congress to accomplish this goal (the "Hoover Power Allocation Act of 2009", H.R. 4349/S. 2891). We request that Western hold this proceeding in abeyance through the current session of Congress, in order to avoid unnecessary redundant expenditure of resources. This will also ensure that Western has the legal authority it may lack under current law, to allocate Hoover power to new allottees including Native American tribes and rural cooperatives.

Notwithstanding this request, we are providing these initial comments, consistent with Western's current schedule for this proceeding, to share with Western some of our views and concerns regarding its proposal.

We welcome Western's decision to include in its proposal provisions that are consistent with those in H.R. 4349/S.2891. However, we have concerns with Western's proposals regarding the proposed marketable resource and the amount retained by current contractors, the term of the contract, and application of the PMI. We also have concerns about provisions that are not included in Western's proposal such as the application of MSCP cost sharing provisions and the Boulder Canyon Implementation Agreement to new allottees, inclusion of existing statutory Schedule A, B and C provisions and references to current contractors, and recognition of the role of the Arizona Power Authority and the Colorado River Commission of Nevada in allocating Hoover power to Arizona and Nevada entities.

- 1) **Proposed Marketable Resource and Amount Retained by Current Contractors:** Western proposes to market 2,044 MW of contingent capacity with an associated 4,116,000 MWh of annual firm energy.

Hoover's full contingent capacity rating is 2,074 MW, and the current energy allocation is 4,527,001 MWh.

We recommend that Western market Hoover's maximum dependable operating capacity of 2,074 MW. The maximum dependable operating capacity should be marketed to the contractors who are paying for the continued operations and maintenance of the dam. If the conditions ever return to optimal, then the full marketable capacity should be made available to those who have been paying for the full contract amounts but have not received it.

We also recommend that Western market Hoover's current energy amount of 4,527,001 MWh. Specifically, we cannot agree with the proposal to market only 95 percent of "the proposed marketable firm energy", because it appears Western's proposed allocation methodology will reduce the current contractors' contract energy percentages.

- 2) **Term of Contract:** Western proposes to extend current contractors' contracts for 30 years commencing on October 1, 2017.

The CRC supports and requests approval of new contracts with a 50 year term commencing on October 1, 2017. We believe that the 50 year term is justified by the current contractors' past, present and future funding of Hoover Dam. Also, we believe that the 50 year term is appropriate in view of the 50 year term during which Hoover contractors will contribute to funding the MSCP.

- 3) **Application of PMI:** Western adopted the Power Marketing Initiative (PMI) in 1995. Western now proposes to apply the PMI to the post-2017 Hoover contracts.

It is unclear whether Western has the authority to apply the PMI to the post-2017 Hoover contracts. For this reason we request, as stated earlier, that Western hold this process in abeyance pending congressional action.

- 4) **MSCP Costs:** Western has not proposed any requirement that current or new allottees agree to pay a proportionate share of MSCP costs.

We request that any entity given the opportunity to contract for Hoover power in the future be required to join the current contractors in paying for the MSCP, by including in its contract a commitment to pay a proportionate share of MSCP costs, as allocated in accordance with each state's requirements.

- 5) **BCP Implementation Agreement:** The Federal Register Notice 60257 dated November 20, 2009 states that: "new contractors, or contractors who receive an increased allocation will be required to reimburse existing BCP contractors for replacement capital advances to the extent existing contractors' allocations are reduced as a result of creating the resource pool."

The CRC agrees that new contractors should be required to reimburse existing BCP contractors for replacement capital advances and further request that any entity given the opportunity to contract for Hoover power in the future be required to participate in the BCP Implementation Agreement by including in its contract a commitment to sign the BCP Implementation Agreement.

- 6) **Schedules A, B and C:** Western's proposal does not appear to use the terminology of current federal statute mandating allocation of power to certain identified entities in Schedules A (pre-uprating), B (post-uprating) and C (excess energy).

We recommend that Western include in its proposed language references to Schedules A, B and C, and to the Hoover contractors included in these schedules in statute.

- 7) **Recognition of Role of APA/CRC:** Western should recognize that the Arizona Power Authority has exclusive authority to allocate marketable Hoover Dam

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power to entities within Arizona, and the Colorado River Commission of Nevada has exclusive authority to allocate marketable Hoover Dam power to entities within Nevada.

The Colorado River Commission of Nevada appreciates this opportunity to provide written comments on Western's post-2017 remarketing initiative, and reserves the right to submit further comments and otherwise participate in this proceeding.

Respectfully Submitted,


George M. Caan
Executive Director