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Via Email post2017bcp@wapa.gov

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 Application of the Energy Planning and Management Program Power Marketing Initiative [74 CFR 60256-7, Friday, Nov. 20, 2009]

Dear Mr. Moe:

These comments are submitted on behalf of Aguila Irrigation District (AID), Harquahala Valley Power District (HVPD), Tonopah Irrigation District (TID), McMullen Valley Water Conservation & Drainage District (MVWCCD), Electrical District Number Eight (ED8), and the City of Safford (Safford) in response to the above-described Federal Register notice. These entities are all customers of the Arizona Power Authority (APA) and each have an existing contract for Hoover power from APA.

My clients have participated with the existing Hoover contractors 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.

We strongly support the legislation that has been introduced in the U.S. Congress to accomplish this goal ("Hoover Power Allocation Act of 2009", H.R. 4349/S. 2891). We ask that Western hold this proceeding in abeyance through the end of the current session of Congress, in order to avoid potential litigation and the unnecessary and redundant expenditure of resources. 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 appreciate 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, the amount retained by current contractors, the term of the contract, and application of the Power Marketing Initiative (PMI). We also question whether Western has the authority under current law to create a pool to allocate Hoover power to new allottees, including Native American tribes. This is one of the reasons that we support legislation that would authorize creation of a resource pool for new allottees.

We also have concerns about current requirements that are not included in Western's proposal such as application of the Multi-Species Conservation Program (MSCP) cost sharing provisions and the Boulder Canyon Project (BCP) Implementation Agreement to new allottees, inclusion of existing Schedule A, B and C provisions, and recognition of the role of the APA and the Colorado River Commission of Nevada (CRC) in allocating Hoover power to entities within Arizona and Nevada.

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 rated contingent capacity is 2,074 MW, and the current energy allocation is 4,527,001 MWh.

   Our position is that Western should market Hoover's full rated capacity of 2,074 MW. The total 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.

   Also, we propose that Western market Hoover's current energy amount of 4,527,001 MWh.

2) 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 entities identified in Schedules A, B and C (excess energy).

   It is our position that Western should retain the current distinctions related to Schedules A, B and C, and to the Hoover contractors identified in these Schedules.

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

We support and request 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 essential in view of the 50-year term during which Hoover contractors will contribute to funding the MSCP.

4) Application of PMI: Western adopted the PMI in 1995. Western now proposes to apply the PMI to the post-2017 Hoover contracts.

There are many who strongly believe that the PMI cannot be applied to Hoover. As a result, the application of PMI to BCP is likely to result in a legal challenge. We concur with the position taken by the Irrigation and Electrical Districts Association of Arizona on this issue.

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

Any entity given the opportunity to contract for Hoover power in the future should 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.

6) BCP Implementation Agreement: As indicated in the Federal Register Notice at 60257, dated November 20, 2009; "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."

We agree 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.

7) Recognition of Role of APA/CRC: Western should recognize that the APA has exclusive authority to allocate Hoover Dam power to entities within Arizona, and the CRC has exclusive authority to allocate marketable Hoover Dam power to entities within Nevada.

We appreciate this opportunity to provide comments on Western's post-2017 remarketing initiative, and reserve the right to submit further comments and otherwise participate in this proceeding.

Respectfully submitted,

Jay I. Moyes

JIM/lkk
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