



THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

*Office of the General Manager*

January 29, 2010

Via facsimile and e-mail

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

Dear Mr. Moe:

**Subject: Boulder Canyon Project - Post-2017 Application of the Energy Planning  
and Management Program Power Marketing Initiative [74 FR 60256-7]**

This letter conveys the comments of the Metropolitan Water District of Southern California (Metropolitan) in response to the notice of proposal published by the Western Area Power Administration (Western) in the Federal Register (74 Fed. Reg. 60256, November 20, 2009) to apply the Power Marketing Initiative to post-2017 marketing of power generated by the Boulder Canyon Project.

Metropolitan is responsible for providing supplemental water resources to its 26 Member Agencies located throughout the Southern California coastal plain. Ultimately, over one-half of the water used by the businesses and 19 million residents of this region comes from Metropolitan. Metropolitan can import over 1.2 million acre-feet of water annually from the Colorado River through its Colorado River Aqueduct to meet the region's water needs. Since 1939, power from the Boulder Canyon Project has provided well over 50% of the energy required to pump this water from Lake Havasu on the Colorado River to Southern California. Obviously, Metropolitan has a keen and unique interest in the allocation of Boulder Canyon Project Power Post-2017.

As an initial matter, Metropolitan believes that further action on Western's administrative power marketing process should be delayed pending Congressional action on legislation that would allocate the Boulder Canyon Project power by statute. When Western commenced its marketing process in 1979 for the Hoover power contracts expiring in 1987, litigation was filed over the proper interpretation and application of the Boulder Canyon Project Act. This litigation was resolved by the Hoover Power Plant Act of 1984. Metropolitan is concerned that renewal of the Western marketing process is again likely to result in litigation that will add uncertainty, expense, and delays in the determination of post-2017 allocations of Boulder Canyon Project power resources.

The Hoover Power Allocation Act of 2009 has been introduced in the Senate (S.2891) and House (H.R. 4349). This legislation would amend the 1984 Hoover Power Plant Act and provides for allocation of the Hoover power resources for the period commencing on the expiration of the current contracts in 2017. This legislation is the result of a lengthy process of discussions and negotiations among the major power stakeholders in the Boulder Canyon Project marketing area. If enacted, the legislation will resolve several contentious issues that the administrative marketing process cannot, including the scope of contract renewal rights authorized by the Boulder Canyon Project Act, the allocation of resources among the Colorado River Lower Division States, and the legal authority to enter into contracts with Native American Tribes and other entities that are not eligible under the Boulder Canyon Project Act. These are issues that could lead to legal challenges to any allocation decisions made by Western, but which can be mandated by Congress as was done in 1984.

**Metropolitan submits the following additional comments on the specific issues raised by Western's Federal Register notice.**

Applicability of the Power Marketing Initiative to the Boulder Canyon Project

On adoption of the Power Marketing Initiative (PMI), Western decided that it would not address concerns about its authority to apply the PMI to the Boulder Canyon Project. At that time, Western had received comments questioning its authority to market power resources that were already governed by statute. (60 Fed. Reg. 54157, October 20, 1995) Western cannot apply the PMI to the Boulder Canyon Project until it has explained what authority it has to do so.

Western is authorized by statute to perform the power marketing functions of the Bureau of Reclamation. 42 U.S.C. § 7152. With respect to power produced at Hoover Dam, those functions are prescribed by the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Hoover Power Plant Act. The Boulder Canyon Project Act expressly conditioned construction of Hoover Dam on the execution of contracts sufficient to repay construction costs over 50 years as well as annual maintenance and operation costs. 43 U.S.C. § 617c, subd. (b). The power contracts were initially authorized for terms of fifty years to ensure repayment of the project construction costs. 43 U.S.C. § 617d, subd. (a). Recognizing the substantial investment that would be made by contract holders to construct transmission systems to utilize the Hoover power, the Act protects that investment by providing that the holder of the contract, if not in default, is entitled to contract renewal unless the transmission facilities are either purchased or compensated for. 43 U.S.C. § 617d, subd. (b).

The Boulder Canyon Project Adjustment Act authorized regulations to implement the statutory requirements for power contracts, but expressly prohibits changes in the allotment of energy without the consent of the allottee. 43 U.S.C. § 618g. As previously noted, Congress acted in 1984 to renew the allocation of the Hoover power resources to resolve disputes that arose on the expiration of the initial contracts. The 1984 Hoover Power Plant Act preserves the statutory rights of contract holders on the expiration of the renewed contracts. P.L. 98-381, § 105, subd. (b).

Congress has not limited or abrogated the rights conveyed to contract holders under these Acts, and Western's authority to market the Boulder Canyon Project power resources is necessarily constrained by these statutory rights. Any regulatory provisions of the Power Marketing Initiative in conflict with the statutory rights of contract holders may not be applied.

Given the fundamental concerns and questions that have been raised regarding the applicability of the PMI to the Boulder Canyon Project, Metropolitan believes Western needs to address this issue before any others. When Western adopted the PMI, it stated it would evaluate the application of the PMI to the Boulder Canyon Project (60 Fed. Reg. 54157, October 20, 1995). Simply proposing to apply the PMI to the long term contracts of the Boulder Canyon Project is not adequate or sufficient to meet the requirements of an "evaluation". Western needs to provide such an evaluation and address the outstanding concerns over the applicability of the PMI before contemplating other issues.

#### The Quantity of Resources to be Extended to Existing Contractors

Western proposes to extend to existing contractors only the 1,951 MW of capacity currently allocated under contract. Furthermore, Western will only market 93 MW of the remaining capacity through a resource pool. The full rated capacity of the Hoover plant is 2,074 MW, leaving 30 MW that will not be marketed. It is Metropolitan's position that all of the full rated capacity, 2074 MW, should be put under contract to the parties that will be paying for the costs of operation and maintenance of the facilities. Furthermore, the increase in the rated capacity is a benefit created by the existing contractors that funded the up-rating program and those contractors should benefit from that investment by an increase in their capacity allocation. The current contracts were finalized before the up-rating program was initiated and therefore had to estimate what the final rated capacity would be. That estimate was the source of the 1951 MW allocated in the current contracts. Experience has shown that the actual capability of the Hoover plant is 2074 MW and this is the amount that should be allocated.

Similarly, Western proposes to market only 4,116,000 MWh of firm energy, with 95% being allocated proportionately to existing contractors and 5% to a resource pool for new customers. This combined allocation falls far short of the 4,527,001 MWh allocated by the 1984 Hoover Power Plant Act. Metropolitan supports the allocation of the current firm energy amount of 4,527,001 MWh.

It is recognized that the actual amount of capacity and energy that a contractor will receive is a function of storage levels in Lake Mead and the amount of water released from Lake Mead through the generators at Hoover Dam.

#### Size of the Proposed Resource Pool

As stated previously, Metropolitan questions the authority of Western to market power resources whose allocation are governed by statute. Notwithstanding this question, Metropolitan supports the size of the resource pool at 5% as proposed by Western, provided the allocation to existing

contractors and creation of a resource pool for allocation to new contractors is accomplished through the passage of legislation presently before Congress. In the absence of such legislative authorization, existing contractors should have the right to renewal of their existing contracts.

#### Excess Energy Provisions

The legislation before Congress, retains the Schedule structure from the current Hoover power contracts (Schedules A, B and C). Schedule C specifies how excess energy is to be distributed among the contractors based on an allocation of a firm energy amount of 4,527,001 MWh. Metropolitan supports the process to manage excess energy as specified in Schedule C with the allocation of firm energy based on 4,527,001 MWh.

#### Length of Contract Term

The term of the initial Boulder Canyon Project contracts was set by the Boulder Canyon Project Act at 50 years from the date energy was ready to be delivered to ensure repayment of the construction costs by the contract holders. The renewal contracts authorized by the 1984 Act were statutorily established at 30 years. Western proposes to use the 30 year term for contracts commencing on October 1, 2017.

Metropolitan supports a contract term of 50 years. The current contract holders have contractually committed to fund the 50-year Lower Colorado River Multi-Species Conservation Program (LCR MSCP). This program expressly provides compliance with the federal Endangered Species Act for Hoover power generation and marketing activities. Although Western is not contributing funding to the LCR MSCP, the power contract holders are paying a proportionate share of the non-federal cost. That obligation will continue for the remainder of the LCR MSCP program and would be imposed on new contract holders under the proposed Hoover Power Allocation Act of 2009. Extending the existing contract holders for a term shorter than the LCR MSCP program term could undermine the funding that supports compliance with the federal law and jeopardize Reclamation's water and power operations on the Lower Colorado River.

A 50-year contract also provides certainty in resource planning and transmission development, especially in regards to the effective and efficient expansion and integration of renewable resources.

**The following comments concern issues not specifically raised by Western but ones Metropolitan believes should be considered nonetheless.**

#### Eligibility Requirements for New Contractors

Western proposes to open the marketing of Hoover power to Native American Tribes. However, the existing statutes governing allocation of this resource limit the eligibility of new customers. Section 5 of the Boulder Canyon Project Act provides for power contracts to be executed with

States, municipal corporations, political subdivisions, and private corporations. 43 U.S.C. § 617d. The 1984 Hoover Power Plant Act authorized contracts with new purchasers “eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act.” P.L. 98-381, § 105, subd. (a)(1)(B). There is no statutory authorization making tribes eligible for Boulder Canyon Project power contracts. Metropolitan supports the proposed Hoover Power Allocation Act of 2009 that will expressly expand eligibility to include federally recognized Indian tribes. In the absence of such statutory authority, Western should limit the eligibility requirements of contractors to those set forth in Section 5 of the Boulder Canyon Project Act.

Reimbursement of Replacement Capital Advances

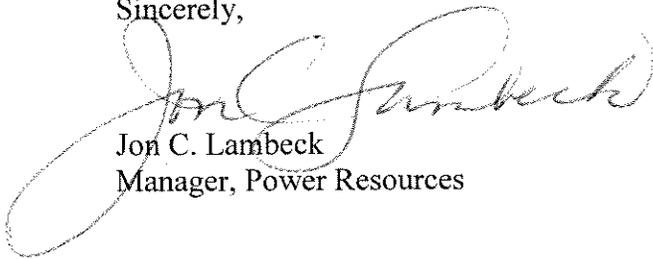
Western proposes that existing contractors would be reimbursed for replacement capital advances paid under existing contracts if their allocations are reduced. As previously noted, it is Metropolitan’s position that Western has no authority to reduce existing contract allocations without the consent of the contract holder. However, Metropolitan supports this reimbursement requirement that is also required pursuant to the Boulder Canyon Project Implementation Agreement. Metropolitan suggests that Western should make execution of the Implementation Agreement a condition in any contract issued to a new contractor.

Funding of the LCR MSCP

As discussed above in regard to the contract term, the existing contractors are contributing to the annual cost of implementing the LCR MSCP program to bring the operations of the Lower Colorado River water and power facilities into compliance with the federal Endangered Species Act. Any new contractor must be required to contribute a proportionate share of its state’s funding obligation of this ongoing program. Failure to continue full funding could jeopardize the existing incidental take authorization for operations at Hoover Dam.

The Metropolitan Water District of Southern California appreciates the opportunity to provide these comments and reserves the right to provide additional comments during this proceeding.

Sincerely,



Jon C. Lambeck  
Manager, Power Resources