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IN THE UNITED STATES DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
PHOENIX, ARIZONA

BOULDER CANYON PROJECT
POST-2017 REMARKETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona
January 20, 2010
1:09 p.m.

REPORTED BY: CHRISTINE JOHNSON, RPR
Certified Reporter #50383

PREPARED FOR:
WESTERN AREA POWER ADMINISTRATION

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1 Be it remembered that heretofore on January 20th,
 2 2010, commencing at 1:09 p.m., at the Western Area Power
 3 Administration, Phoenix, Arizona, the following proceedings
 4 were had, to wit:

5

6

7	OPENING REMARKS	Page
8	BY MR. DOUG HARNESS	3

9

10 COMMENTS BY:

11	FANT, Doug	6
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12	LYNCH, Robert	12
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13	McNEILL, John	18
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14	SWEENEY, Sheryl	22
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15	MOYES, Jay	25
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16	MIGNELLA, Amy	27
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17	McMULLEN, Patrick	29
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1 MR. HARNESS: Okay. Why don't we go ahead and get
2 started, everybody. Good afternoon. Welcome to today's
3 Public Comment Forum. My name is Doug Harness, and I'm an
4 attorney here with Western, and I'm out of our office in
5 Lakewood, Colorado.

6 This Public Comment Forum has been scheduled to
7 give interested parties the opportunity to make oral
8 presentations or to submit written comments for the record
9 on Western's proposal to apply the Power Marketing
10 Initiative of Western's Energy Planning and Management
11 Program to Boulder Canyon Project Firm Electric Service
12 Commitments beyond September 30th, 2017 when the current BCP
13 contracts expire.

14 Western's proposal would extend 100 percent of the
15 existing contractors' contingent capacity allocations and
16 95 percent of the proposed marketable firm energy and that
17 will create a single, one-time resource pool consisting of
18 93 megawatts of contingent capacity with an associated
19 205,800 megawatt hours of annual firm energy.

20 In addition to today's Forum and the Forum that
21 we're holding tomorrow in Ontario, written comments may be
22 submitted by mail to Mr. Darrick Moe, Regional Manager,
23 Desert Southwest Region, Western Area Power Administration,
24 P.O. Box 6457 Phoenix, Arizona 85005-6457. You may also fax
25 comments to Western at area code (602) 605-2490 or e-mail

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1 them to post2017bcp@wapa.gov. Western will accept written
2 comments received on or before January 29th, 2010. Western
3 reserves the right not to consider any comments received
4 after that date.

5 A verbatim transcript of today's Forum is being
6 prepared by our court reporter. Everything said while we
7 are in session today, together with all exhibits, will be
8 part of the official record. The transcript of today's
9 Forum will be available for review on-line at
10 www.wapa.gov/dsw/pwrmtk under the Boulder Canyon Project
11 Remarketing Effort link. The transcript and the complete
12 record of this public process will also be available at
13 Western's Desert Southwest Regional Office and Western's
14 Corporate Services Office.

15 Additionally, a copy of the transcript will be
16 available upon payment of the required fee to the court
17 reporter. And the court reporter's name, address and
18 telephone number may be obtained at any time today or, you
19 know, merely by asking.

20 All comments made today should be relevant to the
21 proposed action, which is: One, the application of the PMI
22 to the Boulder Canyon Project; two, quantity of resources to
23 be extended to existing customers; three, the size of the
24 proposed resource pool to be available to new customers;
25 four, excess energy provisions; five, the term of the

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1 contracts; and, six, what role the Colorado River Commission
2 of Nevada and the Arizona Power Authority should have in the
3 allocation process.

4 As moderator, I reserve the right to disallow any
5 comments that are not relevant to these subjects. Any
6 relevant materials to be introduced in the record should be
7 given to the court reporter, and she'll assign it an exhibit
8 number.

9 After the close of the comment period, Western
10 representatives will review the information, comments and
11 exhibits that have been received with regard to the
12 proposal. Western will then announce a decision in the
13 Federal Register. Comments made during this public process
14 will be discussed in this announcement.

15 Please keep in mind that Western has no
16 presentation today and will not be answering questions. The
17 sole purpose of this Forum is to take your comments.

18 So we'll open up the floor in just a second. I
19 would ask, after you've been recognized, if you would please
20 state your name and the organization that you represent and
21 to spell your name for the convenience of our court
22 reporter. In addition, if you have an extra copy of your
23 presentation, written copy, if you would please give it to
24 the court reporter.

25 So the floor is now open. Who would like to

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1 comment? Gary, you're smiling at me.

2 MR. IJAMS: Nobody wants to be first. You know
3 that, or do you.

4 MR. HARNESS: Well, nobody has to be first. We
5 can --

6 MR. IJAMS: That's true.

7 MR. HARNESS: It wouldn't be the first time.

8 MR. FANT: My name is Doug Fant, F-A-N-T, on
9 behalf of the Arizona Power Authority, and I have some
10 written comments. I'll leave a copy with you for -- for
11 your transcript purposes, and I didn't make enough copies
12 for folks today. I've got about ten here I'll pass out, if
13 anyone wants a copy of those comments.

14 The Arizona Power Authority initially supports the
15 efforts of the states of Arizona and California and Nevada
16 to create a legislative solution to the allocation of power
17 post-2017, post October 1st, 2017. But if that process
18 fails, we would submit these comments into the record. And
19 I'm going to read some of them and ad lib some.

20 The first topic would be authority governing the
21 Hoover post-2017 allocation process. We believe that
22 section 5(c) of the Boulder Canyon Project Act establishes
23 the statutory requirements applicable to allocation of
24 Hoover power. It's in the written material I handed out, so
25 I won't go through that provision, unless does someone want

1 to hear 5(c), probably not. It's painful and long.

2 But APA's position is section 5(c) of the Boulder
3 Canyon Project Act in 1928 gives allocation of power from
4 Hoover Dam. The first priority to that power goes in equal
5 opportunity to the states of Arizona, California, Nevada.
6 Thereafter, the power may be allocated within the marketing
7 area primarily pursuant to priorities developed during the
8 1930's process. Of course, I refer to the Finney -- that's
9 capital, F-I-N-N-E-Y, Albert Key Finney legal memorandum
10 from January 1st, 1930.

11 Second topic involves reclamation law. We have
12 looked at the issue and concluded that reclamation law is
13 not applicable to the Boulder Canyon allocation process.
14 Section 18 of the Reclamation Act of 1939 provided that
15 quote, "Nothing in this Act shall be construed to amend the
16 Boulder Canyon Project Act of 1928 as amended," end of
17 quotation. And that citation may be found at 43 U.S.C.
18 485j, J, as in Jackson. Certain provisions in reclamation
19 law may apply to the operations of Hoover Dam so long as
20 those provisions of reclamation law do not conflict with the
21 terms of the Boulder Canyon Project Act and that authority
22 can be found at 43 U.S.C. 617m, as in mama.

23 Three, application of PMI. Western adopted the
24 Power Marketing Initiative of the Energy Planning and
25 Management Program in 1995 and that's, of course, located at

1 10 CFR Part 905. Western now proposes to apply the PMI to
2 the post-2017 Hoover contracts.

3 APA's position is that the PMI cannot apply to
4 extend the federal power contract that expires on a date
5 specific by force of federal law. The current contracts
6 expire by federal law on September 30th, 2017 pursuant to
7 Section 105(a) (1) (C) (4) (A), so Section 105(a) (1) (C) (4) (A) of
8 the Hoover Power Plant Act of 1984. The Department of
9 Energy's Energy Planning and Management Program Power
10 Marketing Initiative regulations only apply to, quote,
11 "existing customers with long-term firm power contracts," as
12 stated in 10 CFR 905.32.

13 To the extent Western disagrees with the above,
14 the Arizona Power Authority recommends that Western address
15 the issue of whether the PMI process applies to allocation
16 of Hoover power prior to initiating the process itself.

17 Indeed, this is in accord with the commitment
18 Western made when it originally published the EPAMP, and
19 that's E-P-A-M-P, regulations in 1995. And I quote from the
20 preamble of the regulations, quote, "Finally, Western also
21 proposed to evaluate the application of the PMI to
22 Parker-Davis and the Boulder Canyon Project no sooner than
23 10 years before existing contracts expire," end of
24 quotation. And the citation on that is 60 Fed. Reg. 54157
25 and that's October 20th, 1995.

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1 Item number four, the proposed marketable resource
2 and the amount retained by current contractors. Western
3 Area Power Administration proposed to market 2,044 megawatts
4 of contingent capacity with an associated essentially
5 4.1 million-megawatt hours of annual firm energy. Hoover's
6 contingent capacity rating is currently limited by contract
7 and by regulation to 1,951 megawatts, and similarly the
8 current energy allocated is 4.527 million-megawatt hours.

9 APA's position is that Western should allocate all
10 of the 2074 megawatts of nameplate capacity at Hoover.
11 However, Western's proposed reduction in firm energy from
12 current energy amount of 4.5 million-megawatt hours to
13 4.1 million-megawatt hours is fine.

14 Under section 5(c) of the Boulder Canyon Project
15 Act of 1928, Western lacks the statutory authority to
16 withhold capacity and associated energy in order to create a
17 resource pool.

18 Item number five, proper marketing area. The
19 marketing area for Hoover Dam, Hoover Dam power, is
20 established by Western's Conformed General Consolidated
21 Marketing Criteria or Regulations for Boulder City Area
22 Projects. WCGCM -- never mind -- 49 Fed. Reg. 50582. The
23 marketing area has been ratified by law by Section
24 105(a) (1) (C) (4) (C) of the Hoover Power Plant Act of 1984.

25 Therefore, APA's position is that the Boulder City

1 Marketing Area is established by federal law.

2 Item number six, term of contract. Western
3 proposes to extend current contractors' contracts for 30
4 years commencing on the day after the expiration date of the
5 current contracts, or October 1st, 2017.

6 The Arizona Power Authority position is that the
7 original 1930's power contracts let by the Bureau of
8 Reclamation at Hoover Dam were 50-year term contracts. The
9 30-year term of the existing contract that expires in 2017
10 was a political compromise written into the Hoover Power
11 Plant Act of 1984. However, when those contracts expire in
12 2017, it is reasonable to go back to the original 50-year
13 terms. Nothing in the Marketing Criteria would prevent that
14 approach, and indeed Western's Resource Adequacy Planning
15 requirements encourage such an approach. And I should note
16 EPAMP program contract limitations, by definition, also
17 would not apply.

18 Item number seven, repayable advances, the issue
19 we talked about, capital put forward by existing contractors
20 simply state the Power Authority position. Western is
21 already committed, per the terms of the Implementation
22 Agreement, to recover the outstanding capital advances
23 incurred by the existing contractors on or before
24 September 30th, 2017 during the following five-year period.

25 APA recommends that Western clarify this

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1 Implementation Agreement obligation by putting a term
2 referencing and committing any new power contract holder to
3 this same obligation.

4 Item number eight, treatment of Schedule C excess
5 energy. Current law includes a Schedule C power category
6 that prescribes treatment of excess energy at Hoover Dam.
7 Western's remarketing proposal does not address this issue.

8 Arizona Power Authority's position is that APA
9 recommends Western include the existing Schedule C provision
10 in its proposal and also maintain the existing A, B and C
11 classifications of power for purposes of the Hoover
12 post-2017 allocation process.

13 Item number nine -- we have ten so there's more to
14 go -- item nine deals with the role of the Colorado River
15 Commission and Arizona Power Authority in recognition of
16 that role. By statute, the Arizona Power Authority has
17 exclusive authority to purchase power from Hoover Dam within
18 the State of Arizona, and the Colorado River Commission of
19 Nevada similarly has exclusive authority to purchase power
20 from Hoover Dam within the State of Nevada. And that is 43
21 U.S.C. 619a(a). So 619 small (a), additional small (a).

22 The Power Authority position is that under the
23 Boulder Canyon Project Act of 1928, the Arizona Power
24 Authority and the Colorado River Commission of Nevada each
25 respectively receive their power allocation as agents of the

1 state in its sovereign capacity.

2 Finally, item number ten is no waiver of rights.
3 The Hoover Power Plant Act of 1984 contained a provision
4 which expressly preserved the rights under the 1928 Act.
5 I'll probably quote this one. It's fairly short. Quote,
6 "Except as amended by this Act, the Boulder Canyon Project
7 Act of 1928, as amended and supplemented, shall remain in
8 full force and effect," end of quotation.

9 And those are our comments, and we appreciate the
10 opportunity to put the comments into the record. Thank you.
11 Thank you, Doug.

12 MR. HARNESS: Thank you. Bob.

13 MR. LYNCH: I'm Bob Lynch, L-Y-N-C-H, and I'm here
14 on behalf of the Irrigation & Electrical Districts
15 Association of Arizona. I have provided the court reporter
16 with a written set of comments, which I will not read, but
17 merely tell you what the highlights of those comments are.

18 The first question that Western asked in its
19 Federal Register Notice is: Does the Power Marketing
20 Initiative apply to the Boulder Canyon Project? The answer
21 is "No." It's just that simple. I won't bore you with the
22 details. They are in my written comments, and those
23 comments will be extended with authorities and citations
24 when we file our written comments.

25 The second question that they ask was: What

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1 quantity of resource should be extended? One of the
2 interesting legal issues that has to be faced in this
3 process is what is the status of the conformed criteria,
4 criteria established in 1984 after the passage of the Hoover
5 Power Plant Act.

6 I think the close reading of those criteria show
7 that they, unlike portions of the Hoover Power Plant Act
8 itself, do not self-emulate September 30th, 2017. And that
9 they carry forward, and certain aspects of those criteria
10 are still in place, unless they are replaced.

11 There is some mention in the responses to
12 questions following the Public Information Forum about,
13 quote, "new criteria," close quote. I don't know what that
14 means. It wasn't explained. And obviously, we're not going
15 to get any explanation from Doug Harness today.

16 I don't know about anybody else, but the question
17 remains: Where do you go from here? If, in fact, PMI
18 doesn't apply, then what process does? Well, the standard
19 process for dealing with a federal resource is to develop
20 Marketing Criteria. We've got a pretty good template from
21 1984 that needs some tweaking, but we think Western needs to
22 consider, if it's going to go forward with some process
23 other than PMI, what is -- is the Marketing Criteria a
24 useful construct as a template to start from herein facing
25 this, but something has to be done. And the standard

1 practice in all of the projects has been this step,
2 Marketing Criteria followed by an allocation decision.

3 And when they get around to it, we think that they
4 need to allocate all of the power and energy in some fashion
5 and not leave anything on the table the way they did in
6 1984. Whether they allocate all energy or they reserve a
7 portion of it for excess energy or how much they do, I leave
8 to the engineers to fight over, but the rationale for
9 splitting up the resource the way it was done the last time,
10 has not been used up. It is still a good rationale. It is
11 the rationale that's in the legislation. It is the
12 rationale that was kept together by the allottees after
13 exhausting other alternatives, and we think that Western's
14 process should move its potential action toward the
15 legislation from where it is now and in allocating the
16 resource, that is one of those movements that is necessary.

17 The size of the resource pool, as we have examined
18 the existing law, we do not believe there is a legal
19 authority for a resource pool. It's one of the reasons
20 there's a bill. Congress can do it. Western can't. Read
21 more later.

22 Excess energy provision, well, I just talked about
23 Hoover A, B and C, and that's the way the allottees have
24 negotiated. It's the rationale they believe is proper.
25 It's in the legislation, and we think that those decisions

1 should be maintained.

2 On a term of contract, if the provision for
3 30-year contracts and the Conformed Criteria has life past
4 September 30th, 2017, then those criteria need to be amended
5 to the extent they're currently applicable. If you're going
6 to use that as a template and then come up with another set
7 of criteria, then obviously that issue can be addressed. It
8 would be nice to have it match the legislation in say 50
9 years, but at the very least, it should give the agency the
10 opportunity to contract for 50 years, which, in our view,
11 may not be available to it now, and that's a limitation on
12 its own flexibility that doesn't seem to make sense.

13 So we would suggest that a 50-year contract that
14 is up to 50 years is a perfectly good construct for a
15 Marketing Criteria, but then can be decided upon later after
16 weighing all the factors and balancing.

17 The last two things I want to mention briefly are
18 the timing issue and -- well, before I get to that, the
19 question of the state agencies. Congress made an offer in
20 1928. Arizona, Nevada accepted the offer. Congress, in
21 1984, confirmed that that offer had been accepted, extended
22 the process and, in our view, confirmed that that offer
23 wasn't an ongoing offer that was still on the table, was
24 accepted and that there is no legal basis for going back on.

25 This is one of the reasons there is no legal

1 authority for a reserve pool is these resources in the
2 administrative process have to go through the two state
3 agencies. Again, one of the reasons for the legislation, if
4 you can vary from existing law, Congress has to do it.

5 Finally, on timing and process, we would like to
6 request that Western stay its hand until the end of the
7 Congressional session. We believe that that is a prudent
8 administrative action. If Congress acts this year, it will
9 instruct the agency as to what it is to do with this
10 process. If it doesn't act within this year, I don't
11 believe anything will be lost in terms of timing, but I
12 think it would be instructive to see whether the filed
13 legislation does end up in a final bill in this second
14 session of this Congress.

15 As all of you know, there's a hearing in the House
16 on February 11th. There's going to be more activity on this
17 bill in both Houses. It would be a shame to go particularly
18 far down the line in using Western resources to try to come
19 to grips with some of these issues only to have Congress do
20 tell them something else to do. That already happened the
21 last time in the original Federal Register Notice for
22 Marketing Criteria for the remarketing in the '80s was in
23 1981. The lawsuits were in 1982. The final decision was in
24 1983. And then it became unfinal in 1984 after the passage
25 of the Hoover Power Plant Act, which then caused them to

1 have the agency to have to come back and do additional
2 modifications to the criteria, as well as to the Hoover
3 allocation. And then in 1985, over the allocation with more
4 changes.

5 It took a lot of resources. It took a lot of time
6 and it was agonizing. I know. I was there. And it would
7 be nice to avoid that, if it's possible.

8 The second thing, I'd like to echo what Doug Fant
9 said. We think that Western needs to come to grips with
10 process before it moves forward into allocation criteria or
11 answering essentially the other questions in the Federal
12 Register Notice.

13 If Western agrees with us that the PMI Program
14 doesn't apply, then we have to work through questions like,
15 to start with, the '84 criteria as a template. Do we write
16 on whole cloth? What are we going to do? How are we as
17 customers going to help you, the agency, get to the point
18 where allocation decisions can be made? And that's going to
19 take some more work.

20 And so we think it would be prudent for the agency
21 to bite the bullet on the PMI issue, and we think, to a
22 certain extent, the agency's already acknowledged that by
23 the Federal Register Notice that pops that issue out as the
24 threshold issue.

25 So we would hope that some appropriate step would

1 be taken to set in place a two-step process and to be
2 sensitive to the Congressional schedule and give us an
3 opportunity to continue to work with the agency to try to
4 not -- not have the litigation.

5 That is always the easy answer and speaking as a
6 litigator, I know I'm shooting myself in the foot, but I was
7 there. I've been there. It didn't help the process other
8 than to help gin up the legislation and in avoiding
9 litigation this time, I think would be prudent.

10 Thank you for the opportunity to comment today and
11 that's the end of that.

12 MR. HARNESS: Thank you, Bob.

13 MR. McNEILL: My name is John McNeill,
14 M-c-N-E-I-L-L, and I'm a senior attorney with the Central
15 Arizona Water Conservation District. I'd like to first
16 thank you for the opportunity to comment on Western's
17 post-2017 remarketing effort, Boulder Canyon Project.

18 Through CAWCD's contract with the Arizona Power
19 Authority, the Hoover power provides a significant amount of
20 the electric power and energy needed by CAWCD to fulfill its
21 mission in delivering 1.6 million-acre feed of Colorado
22 River Water over the Central Arizona Projects 336-mile long
23 canal system to customers in Maricopa, Pinal and Pima
24 Counties.

25 Hoover power provides not only energy, but

1 flexibility in our ability to operate the system, and we
2 will continue to need this resource well past 2017.

3 We recognize the need to bring certainty to the
4 continuing availability of Hoover power and work closely
5 with other Hoover customers in Arizona, California and
6 Nevada to develop legislation now pending before Congress as
7 the Hoover Power Allocation Act of 2009.

8 Congress has been the sole body to allocate Hoover
9 power since Hoover Dam was first authorized in 1928. We
10 believe that should continue. CAWCD suggests that Western
11 should suspend further action in this matter, at least
12 through the current session of Congress. The interim time
13 could be productively used by Western to address the
14 threshold question whether Western has authority to apply
15 the PMI to the proposed allocation process.

16 Nonetheless, we would like to offer comments in
17 response to Western's specific request in the Federal
18 Register Notice. And in addition, we have comments
19 regarding use of the existing Schedules A, B and C and
20 requirements that new allottees participate in the costs of
21 the Lower Colorado River Multi-Species Conservation Program
22 and agree to the Boulder Canyon Implementation Agreement.

23 The proposed legislation addresses or resolves all
24 of these issues. If CAWCD had to summarize its response in
25 a single sentence, it would be, "We think Western should

1 follow the provisions in the legislation." We do commend
2 Western's decision to include provisions that are generally
3 consistent with approaches taken in the Hoover legislation.

4 However, we think that the types of entities and
5 political subdivisions eligible to receive Hoover power are
6 clearly defined in Section Five of the 1928 Act.

7 It is notable that those entities do not include
8 Native American tribes. That is the principal reason why
9 CAWCD and other Hoover customers support the current
10 legislation to create a power pool and add Native American
11 tribes as authorized allottees.

12 Turning to the specific comment areas,
13 applicability of the PMI to the Boulder Canyon Project, I
14 don't really think I need to add anything to what Mr. Lynch
15 and Mr. Fant have already said there.

16 We do think that Western should explain its legal
17 theories that may support the application of PMI before it
18 makes a threshold determination whether to apply it in this
19 case.

20 On the quantity of resources, we believe Western
21 should allocate 100 percent of the capacity and energy that
22 is potentially available. That means the full rated
23 capacity of 2074 megawatts and the entire 4,527,001-megawatt
24 hours currently allocated. When lake levels allow it,
25 Hoover customers should get the full benefit of the power

1 generation facilities they've paid for.

2 Again, although CAWCD fully supports the creation
3 of a power pool for new allottees, including tribes in the
4 current legislation, unless we can be convinced that Western
5 has authority to apply the PMI, we see no basis for Western
6 to make any allocation to customers other than as provided
7 in the 1928 Act.

8 With respect to excess energy, Schedules A, B and
9 C represent recognition of the financial contributions made
10 by the parties that agreed to finance the upgrading of
11 generation at Hoover and a negotiated settlement of claims
12 by Arizona, California and Nevada, including the rights to
13 excess generation. CAWCD urges Western to retain all three
14 schedules.

15 The term of the contracts, I think the only thing
16 I'd add to what's been said here previously is that a
17 50-year term, as proposed in the legislation, is consistent
18 with the 50-year commitment that has been made by Hoover
19 contractors to fund the MSCP.

20 The role of the APA, the 1928 Act gave first
21 preference to Hoover power to the states of Arizona,
22 California and Nevada. The State of Arizona has designated
23 the APA as the entity to receive Arizona's allocation.

24 In the Hoover Power Plant Act of 1984, Congress
25 recognized that APA is the agency specified by state law as

1 the agent of the State of Arizona. Western should continue
2 to respect the state's choice and on CAWCD's part, we would
3 expect to continue receiving a portion of that post-2017 APA
4 allocation, just as we do now, through a contract with the
5 APA.

6 MSCP costs, the legislation provides that new
7 contractors pay an appropriate share of the MSCP. We would
8 like to see that done in Western's proposal, as well.

9 The Implementation Agreement, basically the same
10 thing. New contractors should be required to participate in
11 the Implementation Agreement. Both of those requirements I
12 just mentioned are covered in the 2009 legislation, and we
13 would urge Western to carry it forward into their process,
14 as well.

15 CAWCD intends to submit further comments by the
16 written comment deadline and, again, reserves all rights to
17 participate further in the proceeding. And I want to thank
18 again Western for the opportunity to participate in these
19 public Forums. Thank you.

20 MR. HARNESS: Thank you, John.

21 MS. SWEENEY: My name is Sheryl Sweeney. I'm an
22 attorney with Riley Carlock & Applewhite here in Arizona.
23 My clients are Maricopa Water District, Roosevelt Irrigation
24 District, Electrical District Number Seven, Buckeye Water
25 Conservation and Drainage District and Ocotillo Water

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1 Conservation District. These are all political subdivisions
2 of the State of Arizona and are current contractors for
3 Hoover power through the Arizona Power Authority.

4 I have been fortunate to be -- have been
5 participating in the discussions among the three states that
6 led to the legislation that has now been introduced in
7 Congress. Those efforts took nearly two years, and we are
8 very much in favor of pursuing a legislative solution to the
9 reallocation question.

10 We are concerned that a decision in this process
11 is going to result in litigation either way, that is, if you
12 decide to apply it, someone will sue and if you decide not
13 to apply it, someone will sue, and we would like the
14 opportunity to let the legislation work its way through and
15 would ask that you delay a decision in this process until
16 the end of this, at least this legislative session.

17 We are appreciative of the fact that Western's
18 proposal includes a lot of provisions that are consistent
19 with the legislation. I guess I would like to point out
20 those things that we think, should this go forward, could
21 use a little improvement.

22 First of all, like you've heard from some of the
23 other folks who have commented already, it is not clear to
24 us that under current law, Western has the authority to
25 create a new resource pool or to allocate power to the

1 Native American communities. That's one of the reasons that
2 we're very much in favor of the legislation because we think
3 it clearly then allows that opportunity.

4 Western's proposal is to market 2044 megawatts and
5 a lesser amount of energy than is currently allocated per
6 the 1984 Act. We would recommend that the resource be
7 marketed at its full rate of capacity of 2074 megawatts and
8 the current energy allocation of 4,527,001-megawatt hours.

9 These -- the folks that have contracted for it are
10 paying for it, will pay for it, deserve the benefit of the
11 system should it ever return to its optimal level, and we'd
12 like to see that happened in this allocation.

13 Western's also asked for recommendations regarding
14 Hoover A, B and C, and I think we've mentioned previously
15 that in the discussions among the three states, we found
16 that when we strayed from keeping the A, B and C
17 designations, things became complicated and more
18 controversial. We think easy and noncontroversial is good
19 and recommend that you keep those three designations.

20 Let's see, we would also support the 50-year
21 term -- contract term as opposed to a 30-year contract term.
22 As John McNeil indicated, we think it's commensurate with
23 the 50-year obligation for MSCP.

24 As I mentioned earlier, we are concerned about the
25 application of the PMI to Hoover. We think you'll hear that

1 there are a lot of folks that feel very strongly that it
2 does not apply and a decision to apply it is likely to
3 result in litigation. That's just our opinion.

4 Finally, the role of the APA and CRC, we believe
5 that they are the exclusive authorities to allocate power
6 within their respective states, and would encourage Western
7 to recognize that. Thank you very much for the opportunity
8 to comment.

9 MR. HARNESS: Thank you, Sheryl.

10 MR. MOYES: Good afternoon. My name is Jay Moyes,
11 M-O-Y-E-S, with the Phoenix law firm of Moyes, Sellers and
12 Sims. I am here today on behalf of six entities that are
13 current customers, Aguila Irrigation District, Tonopah
14 Irrigation District, Harquahala Valley Power District,
15 McMullen Valley Water Conservation and Drainage District,
16 Electrical District Number Eight of Maricopa and Yuma County
17 and the City of Safford, all current contractors.

18 I got up behind Sheryl because I thought she did
19 such an outstanding job of summarizing my comments, which
20 were and are designed to incorporate by reference, not only
21 Mr. Lynch's oral comment today, but the written version that
22 he delivered to you, and I'm going to be perfectly unabashed
23 in plagiarizing his comments, because I've read and examined
24 them and I agree with them fully on behalf of my clients,
25 likewise, those of Mr. McNeill, Mr. Fant and Ms. Sweeney,

1 who we've moved toward greater and greater brevity because
2 we all agree with those comments that have been made before.

3 I would only reiterate my personal view that and
4 plea that Western judge the nature of its actions in this
5 proceeding looking forward to the balance of this calendar
6 year with a view to history in the sense of trying to do
7 those things that are least likely to force litigation into
8 the arena where it would appear that with ample time and
9 communication and collaboration, there are win-win
10 opportunities contemplated by the pending legislation, and
11 we believe that it would be prudent to let those
12 opportunities mature and work through in a timely fashion,
13 but it would appear to us that there is time to do that.

14 We commend Western for, on the one hand,
15 commencing this process as early as it has, vis-a-vis, 2017.
16 I was one of the late entrants in the prior round of
17 contracting back in the '80s, and I know that a lot of years
18 passed where people were doing things that appeared to be
19 productive, but all of which got trumped in the legislative
20 arena and ultimately pushed back to Congress for the final
21 determination.

22 We fully believe and support the view that it's
23 better to start there rather than to try to finish there
24 many years from now after lots of fighting. We are firm in
25 our positions with respect to the lack of legal authority

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1 for Western to implement the PMI and EPAMP in this
2 proceeding and we believe others are likewise firm and any
3 decisions to the contrary is likely to be challenged, and so
4 we would hope that Western could find it prudent to not
5 force that issue for the time being.

6 We do believe, on behalf of those folks who have
7 expressed an -- as new entrants and I can sympathize with
8 them because I was there once, we would urge them to examine
9 carefully the legislation and see what we believe is a
10 greater opportunity for a less litigious approach to getting
11 them what they are looking for and an ample opportunity to
12 be participants and beneficiaries of Hoover power in ways
13 that, frankly, we believe legally Western simply cannot do
14 under the law today despite its perhaps desire, its
15 willingness to consider if it could, we just don't believe
16 that that's something the law simply currently allows.

17 So with that said, I would incorporate my
18 reference to previous comments that I referred to and thank
19 Western for this opportunity.

20 MR. HARNESS: Thank you, Jay.

21 MS. MIGNELLA: I'm Amy Mignella with the Arizona
22 Tribal Energy Association and the last name is
23 M-I-G-N-E-L-L-A. Thank you, Western, for the opportunity to
24 participate today and provide comments. It's a privilege to
25 participate on behalf of the organization that I'm

1 representing at this Forum and all of the members of whom
2 are tribal utilities, none of which, however, receive power
3 from this project at this time.

4 We will be submitting written comments by the
5 January 29th deadline, but for the purposes of our
6 participation today directly, we wanted to also stress to
7 Western that we feel that the process needs to be delayed,
8 not for the reasons of legislation pending in Congress, but
9 because Western has -- has set the schedule actually
10 acknowledging that it has yet to identify fully the tribal
11 interests within the marketing area.

12 In fact, the January 15th, 2010 December 2009 PIF
13 Q & A document that was sent out electronically by Western
14 states that in response to the question: Can Western
15 provide a list of the tribal entities that would fall into
16 the Boulder Canyon marketing area? The response of the
17 agency was that: Western is devoting further study
18 regarding the question in order to respond appropriately
19 after the conclusion of the comment period on the 29th.

20 We feel that this is backwards and should not be
21 the agency's action, and it actually is an affirmative
22 statement that the notice to those interests is being just
23 ignored and totally dismissed. And since numerous requests
24 have been made over the last two or three years to Western
25 to provide that information and Western has yet to do so, we

1 feel that it's essential that Western now allow more time so
2 that it can complete that step before proceeding any further
3 with this process. Thank you.

4 MR. HARNESS: Thank you.

5 MR. McMULLEN: I'm Patrick McMullen,
6 M-c-M-U-L-L-E-N, with the Intertribal Counsel of Arizona. I
7 don't have any verbal comments today, just want to inform
8 Western that ITCA will be submitting written comments by
9 January 29th and that the Intertribal Counsel of Arizona
10 will be at the house of committee hearing on water and power
11 providing testimony as a witness at the hearing on the
12 legislation. Thank you very much.

13 MR. HARNESS: Thank you. Anymore comments? One
14 last chance.

15 (Pause.)

16 MR. HARNESS: Okay. Well, seeing that no one else
17 has indicated a desire to make any more comments, we'll
18 prepare to go off the record. But before we do, I want to
19 thank you all for attending today and for participating. I
20 would also ask if you have not already done so, that you
21 sign the attendance roster that was out on the table by the
22 doors as you came in so we have an accurate record of who
23 was here today.

24 So with that, again, we appreciate your attendance
25 and participation and the Forum is now closed. We'll go off

1 the record. Thank you.

2 (Whereupon, the deposition proceedings terminated
3 at 2:00 p.m.)

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I, CHRISTINE JOHNSON, having been first duly sworn and appointed as Official Court Reporter herein, do hereby certify that the foregoing pages numbered from 2 to 30, inclusive, constitute a full, true and accurate transcript of all the proceedings had in the above matter, all done to the best of my skill and ability.

DATED this 27th day of January, 2010.

Christine Johnson, RPR
Certified Court Reporter No. 50383

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