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IN THE UNITED STATES DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
LAS VEGAS, NEVADA

BOULDER CANYON PROJECT POST-2017 REMARKETING
PROPOSED MARKETING CRITERIA
PUBLIC COMMENT FORUM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Las Vegas, Nevada
December 18, 2012
1:00 p.m.

REPORTED BY: CHRISTINE JOHNSON, RPR
Certified Reporter #50383

PREPARED FOR: BRUSH & TERRELL
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12473 West Redfield Road
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1 Be it remembered that heretofore on December 18,
2 2012, commencing at 1:00 p.m., at the Tropicana Hotel
3 Conference Room, Las Vegas, Arizona, the following
4 proceedings were had, to wit:

5

6

7	OPENING REMARKS	Page
8	BY MR. DOUG HARNESS	3

9

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11 COMMENTS BY:

12	CHEVALIER, Yvette	5
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13	SALO, James D.	8
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14	LEE, Vernon	15
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15	GILBERT, Brenda	19
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1 MR. HARNESS: On the record, please. Well, thanks
2 everybody for quieting down. We'll go ahead and get
3 started. Good afternoon. Welcome to today's Public Comment
4 Forum. Can everybody hear me okay? I feel like I have an
5 echo, so it's harder for me to tell.

6 But, anyway, my name is Doug Harness and I'm an
7 attorney representing the Western Area Power Administration,
8 Desert Southwest Region and I work in Western's office as
9 General Counsel in Lakewood, Colorado.

10 This Public Comment Forum has been scheduled to
11 give interested parties the opportunity to make oral
12 presentations or to submit written comments on the record
13 proposed by Western to allocate federal power from the
14 resource pool identified as Schedule D established by the
15 Hoover Power Allocation Act of 2011 for the Boulder Canyon
16 Project, the proposed criteria published in the Federal
17 Register Notice on October 30th, 2012.

18 In addition to today's Forum, and those that will
19 be held tomorrow in Ontario and Thursday in Phoenix, written
20 comments may be submitted by mail to Mr. Darrick Moe,
21 Regional Manager of Western's Desert Southwest Region, Post
22 Office Box 6457, Phoenix, Arizona 85005-6457.

23 You may also fax comments to Western at area code
24 (602) 605-2490 or e-mail them to Post2017BCP@wapa.gov.
25 Western will accept written comments received on or before

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1 January 11th, 2013. Western reserves the right to not
2 consider any comments received after this date.

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

12 Additionally, a copy of the transcript will be
13 available upon payment of the required fee to the court
14 reporter. And if you'd like information on -- the contact
15 information for our court reporter, that's certainly
16 available at any time.

17 All comments made today should be relevant to the
18 proposed marketing criteria and any relevant materials to be
19 introduced in the record should be given to the court
20 reporter and she'll assign it an exhibit number.

21 After the close of the comment period, Western
22 representatives will review all of the information, comments
23 and exhibits that have been received with regard to the
24 proposed criteria. Western will then announce a decision in
25 the Federal Register. Comments made during the public

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1 process will be discussed in this announcement.

2 We'll open the floor here in just a second.
3 Before we do, I would ask that once you're recognized to
4 speak, please provide your name and the name of any
5 organization that you represent and for the convenience of
6 the court reporter, please spell your last name. And I
7 would also ask today since we don't have a microphone, if
8 you would please stand before making your comments.

9 Also, if you have a copy of your presentation,
10 please give it to the court reporter. So -- oh, finally,
11 please keep in mind that Western has no presentation this
12 afternoon and will not be answering questions. The sole
13 purpose of this Forum is to just take your comments.

14 So with that, we will open the floor, and I think
15 Yvonne (sic) indicates she wanted to go first, so we'll
16 accommodate that.

17 MS. CHEVALIER: Okay. Yvette Chevalier, C-H-E-V,
18 as in Victor, A-L-I-E-R, Moapa Band of Paiutes, Native
19 American federally-recognized tribe. Good afternoon. Thank
20 you for having me speak first. I appreciate it. I have to
21 run to court.

22 The Moapa Band of Paiutes offers this public
23 comment on behalf of our tribal chairperson, William
24 Anderson, who was unable to be here today, and other
25 business council members to place on the record their

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1 position or their desire that Native American preference, as
2 laid out in the WAPA proposed criteria, remain intact.

3 We understand there may be other entities or
4 agencies who would like it to be something other than that,
5 but given the circumstances that the land and water that is
6 used to generate the energy we're speaking of was once
7 tribal land that was taken without their consent.

8 We believe that it is fair, right and proper to
9 have Native American tribes for once be in the first place
10 to receive something good that will help the reservation
11 grow, prosper and sustain itself over the following 50 years
12 that this agreement would cover.

13 The Moapa Band of Paiutes intends to use this
14 power to provide direct transmission energy to its existing
15 casino, tribal plaza, convenience store and gas stations.
16 Believe it or not, in the year 2012, almost 2013, we are
17 still fueling our business, our principal reservation money
18 that provides food and shelter for the tribal members with
19 generators and res diesel fuel.

20 So even though hydropower is not, per se,
21 renewable energy at this time, we believe that the Moapa
22 Band of Paiutes should have access to real electricity.
23 We're in the 21st century, almost 22nd century here.

24 So with that said, we would like to use the energy
25 that is allocated to the Moapa Band of Paiutes for our

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1 casino, our stores and our planned industrial park, housing
2 development, cement plant, sand and gravel company, RV park
3 and our solar energy projects such as the K Roads project
4 that is being constructed starting actually probably in the
5 spring, but already starting the roads next month and they
6 will require energy, as well, and they are on tribal land.

7 So we understand that there are some proposed
8 restrictions on the way that the energy can be used and we
9 have determined roughly at this time that we would use for
10 our existing today businesses and reservation and buildings
11 and small government, maybe ten to 11 megawatts, but we have
12 a five-year master plan and this is a 50-year contract, so
13 we are hoping that WAPA will consider use of this energy
14 that would include for at least the native tribe -- which
15 moves a lot slower than the regular world in terms of
16 development -- some ability to use this power for our
17 five-year master planned development, which includes the RV
18 park, industrial park and some other -- sand and gravel and
19 cement plants.

20 Without those items, we will be unable to, you
21 know, produce the type of income and sustainable survival
22 that the reservation is intended to provide the people of
23 the Moapa Band of Paiutes, which is their own little place
24 in the world to exist and also not just to exist bare bones,
25 but to flourish.

1 So all of these business are coming onboard
2 hopefully in the very near future with the intentions of
3 providing long-term sustainable development, income,
4 economic prosperity for the members of the Moapa Band of
5 Paiutes and their children of which there are many young
6 people who could use this energy in the next 50 years to
7 make really the best and highest use of that land that was
8 allocated to them for their sustenance.

9 So that's my comments. Again, just to summarize,
10 we would ask that WAPA keep the Native American tribes as a
11 priority because for many -- many cultural and religious and
12 native reasons, but also on a practical level. The Moapa
13 Band of Paiutes has never been first at anything, and this
14 would be nice for them to be first in place and first in
15 line at this time. Thank you.

16 MR. HARNESS: Thank you. Jim.

17 MR. SALO: My name is James D. Salo, S-A-L-O. I'm
18 the Deputy Executive Director of the Colorado River
19 Commission of the State of Nevada. Our offices are located
20 at 555 East Washington Avenue, Suite 3100 here in Las Vegas.
21 I've already provided my card and a copy of my comments to
22 the court reporter so she has the details in that form, as
23 well.

24 The Colorado River Commission of Nevada -- I may
25 refer to as -- our agency as the CRC -- also speaking on

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1 behalf of the State of Nevada, appreciates the opportunity
2 to submit oral comments to Western in response to its notice
3 of proposed rule making on marketing criteria dated
4 October 30, 2012.

5 While the CRC plans to file extensive and detailed
6 written comments by the January deadline that you referred
7 to earlier, we offer the following limited comments at this
8 time for the record in this proceeding.

9 Hoover is a distinct federal project, distinct
10 from the other federal projects, primarily because Hoover
11 has always been addressed directly by Congress. The
12 allocations have come from Congress, and Congress has had a
13 much more direct hand in deciding who would have the
14 opportunity to get benefits from Hoover each time that issue
15 has -- or opportunity has arisen.

16 The adoption of the Hoover Power Allocation Act in
17 this last -- a year ago, December, a year ago, by Congress,
18 did not give Western a green light to acquire Hoover power
19 allocations -- to Hoover power allocations its
20 administratively establishing marketing criteria for other
21 projects when those criteria are inconsistent with the
22 directives of Congress.

23 Nevada objects strongly to Western's October 30th,
24 2012 Federal Rules Notice that attempt to apply to Hoover
25 power the same marketing criteria that Western applies to

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1 other -- or has applied to other federal hydropower
2 projects. Hoover power is unique among the federal
3 hydropower projects because its allocation has been made
4 directly by act of Congress. Western does not have the
5 legal authority to apply to Hoover power the same set of
6 priorities that it applies to other hydropower projects.
7 Provisions of the Federal Rules Notice raising particular
8 concerns for Nevada include the following:

9 Number one, Nevada objects to Western's proposal
10 to apply priorities that give federally-recognized Native
11 American tribes and cooperatives a higher priority than the
12 Boulder Canyon Project Act Section 5 entities. Nevada urges
13 Western to change these priorities so that all Section 5
14 eligible entities, including tribes, are treated with the
15 same priority status and cooperatives receive a lower
16 priority.

17 Since enactment of the Boulder Canyon Project Act
18 in 1928, Section 5 entities have been uniquely eligible for
19 Hoover power allocations. The Hoover Power Allocation Act
20 of 2011 added tribes to the list of Section 5 entities
21 eligible to receive Hoover power, but did not give tribes
22 higher priority to receive Hoover power or in favor of other
23 Section 5 entities.

24 The 2011 Hoover Power Allocation Act also did not
25 identify cooperatives as eligible to receive Hoover power

1 allocations from Western and certainly did not give them
2 priority over the Section 5 entities.

3 Number two, Nevada objects to the omission of the
4 word "States," in quotes, with a capital "S" in the original
5 statute in any priority designed to include municipalities
6 and local political subdivisions. The Boulder Canyon
7 Project Act states, in relevant part, that allocations must
8 be made to, quote, "States, municipal corporations or
9 political subdivisions," close quote.

10 It is impermissible for Western to carve out
11 "States" for a lower priority than their own municipal
12 corporations or political subdivisions. Municipal
13 corporations and political subdivisions are entities of the
14 States, not the other way around. The political
15 subdivisions did not create the States.

16 Congress has spoken. It is not within Western's
17 prerogatives to establish sub-priorities, which Congress
18 chose not to establish.

19 Number three, Western should not apply a -- or an,
20 quote, "electric utility status," close quote, requirement
21 to Hoover allocations or applications or allocations. An
22 electric utility status requirement would deny access to
23 Hoover power to Nevada applicants as new allottees because
24 virtually all of Nevada's public entities in the BCP
25 marketing area with electric utility status already receive

1 Hoover power today; therefore, presumably would not be
2 viewed as new allottees in the eyes of Western.

3 If that electric utility status requirement
4 remains, there are few, if any, entities in Nevada that
5 would qualify to even ask for an allocation from Western.

6 The electric utility status requirement, coupled
7 with the Section 5 limitations, would effectively block
8 Nevada entities from becoming a "new allottee," which is not
9 consistent with Congress' intent in enacting the Hoover
10 Power Allocation Act of 2011. Nothing in the language or
11 history of that act suggests Congress intended to leave
12 Nevada entities out of consideration as potential new
13 allottees in the Western process.

14 Congress did not authorize application of any
15 requirement other than that the new allottees must be,
16 quote, "new," close quote, and thus presumably not receiving
17 current allocations of Hoover power. And that they must be
18 Section 5 entities or recognized Native American tribes.
19 Any further shrinking of the pool of potential Nevada-based
20 new allottees by Western is not permissible.

21 Congress certainly did not authorize Western to
22 apply a discriminatory utility status requirement such as
23 Western has proposed, under which tribes are not required to
24 have utility status, while other Section 5 applicants are
25 required to have electric utility status.

1 In addition, Nevada raises two procedural issues.
2 One, in previous informal comments provided to Western in
3 other meetings, participants have asked that certain key
4 definitions be included, key phrases that are used in the
5 notices be defined, including, for example, "new allottee"
6 and the phrase "other eligible applicants." Nevada fully
7 supports that request. We think terms like that that are
8 not elsewhere defined should be defined by Western in its
9 final ruling or final order in this context.

10 In view of the fact that the marketing criteria
11 approved in this proceeding are designed to be applied for
12 the next 50 years, we request that when the marketing
13 criteria are reissued in the final form, they include the
14 relevant portions from the earlier June Federal Rules Notice
15 issued by Western so that all of the conformed criteria will
16 appear in a single Federal Register Notice so that any
17 interested party, customer or otherwise, over the next 50
18 years would only have to look to one Federal Rules Notice
19 document to have all of the relevant criteria in front of
20 them. They would not have to search for two different
21 documents. Today it's easy. They're relatively recent in
22 time. 20 years from now, people may have a challenge in
23 figuring out how many documents they have to have in front
24 of them.

25 Simply stated, interested parties should not be

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1 required to look to more than one Federal Rules Notice in
2 order to understand what the federal marketing criteria are
3 that Western ultimately adopts and the full scope of those
4 criteria.

5 Just general conclusions, Western must amend its
6 priorities and marketing criteria to reflect
7 Hoover-specific, unique statutory requirements. Western's
8 administrative procedures contravene or be inconsistent with
9 the direct mandate of Congress. Western does not have the
10 authority to exercise discretion when Congress gives Western
11 an explicit direction regarding how an allocation should be
12 performed.

13 Section 5 Congressional directive to allocate to,
14 quote, "States, municipal corporations or political
15 subdivisions" and since December of 2011, to
16 federally-recognized American Indian tribes or Native
17 American tribes is binding on Western. Western cannot
18 properly and should not split the Section 5 entities into
19 separate levels of priority.

20 Western also should reconsider the selective
21 imposition of an "electric utility status" requirement for
22 new allottees. That requirement is not mandated by
23 Congress. It is not applied in your own draft or proposed
24 criteria to the tribal entities and perhaps some other
25 potential new allottees under the proposed marketing

1 criteria.

2 Nevada further believes the disparate impact on
3 Nevada noted earlier makes selective application of an
4 "electric utility status" requirement both unsupportable and
5 discriminatory toward Nevada, neither of which can
6 reasonably be viewed as consistent with the intent of
7 Congress when it adopted the Hoover Power Allocation Act of
8 2011.

9 Thank you again for this opportunity to submit
10 these oral comments on behalf of the Colorado River
11 Commission and the State of Nevada in this important
12 proceeding.

13 And I do have copies of this, in addition to the
14 copy I provided to the court reporter, if you'd like.

15 MR. HARNESS: Yeah, we'll just use hers.

16 MR. SALO: Fair enough.

17 MR. HARNESS: Thanks, Jim.

18 MR. SALO: You bet.

19 MR. HARNESS: Mr. Lee.

20 MR. LEE: Vernon Lee, L-E-E. I'm a member of the
21 Moapa Band of Paiutes and I'm here, I guess basically
22 speaking for my tribe, but I also speak for other tribes.
23 And I guess the first thing I'd like to say is that Hoover
24 Dam is a federally-controlled, federally-built entity, has
25 been forever.

1 I believe that the conduit is in place for tribes
2 directly. The fact that tribes have been left out of the
3 power allocation since the dam was built is discriminatory.
4 I believe that the fact that the tribes being basically
5 trustees of the federal government or at least controlled by
6 the federal government would dictate, given the situation of
7 tribes, that not only should we have this, but we should be
8 given the higher priority. And that is based on the fact
9 that the rates of unemployment, the rates of poverty and all
10 other situations socially are greater on tribes in general
11 than it is in the general population of the United States.

12 The need is very evident. I don't know if anybody
13 here has lived on a reservation, probably not, and you'd
14 have to really go there and see what the situation is.
15 There's a need for everything. You know, we scarcely have
16 streetlights. There are no sidewalks. The social network
17 is damaged by lack of opportunity, basically economic
18 opportunity.

19 And that's what this Hoover power really means.
20 It means to develop and grow to -- so the tribes can have a
21 better chance at this so-called "pursuit of happiness" that
22 applies or should apply to all citizens of the United
23 States, which tribes, in general, have been left out.

24 Hoover Dam being a federal entity and the tribes
25 being a federal entity, also, I believe that conduit is in

1 place and it should be exercised first before other
2 municipalities and/or companies or, you know, the other
3 people that want to get some of this power.

4 I also believe that the future development of
5 tribes should be considered because the need is so great.
6 There are -- well, there are -- are future needs that should
7 be looked at because the tribes are -- that they basically
8 lack so much; that development is across the board from the
9 sidewalks and streetlights to housing to development of
10 whatever.

11 Earlier, Ms. Chevalier mentioned some of the
12 business that the Moapa Band of Paiutes might produce. That
13 in a way is the tip of the iceberg. We do have the solar
14 coming, which is going to open up opportunities. We are on
15 the cusp of development. So the need today is not near what
16 the need in five or ten years may be. And that's Moapa. We
17 are at an advantage, given the Indian country in general.

18 Our employment rate is not as high as some tribes.
19 Some tribes go as high as 69 percent. The average is 40 or
20 50 percent. The basic hourly rate for a tribal employee now
21 is about \$10 an hour, and that is probably way below what
22 the average is out there in the world of these businesses
23 and companies that want this power probably pay. In the
24 energy, I don't know if they're going to be included or
25 excluded. They're right next door to us, one mile. And,

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1 you know, they have retirement benefits, and they have good
2 pay.

3 So this development for my tribe is crucial and
4 like I said, I believe the prospects for our tribe is very
5 great and I believe that not only Moapa, but all tribes
6 should be given a priority.

7 Now, there is policy in place in Indian country
8 through the Department of Interior that has to do with
9 energy and it's all focused at economic development. This
10 is for all tribes. And there is also the trust
11 responsibility, which is a federal thing. Now, I would hope
12 that they would recognize the needs and employ that
13 responsibility in an adequate fashion towards tribes, which,
14 in essence, I believe would carve out this niche for tribes.

15 I think it's important that they recognize us so
16 that development can go on and we can be brought forward
17 basically in time. Everything is after the fact on
18 reservations. They had the biggest stimulus that came in a
19 few years ago and there was literally millions, hundreds of
20 millions of dollars allocated for the stimulus. The Moapa
21 Band of Paiutes, part of that stimulus was \$1600. Now, you
22 can barely put a shovel in the ground for \$1600, but that
23 was our share.

24 So the need is great and it should be dealt with
25 adequately, and I hope that the powers that be, WAPA and

1 whomever else, can recognize that need and address it
2 adequately. Thank you.

3 MR. HARNESS: Thank you. Other comments?

4 MS. GILBERT: Brenda Gilbert, G-I-L-B-E-R-T. I'm
5 speaking on behalf of Nye County at the direction of Darrell
6 Lacy, L-A-C-Y, who is the Director of Community Development.
7 Nye County is pleased to have this opportunity to give
8 comments today. They would like you to be aware that they
9 are very interested in applying for an allotment, an
10 allocation; that they do plan on preparing and submitting
11 formal comments before the deadline in January. Thank you.

12 MR. HARNESS: Thank you. Any other comments?
13 Last chance, last call.

14 Okay. Well, seeing as no one else has indicated a
15 desire to make any comments, we'll wrap things up. But
16 before we go off the record, I did want to thank everybody
17 again for attending today and certainly everybody who
18 participated in providing comments. We do sincerely
19 appreciate those as we try to figure out what we're going to
20 do here.

21 So thanks again for that. I would ask if you did
22 not -- if you haven't already done so, please sign the
23 attendance roster back on the back table so we have an
24 accurate attendance record for today and with that, again,
25 thank you. The Forum is closed. We'll go off the record.

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1 (Whereupon, the deposition proceedings terminated
2 at 2:38 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 19, 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 December, 2012.

Christine Johnson, RPR
Certified Court Reporter No. 50383

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