



INTER TRIBAL COUNCIL of ARIZONA

August 23, 2012

MEMBER TRIBES

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COCOPIA TRIBE
COLORADO RIVER INDIAN TRIBES
FORT McDOWELL YAVAPAI NATION
FORT MOJAVE TRIBE
GILA RIVER INDIAN COMMUNITY
HAVASUPAI TRIBE
HOPI TRIBE
HUALAPAI TRIBE
KAIBAB-PAIUTE TRIBE
PASCUA YAQUI TRIBE
PUEBLO OF ZUNI
QUECHAN TRIBE
SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY
SAN CARLOS APACHE TRIBE
TOHONO O'ODHAM NATION
TONTON APACHE TRIBE
WHITE MOUNTAIN APACHE TRIBE
YAVAPAI APACHE NATION
YAVAPAI-PRESCOTT INDIAN TRIBE

Anita J. Decker, Acting Administrator
Western Area Power Administration
P.O. Box 281213
Lakewood, CO 80228-8213

RE: Continuing Tribal Consultation on Hoover Power Allocation to New Entities

Dear Administrator Montoya:

The Inter Tribal Council of Arizona (ITCA) requests that Western Administration consider the following as a continuation of the dialogue with Western in relation to the Boulder Canyon Project Power (BCP or Hoover Power) reallocation process to be initiated by Western in the coming weeks.

Tribal interests in Arizona are frustrated with the apparent predetermination of the allocation criteria by Western. The tribal government policy followed by the Department of Energy since 2006 states that Western must act in "consultation" as:

" . . . providing for mutually agreed protocols for timely communication, coordination, cooperation and collaboration to determine the impact on traditional and cultural lifeways, natural resources, treaty and other federally-reserved rights involving appropriate tribal officials and representatives throughout the decision-making process, . . . consistent with a government to government relationship."

Further, the policy defines "trust responsibility" as including:

" . . . the promotion and protection of . . . federally-recognized interests of the beneficiary American Indian . . . nations; determining, documenting, notifying and interacting with tribal governments with regard to the impact of Departmental programs, policies and regulations to protect American Indian . . . traditional and cultural lifeways . . . and other federally recognized . . . rights."

Principle 1 of the Policy provides:

"The Department recognizes that some tribes have . . . federally-protected rights to resources and resource interests . . . outside reservation and jurisdictional boundaries, and will, to the extent of its authority, protect and promote these . . . resource interests and related concerns in these areas."

As a result of mutual frustrations with the process and the untimely temporary reassignment for Regional Director Darrick Moe until approximately a time coincident with the initiation of the formal allocation process, we believe it is vital that you and the Regional Director become personally involved in the consultation. Only in this way do Tribes in Arizona consider that our interests will be adequately addressed at the level necessary for "meaningful" consultation purposes as required by the President's November 5, 2009 Memorandum on Tribal Consultation.

With respect to the specific issues raised, ITCA provides the following guidance on matters not already identified as in agreement between Western and tribal interests:

1. Tribal preference

This is of highest priority to Tribal interests in Arizona. Western has proposed a staggered order of allocation priority with a reduced priority to any tribe already receiving any other federal hydropower allocation. ITCA recognizes that other Hoover recipients ("existing customers") that will renew the majority of their allocations in 2017 also receive non-Hoover federal hydropower through contracts with Western. As such, reducing adjustments to new tribal customers is not appropriate. ITCA reiterates that preference should be given first to tribes, regardless of receiving any other federal hydropower allocation, and then to non-tribal entities, if there is any Hoover power left. As such, designative subclasses of Tribal priority allocation are not appropriate or acceptable, per the Indian Reorganization Act, Amendment 1994.

Along this same line, while some Tribes have received allocations of other federal hydropower resources, these contracts are set to expire in the next 12 or so years. However, renewal *of these power sources are is not guaranteed*. The Hoover power contracts will be for a term of fifty years. If Tribes with other hydropower allocations are not again offered preference for these sources within the next 12 years, they might end up with no or extremely limited allocation of federal hydropower in the near future (i.e., should they be excluded from or limited by Western's proposed Tribal staggered allocation).

In addition, the legislation and legislative history at issue in this instance refers expressly to "new entities" as priority recipients of unallocated Hoover output, demarcating those interests that are new to Hoover while ignoring the role of any other federal hydropower output. Additionally, nowhere is there any Congressional intent, in any instance, as to creating allocation based on subclasses of Tribes as to who has and who does not have a Federal power source.

2. Contracting directly with tribes

Western must contract directly with each tribe receiving Hoover power as set forth in the legislation. Western has identified no precedent for deviation from such a practice and, in fact, Western has never contracted in any manner other than directly with its allocation recipients. Those Tribes without Utility Responsibility will consider a variety of benefit crediting or other mechanisms through which to receive their allocations, thereby alleviating unwarranted concerns expressed by Western in consultation meetings that Western will have too many contracting parties.

The HPAA establishes a two-step process for allocations to new entities. Allocations must be made "Within 36 months of December 20, 2011" with these allocations "placed under contract by October 1, 2017." Tribes will use this interim time period, with the assistance of Western, to utilize the federal power allocated consistent with reasonable, non-discriminatory operational constraints.

3. Fractional Megawatt share allocations

Linking tribal allocations to minimums due to scale is also unprecedented and without any justification. Western regularly manages the Hoover and other hydro resources in less than full Megawatt quantities. Given the total number of potential new tribal Hoover customers, Western's approach of making allocations only in whole Megawatt amounts will be prejudicial and discriminatory, penalizing smaller tribes.

4. Scheduling dictated to tribal customers

Western has suggested that there would be significant scheduling and operational issues if all of the potential total number of tribes received individual allocations in less than whole Megawatts. Tribes have provided Western with accurate information. There are only 5 tribal utilities out of approximately 64 potential tribes in the Boulder City Area. Therefore, approximately 59 tribes will need to enter into some type of benefit crediting arrangement. As such the allocations to tribes without a tribal utility would be aggregated together. This would achieve Western's expressed goal of aggregating the less than whole Megawatt allocations.

ITCA understands Western is faced with difficult decisions, but feel that tribes should not be used to simplify that decision-making process. Tribes should be given preference for the allocation of Hoover power. In addition, allocating less than whole Megawatts to tribes will not create scheduling and operational problems for Western. Rather, once the allocations have been made, the next natural step is for tribes to seek benefit crediting relationships that will aggregate those allocations, thus achieving Western's own objective.

Sincerely,



Terry Rambler,
President, Inter Tribal Council of Arizona
Chairman, San Carlos Apache Tribe

cc: Mike Simonton, Hoover Project Manager, Desert Southwest Office
Penny Casey, Acting Director, Desert Southwest Office