



Terry Rambler
Chairman

SAN CARLOS APACHE TRIBE

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Tao Etpison
Vice-Chairman

August 9, 2024

Via E-Mail and U.S. Postal Service

Jack Murray
Regional Manager
Desert Southwest Region
Western Area Power Administration
P.O. Box 6457
Phoenix, Arizona 85005-6457
E-M: Pdp-remarketing@wapa.gov

RE: WAPA Proposed 2028 Parker-Davis Project Power Marketing Plan Comments

Dear Mr. Murray:

On behalf of the over 17,300 members of the San Carlos Apache Tribe ("Tribe"), thank you for this opportunity to comment on the Western Area Power Administration ("WAPA") proposed 2028 Parker-Davis Project Power Marketing Plan (2028 Plan).

Consistent with WAPA's statutory mandate, and Proposed 2028 Plan documents, WAPA markets power in a manner that will encourage the most widespread use at the lowest possible rates consistent with sound business principles.

The Tribe is a preference entity and a customer of WAPA's Colorado River Storage Project Management Center ("CRSP"). Despite our reservation falling mostly within the Desert Southwest Region's service territory, we do not currently have an allocation of Parker-Davis power. The Tribe plans to participate in WAPA's call for applications for new allocations so that we may receive an allocation of tribal power from the Parker and Davis dams. However, we

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understand that your 2028 Plan may prohibit or restrict our ability to become a Parker-Davis customer in two ways.

First, the 2028 Plan states, “Qualified applicants must not have an existing allocation of Federal power or be a member of a parent entity that has an allocation of Federal power.” As we have an allocation of CRSP power, we read this to mean we would not be a qualified applicant. We are aware that there are numerous existing Parker-Davis customers who have other allocations of Federal power. This seems to us to be an inequity and a bias against later applying preference customers, as well as a violation of the “widespread use” mandate. We request that this criteria be deleted in the final marketing plan.

Second, the 2028 Plan creates a resource pool for new applicants of only 2% of existing allocations. While we are not aware of the likely number or size of new applicants, this seems to be a small number which, if numerous or large preference entities apply, would again create an inequity between earlier applying parties who would keep 98% of their allocations, and later applying preference entities who would have to share only 2% of the projects’ surplus power. We request that the resource pool be formed from a larger percentage of current allocations, and if there are fewer applicants than can equitably use the resource pool, then the unallocated power be shared among all customers.

Use of our full WAPA power hydropower allocation, including contractual rights, flexible scheduling of our allocation, and transmission of the power to our Reservation loads, will be key to our ability to assure low-cost electric services to our future customers. We are currently exploring options to become a tribal utility ready, willing and able to receive this power by 2028.

We consider our full ability to receive allocations of federal hydropower and our hydropower resources (including our share of the generation and transmission systems) to be a trust resource under the DOE definitions.¹ The San Carlos Apache Reservation along with many of our best agricultural lands were flooded with the construction of the Coolidge Dam. These resources of the Tribe were taken to build federal infrastructure to benefit the entire Western United States. The Tribe’s right to power is set forth in the Act of March 7, 1928 (45 Stat. 210-212), as amended, which reserved “power for agency and school purposes and for pumping irrigation by Indians on the San Carlos Reservation at a cost not exceeding 2 mils per kilowatt hour delivered at the switchboard at the Coolidge Dam.” This provision was reinforced by the San Carlos Indian Irrigation Project Divestiture Act of 1991 (“1991 Act”), whereby Congress noted the “existing obligation” to provide SCAT “power at the rate of 2 mils per kilowatt hour

¹ See DOE Order 144.1, <https://www.energy.gov/en/articles/doc-order-1441-department-energy-american-indian-tribal-government-interactions-and#:~:text=DOE%20Order%20144.1%20provides%20direction%20to%20all%20Departmental,treaty%20and%20other%20federally%20recognized%20and%20reserved%20rights>.

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for irrigation pumping and agency and school purposes pursuant to the Act of March 8, 1928.”
P.L. 102-231, 105 Stat. 1722 §10 (9)(c) (1991).

Because Coolidge Dam was not well planned or designed for the available resource, and because the Federal government has not repaired food damages to Coolidge dam, it is now not generating power to benefit the San Carlos people. Our ability to fully participate in all available allocations of federal hydropower is therefore an important part of our benefit of the federal hydropower resource. These resources must be protected by WAPA, as our federal trustee, on behalf of the Tribe. Any potential threat to these trust resources by federal action requires meaningful government-to-government consultation which we formally request should WAPA continue forward with its participation in the SPP.

In the Tribe’s view, meaningful government-to-government consultation can occur only at a duly convened meeting of the San Carlos Council, the Tribe’s governing body. The Council meets on the first Tuesday of every month. If you wish to consult with the Tribe on this matter, please contact the Council’s Secretary, Santana Dillon, at (928) 961-1849, or via e-mail at santana.dillon@scat-nsn.gov, to be added to the Council’s agenda.

As we say in our Apache language, Ahi’yi’é (thank you) in advance for your review and consideration of this comment and our request for consultation.

Sincerely,

SAN CARLOS APACHE TRIBE



Terry Rambler
Chairman

Cc: Tao Etpison, Vice Chairman
San Carlos Council Members
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