Judy Atwood

From: Jim Salo
Sent: Friday, January 11, 2013 5:20 PM
To: Post2017BCP@wapa.gov
Cc: Jayne Harkins; Craig Pyper; Ann Pongracz; Jim Salo; Judy Atwood
Subject: CRC Comments on BCP Post-2017 Proposed Marketing Criteria
Attachments: 20130111 CRC Comment Ltr to Western re BCP-Post 2017 Resource Pool Notice_Final.pdf

Mr. Moe,

Please find attahced the comments of the Colorado River Commission of Nevada (CRC) in response to Western's Federal Register Notice dated October 30, 2012 - **Boulder Canyon Project --- Post-2017 Resource Pool.** (Fed. Reg. Vol. 77, No. 210, Page 65681). The CRC appreciates the opportunity to submit these comments in this important matter and looks forward to continuing to work closely with Western to support the implementaion okf the Hoover Power Allocation Act of 2011

Thank you.

Jim

James D. Salo
Deputy Executive Director
Colorado River Commission of Nevada
(702) 486-2670
(702) 486-2484 - Direct Line
jsalo@crc.nv.gov

COLORADO RIVER COMMISSION
OF NEVADA

January 11, 2013

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

Fax Number: (602) 605-2400
E-mail: Post2017BCP@wapa.gov

SUBJECT: Comments of the Colorado River Commission of Nevada on the Boulder Canyon Project – Post 2017 Resource Pool Notice of Proposed Marketing Criteria (October 30, 2012)

Dear Mr. Moe:

The Colorado River Commission of Nevada (CRC), an executive agency of the State of Nevada, appreciates this opportunity to submit comments on behalf of the State of Nevada to the Western Area Power Administration (Western) on its Notice of proposed marketing criteria for the Boulder Canyon Project – Post-2017 Resource Pool dated October 30, 2012 (Marketing Criteria).

Under Nevada law, the CRC is specifically directed to:

> " . . . **receive, protect and safeguard and hold in trust for the State of Nevada** all water and water rights, and all other rights, interests or benefits in and to the waters (of the Colorado River and tributaries), and to **the power generated** (on the Colorado River), held by or which may accrue to the State of Nevada under and by virtue of any Act of the Congress of the United States or any agreements, compacts or treaties to which the State of Nevada may become a party, or otherwise." Nevada Revised Statutes 538.171(1). (Emphasis Added.)

555 E. Washington Avenue, Suite 3100, Las Vegas, Nevada 89101-1065
Phone: (702) 486-2670
Fax: (702) 486-2695
http://crc.nv.gov

The CRC, on behalf of the State of Nevada, is today and has been an allottee or customer of the Boulder Canyon Project since the initial allocations in the 1930's under the Boulder Canyon Project Act of 1928 (Public Law No. 624, 70th Congress, December 21, 1928, Ch 42, Sec. 21, 45 Stat. 1066) (BCPA). The capacity and associated energy allocated to the CRC is, in turn, allocated to Nevada customers within the Boulder City Marketing Area (Marketing Area). The CRC submits these comments to Western in furtherance of its trust responsibilities under Nevada State law.

Under the Hoover Power Allocation Act of 2011 (HPAA), (H.R. 470, Public Law 112-72, 125 STAT 777, Dec. 20, 2011), the CRC has two primary responsibilities: (1) to assure that appropriate allocations to the CRC of capacity and associated energy under Schedules A, B and C continue to benefit the CRC, the State of Nevada, and the CRC's current Hoover power customers after October 1, 2017; and (2) to assure that the capacity and associated energy under the new Schedule D is fairly and properly implemented by Western and the CRC in the best interests of the State of Nevada.

The Boulder Canyon Project (BCP or Hoover) is distinct from other federal hydropower projects; Hoover has been primarily allocated and continues under the HPAA to be allocated by Congress, not by administrative processes of Western or its predecessor. The adoption of the HPAA by Congress did not give Western a green light to apply to Hoover power allocations its administratively established marketing criteria for other projects when those criteria are inconsistent with the directives of Congress. As will be discussed further below, the legislative history of the HPAA demonstrates that Congress asserts therein its rightful authority to directly allocate capacity and associated energy from Hoover Dam and to make all material policy judgments necessary to allow its directives to be fully implemented by Western.

The CRC's comments focus on the following:

1) Western may not, through its administrative processes, impose standards, requirements or limitations on potential new allottees which are inconsistent with or not authorized by federal law specific to the Boulder Canyon Project.
2) Western should establish a single priority within its marketing criteria for all BCPA Section 5 entities and federally recognized Native American Tribes (Tribes).
3) Absent direction from Congress, Western may not selectively implement elements of BCPA Section 5 to the disadvantage of the "States", i.e., Arizona, California, and Nevada.
4) Absent direction from Congress, Western may not impose an "electric utility status" priority or requirement on potential allottees, particularly when Congress declined to adopt a proposed amendment to HPAA seeking preference for full-service public power providers.

5) In establishing the 5% resource pool for new allottees in HPAA, Congress did not authorize Western to take actions that would result in the State of Nevada receiving less resources from the pool than it contributed to the pool.
6) Western's allocations of Hoover resources are governed by the HPAA and the BCPA and are ***not*** subject to the Preference Law concept in the 1939 Reclamation Act, so Western may not lawfully designate electric cooperatives as potential new allottees in its allocation process particularly when Congress was asked to include electric cooperatives in Western's 69 MW allocation process under the HPAA, and declined to do so.
7) Western should seek representative load data from applicants when available and allow applicants to supplement such load data with other information, including load aggregated load data, to support any request for an allocation as well as estimating loads where historical information is not available.
8) Western should not allocate access to the dynamic signal associated with Hoover power in such small increments as to be non-cost-effective.
9) Western should publish in a single document all of its criteria and regulations regarding or impacting BCP including the relevant portions of the 1984 marketing criteria as well as the material resulting from its actions on the June 14, 2012 and October 30, 2012 Federal Rules Notices.

DISCUSSION

1) Western may not, through its administrative processes, impose standards, requirements or limitations on potential new allottees which are inconsistent with or not authorized by federal law specific to the Boulder Canyon Project.

The CRC objects to provisions of Western's October 30, 2012 Federal Rules Notice which attempt to apply to the Hoover project the same marketing criteria that Western has applied to other federal hydropower projects. Hoover is unique among federal hydropower projects because the allocation of its hydropower resources has consistently been made directly by Act of Congress. Western does not have the legal authority to apply to Hoover power the same set of criteria and priorities that it applies to other hydropower projects which are not subject to direct allocation by Congress through project-specific legislation as is Hoover.

It is worthy of note that the 2011 Senate Committee Report on the original version of HPAA states that this legislation was needed because WAPA's administrative proposal included terms that are inconsistent with S. 519 (the Senate's 2011 version of HPAA), noting that "Existing contractors from Arizona, California, and Nevada have voiced objections to WAPA's proposed actions because the allocations are contrary to the allocations proposed in S. 519 and would otherwise circumvent the traditional role of Congress in allocating the power from Hoover Dam. S. 519 is needed to implement the agreement reached by the existing contractors". Western's proposed Marketing Criteria continue to be inconsistent with federal law, as Congressman Heck, the lead sponsor of HPAA in 2011, points out in the attached letter. (ATTACHMENT 1 — 2011

Senate Committee Report on S.519, page 2 and ATTACHMENT 2 – Congressman Heck Letter to Western January 2, 2013).

Additionally, the Congressional delegations from Arizona, California, and Nevada earlier made clear to Western in a separate letter that Congress, not Western, would make the policy determinations necessary to allocate Hoover Power beyond 2017. (ATTACHMENT 3 – Letter from Seven Senators to Tim Meeks dated May 24, 2011.)

2) Western should establish a single priority within its marketing criteria for all BCPA Section 5 entities and federally recognized Tribes.

The CRC led the efforts of the current Hoover customers to seek a legislative allocation of Hoover power beyond 2017 and specifically recommended to the current Hoover customers that a 5% pool be created for new allottees and that Tribes be identified in the legislation, for the first time, as eligible applicants for an allocation. While Nevada supports Tribes fully participating in this process to obtain the benefits of Hoover power, we must note that the HPAA does not give Tribes a higher right to Schedule D allocations of power resources than BCPA Section 5 entities. The CRC urges Western to change these priorities so all BCPA Section 5 entities and Tribes are treated with the same priority one status.

Since enactment of the BCPA, BCPA Section 5 entities have been *uniquely eligible* for Hoover power allocations. (ATTACHMENT 4.) The HPAA specified BCPA Section 5 entities and Tribes are eligible to receive Hoover power through Western, but did not give Tribes any higher priority than BCPA Section 5 entities to receive Hoover power. (See also discussion, below, in comment number 6 – electric cooperatives.)

3) Absent direction from Congress, Western may not selectively implement elements of BCPA Section 5 to the disadvantage of the "States", i.e., Arizona, California, and Nevada.

Nevada objects to the omission of the word "States" in any priority designed to include BCPA Section 5 entities. The BCPA states, in relevant part, that allocations must be made "to **States**, municipal corporations (or) political subdivisions..." (Emphasis Added.) Municipal corporations and local political subdivisions are entities created by the States; not the other way around. Congress spoke in 1928 and 2011. It is not within Western's prerogatives to establish sub-priorities which Congress chose not to establish. It is impermissible for Western to carve out "States" for a lower priority than *their own* municipal corporations or political subdivisions.

As noted under Section 3, above, several Nevada *State* agencies, including the Office of the Governor of Nevada, have expressed strong interest in seeking an allocation of Hoover power through Western. Any such application must be given the same priority in Western's final Marketing Criteria as all other BCPA Section 5 entities and Tribes as required by HPAA.

4) Absent direction from Congress, Western may not impose an "electric utility status" priority or requirement on potential allottees, particularly when Congress declined to adopt a proposed amendment to HPAA seeking preference for full-service public power providers.

Western may not apply an "electric utility status" requirement or priority to Hoover Schedule D allocations. The HPAA does not authorize an "electric utility status" requirement for entities eligible to receive an allocation of Hoover power in addition to the statutory requirements. The Imperial Irrigation District in California unsuccessfully sought an amendment to HPAA to give preference to all full-service public power providers. Congress declined to do so. The fact that such an amendment was sought demonstrates that Congress had the opportunity to address whether electric utility status should be a criterion for applicants, and Congress declined to adopt the proposed amendment. Western should not impose an eligibility priority or requirement which Congress declined to include in HPAA. (ATACHMENT 5 – Imperial Irrigation District Letter to Senator Dianne Feinstein dated April 28, 2010.)

Use of an electric utility status requirement would deny access to Hoover power through Western's Schedule D allocation process to Nevada applicants because virtually all of Nevada's public (i.e., Section 5) entities in the Marketing Area with electric utility status currently receive Hoover power, and hence would not be eligible to apply as new allottees. The remaining BCPA Section 5 entities within Nevada, without electric utility status, would similarly be denied the ability to seek an allocation as a new allottee, or have its application viewed in a much lower priority, if the "electric utility status" requirement is retained. The "electric utility status" requirement would effectively block almost all Nevada BCPA Section 5 entities in the Marketing Area the ability to seek to become a "new allottee", a result which is not consistent with Congressional intent in the HPAA.

Based on the CRC's initial outreach efforts, the CRC has identified the following Nevada-based BCPA Section 5 entities and Tribes within the Marketing Area which have expressed interest in seeking an application from Western; but we understand most do not satisfy an "electric utility status" requirement as contemplated by the proposed Marketing Criteria:

City of Henderson / Libraries
City of Las Vegas
City of North Las Vegas
Clark County
Moapa Band of Paiutes
Moapa Valley Water District
Nye County
State of Nevada / Office of the Governor / Energy Office

State of Nevada / Office of the Governor / Office of Economic Development
State of Nevada / Public Works & Nevada Prison System
White Pine County / Community and Economic Development

This is a representative but not exhaustive list of BCPA Section 5 entities in Nevada which, absent an "electric utility status" requirement, may seek to receive an allocation of Hoover power through the Western allocation process. Nothing in the language or history of the HPAA suggests Congress intended to effectively leave these types of Nevada governmental entities "out of the running" as potential new allottees. Congress did not authorize application of any requirement other than that the new allottees must be "new" allottees (thus not currently receiving allocations of Hoover power) who are either BCPA Section 5 entities or Tribes. Any further shrinking of the pool of potential Nevada-based new allottees by Western is not lawful.

5) In establishing the 5% resource pool for new allottees in the HPAA, Congress did not authorize Western to take actions that would result in the State of Nevada receiving less resources from the pool than it contributed to the pool.

Current Hoover customers "gave up" a portion of their allocations to create the Schedule D pool to provide an opportunity for entities not currently receiving hydropower resources from Hoover to be considered for an allocation beyond 2017; it was not intended to be a vehicle to reduce the portion of Hoover resources currently allocated to Nevada.

For Arizona and Nevada, which have never received a full 1/3 of the Hoover resources each as contemplated by federal law, any diminution of the total portion of Hoover resources allocated within their borders would be inappropriate. (See, ATTACHMENT 4.) The State of Nevada has not and does not waive its right to seek a full 1/3 of available Hoover resources in the future under BCPA Section 5(c).

6) Western's allocations of Hoover resources are governed by the HPAA and BCPA and are ***not*** subject to the Preference Law concept in the 1939 Reclamation Act, so Western may not lawfully designate electric cooperatives as potential new allottees in its allocation process particularly when Congress was asked to include electric cooperatives in Western's 69 MW allocation process under the HPAA and declined to do so.

The HPAA specifies the types of entities eligible to receive Hoover power allocations from Western. Efforts were made before the Congressional committees by representatives of electric cooperatives to include specific language addressing their ability to seek a Hoover allocation, including seeking an amendment to the bill. Those efforts to secure an amendment to HPAA addressing the electric cooperatives' desires were unsuccessful. It should be noted that nothing in the HPAA precludes an allocation to an electric cooperative from the 11.5 MW portion of the Schedule D resource to be allocated within each of the three states.

The BCPA in BCPA Section 5 lists the categories of eligible applicants. HPAA incorporates the list from BCPA Section 5 and added Tribes. Neither Act includes electric cooperatives in their list of eligible entities. Western's allocations of Hoover resources are governed by the HPAA and BCPA and are ***not*** subject to the Preference Law concept in the 1939 Reclamation Act which specifically addresses electric cooperatives in a manner not present in either the HPAA or the BCPA.

Western should not attempt through its administrative processes to establish a priority or preference for electric cooperatives when Congress declined to do so, when asked.

7) Western should seek representative load data from applicants when available and allow applicants to supplement such load data with other information, including load aggregated load data, to support any request for an allocation as well as estimating loads where historical information is not available.

Western should take care to assure any historic load data provided by applicants is representative of historic load levels over time, not just reflective of a single "window" of load data which may suggest a higher or lower load than is reasonable. Requesting load data over a number of years rather than a single calendar year would provide a more reliable basis for assessing the applicant's typical load. Further, applicants should be allowed to provide any other information which would assist Western in determining a typical load level for that applicant including possibly aggregating more than one load for purposes of supporting an application for an allocation.

8) Western should not allocate access to the dynamic signal associated with Hoover power in such small increments as to be non-cost-effective.

The CRC is concerned that should access to the dynamic signal associated with Hoover power be allocated to allottees with very small capacity and energy allocations, the overall cost-effectiveness of operating the BCP would be harmed and costs attributable to all customers would unnecessarily increase. Potentially permitting aggregation of smaller increments of the dynamic signal could address both a desire to allow access to the dynamic signal and the need to minimize adverse cost impacts on all Hoover customers.

9) Western should publish in a single document all of its criteria and regulations regarding or impacting BCP including the relevant portions of the 1984 marketing criteria as well as the material resulting from its actions on the June 14, 2012 and October 30, 2012 Federal Rules Notices.

In view of the fact that the marketing criteria approved in this proceeding are designed to be applied for up to the next 50 years, CRC requests that Western publish in a single document all of its criteria and regulations regarding or impacting BCP including the relevant portions of the 1984 marketing criteria as well as the material resulting from its actions on the June 14, 2012 and October 30, 2012 Federal Rules Notices. Publishing all relevant criteria and regulations in one place would provide clarity and ease of administration for Western, current and future Hoover customers, and other interested parties who will likely have need over the next 50 years to review those documents.

CONCLUSIONS:

Western must amend its proposed priorities and marketing criteria to reflect the applicable, Hoover-specific, unique statutory requirements. Western's administrative procedures cannot contravene or be inconsistent with a direct mandate of Congress - Western does not have the authority to exercise discretion when Congress gives Western an explicit direction regarding how an allocation should be performed.

More specifically, the CRC requests that Western:

1) Remove criteria, requirements, or limitations which are inconsistent with or not authorized by federal law specific to the Boulder Canyon Project (Hoover).
2) Assure that States, other BCPA Section 5 entities, and Tribes receive the same first priority or preference in the Marketing Criteria.
3) Assure that "States" are included in any provision which refers to or effectively implements BCPA Section 5 of the BCPA.
4) Remove any requirement that an applicant have "electric utility status".
5) Assure that Nevada's total allocations to current and new customers do not decline after all of its allocations are made.
6) Remove any designation of electric cooperatives as potential new allottees in Western's 69 MW BCP allocation process.
7) Assure that any historic load data provided by applicants is representative of historic load levels over time, not just reflective of a single "window" of time which may suggest a higher or lower load than is reasonable.
8) Avoid allocating the dynamic signal associated with Hoover power in very small, non-cost effective increments.
9) Publish in a single document all of its criteria and regulations regarding or impacting BCP including the relevant portions of the 1984 marketing criteria as well as the material resulting from its actions on the June 14, 2012 and October 30, 2012 Federal Rules Notices.

Thank you, again, for this opportunity to submit these Comments on behalf of the CRC and the State of Nevada. The CRC is willing to work with Western on the allocation of Hoover Power. Any questions concerning this submittal should be referred to Mr. Craig Pyper, Hydropower Program Manager, at (702) 486-2681 or cpyper@crc.nv.gov.

Respectfully submitted,

James D. Salo
Deputy Executive Director
(702) 486-2684 (direct line)
jsalo@crc.nv.gov

JDS/ja

Attachments (5)

LIST OF ATTACHMENTS TO COMMENTS OF
COLORADO RIVER COMMISSION OF NEVADA –
BCP POST-2017 RESOURCE POOL PROPOSED
MARKETING CRITERIA
SUBMITTED JANUARY 11, 2013

ATTACHMENT 1 - 2011 Senate Committee Report on S.519 (Emphasis Added)

ATTACHMENT 2 - Congressman Heck Letter to Western dated January 2, 2013

ATTACHMENT 3 - Letter from Seven Senators to Tim Meeks dated May 24, 2011

ATTACHMENT 4 - Boulder Canyon Project Act of 1928 (Emphasis Added)

ATTACHMENT 5 - Imperial Irrigation District Letter to Senator Dianne Feinstein dated April 28, 2010

Calendar No. 138

112TH CONGRESS *1st Session* | SENATE | REPORT 112–58

HOOVER POWER ALLOCATION ACT

AUGUST 30 (legislative day, AUGUST 2), 2011.—Ordered to be printed

Filed, under authority of the order of the Senate of August 2, 2011

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 519]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 519) to further allocate and expand the availability of hydroelectric power generated at Hoover Dam, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 8, line 21, strike "redesignated as" and insert "redesignated by".

2. On page 9, strike lines 4 and 5 and insert the following:

(A) by striking "any" each place it appears and inserting "each";

3. On page 9, line 14, strike "Subdivision E of the Criteria" and insert "Subdivision C of the Conformed Criteria".

4. On page 9, line 22, strike "redesignated as" and insert "redesignated by".

PURPOSE

The purpose of S. 519 is to further allocate and expand the availability of hydroelectric power generated at Hoover Dam.

BACKGROUND AND NEED

The Boulder Canyon Project Act of 1928 (Public Law 70–642) authorized the Secretary of the Interior, among other things, to con-

struct Hoover Dam and enter into contracts for the sale of power generated at the dam. In 1984, Congress enacted the Hoover Power Plant Act (Public Law 98–381) and, among other things, authorized the Secretary of Energy to allocate power produced at the dam. The 1984 act recognizes three categories of power allocations, referred to as Schedules A, B, and C.

"Schedule A" authorizes contracts to: Metropolitan Water District of Southern California; California cities of Los Angeles, Glendale, Pasadena, and Burbank; Southern California Edison Company; Arizona Power Authority; Colorado River Commission of Nevada; and the City of Boulder City, Nevada. These contractors represent the original contractors for power from Hoover Dam.

"Schedule B" authorizes contracts to: the southern California cities of Glendale, Pasadena, Burbank, Anaheim, Azusa, Banning, Colton, Riverside, and Vernon, as well as the States of Arizona and Nevada.

"Schedule C" allocates excess power production, if any, to the States of California, Arizona, and Nevada.

The current power contracts were signed in 1987, and will expire in 2017. The approximate percentage of power delivered to each state is: 23.4 percent to Nevada; 19 percent to Arizona; and 57.6 percent to California.

On November 20, 2009, the Western Area Power Administration (WAPA) published notice in the Federal Register of its intent to administratively allocate the power supply from Hoover Dam through its existing power marketing procedures. On April 27, 2011, WAPA issued another Federal Register notice of its administrative allocation proposal indicating that the proposal would take effect on May 27, 2011. Due to concerns from the existing contractors, WAPA has agreed to extend the effective date of its decision to December 13, 2011. WAPA's administrative proposal includes terms that are inconsistent with S. 519, including proposed contract terms of 30 years as opposed to 50 years. Existing contractors from Arizona, California, and Nevada have voiced objections to WAPA's proposed actions because the allocations are contrary to the allocations proposed in S. 519 and would otherwise circumvent the traditional role of Congress in allocating the power from Hoover Dam. S. 519 is needed to implement the agreement reached by the existing contractors.

S. 519 allocates hydroelectric power generated at Hoover Dam to current power customers in Arizona, Nevada, and California in accordance with revised Schedules A, B, and C and creates a new pool of "Schedule D" power to be allocated to Indian tribes and other new entities. Two-thirds of the Scheduled D pool will be allocated in accordance with procedures developed by the Western Area Power Administration and the remaining one-third will be allocated in equal shares by the Arizona Power Authority for new contractors in Arizona, the Colorado River Commission of Nevada for new contractors in Nevada, and the Western Area Power Administration for new contractors in California.

LEGISLATIVE HISTORY

Senator Reid introduced S. 519 on March 9, 2011. The bill is cosponsored by Senators Boxer, Ensign, Feinstein, and Heller. The Subcommittee on Water and Power of the Committee on Energy

and Natural Resources held a hearing on S. 519 on May 19, 2011, and considered the bill and adopted technical amendments to the bill at its business meeting on July 14, 2011. The Committee ordered S. 519 favorably reported, as amended, at its business meeting on July 14, 2011.

During the 111th Congress, the Committee considered similar legislation, S. 2891, sponsored by Senator Reid. The Subcommittee on Water and Power held a hearing on H.R. 4349 and S. 2891 on June 9, 2010 (S. Hrg. 111–707) and the Committee ordered H.R. 4349 favorably reported without amendment on July 21, 2010 (S. Rpt. 111–329). A companion measure H.R. 4349, sponsored by Representative Napolitano, passed the House of Representatives by voice vote on June 8, 2010.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on July 14, 2011, by voice vote of a quorum present, recommends that the Senate pass S. 519, as amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 519, the Committee adopted four technical amendments to the bill.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title for the bill.

Subsection 2(a–c) amends section 105(a)(1) of the Hoover Power Plant Act of 1984 (43 U.S.C. 619a) (Hoover Power Act) by specifying that the new contracts for the allocation of power as provided in Schedules A, B, and C shall commence on October 1, 2017. Section 2 also designates specific, revised allocations to the existing contractors and States.

Subsection (d) amends section 105(a) of the Hoover Power Act by adding a new subsection that establishes a new contingent capacity and firm energy pool designated as Schedule D for delivery beginning on October 1, 2017. Section 2(d) also specifies that the Western Area Power Administration (Western) shall allocate 66.7 percent of the Schedule D contingent capacity and firm energy to new entities or Indian tribes within 36 months of enactment of this Act. Within 1 year of enactment, the Secretary of Energy shall make 33.3 percent of the Schedule D contingent capacity and firm energy in equal allocations, available for delivery commencing October 1, 2017 to the Arizona Power Authority for new allottees in the State of Arizona; the Colorado River Commission of Nevada for new allottees in the State of Nevada; and Western for new allottees with the State of California, provided that Western shall have thirty-six months to complete such allocation. New Schedule D contractors must execute the Boulder Canyon Project Implementation Agreement. Contracts must also include a provision requiring new contractors to pay a proportionate share of their State's contribution to the cost of the Lower Colorado River Multi-Species Conservation Program. Any of the 66.7 percent of the Schedule D contingent capacity and firm energy that is not allocated and placed under contract by October 1, 2017 will be returned in the same pro-

portion to the contractors in Schedule A and Schedule B. Any of the 33.3 percent of Schedule D contingent capacity and firm energy that is to be distributed within the States of Arizona, Nevada, and California that is not allocated and placed under contract by October 1, 2017, shall be returned to the Schedule A and Schedule B contractors within the State in which the Schedule D contingent capacity and firm energy were to be distributed.

Subsections (e–f) make technical and conforming changes to the Hoover Power Act.

Subsection (g) amends the Hoover Power Act to specify the expiration date for the new allocation contracts as September 30, 2067. Western is also authorized and required to collect a pro rata share of Hoover Dam repayable advances from new allottees prior to October 1, 2017. Further, transactions with an independent system operator are permitted.

Subsection (h) amends section 105(b) of the Hoover Power Act to change the year "2017" to "2067".

Subsection (i) amends section 105(c) of the Hoover Power Act to specify the procedures the Secretary of Energy is to follow in order to make available the contingent capacity and firm energy if an existing contractor fails to accept an offered contract.

Subsection (j) amends the Hoover Power Act by stating that the obligation of the Secretary of Energy to deliver contingent capacity and firm energy is subject to the availability of the water needed to produce the contingent capacity and firm energy.

Subsection (k) repeals sections 105(e) and 105(f) of the Hoover Power Act.

Subsection (l) provides for continued congressional oversight regarding the terms and conditions of the governing contracts for power generated at Hoover Dam until September 30, 2067.

Subsections (m–n) make conforming changes to the Hoover Power Act.

Section 3 sets forth the requirements for compliance with the Statutory Pay-As-You-Go Act of 2010.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

S. 519—Hoover Power Allocation Act of 2011

S. 519 would update the statutory allocation of electric power generated at the Hoover Dam among various users. The current allocation expires at the end of fiscal year 2017. The legislation would increase the amount of electricity to be marketed by the Western Area Power Administration (WAPA) and would allocate much of the dam's currently unallocated electricity to Native American tribes and other entities. The revised allocations would remain in effect from 2017 through 2067.

Enacting S. 519 would affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effects would be insignificant for each year. In the absence of this legislation, CBO expects that WAPA would allocate the electricity from Hoover Dam by regulation. We estimate that any differences between the electricity allocation under S. 519 and the allocations developed under such regulations would have a negligible effect on

offsetting receipts (a credit against direct spending) from electricity sales because the agency is required by law to keep electric rates as low as possible while recovering all costs of generation and marketing over time. CBO also estimates that implementing the bill would have no significant impact on WAPA's administrative costs, which are funded by appropriations and offset by proceeds from the sale of electricity. Enacting this bill would not affect revenues.

S. 519 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On June 20, 2011, CBO transmitted a cost estimate for H.R. 470, the Hoover Power Allocation Act of 2011, as ordered reported by the House Committee on Natural Resources on June 15, 2011. The two pieces of legislation are similar, and CBO cost estimates are the same.

The CBO staff contact for this estimate is Kathleen Gramp. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 519.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 519, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 519, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of Energy, at the May 19, 2011, Subcommittee on Water and Power hearing on S. 519 follows:

STATEMENT OF DARRICK MOE, REGIONAL MANAGER OF THE DESERT SOUTHWEST REGION, WESTERN AREA POWER ADMINISTRATION, DEPARTMENT OF ENERGY

Madam Chairwoman and members of the Subcommittee, I am Darrick Moe, Regional Manager of the Desert Southwest Region, speaking on behalf of Timothy J. Meeks, the Administrator of the Department of Energy's Western Area Power Administration (Western). I am pleased to be here today to discuss S. 519, the Hoover Power Allocation Act of 2011. This legislation seeks to amend the Hoover Power Plant Act of 1984. The legislation proposes revised

allocations of the generation capacity and energy from the Hoover Dam power plant, a feature of the Boulder Canyon Project (BCP), after the existing contracts expire on September 30, 2017.

Western's mission is to market and deliver reliable, renewable, cost-based hydroelectric power from facilities such as Hoover Dam. Hoover Dam was authorized and constructed in accordance with the Boulder Canyon Project Act of 1928. Pursuant to this Act, the Secretary of the Interior was authorized to contract for the sale of generation based upon general regulations as he may prescribe. Subsequent power sales contracts were executed that committed Hoover power through May 31, 1987. With the passage of the Hoover Power Plant Act of 1984, Congress authorized the Secretary of the Interior to implement an uprating program, which increased the generation capacity of the Hoover Dam facilities, to make additional facility modifications, and to resolve issues over the disposition of Hoover power, post-1987. Western proceeded to market Hoover Dam power and entered into 30-year term contracts with the current Hoover contractors in accordance with the Hoover Power Plant Act of 1984, and Western's Conformed General Consolidated Power Marketing Criteria. This process resulted in the allocation of 1,951 megawatts of contingent capacity with an associated 4,527,001 megawatt-hours of firm energy. Contingent capacity is capacity that is available on an as-available basis, while the firm energy entails Western's assurance to deliver.

The Hoover power plant is a significant Federal hydroelectric power resource in the Desert Southwest with a maximum rated capacity of 2,074 megawatts. Under existing Federal law and policy, Western markets Hoover power at cost. Hoover power is hydropower and is considered "clean energy" with a minimal carbon footprint. The Hoover Dam power plant is able to ramp up and down rapidly and is used by contractors for various power-related ancillary services. For these reasons, Hoover power is an extremely valuable resource for power contractors in the southwestern United States.

The existing power sales contracts between Western and the contractors will expire on September 30, 2017. As this expiration date becomes more prominent on the planning horizon, efforts have progressed among both Federal and non-Federal sectors to determine the allocation of Hoover Dam power after 2017.

In accordance with policy and existing Federal law, Western's post-2017 power allocation effort comprises a series of proposals introduced to the public through public information forums and public comment forums. Western makes policy decisions only after all interested parties have been provided ample opportunity to be engaged in the process and public input has been carefully considered to develop new Hoover Dam allocations that are in the

public's best interest and provide widespread use of this Federal resource.

Western's public process to allocate Hoover Dam electricity was initiated on November 20, 2009, in a *Federal Register* notice that proposed several key aspects of the allocating effort. Among other things, this *Federal Register* notice proposed the application of Western's Power Marketing Initiative (PMI) developed under the Energy Planning and Management Program (EPAMP), the extension of a major percentage of the marketable resource to existing contractors, reservation of an approximate 5% resource pool to be allocated to eligible contractors, and provision of 30-year contract terms. Western conducted three public information forums from December 1–3, 2009. These public information forums were well attended by current customers and interested parties, including Native American tribes, and engaged the attendees through question and answer sessions. Public comment forums were held from January 19–21, 2010. All interested parties were provided an opportunity to submit comments related to Western's proposals contained in the November 20, 2009 *Federal Register* notice. After considering comments received, in an April 16, 2010 *Federal Register* notice, Western extended the comment period from January 29, 2010, to September 30, 2010. This extension provided interested parties additional time to submit comments and allowed Western to consult with tribes to inform them of the remarketing process.

After considering comments received, Western announced in an April 27, 2011 *Federal Register* notice its decision to apply its EPAMP PMI to the BCP remarketing effort. The PMI has been applied to all of Western's remarketing efforts since it was announced as a final rule in 1995 following a four-year public process. Application of the PMI to the BCP expressly protects and reserves a major portion of the existing customers' allocations while also providing potential customers, such as tribal governments and other eligible customers, an opportunity to acquire an allocation. The PMI has historically provided a balancing of the needs of the existing customers with those of prospective customers. Western also decided on a 30-year contract term to achieve a balance between resource certainty and providing for an allocation opportunity for future customers at an appropriate time. Finally, Western also made additional proposals and is seeking further comments on the amount of marketable contingent capacity and firm energy, the size of the resource pool to be created for new customers, and excess energy provisions. As described in the *Federal Register* notice, a public information and comment forum was established for all interested parties to provide written and oral comments on these proposals. The comment period for these proposals was initially set to close June 16, 2011.

Western is currently in the process of publishing a *Federal Register* notice that will extend the close of the com-

ment period established in the April 27, 2011 notice to September 1, 2011. This *Federal Register* notice will also extend the effective date of the decisions announced in the April 27, 2011 notice to December 31, 2011. Western is also rescheduling the public information and comment forums for later this year. This extension provides additional time for on-going legislative activities, as well as additional opportunity for interested parties, including Native American Tribes, to consult with Western and comment on the proposals.

There are numerous steps ahead in the administrative process. Western currently projects that this process will be completed with finalized contracts in the spring of 2015. It is important that the process be finalized well in advance of 2017 to provide customers the time to balance their energy portfolios and make required transmission arrangements, and to allow related state agencies time to carry out their allocations process.

Western has reviewed S. 519. There are several similarities between the draft legislation and Western's proposals, and there are some departures. To provide background that may be useful to the Subcommittee members as this bill is considered, I'll address some of these differences in my comments.

All of Western's allocation efforts are open to public participation and conducted in accordance with the Administrative Procedure Act. At each stage of the process, Western proposes actions and/or policy to be considered and is open for public comment and input. Western believes soliciting and integrating public input into policy decisions allows Western to develop results that are in the public's best interest and lead to the most widespread use of this resource.

Western has 15 current contractors who receive an allocation of Hoover power. Two of those existing contractors are the Colorado River Commission (CRC) and the Arizona Power Authority (APA). CRC and APA sub-allocate their Hoover power to customers under prescribed guidelines and regulations. Both S. 519 and Western's administrative effort propose an amount of resource to be allocated to new customers, including Native American Tribes. S. 519 proposes certain quantities to be allocated to APA and CRC for their disposition to new customers. While it is anticipated that new customers to APA and CRC could result from this effort, Western's process affords the opportunity to fully seek public input and assures all interested parties are considered in the power's disposition.

Western has received numerous written comments and statements from Native American tribes expressing concern that their interests have not yet been fully vetted and considered. In recent years, tribes have been active in Western's remarketing efforts, and one goal of Western's Strategic Plan is to seek partnerships with tribes on numerous initiatives. I believe that soliciting input from tribes and other entities that do not already have an allo-

cation of Hoover power is in the public interest. Western has reached out to tribes specifically in this remarketing effort through letters, phone calls, meetings, site visits, and consultations.

S. 519 would direct that Hoover's full maximum rating of 2,074 megawatts of capacity be allocated to Hoover customers in a multi-faceted approach. As described in Western's April 27, 2011 Federal Register notice, we propose to market 2,044 megawatts of contingent capacity; 30 megawatts below the maximum rating. Retention of project capacity to support the reliability of the Federal electric system is relatively common among the Power Marketing Administrations. Western is currently able to utilize Hoover Dam capacity that is available in excess of 1,951 megawatts. The preservation of 30 megawatts of contingent Hoover Dam capacity for use by Western for project integration purposes should provide the tools we need to meet our mission and statutory requirement of delivering reliable Federal hydro-generation. Western manages multiple federally owned generation and transmission projects in the Desert Southwest on a minute-by-minute basis 24 hours a day. While these projects are financially segregated, they are operated as an integrated system. This 30-megawatt capacity to be held by the Federal Government would provide significant benefit to the operation of the integrated projects and the Western Area Lower Colorado balancing authority that Western operates. Retaining 30 megawatts would also likely allow our Hoover Dam power customers to experience cost-neutral conditions. Should Western be unable to retain approximately 30 megawatts, we would expect to procure replacement power from the market at a higher cost, if it is available. These higher costs would in turn need to be passed through to Western customers in the form of higher rates.

S. 519 expressly requires that each contract offered to a new allottee for Hoover Dam power should require the new allottee to execute the Boulder Canyon Project Implementation Agreement. Western finds significant value in the provisions and results of the Implementation Agreement. However, this agreement was jointly constructed between Western and our customers for unique circumstances that existed in 1994. Should this requirement be retained, the current Implementation Agreement would need to be evaluated and potentially revised to accommodate current conditions. We support the universal benefits achieved by the Implementation Agreement and will work with our customers to determine the appropriate documentation to meet all of our customers' needs; both current and future.

S. 519 expressly requires that each contract offered to a new allottee for Hoover Dam power includes a provision requiring the new allottee to pay a proportional share of its State's funding contribution for the Lower Colorado River Multi-Species Conservation Program, known as the LCR MSCP. The LCR MSCP is a 50-year, multi-stakeholder, Federal and non-Federal partnership, responding

to the need to balance the use of lower Colorado River water resources and the conservation of native species and their habitats in compliance with the Endangered Species Act (ESA). The LCR MSCP is a comprehensive approach to species protection developed after nearly a decade of work. This program is funded on a cost-share basis comprised of 50-percent Federal and 50-percent non-Federal. The states of Arizona, California and Nevada have worked internally with water and power customers to fund each state's respective share. S. 519 recognizes these funding requirements and obligates new power customers to contribute to this funding in a proportional manner. Supporters of S. 519 note that the 50-year obligation of the LCR MSCP is, in part, reason to proceed with 50-year Hoover power supply contracts. Western continues to review the LCR MSCP requirements in our administrative process. However, Western's position is that the 50-year LCR MSCP term need not coincide with the Hoover Dam power sales contracts' term. The adoption of a 50-year contract term, as opposed to Western's decision to apply 30-year contract terms, could potentially exclude evolving classes of customers in decades to come. The modern day electrical industry is dynamic in its regulations, technologies, operations and participants. Western notes that we currently provide Federal hydropower allocations to 87 federally recognized Native American tribes. Many of these tribal customers are new to Western in the last 20 years. The landscape of potential customers in decades to come has the capability to yield new Hoover customers, as we strive to meet the needs of all our customers; existing and future.

As drafted, S. 519 states that Subdivision E of the General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects published in the Federal Register on December 28, 1984, (Criteria) shall be deemed to have been modified to conform to this legislation. Western would like to refine this statement as Western's December 28, 1984, Federal Register notice is more precisely titled *Conformed* General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Conformed Criteria). Western published the Criteria on May 9, 1983, which was in need of conformance per the Hoover Power Plant Act of 1984. Pursuant to the Hoover Power Plant Act of 1984, Western conformed the 1983 Criteria in its December 28, 1984, Federal Register notice. In doing so, the pertinent section is now Subdivision C of the Conformed Criteria. If S. 519 is to move forward, edits would be needed to refer to Subdivision C Western's Conformed Criteria and not Subdivision E of the Criteria.

Western respectfully recognizes that our administrative process is not the exclusive means of allocating Hoover power. I would welcome the opportunity to work with this Subcommittee to address the technical concerns I have raised and to ensure the widespread use of this valuable resource as work continues on this legislation. In the ab-

sence of congressional action, Western will uphold our authority and responsibility to market Hoover power consistent with historical statutes and in concert with the rules and regulations as the Secretary of Energy prescribes.

This concludes my prepared remarks and I would be pleased to answer any questions you or members of the Subcommittee might have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill H.R. 4349, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE HOOVER POWER PLANT ACT OF 1984

Public Law 98–381, as Amended

AN ACT To authorize the Secretary of the Interior to construct, operate, and maintain certain facilities at Hoover Dam, and for other purposes.

* * * * * * *

TITLE I

* * * * * * *

SEC. 105. (a)(1) The Secretary of Energy shall offer:

(A) To each contractor for power generated at Hoover Dam a [renewal] contract for delivery commencing [June 1, 1987] *October 1, 2017,* of the amount of capacity and firm energy specified for that contractor in the following table:

[SCHEDULE A

Long Term Contingent Capacity and Associated Firm Energy Reserved for Renewal Contract Offers to Current Boulder Canyon Project Contractors

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Metropolitan Water District of Southern California	247,500	904,382	387,592	1,291,974
City of Los Angeles	490,875	488,535	209,658	698,193
Southern California Edison Company	277,500	175,486	75,208	260,694
City of Glendale	18,000	47,398	20,313	67,711
City of Pasadena	11,000	40,655	17,424	58,079
City of Burbank	5,125	14,811	6,347	21,158
Arizona Power Authority	189,000	452,192	193,797	645,989
Colorado River Commission of Nevada	189,000	452,192	193,797	645,989
United States, for Boulder City	20,000	56,000	24,000	80,000

[SCHEDULE A—Continued

Long Term Contingent Capacity and Associated Firm Energy Reserved for Renewal Contract Offers to Current Boulder Canyon Project Contractors

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Totals	1,448,000	2,631,651	1,128,136	3,759,787]

Schedule A

Long-term Schedule A contingent capacity and associated firm energy for offers of contracts to Boulder Canyon project contractors

Contractor	*Contingent capacity (kW)*	*Firm energy (thousands of kWh)*		
		Summer	*Winter*	*Total*
Metropolitan Water District of Southern California	*249,948*	*859,163*	*368,212*	*1,227,375*
City of Los Angeles	*495,732*	*464,108*	*199,175*	*663,283*
Southern California Edison Company	*280,245*	*166,712*	*71,448*	*238,160*
City of Glendale	*18,178*	*45,028*	*19,297*	*64,325*
City of Pasadena	*11,108*	*38,622*	*16,553*	*55,175*
City of Burbank	*5,176*	*14,070*	*6,030*	*20,100*
Arizona Power Authority	*190,869*	*429,582*	*184,107*	*613,689*
Colorado River Commission of Nevada	*190,869*	*429,582*	*184,107*	*613,689*
United States, for Boulder City	*20,198*	*53,200*	*22,800*	*76,000*
Totals	*1,462,323*	*2,500,067*	*1,071,729*	*3,571,796*

[(B) To purchasers in the States of Arizona, Nevada and California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act, contracts for delivery commencing June 1, 1987, or as it thereafter becomes available, of capacity resulting from the uprating program and for delivery commencing June 1, 1987, of associated firm energy as specified in the following table:

[Schedule B

Contingent Capacity Resulting From the Uprating Program and Associated Firm Energy

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Arizona	188,000	148,000	64,000	212,000
California	127,000	99,850	43,364	143,214
Nevada	188,000	288,000	124,000	412,000
Totals	503,000	535,850	231,364	767,214

Provided, however, That in the case of Arizona and Nevada, such contracts shall be offered to the Arizona Power Authority and the Colorado River Commission of Nevada, respectively, as the agency specified by State law as the agent of such State for purchasing power from the Boulder Canyon project: *Provided further*, That in the case of California, no such contract under this subparagraph (B) shall be offered to any purchaser who is offered a contract for capacity exceeding 20,000 kilowatts under subparagraph (A) of this paragraph.]

(B) To each existing contractor for power generated at Hoover Dam, a contract, for delivery commencing October 1, 2017, of the amount of contingent capacity and firm energy specified for that contractor in the following table:

Schedule B

Long-term Schedule B contingent capacity and associated firm energy for offers of contracts to Boulder Canyon project contractors

Contractor	*Contingent capacity (kW)*	*Firm energy (thousands of kWh)*		
		Summer	*Winter*	*Total*
City of Glendale	*2,020*	*2,749*	*1,194*	*3,943*
City of Pasadena	*9,089*	*2,399*	*1,041*	*3,440*
City of Burbank	*15,149*	*3,604*	*1,566*	*5,170*
City of Anaheim	*40,396*	*34,442*	*14,958*	*49,400*
City of Azusa	*4,039*	*3,312*	*1,438*	*4,750*
City of Banning	*2,020*	*1,324*	*576*	*1,900*
City of Colton	*3,030*	*2,650*	*1,150*	*3,800*
City of Riverside	*30,296*	*25,831*	*11,219*	*37,050*
City of Vernon	*22,218*	*18,546*	*8,054*	*26,600*
Arizona	*189,860*	*140,600*	*60,800*	*201,400*
Nevada	*189,860*	*273,600*	*117,800*	*391,400*
Totals	*507,977*	*509,057*	*219,796*	*728,853*

(C) To the Arizona Power Authority and the Colorado River Commission of Nevada and to purchasers in the State of California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act, contracts for delivery commencing [June 1, 1987] *October 1, 2017*, of such energy generated at Hoover Dam as is available respectively to the States of Arizona, Nevada, and California in excess of 4,501.001 million kilowatthours in any year of operation (hereinafter called excess energy) in accordance with the following table:

[SCHEDULE C

Excess Energy

Priority of entitlement to excess energy	State
First: Meeting Arizona's first priority right to delivery of excess energy which is equal in each year of operation to 200 million kilowatthours: *Provided, however* That in the event excess energy in the amount of 200 million kilowatthours is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kilowatthours, inclusive of the current year's 200 million kilowatthours. Said first right of delivery shall accrue at a rate of 200 million kilowatthours per year for each year excess energy in an amount of 200 million kilowatthours is not generated, less amounts of excess energy delivered.	Arizona
Second: Meeting Hoover Dam contractual obligations under Schedule A of subsection 105(a)(1)(A) and under Schedule B of subsection 105(a)(1)(B) not exceeding 26 million kilowatthours in each year of operation.	
Third: Meeting the energy requirements of the three States, such available excess energy to be divided equally among the States.	Arizona, Nevada, and California]

Schedule C

Excess Energy

Priority of entitlement to excess energy	*State*
First: Meeting Arizona's first priority right to delivery of excess energy which is equal in each year of operation to 200 million kilowatthours: Provided, That in the event excess energy in the amount of 200 million kilowatthours is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kilowatthours, inclusive of the current year's 200 million kilowatthours. Said first right of delivery shall accrue at a rate of 200 million kilowatthours per year for each year excess energy in an amount of 200 million kilowatthours is not generated, less amounts of excess energy delivered.	*Arizona*
Second: Meeting Hoover Dam contractual obligations under Schedule A of subsection (a)(1)(A), under Schedule B of subsection (a)(1)(B), and under Schedule D of subsection (a)(2), not exceeding 26 million kilowatthours in each year of operation.	*Arizona, Nevada, and California*
Third: Meeting the energy requirements of the three States, such available excess energy to be divided equally among the States.	*Arizona, Nevada, and California*

(2)(A) The Secretary of Energy is authorized to and shall create from the apportioned allocation of contingent capacity and firm energy adjusted from the amounts authorized in this Act in 1984 to

the amounts shown in Schedule A and Schedule B, as modified by the Hoover Power Allocation Act of 2011, a resource pool equal to 5 percent of the full rated capacity of 2,074,000 kilowatts, and associated firm energy, as shown in Schedule D (referred to in this section as "Schedule D contingent capacity and firm energy"):

Schedule D

Long-term Schedule D resource pool of contingent capacity and associated firm energy for new allottees

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
New Entities Allocated by the Secretary of Energy	69,170	105,637	45,376	151,013
New Entities Allocated by State				
Arizona	11,510	17,580	7,533	25,113
California	11,510	17,580	7,533	25,113
Nevada	11,510	17,580	7,533	25,113
Totals	103,700	158,377	67,975	226,352

(B) The Secretary of Energy shall offer Schedule D contingency capacity and firm energy to entities not receiving contingent capacity and firm energy under subparagraphs (A) and (B) of paragraph (1) (referred to in this section as "new allottees") for delivery commencing October 1, 2017 pursuant to this subsection. In this subsection, the term "the marketing area for the Boulder City Area Projects" shall have the same meaning as in appendix A of the General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects published in the Federal Register on December 28, 1984 (49 Federal Register 50582 et seq.) (referred to in this section as the "Criteria").

(C)(i) Within 36 months of the date of enactment of the Hoover Power Allocation Act of 2011, the Secretary of Energy shall allocate through the Western Area Power Administration (referred to in this section as "Western"), for delivery commencing October 1, 2017, for use in the marketing area for the Boulder City Area Projects 66.7 percent of the Schedule D contingent capacity and firm energy to new allottees that are located within the marketing area for the Boulder City Area Projects and that are—

(I) eligible to enter into contracts under section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d); or

(II) federally recognized Indian tribes.

(ii) In the case of Arizona and Nevada, Schedule D contingent capacity and firm energy for new allottees other than federally recognized Indian tribes shall be offered through the Arizona Power Authority and the Colorado River Commission of Nevada, respectively. Schedule D contingent capacity and firm energy allocated to federally recognized Indian tribes shall be contracted for directly with Western.

(D) Within 1 year of the date of enactment of the Hoover Power Allocation Act of 2011, the Secretary of Energy also shall allocate, for delivery commencing October 1, 2017, for use in the marketing

area for the Boulder City Area Projects 11.1 percent of the Schedule D contingent capacity and firm energy to each of—

(i) the Arizona Power Authority for allocation to new allottees in the State of Arizona;

(ii) the Colorado River Commission of Nevada for allocation to new allottees in the State of Nevada; and

(iii) Western for allocation to new allottees within the State of California, provided that Western shall have 36 months to complete such allocation.

(E) Each contract offered pursuant to this subsection shall include a provision requiring the new allottee to pay a proportionate share of its State's respective contribution (determined in accordance with each State's applicable funding agreement) to the cost of the Lower Colorado River Multi-Species Conservation Program (as defined in section 9401 of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1327)), and to execute the Boulder Canyon Project Implementation Agreement Contract No. 95–PAO–10616 (referred to in this section as the "Implementation Agreement").

(F) Any of the 66.7 percent of Schedule D contingent capacity and firm energy that is to be allocated by Western that is not allocated and placed under contract by October 1, 2017, shall be returned to those contractors shown in Schedule A and Schedule B in the same proportion as those contractors' allocations of Schedule A and Schedule B contingent capacity and firm energy. Any of the 33.3 percent of Schedule D contingent capacity and firm energy that is to be distributed within the States of Arizona, Nevada, and California that is not allocated and placed under contract by October 1, 2017, shall be returned to the Schedule A and Schedule B contractors within the State in which the Schedule D contingent capacity and firm energy were to be distributed, in the same proportion as those contractors' allocations of Schedule A and Schedule B contingent capacity and firm energy.

[(2)**]** *(3)* The total obligation of the Secretary of Energy to deliver firm energy pursuant to **[**schedule A of section 105(a)(1)(A) and schedule B of section 105(a)(1)(B)**]** *paragraphs (1)(A), (1)(B), and (2)* is 4,527.001 million kilowatthours in each year of operation. To the extent that the actual generation at Hoover Powerplant in **[**any**]** *each* year of operation (less deliveries thereof to Arizona required by its first priority under **[**schedule C**]** *Schedule C* of section 105(a)(1)(C) whenever actual generation in **[**any**]** *each* year of operation is in excess of 4,501.001 million kilowatthours is less than 4,527.001 million kilowatthours, such deficiency shall be borne by the holders of contracts under said **[**schedules A and B**]** *Schedules A, B, and D* in the ratio that the sum of the quantities of firm energy to which each contractor is entitled pursuant to said schedules bears to 4,527.001 million kilowatthours. At the request of any such contractor, the Secretary of Energy will purchase energy to meet that contractor's deficiency at such contractor's expense.

[(3) Subdivision E of the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" published in the Federal Register May 9, 1983 (48 Federal Register commencing at 20881), hereinafter referred to as the "Criteria" or as the "Regulations" shall be deemed to have been modified to con-

form to this section. The Secretary of Energy shall cause to be included in the Federal Register a notice conforming the text of said Regulations to such modifications.]

(4) Subdivision C of the Conformed Criteria shall be deemed to have been modified to conform to this section, as modified by the Hoover Power Allocation Act of 2011. The Secretary of Energy shall cause to be included in the Federal Register a notice conforming the text of the regulations to such modifications.

[(4)] *(5)* Each contract offered under subsection (a)(1) of this section shall:

[(A) expire September 30, 2017;]

(A) in accordance with section 5(a) of the Boulder Canyon Project Act (43 U.S.C. 617d(a)), expire September 30, 2067;

(B) not restrict use to which the capacity and energy contracted for by the Metropolitan Water District of Southern California may be placed within the State of California: *Provided,* That to the extent practicable and consistent with sound water management and conservation practice, the Metropolitan Water District of Southern California [shall use] *shall allocate* such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State water project water; [and]

(C) conform to the applicable provisions of subdivision E of the Criteria, commencing at 48 Federal Register 20881, modified as provided in this section. To the extent that said provisions of the Criteria, as so modified, are applicable to contracts entered into under this section, those provisions are hereby ratified[.];

(D) authorize and require Western to collect from new allottees a pro rata share of Hoover Dam repayable advances paid for by contractors prior to October 1, 2017, and remit such amounts to the contractors that paid such advances in proportion to the amounts paid by such contractors as specified in section 6.4 of the Implementation Agreement;

(E) permit transactions with an independent system operator; and

(F) contain the same material terms included in section 5.6 of those long-term contracts for purchases from the Hoover Power Plant that were made in accordance with this Act and are in existence on the date of enactment of the Hoover Power Allocation Act of 2011.

(b) Nothing in the Criteria shall be construed to prejudice any rights conferred by the Boulder Canyon Project Act, as amended and supplemented, on the holder of a contract described in subsection (a) of this section not in default thereunder on September 30, [2017] *2067.*

[(c)(1) The Secretary of Energy shall not execute a contract described in subsection (a)(1)(A) of this section with any entity which is a party to the action entitled the "State of Nevada, et al. against the United States of America, et al." in the United States District Court for the District of Nevada, case numbered CV LV '82 441 RDF, unless that entity agrees to file in that action a stipulation for voluntary dismissal with prejudice of its claims, or counterclaims, or crossclaims, as the case may be, and also agrees to file with the Secretary a document releasing the United States, its offi-

cers and agents, and all other parties to that action who join in that stipulation from any claims arising out of the disposition under this section of capacity and energy from the Boulder Canyon project. The Attorney General shall join on behalf of the United States, its officers and agents, in any such voluntary dismissal and shall have the authority to approve on behalf of the United States the form of each release.

[(2) If after a reasonable period of time as determined by the Secretary, the Secretary is precluded from executing a contract with an entity by reason of paragraph (1) of this subsection, the Secretary shall offer the capacity and energy thus available to other entities in the same State eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act.

[(d) The uprating program authorized under section 101(a) of this Act shall be undertaken with funds advanced under contracts made with the Secretary of the Interior by non-Federal purchasers described in subsection (a)(1)(B) of this section. Funding provided by non-Federal purchasers shall be advanced to the Secretary of the Interior pursuant to the terms and conditions of such contracts.]

(c) OFFER OF CONTRACT TO OTHER ENTITIES.—If any existing contractor fails to accept an offered contract, the Secretary of Energy shall offer the contingent capacity and firm energy thus available first to other entities in the same State listed in Schedule A and Schedule B, second to other entities listed in Schedule A and Schedule B, third to other entities in the same State which receive contingent capacity and firm energy under subsection (a)(2) of this section, and last to other entities which receive contingent capacity and firm energy under subsection (a)(2) of this section.

(d) WATER AVAILABILITY.—Except with respect to energy purchased at the request of an allottee pursuant to subsection (a)(3), the obligation of the Secretary of Energy to deliver contingent capacity and firm energy pursuant to contracts entered into pursuant to this section shall be subject to availability of the water needed to produce such contingent capacity and firm energy. In the event that water is not available to produce the contingent capacity and firm energy set forth in Schedule A, Schedule B, and Schedule D, the Secretary of Energy shall adjust the contingent capacity and firm energy offered under those Schedules in the same proportion as those contractors' allocations of Schedule A, Schedule B, and Schedule D contingent capacity and firm energy bears to the full rated contingent capacity and firm energy obligations.

[(e) Notwithstanding any other provisions of the law, funds advanced by non-Federal purchasers for use in the uprating program shall be deposited in the Colorado River Dam Fund and shall be available for the uprating program.

[(f) Those amounts advanced by non-Federal purchasers shall be financially integrated as capital costs with other project costs for rate-setting purposes, and shall be returned to those purchasers advancing funds throughout the contract period through credits which include interest costs incurred by such purchasers for funds contributed to the Secretary of the Interior for the uprating program.]

[(g)] *(e)* The provisions of this section constitute an exercise by the Congress of the right reserved by it in section 5(b) of the Boul-

der Canyon Project Act, as amended and supplemented, to prescribe terms and conditions for [the renewal of] contracts for electrical energy generated at Hoover Dam. This section constitutes the exclusive method for disposing of capacity and energy from Hoover Dam for the period beginning [June 1, 1987, and ending September 30, 2017] *October 1, 2017, and ending September 30, 2067.*

[(h)] *(f)*(1) Notwithstanding any other provision of law, any claim that the provisions of subsection (a) of this section violates any rights to capacity or energy from the Boulder Canyon project is barred unless the complaint is filed within one year after the date of enactment of [this Act] *the Hoover Power Allocation Act of 2011* in the United States Claims Court which shall have exclusive jurisdiction over this action. Any claim that actions taken by any administrative agency of the United States violates any right under this title or the Boulder Canyon Project Act or the Boulder Canyon Project Adjustment Act is barred unless suit asserting such claim is filed in a Federal court of competent jurisdiction within one year after final refusal of such agency to correct the action complained of.

* * * * * * *

[(i)] *(g)* It is the purpose of [subsections (c), (g), and (h) of this section] this Act to ensure that the rights of contractors for capacity and energy from the Boulder Canyon project for the period beginning [June 1, 1987, and ending September 30, 2017] *October 1, 2017, and ending September 30, 2067,* will vest with certainty and finality.

* * * * * * *

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JOSEPH J. HECK
3RD DISTRICT, NEVADA

COMMITTEE ON
ARMED SERVICES

EDUCATION AND
THE WORKFORCE COMMITTEE

PERMANENT SELECT COMMITTEE
ON INTELLIGENCE

Congress of the United States
House of Representatives
Washington, DC 20515–2803

132 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–2803
(202) 225–3252

8485 WEST SUNSET ROAD, SUITE 300
LAS VEGAS, NV 89113–2251
(702) 387–4941

January 2, 2013

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

Re: Request for Revisions to Western's Proposed Hoover Marketing Criteria

Dear Acting Administrator Decker:

I am writing today to request Western to revise the marketing criteria it has proposed to implement the Schedule D allocations authorized in the Hoover Power Allocation Act of 2011("the 2011 Act"). As I am sure you are aware, under the Boulder Canyon Project Act of 1928, the 1984 Hoover Power Plant Act, and the 2011 Act, it has been Congress and not Western that directs allocation of Hoover power through contracts with state, municipal and utility contractors. Thus, any attempt by Western to allocate Hoover power in ways that contravene these statutes, would not be authorized under federal law.

In the 2011 Act, Congress directed the Secretary to offer post-2017 Schedule D Hoover power to new allottees comprised of the states, municipalities and political subdivisions eligible to receive Hoover power under section 5 of the Boulder Canyon Project Act of 1928 and federally recognized Indian tribes. Congress did not include in the 2011 Act any authority to Western either to allocate Hoover power to other types of entities, or to administratively prescribe additional criteria that would preclude section 5 entities from receiving Schedule D allocations.

Therefore, I must request Western revise its proposed marketing criteria to conform to the requirements specific to the Hoover statutes noted above, specifically by including states and other section 5 entities as first priority applicants with Tribes, removing the unauthorized public utility status requirement, and removing the unauthorized cooperatives from eligibility for Schedule D Hoover allocations.

I respectfully request your immediate attention to this issue, and inclusion of the changes requested above in the marketing criteria you issue following the public comments that are due to be submitted on January 11, 2013.

Sincerely,

DR. JOE HECK
Member of Congress

ATTACHMENT 2
Attachment to Comments on BCP Post 2017 Resource Pool
Filed by Colorado River Commission of Nevada
With Western Area Power Administration
January 11, 2013

United States Senate

WASHINGTON, DC 20510

May 24, 2011

Tim Meeks
Administrator
Western Area Power Authority
P.O. Box 281213
Lakewood, CO 80228-8213

Re: Request to stay Western's decision on Hoover Re-Marketing [76 FR 23583]

Dear Administrator Meeks:

We write today to request an immediate stay of the Notice of Decision that the Western Area Power Administration (Western) recently published in the Federal Register on future allocations of Hoover Power pending Congress' consideration of the Hoover Power Allocation Act of 2011 (S. 519). We, as the Chairman of the Senate committee with jurisdiction over WAPA, and as Senators representing states which receive electricity from Hoover Dam, note that this decision is inconsistent with the established precedent that Congress, not Western, directly allocates Hoover power.

As you know, under the Boulder Canyon Project Act of 1928 and the 1984 Hoover Power Plant Act, it was Congress and not Western that directed allocation of Hoover power through contracts with state, municipal and utility contractors. The approach set forth in the Notice of Decision is inconsistent with that approach and is not the best way to ensure the continued availability and reliability of Hoover power to the citizens of Arizona, California and Nevada. We believe that Congress should continue to allocate the post-2017 Hoover power as it has done since the construction of Hoover Dam.

Furthermore, Western's attempt to decide significant issues regarding Hoover power allocations, at the same time that Congress is addressing these issues, will undoubtedly result in conflicts with the will of the Congress because of the differences between the legislation and the Notice of Decision. Therefore, we respectfully request your immediate attention to this issue and must ask Western to issue immediately a notice to stay this decision pending the Congress' consideration of S. 519.

Sincerely,

HARRY REID
United States Senator

JEFF BINGAMAN
United States Senator

ATTACHMENT 3
Attachment to Comments on BCP Post 2017 Resource Pool
Filed by Colorado River Commission of Nevada
With Western Area Power Administration
January 11, 2013

JOHN McCAIN
United States Senator

JON KYL
United States Senator

BARBARA BOXER
United States Senator

DIANNE FEINSTEIN
United States Senator

DEAN HELLER
United States Senator

BOULDER CANYON PROJECT ACT

[PUBLIC-NO. 642-70TH CONGRESS)
[H. R. 5773]

AN ACT To provide for the construction of works for the protection and development of the Colorado River Basin, for the approval of the Colorado River compact, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking, the Secretary of the Interior, subject to the terms of the Colorado River compact hereinafter mentioned, is hereby authorized to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, which the Secretary of the Interior is hereby authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations, with the Imperial and Coachella Valleys in California, the expenditures for said main canal and appurtenant structures to be reimbursable, as provided in the reclamation law, and shall not be paid out of revenues derived from the sale or disposal of water power or electric energy at the dam authorized to be constructed at said Black Canyon or Boulder Canyon, or for water for potable purposes outside of the Imperial and Coachella Valleys: *Provided, however*, That no charge shall be made for water or for the use, storage, or delivery of water for irrigation or water for potable purposes in the Imperial or Coachella Valleys; also to construct and equip, operate, and maintain at or near said dam, or cause to be constructed, a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from said reservoir; and to acquire by proceedings in eminent domain, or otherwise all lands, rights-of-way, and other property necessary for said purposes.

SEC. 2. (a) There is hereby established a special fund, to be known as the "Colorado River Dam fund" (hereinafter referred to as the "fund"), and to be available, as hereafter provided, only for carrying out the provisions of this Act. All revenues received in carrying out the provisions of this Act shall be paid into and expenditures shall be made out of the fund, under the direction of the Secretary of the Interior.

(b) The Secretary of the Treasury is authorized to advance to the fund, from time to time and within the appropriations therefor, such amounts as the Secretary of the Interior deems necessary for carrying out the provisions of this Act, except that the aggregate amount of such advances shall not exceed the sum of $165,000,000. Of this amount the sum of $25,000,000 shall be allocated to flood control and shall be repaid to the United States out of 62½ per centum of revenues, if any, in excess of the amount necessary to meet periodical payments during the period of amortization, as provided in section 4 of this Act. If said sum of $25,000,000 is not repaid in full during the period of amortization, then 62½ per centum of all net revenues shall be applied to payment of the remainder. Interest at the rate of 4 per centum per annum accruing during the year upon the amounts so advanced and remaining unpaid shall be paid annually out of the fund, except as herein otherwise provided.

BOULDER CANYON PROJECT ACT

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SEC. 2. (a) There is hereby established a special fund, to be known as the "Colorado River Dam fund" (hereinafter referred to as the "fund"), and to be available, as hereafter provided, only for carrying out the provisions of this Act. All revenues received in carrying out the provisions of this Act shall be paid into and expenditures shall be made out of the fund, under the direction of the Secretary of the Interior.

(b) The Secretary of the Treasury is authorized to advance to the fund, from time to time and within the appropriations therefor, such amounts as the Secretary of the Interior deems necessary for carrying out the provisions of this Act, except that the aggregate amount of such advances shall not exceed the sum of $165,000,000. Of this amount the sum of $25,000,000 shall be allocated to flood control and shall be repaid to the United States out of 62½ per centum of revenues, if any, in excess of the amount necessary to meet periodical payments during the period of amortization, as provided in section 4 of this Act. If said sum of $25,000,000 is not repaid in full during the period of amortization, then 62½ per centum of all net revenues shall be applied to payment of the remainder. Interest at the rate of 4 per centum per annum accruing during the year upon the amounts so advanced and remaining unpaid shall be paid annually out of the fund, except as herein otherwise provided.

(c) Moneys in the fund advanced under subdivision (b) shall be available only for expenditures for construction and the payment of interest, during construction, upon the amounts so advanced. No expenditures out of the fund shall be made for operation and maintenance except from appropriations therefor.

(d) The Secretary of the Treasury shall charge the fund as of June 30 in each year with such amount as may be necessary for the payment of interest on advances made under subdivision (b) at the rate of 4 per centum per annum accrued during the year upon the amounts so advanced and remaining unpaid, except that if the fund is insufficient to meet the payment of interest the Secretary of the Treasury may, in his discretion, defer any part of such payment, and the amount so deferred shall bear interest at the rate of 4 per centum per annum until paid.

(e) The Secretary of the Interior shall certify to the Secretary of the Treasury, at the close of each fiscal year, the amount of money in the fund in excess of the amount necessary for construction, operation, and maintenance, and payment of interest. Upon receipt of each such certificate the Secretary of the Treasury is authorized and directed to charge the fund with the amount so certified as repayment of the advances made under subdivision (b), which amount shall be covered into the Treasury to the credit of miscellaneous receipts.

SEC. 3. There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such sums of money as may be necessary to carry out the purposes of this Act, not exceeding in the aggregate $165,000,000.

SEC. 4. (a) This Act shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this Act, and no water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact, mentioned in section 13 hereof, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within six months from the date of the passage of this Act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared, and, further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

The States of Arizona, California, and Nevada are authorized to enter into an agreement which shall provide (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the excess or surplus waters

unapportioned by the Colorado River compact, and (3) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (4) that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico but if, as provided in paragraph (c) of Article III of the Colorado River compact, it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the lower basin, and (5) that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses, and (6) that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact, and (7) said agreement to take effect upon the ratification of the Colorado River compact by Arizona, California, and Nevada.

(b) Before any money is appropriated for the construction of said dam or power plant, or any construction work done or contracted for, the Secretary of the Interior shall make provision for revenues by contract, in accordance with the provisions of this Act, adequate in his judgment to insure payment of all expenses of operation and maintenance of said works incurred by the United States and the repayment, within fifty years from the date of the completion of said works, of all amounts advanced to the fund under subdivision (b) of section 2 for such works, together with interest thereon made reimbursable under this Act.

Before any money is appropriated for the construction of said main canal and appurtenant structures to connect the Laguna Dam with the Imperial and Coachella Valleys in California, or any construction work is done upon said canal or contracted for, the Secretary of the Interior shall make provision for revenues, by contract or otherwise, adequate in his judgment to insure payment of all expenses of construction, operation, and maintenance of said main canal and appurtenant structures in the manner provided in the reclamation law.

If during the period of amortization the Secretary of the Interior shall receive revenues in excess of the amount necessary to meet the periodical payments to the United States as provided in the contract, or contracts, executed under this Act, then, immediately after the settlement of such periodical payments, he shall pay to the State of Arizona 18¾ per centum of such excess revenues and to the State of Nevada 18¾ per centum of such excess revenues.

SEC. 5. That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon, for irrigation and domestic uses, and generation of electrical energy and delivery at the switchboard to States, municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam, upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this Act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this Act and the payments to the United States under subdivision (b) of section 4. Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to paragraph (a) of section 4 of this Act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated.

After the repayments to the United States of all money advanced with interest, charges shall be on such basis and the revenues derived therefrom shall be kept in a separate fund to be expended within the Colorado River Basin as may hereafter be prescribed by the Congress.

General and uniform regulations shall be prescribed by the said Secretary for the awarding of contracts for the sale and delivery of electrical energy, and for renewals under subdivision (b) of this section, and in making such contracts the following shall govern:

(a) No contract for electrical energy or for generation of electrical energy shall be of longer duration than fifty years from the date at which such energy is ready for delivery.

Contracts made pursuant to subdivision (a) of this section shall be made with a view to obtaining reasonable returns and shall contain provisions whereby at the end of fifteen years from the date of their execution and every ten years thereafter, there shall be readjustment of the contract, upon the demand of either party thereto, either upward or downward as to price, as the Secretary of the Interior may find to be justified by competitive conditions at distributing points or competitive centers and with provisions under which disputes or disagreements as to interpretation or performance of such contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such readjustments or proceedings.

(b) The holder of any contract for electrical energy not in default thereunder shall be entitled to a renewal thereof upon such terms and conditions as may be authorized or required under the then existing laws and regulations, unless the property of such holder dependent for its usefulness on a continuation of the contract be purchased or acquired and such holder be compensated for damages to its property, used and useful in the transmission and distribution of such electrical energy and not taken, resulting from the termination of the supply.

5(c)

(c) Contracts for the use of water and necessary privileges for the generation and distribution of hydroelectric energy or for the sale and delivery of electrical energy shall be made with responsible applicants therefor who will pay the price fixed by the said Secretary with a view to meeting the revenue requirements herein provided for. In case of conflicting applications, if any, such conflicts shall be resolved by the said Secretary, after hearing, with due regard to the public interest, and in conformity with the policy expressed in the Federal Water Power Act as to conflicting applications for permits and licenses, except that preference to applicants for the use of water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy, or for delivery at the switchboard of a hydroelectric plant, shall be given, first, to a State for the generation or purchase of electric energy for use in the State, and the States of Arizona, California, and Nevada shall be given equal opportunity as such applicants.

The rights covered by such preference shall be contracted for by such State within six months after notice by the Secretary of the Interior and to be paid for on the same terms and conditions as may be provided in other similar contracts made by said Secretary: *Provided, however*, That no application of a State or a political subdivision for an allocation of water for power purposes or of electrical energy shall be denied or another application in conflict therewith be granted on the ground that the bond issue of such State or political subdivision, necessary to enable the applicant to utilize such water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy or the electrical energy applied for, has not been authorized or marketed, until after a reasonable time, to be determined by the said Secretary, has been given to such applicant to have such bond issue authorized and marketed.

(d) Any agency receiving a contract for electrical energy equivalent to one hundred thousand firm horsepower, or more, may, when deemed feasible by the said Secretary, from engineering and economic considerations and under general regulations prescribed by him, be required to permit any other agency having contracts hereunder for less than the equivalent of twenty-five thousand firm horsepower,

upon application to the Secretary of the Interior made within sixty days from the execution of the contract of the agency the use of whose transmission line is applied for, to participate in the benefits and use of any main transmission line constructed or to be constructed by the former for carrying such energy (not exceeding, however, one-fourth the capacity of such line), upon payment by such other agencies of a reasonable share of the cost of construction, operation, and maintenance thereof.

The use is hereby authorized of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines to transmit said electrical energy.

SEC. 6. That the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power. The title to said dam, reservoir, plant, and incidental works shall forever remain in the United States, and the United States shall, until otherwise provided by Congress, control, manage, and operate the same, except as herein otherwise provided: *Provided, however*, That the Secretary of the Interior may, in his discretion, enter into contracts of lease of a unit or units of any Government-built plant, with right to generate electrical energy, or, alternatively, to enter into contracts of lease for the use of water for the generation of electrical energy as herein provided, in either of which events the provisions of section 5 of this Act relating to revenue, term, renewals, determination of conflicting applications, and joint use of transmission lines under contracts for the sale of electrical energy, shall apply.

The Secretary of the Interior shall prescribe and enforce rules and regulations conforming with the requirements of the Federal Water Power Act, so far as applicable respecting maintenance of works in condition of repair adequate for their efficient operation, maintenance of a system of accounting, control of rates and service in the absence of State regulation or interstate agreement valuation for rate-making purposes, transfers of contracts, contracts extending beyond the lease period, expropriation of excessive profits, recapture and/or emergency use by the United States of property of lessees, and penalties for enforcing regulations made under this Act of penalizing failure to comply with such regulations or with the provisions of this Act. He shall also conform with other provisions of the Federal Water Power Act and of the rules and regulations of the Federal Power Commission, which have been devised or which may be hereafter devised, for the protection of the investor and consumer.

The Federal Power Commission is hereby directed not to issue or approve any permits or licenses under said Federal Water Power Act upon or affecting the Colorado River or any of its tributaries, except the Gila River, in the States of Colorado, Wyoming, Utah, New Mexico, Nevada, Arizona, and California until this Act shall become effective as provided in section 4 herein.

SEC. 7. That the Secretary of the Interior may, in his discretion, when repayments to the United States of all money advanced, with interest, reimbursable hereunder, shall have been made, transfer the title to said canal and appurtenant structures, except the Laguna Dam and the main canal and appurtenant structures down to and including Syphon Drop, to the districts or other agencies of the United States having a beneficial interest therein in proportion to their respective capital investments under such form of organization as may be acceptable to him. The said districts or other agencies shall have the privilege at any time of utilizing by contract or otherwise such power possibilities as may exist upon said canal, in proportion to their respective contributions or obligations toward the capital cost of said canal and appurtenant structures from and including the diversion works to the point where each respective power plant may be located. The net proceeds from any power development on said canal shall be paid into the fund and credited to said districts or other agencies on their said contracts, in proportion to their rights to develop power, until the districts or other agencies using said canal shall have paid thereby and under any contract or otherwise an amount of money equivalent to the operation and maintenance expense and cost

of construction thereof.

SEC. 8. (a) The United States, its permittees, licensees, and contractees, and all users and appropriators of water stored, diverted, carried, and/or distributed by the reservoir, canals, and other works herein authorized, shall observe and be subject to and controlled by said Colorado River compact in the construction, management, and operation of said reservoir, canals, and other works and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other purposes, anything in this Act to the contrary notwithstanding, and all permits, licenses, and contracts shall so provide.

(b) Also the United States, in constructing, managing, and operating the dam, reservoir, canals, and other works herein authorized, including the appropriation, delivery, and use of water for the generation of power, irrigation, or other uses, and all users of water thus delivered and all users and appropriators of waters stored by said reservoir and/or carried by said canal, including all permittees and licensees of the United States or any of its agencies, shall observe and be subject to and controlled, anything to the contrary herein notwithstanding, by the terms of such compact, if any, between the States of Arizona, California, and Nevada, or any two thereof, for the equitable division of the benefits, including power, arising from the use of water accruing to said States, subsidiary to and consistent with said Colorado River compact, which may be negotiated and approved by said States and to which Congress shall give its consent and approval on or before January 1, 1929; and the terms of any such compact concluded between said States and approved and consented to by Congress after said date: *Provided*, That in the latter case such compact shall be subject to all contracts, if any, made by the Secretary of the Interior under section 5 hereof prior to the date of such approval and consent by Congress.

SEC. 9. All lands of the United States found by the Secretary of the Interior to be practicable of irrigation and reclamation by the irrigation works authorized herein shall be withdrawn from public entry. Thereafter, at the direction of the Secretary of the Interior, such lands shall be opened for entry, in tracts varying in size but not exceeding one hundred and sixty acres, as may be determined by the Secretary of the Interior, in accordance with the provisions of the reclamation law, and any such entryman shall pay an equitable share in accordance with the benefits received, as determined by the said Secretary, of the construction cost of said canal and appurtenant structures; said payments to be made in such installments and at such times as may be specified by the Secretary of the Interior, in accordance with the provisions of the said reclamation law, and shall constitute revenue from said project and be covered into the fund herein provided for: *Provided*, That all persons who served in the United States Army, Navy, Marine Corps, or Coast Guard during World War II, the War with Germany, the War with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom or placed in the Regular Army or Naval Reserve, shall have the exclusive preference right for a period of three months to enter said lands, subject, however, to the provisions of subsection (c) of section 4 of the Act of December 5, 1924 (43 Stat. 672, 702; 43 U.S.C., sec. 433); and also, so far as practicable, preference shall be given to said persons in all construction work authorized by this chapter: *Provided further*, That the above exclusive preference rights shall apply to veteran settlers on lands watered from the Gila canal in Arizona the same as to veteran settlers on lands watered from the All-American canal in California: *Provided further*, That in the event such entry shall be relinquished at any time prior to actual residence upon the land by the entryman for not less than one year, lands so relinquished shall not be subject to entry for a period of sixty days after the filing and notation of the relinquishment in the local land office, and after the expiration of said sixty-day period such lands shall be open to entry, subject to

the preference in the section provided.[1]

SEC. 10. That nothing in this Act shall be construed as modifying in any manner the existing contract, dated October 23, 1918, between the United States and the Imperial Irrigation District, providing for a connection with Laguna Dam; but the Secretary of the Interior is authorized to enter into contract or contracts with the said district or other districts, persons, or agencies for the construction, in accordance with this Act, of said canal and appurtenant structures, and also for the operation and maintenance thereof, with the consent of the other users.

SEC. 11. That the Secretary of the Interior is hereby authorized to make such studies, surveys, investigations, and do such engineering as may be necessary to determine the lands in the State of Arizona that should be embraced within the boundaries of a reclamation project, heretofore commonly known and hereafter to be known as the Parker-Gila Valley reclamation project, and to recommend the most practicable and feasible method of irrigating lands within said project, or units thereof, and the cost of the same; and the appropriation of such sums of money as may be necessary for the aforesaid purposes from time to time is hereby authorized. The Secretary shall report to Congress as soon as practicable, and not later than December 10, 1931, his findings, conclusions, and recommendations regarding such project.

SEC. 12. "Political subdivision" or "political subdivisions" as used in this Act shall be understood to include any State, irrigation or other district, municipality, or other governmental organization.

"Reclamation law" as used in this Act shall be understood to mean that certain Act of the Congress of the United States approved June 17, 1902, entitled "An Act appropriating the receipts from the sale and disposal of public land in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," and the Acts amendatory thereof and supplemental thereto.

"Maintenance" as used herein shall be deemed to include in each instance provision for keeping the works in good operating condition.

"The Federal Water Power Act," as used in this Act, shall be understood to mean that certain Act of Congress of the United States approved June 10, 1920, entitled "An Act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto; and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes," and the Acts amendatory thereof and supplemental thereto.

"Domestic" whenever employed in this Act shall include water uses defined as 'domestic" in said Colorado River compact.

SEC. 13. (a) The Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article II of the said Colorado River compact, making said compact binding and obligatory when it shall have been approved by the legislature of each of the signatory States, are hereby waived, and this approval shall become effective when the State of California and at least five of the other States mentioned, shall have approved or may hereafter approve said compact as aforesaid and shall consent to

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[1] As amended by act of March 6, 1946 (60 Stat. 36)

such waiver, as herein provided.

(b) The rights of the United States in or to waters of the Colorado River and its tributaries howsoever claimed or acquired, as well as the rights of those claiming under the United States, shall be subject to and controlled by said Colorado River compact.

(c) Also all patents, grants, contracts, concessions, leases, permits, licenses, rights-of-way, or other privileges from the United States or under its authority, necessary or convenient for the use of waters of the Colorado River or its tributaries, or for the generation or transmission of electrical energy generated by means of the waters of said river or its tributaries, whether under this Act, the Federal Water Power Act, or otherwise, shall be upon the express condition and with the express covenant that the rights of the recipients or holders thereof to waters of the river or its tributaries, for the use of which the same are necessary, convenient, or incidental, and the use of the same shall likewise be subject to and controlled by said Colorado River compact.

(d) The conditions and covenants referred to herein shall be deemed to run with the land and the right, interest, or privilege therein and water right, and shall attach as a matter of law, whether set out or referred to in the instrument evidencing any such patent, grant, contract, concession, lease, permit, license, right-of-way, or other privilege from the United States or under its authority, or not, and shall be deemed to be for the benefit of and be available to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and the users of water therein or thereunder, by way of suit, defense, or otherwise, in any litigation respecting the waters of the Colorado River or its tributaries.

SEC. 14. This Act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided.

SEC. 15. The Secretary of the Interior is authorized and directed to make investigation and public reports of the feasibility of projects for irrigation, generation of electric power, and other purposes in the States of Arizona, Nevada, Colorado, New Mexico, Utah, and Wyoming for the purpose of making such information available to said States and to the Congress, and of formulating a comprehensive scheme of control and the improvement and utilization of the water of the Colorado River and its tributaries. The sum of $250,000 is hereby authorized to be appropriated from said Colorado River Dam fund, created by section 2 of this Act, for such purposes.

SEC. 16. In furtherance of any comprehensive plan formulated hereafter for the control, improvement, and utilization of the resources of the Colorado River system and to the end that the project authorized by this Act may constitute and be administered as a unit in such control, improvement, and utilization, any commission or commissioner duly authorized under the laws of any ratifying State in that behalf shall have the right to act in an advisory capacity to and in cooperation with the Secretary of the Interior in the exercise of any authority under the provisions of sections 4, 5, and 14 of this Act, and shall have at all times access to records of all Federal agencies empowered to act under said sections, and shall be entitled to have copies of said records on request.

SEC. 17. Claims of the United States arising out of any contract authorized by this Act shall have priority over all others, secured or unsecured.

SEC. 18. Nothing herein shall be construed as interfering with such rights as the States now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem

necessary with respect to the appropriation, control, and use of waters within their borders, except as modified by the Colorado River compact or other interstate agreement.

SEC. 19. That the consent of Congress is hereby given to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming to negotiate and enter into compacts or agreements, supplemental to and in conformity with the Colorado River compact and consistent with this Act for a comprehensive plan for the development of the Colorado River and providing for the storage, diversion, and use of the waters of said river. Any such compact or agreement may provide for the construction of dams, headworks, and other diversion works or structures for flood control, reclamation, improvement of navigation, division of water, or other purposes and/or the construction of power houses or other structures for the purpose of the development of water power and the financing of the same; and for such purposes may authorize the creation of interstate commissions and/or the creation of corporations, authorities, or other instrumentalities.

(a) Such consent is given upon condition that a representative of the United States, to be appointed by the President, shall participate in the negotiations and shall make report to Congress of the proceedings and of any compact or agreement entered into.

(b) No such compact or agreement shall be binding or obligatory upon any of such States unless and until it has been approved by the legislature of each of such States and by the Congress of the United States.

SEC. 20. Nothing in this Act shall be construed as a denial or recognition of any rights, if any, in Mexico to the use of the waters of the Colorado River system.

SEC. 21. That the short title of this Act shall be "Boulder Canyon Project Act."

Approved, December 21, 1928.

IMPERIAL IRRIGATION DISTRICT

GENERAL MANAGER'S OFFICE • P. O. BOX 937 • IMPERIAL, CA 92251

April 28, 2010

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Re: Request for Proposed Amendment to S. 2891 – the Hoover Power Allocation Act of 2009

Dear Senator Feinstein:

I write on behalf of the Board of Directors of the Imperial Irrigation District (the District) to respectfully request your support for the enclosed amendment to your bill, the Hoover Power Allocation Act of 2009 (S. 2891). The proposed amendment would direct the Western Area Power Administration (WAPA) to give preference to full-service public power providers when allocating California's share of the new "Schedule D" allotment of Hoover Dam power that the legislation creates for agencies that do not currently hold Hoover contracts.

The purpose of the amendment is to ensure that public power providers serving the broadest customer base possible would have fair and transparent access to the new allocation of this public resource and to guarantee its distribution to a wide spectrum of residential, industrial and commercial users in California. The amendment does not affect provisions in the bill for the allocation of power in Arizona and Nevada.

The District has discussed the amendment with the Southern California Public Power Association (SCPPA), which has no objection to its substance. The Imperial Irrigation District is a full-service public power provider and is located within the marketing area for Hoover power, and would like to add a component of Hoover power to its portfolio, which contains the smallest percentage of federal power of any public agency in the region. The District currently serves over 140,000 residential, commercial and industrial customers in Imperial, Riverside and San Diego counties. As drafted, S.2891 is intended to offer the District and other eligible agencies the opportunity to gain an allocation of power from the Schedule D pool specifically created for "new allotees" within the marketing area.

ATTACHMENT 5
Attachment to Comments on BCP Post 2017 Resource Pool
Filed by Colorado River Commission of Nevada
With Western Area Power Administration
January 11, 2013

TELEPHONE (760) 339-9477 • FAX (760) 339-9392
WEB SITE: www.iid.com

However, the legislation in its current form provides little guidance to WAPA on how, and to whom, this resource would be allocated. The District's concern is that WAPA will use a process that is neither transparent nor well-defined, giving the agency overly broad discretion in allocating this extraordinary public resource.

The District recognizes that S.2891 embodies agreements carefully negotiated among existing Hoover power contractors in the Lower Colorado River Basin. Our goal has been to craft a modest amendment that would honor those agreements and the essential purpose of the legislation, while at the same time providing reasonable direction to WAPA in allocating California's portion of Schedule D power.

Our proposed amendment would require WAPA to give a preference to ***" public power agencies serving 1) residential and 2) commercial and industrial users" as of the date of enactment of this Act."*** Given the vital nature of this valuable and scarce public resource, we believe that such a preference is appropriate, in the public interest and worthy of your support. If the District's proposed amendment is included in the legislation, the Imperial Irrigation District would give its full support to the bill.

Thank you for your continued extraordinary service in the United States Senate to the citizens of the state of California and to the nation. We look forward to working with you and your staff toward enactment of S.2891 for the good of the entire Lower Colorado River Basin region.

Sincerely,

Brian J. Brady
General Manager

CC: SCPPA Member Agencies
Senator Barbara Boxer
Representative Grace Napolitano
Representative Bob Filner

Attachment A – IID proposed Amendment to S.2891

Proposed IID amendment:

In Sec. 2(D)(iii), insert the following after the word "California": *"with preference given to public power agencies serving 1) residential and 2) commercial and industrial users as of the date of enactment of this Act."*

Explanation:

S.2891 creates a pool of Hoover power for allocation to eligible agencies ("new allottees") that do not currently have contracts for Hoover power. Section 2(C) specifies that 66.7 percent of the pool ("Schedule D" power) be made available generally for allocation to eligible agencies in Arizona, California and Nevada by the federal Western Area Power Authority (WAPA). Section 2(D) assigns 11.1 percent of the pool to each of the three states for allocation to eligible entities within each state. In the case of Arizona and Nevada, their 11.1 percent shares would be allocated by the appropriate state agency in each state. California's 11.1 percent would be allocated by WAPA.

The proposed amendment affects *only* WAPA's allocation of California's 11.1 percent of the new Schedule D power. The amendment directs that WAPA's allocation process for California give preference to public power agencies that currently serve residential, commercial and industrial customers. This will ensure that the benefits of Hoover power are broadly distributed within California's economy.

S.2891 with proposed amendment highlighted below.

`(C)(i) Within 18 months of the date of enactment of the Hoover Power Allocation Act of 2009, the Secretary of Energy shall allocate through the Western Area Power Administration (referred to in this section as `Western'), for delivery commencing October 1, 2017, for use in the marketing area for the Boulder City Area Projects 66.7 percent of the Schedule D contingent capacity and firm energy to new allottees that are located within the marketing area for the Boulder City Area Projects and that are--

`(I) eligible to enter into contracts under section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d); or

`(II) federally recognized Indian tribes.

`(ii) In the case of Arizona and Nevada, Schedule D contingent capacity and firm energy for new allottees shall be offered through the Arizona Power Authority and the Colorado River Commission of Nevada, respectively.

`(iii) In performing its allocation of Schedule D power provided for in this subparagraph, Western shall apply criteria developed in consultation with the States of Arizona, Nevada, and California.

`(D) Within 1 year of the date of enactment of the Hoover Power Allocation Act of 2009, the Secretary of Energy also shall allocate, for delivery commencing October 1, 2017, for use in the marketing area for the Boulder City Area Projects 11.1 percent of the Schedule D contingent capacity and firm energy to each of--

`(i) the Arizona Power Authority for allocation to new allottees in the State of Arizona;

`(ii) the Colorado River Commission of Nevada for allocation to new allottees in the State of Nevada; and

`(iii) Western for allocation to new allottees within the State of California ***with preference given to public power agencies serving 1) residential and 2) commercial and industrial users as of the date of enactment of this Act.***