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Email and U.S. Mail

Mr. Mike Gazda
Arizona Power Authority
1810 West Adams St.
Phoenix, AZ 85007-2697

RE: Comments on Hoover Allocation Post 2017 Draft Plan of March 19, 2014

Dear Mike:

As requested by the Arizona Power Authority Commission, we provide the attached Initial Comments on the "Arizona Power Authority Public Information and Comment Draft Plan Hoover Power Allocation Post 2017" that was distributed on March 19, 2014. These comments are provided on behalf of Aguila Irrigation District, City of Safford, Electrical District Number Eight, Harquahala Valley Power District, McMullen Valley Water Conservation & Drainage District, and Tonopah Irrigation District.

Of highest importance is our comment of continuing support for the methodology demonstrated by Schedules 1A and 1B set forth in the Draft Plan. We consider that methodology to be the most equitable and equable reallocation, with reliance upon the substantial "D" pool that was set aside by Congress to address wider distribution of the Hoover resource among new entrants, while avoiding undue harm to existing customers.

We appreciate the work that you and others have done, and look forward to continuing to work with the Authority and its consultants on this vital process.

Respectfully yours,

Jay I. Moyes

JIM/lkk
Cc: Jim Downing
Jeff Woner
Eric Buckley
Ken Saline
Dennis Delaney
Sheryl Sweeney
Paul Orme
Bob Lynch
Mark McGinnis

Initial Comments
on the
Hoover Power Allocation Post-2017
Public Information and Comment Draft Plan of March 19, 2014

The following initial comments are submitted by Moyes, Sellers & Hendricks, on behalf of Aguila Irrigation District, Electrical District Number Eight, Harquahala Valley Power District, McMullen Valley Water Conservation & Drainage District, Tonopah Irrigation District, and City of Safford.

Summary Position Comment: We strongly support adoption of the allocation methodology set forth in the Draft Plan as Alternative 1 and demonstrated by Spreadsheet 1, Schedules 1A and 1B (*without* any further reduction of energy), and urge reliance upon the substantial new pools of "D" power, exclusively, to address applications by entities not currently Hoover customers.

Specific Comments on the Draft Plan:

Preface: Our comments will be presented in roughly the order in which the subjects of the comments arise in the Draft Plan. It should be noted that some comments we address are germane to only certain Alternatives and/or Alternative Spreadsheets that we do *not* support. We comment on some of those non-supported portions only to indicate changes that we feel should be required *in the event that* such non-supported methodologies should, notwithstanding our objection, be adopted by the Commission as part of a formal proposal.

1. <u>The Role of the Redbook</u>

We consider the Redbook to be a highly relevant document providing primary guidance with respect to long-standing Authority interpretation of governing statutes and regulations. It reflects important analysis and decisions from a critical period in the development of energy and water policy in the State of Arizona. It also constitutes a material basis for the reasonable reliance and expectations of existing customers regarding the continuation of those policies and prior administrative interpretations. We encourage the Authority's reliance upon these interpretations as important policy foundation for post-2017 decisions, even if one concludes that the Redbook does not bind the Authority, nor control the Authority's post-2017 allocation. We appreciate that the Draft Plan acknowledges and explains its points of proposed deviation from the Redbook, and we respect the Commissioners' authority to do so through this process. Because of its continuing relevance, however, we suggest that the Redbook be made a part of the administrative record in this process.

2. <u>Title 30 and Title 45 of Arizona Revised Statutes</u>

We submit that certain provisions of Title 30 are applicable to *all* power within the Authority's jurisdiction, including both D-2A power *and* D-2*B* power. Certain aspects of Title 30 applicable to Schedule B are not addressed in Title 45, and those Title 30 provisions are not superseded by nor inconsistent with the provisions of Title 45. We suggest that in the second paragraph of Section III.B.4.d. the statement that "*Title 45 is the exclusive law on matters related to*

Schedule B Hoover uprating power, and Title 45 supersedes any inconsistent provisions of Title 30" should be modified by inserting "addressed in Title 45" after "*matters*".

In order to be more precisely consistent with the language of A.R.S. § 30.124.B, which sets forth the Authority's statutory mandate, we suggest the following revisions in the third paragraph of Section III.B.3 of the Draft Plan: In the phrase "*to dispose of power in a manner that renders the greatest public service and achieves the widest practical use of electrical energy*", after "*to*," insert "as nearly as practical"; and substitute "encourages" for "*achieves*."

3. Informal Process; Additional Meetings After Formal Proposal

We support the extended informal process by which the Authority proposes to receive public input and participation prior to the start of the formal process. Several of the items we comment on here are worthy of further informal dialogue, as well as others that should continue to be discussed as the Authority moves toward a formal proposal and process.

We suggest adding language in the last paragraph of Section III.B.4.c of the Draft Plan reaffirming the intent to hold additional public meetings *after* publication of the final proposal and before adoption of the Final Allocation Plan, if needed, or to "continue" into multiple sessions the referenced public information Conference and public comment Conference.

We do urge, however, that the informal process timing decisions be sensitive to the dates by which allocations must be finalized in order to allow reasonable time for formal contract development, execution and implementation.

4. Power Purchase Certificates

The Authority has stated in prior public meetings that existing holders of power purchase certificates are not required to reapply for a new power purchase certificate to serve the territory covered by their existing certificate; and we suggest adding clarification to that effect in all places in the Draft Plan that address the power purchase certificate requirement.

5. Deferral of D-2 Allocation Until D-1 Allocation is Completed

We support the proposal to await the results of Western's D-1 allocation before initiating the formal APA allocation process, assuming the Western allocation process concludes in the fall of 2014; but if it does not, the Authority should reconsider that sequence in light of the end line timing constraints for implementing the Post-2017 contracts.

6. "In-lieu" Water

The second paragraph of Section III.B.4.b. of the Draft Plan lists the additional information that applicants will be asked to include in their applications for Hoover power. Item (4) says "In-lieu water (capacity and energy) for the previous five (5) calendar years, including methodology used to calculate in-lieu water." The term "in-lieu water," means many different things to different people. We believe the Authority should exercise extreme caution in any attempt to equate any given applicant's current surface water supplies, and future availability, to historical or projected future electric loads, and to then compare the results of such an equation for one applicant to those of other applicants. The variety of current circumstances (and the reasons therefor) and possible

future water supply scenarios is as broad as the number of customers and potential applicants. Further dialogue is warranted to identify and distinguish the different scenarios and to "standardize" the bases for calculating the water data required in an application, to ensure fair comparisons if such data and distinctions among and between different entities' water supplies might become a determinant for final allocations. In sum, the proposed "in-lieu water" component of the proposed application data requires much more study before any alternative allocation methodology is based upon comparative evaluations of that element.

7. Incomplete Applications

If an application is found to be deficient, the Authority should provide at least seven *business* days to cure; and ten may be more reasonable where requested for good cause.

8. Appeals

It has been suggested that the Authority should adopt an internal administrative appeal process for use in this allocation process, as opposed to relying on the Office of Administrative Hearings. We strongly support that suggestion, and believe customers should have full opportunity to review and provide comments on any such internal appellate procedure before it is adopted.

With respect to appeals involving sufficiency of and application for Hoover power, we suggest that if a deficiency is identified and duly noticed, but and not timely cured, the application should be deemed denied by the APA and the appeal timelines triggered. Conversely, an application should deemed "administratively complete" if the Authority does not give written notice of identified deficiencies within a stated time-period, *e.g.,* 30 days.

9. Definition of District

We support and agree with the analysis and conclusions regarding the Draft Plan's definition of "district" as used in Title 30.

10. Limitations applicable to Cities, Towns and Cooperatives

Some have questioned whether the 17,500,000 kWh limit discussed in Section IV.A.2.b. of the Draft Plan applies only to co-ops and not cities or towns, and whether it is a cumulative limit, not an individual limit. A determination on these questions might be appropriate as a matter of policy; however, we believe the discussion is only academic, because we do not believe there will be any Hoover A remaining to be allocated after satisfying the mandated first preference of districts.

11. Pre- and Post- 2017 Investment and Equity

Section IV.A.4. of the Draft Plan states that Hoover power is sold at cost based rates, which are generally well below market rates. The Draft Plan attributes this benefit to "the considerable investment by the federal government and the states of Arizona, California and Nevada in the Hoover power plant." This statement omits the fact that the federal government is fully repaid its investment, with interest, by the customers; and that the money paid by "Arizona" came from the Authority's Pre-2017 customers. We think it is important for the Draft Plan to acknowledge that the significant benefit of low rates is made possible by the historical capital investment by the Authority's existing customers, and that "new allottees" should pay a pro rata reimbursement of

those investments. In the case of Western-allocated D1 power, the federal Hoover Power Allocation Act of 2011 *requires* 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. . ." Accordingly, when the Authority receives that required reimbursement from Western, those funds should be forwarded to the existing Authority customers in proportions consistent with *their* respective contributions. "New allottees" who receive an allocation from Schedule A, B, D2A, or D2B should likewise be required to reimburse a pro rata share of the Hoover Dam repayable advances and expenditures which the Authority – i.e., the pre-2017 customers -- have made that will provide benefit to the post-2017 customers.

Under the same concept of equity, the Authority's current expenditure of several hundred thousand dollars for legal and technical consultants to develop a Hoover Allocation Post-2017 Plan and Application process will benefit *all* Post-2017 customers, but the entire cost is being currently expensed and borne by the *existing* customers in current rates. One way to reduce that inequity would be to fund the process costs with money from the "APA Fund." New customers could, for example, be required to pay a standardized surcharge for a time to recoup those costs -- to either replenish the APA Fund, if used initially, or, reimburse the existing customers if those costs continue to be expensed in current rates.

Accordingly, if existing customers are forced to give up more power than contemplated by Schedules 1A or 1B, -- i.e., becoming allocation "losers" -- then all "new allottees" and allocation "winners" should be required to reimburse proportionately to the "losing" existing contractors a pro rata share of those allocation process cost advances noted above.

12. Other Federal Resources

Section IV.A.4 states that in order to dispose of Schedule A power in an equable manner so as to render the greatest public service and encourage the widest practical use, the Authority wishes to provide the benefit of lower electric rates to "geographic areas of the State and entities that do not receive similar benefits from other at-cost resources." Further, Section IV.E states that "[t]he Authority's regulations also provide that …the Authority shall consider other sources of Power available to the prospective Purchaser from the federal government." To the extent that the final allocation methodology deviates from the methodology reflected by Spreadsheet 1, Schedules A and B, we believe it is appropriate for the Authority to take into account an applicant's other federal preference resources, or the lack thereof.

13. Schedule B Non- Tax Exempt Entities

We support the Authority's interpretation that the "option to purchase" language of A.R.S. § 45-1708(B) means that such entities must be afforded an opportunity to apply for Schedule B power, but are not necessarily entitled as a matter of right, by virtue of that statute, to any final allocation.

14. Allocation of Schedule C Power

We support continuation of the existing regime for allocating the "ephemeral" Schedule C Power. However, in light of the Schedule D power, the existing structure requires a slight

modification suggested by others, which we also recommend as follows: Enter into Schedule C contracts now. Give Schedule B contractors a right of first refusal for such amount of Hoover C energy as is available until the Hoover B capacity factor is brought up equal to the Hoover D capacity factor. Thereafter, give Schedule B and Schedule D contractors a right of first refusal for such amount of Hoover C energy as is available to bring the Hoover B and Hoover D capacity factors equal to the Hoover A capacity factor. Any balance of Hoover C remaining should be offered proportionately to all Authority customers.

15. 50-Year Term

The Hoover Power Plant Act of 2011 allocated Post-2017 Hoover power to Arizona -- and the Authority will contract with Western for that power -- for a term of 50 years. The existing customers were instrumental in the successful passage of that 50-year term. Arizona, Nevada and the California entities justified that length of term by willingly surrendering 5% of their existing allocations in exchange for 50-year certainty with respect to the balance. That justification applies to the Authority's existing customers' allocations just as it does to the Authority's allocation. The Authority's customer contracts should be for the same term -- 50 years.

We understand that the Commission may desire flexibility to adapt to changes that may occur over the next 50 years. Flexibility to accommodate changed circumstances has been managed since 1987 via the recapture provision in the Power Sales Contract and the Authority's very effective and widely used Resource Exchange Program. Those two programs can continue to provide for equitable redistribution of unneeded resource resulting from whatever changed circumstance, whether long or short term, ensuring that the resource is always optimally utilized where needed. The Resource Exchange Program was implemented to allow customers to make optimal short term economic resource mix decisions by sharing the Hoover with others better able to optimally use it, without risk of permanent loss of Hoover allocations. The recapture provisions give the Authority flexibility to appropriately address permanent, long term changed circumstances that render an allocation permanently "excess." Continuing these concepts in the Post-2017 power sale contracts is an appropriate way to manage the risk of changed circumstances.

Lastly, but importantly, the longer term power sales contracts will enhance the Authority's bond rating and otherwise facilitate the issuance of bonds by the Authority.

16. Alternative 1, Spreadsheet 1, Schedules 1A and 1B

As stated above, we strongly support Alternative 1 as clearly the most practicable, equable, equitable and defensible allocation methodology after taking fully into account all relevant issues and factors. Alternative 1 is consistent with the consensus reached by the existing customers, notwithstanding the fact that many of them – in particular the former 1985 "have not" entities for whom these comments are submitted -- can advance arguments and alternatives that advantage themselves, but at the expense of others, when all have relied heavily upon the existing contract allocations. All of the other Draft Plan suggested Alternatives will create winners and losers among existing customers, will cause undo harm to several and various existing customers, and may not be equable or in accord with the Commission's statutory duties.

We note with concern that, in discussion of Alternative 1, the Draft Plan reports that the Commission has discussed a further reduction of up to an additional 15% from existing customers'

allocations of energy and the redistribution of such energy to new Schedule A and B purchasers. We strongly oppose any such further reduction. Losing 5% plus 15% of the energy would be significantly worse than the "cut" taken from existing customers to fund new entrant pools that have been created for any other federal preference resources. Hoover power is already an energy-poor, non-firm resource. Any further diminution of the capacity factor of the Schedule A power would materially reduce its value and operational efficacy. The existing customers supported the federal legislation reducing existing allocations by 5% in order to create a meaningful pool of "D" power available for new users. There has been no suggestion nor agreement that any additional reduction is acceptable. The 5% "D" pool is substantial and is available and intended for all new entrants, including new districts that would otherwise be eligible for Hoover A.

These initial comments, at this stage of the process, are not intended to be a "legal brief", but rather a statement of position and support for what we consider to be the best course for the Commission to follow. Accordingly, we will not specifically address here a detailed evaluation of each of the other Alternatives suggested in the Draft Plan, all of which we consider to be inferior to Alternative 1. Many of our comments are, however, applicable to one or more of Alternatives 2 through 6.

In the second paragraph of Section V.B. setting forth the Schedule D-2A preference, the reference to cities, towns and cooperatives should note the 17,500 MWh limitation.

Section V.B. states that the Authority retains its discretion to modify individual allocations based on criteria set forth in A.R.S. § 30-124(B) and A.A.C. R12-14-201. We believe that any adjustments based on this reservation of discretion, *e.g.*, to allow policy decisions or rely upon new or better data, should be identified specifically and subjected to public comment and discussion.

17. Definition of "Agricultural" Load

To the extent that any final allocation methodology distinguishes agricultural load from non-agricultural, we believe that, in addition to irrigation water pumping loads for wells, sumps, boosters, lift stations, drip system pressurization and similar water handling facilities, the definition of agricultural load should also include the following agriculturally-related facilities: dairies, feedlots, cotton gins, cooling facilities, packing sheds, shrimp farms, egg farms, farm residences, farm labor housing, farm "headquarters" shops, sheds and security facilities, district office buildings and facilities used in operations of the district, and other such facilities used to conduct agricultural operations.

18. Other Comments

The various Alternatives and Spreadsheets are based on voluntarily provided data that has not been verified by the Authority. We might expect that some Spreadsheet conclusions may change when more refined information is provided. Of greater concern, though, is the fact that apparently several districts and perhaps other intended applicants have elected to not provide voluntary data. We think it would be appropriate to clarify that even though it is now in only the "informal process" the Authority will nevertheless be evaluating data and ultimately selecting an alternative to initiate the "formal process" based in part upon the voluntary data provided prior to formal applications. That presumably should incentivize potential applicants to provide their voluntary data during the pendency of the "informal process" for the integrity of the process.