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April 28, 2014

HAND DELIVERED & EMAIL

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

Re: Comments and Questions Regarding "Arizona Power Authority Public Information and Comment Draft Plan Hoover Power Allocation Post 2017" distributed March 19, 2014

Dear Mike:

On March 19, 2014, the Arizona Power Authority issued a document entitled "Arizona Power Authority Public Information and Comment Draft Plan Hoover Power Allocation Post 2017" (the "Draft Plan"). The Authority has requested written comments on the Draft Plan by April 28, 2014. The enclosed Comments and Questions are submitted on behalf of Buckeye Water Conservation and Drainage District, Electrical District Number Six, Electrical District Number Seven, Maricopa County Municipal Water Conservation District Number One, Ocotillo Water Conservation District, and Roosevelt Irrigation District.

We continue to support the methodology set forth in Spreadsheet 1 as the most equable and equitable method of reallocating Hoover power. A significant pool of power is being voluntarily made available to new entrants (69 MW from Western and 11 MW from APA). Western Area Power Administration has embraced the creation of new entrant power pools as a way to provide widespread use of power without causing undue harm. It is a successful model that also can work in Arizona.

Thank you for the opportunity to comment and for all of the hard work that has gone into this process to date.

Very truly yours,

Sheryl A. Sweeney

Enclosures

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04/28/14

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Comments and Questions
Regarding APA Public Information and
Comment Draft Plan (3-19-14)
Hoover Power Allocation Post-2017

1. Introduction

The third paragraph of the APA Public Information and Comment Draft Plan distributed March 19, 2014, ("Draft Plan") indicates that once the final proposals on reallocation are done, the Authority will consider the final proposals in a public information Conference and a public comment Conference and in developing the Final Allocation Plan. Draft Plan, p. 1. We suggest that you add language which recognizes that meetings other than the two Conferences also may occur between the final proposal and the Final Allocation Plan, if needed. The same concept also could be added in the last sentence of Section III.B.4.c. Draft Plan, p. 15.

2. Redbook

Section II.A.2. of the Draft Plan addresses the role of the Redbook. Draft Plan, p. 3-4. We view the Redbook as a long-standing APA interpretation of the statutes and regulations governing APA. It is worth noting that the Redbook was established at a critical time in the APA's history and the development of energy policy in the State of Arizona, and is thus an important guidance document with respect to the expectations of the existing customers and the development and implementation of the regulations and statutes governing the conduct of the APA. We support APA's reliance upon these interpretations where appropriate, as they may provide APA with an additional shield as to the appropriateness of its post-2017 decisions. That said, we agree that the Redbook does not bind the Authority, nor does it control the Authority's allocation of post-2017 power, and thus there may be instances where it is appropriate for the APA to deviate from the parameters of the Redbook. It appears that the Draft Plan recognizes where it differs from the Redbook and explains why the change is being made. Therefore, we are satisfied with the APA's approach, and assume, but request confirmation, that the Redbook will be included as part of the administrative record supporting the APA's decision-making process.

3. State Law

Section II.B.3., line 8, change "term" to "terms" or "provisions." Draft Plan, p. 6. The last paragraph of Section II.B.3. states that the Authority intends to subdivide the 11.1% of Schedule D into two pools: capacity and energy attributable to adjustments in Schedule A, and capacity and energy attributable to adjustments in Schedule B. Draft Plan, p. 7-8.

4. Information Workshops and Conferences on Preliminary Proposal

Section III.B.3. addresses the process by which the Authority will facilitate discussion and public participation prior to the start of the Formal Process. We agree with and support this approach. Draft Plan, p. 10-12.

The third paragraph of Section III.B.3. describes the Authority's statutory mandate "to dispose of power in a manner that renders the greatest public service and achieves the widest practical use of electrical energy." Draft Plan, p. 11. We suggest that after "to," you insert "as nearly as practical" and substitute "encourages" for "achieves." These changes are consistent with A.R.S. § 30.124.B, which sets forth the Authority's statutory mandate.

5. Regulatory Timeline

The second paragraph of Section III.B.4.a. of the Draft Plan states that not later than 30 days after receiving a notice of eligibility, a prospective Purchaser must apply for a power purchase certificate. Draft Plan, p. 12. We understand that the APA agrees that existing holders of power purchase certificates are not required to reapply for a power purchase certificate. Therefore, a sentence or footnote should be added that says:

> "The holder of an existing power purchase certificate only needs to reapply for a power purchase certificate if the holder wants to use the power in a service territory that differs from the service territory described in the holder's existing power purchase certificate."

See A.A.C. § R12-14-202.D. The same change also needs to be made in the first paragraph of Section III.B.4.d.

In Section III.B.4.c., there is a discussion regarding the preliminary proposal and the Formal Process. Draft Plan, p. 14-15. We support APA's decision to wait until the conclusion of Western's allocation of the D-1 power before initiating the formal APA allocation process. By waiting until Western completes its process, the Formal Process will be more efficient, and some of the outstanding issues and questions may either be resolved or changed, depending on the allocation process and results for the D-1 allocations. We understand that APA currently anticipates the formal process will be initiated sometime in January 2015, assuming the Western allocation process concludes in the fall of 2014.

The second paragraph of Section III.B.4.d. states 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. Draft Plan, p. 15. We suggest that after "power," you insert "contained in Title 45." There are certain aspects of Title 30 that apply to Schedule B that are not addressed in Title 45.

6. Application Requirements

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. Draft Plan, p. 13-14. 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 use of the term "in-lieu water," apparently means different things to different people. We support use of the term "pumping equivalent" or "normalization." These terms would encapsulate all nonpermanent water supplies that an applicant uses instead of pumping groundwater, including, but not limited to, "in-lieu" and "ag pool" water, as those terms are used by CAP. Therefore, it is probably more accurate to say something like:

> "The amount of pumping equivalent water (i.e., nonpermanent, nongroundwater supplies) received during the previous five (5) calendar years, together with (i) a calculation of the amount of capacity and energy that would have been used to pump groundwater had the pumping equivalent water not been available; and (ii) the methodology used to calculate such capacity and energy."

In the last paragraph of Section III.B.4.b., the Draft Plan states that an applicant will be given seven calendar days after being notified to cure any deficiency in its application. It goes on to say that if the applicant fails to cure the deficiency within seven days, the application will not be further considered. Draft Plan, p. 14. We suggest that the Authority add language that would allow it to grant a longer cure period upon the reasonable request of the applicant.

With respect to applications, to help clarify when appellate rights are triggered, we suggest it be clarified that if a deficiency in an application is identified and not timely cured, the application will be deemed denied by the APA and the appeal timeframes will be triggered. Additionally, we suggest that it be clarified that if the APA does not identify any deficiencies in an application within a discrete time-period, perhaps 30 days, the application is deemed "administratively complete."

7. <u>Schedule A Power – Definition of District</u>

Section IV.A.2.a. of the Draft Plan discusses the definition of "district" as used in Title 30. Draft Plan, p. 18. We agree with the analysis and conclusions set forth in this Section.

8. <u>Limitations applicable to Cities, Towns and Cooperatives.</u>

Section IV.A.2.b. of the Draft Plan describes the limitations on cities, towns and cooperatives as an amount of power equal to 17,500,000 kWh minus existing contracts for purchase of power from Hoover Dam, Parker-Davis Project, Glen Canyon Dam or another federal power project on the main stream Colorado River. Draft Plan, p. 21-22. Is there a reason to use the terms Hoover Dam and Glen Canyon Dam instead of Boulder Canyon Project and Salt Lake City Area Integrated Projects?

For the record, there is some question as to whether the 17,500,000 kWh applies only to the co-ops and not to the cities and towns. In addition, there is some recollection that the 17,500,000 kWh limit is a cumulative limit, not an individual limit. We have not attempted to run this to ground, because we do not think there is enough Hoover A to get past the district level of preference.

9. <u>Policy Considerations</u>

Section IV.A.4. of the Draft Plan notes that the Authority sells Hoover power at cost based rates, which results in a significantly lower power rate for Authority customers. Draft Plan, p. 23. The Draft Plan goes on to state that this benefit is "made possible by the considerable investment by the federal government and the states of Arizona, California and Nevada in the Hoover power plant." This statement fails to acknowledge the true source of the money. The federal government is fully repaid its investment, with interest, by the states of Arizona and Nevada and certain entities in California. The money paid by Arizona comes from

APA's existing customers. The significant benefit of low rates to APA customers is made possible by the considerable investment of the Authority's existing customers. We think it is important for the plan to contain recognition of the significant Hoover upgrade capital contributions made by the existing customers.

With respect to the fact that the benefit of low rates is facilitated and made possible by existing customers, equity demands that "new allottees" pay a pro rata reimbursement. For example, with respect to the D1 power, the federal legislation requires Western to "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. . ." HOOVER POWER ALLOCATION ACT OF 2011, PL 112-72, December 20, 2011, 125 Stat 777. When APA receives a reimbursement from Western, pursuant to the provision cited above, it should forward such reimbursements to the existing customers in a proportion consistent with their pre-2017 contributions. Insofar as "new allottees" apply for and receive an allocation from Schedule A, B, D2a, or D2b, they should be required to reimburse a pro rata share of the Hoover Dam repayable advances and certain expenditures the APA and its existing customers have made.

For example, the APA is currently expending several thousand dollars for the use of legal and technical consultants in the development of a Hoover Allocation Post-2017 Plan and Application process, something which will benefit both existing and new customers, but the entire cost is currently being borne by the existing customers. One way to reimburse the advances of such costs from the existing customers would be by taking money from the APA fund and reimbursing the existing customers on a pro rata basis. Alternatively, upon execution of a power sales contract, new allottees could pay a reimbursement fee on a pro rata basis, with such a fee being reimbursed proportionately to the existing customers.

Additionally, consistent with the requirement placed on Western, it would be appropriate and fair that insofar as the existing customers are forced to give up more power than contemplated by Spreadsheets 1A or 1B, that "new allottees" be required to pay a pro rata share of the advances outlined above, and that such reimbursements be paid in proportion to the existing contractors. Without such an adjustment, the existing contractors would in effect be subsidizing the power costs of "new allottees."

Section IV.A.4. goes on to state 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 would like 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." Draft Plan, p. 23. The existing customers, who have paid for the project, should not have their allocations reduced in order to provide this benefit to those who have not paid for the project. This policy consideration should not be applied to Schedule A power. It should only apply, if at all, to Hoover D-2.

10. Schedule B Nontax Exempt Entities

Section IV.B.2. states that A.R.S. § 45-1708(B) provides that the Authority must grant nontax-exempt public utilities an option to purchase the maximum amount of said capacity

permitted by federal regulations governing the issuance of tax-free bonds. Draft Plan, p. 24. We support the APA's interpretation that the "option to purchase" language means that such entities must be afforded an opportunity to apply for Schedule B power, but are not necessarily entitled to an allocation.

11. Schedule C Power

With respect to Hoover C, we support continuation of the existing structure. However, in light of the Schedule D power, the existing structure requires a slight modification. Enter into Schedule C contracts now. Draft Plan, p. 26. Give Schedule B contractors which are then utilizing Schedule B a right of first refusal for such amount of Hoover C energy pro rata to the amount of capacity being taken. as is available to bring the Hoover B capacity factor equal to the Hoover D capacity factor. Schedule D2B should be given the same treatment as Schedule B power with respect to available Schedule C power. Summarily, Schedule B and Schedule D2B contractors which are utilizing their capacity in a year in which Schedule C is available should have a right of first refusal for Schedule C power, pro rata to the amount of capacity being taken, until each has a capacity factor equal to the Hoover A and Hoover D2A capacity factor. Thereafter, any Hoover C above that amount should be offered proportionately to all APA customers.

12. Length of Contract Term

Section IV.F. addresses the term of the Post-2017 contracts. Under the Hoover Power Plant Act of 2011, the Authority's Post-2017 allocation of Hoover power is for a period of 50 years. Draft Plan, p. 30. Section IV.F. suggests that a shorter term might be advisable for the Authority's contracts with its customers, because of the possible, and perhaps significant, changes in the Authority's operations and the customers' operations in the upcoming years. The Authority requests suggestions as to the appropriate term of the Post-2017 customer contracts.

The existing customers were instrumental in the formation of the three-state coalition and were critically involved in the success of the federal legislation granting the Authority a 50-year allocation. The justification for the 50-year term was that Arizona, Nevada and the California entities were willing to give up 5% of their existing allocations to create a new entrant pool, in exchange for the long-term certainty with respect to the remaining resource allocation. That same justification applies not just to the Authority, but the Authority's existing customers. The existing customers supported the Authority and helped champion the federal legislation, and continue to be willing to give up a portion of their existing allocations in exchange for the same certainty contained within the federal legislation. The customer contracts should be for a period of 50 years.

We understand that the Commission is concerned that many things may change in 50 years and that it is desirable to have the flexibility to address certain changes. That same risk has been managed since 1987 via the recapture provision in the Power Sales Contract and APA's Resource Exchange Program. The combination of the two allows customers to voluntarily lay off unneeded resource, while allowing other customers to have the benefit of additional resources.

The Power Sales Contract provides:

"SECTION 29. Recaptured, Relinquished or Tendered Hoover Power

(a) If for any reason all or a portion of contractor's Entitlement has exceeded for a period of three (3) consecutive Contract Years the electric load of the Contractor, the Authority may recapture, in accordance with this Section 29(a), all or a portion of Contractor's Entitlement. The Authority shall give the contractor at least thirty (30) days notice of a hearing relating to a determination to effect recapture pursuant to this Section 29 (a). At such hearing, the Authority shall determine if the Contractor's Entitlement can be reasonably expected to exceed in whole or in part the Contractor's load in the future. Any portion of Contractor's Entitlement, or all of Contractor's Entitlement, as the case may be, the Authority determines to be excess pursuant to the preceding sentence shall be recaptured by the Authority. Any such recapture shall be effective sixty (60) days following written notice to the Contractor of the Authority's determination to recapture. Any such recapture of Hoover Power shall result in a reduction of the Contractor's Entitlement to the extent of the recapture.

(b) The Contractor may tender or relinquish to the Authority for resale by the Authority, Hoover Power to be made available to the Contractor and not needed by the Contractor. Hoover Power so relinquished or tendered to the Authority shall be returned to the Contractor within sixty (60) days following written notice by the Contractor to the Authority if required to meet the loads of the Contractor. The Authority will use its best efforts to sell such Hoover Power and the net proceeds of the sale thereof shall be applied to satisfy the Contractor's payment obligations hereunder. No tender or relinquishment of such Hoover Power shall relieve the Contractor of its obligations under this Power Sales Contract or, subject to the next succeeding sentence, be deemed a recapture by the Authority pursuant to Section 29(a) of this Power Sales Contract unless such tender or relinquishment shall be for the remaining term of this Power Sales Contract and the Authority shall have sold all or a portion of the Hoover Capacity and Energy to be made available to the Contractor for the remaining term of this Power Sales Contract. **The Authority retains the option to recapture pursuant, to Section 29 (a) a tender or relinquishment pursuant to this Section 29 (b) which exceeds three (3) consecutive Contract Years.**"

In the early years of the Power Sales Contract, circumstances were such that it made economic sense for (1) SRP districts to buy capacity from SRP instead of APA; and (2) APS districts to buy energy from APS instead of APA. As a result, the SRP districts wished to voluntarily relinquish capacity to APA and the APS districts wished to voluntarily relinquish energy to APA. However, the last sentence of Section 29(b) of the Power Sales Act (allowing a voluntary relinquishment which exceeded three (3) years to be permanently recaptured) could have forced these districts to take all of their Hoover power every three (3) years, even if it cost the districts more and resulted in no surplus being available to others.

Likewise, when CAP water became available, it was economic for the CAP districts to take CAP water and lay off Hoover. However, having the Hoover resource as a back-up in the event CAP was unavailable was very important. As a result, the CAP districts had to consider whether to forego CAP water every three years in order to fully use their Hoover power and avoid recapture.

In order to alleviate the need to make these otherwise unnecessary and undesirable decisions, the Resource Exchange Program was created by APA. It essentially provided a program for its customers to make economic decisions and to make more Hoover available to others without risk of recapture. We think that rolling these concepts into the Post-2017 power sale contracts is an appropriate way to manage the risk of changed circumstances.

Lastly, the longer term power sales contracts provide the most secure method of facilitating the issuance of bonds by the Authority.

13. <u>Alternative 1</u>

Alternative 1 is consistent with the reallocation consensus reached by the existing customers, and we continue to support this alternative as the preferred alternative. Draft Plan, p. 32-33. All of the other alternatives will cause undo harm to several of the existing customers, for the benefit of other existing customers. Any such changes may not be equable, and thus risk contravention of the Commission's statutory duties and obligations. This alternative presents the lowest risk that an existing customer would ultimately appeal the decisions implemented by the Commission.

In Section V.B. of the Draft Plan, it notes 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. Draft Plan, p. 32. This reduction is significantly larger than the new entrant pools created for any other preference resource. Hoover power is already an energy-limited resource, and further diminishing the capacity factor of the Schedule A power would further reduce the value and efficacy of such power. Consequently, we are strongly opposed to any such reduction. Much like the length of the contract term, the existing customers supported federal legislation reducing existing allocations by 5% in order to create a pool of power available for new users. They were willing to do this in exchange for long-term certainty. There is no agreement that any additional reduction is acceptable. The 5% pool is for all new entrants. That includes new districts that would otherwise be eligible for Hoover A.

With respect to considering an additional reduction of power from the existing customers, bear in mind that Western Area Power Administration is marketing 69 MW of Hoover D1, which also is available to new entrants in Arizona. Given the widespread marketing approach being used by Western to include new entrants, the significant pool size and the exclusion of existing APA customers from eligibility for Schedule D, only Alternative 1 provides consistency with federal legislation and marketing, without causing further harm to existing APA customers.

Existing Hoover A customers should not be expected to give up 5% for new entrants that are not districts and then give up an additional amount for new districts. This is consistent with

the requirement that the APA "shall [] dispose[] of [power] in an equable manner so as to render the greatest public service and at levels calculated to encourage the widest practical use of electrical energy." A.R.S. § 30-124. Equable means "free some sudden or harsh changes." Therefore, the only way to read the APA's directive is that in disposing of power it must do so in an effort to minimize sudden or harsh changes. Requiring existing Hoover A customers to surrender more than is required for the 5% pool would cause all such customers to suffer sudden and harsh changes with respect to the energy portfolios and ability to provide power. Any requirement for the existing customers to give up more than 5% of their current allocations would be a harsh and abrupt change, thereby violative of the APA's statutory duties and obligations.

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

The last paragraph of 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) (electric power, as nearly as practical, shall be disposed of in an equable manner so as to render the greatest public service and at levels calculated to encourage the widest practical use) and A.A.C. R12-14-201 (the financial interest and obligation of the Authority; the needs and interests of the purchaser, customers of the purchaser, and prospective purchasers in the same preference class; the needs of the entities and the type of use; and the other sources of power available to the purchaser from the federal government.) Based upon discussions at the April 7, 2014, workshop, we understand that all of these factors have been taken into account in the various spreadsheet alternatives. The reservation of discretion is simply to allow APA to make adjustments based on policy decisions or new or better data. To the extent any such revisions are made, the interested parties will have an opportunity to comment.

This same reservation is contained in the Draft Plan for all of the Alternatives except Alternative 6. Our comments here are directed to each instance where the reservation is repeated.

14. <u>Alternative 2A</u>

Section V.C. discusses Alternative 2A. Draft Plan, p. 33-34. In Alternative 2A, Schedule A power is allocated based on five-year average loads, plus in-lieu calculations and adds Hohokam as a Schedule A recipient. SRP is treated like it is in Alternative 1. As discussed above, the term in-lieu needs to be more clearly defined, and reflect that it means any nonpermanent water supply which a customer has used instead of pumping groundwater.

We object to the use of Alternative 2A. Different districts have made different load management decisions. For example, ED7 attempts to balance its load with its federal resources, to reduce the need for third-party purchases. Other districts have chosen to grow and add load. A district like ED7 should not be penalized because another district chose to grow.

If Alternative 2A is selected, we support including the "pumping equivalent load" calculation**.**

We object to new districts being included as an equal participant in Schedule A power. The new entrant pools (D-1 and D-2) were created in order to accommodate new users, including new districts, without causing undo harm to existing customers.

This alternative will be detrimental, and harm disproportionately, the following existing customers:

- Aguila Irrigation District
- Avra Valley Irrigation & Drainage District
- Buckeye Water Conservation & Drainage District
- Chandler Heights Irrigation District
- Cortaro-Marana Irrigation District
- Electrical District No. 2
- Electrical District No. 4
- Electrical District No. 5
- Electrical District No. 6
- Electrical District No. 7
- Maricopa County Municipal Water Conservation District No. 1
- Ocotillo Water Conservation District
- Roosevelt Water Conservation District
- Silverbell Irrigation & Drainage District

This alternative is also inconsistent with the federal legislation. Because this alternative would unduly harm these customers, it would be reasonable to anticipate that one or more of them will appeal or seek other remedies if this alternative is selected. Any such changes may not be equable, and thus risk contravention of the Commission's statutory duties and obligations.

As described above, any decrease to existing customers of more than 5% is not "equable." Although an increase to existing customers (other than SRP and CAP) would be beneficial to most existing customers, as a matter of policy, and to ensure process is legally defensible, we oppose changes beyond the 5% contemplated in the federal legislation, as such changes are harsh, abrupt, and lead to a system whereby it is difficult for customers and the public to have stable and consistent power supply. Thus, this alternative is unacceptable and inconsistent with the APA's statutory obligations.

15. <u>Alternative 2B</u>

Alternative 2B is just like Alternative 2A, then multiplied by the percentage of the five-year load that is agricultural. Draft Plan, p. 34-35.

We object to the use of Alternative 2B for the reasons stated in our objection to Alternative 2A. In addition, many districts serve nonagricultural customers in order to help lower water and power rates for their agricultural customers. The non-ag service component is integral to preserving agriculture and should not be used to penalize existing customers.

We note that it appears that the agricultural percentage may be applied to the wrong number. In this Schedule 2B, the formula appears to be:

Average Load + pumping equivalent "load" X Ag%

We think that the formula should be:

(Average Load + non-ag pumping equivalent "load") X Ag% + (ag pumping equivalent "load")

As discussed at the April 7, 2014, workshop, APA will need to ask applicants to describe what percentage of pumping equivalent water is used for agricultural purposes.

The more difficult question is what is "agricultural" use and is "agricultural" use an appropriate distinction? APA's existing customers that wheel over APS's system are contractually limited to serving "District Customers." "District Customers' are defined as follows:

> "4.5 District Customer: District and the members of the District whose electrical loads are used for agricultural purposes on a commercial scale (such as irrigation water pumping, sumps, lift stations, drip irrigation pumps, packing sheds, cooling facilities, cotton gins, grain elevators, farm labor residences, farm residences located on the farm and occupied by the farm owner/operator, feed lots and dairies, excluding processing for commercial, wholesale or retail products) within the boundaries of the District or for other agricultural related loads as agreed to by District and Seller. District Customer shall also include electrical loads used for District office buildings, warehouse facilities or other loads used in the operation of the District and located within the District boundaries. In order to fully utilize District Preference Resources, District Customer load shall also include future non-agricultural loads for water pumping, booster pumps, lift pumps, waste water treatment and water treatment but shall not include non-agricultural loads of chilled or process water used for industrial, commercial or manufacturing purposes or other loads associated with water, i. e., an office building located on the same property but not integral to the specifically aforementioned related water facilities load; provided that all such non-agricultural loads shall be new load added after October 10, 1997, and located within the District's boundaries. Prior to adding these non-agricultural loads, District shall notify Company of such intent and provide documentation which shows how District's Preference Resources are greater than existing loads. District Customer does not include golf courses."

We consider all of the highlighted terms in the above definition to be "agricultural" in nature. This definition is not without its difficulties. The definition of "agricultural" in this context has been disputed and argued over by parties for years and continues to be a source of disagreement with APS.

Finally, we question whether agricultural use alone is an appropriate distinction. Given that an irrigation district is formed for the primary purpose of providing water for irrigation,

perhaps the distinction should be both agricultural and irrigation uses. *See* A.R.S. §§ 48-2901.A., 48-2905.B., and 48-2909.B. *See also*, *Maricopa Cnty. v. Maricopa Cnty. Mun. Water Conservation Dist. No. 1*, 171 Ariz. 325, 328, 830 P.2d 846, 849 (App. 1991); *Hohokam Irr. & Drainage Dist. v. Arizona Pub. Serv. Co*., 204 Ariz. 394, 398, 64 P.3d 836, 840 (2003).

We suggest that "agriculture" be defined to include, but not be limited to, all of the following:

- irrigation water pumping
- sumps
- booster pumps
- egg farms
- lift stations
- drip irrigation pumps
- packing sheds
- cooling facilities
- cotton gins
- grain elevators
- farm labor residences
- farm residences
- feed lots
- dairies
- other agricultural loads
- district office buildings, warehouse facilities and other loads used in the operation of the district

This alternative will be detrimental, and harm disproportionately, the following existing cusotmers:

- Avra Valley Irrigation & Drainage District
- Buckeye Water Conservation & Drainage District
- Chandler Heights Irrigation District
- Cortaro-Marana Irrigation District
- Electrical District No. 4
- Electrical District No. 5
- Electrical District No. 6
- Electrical District No. 7
- Maricopa County Municipal Water Conservation District No. 1
- Ocotillo Water Conservation District
- Salt River Project
- San Tan Irrigation District
- Silverbell Irrigation & Drainage District

This alternative is also inconsistent with the federal legislation. Because this alternative would unduly harm these customers, it would be reasonable to anticipate that one or more of

them will appeal or seek other remedies if this alternative is selected. Any such changes may not be equable, and thus risk contravention of the Commission's statutory duties and obligations.

As described above, any decrease to existing customers of more than 5% is not "equable." Although an increase to existing customers (other than SRP and CAP) would be beneficial to most existing customers, as a matter of policy, and to ensure process is legally defensible, we oppose changes beyond the 5% contemplated in the federal legislation, as such changes are harsh, abrupt, and lead to a system whereby it is difficult for customers and the public to have stable and consistent power supply. Thus, this alternative is unacceptable and inconsistent with the APA's statutory obligations.

16. <u>Alternative 3A</u>

Alternative 3A is just like Alternative 2A, but excludes the pumping equivalent load calculations. Draft Plan, p. 32-33.

We object to the use of Alternative 3A for all of the reasons stated in our objection to Alternative 2A. In addition, excluding pumping equivalent loads further penalizes districts for making water management decisions that preserves groundwater for future use and helps Arizona fully utilize its CAP allocation.

This alternative will be detrimental, and harm disproportionately, the following existing customers:

- Avra Valley Irrigation & Drainage District
- Buckeye Water Conservation & Drainage District
- Chandler Heights Irrigation District
- Cortaro-Marana Irrigation District
- Electrical District No. 4
- Electrical District No. 5
- Electrical District No. 6
- Electrical District No. 7
- Maricopa County Municipal Water Conservation District No. 1
- Ocotillo Water Conservation District
- Queen Creek Irrigation District
- Roosevelt Water Conservation District
- Silverbell Irrigation & Drainage District

This alternative is also inconsistent with the federal legislation. Because this alternative would unduly harm these customers, it would be reasonable to anticipate that one or more of them will appeal or seek other remedies if this alternative is selected. Any such changes may not be equable, and thus risk contravention of the Commission's statutory duties and obligations.

As described above, any decrease to existing customers of more than 5% is not "equable." Although an increase to existing customers (other than SRP and CAP) would be beneficial to most existing customers, as a matter of policy, and to ensure process is legally

defensible, we oppose changes beyond the 5% contemplated in the federal legislation, as such changes are harsh, abrupt, and lead to a system whereby it is difficult for customers and the public to have stable and consistent power supply. Thus, this alternative is unacceptable and inconsistent with the APA's statutory obligations.

17. <u>Alternative 3B</u>

Alternative 3B is just like Alternative 3A, then multiplied by the percentage of the five-year load that is agricultural. Draft Plan, p. 36.

We object to the use of Alternative 3B for all of the reasons stated in our objection to Alternative 2A, 2B and 3A.

As reflected in the April 7, 2014, consultants' workshop, the coloring of the spreadsheet associated with Alternative 3B is incorrect and inconsistent with the color conventions utilized with respect to the other spreadsheet.

This alternative will be detrimental, and harm disproportionately, the following existing customers:

- Avra Valley Irrigation & Drainage District
- Buckeye Water Conservation & Drainage District
- Chandler Heights Irrigation District
- Cortaro-Marana Irrigation District
- Electrical District No. 4
- Electrical District No. 5
- Electrical District No. 6
- Electrical District No. 7
- Maricopa County Municipal Water Conservation District No. 1
- Ocotillo Water Conservation District
- San Tan Irrigation District
- Silverbell Irrigation & Drainage District
- Roosevelt Water Conservation District
- Queen Creek Irrigation District

This alternative is also inconsistent with the federal legislation. Because this alternative would unduly harm these customers, it would be reasonable to anticipate that one or more of them will appeal or seek other remedies if this alternative is selected as the proposal triggering the formal process. Any such changes may not be equable, and thus risk contravention of the Commission's statutory duties and obligations.

As described above, any decrease to existing customers of more than 5% is not "equable." Although an increase to existing customers (other than SRP and CAP) would be beneficial to most existing customers, as a matter of policy, and to ensure process is legally defensible, we oppose changes beyond the 5% contemplated in the federal legislation, as such changes are harsh, abrupt, and lead to a system whereby it is difficult for customers and the

public to have stable and consistent power supply. Thus, this alternative is unacceptable and inconsistent with the APA's statutory obligations.

18. Alternative 4

Alternative 4 is just like Alternative 1 for Schedule A. Draft Plan, p. 36-37. Schedule B is allocated based on five-year load averages, except CAP. CAP is treated like it is in Alternative 1.

The effect of this is to take power from AID, ED8, MVWCDD and Wickenburg, increase the allocations to Page, Safford and Thatcher and give new allocations to Fredonia, Mesa and Williams. Why are AID, ED8 and MVWCDD being singled out to take a bigger reduction than all other districts? To do so unwraps the compromise that was made in 1987 to allow these then new, non-CAP districts to retain their Schedule B allocations when all of the other districts' Schedule B allocations were recaptured for the benefit of CAP.

Please clarify why Spreadsheet 4/Schedule A slightly different than Spreadsheet 1/Schedule A. Note that Thatcher is shown as a negative, but shaded green.

This alternative will be detrimental, and harm disproportionately, the following existing customers:

- Aguila Irrigation District
- Electrical District No. 8
- McMullen Valley Irrigation & Drainage District
- Wickenburg
- Thatcher

This alternative is also inconsistent with the federal legislation. Because this alternative would unduly harm these customers, it would be reasonable to anticipate that one or more of them will appeal or seek other remedies if this alternative is selected as the proposal triggering the formal process. Any such changes may not be equable, and thus risk contravention of the Commission's statutory duties and obligations.

As described above, any decrease to existing customers of more than 5% is not "equable." Although an increase to existing customers (other than SRP and CAP) would be beneficial to most existing customers, as a matter of policy, and to ensure process is legally defensible, we oppose changes beyond the 5% contemplated in the federal legislation, as such changes are harsh, abrupt, and lead to a system whereby it is difficult for customers and the public to have stable and consistent power supply. Thus, this alternative is unacceptable and inconsistent with the APA's statutory obligations.

19. Alternative 5

Alternative 5 is like Alternative 1 until 2030. Draft Plan, p. 37-38.

In 2030, Schedule A allocations for entities in Maricopa County are reduced by an additional 10%. That power is then redistributed to entities outside of Maricopa County.

At that same time, CAP's Schedule B allocation is reduced by an additional 10%, and that amount is redistributed to the Maricopa County entities.

The reason given for creating this option is to address the loss of agricultural CAP water in 2030. In 1987, the Hoover allocations made to what are now CAP districts were based on the electric loads existing at that time. Those loads were pumping loads, without the benefit of CAP water. The "loss" of CAP water in 2030 simply puts those districts back in the position they were in 1987. Giving them an extra 10% in 2030 would be a bonus, at the expense of non-CAP districts. The distinction between Maricopa County districts and districts outside of Maricopa County is the wrong distinction. If the intent is to help districts that lose CAP water, it does not matter whether they are in Maricopa County or not.

If the intent is to use a portion of CAP's allocation to make up for the loss of CAP ag water, that transfer should be directly from CAP to the CAP districts. There is no need to involve the non-CAP districts or to take anything away from them to accomplish this shift.

Finally, if this type of alternative ultimately is adopted by APA, it also should recognize that non-CAP districts also will be losing nonpermanent supplies such as CAP in-lieu water and effluent. These types of losses should be given the same treatment as the loss of CAP water, with a pumping equivalent load calculation.

This alternative will be detrimental, and harm disproportionately, the following Hoover A existing customers:

- Buckeye Water Conservation & Drainage District
- Chandler Heights Irrigation District
- Electrical District No. 7
- Harquahala Valley Power District
- Maricopa County Municipal Water Conservation District No. 1
- Ocotillo Water Conservation District
- Queen Creek Irrigation District
- Roosevelt Irrigation District
- Roosevelt Water Conservation District
- Salt River Project
- San Tan Irrigation District
- Tonopah Irrigation District

This alternative will be detrimental, and harm disproportionately, the following Hoover B existing customer:

- Central Arizona Project

This alternative is also inconsistent with the federal legislation. Because this alternative would unduly harm these customers, it would be reasonable to anticipate that one or more of them will appeal or seek other remedies if this alternative is selected as the proposal triggering the formal process. Any such changes may not be equable, and thus risk contravention of the Commission's statutory duties and obligations.

As described above, any decrease to existing customers of more than 5% is not "equable." Although an increase to existing customers (other than SRP and CAP) would be beneficial to most existing customers, as a matter of policy, and to ensure process is legally defensible, we oppose changes beyond the 5% contemplated in the federal legislation, as such changes are harsh, abrupt, and lead to a system whereby it is difficult for customers and the public to have stable and consistent power supply. Thus, this alternative is unacceptable and inconsistent with the APA's statutory obligations.

20. <u>Alternative 6</u>

In Alternative 6, all Schedule A customers, except SRP, are increased by 6.5%, whereas SRP is reduced by 22%. Draft Plan, p. 39.

In Schedule B, all customers are increased by 6.5%, except CAP. CAP is reduced by approximately 22%, which is used to create the new entrant pool and increase the capacity of the existing customers.

As described above, any decrease to existing customers of more than 5% is not "equable." Although an increase to existing customers (other than SRP and CAP) would be beneficial to most existing customers, as a matter of policy, and to ensure process is legally defensible, we oppose changes beyond the 5% contemplated in the federal legislation, as such changes are harsh, abrupt, and lead to a system whereby it is difficult for customers and the public to have stable and consistent power supply. Thus, this alternative is unacceptable and inconsistent with the APA's statutory obligations.

21. <u>Other Matters</u>

a. Substantiation of Data

At the April 7, 2014, workshop, APA's consultants requested suggestions regarding what type of documentation should be used to substantiate the data (i.e., numbers) provided by entities applying for an allocation of Hoover power. It would be appropriate for the Commission to incorporate into its proposal the ability to request for additional data or verification associated with information submitted in application.

With respect to load data, the application should include an explanation of how the load was determined, and the identification of the documentary support upon which the load data was based.

With respect to the percentage of agricultural use, the application should include an explanation as to how the applicant defined the term, how the percentage was calculated, and the identification of the documentary support underlying the calculation of the agricultural use.

b. Data Consistency

K. R. Saline & Associates has submitted some suggestions to the Authority regarding how to make sure that the data submitted by applicants can be evaluated on an apples-to-apples basis. We fully support these suggestions.

c. Voluntary Data Concerns

The alternatives are based on data that was provided "voluntarily," and has not been verified or undergone independent scrutiny. Consequently, we understand that some assumptions may change when more accurate or robust information is proffered. Therefore, these comments are based on the concepts associated with the alternatives, and not on the accuracy of the information upon which some of the assumptions are made.

Also, as became obvious at the April 7, 2014, work session, there may be several districts that elected to not provide "voluntary data." By not providing voluntary data, and remaining in the shadows, these districts have been afforded an unfair advantage. These mystery districts are able to evaluate, draw conclusions, and develop strategies with respect to the alternatives, relying upon and utilizing the voluntary data the existing customers (and one new district) have provided. It would be appropriate to clarify that insofar as a potential "new allottee" does not provide voluntary data, the APA will be evaluating and ultimately selecting an alternative to initiate the "formal process" based in part upon the "voluntary data," and thus incentivize these mystery districts to likewise provide "voluntary data" during the pendency of the "informal process.

d. DWID questions

In Title 45, "district" is defined to include, among other entities, "agricultural improvement districts" or "water users associations." At the April 7, 2014, workshop, the representative for the Metropolitan Domestic Water Improvement District ("DWID") asked whether the DWID would be considered a "water users association" for purposes of Title 45.

We think the answer to that is no. The term "water user association" is included in numerous statutes, always in conjunction with the term "agricultural improvement districts." It is included at the request of SRP. SRP is the only agricultural improvement district in the state. SRP is overlain by an affiliated entity called the Salt River Valley Water Users Association, which is why SRP requests inclusion of the term "water user association." DWIDs are not intended to be included in the definition of "water user association."