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REFER TO FILE NO. 1991-1

October 15, 2014

Chairman and Members of the Commission
of the Arizona Power Authority and
Michael Gazda, Acting Administrator
1810 West Adams Street
Phoenix, Arizona 85007

Re: Primary Marketing Consideration Under §30-125(a) is Irrigation
Agriculture.

Dear Chairman, Members of the Commission and Mr. Gazda:

Our office is special counsel to the Mohave Valley Irrigation and Drainage District. The Mohave Valley Irrigation and Drainage District (MVIDD) is an irrigation district organized under the laws of the State of Arizona under the provisions of the Arizona Revised Statutes concerning irrigation districts and with the status of a political subdivision as provided by the Arizona Constitution.

MVIDD is completely devoted in its operation to assisting delivery of its allocation of water from the Colorado River contracted from the United States of America for the purpose of irrigation by its land owners, whose electric demand for power and energy is associated with the irrigation pumps required to withdraw, and apply the water for irrigated agriculture within the MVIDD.

MVIDD is the historically intended type of District to be benefited by an allocation of the Boulder Canyon Project Hoover power and energy allocated to the State of Arizona to be marketed through the Arizona Power Authority (APA), as compared to Districts which no longer serve predominately irrigation or irrigated agriculture but which continue to claim the status of irrigation and electrical districts and other districts under Title 48 entitled to be considered for an allocation under Arizona Revised Statutes §30-125(a).

As a matter of performing its due diligence in the marketing effort, Commissioners themselves should visit the areas served by District applicants for Hoover, both those which are current customers and those seeking to become customers for the first time. Commissioners should also refer to Google Earth and other programs that can identify each applicant so that the Commissioners can visually determine what constitutes the business of the applicant district.

Also, the Consultants for the Commission have been asked to inquire of the ADWR for their records on each current and prospective district concerning the use of water for irrigation and commercial agriculture.

Absent taking these steps the Commission is effectively blinding itself in making Hoover allocation decisions based on statistics that may be illusory.

The power and energy demand of the District is being calculated and will be relatively small in comparison to the total amount of Hoover power and energy available to the APA for marketing under schedules a and b of the marketing program.

It would be unwise, improper and a strained construction and interpretation of the Arizona Revised Statute should the Commission, in the exercise of its authority to market Hoover power and energy Schedules A and B, allocate and contract Hoover A and B power to Districts without regard to the amount of irrigation and irrigated agriculture to which District-applicants devote their electrical resources.

The purpose and intent evidenced by the legislative history of A.R.S. 30-125(a) indicates Hoover power and energy was not intended to benefit hobby farmers, lake-owners, recreation projects, commercial enterprises and residential electric consumers. While reading earlier marketing decisions and the legislative history (which is in the library of the APA and the history otherwise available for the education of the Commission) it indicates that Districts devoted to irrigation and commercial agriculture fought a long and lengthy battle to secure a sufficient allocation priority for Hoover power and energy for those uses distinguished from the power and energy uses of regulated utilities and other entities whose primary use of power and energy was not devoted to irrigation.

On behalf of MVIDD, we urge the Commission in the remarketing of Hoover to take a fresh look at applicant-Districts whose primary purpose is to furnish members their electricity need for irrigation and irrigated agriculture purposes as distinguished from those whose primary purpose has transitioned into other purposes.

We would point out that in 2017, upon the expiration of the current contracts, no existing contractors have any type of right, title, or other claim, either equitable or legal, to a mandatory reallocation of any amounts Hoover A and B. Each marketing cycle is a new beginning when the State of Arizona, acting through the APA, makes a decision on marketing a scarce resource-Hoover power and energy. Applicants must qualify anew.

To further the interest and the intent of the legislative history of Title 30, Section 125 (a) concerning marketing of Hoover Schedule A and B, the amount of an allocation to an entity for 2017 is vested solely in the discretion of the Commission acting on behalf of the Authority and the State of Arizona having a regard for that historic interest and intent.

The MVIDD electric needs under 125 (a), the calculation of which will subsequently be presented to the Authority, are slight and small. An allocation can be easily determined and made for the benefit of irrigation and agricultural needs of the MVIDD and its

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landowners. The idea that it should be required to apply for and be considered only under the "D" power concept is legally flawed, inappropriate, and contrary to existing law. Such a determination would be suspect.

Based on the familiarity of this office and the undersigned since 1966 (and prior thereto) with the intent and purpose of the statutes governing the marketing by the Authority of Hoover power and energy, it would be a tragedy and betrayal of the original trust intended by the drafters of ARS 30-125 and the legislature that adopted it for the Commission in its remarketing to not focus allocations primarily on the irrigation and agricultural needs of Districts applying for Hoover Schedule A and B.

We would be delighted to meet with the Commission and its Staff and consultants to answer questions.

Very truly yours,

CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.

By 

Michael A. Curtis, Special Counsel to
Mohave Valley Irrigation & Drainage District

Cc: MVIDD Management and Board of Directors