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ARIZONA POWER AUTHORITY

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MINUTES OF THE ARIZONA POWER AUTHORITY (“APA”) COMMISSION (“Commission”) MEETING HELD FEBRUARY 21, 2023

PRESENT: Philip C. Bashaw, Chairman
Russ Jones, Commissioner
Kim Owens, Commissioner
John Sullivan, Commissioner
Jim Sweeney, Vice Chairman

STAFF: Heather Cole, Executive Secretary to Commission
Jordy Fuentes, Executive Director
Ben Norris, Attorney General’s Office
John Schutter, Senior Accountant
Sonseeahray Thayer, Chief Financial Analyst

OTHER: Tisha Brackeen, AEPCO
Bryce Dningar, CAWCD
James, Eklund, Sherman Howard
Sheri Farag, Salt River Project
Darrin Francon, Central Arizona Project
Ed Gerak, Irrigation & Electrical Districts Association (IEDA)
Elston Grubaugh, Wellton Mohawk
Daniel Herder, ClarkHill
Taylor Howerter, Roosevelt Irrigation District
Leslie James, CREDA
Daniel Jones, ED #4
DeWayne Justice, ED #7
Jimmy Kendrick, WAPA
Patrick Ledger, AEPCO
Shane Leonard, RWCD
Ron McEachern, CAIDD
Kristin McMinimy, AEPCO
Doug Milligan, SRP
Jason Moyes, Moyes, Sellers & Hendricks
Donovan Neese, Roosevelt Irrigation District
Daniel Prichard, K.R. Saline & Associates

Jeff Ritter, Central Arizona Project
Ken Robbins, Electrical District #2
Scott Saline, KR Saline & Associates
Meghan Scott, Wellton Mohawk
Russell Smoldon, AMPUA
Sheryl Sweeney, ClarkHill
Jeff Woner, KR Saline & Associates

CALL TO ORDER: The meeting was called to order at 1:04 p.m. by Chairman Phil Bashaw. Quorum was established.

ROLL CALL: Commissioners Bashaw, Owens, Sullivan and Sweeney were present.

CHAIRMAN REQUEST FOR DECLARATION OF CONFLICT OF INTEREST BY ANY COMMISSIONER:

- Each Commissioner declared they had no conflict of interest on any matter as listed on the agenda for today's meeting.

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was recited.

APPROVAL OF MINUTES:

- **Motion:** To approve the minutes from the Regular Commission Meeting held on January 17, 2023 was made by Commissioner Sweeney and seconded by Commissioner Sullivan.
- **Vote:** Commissioners Bashaw, Owens, Sullivan & Sweeney approved the motion.
- **Resolved:** Approved as stated above and the written documents are entered into the Commission records.

- **Motion:** To approve the minutes from the Executive Session held on January 17, 2023 was made by Commissioner Sweeney and seconded by Commissioner Sullivan.
- **Vote:** Commissioners Bashaw, Owens, Sullivan & Sweeney approved the motion.
- **Resolved:** Approved as stated above and the written documents are entered into the Commission records.

REVIEW OF EXPENDITURES AND FINANCIAL REPORTS AND APPROVAL OF CLAIMS: Sonseeahray Thayer, Chief Financial Analyst, provided the Expenditures & Financial Reports. Hoover Operations Fund Claims #137812 - #13911, and APA Fund Claim #658 for the period February 1, 2023 through February 28, 2023 were presented.

- **Motion:** To approve Hoover Operations Fund Claims #13812- #13911 and APA Fund Claim #658 as presented was made by Commissioner Sullivan and seconded by Commissioner Owens.
- **Vote:** Commissioners Bashaw, Owens, Sullivan & Sweeney approved the motion.
- **Resolved:** Approved as stated above and the written documents are entered into the Commission records.

REPORT ON POWER OPERATION MATTERS: Sonseeahray Thayer, Chief Financial Analyst, reported the following:

- Monthly precipitation – January precipitation was significantly higher than the same time last year.
- Water Year Precipitation – Additionally, when we compare this water year to date to the same time period last year, over all we have had more precipitation.
- Upper Colorado River System – Precipitation to Date in the upper Colorado river system is at 118% which is a little higher than what it was the same time last year.
- Lake Powell inflow is forecast to be at 96% of normal for the year.
- Total System Contents – (Upper and lower basin) Total system contents is flat from last month.
- Reservoir and System Capacity – Currently Lake Powell is at 29% and Lake Mead is at 32% of capacity.
- Lake Mead Elevation – By December of 2024 we anticipate the elevation at lake Mead to be at the 1,018 mark.
- Glen and Hoover release remain fairly consistent from year to year

The Climate Forecast from the Colorado Basin River Forecast Center for Arizona is 33%-50% above normal temperatures with a 33%-50% chance of below normal precipitation over the next 3 months.

LEGAL REPORT

Assistant Attorney General, Ben Norris updated the Commission on the following: In 2003, the Navajo Nation (“the Nation”) sued the U.S. Department of Interior (the “U.S.”) in the U.S. District Court for the District of Arizona (the “District Court”), alleging that the U.S. failed in its trust obligations to (1) determine the Nation’s water needs and (2) come up with a plan to address those needs. The APA intervened in the case, along with several other Arizona entities (including other agencies of the State), the States of Colorado and Nevada, and a number of California irrigation and water districts, etc. (together, the “State Entities”). The case was stayed for about ten years to allow for settlement negotiations, which were unsuccessful. In 2014, the District Court granted the defendants’ motion to dismiss. The Nation appealed to the U.S. Court of Appeals for the 9th Circuit (the “9th Circuit”). In December 2017, the 9th Circuit issued its decision affirming the dismissal of some claims, but reversing the dismissal of the breach of trust claims and remanding the case back to District Court. The District Court then found it lacked jurisdiction because the Nation’s complaint would require the District Court to determine the Nation’s rights in Colorado River water, while the U.S. Supreme Court (the “Supreme Court”) specifically reserved jurisdiction for itself on these issues in *Arizona v. California*. The Nation then filed a motion for leave to file its Third Amended Complaint on the breach of trust issue, which the District Court denied in August 2019. The Nation appealed for a second time to the 9th Circuit. In April 2021, the 9th Circuit reversed the District Court and once again reinstated the Nation’s lawsuit. The U.S. and the State Entities (but not the APA) then filed separate petitions for certiorari with the Supreme Court (a request to have the Supreme Court hear their appeal), which the Supreme Court granted.

The issues now before the Supreme Court are (A) Can the litigation proceed in District Court (where the Navajo Nation filed its complaint), or does the Nation have to file its complaint in the Supreme Court itself, under that Court’s retained jurisdiction as provided in *Arizona v. California*, and (B) Under the treaties between the U.S. and the Nation, does the U.S. have a trust duty to the Nation that obligates the U.S. to (1) determine the Nation’s water needs and (2) come up with a plan to address

those needs. As the appellants, the U.S. and the State Entities filed the opening briefs. In its brief, the primary argument of the U.S. was that it owes no trust duty to the Nation because none of its treaties with the Nation contained the specific language necessary to give rise to a trust relationship; the U.S. only briefly discussed the jurisdiction issue. In their joint brief, Arizona, Nevada, and the other State Entities addressed the jurisdiction issue first and the trust issue second, except that the State of Colorado wrote a separate brief arguing only the jurisdiction issue, stating that there was no need to address the trust issue because the jurisdiction issue is dispositive. The Nation then filed its response brief, heavily focused on the trust issue, claiming that the U.S. has never fulfilled the promises it made to the Nation in the treaties that the Nation signed with the U.S. No fewer than 9 separate amicus briefs were filed in support of the Nation, mostly by various Indian-related entities represented by law school clinics and large law firm pro bono departments; the amicus briefs generally focused on the trust issue and the history of the failure of the U.S. to live up to its treaty obligations to the Nation. There still may be reply briefs from the U.S. and the State Entities. Oral argument before the Supreme Court has been set for March 20, 2023, and while the Supreme Court sets its own schedule, it would not be a surprise to have a ruling sometime in 2023.

While most of the briefing to the Supreme Court so far has focused on the trust issue, it may be that the Supreme Court's primary concern is with the jurisdiction issue, as the Supreme Court views part of its job is to make sure that federal law is interpreted and applied uniformly. Put another way, the prospect of various Indian tribes filing similar actions in different District Courts across the West, inevitably resulting in conflicting interpretations of U.S. treaty obligations to various tribes, may be particularly concerning to the Supreme Court. However, this is speculative at best, and we will have to review whatever additional briefs may be filed and await the Supreme Court's ruling before we can know what the next steps in this litigation will be.

EXECUTIVE DIRECTOR REPORT

Legislative Update:

State

- House Bill 2218 – Added language to allow the APA to own energy storage/ clean up an ambiguity in statute related to hiring director, manager, or Chief Engineer.
- House Bill 2437 – No line siting approval needed if connecting line never leaves your property
- House Bill 2496 – Adds to the definition of series of transmission line to be more than five structures longer than 1 mile in order to need line siting approval

Federal

- Senator Kelly/Representative Stewart Bill - Needs to be reintroduced

APPA Legislative Rally

CREDA & Upper/Lower Basin Customers asking for:

- Short term – Replacement Power \$255 million of which \$80 million would be earmarked for Hoover customers.
- Mid-term – Kelly/Stewart bill – Estimate as if the bill had passed would be \$92.5 of which \$30.2 million would be for Hoover operations.
- Long-term – We need to address or re-address any reality where hydropower does not produce the amount of hydropower that existing customer take or pay contracts are based on.

Drought Impact Update:

USBR modeling - USBR did some preliminary modeling using the four worst years of precipitation (2000-2004) as the input of inflows for the next four years and then ran 4 different scenarios. These

scenarios were 1) make no operational changes 2) optimize releases to protect Lake Powell's critical level, 3) optimize releases to protect both Powell and Mead critical water levels, and 4) they ran a hybrid of scenario 3 but focused by prioritized Powell over Mead for operation optimization. The scenarios are not really that important other than to say that we really need some wetter years or we have to make very hard decisions on the amount of water we are taking from the River.

Replacement power costs - Replacement power costs continue to be very high. Many of our customers are in the mode of raising rates. Some have seen upward of 150% increases over the last two or three years. I am working on getting more information related to these increases to help better inform you and other decision makers as we deal with the additional effects of less power coming to these customers.

Replacement power options – The APA will continue to explore replacement power options for Arizona customers. We continue to work with WAPA CRSP on the program they are working on. The piece of property identified by this group has an application pending to put that piece of property to auction. Staff will continue to monitor.

As previously mentioned, Elston Grubaugh, Wellton Mohawk made a request of WAPA to help with replacement power. The APA continues to explore solutions that may be beneficial to Wellton Mohawk but also for other Arizona power customers.

CREDA/ WAPA to SPP Conversation:

This is in relation to WAPA CRSP, of which many of our customers have contracts. Mr. Fuentes is on the CREDA board and this has been a topic of discussion for a while. Many of the WAPA CRSP customers are already part of the SPP market. They want their WAPA CRSP resources to be put into the SPP market. The issue is lower basin customers do not see the benefits that the upper basin customers do. In fact, it could be argued that the energy resource that lower basin customers get may be impaired from a resource adequacy perspective. There have been many conversations about this with WAPA and other upper basin customers. AEPCO has put together a letter that nearly every Arizona stakeholder has signed onto, except for SRP. The letter lays out a technical solution that has been vetted and discussed by AEPCO, ACES, CRC Nevada, WAPA CRSP, and a number of upper basin CRSP customers.

WAPA 2024 Base Rate Update:

Mr. Fuentes recently attended a presentation by WAPA and USBR related to the Base Rates. Currently, the base rates are based on the 24 month study that does not contain the reductions in water that we know are likely coming. Both the APA and CRC Nevada made sure WAPA & USBR know we were concerned with going through the process of adopting a base rate knowing that it will likely significantly change. Mr. Fuentes sought and got a commitment from WAPA that they would work with us and that their normal timelines may need to be compressed depending upon when we know what cuts we will likely see.

BUSINESS ITEMS

Possible Approval of Outside Legal Service Contracts

The Attorney General's office has conducted the RFP process. Three firms responded to the RFP. 1 had "no" experience with Water or the Colorado River and the other two had "some" experience. Dickenson Wright & Sherman Howard were offered contracts on an "as needed" basis. Mr. James Eklund, Sherman Howard, was present at the Commission meeting. He introduced himself and the

firm which has extensive experience with Colorado River issues. The Commissioners were sent the contracts for review and may ratify them at the next Commission meeting.

Possible Approval of APA Renewable Energy Certificate Program

An APA Customer Meeting was held on February 6 to discuss the possibility of an APA Renewable Energy “REC” Program. Beginning in 2022, WAPA gave their Contractors the ability to claim their 2021 RECs if they so desired. Any RECs not claimed were sold by WAPA. In 2023 WAPA has determined that all Contractors may claim their REC and market them. A contractor may also not claim their RECs and WAPA will sell them and credit the contractor with the amount of the sale.

Staff believes that the APA can market and sell the APA RECs for a much higher price than if they were sold by WAPA. Therefore, Staff has been working with the APA customers to put together a REC Program that will create flexibility for customers to use their RECs as they see fit. 2022 RECs will be available April 1, as will RECs that were generated in the first quarter of 2023. Moving forward, APA customers will have their RECs available on a quarterly basis.

Sheri F. from SRP asked if the APA statutes allow for the sale of property such as the RECs. Staff will work with legal counsel to confirm statutory authority. The discussion also included topics regarding WREGIS accounts, timing and how the transfer of RECs will occur.

WAPA will need to know no later than April 1, 2023 how the APA would like to handle the 2022 RECs as well as 1st Qtr 2023.

Commissioners & Customers will receive draft versions of the program and election form in the coming weeks. If necessary, a Special Commission Meeting may be needed to approve the program and to move forward with claiming the APA Recs on behalf of the APA customers.

COMMISSIONER COMMENTS:

Commissioner Sullivan thanked Mr. Patrick Ledger for the letter sent to CRSP which articulated his position.

CUSTOMER COMMENTS:

Leslie James thanked Mr. Fuentes for his help framing the congressional “asks” and issues that need to be addressed. Mr. Fuentes shared that Ed Gerak & Ken Saline were instrumental in reaching the final numbers.

Mr. Shane Leonard encouraged those making the “asks” to be very specific when asking the Irrigation Districts to provide replacement cost figures. There are many factors that need to be included to ensure that the metrics are consistent.

There being no further business to come before the Commission, Chairman Sullivan adjourned the meeting.

The meeting was adjourned at 2:37 p.m.

Phil Bashaw, Chairman

ATTEST:

Heather J. Cole, Executive Secretary to Commission

DRAFT