

## COMMISSION

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JORDY FUENTES – EXECUTIVE DIRECTOR  
HEATHER COLE – EXECUTIVE SECRETARY



## ARIZONA POWER AUTHORITY

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## MINUTES OF THE ARIZONA POWER AUTHORITY VIRTUAL (“APA”) COMMISSION (“Commission”) MEETING HELD JULY 16, 2024

- PRESENT:** Phil 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  
Dena Benjamin, Legal Counsel  
John Schutter, Chief Analyst  
Sonseeahray Thayer, Chief Financial Officer
- OTHER:** Elston Grubaugh, Wellton Mohawk  
Daniel Herderer, Clark Hill  
Taylor Howerter, Roosevelt Irrigation District  
Leslie James, CREDA  
Daniel Jones, Electrical District #4  
DeWayne Justice, Electrical District #7  
Kristine McMinimy, AEPCO  
Jason Moyes, Moyes, Sellers & Hendricks  
Daniel Pritchard, K.R. Saline & Associates  
Ken Robbins, Electrical District #2  
Ken Saline, KR Saline & Associates  
Scott Saline, KR Saline & Associates  
Meghan Scott, Wellton Mohawk  
Sheryl Sweeney, Clark Hill  
Kelly Urbine, Current Insights  
Robert Van Hofwegan, Electrical District #8  
Glen Vortherms, Maricopa Water Conservation District  
Daniel Wilson  
Jeff Woner, K.R. Saline & Associates  
Brian Young, Central Arizona Project

**CALL TO ORDER:** The meeting was called to order at 10:05 a.m. by Chairman Phil Bashaw. Quorum was established.

**ROLL CALL:** Commissioners Bashaw, Jones, 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 May 21, 2024, was made by Vice Chairman Sweeney and seconded by Commissioner Sullivan.
- **Vote:** Commissioners Bashaw, Jones, Owens, Sullivan & Sweeney approved the motion.
- **Resolved:** Approved as stated above and the written documents are entered into the Commission records.

*There were no minutes to approve from the Regular Commission Meeting that was called to order but then not held due to the lack of a quorum on June 18, 2024.*

**REVIEW OF EXPENDITURES AND FINANCIAL REPORTS AND APPROVAL OF**

**CLAIMS:** Sonseeahray Thayer, Chief Financial Officer, provided the Expenditures & Financial Reports. Hoover Operations Fund Claims #14671 - #14747 & #14752 - #14786 & APA Claims #673-#674 for the period May 1, 2024 through June 31, 2024 were presented.

- **Motion:** To approve Hoover Operations Fund Claims #14671 - #14747 & #14752 - #14786 & APA Claims #673- #674 as presented was made by Commissioner Jones and seconded by Commissioner Owens.
- **Vote:** Commissioners Bashaw, Jones, Owens, Sullivan & Sweeney approved the motion.
- **Resolved:** Approved as stated above and the written documents are entered into the Commission records.

**REVIEW OF DRAFT APA & HOOVER OPERATIONS FUND 2025 BUDGETS -** Sonseeahray Thayer, Chief Financial Officer explained the revisions.

- *Please note, there have been no revisions to the 2025 APA Fund Draft Budget.*

**HOA Budget**

In the June 2024 Customer Meeting, the HOA Preliminary budget was presented, showing no increase in the composite rate expected for OY 2025. As you may recall, this composite rate was determined by using the WAPA estimated generation of 3,143,136 MWh and conservatively decreasing it by 3.7% to 3,027,161 MWh to mitigate what we felt was an overly optimistic estimate of generation based on prior historical yearly totals. Since last month's customer meeting, there have been substantial decreases in the expected total generation of energy from the Hoover Dam for the 2025 operating year, going from an original estimate in May of the undiluted 3,143,000 MWh to a current estimate of

3,036,000 MWh as of July 10, 2024, due to, according to the Bureau of Reclamation, dryer trending and less forecasted capacity.

Additionally, the APA has been informed that this new forecast does not include the IID (Imperial Irrigation District) agreement, which would reportedly bring the generation down by another approximately 110,000 MWh per year, making the OY 2025 energy generation at the Hoover dam amount to 2,926,000 MWh.

As a result of these two items, the APA has had to revise the OY 2025 HOA budget. Due to the possibility of a larger than anticipated composite rate increase, as compared to last month's presentation of no composite rate increase, we have prepared 2 budget scenarios; One that accounts for the full decrease in energy generated to 2,926,000 and one that accounts for 1 1/2 of this decrease to 2,976,581.

When looking at Scenario #1, the full estimated decrease from the preliminary budget has been accounted for, using 2,926,000 MWh as the BCP OY estimated generation amount; This decrease would account for not only the decrease in Hoover estimated generation, but also the full currently estimated approximation of the IID agreement. Using this figure, the Composite Rate would increase \$1.04 over the current year composite rate, to \$35.60; a 3% increase from OY24.

In addition, half of the estimated decrease was accounted for, using 2,976,581 MWh as the BCP OY estimated generation amount; Using this figure, the Composite Rate would increase \$.51 over the current year composite rate, to \$35.07; a 1.5% increase from OY24.

Please note that while four main components make up the HOA budget, as was discussed in the customer meeting last month, the change in composite rate is primarily driven by 2 of those components; the WAPA Total Revenue Requirement, or "Base Charge", and the Estimated Generation for the operating year. While this is the case, please know that the APA continues to look at controllable expenses in order to provide customers with the most efficiently run organization while still being able to offer stellar customer service.

As stated in the May 2024 customer meeting, WAPA utilizes what we believe to be overly optimistic energy through the dam. Despite the estimated OY25 energy from WAPA being lower than the original estimate for OY25, WAPA is still predicting an increase of 67,000 MWh from the current year's presently predicted final amount of 2,974,000 MWh. In addition, their current OY25 energy generation amount does not include any decrease from the IID agreement. The APA feels that the IID approximation of 110 thousand MWh should be included when looking at both scenario 1 and 2 and therefore, has included this amount in our calculations.

We have presented these two budget scenarios in order to receive feedback from both the customers and the commission as to how the APA should proceed with the budget. Please note, as these are not finalized numbers, we could potentially see more changes in the estimated energy generation, either up or down, and would like feedback on whether customers would like to see the full decrease in the composite rate or if we should take a less conservative approach to the budget and account for a smaller decrease in our assumptions.

**REPORT ON POWER OPERATION MATTERS:** Sonseeahray Thayer, Chief Financial Officer, reported on the following:

- Monthly precipitation – There has been more precipitation this June compared to the same time last year.
- Water Year Precipitation – When comparing Water Year 2024 to date to the same time last year, over all there has been less precipitation.
- Upper Colorado River System – Precipitation to date in the Upper Colorado River System is currently at 101%, lower than it was at the same time last year but higher than the previous 3 years.
- Lake Powell Inflow - Lake Powell inflow is forecast to be at 85% of normal for the year.
- Total System Contents – (Upper and Lower Basin) Total system contents for the current water year has increased in the last month.
- Reservoir and System Capacity – Lake Powell’s is currently at 42% capacity, Lake Mead’s is at 33% capacity, while total system capacity is at 44%.
- Lake Mead Elevation – By May of 2026, the anticipated elevation at Lake Mead may be at the 1,059 mark.
- Glen Release – The Glen release for WY24 is comparable to the same time over the last few years
- Hoover Release – and the Hoover release remains relatively consistent year over year.

*Commissioner Owens left the Commission Meeting @ 10:38am*

**LEGAL COUNSEL UPDATE** – Dena Benjamin, Legal Counsel, summarized the Supreme Court Decision in *Loper Bright Enterprises v. Raimondo*, overturning the *Chevron* Doctrine.

*(The views expressed are her own, and not the official opinion of the Attorney General).*

In *Loper Bright Enterprises v. Raimondo* (June 28, 2024), the Supreme Court decided by a vote of 6-3 to overrule *Chevron USA Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). The case deals with the regulation of commercial fishing in the U.S. exclusive economic zone, and involved a challenge to a rule that required fisherman to pay for compliance costs of observers to board their vessels. The specifics of the statutes or regulations involved, however, don’t relate to the APA or its customers.

The *Chevron* doctrine (adopted in the 1984 decision) is summarized in the majority opinion as a 2-step process: In cases involving the interpretation of a federal statute administered by a federal agency, a court first determined if Congress has "directly spoken" to the issue at hand, and if so, the courts were bound by Congress' words in the statute. But if the statute was "silent or ambiguous," then courts were directed to defer to the agency's interpretation of the statute.

The majority then states that while the courts must “respect” the views of the executive branch (including its administrative agencies), it is the courts, not federal agencies, that have the ultimate authority to interpret the statutes enacted by Congress. The Court provides a lengthy historical analysis demonstrating this point.

The majority opinion states that the federal Administrative Procedures Act (“APA”), enacted in 1946, confirmed the prior cases holding that federal courts are the ultimate interpreters of federal statutes, not federal agencies. The majority states that: “The deference that *Chevron* requires of courts reviewing agency action cannot be squared with the APA,” and justifies this position in detail. While agencies

may have subject matter expertise, it is the courts that have expertise in resolving statutory ambiguities. The Court said the *Chevron* has become unworkable, and notes exceptions to the doctrine.

One of the most important parts of the decision is the discussion of the doctrine of *stare decisis*. This doctrine generally requires courts to adhere to their prior decisions as precedent. The majority concluded that *stare decisis* did not require it to continue to follow *Chevron*, because that decision has become unworkable (among other reasons). The majority also stated that *Chevron* allows federal agencies to change positions when they like, which makes the law unstable for regulated parties.

There is a significant exception to the majority's ruling, which is that it does not apply to prior cases that relied on the *Chevron* framework. The holdings of those cases that specific federal agency actions are lawful remain good law and are still subject to *stare decisis*.

The dissenting opinion by Justice Kagan argued that a title for the majority's holding could be "hubris squared." She stated that it is appropriate for federal courts to rely on agencies' interpretation of the law because the agencies, not the courts, have expertise in the areas they regulate. She also argued that *Chevron* is well-established precedent and should have been followed under *stare decisis*.

Some of the "take-aways" from *Loper Bright Enterprises v. Raimondo* are that:

- Existing federal court decisions that relied on *Chevron* remain good law.
- Significant power that rested with federal agencies under *Chevron* now has been transferred to the federal courts, meaning there is even more is at stake in upcoming federal court appointments.
- We will learn more about the decision and its ramifications in the years to come.

## **EXECUTIVE DIRECTOR REPORT**

### **LTEMP FSEIS Record of Decision Update**

- The Bureau of Reclamation (BOR) reinforced the 2 purposes of cool/cold water releases and modifications to the HFE accounting period
- Hydropower impacts were estimated at \$5-\$18M for 2024. This is less than initial estimates, but likely only due to the delay in the FSEIS process and completion of the ROD
- The HFE accounting period is now year-round, with a focus on Spring releases. If the sediment trigger is met but an HFE is not performed, it is possible for the sediment balance to rollover into the next year. The report advocates for Spring HFEs to more naturally match nature, but given past engagement with the AMWG, it is likely to build beaches in preparation for the summer rafting season.
- Despite our attempts, they continue to state that non-native fish were "recently" discovered downstream of GCD. This has allowed them to only focus on the temperature releases, and not fish curtains or other "long-term" solutions because they wouldn't have been able to implement by this summer.
- BOR seemed to bulletproof the ROD against hydropower claims by referring to the ability for WAPA to obtain replacement power, that the cost of experiments will be non-reimbursable. Despite acknowledging the impact to the Basin Fund, it shouldn't have a Cost Recovery Charge impact this year.
- The ROD expressed a need for an updated MOA to address LTEMP Flow Actions and Fish Control

- It also provide a reference to Section 7 (ESA) compliance, a potential NEPA exposure point.
- Implementation will follow Section 1.3 of the 2016 LTEMP, but it wasn't laid out expressly in this ROD
- A significant portion of the ROD was dedicated to the Monitoring Plan for non-native fishes
- BOR will invoke emergency criteria for implementation this year, as they claim that they will not have enough time for a 30-day notification
- Trigger of the cool mix flows will be based on modeling. There is a temperature gauge at RM61, but it doesn't have the ability to communicate throughout the day. Termination of the flows will be based on similar modeling, but could be problematic if the modeling is flawed.

**Visitors Center Update** – The Visitor Center Ad-hoc committee met on June 26<sup>th</sup>. We spent two hours on the call better understanding the revenue and expenses of the Visitor Center. We ran out of time to finish the meeting another meeting is being scheduled to complete the meeting. A tour of the Visitor Center and its operations for customers will be part of the upcoming Technical Review Committee meeting in September.

**Pinal Solar Update** – On June 5<sup>th</sup> there was a customer meeting where AEPCO gave a status update on the grant and provided a lose roadmap of next steps. AEPCO secured an extension of time to submit its formal application for the grant. They are using a consultant to help with the development of that application.

**Building/Landscaping Project** – The landscape project is moving forward. We ran into one hiccup with the City of Phoenix related to their turf removal program. They were wanting to enforce some requirements on us, like engineered stamped plans and ground cover requirements relating to the small amount of area that is in the right-of-way, which were going to significantly increase the cost of the project (\$15k rough estimate). Considering we were going to only get back somewhere in the ball park of \$7,500, the decision was made to move forward without participating in the City of Phoenix's turf removal program. Please reach out if you have any further questions on this.

**WAPA CRSP to SPP/Pseudo Tie** – The development of the pseudo tie continues to move forward. The steering committee meets later in July to continue its discussions.

## **BUSINESS ITEMS**

- Possible Approval & Authorization to Enter into an Interagency Service Agreement – Department of Law, Attorney General Office for the State Fiscal Year 2025.
  - **Motion:** To approve entering into an Interagency Service Agreement with the Department of Law, Attorney General Office for the State Fiscal Year 2025 as presented was made by Commissioner Jones and seconded by Vice Chairman, Jim Sweeney.
  - **Vote:** Commissioners Bashaw, Jones, Sullivan & Sweeney approved the motion.
  - **Resolved:** Approved as stated above and the written documents are entered into the Commission records.

- Possible Approval & Authorization of a 12-month extension of the contract with Duncan & Allen LLP for outside counsel services procured by the Office of the Arizona Attorney General (AGO) on the behalf of the Arizona Power Authority (Authority).
  - **Motion:** To approve a 12-month extension of the contract with Duncan & Allen LLP for outside counsel services procured by the Office of the Arizona Attorney General (AGO), on the behalf of the Arizona Power Authority (Authority) as presented was made by Commissioner Jones and seconded by Commissioner Sullivan.
  - **Vote:** Commissioners Bashaw, Jones, Sullivan & Sweeney approved the motion.
  - **Resolved:** Approved as stated above and the written documents are entered into the Commission records.

**VISITORS' COMMENTS/CALL TO THE PUBLIC: N/A**

**COMMISSIONER COMMENTS:** Commission Jones welcomed Commissioner Sullivan back!

**ADJOURNMENT:**

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

The meeting was adjourned at 11:26 a.m.

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Phil Bashaw, Chairman

ATTEST:

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Heather J. Cole, Executive Secretary to Commission