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Chairman Brophy and Members of the Commission
Robert Johnson Executive Director
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1810 West Adams Street
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Re: Contractual Law to be Applied on Contract Rights and Reimbursement

Gentlemen:

FEDERAL LAW-WHAT DID IT SAY?

First, review again the language of the Congressionally enacted Federal Hoover 2011 Act.

Second, in 2011, the Federal Post 1987 Hoover Contractors (the actual Federal Contractors – a word of "art") were worried sick Congress might change the rules on Hoover allocations after almost 90 years. Congress might and perhaps completely restructure the allocations (the automatic right of renewal was gone). Commissioner Walden appeared before Congressional committees and testified on the proposed Hoover bill.

Third, many current APA customers have vocally declared "they" negotiated the new 2011 Federal Hoover enactment at great expense. Not so. A review of the actual history will indicate the California Federal Contractors and the Nevada Federal Contractor as well as the APA as the recognized Arizona Federal Contractor played major roles, along with Sen. Reid. and the Nevada, California, and Arizona congressional delegations. The APA, at great expense (because it was important to preserve the Hoover resource for the benefit of the entire "State of Arizona") played the major Arizona role as its Federal Contractor - you can review the negotiating notes. The negotiating entities were the recognized BCP Federal Contractors.

Fourth, in 2011, the only recognized Hoover "current Federal Contractors" working on the 2011 legislation were the following: Nevada (CRC), the California entities (which had individual contracts and even Southern California Edison was a Federal Contractor), and Arizona through the APA. The APA is and was (in contract terms as a matter of law) the only

Arizona Hoover Federal "Contractor". No Arizona district, electrical or irrigation or otherwise, was identified, described, and recognized as a "Contractor" in the 2011 legislation. There was mentioned and described as part of the Federal marketing mandate the concept of "new" Federal contract allottees who would become "new" Federal Contractors for D-1 and D-2, but APA was an old Federal Contractor. There were no "new" Arizona APA Federal allottees except in the category of D-2. Much commotion and many "tire spinning" comments have been made on what the Federal 2011 law designated or did not designate as a recognized "Federal Contractor" to be assessed charges. A reading of the law will clarify the definition and identity of what constitutes under the 2011 law a Federal Contractor, old or new. And an existing APA sub allottee Hoover customer is not mentioned. And APA is not a new Federal Contractor whose account must be adjusted with a cost, but the D-2 contractors are.

THE FLAVOR OF THE REIMBURSEMENT ARGUMENT:

The flavor of the current argument appears by analogy to be: "We have been here as customers of this closing restaurant (Post 1987 APA contract) for a long time; and we have eaten all the food (capacity) and drunk all our fill (energy), enjoyed the "fare" and paid the tab, a portion of which tab expense has gone to build a new restaurant (Post 2017 APA contract), therefore when the "new" restaurant (Post 2017) opens up, because we paid our Post 1987 bills - the tab - at the old place, we should be allowed to get to the head of the food line again, and also get some money back for having paid our old food tabs and bills." This argument does not hold legal weight or have merit in the Post 2017 remarketing of Hoover

BLACK LETTER CONTRACT LAW-WHAT IS IT AND DOES IT APPLY TO HOOVER REMARKETING ANALYSIS?

In the practice and study of the law, some historic concepts have evolved serving as "guidelines" and "universally" accepted fundamental contract law principles. These contract law principles are often referred to as "Black letter contract law" or "Hornbook contract law." When examining a legal contract problem, the "Black letter law" and "Hornbook law" are referred to in looking at "basic" legal contract principles to be applied in a case. It is a custom and practice to refer to "Black letter" contract law principles for guidance when examining a matter of contract.

As a matter of **"Black letter" contract law in Arizona:**

1. When it's over, it's over. The first **Black letter contract law principle** is that, unless the document within its 4 corners otherwise provides (i.e., a right of renewal), when the contract expires, is terminated, or is otherwise over - it is over. Done. Gone. The Post 1987 Hoover contracts are and have been and will be until September 30, 2017 a binding matter of contract between APA and its customers governed by the Post 1987 contract terms contained therein. Again, it will terminate and expire and be of no further force nor effect nor value on September 30, 2017, except as a

legal piece of paper history (unless an outstanding bill has not been filed). All benefits and burdens of the Post 1987 Hoover APA contracts promised by the APA to customers and assumed and agreed to by its customers are identified in the terms and conditions contained within the contract parameters. There are no "extra" agreements and no "side deal bells and whistles" agreements governing the administration and interpretation of the contracts. **Black letter contract law principles** - There was an APA (1) "offer" to contract, (2) communication and mutual understanding, (3) consent, and (4) "acceptance" resulting in a written "agreement" for a "fixed term" and (5) "payment of consideration" to APA for the benefits and burdens (6) delivered to and accepted by the APA contractors. This constituted an enforceable contract.

NOTE - The Federal Contractors financed the Hoover uprates which provided more BCP capacity, but not energy, because Hoover is a "run of the river" resource with no energy contract guarantees. When Western sold increased uprate capacity, all Federal Contractors received less energy, and that was the deal. APA got capacity but less energy.

2. In consideration of delivering contractually required power and energy, APA has been (or will be - we all hope) fully paid and compensated pursuant to its contracts for all its pre-October 2017 Hoover expenses. The Post 1987 Schedule A contractors (Note - some of whom were **new** 1987 Schedule A contractors that received power taken from pre 1987 "Legacy" Schedule A contractors) will have received and paid for all of the contractual benefits of their bargain with the APA. **Black letter contract law principle - A fully performed contract upon completion expires of its own accord.** The parties are released from their obligations under the completed contract.

NOTE - The 2011 Federal law required "capital account adjustments" in 2017 are only for 2017 contracts effect with "new" Federal Contractors. APA is not a new Federal Contractor nor are its Schedule A customers. Only D-1 and D-2 are new Federal Contractors to get adjusted accounts.

3. Conclusion: Only D-1 and D-2 Federal Contractors will have adjusted accounts as "new" Federal Contractors. APA is not a new Federal Contractors nor are Schedule A customers.

4. All Post October 2017 APA Hoover contractors are "new" APA contractors, but only D-1 customers are "new" Federal Contractors. "Old customers" and "old contractors" are terms of historic description – not evidence of legal rights. APA has no basis for making such payment unless it wants to make a gift.

5. Post October 2017 customers cannot be invoiced for Post 1987 costs. And only D-1 and D-2 entities are "new Federal Contractors required to pay.

Very truly yours,

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