

ARIZONA STATE SENATE

RESEARCH STAFF



TO: JOINT LEGISLATIVE AUDIT COMMITTEE

DATE: January 19, 2024

SUBJECT: Sunset Review of the Arizona Power Authority

RACHEL ANDREWS
LEGISLATIVE RESEARCH ANALYST
NATURAL RESOURCES, ENERGY & WATER
COMMITTEE
Telephone: (602) 926 -3171

Attached is the final report of the sunset review of the Arizona Resource Advisory Council, which was conducted by the Senate Natural Resources, Energy & Water Committee of Reference and the House of Representatives Natural Resources, Energy & Water Committee of Reference.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona

The Honorable Katie Hobbs

President of the Senate

Senator Warren Petersen

Speaker of the House of Representatives

Representative Ben Toma

Senate Members

Senator Sine Kerr, Co-Chair
Senator Thomas "T.J." Shope
Senator Frank Carroll
Senator Brian Fernandez
Senator David Gowan
Senator Juan Mendez
Senator Priya Sundareshan

House Members

Representative Gail Griffin, Co-Chair
Representative Austin Smith
Representative Oscar De Los Santos
Representative Timothy Dunn
Representative Alexander Kolodin
Representative Christopher Mathis
Representative Cory McGarr
Representative Barbara Parker
Representative Stacey Travers
Representative Betty J Villegas

Arizona Power Authority

Office of the Auditor General

Arizona State Library, Archives and Public Records

Senate Resource Center
Senate Republican Staff
Senate Democratic Staff
Senate Research Staff

Office of the Chief Clerk
House Republican Staff
House Democratic Staff
House Research Staff

**Senate Natural Resources, Energy & Water Committee of Reference and House of
Representatives Natural Resources, Energy & Water Committee of Reference
Final Report**

Arizona Power Authority

Background

Pursuant to [A.R.S. § 41-2953](#), the Joint Legislative Audit Committee assigned the sunset review of the Arizona Power Authority (APA) to the Senate Natural Resources, Energy & Water Committee of Reference and House of Representatives Natural Resources, Energy & Water Committee of Reference.

The APA manages the development of Arizona's hydroelectric power from Colorado River waters and the sale of power to qualified purchasers ([A.R.S. Title 30, Chapter 1](#)). The APA is managed by the five-member appointed APA Commission (Commission). The Commission must submit an annual report of transactions, proceedings and recommendations for each fiscal year to the Legislature and Governor by January 1 (A.R.S. §§ [30-105](#) and [30-108](#)).

The APA is statutorily set to terminate on July 1, 2024, unless legislation is enacted for its continuation ([A.R.S. § 41-3024.16](#)).

Committee of Reference Sunset Review Activity

The Senate Natural Resources, Energy & Water Committee of Reference and House of Representatives Natural Resources, Energy & Water Committee of Reference held a public meeting on Thursday, January 11, 2024, to consider the APA's responses to the statutorily-outlined sunset factors and to receive public testimony.

Appendices

1. Meeting Agenda
2. Minutes of the Senate Natural Resources, Energy & Water Committee of Reference and House of Representatives Natural Resources, Energy & Water Committee of Reference
3. Chairperson's letter requesting the APA's response to sunset factors
4. The APA's response to sunset factors

Interim agendas can be obtained via the Internet at <http://www.azleg.gov/Interim-Committees>

ARIZONA STATE LEGISLATURE

INTERIM MEETING NOTICE OPEN TO THE PUBLIC

SENATE NATURAL RESOURCES, ENERGY AND WATER COMMITTEE OF REFERENCE AND HOUSE NATURAL RESOURCES, ENERGY AND WATER COMMITTEE OF REFERENCE

Date: Thursday, January 11, 2024

Time: 9:00 A.M.

Place: SHR-2 SHR 1 (Note Room Change) 

Members of the public may access a livestream of the meeting here:

<https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2024011021>

AGENDA

1. Call to Order
2. Roll Call
3. Introduction
4. Sunset Review of the Arizona Department of Forestry and Fire Management
 - a. Presentation by the Arizona Office of the Auditor General
 - b. Presentation by the Arizona Department of Forestry and Fire Management
 - c. Public Testimony
 - d. Discussion and Recommendation
5. Sunset Review of the Arizona Resource Advisory Council
 - a. Presentation by the Arizona Resource Advisory Council
 - b. Public Testimony
 - c. Discussion and Recommendation
6. Sunset Review of the Arizona Power Authority
 - a. Presentation by the Arizona Power Authority
 - b. Public Testimony
 - c. Discussion and Recommendation
7. Adjourn

Members:

Senator Sine Kerr, Co-Chair
 Senator Frank Carroll
 Senator Brian Fernandez
 Senator David Gowan
 Senator Juan Mendez
 Senator Thomas "T.J." Shope
 Senator Priya Sundareshan

Representative Gail Griffin, Co-Chair
 Representative Oscar De Los Santos
 Representative Timothy M. Dunn
 Representative Alexander Kolodin
 Representative Christopher Mathis
 Representative Cory McGarr
 Representative Barbara Parker
 Representative Austin Smith
 Representative Anastasia "Stacey" Travers
 Representative Betty J. Villegas

01/04/2024
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For questions regarding this agenda, please contact Senate Research Department.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Senate Secretary's Office: (602) 926-4231 (voice). Requests should be made as early as possible to allow time to arrange the accommodation.

ARIZONA STATE LEGISLATURE

SENATE NATURAL RESOURCES, ENERGY AND WATER COMMITTEE OF REFERENCE AND HOUSE NATURAL RESOURCES, ENERGY AND WATER COMMITTEE OF REFERENCE

Minutes of the Meeting
January 11, 2024
9:00 A.M., SHR1

Members of the public may access a livestream of the meeting here:

<https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2024011021>

Members Present:

Senator Sine Kerr, Co-Chair
Senator Frank Carroll
Senator Brian Fernandez
Senator David Gowan
Senator Juan Mendez
Senator Thomas T.J. Shope
Senator Priya Sundareshan

Representative Gail Griffin, Co-Chair
Representative Oscar De Los Santos
Representative Timothy M. Dunn
Representative Alexander Kolodin
Representative Christopher Mathis
Representative Cory McGarr
Representative Barbara Parker
Representative Austin Smith
Representative Anastasia "Stacey" Travers
Representative Betty J. Villegas

Staff:

Rachel Andrews, Senate Natural Resources, Energy and Water Research Analyst
Samuel Rosenberg, Senate Natural Resources, Energy and Water Assistant Research Analyst
Emily Bonner, House Natural Resources, Energy and Water Research Analyst
Blanca Santillan Ramos, House Natural Resources, Energy and Water Research Assistant Analyst

Co-Chair Kerr called the meeting to order at 9:03 a.m. and attendance was taken.

SUNSET REVIEW OF THE ARIZONA DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT

Presentation by the Arizona Office of the Auditor General

Marc Owen, Office of the Auditor General, distributed and explained a PowerPoint presentation entitled "Arizona Department of Forestry and Fire Management, Performance Audit and Sunset Review" (Attachment A).

The Committee offered comments.

Mr. Owen answered questions posed by the Committee.

The Committee offered additional comments.

Presentation by the Arizona Department of Forestry and Fire Management

Tom Torres, State Forester, Arizona Department of Forestry and Fire Management, distributed and explained a PowerPoint presentation entitled "Presentation to Committee of Reference, Performance Audit and Performance Review" (Attachment B). Mr. Torres answered questions posed by the Committee.

Mr. Owen answered additional questions posed by the Committee.

Representative Griffin offered comments.

Public Testimony

Jack Lunsford, City of Buckeye, offered comments in support of the Arizona Department of Forestry and Fire Management.

Discussion and Recommendation

Representative Griffin moved that the Senate Natural Resources, Energy and Water Committee of Reference and the House Natural Resources, Energy and Water Committee of Reference recommends that the Arizona Department of Forestry and Fire Management be continued for 8 years until July 1, 2032.

Representative Kolodin requested a roll call vote. Representative McGarr seconded the motion.

The motion CARRIED with a roll call vote of 12-4-1 (Attachment 1).

SUNSET REVIEW OF THE ARIZONA RESOURCE ADVISORY COUNCIL

Presentation by the Arizona Resource Advisory Council

Lynn Cordova, Legislative Policy Administrator, Arizona State Land Department, offered comments regarding the Arizona Resource Advisory Council and answered questions posed by the Committee.

Representative Griffin offered comments.

Rachel Andrews, Senate Natural Resources, Energy and Water Research Analyst, answered questions posed by the committee.

Ms. Cordova answered additional questions posed by the committee.

Ms. Andrews answered additional questions posed by the committee.

Representative Griffin answered questions posed by the Committee.

Ms. Cordova answered additional questions posed by the committee.

The Committee offered comments.

Public Testimony

No public testimony took place.

Discussion and Recommendation

No further discussion took place.

Representative Griffin moved that the Senate Natural Resources, Energy and Water Committee of Reference and the House Natural Resources, Energy and Water Committee of Reference recommends that the Arizona Resource Advisory Council be terminated. The motion CARRIED by a voice vote.

SUNSET REVIEW OF THE ARIZONA POWER AUTHORITY

Presentation by the Arizona Power Authority

Jordy Fuentes, Director, Arizona Power Authority, distributed and explained a PowerPoint presentation entitled "Arizona Power Authority, Joint NREW Committee of Reference" (Attachment C) and answered questions posed by the Committee.

Public Testimony

No public testimony took place.

Discussion and Recommendation

Representative Kolodin offered comments.

Representative Griffin moved that the Senate Natural Resources, Energy and Water Committee of Reference and the House Natural Resources, Energy and Water Committee of Reference recommends that the Arizona Power Authority be continued for 8 years until July 1, 2032. The motion CARRIED by a voice vote.

Attached is a list noting the individuals who registered their positions on the agenda items (Attachment D).

There being no further business, the meeting was adjourned at 11:02 a.m.

Respectfully submitted,

Brigid Fitzgerald
Committee Secretary

(Audio recordings and attachments are on file in the Secretary of the Senate's Office/Resource Center, Room 115. Audio archives are available at <http://www.azleg.gov>)



Arizona State Legislature

1700 West Washington
Phoenix, Arizona 85007

June 22, 2023

Director Jordy Fuentes
Arizona Power Authority
1810 W. Adams
Phoenix, AZ 85007

Dear Director Jordy Fuentes:

The sunset review process prescribed in Title 41, Chapter 27, Arizona Revised Statutes, provides a system for the Legislature to evaluate the need to continue the existence of state agencies. During the sunset review process, an agency is reviewed by legislative committees of reference (CORs). On completion of the sunset review, the CORs recommend to continue, revise, consolidate or terminate the agency.

The Joint Legislative Audit Committee has assigned the sunset review of the Arizona Power Authority to the CORs comprised of members of the Senate Natural Resources, Energy and Water Committee and the House of Representatives Natural Resources, Energy and Water Committee.

Pursuant to A.R.S. § 41-2954, the COR is required to consider certain sunset factors in deciding whether to recommend continuance, modification or termination of an agency. Please provide your agency's response to the factors listed below:

1. The key statutory objectives and purposes in establishing the agency.
2. The agency's effectiveness and efficiency in fulfilling its key statutory objectives and purposes.
3. The extent to which the agency's key statutory objectives and purposes duplicate the objectives and purposes of other governmental agencies or private enterprises.
4. The extent to which rules adopted by the agency are consistent with the legislative mandate.
5. The extent to which the agency has provided appropriate public access to records, meetings and rulemakings, including soliciting public input in making rules and decisions.
6. The extent to which the agency timely investigated and resolved complaints that are within its jurisdiction.
7. The extent to which the level of regulation exercised by the agency is appropriate as compared to other states or best practices, or both.
8. The extent to which the agency has established safeguards against possible conflicts of interest.
9. The extent to which changes are necessary for the agency to more efficiently and effectively fulfill its key statutory objectives and purposes or to eliminate statutory responsibilities that are no longer necessary.

10. The extent to which the termination of the agency would significantly affect the public health, safety or welfare.

Additionally, please provide written responses to the following:

1. The extent to which the agency potentially creates unexpected negative consequences that may require additional review by the COR, including increasing the price of goods, affecting the availability of services, limiting the abilities of individuals and businesses to operate efficiently and increasing the cost of government.
2. The extent to which the agency has addressed deficiencies in its enabling statutes.
3. The extent to which the agency has determined whether the Attorney General or any other agency in Arizona has the authority to prosecute or initiate actions.
4. The consequences of eliminating the agency or consolidating it with another agency.

Additionally, statute requires the COR to consider certain factors for each agency that administers an *occupational regulation*, which is defined as: 1) a statute, rule, practice, policy or other state law that allows an individual to use an occupational title or work in a lawful occupation; and 2) a government registration, government certification and occupational or professional license. An *occupational regulation* does not include a business license, facility license, building permit or zoning and land use regulation, except to the extent those state laws regulate an individual's personal qualification to perform a lawful occupation. If your agency falls under this category, please provide written responses to the following:

1. The extent to which the occupational regulation meets the requirements of A.R.S. § 41-3502.
2. The extent to which the failure to regulate a profession or occupation will result in:
 - a. the loss of insurance.
 - b. an impact to the ability to practice in other states or as required by federal law.
 - c. an impact to the required licensure or registration with the federal government.
 - d. the loss of constitutionally afforded practices.

Your response should be received by September 1, so that we may proceed with the sunset review and schedule the required public hearing. Please submit the requested information to:

Rachel Andrews
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

Thank you for your time and cooperation. If you have any questions, please feel free to contact me at 602-926-5955 or Rachel Andrews, the Senate Natural Resources, Energy and Water Research Analyst, at 602-926-3322.

Sincerely,


Sine Kerr

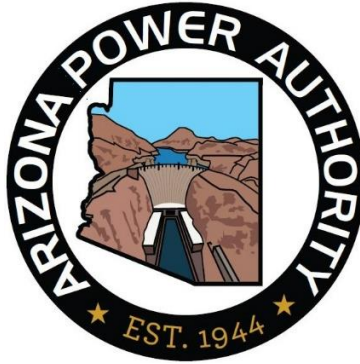
cc: Gail Griffin, House Natural Resources, Energy and Water, Chair
Emily Bonner, House Natural Resources, Energy and Water, Analyst

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JIM SWEENEY – VICE CHAIRMAN
RUSSELL L. JONES – COMMISSIONER
KIM OWENS – COMMISSIONER
JOHN F. SULLIVAN – COMMISSIONER

STAFF

JORDY FUENTES – EXECUTIVE DIRECTOR
HEATHER COLE – EXECUTIVE SECRETARY



ARIZONA POWER AUTHORITY

1810 W. ADAMS STREET
PHOENIX, AZ 85007-2697
(602) 368-4265

WWW.POWERAUTHORITY.ORG

RESPONSE TO SUNSET REVIEW INQUIRIES

ARIZONA POWER AUTHORITY

PART I

1. The key statutory objectives and purposes in establishing the Authority.

The Arizona Power Authority (the “Authority”) is a body corporate and politic of Arizona, established by the Legislature in 1944 to receive and distribute Arizona’s original share of hydroelectric power from Hoover Dam, which, at the time, was 189 megawatts. In that capacity, the Authority has discharged its responsibility to Arizona and Arizona’s interests by husbanding, managing, marketing and distributing the power from Hoover Dam throughout the state economically and fairly, achieving the widest possible use without financial risk to Arizona. Beginning in 2017, the Authority’s share of Hoover power amounted to a nameplate capacity (which is the rated capacity of a generator) of approximately 400 megawatts.

Hoover hydroelectric power first became available in 1936, but at that time Arizona was unable to receive and distribute its share of power, due to its limited population, enabling California to make use of Arizona’s allocation. In response, in 1944 the Arizona Legislature created the Authority by enacting *A.R.S. § 30-101, et seq.* (“Title 30”), charging the Authority with the responsibility of acquiring and marketing Arizona’s 19.4% share of Hoover power, on behalf of the State in its sovereign capacity.

As originally enacted, Title 30 created the Authority and specified its organization and responsibilities. Those responsibilities now include the following broad authorizations:

- Acquisition and marketing of electric power generated from the waters of the mainstream Colorado River and from other sources authorized by law.
- Construction, operation and maintenance of hydroelectric facilities at various Colorado River and other sites.
- Encouragement of activities deemed feasible for the production of electric power or energy from solar, nuclear or geothermal resources.
- Disposition of electric power in an equitable manner so as to render the greatest public service to encourage the widest practical use at lowest possible cost.
- Acquisition, construction and operation of electric transmission systems, standby or auxiliary plants or facilities to generate electric power.

- Negotiation of agreements for delivery of power generated or produced by the Federal Government or other projects for the benefit of customers.
- Negotiation of agreements for inter-connections or pooling with projects, plants, systems or facilities of other distributors of electric power.
- Cooperation with public agencies to conserve, develop, acquire and market power and transmission resources.

In 1967, the Legislature added to the Authority’s legal responsibilities by adopting the Arizona State Water and Power Plan (A.R.S. § 45-1701 *et seq.* – hereafter “Title 45”). This legislation was in part enacted to provide a State-funded financing vehicle for the Central Arizona Project (“CAP”) through the Authority, when it appeared that Federal funding would not be available. CAP, however, was ultimately constructed by the Federal government, with Federal funding, obviating the necessity of a State-funded project. However, other provisions and later amendments of Title 45 governing the Authority came into use with the enactment by the U.S. of Public Law 98-381 (the “1984 Act”) – a reallocation of Hoover power from the 1936 enactments. The 1984 Act renewed the allocation by the United States of Arizona’s share of Hoover Power, vesting it in the Authority, and provided for the improvement of the hydroelectric output of Hoover Dam (the “Hoover Uprating”), to be financed by recipients of the additional power. The Authority’s share of the Hoover Uprating was subsequently allocated by the Authority under Title 45. The primary portion of the uprating power went to the Central Arizona Water Conservation District (“CAWCD”), for use in operating its CAP canal system and integration of Hoover power into CAP’s Federal repayment obligation mechanisms.

As will be discussed later in this Response, the Authority has successfully financed its portion of the Hoover Uprating at Hoover Dam.

The 1984 Act’s allocation of Hoover Power to the Authority terminated in 2017 and was replaced by 43 U.S.C. § 619a (the Hoover Power Allocation Act of 2011, hereafter the “2011 Act”). The 2011 Act, among other things, allocated Arizona’s share of Hoover power to the Authority beginning in 2017 for a period of 50 years.

In the discharge of its responsibilities to manage and distribute its share of Hoover power, the Authority has: (1) contracted with the U.S. to take and pay for such power; (2) issued long-term bonds totaling, at present, \$23.7 million to pay for its share of the Hoover Uprating and other Hoover-related improvement obligations imposed by the United States; (3) negotiated a contract to receive Hoover power from the United States for 50 years under the 2011 Act; and (4) reallocated its Hoover power resource for the 50 year period following the 2017 renewal date to a large number of Arizona power users.

2. The Authority’s effectiveness and efficiency in fulfilling its key statutory objectives and purposes.

Since its creation in 1944, the Authority has carried out its legislative mandate by effectively and efficiently managing the distribution of low-cost, dependable hydroelectric power to irrigation and electrical districts, cities, and towns located throughout Arizona. CAWCD is the Authority’s largest customer, followed by the Salt River Project. The Authority also serves 61 other power contractors. (see Attachments 1).

In 1944, the Authority’s initial share of Hoover hydroelectric power was 189 megawatts. With the Hoover Uprating project and the 1984 Act, that share grew to 377 megawatts. In 2017, that share grew to over 400 megawatts.

With the exception of a start-up appropriation of \$250,000 during its early years, the Authority has operated entirely without any financial support from the State. The \$250,000 was fully repaid within a short time. The Authority’s revenues since the original start-up appropriation, have been derived solely from the sale of hydroelectric power and transmission service to its allottee customers, and the Authority operates on a cost-of-services only basis.

As briefly described in Section 1, above, the Authority, under the 1984 Act, obtained additional hydropower (189 megawatts) from the Hoover Uprating project, bringing its total power resource to 377 megawatts according to our contract with Western Area Power Administration (“Western”). The acquisition of the additional 189 megawatts was made possible by the Authority’s bond financing powers granted under Title 45. Its first tax exempt revenue bonds amounted to more than \$90 million. Those proceeds were used to finance the construction costs of the Hoover Uprating and were fully repaid as of 2017. Additional long-term revenue bond indebtedness issued by the Authority in 2018 in the amount of \$26.6 million have helped to keep the cost of the resource at remarkably low levels, all to the benefit of the Authority’s allottee customers. At present, the Authority’s bonds bear an unusual and exemplary AA rating by Standard & Poor’s and Moody’s. The bonds are debt of

the Authority, secured by power revenues, and as required by Arizona law not obligations, debt or responsibility of the State of Arizona.

The Authority's power contracts and the budgeting, auditing and accounting of its finances are meticulously administered and supervised by the Authority's five appointed commissioners and its staff, all of whom are tasked to manage the Authority for the benefit of Arizona. Its operating costs, budgets, and periodic financial results are transparent, publicly disclosed, and the subject of regular open public meetings of the Authority.

3. The extent to which the Authority's key statutory objectives and purposes duplicate the objectives and purposes of other governmental agencies or private enterprises.

Under governing Federal law, and given both existing State law and the covenants governing the Authority's current outstanding bonds, none of these activities could have been, nor in the future over the next 50 years can be, conducted by an entity other than the Authority. As to comparable circumstances in other states, Nevada and California also receive Hoover power. Nevada has a state entity, the Colorado River Commission, which is roughly comparable to the Authority in its responsibilities and powers regarding the Hoover hydroelectric resource. California has a number of different entities (only one of which is private – an investor owned utility) which together accomplish roughly the same activities for California that the Authority is responsible for in Arizona. The lone private California utility (Southern California Edison) receiving Hoover power directly, is an historical anomaly of Federal power preference law, and is not otherwise replicated in the Federal law governing Hoover power.

Title 30 tasks the Authority to: (1) receive Hoover power in its name on behalf of Arizona; (2) make such power available to marketing areas of the State; (3) enter into agreements for interconnection, pooling, transmission, and distribution of its power resources; and (4) develop plans and programs for the practical, equitable, and economic utilization of the power under its control, and in so doing achieving the widest practical use and benefit to the State of Arizona, all at no cost, and no financial obligation to Arizona. Over its more than 75 years of operating history, the Authority has done so. It has increased the hydroelectric resource under its control from 187 megawatts in 1944 to approximately 400 megawatts in 2017. In so doing, it has served a growing number, and growing diversity of hydroelectric power users (numbering more than 60 separate entities, including a number of Arizona's Indian tribes) ranging from CAWCD and Salt River Project, to a diverse and scattered group of irrigation districts, electrical cooperatives, cities, and towns, which, together serve millions of people and hundreds of thousands of acres of agricultural production throughout Arizona. It has purchased and marketed the valuable Hoover hydroelectric resource fulfilling its legislative mandate to provide power to Arizonans at the lowest possible cost, consistent with sound business principles. The Authority does not market electric power directly to ultimate retail consumers; rather, it provides low-cost power to a large number of entities on a wholesale basis which, in turn, are able to provide electric power or water produced with such power, at a lower cost and more efficiently than would have otherwise been possible. A listing of the Authority's current Arizona power customers is shown on "Attachment No. 1".

In its Declaration of Purpose and Policy the Legislature, in adopting Title 45, provided that "electric power resources and the use of the energy therefrom must be developed in order to provide effective support for and implementation of the State's water program and to promote the general welfare, health, safety and prosperity of the people of the State." The Authority believes that its long and successful history of managing and distributing Arizona's Hoover hydroelectric resources and its ability to effectuate a 50-year extension of its hydroelectric entitlement (which will now expire in 2067) is convincing evidence that the Authority has met, with extraordinary success, its responsibilities to the public interest by providing low-cost electric power to a wide array of wholesale power customers, who, in turn, pass on these savings to their own power users, to the wide spread benefit of all Arizonans.

In addition, in its power marketing activities, the Authority engages in a full range of other services, in much the same way as other wholesale power utilities. In order to enable its power contractors to gain efficiency from variations in demand and electric load, the Authority engages in pooling activities and enters into electrical capacity and energy exchanges to extend the utility of its Hoover resources.

In addition to its power marketing activities, the Authority is a contributing party to the Lower Colorado Multi-Species Conservation Program ("MSCP"), a cooperative effort between Federal and non-federal water and power users to restore and protect riparian, marsh and backwater habitat on the Colorado River system. As a party to the MSCP, the Authority's responsibilities extend to 2055.

4. The extent to which Rules adopted by the Authority are consistent with the legislative mandate.

The Authority adopted a complete revision of the Authority's Rules in March, 2003 to adjust its operating procedures and the means by which it deals with the State's power users to more closely reflect the Authority's enabling legislation, and to update the Authority's practices to conform with changes in requirements for public processes and changes in the way preference power is distributed. In January, 2015, the Authority adopted rules to govern the process for appeals of its power allocation decisions. These appeals rules were adopted to provide any parties dissatisfied with the Authority's post-2017 power allocation decisions with a means of redress which could meet the time schedule imposed on the Authority's actions by the 2011 Act, and bind all parties affected by the Authority's allocation decisions.

5. The extent to which the Authority has provided appropriate public access to records, meetings and rulemakings, including soliciting public input in Rules and decisions.

The Authority, in adopting the 2003 total revision of its rules spent more than two years drafting and developing the Rules in their current form, much of that effort being devoted to numerous meetings with the Authority's customers, prospective customers and members of the public, during which oral and written comments were solicited and accepted, resulting in a series of drafts and redrafts that were submitted for comment, correction and addition.

Similarly, the 2015 appeals rules revisions were the product of significant public notice, numerous public meetings and public discussion by the Authority, and public input which, in fact, involved even drafting efforts by those affected by the proposed Rules. Additionally, the Rules were the subject of several hearings and lengthy discussion before the Governor's Regulatory Review Council before finally being approved and adopted. The Authority believes its regulations to be complete, functional, and fair. They were used extensively during the post-2017 allocation process to guide its activities.

6. The extent to which the Authority timely investigated and resolved complaints that are within its jurisdiction.

The Authority is not aware of specific complaints as to its activities, other than normal operating considerations – some of which require public input and comment. Such issues are normally addressed at the Authority's regular public meetings, held at least once each month.

7. The extent to which the level of regulation exercised by the Authority is appropriate as compared to other states or best practices, or both.

The Authority is not a regulatory agency. Rather it manages its contractual relationships with the United States and its customers and administers the acquisition and resale at cost, of the power under its jurisdiction, pursuant to Title 30 and Title 45, and subject to the requirements imposed upon the Authority by State law, the 1984 Act and the 2011 Act, and its own regulations and contractual obligations with both the Federal government and the Authority's power purchase contractors.

8. The extent to which the Authority has established safeguards against possible conflicts of interest.

The Authority Conflict of Interest Policy is in-line with the State of Arizona policies and requires employees and commissioners to attest every other year by January 31:

- a. Commissioners and employees review and certify that they have read and understand their obligations under Arizona law
- b. Should any commissioner, employee or relatives thereto come into a substantial interest in any contract, sale, purchase, service or have a substantial interest in any decision of the Authority, written notice must be provided immediately to the Executive Director and Administrative Council and said commissioner or employee shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale, purchase or decision
- c. Yearly, Administrative Counsel reviews the Authority's Conflict of Interest file and advises the Executive Director and the Commission of any impermissible conflicts of interest and any supplemental information as necessary.
- d. At the beginning of each meeting all Commissioners are to publicly declare any substantial interest in any decision to be made at said meeting

- e. All contractors doing business with the Authority are required to disclose in writing any substantial interest they may have in any decision of the Authority

- 9. The extent to which changes are necessary for the Authority to more efficiently and effectively fulfill its key statutory objectives and purposes or to eliminate statutory responsibilities that are no longer necessary.

The Authority does not believe there is a present need to revise either Title 30 or Title 45 under which it operates. However, the Authority reserves the right to seek legislation to assist the Authority in carrying out its statutory obligations.

- 10. The extent to which the termination of the Authority would significantly harm the public health, safety or welfare.

Termination of the Authority would prevent the Authority from meeting its obligations under the power contracts for the receipt and delivery of approximately 400 megawatts of Hoover electrical power to 63 different cities, towns and electrical and irrigation districts, CAWCD, and Salt River Project under the 2011 Act for a 50-year period that began in 2017.

Termination of the Authority would violate *A.R.S. § 41-3024.16 (B)* (See Attachment 3), because of the Authority's outstanding bond debt. Termination of the Authority would violate Section 701 of the Power Resource Revenue Bond Resolution (See Attachment 4), because termination would make impracticable the covenant to pay the bonds punctually, and to "preserve and protect the pledge of the Pledged Property and the assignment of the Power Sales Contracts and all rights of the bondholders under the Resolution against all claims and all persons whomsoever." (Attachment 4).

Termination of the Authority could also cause a violation of the Contract Clause of the *United States Constitution, Article 1, section 10, clause 1* ("No state shall ... pass any ... law impairing the Obligation of Contracts."), because if the Authority ceases to exist, holders of the Authority's bonds may not be paid in full because bonds of the Authority do "not constitute a debt of the state and [are] payable only from revenues of the Authority." *See A.R.S. § 30-226(B) (3)*.

PART II

ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

1. The extent to which the Authority potentially creates unexpected negative consequences that may require additional review by the COR, including increasing the price of goods, affecting the availability of services, limiting the abilities of individuals and businesses to operate efficiently and increasing the cost of government.

The Authority provides a long-term hydroelectric power resource to the preference power users in Arizona that its customers and allottees would not have access to otherwise. The cost of that resource to its recipients is the Authority's pass-through cost, with all revenues in excess of expenses that are collected through the operating year, being refunded to the Authority's customers within the succeeding operating year. The price the Authority charges for its power resource depends on operating and capital costs associated with the Hoover Dam by which the Authority receives and distributes its power resource. As a result, the Authority's costs (and therefore its power customers' costs) depend upon the costs and exigencies associated with physical operations of the Federal system over time. Some of these are capital related and therefore somewhat predictable (e.g., costs of transformers and circuit breakers). Others relate to natural conditions which affect the power resource (e.g., water runoff over time in the upper Colorado River system; upstream releases from Lake Powell; irrigation demand below Lake Mead). With regard to especially these latter factors, the Authority has no control over their effect on its costs and, to that extent, there are sometimes 'negative consequences' (i.e., the Authority's pass-through costs increase) just as there are sometimes 'positive consequences' when costs decrease.

2. The extent to which the Authority has addressed deficiencies in its enabling statutes.

The Authority has not faced difficulty in complying with its statutory mandate; that being contracting for Arizona's lawful share of Hoover power and putting it to the most economic, widespread use for Arizona through its periodic allocation processes (the most recent being 6 years ago) and subsequent day-to-day management of the resource. The Authority has sought, and obtained, periodic adjustment to the laws governing its activities, most recently to adjust its bonding authorities to meet the requirements of bond market standards imposed as part of the issuance of its most recent revenue bonds.

3. The extent to which the Authority has determined whether the Attorney General or any other agency in Arizona has the authority to prosecute or initiate actions.

The only "action" that might occur under its enabling legislation would be the enforcement of the Authority's contractual commitments and responsibilities under its Federal contracts, or with the Authority's customers and bondholders. Therefore, any legal action would not ordinarily arise from the provisions of the Authority's enabling legislation, but would instead, result from the Authority's ongoing business and contractual relationships. That said, since June 1961, and immediately following the passage of *A.R.S. §41-192.01*, the Authority has retained, when necessary, its own "in-house" counsel to represent it before federal agencies, federal courts, and in "matters incidental to any proceeding before any such federal agency or court." Since June 1961, "matters incidental to any proceeding before any such federal agency or court," has been understood by the Authority, every Arizona Attorney General, and the Arizona Legislature, to include legal services involving a wide variety of state law issues which facilitate or support the Authority's legislative mandate, and management of its federal resources. In 1967, the Arizona Legislature codified this understanding and practice, when it authorized the Authority to employ legal counsel to provide it with professional assistance and advice. *See A.R.S. § 45-1709 (5)*.

4. The consequences of eliminating the Authority or consolidating it with another agency.

Please see the Authority's response to Items Nos. 3 and 10, Part I which, in part, address the difficulty and consequences of eliminating the Authority and discuss the unique role assigned to the Authority by both Federal and State law.

To summarize, eliminating the Authority would cause virtually unsolvable problems with the Authority's outstanding contractual and statutory commitments to the United States, to the Authority's power customers and to the citizens of Arizona for whose ultimate benefit the Authority receives and markets electric power generated from the Colorado River, and to the Authority's bondholders.

The Authority does not believe that there is another agency that is either qualified or permitted by law to carry out the Authority's functions. Consolidation would not achieve any useful purpose and would result in an increase in costs to the State and its customers. Elimination of the Authority would also result in default of the Authority's Bonds.

Among the difficulties that would be encountered if the Authority were eliminated are:

- a. Failure to comply with a requirement of Federal law that Hoover contracts to be entered into with the Authority as the State's representative in its sovereign capacity.
- b. Interruption and default in the Authority's performance of its contracts with the United States and its wholesale power customers.
- c. If contract default occurred, it would trigger a default in the Authority's revenue bonds.
- d. The Authority's "AA" Bond Rating reflects the rating agencies' reliance on the Authority's multi-year history of uninterrupted service and its ability to perform its utility functions. The rating agencies would immediately downgrade the Authority's bonds, which could have a negative effect on other Arizona obligations.

PART III

OCCUPATIONAL REGULATION

As stated above, the Authority is not a regulatory agency not does it administer occupational regulation and therefore does not fall under the requirements of *A.R.S. § 41-3502*

* * * *

Attachment No. 1

ARIZONA POWER AUTHORITY POWER CONTRACTORS as of September, 2017:

ARIZONA POWER AUTHORITY SCHEDULE A CUSTOMERS

Aguila Irrigation District
Avra Water Irrigation and Drainage District
Buckeye Water Conservation & Drainage District
Chandler Heights Citrus Irrigation District
Cortaro-Marana Irrigation District
Electrical District No. 2 of Pinal County
Electrical District No. 3 of Pinal County
Electrical District No. 4 of Pinal County
Electrical District No. 6 of Pinal County
Electrical District No. 7 of Maricopa County
Electrical District No. 8 of Maricopa County
Franklin Irrigation District
Gila Valley Irrigation District
Grover's Hill Irrigation District
Harquahala Valley Power District
Hohokam Irrigation and Drainage District
Maricopa County Municipal Water Conservation District
Markham Irrigation and Water Conservation District
McMullen Valley Water Conservation and Drainage District
Ocotillo Water Conservation District
Queen Creek Irrigation District
Roosevelt Irrigation District
Roosevelt Water Conservation District
Salt River Project
San Tan Irrigation District
Silverbell Irrigation & Drainage District
Silvercreek Irrigation District
Tonopah Irrigation District
Wellton-Mohawk Irrigation and Drainage District

ARIZONA POWER AUTHORITY SCHEDULE B CUSTOMERS

Aguila Irrigation District
Ak-Chin Tribe
Central Arizona Water Conservation District
City of Safford
Electrical District No. 8 of Maricopa County
McMullen Valley Water Conservation and Drainage District
Page Own System & Operating (Muni)
Town of Thatcher
Town of Wickenburg

ARIZONA POWER AUTHORITY SCHEDULE D CUSTOMERS

Aha Macav Power Service
City of Avondale
City of Buckeye
City of Chandler Municipal Utilities Department
City of Flagstaff
City of Glendale
City of Globe
City of Maricopa
City of Peoria
City of Phoenix
City of Scottsdale
City of Sedona
City of Sierra Vista
City of Tempe Public Works Department
City of Tucson Water Department
City of Williams
City of Yuma
Duncan Valley Electric Cooperative, Inc.
Graham County Electric Cooperative, Inc.
Hualapai Tribe
Mohave Electric Cooperative, Inc.
Navopache Electric Cooperative
Northern Arizona Irrigation District Power Pool
Sulphur Springs Valley Electric Cooperative, Inc.
Town of Fredonia
Town of Gilbert
Town of Payson
Trico Electric Cooperative, Inc.

Attachment 2

Revenue Bond obligations of the Arizona Power Authority

Arizona Power Authority Power Resource Revenue Bonds, 2014
Series (Hoover Prepayment Project)

<u>Year</u>	<u>Principal Amount</u>
10/1/2018	540,000
10/1/2019	550,000
10/1/2020	560,000
10/1/2021	580,000
10/1/2022	595,000
10/1/2023	615,000
10/1/2024	635,000
10/1/2025	660,000
10/1/2026	685,000
10/1/2027	715,000
10/1/2028	745,000
10/1/2029	775,000
10/1/2030	805,000
10/1/2031	845,000
10/1/2032	885,000
10/1/2033	930,000
10/1/2034	975,000
10/1/2035	1,025,000
10/1/2036	1,075,000
10/1/2037	1,125,000
10/1/2038	1,180,000
10/1/2039	1,240,000
10/1/2040	1,300,000
10/1/2041	1,365,000
10/1/2042	1,430,000
10/1/2043	1,500,000
10/1/2044	1,575,000
10/1/2045	1,655,000

Attachment 3

41-3024.16. [Arizona power authority; conditional termination July 1, 2024](#)

- A. The Arizona power authority terminates on July 1, 2024, and title 30, chapter 1, article 1 is repealed on January 1, 2025, if the authority:
 - 1. Has no outstanding contractual obligations with the United States or any United States agency.
 - 2. Has no debts or obligations that were issued to finance the cost of the Hoover power plant modifications project, the Hoover power plant uprating project or other facilities related to the Boulder Canyon project.
 - 3. Has otherwise provided for paying or retiring these debts or obligations.
- B. If any contractual debt or obligation listed in subsection A of this section exists and a satisfactory provision has not been made to pay or retire the debt or obligation, the authority, and title 30, chapter 1, article 1, shall continue in existence until the debt or obligation is fully satisfied.



Arizona Power Authority



Joint NREW Committee of Reference

January 11, 2024

Description of the Authority



Body corporate and politic of the State of Arizona established by the Legislature in 1944 to acquire and market Hoover power and other renewable resources on behalf of the State of Arizona



1810 West Adams Street, Phoenix

Description of the Authority (cont.)



- 5 Commissioners appointed by the Governor to serve 6-year non-concurrent terms
- Seasoned Board of Commissioners with extensive experience in Arizona power, water and agricultural issues
- Federal Law Governing the Authority
 - Boulder Canyon Project Act – 1934
 - Hoover Power Allocation Act of 2011
- State Law Governing the Authority
 - Title 30
 - Title 45
 - By Arizona law, the Authority operates at no cost to the State of Arizona and its bond debt is not an obligation of the State.



Legislative Authority

- Acquisition and marketing of electric power generated from the waters of the mainstream Colorado River and from other sources authorized by law.
- Construction, operation and maintenance of hydroelectric facilities at various Colorado River and other sites.
- Encouragement of activities deemed feasible for the production of electric power or energy from solar, nuclear or geothermal resources.
- Disposition of electric power in an equitable manner so as to render the greatest public service to encourage the widest practical use at lowest possible cost.
- Acquisition, construction and operation of electric transmission systems, standby or auxiliary plants or facilities to generate electric power.
- Negotiation of agreements for delivery of power generated or produced by the Federal Government or other projects for the benefit of customers.
- Negotiation of agreements for inter-connections or pooling with projects, plants, systems or facilities of other distributors of electric power.
- Cooperation with public agencies to conserve, develop, acquire and market power and transmission resources.

Arizona Power Authority Commission



Philip Bashaw
Chairman



Jim Sweeney
Vice-Chairman



Russell Jones
Commissioner



Kim Owens
Commissioner



John Sullivan
Commissioner

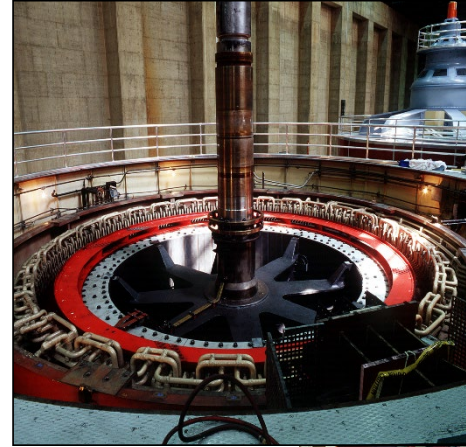
Authority's Historical Activities



- The Authority receives Arizona's entitlement of hydropower generated at Hoover Dam
- This hydropower entitlement amounts to over 400,000 kW of power and approximately 1 billion kWh of energy
- The Authority represents Arizona's interests with respect to Bureau of Reclamation and Western Area Power Administration operational and managerial activities at Hoover Dam
- Advocate on behalf of Arizona entities that have power entitlements from Upper Basin hydropower resources

Outstanding Bonds

- The Power Authority issued bonds in the 1980s to cover Arizona's share of upgrading the generators at Hoover Dam, which have been paid in full.
- Additional revenue bonds were issued in 2014 after the Hoover Dam Visitor Center was built to refinance federal government debt, in the amount of \$26.6 million and will run through 2045
- \$23.1 million remains outstanding with an average interest rate of 4.1%
- Bond rating
 - AA1 – Moody's
 - AA/Stable – S & P



Contracts

- The Boulder Canyon Project Electric Service Contract between United States Bureau of Reclamation and the Arizona Power Authority runs through 2067 to purchase power generated at Hoover Dam
- The Power Sales Contracts for sale of the Hoover power to 63 public power customers run through 2067
 - 40-year average Hoover Dam hydropower generation is 4.5 million MWh
 - 20-year average (drought) Hoover Dam hydropower generation is 3.6 million MWh
 - WY 2024 projection – 3 million MWh
 - Wholesale power prices are up in most instances over 100% as compared to just a few years ago



Renewable Energy Development



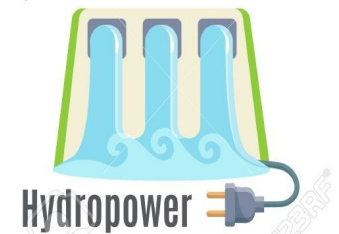
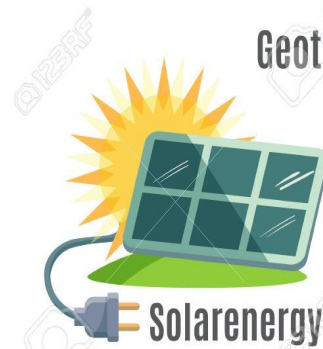
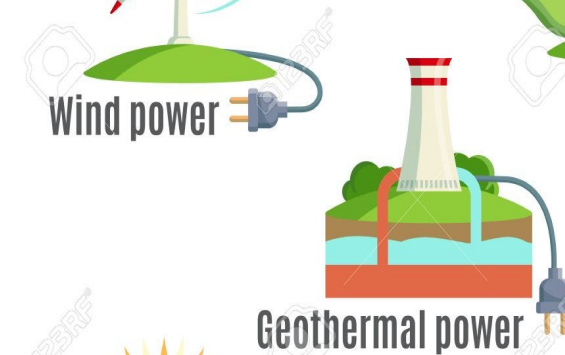
- The Arizona Power Authority is collaborating with the Arizona Electric Power Cooperative (AEPCO) on building needed replacement power for public power entities using federal grant funding from the USDA New ERA Grant program
- Project –
 - Solar & Lithium Ion Batteries
 - 30+ public power entities involved



Resource Planning & Procurement



The Arizona Power Authority received a \$1 million dollar legislative appropriation last year that is being used to help small public power entities to identify and meet their resource needs





Arizona Power Authority

Questions?

January 11, 2024