



TO: David Modeer and CAWCD Board of Directors

FR: Terry Bracy, Tracy Tucker, Michael Bracy and Brandon Avila

DA: November 23, 2009

RE: Federal Legislative Report for November 23, 2009

Congressional Calendar:

With only three legislative weeks remaining on the calendar, Congress is working to clear the remaining FY2010 appropriations bills. Seven of the 12 appropriations bills for FY2010, which began Oct. 1, are still awaiting approval. Agencies covered by spending bills that have not been completed are being funded through December 18 at last year's levels under a continuing resolution. In addition to spending bills, a key Senate vote to clear the way for consideration of the health care reform bill allowed the Senate to move closer to completion of the massive bill before leaving for the year.

Due to the amount of time that the Senate will need to complete appropriations and health care, it is clear that climate change and energy legislation will be pushed into next year's legislative agenda. Both Senator Reid and Environment and Public Works Chairwoman Boxer (D-CA) have confirmed this schedule publicly. If Congress is able to complete health care reform this year, then the immediate priorities for next year will be financial services regulatory reform and the climate change and energy bills. Because of the sensitivity surrounding these issues, the timeline will be determined by the amount of support that could be generated in moderate House and Senate seats. Election year politics could play a big role in that process.

Climate Change and Energy Act:

The Senate reported out their version of the climate change bill, S.1773, despite Senator Boxer's ability to win over a Republican vote. Outside of the Environment and Public Works Committee efforts are being made to find alternative legislative proposals to the Boxer draft. Senator Kerry and a group of moderates are discussing option, in addition to Senator Baucus and the Finance Committee, which also maintains jurisdiction over portions of the bill. If an agreement can't be achieved on an across the board cap and trade program, discussions are also starting to surface on a proposal to narrow the climate change bill to strictly greenhouse gas emission from power plants. This idea has already

seen criticism from the Administration and its goal of pursuing a comprehensive approach.

The BTBV team has met with the Arizona delegation and House and Senate Committee staff to express the concern CAP has with the impact of the cap and trade proposal on the energy used from the Navajo Generating Station. We will continue to have conversations with key offices and Committees as this bill continues to be crafted and amended.

Water Transfer Rule:

It appears that the EPA may discard the 2008 EPA rule that allows water transfers from one water body to another without Clean Water Act permits. Under the rule, water that passes through flood gates, canals, tunnels or natural stream courses does not require a permit if it is not being withdrawn for industrial or commercial purposes. The EPA has not established a schedule for reconsideration of the rule. Any changes would go through notice and comment rulemaking procedures.

The BTBV team is monitoring this rule and other proposed legislation regarding Clean Water Act amendments or interpretations as they relate to CAP. This will be followed within the overall goals established by our national water coalitions.

Hoover Power Allocation Act:

Representative Napolitano (D-CA) has agreed to take the lead in introducing the proposed Hoover Power Allocation Act in the House. Senator Reid (D-NV) is expected to introduce the bill in the Senate. Original cosponsors are being gathered in the Arizona, California and Nevada delegations. The bill is expected to be introduced sometime this year in both chambers.

Meanwhile, the Western Area Power Administration has published its proposal for its allocation of Hoover power. A quick summary of the proposal compared to the draft bill:

- Western will market 2044 MW of capacity and 4.116 gigawatt-hours (GWh) of energy (compared to the 2074 MW and 4.526 GWh that would be distributed under the draft Hoover legislation)
- Western would extend 100% of existing contractors' capacity allocations (1951 MW) and 95% of the proposed marketable firm energy (3.910 GWh), apportioned based on their existing energy allocations.
- A new resource pool of 93 MW, with associated firm energy of 0.206 GWh would be allocated to new customers within the existing marketing area that are either qualifying Native American Tribes or meet the BCP marketing criteria. This pool is actually about 10 percent smaller than the pool that would be created under the proposed legislation. All contracts would be for 30 years.

Three public information forums are planned for December 1-3, 2009, including one in Phoenix on December 3, 2009, followed by three public comment forums on January 19-

21, 2010, with written comments due no later than January 29, 2010. The BTBV team is working with the Arizona delegation to represent the interest in Hoover power for CAP.

EPA Rule Regarding Navajo Generating Station (NGS):In response to EPA's Advanced Notice of Proposed Rulemaking, all Members of the Arizona delegation in the House and Senate weighed in with EPA letters. The EPA held a conference call with staff of the AZ and NM congressional delegations on November 17 to open up a dialogue with offices on the issue of visibility at NGS and Four Corners. EPA indicated they received 6,700 comments in total. In brief, EPA will issue the proposed rule in late spring and finalize it in 2011. While EPA is currently looking at the impact on visibility and costs, the issue of water delivery and importance of Central Arizona Project water was highlighted.

Jobs Bill:

As unemployment continues to rise the leaders in both chambers have begun to discuss the need for a jobs creation bill. This could be taken up early next year.

It is still unclear what kind of programs would be funded in this proposed jobs package. However, Senate Energy and Natural Resources Committee Chairman Bingaman (D-NM) recently indicated that he would like to include energy related jobs in such a proposal. Specifically, he mentioned the addition of new energy technology, such as a Clean Energy Development Administration (CEDA), and transmission upgrades. The energy bill that was approved by Senator Bingaman's Committee this year provided \$100 billion in loan guarantee authority for deployment of advanced clean-energy technology.

The fate of this package will depend on the trends in the economy and the ability to win over fiscally conservative Members who have been critical of the impact the Stimulus Proposal has had.

Climate Ready Utilities Working Group:

EPA announced in the November 20 *Federal Register* that the Climate Ready Utilities Working Group of the National Drinking Water Advisory Council will meet in Washington, D.C., on December 3 and 4.

The BTBV will attend this meeting representing CAP.