

Send comments on the scope of the EIS to Mrs. Caryn Hunt DeCarlo, Bureau of Reclamation, 705 N. Plaza Street, Room 320, Carson City, NV 89701, via e-mail to [chunttdecarlo@mp.usbr.gov](mailto:chunttdecarlo@mp.usbr.gov), or faxed to 775-884-8376.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Hunt DeCarlo, 775-884-8352.

**SUPPLEMENTARY INFORMATION:** The project area is in the Walker River Basin within Nevada, and includes both the East and West Walker Rivers. The goal of the program is to acquire water rights sufficient to increase the long-term average annual inflow to Walker Lake by up to 50,000 acre-feet. To increase Walker Lake inflows by up to 50,000 acre-feet annually may require acquiring more than 50,000 acre-feet of water rights due to annual hydrologic variability.

### Special Assistance for Public Scoping Meeting

If special assistance is required at the scoping meetings, please contact Caryn Hunt DeCarlo at 775-884-8352, TDD 775-882-3436, or via e-mail at [chunttdecarlo@mp.usbr.gov](mailto:chunttdecarlo@mp.usbr.gov). Please notify Mrs. Hunt DeCarlo as far in advance of the meetings as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 775-882-3436.

### Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 21, 2007.

**Susan M. Fry,**

*Regional Environmental Officer, Mid-Pacific Region.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### Adoption of Amended Navajo Power Marketing Plan

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of adoption.

**SUMMARY:** On September 18, 2007, the Commissioner of Reclamation adopted the Amended Navajo Power Marketing Plan (Amended Plan) on behalf of the Secretary of the Interior (Secretary), pursuant to section 107 of the Hoover Power Plant Act of 1984 (98 Stat. 1333). The Amended Plan is to provide for the future marketing of the United States' entitlement to generation from the Navajo Generating Station (Navajo) which is in excess of the pumping requirements of the Central Arizona Project (CAP) and certain needs for desalting and protective pumping facilities. The Amended Plan was developed in consultation with representatives of the Bureau of Reclamation (Reclamation), Western Area Power Administration (Western), the Governor of Arizona, and the Central Arizona Water Conservation District (CAWCD) as required by the Hoover Power Plant Act of 1984 (Act).

At the request of Reclamation, Western published a notice in the **Federal Register** on August 14, 2006, to initiate and obtain public comments on the proposed Amended Plan. Western held public information forums on September 19, 2006, in Phoenix, Arizona, and on September 22, 2006, in Ontario, California. Western accepted oral and written comments on the proposed Amended Plan at public comment forums on October 10, 2006, in Phoenix, Arizona, and on October 11, 2006 in Ontario, California, and thereafter until November 13, 2006, the end of the public comment period. Additional public information forums will be held in advance of the time of the actual marketing of Navajo Surplus under the Amended Plan to address the procedures to be used in the actual marketing process.

Public comments were received both with respect to the terms of the proposed Amended Plan and with respect to Western's presentations at the public forums relating to the implementation of the plan. Written comments were received from Aha Macav Power Service, Arizona Power Authority, Arizona Tribal Energy Association, Colorado River Indian Tribes, Ralph E. Hitchcock and Associates, Moyes Storey Law Offices, Santa Cruz Water & Power Districts Association, and Salt River Project Agricultural Improvement and Power District. Oral comments were received from the Central Arizona Water Conservation District, Ralph E. Hitchcock and Associates, and the Colorado River Indian Tribes.

Comments and responses, paraphrased for brevity, are presented below.

Reclamation considered all comments prior to the adoption of the Amended Plan. Reclamation determined that no modifications to the proposed Amended Plan were necessary as a result of the comments and in light of the proposed Amended Plan's flexible framework. Nevertheless, Reclamation has made edits to the proposed Amended Plan for clarification purposes.

**DATES:** As provided in Part X of the Amended Plan, the Amended Plan will become effective thirty days after its date of publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Smith, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006, telephone (702) 293-8231, e-mail [AmendedPlan@lc.usbr.gov](mailto:AmendedPlan@lc.usbr.gov).

**SUPPLEMENTARY INFORMATION:** The United States acquired an entitlement to 24.3 percent of generation available at Navajo for use by CAP pursuant to the Colorado River Basin Project Act (43 U.S.C. 1501, *et seq.*). The CAP is a Reclamation multi-purpose water resource development and management project in Arizona.

Section 107(a) of the Act provides that the capacity and energy associated with the United States interest in Navajo which is in excess of the pumping requirements of the CAP and any needs for desalting and protective pumping facilities (Navajo Surplus) shall be marketed and exchanged by the Secretary of Energy. Furthermore, Section 107(c) of the Act provides that in the marketing and exchanging of Navajo Surplus, the Secretary of the Department of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and CAWCD (or its successor in interest to the repayment obligation for the CAP).

On December 1, 1987, Reclamation, on behalf of the Secretary, adopted the Original Plan which provided for long-term contracts through September 30, 2011.

This adopted Amended Plan contains the framework for the sale and exchange of Navajo Surplus, including an annual process to determine the power to be marketed, eligibility criteria, contract provisions, rate-setting provisions, and revenue collection and distribution criteria. The rate-setting provisions in the adopted Amended Plan were developed to accomplish the requirements of the Act to market and exchange Navajo Surplus "for the purposes of optimizing the availability of Navajo surplus and providing

financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project." These provisions also provide that "rates shall not exceed levels that allow for an appropriate saving for the contractor."

The adopted Amended Plan implements provisions of the Revised Stipulation entered in the Central Arizona Project repayment litigation, *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated Action). The Revised Stipulation requires, as a condition to the effectiveness of the Revised Stipulation, that the Original Plan be amended to provide for the establishment of rates for the sale or exchange of Navajo Surplus after September 30, 2011 "which optimize the availability and use of revenues" for the Lower Colorado River Basin Development Fund in a manner consistent with the Act. The Arizona Water Settlements Act of 2004, Public Law 108-451 amends statutory provisions relating to the use of Navajo Surplus revenues set forth in 43 U.S.C. 1543(f).

The Original Plan also contains a provision to collect an additional rate component that allows CAWCD to recover an advance of funds made to Reclamation for the construction of authorized features of the CAP. This obligation will be fulfilled under the contract provisions of the Original Plan. The Original Plan also contains specified quantities of capacity and energy to be marketed under long-term contracts. This adopted Amended Plan provides for an annual determination of capacity and energy resources available for marketing as Navajo Surplus based upon the availability of water for CAP pumping, in conjunction with an annual determination of rates and the various capacity and energy products to be marketed. Navajo Surplus under this adopted Amended Plan will be placed under contract for various time periods, which may be short-term, annual, or multi-year.

#### **National Environmental Policy Act**

In compliance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality regulations, and the Department of the Interior regulations for compliance with NEPA, Reclamation and Western determined that the adopted Amended Plan met the requirements of a categorical exclusion. Copies of the categorical exclusions prepared by Reclamation and Western

will be made available to interested persons upon request.

#### **Public Comments and Responses**

*Comments relating to the term of Navajo Surplus contracts:* Material presented at the public information forums on the proposed Amended Plan indicates Navajo Surplus will be marketed on an annual or shorter term basis. This will expose the Development Fund to market volatility and discourage purchasers who require the certainty of longer term contracts. Navajo Surplus should be made available for multi-year terms of at least three years. A five-year contract provides greater stability than a one-year contract. At least a portion of the Navajo Surplus should be sold in long term contracts.

*Response:* The Amended Plan is designed to be flexible. The Amended Plan permits both shorter and longer term contracts for the sale or exchange of Navajo Surplus. Article IV.A. of the Amended Plan states that Reclamation will on an annual or more frequent basis determine the quantity of Navajo Surplus available to be marketed and the period for which it is available. The annual determination process will allow Reclamation to take into account the varying power demand of the CAP and will reduce the need for the CAP to purchase power to supply its demand. Although the determination of available Navajo Surplus will be made at least annually, the period for which the power is sold or exchanged may vary. Reclamation anticipates that some blocks of power may be marketed in multi-year contracts and others marketed for shorter terms.

*Comments relating to the pricing of Navajo Surplus:* Navajo Surplus should be sold at cost. Western does not have legal authority to market Navajo Surplus at market-based prices. Federal power sold to preference customers should be sold at cost-based prices. Western is proposing to depart from established cost-based principles governing pricing of federal power. This poses a threat to Western's preference customers. The plan to optimize revenue from the sale of Navajo Surplus should be balanced against the statutory requirement of an appropriate savings for the contractor to result in a below market price. The power should be sold at a price based on the market but reduced to eliminate costs incurred by the private sector but not by the federal government such as taxes. After the CAP is paid off, Navajo Surplus should be sold at cost.

*Response:* Navajo Surplus has never been marketed at cost-based pricing. The Hoover Power Plant Act of 1984

and the Arizona Water Settlements Act of 2004 provide that the Lower Colorado River Basin Development Fund (Development Fund) is to be used to repay CAP construction costs and to fund specified purposes including Indian water projects and settlements. Congress has directed that revenues from the sale of Navajo Surplus be deposited into the Development Fund and be available for these purposes. Cost-based pricing of this resource would not result in revenue which could be dedicated to CAP construction costs or Indian water projects. This would run counter to intent of these Acts of Congress. The Hoover Power Plant Act of 1984 states that the rates for Navajo Surplus should not exceed levels that allow for an appropriate saving for the contractor but does not further define what is intended by "appropriate savings." The marketing process for Navajo Surplus will permit the contractors to determine the price which represents to them an appropriate savings when, for example, placing a bid or submitting a request for proposal to Western. The provisions of the Hoover Power Plant Act of 1984 and the Arizona Water Settlements Act of 2004 which relate to the CAP, the sale of Navajo Surplus, and the purposes for which the Development Fund may be used have no bearing upon the marketing of power from other federal projects.

*Comments relating to the possible auction of Navajo Surplus:* Western and Reclamation should support the use of an auction process to sell Navajo Surplus, using standard electricity products and standard market contract arrangements to promote efficiency. Such a process could accommodate those seeking smaller quantities of power.

*Response:* The Amended Plan is designed for flexibility. It would allow Navajo Surplus to be auctioned as standard electricity products using standard contracts in a manner which promotes efficiency and which accommodates those seeking smaller quantities of power.

*Comments relating to the exchange of Navajo Surplus:* The proposed Amended Plan, unlike the original Navajo Power Marketing Plan, does not specify the amount of power to be exchanged.

*Response:* The Amended Plan is designed for flexibility. Whether and to what extent power is available for exchange will be determined by Reclamation in an annual process which takes into account the varying power needs of the CAP.

*Comments relating to the resale of Navajo Surplus:* Western should not apply Western's General Power Contract Provisions (GPCP), Article 17, to sales of Navajo Surplus because this would not allow a contractor to resell Navajo Surplus. If a contractor acquires Navajo Surplus and is not permitted to resell unused portions, the risk for the contractor increases. With higher risk, the contractor is likely to offer a lower price for Navajo Surplus and this would defeat the purposes of the Hoover Power Plant Act of 1984 and the Arizona Water Settlements Act of 2004.

*Response:* Article 17 of the GPCP was included in contracts for the sale of Navajo Surplus under the original Navajo Power Marketing Plan. At the time of actual contracting under the Amended Plan, Western will determine which GPCPs will be included in contracts marketing Navajo Surplus.

*Comments relating to the first opportunity provisions of the original Navajo Power Marketing Plan:* The original Navajo Power Marketing Plan and the contracts entered into under that plan provide a first opportunity to existing contractors to enter into new contracts for Navajo Surplus when the existing contracts expire. New contracts should be entered into under the first opportunity provisions of the original plan. Exercise of the first opportunity provisions for new contracts may impact the extent to which Navajo Surplus is available to be marketed to others.

*Response:* Reclamation is engaging in ongoing negotiations relating to the first opportunity provisions of the original Navajo Power Marketing Plan. These negotiations may result in new contracts for the sale of Navajo Surplus. The extent to which any such new contracts may affect the amounts of Navajo Surplus which is available to be marketed to others will not be known until the conclusion of those negotiations.

*Comments relating to marketing Navajo Surplus to Indian tribes:* Many tribes in the Colorado River Basin are new participants in the electric energy business. It is unlikely that Indian tribes have the staff capabilities to successfully participate in an auction process. The federal government and Indian tribes have a long-standing trust relationship. Western should consider benefits to Arizona Indian tribes when marketing Navajo Surplus. Western should set aside the amount of Navajo Surplus necessary to meet the needs of Indian reservations. Tribes in Arizona should be included in the first priority group for eligibility to contract with Western for the sale or exchange of

Navajo Surplus. Navajo Surplus should be sold to Indian tribes at cost or at the same cost as it is sold to larger utilities with sufficient staff to evaluate its value. Many tribes cannot take advantage of the sale of Navajo Surplus in large blocks of power or for single year periods.

*Response:* The Amended Plan is designed to optimize the revenues from the sale of Navajo Surplus to fulfill Congressional purposes relating to the repayment of construction costs of the CAP and relating to funding specified purposes including Indian water projects and settlements. In order to optimize revenues, Reclamation anticipates that Western will market the power, through an auction or by a request for proposals. Indian tribes are welcome to participate in these processes. An auction is only one of several methods that Western may use to market Navajo Surplus under the Amended Plan. The Amended Plan provides that first priority will be given to Arizona preference entities. Western currently recognizes several Indian Tribes as qualifying as preference entities in Arizona. The Amended Plan provides for flexibility in designing the products for sale and exchange. The Amended Plan does not require the products be structured in any particular manner. Reclamation anticipates that both large and small blocks of power may be available to be marketed as Navajo Surplus and further anticipates that some blocks may be available in multi-year increments. Both Reclamation and Western recognize the trust relationship between the United States and Federally-recognized Indian Tribes.

*Comments relating to the possible sale of Navajo Surplus as a firm product:* If Navajo Surplus is sold as a firm product, the proposed Amended Plan is unclear as to whether Western will be responsible for ensuring the firm product is delivered. Western should not firm Navajo Surplus at the expense of other Western customers.

*Response:* The Amended Plan is designed to be flexible. The Amended Plan permits Western to market Navajo Surplus as a firm product and as a unit contingent product. Costs related to the marketing of Navajo Surplus will not be passed along to non-CAP Western customers, nor will generation resources from other federal projects be used to firm Navajo Surplus.

*Comments relating to the integrated operation of the CAP water and power systems:* The CAP design assumes an integrated operation of the CAP water and power systems to optimize the efficiency of both. The proposed

Amended Plan should place more emphasis on the integrated operation of the CAP water and power systems.

*Response:* The Amended Plan addresses the integrated operation of the CAP water and power systems in Article V. The integrated operation will optimize revenues from the marketing of Navajo Surplus. The Amended Plan recognizes in Article VII(C) that CAWCD may be a party to contracts for the sale or exchange of Navajo Surplus for the purpose of affirming any obligations of CAWCD under the contract. Such contracts may further address CAP operations to enhance the availability and value of this resource.

*Comments relating to participation of CAWCD in energy marketing:* The proposed Amended Plan does not ensure the availability of power to run CAP pumps in the event of an outage of the entire Navajo power plant. It is unclear whether the expectation is that CAWCD will actively participate in energy marketing or simply bear the financial responsibility for a replacement supply.

*Response:* The Amended Plan solely addresses the marketing of Navajo Surplus. It does not address the availability of alternate supplies to run CAP pumps in the event of a complete outage of the Navajo Generating Station. Should such an outage occur, CAWCD, as the operating agent for the CAP, will make the decision whether to actively participate in energy marketing or to utilize another entity for this purpose. CAWCD currently participates in energy marketing.

*Comments related to transmission of Navajo Surplus:* A section should be added requiring Western to consult with the Arizona Power Authority prior to entering into any contracts relating to the transmission of Navajo Surplus in order to avoid compromising transmission rights and paths for the delivery of Arizona's federal entitlement to power from Hoover Dam.

*Response:* The Amended Plan addresses the marketing of Navajo Surplus. To the extent Western in its contracts for the sale or exchange of Navajo Surplus addresses transmission, Western will take into account transmission rights held by others. Western will not compromise the transmission rights and paths for the delivery of Arizona's federal entitlement to power from Hoover Dam.

*Comments relating to credit requirements for purchasers of Navajo Surplus:* The proposed Amended Plan is silent as to the credit requirements for purchasers of Navajo Surplus. Western should not bear the credit risk and then

pass it along to other Western customers.

*Response:* Reclamation expects that Western will follow its standard procedures with respect to credit requirements to be applied to purchasers of Navajo Surplus. Western will not pass along to other Western customers any credit risk relating to purchasers of Navajo Surplus.

*Comments relating to editing the proposed Amended Plan:* The proposed Amended Plan alternates between the use of the phrase “sold and exchanged” and “sold or exchanged” and should be consistent in its terminology. The definition of “Development Fund” should include the phrase “as amended or supplemented” because the statutory section establishing the fund has been amended. Article VI.D. (Eligibility) appears to paraphrase Section 107(c) of the 1984 Hoover Power Plant Act but should be modified to clearly and simply state the intent of Congress.

*Response:* Reclamation believes the Amended Plan appropriately uses “and” and “or” in different contexts when describing actions related to the marketing of Navajo Surplus. Reclamation has accepted this change to the Development Fund definition. The Amended Plan carries the Eligibility language forward from the original Navajo Marketing Plan. Reclamation believes it accurately reflects the intent of Congress.

Dated September 18, 2007.

**Robert W. Johnson,**

*Commissioner, Bureau of Reclamation.*

### **Amended Plan**

The text of the adopted Amended Plan is as follows:

#### **Amended Navajo Power Marketing Plan**

##### *I. Purpose and Scope*

Section 107 of the Hoover Power Plant Act of 1984, Pub. L. 98–381, requires that a power marketing plan be developed to provide for marketing and Exchanging of Navajo Surplus for the purposes of optimizing the availability of Navajo Surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona Project. The Secretary of the Department of the Interior adopted the original Navajo Power Marketing Plan on December 1, 1987 (Original Plan). The Revised Stipulation entered in the Central Arizona Project repayment litigation, *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95–625–TUC–WDB (EHC), No. CIV 95–

1720–PHX–EHC (Consolidated Action) requires, as a condition to the effectiveness of the Revised Stipulation, that the Original Plan be amended. The Revised Stipulation requires the amended Navajo Power Marketing Plan provide for the establishment and collection of rates for the sale or Exchange of Navajo Surplus that optimize the availability and use of revenues for the Lower Colorado River Basin Development Fund while allowing for an appropriate saving for the contractor. Satisfying the requirements of the Revised Stipulation is one of the elements necessary for final judgment to be entered in the above-referenced litigation. The entry of final judgment in that litigation permits the Secretary of the Department of the Interior to make a required finding under the terms of the Arizona Water Settlements Act of 2004, Pub. L. 108–451.

A. This Amended Navajo Power Marketing Plan hereinafter called “Plan” shall be applicable to all new or amended contracts for Navajo Surplus entered into after this Plan is adopted. The Original Plan shall remain in effect for all Navajo Surplus contracts entered into before the adoption of this Plan and shall continue until such contracts terminate or are amended in accordance with this Plan.

B. This Plan recognizes the obligation of the United States to use its entitlement to electrical capacity and energy from Navajo to provide necessary power for the pumping requirements of the Central Arizona Project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974, Pub. L. 93–320, as amended.

C. This Plan provides that Western, working closely with Reclamation and CAWCD, will be the marketing entity responsible for the sale and Exchange of Navajo Surplus in accordance with applicable Federal law, regulations and the Revised Stipulation. Western shall market Navajo Surplus directly to, with or through the Arizona Power Authority and/or other entities having the status of preference entities under the Reclamation Project Act of 1939. Western may utilize Exchange, banking, purchase or sales agreements, or integration with other resources to fulfill any purpose of this Plan.

D. This Plan sets parameters for the establishment of Rates, not to exceed levels that allow for an appropriate saving for the contractor, that will optimize the availability and use of revenues from the sale and Exchange of

Navajo Surplus to provide financial assistance for payment of the operation and maintenance expenses associated with Navajo Surplus and for the purposes set forth in 43 U.S.C. 1543(f), as amended by the Arizona Water Settlements Act of 2004, Pub. L. 108–451.

E. This Plan satisfies the obligation of the United States in accordance with the Revised Stipulation, to amend the Original Plan “to provide for the establishment and collection of rates for the sale or exchange of Navajo Surplus Power after September 30, 2011.”

F. This Plan specifies that for so long as Navajo operates and there is Navajo Surplus, Western shall continue to market Navajo Surplus under this Plan with such amendments or revisions as may be adopted by the Secretary of the Department of the Interior, after consultation with the Secretary of Energy, CAWCD, and the Governor of Arizona and as provided by law, including the authorities set forth in section II.

### *II. Authorities*

The authorities under which this Plan is developed are:

A. Federal Reclamation laws (43 U.S.C. 372 *et seq.*, and all Acts amendatory thereof or supplementary thereto); in particular, the Colorado River Basin Project Act of 1968, Pub. L. 90–537, as amended, the Colorado River Basin Salinity Control Act of 1974, Pub. L. 93–320, as amended, the Hoover Power Plant Act of 1984, Pub. L. 98–381, and the Arizona Water Settlements Act of 2004, Pub. L. 108–451.

B. Rules, regulations, and agency agreements of Western and Reclamation issued or made pursuant to applicable law.

### *III. Definitions*

The following terms wherever used herein shall have the following meanings:

A. “Boulder City Marketing Area” shall mean the marketing area defined in the 1984 Conformed Criteria published in the **Federal Register** (49 FR 50585) on December 28, 1984.

B. “Central Arizona Project” or “CAP” shall mean the Reclamation multipurpose water resource development and management project in Arizona authorized by the Colorado River Basin Project Act of 1968, Pub. L. 90–537, as amended (43 U.S.C. 1501 *et seq.*).

C. “CAWCD” shall mean the Central Arizona Water Conservation District.

D. “Conformed Criteria” shall mean the Conformed General Consolidated Power Marketing Criteria or Regulations

for Boulder City Area Projects published in the **Federal Register** (49 FR 50582) on December 28, 1984.

E. "Development Fund" shall mean the Lower Colorado River Basin Development Fund established under section 403 of the Colorado River Basin Project Act of 1968, Pub. L. 90-537, as amended.

F. "Exchange" shall mean any arrangements providing for delivery of capacity and energy to Western and return of capacity and energy by Western from Navajo within a one year period.

G. "Navajo" shall mean the Navajo Generating Station, the thermal generating power plant located near Page, Arizona, and associated transmission facilities.

H. "Navajo Entitlement" shall mean the United States entitlement of 24.3 percent of the generation from Navajo.

I. "Navajo Surplus" shall mean capacity and energy associated with the Navajo Entitlement which is in excess of the pumping requirements of the Central Arizona Project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974, Pub. L. 93-320, as amended.

J. "New Waddell Dam" or "New Waddell Reservoir" shall mean the regulatory storage facilities constructed on the Agua Fria River as a feature of the CAP.

K. "Original Plan" shall mean the original Navajo Power Marketing Plan adopted on December 1, 1987.

L. "Plan" shall mean this Amended Navajo Power Marketing Plan.

M. "Rate(s)" shall mean the price(s) established by a marketing process for various Navajo Surplus capacity or energy products marketed under this Plan to optimize the availability and use of revenues for the Development Fund.

N. "Reclamation" shall mean the Bureau of Reclamation, United States Department of the Interior.

O. "Revised Stipulation" shall mean the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment Upon the Satisfaction of Conditions, filed with the United States District Court for the District of Arizona in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated Action), and that court's order dated April 28, 2003, and any amendments or revisions thereto.

P. "Western" shall mean the Western Area Power Administration, United States Department of Energy.

#### IV. Power To Be Marketed

A. Reclamation, in consultation with CAWCD, shall annually or more frequently, as appropriate, determine the Navajo Surplus available for sale and Exchange by Western, and the period for which it will be available for sale and Exchange, taking into consideration among other factors, the following:

1. Existing contractual commitments to deliver Navajo Surplus, including new contracts entered into under the first opportunity provisions of section IV.G. of the Original Plan.

2. CAP estimated pumping energy requirements in excess of capacity and energy supplied to CAWCD from Hoover Dam or New Waddell Dam, based on projected CAP water deliveries for that year and successive years.

3. Estimated capacity and energy needs of the United States for desalting and protective pumping facilities, as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974, Pub. L. 93-320, as amended.

4. Projected Navajo generation.

B. Any Navajo Surplus not sold or Exchanged in accordance with paragraph A of this section may, as determined by Western, in cooperation with CAWCD and Reclamation, be sold under appropriate long-term or short-term arrangements.

#### V. Optimization

A. To optimize the availability of Navajo Surplus, CAWCD shall utilize, for CAP pumping requirements, Hoover capacity and energy scheduled from Hoover Dam in accordance with the terms and conditions of CAWCD's contract with the Arizona Power Authority to permit additional Navajo capacity and energy to be sold or Exchanged by Western as Navajo Surplus.

B. To optimize the availability and use of revenues from the sale and Exchange of Navajo Surplus:

1. CAWCD will use seasonal and daily power management. Specifically, CAWCD will divert maximum amounts of water from the Colorado River in the winter season for storage in the New Waddell Reservoir, and then serve CAP water demands in the summer season from water previously placed in storage. On a daily basis, CAWCD to the extent possible will pump off-peak to optimize the on-peak availability of Navajo Surplus.

2. Western, in consultation with Reclamation and CAWCD, shall develop capacity and energy products from the Navajo Surplus determined to be available under section IV.A for sale or Exchange, taking into account market prices for standard capacity and energy products.

#### VI. Eligibility

A. Western shall offer Navajo Surplus for sale in the following order of priority, in accordance with part IV, section A of the Conformed Criteria:

1. Preference entities within Arizona.
2. Preference entities within the Boulder City Marketing Area.
3. Preference entities in adjacent Federal marketing areas.
4. Non-preference entities in the Boulder City Marketing Area.

B. In the event a bidding or request for proposal process is utilized, after the bids or proposals are received the bidding entities will be given first opportunity, in order of priority, to purchase at a price which is based on the highest offer.

C. In the event that a potential contractor fails to place Navajo Surplus capacity and energy under contract within a reasonable period, as specified by Western and in accordance with the terms and conditions offered by Western, the amounts of capacity and energy not placed under contract will be reoffered in accordance with the order of priority specified in paragraph A of this section.

D. Arizona entities, regardless of preference status, shall have first opportunity for electrical capacity and energy Exchange rights as necessary to implement this Plan. Western, in consultation with CAWCD and Reclamation, may determine that any capacity and energy not subscribed to by Arizona entities for Exchange may be offered for sale in the order of priority stated in paragraph A of this section or may be offered to non-Arizona entities for Exchange.

#### VII. Contract Provisions

A. Western, after consultation with Reclamation and CAWCD, shall enter into all power sales and Exchange contracts necessary to carry out the provisions of this Plan in selling and exchanging Navajo Surplus. Navajo Surplus shall be marketed, and Exchange rights granted, by Western on behalf of the Secretary of the Department of the Interior, under contracts consistent with this Plan and the Conformed Criteria.

B. Contracts for the sale or Exchange of Navajo Surplus shall specify a delivery point on the Navajo or CAP

transmission systems as may be available. If the contractor cannot take delivery of Navajo Surplus into its own system at these delivery points, transmission service arrangements to other delivery points will be the obligation of the contractor.

C. CAWCD may be a party to contracts for the sale or Exchange of Navajo Surplus for the limited purposes of (i) concurring that the contracts optimize the financial assistance available for the purposes set forth in 43 U.S.C. 1543(f), as amended by the Arizona Water Settlements Act of 2004, Pub. L. 108-451, and (ii) affirming any rights and obligations of CAWCD under the contracts.

D. Western and the contractor shall agree upon written metering and scheduling instructions prior to any deliveries under this Plan. The metering and scheduling instructions shall provide the operating and accounting procedures for such deliveries. Metering and scheduling instructions are intended to implement terms of the contract, not to modify or amend it, and therefore are subordinate to the contract. Western and the contractor may modify these instructions, as necessary, to reflect changing power system conditions. In the event the contractor fails or refuses to execute the initial metering and scheduling instructions or any revised instructions Western determines to be necessary, Western shall develop and implement temporary instructions until acceptable instructions have been developed and executed by Western and the contractor.

#### VIII. Rate-Setting

A. Rates for Navajo Surplus developed pursuant to section IV.A shall be established annually by Reclamation and Western, in consultation with CAWCD, through a competitive process that optimizes the availability and use of revenues for the Development Fund with priority to entities in accordance with section VI.A. and that allows for an appropriate saving for the contractor, taking into consideration, among other factors, prices for comparable capacity and energy products.

B. Rates for Navajo Surplus developed under section IV.B or marketed under the first opportunity provision of the Original Plan shall be established in the contracts for sale of such Navajo Surplus, taking into consideration, among other factors, prices for comparable capacity and energy products, and allowing for an appropriate saving for the contractor.

C. Rates developed annually pursuant to this Plan shall not be applicable to

pre-existing contracts unless provided for in such contracts.

D. Because of the Hoover Power Plant Act of 1984's, Pub. L. 98-381, requirements for noncost-based rates, the Rates established pursuant to this Plan are not suitable to the required review of Western's rates by the Federal Energy Regulatory Commission. All Rates promulgated by the Administrator of Western under this Plan shall be a final act of the Secretary of Energy and shall be subject to review pursuant to the judicial review provided by the Administrative Procedure Act (5 U.S.C. 553, *et seq.*).

#### IX. Revenue Collection and Distribution

Western shall deposit all revenue collected from the marketing of Navajo Surplus under this Plan into the Development Fund, where it will be used:

A. First, to pay all costs of operation and maintenance determined to be associated with the sale and Exchange of Navajo Surplus, including actual costs for services performed by Reclamation and Western under this Plan including appropriate administrative expenses of Reclamation and Western.

B. Second, for the purposes set forth in 43 U.S.C. 1543(f), as amended by the Arizona Water Settlements Act of 2004, Pub. L. 108-451, including crediting funds against the annual CAWCD repayment obligation and funding specific Indian water-related activities.

#### X. Effective Date

This Plan will become effective 30 days after publication in the **Federal Register** following adoption by the Secretary of the Department of the Interior.

#### XI. Consultation

This Plan is deemed most acceptable in accordance with section 107(c) of the Hoover Power Plant Act of 1984, Pub. L. 98-381, after consultation with Western (Secretary of Energy), the Governor of Arizona, and CAWCD.

Adopted:

Dated: September 18, 2007.

**Robert W. Johnson,**

*Commissioner, Bureau of Reclamation.*

[FR Doc. E7-18744 Filed 9-21-07; 8:45 am]

**BILLING CODE 4310-MN-P**

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-615]

### In the Matter of Certain Ground Fault Circuit Interrupters and Products Containing the Same; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 16, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Pass & Seymour, Inc. of Syracuse, New York. Letters supplementing the complaint were filed on September 4, 5, and 6, 2007. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ground fault circuit interrupters and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 5,594,398, RE38,293, 7,154,718, 7,164,564, 7,212,386, and 7,256,973. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Bryan F. Moore, Esq., Office of Unfair