

thorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 22. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 23. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

[FR Doc.76-30344 Filed 10-15-76; 8:45 am]

[Docket Nos. R-393, RM76-5]

TENNESSEE GAS PIPELINE CO.

Small Producer Regulation; Order Granting Application for Reconsideration for Purposes of Further Consideration

OCTOBER 8, 1976.

On September 9, 1976, Tennessee Gas Pipeline Company (Tennessee) filed an application for rehearing and reconsideration of Opinion No. 742-A and Order No. 553, both issued on July 27, 1976. Since Tennessee's application for rehearing was untimely filed, it is being treated solely as an application for reconsideration.

The Commission finds: In order to afford the Commission the opportunity to consider fully the issues raised by the above-referenced application, it is appropriate and proper in the administration of the Natural Gas Act to grant reconsideration of Opinion No. 742-A and Order No. 553 for the purpose of further consideration.

The Commission orders: The application for reconsideration filed by Tennessee

is granted for the purpose of further consideration.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 76-30342 Filed 10-15-76; 8:45 am]

[Docket No. RP74-41 (AP 76-2)]

TEXAS EASTERN TRANSMISSION CORP.

Proposed Changes in FPC Gas Tariff

OCTOBER 7, 1976.

Take notice that Texas Eastern Transmission Corporation on September 30, 1976 tendered for filing proposed changes in its FPC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Twenty-fourth Revised Sheet No. 14
Twenty-fourth Revised Sheet No. 14A
Twenty-fourth Revised Sheet No. 14B
Twenty-fourth Revised Sheet No. 14C
Twenty-fourth Revised Sheet No. 14D

Texas Eastern states that it is reducing its rates due to repayment of advance payments for gas pursuant to Article V of the Stipulation and Agreement under Docket No. RP74-41. The above tariff sheets are proposed to become effective on November 1, 1976.

Texas Eastern states that copies of the filing were served on the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 20, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-30351 Filed 10-15-76; 8:45 am]

[Docket No. AR64-2, etc.; RP73-35]

TRUNKLINE GAS CO.

Proposed Plan for Flow Through of Refunds

OCTOBER 8, 1976.

Take notice that Trunkline Gas Company (Trunkline) on September 22, 1976 submitted its plan for flow through of refund amounts received from producers as a result of F.P.C. Opinion and Order Nos. 595 and 595-A issued in Docket No. AR64-2, et al., such plan submitted pursuant to the Commission's Order issued February 23, 1976 Directing Disbursement and Flow Through of Refunds in the above referenced docket.

Copies of this plan were served on each jurisdictional customer and upon the appropriate state regulatory agencies.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 22, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. This application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-30381 Filed 10-15-76; 8:45 am]

[Project No. 2401]

UTAH POWER & LIGHT CO.

Grace-Cove Project

OCTOBER 6, 1976.

In the matter of order issuing major license for constructed project and denying request for disclaimer of jurisdiction.

Utah Power & Light Company (Applicant) of Salt Lake City, Utah, filed on August 30, 1963, and supplemented June 18, 1968, January 27, 1969, December 10, 1971, and April 20, and December 4, 1972, an application for major license for, or alternatively a disclaimer of jurisdiction over, the constructed Grace-Cove Project No. 2401 located on the Bear River in Caribou County, Idaho. The project consists of two diversion dams, a reservoir containing 250 acre-feet of storage, and three powerhouses with a total installed capacity of 51,500-kW.

The project is composed of two developments. The Grace development, containing two 5,500-kW generating units was constructed in 1908 by a predecessor of the Applicant. Utah Power & Light Company purchased the plant in 1912. In 1914 the Applicant built an additional powerhouse with two 11,000-kW units, and added a third 11,000-kW unit in 1923. The flume was replaced between 1937 and 1952, and in 1950 a new dam was constructed immediately downstream of the original one.

The Cove development was constructed by the Applicant in 1927. The powerhouse contains a single 7,500-kW generating unit. Since the initial construction, the flume and spillway have been repaired (1949-50) and a substation has been built (1955). The license application does not request authorization for any modifications of the existing project.

Public notice of the license application was issued October 18, 1963, 28 FR 11463, with December 9, 1963, given as the last day for filing protests or petitions.

tions to intervene. No protests or petitions to intervene were received.

JURISDICTION

Applicant, in Exhibit P of its application, questions whether the Grace-Cove Project must be licensed under the Federal Power Act. Applicant attests that its application was filed in response to our decision in Public Service Company of New Hampshire, (Androscoggin),² wherein we established the policy of backdating licenses for projects dilatory in seeking Commission authorization. However, Applicant believes that there is uncertainty in the application of Androscoggin to the Grace-Cove Project. Applicant argues that the fact that jurisdiction in Androscoggin was based upon navigability of the river on which the project was located distinguishes it from Grace-Cove where it contends that the associated river is non-navigable.

We do not find it necessary to reach the questions raised by the Applicant regarding the navigability of the entire Bear River, or the applicability of the Androscoggin case to non-navigable waters. Jurisdiction over Project No. 2401 may be found through the Supreme Court's determination in *FPC v. Union Electric Co.* (Taum Sauk),³ where the Court concluded that Section 23(b) of the Act⁴ gives the Commission licensing authority over a water power project which utilizes the headwater of a navigable river to generate energy for an interstate power system. Grace-Cove is such a project.

The Bear River, at a point downstream from the project, has historically been used for navigational purposes. Between 1871 and 1873 a stern-wheel steam boat was used along the lower stretch of the Bear River to transport freight, ore, and passengers from the railroad junction city of Corinne, at approximately river mile 15, to Salt Lake City via the Great Salt Lake and the Jordan River.⁵ Such evidence requires a finding that the Bear River downstream from the Grace-Cove Project was a navigable waterway of the United States. It is irrelevant that diversion of the upstream water for irrigation has rendered the river no longer suitable for navigation. The Supreme Court has determined that if a river was navigable at an earlier period of time, it is unimportant that actual navigation has now been abandoned.⁶ The Commission may find a river navigable " * * * if (1) It presently is being used or is suitable for use, or (2) it has been used or was suitable for use in the past; or (3) it could be made suitable for use in the future by reasonable improvements." * *

² 27 FPC 830 (1962).

³ 381 U.S. 90 (1965).

⁴ Federal Power Act Section 23(b), 16 U.S.C. 817(b).

⁵ D. E. Miller, Great Salt Lake Past and Present, 13 (1949); Box Elder Chapter-Sons of Utah Pioneers, Box Elder Lore (Sept. 1951).

⁶ U.S. v. *Appalachian Power Co.*, 311 U.S. 377 (1940).

⁷ *Rochester Gas and Electric Corp. v. Federal Power Commission*, 344 F. 2d 594, 596 (2d Cir. 1965).

Having determined that Grace-Cove utilizes waters which become navigable at a point below the project, jurisdiction may be based on Taum Sauk if it can be shown that the project generates energy for an interstate power system. The Grace and Cove plants are connected to Utah Power & Light's 46-kV and 161-kV interconnected transmission facilities. These transmission facilities interconnect with Applicant's generating stations in Idaho, Utah, and Wyoming, and interconnect at the Utah-Arizona state line with the Bureau of Reclamation's Colorado River Storage Project. The system also interconnects with the Montana Power Company at the Idaho-Montana state line through a 161-kV line leased by Utah Power & Light from Idaho Power Company. Power flows in both directions across each of these state lines. The interstate transmission of electric energy and a project which generates energy for such transmission affects commerce among the states.⁷ The analogy to Taum Sauk is complete.

Despite the application of Taum Sauk to the instant proceeding, the question of licensing jurisdiction remains somewhat clouded as application of § 23(b) has been held nonretroactive from its 1935 enactment date. In *Farmington River Power Company v. FPC*,⁸ the Second Circuit found that a project which "was constructed in 1925 and remains essentially unchanged today", did not fall within the jurisdictional ambit of Section 23(b), which was added to the Act after the project was built.⁹ Nevertheless in our recent decision in *Puget Sound Power and Light Company*,¹⁰ we distinguished *Farmington* and concluded that licensing jurisdiction did exist where substantial post-1935 construction on a project had occurred. In the instant proceeding, the facts are similar to those in *Puget*. Although initial construction on both the Grace and Cove plants was completed long before 1935, a new dam was constructed at the Grace facility in 1950. The new dam's construction did not constitute repair or maintenance, thereby leaving the project "essentially unchanged", but was a significant addition, thus bringing the project within our jurisdiction.

COMMENTS ON THE APPLICATION

By letters dated October 16, 1963, the then Acting Secretary of the Commission requested comments on the application from appropriate Federal and State agencies pursuant to section 4(e) of the Act.¹¹ Comments received and responses to those comments are as follows:

CONSERVATION AND ENHANCEMENT OF FISH & WILDLIFE RESOURCES

The State of Idaho Fish and Game Department (Department) reported

⁸ Taum Sauk, at 94.

⁹ 455 F. 2d 86 (2d Cir. 1972).

¹⁰ Id. at 89-90.

¹¹ Order Establishing Jurisdiction, Project No. 2495, issued July 31, 1975, F.P.C. (1975), appeal docketed, No. 75-3523, 9th Cir., Nov. 17, 1975.

¹² 16 U.S.C. 797(e).

(December 9, 1963) that the project at present offers little or no enhancement of wildlife resources. The Department recommended two special license articles to provide for any future development of potential fish, wildlife, and recreational resources associated with the project. One proposed article would require the Applicant to construct and maintain those fish and wildlife conservation facilities deemed necessary by either the Commission, the Secretary of the Interior, or the Idaho Fish and Game Department; the other would require Applicant to permit the United States or the State of Idaho to use project lands to a reasonable extent free of charge for the development or improvement of facilities and to make whatever project modifications are necessary to accommodate Federal or State conservation developments. Articles 16 and 17 of this license provide for the Department's recommendations.

The Department of the Interior, (Interior) in a letter received March 25, 1964, recommended that conditions relating to fish and wildlife resources be included in any license issued. These recommendations are similarly met by the inclusion of Articles 16 and 17 of this license.

Further protection of fish and wildlife resources is afforded by Article 27, which requires Applicant to file an Exhibit S within one year of the issuance date of the license. Although Order No. 323, which requires the preparation of an Exhibit S, was issued after the license application for Project No. 2401 was filed, a substantial period of time has elapsed since that filing and 25 years will elapse before a new license containing a fish and wildlife plan will be issued. In addition, the Department's aforementioned report concluded that little activity geared toward fish and wildlife enhancement had occurred within the project boundaries. For these reasons, we determine through Article 27 of the proposed license that an Exhibit S must be filed.

RECREATION

The Applicant has not advanced a plan for future recreational development nor a statement of the agencies consulted during the preparation of its Exhibit R. Applicant concluded that only the small ponds behind the diversion dam could offer any possible recreational use, and that these ponds are subject to such violent water level fluctuations that they are of little value. Therefore, as there is limited potential for recreational development at the project and many bodies of water and streams in the area are available for fishing, boating, and other recreational uses, it is not necessary for Applicant to file a revised Exhibit R at this time.

WATER USE

The March 25, 1964, letter from Interior recommended the inclusion of a special article that would subordinate Applicant's water rights for power purposes to irrigation uses. Interior noted the ever-present importance of irriga-

tion to the area affected by the Grace-Cove facility and concluded that a stipulated subordination of water use for power purposes would assure the needed economic development of the Bear River Basin.

Applicant opposed such an article by letter filed June 9, 1964. It averred that during the previous 30 years there had been no water releases from Bear Lake solely for the generation of power. Applicant further argued that water has consistently been conserved for irrigation, with power being generated by its downstream Bear River plants only when irrigation demands required water releases.

We are not including the article proposed by Interior. Special Article 25, included herein, precludes the use of the license as the basis of damage claims if water is diverted for irrigation or other beneficial consumptive uses.

The Corps of Engineers reported (February 11, 1964) that insertion in the license of special terms and conditions in the interest of navigation were not considered necessary and that plans for the structures affecting navigation were satisfactory. The Department of Health, Education, and Welfare, by report received January 23, 1964, concluded that this project would have no adverse effect on water supply, water quality, or vector control.

ENVIRONMENTAL CONSIDERATIONS

Applicant filed an Environmental Report as a supplement to its application on April 20, 1972. Comments on Applicant's Report were received from Interior, Forest Service, Corps of Engineers, Department of Health, Education, and Welfare, Idaho Water Resources Board, and the City of Grace, Idaho, with no objections to issuance of the license. Following a thorough review of Applicant's Report and agency comments thereon we conclude that the issuance of a license by the Commission for Project No. 2401 does not constitute a major Federal action significantly affecting the quality of the human environment. The license does not authorize any new construction or change in project operation. Thus, the preparation of an environmental impact statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969¹² and our implementing Order No. 415-C is not required.

Interior, in its environmental comments concerning Project No. 2401, recommended the investigation of possible historic places within the project boundary and an archeological survey of project lands. The National Register of Historic Places has been reviewed through June 5, 1975, and no historic structures or sites are listed for the project area. As no new construction is being authorized by the issuance of this license, no further study of a historic or archeological nature is required. Nevertheless, should Applicant ever seek Com-

mission approval for subsequent project construction it very well may be required to conduct the surveys and studies outlined by Interior.

TRANSMISSION FACILITIES

With regard to the transmission facilities connected with this project, we conclude that the following transmission facilities are subject to any license issued for Project No. 2401: (a) the 6.6-kV generator leads of Grace units 3, 4 and 5 to the 138-kV step-up transformer; (b) the 2.4-kV generator leads of Grace units 1 and 2, the 2.4/46-kV step-up transformer and a short section of 46-kV transmission line to the outdoor substation; (c) the 6.6-kV generator leads to the Cove outdoor substation and the 6.6/46-kV step-up transformer; (d) 1.6 miles of dual 46-kV line between the Cove and Grace plants; (e) the 6.6/138-kV transformer at the Grace plant; and (f) appurtenant facilities at both developments.

Exhibit M of the application lists the 2.4/46-kV and 6.6/138-kV transformers at the Grace plant and the 6.6/46-kV transformers at the Cove plant as being part of the project. In a letter dated April 21, 1967, the Applicant expressed no objection to including the 46-kV transmission lines from the Cove plant to the Grace plant. The Applicant overlooked the generator leads and the short 46-kV line when compiling Exhibit M; these are considered appurtenant facilities and are included as such in the project description with the previously mentioned facilities. Additionally, special Article 26 requires the inclusion of both 46-kV lines and the generator leads in Applicant's filing of revised Exhibits F, K, and M.

COMPUTATION OF ANNUAL CHARGES

The installed capacity of the project is 51,500 kilowatts. For annual charge purposes this capacity is converted to 68,700 horsepower by multiplying the kilowatts by 4/3. Special Article 24 provides for the annual charges for the project.

EXHIBITS

Exhibits J and L have been examined and found to substantially conform to the Commission's Rules and Regulations, and should be approved and made part of this license. Exhibits F, K, and M have been examined and found to generally conform to the Commission's Regulations; however, they do not include as part of the project all the aforementioned transmission facilities. Therefore, these exhibits are approved and made a part of the license only to the extent that they show the general location and nature of the project.

There are no conflicting applications for a preliminary permit or a license before the Commission. The project does not affect a government dam. Under the circumstances, the license for Project No. 2401 under the terms and conditions hereinafter provided best fulfills the standards of Section 10(a) of the Fed-

eral Power Act,¹³ Section 10(a) requires that the approved project shall:

be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreation purposes * * *

We conclude on the basis of the facts before us that a major license should be issued to Applicant effective May 1, 1965, the first day of the month in which *Tam Sauk* was decided, and terminating 25 years from the first day of the month in which this license is issued. This is in accordance with the principles enunciated in the Commission's Order issued September 24, 1976, in *Pacific Power and Light Co., Project No. 2652, F.P.C. (1976)*.

The Commission finds: (1) The Bear River is a navigable waterway of the United States from at least the City of Corinne, approximately at river mile fifteen to its mouth.

(2) The Grace-Cove Project No. 2401, is located on the Bear River.

(3) The Grace-Cove Project No. 2401, as constituted under this license, generates electric energy for an interstate system and has undergone major post-1935 construction.

(4) The Applicant, Utah Power & Light Company, is a corporation incorporated under the laws of the State of Maine and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(5) Public notice of the application was given. No protests or petitions to intervene were received by the Commission.

(6) No conflicting application is before the Commission.

(7) The project does not affect a government dam, nor will the issuance of a license, subject to the conditions hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(8) Subject to the terms and conditions hereinafter imposed, the project is best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes.

(9) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 68,700 horsepower, and the amount of annual charge based on such capacity to be paid to the United States under the license for the project for the cost of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

¹³ 16 U.S.C. 803(a).

¹² 42 U.S.C. 4332(2)(C).

(10) Exhibits J and L as designated and described in paragraph (B) below conform to the Commission's Rules and Regulations and should be approved and made a part of the license for the project.

(11) Exhibits K and M as designated and described in paragraph (B) below should be approved only to the extent that they show the general location and nature of the project.

(12) The plans for the structures affecting navigation have been approved by the Corps of Engineers.

(13) This action does not require the preparation of an environmental impact statement.

(14) The term of the license herein-after authorized is reasonable.

The Commission orders: A. This license is hereby issued to Utah Power & Light Company of Salt Lake City, Utah, under Section 4(e) of the Federal Power Act, for a period effective May 1, 1965, and terminating 25 years from the first day of the month in which this license is issued, for the continued operation and maintenance of the Grace-Cove Project No. 2401, located on the Bear River in Caribou County, Idaho, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

B. The Grace-Cove Project No. 2401 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the Licensee's interests in such lands, the limits of which are otherwise defined, the use and occupancy of which are necessary for the purposes of the project; such project area and project boundary being shown and described by certain exhibits which form part of the application for license and which are designated and described as follows:

Exhibit	FPC No.	Showing
J	2401-1	General map of project area.
K-1	2401-17	Grace-Cove project.
K-2	2401-18	Do.
K-3	2401-19	Do.

(ii) project works consisting of:

Grace Development—(1) a timber crib, rock-filled dam, 180.5 feet long and 51 feet high, with 120 feet of spillway controlled by flashboards and about 200 feet of earth dike; (2) a reservoir of 250 acre-feet storage at elevation 5,556; (3) 2 conduits of wood stave and riveted steel pipe about 4.8 miles long; (4) a powerhouse containing two horizontal turbines each driving a generator rated at 5,500-kW; (5) a powerhouse containing three vertical turbines each driving an 11,000-kW generator; (6) the 2.4/46-kV step-up substation; (7) the 6.6/138-kV step-up substation;

Cove Development—(8) a reinforced concrete dam 140 feet long and 24 feet high and 150 feet of earth dike; (9) a conduit consisting of a concrete-lined canal and open box wood flume; (10) a steel penstock 528 feet long; (11) a powerhouse containing one vertical turbine driving a 7,500-kW generator; (12) the 6.6/46-kV step-up substation; (13) two 46-kV transmission lines between the Grace and Cove stations; and (14) appurtenant facilities—the location, nature and character of which are more specifically

shown and described by the exhibits hereinbefore cited and by certain other exhibits which also form part of the application for license and which are designated and described as follows:

Exhibit L	FPC No.	Showing
1 (Grace).....	2401-4	Plan and elevation of Grace Dam.
2 (Grace).....	2401-5	Plan and sections of Grace Intakes.
3 (Grace).....	2401-6	Elevations and sections of Grace intake houses.
4 (Grace).....	2401-7	Plan, sections and elevations of Grace surge tanks.
5 (Grace).....	2401-8	Plan of Grace powerhouse.
6 (Grace).....	2401-9	Elevations and sections of Grace powerhouse.
1 (Cove).....	2401-10	Sections and elevations of Cove powerhouse.
2 (Cove).....	2401-11	Plans and sections of Cove powerhouse.
3 (Cove).....	2401-12	Sections of Cove lower spillway, Penstock intake and flume.
4 (Cove).....	2401-13	General plan and sections of Cove headworks.
5 (Cove).....	2401-14	Plan and sections of Cove intake and details of screens and lifting yoke.
6 (Cove).....	2401-15	Plan, elevation, and sections of Cove Dam.

Exhibit M: Consisting of two typewritten pages entitled, "General Description of Mechanical, Electrical and Transmission Equipment" filed with the Commission August 30, 1963.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-10 (revised October 1975) which terms and conditions, designated as Articles 1 through 23, are attached hereto and made a part hereof and subject to the following special conditions set forth herein as additional articles.

Article 24. The Licensee shall pay the United States the following annual charge:

For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 68,700 horsepower.

Article 25. This license shall not be construed as affecting in any way any claim the Licensee may have concerning its water rights acquired pursuant to State Law. Those rights, not this license, shall govern any claim the Licensee may advance against the United States for any damages resulting from any future depletion in the flow of the waters of the Bear River and its tributaries for the irrigation of lands or other beneficial consumptive uses.

Article 26. The Licensee shall file, in accordance with the Commission's Rules and Regulations, revised Exhibits F, K,

and M, within one year after issuance of this license to show and describe the existing 46-kV transmission line between the Grace and Cove plants; the 6.6-kV generator leads of Grace units 3, 4 and 5 to the 138-kV step-up transformer, the 2.4-kV generator leads of Grace units 1 and 2, the 6.6-kV generator leads to the Cove outdoor substation, and a short section of 46-kV transmission line to the outdoor substation as a part of the project facilities.

Article 27. Licensee shall, within one year following issuance of this license, file for Commission approval an Exhibit S prepared in accordance with the requirements of Section 4.41 of the Commission's Regulations under the Federal Power Act.

Article 28. The Licensee, in the interests of promoting optimum recreational use and protecting the scenic values of project lands and waters, may to a reasonable extent grant permits to individuals or groups of individuals for landscape plantings on projects lands, or for the construction of access roads, wharves, landings, and other similar facilities, the occupancy of which may, under appropriate circumstances, be subject to the payment of rent in a reasonable amount: *Provided*, That the Licensee, in granting such permits, shall require that permittees provide for multiple occupancy and use of such facilities, where feasible, and shall ensure that such facilities are constructed and maintained in such manner as to be consistent with shoreline aesthetic values; *Provided further*, That the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities, which are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 29. Pursuant to Section 10(d) of the Act, after the first 20 years of operation of the project under license, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year: *Provided*, that, if and to the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year or years after the first 20 years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization re-

serve account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the weighted cost components of long-term debt, preferred stock, and the cost of common equity, as defined herein. The weighted cost components for each element of the reasonable rate of return is the product of its capital ratios and cost rate. The current capital ratios for each of the above elements of the rate of return shall be calculated annually based on an average of 13 monthly balances of amounts properly includable in the Licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10 year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 30. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water.

Article 31. Licensee shall file with the Commission an emergency action plan designated to provide an early warning to downstream inhabitants and property owners if there should be an impending or actual sudden release of water caused by an accident to, or failure of, project structures. Such plan to be submitted within one year of the date of issuance of the license, shall include, but not be limited to, instructions to be provided on a continuing basis to operators and attendants for actions they are to take in the event of an emergency; detailed and documented plans for notifying law enforcement agents, appropriate Federal, State and local agencies, operators of downstream water-related facilities, and those residents and owners of properties endangered; actions that would be taken to reduce the inflow to the reservoir, if such is possible, by limiting the outflow from upstream dams or control structures; and actions to reduce downstream flows by controlling the outflow from dams located on tributaries to the stream on which the project is located. Licensee shall also submit a summary of the study used as a basis for determining the areas that may be affected by such an emergency occurrence, including criteria and assumptions used.

(D) Licensee shall, within 90 days from the date of acceptance of this license, file in accordance with the provisions of § 11.20(a)(4) of the regulations a statement under oath showing

the gross amount of kilowatt-hours generated by the project for each calendar year commencing with the effective date of the license.

(E) This order shall become final within 30 days from the date of its issuance unless application for rehearing shall be filed as provided in section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of the license for Project No. 2401. In acknowledgement of its acceptance of the license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

By the Commission.

KENNETH F. PLUMB,
Secretary.

**TERMS AND CONDITIONS OF LICENSE FOR
CONSTRUCTED MAJOR PROJECT AFFECTING
THE INTERESTS OF INTERSTATE OR FOREIGN
COMMERCE**

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent

as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States

or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of an other licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities

at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: *Provided*, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent

[Docket No. ER76-92]

**WESTERN POWER DIVISION CENTRAL
TELEPHONE & UTILITIES CORP.****Filing of Revised Rate Schedules**

OCTOBER 8, 1976.

of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of non-power facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 22. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or a annual license under the terms and conditions of this license.

Article 23. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

[FR Doc.76-30346 Filed 10-15-76;8:45 am]

[Docket No. ER76-919]

VERMONT ELECTRIC POWER CO.**Filing of Purchase Agreement**

OCTOBER 8, 1976.

Take notice that on September 24, 1976, the Vermont Electric Company (VELCO) tendered for filing a Purchase Agreement for the sale of five thousand kilowatts (5,000 KW) and related energy from the Vermont Yankee Nuclear Electric Generating Unit in Vernon, Vermont, to the City of Taunton, Massachusetts, by VELCO, dated as of December 30, 1975. VELCO states that service under this Agreement is to begin October 31, 1976 and is to terminate October 31, 1978.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 20, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-30357 Filed 10-15-76;8:45 am]

Take notice that on September 8, 1976, Western Power Division, Central Telephone & Utilities Corporation (CTU) tendered for filing revised rate schedules reflecting reduced rates from those originally proposed, based on the elimination from rate base of construction work in progress. The instant filing was tendered pursuant to: (1) Ordering paragraph (B) of the Commission's order of February 20, 1976; (2) the deficiency letter issued by the Secretary of the Commission dated June 1, 1976; and (3) the Commission's order of August 17, 1976.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 22, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-30356 Filed 10-15-76;8:45 am]

[Docket No. ER76-150]

WISCONSIN PUBLIC SERVICE CORP.**Filing of Proposed Settlement Agreement
and Revised Tariff Sheets**

OCTOBER 12, 1976.

Take notice that on October 1, 1976, Wisconsin Public Service Corporation tendered for filing a Settlement Agreement dated September 20, 1976, and signed on behalf of the Company and each of the eight wholesale customers affected thereby.

Concurrently with its tender of the proposed Settlement Agreement, Wisconsin Public Service Corporation tendered for filing revised rate schedules intended to reflect the terms of the proposed Agreement. The revised rate schedules consist of Tenth Revised Sheet No. 1, First Revised Sheet No. 2, and Original Sheet No. 3, Schedule W-1. The Company requests that such schedules be accepted for filing so as to become effective as of February 22, 1976, at the same time as the Settlement Agreement is approved by the Commission.

Wisconsin Public Service Corporation states that copies of the proposed Settlement Agreement and revised rate schedules are being sent to the customers affected thereby and to the Public Serv-

ice Commissions of Wisconsin and Michigan.

Any person desiring to be heard or to protest said filings should file comments with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before October 22, 1976. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of these filings are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-30379 Filed 10-15-76;8:45 am]

DEPARTMENT OF THE INTERIOR**Bureau of Reclamation****KANOPOLIS UNIT, KANSAS****Public Hearing on Draft Environmental
Statement**

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the Kanopolis Unit, Kansas, water development project. This statement (INT DES 76-39) was made available to the public on October 8, 1976.

The draft environmental statement deals with the modification of an existing dam and construction of a diversion in an existing stilling basin, canals, laterals, and drains. Kanopolis Dam is 24 miles southwest of Salina, Kansas, and is located in Ellsworth County.

Initial storage capacity of Kanopolis Reservoir is planned to be 205,000 acre-feet which will provide water for irrigation of 20,000 acres, municipal and industrial use in Salina, fishery flows, and to meet unspecified demands for the State of Kansas.

A public hearing will be held in Lindsborg, Kansas, at the Lindsborg Housing Authority Community Building, 421 East Saline Street, at 9 a.m. on November 18, 1976, to receive views and comments from interested organizations or individuals relating to the environmental impacts of this project. Oral statements at the hearing will be limited to periods of 10 minutes. Speakers will not trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker to provide additional oral comment after all persons wishing to comment have been heard. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request, whenever possible, and any scheduled speaker not present when called will lose his privilege in the scheduled order and his name will be recalled at the end of the scheduled speakers. Requests for scheduled presentation will be accepted up to November 15, 1976, and any subsequent requests will be handled on a first-come-first-served basis following the scheduled presentation. Written statements received at the hearings will become a part of the hearing record and will not be reprinted in full in the final

environmental statement. The issues expressed in those written statements will be restated and responded to in the final environmental statement in the same manner as the oral testimony. Hearing transcripts and records will be available for public inspection at the address below and at the Kansas Reclamation Office, Landmark Plaza Building, 103 East 10th Street, Topeka, Kansas 66612, telephone (913) 234-8661.

Organizations or individuals desiring to present statements at the hearing should contact Regional Director Joe D. Hall, Bureau of Reclamation, Lower Missouri Region, Building 20, Denver Federal Center, Denver, Colorado 80225, telephone (303) 234-3779, and announce their intention to participate. Written comments from those unable to attend, and from those wishing to supplement their oral presentation at the hearing should be received by November 28, 1976, for inclusion in the hearing record.

Dated: October 12, 1976.

G. G. STAMM,
Commissioner of Reclamation.

[FR Doc. 76-30391 Filed 10-15-76; 8:45 am]

Office of the Secretary
CENTRAL ARIZONA PROJECT, ARIZ.
Allocation of Project Water for Indian
Irrigation Use

INTRODUCTION

On April 15, 1975, the Secretary of the Interior gave notice of a proposed allocation of Central Arizona Project (CAP) water for Indian irrigation use. The notice was published in the *FEDERAL REGISTER* (40 FR 17297) on April 18, 1975.

The notice of proposed allocation invited written comments, suggestions, and/or objections from interested persons and stated that all relevant materials received before June 17, 1975, would be considered. About 20 letters of comment were received before or shortly after June 17, 1975. In addition to those comments, about 70 letters were received some time after June 17 that were not directly in response to the notice of proposed allocation. Most of those appeared to have been inspired by an article on the Pima Indians in a newsletter of the Association of American Indian Affairs, Inc. (No. 89, June-August 1975), reporting unfavorably on the proposed allocation.

The approximately 70 letters that were received as a result of the article in the newsletter were principally expressions of attitude rather than discussions of issues. However, most of the approximately 20 letters that were received directly in response to the published notice of proposed allocation did discuss the issues in one or more respect and did raise a number of relevant points. Those points are summarized below. Following that discussion, the departmental decisionmaking procedure is described and the final allocation is set forth.

I. SUMMARY OF COMMENTS RECEIVED ON
PROPOSED ALLOCATION

The comments received in response to the notice published in the *FEDERAL REGISTER* on April 18, 1975, covered the administrative rulemaking procedures; statutory provisions, legislative history, and congressional intent; Indian water rights and needs; impacts on non-Indian interests; and suggested revisions to the proposed allocation. Summarized below are statements representative of those comments:

A. *Administrative rulemaking procedures.* Correspondents complained that they had been unable to obtain copies of materials used in making the proposed allocation. (All requests have been met.) They requested a public hearing on the record and the right to cross-examine the Secretary of the Interior and other officials who have participated in the administrative process of making the allocation, and they objected because written comments had not similarly been invited prior to the publication on December 20, 1972, 37 FR 28082, of the earlier Secretarial decision of December 15, 1972, entitled "Water-Use Priorities and Allocations of Irrigation Water."

B. *Statutory provisions, legislative history, and congressional intent.* Correspondents challenged the proposed allocation on the grounds that it was contrary to express provisions in the Colorado River Basin Project Act, 43 U.S.C. 1501 (herein referred to as the "Basin Act"), or to the intent of Congress as reflected in the legislative history. They suggested that the failure to use the term "industrial" along with "municipal" makes it inappropriate to give a priority to industrial uses over Indian needs. They also suggested that, notwithstanding the declining nature of the project water supply, a continuing fixed allocation of water be provided for Indian agricultural use. Agricultural interests expressed concern that the contingent nature of project supply in the later years would make it difficult to justify and finance distribution facilities; and agricultural interests have complained that under the municipal and industrial (M&I) priority, water could be wasted on nonessential purposes such as irrigating golf courses and filling swimming pools while crops are being lost for lack of irrigation water.

C. *Indian water rights and needs.* Correspondents claimed that the Indians would be deprived of their water rights by the proposed allocation. They contended that the Gila River tribe should be given CAP water to irrigate lands that could have been irrigated with water said to have been taken by the United States for the use of others.

They also contended that the proposed allocation would result in the abandonment of Indian agriculture in the later years of the project. Finally, they stated that basing the allocation on the criterion of lands presently developed for irrigation contravenes Section 304 of the Basin Act. Non-Indian correspondents contended that there is no basis in law

for the Indian preference included in the proposed allocation.

D. *Impacts on non-Indian interests.* Correspondents contend that the priority granted to the Indians is inconsistent with the priority for M&I use established under the 1972 decisions, 37 FR 28082, and that the Indian use is detrimental to both M&I and non-Indian agricultural uses. They contend that competing uses will place a disproportionate financial burden on non-Indian agriculturalists.

E. *Suggested revisions to the proposed allocation.* Some correspondents suggested that a significantly larger—others a significantly smaller—quantity of water be allocated for Indian agricultural use; significant quantities of M&I water be allocated to the Indians; an allocation be made for the Fort McDowell tribe; and the amount of water to be marketed for M&I purposes be limited to preserve the agricultural functions of the project.

II. DEPARTMENTAL DECISIONMAKING
PROCESS

The departmental decisionmaking process included the opportunity for comment by the interested parties and the general public, analysis and consideration of the comments received, evaluation of alternatives, evaluation of possible environmental impacts, and Secretarial meetings with Indian and non-Indian interests.

A. *Analysis and Consideration of the Comments Received—1. Rulemaking procedures.* Some of the correspondents complained that they had been unable to obtain copies of materials used in making the proposed allocation. To obviate that problem, an administrative record of significant meetings, correspondence, and factual data relied upon in making the proposed allocation was assembled in the Arizona Projects Office of the Bureau of Reclamation in Phoenix, and its availability for inspection by the public was announced in the notice published on April 18, 1975. Duplicate sets of those documents were made available to the Phoenix office of the Bureau of Indian Affairs and to the Washington office of the Bureau of Reclamation. A number of requests for complete sets or portions thereof were received both in Phoenix and in Washington. All requests for copies of those and any other materials that were received have been complied with and the materials have been furnished.

Some of the correspondents have requested a public hearing on the record and the right to cross-examine the Secretary of the Interior and other officials who have participated in the administrative process of making the allocation. Although it has been the practice during the extended course of the deliberations leading up to the allocation to meet with representatives of interested groups who have requested such meetings, formal public hearings on the record, including cross-examination, are not required by law for this kind of a decision, and the benefits to be expected from such pro-

ceedings would not be commensurate with the costs to the parties, the delay in implementation, and the exacerbation of conflicts. The comments that have been received have been carefully assessed and taken into consideration in the allocation.

There was some objection because written comments had not similarly been invited prior to the publication on December 20, 1972, 37 FR 28082, of the earlier Secretarial decisions of December 15, 1972, entitled "Water-Use Priorities and Allocation of Irrigation Water." The earlier decisions announced, among other things, the principle of a priority for municipal and industrial uses. However, the earlier decisions were an integral part of the notice of proposed allocation published April 18, 1975, having been referred to and incorporated therein. Interested parties, therefore, had the opportunity to and did submit relevant comments.

2. *Statutory Provisions and Legislative History.* A number of the comments challenged the proposed allocation on the grounds that it was contrary to express provisions in the Basin Act or to the intent of Congress as reflected in the legislative history. These challenges were made by both the Indian and non-Indian interests, but usually with respect to different statutory provisions or different portions of the legislative history. Therefore, it has been decided to set forth, in some detail, those statutory provisions and portions of the legislative history that are considered to be significant and that were relied upon in making the final allocation. By discussing the statutory provisions and the legislative history now, in advance of discussing some of the other issues that were raised in the comments, a better understanding of the latter issues will be possible.

a. *Priority for M&I.* Section 301(a) of the Basin Act states that the Central Arizona Project is authorized for the purpose, among others, "of furnishing irrigation water and municipal water supplies to the water-deficient areas of Arizona and western New Mexico through direct diversion or exchange of water." It has been suggested in some of the comments that the failure to use the term "industrial" along with "municipal" makes it inappropriate to give a priority to industrial use. However, an authorization for municipal purposes includes industrial uses, since municipal water systems routinely provide water to industrial users within their service area. "Municipal" is used in section 301(a) to distinguish from irrigation uses, not from industrial uses,¹ as is made explicit

in subsequent sections of the Basin Act. Section 304, authorizes master contracts with a State water user organization for "[i]rrigation and municipal and industrial water supply" and further provides that "[c]ontracts relating to municipal and industrial water supply under the Central Arizona Project may be made without regard to the limitations of the last sentence of section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c)." * * * [Emphasis added.] The last sentence of section 9(c) of the Reclamation Act establishes a priority for irrigation over M&I uses.²

In canceling the priority for irrigation use under Reclamation law, Section 304 implements the congressional intent reflected in the legislative history that M&I purposes would take priority in the Central Arizona Project.³

Page 26 of the Report of the Senate Committee on Interior and Insular Affairs (S.R. 408, 90th Cong., 1st Sess.), describes the use of project water as follows:

The committee feels that the transition from an agricultural economy dependent on irrigation to a strong, diversified industrial economy is inevitable. It is also desirable, because industrial and municipal uses of water will, in the long run, support a large and more affluent population than will predominantly agricultural uses of water. And this is a very important consideration in an area which will probably always have to live within definite constraints on availability of water supplies. Basic changes such as these in the structure and fabric of a region's economy and way of life do not normally occur overnight; however, and when they do, they are usually accompanied by tragic dislocations which disrupt the economy of the area, the well-being of its institutions and the security and the aspirations of its people.

The committee's approval and endorsement of S. 1004 is in part based on a recognition of the need for a gradual transition toward a predominantly municipal and industrial use of water. Accordingly, water supplied under the project is to supplement existing supplies and no new lands are to be irrigated. Water supplied by the Central Arizona Project will allow Arizona to utilize its share of Colorado river water awarded and decreed by the Supreme Court. It will also provide time to diversify the economy, to plan, and to implement procedures which will avoid the crises which too often accompany a region's realization that economic growth must take place within the confines of a limited water supply. [Emphasis added]

Congress had in mind that without the Central Arizona Project, the supply of ground water for agriculture would be "drastically depleted" because of the present rate of overdraft and because of the increasing preemption of the ground-water supply by M&I users. It viewed the project as prolonging the availability of water for agriculture, but not as a permanent solution to the water dilemma.

¹ "No contract relating to municipal water supply or miscellaneous purposes * * * shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes."

² Otherwise, under Section 604 of the Basin Act, the Secretary would be governed by the Federal Reclamation laws in constructing, operating, and maintaining the Central Arizona Project.

Ultimately, the project would provide an additional firm supply of M&I water, while in the interim the existing agricultural uses would be maintained as much as possible. Thus, on page 27 of the Senate Report:

Because of pumping costs, poor water quality, and the physical limitations imposed by the variable nature of the underground storage, the entire volume of underground water cannot be considered available for use. The present net rate of overdraft of about 2 million acre-feet per year will drastically deplete this largely nonreplenishable resource before adequate water is available to bring supply and demand in balance.

Water use in Arizona in the past has been predominantly for agriculture. As late as 1960 more than 90 percent of the water used in central Arizona was used for agricultural purposes. As the urban areas of Phoenix and Tucson expand, this relationship of water use is changing rapidly. The rate of change is expected to accelerate in the future as the population continues to expand and as industrial development increases.

Central Arizona Project water will be marketed through qualified contracting agencies, principally municipalities and irrigation districts. The chief immediate result of purchases of project water by either of these two types of users will be a reduction in present overdrafts on the ground water, which in turn will result in prolonged availability of water for all uses. The use of project water to satisfy the growing urban needs will slow the pace of the preemption of agricultural water which is now taking place.

In brief, the Central Arizona Project is needed to—

1. Reduce a dangerous overdraft upon ground water reserves.
2. Maintain as much as possible of the area's 1,250,000 acres of irrigated farm land.
3. Provide a source of additional water for municipal and industrial use that will be required during the next 30 years.

Similar statements appear on pages 54 and 55 of the Report of the House Committee on Interior and Insular Affairs (H.R. 1312, 90th Cong., 2nd Sess.).

Page 32 of the Senate Report states that the Committee adopted the Bureau of Reclamation's water studies, and a "Summary of Bureau of Reclamation Reservoir Operation and Water Supply Studies" appears on page 35. Those studies showed a declining supply of project water from the year 1975 through the year 2030. In the year 1975, about 1.7 million acre-feet were expected to be available for irrigation purposes; whereas only 82,000 acre-feet were expected to be used for M&I purposes. The former figure gradually reduced through the years, and the latter figure gradually increased; until by the year 2000, project deliveries for M&I purposes were estimated to be 312,000 acre-feet per year.

Thus, the curtailment of the project supply of irrigation water to provide a dependable M&I supply is an integral feature of the act. As footnote 3 on page 34 of the Senate Report states: "Although the average yield under the year 2030 conditions would be 723,000 acre-feet, the assured yield would be less than 1/2 of this figure and would be devoted to municipal and industrial use." (Emphasis added.)

As planned and enacted by Congress, the variable project yield was to be used

³ In the Colorado River Compact, for example, the term that is used to make the distinction between irrigation and M&I uses is "domestic" use, defined to include "the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of [hydro] electrical power." The use of water for hydro generation is not a consumptive use and, therefore, is not given priority under the Compact; whereas, the use of water for thermal generation is a consumptive use and has priority as an industrial use.

for agricultural purposes and was to diminish over the years; whereas the bulk of the assured yield was ultimately to be used for M&I purposes. Subsequent studies by the Bureau of Reclamation have resulted in some changes in the hydrologic estimates with respect to average and assured yield* and some changes in the demand for M&I water, but the relationship between the use of project water for agricultural purposes and for M&I purposes remains essentially the same.

The allocation of project water for Indian irrigation use gives recognition to the foregoing principle.

b. Need for Augmentation. In the words of then Secretary of the Interior Udall, quoted on page 27 of the Senate Report, the project would only alleviate the most immediately urgent water supply deficiencies. In order to meet fully the future agricultural and M&I needs of the region, the supply of water from the Colorado River would have to be augmented. On page 40 of the House Report:

It is inevitable that water requirements will exceed the supply. This condition will occur with or without a Central Arizona Project.

And on page 41 the need and prospects for augmentation are further discussed. Section 201 of the Basin Act provides authority to make the necessary studies.

c. Allocation for Indian Irrigation Use. There are no express provisions in the Basin Act respecting the amount of water that should be allocated for Indian irrigation use, although there are provisions that indicate a congressional expectancy that some water would be allocated for that purpose. For example, in Section 304 of the Basin Act, Indian lands are exempt from the prohibition against using project water for irrigation of lands not having a recent irrigation history and do not require master repayment contracts. Under Section 402 of the Basin Act, construction costs allocated to irrigation of Indian lands are, in effect, non-reimbursable.

On page 27 of the Senate Report, it is stated that one of the purposes of the project is to "maintain as much as possible of the area's 1,250,000 acres of irrigated farm land." The farm lands irrigated by Indians are included in this figure, along with all farm lands irrigated by non-Indians.

Further, as has been noted in some of the comments, the approximately \$832 million authorized to be appropriated for project construction in Section 309 of the Basin Act, includes an authorization

*Studies made during authorization assumed that aqueduct conveyance losses would be about 10 percent of the total water diverted from the Colorado River. More recent analyses indicate that the annual conveyance losses will be fairly constant. Thus, less water will be available during shortage years while more water will be available during years of normal and above-normal supply. Recently updated estimates of lower Colorado River channel losses and of increased water use by the other Colorado River Basin States have been taken into account in estimating the availability of project water.

of about \$20 million for an Indian distribution system (page 36 of Senate Report). However, we do not find any reliable evidence that the amount of the authorization was related to the amount of water the Indians would receive from the project. In this respect it should be noted that there is also authorized in Section 309 of the Basin Act the sum of \$100 million for construction of distribution and drainage systems for non-Indian lands. If the respective figures were assumed to be relevant to the allocation of project water between Indian and non-Indian lands, the ratio would be 1 to 5.

Another possible clue in the legislative history is the extent to which the irrigation costs were allocated to Indians and, therefore, excluded from the project economic and financial analyses. Although all of the approximately \$20 million authorized for Indian distribution systems was excluded from such analyses, none of the costs allocated to irrigation were excluded (page 37 of the Senate Report). It could be supposed that if any substantial amount of project water had been expected to be used for Indian irrigation, the amounts allocated thereto would have been excluded from the project economic and financial analyses.

3. Indian water rights and needs. A number of the comments have mistakenly complained that the Indians are being deprived of their water rights by the proposed allocation. However, the five central Arizona tribes which are within the service area of the Central Arizona Project do not have rights to the Colorado River water to be made available by the project. The project diverts water from the mainstream of the Colorado River at Lake Havasu and by aqueduct transports that water more than 300 miles to the project service area; whereas under the doctrine of reserved Indian water rights set forth in *Winters v. United States*, 207 U.S. 564 (1908), rights are reserved to Indian tribes only in waters that are on or adjacent to their reservations.

Therefore, although some of the five central Arizona tribes that will receive project water may have adjudicated rights in the waters indigenous to central Arizona, they have no such rights to the waters that the project will transport from the mainstream of the Colorado River. Consistent with this view, no rights on the mainstream of the Colorado River were decreed for the five central Arizona tribes in *Arizona v. California*, 373 U.S. 546 (1936); Decree—376 U.S. 340 (1964).

Some of the comments have also alleged that the proposed allocation to Indian irrigation would result in the destruction of Indian agriculture in the later years of the project and would take away the Indian's livelihood. However, the project takes nothing from the Indians that they might otherwise have if the project were never built. The project water that is allocated to Indian agriculture supplements whatever water sources the Indians might have.

The regrettable fact is that if the project is never built, both Indian and non-Indian agriculture will experience the crisis of a disappearing water supply within an earlier period of time than would be the case with the project. The effect of the project is to prolong the period during which an adequate supply of water will be available and to moderate the shortages during the later critical periods.

In Docket 236-C and Docket 236-D, United States Court of Claims, the Gila River tribe is seeking compensation for a taking by the United States of certain of its water rights on the Gila River in central Arizona. The tribe argues that it should be given water from the Central Arizona Project to irrigate the lands that could have been irrigated by the water that has been taken from it. However, the taking has already occurred; the tribe's right to indemnification has already vested; and a remedy in the Court of Claims is available to and is being actively pursued by the tribe.

Any attempt to allocate project water to the tribe in compensation for the taking would present insoluble complications in terms of reconciling such an allocation with the Court of Claims proceedings and with the congressional intent in authorizing the Central Arizona Project. For one thing, the project water supply for irrigation is at best only a supplemental one, and after the first 20 years even that supply will be highly contingent; whereas the tribe's claim would be based on a water right of the first priority. Further, although there is authority under the Basin Act to contract for the sale of project water to non-Indians and authority to make a reasonable allocation of project water for Indian irrigation use on a nonreimbursable basis, there is no authority to use project water to pay or compromise claims of the Gila River tribe or anyone else.

Moreover, the water the tribe claims has been unlawfully taken would have been used to irrigate lands that are not now developed for irrigation. The tribe would have to make substantial capital investments in those lands to develop them for irrigation before it could take advantage of project water, an investment which would be questionable in view of the contingent nature of the project water supply for irrigation use after the first 20 years.

It was because of this contingency in the water supply for irrigation after the first 20 years that it was decided that one of the criteria for determining the allocation of project water for Indian irrigation use should be to restrict the supply of project water to those Indian lands which are presently developed for irrigation. In this way the Indians would be able to prolong the irrigation of such lands and would not be encouraged to make investments in the development of the lands for which the water supply was contingent.

The comments submitted in behalf of the five central Arizona tribes argue that basing the allocation on the criterion of

lands presently developed for irrigation contravenes section 304 of the Basin Act. The latter provision prohibits making project water available directly or indirectly for the irrigation of lands not having a recent irrigation history,⁶ but expressly exempts Indian lands from the prohibition.

In using presently developed lands as a criterion for determining the allocation of project water for Indian irrigation use, no effort is made to restrict the use of such water by the tribes for the irrigation of other lands. The criterion does not, accordingly, conflict with section 304, of the Basin Act, although it is assumed that the irrigation of presently developed lands will be more feasible than would the development of new lands.

The point is that the criterion is a reasonable guideline for allocating a limited and contingent supply of water. It was determined that to the extent water was available from the project for irrigation purposes, it should be allocated on the basis of servicing 100 percent of the presently developed Indian lands during the early years of the project.⁷ This would permit the Indians to maintain their agricultural capability as long as possible; whereas the non-Indian agricultural interests would be able, without overdrafting of ground water, to irrigate only about one-third of their lands having a recent irrigation history.⁸

The non-Indian irrigation interests complain in their comments that there is no basis in the law for such a preference for Indian irrigation. However, in making an allocation of this kind, there are no hard and fast rules which can be referred to. It is a process of evolving equitable and reasonable guidelines for determining how the supply of project water should be allocated between the Indian and non-Indian agricultural interest, and some discretion is available to the Secretary of the Interior.

As the Supreme Court pointed out in *Arizona v. California*, 373 U.S.C. 546 (1963), when Congress confers on the Secretary the authority to contract for the disposition of project water, as it has done in Section 304 of the Basin Act, it intends for the Secretary "to decide which users within each State would get

water. The general authority to make contracts normally includes the power to choose with whom and upon what terms the contracts will be made." Later in the opinion, the Court states that in apportioning limited water supplies, the Secretary is not required to prorate the supply. To so require would "strip him of the very power of choice which we think Congress, for reasons satisfactory to it, vested in him and which we should not impair or take away from him." Decisions that the Secretary may make as to the allocation of a limited supply of water, the Court notes, would have significant public welfare consequences, and the Secretary should have the discretion to take those consequences into account in making the allocation.

A moderate advantage for Indian over non-Indian agricultural interests is a reasonable exercise of the Secretary's discretion because of underdevelopment in the Indian communities and because the Secretary traditionally has a special concern for their welfare. The theme of special concern for Indian interests is a recurrent one in the entire fabric of law and court decisions relating to Indians and is part of the Basin Act itself—in the provisions, for example in section 304 of the Basin Act (canceling the restriction against Indian irrigation of new lands) and Section 402 (relieving Indians of obligation to repay construction costs for project irrigation water).

Notwithstanding the Secretary's special concern for Indian welfare, project water could not reasonably be allocated predominantly for Indian irrigation use. As is clear from the legislative history, Congress did not regard the project as an Indian irrigation project, in the sense that the Navajo Indian Irrigation Project in New Mexico, 43 U.S.C. 1615i, is exclusively for the benefit of the Navajo tribe.

Although an advantage has been given to Indian irrigation use of project water, the tribes will be expected to contract for M&I water on terms and conditions comparable to those that apply to non-Indian M&I users. The Indian exemption from reimbursing the Government for the cost of providing project water in section 402 of the Basin Act, applies only to the irrigation of Indian lands. The one variation on this requirement will be the traditional practice of the tribes dealing directly with the Secretary rather than with the State or with a subdivision of the State such as the Central Arizona Water Conservation District.

In the notice of proposed allocation that was published in the *FEDERAL REGISTER* on April 18, 1975, the tribes were invited to express their interest to the Secretary if they wished to contract for project M&I water like any other entity in central Arizona. At the time of that announcement, the conservation district deadline had already expired for prospective M&I subcontractors to commit themselves, but in their comments responding to the notice of proposed allocation, the five central Arizona tribes have expressed an interest for M&I water in the amount of 188,000 acre-feet an-

nually through the year 2005 and the difference thereafter between 445,000 acre-feet and the amount of irrigation water received in every year. Since it has been determined to treat Indian requests for M&I water on the same footing as all other requests, the Indian requests will be reconciled as to amounts, terms, conditions, and projected uses with the requests for M&I water that have been made by non-Indians, and a reasonable allocation will be made to them for M&I uses, for which repayment contracts with the Secretary will be expected.

4. Impacts on non-Indian interests. Non-Indian agricultural interests have expressed apprehension in their comments that the allocations of project water for Indian irrigation and M&I use will produce a disproportionate financial burden on non-Indian agriculturalists. There is, however, no basis for such apprehension since, pursuant to the contract with the conservation district, the cost allocated for repayment by non-Indian water users would be reduced in proportion to the amount of water that is allocated to Indian water users. Also, as provided in Section 304 of the Basin Act, the repayment obligation of non-Indian agriculturalists will be commensurate with their ability to pay, pursuant to the Reclamation Project Act of 1939, 43 U.S.C. 485. Moreover, amounts received from Indian M&I uses will be credited to the Lower Colorado River Basin Development Fund to assist in repaying project costs.

The non-Indian agricultural interests have also expressed a concern that because of the M&I priority, the supply of project water after the first 20 years for non-Indian irrigation uses will be contingent, and it will be difficult for any of them to finance the construction of the distribution facilities necessary to take advantage of the project water supply. Unfortunately, this problem is inherent in the fact that the Central Arizona Project was not planned to nor can it provide a total solution to all of the water-user problems in the region.

The Central Arizona Project is a complex and costly system for diverting and pumping water from the Colorado River and transporting it by aqueduct more than 300 miles to central Arizona. Priority has been given to M&I uses both because they are traditionally regarded as the more urgent uses and because they are able to economically justify the high cost associated with providing such service. Although the cost for project M&I water is comparable to or even less than the cost for an M&I water supply in some of the other water-short areas, it is too high to economically justify the use of such water for agriculture in central Arizona.

Non-Indian agricultural interests will nonetheless benefit substantially from the Central Arizona Project. Even though the supply of project water after the first 20 years for irrigation use will be contingent, there will be years in which a generous supply of project water will be available for that purpose. When used by irrigators who are able to arrange for

⁶ "Lands presently developed for irrigation" is not the same as "lands not having a recent irrigation history." In the criterion used for the allocation of project water for Indian irrigation use, all lands that were presently developed for irrigation were taken into account, notwithstanding that such lands may not have had a recent irrigation history.

⁷ The acreage of presently developed Indian land is about twice the number of acres of Indian land presently being farmed.

⁸ In the notice of proposed allocation, it was stated that the non-Indian agricultural interests would be able to continue irrigation of about 50 percent of their lands. In their comments, the non-Indian interests contended that the figure was too high and that they could continue irrigation of only about 30 percent of their lands. A further review of the data leads us to conclude that about one-third would be more accurate.

distribution facilities, such use will significantly reduce the drain on the ground water and thereby facilitate pumping of ground water by agricultural interests who cannot arrange for the necessary distribution facilities. The project water supplied for M&I uses similarly will reduce the drain on the ground-water supply, and agricultural interests will for this reason indirectly benefit from the project even if all project water were made exclusively available for M&I use. Additionally, agricultural interests may be better able to arrange for distribution facilities than may now seem apparent if they cooperate with each other in constructing joint distribution systems or in working out water exchanges.

The non-Indian M&I interests have also complained that the allocation to the Indian tribes for irrigation use of a guaranteed amount of 257,000 acre-feet annually for the first 20 years and 10 percent of all project water annually thereafter constitutes a priority for Indian irrigation use that is inconsistent with the priority for M&I use established under the 1972 decisions, 37 FR 28082. Among other things, it was there stated:

All contracts and other arrangements for Central Arizona Project water shall contain provisions that in the event of shortages, deliveries shall be reduced pro rata until exhausted, first for all miscellaneous uses and next for all Central Arizona Project agricultural uses, before water furnished for municipal and industrial uses is reduced.

However, that condition was established by the Secretary of the Interior on December 15, 1972, concurrently with his execution of a contract with the Central Arizona Water Conservation District for non-Indian irrigation and M&I uses. Although the latter contract reiterates the same schedule of priorities in Article 8.11, it also expressly states that those priorities do not apply to Indian uses and that the relative priority between Indian and non-Indian uses is to be determined by the Secretary.^{*} There should be no misunderstanding that the final allocation as set forth below establishes certain rights in the tribes to use project water for irrigation use irrespective of the priorities established for M&I uses in the 1972 decisions.

Agricultural interests have also complained that under the priority for M&I uses set forth in the 1972 decisions, water could be wasted on nonessential purposes such as irrigating gardens and golf courses and filling swimming pools, while crops were being lost for lack of irrigation water. To obviate this risk the 1972 decisions contained the following condition:

In times of water shortages the Secretary will exercise his rulemaking authority to

^{*} The contract with the conservation district has not been validated under State law as is required by its terms, but we have no doubt that the conservation district will do this soon now that the final allocation has been made.

require assurances satisfactory to him that appropriate water conservation measures have been adopted by project water using entities.

The intention to impose appropriate water conservation measures to avoid wasteful M&I uses is reaffirmed.

5. *Revisions to the proposed allocation.* Congress intended the Central Arizona Project to benefit everyone in the region, both Indian and non-Indian, and any allocation of project water to Indian irrigation use that would make the project of little or no benefit to non-Indian interests could not be reconciled with that intent. Both Indian and non-Indian interests are in dire need of water. An allocation of project water for Indian irrigation use so disproportionately large as to make the benefit to the non-Indian community meaningless would be outside the congressional intent, no less than would be an allocation to the non-Indian agricultural interests or to M&I users that would have made the benefit to the Indians meaningless. The Department's task, therefore, is to evolve a formula for allocating project water for Indian irrigation use that will at the same time be generous to the Indians but not so disproportionately as to vitiate the benefit of the project to the non-Indians.

A number of alternatives to the proposed allocation were proposed and considered as to their potential to equitably distribute project benefits while remaining consistent with the congressional intent in authorizing the project. Of all the alternatives that were proposed and considered, only the proposed allocation seems to offer a fair and equitable distribution of project benefits among Indian and non-Indian interests while remaining consistent with the intent of Congress.

However, in the final allocation appearing below, in addition to a number of editorial revisions, one substantive revision has been made in the proposed allocation that was published on April 18, 1975.

It was stated in the proposed allocation that the Fort McDowell tribe had an ample supply of surface water to satisfy all of its onfarm requirements. Therefore, no project water was allocated to that tribe, although it had requested an allocation of 5,000 acre-feet annually.

Based on the guidelines adopted for allocating project water for Indian irrigation use, the other four tribes would have been entitled to 252,700 acre-feet per year. Since the distribution of project water for Indian irrigation use in the later years of the project would be made on a percentage basis, the 252,700 acre-feet was rounded out to 257,000 acre-feet annually so as to equal 20 percent of the estimated irrigation water available in years of normal supply.^{*} This permitted the allocation to the other four tribes to

^{*} This estimate was based on the assumption that no more than the dependable annual supply would be marketed for M&I use.

be increased by 4,300 acre-feet annually. The other four central Arizona tribes have supported the request by the Fort McDowell tribe and have questioned why the approximately 4,300 acre-feet annually that was added to the combined allocation of 252,700 acre-feet annually for the other four tribes was not instead made available to the Fort McDowell tribe.

Since the other four tribes support the request of the Fort McDowell tribe, and with the expectancy that that water would be used by the Fort McDowell tribe on the new in-lieu lands which it may receive pursuant to section 302 of the Basin Act, said 4,300 acre-feet will be allocated to the Fort McDowell tribe. The adjustments required in the allocation to the five tribes are set forth in the final allocation included herewith.

B. *Evaluation of Environmental Impacts.* The NEPA (National Environmental Policy Act of 1969) process has been considered in connection with the Central Arizona Project from the beginning. The programmatic CAP environmental impact statement (EIS) was done in 1972 and the subsequent site-specific EIS's which have been completed and are underway all show that the Department has complied, and continues to comply, with the NEPA procedures. The Bureau of Reclamation recently completed an Environmental Assessment Report (EAR) on the proposed allocation of April 18, 1975. The EAR concludes that the proposed allocation does not significantly affect the quality of the human environment, and it is the Solicitor's opinion that the EAR is legally sufficient.

C. *Meetings with Indian and Non-Indian Interests.*

1. *Congressional Hearings.* On October 23 and 24, 1975, the Senate Committee on Interior and Insular Affairs conducted oversight hearings on the water requirements and related water rights issues relating to the five central Arizona Indian tribes. The public record, established as a result of those hearings, provided a valuable overview of the water supply and needs of all Arizona interests, particularly of the Indian interests.

2. *Secretarial Meetings.* To assure that the Secretary was aware of all relevant viewpoints and therefore able to make an informed decision, the Acting Secretary, in September 1975, made a commitment that the Secretary would hear additional comments from both M&I users and Indian and non-Indian agriculturalists prior to making the final decision on the allocation of water for Indian agricultural use.

The Secretary met on April 13, 1976, with representatives of the five central Arizona tribes and on April 14, 1976, with representatives of State and local governmental bodies and private water users. During those meetings, the Secretary heard the arguments of the various interests and invited the submission of any additional information relevant to the decision at hand. In addition to the statements presented at the meetings, a letter was received from the

Arizona Water Commission outlining that agency's preliminary views on possible priorities and allocations among non-Indian interests.

Dated: October 12, 1976.

KENT FRIZZELL,
Acting Secretary of the Interior.

CENTRAL ARIZONA PROJECT, ARIZONA

ALLOCATION OF PROJECT WATER FOR
INDIAN IRRIGATION USE

Pursuant to the authority vested in the Secretary of the Interior by the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501), (herein referred to as the "Basin Act") and the Act of June 17, 1902, as amended (32 Stat. 388, 43 U.S.C. 391), certain Secretarial decisions made on December 15, 1972, concerning the priorities for water use and the allocation of irrigation water between Indian reservation lands and non-Indian lands within the Central Arizona Project, were published on December 20, 1972, 37 FR 28082. The publication also announced Secretarial execution on December 15, 1972, of a contract with the Central Arizona Water Conservation District for delivery of project water and repayment of project costs.

The Secretarial decisions of December 15, 1972, and the concurrently executed contract with the District contemplated a future Secretarial allocation of irrigation water from the Central Arizona Project for Indian use within established reservation boundaries. Pursuant to the authorities cited above, such an allocation is set forth below.

Before describing the procedure used to determine the allocations set forth below to the five central Arizona Indian tribes for irrigation use within the boundaries of their respective reservations, a critical feature of the Central Arizona Project should be understood. The project was not planned to—nor did Congress intend in authorizing it that it would—provide a total solution to the water requirements of central Arizona.

This is arid country with a limited supply of surface and ground water. Both agricultural and municipal and industrial uses have to depend on ground-water pumping, but the ground-water level has been dropping at an alarming rate so that the expense of pumping may soon make irrigated farming in this region uneconomical. Moreover, the ground-water supply is not expected to be adequate to support the demand for municipal and industrial water accompanying estimated future population growth and industrial development.

The Central Arizona Project is designed to alleviate the agricultural drain on the ground-water supply in the early years of the project and to provide a dependable supply of municipal and industrial water on a permanent basis. The early years of the project are about the first 20 years during which time waters not being used by the other Colorado River Basin States will be diverted through the project to central Arizona and used in lieu of or to replenish the ground-water supply. It is during this period of time that the project will make its greatest contribution to irrigation. During the first 20 years, two developments will converge to reduce significantly the water available from the project for irrigation. One will be the increasing utilization of the Colorado River by the other Basin States, and the other will be the increasing demand in central Arizona for municipal and industrial water.

It is clear, based on the legislative history, the hydrologic studies, and the financial realities, that the Central Arizona Project

was not intended by the Congress to be used primarily for irrigation after the first 20 years, nor would it be reasonable to use such costly water for that purpose. That was the reason municipal and industrial uses were assigned a first priority in the decisions of December 15, 1972, 37 FR 28082.

After the first 20 years all irrigators in central Arizona, Indian and non-Indian alike, will have to look to sources other than the watersupply which is now being allocated between Indian and non-Indian irrigation to supplement their ground-water supply. The authorizing legislation contemplates that such future water needs of Arizona and other arid States in the West will be met by augmentation of the natural flows of the Colorado River. It is hoped that by the time the need becomes critical, the technical means for accomplishing augmentation will have been developed. However, since there are no specifically authorized augmentation programs at the present time, the possibility of augmentation was not taken into account in allocating project water for Indian irrigation use.

Therefore, with the understanding that the water supply from the Central Arizona Project, which is hereby being allocated between Indian and non-Indian agricultural users, will not be a total solution to their respective needs, it has been determined to make the allocation in two successive time frames. One will cover the project water that will be available during the first 20 years, and the other will cover that to be available thereafter.

During the deliberative process, the Secretary and his representatives met with the Indian tribes and their representatives and with officials of the State of Arizona to explore Indian expectations and needs and to sort out the conflicting claims and facts. During those meetings, a consensus developed as to an acceptable approach for determining the amount of water to be allocated to Indian irrigation use during the early years of the project. In the final decision-making process, a number of alternatives were proposed and

considered but none seemed to offer as fair and equitable a distribution of project benefits to Indian and non-Indian interests, while at the same time remaining consistent with the congressional intent in authorizing the Central Arizona Project.

As a result thereof, it has been determined that sufficient project water should be made available to the Indian tribes so that 100 percent of lands presently developed for irrigation on the Indian reservations can be irrigated. The amount of project water that would be made available would take into account the estimated available surface water and the estimated current ground-water yield that is available for irrigation without overdrafting. The Bureau of Reclamation was requested to make a technical study of the water requirements under those assumptions in cooperation with the Indian tribes and the State officials and to provide the Secretary with a report. The Bureau's findings and the supporting technical material have been reviewed and have been determined to be reliable and accurate.

In outline, the Bureau of Reclamation used the following procedure: (1) The total acreage of presently developed lands on each reservation was determined. (2) The total water requirement for each reservation was computed on the basis of 4.59 acre-feet per acre. (3) The number of acre-feet of nonproject surface and ground water available to each reservation was estimated. (4) The number of acre-feet of project water required for each reservation was then obtained by subtracting the available surface and ground water from the total water requirement. (5) The number of acre-feet to be delivered to each tribe at the turnout points on the project canals (canalside) was the amount as determined in No. 4 multiplied by 1.176 (which is the same as dividing by 0.85) to allow for a 15-percent loss in the distribution systems from the amount delivered canalside.

A summary of the Bureau of Reclamation's findings are presented in the following table (units in 1,000's of acres or acre-feet):

Reservation	Presently developed acreage	Multiply by 4.59 for total onfarm acre-ft required	Subtract available water		Multiply by 1.176 for acre-ft of project water canalside
			Surface	Ground	
AK Chin.....	10.8	49.6	0	0	58.3
Gila River.....	62.1	28.5	77.3	60.6	173.1
Papago.....	1.7	7.8	0	1.0	8.0
Salt River.....	13.0	59.7	33.6	14.8	13.3
Fort McDowell.....	1.3	6.0	6.0	0	0
Total.....	88.9	408.1	116.9	76.4	255.7

There were one or more respects in which the tribes' figures and the State's figures were in disagreement with those of the Bureau of Reclamation. In general, the tribes' figures tended to increase the amount of project water which should be allocated to them, as compared with the amount supported by the Bureau of Reclamation's figures, and the State's figures tended to diminish such amount. To give an illustration of the range, the respective totals of the amounts of project water which should be allocated to the tribes were as follows (1,000 acre-feet):

State	194.3
Bureau of reclamation.....	252.7
Tribes	395.0

A principal area of disparity among the three groups was in the estimate of the ground-water supply available for irrigation use. The State's ground-water estimate, for example, would have credited the Gila River tribe with 114.8 thousand acre-feet of ground water to be deducted from the tribe's total water requirement; whereas the Bureau of

Reclamation's estimate was 60.6 thousand acre-feet and the tribe's 28.3 thousand acre-feet. The State used a least-cost analysis (cost of ground-water pumping versus cost of project water) in evaluating ground-water availability, but that approach would not be appropriate for Indian irrigation water since project water will be made available to the tribes on a nonreimbursable basis.

The tribe's estimate was also rejected because it would have eliminated from the ground water available for irrigation use an amount which the tribe plans to use in the future for municipal and industrial purposes. Under the Bureau of Reclamation's estimate, which has been adopted, deductions from the ground water available for irrigation use would be permitted for present municipal and industrial uses, but not for anticipated municipal and industrial uses since the Tribes will be expected to contract for M&I water, as other M&I users do.

The Papago and the Salt River tribes each similarly claimed less ground water available for irrigation uses than that estimated by

the Bureau of Reclamation, but there is no convincing support for their claims.

There were also differences in the respective estimates in matters other than ground water. The Gila River tribe, for example, requested water for the irrigation of reservation lands that had figured in litigation involving a claim by the tribe for a taking by the United States of some of its water rights on the Gila River (29 Ind. Cl. Comm. 144). The tribe is now pursuing a remedy for money damages against the United States in connection with those Gila River water rights. For the reasons set forth in the introduction to this allocation, those lands were not taken into account under the foregoing approach.

The Salt River tribe, on the other hand, claimed a water duty of 6.25 acre-feet per acre, instead of the normal water duty of 4.59 acre-feet. This claim was predicated on a more intensive use of water due to double cropping and other practices. In making an allocation of project water to the Salt River tribe for irrigation use, it is not intended to prescribe how the tribe should conduct its agricultural enterprises nor to prevent the tribe from continuing those practices requiring the larger water duty of 6.25 acre-feet per acre. However, in determining what supplemental supply of water should be made available to the tribe in addition to the surface and ground water now available to it, it was determined to use the normal water duty of 4.59 acre-feet applied to each of the other four tribes. In this way, nothing is being taken away from the Salt River tribe that it would otherwise have without the project. However, as to the benefits that will be made available from the project, the same guidelines will be used for the Salt River tribe as apply to each of the other tribes.

The Fort McDowell tribe has an adequate supply of surface water to satisfy all of its present onfarm requirements. The tribe will be receiving new in-lieu lands pursuant to Section 302 of the Basin Act, and each of the four other tribes has supported the request of the Fort McDowell tribe for an allocation of 5,000 acre-feet annually of project water. Since the other four tribes are of the view that it would be better to give to the Fort McDowell tribe the 4,300 acre-feet annually that was added to their entitlement under the procedures used in arriving at the proposed allocation, said 4,300 acre-feet annually are hereby allocated to the Fort McDowell tribe.

Accordingly, the allocation will be made on the basis of the Bureau of Reclamation's findings. The total of 252,700 acre-feet annually for Indian irrigation use which is supported by the foregoing findings, plus the 4,300 acre-feet for the Fort McDowell Indian Reservation, amounts to about 257,000 acre-feet annually. For the first 20 years, the tribes will receive a fixed amount of 257,000 acre-feet annually, subject, of course, to the capability of the project to supply that amount of water.

Such an allocation for Indian irrigation will give the tribes an advantage which they would not otherwise have were the allocation made solely on the basis of population (2 percent) or presently developed acreage (8 percent) on the reservations. Moreover, whereas such deliveries to the tribes would amount to sufficient project water when used with estimated available surface and ground-water supplies to irrigate 100 percent of their presently developed lands, non-Indians would be receiving only enough water, when used with estimated available surface and ground-water supplies, to irrigate only about one-third of their lands with a recent irrigation history. This preference is provided based on my concern for the well being of the five central Arizona tribes.

On the foregoing basis, each tribe will be entitled to the following canal-side delivery of

irrigation water in acre-feet annually for the first 20 years:

AK Chin	58,300
Gila River	173,100
Papago	8,000
Salt River	13,300
Fort McDowell	4,300
Total	257,000

As a further advantage to the tribes, it has been determined that the delivery of the foregoing amounts to the tribes will be on a guaranteed annual basis, whereas the irrigation water deliveries to non-Indians will fluctuate from year to year, depending on hydrologic conditions. However, because of the combination of hydrologic and other factors described earlier, it will not be possible to continue these deliveries after the year 2005. As the project is expected to be operational in 1985, this will allow for a full 20 years; but if the project is unduly delayed, the guaranteed amount may be available for less than 20 years through the year 2005.

After the year 2005, there will still be water available in some years for the irrigation of Indian and non-Indian lands after meeting municipal and industrial needs, but it will not be in such dependable annual quantities as to guarantee the delivery of water in the specific amounts determined above. However, irrigation water shall continue to be delivered to the tribes on the basis of 20 percent of the total irrigation water available each year. Under the priorities set out in the December 15, 1972, decisions, water used for municipal and industrial purposes would have priority over irrigation.¹⁰ Since it is presently estimated that more than the dependable annual supply may be sold by the Central Arizona Water Conservation District for M&I purposes, no water would be available for delivery to the tribes for irrigation in half or more of the years from the 20th to the 50th year. To avoid such a possibility, it has been determined that at least 10 percent of all project water supply will be allocated to the tribes following the year 2005, so that the tribes will have either 20 percent of all irrigation water or 10 percent of all project water each year, whichever is to their advantage. Although this water is to be used by the tribes for irrigation, it will have the same priority as M&I water under the decisions of December 15, 1972. As such, during the years of minimum project water supply, the tribes will receive 10 percent of all project water annually for irrigation, whereas non-Indians will receive no irrigation water. In years of normal supply based on present estimates, the tribes can expect to receive from 150,000 to 200,000 acre-feet. After the year 2005, the water available for Indian agriculture use is to be prorated among them in proportion to their entitlements during the first 20 years, as follows:

	Percent
AK Chin	22.7
Gila River	67.3
Papago	3.1
Salt River	5.2
Fort McDowell	1.7
Total	100.0

Water allocated for agricultural use to each tribe by this decision is required to be used

¹⁰ The priority is, of course, subject to the statutory "first priority" in section 304(e) of the Basin Act, for water users who have yielded water from other sources in exchange for project water. This priority would apply to present water users voluntarily exchanging water from other sources for project water; it would not apply to persons like the Gila River Tribe, some of whose water rights may have previously been taken from them.

on the reservation of the tribe to which it is allocated. This restriction is consistent with Section 304 of the Basin Act. If water allocated to a tribe by this decision is used for the irrigation of Indian lands on the reservation, the capital costs of the project attributable to such water shall be either nonreimbursable or deferred, pursuant to the provisions of section 402 of the Basin Act, and contracts for Indian irrigation water service shall so provide.

The allocation of project irrigation water made to the tribes by this decision is not intended to preclude their right to contract for project M&I water like any other entity in central Arizona. So long as such water has not been contracted to other users, such contracts may be made through the Secretary of the Interior. To enable the Central Arizona Water Conservation District to proceed expeditiously to enter into contracts for project M&I water, each tribe should express to this Department, on a timely basis, its interest in receiving M&I water and the expected uses thereof. The tribes should be prepared to execute a repayment contract for M&I water with the Secretary at the same time as other M&I users contract with the conservation district.

[FR Doc. 76-30424 Filed 10-15-76; 8:45 am]

[Int DES 76-40]

EAST DECKER AND NORTH EXTENSION MINES, BIG HORN COUNTY, MONTANA

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and to section 69-6504(b)(3) R.C.M. 1947 of the Montana Environmental Policy Act, the Department of the Interior and the Montana Department of State Lands have jointly prepared a draft environmental impact statement on the proposed surface mining of coal in the East Decker and North Extension areas in Big Horn County, Montana. The draft statement assesses the environmental impacts of the lessee's plan for the strip mining of the Federal, State, and privately owned coal and for the concurrent reclamation and revegetation of lands disturbed by mining and related activities. The proposed action in the East Decker area is on Federal coal lease Montana 073093, on State coal leases Nos. 531, 822, 823, and 918, and on fee coal owned by Gregg H. and Charles V. Pearson and by George B. Holmes. These leases and holdings include all or parts of secs. 1, 11, 12, 13, and 14, T. 9 S., R. 40 E. and secs. 7, 8, 17, and 18, T. 9 S., R. 41 E., Montana Prin. Mer. The proposed action in the North Extension area is on Federal coal leases Montana 057934, Montana 057934A, Montana 061685, and Montana 06770, and on fee coal owned by Rosebud Coal Sales Co. These leases and holdings include all or parts of secs. 33 and 34, T. 8 S., R. 40 E., and secs. 3, 4, 9, and 10, T. 9 S., R. 40 E., Montana Prin. Mer.

The draft environmental statement is available for public review in the U.S. Geological Survey Public Inquiries Office, Room 1012, Federal Building, Denver, Colorado 80202; the U.S. Geological Survey Library, Denver West Office Park,

Bldg. 3, 1526 Cole Blvd., Lakewood, Colorado 80225; the U.S. Geological Survey Library, Room 4A100, USGS National Center, Reston, Virginia 22092; the Montana State Library, 900 E. Lyndale, Helena, Montana 59601, the Parmly Billings Library, 510 N. Broadway, Billings, Montana, 59101; the Bighorn County Public Library, 419 N. Custer Ave., Hardin, Montana 59034; the Rosebud County Library, 201 N. 9th Ave., Forsythe, Montana 59327; and the Sheridan County Public Library, Louks and Alger Sts., Sheridan, Wyoming 82801.

A limited number of copies are available on request from the U.S. Geological Survey, Box 25046, Federal Center, Mailstop 412, Lakewood, Colorado 80225; and over the counter only from the U.S. Geological Survey Public Inquiries Office, Room 1012, Federal Building, Denver, Colorado, and from the Montana Department of State Lands, 1625 11th Ave., Helena, Montana.

Written comments on the draft environmental statement will be accepted within forty-five (45) days of this notice. All such comments will be considered during preparation of the final environmental statement.

Public hearings on the statement will be held at the following times and locations:

NOVEMBER 16, 1976

The Conference Room, Ponderosa Inn, 2511 1st Ave. North, Billings, Montana, 10:00-12:00 a.m., 1:30-5:00 p.m., and 7:00-9:00 p.m.

NOVEMBER 17, 1976

The Squirrel Creek School about half a mile northeast of Decker, Montana, 7:00-9:00 p.m.

NOVEMBER 18, 1976

The Snow Goose Room, Sheridan Center Motor Inn, 609 N. Main, Sheridan, Wyoming, 1:30-5:00 p.m. and 7:00-9:00 p.m.

Dated: October 13, 1976.

STANLEY D. DOREMUS,
Deputy Assistant Secretary
for the Interior.

[FR Doc.76-30401 Filed 10-15-76; 8:45 am]

[INT DES 76-42]

PROPOSED 230/345 KV TRANSMISSION LINE FROM OREANA, NEVADA TO HUNT, IDAHO

Availability of Draft Environmental Statement and Holding of Public Hearing Regarding

In accordance with section 102(2) (C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared a draft environmental statement on a proposed 230/345 KV transmission line from Oreana, Nevada to Hunt, Idaho.

The statement addresses itself to construction of a 230/345 kilovolt (KV) transmission line of 286 to 360 miles, depending on the route selected. The proposal by Sierra Pacific Power Company of Nevada would also call for construction of a substation near Valmy, Nevada; upgrading of an existing sub-

station; and construction of new access roads, as required, to the right-of-way.

Written comments will be accepted by the Nevada State Director, (N-911) Bureau of Land Management, Room 3008, Federal Building, 300 Booth Street, Reno, Nevada 89509, until December 2, 1976.

Limited copies of this draft statement are available upon request at the above address. Copies may also be obtained by writing the Director (130), Bureau of Land Management, Department of the Interior, Washington, D.C. 20240.

Copies are available for inspection at the following locations:

Nevada State Office: Room 3008, Federal Building, 300 Booth Street, Reno, Nevada 89509.

Battle Mountain District Office: P.O. Box 194, Battle Mountain, Nevada 89820.

Carson City District Office: 801 North Plaza Street, Carson City, Nevada 89701.

Elko District Office: 2002 Idaho Street, Elko, Nevada 89801.

Winnemucca District Office: 705 East 4th Street, Winnemucca, Nevada 89445.

Idaho State Office: Room 398 Federal Building, 550 West Fort Street, P.O. Box 042, Boise, Idaho 83724.

Boise District Office: 230 Collins Road, Boise, Idaho 83702.

Burley District Office: Route 3, Box 1, Burley, Idaho 83318.

Shoshone District Office: 400 West F Street, P.O. Box 2B, Shoshone, Idaho 83352.

In addition to the above locations, reading copies are available at public libraries in Carson City, Fallon, Elko, Battle Mountain, Winnemucca, Wells, Lovelock, and Reno, Nevada; and Boise, Burley, and Twin Falls, Idaho.

A public hearing will be held beginning at 7 p.m. on November 16, 1976, at the Pioneer Motor Inn, 221 South Virginia in Reno, Nevada.

The hearing will provide the BLM, under section 102(2) (C) of the National Environmental Policy Act of 1969, with the opportunity to receive additional comments and views of interested State and local agencies and the public.

Interested individuals, representatives of organizations, and public officials wishing to testify are requested to contact Mr. Ed Tilzey, environmental team leader, BLM, Room 3008, Federal Building, 300 Booth Street, Reno, Nevada 89502 by 4:15 p.m., November 9, 1976. Requests should identify organization represented and should be signed by the prospective witness. Because of time constraints, oral testimony will be limited to 10 minutes unless additional time is requested in advance.

Oral testimony can be supplemented with written statements at the time oral testimony is presented. Also, speakers with prepared speeches may file their text with the presiding officer whether or not they have been able to finish oral delivery in the allotted time. If time permits following oral testimony by those who have given advance notice, the hearing officer will give others an opportunity to be heard.

Written comments from those unable to attend the hearing should be addressed to the BLM State Director (N-

911) at the above address. The BLM will accept written testimony and comments, as well as supplemental materials until November 20, 1976.

Dated: October 15, 1976.

STANLEY D. DOREMUS,
Deputy Assistant Secretary
for the Interior.

[FR Doc.76-30709 Filed 10-15-76; 10:58 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

SHIPPERS ADVISORY COMMITTEE

Public Meetings

Pursuant to the provisions of section 10(a) (2) of the Federal Advisory Committee Act (86 Stat. 770), notice is hereby given of meetings of the Shippers Advisory Committee established under Marketing Order No. 905 (7 CFR Part 905). This order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The committee will hold meetings on November 2 and November 9, 1976, at 10:30 a.m. in the A. B. Michael Auditorium of the Florida Citrus Mutual Building, 302 South Massachusetts Avenue, Lakeland, Florida.

The meetings will be open to the public and a brief period will be set aside at each meeting for public comments and questions. The agenda of each meeting includes analysis of current information concerning market supply and demand factors, and consideration of recommendations for regulation of shipments of the named fruits.

The names of committee members, agenda, and other information pertaining to each meeting may be obtained from Frank D. Trovillion, Manager, Growers Administrative Committee, P.O. Box R, Lakeland, Florida 33802; telephone 813-3103.

Dated: October 14, 1976.

IRVING W. THOMAS,
Acting Administrator.

[FR Doc.76-30542 Filed 10-15-76; 8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

HERBERT H. LEHMAN COLLEGE OF CUNY ET AL.

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being