

reconciliation as suggested, but due to time and resource limitations, Western decided to use the annual true-up instead. Western provided further clarification on these annual reconciliation procedures in the final procedures.

E. Third-Party Payment

Comment: Western should ensure that billing and payment procedures are flexible enough to accept payments from third-party billing agents, such as the recently created CVP Business Corporation.

Response: Western understands that some Power Contractors may wish to use a third-party for payment of their share of the PRPO. Although such a business arrangement does not transfer the Power Contractor's obligation to make payment, Western understands that the Power Contractor might wish to use a third-party agent. As such, Western has ensured that the final procedures allow for third-party agents to make payments on behalf of the Power Contractors.

F. First Preference Customer Exclusion

Comment: Several commentors supported Western's proposal to exempt First Preference customers from payments to the Restoration Fund in recognition of the contributions these counties have made toward restoration programs.

Response: Western proposed excluding all First Preference customers as a result of the significant environmental contributions of the Trinity River Division and New Melones projects toward CVPIA Restoration Fund programs. After evaluating comments provided during the comment period and reviewing documents that support these environmental benefits, Western plans to maintain the position of exclusion for this subset of customers and document this in the final procedures.

Comment: Several commentors opposed the exclusion of the First Preference customers from Restoration Fund payments. Comments stated that the Trinity Public Utility District (TPUD) has already been receiving an increase in the payments of in-lieu-of (ILO) taxes for impacts of the CVP on Trinity County. This increase of ILO taxes, coupled with the temporary exclusion granted to TPUD for Restoration Fund collections, provides more than appropriate compensation for the impacts experienced by Trinity County as a result of the construction of Trinity Dam. Similarly, other comments questioned Western's intent to include Calaveras and Tuolumne counties in the

exclusion. The comment indicated that these two counties already benefit from Western's new marketing plan proposal to deliver firm load factor energy to them, even though New Melones may not generate power for months.

Response: Western's rationale for excluding First Preference customers from post-2004 Restoration Fund collections is based on the contributions the Trinity and New Melones Dam projects and their operation have had toward environmental efforts in the areas of mitigation and restoration as they apply to CVPIA and other legislation.

Western considered the environmental contributions of the Trinity River Division (TRD) and New Melones Project as the basis for excluding First Preference customers. Western did not base this decision on the financial impacts upon the individual First Preference customers. Some customers commented or inferred that this was necessary for Western to base its decision. Western examined this financial data as requested by the customers; however, these calculations do not provide a full representation of the benefits and/or burdens experienced by the First Preference customers. There are other intangible benefits provided by the TRD and New Melones Project that either directly or indirectly provide environmental mitigation in support of CVPIA and/or projects supported by the CVPIA Restoration Fund. Since the First Preference customers' energy entitlements are limited to a mathematical calculation associated with the generation of each respective dam, any change to the generation output or reoperation directly affects the calculation of the First Preference customers' energy entitlement. This concept is a necessary basis for Western's decision to exclude First Preference customers from future Restoration Fund collections.

Comment: One commentor disagreed with Western including the Sierra Conservation Center (SCC) in the exclusion, believing that the construction of the New Melones Dam had no impact on SCC.

Response: The authorizing legislation of the TRD and the New Melones Project (Pub L. 69-386 (Trinity), Pub. L. 87-874 (New Melones)) does not discriminate among First Preference customers within the counties of origin. In the interest of consistency and equity, all preference customers within the counties will be treated the same. The basis for Western's rationale for exclusion is contingent on the benefit or contribution that the Trinity and New Melones project operations have had on

CVPIA environmental mitigation and restoration.

Comment: Western should consider limiting the period of exclusion to no longer than 5 years, as circumstances regarding the rationale for exclusion change periodically.

Response: Western reviewed the procedures and agrees to include a provision in the final procedures that provides for a review process every 5 years or earlier if certain conditions are met.

Acronyms and Definitions

As used throughout the remainder of this notice, the following acronyms and definitions when used with initial capitalization, whether singular or plural, have the following meanings:

2004 Power Marketing Plan: The final marketing program for power marketed by the Sierra Nevada Region after 2004 established through a public process and published in the June 25, 1999, **Federal Register** (64 FR 34417).

Administrator: The Administrator of the Western Area Power Administration.

Base Resource: CVP and Washoe Project power output and existing power purchase contracts extending beyond 2004 determined by Western to be available for marketing, after meeting the requirements of Project Use and First Preference Customers, and any adjustments for maintenance, reserves, transformation losses, and certain ancillary services.

Billing Month: The month CVP Power Contractors will be billed for the Restoration Payments.

Billing Year: The period, September through August, that represents the annual Restoration Fund billing cycle.

Central Valley Project (CVP): The multipurpose Federal water and power project extending from the Cascade Range in northern California to the plains along the Kern River south of the city of Bakersfield.

CVP Improvement Act of 1992 (CVPIA): Title 34 of Pub. L. 102-575, 106 Stat. 4706 *et seq.* A legislative act, enacted on October 30, 1992, that defines provisions for habitat restoration, improvement and acquisition, and other fish and wildlife restoration activities in the CVP area of California.

DOE: United States Department of Energy.

Exchange Program: A program established in accordance with the 2004 Power Marketing Plan and intended to allow customers to more effectively use their power allocations.

First Preference Customer: A customer wholly located in Trinity, Calaveras, or