

Exclusion of First Preference Customers From the Power Restoration Payment Obligation

Western has discretion how the PRPO is assessed to CVP Power Contractors. As a consequence, Western reviewed the contribution the Trinity River Division and New Melones projects provide, either directly or indirectly, to environmental mitigation in support of CVPIA and/or projects supported by the CVPIA Restoration Fund.

The Trinity River Division's contribution to, and support of, environmental mitigation and restoration is many fold. The diversion of Trinity River water through the Trinity River Division's plants and tunnels benefits CVPIA related projects due to its unique characteristics. The lower temperature of Trinity River water makes the Sacramento River more conducive to spawning of endangered and threatened fish species. In addition, other benefits include the dilution effects the Trinity River water affords Spring Creek Dam releases/overflows and the substantial volume increase provided to the Sacramento River. Further, the final outcome of the Supplemental Environmental Impact Statement for the Trinity Record of Decision may make it necessary to further reoperate Trinity Dam to comply with river flow requirements. It is possible that the First Preference entitlement calculation for Trinity County may be reduced, thus effecting the energy entitlement authorized by law. The construction of the New Melones Dam, though originally intended to provide flood control protection, is now also valuable for the benefits it provides for environmental mitigation. Like the TRD, its benefit to the CVP in assisting to meet CVPIA goals and programs is unique and unlike the benefit that any other facility can provide. New Melones' water releases to the Stanislaus River, which flow ultimately into the San Joaquin River, bear the sole CVP burden of complying and supporting the Vernalis Adaptive Management Plan (VAMP) as prescribed in Water Right Decision 1641. This program was based on the Bay-Delta hearings, supports the State's Water Quality Plan, and is also contained in CVPIA legislation. This program requires that water pulse flow targets be met and maintained so that 12 years of studies are available and analyzed for use by the State Water Quality Review Board. In essence, this program has contributed toward a reoperation of New Melones in an effort to support VAMP. In addition, New Melones' water releases help to support other fish

habitat and riparian projects along the Stanislaus and San Joaquin rivers as well as water conditions in the California Delta, as required by CVPIA.

The environmental benefits of the TRD and New Melones projects toward CVPIA Restoration Fund programs are significant. Since CVPIA was enacted, these facilities have been reoperated so CVP meets the standards and guidelines set forth by CVPIA. With the reoperation of these facilities and the fact that the First Preference customers' energy entitlements are based on the generation output of these facilities, their reoperation ultimately affects these customers. These circumstances provide a basis by which to exclude Restoration Fund collections from any First Preference customers within the affected areas.

Adjustment to the PRPO

Each FY's annual PRPO is subject to a Midyear Adjustment determined by Reclamation. The Midyear Adjustment occurs on or about April 1 of each FY, following Reclamation's annual determination of available CVP water supply for the year. Reclamation notifies Western, in writing, of the Midyear Adjustment. Upon receiving Reclamation's notification, Western will factor the Midyear Adjustment amount into the calculation for the remaining PRPO for the year. The bills for the remainder of the billing year will reflect the adjusted PRPO. Western will then notify each CVP Power Contractor of the Midyear Adjustment to the annual PRPO.

Collection of CVP Power Contractors' Restoration Fund Payment

Each CVP Power Contractor and any applicable thirdparty agents will receive a Restoration Fund Bill each month on or about the twenty-fifth (25th) but no later than the last day of the month. The Restoration Fund billing cycle for each FY will begin within 30 days following August 1 or the date written notification of the annual PRPO is received from Reclamation, whichever occurs later.

Payment Due Date

All CVP Power Contractors' Restoration Payments are due and payable before the close of business twenty calendar days after each Restoration Fund Bill is issued, or the next business day thereafter, if said day is a Saturday, Sunday, or Federal holiday.

Late Payment Charges Assessed to Delinquent Restoration Payments

Western will add a late payment charge of five hundredths percent

(0.05%) of the principal amount unpaid for each day the Restoration Fund Bill payment is delinquent. Payments received will be first applied to the charges for the late payment assessed on the principal and then to the payment of the principal.

Deposit of CVP Power Contractors' Restoration Payments Into the Restoration Fund

On or about the twenty-seventh (27th) calendar day of the month following each Billing Month, Western will transfer all of the Restoration Payments received, including late payment charges, to Reclamation for deposit into the Restoration Fund. The thirtieth (30th) of September of each FY is the last day Western will transfer Restoration Payments, including late payment charges, to Reclamation for that FY.

Review Process

Western will review the procedures for the assessing and collecting of Restoration Payments from the CVP Power Contractors every 5 years or if one of the following occurs: (1) If there is a significant change to or suspension of the legislation, (2) if a material issue arises, (3) if an apparent inequity in the procedures is discovered, or (4) if any significant change occurs that affects the procedures.

Availability of Information

All studies, comments, letters, memorandums, or other documents made or kept by Western for developing the final procedures, will be made available for inspection and copying at Western's Sierra Nevada Region Office, 114 Parkshore Drive, Folsom, CA 95630-4710.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities. Western has determined that this action relates to rates or services offered by Western and, therefore, is not a rule within the purview of the Act.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500 through 1508), and the Integrated DOE NEPA Implementing Procedures (10 CFR part 1021), Western has determined this action is