

energy to nonpreference customers. In response, CRC cites a 1980 Comptroller General decision that addressed a similar issue on the Falcon-Amistad Project. In that case, the Comptroller General ruled that the preference restriction pertained only to the initial sale of power and not to any subsequent sale by the preference customer, and that since the contract between the parties included no additional prohibition against resales, none existed.

*Comments and discussion:* Some commenters stated that CRC's allocation should be reduced by the amount of energy being resold to nonpreference entities. Historically, CRC has some customers that are nonpreference entities and CRC's contract with Western has allowed sales to these customers. Therefore, Western has no basis to reduce CRC's allocation because of these sales. Western will not reduce CRC's allocation as long as CRC complies with applicable laws, regulations, and the terms and conditions of its P-DP FES contract.

#### Native American Issues

*Background:* Western no longer requires utility status for Native American tribes as a prerequisite for receiving power allocations. That means more tribes may apply for allocations of P-DP hydropower as preference entities. In previous Western PMI remarketing efforts, tribes received a large part of resource pool allocations.

*Comments and discussion:* Some commenters said Western should create a larger resource pool. They believe that this would help Western allocate power that approximates 65 percent of qualified Native American applicants' load, a goal set during the Salt Lake City Area Integrated Projects (SLCA/IP) reallocation process. Western set the 65-percent level as a goal, not a requirement. It was also specific to the SLCA/IP remarketing effort.

Another commenter, who favored a complete reallocation, said it is unfair to prevent Native American tribes from participating fully in the current marketing effort, since the requirement for utility status prevented them from receiving P-DP allocations in the past. Western invites the tribes to participate fully in the current remarketing effort. In fact, Western has increased the resource pool size to 17 MW, making more resources available to potential new customers within the P-DP marketing area, including Native American tribes.

Another commenter asked Western to create a separate "new user category" for tribes. The comments included with

the EPAMP regulations (60 FR 54151, 54167, October 20, 1995) state,

Western declines to create a special class of power exclusively for tribes. In the absence of direction from Congress to the contrary, Western believes it is inequitable to create administratively a special, preferential classification for Indians.

In contrast, one commenter stated that his utility "would strenuously object to another attempt to carve out a specific portion of whatever resource pool is created to meet additional tribal requirements." Western will accept applications from all eligible preference entities and will not set aside a specific part of the resource pool for any specific customer class.

*Background:* The Colorado River Indian Tribes (CRIT) have a reservation that spans parts of Arizona and California. The tribes applied for and received an allocation for the tribal load in Arizona; however, the load in California fell outside the SLCA/IP marketing area.

*Comments and discussion:* CRIT commented that Western told the tribes that they "could look to Parker-Davis for the load that was not covered (by SLCA/IP)." In a **Federal Register** notice concerning the SLCA/IP (67 FR 5113, 5114), published February 4, 2002, Western stated:

Any expansion of the (SLCA/IP) marketing area to include portions of reservations in California is outside the scope of this effort. The portions of reservations in California are within the Parker-Davis Project marketing area. Power resource pools from these projects will be allocated effective upon expiration of existing contracts on September 30, 2008. Tribes with reservation lands and eligible loads in California may be able to participate in that process.

This statement does not amount to an entitlement for CRIT. However, Western welcomes resource allocation applications from all eligible preference customers, including tribes. We will address the application process and criteria in a future public process.

#### Other Comments

Western received a request to abandon Integrated Resource Planning (IRP) requirements for P-DP contractors. This request is outside the scope of this process. Section 114 of the National Energy Policy Act of 1992 (Pub. L. 102-486) requires all Western contractors to submit IRPs as a condition of receiving Federal hydropower. Since Western's PMI also requires contractors to complete IRPs, this requirement will continue for P-DP contractors.

A commenter asked that Western return unallocated energy to contractors

on October 1, 2008. In 10 CFR part 905.32(e)(1), the PMI regulations state,

If power is reserved for new customers but not allocated, or resources are offered but not placed under contract, this power will be offered on a pro rata basis to customers that contributed to the resource pool through application of the extension formula in § 905.33.

Other commenters asked Western to evaluate the P-DP resource in relationship to the requirements of the restructured and evolving power industry, and to work with the control area operator to ensure P-DP customers receive credit for their ancillary services. There is a great deal of uncertainty surrounding industry restructuring. The Federal Energy Regulatory Commission (FERC) has proposed a standard market design that has not been finalized. Several regional transmission organizations are attempting to form in the southwestern United States, including the P-DP marketing area. These organizations do not plan to begin operations for several years after the effective date of contract extensions. It is not possible to anticipate which changes will occur to the electric utility industry, or when. Western continually monitors utility industry changes and actively participates in regional organizations.

Western received a request to exempt Fredonia, Arizona, from the Central Arizona Project recovery cost because the town receives no benefits from CAP. Because the purpose of this process is to determine the applicability of the EPAMP PMI to the P-DP, this issue is outside the scope of this process.

Western was asked whether P-DP's operational integration with the Boulder Canyon Project (BCP) will continue. Applying the PMI also means applying the existing marketing plan. Therefore, operational integration will continue under the existing marketing plan contained in the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (49 FR 50582, December 28, 1984).

Some commenters said that Western should evaluate whether project integration will continue past 2017. Changes to existing marketing criteria are outside the scope of this public process. It is too early to make decisions about contracts that expire 14 years from now in 2017.

The Metropolitan Water District of Southern California requested confirmation that it will be eligible for an allocation as a new customer. Dixie Power Water Light and Telephone requested that the P-DP marketing area be expanded to include Kane and