

**DEPARTMENT OF ENERGY****Western Area Power Administration****Proposed Amended Navajo Power Marketing Plan**

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of public process and call for comments.

**SUMMARY:** The Bureau of Reclamation (Reclamation) has requested that Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), initiate and administer a public process to obtain comments on the proposed Amended Navajo Power Marketing Plan (Amended Plan). This notice initiates that public process.

The proposed Amended Plan is to provide for the future marketing of the United States' entitlement to generation from the Navajo Generating Station (Navajo) which is in excess of the pumping requirements of the Central Arizona Project (CAP) and certain needs for desalting and protective pumping facilities. The proposed Amended Plan was developed in consultation with representatives of Reclamation, Western, the Governor of Arizona, and the Central Arizona Water Conservation District (CAWCD) as required by the Hoover Power Plant Act of 1984 (Act).

All interested parties are invited to submit comments to Western concerning the proposed Amended Plan. Western will provide all comments and related public record documents to Reclamation for its review and response prior to the consideration and adoption of the Amended Plan by the Secretary of the Interior, in accordance with the Act.

**DATES:** The comment period begins today and ends November 13, 2006. Western will present a detailed explanation of the proposed Amended Plan at public information forums. The public information forums dates and times are:

1. September 19, 2006, 1 p.m. MST, Phoenix, AZ.
2. September 22, 2006, 1 p.m. PDT, Ontario, CA.

Western will accept oral and written comments on the proposed Amended Plan at public comment forums. The public comment forums dates and times are:

1. October 10, 2006, 1 p.m. MST, Phoenix, AZ.
2. October 11, 2006, 1 p.m. PDT, Ontario, CA.

Western will accept written comments any time during the comment period.

**ADDRESSES:** The public information forum and the public comment forum locations are:

1. Phoenix—Western Area Power Administration, Desert Southwest Regional Office, 615 South 43rd Ave., Phoenix, AZ.
2. Ontario—Doubletree Hotel Ontario Airport, 222 North Vineyard Ave., Ontario, CA.

Written comments concerning the proposed amendment should be sent to Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005-6457. Written comments may also be faxed to (602) 605-2490, attention: Brian Young. Documents associated with this public process may be viewed at <http://www.wapa.gov/dsw/pwrmtk>.

As access to Western facilities is controlled, any U.S. citizen wishing to attend any meeting held at Western must present an official form of picture identification, such as a driver's license, U.S. passport, U.S. Government ID, or U.S. Military ID, at the time of the meeting. Foreign nationals should contact Western at least 45 days in advance of the meeting to obtain the necessary form to attend the meeting.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian Young, Remarketing Program, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005-6457, telephone (602) 605-2594, e-mail [navajoplan@wapa.gov](mailto:navajoplan@wapa.gov). The original Navajo Power Marketing Plan dated December 1, 1987 (Original Plan) is available for viewing at <http://www.wapa.gov/dsw/pwrmtk>.

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

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

in interest to the repayment obligation for the CAP).

On December 1, 1987, Reclamation, on behalf of the Secretary of the Interior, adopted the Original Plan which provided for long-term contracts through September 30, 2011. By letter dated July 3, 2006, Reclamation requested that Western initiate and administer a public process to obtain comments on the proposed Amended Plan to provide for the future marketing of Navajo Surplus Power.

This proposed Amended Plan contains the framework for the sale and exchange of Navajo Surplus Power, including an annual process to determine the power to be marketed, eligibility criteria, contract provisions, ratesetting provisions, and revenue collection and distribution criteria. Following consideration of comments received and adoption of the Amended Plan by the Secretary of the Interior, the Amended Plan will become effective 30 days after publication in the **Federal Register**. The ratesetting provisions in the proposed Amended Plan were developed to accomplish the requirements of the Act to market and exchange Navajo Surplus Power "for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project." These provisions also provide that "rates shall not exceed levels that allow for an appropriate saving for the contractor."

The proposed Amended Plan implements provisions of the Revised Stipulation Regarding A Stay of Litigation (*Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC). The Revised Stipulation requires that the Original Plan be amended to provide for the establishment of rates for the sale or exchange of Navajo Surplus Power after September 30, 2011 "which optimize the availability and use of revenues" for the Lower Colorado River Basin Development Fund in a manner consistent with the Act. The Arizona Water Settlements Act, Pub. L. 108-451 amends the use of Navajo Surplus Power revenues set forth in 43 U.S.C. 1543(f).

The Original Plan also contains a provision to collect an additional rate component that allows CAWCD to recover an advance of funds made to Reclamation for the construction of authorized features of the CAP. The repayment of this advance will be satisfied under contracts pursuant to the Original Plan. The Original Plan also

contains specified quantities of capacity and energy to be marketed under long-term contracts. This proposed Amended Plan provides for an annual determination of capacity and energy resources for marketing as Navajo Surplus Power based upon the availability of water for CAP pumping, in conjunction with an annual determination of rates and the various capacity and energy products to be marketed. Navajo Surplus Power under this Amended Plan will be placed under contract for various time periods, which may be short-term, annual, or multi-year.

### Proposed Amended Navajo Power Marketing Plan

#### I. Purpose and Scope

Section 107 of the Hoover Power Plant Act of 1984 requires that a power marketing plan be developed to provide for marketing and exchanging of Navajo Surplus for the purposes of optimizing the availability of Navajo Surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona Project. The Secretary of the Interior adopted the original Navajo Power Marketing Plan on December 1, 1987 (Original Plan). The Revised Stipulation entered in the Central Arizona Project repayment litigation, *Central Arizona Water Conservation District v. United States*, et al., No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated Action) requires the Original Plan be amended. The Revised Stipulation requires the amended Navajo Power Marketing Plan provide for the establishment and collection of rates for the sale or exchange of Navajo Surplus Power that optimize the availability and use of revenues for the Lower Colorado River Basin Development Fund while allowing for an appropriate saving for the contractor. Satisfying the requirements of the Revised Stipulation is necessary for final judgment to be entered in the Central Arizona Project litigation. The entry of final judgment in that litigation permits the Secretary of the Interior to make a required finding under the terms of the Arizona Water Settlements Act.

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

terminate or are amended in accordance with this Plan.

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

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

D. This Plan sets parameters for the establishment of Rates, not exceeding levels that allow for an appropriate saving for the contractor, that will optimize the availability and use of revenues from the sale and exchange of Navajo Surplus to provide financial assistance for payment of the operation and maintenance expenses associated with Navajo Surplus and for the purposes set forth in 43 U.S.C. 1543(f), as amended by the Arizona Water Settlements Act, Public Law 108-451.

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

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

#### II. Authorities

The authorities under which this Plan is developed are:

A. Federal Reclamation laws (43 U.S.C. 372 *et seq.*, and all Acts amendatory thereof or supplementary thereto); in particular, the Colorado River Basin Project Act of 1968 (Pub. L.

90-537), the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93-320), as amended, the Hoover Power Plant Act of 1984 (Pub. L. 98-381), and the Arizona Water Settlements Act of 2005 (Pub. L. 108-451).

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

#### III. Definitions

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

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

B. "Central Arizona Project" or "CAP" shall mean the Reclamation multipurpose water resource development and management project in Arizona authorized by the Colorado River Basin Project Act, as amended (43 U.S.C. 1501 *et seq.*).

C. "CAWCD" shall mean the Central Arizona Water Conservation District.

D. "Conformed Criteria" shall mean the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects published in the **Federal Register** (49 FR 50582) on December 29, 1984.

E. "Development Fund" shall mean the Lower Colorado River Basin Development Fund established under section 403 of the Colorado River Basin Project Act.

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

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

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

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

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

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

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

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

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

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

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

#### IV. Power To Be Marketed

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

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

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

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

4. Projected Navajo generation.

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

#### V. Optimization

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

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

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

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

#### VI. Eligibility

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

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

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

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

D. Arizona entities, regardless of preference status, shall have first

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

#### VII. Contract Provisions

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

B. Contracts for the sale or exchange of Navajo Surplus shall specify a delivery point on the Navajo or CAP transmission systems as may be available. If the contractor cannot take delivery of Navajo Surplus into its own system at these delivery points, transmission service arrangements to other delivery points will be the obligation of the contractor.

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

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

### VIII. Ratesetting

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

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

C. Rates developed annually pursuant to this Plan shall not be applicable to pre-existing contracts unless provided for in such contracts.

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

### IX. Revenue Collection and Distribution

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

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

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

### X. Effective Date

This Plan will become effective 30 days after publication in the **Federal**

**Register** following adoption by the Secretary of the Interior.

### XI. Consultation

This Plan is deemed most acceptable in accordance with section 107(c) of the Hoover Power Plant Act of 1984 as evidenced by the concurrences below from Western (Secretary of Energy), the Governor of Arizona, and CAWCD.

### Regulatory Procedure Requirements

#### *Review Under the Regulatory Flexibility Act*

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 and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

#### *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 1500-1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

#### *Determination Under Executive Order 12866*

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

#### *Small Business Regulatory Enforcement Fairness Act*

Western determined this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: August 1, 2006.

**Michael S. Hacsckaylo**,  
Administrator.

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**BILLING CODE 6450-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8208-3]

### Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Science Applications International Corp. (SAIC)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; Request for comment.

**SUMMARY:** EPA has authorized SAIC Corp. of Oakland, California, for access to Information which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

**DATES:** Comments concerning CBI access will be accepted through August 31, 2006.

**ADDRESSEES:** Comments should be sent to Peggy Delatorre, Contracting Officer, Environmental Protection Agency Mail Code: MTS-4-3, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 972-3717.

*Notice of Required Determinations, Contract Provisions and Opportunity to Comment:* Under EPA contract number: GS-10F-0076J Delivery Order #0909, SAIC provides enforcement support services to the Environmental Protection Agency Region 9. In performing these tasks, SAIC employees have access to agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, etc. The documents to which SAIC has access potentially include documents submitted under the Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation, and Liability Act. Some of these documents may contain information claimed as CBI. SAIC is required by contract to protect confidential information. When SAIC's need for the documents is completed, SAIC will return them to EPA.

Dated: July 27, 2006.

**Elizabeth Adams**,

Acting Director, Superfund Division, U.S. EPA Region IX.

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