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**VIA EMAIL [post2008pdp@wapa.gov](mailto:post2008pdp@wapa.gov)**  
**AND U. S. MAIL**

Mr. J. Tyler Carlson  
 Regional Manager  
 Desert Southwest Region  
 Western Area Power Administration  
 P.O. Box 6457  
 Phoenix, Arizona 85004-6457

**Re: Proposed Post-2008 Parker-Davis Project Resource Pool**

Dear Mr. Carlson:

On October 1, 2004, Western Area Power Administration ("Western") published a notice in the Federal Register regarding the Parker-Davis Project Post-2008 Resource Pool (the "FRN"). See 69 Fed. Reg. 58,900 (Oct. 1, 2004). The FRN provided that interested entities may submit written comments on the proposed allocation procedures to you no later than December 30, 2004. One of several Public Information Forums was held at Western offices in Phoenix on October 26, 2004.

The purpose of this letter is to submit comments on the proposed allocation procedures on behalf of five entities that purchase power produced by Western, including Maricopa County Municipal Water Conservation District Number One, Electrical District Number Seven, Buckeye Water Conservation and Drainage District, Roosevelt Irrigation District and Ocotillo Water Conservation District (collectively the "Districts"). All of these entities purchase Boulder Canyon Project power sold by Western to the Arizona Power Authority ("APA"), which in turn resells it to the Districts. In addition, all of the Districts, except Buckeye Water Conservation and Drainage District, have contracts with Western to purchase power from the Salt Lake City Area Integrated Projects ("SLCA/IP").

Thank you for providing this opportunity for the Districts to present to you their comments regarding the Post-2008 Parker-Davis Resource Pool. The Districts have several comments and requests for clarification that they request Western address prior to making any final allocation decisions. The following comments are organized in the order that they arise under the FRN.

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## I. “Utility Status”

Section II of the FRN describes the “General Eligibility Criteria” to be used for determining which entities are qualified to receive an allocation of Post-2008 Parker Davis Resource power. Subsection (D) provides that “[q]ualified applicants that desire to purchase power from Western for resale . . . must have utility status by October 1, 2005.” “Utility status” is later defined as “the applicant has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis for resale to retail customers.” The definition of “utility status” comes directly from the “Energy Planning and Management Program”, or “EPAMP,” 10 C.F.R. § 905.35(c).

This definition contains several ambiguities that need clarification. The first of these ambiguities is found in the requirement that the entity “has” a distribution system. In the same subsection, the FRN states that the applicant “must have the necessary arrangements for transmission and/or distribution service in place by April 1, 2008.” Similarly, Subsection II(C) states that qualified applicants to purchase power (not for resale) must have “made the necessary arrangements for transmission and/or distribution service.” At the Public Information Forum held on October 27, 2004, Roy Tinsley stated his belief that the definition of utility status was carefully worded not to require ownership of distribution facilities. The Districts agree with this assessment. An entity should be considered to “have” a distribution system if it has “made the necessary arrangements” for distribution service. Ownership of the distribution system is not necessary or required to receive power from Western.

The second ambiguous phrase in the definition of “utility status” is the requirement that “the applicant has responsibility to meet load growth.” Again, this language is directly taken from EPAMP, 10 C.F.R. § 905.35(c). EPAMP and the FRN give no guidance as to the meaning of this phrase, however. At the Public Information Forum, Western staff expressed that this phrase means that the entity has an obligation to serve any customers in its service area. The Districts are in a unique position because their primary purpose is to provide for irrigation to the lands within their boundaries. They are unlike the typical utility that is required to provide power to anyone that requests it within their service territories. Nevertheless, the Arizona Supreme Court has recognized that electricity is necessary for the operation of a modern irrigation system, which is run by an irrigation district. *See Hohokam Irr. & Drainage Dist. v. Ariz. Pub. Serv. Co.*, 204 Ariz. 394, 64 P.3d 836 (¶ 25 (2003)). Irrigation districts have the statutory power to provide their members with “water, electricity and other public conveniences and necessities.” A.R.S. § 48-2978(15). While the Districts are not required to provide electricity to all customers within their service areas, they have the right to do so. This should be sufficient to satisfy the requirement that they “have responsibility to meet load growth.” Accordingly, the Districts request that Western recognize that the Districts satisfy the requirement of “responsibility to meet load growth.”

## **II. Wholesale versus Retail Eligibility**

The FRN contains one set of criteria for eligibility to receive a firm power allocation for direct use, under Subsection II(C), and another set of criteria for eligibility to receive the same allocation for resale to consumers, under Subsection II(D). Applicants that seek to obtain an allocation for resale must have "utility status." The Districts believe that they satisfy the criteria to qualify for an allocation for resale (as explained above). Nevertheless, Western may determine that some or all of the Districts do not qualify to obtain an allocation for resale, but do qualify to receive an allocation under Subsection II(C) of the FRN. In the event that Western takes this position, the Districts request that Western accommodate their unique situation to allow them to receive an allocation of Post-2008 Parker-Davis Resource Pool power. This could be achieved by accounting for the Districts' other power allocations from Western, such as those from SLCA/IP and the Boulder Canyon Project, as being utilized first for the resale components of the Districts' activity, to the extent necessary. Then, any post-2008 Parker-Davis Resource Pool power could be allocated for the Districts' non-resale requirements. In other words, if a contractor does not qualify for "utility status," it should be allowed to take Post-2008 Parker-Davis Resource Pool power for its direct use needs, and satisfy its resale needs through its other power sources.

## **III. Advance Funding**

Subsection IV(F) of the FRN states that "Contractors will be required to pay in advance for their firm electric service." At the Public Information Forum held in Phoenix on October 26, 2004, a question was asked as to how far in advance payment would be required. Western staff indicated that payment would be required on a monthly basis.

As Western is aware through the ongoing discussion of the revisions to the General Power Contract Provisions, the Districts have objections to the concept of mandatory advance funding. Those objections do not need to be repeated in these comments. However, it is our understanding that Western has been discussing a one month "payment shift" methodology which would require Parker-Davis Project Firm Electric Service Contractors to prepay one month's electric service. This type of prepayment, together with the voluntary Advancement of Funds Contract, appears to a reasonable compromise that the Districts could support.

## **IV. Reimbursement of Existing Contractors**

Subsection IV(G) of the FRN states that "[t]o the extent existing contractors' allocations are reduced to create the resource pool, new contractors will be required to reimburse existing contractors for undepreciated replacement advances." At the Public Information Forum held in Phoenix on October 26, 2004, a question was asked as to whether any figures were available as to the amount that would be charged under this provision. Western staff indicated that no exact figures were available, but that the reimbursement charge would be relatively small,

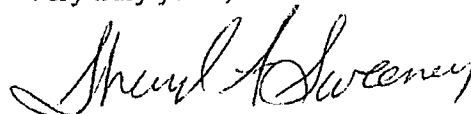
because a very small amount of existing allocations would be reduced. Western staff also indicated that they were considering giving contractors the option of paying for this reimbursement expense up front, at the beginning of the contract period, or over a period of five years.

The Districts request that more specific information as to how the reimbursement would be charged, and the amount of these charges on a per megawatt or per contractor basis, be provided for review before the Post-2008 Parker-Davis Resource Pool contracts are finalized. While the relative cost of reimbursement may seem small, compared to the overall size of the Parker-Davis Resource Pool, this cost could be difficult for smaller entities, such as the Districts, to absorb. The amount and method in which this cost is distributed would be a key factor in their decision as to whether to enter contracts for power from the Post-2008 Parker-Davis Resource Pool. Western should provide options to potential contractors that would minimize this cost, and make it easier to absorb. The amount of this charge and proposed method of payment should be disclosed to potential contractors as soon as possible so that potential contractors may provide meaningful feedback.

#### Conclusion

Maricopa County Municipal Water Conservation District Number One, Electrical District Number Seven, Buckeye Water Conservation and Drainage District, Roosevelt Irrigation District and Ocotillo Water Conservation District are all interested in applying for an allocation under the post-2008 Parker-Davis Resource Pool. The Districts hope that these comments are helpful to Western as it finalizes its eligibility and allocation criteria. Given the December 30, 2004, deadline for filing applications for the Parker-Davis Resource Pool, we would appreciate receiving clarification from Western on these issues within the next 10 to 12 days. If you would like to schedule a meeting or a conference call for further discussion, please let me know.

Very truly yours,

  
Sheryl A. Sweeney

c: Stan Ashby  
R. D. Justice  
Jeff Woner  
Jackie Meck  
Jim Sweeney  
Dennis Delaney  
Ken Saline  
Jim Noble  
Bob Lynch  
Jay Moyes