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THE UNITED STATES DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
PHOENIX AREA OFFICE

PARKER-DAVIS PROJECT  
APPLICATION OF POWER MARKETING INITIATIVE  
PUBLIC COMMENT FORUM  
(To Post - 2008 Remarketing Effort)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Ontario, California  
October 10th, 2002  
1:00 o'clock p.m.

PREPARED BY: CHRISTINE JOHNSON, RPR  
CERTIFIED COURT REPORTER #50383

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1           Be it remembered that heretofore on October 10,  
2 2002, commencing at 1:00 p.m., at the Doubletree Ontario  
3 Airport, Ontario, California, the following proceedings were  
4 had, to wit:

5

6

7 WESTERN AREA POWER ADMINISTRATION

8 APPEARANCES:

9

MR. DOUGLAS N. HARNESS  
Office of General Counsel

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MR. ROY TINSLEY  
Project Manager, Western Area Power  
Administration

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1 MR. HARNESS: Okay. Let's begin.

2 Good afternoon, everyone. Welcome to today's  
3 Public Comment Forum. My name is Doug Harness. I'm an  
4 attorney with Western Area Power Administration from our  
5 Lakewood, Colorado office, and I'll be the moderator for  
6 today's Forum.

7 The purpose of this Public Comment Forum is to  
8 give interested parties the opportunity to make oral  
9 presentations or submit written comments for the record on  
10 Western's proposal to apply the Power Marketing Initiative  
11 or PMI of Western's Energy Plan and Management Program to  
12 Parker-Davis Project firm electric service commitments  
13 beyond September 30th, 2008.

14 Western's proposal would create a resource pool of  
15 six percent to available Parker-Davis resources for  
16 allocation to new customers and would extend 94 percent of  
17 the Parker-Davis contractual entitlements to firm  
18 Parker-Davis resources for 20 years beyond September 30th,  
19 2008.

20 In addition to today's Forum, written comments may  
21 be submitted at anytime during the comment period that ends  
22 on November 6, 2002.

23 These comments should be sent to Mr. J. Tyler  
24 Carlson, Regional Manager of Western's Desert Southwest  
25 regional office at post office box 6457, Phoenix, Arizona,

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1 85005-6457.

2           Comments may also be submitted by fax to area code  
3 (602) 352-2490 or by e-mail to "post2008PDP@WAPA.gov."  
4 That's "post2008PDP" -- as in Parker-Davis Project --  
5 "@WAPA.gov." Comments must be received by 5:00 p.m. local  
6 Phoenix time on November 6th to be considered.

7           All written comments received by Western will be  
8 posted on Western's website at the end of the comment  
9 period.

10           A verbatim transcript of today's Forum is being  
11 prepared by today's court reporter. Everything said today,  
12 while together with all exhibits, will become part of the  
13 official record.

14           Copies of today's transcript will be available to  
15 anyone who would like a copy upon payment of the required  
16 fee to the court reporter.

17           And you can get the reporter's name and address  
18 and telephone number at the end of this Forum, if you're  
19 interested.

20           Copies of the transcript and the exhibits will be  
21 available for review in the Desert Southwest Customer  
22 Service regional office located in Phoenix.

23           All comments made today should be relevant to the  
24 proposed action, which is: One, the application of the PMI  
25 to the Parker-Davis Project; two, the size of the resource

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1 pool to be available to new customers; and, three, the  
2 percentage of resources to be extended to existing  
3 customers.

4 As moderator, I reserve the right to disallow any  
5 comments that are not relevant to these subjects.

6 Any relevant materials to be introduced in the  
7 record should be given to the court reporter, and she'll  
8 assign them an exhibit number.

9 After the close of the public comment period,  
10 Western will review all the information, comments and  
11 exhibits that have been received with regard to the  
12 proposal. Western will then announce a decision in the  
13 "Federal Register."

14 Comments made during this public process will be  
15 discussed in this announcement.

16 How we're going to proceed today is through the  
17 sign-up sheet that was outside, and we'll just go in order  
18 of those who signed up.

19 Then after all the speakers who have signed up  
20 have made their comments, we will open the floor to anyone  
21 else who would like to make comments.

22 We would ask a few things of the speakers: First,  
23 that you go to the microphone to present your comments so  
24 that everyone can hear them well, hopefully, including our  
25 court reporter.

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1           We would also ask that you identify yourself in  
2 name and the organization that you represent, and if you  
3 would please spell your name for the convenience of the  
4 court reporter.

5           Finally, we'd also ask if you have an extra copy  
6 of your presentation, that you give it to the court  
7 reporter.

8           Finally, please keep in mind that Western has no  
9 presentation today and will not be answering comments. The  
10 sole purpose of this Forum is to take your -- I'm sorry,  
11 will not be answering questions. The sole purpose of this  
12 Forum will be to take your comments.

13           So with that, we will begin, and the first speaker  
14 we have on our list is Ralph Hitchcock.

15           MR. HITCHCOCK: I'm Ralph Hitchcock of Ralph  
16 Hitchcock & Associates representing the Agua Caliente Tribe  
17 and the Band of Cahuilla Indians in the Chino Valley area.  
18 That's Hitchcock, H-i-t-c-h-c-o-c-k. I'm here to provide or  
19 represent the -- and support for the PMI.

20           Some of the obvious comments is since the tribal  
21 agencies lack representation in early stages were somewhat  
22 new to the process of exercising the preference rights, and  
23 we'd like to do so at this time.

24           And as the California, Southern California economy  
25 and development is moved easterly, all of a sudden the

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1 tribes are in the possession of exercising the economic  
2 development and tribal business development activities to  
3 diversify their economics and becoming an active player in  
4 the California economy.

5 As such, the tribal owned-and-operated businesses  
6 are growing. There are, because of the associated problems  
7 of the electric utility industry, higher rates, declining  
8 reliability of service, there -- we are considering the  
9 development of tribal utilities.

10 So from a business development, from a utility  
11 development area, the Agua Caliente Tribe sincerely feels  
12 that they're a prime candidate for the allocation.

13 Therefore, we respectfully request that the -- we  
14 appreciate the opening of the allocation. We think that the  
15 -- as everybody does -- everybody wants their share or all  
16 -- or investigations should be carried on to determine if,  
17 in fact, the allocation can be appropriately increased.

18 Essentially, the bottom line is because of our  
19 economic development, interest and activities, because of  
20 the development or consideration for development of the  
21 tribal utility, we support the PMI and support all efforts  
22 to increase that allocation.

23 Thank you.

24 MR. HARNES: All right. Thank you. By the way,  
25 can everybody hear me okay? It's hard to tell up here.

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1           Next, Jerry Toenyas.

2           MR. TOENYAS: Yes, Jerry Toenyas, T-o-e-n-y-e-s,  
3 and I represent the San Luis Rey Settlement Parties who  
4 consist of the Vista Irrigation District, City of Escondido  
5 and the San Luis Rey Water Authority and Five Bands or  
6 Mission Indians, the La Jolla, Rincon, San Pasqual, the Pauma  
7 and the Pala.

8           And first I'd like to express our appreciation for  
9 the September 18th information forum that you held, the data  
10 that was provided there, any questions that you answered for  
11 us.

12           And today I have three comments that I'd like to  
13 provide, three topics. The first one is on Integrated  
14 Resource Planning.

15           And as you know, the Energy Planning and  
16 Management Program had two parts: Had the Power Marketing  
17 Initiative and the Integrated Resource Planning. And we  
18 would like to suggest that the Integrated Resource Planning  
19 requirement to be eliminated in the next marketing plan.

20           And the reason for this, our industry has changed  
21 dramatically over the last ten years since that was  
22 initially required. We now have several FERC Orders, which  
23 are promoting the economic use of energy.

24           We have went through California restructuring  
25 since that point in time so that we now have a market price,

1 a spot price for power. We got a lot of state requirements  
2 regarding renewable energy portfolios.

3           There is many existing requirements for the  
4 efficient use of electrical power that are now in existence  
5 and really hierarchies coming down to a paperwork exercise  
6 anymore. And so we would request that you consider  
7 eliminating that requirement in the next marketing plan.

8           The second comment has to do with Power Marketing  
9 Initiative and the fact that we support a 20-year contract  
10 term for the extensions coming up in 2008.

11           And the third comment has to do with ancillary  
12 services. We -- we request that all ancillary services be  
13 included in the power allocation in the future.

14           And we also request that Western work with the  
15 allottees and with the California ISO or whatever successor  
16 regional transmission organization is going to exist at  
17 that point in time on how to provide self-provision or  
18 whatever the new term is going to be probably in 2008, for  
19 that to make sure that we can get credit for the ancillary  
20 services that are provided by the Parker-Davis allocation.

21           We are still formulating and coordinating our  
22 comments regarding the size of the resource pool and the  
23 applicability of the Power Marketing Initiative regarding  
24 Parker-Davis, and we will be submitting our written comments  
25 to you before the November 6th deadline.

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1 Thank you.

2 MR. HARNESS: Thank you.

3 Next on the list is Michael Curtis.

4 MR. CURTIS: My name is Michael Curtis. I'm, at  
5 this time, representing Mr. Don Pope, the manager of the  
6 Yuma County Water Users Association.

7 At the Phoenix hearing, comments were made by  
8 Mr. Robert Lynch with respect to the lack, in the future, of  
9 a need for there to be a withdrawal of any power and energy  
10 under the Parker-Davis Program.

11 Now, Mr. Pope was unable to be here today, but he  
12 asked me to deliver these comments, which are his response  
13 to what he believes were serious factual errors that  
14 Mr. Lynch placed in the record.

15 Mr. Pope states that it should be noted that  
16 Mr. Lynch's comments at the October 9th, 2002 meeting in  
17 Phoenix in regards to the future needs for priority use  
18 power in the Yuma Valley were totally inaccurate.

19 Mr. Lynch argued there should be no need for  
20 future priority power use, power withdrawals because of the  
21 future water transfers from the Imperial Irrigation District  
22 to others via the California Aqueduct.

23 Mr. Lynch's assumptions that such transfers will  
24 reduce groundwater management needs in the Yuma Valley is  
25 false.

1           The amount of water following to IID and the  
2 All-American Canal has absolutely no bearing on Yuma Valley  
3 groundwater levels. High groundwater in the Yuma Valley is  
4 caused by the groundwater mound on the Yuma Mesa as appears  
5 in the attached exhibit, a copy of which has been delivered  
6 to the reporter for inclusion in the record.

7           This has further worsened conditions in the water  
8 mound when high Colorado water levels are experienced during  
9 periodic flooding events and flood control releases.

10           Accordingly, there is a need for both a current  
11 and future withdrawal for Yuma area priority use power.

12           A contract exists for additions to wells to be  
13 constructed in the Yuma Valley. Wells that are intended to  
14 be constructed will require nearly a megawatt of power.

15           Such was the result of a series of meetings held  
16 over the past several years with the Yuma Area Water  
17 Resources Management Group and is the first in a program of  
18 needed withdrawals for groundwater management purposes,  
19 also, for maximizing return flows and dealing with salinity  
20 issues in the Yuma Valley, as well as environmental  
21 concerns.

22           Mr. Pope goes on to note that members of the Yuma  
23 Area Water Resources Management Group include six irrigation  
24 districts in the Yuma area and also the City of Yuma and  
25 Yuma County Political Subdivisions of Arizona, the Bureau of

1 Reclamation, the International Boundary and Water  
2 Commission, the State of Arizona, through it's Department of  
3 Water Resources, and the Cocopah Tribe.

4 Mr. Pope notes that the record of all these  
5 proceedings and studies is public and available, and that  
6 all of the affected agencies of the United States are aware  
7 of this record.

8 Mr. Pope concludes that the bottom line is there  
9 will be needs for future withdrawals of priority use power  
10 to control groundwater in the area of Yuma deal with return  
11 flows and satisfy Mexican treaty and salinity requirements  
12 and other water obligations.

13 Now, I'm no longer Mr. Pope.

14 MR. HARNESS: Okay. On behalf of -- I understand.  
15 So you're going to now make your second comments basically?

16 MR. CURTIS: This is where the fun starts. On  
17 behalf of a variety of Arizona interests, some of which are  
18 the Avra Valley Irrigation and Drainage District, the  
19 Cotaro-Marana Irrigation District, Hohokam Irrigation  
20 District, Page Electric Utility Authority, all of whom are  
21 political subdivisions of the State of Arizona and  
22 preference customers under reclamation laws, we wanted to  
23 make a few comments in a little more detail than we made  
24 previously.

25 First of all, we want to discuss the fact that the

1 size of the resource pool, at first blush, is entirely too  
2 small to deal equitably with the needs of new entities in  
3 the marketing area.

4 Secondly, we want to point out the Parker-Davis  
5 Projects do not exist independently from the Gila Project  
6 and the Yuma Project, and we think it's important to note  
7 that in research, historically, that the generation of  
8 Parker-Davis is uniquely dedicated.

9 Half of it is to the Metropolitan Water District  
10 at Parker because they paid and bought half.

11 The remainder, the history shows, is dedicated to  
12 the pumping of waters from Yuma to accomplish a return flows  
13 and salinity control.

14 And in the history of the more recent Davis Act,  
15 that as much of 200 megawatts of Parker-Davis, under the  
16 generation control of the Reclamation, was anticipated in  
17 order to provide 600,000 or so acre feet a year of return  
18 flows of which approximates one-third of the United States  
19 treaty obligation with Mexico, and that this history  
20 reenforces the primacy of the control of the generation and  
21 the control of the output of Parker-Davis in the hands of  
22 Reclamation, subject to Reclamation's determination, from  
23 time to time, as to what regeneration is available as  
24 surplus.

25 And we think it's important to note that there is

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1 no such thing as firm marketed or dedicated Parker-Davis to  
2 others than the Bureau of Reclamation, which may need  
3 resources to meet their statutory and other project purpose  
4 needs.

5           The only thing that's available to Western is a  
6 surplus, and the contract term of that surplus has to repeat  
7 and bear -- and bear in the documents and the contracts the  
8 warning label that whatever is purchased is purchased  
9 subject to withdrawal.

10           We think it's incumbent on Western to treat  
11 Parker-Davis the way cigarette companies are supposed to  
12 treat a package of cigarettes, and that is: Put the label  
13 -- the warning label on the product so that subsequently  
14 there are no upset people when Reclamation determines that  
15 the United States wants to perhaps deal with Mexican treaty  
16 obligation by increasing return flows and needed pumping or  
17 may need it for other recognized purposes.

18           And it's for those reasons, that we think that  
19 there cannot be a strict adherence to the EPAMP and the PMI.  
20 This is a unique situation, and we'll address that later.

21           But with respect to the resource pool and with  
22 respect to the size, we would point out that the entities on  
23 whose behalf I'm speaking, would not like to to see any  
24 customers have to have a reduction in their allocation,  
25 while at the same time, they would like to have an

1 allocation, and they believe that the allocation that they  
2 could be participating in is an allocation of approximately  
3 30 megawatts.

4           And I refer to the Appendix 1216 on the Davis Dam  
5 Allocation of Energy Document dated June 3rd, 1948, because  
6 that document refers, on page A-764, to the source of at  
7 least 15 megawatts of Parker-Davis, and that page reference  
8 contains the following quote, "One half of the 30,000  
9 kilowatts allotted for use in the State of California is  
10 recommended for the Imperial Irrigation District, a  
11 preference customer.

12           "Since the capacity of the proposed Pilot Knob  
13 Power Plant and the plants at the drops on the All-American  
14 Canal, plus 15,000 kilowatts of Davis power under the  
15 commitment in the district's contract for Parker power would  
16 make ample hydroelectric power available to the district, it  
17 is recommended that the 15,000 kilowatts of Davis power over  
18 and above the 15,000-kilowatt Parker contract commitment be  
19 subject to recapture by the Bureau if and when the district  
20 places their proposed Pilot Knob Power Plant in operation."

21           We would suggest that Western needs to take  
22 recognition that here is 15 megawatts because Pilot Knob is  
23 built in, technically in operation, even if, from time to  
24 time, it is not operable.

25           We would also point out that there is another

1 potential ten or 15 megawatts because at the Colorado River  
2 Commission of its seven contracts, two of those contracts  
3 are not contracts with preference utilities, and that it is  
4 contrary to Western's policy and undermines federal law to  
5 allow a customer to resell hydropower to third parties,  
6 particularly if they're not preference customers. At least  
7 that's the citation at 60 Federal Register 54, 151, at page  
8 15.

9           We think then that with a 30-megawatt pool, you  
10 don't have to have a resource pool achieved by reducing  
11 anybody.

12           You have now a pool that you could distribute a  
13 megawatt to each of 30 customers who would be new entities  
14 who could participate, and it's the thought that  
15 Parker-Davis is not like Pick-Sloan. It's not like CRSP and  
16 it's not like CVP.

17           The projects were not particularly developed in  
18 the Yuma Act and the Gila Act and the Parker-Davis Acts for  
19 reasons similar to those other areas that we've cited and,  
20 therefore, Parker-Davis should be viewed as unique and that  
21 the bounty should not be limited, but should be expanded so  
22 long as it can be done equitably.

23           And the proposal is that none of the existing  
24 customers legitimately -- I shouldn't use the word  
25 legitimately. You never want to say something or someone is

1 illegitimate -- so let me say, with the exception of two  
2 customers, everyone would receive exactly what they have and  
3 those two customers, one of which there is a clear record  
4 that they never had legitimate expectation, once Pilot Knob  
5 was built, there was never a legitimate expectation of the  
6 continuance of the 15 megawatts at the expense of other  
7 entities in California and perhaps Arizona.

8           And that the concept of a preference customer  
9 acquiring Parker-Davis allocation for resale to  
10 nonpreference entities, we think, is not supportable.

11           So, in summary, we would just say that we think we  
12 have a solution that we are putting forward and we invite  
13 comment and response. Hopefully, those who realize our  
14 proposal does not intend to take anything away from them  
15 will be gentle in their response.

16           On the other hand, if you wanted to boost the  
17 resource pool by another additional 15 megawatts, obviously,  
18 you could do the six percent pool with a 94 percent contract  
19 extension, but we think you could probably go a long ways to  
20 solve the equity problem, which we think is Western's job to  
21 do, with a scarce resource like this, and you would not have  
22 to reduce anybody's allocation.

23           But we'll leave that for further comment in the  
24 written remarks.

25           And with that, I think I'll start to move towards

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1 the door. Thank you.

2 MR. HARNESS: All right. Thank you.

3 Next, we have Henryk -- yeah, I'll allow you to  
4 pronounce it.

5 MR. OLSZOWSKI: Good afternoon. Henryk  
6 Solstowski, General Superintendent at Imperial Irrigation  
7 District and also Imperial District representative to the  
8 Parker-Davis Project. That name is spelled, H-e-n-r-y-k.  
9 The last name is spelled, O-l-s-t-o-w-s-k-i.

10 IID currently has a allocation from a Parker-Davis  
11 Project. IID's load is growing approximately three percent  
12 annually, and we seek out low-cost energy resources to meet  
13 that growing demand.

14 We depend on our Parker-Davis allocation to  
15 provide low-cost energy to our customers. Imperial Valley  
16 brings much bounty to this great country in the form of  
17 low-cost agricultural projects.

18 Although Imperial Valley provides much bounty, we  
19 do not live in an economically bountiful area. Imperial  
20 County has one of the highest unemployment rates in this  
21 country, along with one of the lowest per capita incomes.  
22 Low-cost energy is vital to our customers.

23 IID supports Western's Power Marketing Initiative.  
24 IID supports the 20-year contract term. IID supports the  
25 proposed 94 percent extension of a marketable resources from

1 the Parker-Davis Project to the existing customers, along  
2 with the creation of a six-percent resource pool for new  
3 customers.

4 And IID supports the request of CRC's Jerry Lopez  
5 to allow customers the opportunity to rely on writing --  
6 excuse me, opportunity to reply in writing to comments made  
7 by others.

8 Finally, IID has obtained the assistance of  
9 Deborah Sliz, who has additional comments to be made on  
10 behalf of Imperial Irrigation District.

11 MS. SLIZ: That's Deborah, D-e-b-o-r-a-h, Sliz,  
12 S-l-i-z. I'm with the firm of Morgan McGuire in Washington,  
13 D.C., and we are a government relations firm that has worked  
14 with a number of Western's clients in prior resource  
15 extension processes.

16 As Henryk says, IID supports Western's proposal to  
17 apply the PMI to the Parker-Davis renewals. We think that  
18 those proposals are based on very sound policies.

19 Western has good precedence in the earlier  
20 resource extension processes that have gone through that  
21 have adopted the PMI, the Pick-Sloan East process, the  
22 Colorado River Storage Project and the Central Valley  
23 Project.

24 Applying the PMI here would continue the theme of  
25 regional equity that has been a feature of those other

1 contract extension processes.

2 We believe the 20-year contracts are a win-win for  
3 the customers and for the government. The government gets  
4 assured of a long-term revenue stream. The customers are  
5 assured of continuity of power supply.

6 As the presence here today indicates, federal  
7 power is a very important, I'd say, essential component of  
8 the customer's resource portfolios. And the proposed  
9 extension is critical to their ability to continue their  
10 utility planning strategies, particularly in a market -- a  
11 Western market, a California market that has been as  
12 volatile as it has in the last couple of years.

13 We think that the resource extension proposal will  
14 provide significant socioeconomic benefits and as Henryk  
15 says, that's particularly true here in the Imperial Valley.

16 We also think that the long-term contracts, as  
17 proposed, will provide positive environmental benefits  
18 because customers who are assured of the foundation of the  
19 federal resource will be encouraged to invest in renewable  
20 resources.

21 We believe the PMI proposal is equitable; that it  
22 provides existing customers an extension of the major part  
23 of their allocation, but Western gets the flexibility to  
24 allocated and to set aside the resource pool to new  
25 customers.

1           We do support the six-percent set aside or  
2 resource pool. We think it's consistent with what Western  
3 has done in the other projects. We support the special  
4 consideration for Native Americans.

5           And in conclusion, we believe that the  
6 relationship between IID and Western has been a very  
7 positive one. We support the extension as proposed by  
8 Western and believe that that will lead to a continuation of  
9 that positive relationship.

10           Thank you.

11           MR. HARNESS: Thank you.

12           Next, I understand Mr. Kanj would like to speak.

13           MR. KANJ: Yeah, my name is Jamal, J-a-m-a-l,  
14 Kanj, K-a-n-j, the Deputy Government Manager for Viejas  
15 Tribal Government.

16           First, I want to thank Western for the promptness  
17 of their staff and their responding to our request, and we  
18 are happy to participate in today's comments.

19           And not knowing the exact match between the new  
20 demand and the available power pool, I have to address the  
21 tribal demand as a new power market demand that did not  
22 exist what? Almost ten years ago.

23           What I'm trying to say is that the tribe's role in  
24 -- play or be a part of the previous PMI basically was  
25 absent. So it will be a little bit disadvantageous to the

1 tribes today to be limited to the available pool that has  
2 been recommended.

3 Again, that is based on the fact that not knowing  
4 what the new demand and the existent supply, the new supply.

5 What we are trying to recommend basically in that  
6 regard is that maybe it would be suggested that you would  
7 create, in addition to the, I think, what you're proposing  
8 in the resource pool now, maybe you could create a new  
9 category (phonetic) and that would be a new market demand  
10 category (phonetic).

11 So at least you will give a chance to those who  
12 did not exist ten years ago to be able to play a role in  
13 today's PMI.

14 Other than that, you know, the tribe will find it  
15 really difficult to support the current PMI, independent of  
16 addressing the new demands.

17 And until we -- we will be submitting our comments  
18 in writing, and until we see what is proposed, the tribe  
19 would make its recommendation accordingly and thank you.

20 MR. HARNESS: Thank you.

21 We have run through the speaker list. So we will  
22 open the floor.

23 Mr. Curtis has already indicated to me that he  
24 would be interested in making a comment. So --

25 MR. CURTIS: On a separate subject, the subject of

1 posting and comments, the people whom I previously  
2 identified do not feel that this type of federal public  
3 process lends itself to the classic briefing schedule found  
4 in appellate litigation.

5           It has been recommended that there be posting of  
6 comments, which would indicate that there are comments. And  
7 then there was a suggestion that there be a chance to reply  
8 and perhaps a chance for rebuttal and perhaps a chance for  
9 surrebuttal and then perhaps an opportunity for Western to  
10 actually make some recommendations, at the conclusion of  
11 which, there would be an opportunity for a reply.

12           And then I imagine Western would make a decision  
13 whether it wanted to reply to the replies. We think all of  
14 that is inappropriate, and we think that Western ought to  
15 publish the comments, post them the way it is intended,  
16 issue its remarks and where it intends to go and solicit  
17 comments at that time from the interested parties.

18           On a second -- second, separate issue, we are not  
19 sure that we have made clear the strong feeling we have that  
20 Parker-Davis is not a project which lends itself to the  
21 primacy of Western to determine anything about the available  
22 resource, other than what Reclamation says is to be the  
23 available resource, which is then surplus and which Western  
24 then should market.

25           However, we think that in terms of how Reclamation

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1 manages its responsibilities, statutory and contractual, on  
2 the river and how and when it withdraws electricity in order  
3 to meet those purposes is a subject matter for Reclamation  
4 to determine in the exercise of its authority under the  
5 Department of the Interior.

6           Once Reclamation makes a decision on what it needs  
7 and doesn't need, we think it is then fully appropriate for  
8 Western to manage the surplus with the warning label on the  
9 package of cigarettes that says, "This is subject to  
10 withdrawal."

11           Thank you very much. I'm not sure I made that  
12 last point clear in my initial remarks.

13           MR. HARNESS: Okay. Thank you.

14           Mr. Allen?

15           MR. ALLEN: Thank you. My name is Donald R.  
16 Allen, A-l-l-e-n. I'm with the law firm of Duncan,  
17 D-u-n-c-a-n, & Allen in Washington, D.C.. I'm here on  
18 behalf of Imperial Irrigation District.

19           Some remarks were made that had had been reported  
20 to me and were restated here today, and I wanted to hear  
21 them myself and offer some -- there's just some erroneous --  
22 I wanted to offer some clarifications.

23           First of all, I'd like to say that IID has asked  
24 me to look into this matter. My firm has represented  
25 Imperial Irrigation District for a long time. My partner

1 and I have -- now deceased, Emmerson Duncan -- has been  
2 representing them and his partner Norv Caneli since 1933.

3 We do have some understanding of the historical  
4 record, although, I'm not going to claim that here. I hope  
5 Parker-Davis isn't as harmful as cigarettes are, the analogy  
6 that's been drawn. I thought Parker-Davis was intended for  
7 the purposes for which the reclamation program was  
8 developed.

9 But we looked through our files and we've only  
10 recently become aware of these questions that have been  
11 raised.

12 I'm still in the midst of assembling the factual  
13 record, but I can summarize three or four key facts in the  
14 record, which I think will tell you why IID vigorously  
15 objects to the facts which have been presented and  
16 implications, which I think parties would hope would be  
17 drawn from them.

18 Earlier, one of the speakers referred to a  
19 memorandum from the Commission of Reclamation to the  
20 Secretary of the Interior dated June 3rd, 1948, and I think  
21 he wisely read the key sentence, and I'd like to restate  
22 that.

23 That sentence said, in part, "Since the capacity  
24 of the proposed Pilot Knob Power Plant and the other plants  
25 at the drops" -- and I'm skipping a few words -- "would make

1 ample hydroelectric power electricity," close quote.

2           The suggestion was made that 15 of the  
3 30 megawatts available to Imperial Irrigation District back  
4 in the early 1950's, should be subject to some kind of  
5 reduction.

6           That statement is important because it indicates  
7 there was a needs-driven determination by the Bureau of  
8 Reclamation and that's true.

9           That needs determination or perhaps it's better to  
10 say skepticism about IID's needs for power was carried  
11 through in the first contract between the Bureau and IID for  
12 Davis power.

13           The contract was negotiated in the summer and fall  
14 of 1950, and when it was finally executed, contained a  
15 discretionary authority for the Bureau to reduce IID's  
16 allocation of then Davis power from 30 megawatts to  
17 15 megawatts.

18           As I say, I'm still assembling this material. Our  
19 people were in College Park last Thursday when the sniper's  
20 were going off because that's where they -- the record  
21 center is and, frankly, it's a bit of a problem in a quick  
22 period of time to assemble this record. We have not been to  
23 the record's center in Denver yet.

24           However, we look forward to submitting all of this  
25 material in an organized fashion so you will have a complete

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1 documentation of what I'm going to say and what I'm going to  
2 quote from.

3 But that original September, 1950 contract  
4 provided for the United States, which it said, quote, "May  
5 reduce the contract rate of delivery to 15,000 kilowatts if  
6 and when IID places the proposed Pilot Knob Power Plant in  
7 operation," close quote.

8 It was a one-time reduction that followed, along  
9 with the June 3rd, 1948 memorandum from the commissioner to  
10 the secretary, which was approved.

11 But that discretionary reduction was not without  
12 limits. In fact, it was very carefully limited.

13 The contract went on to provide that there would  
14 be no -- that the United States would -- and I quote, "Hear  
15 and consider the views of IID as to its needs for power and  
16 plans for disposal thereof," close quote, before  
17 implementing that reduction.

18 Time passed and in 1954, IID had suffered three --  
19 I guess up to four years, at that point, of significant  
20 power development far beyond any estimates that they had  
21 submitted to the Bureau in 1948, which led the Bureau to  
22 conclude that there would be ample power for IID from the  
23 Davis Project. And when Pilot Knob came on, to allow for a  
24 15-megawatt reduction.

25 IID put these figures together and transmitted

1 them to the Bureau and asked for the hearing that was  
2 assured it in the contract preempting the Bureau's need to  
3 consider the matter in the first instance.

4           The Bureau did, and after three months, responded  
5 to IID that that reduction would not be made. He had said  
6 -- and this is a letter from Mr. Taylor, acting Regional  
7 Director of the Bureau on September 10th, 1954, "I have been  
8 authorized by the Department to advise you that the rate of  
9 delivery of 30,000 kilowatts of power, under your contract,  
10 will remain in effect," close quote, the Parker and Davis.

11           And so that was the end of the reduction --  
12 reduction possibility to IID. There was no overriding  
13 withdrawal provision. There was no use of the words  
14 "recapture."

15           The allocation, from the beginning of the 1950  
16 contract, was at a 30-megawatt rate of delivery with the  
17 possibility of a 15-megawatt reduction, and the reasons for  
18 that possible reduction were considered and determined not  
19 sufficient to make the reduction.

20           In 1954, the Congress also provided for the  
21 consolidation of the Parker and the Davis Projects, and by  
22 the end of the 1950's, it wanted to experience the  
23 administrative efficiencies of that consolidation and  
24 decided to terminate the individual Parker and Davis  
25 contracts as soon as it could.

1           IID's Davis contract was to have run till 1970,  
2 but the earliest it could be terminated was 1962, as was  
3 meant this case, I think, for many other Parker-Davis --  
4 Parker and Davis contractors.

5           So the Bureau sent out a letter in 1959, stating  
6 its intention to, in their words, "reallocate," close quote,  
7 the power, but assuring customers that any reallocation, and  
8 I quote, "That entity reallocation," and I quote, "The  
9 continuity of power supplies presently available to the  
10 preference customers will be a major objective in such  
11 reallocation," close quote.

12           That's a letter of October 8, 1959, to IID from  
13 Mr. Taylor, the Regional Director.

14           That letter was followed up with another letter  
15 one month later when Arley West wrote on January 7th, 1960,  
16 to IID, and I quote -- I'll give you two sentences. Tell me  
17 if I'm not reading slow enough here -- "Although it is not  
18 possible for us to make an immediate final allotment of  
19 power to customers, we wish to alleviate as much of your  
20 doubt as possible, period. We assure you, at this time,  
21 that the power and energy will be allotted to you in an  
22 amount at least equal to the amount stated in your present  
23 contract," close quote. That was 30 megawatts.

24           We've -- we're still searching the record to find  
25 out what else was going on at that time to see if it bears

1 on this. I'm tempted to think that these three or four  
2 simple letters are simply the rest of the story.

3 I want to complete my research, although, I did  
4 feel that it was important at this time, since this question  
5 has been raised, to give you the full, factual record and  
6 share with you my conclusion that from what I understand.

7 So far, both from what I've been told as a young  
8 lawyer at someone else's hand, I've learned myself there is  
9 no question about the IID allocation.

10 Indeed, they are not a withdrawable customer,  
11 while some Parker-Davis customers are.

12 Thank you very much for the opportunity to present  
13 this. And as I say, we'll get these documents accumulated.  
14 They're difficult, but we'll get them in the right format.  
15 Some of them have have been declassified, and we'll have  
16 them to you. Thank you.

17 MR. HARNESS: Thank you.

18 Is there anyone else who would like to make any  
19 comments?

20 Mr. Lopez?

21 MR. LOPEZ: My name is Gerald A. Lopez. I'm a  
22 Senior Deputy City Attorney General for the Colorado River  
23 Commission of Nevada.

24 In view of what has been said here today, CRC  
25 reiterates its support for the size of a new resource pool

1 as proposed by Western.

2 We understand the desire to spread the benefits of  
3 federal power widely. We believe Western adequately  
4 accomplished that in its 1984 PDP marketing plan.

5 We would suggest that Western's allocation to  
6 Southern Nevada are an essential and primary part of the  
7 plan per widespread distribution within the three states  
8 that encompasses the PDP marketing area.

9 In fact, Nevada gets the smallest percentage of  
10 the marketable resource, approximately 23 percent to, I  
11 believe, about 25 percent for California and 47 percent to  
12 Arizona.

13 The State of Nevada and its Colorado River  
14 Commission, as we demonstrated in our comments in Las Vegas,  
15 is unquestionably a preference entity under the federal  
16 reclamation law and has been treated as such since it first  
17 began to take Davis power in the early 1940's.

18 Because the State of Nevada is the preference  
19 entity, the provisions of our contract for Parker-Davis  
20 power do not restrict us from reselling the federal power to  
21 non-preference end users.

22 And yesterday I pointed out the May 1, 1980  
23 opinion of the Comptroller General of the United States that  
24 indicates that such resales do not violate the preferences  
25 clause.

1           We have been serving the industrial complex at  
2 Henderson Nevada with federal knowledge and blessing, also,  
3 since the 1940's.

4           CRC is no different than Salt River Project or  
5 Wellton-Mohawk and other preference customers who I  
6 understand also resell to non-preference end users.

7           Is the suggestion we heard earlier advocating that  
8 Western calculate how much of S.R.P. and Wellton-Mohawk's --  
9 to use those two as an example -- how much of their firm  
10 marketable PDP power is sold to non-preference entities and  
11 contribute that to the new resource pool? I think not. Nor  
12 would CRC advocate such a position.

13           Integrated Resource Planning is an important part  
14 of Western's power marketing. Such planning is very  
15 difficult, if the resource is not stable. And so we must  
16 reject the call we heard today for making all marketable  
17 resources withdrawable. Western should reject that notion,  
18 as well.

19           The industries we serve are an important part of  
20 Nevada's economy. Harming them harms Nevada who has  
21 shouldered the risks and burdens from the very beginning of  
22 the Parker-Davis Project.

23           As we pointed out in Las Vegas, the reduction of  
24 firm Parker-Davis allocation to existing customers, even by  
25 the amount proposed by Western, could very well endanger the

1 well-being of those customers.

2           They will be required to replace economic power  
3 Davis resources with substantially more expensive market  
4 resources.

5           We believe we can live with a six-percent  
6 reduction. We would prefer the smaller reduction urged on  
7 Western yesterday by Bob Lynch. A larger reduction would  
8 harm your existing customers, we believe, unfairly and  
9 unjustifiably.

10           These existing customers are important to the  
11 continued repayment and maintenance of the project. The  
12 existing customers have made substantial repayment advances  
13 to the project, and any new customers must be prepared to  
14 reimburse those existing customers for undepreciated  
15 replacement advances.

16           Nevada reiterates its support for Western's  
17 proposal to extend 94 percent of the PDP customer's  
18 entitlement of long-term firm PDP resources as of  
19 September 30, 2008.

20           Let me conclude with a remark about process. I  
21 fully appreciate that one technique for opposing an idea is  
22 to exaggerate that idea all out of proportion to the way it  
23 was presented. That should surprise none of us here.

24           My recommendation yesterday was not -- did not  
25 contemplate endless replies and rebuttals and surrebuttals

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1 and whatever else you mentioned.

2 I'm talking about one opportunity to reply one  
3 time and on a very short period and for a very short period.

4 You already have -- I would point out that you  
5 have a precedent in the -- in your Hoover allocation process  
6 where you allowed the interested persons to comment on the  
7 comments. I think that was very helpful to Western then.

8 It can be helpful to Western at this point in  
9 time, too, and one reason is because, as you've seen in Las  
10 Vegas and in Phoenix, you have received actually very few  
11 oral comments.

12 We interested people have heard very little from  
13 others, and the first time we're going to see what others  
14 have been saying is through the written comments. And to  
15 see that for the first time when we have no opportunity to  
16 respond to that, strikes me as unfair and unhelpful,  
17 actually, to the process.

18 So I would urge that at least one time Western  
19 will allow the existing interested persons to respond to the  
20 written comments, particularly as you can see the written  
21 comments are not focused strictly on the proposal. They're  
22 focussed on what other customers have and the effect other  
23 customers -- those other customers, in all fairness, should  
24 be given an opportunity to respond.

25 And I thank you for letting me address you now.

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1           MR. HARNESS: Would anyone else like to make any  
2 comments? I'm sorry for laughing, but just like at an  
3 auction, when somebody goes to scratch their nose, I start  
4 to wonder if they're raising their hand to make a comment.

5           Okay. Well, seeing as -- Don?

6           MR. ALLEN: I would just like to say "thank you"  
7 to Western for taking the time to go into the three places  
8 you had to go, rent the rooms. You took the time and at  
9 least we -- and I know others in the room -- are grateful  
10 for you doing that.

11           MR. HARNESS: You're welcome. We'll be sending  
12 you the bill. Just kidding on that.

13           Yes, Mr. Curtis?

14           MR. CURTIS: I'd like to amplify on that by saying  
15 it does demonstrate that Western is not involved in a one,  
16 two, three, five process. As everybody knows, a one, two,  
17 three, five process is a "foregone" process. So, yes, thank  
18 you for undertaking the effort.

19           MR. HARNESS: You're welcome.

20           Well, seeing as no one else is expressing any  
21 intent or interest or comments, we will close things down  
22 here.

23           We certainly want to thank you all for coming  
24 today, for participating. We would ask if you haven't  
25 already done so, that you sign the attendance roster, which

1 is outside the door so we have an accurate accounting of who  
2 was here today.

3 Other than that, I'd just like to remind you that  
4 the written comments are due by November the 6th. And with  
5 that, again, thank you for your participation and  
6 attendance, and we'll go off the record.

7 (Whereupon, the proceedings terminated at 2:11  
8 p.m.)

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I, CHRISTINE JOHNSON, having been first duly sworn and appointed as Official Court Reporter herein, do hereby certify that the foregoing pages numbered from 2 to 37, inclusive, constitute a full, true and accurate transcript of all the proceedings had in the above matter, all done to the best of my skill and ability.

DATED this 15th day of October, 2002.

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CERTIFIED COURT REPORTER # 50383

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