

Customer Comment	Customer Proposed Language	Western Response
<p>[Lynch] In subsection 12.1, I have suggested adding a reference to actions taken after execution of the amendment as being subject to the Administrator’s determination. It is clear that subsection 12.2 operates prospectively. It should be clear that subsection 12.1 does also. I have also altered the reference to preference law because it is an entitlement to preference not an actual preference that is, in fact, a contractor’s “status” in this subsection. I would note that this provision does not work in any contract executed with a non-preference entity and thus, this exact language may not work in a different context, including a GPCP.</p>	<p>12.1 If the Administrator of Western determines that actions taken by the Contractor, <u>after the date of execution of this Amendment</u>, have abrogated the Contractor’s status as an entity <u>entitled to with</u>-preference under Reclamation Law to purchase Federal hydropower, then the Administrator may take appropriate action, which may include termination of this Contract.</p>	<p>Western agrees that this provision is not intended to be retroactive and will add <u>“after the date of execution of this Amendment”</u>.</p> <p>Western will further revise the 12.1 as follows: “have abrogated the Contractor’s status as an entity <u>with-qualified for</u> preference” to more accurately describe the Contractor’s “status”.</p>
<p>[Lynch] Subsection 12.3. I have deleted language in lines 2 and 4 that I believe make the provision vague and troublesome. I have inserted a trigger on line 3 that I believe helps make this notice provision clear and workable. I hope you agree.</p>	<p>12.3 The Contractor shall give Western written notice prior to implementing any changes <del>that may be</del> covered by Section 12.2. Such notice shall be provided at least 120 days in advance <u>of proposed implementation of any such change -or as soon as the Contractor becomes aware of the proposed change</u>. Western will respond in writing within 90 days of receipt of such notice, indicating whether the Administrator intends to take action.</p>	<p>Western agrees that <u>“that may be”</u> is unnecessary and will delete the language.</p> <p>The additional language is accepted, however, “...or as soon as...” will not be deleted. This language was added to address the customers’ concern that they may not be aware of a change 120 days in advance. This language will be changed to read “or as soon <u>thereafter</u> as the Contractor becomes aware of the proposed change”.</p>
<p>[Lynch] In subsection 12.4, I have altered the notice mechanism for Western because the request for reconsideration to the Administrator is keyed to “<u>receipt</u>” of notice. Thus, the timeframe in the giving of the notice must also be keyed to that same event to make things work. I have also changed the timeframe so as to allow 60</p>	<p>12.4 In any case in which the Administrator determines to take action because the Contractor’s status will change or has changed in a manner addressed in subsections 12.1 and/or 12.2, Western will notify the Contractor in writing of the Administrator’s intended action(s) and the reasons for taking the</p>	<p>Western will use the suggested language in an independent sentence as follows: <u>...intended actions. Implementation of the Administrator’s action shall take place no earlier than 30 days from the Contractor’s receipt of such notice.”</u></p>

<p>days for a contractor to request reconsideration because additional time for preparation may bring out factors that allow matters like this to be resolved and benefit the process.</p> <p>Finally, I have noted that any final decision by the Administrator will include the effective date of that action.</p>	<p>intended action(s), <u>implementation of which shall be no earlier than 60 days from the Contractor's receipt of such notice at least 30 days prior to implementation of such action.</u> If the Contractor disagrees with the Administrator's determination, the Contractor may request reconsideration from the Administrator. Requests for reconsideration to the Administrator shall be made in writing, and must be received by the Administrator within <del>60</del>30 days of the Contractor's receipt of the notice from the Administrator. The Administrator will provide the Contractor with written notice of Western's final decision within <del>60</del>30 days of receipt of the request for reconsideration, <u>including the effective date thereof.</u></p>	<p>Western has retained the 30 day time frame in order to bring closure to the process. There is ample lead time in the process prior to a decision for all parties to understand and address the issues so that they are able to respond to a decision or appeal within 30 days.</p> <p>Western agrees that <u>"including the effective date thereof."</u> is clarifying.</p>
<p>[SRP] Endorses Lynch comments re GPCPs</p>		<p>See responses to Lynch comments above.</p>
<p>[CRC] We believe this procedure could save time and expense on all sides by promoting early understanding and solution before the Administrator commits to some course of action. ...The potential severity of the intended action and the need to prepare an adequate defense in a matter that may be complex and where the stakes are high justifies the longer time for response.</p> <p>In cases where the Administrator nonetheless determines to take action, the Contractor should have at least 120 days to respond to the notice.</p>	<p>We urge that subsection 12.4 provide that <u>where the Administrator undertakes an investigation of a Contractor pursuant to subsection 12.1, or pursuant to subsection 12.2 in the absence of a notice from the Contractor provided under subsection 12.3, the Administrator must notify the Contractor of the investigation and offer the Contractor a reasonable opportunity to provide comments and other information on the matter.</u></p>	<p>Western will add the following language: <u>"If the Administrator decides to pursue a review for reasons other than in response to a notice from the Contractor, the Administrator will notify the Contractor and offer the Contractor a reasonable opportunity to provide comments and other information on the matter."</u></p> <p>Western has retained the 30 day time frame in order to bring closure to the process. See above.</p>



<p><b>[WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT]</b> Concur with both Lynch and Colorado River Commission. Could be difficult to respond in 30 days if Administrator determines to take action, but not a point of contention Ready to sign as it stands.</p>		
<p><b>[AEPCO]</b> ...the language in subpart 12.2 must be modified to preserve certainty, for the purpose of future resource planning, by more clearly specifying the parameters triggering re-examination and adjustment with respect to member-based power supply entities. Within AEPCO’s system, a partial requirements distribution cooperative member has the right, at any time, to withdraw as a member of AEPCO, which may or may not affect existing contractual obligations regarding power and energy. Consequently, AEPCO could "lose one or more members" without any impact on its contractual obligation to serve that former member. It is therefore our position that a unilaterally imposed "adjustment" in allocation by the Administrator is warranted only when a member withdraws and such member’s contract with AEPCO is terminated or modified resulting in a material impact on AEPCO’s obligation to supply power and energy as measured against the obligation recognized by the Administrator in approving AEPCO’s present allocation.</p>	<p>12.2 Western’s Administrator reserves the right to <u>re-examine and</u> adjust Western’s firm electric service obligations under this contract as <del>he or she</del> <u>the Administrator</u> deems <u>reasonably</u> appropriate, if, the Contractor’s status <del>as of</del> <u>from and after</u> the date of execution of this Amendment, changes in a manner that results in <u>a change of the beneficiaries of the preference allocation, an obligation to supply power and energy that is materially different from that recognized by the Administrator in approving the Contractor’s present allocation,</u> including but not limited to: (1) merging with, acquiring, or being acquired by another entity; (2) creating a new entity from an existing one; (3) joining or withdrawing from a member-based power supply entity; (4) if the Contractor is a member-based power supply entity, losing <del>one or more members</del> <u>a member and terminating or modifying its contractual relationship with such member</u>; or (5) selling, leasing, or otherwise disposing of its, or a member’s, electric distribution system.</p>	<p>It is clear in the context of Section 12 that the Administrator will “re-examine” Western’s firm electric service obligations.</p> <p><u>“The Administrator”</u> will be substituted for “he or she”.</p> <p>“Reasonably” was deleted from the proposed language based on customer’s comments that it added nothing of substance to the provision. A standard of reasonableness will be used to evaluate the Administrator’s exercise of discretion. Use of the word reasonable does not change the review standard.</p> <p>“...As of the date of...” is meant to be a baseline against which changes thereafter are measured. The commenter’s proposed language does not represent a baseline.</p> <p>Western believes “...a change in beneficiaries...” is more specific and more easily determined than “materially” and has provided that language in response to a need for a trigger.”</p> <p>Western will maintain the option to review. If termination or modification of the contractual relationship does not result in a change in beneficiary, then 12.2 is not triggered.</p>