

receive their fair share of the marketable resources available. A power reservation for Native Americans of 25 percent of the current commitments from the Eastern Division of the Pick-Sloan Missouri Basin Program is far greater than that needed to meet a fair share of the power needs of the requesting tribes. A 25 percent resource pool would equal 500 MW of firm power, a resource far in excess of the loads of all potential new preference customers in the region. As documented in the EIS, there are increased environmental impacts associated with progressively larger resource pool sizes. Western believes that an extension of less than 90 percent of the resource to existing customers may lead to unnecessary power supply dislocations and potential development of new, but largely unneeded, supply-side resources, lessening the efficiency of the integrated system and defeating the purpose of the Program. Western sees no reason to allocate power to an entity in amounts greater than its loads, as this would deny a valuable renewable resource to existing customers. It is contrary to Western's policy and undermines Federal law to allow a customer to resell hydropower to third parties. Neither equity nor environmental quality is served by withdrawing power from existing customers to meet the load growth of new customers. Western intends to allocate power to Native Americans for use on the reservation out of project-specific resource pools, but will determine the size of the allocation based upon the need to meet an appropriate share of the load for eligible new customers.

Comment was received that the resource pool be enlarged to 4.5 percent to assure the pool is not so small that it limits a tribe's "fair share" or that the expectations of existing customers are not fixed too high. Over the last several months, Western has developed an estimate of the loads that exist on reservations within the marketing area of the Pick-Sloan Missouri Basin Program-Eastern Division. Information on the hydropower benefits currently being received by reservations has also been compiled. Based upon this information, and information from customers relating to Native American loads, a 3 percent initial resource pool was proposed. Comment was received that the proposed 3 percent initial reservation of Pick-Sloan Eastern Division power was not enough to meet a fair share of the needs of tribes, and should be increased to 4.5 percent. To assure that a fair share of the load of Native Americans is met, Western has

increased the size of the initial resource pool to 4 percent.

Comments were received regarding the size of the resource pool. At present, Western supplies about 26 percent on average of the total load of firm power customers in the Eastern Division of Pick-Sloan. The size of the initial pool is large enough to meet a considerably higher percentage of tribal load than many existing customers enjoy.

Comments on the "fair share" concept were that Western has not addressed the tribal arguments in support of a greater than "fair share" allocation; Western's estimate that 45 MW of Pick-Sloan power is enough to meet a fair share of the needs of the tribes is flawed because it assumes a "fair share" would not exceed 70 percent and the load analysis was based on 1990 census data when the delivery of power would actually begin in the year 2000; and the term "fair share" should be discontinued because it is ambiguous and promotes misunderstanding and mistrust. Western regrets that tribes oppose the use of the term "fair share" due to its ambiguity. Western will not define "fair share" in this final rule, as this determination can be made better during the future project-specific allocation process for new customers within the Eastern Division marketing area.

During the comment period, it was suggested that tribes should receive all "new" power resources resulting from operational changes or upgrades. In contrast, another comment asked Western to accommodate new customer needs exclusively from new resources and not from a resource pool. According to this commenter, if needy groups need assistance, it should be in the form of subsidies borne by all taxpayers and not through actions that will increase power costs for rural America.

Equity is not served by dedicating future increases in resources, whether due to operational changes favorable to power production or upratings at existing powerplants, to one class of customers. The Power Marketing Initiative provides tribes with significant new benefits. Nor will Western limit new customer access to power to new power resources only. The creation of a resource pool serves the policy of promoting widespread use of hydropower. Limiting new customer allocations to potential new power resources would create additional uncertainty for new customers, as there is no assurance of the availability of such resources during any defined time period.

To date, Western has received full cooperation from Eastern Division

cooperatives on the issue of delivery of hydropower benefits to reservations. Even if unanticipated obstacles to the delivery of hydropower benefits arise, Western retains the right to provide the economic benefits of its resources to Native Americans directly. Given this flexibility, Western sees no reason to include language that makes delivery of power/power benefits to tribes a condition of firm power sales contracts for cooperatives. Western, Native Americans and Western's Eastern Division customers will continue to work together to assure that the tribes receive the benefit of their allocation. Western has responded positively to requests for assistance in negotiations.

One comment suggested that Western evaluate tribal irrigation potential and integrate that irrigation into the Pick-Sloan similar to the Standing Rock Sioux and the Three Affiliated Tribes under the Water Resources Development Act of 1992. Another comment asked that more tribes receive compensation like that received by the Fort Berthoud, Standing Rock Sioux and Three Affiliated tribes. Special legislation would be required to accomplish these suggestions. Western will consider allocation of power to eligible irrigation districts in a future, project-specific resource pool allocation process.

Western has no authority to adjudicate Indian water rights and negotiate such rights with the states. This activity is outside the scope of Western's mission, and should be addressed through direct discussions with the responsible agencies.

Western will not adopt the comment that only short-term commitments of firm power should be made pending resolution of Missouri River Basin tribal issues. Significant resource uncertainty would continue for existing customers in the Eastern Division if this comment were adopted, as contracts currently in place expire in the year 2000. Instead, Western will continue to work with tribes in the upper Midwest in parallel with Program implementation.

Several comments were received advocating flexibility in the allocation of Western power to Indian tribes. Instead of limiting allocations to use on the reservation, these commenters asked that tribal members living adjacent to the reservation and within the servicing cooperative's service territory also be allowed to receive the benefits of cost-based Eastern Division power. Another comment asked how Western intended to address the closed/open reservation issue. In order to retain the flexibility to address these situations, this Federal Register notice states that Western