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February 27, 2026

BY OVERNIGHT DELIVERY

Bureau of Reclamation
Attn: BCOO-1000
P.O. Box 6170
Boulder City, NV 89006

Re: Comments of the Hualapai Indian Tribe to Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

As water rights attorneys for the Hualapai Tribe, we submit the following comments for the Tribe on the Draft Environmental Impact Statement of the Interior Department's Bureau of Reclamation on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (DEIS), published in the Federal Register on January 16, 2026.

1. Basic Water Sources, Uses and Present and Future Water Needs on Hualapai Reservation.

The Hualapai Reservation encompasses approximately one million acres in northwestern Arizona. All lands on the Reservation are tribal trust lands; there are no allotments or fee inholdings. The Colorado River forms the northern boundary of the Reservation through a 108-mile portion of the Grand Canyon. The entire Reservation is downstream from Lake Powell and upstream from Lake Mead.

The Reservation is arid and has no significant surface water streams other than the Colorado River. It has very limited groundwater resources, on which the Tribe currently depends for all its water needs. The Tribe's principal residential community at Peach Springs, Arizona presently relies exclusively on three groundwater wells near the Reservation's southern boundary. Those wells were installed in 1975, so the piping for the well system is over 50 years old and has failed in the recent past, leaving the Peach Springs community without water for several days. One of the wells has also suffered episodes of dangerous E-coli and coliform contamination. When that well is out of service because of contamination, the Tribe is unable to supply sufficient water to Peach Springs and has been forced to implement strict mandatory conservation measures. Because this groundwater is currently the only source of water for residential needs on the Reservation, the Tribe is very vulnerable to any short-term interruptions in supply from these wells, and also to the long-term decline in the water levels in the aquifer from which the wells are supplied.

Water availability is even worse elsewhere on the Reservation. There is a small groundwater well on the east side of the Reservation that provides water to ranchers and wildlife in that area, but this water is not potable for human consumption. And there are two wells at West Water, which is located on a dirt road that runs between Peach Springs and the Tribe's principal economic enterprise at Grand Canyon West on the western rim of the Grand Canyon—a distance of 60 miles. The West Water wells, which are 35 miles from Grand Canyon West, previously provided all of the water for the Tribe's Grand Canyon West development. But several years ago, the water table in those wells suddenly dropped because of the current long-term drought and both wells failed. Since then, the Tribe has been forced to curtail some of its operations at Grand Canyon West because of a lack of water, and has resorted to pumping groundwater near Peach Springs and hauling it by truck to the West Water site, from which the water is then pumped to Grand Canyon West. This patchwork system is insecure and very expensive, but it is the only way the Tribe can continue any operations at Grand Canyon West.

Grand Canyon West is the centerpiece of the Tribe's economy, and is vitally important to the economic wellbeing of the Hualapai Tribe. The Hualapai Reservation does not have the natural

resources to permit commercial agriculture, timber or mineral development. But the Reservation's virtually unique location on the Grand Canyon gives the Tribe a strong basis to create a self-sustaining tourism-based economy.

Prior to the pandemic, Grand Canyon West employed more than 1,500 workers (more than 550 of whom were not tribal members). At that point, the Hualapai Tribe was the second largest employer in Mohave Country, Arizona, and Grand Canyon West hosted over 1 million visitors a year. Although operations at Grand Canyon West declined during the pandemic years, they are now slowly returning to pre-pandemic capacity. But Grand Canyon West, like Peach Springs, requires a secure source of water in order to operate and the Tribe's current reliance on its declining groundwater resources is not sustainable. Water from the Colorado River is vitally necessary to securing the basic domestic needs of the Tribe's on-Reservation population and to sustaining its on-Reservation economy, particularly at Grand Canyon West.

2. Hualapai Water Rights Settlement Act.

In the Hualapai Tribe Water Rights Settlement Act of 2022, Pub. L. No. 117-349, 136 Stat. 6225 (2023), Congress approved a full and final settlement of all of the Hualapai Tribe's federally reserved water rights claims for its Reservation and trust lands, including the Tribe's rights to water from the Colorado River. The Act quantifies the Tribes' Colorado River water rights as 4,000 acre-feet a year (afy) of Central Arizona Project (CAP) water. Within the CAP, this entire water allocation has a non-Indian agricultural (NIA) priority. The Act provides that 1,115 acre-feet a year of the CAP water will be firmed (half by the United States and half by the State of Arizona) to municipal and industrial (M&I) priority status—the highest priority within the CAP—but only until 2108. Like Hualapai, several other tribal water settlements in Arizona provide tribes with quantities of the Central Arizona Project NIA water, which is the lowest priority water in the CAP system, the first block of water cut when shortages are declared to the CAP system.

This NIA water was set aside by Congress in 2004 for future tribal water settlements by the Arizona Water Settlements Act (AWSA). At the time ASWA was enacted, the general expectation of Congress, the State of Arizona, and tribal and non-Indian water users was that Colorado River shortages would occur relatively rarely and that tribes could "bank" NIA water they did not use in wet years that could be withdrawn from the "bank" for use in dry years when shortages would occur. This general expectation still prevailed in 2012 when the framework for the Hualapai water settlement was negotiated between the Tribe, the Interior Department, the State of Arizona, and major water users and providers in the State, chiefly the Salt River Project (SRP) and Central Arizona Water Conservancy District (CAWCD). A statute ratifying the Hualapai settlement was introduced in Congress in 2014 but not enacted by Congress until 2022.

In the past decade, the unprecedented drought in the Southwest—which had initially been seen as part of the cyclical pattern of wetter and drier periods observed throughout the prior century—has become recognized as a more permanent, structural phenomenon. Deep shortages in Colorado River flows in the past several years have led the Interior Department to impose significant reductions in water deliveries in the Lower Basin in order to preserve long term system operations. It bears emphasis that neither the Hualapai Tribe nor the State of Arizona anticipated any such shortages when the Arizona Water Settlements Act was passed in 2004 nor when the framework of the Hualapai settlement was agreed to in 2012.

The Hualapai Settlement Act also authorized the appropriation of $312 million of federal monies for a trust fund the Tribe may use to construct an infrastructure project to pump and deliver up to 3,414 afy of water from the Colorado River to the Reservation, and for other purposes. The project, as currently planned by the Tribe, will divert water from the Colorado River on the Reservation where Diamond Creek enters the River, and then pump that water up to the plateau thousands of feet above the River through a 70-mile pipeline to reach both Peach Springs—the community where virtually all the Tribe's members reside on the Reservation—and Grand Canyon West.

In addition to the CAP water allocated to the Hualapai Tribe in the 2022 Hualapai Settlement Act, Congress established an Economic Development Fund to enable the Hualapai Tribe to purchase additional Colorado River water rights as part of a separate settlement agreement among the Tribe, the United States and Freeport Minerals Corporation. This settlement agreement was ratified by Congress in the Bill Williams River Water Settlement Act of 2014, Pub. Law 113-223, (sec. 5(d)(1)(A)). Freeport has contributed the money required by that settlement to this Fund. In June 2024, the Hualapai Tribe used a part of the money in that Economic Development Fund to purchase 298 acres of land appurtenant to the Colorado River in the vicinity of Yuma, Arizona, together with a right to divert up to 1,110 afy of water from the Colorado River. The DEIS recognizes this water right as belonging to the Hualapai Tribe. Technical Appendix 18 (TA 18) at p. 6.[1]

[1] Erroneously, however, the DEIS states this right has a priority date of February 17, 2006, TA 18, p. 6. That date is incorrect. While the prior owner of the 298-acre tract entered into a "Section 5" contract with the Bureau of Reclamation to divert the 1,110 afy in 2006, the Bureau of Reclamation's practice is to treat Colorado River water users with Section 5 contracts in Arizona as having a priority date that is co-equal with CAP unless their diversions commenced prior to the authorization of CAP by Congress.

3. <u>The Department Should Not Curtail Full Deliveries of Any Tribal Water Rights, Including Hualapai's, That Have Been Quantified by Congress or by Final Court Decrees.</u>

The DEIS considers and analyzes five alternative strategies for managing Colorado River water in times of shortage after 2026, some of which are based on the existing priority system and others of which propose to allocate shortages on a pro rata basis. Although the DEIS contains voluminous information about tribal water rights in the Colorado River Basin and how those rights would be impacted under each of the five alternatives the DEIS considers, the DEIS is fatally flawed because it fails to consider and analyze any option that <u>fully</u> protects from diminution in times of shortage all tribal water rights—like Hualapai's—that have been ratified and confirmed by Acts of Congress and/or final court decisions.

In doing this blinkered analysis, the DEIS simply assumes that there is no possible alternative that would fully protect tribal water rights from curtailment during shortages, and that the Department must therefore simply accept as inevitable the conclusion that some congressionally approved or judicially decreed tribal water rights must be cut in water short years. But of course, this outcome is not inevitable and the Department sets forth no factual basis to support its assumption that this outcome is unavoidable. Instead, the DEIS could and should—indeed must—consider a different available alternative for managing shortages: one that would <u>not</u> impose any shortages on tribal water rights that have been confirmed by Congress and/or by final court decrees.

This defect must be corrected in the final EIS (FEIS) and Record of Decision (ROD). The Final EIS should consider and analyze an alternative that fully protects from diminishment all tribal water rights approved in congressional statutes or judicial decrees—either separately as a Sixth Alternative or in tandem with whatever Alternative the Final EIS and ROD selects as the Preferred Alternative. In other words, the Department should provide an alternative that starts from the premise that congressionally or judicially approved tribal water rights will be prioritized and fully protected from curtailment, and then analyze the impact of doing so on other water users.

The Hualapai Tribe does not itself have sufficient information to assess the consequences of protecting from curtailment the water rights of every other tribe.[2] The Tribe does submit that,

[2] As set forth in TA 18, pp. 5-7, of the DEIS, the legislative enactments and judicial decrees quantifying tribal water rights in the Colorado River vary considerably. Several tribes in Arizona and California hold present perfected rights in the *Arizona v. California* decree of the United States Supreme Court. Table TA 18-2; TA 18, pp. 5-6. Other tribes, like Hualapai, have CAP entitlements with varying priorities, including NIA water. Table TA 18-3, TA 18 pp. 6-7.

for several reasons, protecting Hualapai's rights would have minimal impact on other users during the 20-year period after 2026 in which the Department's Decision is expected to operate.

First, the Hualapai Tribe's Colorado River water entitlements totals 5,110 afy, TA 18 at pp. 6-7, which is a relatively small amount. The major portion of this entitlement—4,000 afy—was specifically approved by Congress as a CAP NIA water allocation when it ratified the Tribe's water rights settlement agreement in 2022. Second, Hualapai's congressional settlement will not become enforceable until Congress fully appropriates the funding authorized in the 2022 Settlement Act and other conditions are met. Third, once the Hualapai settlement does become enforceable, which will likely be several years after 2026, it will then take the Tribe several additional years to finally construct the water delivery infrastructure authorized by Congress in the Settlement Act. Fourth, it will take additional years—perhaps decades—for the Tribe to fully utilize its 5,110 afy Colorado River entitlement on the Reservation. Consequently, at least some Hualapai water will almost certainly be available for conservation in Lake Mead during most if not all of the two decades after 2026 that the Final ROD is expected to operate. Finally, Hualapai is the only tribe in Arizona with a settlement or decree quantifying its water rights upstream of Lake Mead. In that stretch of the Colorado River, there are no other water sources available to the Hualapai Tribe as plausible alternatives to the water rights confirmed in its settlement—which may not be true of every other tribe with an entitlement to Colorado River or CAP NIA water.

Even though Hualapai will not have access to its water rights until the occurrence of the enforceability date of its settlement several years from now, it is critical for the Department in the FEIS not to impair or reduce Hualapai's water rights on an anticipatory basis. The Department intends that the allocation system adopted in the FEIS will apply for a 20-year period—a period during which Hualapai almost certainly will be bringing water to its Reservation to use both to support its population and its on-Reservation economy. Thus, the post-2026 rules to be adopted in the FEIS this year certainly will affect Hualapai in the 20-year period during which the FEIS rules will be in effect. The Department should not adopt an allocation system that reduces Hualapai's access to water even before that access is first realized.

We emphasize that the Hualapai Tribe's quantified CAP water right of 4,000 afy—a right specifically approved by Congress—is a tiny amount of water in the vast Colorado River system, even in a system stressed by drought. From the perspective of the Department's management of the River, this quantity of water hardly rises to the level of a rounding error. But for Hualapai, that small amount of water is the entirety of the future of its Reservation and the future of the Hualapai people. As described in Part I above, the existing groundwater on the Reservation—currently the sole source of water—is insecure and failing, leaving the Reservation population in a constant state of near (and sometimes actual) crisis. And Grand Canyon West, the lynchpin of the Tribe's economy and the principal source of employment for the Tribe's population, is entirely dependent

on this failing groundwater system and on an expensive and burdensome need to truck groundwater long distances to deliver it to Grand Canyon West.

It should also be noted that because of its location directly on the Grand Canyon, Hualapai stands in a privileged position as compared to most users of the Colorado River in Arizona. The Colorado River flows right by the Hualapai Reservation; indeed, it forms the northern boundary of the Reservation for 108 miles. The Colorado River is part of the aboriginal homeland of the Hualapai people. Yet the water from the Colorado River has been and will continue to be pumped hundreds of miles by the CAP system to serve the needs of populations living in central Arizona, while the Hualapai people, who watch the River flow by their homeland every day, have for decades been denied the right to use any of that water. Now that Congress has finally quantified Hualapai's federally reserved water right to use a small but necessary amount of water from the River to sustain their life on the Reservation, that hard-won victory should not be impaired by the Department's administrative action to reduce Hualapai's water right, even in times of shortage. It is all the more improper to reduce Hualapai's right to take water from the River on its own lands in favor of populations who live far distances away.

Failure by the DEIS to even consider full protection of tribal water rights quantified by Congress or final court decrees in times of shortage renders the DEIS legally deficient for several reasons. First, it ignores the well-established trust responsibility of the United States towards these rights—rights to which the United States holds legal title to in trust for the Indian tribes in the Colorado River Basin. Second, tribal water rights unquestionably have a superior legal right to the Colorado River as compared to any non-Indian rights. That was clearly established as long ago as 1908, when the Supreme Court held in the landmark case of *Winters* v. *United States*, 207 U.S. 564 (1908), that Indian tribes have water rights under federal law that are legally senior to non-Indian uses commenced after the date the tribe's reservation was established (in Hualapai's case, 1883). In *Winters*, the Court held that tribes can use these water rights to satisfy both their present and future needs to create a permanent, self-sustaining homeland for the Tribe and its members. Tribal water rights thus have a priority that, under the *Winters* Supreme Court decision, is senior to all non-Indian water rights in the Colorado River Basin.

Sadly, however, in the five decades immediately following the *Winters* decision, the United States egregiously and repeatedly failed to assert the rights of tribes in court cases against non-Indian water appropriations that were legally junior to the rights of tribes as determined in *Winters*. For over 50 years, the Federal Government ignored the law and provided federal funds for construction of non-Indian water projects in the Colorado River and elsewhere in the West to allow non-Indians to use water to which Tribes had superior legal rights. As the National Water Commission's Final Report succinctly summarized this history of abject neglect in 1973:

> During most of this 50-year period [following the decision in *Winters v. United States*, 207 U.S. 564 (1908)], the United States was pursuing a policy of encouraging the settlement of the West and the creation of family-sized farms on its arid lands. In retrospect, it can be seen that this policy was pursued with little or no regard for Indian water rights and the *Winters* doctrine. With the encouragement, or at least the cooperation, of the Secretary of the Interior—the very office entrusted with protection of all Indian rights—many large irrigation projects were constructed on streams that flowed through or bordered Indian Reservations, sometimes above and more often below the Reservations. With few exceptions the projects were planned and built by the Federal Government without any attempt to define, let alone protect, prior rights that Indian tribes have had in the waters used for the projects. . . . In the history of the United States Government's treatment of Indian tribes, its failure to protect Indian water rights for use on the Reservations it set aside for them is one of the sorrier chapters.[3]

This shameful history has changed for the better in more recent decades, during which tribes have themselves acted to assert their reserved water rights in court and have negotiated settlement agreements approved by Congress quantifying their *Winters* doctrine reserved rights. Since the 1970s, the United States, as trustee for these rights, has generally participated in this litigation, usually by supporting the water rights claims that the tribes have asserted in court and also by supporting congressional legislation confirming water rights settlements that tribes have negotiated resolving those claims.

However, in order to secure the support in Congress for these tribal water settlements from the Federal Executive Branch, States and non-Indian water users, tribes—including the Hualapai Tribe—have been required to waive all claims against the United States, States and non-Indian water users for past injuries to or encroachment upon the tribes' legally senior water rights. Specifically, tribes—including Hualapai—have been required to waive all claims against the United States for its abject historical failures to protect their rights in the decades immediately following the *Winters* decision.

These waivers constituted major concessions by the tribes because they have allowed legally junior non-Indian users to continue to use water to which the tribes hold senior legal rights. And by waiving claims against the United States, tribes have absolved the Federal Government from damages for its past failures to protect tribal rights to which the tribes, by law, held a senior legal priority. Because of the historic derelictions of the United States throughout much of the

[3] NAT'L WATER COMM'N, WATER POLICIES FOR THE FUTURE – FINAL REPORT TO THE PRESIDENT AND TO THE CONGRESS OF THE UNITED STATES 474-75 (Washington: Government Printing Office, 1973).

20th century in failing to protect tribal water rights, non-Indians were able to develop long-established water uses that tribes were then forced to recognize in their negotiated water settlements.

For the Secretary now to fail to protect congressionally approved quantifications of tribal water from shortages would impose a fundamental unfairness on the tribes that have entered these settlements in good faith. On the one hand, the tribes remain fully bound by *all* of the waivers they have given to the State and Federal parties in these settlements. But on the other hand, tribes would not receive the full benefit of the bargain they are entitled to in exchange for giving these waivers—a right to take full delivery of the Colorado River water in a quantity that Congress approved as necessary to sustain a permanent livable homeland on their reservations. Instead, pursuant to a Secretarial decision, tribal water confirmed by Congress would be subject to severe reductions. The United States and non-Indian parties would continue to get everything they bargained for in these settlements with Hualapai and other tribes, but the tribes in return would get much less than they bargained for. That result would be a clear miscarriage of justice. As part of the ROD in this matter, the Secretary must ensure that tribes receive the full quantity of water that Congress or a court has determined is necessary to meet the tribes' present and future needs for its Reservation.

There is historical precedent for the Secretary to take this kind of protective action on behalf of tribes. In 1980, Interior Secretary Cecil Andrus established an allocation of 308,000 acre feet a year of CAP water to certain Arizona Indian tribes and published a decision in the Federal Register providing that the amounts allocated to those tribes would be accorded co-equal priority with all CAP M&I users in Arizona, 45 Fed. Reg. 81265 (December 10, 1980), (copy enclosed). Interior Secretary James Watt reaffirmed Secretary Andrus's allocation with some modifications, mostly with relatively small reductions in the amounts allocated to some tribes. 48 Fed. Reg. 12446 (March 24, 1983) (copy enclosed). This allocation and protection was established by Secretaries Andrus and Watt administratively in the exercise of the Secretary's executive discretion and authority to manage Colorado River operations and withdrawals, even where these allocations were not part of any congressionally or judicially approved quantification of any tribe's *Winters* doctrine reserved water rights as is the case with Hualapai. This history demonstrates the ample authority of the Department to take steps to prioritize and protect tribal water rights, an authority that must be exercised here as well.

By contrast, failure by Secretary Burgum to adopt protections to ensure full delivery of Colorado River water to tribes with congressionally or court approved water rights would subordinate the senior legal priority of tribal water rights under the *Winters* doctrine to legally junior non-Indian uses, which would diminish the tribal water rights that have been specifically approved by Congress or by final court decrees. Such an action would repeat the dismal and

discredited failures of the United States to assert and protect tribal reserved rights in the several decades immediately following *Winters* and would result in a comparable and irreparable subversion of tribal water rights. The Secretary should not allow the United States in the 2020s to repeat the appalling derelictions of its trust responsibility that occurred over a period of several decades in the early and mid-20th century.

4. <u>If the Department Fails to Fully Protect Tribal Water Rights, It Should Adopt the Allocation System Which Least Impairs Hualapai's Water Rights.</u>

To its credit, the Department in the DEIS did analyze the impact of various alternatives that would have less deleterious impacts on the water rights of most Arizona tribes—including Hualapai—than simply mechanically allocating shortages based on a strict regime of legal priorities. Some of these alternatives would instead allocate shortages on a pro rata basis.

The Hualapai Tribe strongly favors the pro rata allocation alternatives because the century-old legal priority system first established in the 1922 Colorado River Compact is deeply flawed and outmoded. Even at the time the 1922 Compact was adopted, it was based on overly optimistic and unrealistic hydrologic projections for the Colorado River that substantially overstated the available water supply in the River. Those 1922 projections are now completely antiquated because of the current long-term drought. Continuing to manage shortages in the next two decades during the present drought based solely on a system of legal priority established more than a century ago would subordinate all water rights in Arizona and Nevada with a priority date of 1968 or later—the year Congress authorized the CAP—to California's right to divert 4.4-million-acre feet a year from the River—about two thirds the average minimal flow in the Lower Basin. Adhering to a strict legal priority alternative would devastate the economies of Arizona and Nevada as well as sharply curtail deliveries of Central Arizona Project water to Arizona tribes—the water on which most tribes in Arizona depend. As a practical matter, this would also eliminate all tribal rights to CAP NIA water in most years. Needless to say, that would devastate the Hualapai Tribe's congressionally approved water rights, and make virtually illusory the benefits which the Tribe is supposed to receive under its water rights settlement. The Secretary's final decision on this matter should protect Hualapai, other Arizona tribes and Arizona itself from such a disastrous result.

Of the alternative pro rata allocation alternatives considered, Hualapai favors the "Enhanced Coordination" model because, of all approaches, it has the least bad outcomes for Hualapai. Unlike the priority-based models, which essentially wipe out Hualapai's CAP NAI supply, the "Enhanced Coordination" model makes comparatively modest cuts of less than 25 percent to Hualapai's 4,000 afy allocation, in scenarios up to total River shortages of 2.3 million acre-feet per year. While this would still impose real limitations on Hualapai's future supply of

the water necessary to support its population and economy, it has the advantage of doing less harm to Hualapai than the other alternatives analyzed by the DEIS.

The Hualapai Tribe appreciates the opportunity to submit these comments.

Respectfully Submitted,

SONOSKY, CHAMBERS, SACHSE,
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Mary J. Pavel
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Attorneys for the Hualapai Tribe

Enclosures: 45 Fed. Reg. 81265 (December 10, 1980)
48 Fed. Reg. 12446 (March 24, 1983)

withdrawal will continue until such final determination is made.

All communications in connection with this proposed modification should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona, 85073.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-7565 Filed 3-23-83; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Amoco Production Company (USA) has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 0987, Block 273, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: March 16, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-7606 Filed 3-23-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that The Superior Oil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0253, Block 149, West Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: March 16, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-7607 Filed 3-23-83; 8:45 am]

BILLING CODE 4310-MR-M

Office of the Secretary

Central Arizona Project, Arizona; Water Allocations and Water Service Contracting; Record of Decision

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of final water allocations to Indian and non-Indian water users and related decisions.

SUMMARY: The purpose of this action is to provide notice of final decisions made by the Secretary of the Interior concerning the allocation of water developed by the Central Arizona Project (CAP) to Indian and non-Indian water users, the conditions upon which those allocations were made, and water service contracting.

FOR FURTHER INFORMATION CONTACT: David G. Houston, Deputy Assistant Secretary, Land and Water Resources, U.S. Department of the Interior, Washington, D.C. 20240. Telephone: (202) 343-5678.

SUPPLEMENTARY INFORMATION: Previous Department of the Interior notices concerning CAP water allocations were published in the Federal Register on December 20, 1972, April 18, 1975, October 18, 1976, August 8, 1980 and December 10, 1980. Previous notices concerning compliance with the National Environmental Policy Act of 1969 in connection with CAP water allocations were published on June 2, 1981, December 4, 1981, December 11, 1981, and March 24, 1982.

These decisions were made pursuant to the authority vested in the Secretary of the Interior by the Reclamation Act of 1902, as amended and supplemented (32 Stat. 388, 43 U.S.C. 391) and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501), the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1505) and the Implementing Procedures of the U.S. Department of the Interior (516 DM 5.4), and in recognition of the Secretary's trust responsibilities to the Indian tribes of central Arizona. They were made after full consideration by the Secretary and his staff of the decisionmaking records and activities of previous Secretaries of the Interior on the subject of CAP water allocations, the draft and final environmental impact statements prepared on Water Allocations and Water Service Contracting, Central Arizona Project (INT-DES 81-50 and INT-FES 82-7 respectively), and the views of members of the public, officials of other Federal agencies and the State of Arizona, Members of the Congress, Indian tribes and environmental organizations presented in the form of written comments and correspondence or orally at meetings and public hearings held in connection with the allocations and environmental impact statements.

Lake. The island is composed of boulders and other material of glacial origin covered with a shallow layer of soil. Forest vegetation is similar to that of the adjacent surveyed upland which consists of pole size Norway, white and jack pine, and birch. The understory consists of alder, hazel, and white pine.

Tract No. 47 rises to an elevation of 15 feet above the ordinary high water mark of Spider Lake. The island is composed of glacial till covered with a shallow to medium layer of soil. Forest vegetation is similar to that of the adjoining surveyed upland which consists of Norway and white pine, birch, and aspen. The understory is composed of pine, alder, hazel, and oak. Borings indicate that the larger pine trees range up to 150 years of age.

Tract No. 48 rises 2 feet above the ordinary high water mark of Spider Lake. The island is composed of granite glacial till rubble. The vegetation on this tract consists of underbrush.

3. The elevation of the islands, similarity of timber succession on the islands and the opposing mainland, age of timber present, composition of soil, and the character of the channel show conclusively that those tracts of land existed as an islands on May 11, 1858, when Minnesota was admitted into the Union, and at all subsequent dates.

4. The tracts 37–48 were found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). Therefore, they are held to be public land.

5. All inquiries relating to these tracts should be sent to the Deputy State Director for Lands and Minerals Operations, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before May 9, 1983.

Jeff O. Holdren,

Deputy State Director for Lands and Minerals Operations.

[FR Doc. 83-7583 Filed 3-23-83; 8:45 am]

BILLING CODE 4310-84-M

[ES 32061, Survey Group 124]

Minnesota; Filing of Plats of Survey

1. On October 5, 1982, the plats representing the survey of two islands in T. 142 N., R. 34 W., Fifth Principal Meridian, Minnesota, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. on May 9, 1983.

The islands listed below describe the lands omitted from the original survey.

Fifth Principal Meridian, Minnesota

T. 142 N., R. 34 W.,

Tract Nos. 37 and 38.

2. The island Tract No. 37 rises in elevation from 2 to 20 feet above the ordinary high water mark of Mantrap Lake. Its character is similar in all respects to that of the adjacent surveyed lands. The island is composed of boulders and other material of glacial origin, covered with a medium layer of soil. Timber on this Tract consists of basswood, ash, tamarack, spruce, aspen, and birch, with a ground cover consisting primarily of willow, hazel, dogwood, and alder. Many large tree stumps were found on the island Tract No. 37.

The elevation of Tract No. 38 rises 2 feet above the ordinary high water mark of Skunk Lake. The island is composed of glacial till covered with a shallow layer of soil, with granite boulders scattered over the Tract. Forest vegetation consists of birch, aspen, and jack pine, while the understory consists of alder and hazel.

3. The elevation of the islands, similarity of timber and vegetation on the tracts and the mainland, composition of the soil, and the character of the channels, show conclusively that the island Tract Nos. 37 and 38 existed as islands on May 11, 1858, when Minnesota was admitted into the Union, and at all subsequent dates.

4. Tract Nos. 37 and 38 were found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). They are, therefore, held to be public land.

5. All inquiries relating to these islands should be sent to the Deputy State Director for Lands and Minerals Operations, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before May 9, 1983.

Jeff O. Holdren,

Deputy State Director for Lands and Minerals Operations.

[FR Doc. 83-7584 Filed 3-23-83; 8:45 am]

BILLING CODE 4310-84-M

[AR 032168]

Arizona; Proposed Modifications of Withdrawal and Opportunity for Public Hearing

March 18, 1983.

As a result of the review made pursuant to Section 204(l) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754; 43 U.S.C. 1714, the Bureau of Land Management, Department of the Interior, proposes to modify Public Land Order 3238 of September 27, 1963, withdrawing the following described public land from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws:

Gila and Salt River Meridian, Arizona

T. 14 S., R. 13 E.,

Sec. 27, SW¼SW¼SE¼SW¼, S½S½NW¼SW¼SE¼, SW¼, E½E½SE¼SE¼SW¼, SW¼, SE¼SE¼NE¼SE¼SW¼SW¼.

The area described aggregates 3.91 acres in Pima County.

The purpose of the withdrawal is for use by the Immigration and Naturalization Service as a border patrol sector headquarters site. The Bureau of Land Management proposes to modify the period of withdrawal from an indefinite period to a period of 20 years. No change is proposed in the purpose or segregative effect of the withdrawal.

Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal modification. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned on or before June 30, 1983. Upon determination by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. In lieu of or in addition to attendance at a scheduled public hearing, written comments or objection to the proposed modification may be filed with the undersigned officer on or before June 30, 1983.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. The authorized Officer will review the withdrawal rejustification to ensure that the modification would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for and an agreement is reached on the concurrent management of the land and its resources. The authorized Officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the withdrawal will be modified and if so, for how long. The final determination of the modification of the withdrawal will be published in the **Federal Register.** The existing

Decision

The Secretary of the Interior has elected to allocate waters developed by the Central Arizona Project (CAP) and to proceed with water service contracting with Indian and non-Indian users for the delivery of Arizona's remaining entitlement to Colorado River water. This decision allocates 309,828 acre-feet annually of water for Indian use (see Table 1) and 640,000 acre-feet annually for municipal and industrial (M&I) use (see Table 2), with the remaining supply for non-Indian agricultural use (see Table 3).

These allocations will, however, be subject to the following conditions:

1. The Gila River Indian Community will be offered a water service contract for 173,100 acre-feet per year for irrigation purposes on the reservation subject to acceptance of feasible non-potable water exchanges and subject to a 25 percent reduction in water short years with the remaining 75 percent of the irrigation allocation on a priority basis with 510,000 acre-feet of non-Indian M&I allocations.

2. Indian entities with existing contracts which provide for non-potable water exchanges will be required to accept non-potable water exchanges where feasible and consistent with contractual provisions.

3. Allocations to tribal homelands are intended to serve irrigation, domestic, municipal, and industrial uses on the Reservations and repayment of allocated project costs will be based on actual uses of the water and will be in accordance with applicable statutes.

4. The M&I allocation of 640,000 acre-feet per year can be made more firm by executing feasible non-potable effluent exchanges with Indian tribes. This allocation is subject to adoption of a pooling concept whereby all M&I allottees share in the benefits of effluent exchanges.

5. Water service contracting with M&I entities will proceed in accordance with this decision and based on quantities delineated on Table 2 herein.

6. An initial contracting period extending for 6 months will be provided and, in the absence of extenuating circumstances, the expiration of such period will lead to a request on behalf of the Secretary for the Arizona Department of Water Resources (DWR) to recommend reallocation of any remaining M&I and non-Indian agricultural water not contracted for during the initial contract period.

7. All water not contracted for, or contracted for but not expected to be utilized during interim periods, will be retained under jurisdiction of the Secretary and will be marketed on an interim basis to expedite repayment of the CAP.

CAP Water Allocation Description

The decision is to allocate 309,828 acre-feet of CAP water annually to 12 Indian entities for irrigation or for maintaining tribal homelands; and to accept the State of Arizona's 1982 allocation recommendations for non-Indian users, which provide 640,000 acre-feet annually for M&I use, with the remaining supply for non-Indian agricultural use.

The quantities allocated to Indian users and the purposes they will serve are shown in Table 1.

TABLE 1.—CAP WATER ALLOCATIONS, INDIAN COMMUNITIES

Units: Acre-feet

Entity	Irrigation	Tribal homeland [1]	Total
Ak Chin	58,300		58,300
Camp Verde		1,200	1,200
Fort McDowell		4,300	4,300
Gila River	173,100		173,100
Papago-Chuchu	8,000		8,000
Papago-San Xavier		27,000	27,000
Papago-Schuk Toak		10,800	10,800
Pasqua Yaqui		500	500
Salt River	13,300		13,300
San Carlos	2,700	10,000	12,700
Tonto Apache		128	128
Yavapai		500	500
Total	255,400	54,428	309,828

[1] Includes irrigation, domestic, municipal, and industrial uses on the Reservation.

To ensure that maximum beneficial use is made of CAP water supplies in conjunction with available Arizona water supplies, Indian entities with existing contracts which provide for non-potable water exchanges will be required to accept non-potable water in exchange for CAP Indian irrigation allocations where feasible and consistent with contractual provisions. During years of water supply shortages, Indian users and non-Indian M&I users would share a first priority on project water supplies. Depending upon severity of shortages, project water delivery for miscellaneous uses would be reduced pro rata until exhausted; next, non-Indian agricultural uses would be reduced the same way until exhausted; next, the Gila Tribe allocation would be reduced 25 percent and other Indian irrigation uses would be reduced 10 percent on a pro rata basis until exhausted. Thereafter, the remaining water contracted for by 11 Indian entities under existing contracts and 75 percent of the Gila River Tribe allocation would share a priority with 510,000 acre-feet of non-Indian M&I uses (the 510,000 acre-feet of M&I supply is exclusive of water obtained through effluent exchange agreements with Indian entities) and would be reduced on a proportional basis, and within each class on a prorated basis, based on the amount of water actually delivered to each entity in the latest non-shortage year.

It is further decided that the water allocated to tribal homelands, under provisions of these CAP water allocations, shall be defined to serve irrigation, domestic, municipal, and industrial uses and purposes on the Reservations and repayment shall be subject to applicable law based on the actual use of the water.

The Secretary of the Interior will retain the right to contract for water sales on an interim basis where Indian water allottees are not utilizing the full CAP allotment as provided herein.

The quantities allocated to the M&I entities recommended for CAP water by the DWR in 1982 are shown in Table 2 below. The allocations include 71 municipal users, 2 power companies, 8 mining companies, 2 recreational entities, and 2 other applicants that do not fall under any of these categories.

TABLE 2.—CAP WATER ALLOCATIONS MUNICIPAL AND INDUSTRIAL [1]

(Units: Acre-feet)

Entity	Schedule of demand			
	County	1985	2005	2034
M&I (municipal) [2]				
Agua Fria (Citizens Util. Co.)	Mar			1,439
Apache Jct. (Az. Water Co.)	Pinal			6,000
Avondale	Mar			4,099
Bennett Water Co	Mar			432
Buckeye	Mar			[3] 25
Camp Verde Water Co	Other			1,443
Casa Grande (Az. Water Co.)	Mar			6,554

TABLE 2.—CAP WATER ALLOCATIONS MUNICIPAL AND INDUSTRIAL[1]—Continued

[Units: Acre-feet]

Entity	County	Schedule of demand		
		1995	2005	2034
Carefree Ranch Water Co	Mar			954
Carefree Water Co	Mar			400
Cave Creek Water Co	Mar			1,500
Chandler	Mar			3,668
Chandler Heights I.D	Mar			315
Chaparral City Water Co	Mar			8,978
Clearwater Co	Mar			2,648
Coolidge (Az. Water Co.)	Pinal			2,000
Community Water Co. (Gm, Vly.)	Pima			1,100
Consolidated Water Co	Mar			3,902
Contaro-Marana I.D	Pima			47
Cottonwood Water Co	Other			1,159
Graysond Valley Water Co	Mar			2,597
Del Lago	Pima			765
Desert Ranch Water Co	Mar			109
Desert Sage Water Co	Mar			5,951
Desert Sands Water Co	Mar			768
Eloy	Pinal			2,171
E&R Water Co	Other			161
Florence	Pinal			1,543
Florence Gardens	Pinal			457
Flowing Wells I.D	Pima			4,974
Foothills Water Co	Pima			1,602
Gilbert	Mar			7,355
Glendale	Mar			14,685
Globe	Other			3,583
Goodyear	Mar			2,374
Green Valley Water Co	Pima			1,900
Ironwood Water Co	Mar			922
Litchfield Park Serv. Co	Mar			6,560
Maricopa Mtn. Water Co	Pinal			109
Mayer-Humboldt Water Co	Other			300
McMicken I.D	Mar			9,237
Mesa	Mar			20,129
Miami-Claypool (Az. Water Co)	Other			1,859
Midvale Farms Water Co	Pima			1,530
Nine Pueblo	Pima			237
Nine Tower Utility Co	Mar			2,359
Nogales	Other			3,948
North Valley Water Co	Mar			393
Palm Springs Water Co	Pinal			2,919
Paradise Valley Water Co	Mar			3,231
Payson	Other			4,995
Peoria	Mar			15,900
Phoenix	Mar			133,882
Prescott	Other			7,127
Queen Creek I.D	Mar			944
Ranch Lands Water Co	Pima			393
Rio Rico (Citizens Util. Co.)	Pima			2,683
Rio Verde Util. Inc	Mar			812
San Tan I.D	Mar			239
Scottsdale	Mar			19,702
Sun City (Citizens Util Co.)	Mar			15,815
Sunrise Water Co	Mar			544
Sunshine Water Co	Mar			18
Tempe	Mar			4,215
Triple End Water Service	Other			206
Tucson	Pima			151,084
Turner Ranches	Mar			3,902
West End Water Co	Mar			197
West Phoenix Water Co	Mar			21
White Tank (Az. Water Co.)	Mar			960
William A. F. Base	Mar			853
Youngtown	Mar			390
Subtotal				494,742
M&I (Power):				
Az. Publ. Serv./Salt Ri. Proj.		55,600	*	142,215
M&I (Mines):				
Anamax, Twin Buttes	Pima	8,105	*	4,644
Asarco—Hayden	Other	833	*	582
—Mission	Pima	4,161	*	10
Cities Serv. Co	Other	3,285	*	2,871
Cyprus-Pima	Pima	7,263	*	5,259
Duval	Pima	11,828	*	8,640
Inspiration Copper	Other	4,647	*	2,904
Kennecott	Other	28,611	*	22,028
Phelps-Dodge	Other	20,866	*	14,565
Subtotal Mines				60,764
M&I (Recreation):				
Az. Game & Fish Dept	Mar	795	*	324
Maricopa County	Mar	852	*	965
Subtotal—Rec				989
M&I (Other):				
Phx. Memorial Park	Mar			84
State Land Department				39,708

TABLE 2.—CAP WATER ALLOCATIONS MUNICIPAL AND INDUSTRIAL [1]—Continued

[Units: Acre-feet]

Entity	Schedule of demand			
	County	1985	2008	2034
Subtotal—Other				36,080
Total				[6]508,823

[1] Municipal subcontractors will be allowed to use up to the amount of water identified for the year 2034 at any time during the contract repayment period.
[2] The maximum allocation shall be 434 acre-feet until 2005, then reducing to 25 acre-feet per year for the year 2034.
[3] Subcontractors will be allowed to utilize the indicated amount until such time that all M&I use totals 640,000 acre-feet.
[4] Distribution between the two entities to be determined during contract negotiations.
[5] No request for water in the year 2034.
[6] Rounded to 640,000.

To ensure that maximum use is made of available CAP water supplies, the Secretary of the Interior will retain the right to contract for water sales on an interim basis where water allottees are not utilizing the full CAP allotment as provided herein.

The allocations to M&I users can be made more firm by, and are premised on expectations that, municipal effluent in quantities of least 100,000 acre-feet per year will be exchanged with Indian users. These expectations are consistent with the Indian allocations where this decision provides that exchanges will be required where feasible and consistent with contractual provisions. Exchanges will be treated under a pooling concept whereby benefits of exchange will accrue to all M&I users.

The CAP water allocations to the non-Indian agricultural users shall include the remaining supplies and are expressed as percentages of water available to non-Indian agriculture. These agricultural entities range in size from 90 acres to over 150,000 acres and include 23 irrigation districts or farming operations. Table 3 below provides the percent of supply available for each entity.

As previously noted for Indian allottees and non-Indian municipal and industrial allottees, the Secretary of the Interior will retain the right to contract for water sales on an interim basis where water allottees are not utilizing the full CAP allotment as provided herein.

TABLE 3.—CAP WATER ALLOCATION: NON-INDIAN IRRIGATION [1]

	Percent of supply available for non-Indian agriculture		
	1985	2008 [2]	2034 [3]
Arcadia Water Company	0.19		
Ara Valley Association	3.69		
Central Arizona Irrigation District	18.01		
Chandler Heights Irrigation District	.29		
Cortaro-Marana Irrigation District	2.14		
FICO	1.39		
Harquahala Valley Irrigation District	7.67		
Hohokam Irrigation District	6.36		
La Canoa	.04		

TABLE 3.—CAP WATER ALLOCATION: NON-INDIAN IRRIGATION [1]—Continued

	Percent of supply available for non-Indian agriculture		
	1985	2008 [2]	2034 [3]
Maricopa-Stanfield Irrigation District	20.48		
Marley, Jasper Jr.	.06		
McMicken Irrigation District	2.28		
MCMWCD #1	4.98		
New Magma Irrigation District	4.34		
Queen Creek Irrigation District	4.83		
Rood, W. E.	.06		
Roosevelt Irrigation District	2.81		
RWCD	5.98		
Salt River Project	2.97		
San Carlos Irrigation District [4]	4.09		
San Tan Irrigation District	.77		
Tonopah Irrigation District	1.98		
U.S. Forest Service	.22		
Total	100.00		

[1] During shortages, all M&I and Indian uses would have priority over non-Indian irrigation. Where available, non-Indian irrigation shares the project supply available for this purpose according to the listed percentages. These allocations are based in part on recommendations from the State of Arizona and percentages shown are reflective of those provided in correspondence to the Secretary of the Interior dated January 18, 1982, and November 10, 1982, from the Arizona Department of Water Resources.

[2] The allocation for years subsequent to 1985 will be based on the 1985 allocation minus the supply that would have been delivered to eligible lands that have been converted to M&I or otherwise removed from irrigation. Contract language similar to that contained in the letter to the Secretary of the Interior from the Arizona Department of Water Resources dated November 10, 1982, will be included in all non-Indian irrigation subcontracts.

[3] The water service subcontract among the United States, the Central Arizona Water Conservation District (CAWCD) and the San Carlos Irrigation District (District) will not require the District to reduce the amount of groundwater pumped by the amount of CAP water received. However, the subcontract will require that the District continue to employ measures adequate in the judgment of the Secretary and the CAWCD to control expansion of irrigation in the contract service area and to reduce pumping of groundwater consistent with, and to comply in all other respects with, Arizona's statutory requirements.

During years of water supply shortages, Indian users and non-Indian M&I users would share a first priority on project water supplies. Depending upon severity of shortages, miscellaneous uses would be reduced pro rata until exhausted; next, non-Indian agricultural uses would be reduced the same way until exhausted; next, 25 percent of the Gila Tribe allocation and 10 percent of the irrigation amount allocated to Indian contractors other than the Gila Tribe would be reduced pro rata until exhausted. Finally, the remaining water contracted for by 11 Indian entities under existing contracts and 75 percent of the Gila River Tribe allocation would share a priority with 510,000 acre-feet of non-Indian M&I uses (510,000 acre-feet for M&I is exclusive of water obtained through effluent exchange agreements with Indian entities) and would be reduced on a proportional basis, and within each class on a prorated basis, based on the amount of water actually delivered to each entity in the latest non-shortage year.

Description of Alternative Allocations

The following alternatives were considered by the Department in reaching its decision:

A. *Options*—Water Allocation

A.1. *No Action.* The "No Action" alternative would allocate CAP water based upon the demands anticipated during the planning stages of the project: M&I deliveries at 82,000 acre-feet, 232,000 acre-feet, and 312,000 acre-feet, in years 1975, 1990, and 2000 and after, respectively, in the metropolitan Phoenix and Tucson areas. The remainder would go to agricultural users (both Indian and non-Indian) shared pro rata on acreage developed for irrigation.

A.2. *Kleppe Allocation With 1981 State Recommendations.* Five central Arizona Indian tribes would be allocated 257,000 acre-feet annually for irrigation use until 2005, thereafter 10 percent of total project supplies or 20 percent of project agricultural supplies, whichever was to their advantage. M&I users would be allocated from 190,242 acre-feet (1985) to 719,992 acre-feet (2034) annually. The remainder of the CAP supplies would be shared by 23 irrigation districts or farming operations pro rata based on eligible acres.

A.3. *Andrus Allocation With 1981 State Recommendations.* This provides 12 Indian tribes or communities with a total of 309,828 acre-feet annually for irrigation or for maintaining tribal homelands. The 1981 State recommendations provide from 190,242 (1985) to 514,000 (2034) acre-feet annually to 81 M&I entities, with the remaining supply to 23 irrigation districts or farming operations. During shortages, CAP deliveries are reduced

until exhausted first to all miscellaneous uses and then to non-Indian irrigation uses, then 10 percent of the Indian irrigation amount is reduced until exhausted. Finally, the remaining Indian irrigation and tribal homeland amounts are reduced pro rata with no more than 510,000 acre-feet per year of M&I uses, based on amount of water actually delivered to each entity in the most recent past year of full deliveries to these entities.

A.4. *Andrus Allocation Modified To Favor M&I Use.* The Indian allocations are the same as Alternative 3, the differences being in the distribution in times of shortage. The alternative allocates from 190,242 acre-feet (1985) to 897,020 acre-feet (2034) annually to 81 M&I entities, with the remaining supply to 23 irrigation districts or farming operations. During shortages, CAP deliveries are reduced until exhausted first to all miscellaneous uses and then to non-Indian irrigation uses, then 25 percent of the Indian irrigation amount is reduced until exhausted. Finally the remaining Indian irrigation and tribal homeland amounts are reduced pro rata with all M&I uses, based on the scheduled amounts of water (demand) for each entity in the current year. In addition, effluent exchanges (full time) of not less than 100,000 acre-feet per year are assumed for the Salt River and Gila River reservations in amounts not to exceed 20 percent of the individual tribe's allocation prior to 2005, nor more than 50 percent after 2005.

A.5. *Andrus Allocation Modified To Favor Indian Use.* The Indian allocations are the same as Alternative 3, the differences being in the distribution in times of shortages. This alternative allocated from 190,242 acre-feet (1985) to 578,010 acre-feet (2034) annually to 81 M&I entities with the remaining supply to 23 irrigation districts or farming operations. During shortages, CAP deliveries are reduced until exhausted first to all miscellaneous uses and then to non-Indian irrigation and non-municipal M&I use. Finally, the Indian allocated amounts are reduced pro rata with the M&I (municipal only) amounts based on the quantity of water actually delivered to each entity in the most recent past year of full deliveries. There is no prior 10 percent reduction in Indian agricultural use.

A.6. *Agency Proposed Action With 1982 State Recommendations.* The Agency Proposed Action is to allocate 309,828 acre-feet annually to 12 Indian tribes for irrigation or for maintaining tribal homelands. The 1982 State Recommendations provide 640,000 acre-feet annually (2034) to 85 M&I entities, with the remaining supply to 23 irrigation districts or farming operations. During shortages, CAP deliveries would be reduced until exhausted first to all miscellaneous uses and then to non-Indian agricultural use, next, 25 percent of the Gila Tribe allocation and 10 percent of the irrigation amount allocated to Indian contractors other than the Gila Tribe would be reduced pro rata until exhausted. Finally, the remaining water contracted for by 11 Indian entities under existing contracts and 75 percent of the Gila River Tribe allocation would share a priority with 510,000 acre-feet of non-Indian M&I uses (510,000 acre-feet for M&I is exclusive of water obtained through effluent exchange agreements with Indian entities) and would be reduced on a proportional basis, and within each class on a prorated basis, based on the amount of water actually delivered to each entity in the latest non-shortage year. In addition, effluent exchanges would be required for tribal entities where feasible and consistent with contractual provisions.

B. *Options*—Effluent Exchange

B.1. Effluent exchanges optional for tribal contractors, but not required.

B.2. Effluent exchanges with Indian tribes required where feasible and consistent with contractual provisions (i.e., where conditions specified in individual Indian contracts are met).

B.3. Allocations made consistent with option B.2., with the proviso that CAWCD will implement the "pooling concept."

B.4. Allocations made consistent with Option B.3., with added contractual provision that M&I allocations will be adjusted if effluent exchanges are not implemented.

B.5. Allocations made consistent with Option B.2., but cities would be allowed to individually exchange effluent with Indian users.

C. *Options*—Tribal Homeland

C.1. Do not define purpose of water allocated to tribal homeland at this time.

C.2. Define purpose of water allocated to tribal homeland as domestic, municipal, and industrial.

C.3. Define purpose of water allocated to tribal homeland as agricultural irrigation and therefore capital costs would be deferred under the Leavitt Act.

C.4. Define purposes of water allocated to tribal homeland as any use necessary to ensure intended purpose of the reservation including irrigation, domestic, municipal, and industrial. Contracts would be interpreted pursuant to the *Rules, Regulations, and Determinations* provisions of the contracts to provide for appropriate repayment consistent with the actual use of the water.

C.5. Define and interpret purposes of water allocated to tribal homelands consistent with option C.4 with added clarification that agricultural irrigation uses would be subject to priority reduction of 10 percent in water short years before sharing a priority basis with non-Indian M&I.

Background for Decision

Authorized as part of the Colorado River Basin Project Act (Pub. L. 90-537) in 1968, the CAP is a multi-purpose water project which will deliver water for irrigation, municipal and industrial uses in central and southern Arizona, and by exchange, to users in western New Mexico and on Gila River tributaries upstream for CAP facilities in Arizona.

The water users can be divided into four categories: Indian agricultural irrigation, tribal homeland, non-Indian agriculture, and non-Indian M&I.

The Secretary of the Interior has the responsibility for allocating CAP waters. A final allocation of CAP water and a contract with the Secretary for delivery of the water is required so that facilities can be designed and constructed to treat (where necessary) and deliver the CAP water to the point of use. In many cases, the delivery facilities will be extensive, or will require negotiation for joint use of existing facilities, and adequate lead time is required if the users will be able to take water when the CAP comes on-line.

The main CAP aqueduct system is currently scheduled to make water deliveries to the Phoenix and Pinal county areas in 1985, and to the Tucson area in 1989 or 1990. Even if the allocations are made without delay, it is likely that some of the eventual recipients of CAP water will be unable to take delivery when the water is first made available.

On November 12, 1981, Secretary Watt provided guidance to the Bureau of Reclamation with regard to his proposed action on CAP allocations to the Indian sector. Based on the Secretary's proposal, the DWR prepared final recommendations for the allocation of CAP water to the non-Indian sector. The recommendations were forwarded to the Secretary in letters dated January 18, 1982, April 6, 1982, and November 10, 1982. These proposed Indian allocations, along with the State's recommendations for non-Indian allocations, comprised the Agency Proposed Action in the final EIS on Water Allocations and Water Service Contracting, Central Arizona

Project, which was prepared by the Bureau of Reclamation and filed with the Environmental Protection Agency on March 19, 1982.

Non-Indian agricultural water users are expected to contract for and receive water available from the CAP facilities which is not being utilized in the early years by the M&I and Indian contractors. The amount of this water will be relatively substantial in the early years of the project and during years of high runoff in the Colorado River Basin. Amounts are expected to decrease during the project life as the M&I use increases.

The Department's allocation (Alternative 6) contains elements of Alternatives 3 (Andrus) and 4 (Andrus Modified for M&I). The magnitude of the alternative allocations is identical, but the distribution of the project water during times of shortage combines elements of both. Under the Andrus allocation (Alternative 3) during shortages, 10 percent of Indian allocations for irrigation use would be reduced until exhausted prior to a pro rata reduction of the remaining Indian irrigation and tribal homelands amounts on a shared priority basis with 510,000 acre-feet per year of non-Indian M&I uses. The Andrus Modified for M&I Alternative (Alternative 4), provides that during shortages, 25 percent of the Indian irrigation amount would be reduced until exhausted prior to a pro rata reduction of the remaining Indian irrigation and tribal homeland amounts with all non-Indian M&I uses. The Department's Indian allocation is a combination of these two shortage distribution formulas. Like the Andrus allocation, the shortage distribution maintains the 510,000 acre-feet per year formula value for non-Indian M&I use, as well as the 10 percent reduction in Indian irrigation use for the 11 tribes or communities affected by water service contracts executed in December 1980 (all except the Gila River Indian Reservation). However, like Alternative 4 (Andrus Modified for M&I Use), the Gila River Indian Reservation's allocation would be reduced by 25 percent prior to the pro rata reduction.

Like Alternative 4, the Department's allocation will require effluent exchanges where feasible and consistent with contract provisions. However, in addition to the exchanges with the Salt River and Gila River Reservations described for Alternative 4, the analysis also assumes exchanges between the city of Tucson and the San Xavier Indian Reservation.

Discussion of the Environmental Consequences of the Alternatives

The requirements of the National Environmental Policy Act have been integrated into all phases of planning and development of the Central Arizona Project. A programmatic Environmental Impact Statement (EIS) was completed in 1972 and several site-specific statements have been or are in the process of being done on individual features of the project. The Bureau of Reclamation prepared a final EIS on Water Allocations and Water Service Contracting, Central Arizona Project in March 1982. Copies of the final EIS are available to the public upon request.

The Bureau addressed two general categories of impacts: The first category was impacts due to demographic and land use changes resulting from the availability or unavailability of CAP water; or due to the varying amount of CAP water made available. The second category was due to distribution system construction and development of lands for irrigation. Such actions impact wildlife and wildlife habitat, cultural resources, social/economic conditions, groundwater quantity, population, and land use.

The agency-proposed action was derived from an institutional process that involved soliciting expressions of interest to contract for CAP water from the Arizona Indian tribes; and from requesting the State of Arizona to make recommedations on allocating CAP water for M&I use and non-Indian agriculture.

On November 12, 1981, the Secretary selected a proposed Indian allocation (Proposed Action) in order to facilitate the timely completion of the EIS. In light of the Secretary's proposed action to allocate CAP water to Indians, the State of Arizona was asked to make recommendations on allocating CAP water to non-Indians. By letters to the Secretary dated January 18, 1982, April 6, 1982, and November 10, 1982, the DWR made such recommendations after extensive public involvement procedures.

The relative differences in environmental impacts among the allocation alternatives generally are not significant. The Proposed Action provides a significant benefit to the tribes by assuring a relatively stable and predictable water supply for domestic and economic development. However, by making a reasonable reduction in the Gila Indian Reservation's allocation during times of water supply shortage, additional water is made available for non-Indian municipal and industrial use. Compared to alternatives 3 and 5 over the 50-year repayment period of the CAP, the Proposed Action is projected to deliver about 2,500,000 acre-feet more to the M&I sector, and over 1,000,000 acre-feet more to the non-Indian agricultural sector, while maintaining the essential benefits of CAP water deliveries to the tribes. The increased delivery to the M&I sector avoids locally severe impacts of water supply shortfalls in Apache Junction under alternatives 3 and 5, and to the Kennecott and Phelps Dodge mining operations under alternatives 1 and 5. Under the Proposed Action significantly less farmland would be retired for acquisition of ground-water rights by municipalities than under alternatives 1 and 2. Hence, the Proposed Action, which falls within the range of alternatives 3 and 4 and the resulting environmental impacts is considered to be the environmentally preferred alternative.

There will also be some differing levels of environmental impacts, associated with constructing canals and laterals to deliver CAP water to Indian and non-Indian users. Future environmental analysis of individual delivery systems will include, where appropriate, the evaluation of all reasonable alternatives. All practical means to avoid or minimize adverse environmental impacts will be achieved through specific mitigation measures and monitoring provisions imposed upon the water user in the subcontract and construction specifications.

1. *Impacts from Demographic and Land Use Changes.* The Bureau's analysis indicates that there would be no significant difference in the acreage of undeveloped desert that would be converted to urban use over the 50-year project period under any of the alternative CAP water allocations (about 165,000 acres under each of the alternatives). A loss of that wildlife now associated with that desert habitat would also be expected. The amount of habitat is part of almost 20 million acres of Sonoran Desert scrub vegetation estimated to exist in Arizona.

The amount of farmland to be converted to urban use within the project service area over the 50-year project period would be about 34,500 acres for each of the alternatives. This would mean a loss of crops grown on converted farmland, predominantly cotton. The significance of impact is revealed by comparing about 34,500 acres of irrigated farmland to be lost as a result of urbanization of the estimated 792,500 harvested acres now being irrigated in the project area. The amount

of irrigated farmland to be lost amounts to about 5 percent of the total farmland now being irrigated.

Some agricultural lands may be retired to make water available (grandfathered water rights) to nearby municipalities if required to sustain projected population growth. Since the alternative CAP allocations would provide water in varying quantities for municipal use, in some cases, the combination of CAP and other dependable water supplies would not meet the demands of the projected population of a given municipality. In those cases, retirement of farmland was assumed as the most likely means for increasing the water supplies. It is estimated that a maximum of 8,900 acres would be retired from cultivation under any of the CAP allocation alternatives to meet the water demands of the municipal sector. It will take a period of time before any kind of natural vegetation is reestablished on this land. In addition, it will mean the loss of farm revenues for those now cultivating the land.

Another impact of retiring farmland is the added particulate matter in the area of abandoned fields. Retiring farmland would exacerbate the already existing problem of dust storms and fugitive dust until vegetation has recovered sufficiently to alleviate the problem.

Anticipated changes in land use on the 10 Indian reservations are not expected to be significant. While in excess of 90,000 acres have been developed for irrigation on the ten reservations, it is estimated that 50,100 acres of land are under irrigation at the present time. An additional 28,149 acres of land could be developed for irrigation under the CAP action alternatives.

Much of the irrigation use of CAP water on Indian reservations would take place on lands previously developed for irrigation. However, some of these lands were subsequently abandoned and have reverted to native vegetation, and the redevelopment of this acreage would cause wildlife habitat losses. It is also possible that the redevelopment of these lands could have adverse impacts on cultural resources that may remain partially intact.

In all cases there will be a beneficial economic impact to tribes with any of the CAP action alternatives. Alternatives 3, 4, 5, and 6 provide an added significant benefit to the tribes by assuring a relatively stable and predictable water supply for domestic and economic development on Indian reservations. Additional jobs would be generated, per capita income would be increased, and the life style of the reservation residents would be upgraded.

Since CAP water would be used primarily as a substitute for groundwater, no changes in land use or other impacts are expected as a direct result of the non-Indian agricultural allocations. However, differences in allocations to M&I users could lead to farmland retirement within agricultural districts. There will also be some impacts on fish and wildlife, as well as land use, as irrigation delivery facilities such as canals and laterals are constructed to deliver CAP water to these entities.

2. *Impacts of Constructing Distribution Systems.* There will be some environmental impacts associated with constructing canals and laterals to deliver CAP water to Indian and non-Indian users. At least 40 to 50 miles of canals will be required to deliver the Indian allocation of CAP water. Most of this land will be Sonoran Desert, but some will be retired agricultural land, existing irrigated agricultural land, or undeveloped urban lands. In addition, perhaps as much as 500 miles of canals and pipelines will be required to deliver irrigation and M&I water to non-Indian entities. Under a "worst case" scenario, assuming a 66-foot construction right-of-way, 4,400 acres would be disturbed, including both developed and undeveloped land.

No adverse impacts on special status species are anticipated as a result of CAP water allocations. Changes in land use, such as development of undisturbed wildlife habitat, were projected for each of the action alternatives. The difference among the alternatives is minimal, certainly not significant in the context of endangered species habitat.

The abundance of cultural resources in the CAP area is disappearing at an increasing rate as population grows and development continues. Exact inventories of the cultural resources and an analysis of impacts can be made only when the precise areal extent of projected land use modifications are defined. At that time, intensive archaeological/historical surveys of the above defined areas would be conducted. Generally, however, of the possible scenarios, only the conversion of lands to agriculture could have significant impact.

In some cases, where planning for delivery facilities is incomplete and it appears that such facilities would be extensive, or would be constructed in environmentally sensitive areas, further environmental analysis may be required prior to execution of a water service subcontract.

Summary

Since CAP water would be used primarily as a substitute for ground water, no major changes in population, land use, or other social indicators are expected as a result of the water allocations. Without the delivery of M&I water, the CAP service area population is projected to be just under 2.5 million by 2034. The area is projected to increase by an additional 100,000 persons by 2034 as a result of M&I water availability, representing an increase of approximately 4 percent over projected growth without CAP. The land use effects identified are of relatively minor magnitude and will not likely impose major economic effects on neighboring communities or lands.

In conclusion, the effect of CAP water would be twofold. First, the water would enable certain existing activities to be maintained at near-current levels. For example, agriculture would be able to sustain production while reducing the serious overdrafting of the ground water supplies. Second, CAP water would help to accommodate the population and economic growth that is projected for central Arizona.

Effect on Previous Decision

The decisions contained herein supersede those made by Secretary Andrus on December 5, 1980, and to the extent those decisions are inconsistent with these decisions, they are rescinded.

Dated: February 10, 1983.

James G. Watt,

Secretary of the Interior.

[FR Doc. 83-7543 Filed 3-23-83; 8:45 am]

BILLING CODE 4310-10-M

INTERSTATE COMMERCE COMMISSION

[No. 39076 et al.] [1]

Motor Carriers; Atlantic Coast Express, Inc.; Petition for Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Three motor contract carriers have each request exemption from the requirements of 49 U.S.C. 10702, 10761, and 10762. The sought relief is provisionally granted for future as well as existing contracts.

[1] This proceeding embraces three petitions for exemption filed by motor contract carriers: No. 39076, Atlantic Coast Express, Inc.; No. 39077, Trans-United, Inc.; and No. 39081, Valdez Transfer, Inc.

legislation for the Trinity River Division (69 Stat. 719) to increase flow releases from Lewiston Dam. Under Section 2 of the Trinity River Act (Pub. L. 84–386) the Secretary is "* * * authorized and directed to adopt appropriate measures to insure the preservation and propogation of fish and wildlife, including, but not limited to, the maintenance of the flow of the Trinity River below the diversion point at not less than one hundred and fifty feet per second for the months of July through November * * *"

Eight flow release alternatives are presented in the EIS. They span a range of flows varying from a low of 120,500 acre-feet per year (the minimum release level established by prior agreement between WPRS and the California Department of Fish and Game) to a high of 340,000 acre-feet per year. The proposed course of action is:

340,000 acre-feet annual fishery release in normal years; 220,000 acre-feet fishery release in dry years; 140,000 acre-feet fishery release in critically dry years.

This proposed course of action reflects a recognition that although it would be desirable to sustain environmental values through high releases to the Trinity River in all years, there are compelling needs and uses outside of the basin for water and power which require a reasonable compromise between water export and instream releases—especially in water-short years. It is suspected that the flows to be released in dry and critically dry years may be insufficient to support desirable levels of salmon and steelhead habitat. However, the flows to be allocated for dry and critically dry years will help to allow habitat below Lewiston Dam to be maintained at levels at least comparable to those which would have existed during dry and critically dry years in the absence of the project.

FOR FURTHER INFORMATION CONTACT: Jody Hoffman, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–2727, Sacramento, California 95825, (916) 484–4731.

Anyone requiring a copy of the FEIS for review should immediately contact the above individual.

Dated: December 5, 1980.

Approved:

James H. Rathlesberger,

Special Assistant to Assistant Secretary of the Interior.

Lynn A. Greenwalt,

Director, U.S. Fish and Wildlife.

[FR Doc. 80–38254 filed 12–9–80; 8:45 am]

BILLING CODE 4310–55–M

Office of the Secretary

Central Arizona Project; Allocations of Project Water to Indian Tribes

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of water allocations.

SUMMARY: The purpose of this action is to allocate Central Arizona Project (CAP) water to Indian tribes. This notice allocates 309,828 acre-feet of water to Indian reservations, with the stipulation that in times of shortages, the Indian supply will be reduced on a proportional basis with the municipal and industrial (M&I) supply. This proportion will be determined according to the amount of water used by each of two classes in the most recent year in which a full supply was available for both classes. This action adjusts allocations made previously by the Department.

FOR FURTHER INFORMATION CONTACT: Steve Lanich, Office of the Assistant Secretary, Land and Water Resources, Department of the Interior, Washington, D.C. 20240. Telephone: (202) 343–4931.

SUPPLEMENTARY INFORMATION: On August 8, 1980, the Secretary of the Interior gave notice in the Federal Register (45 FR 52938) of proposed allocations of water from the Central Arizona Project (CAP) to Indian tribes in Arizona. The notice invited written comments, suggestions or objections from interested persons. Subsequently, the Secretary announced in the Federal Register on August 15, 1980, (45 FR 54452) that public hearings would be held in three locations in Arizona on the proposed allocations and that written comments on the proposal would be received and considered until October 7, 1980. In making his decision on allocations of project water to Indian tribes, the Secretary has considered the testimony of the 98 witnesses at the public hearings and the written comments. These decisions are made pursuant to the authority vested in the Secretary of the Interior by the Act of June 17, 1902, as amended, (32 Stat. 388, 43 U.S.C. 391) and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501) and in recognition of the Secretary's trust responsibility to the central Arizona Indian tribes.

Summary of Comments Received on Proposed Allocations

The testimony at the public hearings and the written comments addressed the issues of substitute water, conservation of groundwater and priority of use of project water; suggested revisions to the proposed allocations; and presented options for the eventual completion of the full project. Statements summarizing those comments and testimony are presented below.

A. *Substitute water.* The notice of proposed allocations included a proposal to provide, through water service contracts with the Indian tribes, for the substitution of non-CAP water for Indian CAP allocations. This was to be accomplished under certain criteria which assured that there would be no diminution of the tribes' total allocation and no additional cost to the tribes. Commentators presented evidence in favor of and in opposition to this proposal, with most comments addressed to the use of treated municipal wastewater as the main source of substitute water. The tribes uniformly opposed the use of this effluent water. Concerns about this source included the effects of effluent water use on human and livestock health, long-term impacts of effluent water application on cropping patterns, soils and groundwater, and the legal and economic questions related to effluent water use. Other commentators urged that substitution be considered not only for sewage effluent but also for local water supplies whose chemical constituents are better suited to agriculture.

B. *Conservation of groundwater.* In authorizing the Central Arizona Project, Congress recognized the serious overdrafting of groundwater resources in Arizona. Section 304(c) of the Colorado River Basin Project Act (Pub. L. 90–537, 82 Stat. 887, 891) provides that each contract for CAP water service shall require that:

(1) There be in effect measures, adequate in the judgment of the Secretary, to control expansion of irrigation from aquifers affected by irrigation in the contract service area; (2) the canals and distribution systems * * * (for delivery of CAP water have) * * * linings adequate in his judgment to prevent excesive conveyance losses; and (3) (no groundwater pumping may occur within the) * * * service area of a contractor receiving water from the Central Arizona Project for any use outside * * * the service area unless the Secretary and * * * contractor shall agree, or shall have previously agreed that * * * a surplus of groundwater exists and drainage is or was required.

The Secretary has regarded this provision as requiring the reform of groundwater management by the State prior to allocation of CAP water for non-Indian use. In response to this view, the State of Arizona enacted on June 12, 1980, a comprehensive groundwater law to manage the future use of most groundwater reserves. As State law, this statute is not applicable to activities on

Indian reservations, some of which lie in areas where acute overdrafting now occurs. Some commentators asked that Indian use of groundwater be controlled similar to non-Indian use. Others argued that Indian groundwater resources were being depleted by non-Indian pumping adjacent to the tribes' lands.

C. *Priority of use.* The proposed allocations address the problem of shortages of project water which will occur in times of drought and in the later years of the project as the Upper Basin States begin to use their full entitlement to water from the Colorado River. The notice proposed the concept of a shared first priority between Indian and municipal and industrial (M&I) users. In times of shortage, miscellaneous uses would first be reduced pro rata to zero, followed by similar pro-rata reductions for non-Indian agricultural uses. Deliveries to Indian tribes and M&I users would then concurrently be reduced in the same manner, in a proportion based on use of project water in the most recent year when no shortage occurred; that is the last year when the full amount of CAP water specified in water service contracts was delivered to the Indian and M&I allottees of CAP water. Commentators questioned this concept, suggesting that CAP water be committed first to domestic needs, both Indian and non-Indian, before any argicultural uses. Others proposed that all Indian CAP water supplies be of first priority, regardless of shortages.

D. *Suggested revisions.* Some commentators suggested that substantial reductions—or substantial increases—be made in the Indian allocations. The Secretary's method for computing the individual tribes' shares was questioned, and specific comments were made concerning Congressional action on the quantification of water rights of the Ak-Chin and Papago Reservations.

The notice of proposed allocations also proposed that CAP water be credited against the Indian water rights finally adjudicated under the *Winters* doctrine. Some Indian commentators objected to this. Several commentators proposed that, to achieve the greatest social benefit from the CAP at the least cost to Arizona, all project water be allocated to the tribes. Others proposed increases in project water allocations to non-Indian agriculture, mining and power generation facilities. Several potential M&I contractors presented requests for new or increased CAP allocations.

E. *Completion options.* The size and complexity of the CAP have required phased planning and construction stages, in addition to the planning still to be done for local distribution systems. Thus, there were comments on the value and advisability of constructing a dam at the confluence of the Salt and Verde Rivers; on the size, location and route of the aqueduct serving the Tucson area; and on the possible technique of making "block" allocations to large areas within the CAP service area rather than specific and separate allocations to water user organizations. While these issues are all important to the final configuration of the CAP, no decisions can be made at this time on matters other than the Indian allocation. Accordingly, the Department and the Water and Power Resources Service will continue the appropriate studies of these matters so that decisions can be made on the remaining issues in the future.

Analysis and Consideration of the Comments and Testimony Received

The Departmental decision making process included consideration of the administrative record of the 1976 allocations and information collected and up-dated in the period before the present proposed allocation, the collection of testimony at three public hearings in Arizona and the opportunity for public comment called for in the Federal Register on August 8, 1980, (45 FR 52938) and August 15, 1980, (45 FR 54452), analysis and consideration of testimony and comments received, evaluation of alternatives, evaluation of possible environmental impacts, and meetings with Indian and non-Indian interests.

A. *Substitute water.* The notice of proposed allocations included a proposal to provide, through water service contracts with the Indian tribes, for the substitution of non-CAP water for Indian CAP allocations. This was to be accomplished under criteria which assured that the quantity, quality, suitability and delivery facilities of the substitute water would be appropriate for the beneficial uses to which that water was to be put. All additional costs were to be borne by the Central Arizona Water Conservation District or the benefiting subcontractor, and any favorable cost differential was to inure to the benefit of the tribes or the Federal Government. Included in the proposal was a statement that the Secretary has discretion to require a substitution under specified conditions.

At present, the largest source of substitute water in the project area is effluent water. Among the potential advantages to using effluent water are expanding the flexibility of use of CAP water and reducing the need to pump groundwater. Moreover, it may afford the highest and best use of both CAP and effluent water. Substitute water would not be subject to the shared priority concept in times of shortage, so the Indian allocation could be considerably more reliable with a constant supply of substitute water than with the variable CAP allocation. Similarly, the use of some substitute water by Indian tribes would reduce the impact of shortages on M&I users. During the public comment period, many parties offered comments on the issue of substitute water. These are summarized below.

1. State of Arizona

a. The State believes the substitution of effluent water for CAP water is essential to its ability to meet future water demand from M&I users.

b. It believes that the affected tribes should be required to take effluent as substitute water as soon as the effluent becomes available.

c. It objected to the Department's position that substitutions be required only after the municipality has exhausted all other water resources available (including other CAP water, such as non-Indian agricultural water).

2. Indian Tribes

a. Without exception, the tribes are vigorously opposed to a mandatory substitute water concept, especially involving effluent.

b. They believe that effluent will restrict their choices of crops to be grown on the reservations, and they point out that the long-term effects of effluent use as irrigation water are unknown.

c. The tribes described several situations where the use of effluent water by Indians would be uneconomical (pumping effluent upstream from Tucson to the San Xavier Reservation when downstream users are available) or where requiring exchanges might affect ongoing negotiations for voluntary substitution (Chandler and Scottsdale exchanges with Gila and Salt River communities.)

3. Cities

a. Most of the cities recognize the value of their effluent as a water resource. They also believe that effluent will be a reliable source of water available in the future, and that planning for exchanges now makes good resource management sense.

b. The cities are generally supportive of the State's proposal that the tribes be required to accept effluent as soon as it becomes available.

c. The cities prefer that contractual terms for exchange agreements not be limited to effluent. Non-potable groundwater suitable for agricultural or industrial use could also be exchanged for CAP water. The cities also contend that any exchanges must be on an acre-foot for acre-foot basis. In addition, they note that exchanges solely between non-Indians should also be allowed.

There are potential constraints on the use of effluent water as the primary component of any large substitution of non-CAP water for CAP supplies. Many of these are technical in nature, relating to the long-term impact of effluent water on human and livestock health and cropping patterns and the absorptive capacity of soils and groundwater quality. Concern about these effects has led to a series of requirements by State and Federal authorities which restrict the use of effluent water to purposes which do not directly impinge on public health. An expanding body of research, however, and improved treatment techniques may lead to wider use of effluent water and general recognition of it as an important water resource. Many commentators who addressed this subject submitted technical information on these issues. After studying this, it has been determined that the use of effluent water for limited agricultural and industrial purposes is worth pursuing as a substitute for some CAP water. Given Central Arizona's arid climate, and its pressing need to manage *all* of its water resources wisely, some substitution of effluent water and other local water unfit for municipal uses, for CAP water, where appropriate, may be required of all contractors.

To allow for the possibility of water substitution the CAP allocations to Central Arizona Indians contain a provision for substitution and a similar provision will be included in their respective water service contracts.

The Department has developed, in consultation with all affected interests, contract language which provides that Indian tribes may be required to enter into substitute water agreeemnts with nearby cities, but only after a series of stringent conditions have been met. The conditions are designed to protect the tribes' interests by assuring that the water will be of a suitable quality and available at the time and place most beneficial to the tribes. Additionally, the conditions provide that the costs of the substitution (including treatment plant costs) will be borne by the beneficiaries of the exhange; i.e., the CAWCD or the M&I subcontractor needing the CAP water.

Representatives of some Phoenix area municipalities stated that twenty to thirty percent of their ground water supplies are unfit for municipal uses. They urged that substitution not be confined to sewage effluent but include these other sources as well. This suggestion underscores the need to assure that *all* water resources in Central Arizona be applied to compatible needs. Thus the substitute water concept appears appropriate not only to these Indian allocations but also to the non-Indian allocations which will be made in the near future.

B. *Conservation of groundwater.* In authorizing the Central Arizona Project in 1968, Congress recognized the serious problems associated with overdrafting of groundwater resources in Arizona. Currently, water demands in Arizona are such that the State relies on groundwater resources for more than sixty percent of its water supply, and water needs are met at the expense of overdrafting or "mining" groundwater. In some areas, there are reports that groundwater levels have fallen 4–8 feet in a single year. Land subsidence has occurred, and intensive use of surface water has reduced natural recharge of aquifers. Falling water tables have also resulted in significantly higher energy costs for pumping, with pump lifts exceeding 400 feet in parts of the project area. Given the limited rainfall and snowpack in Arizona and the present full utilization of surface waters, groundwater remains the State's only available water reserve. Its management, both in terms of quality and quantity, is a major purpose of the Central Arizona Project.

In response to this problem, the State of Arizona enacted on June 12, 1980, a comprehensive ground water management law. Uses of groundwater are sharply curtailed under the statute, and existing wells will be monitored to control pumping. The goal for most of Central Arizona is to reach a balance of pumping and natural recharge by the year 2025.

Many commentators proposed that the concepts in the State's groundwater law be applied to Indian groundwater pumping in order to ensure the eventual balance of pumping and natural recharge. Most of the Indian commentators, however, charged that Indian lands have systematically been depleted of groundwater by the pumping activities of adjacent non-Indian owners, both public and private. They argue that they have not been able to fully develop their groundwater resources and the aquifers under their reservations have been depleted by non/Indian users. Groundwater pumping on tribal lands is arguable less, proportionately, than pumping throughout the region as a whole for two reasons: the reservations do not have dense urban settlements, and they have less irrigated land. The tribes also have been severely restricted in their ability to tap underground water by their lack of financial resources and access to capital. Nonetheless, much of Central Arizona Indian agriculture depends on groundwater.

In response to these concerns, the Secretary has determined subsequent to the comment period and public hearings that Indian water service contracts shall contain provisions requiring the integrated management and control of surface and groundwater on Indian reservations receiving CAP water to the end that groundwater withdrawals are managed on a responsible basis.

C. *Priority of use.* The proposed allocations address the problem of shortages of project water which will occur in times of drought and in the later years of the project as the Upper Basin States begin to use their full entitlement to water from the Colorado River. The Central Arizona Project will alleviate only the most urgent water supply problems of the area, and shortages will be increasingly more frequent in the future. Under the best of circumstances, CAP could initially deliver as much as 2.1 million acre-feet, but the average yield is expected to be about 1.2 million acre-feet over the life of the project. More important, the assured yield will total only one-third to one-half of the average yield. Given the variable conditions affecting supply and the growing needs of Central Arizona, the Secretary has decided that Indian users and M&I users will share a first priority in project water deliveries during times of shortage, with the limitation that the Indians' participation in the shared priority will first be reduced by ten percent of the water allocated for Indian agricultural uses.

This revised priority is made because the 1976 decision was unfair, in part, to the Indians who received allocations. Moreover, the decision omitted several Indian reservations which were able to receive, and in need of, project water.

Under the 1976 allocation, Indian irrigation water would have been reduced drastically after the year 2005. From 257,000 acre-feet per year in the first 20 years of the project, Indian supplies would be decreased in the later years of the project to either 10 percent of the project supply or 20 percent of the agricultural supply, whichever was to the tribes' advantage. This abrupt reduction would have effectively worked against permanent investments in irrigation facilities and placed an inequitable burden on the Indians in order to make up for deficits in overall water supplies of Central Arizona. Under the post-2005 priority system used in the 1976 allocations, the water available to the tribes would not have been nearly enough to irrigate the lands previously subjugated. In other words, any economic growth stimulated in the early years of the project would have been only temporary, and achievement of a permanent tribal homeland would have bene only illusory.

The shared priority system intends to redress this inequity. Instead of the first, but temporary priority for the tribes proposed in the 1976 notice, the Indians will share a first priority with the non-Indian M&I allottees of CAP water for the life of the project. In times of shortage, the Indian allocation will be a percentage to the total supply that is based on the relation of the Indian allocation to the non-Indian M&I allocation.

For the limited purpose of establishing the relative Indian and non-Indian M&I percentages of the shared priority, non-Indian M&I allocations beyond 510,000 acre-feet, including conversions from agriculture to M&I, will not be permitted to be included in the calculations of the non-Indian portion of the shared priority. (This is not to say that future Secretarial allocations for M&I use, or agricultural conversions to M&I use might not take the total non-Indian allocations to a figure greater than 510,000 acre-feet is an absolute limit when calculating the shared priority between Indian and M&I use in times of shortage).

As discussed above, ten percent of the Indian *agricultural* allocation will be eliminated from the shared priority in times of shortage. That represents approximatly 26,000 acre-feet of the Indian allocation. Thus, assuming that full use of both the Indian and non-Indian M&I allocations occurred in a year when water was available, the Indian percentage of the shared priority in a subsequent year of short supply would be approximately thirty-six (36%) percent of the available supply. Such limits on non-Indian and Indian participation in the shared priority provide for relative stability and predictability for all allottees over the life of the project, a feature which was missing from the 1976 allocations.

In addition to the need to redress the inequity in the priority system of the 1976 allocation, the Federal Government has since that decision developed two policies which mandated reconsideration of the earlier allocation. First, the President's Water Policy Message to Congress on June 6, 1978, recognized the need to develop water resources on or near Indian reservations to serve as an important component in the development of permanent tribal homelands. It is clear that in an arid area like Central Arizona a relatively dependable, long-term supply of water for domestic and economic development activities is critical if these homelands are to exist. Second, the President also announced at that time his intent to settle Indian water claims through negotiation whenever possible. Pursuant to this policy, the Secretary has used CAP allocations to assist in the settlement of Indian claims to local water supplies.

D. *Suggested Revisions.* During the public review period, many comments were received which questioned the accuracy and/or equities of the proposed adjustments in comparison to the 1976 tribal allocations. These comments are summarized as follows:

1. *Gila River Pima-Maricopa Indian Reservation:* The Gila River Indian Community has requested that its proposed allocation of 173,100 acre-feet per year be increased by an additional 103,476 acre-feet per year, bringing the total requested annual allocation to 276,576 acre-feet. The Community asserts that the Secretary erred in calculating presently developed acreage (by underestimating), available surface water supplies (by overestimating), and available groundwater (by overestimating).

a. *Lands presently developed for irrigation:* The Community stated that more reservation lands are presently developed for irrigation than were included in the 1976 allocation. The Community also alleges that all Indian land in the San Carlos Irrigation Project, whether or not actually developed, should be included in the total of presently developed acreage.

b. *Surface Water:* The Community maintains that the surface water supply available to the reservation was overestimated by at least 9,300 acre-feet (3,400 acre-feet of water at Gila Crossing and 5,900 acre-feet of water at Maricopa Colony).

c. *Groundwater:* The Community states that the Department's estimate of effective groundwater yields on the reservation should be reduced by approximately 10,000 acre-feet annually because of salinity problems.

2. *Salt River Pima-Maricopa Indian Reservation:* The Salt River Indian Community claimed that the presently developed acreage on the reservation is 14,858 acres and not 13,061 acres as reported in the 1976 allocation.

3. *Fort McDowell Mohave Apache Indian Community:* Concern was expressed that the allocation to Fort McDowell was conditioned on the construction of Orme Dam and relocation of part of the reservation.

4. *Ak-Chin Indian Community:* The Community supported the proposed allocation but expressed concern that the shared priority concept would jeopardize the Secretary's ability to fulfill his responsibility to deliver water to the reservation as required in the Ak-Chin Water Rights Settlement Act (Pub. L. 95–328). The State of Arizona has objected to the proposed Ak-Chin allocation, claiming that most of the tribe's needs set forth in the Settlement Act should be met by sources other than the CAP, leaving the proposed 58,300 acre-feet for allocation to non-Indian users.

5. *Papago:* The tribe claimed that the 1976 allocation of 8,000 acre-feet to Chuichu is mistaken because it is insufficient to sustain an economic farm unit. The tribe also requested that any water that would have been allocated to the Gila Bend portion of the Papago Reservation be used to augment the allocations to San Xavier or Chuichu, if economically feasible.

6. *Camp Verde:* The tribe has requested that their allocation be increased from 1,200 to 1,800 acre-feet per year. It has also been requested that the allocation be based on the permanent tribal homeland concept.

7. *San Carlos Apache Tribe:* The Tribe requested more water but did not allege any error in the proposed allocation.

8. *Pascua Yaqui:* The Tribe has requested an additional allocation of 400 acre-feet per year, for maintenance of a permanent tribal homeland.

9. *Tonto Apache:* The Tribe has requested an additional allocation of 130 acre-feet per year, for maintenance of a permanent tribal homeland. In addition, a study by the Salt River Project indicates that the Tribe requires 18 acre-feet per year more than proposed in the August 8 *Notice.*

10. *Yavapai Prescott:* The Tribe has requested an additional allocation of 500 acre-feet per year, for maintenance of a permanent tribal homeland.

The tribes' comments would require allocation of approximately 117,000 acre-feet annually in addition to the 309,810 acre-feet in the proposed allocation. Most of that increment is attributable to alleged technical errors in the assessment of available water supplies and presently developed acreage on the five reservations which were allocated water in 1976. In addition, a proposed revision in the definition of lands described as "presently developed for irrigation" accounts for some of the claimed water. The remainder of the increase is requested by some tribes for more extensive development of their reservations as permanent tribal homelands. This latter portion of the requested increase is for reservations which were not included in the 1976 allocations.

The August 8 *Notice* proposed no adjustment in the quantity of CAP water allocated to the five tribes in 1976. The only objectives of the August 8 adjustment were: to provide project water to additional Central Arizona Indian reservations which have need of water and which can reasonably benefit from a CAP allocation; and to establish an equitable priority for Indian use of CAP water.

Because of the limited objectives in adjusting the allocation, and because Indian tribes are but one of an intended group of CAP beneficiaries, the Secretary has decided to make only a single numerical adjustment to the August 8 proposed allocations. Therefore, the final notice allocates an additional 18 acre-feet per year to the Tonto Apache, bringing their total allocation to 128 acre-feet per year.

The 1976 allocation did not take into account the ability to serve some of the Indian reservations located beyond the physical reach of CAP facilities by means of the exchange provisions in section 304 of the Act. (*See* Cong. Rec. H3819, May 15, 1968). In addition, some reservations able to receive a direct allocation of CAP water were not included in the 1976 allocation. The August 8 *Notice* proposed allocations to these reservations (Camp Verde, Tonto Apache, Yavapai Prescott, Pascua Yaqui, San Carlos, Shuk Toak, and San Xavier) primarily for the purpose of maintaining permanent tribal homelands. These allocations represent an increase of 52,810 acre-feet per year over the amount allocated in 1976. Water is allocated to these reservations in quantities sufficient to provide a minimum water resource for development and growth of municipal needs, as well as other uses necessary to sustain a permanent tribal homeland.

The final allocations to these tribes remain essentially the same as those proposed in the August *Notice* with two corrections. As mentioned above, the Tonto Apache will receive an additional 18 acre-feet per year, and the Camp Verde allocation is designated in the final notice as water supplied for the purpose of contributing to the maintenance of a permanent tibal homeland.

The proposed allocation to the Fort McDowell Reservation appeared to some commentators to be contingent on the construction of Orme Dam and the relocation of part of the reservation. This is not the case. The allocation to Fort McDowell is intended to contribute to the maintenance of the reservation as a permanent tribal homeland. Water for this purpose is needed whether or not Orme Dam is built.

The allocation to the Ak-Chin Community in 1978 was 58,300 acre-feet. The quantity of that allocation was not proposed to be increased although the Ak-Chin Water Rights Settlement Act requires the Secretary to deliver to the reservation an interim water supply of 58,300 acre-feet and a permanent water supply of 85,000 acre-feet beginning in 2003. The permanent supply to Ak-Chin probably will be comprised of groundwater underlying the public lands, the CAP allocation, and remaining groundwater under the reservation and such additional water from other sources as may be necessary.

It is clear that the CAP is intended to contribute to the permanent water supply to which Ak-Chin is entitled to under Pub. L. 95-328. To insure that the variable CAP supply or lack of reservation groundwater will not prevent full deliveries to Ak-Chin, the water delivery system from the well field will be designed to transport 85,000 acre-feet of water annually to the reservation from nearby Federal lands.

The State of Arizona has strongly objected to including Ak-Chin in the proposed adjustment to the 1976 allocation which creates the shared priority with non-Indian M&I users. The State believes that Ak-Chin should rely upon the development of well fields underlying Federal lands near the reservation, leaving the Ak-Chin CAP supply after the year 2005 available to non-Indians. After consideration of the alternatives, the Secretary has decided to affirm the August 8 allocation of 58,300 acre-feet of CAP water to Ak-Chin. Complete reliance on the proposed well fields would have several serious consequences, all of them detrimental to future water use. Preliminary analysis shows that underground water reserves capable of being tapped for Ak-Chin probably are not sufficient to support the pumping of such large quantities of water for a sustained period beyond 25 years. Moreover, conservation of groundwater, and not its depletion, is a primary purpose of the CAP. Finally, financial estimates of the relative cost of using the well field versus the use of CAP water argue for employing both sources to achieve the greatest cost-effectiveness.

The decision to make only limited adjustments in the Indian allocation is not intended to suggest that the Central Arizona Indian tribes may not need additional water. To the extent that the Indians have outstanding water rights or needs which need to be fulfilled, the Department will look to remedies other than the CAP to fulfill them.

E. *Other Issues.* The *Notice* of proposed allocations to Indian tribes dated August 8, 1980, contained proposals on several associated issues. These were credits against *Winters Rights*, possible additional water for the tribes, and non-Indian water use.

1. *Credits Against Winters Rights:* These proposed allocations to the tribes will be credited against the reservations' *Winters* rights as and when finally adjudicated, or as finally determined by Congressional action. This stipulation will be included in the contracts with the tribes for these allocated supplies.

To the extent that a CAP allocation is credited against *Winters* rights, the reservation being so credited will be able to use such water in any manner and for any uses permitted under its *Winters* rights.

In this context it should be added that the allocation of CAP water to the tribes will not constitute a taking, either directly or by implication, of any water rights of the tribes; no will it constitute the Department's opinion as to the legal rights of these tribes.

2. *Possible Additional Water For the Tribes:* Except as specifically provided in the allocations, the tribal allocations are limited to irrigation uses on the reservations. The tribes, however, are not precluded from contracting for project M&I water just as any other entity in central Arizona may so contract. As long as such water has not been contracted to other uses, such contracts may be made through the Secretary of the Interior. If the tribes do decide to contract for this M&I water, they should be prepared to execute a contract with the Secretary at the same time as other M&I users contract with the CAWCD and the Secretary.

3. *Non-Indian Water Use:* In 1976, the Arizona Water Commission, now the

Department of Water Resources, recommended water allocations for non-Indian M&I and agricultural users. In the four years since the recommendations various conditions have changed, including the proposed increased tribal allocation contained herein, and increased estimates of the potential cost of CAP water.

In light of these changed circumstances, I have asked the DWR to revise its original recommendations for both M&I and agricultural use. I have been advised by Governor Babbitt that the State's revised recommendations for the allocation of CAP non-Indian water supplies will be submitted promptly following the publication of this notice.

F. *Evaluation of Environmental Impacts.* The requirements of the National Environmental Policy Act have been integrated into all phases of the Central Arizona Project. A programmatic Environmental Impact Statement was completed in 1972 and site-specific statements have been or are in the process of being done on particular phases of the project. The Bureau of Reclamation (now the Water and Power Resources Service) prerpared an environmental assessment of the Indian allocations of CAP water as proposed on April 18, 1975—(40 FR 17927). Based on the assessment, the Bureau concluded in a "Negative Determination of Environmental Impact," dated June 4, 1976, that the proposed allocations did not significantly affect the quality of the human environment. The Solicitor's office reviewed and approved the assessment and negative finding.

Since the preparation of those documents, several other reports evaluating the potential environmental effects of possible CAP allocations have been written. These include:

An environmental evaluation of the AWC-recommended M&I allocations (March 1979);

A two-part conceptual and technical assumptions review of the AWC recommendations (November 9, 1979 and December 31, 1979);

A supplemental environmental evaluation analyzing the potential M&I users rejected by the AWC (December 1979);

A report on potential water use by non-Indian agriculture as recommended by the AWC (December 1979).

Finally, the Water and Power Resources Service has completed an environmental assessment on the Indian allocations as proposed in the August 8 *Notice.* Water and Power has concluded in a Finding of No Significant Impact (FONSI) dated October 15, 1980, that these allocations do not significantly affect the quality of the human environment and therefore preparation of an Environmental Impact Statement is not required. Copies of that assessment and subsequent FONSI are available to the public upon request.

Authority and Purpose for Allocations

I take this action in recognition of my trust responsibilities to the Indians, and pursuant to the authority vested in the Secretary of the Interior by the Act of June 17, 1902, as amended, (32 Stat. 388, 43 U.S.C. 391) and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501). In making these decisions, I have carefully considered many interrelated factors, the testimony given at the public hearings and comments received during the public comment period. I have met on many occasions with representatives of the central Arizona tribes, with other potential users of CAP water, and with Governor Bruce Babbitt and members of the Arizona Congressional delegation. Also, I have reviewed at length the voluminous data which this Department has compiled over many years in regard to the CAP.

In these decisions, I have adjusted the water-use priorities and allocation of water to Indians announced by Acting Secretary of the Interior, Kent Frizzell, on October 12, 1976, 40 FR 45883. I am making these adjustments to correct certain omissions in the 1976 notice and to accommodate certain supervening conditions.

Among the factors which have prompted me to make these adjustments are the following:

(1) Under the 1976 allocation, Indian irrigation water would have been reduced drastically after the year 2005. From 257,000 acre feet per year in the first 20 years of the project, it would be decreased in the later years of the project to either 10 percent of the project supply or 20 percent of the agricultural supply, whichever was to the tribes' advantage. It is my opinion that this abrupt reduction in Indian supply is unfair to the Indians. Under the post-2005 formula used in the 1976 allocations, the economic growth permitted on the reservations in the early years of CAP operation would be only temporary, and both the Government and the tribes would be faced with the costs of a return to depressed economic conditions. Therefore, I have tried to assure the tribes of a more dependable supply of water throughout the life of the project.

(2) The 1976 allocations did not provide project water to all the Indian tribes which could reasonably benefit from the project. For example, the San Carlos Apache Tribe, which was mentioned specifically in the legislative history of the project as an intended recipient of project water, did not receive an allocation.

Besides the factors listed above, there are other reasons for my adjustment of the 1976 allocations:

(1) Subsequent to the 1976 decision, Congress committed the United States Government to provide the Ak-Chin lands with a permanent water supply. Additionally, the Honorable Morris K. Udall has introduced a bill, H.R. 7640, which would similarly provide permanent water for lands of the Papago Tribe.

(2) President Carter, in his Water Policy Message to Congress of June 6, 1978, recognized that Indian reservations are intended to be maintained as permanent tribal homelands. In an arid region such as central Arizona, a relatively dependable long-term water supply is critical if these homelands are to exist.

(3) Also in his June 6, 1978 message, the President announced his Administration's intent to settle Indian water claims through negotiation, wherever possible. Several water claims are now being litigated in Arizona and others are likely to be filed. On several occasions, I have stated that, pursuant to the President's policy, CAP water will be used in the settlement of outstanding claims, where possible.

Projected Water Supply

Before describing the procedures used to determine the allocations set forth below, I will point out certain hydrologically related aspects of the CAP. This is arid country with a limited supply of surface and groundwater, and many agricultural and M&I water users rely exclusively on groundwater. This dependence has been so great that the groundwater table has been dropping at an alarming rate. The Arizona Water Commission has estimated that the annual overdraft in the counties of Maricopa, Pinal and Pima is 1.9 million acre-feet.

In response to this problem, the Arizona State Legislature, on June 11, 1980, enacted the Ground Water Management Act of 1980. This law is far-reaching and should help alleviate this serious drawdown of groundwater reserves. I commend the Governor, the Legislature, and the Arizona Groundwater Management Study Commission for their serious and sustained efforts to improve the management of Arizona's limited water resources.

Despite the virtues of this new law, however, no one expects it to "solve" Arizona's water problems; nor should any one expect the CAP to work

miracles. What the CAP will do is this: It will alleviate to some extent the agricultural drain on the groundwater supply in the early years of the project, and it will provide a supply of municipal and industrial water on a permanent basis.

In making my allocations, I have studied data prepared by the Arizona Water Commission (AWC) and by the Water and Power Resources Service. Both reports estimate the total CAP supply based on assumptions relating to the hydrology of the Colorado River Basin, local runoff, the way in which the mainstem Colorado River reservoirs are operated, the rate at which the Upper Basin States develop their supplies, and a variety of other factors. But while they are in general agreement as to the various factors involved in these calculations, the two reports make different predictions.

Based on its assumptions, the Water and Power Resources Service (WPRS) has assumed that the minimum amount of Colorado River water available for diversion into the CAP during the most critical drought years will be 400,000 acre-feet. Due to losses, less than that, perhaps as little as 300,000 acre-feet, would be *delivered* to users during drought years, according to WPRS.

However, the Executive Director of the Arizona Water Commission (now the Department of Water Resources) has referred to his agency's CAP projection of 550,000 acre-feet of supply for diversion in drought years and 500,000 acre-feet for actual delivery as "quite conservative." The AWC conclusion relies on the assumption that the rate of development in the Upper Colorado River Basin will be slower than that predicted by WPRS, and on different assumptions regarding the operation of Hoover Dam.

From these numbers, the disagreement between the two agencies is obvious. For the purpose of this decision, however, I am accepting neither of these projections as definitive. My allocations do not reduce the tribal amounts after 2005 as did the 1976 allocations. Instead, my allocations rely on the concept of a "shared priority" between Indian users and municipal and industrial users throughout the life of the project. This concept, which is discussed in more detail below, provides that these two classes of users will suffer together and proportionally in shortage years.

Although it is important to all parties involved to have accurate forecasts of Colorado River water supplies, these projections are not as important to my allocations—because of the shared priority concept—as they were to Acting Secretary Frizzell's. At this point, since only time will tell which agency made better predictions about the future, I have found it useful to consider both reports in calculating the possible long-term ramifications of various allocation scenarios.

Indian Allocations

I considered 14 reservations for allocations of CAP water. (I should explain and emphasize what I mean by an "allocation." It is an offer to contract for CAP water. By no means does the allocation, by itself, commit the Department to deliver water to the various potential users to whom water is allocated. In all cases, contracts or subcontracts must be made and executed with the Secretary of the Interior as a party to them. It is only through the contracting process that water is firmly committed to the users.) I have tried to consider the particular circumstances of each tribe in making my decisions. I have found that there is no single formula to be used in determining the allocations of all the tribes.

I first considered the five reservations allocated water in 1976. These reservations are the Ak-Chin, Gila River, Salt River, Papago (Chuichu) and Fort McDowell. The rationale used in making those allocations is explained in detail in the 1976 **Federal Register** notice.

Based on a review of the comments on the August 8 proposals and the record of the allocation, I have decided not to adjust the quantity of the original 257,000 acre-feet allocated to the five tribes:

	Acre-feet
Ak-Chin	58,300
Gila River	173,000
Salt River	13,300
Papago Chuichu	8,000
Fort McDowell	4,300

These allocations will, however, be subject to a revised priority system described below.

The August 8 proposals included allocations to seven tribes which were not allocated water in 1976. (Camp Verde, Tonto Apache, Yavapai Prescott, Pascua Yaqui, San Carlos, Shuk Toak, and San Xavier). The addition of these allocations represents an increase of 52,810 acre-feet in the total Indian share of CAP water. In general, the allocations were expected to contribute to the maintenance of permanent tribal homelands for these tribes; that is, they represent enough water to provide a minimum water resource for development and growth of reservation economies.

The proposed allocations are hereby affirmed, with two changes. The Tonto Apache allocation is increased by 18 acre-feet per year to a total of 128 acre-feet, and the Camp Verde allocation is designated as a water supply for the purpose of contributing to the maintenance of a permanent tribal homeland. Those allocations are displayed in the following table:

	Portion solely for irrigation (acre-feet)	Portion for tribal homeland (acre-feet)
Camp Verde		1,200
Tonto Apache		128
Yavapai Prescott		500
Pascua Yaqui		500
San Carlos	2,700	10,000
Shuk Toak		10,800
San Xavier		27,000

As in the 1976 decisions, the allocations to Ak-Chin, Gila River, Salt River, Fort McDowell, Chuichu, and 2,700 acre-feet of the San Carlos allocation are limited to irrigation uses on the reservation, except to the extent modified by the *Winters* rights credit discussed below.

The full allocation to San Xavier, Shuk Toak, Pascua Yaqui, Tonto Apache, Camp Verde, and Yavapai and 10,000 acre-feet of the San Carlos allocation may be used for domestic, irrigation and M&I purposes, consistent with the purpose of maintaining tribal homelands. All of these allocations are also limited to uses on the reservations, except to the extent modified below.

Priority of Use in Times of Shortage

While the non-Indian agricultural supply of water will vary from year to year, even under pessimistic projections of water supply, Indian agricultural users and M&I users will receive their full allocations of water in most years. However, it is likely that there will be some years, probably after the turn of the century, in which there will not be enough water to satisfy Indian and M&I users completely.

In these shortage years, Indian users and M&I users will *share* a first priority on water, with the limitation that the Indians' participation in the shared priority will first be reduced by ten percent of the water allocated for Indian agricultural uses.

Under this concept, the scheme for reducing water deliveries in times of shortage will work this way: First, miscellaneous uses will be reduced pro rata until exhausted; next, non-Indian agricultural uses will be reduced in the same way until exhausted. Then, ten percent of Indian agricultural uses will

be reduced. Thereafter, water for Indian and M&I uses will be reduced on a proportional basis, and within each class on a pro rata basis. The proportional basis between these two classes will be fixed as a ratio of the amount of water used by each class in the most recent year in which a full supply was available for both classes. (A year of "full supply" is one in which the total amounts of water specified in the M&I subcontracts and the Indian contracts are delivered, while the pro rata diminution within each class will be based on the actual use of water in the most recent year in which a full supply was available to the class).

For the limited purpose of establishing the relative Indian and non-Indian M&I percentages of the shared priority, non-Indian M&I allocations beyond 510,000 acre-feet, including conversions from agriculture to M&I, will not be permitted to be included in the calculations of the non-Indian portion of the shared priority. (This is not to say that future Secretarial allocations for M&I use, or agricultural conversions to M&I use might not take the total non-Indian allocations to a figure greater than 510,000, but that 510,000 acre-feet is an absolute limit when calculating the shared priority between Indian and M&I use in times of shortage).

As discussed above, the percent of the Indian *agricultural* allocation will be eliminated from the shared priority in times of shortage. That represents approximately 26,000 acre-feet of the Indian allocation. Thus, assuming that full use of both the Indian and non-Indian M&I allocations occurred in a year when water was available, the Indian percentage of the shared priority in a subsequent year of short supply would be approximately thirty-six (36%) percent of the available supply. Such limits on non-Indian and Indian participation in the shared priority provide for relative stability and predictability for all allottees over the life of the project, a feature which was missing from the 1976 allocations.

Summary of Allocations and Priorities to Indian Tribes

[Acre-feet per year]

Tribe	(C) Portion for 10 pct maximum tribal homeland irrigation base in shortage year	(A) Allocation	(B) Portion solely for irrigation
Ak-Chin	58,200	58,300	52,470
Gila River	173,100	173,000	155,790
Salt River	13,300	13,300	11,970
Chuichu	8,000	8,000	7,200
Fort McDowell	4,300	4,300	
Camp Verde	1,200	1,200	
San Carlos	12,700	2,700 10,000	2,430
San Xavier	27,000	27,000	
Schuk Toak	10,800	10,800	
Pascua Yaqui	500	500	
Tonto Apache	128	128	
Yavapai	500	500	
Total	309,828	255,400 54,428	229,860

Possible Substitution of Non-Cap Water

By improving the Indian supply in the later project years, it is apparent that the position of the M&I users will be less favorable than under the 1976 notice. In an effort to make the M&I supply as dependable as possible, these allocations permit the substitution of non-CAP water for Indian CAP water, and provisions addressing such substitutions will be included in the Indian water service contracts. The Department has developed, in consultation with the affected interests, proposed contract language which provides that Indian tribes may be required to enter into substitute water agreements, but only after a series of stringent conditions are met. These include:

(1) The suitability of the substitute water will be determined by the Secretary on stated criteria: (a) that the delivery facilities are equivalent to CAP facilities, (b) that the supply is available in comparable quantities at the time and place of need, (c) that the quality of the water meets all appplicable regulatory requirements, including, but not limited to those relating to treatment and delivery, and (d) that the water shall be of suitable quality for the beneficial uses under a reasonably diversified cropping pattern customary for lands of like character in the region.

(2) All costs of substitution will be borne by the Central Arizona Water Conservation District or by the subcontractor securing the benefit of CAP water by substitution (however, this requirement will not preclude the use of Environmental Protection Agency grants, or non-federal financial assistance, to deliver effluent water to the reservations);

(3) Prior to December 31, 2005, exchanges may not exceed twenty percent of an individual tribe's CAP allocation and will be on the basis of delivery of not less than two acre-feet of subsitute water for each acre-foot of project water exchanged. Thereafter, exchanges will be limited to fifty percent of each tribe's allocation, will be on not less than an acre-foot for acre-foot basis, and the party proposing substitution must establish to the satisfaction of the Secretary that there is no reasonable or prudent alternative to the proposed substitution available to that party for current or reasonably anticipated M&I use.

(4) Negotiations for the proposed substitution of supply will be between the tribe and the party offering water. Under procedures to be developed by the Department, the Secretary will reserve the authority to approve a substitution if it is determined that tribal agreement is being withheld unreasonably.

No doubt, there are substantial legal, technical, and environmental aspects of this concept to be worked out. But there is also no doubt that if appropriate use is made of the effluent, shortages will fall less severely on all users served by the Central Arizona Project.

Also, in an effort to identify more water which could be made available to mitigate the adverse effects of shortage years, the August 8 *Notice* directed the Assistant Secretary for Land and Water Resources to review whether operating criteria for Lower Basin Colorado River reservoirs permit, or could be modified to permit, the use of additional water for CAP purposes. The State of Arizona's CAP water availability projections differ from those of the Water and Power Resources Service. One purpose of this review was to determine if these differences are significant, and if so, whether or not they can be resolved, thus making some additional water available to the project. This review has been completed and based on its findings, I have concluded that the facts do not presently justify any modification in the operating criteria for the reservoirs.

Conservation of Groundwater

This subject was not addressed in the august 8 *Notice*. However, many comments were received from the non-Indian community which suggested that

Indians who benefit from the CAP should be required to meet the same water conservation and groundwater requirements as non-Indians. Most of the Indian commentators, however, charged that Indian lands have been systematically depleted of groundwater by the pumping activities of their non-Indian neighbors. The Indians argue that they have not been able to develop their groundwater resources fully, and that the aquifiers under their reservations have been depleted by non-Indian users. Groundwater pumping on tribal lands is arguably less, proportionately, than pumping throughout the region as a whole for two reasons: The reservations lack dense urban settlements, and they have less irrigated agriculture, the tribes also have been severely restricted in their ability to tap underground water by their lack of financial resources and access to capital. Despite these concerns, a principal purpose of the CAP remains the conservation and management of groundwater. For this reason, Indian water service contracts will contain provisions requiring the integrated management and control of surface and groundwater on Indian reservations receiving CAP water to the end that groundwater withdrawals are managed on a responsible basis.

Credits Against Winters Rights

These allocations to the tribes will be credited against the reservations' *Winters* rights, as and when finally adjudicated or finally determined by Federal legislative action. This stipulation will be included in the contracts with the tribes for these allocated supplies.

Th the extent that a CAP allocation is credited against *Winters* rights, the reservation being so credited will be able to use such water in any manner and for any uses permitted under its *Winters* rights.

In this context it should be added that the allocation of CAP water to the tribes will not constitute a taking, either directly or by implication, of any water rights of the tribes; nor will it constitute the Department's opinion as to the legal rights of these tribes.

Possible Additional Water for the Tribes

Except as specifically provided in the above allocations, the tribal allocations are limited to irrigation uses on the reservations. The tribes, however, are not precluded from contracting for project M&I water just as any other entity in central Arizona may so contract. As long as such water has not been contracted to other users, such contracts may be made through the Secretary of the Interior. If the tribes do decide to contract for this M&I water, they should be prepared to execute a contract at the same time, and under the same conditions as other M&I users contract with the CAWCD and the Secretary.

In a related matter, the asserted needs for tribal irrigation water exceed the allocations. It is my view that tribal irrigation requests above and beyond these allocations should be treated in the same way as requests from others seeking irrigation water.

Non-Indian Water Use

In 1976, the Arizona Water Commission, now the Department of Water Resources, recommended water allocations for non-Indian M&I and agricultural users. In the four years since the recommendations various conditions have changed, including the proposed increased tribal allocation contained herein, and increased estimates of the potential cost of CAP water.

In light of these changed circumstances, I have asked the DWR to revise its original recommendations for both M&I and agricultural use. I have been advised by Governor Babbitt that the State's revised recommendations for the allocation of CAP non-Indian water supplies will be submitted promptly following the publication of this notice.

Evaluation of Environmental Impacts

The requirements of the National Environmental Policy Act have been integrated into all phases of the Central Arizona Project. A programmatic Environmental Impact Statement was completed in 1972 and site-specific statements have been or are in the process of being done on particular phases of the project. The Bureau of reclamation (now the Water and Power Resources Service) prepared an environmental assessment of the Indian allocations of CAP water as proposed on April 18, 1975—(40 FR 17927). Based on that assessment, the Bureau concluded in a "Negative Determination of Environmental Impact," dated June 4, 1976, that the proposed allocations did not significantly affect the quality of the human environment. The Solicitor's Office reviewed and approved the assessment and negative finding.

Since the preparation of those documents, several other reports evaluating the potential environmental effects of possible CAP allocations have been written. These include:

An environmental evaluation of the AWC-recommended M&I allocations (March, 1979);

A two-part conceptual and technical assumptions review of the AWC recommendations (November 9, 1979 and December 31, 1979);

A supplemental environmental evaluations analyzing the potential M&I users rejected by the AWC (December, 1979);

A report on potential water use by non-Indian agriculture as recommended by the AWC (December, 1979).

Finally, the Water and Power Resources Service has completed an environmental assessment on the Indian allocations as proposed in the August 8 *Notice*. Water and Power has concluded in a Finding of No Significant Impact (FONSI) dated October 15, 1980, that these allocations do not significantly affect the quality of the human environment and therefore preparation of an Environmental Impact Statement is not required. Copies of that assessment and subsequent FONSI are available to the public upon request.

Effect on Previous Decisions

The adjustments to the 1976 allocation have been made with the understanding that Secretarial decisions are precedent in the Department and are not generally revised without substantial reason. However, the temporary priority for Indian water use under the 1976 allocation is unreasonable and justifies a revision from a first, but temporary, priority in CAP water, to a shared priority with M&I users over the life of the project. In addition, we are aware of no decisions which have been made by the non-Indian community in reliance on the 1976 allocations which would restrict the Secretary from revising the allocation for good cause.

My final decisions on the allocations contained herein supersede the decisions published by Acting Secretary Frizzell on October 15, 1976 and by Secretary Morton on December 15, 1972, 37 FR 2802; and insofar as those decisions are inconsistent with these final decisions, they are rescinded.

Dated: December 5, 1980.

Cecil D. Andrus,

Secretary of the Interior.

[FR Doc. 80-38307 Filed 12-9-80; 8:45 am]

BILLING CODE 4310-10-M

Regional Oil Shale Coal Team; Meeting

Pursuant to the Federal Advisory Committee Act (Public Law 92-163), notice is hereby given of a meeting of the Regional Oil Shale Team, composed of the Green River-Hams Fork and Uinta-Southwestern Utah Regional Coal Teams of the Federal-State Coal Advisory Board, to be held at 10:00 a.m., Tuesday, January 6, 1981, in Room 503, Federal Court House, 1921 Stout Street, Denver, Colorado 80202. The Team will meet to discuss a Memorandum of Understanding covering its