Health, Bethesda, Maryland 20892, telephone 301–496–5717, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Mark L. Rohrbaugh, Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, room 4C39, Rockville, Maryland 20892, telephone 301–496–8208, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.855, Immunology, Allergy, and Immunologic Diseases Research, National Institutes of Health)

Dated: January 27, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–2769 Filed 2–4–92; 8:45 am]

BILLING CODE 4140–01–M

Additional Regional Meetings

Notification was provided previously that the National Institutes of Health (NIH) had scheduled two regional hearings to receive public comment on the draft NIH Strategic Plan. Because of the overwhelming response to the first announcement, notice is hereby given that the NIH will convene two additional regional meetings. The first meeting of this round will take place on March 3, 1992, at Emory University School of Medicine, Atlanta, Georgia. The second meeting will be held on March 5, at Washington University School of Medicine, St. Louis, Missouri.

To ensure that the momentum of biomedical research will go forward and that the past Federal investment in biomedical research will continue to be capitalized, NIH has been engaged in a synergistic process involving all its organizational components, as well as the Alcohol, Drug Abuse and Mental Health Administration, to develop a framework for discussion of strategies to guide the NIH as it advances into the 21st century. This "framework" identifies research that promises extraordinary dividends for the Nation's future health. It has a scope that transcends immediate interests and is responsive to changing public and national health needs. Importantly, it builds on past accomplishments, organizational strengths, and mechanisms and approaches of proven value. Finally, it creates a framework for ordering NIH's corporate thinking and charts an initial course for our efforts. This framework will guide the subsequent development of the NIH Strategic Plan.

These regional meetings will be of one day duration, beginning at 9 a.m. and ending at 5 p.m. The meetings will begin with a plenary session where an overview of the NIH planning process will be presented and questions by the participants concerning the Framework for Discussion of Strategies for the NIH will be considered. The meeting will then break out into five panel sessions to discuss five broad trans-NIH objectives and the specific functional components which are key to realizing the objectives. These panels will meet concurrently from 10 a.m. until 3 p.m., will be chaired by senior NIH officials, and will be organized as follows: (1) Critical technologies, (2) research capacity, (3) intellectual capacity, (4) stewardship of public resources, and (5) public trust. The meeting will end with a plenary session to report on the panels' deliberations. The oral testimony originally planned is being deferred in favor of the sharing of your views during the panel sessions; however, written comments will be accepted at the meeting.

If you will be attending one of the regional meetings, please notify Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, room 103, 9000 Rockville Pike, Bethesda, Maryland 20892, by mail or facsimile (301–402–1759) by February 19, 1992.

If you have already notified the NIH of plans to attend one of the previously scheduled hearings but you will attend the Atlanta or St. Louis meeting instead, please indicate which of the formerly scheduled sites you had selected. Please indicate your first and second preference for panel participation. In order to achieve balance in the panel discussions and to accommodate to space limitations, the NIH reserves the option to reassign participants to panels. A copy of the Framework for Discussion of Strategies for the NIH, as well as additional information about the meetings, will be sent in advance of the regional meetings to the participants.

If you or others from your organization who plan to attend one of these regional meetings have any special needs that require assistance, please inform the office listed above. If you have questions concerning either of the two regional meetings, please contact Ms. Mary Demory (301) 496–1454.

Dated: January 30, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92–2768 Filed 2–4–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Preliminary Notice of Adverse Impact on Great Smoky Mountains National Park Under Section 165(d)(2)(C)(ii) of the Clean Air Act

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

ACTION: Notice of preliminary determination under section 165(d)(2)(C)(ii) of the Clean Air Act.

SUMMARY: This notice announces the preliminary determination by the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, as the Federal Land Manager of Great Smoky Mountains National Park (NP) that, in accordance with the Prevention of Significant Deterioration (PSD) air quality requirements of the Clean Air Act, (1) air pollution is causing adverse impacts on the air quality related values of this PSD class I area, and (2) emissions of pollutants of concern from proposed major emitting facilities in the vicinity of the park will contribute to and exacerbate these impacts. At this time, the Federal Land Manager is recommending that the Tennessee Air Pollution Control Division, as well as the permitting authorities of other States in the region (i.e., North Carolina, South Carolina, Georgia), not issue permits for new major sources in the vicinity of the park unless measures are taken to ensure that these proposed sources would not contribute to adverse impacts on park resources. By this notice, the Department of the Interior invites public discussion of this decision during a 30-day comment period, after which time the Federal Land Manager will make a final determination on the basis of the best available information. The intent of this notice is to solicit comments on the preliminary determination and to alert interested parties to the availability of supporting documentation.

Today's action is "generic" in the sense that it sets a general policy for all major sources within approximately 120 miles of Great Smoky Mountains NP that seek to increase pollutants of concern. A separate action is currently underway concerning a proposed new boiler at the Tennessee Eastman facility in Kingsport, TN. Public comment on the Federal Land Manager's November 5, 1991, preliminary adverse impact determination concerning this source will be taken by the State of Tennessee in the context of the public hearing on Tennessee Eastman's proposed permit.

DATES: Comments must be received on or before March 6, 1992.

ADDRESSES:

Comments. Comments should be submitted (in duplicate, if possible) to: Chief, Policy, Planning, and Permit Review Branch, National Park Service-Air, P.O. Box 25287, Denver, Colorado 80225.

Supporting documentation. Copies of the technical support document entitled, "Technical Support Document Regarding Adverse Impact Determination for Great Smoky Mountains National Park," including references, are available for public inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, at the following locations: National Park Service, Main Interior Building, room 3229, 18th and C Streets NW., Washington, DC; Air Quality Division, 12795 West Alameda Parkway, Lakewood, Colorado, room 215; and Great Smoky Mountains National Park Headquarters, Gatlinburg, Tennessee. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine L. Shaver, Chief, Policy, Planning, and Permit Review Branch, National Park Service-Air, P.O. Box 25287, Denver, Colorado 80225, telephone number (303) 969–2071.

SUPPLEMENTARY INFORMATION:

Background

Purposes and Values of Great Smoky Mountains National Park

Great Smoky Mountains NP was established in 1926 "for the benefit and enjoyment of the people." The park encompasses 800 square miles of massive mountain ridges and deep-cliff valleys in the States of Tennessee and North Carolina. It is world-renowned for the diversity of its plant and animal resources, the beauty of its ancient mountains, the quality of its remnants of American pioneer culture, and the depth and integrity of the wilderness sanctuary within its boundaries. Its status is emphasized by the fact that it is both an International Biosphere Reserve and a World Heritage Site.

As a unit of the National Park System, Great Smoky Mountains NP is managed consistent with the general mandate of the Organic Act of 1916 which states that the National Park Service (NPS) shall:

> Promote and regulate the use of * * * national parks * * * by such means and measures as conform to the fundamental purpose of the said parks, * * * which purpose is to conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 16 U.S.C. 1.

The 1978 amendments to the Organic Act further clarify the importance Congress placed on protection of park resources, as follows:

> The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. 16 U.S.C. 1a–1.

Clean Air Act Requirements

In 1970, Congress passed the Clean Air Act (the Act), establishing national policy toward preserving, protecting, and enhancing air quality. In 1977, Congress amended the Clean Air Act, *inter alia*, designating all national parks, established as of August 7, 1977, that exceeded 6,000 acres in size, as mandatory class I areas. Class I areas are afforded the greatest degree of air quality protection under the Act. There are 48 units of the National Park System, including Great Smoky Mountains NP, designated as class I. The 1977 Clean Air Act Amendments also contain a section that specifically requires visibility protection for mandatory Federal class I areas. Section 169A sets, as a national goal, the prevention of any future, and remedying of any existing, manmade visibility impairment in mandatory class I areas. The Act requires that reasonable progress be made toward this national goal. The 1990 Amendments to the Clean Air Act left intact the requirements for class I area protection, while providing additional tools to accomplish the protection (e.g., visibility transport commissions). Under the Prevention of Significant Deterioration (PSD) program of the Act, major sources of air pollution that propose to build new, or significantly modify existing facilities in relatively unpolluted areas of the country ("clean air regions"), are subject to certain requirements generally designed to minimize air quality deterioration. Where emissions from new or modified facilities might affect class I areas, like Great Smoky Mountains NP, set aside by Congress for their pristine air quality or other natural, scenic, recreational, or historic values potentially vulnerable to air pollution, the Act imposes special requirements to ensure that the pollution will not adversely affect such values. In addition, the Act gives the Federal Land Manager and the Federal official charged with direct responsibility for management of class I areas an affirmative responsibility to protect air quality related values, and to consider in consultation with the permitting authority whether a proposed major emitting facility will have an adverse impact on such values.

The Clean Air Act establishes several tests for judging a proposed facility's impact on the clean air regions in general, and on the class I areas in particular. One such test is the "class I increment" test. The class I increments represent the extremely small amount of additional pollution that Congress thought, as a general rule, should be allowed in class I areas.

Congress realized, however, that in certain instances sensitive air quality related resources could be adversely affected at air pollution levels below the class I increments. Therefore, the Act establishes the "adverse impact" test, which requires a determination of whether proposed emissions will have an "adverse impact" on the air quality related values, including visibility, of the class I area. If the Federal Land Manager demonstrates to the satisfaction of the permitting authority that proposed emissions will adversely affect the air quality related values of the class I area, even though they will not cause or contribute to concentrations which exceeds the class I increments, then the permitting authority may not authorize the proposed project. Thus, the adverse impact test is critical for proposed facilities with the potential to affect a class I area.

Adverse Impact Considerations

The legislative history of the Clean Air Act provides direction to the Federal Land Manager on how to comply with the affirmative responsibility to protect air quality related values in class I areas:

> The Federal land manager holds a powerful tool. He is required to protect Federal lands from deterioration of an established value, even when class I numbers are not exceeded * * * While the general scope of the Federal Government's activities in preventing significant deterioration has been carefully limited, the Federal land manager should assume an aggressive role in protecting the air quality values of land areas under this jurisdiction. * * * In cases of doubt the land manager should err on the side of protecting the air quality-related values for future generations. Sen. Report No. 95–127, 95th Cong., 1st Sess. (1977).

The Assistant Secretary for Fish and Wildlife and Parks, as Federal Land Manager for class I areas managed by the National Park Service and U.S. Fish

and Wildlife Service, has stated that air pollution effects on resources in class I areas constitute an unacceptable adverse impact if such effects:

1. Diminish the national significance of the area; and/or
2. Impair the quality of the visitor experience; and/or
3. Impair the structure and functioning of ecosystems.

(*See, e.g.*, 47 FR 30223 (1982)).

Factors that are considered in the determination of whether an effect is unacceptable, and therefore adverse, include the projected frequency, magnitude, duration, location, and reversibility of the impact. In addition, the Federal visibility protection regulations, 40 CFR 51.300, *et seq.*, 52.27, define "adverse impact on visibility" as:

> * * * visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with: (1) Times of visitor use of the Federal class I area, and (2) the frequency and timing of natural conditions that reduce visibility. Id. 51.301(a).

Summary of Proposed Action

The action which is the subject of this notice concerns the Federal Land Manager's preliminary determination that air pollution is causing unacceptable, adverse impacts on visibility and other air quality related values in Great Smoky Mountains NP, and that emissions of the pollutants of concern from proposed major emitting facilities in the vicinity of the park would contribute to and exacerbate these impacts. Therefore, the Federal Land Manager would recommend that the Tennessee Air Pollution Control Division and the permitting authorities of other States in the region not issue permits for proposed new major sources in the vicinity of the park (within approximately 200 kilometers) unless measures are taken—e.g., offsets—to ensure that these proposed sources would not contribute to adverse impacts on park resources.

This action is "generic" in the sense that it sets a general policy for all major new sources (and major modifications of existing sources) within approximately 120 miles of Great Smoky Mountains NP that seek to increase pollutants of concern. A separate action is currently underway concerning a proposed major source permit for a new boiler at the Tennessee Eastman facility in Kingsport, TN. The proposed boiler would increase nitrogen oxide emissions in the area by 1,542 tons per year. Given the time constraints of the Tennessee Eastman permit proceeding, the Federal Land Manager has asked the State of Tennessee to solicit comments on the Federal Land Manager's November 5, 1991, preliminary determination of adverse impact in the context of the State's public hearing on the proposed permit. Thus, a final determination on the Tennessee Eastman permit need not await a final determination on the "generic" policy set forth today.

Potential Impacts of New Air Pollution Sources

To be able to assess the potential impacts of emissions from new sources, the Federal Land Manager first performed a comprehensive assessment of the current air quality conditions at Great Smoky Mountains NP. As summarized below and discussed in detail in the Technical Support Document, this assessment shows that air quality related values at Great Smoky Mountains NP (i.e., terrestrial and aquatic resources, visibility) are currently being adversely affected by air pollution.

Potential Impacts on Biological and Aquatic Resources

Ozone monitoring results to date indicate that frequent ozone levels sufficient to cause injury to plants exist in the park. Both Cove Mountain and Lock Rock ambient ozone monitoring stations exhibit typical mountaintop patterns of little diurnal fluctuations, chronic sustained ozone exposure and peak concentrations delayed into the evening. This pattern increases with elevation.

Observations in Great Smoky Mountains NP of foliar injury typically associated with ozone prompted researchers to initiate extensive ozone studies in the park. Since 1987, field surveys have identified 95 native plant species that exhibit ozone-like foliar injury in the park. Thirty-nine of these have been exposed to ozone under controlled conditions in fumigation chambers at the Uplands Research Laboratory in the park. Ten of the fumigated species have been shown to be extremely sensitive to ozone with foliar injury occurring on greater than 50 percent of the plants in the ambient chambers. Ten species are moderately sensitive, with foliar injury on less than 50 percent of the plants in the ambient treatment, but greater than 50 percent of the plants in the 2.0 times ambient treatment. Another 7 species are slightly sensitive, with foliar injury occurring in the 2.0 times ambient chambers only. In addition to the visible foliar injury, reduced plant growth and early leaf loss have been recorded for a number of species. The results of monitoring data show that ozone levels at higher elevation sites in the park (Look Rock, for example) can be up to 2 times greater than the levels recorded at the Uplands Research Lab. From the monitoring data, we can conclude that 27 of the 39 species tested, to date, can be injured at ozone levels that occur in the park.

In summer 1991, to quantify the extent of foliar injury in Great Smoky Mountains NP, and to better understand the amount of injury associated with various ozone levels, researchers installed a total of 8 permanent field monitoring plots near the ambient ozone monitors at Look Rock, Cove Mountain, and the Uplands Research Lab in the park. Ozone injury was observed on black cherry (*Prunus serotina*) and sassafras (*Sassafras albidumn*) leaves at all three locations. Although the injury observed on the black cherry trees near the Uplands Research Lab was slight, at the higher elevation Cove Mountain and Look Rock sites, over 90 percent of the individuals exhibited ozone injury with up to 75 percent of the black cherry leaf area injured. Ambient monitoring data reveal that summer 1991 ozone levels in Great Smoky Mountain NP are comparable to those of previous years.

Great Smoky Mountains NP embraces the largest remaining area of red spruce (*Picea rubens*)-Fraser fir (*Abies fraseri*) forests in the world, and the park also receives the highest deposition of nitrate of all monitored national parks. In fact, the 1989 National Acid Precipitation Assessment Program (NAPAP) Annual Report (1990) cited the high elevation red spruce forests of the eastern United States as the only instance of apparent evidence of forest damage in North America related to the direct effects of acidic deposition. From 1984 to 1989, surveys funded by NPS, NAPAP, and the Forest Service in high elevation forests within the park revealed a series of decline symptoms. These symptoms included an abrupt reduction, beginning in the early 1970's, in the amount of new wood reduced each year (produced annual radial increment) in red spruce growing above 6,000 ft; a general thinning of spruce resulting from the gradual loss of foliage; and the occurrence of necrotic spots (flecking) on the upper surface of spruce needles, which functionally reduces photosynthetic area. On average, the percentage of live spruce subactively classified as "healthy," based on needle

retention and crown fullness, steadily decreased during each annual evaluation. In 1985, 85 percent of the red spruce in Great Smoky Mountains NP were considered "healthy." By 1989, that number had decreased to a mere 51 percent. Crown conditions appear to worsen with increasing elevation. These forest decline symptoms could be caused by air pollution. It has further been suggested that atmospheric deposition is predisposing sensitive Fraser fir (a species recently designated by Tennessee as threatened) to balsam woolly adelgid (*Adelges piceae*) infestation and mortality. In Great Smoky Mountains NP, Fraser fir mortality due to woolly adelgid infestations exceeds 90 percent of the trees.

Nutrient cycling in two red spruce-Fraser fir sites in the park has been studied as part of the Integrated Forest Study, a large research project that looked at the potential for acidification in twelve locations around the U.S. and additional sites in Canada and Norway. It has been concluded that aboveground cycling of nutrients at the park sites was dominated by atmospheric deposition rather than by litterfall. The study found that the soils in the two sites are acidic and are essentially nitrogen-saturated. The belief is that the soils acidified naturally, although atmospheric deposition may have accelerated the process. Although the soil itself will probably not acidity further with continued atmospheric input, there are other considerations that cause concern. First, certain soil solutions are dominated by nitrates, sulfates, and hydrogen and aluminum (Al) cations. Pulses of nitrate and, to a lesser extent sulfate, in the soil solution caused Al to occasionally reach levels shown to inhibit root growth and calcium and magnesium uptake in red spruce seedlings in solution culture studies performed in the laboratory. There is concern that increased nitrate input will increase soil solution Al concentrations to levels toxic to plants.

Second, although the soil itself may not acidify further, the soil solution that enters the surrounding streams may contain increasing amounts of nitrates and acidity. Precipitation chemistry monitoring performed under the direction of the National Atmospheric Deposition Program has shown an average monthly, volume-weighted precipitation pH of between 4.0 and 5.0. Surveys of lakes and streams in the region show that most are poorly buffered and potentially sensitive to acidification. Watershed studies in the park in the 1980's found that although base flow pH of the high elevation streams draining Newfound Gap averaged 6.0 to 6.5, storms sometimes caused the pH to drop below 6.0. The researchers found that some of these high-elevations streams were extremely sensitive to acidification, with an acid neutralizing capacity (ANC) of only zero to 20 microequivalents per liter (ueq/L). In general, waters with an ANC of 200 ueq/L or less are considered sensitive. They also found moderately high levels of nitrates in the streams they studied. They concluded that although the nitrate concentrations are not presently high enough to acidify the streams, increased nitrate input could cause stream acidification. Other researchers confirmed that alkalinity and pH decrease, and nitrate concentrations increase, with increasing elevation in the park, indicating that the highest elevation streams are the most sensitive. Also of concern are the high levels of A1 recorded in the soil solution. It has been shown that this A1 washes into the streams during storm events, and may reach concentrations that are toxic to fish.

Concern about the potential for stream acidification and impacts on aquatic biota has prompted the National Park Service to undertake two stream studies in Great Smoky Mountains NP. One involves a high elevation stream water chemistry and fish survey that will be conducted over the next three to four years. The other is an intensive study of the Noland Divide watershed adjacent to the site of the Integrated Forest Study mentioned above. Preliminary data indicate that Noland Creek exhibits near-zero alkalinity and high nitrate and sulfate levels. The researchers will be doing continuous monitoring of pH, conductance, temperature, and discharge at Noland Creek in the spruce-fir zone, and will be attempting to quantify the frequency and extent of episodic acidification in the creek.

In summary, ozone-related injury already exists in the park. Given the Clean Air Act's affirmative responsibility to protect park resources, the Federal Land manager reasonably believes that increases in ozone precursor emissions, namely, volatile organic compounds (VOC) or nitrogen oxides (NO_x), are likely to exacerbate current ozone levels and related injury, and are therefore unacceptable without offsetting decreases in emissions. Also, studies reveal that soils in the park are already nitrogen-saturated; and streams in the park have been identified that have low alkalinity and are, therefore, sensitive to acidification. The Federal Land Manager concludes that the effects of additional sulfur dioxide (SO_2) and NO_x emissions in terms of increased acidic deposition are unacceptable and will adversely affect the structure, functioning, and national significance of the ecosystem at Great Smoky Mountains NP.

Potential Impacts on Visibility

Visibility is currently seriously degraded at Great Smoky Mountains NP. Through a 1979 Federal Register process, the Department of the Interior found, and the Environmental Protection Agency (EPA) agreed, that visibility is an important value in Great Smoky Mountains NP. See 44 FR 69122 (November 30, 1979). In a November 14, 1985, letter, the Department of the Interior informed the EPA that, with respect to uniform haze, the NPS visibility monitoring program has shown that scenic views at the Great Smoky Mountains NP (and other class I areas) are impaired by anothropogenic pollution more than 90 percent of the time.

The Department of the Interior's finding of significant existing visibility impairment at Great Smoky Mountains NP is supported by studies of historic and current visibility conditions. Under natural conditions, without the influence of air pollution, the State-of-Science/Technology report entitled Visibility: Existing and Historical Conditions—Causes and Effects (National Acid Precipitation Assessment Program 1990), states that visual range in the eastern United States is estimated to be 150 km (+/− 45 km). Visibility is strongly affected by light scattering and absorption by fine particulate matter (<2.5 microns in diameter). The NAPAP report estimates that under natural conditions, fine particulate matter concentrations in the eastern U.S. would be about 3.3 micrograms per cubic meter ug/m^3). As explained further below, among the constituents of the fine particulate matter, fine sulfate particles (which result from the atmospheric conversion of gaseous sulfur dioxide emissions) are currently responsible for most of the visibility impairment throughout the East. Natural levels of sulfate have been estimated to be about 0.2 ug/m^3.

Studies examining historical visibility trends in the East show that annual average visibility in the southeastern United States declined 60 percent between 1948 and 1983, with an 80 percent decrease in summer months and a 40 percent decrease in winter months. Visual range in rural areas of the East currently averages 20–35 km.

substantially lower than the estimated 150 km natural condition. Many of the constituents of the haze that degrades visibility are not emitted directly but are formed by chemical reactions in the atmosphere. Gaseous "precursor" emissions from a source are converted though very complex reactions into "secondary" aerosols. Sulfur oxides convert to nitric acid and ammonium sulfates, nitrogen oxides convert to nitric acid and ammonium nitrate, and hydrocarbons become organic aerosols. Haziness over the eastern U.S. since the late 1940's has been dominated by sulfur. Declining visibility is well correlated with increasing emissions of sulfur dioxide.

The National Park Service has been monitoring visibility at Great Smoky Mountains NP since 1984 as part of its visibility monitoring network and more recently (since 1988) as part of EPA's national visibility monitoring network for class I areas known as the IMPROVE network. Initially, teleradiometers and cameras were used to monitor views and determine visual range.

In 1985, the NPS began monitoring fine particulate matter at Great Smoky Mountains NP using a Stacked Filter Unit (SFU) which was replaced by the more sophisticated IMPROVE sampler in 1988. In addition to providing a more accurate cut-point for fine particles less than 2.5 microns in diameter, the IMPROVE sampler allows for the collection and analysis of a greater number of atmospheric pollutants, such as chloride, sulfate, and nitrate ions, and elemental and organic carbon.

The analysis of fine particle data collected at Great Smoky Mountains NP from March 1988 through February 1991 using the IMPROVE sampler indicates that monthly average fine particle concentrations have ranged from 8.7 to 25.1 ug/m^3 during the summer (*i.e.*, June-September), or three to eight times higher than the estimated annual average natural background concentration. The summer average of fine particle mass concentrations measured at Great Smoky Mountain NP during the period March 1985 to February 1987 using the SFU was 9.3 ug/m^3, whereas the average for the entire sampling period was 6.4 ug/m^3. Thus, summer and annual average fine particle mass concentrations are three and two times, respectively, the estimated natural background.

Recent analyses of data collected at Great Smoky Mountains NP have shown that sulfates are responsible for 70–85 percent of the visibility impairment. Based on the SFU data, the summer average sulfate concentration between 1985 and 1987 ranged from 1.9–8.3 ug/m^3, a ten to forty-two fold increase from natural background. Similarly, the 3-year average sulfate concentration of 4.9 ug/m^3 during the 1985–1987 time period has experienced an almost twenty-five fold increase from natural background. The most recent data available from the IMPROVE sampler show an average summer (1988–1990) sulfate of 9.4 ug/m^3 and a 38-month average (Mar '88–Feb '91) of 5.7 ug/m^3, slightly higher than, but consistent with, the SFU data. On the average, organics are responsible for most of the remaining visibility impairment. Nitrate aerosols (resulting from atmospheric conversion of nitrogen oxide emissions) are generally responsible for only one percent of the visibility impairment and average less than 3 ug/m^3. However, at times, nitrates comprise up to 10 percent of the fine mass and could significantly affect visibility during some episodes. Thus, one can reasonably conclude that the existing poor visibility conditions at Great Smoky Mountains NP are likely a result of the dramatic increases in sulfate concentrations, primarily the result of an increase in man-made sulfur oxide emissions in the region, but the NO_x may contribute to the problem as well.

Using the fine particle data collected at Great Smoky Mountains NP and reconstructing the extinction (standard visual range) from the particle data, one can describe the effect of the increased fine particulate and sulfate concentration on visibility at Great Smoky Mountains NP. Median visual range at Great Smoky Mountains NP is 39 km, with a median summertime visual range of 19 km. In other words, the "average" visibility day at Great Smoky Mountains NP has experienced a degradation through time to one-fourth of estimated natural conditions. This degradation is likely attributable to increases in man-made sulfur oxide emissions. Visibility conditions at the park show a strong seasonal pattern, with the worst visibility occurring during the summer, when visitation at Great Smoky Mountains NP is highest. During summer months the average visibility ranges from 23-43 km, or less than one-third the estimated natural visual range.

The chronic visibility at Great Smoky Mountains NP typically manifests itself as a uniform haze. Such impairment is a homogeneous haze the reduces visibility in every direction from an observer. It appears as though the observer were peering through a grey or white translucent curtain placed in front of the scene. Colors appear washed out and less vivid, and geologic features become less discernible or may disappear.

In a November 14, 1985, letter, the Department of the Interior informed the EPA that, with respect to this uniform haze, the NPS visibility monitoring program has shown that more than 90 percent of the time scenic views at Great Smoky Mountains NP (and other class I areas) are affected by anthropogenic pollution.

As noted above, the Federal visibility protection regulations, 40 CFR 51.300, 52.27, define "adverse impact on visibility" as visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with: (1) Times of visitor use of the Federal class I area, and (2) the frequency and timing of natural conditions that reduce visibility. Based on this general definition and the data summarized above, manmade pollution clearly causes adverse impacts on visibility at Great Smoky Mountains NP. Although the extent of the problem varies in magnitude, visibility at Great Smoky Mountains NP is substantially impaired most of the time.

Good visibility in scenic areas has many aesthetic and economic benefits. The vistas offered at Great Smoky Mountains NP represent an important value to the visitors who come to enjoy them. Futhermore, considerable economic benefit accrues to communities near areas of great scenic beauty, like Great Smoky Mountains NP, as millions of visitors come to these areas annually.

One of the reasons people visit parks is to see and enjoy the scenery. Poor visibility is a frequent complaint made by visitors to Great Smoky Mountains NP. Studies conducted by the NPS show that visitors are aware of visibility conditions and that clean, clear air is integral to the enjoyment of visiting the parks. A survey conducted in 1985 by the NPS revealed that park visitors rank air quality attributes higher than any other park attributes, and that viewing scenery was the most common visitor activity.

It is unlikely that any proposed visibility-impairing pollutants (i.e., SO_2, NO_x, and VOC) would be visible as a distinct, coherent plume in the park. These proposed emissions would likely, however contribute to uniform haze, the more pervasive visibility problem in Great Smoky Mountains NP. In fact, NPS research has shown that both local

(*e.g.*, within 200 km) and long-distant sources contribute to such visibility impairment at Great Smoky Mountains NP. In addition to Tennessee, source areas in the States of Ohio, Kentucky, West Virginia, Virginia, Indiana, North Carolina, and Illinois have been estimated to contribute to the park's haze.

Given the existing impacts on the visibility at Great Smoky Mountains NP, any significant increase in emissions which contributes to visibility impairment at Great Smoky Mountains NP would adversely affect this class I resource.

In sum, with respect to visibility, the Federal Land Manager believes that any increases in visibility-impairing pollutants would contribute to existing adverse impacts on visibility at Great Smoky Mountains NP. The Federal Land Manager further believes that allowing a significant increase in visibility-impairing pollutants would interfere with—rather than promote—achievement of the national visibility goal and the need to make reasonable progress toward that goal.

Based on the above findings and discussion, the Federal Land Manager concludes that the present visibility conditions at Great Smoky Mountains NP meet the adverse impact criteria discussed above, and therefore, are adverse. Specifically, the present conditions interfere with the management, protection, preservation and enjoyment of the visitor's visual experience, thereby diminishing the national significance of the area.

Summary of Potential Impacts

The Federal Land Manager believes that, because of the significant and widespread existing air pollution effects occurring within the Great Smoky Mountains NP, any significant increase in SO_2, NO_x, or VOC emissions in the vicinity of the park could potentially cause or contribute to adverse impacts. Indeed, additional emissions would adversely impact sensitive resources at Great Smoky Mountains NP by: (1) Contributing to already high ozone levels, at times approaching the national standard, thereby impacting ozone-sensitive vegetation; (2) depositing additional nitrogen on soils which are already nitrogen-saturated, which will mobilize nitrogen and aluminum in the soil and leach these toxic elements into sensitive streams and vegetation within the park, with resulting adverse effects on aquatic and terrestrial life; and (3) exacerbating existing adverse visibility conditions at Great Smoky Mountains NP.

Proposed Finding and Recommendation

Based on the above information, the Federal Land Manager preliminarily finds that existing air pollution effects interfere with the management, protection, and preservation of park resources and values, and diminish visitor enjoyment, and, therefore, are adverse. The Federal Land Manager also preliminarily finds that the effects of additional SO_2, NO_x, and VOC emissions associated with major new sources (or major modifications of existing sources) proposed for the area would likely contribute to and exacerbate the existing adverse effects and are, therefore, unacceptable.

Based on these findings and the Department's legal responsibilities and management objectives for Great Smoky Mountains NP, the Federal Land Manager would recommend that the Tennessee Air Pollution Control Division and the permitting authorities of other States in the region not permit additional major air pollution sources with the potential to affect Great Smoky Mountains NP's resources unless these States can ensure, through offsets or other comparable measures, that such sources would not contribute to adverse impacts. The Federal Land Manager would further suggest that these States develop a Statewide emissions control strategy to protect the air quality related values of Great Smoky Mountains NP. This strategy might include (1) an offset program requiring a greater than one-for-one emission reduction elsewhere in the State to offset proposed emission increases associated with major new or modified sources; (2) a Statewide Reasonable Available Control Technology requirement to control existing sources of emissions; and (3) a provision setting a timeframe for determining maximum allowable levels of air pollutants in the State, which would involve Statewide emission caps as a primary method for achieving these maximum allowable levels. This emissions cap could reflect a level of allowable pollution that will provide long term protection for critical natural resources throughout the region.

The Federal Land Manager will consider the above possible approaches, as well as any additional alternatives received through the public comment process, in making final recommendations to the Tennessee Air Pollution Control Division and other permitting authorities in the region regarding the finding of adverse impact for Great Smoky Mountains NP.

Public Comments

Interested parties are invited to comment on this preliminary determination. Comments should specifically address the following issues: (1) Whether the existing air quality effects at Great Smoky Mountains NP are adverse; and (2) given the Congressional mandates related to Great Smoky Mountains NP and the Federal Land Manager's responsibilities, whether it is reasonable to conclude that proposed major increases in emissions of SO_2, NO_x, or VOC's in the area without offsetting decreases would contribute to adverse impacts on park resources.

Finally, the Federal Land Manager would welcome comments and recommendations as to possible emission control strategies that would address the air quality concerns at Great Smoky Mountains NP.

Dated: January 30, 1992.

Michael Hayden,

Assistant Secretary for Fish and Wildlife and Parks, and Federal Land Manager for Areas under the Jurisdiction of the National Park Service.

[FR Doc. 92-2703 Filed 2-4-92; 8:45 am]

BILLING CODE 4310-10-M

Central Arizona Project (CAP) Water Allocations and Water Service Contracting; Final Reallocation Decision

AGENCY: Office of the Secretary (Secretary), Interior.

ACTION: Notice of final reallocation decision for uncontracted CAP non-Indian agricultural water allocations.

SUMMARY: The Final Reallocation Decision contained herein will reallocate 29.3 percent of CAP non-Indian agricultural water allocations in line with the Arizona Department of Water Resources (ADWR) recommendations and the Department of the Interior (Department) will offer amendatory or new subcontracts for such water to non-Indian agricultural water user entities. The contracting process which follows this Final Reallocation Decision will include consideration of a full range of contracting terms and conditions and will provide an opportunity for public review and comment on specific contract actions. Any non-Indian agricultural water reallocations that remain uncommitted after completion of the contracting process shall revert to the Secretary for discretionary use in Indian water rights settlements and other purposes.

FOR FURTHER INFORMATION CONTACT: For information on subcontract qualifying conditions or for copies of proposed subcontracts, interested parties should contact Mr. Donald Walker, Contracts and Repayment Specialist, Bureau of Reclamation, Department of the Interior, 1849 C Street, NW., Washington, DC 20240 (telephone: 202–208–5671) or Mr. Steve Hvinden, Regional Economist, Bureau of Reclamation, PO Box 61470, Boulder City, Nevada 89006–1470 (telephone 702–293–8651).

SUPPLEMENTARY INFORMATION:

Background

The CAP is a multi-purpose project which provides water for municipal and industrial (M&I), Indian, and non-Indian agricultural uses. The last allocations of CAP water, the conditions upon which those allocations were made, and the procedures for water service contracting were published in the **Federal Register** (48 FR 12446, March 24, 1983). That notice contained the Secretary's final decision, summarized CAP issues, and provided basic background information applicable to this reallocation.

In the 1983 notice, the Secretary allocated 638,823 acre-feet of water per year to non-Indian M&I water user entities and 309,828 acre-feet of water per year to Indian entities. The non-Indian agricultural water users were to receive any CAP supply that remained after the non-Indian M&I and Indian entities used their entitlements. The water supply allocated to each of the 23 non-Indian agricultural users was stated in terms of a percentage of the total non-Indian agricultural supply. That supply will amount to about 900,000 acre-feet per year, initially, and is predicted to decline to about 400,000 acre-feet per year, 50 years hence. In shortage years it will drop to zero. The actual amount available will be determined on an annual basis and will vary depending upon a number of factors, including but no limited to hydrologic conditions on the Colorado River and demand for water by users with higher priorities. The percentage represents each allottee's portion of the total irrigated acreage, with an adjustment to reflect any other surface water supply available to the allottee.

The Central Arizona Water Conservation District (CAWCD) and the Bureau of Reclamation (Reclamation) have been entering into long-term CAP water service subcontracts with those entities to whom allocations of CAP agricultural water were made in the 1983 notice. CAWCD is the entity which has contracted with Reclamation for repayment of the costs of the project. The combined entitlement for entities which have entered into CAP water service subcontracts subsequent to the 1983 notice represents 70.7 percent of the non-Indian agricultural supply. Eleven entities have declined their CAP water allocation for a total of 23.82 percent of the non-Indian agricultural supply. Two entities which were allocated the remaining 5.48 percent of the agricultural water supply have not yet contracted for such supply.

Water deliveries pursuant to the subcontracts will begin following Reclamation's issuance of a notice of substantial completion of the CAP. It is anticipated that such a notice will be issued sometime in late 1992. In the meantime, CAP water deliveries have been and are being made through completed portions of the CAP aqueduct pursuant to interim water service contracts.

The 1983 notice provided for a reallocation of the CAP water after the initial round of water service contracting had been completed. An interest in the reallocation has existed for several years, but the Department and ADWR have refrained from proceeding until there was more certainty about the amount of allocations involved and until ongoing negotiations for Indian water rights settlements had been completed. However, in November of 1988, the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (SRPMICWRSA) compelled the Secretary to request ADWR to make a recommended reallocation of uncontracted non-Indian CAP agricultural water to the Secretary. The amount of time that ADWR had to respond to the request was not specified. However, ADWR was required to complete its recommendation by January 7, 1991, by the decision of the Arizona Superior Court in *Central Arizona Irrigation and Drainage District et al.* v. *Plummer*, No. CIV–38812 (October 15, 1990).

In response to the request from Reclamation dated December 28, 1988, and in compliance with the Court order cited above, ADWR recommended to the Secretary by its letter dated January 7, 1991, how the remaining 29.3 percent of the non-Indian agricultural supply should be reallocated. In arriving at its recommendations, ADWR conducted an extensive public input and review process which elicited numerous opinions, options, and alternatives. By letter dated January 15, 1991, ADWR supplemented its recommendations to the Secretary with a report explaining the methodologies used to calculate the water recommendations, discussing the factors considered in making the recommendations, and addressing issues and concerns raised by public comments. ADWR's report, transmitted by letter dated January 15, 1991, was fully considered and used in developing options for consideration.

The notice of proposed water reallocation decision for uncontracted CAP non-Indian agricultural water allocations and request for comments was published in the **Federal Register** (56 FR 28404, June 20, 1991). Three options were presented and discussed in that notice. Brief summaries of the two options considered but not selected, options 1 and 2, follow.

Reallocation Options Considered

The essential difference in the options focused on who would receive the initial reallocations and how to dispose of that portion of the reallocation that might remain after the contracting process is completed. Option 1 was the ADWR recommendations without change. Those recommendations provide, among other things, for reallocation to existing and certain new subcontractors, some of which already have allocations from 1983. It also provided for pro rata upward adjustment of all allocations under subcontract to dispose of the portion of the reallocation remaining after the initial round of contracting. Based on the possibility that some portion of the reallocation may remain as a result of allottees refusing, not qualifying for, or accepting a lesser allocation than that offered for contracting, two other options were conceived.

Under Option 2, any remaining CAP non-Indian agricultural water supply would be initially reallocated pro rata among the 10 existing subcontractors with the stipulation that any reallocations not contracted for within 180 days of the reallocation decision would revert to the Secretary for discretionary use. This method would eliminate from the reallocation any new non-Indian agricultural entities and any non-Indian agricultural entities which have previously declined or failed to subcontract.

Option retained the reallocations recommended by ADWR, but, like Option 2, provides for reversion of uncontracted allocations. Option 3 was selected and is the foundation for the Final Reallocation Decision that follows.

Previous Notices and Decisions

Previous Departmental **Federal Register** notices relating to CAP water

allocations are as follows: 37 FR 28082, December 20, 1972; 40 FR 17297, April 18, 1975; 41 FR 45883, October 18, 1976; 45 FR 52983, August 8, 1980; 45 FR 81265, December 10, 1980; 46 FR 29544, June 2, 1981; 48 FR 12446, March 24, 1983; and 56 FR 28404, June 20, 1991. Previous **Federal Register** notices relating to compliance with the National Environmental Policy Act of 1969 and CAP water allocations are as follows: 46 FR 29544, June 2, 1981; 46 FR 59316, December 4, 1981; 46 FR 60658, December 11, 1981; and 47 FR 12689, March 24, 1982.

Authority

CAP water decisions are made pursuant to the Reclamation Act of 1902, as amended and supplemented (32 Stat. 388, 43 U.S.C. 391), the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057, 43 U.S.C. 617), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501), the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (section 11(h) of Pub. L. 100–512, 102 Stat. 2559), the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR part 1505), the Implementing Procedures of the U.S. Department of the Interior (516 DM 5.4), and in recognition of the Secretary's trust responsibility to Indian tribes.

Compliance With the Requirements of the National Environmental Policy Act of 1969 (NEPA)

Reclamation has completed a Final Environmental Assessment, "Reallocation of Uncontracted, Central Arizona Project, non-Indian Agricultural Water" (Final EA) date July 1991, on the proposed reallocation decision. A "Finding of No Significant Impact" (FONSI) was signed August 6, 1991, by Reclamation's Regional Director of the Lower Colorado Region, Boulder City, Nevada. Anyone interested in receiving a copy of the Final EA, including the comments of interested and affected parties on the draft EA and the responses thereto, or the FONSI should contact Mr. Bruce Ellis, Chief, Environmental Division, Arizona Projects Office, Bureau of Reclamation, P.O. Box 9980, Phoenix, Arizona 85068 (telephone 602–870–6767). The Final Reallocation Decision commits the Department to carry out the requirements of NEPA, the Endangered Species Act, and the National Historic Preservation Act prior to any specific action to implement the reallocation.

Comments on the Proposed Reallocation and Responses

The **Federal Register** notice (56 FR 28404, June 20, 1991) of the Secretary's proposed water reallocation decision for uncontracted CAP non-Indian agricultural water allocations invited written comments from interested parties on or before July 22, 1991, and stated that all such comments would be considered. During the comment period, written and oral comments were received from officials of other Federal agencies, ADWR, municipalities, non-Indian irrigation districts, water resource associations, Indian tribes, and interest group representatives. In general, comments focused on the following broad areas: (1) The effect of distribution of the reallocated water among State of Arizona Active Management Areas (AMA), (2) the availability and the need for water allocations to settle Indian water rights claims; (3) whether new entities should be considered in the reallocation, and (4) whether the proposed reallocation is in accordance with existing laws and contracts. Response to comments on the draft EA, including comments on such peripheral subjects as the potential impacts associated with conversion of irrigation water to municipal and industrial use, implementation of exchange agreements, and administration of the Reclamation Reform Act are included in the Final EA. A synopsis of the comments and concerns of each commenter on the proposed reallocation and the Department's responses follows.

(1) Roosevelt Water Conservation District, April 22, 1991

Comment 1–1: The Department should set aside all or a significant portion of the unallocated CAP agricultural allocations for use in existing and potential Indian water rights settlements with the San Carlos Apache Tribe, the Gila River Indian Community, and the Tohono O'odham Nation. Under section 13 of the SRPMICWRSA, the Secretary has the discretion to use 1st round allocations for Indians, including the Southern Arizona Water Rights Settlement Act (SAWRSA).

Response 1–1: Section 11(h) of the SRPMICWRSA is clear that the Secretary must reallocate the uncontracted allocations for non-Indian use and thereafter offer amendatory or new subcontracts to non-Indian agricultural water users. The Secretary does not have the discretion to initially reallocate the uncontracted allocations for use by Indians. Furthermore, section 11(h) requires that the reallocation must be completed within 180 days of the date that the Secretary receives a recommendation from the ADWR. The Department believes that if Congress had desired that the uncontracted allocations be made available first for use by Indians, Congress could and would have so stated in the statute. Section 13 of the SRPMICWRSA provides that:

> Nothing in * * * this Act shall be construed in any way to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona Indian tribe, band, or community, other than the Community.

The Department does not believe that section 13 provides any discretion to the Secretary to make first-round reallocations available for use in SAWRSA. Furthermore, the Department does not believe that the proposed reallocation to non-Indian users would affect the rights, claims, or entitlements of the Tohono O'odham Nation under SAWRSA.

Comment 1–2: Having set aside the allocations as recommended in the previous comment, the Department should treat any of the allocations ultimately used in settlements with the tribes as contributions of water from the entities which would have received the reallocated water, but for its use in the particular Indian water rights settlement.

Response 1–2: See response 1–1. The Secretary does not have the authority to set aside the allocations as suggested. The Congress was aware in 1988 that water supplies were needed for existing and pending Indian water rights settlements, yet the Secretary was directed to reallocate the uncontracted allocations for non-Indian use. Moreover, the Congress directed the Secretary to perform the reallocation in a short time frame of 180 days. The Department does not believe that a suspension of the reallocation process would necessarily aid in the Indian water rights settlement process. The Department believes that the added uncertainty associated with a suspension could have the opposite effect and thereby frustrate attempts to reach water rights settlements.

Comment 1–3: If settlements are not achieved with the tribes within a reasonable period of time, determined at the sole discretion of the Secretary, the reallocation should proceed in accordance with the methodology set forth in the ADWR recommendations.

Response 1–3: See responses 1–1 and 1–2.

(2) Tucson Active Management Area (AMA) Water Augmentation Authority (TWAA), June 17, & July 9, 1991

Comment 2–1: The TWAA believes the non-contracted CAP agricultural water from the Tucson basin should be allocated to the Tohono O'odham Nation to meet part of the Secretary's obligation to the Nation under SAWRSA.

Response 2–1: See responses 1–1, 3–1, and 4–1.

(3) Tohono O'odham Nation (Nation), April 24, & July 11, 1991

Comment 3–1: The Nation objects to the ADWR recommendations because the proposed reallocations would substantially foreclose final settlement of the Nation's water rights under SAWRSA and would further eliminate a source of water essential for a fair and equitable resolution of the Nation's water claims in the Sif Oidak District.

Response 3–1: See response 1–1. The Secretary is required to allocate the uncontracted allocations for non-Indian agricultural water use and to offer amendatory or new subcontracts to the non-Indian water users. However, the Final Reallocation Decision provides that any allocations that are not contracted for would revert to the Secretary for his discretionary use. Allocations which might revert to the Secretary could be used for SAWRSA, or for water claims in the Sif Oidak District.

(4) Southern Arizona Water Resources Association (SAWRA), April 8, and July 9, 1991

Comment 4–1: SAWRA strongly objects to ADWR's recommended reallocations and its rationale for those allocations. During the process of reallocation of the agricultural water, ADWR ignored (1) the distinguishing hydrologic characteristics of the Tucson basin, (2) the historical context within which the original allocations were made, (3) the need and recent precedents for use of agricultural water to settle Indian water rights claims, and (4) the basic issues of fairness and equity.

Response 4–1: Section 11(h) of the SRPMICWRSA requires the Secretary to reallocate uncontracted non-Indian agricultural allocations to non-Indian agricultural water users. The Department does not believe that the water allocation relationships that existed in the 1983 CAP water allocation must be rigidly adhered to in the reallocation. The 1983 allocation of non-Indian agricultural water supplies and the proposed reallocation were both based on CAP eligible acres, adjusted for locally available surface water supplies. So far as the Department is aware, there was never any intent to use the non-Indian agricultural water allocations as a method to achieve a specific distribution of CAP water among the three affected AMAs. Since some of the irrigation districts have rejected their CAP water allocations, there are fewer eligible lands within the Tucson and Phoenix AMAs that can participate in the reallocation. Moreover, the AMAs are not losing a CAP water supply since they never had a CAP supply to begin with. Offers to contract were made to specific users within the AMAs. Since those users declined their CAP allocations, the water supplies are no longer destined for use within the AMA. While there may be frustrated expectations on the part of the AMAs, there would be essentially no impact as a result of the reallocation.

In order to address the concerns of the AMAs, the Secretary would have to develop a new allocation formula specifically designed to maintain the original distribution of water among the AMAs. This alternative has been considered and rejected. The Department recognizes that the decision of non-Indian agricultural water allottees within the Tucson AMA to not contract for CAP water has complicated the task of meeting the AMA goals. Nevertheless, the Department has deferred to the State with respect to how it chooses to initially reallocate CAP non-Indian allocations within the State. There are no other eligible, interested, non-Indian agricultural water users within the AMA to whom the water can be allocated.

The Department believes that the criteria established by ADWR for eligibility for an allocation recommendation are reasonable and consistent with the way that CAP water has been historically allocated to non-Indian agricultural water users. Those criteria included the following: (1) The entity must be located in an area of groundwater decline; (2) The entity must serve water for agricultural purposes; and (3) The entity must have lands which are eligible to be irrigated with CAP water.

Comment 4–2: The commenter strongly objects to reallocating water to McMullen Valley Water Conservation and Drainage District (MVWCDD). SAWRA asserts that MVWCDD is outside of the CAWCD service area and that the city of Phoenix is the real beneficiary. It views the reallocations to MVWCDD and RID as being made at the expense of the Tucson AMA's effort to reduce groundwater use.

Response 4–2: See responses 4–1, 5–1, and 20–3.

(5) Inter Tribal Council of Arizona, Inc., July 22, 1991

Comment 5–1: The Tribal Council requests that the proposed reallocation be modified to (1) exclude new entities and entities which previously declined to contract; (2) set conditions that limit subcontractors to contract to use the water on the subcontractors' land for agricultural use only; (3) require demonstration, to the satisfaction of the Secretary, that it is economically feasible for the subcontractors to use CAP water and pay any associated debt; (4) establish a 90-day timeframe for completion of the contracting process; and (5) reallocate any uncontracted municipal and industrial (M&I) water for Indian water rights settlements unless entities with an M&I water allocation demonstrate to the Secretary within 30 days that it is economically feasible for the entity to immediately contract for and put the water to beneficial use.

Response 5–1: The Department believes that the criteria established by ADWR to be eligible for a reallocation are reasonable. The Department does not believe that there is good rationale for excluding from the reallocation or contracting processes new entities or entities that have previously declined a subcontract if such entities meet the ADWR criteria and the conditions set forth in the Final Reallocation Decision that follows.

Regarding the second comment, the agricultural water service subcontracts provide that the CAP water must be used for agricultural purposes within the subcontractor's service area. Some agricultural subcontractors may choose to take delivery of their CAP water through an exchange. Exchanges can be an effective water management and conservation tool. Exchanges have always been envisioned as a vital part of the CAP. Section 1 of the CAP authorizing legislation contemplates the furnishing of CAP water "* * * through direct diversion or exchange of water." At this time, the Roosevelt Irrigation District (RID) is planning on exchanging its allocation of CAP water for city of Phoenix effluent water. Under this concept, RID would enter into a subcontract for the CAP water with the stipulation that the CAP water be delivered to the city of Phoenix. In return, the city of Phoenix would deliver effluent water to RID. Through the exchange the city of Phoenix would get an additional potable water supply and

RID would get an affordable irrigation water supply not otherwise available to either party. Therefore, the Department believes that physically limiting delivery of CAP non-Indian agricultural water to the subcontractor's agricultural service area would be unnecessarily restrictive when there are substantial benefits to be realized from an exchange arrangement.

Regarding the third comment, other than meeting certain financial and contractual obligation tests, the Department does not believe that it is appropriate to require the existing subcontractors to meet the kind of "economic" feasibility test suggested in the comment. The Final Reallocation Decision that follows provides that the new allottees must meet the same financial feasibility tests as other entities which received federally constructed distribution systems. It also requires that all subcontractors must be current with their financial and contractual obligations to the United States, CAWCD, and bond holders prior to execution of new or amendatory subcontracts.

Regarding the fourth and fifth comments, the Department believes that a 6-month time period to complete the contracting process for the existing subcontractors is reasonable. The reallocation of M&I water is beyond the scope of this allocation. However, the Department does intend to bring closure to the M&I subcontracting process soon so that it can determine how much of the M&I water might be available for reallocation.

(6) Dennis DeConcini and John McCain, U.S. Senators, and Jim Kolbe, Member of Congress, June 28, 1991

Comment 6–1: Individiauls and organizations in the Tucson area have contacted the Congressman expressing great concern that the ADWR recommendations, if adopted, will result in roughly 15 percent of the Tucson basin's original CAP agricultural water allocation being allocated outside the basin. If combined with possible similar reallocations of M&I water supplies in the future, nearly a third of the original CAP water allocated to the basin would be unavailable for use in the Tucson area. Such a result would have serious implications for Tucson's water future.

Response 6–1: See response 4–1.

(7) Gover, Stetson & Williams, P.C. (Tohono O'odham Nation), May 10, & July 22, 1991

Comment 7–1: The proposed course of Secretarial action is a continuation of a reallocation process which ignores the paramount water rights of Indian nations, and risks diversion of water resources to non-Indians to the point that the "wet" water supply for Indian nations will be lost.

Response 7–1: See response 1–1. The Department is well aware of the need for water for existing and pending Indian water rights settlements and is committed to finding water supplies for the settlements. However, in this case, the Secretary has been directed by the Congress to reallocate the uncontracted non-Indian agricultural water allocations to non-Indian uses. The Department believes that the reversion concept encompassed in the Final Reallocation Decision may provide a source of water for Indian water rights settlements.

(8) City of Phoenix (Phoenix), July 18, 1991

Comment 8–1: Phoenix fully supports making an allocation to MVWCDD and to the RID, but does not feel that it is necessary or desirable to establish a fixed deadline of 1 year from the date of the reallocation decision to meet the conditions required for the offer of a subcontract. A more flexible time frame, such as "within a reasonable period of time," would be preferable.

Response 8–1: The Department believes that the 1-year deadline is reasonable. However, the Department also understands that there may be extenuating circumstances beyond the entity's control which prevent the entity from meeting the 1-year deadline. As a result of the public review process for the proposed reallocation decision, ADWR has recommended that the Secretary consider extensions of the deadline under such circumstances, provided that under no circumstance would the deadline be extended for more than an additional 1-year period. The Final Reallocation Decision recognizes that concept.

Comment 8–2: Phoenix feels the ADWR should not be the party that is formally satisfied that the districts have met the conditions the Secretary has established.

Response 8–2: The Department concurs. The Final Reallocation Decision provides that after consulting with ADWR the Secretary will make the final decisions regarding the satisfaction of prerequisite conditions.

Comment 8–3: Phoenix fully supports a provision that all non-Indian agricultural water allocations which are not contracted for "within a reasonable period of time" shall revert to the Department.

Response 8–3: The Department acknowledges the comment.

(9) Maricopa-Stanfield Irrigation and Drainage District (MSIDD) July 19, 1991

Comment 9–1: The MSIDD expresses a concern that the reversion provision is not legal and opines that neither the CAP agricultural water service subcontracts nor the CAP master repayment contract provides a basis for the reversion provision. The MSIDD also states that SRPMICWRSA does not provide for the use of non-Indian agricultural water to satisfy Indian water rights claims. The MSIDD believes that the CAP agricultural water service subcontracts require that all agricultural allocations that are declined must be reallocated to non-Indian uses until the agricultural allocations are all under subcontract with non-Indian agricultural water users.

Response 9–1: Section 11(h) of the SRPMICWRSA does not address what happens if the agricultural entities to whom an allocation is made as a result of the reallocation process do not sign a new or amendatory CAP water service subcontract. Since Congress did not direct the Secretary to reallocate such allocations for a specific use or otherwise specify how they should be treated, the Secretary may reserve such allocations for his discretionary use. The Department does not agree with MSIDD's interpretation of the subcontracts. To the extent that section 11(h) of the SRPMICWRSA and the terms of the agricultural water service subcontracts are inconsistent, the Department believes section 11(h) of the SRPMICWRSA supersedes the subcontract provision and the Secretary can reserve the uncontracted allocations for his discretion. In addition, the legislative history for the SRPMICWRSA indicates that it was the intent of the Congress that the reallocation be performed consistent with the Secretary's obligations under the SAWRSA. It is the Department's view that the reversion concept is an appropriate and reasonable means for the Secretary to both follow the specific direction of the SRPMICWRSA and the intent of the Congress.

(10) Irrigation & Electrical Districts Association of Arizona (I&EDAA) July 19, 1991

Comment 10–1: The I&EDAA expresses concerns about the legal authority for the reversion mechanism.

Response 10–1: See response 9–1.

Comment 10–2: The I&EDAA argues that the stated intent of the non-Indian agricultural water subcontract language was that the agricultural water entitlement percentages would

ultimately total 100 percent and that the percentages would be adjusted in the reallocation process to accomplish that end. There is nothing in the law or the subcontracts that authorizes the reversion concept.

Response 10–2: See response 9–1. Under the reversion concept, the percentages would still total 100 percent. Any of the reallocated water made available to the Secretary under the reversion concept for other uses would retain its status as non-Indian agricultural water with a subordinate priority to Indian allocations and municipal and industrial allocations established by the 1983 decision (48 FR 12446–12449).

(11) Arizona Department of Water Resources, July 22, 1991

Comment 11–1: ADWR stated that it incorrectly interchanged the terms "financial feasibility" and "economic feasibility" in its recommendation to the Secretary. ADWR states all references to demonstration of feasibility should be in terms of "financial feasibility".

Response 11–1: The Department notes and accepts the comment. The Final Allocation Decision reflects consideration of the comment.

Comment 11–2: ADWR recommends that the conditions for new allottees must be satisfied within 1 year from the time the Secretary makes his decision on the reallocation. However, the Secretary should consider granting justifiable extensions of the 1-year period in 6-month increments for a maximum extension of 1 year.

Response 11–2: See response 8–1.

Comment 11–3: Concerning the reversion provision, ADWR requests that it be consulted before any discretionary allocations are made.

Response 11–3: The Department accepts the comment and will consult with ADWR before any reverted water is reallocated further or committed.

(12) McMullen Valley Water Conservation and Drainage District (MVWCDD) July 19, 1991

Comment 12–1: The MVWCDD is concerned about the use of the term "economically feasible" in the notice of proposed water reallocation decision (56 FR 29404, June 20, 1991).

Response 12–1: See response 11–1.

Comment 12–2: The MVWCDD suggests that imposition of a fixed 1-year deadline for meeting the conditions for contracting for a CAP reallocation is unreasonable and legally unwise.

Response 12–2: See response 8–1.

Comment 12–3: The MVWCDD states that it is redundant to separately impose any of the conditions in paragraph 4 of the ADWR recommendations as set forth in the notice of proposed water reallocation decision under Option 1 (56 FR 28404, June 20, 1991). Each of the conditions must be independently satisfied pursuant to other laws and/or contracts.

Response 12–3: The MVWCDD is suggesting that the 1-year deadline for the conditions is not required because the conditions will eventually need to be satisfied pursuant to other laws or contract. Given the large demand for uncontracted CAP allocations, the fact that CAP will soon be placed into repayment status, and the repayment problems being faced by some of the irrigation districts, the Department believes that it is reasonable and prudent to require the new allottees to meet the specified conditions prior to the execution of a CAP water service subcontract.

(13) Central Arizona Irrigation and Drainage District (CAIDD) July 19, 1991

Comment 13–1: The CAIDD objects to the reversion provision.

Response 13–1: See response 9–1.

(14) Roosevelt Irrigation District (RID), July 12 & 19, 1991

Comment 14–1: The RID expressed concerns about the fixed deadline for any new contractor to comply with paragraphs 4 and 6 of the ADWR recommendations as set forth in the proposed water reallocation decision under Option 1 (56 FR 28404, June 20, 1991).

Response 14–1: See responses 8–1 and 12–3.

Comment 14–2: The RID requests an express disclaimer that it would not be required to pay for any CAP water until the exchange facilities are complete.

Response 14–2: It is more appropriate to address that issue during negotiations for a CAP subcontract and the exchange agreement rather than as part of this reallocation decision.

Comment 14–3: The RID disagrees with ADWR's methodology for calculation of its allocation percentage.

Response 14–3: The Department acknowledges this comment. The Department has accepted ADWR's reallocation recommendations for the initial reallocations. Inherent in accepting ADWR's recommendations is the acceptance of ADWR's criteria used in developing the recommendations.

(15) Ellis, Baker & Porter on behalf of several Arizona Irrigation Districts, July 22, 1991

Comment 15–1: The commenter deplores the compressed schedule by which the Department seeks to review comments and make its decision on the CAP reallocation. The commenter suggests that the Department has already made a decision.

Response 15–1: Congress directed the Secretary to make the reallocation within 180 days of receiving ADWR's recommendations. Staff from the various Federal agencies involved in the reallocation decision have been working diligently over the 6-month period to meet the deadline. However, the reallocation process has been time consuming. It is possible that the Congress did not anticipate or consider the time required for completion of the NEPA process or that part of the 6-month period would have to be devoted to public review and comment and consideration of those comments.

The Department agrees that 6 calendar days (4 working days) are not sufficient to analyze the comments and make the Final Reallocation Decision. However, the Department has endeavored to complete the reallocation in the shortest period possible that is consistent with a full and proper evaluation of all comments received during the public comment period and adequate consideration of the information and issues involved.

Comment 15–2: The commenter registers disagreement with the reversion provision for uncontracted water, particularly in light of section 11(h) of the SRPMICWRSA.

Response 15–2: See response 9–1.

Comment 15–3: The commenter states that the Secretary has no authority to reserve CAP uncontracted water for Indian water rights settlements, and asserts that to do so would be to use "the State's water" to settle "Federal" obligations.

Response 15–3: See response 9–1. Also, the Department is not sure what is meant by "the State's water." If it means the Secretary lacks the authority to allocate and distribute among users Arizona's apportionment of 2.8 million acre-feet of mainstream water, the Department disagrees. The Supreme Court Opinion in *Arizona* v. *California* (June 3, 1963, 373 U.S. 579–580) states:

> Having undertaken this beneficial project, Congress, in several provisions of the Act, made it clear that no one should use mainstream water save in strict compliance with the scheme set up by the Act. . . . To emphasize that water could be obtained from the Secretary alone, Section 5 further declared, "No person should have or be entitled to have the use for any purpose of water stored as aforesaid except by contract made as herein stated." . . . These several provisions, even without legislative history, are persuasive that Congress intended the Secretary of the Interior, through his Section

5 contracts, both to carry out the allocation of the water of the main Colorado River among the Lower Basin States and to decide which users within each state would get water. The general authority to make contracts normally includes the power to choose with whom and upon what terms the contracts will be made.

The Supreme Court rejected the arguments that Congress in sections 14 and 18 of the Project Act took away practically all of the Secretary's power by permitting the States to determine with whom and on what terms the Secretary would make water contracts. It was the Court's view that nothing in those provisions affected the Court's decision that it is the Act and the Secretary's contracts, not the laws of prior appropriation, that control the apportionment of water among the States. Accordingly, the Court held that

. . . the Secretary in choosing between users within each State and in settling the term of his contracts is not bound by these sections to follow State law (373 U.S. 585).

Comment 15–4: The commenter asserts that critics may argue to the Secretary that the proposed reallocation would violate the Reclamation Reform Act of 1982. The delivery of agricultural water to a city for non-agricultural use is not recognized by either law or regulation and in such cases a city has to be treated as an excess landowner.

Response 15–4: The Department has not proposed to allocate or reallocate agricultural water to a city.

(16) Central Arizona Water Conservation District (CAWCD), July 22, 1991

Comment 16–1: CAWCD objects to the reversion concept.

Response 16–1: See response 9–1.

Comment 16–2: The time frames for the new allottees to meet the conditions required for the offering of a CAP subcontract and to complete the subcontracting process should not extend beyond the initiation of repayment for CAP.

Response 16–2: The Department agrees. See response 8–1.

Comment 16–3: In the interest of equity, the Tonopah Irrigation District's CAP water service subcontract should be amended to reduce the District's entitlement to CAP water to reflect the removal of eligible lands from agricultural use since the date of the original CAP water allocation.

Response 16–3: The Department agrees and intends to pursue such a modified subcontract with the District.

(17) Gila River Indian Community (Community), May 21, 1991

Comment 17–1: The Secretary should allocate 75 percent of the uncontracted allocations to the Community.

Response 17–1: Subsection 11(h) of SRPMICWRSA clearly states that the Secretary must reallocate the uncontracted previously allocated CAP agricultural water for non-Indian agricultural use and offer contracts for such water to non-Indian agricultural users. See response to comment 1–1.

Comment 17–2: The reference in section 11(h) of the SRPMICWRSA to "non-Indian agricultural users" does not refer to a racial grouping but to a water priority grouping. Therefore, the Secretary is authorized to allocate the uncontracted allocations to the Community.

Response 17–2: The Department believes that the phrase "non-Indian agricultural users" is self explanatory, in that it identifies a type of user that does not include Indian tribes, communities, nations, or reservations, and that the Department is therefore precluded from initially reallocating the uncontracted allocations to such Indian entities.

(18) San Carlos Apache Tribe, June 5, 1991

Comment 18–1: The final reallocation decision needs to be clear that the "excess Ak-Chin water" is not part of the pool that is being reallocated.

Response 18–1: The "excess Ak-Chin water" has been and continues to be considered as Indian water. Therefore, by definition, such water is not part of the pool being reallocated.

(19) City of Tucson (Tucson), July 5, & July 19, 1991

Comment 19–1: Tucson strongly advocates that all original uncontracted CAP water allocations from the Tucson AMA should be reallocated within the Tucson AMA.

Response 19–1: The Department disagrees. See responses 1–1 & 4–1.

Comment 19–2: Under the provisions of SAWRSA the United States is obligated to annually deliver 28,200 acre-feet of water suitable for agricultural use to the Tohono O'odham Nation, beginning October 12, 1992. The proposed reallocation serves to remove a well-suited solution to this Indian claim. The Secretary should reserve sufficient water to fulfill the Tohono O'odham entitlement prior to the reallocation process.

Response 19–2: The Department disagrees. See responses 1–1 & 3–1.

Comment 19–3: The proposed reallocation to the MVWCDD creates a potential conflict with the purpose of the CAP to protect Arizona's ground-water resources. The observation is made that the Phoenix owns 94 percent of the irrigated lands within the MVWCDD and intends to retire land from irrigation and export the ground water to meet future municipal needs. Tucson asserts that the allocation of CAP water for this purpose (to make ground water available to Phoenix from MVWCDD) would violate the purpose of the CAP and the Secretary's trust responsibility to Indian tribes, particularly the Tohono O'odham Nation.

Response 19–3: See response 20–3. With respect to the Secretary's trust responsibilities, the possibility of reallocation for Indian uses has been carefully considered, and the Department has concluded that within the constraints of existing law, the proposed action (i.e. reallocation with reversion for discretionary use) is the best way for the Secretary to comply with the statutory obligation and to meet his trust responsibilities.

(20) Groundwater Users Advisory Council, Tucson AMA, July 8, 1991

Comment 20–1: Reclamation may have misinterpreted section 11(h) of the SRPMICWRSA without consideration of section 13 of the Act. Section 13 of the SRPMICWRSA justifies an allocation for the SAWRSA.

Response 20–1: The Department disagrees. See response 1–1.

Comment 20–2: It is questionable whether the recommended reallocation to MVWCDD is truly to a non-Indian agricultural water user.

Response 20–2: MVWCDD meets the criteria established by the ADWR for its allocation recommendations, i.e., MVWCDD has lands eligible for irrigation with CAP water, MVWCDD is located in an area of ground-water decline, and MVWCDD provides water for irrigation purposes. Reclamation is aware that the Phoenix owns most of the land in MVWCDD and that the delivery and use of CAP water in McMullen Valley will allow Phoenix to conserve ground water in McMullen Valley for potential future conveyance to the Phoenix service area. However, without a change in section 304(c)(3) of the CAP authorizing legislation, the transfer of ground water from McMullen Valley to Phoenix would be prohibited.

The Final Reallocation Decision provides that MVWCDD must demonstrate that it can take and pay for CAP water based strictly on farm economics, in order to receive an offer of a subcontract. No financial assistance from Phoenix will be allowed to enter

into such a determination. Furthermore, MVWCDD must demonstrate that it will be able to comply with section 304(c)(1) of the CAP authorizing legislation regarding the limitation of irrigated acreage within a CAP contractor's service area.

The Department does not believe MVWCDD should be denied an allocation solely because of speculation about how Phoenix might benefit from its ownership of land in MVWCDD. Reclamation notes that a number of other cities in the Phoenix area own land in CAP agricultural districts and might wish to convey or exchange ground water to obtain CAP water for their service areas.

Comment 20–3: The commenter fails to see how the SRPMICWRSA precludes first-round reallocation to Indians, while allowing the use of the same water for Indian settlements after the contracting is completed.

Response 20–3: See response 1–1.

Comment 20–4: Use of some of this agricultural CAP water would avoid penalties to be paid by the Federal Government under the SAWRSA, and provide for the least expensive mechanism to fulfill the requirement for "exchange water" for 28,200 acre-feet per year of effluent.

Response 20–4: Regardless of financial considerations, the Secretary does not have the discretion to initially reallocate the uncontracted allocations for Indian water rights settlements. See response 1–1.

Comment 20–5: The AMA goal of safe yield is synonymous with the CAP purpose of eliminating ground-water overdraft.

Response 20–5: See response 4–1.

Comment 20–6: The impacts of this reallocation decision warrant preparation of an "Environmental Impact Statement" rather than a "Finding of No Significant Impact."

Response 20–6: The Final Reallocation Decision provides that the implementation of the reallocation of non-Indian agricultural water will be subject to further compliance with the requirements of the NEPA, and compliance with the requirements of the Endangered Species Act and the National Historic Preservation Act prior to execution of any new or amendatory water service subcontract actions and any distribution system repayment contract or construction actions.

Final Reallocation Decision

Introduction

Many diverse interests expressed wide-ranging and conflicting comments and recommendations that can not all be accommodated. The Department is satisfied that ADWR used reasonable criteria and developed its reallocation recommendations through an open public process. Historically, the Department has deferred to the State's recommendations regarding the allocation of CAP water among non-Indian entities. In this instance, the Department has modified the State's recommendations as follows.

(1) It is not in the best interest of the United States to obligate itself for water service to entities that are not current with financial and contractual obligations to the United States, CAWCD, or bond holders. Therefore, being current with financial and contractual obligations will be one prerequisite to execution of a new or amended subcontract for reallocated water.

(2) It is in the best interest of all parties for a reasonable amount of time to be available for potential subcontractors to meet all preconditions associated with being offered a new or amended subcontract. Therefore, the rigid time frames set forth in ADWR's initial recommendations and the proposed reallocation are relaxed to allow the granting of time extensions, within limits, when necessary.

(3) Providing water for Indian water rights settlements and other purposes from the CAP are current pressing problems for the Department.

Therefore, reallocated water not contracted for within the specified time frames will revert to the Department for discretionary use.

Decision

In consideration of the decisions of previous Secretaries on 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), the Draft and Final Environmental Assessments on this reallocation of Non-Indian Agricultural Water (dated June 1991 and July 1991, respectively) and the public comments thereon, the recommendations, report and public review process of ADWR, the notice of proposed reallocation and the public comments, thereon, and this Final Reallocation Decision notice, I hereby reallocate the uncontracted CAP non-Indian agricultural water allocations as set forth below and direct the Commissioner of Reclamation, through his Regional Director, Lower Colorado Region, Boulder City, Nevada, to proceed with water service contracting pursuant to subsection 11(h) of SRPMICWRSA and in accordance with the terms and conditions of this decision. The Final Reallocation Decision is as follows:

1. Amendatory subcontracts will be offered to all existing CAP non-Indian agricultural subcontractors. Such amendatory subcontracts would adjust the water entitlements contained in subarticle 4.13(a) of the existing subcontracts as follows:

Irrigation district (subcontractor)	Existing allocation (percent)	New allocation (percent)
Central Arizona IDD	18.01	22.74
Chandler Heights Citrus ID	0.28	0.30
Harquahala Valley ID	7.67	8.73
HoHoKam ID	6.36	6.97
Maricopa-Stanfield IDD	20.48	22.75
New Magma IDD	4.34	7.23
Queen Creek ID	4.83	4.83
Roosevelt Water CD	5.98	6.33
San Tan ID	0.77	0.77
Tonopah ID	1.98	1.98

2. New subcontracts will be offered to agricultural entities to whom previous allocations were made in 1983 (**Federal Register** (48 FR 12446, March 24, 1983)) but were not heretofore subject to contracting deadlines. The new subcontracts would adjust the previous allocations as follows:

Subcontractor	Original allocation (percent)	Adjusted allocation (percent)
Farmers Investment Co. [FICO]	1.39	1.64
San Carlos IDD [SCIDD]	4.09	6.84

3. New subcontracts will be offered with the indicated allocations to the following entities:

Entity/subcontractor	Allocation (percent)
Arizona State Land Department:	
Lease #01–00694 (Picacho Pecans)	0.54
Lease #01–077685 (Aguirre)	0.11
McMullen Valley Water CDD [MVWCDD]	3.17
Roosevelt ID [RID]	5.07

4. No subcontract will be executed with any entity in paragraph 3 above unless the entity meets the following conditions within 1 year from the date of this decision, or within a longer period, not to exceed 1 year, as may be agreed to by the Regional Director, Bureau of Reclamation, Boulder City, Nevada.

a. Demonstrates to the satisfaction of the Secretary that it is financially feasible to distribute CAP water for agricultural production to the eligible lands in the entity's leasehold or service area and that there is no impediment to any necessary exchange agreements. To meet the financial feasibility requirement, the allottee must demonstrate, using Reclamation's farm budgeting process, that there is sufficient revenue from farm operations within its leasehold or service area to cover all expenses associated with farming, to provide a reasonable return to the farmer for the cost of the farmer's labor, management, and capital, to pay all costs of construction, operation, maintenance, and replacement associated with delivering CAP water from the CAP aqueduct to the point of use, to pay all CAP water costs, and to meet debt requirements, including repayment of Federal construction cost obligations over a period of not to exceed 40 years. In effect, the Department will expect the allottee to meet the same financial feasibility requirements as the other entities which received federally funded and constructed distribution systems. Willingness to pay from non-farming sources will not be considered in determining the ability of the allottee to meet the financial feasibility requirement. The determination that this condition has been met will be made in consultation with ADWR.

b. Commits to relinquish any allocation of "Hoover B" electric power, the incremental capacity and energy resulting from the up-rating program of the Hoover Dam Power plant pursuant to Public Law 98–381 (98 Stat. 1333).

c. Demonstrates to the satisfaction of the Secretary that there will be in place provisions to comply with section 304(c)(1) of Public Law 90–537 for any such entity located outside of an existing AMA or Irrigation Non-expansion Area. The determination that this condition has been met will be made in consultation with ADWR.

5. A determination of eligible acres will be made by the Secretary and the allocation will be adjusted, if necessary, in a manner consistent with the methodology used by ADWR in developing its recommended reallocation before a subcontract will be executed with any entity listed in paragraph 3.

6. Amendatory or new subcontracts must be executed with the existing subcontractors or entities to whom previous allocations were made in 1983 within 6 months of the date of this decision, unless the offering of the amendatory or new subcontract is delayed more than 4 months by the United States or CAWCD. In that event, the amendatory or new subcontract must be executed within 2 months from the time it is offered. New subcontracts must be executed with the allottees listed in paragraph 3 within 6 months after the requirements of paragraph 4 have been completed. No new or amendatory subcontract will be executed with any allottee that is not current with existing obligations to the United States, CAWCD, or bond holders when the time frames specified in this paragraph elapse.

7. If any allottee contracts for an amount less than the amount allocated herein, declines to contract, or is not eligible for a subcontract when the time frames specified in paragraph 6 elapse, then all such uncontracted for water will revert to the Secretary for discretionary use. All reverted water shall retain its status as non-Indian agricultural water with a priority subordinate to Indian allocations and M&I allocations established by the 1983 Decision (48 FR 12446–12449). While the reverted water may be used for M&I service, it will not have the right of conversion to M&I use and priority as provided for in the existing non-Indian agricultural subcontracts. The Department will consult with ADWR before committing reserved water to any specific use or user.

8. Implementation of the reallocation decision will be subject to compliance with the requirements of NEPA, the Endangered Species Act, the National Historic Preservation Act, and other applicable laws and regulations. Such compliance will be carried out prior to the execution of any new water service subcontracts, amendments to existing water service subcontracts, and any new water distribution system repayment contracts, and before commencing construction for any new water distribution systems.

Effective Date and Effect on Previous Decision

This Final Reallocation Decision is effective as of the date of this notice and supplements the previous allocation decision published by Secretary Watt on March 24, 1983 (48 FR 12446). Insofar as the March 24, 1983, decision is inconsistent with this Final Reallocation Decision, the affected provisions of the 1983 decision are hereby rescinded.

Dated: January 31, 1992.

Manuel Lujan Jr.,

Secretary of the Interior.

[FR Doc. 92–2762 Filed 2–4–92; 8:45 am]

BILLING CODE 4310–09–M

Bureau of Land Management

[MT–070–01–4212–21; MTM80639]

Realty Action: Leases, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, proposal to lease public land in Lewis and Clark County, Montana.

SUMMARY: The Bureau of Land Management proposes to issue a lease on the following described public lands to resolve an unintentional occupancy trespass.

Principal Meridian, Montana

T. 10 N., R. 1 W., Sec. 6, an unofficial Metes and Bounds Lot within Lot 2; comprising 0.57 acres.

The land is located at the upper end of Hauser Lake about 13 miles east of Helena, Montana. The lease would be issued under section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976: 43 U.S.C. 1732, and would be issued noncompetitively. The lease would be issued for a term of 20 years and would be nonrenewable. Fair market rental will be collected for the use of the land, as well as full payment of past trespass liability and reasonable administrative and monitoring costs for processing the lease. A final determination on the lease of this public land will be made after completion of an environmental assessment.

DATES: On or before March 5, 1992, interested parties may submit comments to the Headwaters Resource Area Manager, P.O. Box 3388, Butte, Montana 59702.

FOR FURTHER INFORMATION CONTACT: Bob Rodman, 406–494–5059, at the above address.

Dated: January 24, 1992.

Merle Good,

Area Manager.

[FR Doc. 92–2735 Filed 2–4–92; 8:45 am]

BILLING CODE 4310–DN–M

[CO–050–4380–12]

Moratorium on Commercial Outfitting Permits

AGENCY: Bureau of Land Management, Interior.

ACTION: Establish a moratorium on the number of commercial outfitting permits for the Arkansas Headwaters Recreation Area within the BLM Canon City District, Colorado.

SUMMARY: The BLM Canon City District and the Colorado Division of Parks and