

Civil Recoveries Arbitrage Corporation (NACRA) timely filed a petition for reinstatement of oil and gas lease CACA 38084 in (Santa Barbara and Ventura County, California. The lessee paid the required rental accruing from the date of termination, June 1, 2002.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of \$5 per acre and 16 $\frac{2}{3}$  percent or 4 percentages above the existing competitive royalty rate. The lessee paid the \$500 administration fee for the reinstatement of the lease and \$155 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31(e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188(e)). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of \$5 per acre;
- The increased royalty of 16 $\frac{2}{3}$  percent or 4 percentages above the existing competitive royalty rate; and
- The \$155 cost of publishing this Notice

**FOR FURTHER INFORMATION CONTACT:**

Bonnie J. Edgerly, Land Law Examiner, Branch of Adjudication, Division of Energy & Minerals, BLM California State Office, 2800 Cottage Way, STE W-1834, Sacramento, California 95825, (Ph: 916-978-4370).

Dated: December 13, 2005.

**Debra Marsh,**

*Supervisor, Branch of Adjudication, Division of Energy and Minerals.*

[FR Doc. E5-7651 Filed 12-21-05; 8:45 am]

BILLING CODE 4310-40-P

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Notice of Inventory Completion:  
Phoebe A. Hearst Museum of  
Anthropology, University of California,  
Berkeley, Berkeley, CA**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice.

Notice is here given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, CA. The human remains and associated funerary objects were removed from Humboldt County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

An assessment of the human remains, catalogue records, and associated documents relevant to the human remains was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Big Lagoon Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Resighini Rancheria, California; and Yurok Tribe of the Yurok Reservation, California.

In 1926, human remains representing at least five individuals were recovered from site CA-Hum-NL-3, Humboldt County, CA, by Dr. Herbert H. Stuart. Dr. Stuart donated the human remains to the Phoebe A. Hearst Museum of Anthropology that same year. No known individuals were identified. No associated funerary objects are present.

Based on the consultation, geographic, linguistic, and archeological evidence, including the presence of a site-specific artifact indicative of the Gunther Pattern (A.D. 1500-1850), which is not in the possession of Phoebe A. Hearst Museum, the site CA-Hum-NL-3 has been identified as a Yurok site. Archeological evidence indicates that the Yurok cultural continuity began by at least A.D. 500.

In 1930, human remains representing at least seven individuals were removed from site CA-Hum-NL-7, Trinidad, Humboldt County, CA, by Dr. Stuart. In 1931, Dr. Stuart donated the human remains to the Phoebe A. Hearst Museum. No known individuals were identified. The 22 associated funerary objects are 22 disk shell beads.

Based on consultation, geographic, linguistic, archeological, and ethnographic evidence, site CA-Hum-NL-7 has been identified as a Yurok site. The presence of Class J and Class K beads are indicative of the Protohistoric Period (post A.D. 1500). Archeological evidence indicates that the Yurok cultural continuity began by at least A.D. 500.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of 12 individuals of Native American ancestry. Officials of the

Phoebe A. Hearst Museum, also have determined that, pursuant to 25 U.S.C. 3001 (2), the 22 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum, have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Big Lagoon Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Resighini Rancheria, California; and Yurok Tribe of the Yurok Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and the associated funerary objects should contact Douglas Sharon, Director, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720-3712, telephone (510) 643-0585, before January 23, 2006. Repatriation of the human remains and associated funerary objects to the the Big Lagoon Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Resighini Rancheria, California; and Yurok Tribe of the Yurok Reservation, California may proceed after that date if no additional claimants come forward.

Phoebe A. Hearst Museum of Anthropology, is responsible for notifying the Big Lagoon Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Resighini Rancheria, California; and Yurok Tribe of the Yurok Reservation, California that this notice has been published.

Dated: November 30, 2005

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E5-7680 Filed 12-21-05; 8:45 am]

BILLING CODE 4312-50-S

**DEPARTMENT OF THE INTERIOR**

**Bureau of Reclamation**

**Pick-Sloan Missouri Basin Program  
(P-SMBP), Eastern and Western  
Division Proposed Project Use Power  
Rate**

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Approval of new rate for Pick-Sloan Missouri Basin Program, Eastern and Western Division Project Use Power

**SUMMARY:** The Bureau of Reclamation (Reclamation) determined, after public input, that the proposed P-SMBP project use power rate of 12.55 mills per kilowatt-hour (kWh) is approved and will become effective 30 days after this notice is published.

**DATES:** *Effective Date:* The P-SMBP project use power rate of 12.55 mills/kWh will become effective 30 days after this notice is published.

*Explanation of Public Comment Format:* Reclamation, by **Federal Register** Notice (FRN) dated April 29, 2005, stated its intent to adjust the project use power rate with a 30-day written comment period which would end on June 6, 2005. Reclamation published another FRN on June 26, 2005, that extended the comment period to July 31, 2005. A total of 7 letters with written comments were received during the comment period. All booklets, studies, comments/letters that were utilized to develop the rate for project use power are available for inspection and copying at the Great Plains Regional Office, located at 316 North 26th Street, Billings, Montana 59101.

**FOR FURTHER INFORMATION CONTACT:** Mike Ferguson, Bureau of Reclamation, Great Plains Regional Office, at (406) 247-7705 or by e-mail at [mferguson@gp.usbr.gov](mailto:mferguson@gp.usbr.gov).

**SUPPLEMENTARY INFORMATION:** Power rates for the P-SMBP are established pursuant to the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Flood Control Act of 1944 (58 Stat. 887).

The project use power rate will be reviewed by Reclamation each time Western Area Power Administration (Western) adjusts the P-SMBP firm power rate. Western will conduct the necessary studies and will use the same Reclamation established methodology that was used to develop the 12.55 mills/kWh rate to calculate any new rate. The P-SMBP project use rate will be adjusted by Reclamation when Western adjusts the P-SMBP firm power rate.

*Project Use Power Rate Adjustment Comments:* The following comments were received during the public comment period. Reclamation paraphrased and combined comments when it did not affect the meaning. Reclamation's response follows each comment.

*Comment:* Would like to discuss 100-year average of OM&R from the Fiscal Year 2005 Proposed Project Use Power Rate Adjustment Project Use Power Study (PUPRS) with wheeling costs in P-SMBP.

*Response:* The PUPRS is a 100-year study. The 100-year term is consistent with planning requirements and with the assumption that the projects will have a 100-year life (for example Buffalo Bill Dam in Wyoming is approaching 100-years now). However, in Western's Power Repayment Study (PRS) to establish the firm power rate, it is the critical maximum repayment requirement in a given year (known as the pinch point) that drives the rate solution. There is no such pinch point in a strictly operation, maintenance, and replacement (OM&R) based study since maintenance and replacement expenditures can and have been moved (deferred) over time. Therefore, we are looking at what the average revenue requirement will be to meet OM&R expenses over the project life. Furthermore, as in most rate studies, the first 5 years are based on projected OM&R requirements from actual budget documents. Beyond 5 years, the operation and maintenance is leveled and the replacements come from standard equipment life expectancy data.

*Comment:* Question inclusion of wheeling costs in project use power rate especially when firm power customers get benefit of ultimate cost allocation and sub-allocation percentage.

*Response:* Questions relating to relative benefits received by various project beneficiaries are not relevant to the current determination of the appropriate cost components of the project use power rate. Wheeling expenses paid by the government for the delivery of project use power are an appropriate cost to include in this cost based rate study.

*Comment:* Should Reclamation and Western revisit wheeling costs associated with irrigation pumping when it exceeds construction of transmission line?

*Response:* Possibly. However, the effect of revisiting wheeling costs is problematic. If wheeling rates are postage-stamp rates and the wheeling agent is charging everyone the same, it may not be possible to justify constructing a separate transmission line. Maybe the cost differential, if it exists, could be used in some formal way to demonstrate that the wheeling charges are unreasonable and should be lowered. It is doubtful that Reclamation would construct a parallel transmission line. Reclamation has no transmission

line maintenance capability and would probably contract with the same coop that is now wheeling that power.

*Comment:* Western recently issued a **Federal Register** Notice announcing a proposed power rate increase based on the FY2004 Rate Study. Why is the project use power rate based on a FY2003 PRS?

*Response:* When Reclamation began the process for updating the OM&R rate basis for project use power, Western and Reclamation felt that it would be best to key it off of the most current rate-setting PRS that had been through the review process and had been accepted by Federal Energy Regulatory Commission. The 2004 PRS is just going through that process now. If and when the new rate is approved, we will do a new project use study that keys off of the 2004 PRS.

*Comment:* Western held informal meetings with their customers in May 2005. Is there any reason why Reclamation didn't have similar discussions with their contractors to discuss criteria and changes and study results?

*Response:* All of the existing project use power contractors are notified of the upcoming rate increase and are allowed sufficient time to comment. Western has over 200 customers which have effective representation in a few larger organizations. Reclamation has a little over 30 contractors and they are widely scattered across the region. Project use power contractors will not see their rate increase unless their ability to pay for such an increase has gone up. Based on ongoing studies dealing with project payment capacity and ability to pay, we have not seen any evidence that the agricultural economy is improving. Absent such evidence, it seemed an unnecessary expense to hold such informal meetings. However, based on other comments and one informal meeting, Reclamation is evaluating such a process for future rate increases.

*Comment:* Would like to understand the basis for statements one through five of the brochure and how they relate to the legislation authorizing the P-SMBP. Would like to discuss past practices and legislation history and what has changed.

*Response:* Reclamation looked at increasing the project use rate periodically over time. In the late 1970's and thereafter, the OM&R costs of the system began to diverge from the original rate significantly. Also, project evaluation standards for reauthorization were now under Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies which required the use of appropriate

economic and financial measures of project feasibility. That means using the actual opportunity cost of power in the evaluation of new projects. It was appropriate at that time to begin a sustained effort to bring the project power charges into alignment with actual costs.

For statements 1–3 of the brochure, these rules of application primarily stem from legal review which states that the Bureau of Reclamation can increase the rate to keep pace with OM&R of the power system but that such increases for existing contractors are subject to ability to pay. Congress did not intend to limit the pumping power rate to 2.5 mills. Rather, the 2.5 mill rate was intended to be the initial rate and subject to increases. The Flood Control Act of 1944 requires that increases in the rate be subject to the user's ability to pay. This application can result in different districts paying different rates as determined by their ability to pay.

For statement 4 of the brochure, certain tribal interests elected not to do an ability-to-pay determination.

For statement 5 of the brochure, see the introductory discussion.

*Comment:* Would like to discuss repayment of power investment and assistance to irrigation as envisioned and incorporated in the Report on Financial Position Missouri River Basin Project dated December, 1963 which was the basis for Oahe, Mid-State, and Garrison Unit authorizations in 1965 and 1966.

*Response:* Reclamation, Western and the U.S. Army Corps of Engineers (Corps) are following the repayment rules set forth in the 1963 report. Nothing in those rules impacts the project use power rate. Rather, they primarily impact the repayment of irrigation costs that were beyond irrigation's ability to pay and assigned to power for repayment and when those costs will be repaid.

*Comments Regarding Contract Rate of Delivery (CROD):* Would like to discuss rationale and authority for penalties for exceeding the CROD as it relates to project use pumping power? Second part of this question relates to billing for increased capacity and transmission charges incurred as a result of exceeding CROD.

The rate adjustment study includes the establishment of severe penalties for exceeding the CROD. It seems unreasonable to establish a penalty to the irrigation use when it is first priority power and inappropriate to include this special condition in the rate setting exercise. It should be included as an individual contract item with the user

rather than a general rate setting component.

The rate adjustment study includes the establishment of penalties for exceeding the CROD. It does not seem appropriate that a rate study be used for this purpose. This subject seems to be a backlash from a recent incident. In our case, the CROD was exceeded for one month out of the 50 plus years that project use power has been delivered. This should be a power contract matter between Reclamation and the project use power recipient rather than an element of rate adjustment.

Following our detailed review of the reason for including the penalty clause in the firm power contracts in the 1970's, we were encouraged to hear that it wasn't Reclamation's plan or intent to penalize the P-SMBP project use power pumpers with a rate of 10 times the project use power rate unless they haven't worked with Reclamation on possible changes in pumping needs caused by things like a change out of a pump. Before our discussion, it was hard to understand how the penalty clause would apply to project use pumping. The main purpose of the P-SMBP legislation was to develop irrigation and then have first use of the hydropower. All the firm power contracts have withdrawal clauses to cover project use pumping power needs.

*Response:* Reclamation has and will continue to work with its irrigation contractors to set a CROD that accurately reflects the project use power demand requirements of the project. These rates of delivery are used to determine capacity and wheeling purchases. Rates are set to recover actual costs so when an irrigation district exceeds their CROD, it often requires purchasing additional capacity and wheeling on the spot market. These costs can be extremely high and will be passed on to the districts or power contractors. Irrigation districts should never exceed their CROD if they are operating within their water and electric service contracts. In order to ensure this, Reclamation believes a penalty is necessary. Section 9(c) of the Reclamation Project Act of 1939 and the Flood Control Act of 1944 authorizes Reclamation to set electric power rates on Reclamation projects. In the specific case mentioned in comment 3 above, the CROD was exceeded following the district increasing the pump size without approval from Reclamation. This was in violation of the water service contract between the district and Reclamation. The district was notified that the larger pump would likely cause them to overrun their CROD. The rate schedule, MRB-P12, becomes part of

each project use power contract when it becomes effective.

*Comment:* Would like to know how Western and Reclamation plan to handle depletions on future irrigation? Would like to discuss effects on revenues and repayment?

*Response:* Depletions are still being handled on the basis of ultimate development since that is our mandate under the ultimate development concept. To assume no depletions or different depletions assumes no ultimate development which has implications for cost allocations, National Environmental Policy Act, etc. At this time, the depletions are tied to the assumed irrigation development following the ultimate development concept.

*Comment:* Would like to discuss original basis for sub-allocation and ultimate cost allocation concept in P-SMBP. Basis for changes in that seem to be occurring and the reason for changes.

*Response:* The only present-day changes in the sub-allocation and ultimate cost allocation concepts were authorized by the Garrison Reformulation Act of 1986 where almost 900,000 acres of development were removed from the development total and the Act explicitly provided for the reallocation of costs associated with the deleted acreage.

*Comments regarding the Project Use Power Study:* The project use power study seems to focus on a \$500,000 wheeling charge and separates wheeling from other operation and maintenance costs. In 1999 the Commissioner of Reclamation confirmed that the project use power rate includes the delivery costs (wheeling) to the pumps. This should be stated in the report and be a basic premise of the study.

The study seems to focus on non-federal wheeling costs as P-SMBP costs. In 1999 the Commissioner, after a considerable amount of study, confirmed that the project use power rate includes the delivery costs to the pumps. The report attempts to justify this but makes no mention of this confirmation. Instead, it focuses on a \$500,000 wheeling cost and separates wheeling cost from other operation and maintenance costs. This is evident on page 5, in Appendix B, and on page 2 of Appendix F. Wheeling cost for project use power is listed as an assumption on page 5.

The study eludes in Appendix F that non-federal wheeling cost is a basis for adjusting the rate. A \$500,000 cost is the only cost increase mentioned. This cost seems insignificant if compared to the total P-S Program cost that determines

the rate, and we question whether it should be a reason for rate adjustment.

*Response:* Wheeling costs are annual expenses paid by the government for delivery of project use power. Reclamation and Western treat them as such in their rate studies. The current study appropriately includes those costs as one of the many expenses in the study.

*Comment:* The study infers in Appendix F that the action to adjust the rate is due to dramatic increases in non-federal wheeling costs to irrigation projects. This increase seems to be \$500,000 and is insignificant compared to the total P-S Program costs that determine the power rate. We question whether costs are part of the P-S total annual costs and should not be portrayed as the basis for adjusting the rate.

*Response:* Appendix F of the study is a general background on project use power on P-SMBP. Historical information on wheeling is included in that section. The reason for the rate increase is stated on the first page of the study: "The major factor contributing to the need for an upward rate adjustment is increased OM&R expenses on the P-SMBP system."

*Comment:* The study includes the establishment of a new rule concerning application of ability-to-pay for new irrigation development. The purpose of P-SMBP has not changed; why is there a new classification made for new irrigation in this rate setting process?

*Response:* The study creates a new minimum level for "ability to pay". Most P-SMBP contractors pay 2.5 mills/kWh for project use power based on the original project use power rate. This rate was never intended to stay at this level in perpetuity but was intended to increase to recover costs. As new irrigation is developed it is sound business practice to consider current O&M costs when determining the feasibility of that development. The rule is not new as it coincides with the original intent of periodically increasing the project use power rate to recover cost and the same philosophy was applied to the last rate increase.

*Comments regarding wheeling:* Several specific study parameters deserve discussion. For example, while non-federal wheeling to irrigation may not be a significant impact to overall rate adjustment, the specific manner in which these costs (one of numerous costs) are counted, does have an impact. It is important that the commitment to delivery be reinforced through a study of transmission procedure and at least cost analysis in order to remain

consistent with the intent of the enabling P-SMBP legislation.

As indicated at our meeting, we are still concerned about the wheeling costs being included in the project use pumping power rate especially when 15.8% of the total power investment is set aside for project use pumping. It seems like the power investment set aside in an interest-free account for irrigation should be used to build the transmission to the project pumps as originally planned in the P-SMBP legislation. We think this is especially true when the cost of wheeling to the pumps exceeds the cost of constructing the transmission facilities to serve the pumps. From a purely economic standpoint, the government should at least renegotiate the wheeling arrangements or construct the transmission facilities.

*Response:* We assume that the first comment is asking if it is more economical for the Federal government to construct distribution lines to some P-SMBP irrigation district pumps rather than pay wheeling charges. The initial cost of constructing the distribution lines is, in some cases, lower than the annual wheeling charge. However, after the line is constructed, the government would maintain the line, through a contract. Also, the cost of purchasing rights-of-way may further increase the initial construction cost. Reclamation agrees that extraordinarily high wheeling charges should be investigated. The 15.8% of construction costs "set aside" represent a cost obligation for already constructed features to be repaid in the future, not a revolving fund for future construction.

*Comment:* It appears that cost analysis continues to be based on the assumption that flood irrigation is the norm. Considering the shift from flood to sprinkler irrigation over the last twenty years, it may be appropriate that analysis reflect such change. It is also reasonable to assume that new development will be completed consistent with these technologies.

*Response:* Reclamation delivers project use power for gravity irrigation unless project specific legislation states otherwise.

*Comment:* New development should be an important premise with regards to rate adjustment analysis. It is a contention of the Upper Missouri States that the promise and intent of the P-SMBP legislation is far from being met. While it is off the direct subject of a power rate adjustment it is appropriate at this point to reinforce our commitment to further P-SMBP development and suggest that it is a priority. It is also our position that P-

SMBP development not be restricted to federal project status and that P-SMBP project use power be made available to non-federal projects.

*Response:* Reclamation agrees that the development envisioned under P-SMBP has not occurred. Reclamation also supports further development when it is economically feasible under current Federal feasibility standards. Current legislation does not provide for delivery of P-SMBP project use power to private irrigation districts.

*Comment:* Page 2 of Appendix F discusses only wheeling cost and the ability to pay adjustment. It would be appropriate to discuss other costs that are included and also excluded in the project use power rate. In other words the study reflects that there is insecurity in the irrigation wheeling responsibility. We hope that this enigma can be overcome.

*Response:* Appendix F is intended to give the reader a background on project use power on P-SMBP. The treatment of ability to pay and wheeling costs are key to understanding this. The other costs included in the project use power rate are shown in appendixes A and B.

*Comment:* It is interesting to note the assumptions used for the FY2003 Rate Setting PRS by Western. We understand from our discussions that Western continues to use the Corps Main Stem Reservoir, Series 8-83, dated April 1984 adjusted for the Garrison Diversion Unit Reformulation Act of 1986. By continuing to assume the massive depletions for irrigation that were used in the 1984 Study, the long-term power generation and revenues are substantially understated. Probably a more realistic approach would be to project generation and revenues at the 2010 levels to the end of the PRS. It would be interesting to see how this might affect the need for the rate increase. For example, the power revenues go from \$312 million in 2010 to \$272 million in 2100 a reduction of \$40 million per year. This is basically due to huge depletions for future irrigation. The statement was made that no changes could be made in the depletions or cost allocations because of the McGovern Amendment, which was a part of the 1977 DOE Act. It was pointed out that Reclamation and Western had made changes in the early 1980's regarding the future power developments and sub-allocation percentages without Congressional Approval.

*Response:* Aside from the reductions in depletions and costs stemming from the Garrison Diversion Unit Reformulation Act of 1986, Reclamation, Western and the Corps are

still constrained to follow the ultimate development concept in rate setting. The primary driver of the P-SMBP firm rate is construction repayment which is due on critical dates and near-term generation which is currently being affected by drought. Construction repayment is not a factor in the project use power rate.

*Comment:* Based on the PUPRS and discussions, we had a feeling that Reclamation was getting away from the ability to pay concept. We hope this is not the case. Congressional Directives in the Flood Control Act of 1944 and subsequent P-SMBP legislation were to develop irrigation in the Basin to stop the out migration of people. This would compensate the states for the rich farmlands that were flooded by the reservoirs.

*Response:* Reclamation is not getting away from the ability to pay concept.

*Comment:* As discussed at the meeting, we expressed a concern that the repayment criteria and payout dates established in the 1963 report on Financial Position Missouri River Basin Project were not being followed on repayment of the June 30, 1964 power investment which was completed or under construction on that date. As pointed out this has an adverse effect on repayment of the interest-free power investment.

*Response:* The rules adopted in the 1963 report are being followed. All projects completed or under construction as of June 30, 1964 were to have their irrigation aid repaid as soon as practically possible after the completion of firm power repayment. All projects authorized after that date are to have their irrigation aid paid within 50 years plus up to a 10-year development period but only after the pre-1964 project aid was paid. Since firm power investments have continually been made, the pre-1964 project repayment was continually pushed out. However, with the completion of North Loup Block 1 with an irrigation aid repayment date of 2046, all prior irrigation aid and the irrigation aid for the first block of North Loup is due in 2046. Reclamation does not believe that repayment of irrigation aid 60 years in the future without interest constitutes an adverse impact.

*Comment:* We would like to see Reclamation hold an annual meeting with the P-SMBP project use power pumpers to discuss project use power rates and other items of interest to the group.

*Response:* Reclamation will take this into consideration based on other written comments and comments at an

informal meeting held with some of the project use power contractors.

*Comment:* In making its calculations, Reclamation is spreading the wheeling costs associated with delivery of project use power across all P-SMBP generation. Wheeling costs of project use power are a component only of irrigation sales, not all power sales. Wheeling costs associated with project use power are not relevant to P-SMBP generation serving P-SMBP firm power customers of Western. By spreading these costs across all P-SMBP generation, Reclamation is understating the real cost of project use power. At the time Reclamation made its unilateral decision to include third party wheeling costs as part of power's aid-to-irrigation, Mid-West objected to Reclamation's decision. Mid-West continues to disagree with Reclamation's legal analysis of the issue. Mid-West also continues to object to the Reclamation's unilateral action without a public process fully airing the issue. Mid-West understands that applying wheeling costs for project use power only to generation association with project use power would raise the project use power rate above Reclamation's current proposal. Nevertheless, Reclamation should adopt the methodology that properly classifies wheeling of project use power as a component of irrigation sales, not all P-SMBP sales.

*Response:* The rate includes all wheeling costs including those for firm power delivery as well as project use power delivery. The firm power wheeling costs are much more than the project use power wheeling costs.

*Comment:* Reclamation's proposed rate adjustment is based upon the Western's 2003 PRS. That PRS is no longer the rate-setting PRS. The 2004 PRS has indicated the need for another rate increase for P-SMBP firm power customers. Rather than initiating a new process for adjusting the project use power rate or lagging behind in establishing the project use power rate, Mid-West asks Reclamation to incorporate data from the 2004 PRS to recalculate what the project use power rate should be in this proceeding.

*Response:* Reclamation started the analysis of this project use power rate increase following Western's 2003 PRS. Reclamation in consultation with Western made the decision to complete the rate adjustment using the 2003 PRS. Once Western makes another rate increase, Reclamation will revisit the project use power rate to determine if another rate adjustment is necessary.

*Comment:* Reclamation notes in PUPRS that the application of the new project use rate may be mitigated by

application of the "ability-to-pay" test to P-SMBP irrigation projects. Reclamation goes on to state that "[A]bility-to-pay studies will be conducted *periodically* [emphasis added] \* \* \*." Mid-West believes that these studies should be conducted on a regular basis—every five years.

*Response:* Reclamation has a process for 5-year rate reviews on its water contracts. If a district has increased ability to pay at that time, the first priority for that ability is to increase the project use power pumping rate paid by that district up to the full ability to pay.

*Comment:* Mid-West agrees with Reclamation that the new project use power rate will be the "floor" for new irrigation development under the P-SMBP, and that the "ability-to-pay" test will not result in a project use power rate lower than that noted in these proceedings.

*Response:* No response required.

*Comment:* Mid-West commends Reclamation for establishing penalties for exceeding the CROD. This will help ensure proper application of the project use power rate.

*Response:* No response required.

*National Environmental Policy Act (NEPA):* In compliance with NEPA, Reclamation has determined that this action is categorically excluded from the preparation of an Environmental Assessment or Environmental Impact Statement.

*Power Rate Schedules:* The existing rate schedule MRB-P11 placed into effect on March 22, 2002, will be replaced by rate schedule MRB-P12. Rate Schedule MRP-P12 is as follows:

*Effective:* 30 days after being published in FRN.

*Affected Parties:* All current Pick-Sloan Missouri Basin Program project use power recipients.

*Location:* In the areas generally described as central and eastern Montana, North and South Dakota, Nebraska, eastern Colorado, Wyoming, Kansas, western Iowa, and western Minnesota.

*Applicable:* For use in the operation of congressionally authorized irrigation and drainage pumping plants on irrigation projects for power service supplied through metering at specified points of delivery.

*Character and Conditions of Service:* Alternating current, 60 hertz, three phase, delivered and metered at the point identified in the contract upon demand during the summer irrigation season.

*Availability:* Available at 60 hertz at the pumping plant upon demand during the summer irrigation season.

*Monthly Rate:*

*Demand Charge:* None.

*Energy Charge:* 12.55 mills per kilowatt-hour for all energy use; subject to ability-to-pay but not less than 2.5 mills per kilowatt-hour.

*Seasonal Minimum Bill:* \$2.75 per kilowatt of the maximum 30-minute integrated demand established during service months of each year specified in the contract.

*Adjustments:*

*For Power Factor:* The customer will normally be required to maintain a power factor at a point of delivery of not less than 95 percent lagging or leading.

*Penalties for Exceeding the Contract Rate of Delivery (CROD):* Energy usage in excess of the CROD will be billed at a rate 10 times the current project use power rate. This will be calculated on a prorated basis. The customer will also be billed for any increased capacity and transmission charges incurred as a result of exceeding the CROD.

*Approval of Project Use Power Rate by Commissioner of Bureau of Reclamation:* The Commissioner approved the rate of 12.55 mills/kWh by memorandum dated December 5, 2005.

Dated: December 16, 2005.

Michael J. Ryan,

Regional Director.

[FR Doc. 05-24352 Filed 12-21-05; 8:45 am]

BILLING CODE 4310-MN-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-639 and 640 (Second Review)]

### Forged Stainless Steel Flanges from India and Taiwan

#### Determinations

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines,<sup>2</sup> pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on forged stainless steel flanges from India and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

#### Background

The Commission instituted these reviews on July 1, 2005 (70 FR 38195)

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> Commissioner Daniel R. Pearson dissenting with respect to forged stainless steel flanges from Taiwan.

and determined on October 4, 2005, that it would conduct expedited reviews (70 FR 60558, October 18, 2005).

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 16, 2005. The views of the Commission are contained in USITC Publication 3827 (December 2005), entitled *Forged Stainless Steel Flanges from India and Taiwan: Investigation Nos. 731-TA-639 and 640 (Second Review)*.

Issued: December 16, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5-7678 Filed 12-21-05; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-523]

### Certain Optical Disk Controller Chips and Chipsets and Products Containing Same, Including DVD Players and PC Optical Storage Devices II; Notice of Commission Decision To Review Portions of an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930; Grant of Motion To File Corrected Petition for Review; Denial of Motion To File Reply Brief; Extension of Target Date for Completion of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of a final initial determination ("ID") of the presiding administrative law judge ("ALJ") finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission has also granted a motion for leave to file a corrected petition, denied a motion for leave to file a reply brief, and has extended the target date for completion of the investigation by 30 days, *i.e.*, until March 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3012. Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S.

International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000.

General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on August 31, 2004, based on a complaint filed on behalf of MediaTek Corporation ("complainant") of Hsin-Chu City, Taiwan. 69 FR 53089 (Aug. 31, 2004). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain optical disk controller chips and chipsets by reason of infringement of claims 1, 3-6, 8-9, and 10 of U.S. Patent No. 5,970,031 ("the '031 patent") and claims 1-4 of U.S. Patent No. 6,229,773 ("the '773 patent"). *Id.* The notice of investigation named two respondents: Zoran Corporation ("Zoran") of Sunnyvale, CA and Oak Technology, Inc. ("Oak") of Sunnyvale, CA. *Id.*

On October 7, 2004, the ALJ issued an ID (Order No. 5) granting complainant's motion to amend the complaint and notice of investigation to add Sunext Technology Co., Ltd. ("Sunext") of Hsin-Chu City, Taiwan, as a respondent and to add another patent, *viz.*, claims 1-2, 5-6, 15-19, 21, and 22 of U.S. Patent No. 6,170,043 ("the '043 patent") to the scope of the investigation. 69 FR 64588. That ID was not reviewed by the Commission. *Id.*

A tutorial was held on June 24, 2005, and an eight-day evidentiary hearing was held from June 27, 2005, through July 7, 2005.

On September 30, 2005, the ALJ issued his final ID and recommended determination on remedy and bonding. The ALJ concluded that there was no violation of section 337. Although he found that respondent Oak infringes claims 1, 2, and 3 of the '773 patent, he found that those claims are invalid as anticipated by Japanese patent application number 08-015834 (RX-518) ("the Okuda prior art reference"). He found no infringement of claim 4 of the '773 patent, and no infringement of any asserted claim of the '031 or '043 patents. The ALJ concluded that the