SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 3, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 24, 2008.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(239)(i)(C)(*5*) and (345)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(C) * * *

(*5*) Rule 205, (a part of regulation II), ''Permit Renewal,'' adopted on April 18, 1972 and amended on May 2, 1996.

(*i*) Resolution of May 2, 1996.

* * * * *

(345) * * *

(i) * * *

(D) Great Basin Unified Air Pollution Control District

(*1*) Rule 201, ''Exemptions,'' adopted on September 5, 1974 and revised on January 23, 2006.

* * * * *

[FR Doc. E8–28732 Filed 12–4–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 419

RIN 1006–AA48

Truckee River Operating Agreement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Reclamation is publishing this rule to comply with the requirements of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act. The Settlement Act requires that the operating agreement negotiated with the States of California and Nevada for the operation of Truckee River Reservoirs (the five Federal reservoirs in the Truckee River basin) be promulgated as a Federal Regulation.

DATES: This rule is effective January 5, 2009. The Truckee River Operating Agreement provides that it cannot be implemented until the last of the conditions set forth in Sections 12.A.4(a) through 12.A.4(g) is satisfied. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Kenneth Parr, Bureau of Reclamation, 705 N. Plaza St., Carson City, NV 89701; telephone (775) 882–3436; or for a copy of TROA, visit the TROA Web site at *http://www.usbr.gov/mp/troa/*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 205(a) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, title II of Public Law 101–618, November 16, 1990 (Settlement Act), directs the Secretary (Secretary) of the Department of the Interior (Interior) to negotiate an operating agreement that must:

- Satisfy all applicable dam safety and flood control requirements;
- Provide for the enhancement of spawning flows available in the Lower

Truckee River for the Pyramid Lake fishery (endangered cui-ui and threatened Lahontan cutthroat trout [LCT]) in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended (ESA);

- Carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement between the Pyramid Lake Paiute Tribe (Pyramid Tribe) and Sierra Pacific Power Company (Power Company), as modified by the Ratification Agreement of the United States (PSA);
- Ensure that water is stored in and released from Truckee River Reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch and Truckee River General Electric (TRGE) decrees, except for any rights voluntarily relinquished by the parties to the operating agreement; and
- Minimize the Secretary's costs associated with operation and maintenance of Stampede Reservoir.

The Settlement Act further provides that the following may be addressed in the operating agreement:

- Administration of the operating agreement;
- Means of assuring compliance with PSA;
- Operations of Truckee River system that will not change;
- Operations and procedures for using Federal facilities to meet the Secretary's responsibilities under ESA;
- Methods of reducing the likelihood that Lake Tahoe will drop below its natural rim and improving the efficient use of Lake Tahoe during extreme drought situations;
- Procedures for managing and operating Truckee River Reservoirs;
- Procedures for operating Truckee River Reservoirs for instream beneficial uses;
- Operation of other reservoirs in the Truckee River basin to the extent owners of affected storage rights become parties to the operating agreement; and
- Procedures and criteria for implementing California's allocation of Truckee River water.

The Truckee River Operating Agreement (TROA) was signed by all signatory parties on September 6, 2008. TROA, among other things, will: (1) Enhance conditions for threatened and endangered fishes in the Truckee River and its tributaries; (2) increase municipal and industrial (M&I) water supplies to provide drought protection for the Truckee Meadows (the Cities of Reno and Sparks, Nevada, metropolitan area); (3) improve river water quality downstream from the City of Sparks and Derby Dam; (4) enhance stream flows and recreational opportunities in the Truckee River basin; and (5) provide procedures for implementing the interstate allocation of Lake Tahoe basin and Truckee River basin waters between Nevada and California. While the Settlement Act also confirms the allocation of the waters of the Carson River and its tributaries between California and Nevada represented by the Alpine Decree, TROA does not affect the Carson River.

Section 205(a)(9) of the Settlement Act requires the Secretary to satisfy the requirements of the National Environmental Policy Act (NEPA). Because the State of California is a mandatory signatory party, it is also necessary to comply with the California Environmental Quality Act (CEQA). Consequently, Interior and the California Department of Water Resources jointly prepared an Environmental Impact Statement/Environmental Impact Report (EIS/EIR). The final EIS/EIR concludes that TROA will:

- Provide better conditions for threatened LCT and endangered cui-ui in many reaches of the Truckee River and its tributaries;
- Provide greater potential for enhancing riparian vegetation along some reaches of the Truckee River in median hydrologic conditions and along all mainstem and tributary reaches under dry and extremely dry hydrologic conditions; and
- Enhance riparian habitat along some mainstem and tributary reaches under wet and median hydrologic conditions and along most mainstem reaches in dry and extremely dry hydrologic conditions.

Section 205(a)(9) also provides that the Secretary may not become a party to TROA if the Secretary determines that the effects of TROA, together with cumulative effects, are likely to jeopardize the continued existence of any threatened or endangered species or be adverse to designated critical habitat of such species. The final EIS/EIR concludes that implementation of TROA will not adversely affect LCT or cui-ui, but in fact is likely to benefit both species. The U.S. Fish and Wildlife Service has concurred in that determination through the consultation process required by Section 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Since TROA is the result of negotiations and agreement among at least the five mandatory signatory parties and must be promulgated as a Federal regulation, this rule incorporates by reference the signed agreement exactly as negotiated.

II. Overview of Rule

The main provisions of TROA were summarized in the Notice of Proposed Rulemaking, published in the **Federal Register** on September 15, 2008 (73 FR 53180). TROA, which constitutes the rule, is incorporated by reference. It provides the framework, rules, and procedures for the operation of Truckee River Reservoirs, Independence Lake, and Donner Lake (to the extent Donner Lake is made available), and for management of flows in the Truckee River with more flexibility than is available under current operations. It also provides for implementation of the interstate allocation of waters of the Lake Tahoe and Truckee River basins between California and Nevada, as provided in Sections 204 and 210(a)(2) of the Settlement Act. The maintenance of Floriston Rates and Reduced Floriston Rates (prescribed rates of flow in the Truckee River at the California-Nevada State border) is the basic foundation of TROA.

TROA retains most current procedures and management authorities for operating Truckee River Reservoirs, including maintaining the storage priorities for project water (water associated with the license or permit for a particular reservoir) and water dedicated to maintenance of Floriston Rates. Applicable flood control and safety of dams requirements will continue to be in effect. Truckee River Reservoirs will continue to be operated to satisfy the exercise of water rights in conformance with the decrees entered in *United States* v. *Orr Water Ditch Company, et al.*, In Equity No. A3, Case No. 73–cv–00003 (D. Nev. 1944) and *United States* v. *Truckee River General Electric Co.*, No. 14861 (N.D. Cal. 1915) now designated Case No. 68–cv–643 (E.D. Cal.), except for any water rights that are voluntarily relinquished by any persons or transferred under State law. The Federal Water Master will continue to assure that Truckee River operations satisfy the exercise of water rights recognized by the Orr Ditch Decree.

III. Comments on the Proposed Rule

Fourteen comment letters were received from the public during the comment period. Eleven letters expressed support for TROA, and three letters opposed TROA. Letters in support were received from the City of Fernley, City of Reno, City of Sparks, Washoe County, Truckee Meadows Water Authority (Water Authority) (two letters), Pyramid Lake Paiute Tribe, Fallon Paiute-Shoshone Tribe, State of California, State of Nevada, and Senator Harry Reid of Nevada. These letters of

support generally encouraged the expeditious implementation of TROA and required no response.

Letters in opposition were received from the City of Fallon, Churchill County, and Truckee-Carson Irrigation District (TCID).

No change was made to the rule as a result of the comments as compared to the previously proposed rule.

Comments are addressed by subject; related comments have been combined. A response follows each comment.

Comment: The Fallon Paiute-Shoshone Tribe wishes to become a signatory party to TROA.

Response: The Fallon Paiute-Shoshone Tribe may become a signatory party to TROA as provided in Section 14.E of TROA with the prior unanimous consent of the mandatory signatory parties to TROA. Mandatory signatory parties are the United States, State of California, State of Nevada, Pyramid Tribe, and Water Authority.

Comment: TROA is incomprehensible, partly because Churchill County did not participate in negotiations.

Response: All TROA negotiation plenary sessions and most working group and committee meetings were open to any interested persons. If Churchill County was not represented at any TROA sessions or meetings, it was because it chose not to participate.

Comment: Newlands Project water right owners have had no role in the complex and lengthy negotiation process. TROA does not include these entities as signatories.

Response: Consistent with Section 205(a)(1) of the Settlement Act, the TROA negotiations were open to all parties who expressed an interest in participating and becoming a signatory party to TROA. To the extent the Newlands Project water right holders, TCID, Churchill County, and City of Fallon were not represented at TROA sessions or meetings, it was because they chose not to participate.

Comment: TROA negotiation meetings were not conducted under the auspices of the Federal Advisory Committee Act (FACA).

Response: The United States has complied with all applicable laws, including the Settlement Act, in negotiating TROA.

Comment: The potential of replacing the Water Master with the Administrator who is appointed based on the preference of the TROA signatories interferes with the Orr Ditch court's authority and violates the separation of powers doctrine.

Response: The TROA Administrator will not replace the Federal Water Master. The Federal Water Master position will still exist and is different from the TROA Administrator position. The same person will serve as both the Federal Water Master and the TROA Administrator. Section 2.A of TROA provides that the Federal Water Master in office on the date TROA enters into effect will be the first Administrator. When there is a vacancy, the TROA parties nominate replacement candidates for consideration by the Orr Ditch court. The Orr Ditch court ultimately appoints the Administrator.

TROA keeps the powers of the Federal Water Master and Administrator separate. According to TROA Section 1.C.1, the Federal Water Master under the Orr Ditch Decree will retain full authority to ensure that Orr Ditch Decree water rights are fully enforced, while TROA Section 2.A.1 states the Administrator will be responsible for carrying out the terms and conditions of TROA.

Comment: Under TROA Section 2.B.2(a), the Special Hearing Officer is appointed by a four-member appointing committee comprised of one representative appointed by each of the Sovereign Parties. These provisions grant entirely too much decision-making power related to the management of the Truckee River to the TROA signatories.

Response: Parties not signatory to TROA are not constrained by proceedings before the Special Hearing Officer and will retain access to the remedies that are currently available. Disputes under the authorities of the Orr Ditch Decree and TROA would be considered separately. TROA Section 2.B.1 states, ''[d]isputes arising under the Orr Ditch Decree shall remain subject to the jurisdiction of the Orr Ditch court and the Federal Water Master.'' Disputes arising under TROA would be submitted to the Truckee River Special Hearing Officer pursuant to TROA Section 2.B.2.

Comment: TROA or its associated documents do not set forth any factual scenarios that attempt to describe how TROA works.

Response: Selected TROA operational scenarios were presented in Exhibit 16 of the Water Resource Appendix of the final EIS/EIR.

Comment: The computer model used for TROA is not understandable, was never fully explained, and is flawed in various aspects that make it inappropriate to use to support the TROA ''management scheme.''

Response: The Truckee River Operations Model was explained in detail in the NEPA/CEQA process for TROA, including the revised draft and final EIS/EIR. In response to numerous comments on the model, the section in chapter 3, ''Use of the Truckee River Operations Model,'' was greatly expanded in the final EIS/EIR to further explain development and limitations of the operations model, as well as its use as a comparative tool in the negotiations and EIS/EIR process.

In the development and analysis of TROA, the negotiating parties relied on their respective goals and objectives for TROA; professional judgment of their respective staffs; professional judgment of experienced Truckee River system water managers; the historic hydrograph and other records for the system; and the results produced by use of the operations model with consideration of its recognized limitations.

No comment on the model was received following publication of the final EIS/EIR.

Comment: TROA cannot supersede the Truckee River Agreement (TRA) without agreement of TCID, and it is presumptuous to discard TRA in favor of a ''management scheme'' that benefits only certain entities. TROA violates many provisions of TRA, which is incorporated into the Orr Ditch Decree; thus, TROA violates the Orr Ditch Decree.

Response: The Congress, in Section 205(a)(1) of the Settlement Act, directed the Secretary to negotiate an agreement for the operation of Truckee River Reservoirs that includes the required provisions set forth in Section 205(a)(2) of the Settlement Act. The Settlement Act requires the Secretary, the State of Nevada, and the State of California, in consultation with other parties, to negotiate an operating agreement to carry out the terms of the PSA between Power Company (now Water Authority) and the Pyramid Tribe, and that the Secretary promulgate the operating agreement as the exclusive Federal regulation governing the operation of Truckee River Reservoirs.

Further, Section 205(a)(4) of the Settlement Act requires that TROA be submitted to the Orr Ditch and TRGE courts for approval of any necessary modifications to the Orr Ditch Decree (which incorporates TRA) and the TRGE Decree. Section 205(a)(2)(D) of the Settlement Act directs that, under TROA, Truckee River Reservoirs are to be operated to ''ensure that water is stored in and released from [those reservoirs] to satisfy the exercise of water rights [including those for the Newlands Project] in conformance with the Orr Ditch Decree and [TRGE] Decree * * *'' The provisions of TROA have been negotiated to satisfy the statutory requirements.

No interested and potentially affected entity was excluded from TROA negotiations or prevented from being a signatory to TROA.

Comment: Any unused water in the Truckee River is to inure to the benefit of the Washoe County Water Conservation District (Conservation District) and TCID. Attempts to alter the division of unused water are in violation of TRA and undermine the Orr Ditch Decree.

Response: As to TCID, the amount of Truckee River water which can be diverted to the Newlands Project is governed by the Operating Criteria and Procedures for the Newlands Project (OCAP), not by TROA. The Conservation District is a signatory to TROA.

Comment: The parties to TRA agreed that saved water would flow in the river and that 31 percent of this diverted flow would be available for TCID to divert and place to beneficial use. TROA makes no provision for this term in TRA.

Response: The Ninth Circuit Court of Appeals held that the TRA's diverted flow provisions did not confer any water rights on the TCID, but instead that ''TCID's rights were strictly managerial.'' *Truckee Carson Irrigation District* v. *Secretary of Interior*, 742 F.2d 527, 531 (1984).

Comment: The resolution of unappropriated water as required in the Settlement Act and TROA has not occurred, and unappropriated water cannot be managed as envisioned under TROA.

Response: TROA parties recognize the concerns expressed in this comment. Settlement Act Section 210(a)(2)(B) and TROA Section 12.A.4 expressly provide that TROA will not go into effect until the unappropriated water issue is finally resolved in a manner satisfactory to the State of Nevada and the Pyramid Tribe.

Comment: No transportation losses are assigned to credit waters, elevating these waters above other decreed water rights with clearly higher priority.

Response: TROA Section 5.E.1 specifies that conveyance losses shall be calculated by the Administrator. Section 5.E.2 provides that when project water or credit water is released, conveyance loss shall be allocated to each release using the proportion that each category of water in each stream reach bears to the total flow in each stream reach. In determining conveyance losses, the Administrator must comply with Section 205(a)(2) of the Settlement Act, which requires TROA to satisfy the exercise of Orr Ditch Decree water rights, including Newlands Project water rights, but excludes those that are voluntarily relinquished or transferred under State law. Credit water operations would not affect this requirement.

Comment: Donner Lake water cannot be used for TROA purposes.

Response: The TROA parties in TROA Section 1.C.5 recognize the ongoing dispute between TCID and Water Authority over their respective ownership interests in and use of Donner Lake water and that the water will be used to the extent it is available.

Comment: Under what authority can Privately Owned Stored Water (POSW) owned by TCID be used to meet the increased minimum releases specified in TROA?

Response: Minimum releases from Donner Lake under TROA are made pursuant to the Donner Lake Indenture. Under TROA, TCID's POSW in Donner Lake may only be used for enhanced minimum releases with the approval of TCID.

Comment: Newlands Project water right owners do not appear to benefit from Newlands Project Credit Water (NPCW) as described in TROA, and the NPCW provisions are contrary to the water rights of such owners.

Response: The concept of NPCW is neither intended to benefit nor adversely affect the Newlands Project. NPCW provisions are predicated on the authority in OCAP (referred to in TROA as Truckee Canal Diversion Criteria) to ensure, to the extent possible, that the water supply for the Carson Division stored in Lahontan Reservoir meets but does not exceed Lahontan Reservoir storage targets. (See Newlands Project Credit Water in chapter 2 of the final EIS/EIR, TROA Section 7.H, and TROA Appendix 7.D.) The model analysis for NPCW in the final EIS/EIR incorporates operations that are consistent with both OCAP and TROA.

Comment: There may not be sufficient room to accommodate all of the entities seeking credit water storage.

Response: The priorities for accumulating, exchanging, releasing, and spilling credit water categories as well as the amounts of each category were negotiated by the TROA parties and based in part on provisions of PSA. TROA parties recognize that all categories of credit water may not simultaneously be in storage or that the amount of credit water stored may be limited by hydrologic conditions.

Comment: TROA provisions regarding credit water and Floriston Rates would impair Orr Ditch Decree water rights in the Newlands Project.

Response: As required in Section 205(a)(2)(D) of the Settlement Act, operation of Truckee River Reservoirs under TROA must satisfy the exercise of water rights in conformance with the Orr Ditch Decree, meaning that Newlands Project water rights will not be impaired by TROA. Water that may previously have been available for diversion to the Newlands Project may no longer be available under TROA because senior upstream water right owners can more efficiently and fully exercise their water rights. TROA also complies with Section 210(b)(13) of the Settlement Act, which expressly recognizes the authority of the Orr Ditch court ''to ensure that the owners of vested and perfected Truckee River water rights receive the amount of water to which they are entitled under the Orr Ditch decree or the Alpine decree.'' TROA protects Orr Ditch Decree water rights, including the water which may be legally diverted at Derby Diversion Dam pursuant to the Orr Ditch Decree and Newlands Project OCAP.

Comment: The provisions of TROA are contrary to Nevada water code and supplant the authority of the State Engineer to review and approve changes to existing water rights.

Response: TROA does not supplant the authority of either the Nevada State Engineer or the California State Water Resources Control Board to review and approve changes to existing water rights that will be managed in accordance with the provisions of TROA.

Comment: TROA Section 5.E.1 specifies conveyance losses shall be calculated by the Administrator using procedures developed by the Administrator. This is a clear violation of Nevada Revised Statutes Section 533.055 and directly interferes with the authority of the State Engineer.

Response: Section 210(b)(12) of the Settlement Act states: ''Nothing in this title is intended to abrogate the jurisdiction of or required approvals by the Nevada State Engineer or the California State Water Resources Control Board.'' TROA will be implemented in accordance with procedures of the State Engineer for determining conveyance losses.

Comment: It is not clear that TROA benefits cui-ui or LCT; cui-ui is better off without TROA.

Response: Section 7 consultation pursuant to ESA concluded that TROA is not likely to adversely affect endangered cui-ui and threatened LCT and, in fact, is likely to directly or indirectly benefit both species. This conclusion satisfies Section 205(a)(9) of the Settlement Act.

Comment: The United States did not consult with the City of Fallon pursuant to Section 210(b)(16) when negotiating TROA.

Response: Section 210(b)(16) of the Settlement Act is independent of and not related to TROA.

Request for Extension: In its letter, TCID requested a 120-day extension. No other member of the public requested an extension. TCID has been involved in the TROA process since it began 18 years ago and provided substantial comments that were responded to during the NEPA/CEQA process. No extension of time is warranted.

IV. Procedural Requirements

1. Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is not a significant rule and has not reviewed it under the requirements of Executive Order 12866. We have evaluated the impacts of the rule as required by E.O. 12866 and have determined that it is not a significant regulatory action. The results of our evaluation are given below.

a. This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

TROA is a mechanism negotiated by its signatories to facilitate more flexibility in water use and storage and more effective coordination of reservoir operations on the Truckee River. The increased flexibility and more effective coordination of operations will provide a more stable water supply for Reno, Sparks, and Washoe County, Nevada, will enhance stream flow in the Truckee River below Derby Dam for threatened and endangered fishes, and will improve water quality.

The credit water and exchange provisions of TROA allow parties to more efficiently use the water resource and, more particularly, realize more efficient and effective utilization of their own water rights. Historically, senior water right holders could not always fully divert the water to which they were entitled under their water right because of their inability to use or store the water when available. At times some junior water right holders have been able to benefit from this water. The additional storage options made available under TROA will permit senior water right holders to more fully exercise their water rights. To the extent the exercise of senior Orr Ditch Decree water rights under TROA makes less water available to junior water right holders than has in the past been available because the senior rights could not be fully exercised, there is no unlawful injury to junior water right holders.

The total cost of implementing TROA is estimated to be approximately $15.8 million annually ($2.1 million for storage fees, operation and maintenance, and administration; $1.4 million in lost income from water transfers; and approximately $12.3 million annually for the purchase of water rights until 10,000 acre feet of water rights have been acquired to meet future water demand). Operation of Truckee River Reservoirs under TROA will result in new storage contracts which will reflect average storage and operation costs of approximately $1.5 million annually. The administration cost associated with implementing TROA is estimated to be $600,000 annually to be shared by the Federal Government and the States of California and Nevada. Under TROA irrigation water rights acquired by Water Authority and others are to be transferred in accordance with applicable State law to meet water conservation and water quality objectives. This reduction of water rights used for irrigation is projected to result in a loss of approximately 100 agricultural jobs and the loss of $1.4 million in personal income. Water rights will also be purchased from willing sellers to meet future water demand. The cost of such purchases is approximately $12.3 million annually based on current market value of water rights. Because TROA implementation actions rely on market mechanisms, any reductions in economic activity or productivity, including employment or income reductions occasioned by the sale of irrigation water rights and reduced agricultural activity, will be fully compensated by the monetary or other compensation derived from the sale of the water rights.

One of the benefits of TROA would be the avoided costs to the water users in the area of developing additional water storage facilities to meet increasing water demands in the region. The construction costs and operation and maintenance for new water storage facilities to meet that demand would be approximately $5 million annually. In addition to the avoided costs from implementing TROA, there is the additional benefit of supporting the Reno-Sparks economy by providing the storage capacity for M&I water demand in the future. It is estimated that in 2033, through the operation of TROA, the stored M&I water will support approximately 74,000 jobs and approximately $2.6 billion in associated personal income annually. There are also the annual nonmonetary benefits of improving water quality, improving fish and wildlife habitat, and meeting Indian trust responsibilities. Accordingly, TROA is not an economically significant rule under E.O. 12866.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. Bureaus within Interior are the only Federal agencies directly affected by the agreement. For instance, all TROA actions are specifically subordinated to Army Corps of Engineers (Corps) flood control criteria so that the Corps is free to adjust them as necessary apart from this regulation. In addition, TROA specifically provides that any use of the Corps' Martis Creek Reservoir for a TROA purpose (e.g., for conservation or credit water storage) would require a written agreement with the Corps. Upon TROA taking effect, Section 206(c) of the Settlement Act, which pertains to water use on the U.S. Naval Air Station, Fallon, Nevada, will also become effective. This is a consequence of the Settlement Act and not a direct effect of the provisions of TROA.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The rule is a negotiated agreement, and it directly affects only the signatories of that agreement.

d. OMB has determined that this rule does not raise novel legal or policy issues. TROA explicitly incorporates or accommodates all relevant laws and judicial decisions. By law TROA cannot have an adverse effect on any other person's water rights under the Orr Ditch or TRGE Decrees, and any modifications to those decrees necessary to implement TROA must be approved by the two courts with jurisdiction over the two decrees before TROA can become effective. TROA is required to be consistent with the decision in *Pyramid Lake Paiute Tribe* v. *Morton,* 354 F. Supp. 252 (D.D.C. 1973) and with the Secretary's responsibilities under ESA.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The rule will not affect a substantial number of small entities. TROA directly affects only its signatories. While TCID may be considered a small entity, TROA neither directly affects TCID nor the water rights of the individual water

right holders on the Newlands Project. Specifically, the parties likely to be directly affected by TROA are:

- U.S. Department of the Interior;
- State of California;
- State of Nevada;
- Pyramid Lake Paiute Tribe;
- Truckee Meadows Water Authority;
- Washoe County Water Conservation District;
- City of Reno, Nevada;
- City of Sparks, Nevada;
- City of Fernley, Nevada;
- Washoe County, Nevada;
- Sierra Valley Water Company;
- Carson-Truckee Water Conservancy District;
- North Tahoe Public Utilities District; and
- Truckee Donner Public Utilities District.

Power Company joined in the execution of TROA for a limited purpose through a Special Joinder on September 6, 2008.

Water operations of the Water Authority (successor in interest to Power Company), Conservation District, City of Reno, City of Sparks, and Washoe County, Nevada, are all intertwined within one geographic area in western Nevada. The criterion for a small entity is less than 50,000 population. All of these entities are located within Washoe County, Nevada. The population of Washoe County is approximately 346,000 people (2000 Census). The Reno-Sparks division of Washoe County has a population of approximately 256,000. Only if Conservation District, a taxing authority water purveyor of M&I and irrigation water supplies, were considered a separate entity would it be considered small as it has 33,000 people within its taxing jurisdiction; Water Authority serves 77,000 customers. The City of Fernley, in Lyon County, with a population of approximately 8,600 (2000 Census), would be considered small.

Carson-Truckee Water Conservancy District's office is located in Reno, Nevada, and the District has no service population. It is authorized under Nevada State statutes to collect fees and taxes to do conservation work.

North Tahoe Public Utility District, Tahoe Vista, Placer County, California, has a service population of 5,300 and, therefore, is considered a small entity. It consists of the Sewer and Water Department, Recreation and Parks Department, North Tahoe Beach Center, and the North Tahoe Community Conference Center.

Truckee Donner Public Utilities District, Truckee, California, is a non-profit utility providing electric and water service in the Truckee area. The District serves 12,000 electric customers and 12,000 water service connections. It is considered a small entity.

Sierra Valley Water Company is a small water purveyor in Sierra and Plumas Counties, California. It provides domestic and irrigation water to 29 customers. It is, therefore, considered small.

Pyramid Lake Paiute Indian Reservation is located in Washoe County, with approximately 1,734 tribal members residing on the reservation. Indian tribes are not covered by the Regulatory Flexibility Act.

Power Company's service territory covers approximately 50,000 square miles in northern Nevada including the cities of Reno, Sparks, and the Lake Tahoe area of northeastern California. It employs in excess of 1,100 people and services approximately 500,000 electric and gas customers. It has assets in excess of $2.5 billion and revenue in excess of $1 billion. It is not, therefore, considered a small entity.

Of the current signatories, only five are considered to be small entities. There is, therefore, not a significant effect on a substantial number of small entities.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The availability of additional water management options is expected in the long term to lower overall operation costs.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. TROA has only regional effects and will not have national or international implications.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The costs of the new water management opportunities made available by the agreement will only accrue to the signatories, and the costs will be small relative to the benefits and will apply only if a signatory avails itself of the options under the agreement. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, the rule does not have significant takings implications. The provisions of the agreement are accepted voluntarily by the signatories and the exercise of water rights under existing decrees is expressly provided for. Therefore, this rule will not result in a taking of private property, and a takings implication assessment is not required.

6. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The State of California and the State of Nevada are signatories to TROA and participated fully in negotiations that culminated in the agreement. TROA would have two principal effects on the State governments.

First, when TROA enters into effect, an allocation of the waters of the Lake Tahoe and Truckee River basins, and confirmation of the allocation of the Carson River and its tributaries represented by the Alpine Decree, automatically enters into effect in a manner similar to an interstate compact. Generally, these allocations limit the amount of water that can be used or diverted from Lake Tahoe basin for use within the basin under procedures of the two States, and the amount of water that can be used or diverted from the California portions of the Truckee River basin and the Carson River and its tributaries under relevant decrees and procedures of the State of California. The balance of the water of these two rivers that flows into Nevada can be allocated pursuant to the water allocation procedures of the State of Nevada and various court decrees. Generally, these allocations were negotiated by and agreed to by the two States. Though not required by law to do so, both States have voluntarily abided by their provisions pending passage of the Settlement Act, initially, and pending implementation of TROA, subsequently. TROA merely aids in the implementation of the allocation of the waters of the Lake Tahoe and Truckee River basins provided for in the Settlement Act. By signing TROA, the two States have, effectively, bound themselves to this interstate allocation.

Second, there are modest (i.e., expected to be approximately $600,000 in total) financial requirements for funding the annual administration of TROA. Subject to the limits on the authority in the constitutions of the two States to commit future appropriations, it is reasonable to expect the two States to pay their allocated shares of the funding. By signing TROA, the two States signaled their intention to secure funding for their shares of the administration of TROA. Neither of these effects is considered to rise to the level of significance requiring a Federalism Assessment. The rule, which governs only the responsibilities of the signatories, does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule provides for the application of State law in its implementation in the same manner as does the Settlement Act. Therefore, a Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

a. Does not unduly burden the judicial system;

b. Meets the criteria of Section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

c. Meets the criteria of Section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects, within the requirements of the Executive Order, on Federally recognized Indian tribes. Implementation of this rule will benefit the Pyramid Tribe, as described below.

Indian trust resources are legal interests in property or natural resources held in trust by the United States for Indian Tribes or individuals. The Secretary is the trustee for the United States on behalf of Indian Tribes. Examples of trust resources are lands, minerals, hunting and fishing rights, and water rights. Indian trust resources have been assessed in consultation with the following tribes during the development of TROA: Pyramid Lake Paiute Tribe—Pyramid Lake Indian Reservation in Nevada; Reno-Sparks Indian Colony—Reno and Hungry Valley, in Nevada; Fallon Paiute-Shoshone Tribe—Fallon Paiute-Shoshone Reservation and Fallon Colony in Nevada; and Washoe Tribe of Nevada and California—colonies in Nevada and in California with cultural interests at and near Lake Tahoe.

For the Pyramid Tribe, flow in the Truckee River below Derby Dam and discharge to Pyramid Lake will increase slightly under TROA. With increased flow and the increased capacity to manage Truckee River water, TROA will: Assist in improving lower river water quality; enhance slightly the elevation of Pyramid Lake; enhance the riparian canopy; assist in stabilizing the lower river; enhance recreational opportunities at Pyramid Lake; enhance spawning opportunities for cui-ui and LCT; and enhance river habitat for Pyramid Lake fishes. In addition, the exercise of Truckee River agricultural and M&I water rights below Derby Dam, including those of the Pyramid Tribe, will continue to be satisfied. For Reno-Sparks Indian Colony, TROA will have no effect on the exercise of Truckee River water rights. The Fallon Paiute-Shoshone Tribe will receive a full water supply with the same frequency as at present. TROA will have no effect on flows of the Carson River or on resources of the Washoe Tribe.

The Federal Government negotiated TROA on a government-to-government basis with the Pyramid Tribe, as well as with the States of California and Nevada. As a result, TROA incorporates the principles of sovereignty for each sovereign signatory.

9. Paperwork Reduction Act

This rule does not contain any requirement for information collection by a Federal entity or Federal employee, and a submission under the Paperwork Reduction Act (PRA) is not required.

There are several provisions of TROA which require information to be submitted by the signatory parties to the TROA Administrator. With respect to the Paperwork Reduction Act, it is important to note that the TROA Administrator is not a Federal employee and the Office of the TROA Administrator is not a Federal entity. The signatory parties have agreed to provide to the Administrator the information requested and necessary for proper implementation and administration of TROA. Thus, even though there are requirements to provide information contained in the negotiated TROA and, as required by Congress, are provisions of the rule, the information is not sought or requested by a Federal employee or a Federal agency. Accordingly, the subject provisions are not information collection requirements for purposes of the Paperwork Reduction Act.

10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The final EIS/EIR has concluded that implementation of TROA would not significantly affect the quality of the human environment and that no unavoidable adverse impacts are expected as a result of implementing TROA. No mitigation measures are identified or required. Because of exchanges and storage agreements that are components of TROA, a more assured long-term drought water supply for Truckee Meadows would be obtainable, and improved flow conditions would be possible for Pyramid Lake fishes and aquatic species in general. California's allocation of water for M&I purposes in the long run would be assured and could be utilized in the short run to improve environmental conditions in the Truckee River. Compliance with NEPA has been accomplished.

11. Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

12. Effects on Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Analysis contained in the final EIS/EIR shows that under TROA, hydropower generation and gross revenues are about 3.5 percent less under wet hydrologic conditions than under current conditions due to the increased conservation and improved water quality applications of TROA; about 6.0 percent less in median hydrologic conditions, and about 55.0 percent greater in dry hydrologic conditions. Net reduced hydroelectric power generation, if any, resulting from implementation of TROA would be compensated consistent with the provisions of the Agreement.

13. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

List of Subjects in 43 CFR Part 419

Agriculture, Endangered and threatened species, Incorporation by reference, Irrigation, Natural resources, Reclamation, Reservoirs, Water resources, Water supply.

Dated: November 28, 2008.

Kameran L. Onley,

Acting Assistant Secretary—Water and Science.

■ For the reasons given in the preamble, the Bureau of Reclamation is adding to title 43 of the Code of Federal Regulations a new part 419 to read as follows:

PART 419—TRUCKEE RIVER OPERATING AGREEMENT

Sec.
419.1 What is the purpose of this part?
419.2 What are the definitions used in this part?
419.3 What general principles govern implementation of the TROA?
419.4 What specific provisions govern operations of the reservoirs?

Authority: Public Law 101–618 (104 Stat. 3289, 3294).

§ 419.1 What is the purpose of this part?

(a) This part satisfies the requirement of Section 205(a)(5) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Settlement Act) that the negotiated agreement for operation of Truckee River Reservoirs be promulgated as a Federal regulation. The Truckee River Operating Agreement (TROA), published in September 2008 by the Bureau of Reclamation, is the agreement negotiated pursuant to Section 205(a) of the Settlement Act and is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 522 (a) and 1 CFR part 51. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, a copy of TROA may be obtained from or inspected at the Bureau of Reclamation, 705 N. Plaza St., Carson City, NV 89701, 775–884–8356, where copies are on file, or at the following Web site: *http://www.usbr.gov/mp/troa/.*

(b) This part implements the Settlement Act by providing for operation of the Truckee River Reservoirs and other reservoirs in a manner that:

(1) Implements California's allocation of Truckee River basin water and the Nevada and California allocations of Lake Tahoe basin water;

(2) Enhances fish, wildlife, and recreational beneficial uses of water in the Truckee River basin;

(3) Carries out the terms, conditions, and contingencies of the Preliminary Settlement Agreement;

(4) Ensures that water is stored in, released from, and passed through Truckee River Reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch Decree and Truckee River General Electric Decree, except for rights voluntarily relinquished by any persons or transferred under State law;

(5) Provides for the enhancement of spawning flows available in the Lower Truckee River for Pyramid Lake Fishes in a manner consistent with the Secretary of the Interior's responsibilities under the Endangered Species Act, as amended;

(6) Satisfies all applicable dam safety and flood control requirements; and

(7) Minimizes the Secretary of the Interior's costs associated with operation and maintenance of Stampede Reservoir.

§ 419.2 What are the definitions used in this part?

Act means the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, title II, Public Law 101–618 (104 Stat. 3289, 3294).

Administrator means the individual appointed in accordance with Sections 2.A.2 through 2.A.3 of the Truckee River Operating Agreement (incorporated by reference at § 419.1).

Preliminary Settlement Agreement means that Agreement between the Pyramid Lake Paiute Tribe and Sierra Pacific Power Company of May 23, 1989, as subsequently modified and ratified by the United States.

TROA means the Truckee River Operating Agreement.

Truckee River basin means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including Pyramid Lake, but excluding the Lake Tahoe basin.

Truckee River Reservoirs means Boca Reservoir, Prosser Creek Reservoir, Martis Creek Reservoir, Stampede Reservoir, and the storage provided by the dam at the outlet of Lake Tahoe.

§ 419.3 What general principles govern implementation of the TROA?

The following are general operational principles which provide a framework for the Administrator in implementing the TROA (incorporated by reference at § 419.1). These general principles are intended to be consistent with the specific provisions of TROA, but if they conflict with those specific provisions, the specific TROA provisions control. Operations should meet all of the following criteria:

(a) Be conducted, consistent with the TROA and applicable legal requirements, so that the available water supply in the Truckee River basin satisfies, to the maximum extent possible, multiple beneficial purposes, including municipal and industrial, irrigation, fish, wildlife, water quality, and recreation purposes.

(b) Satisfy vested and perfected rights to use the water of the Truckee River and its tributaries, to the extent that water rights are scheduled to be exercised, and to the extent that water is lawfully available. This includes, but is not limited to, the exercise of water rights under the provisions of the Orr Ditch Decree, except as expressly provided in the Settlement Act and the TROA.

(c) Maintain minimum releases and, to the extent practicable consistent with existing water rights and the TROA, maintain enhanced minimum releases, preferred stream flows, and reservoir recreation levels as described in Article Nine of the TROA.

(d) Comply with applicable flood control requirements for Prosser Creek, Stampede, Boca, and Martis Creek Reservoirs.

(e) Comply with all applicable dam safety requirements.

(f) Use the integrated schedules developed by the Administrator through coordination with the scheduling parties.

(g) Respond to declared Federal, State, or local water-related emergencies presenting a clear and immediate danger to public health, life, property, or essential public services involving an upset or other unexpected occurrence to facilities and resources addressed in the TROA.

§ 419.4 What specific provisions govern operations of the reservoirs?

The specific provisions governing operations of the Truckee River Reservoirs and other reservoirs are contained in the TROA (incorporated by reference at § 419.1). The following table shows the location of the provisions in the TROA.

Provisions governing . . .	Are in the following sections of the TROA . . .
Recitals, Definitions	Recitals 1 through 9. Definitions (1) through (106).
Satisfaction of provisions of law, general operational principles, protection of water rights, imported water, remaining water of the Truckee River, and emergencies.	Sections 1.A through 1.F.
Administration	Sections 2.A through 2.C.
Accounting, reporting, forecasting, and monitoring	Sections 3.A through 3.E.
Incorporation of certain provisions of the preliminary settlement agreement	Sections 4.A through 4.G.
Operation of Floriston Rate and Project Water	Sections 5.A through 5.E.
Truckee River and Lake Tahoe Basin Allocation and Accounting	Sections 6.A through 6.E.
Credit Water Establishment, Storage, and Conversion	Sections 7.A through 7.H.
Priorities and Rules for Operations Following Impoundment or Accumulation of Water in Reservoirs	Sections 8.A through 8.V.
Beneficial Uses of Water for Instream Flows and Recreation in California	Sections 9.A through 9.F.
Design of Water Wells in the Truckee River Basin in California	Sections 10.A through 10.H.
Scheduling	Sections 11.A through 11.H.
Effectiveness of the TROA	Sections 12.A and 12.B.
Relation of TROA to Settlement Act, Adjustments to Operations and Changes to Agreement	Sections 13.A through 13.E.
Miscellaneous areas	Sections 14.A through 14.Q.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2300

[LLWO35000.L14300000.PN0000.24–1A]

RIN 1004–AE05

Land Withdrawals; Amendment of Regulations Regarding Emergency Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Land Management's (BLM) emergency withdrawal regulation to remove language that directs the Secretary of the Interior (Secretary) to immediately make an emergency withdrawal upon notification by one of two congressional committees. Constitutional questions have arisen when this regulation and corresponding provisions in Section 204(e) of the Federal Land Policy and Management Act (FLPMA) have been used by a congressional committee to direct Secretarial action. A district court, however, found it unnecessary to rule on the constitutionality of the committee-directed provision in Section 204(e) of FLPMA because the Secretary had bound himself through regulations regarding special action on emergency withdrawal. This final rule removes from regulations only the provision that has been the subject of past constitutional questions.

DATES: This rule is effective January 5, 2009.

FOR FURTHER INFORMATION CONTACT: For information on the substance of the rule, please contact Jeff Holdren at 202–452–7779 or Vanessa Engle at 202–452–7776. For information on procedural matters, please contact Jean Sonneman at 202–785–6577. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals. FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Final Rule
III. Discussion of Public Comments
IV. Procedural Matters

I. Background

Section 204(e) of FLPMA provides that the Secretary of the Interior shall withdraw lands immediately upon a determination, either by the Secretary or by either of two committees of the Congress, that an emergency exists and that extraordinary measures need to be taken to protect natural resources or resource values that otherwise would be lost. The congressional notification authority may be exercised by the Committee on Natural Resources of the House of Representatives or by the Committee on Energy and Natural Resources of the Senate. 43 U.S.C. 1714(e). The BLM's regulations at 43 CFR 2310.5 state that the Secretary shall immediately withdraw lands when the Secretary determines, or when the Secretary is notified by a Committee, that an emergency exists and that extraordinary measures must be taken to protect natural resources or resource values that would otherwise be lost.

Over the years the Secretary has rarely invoked his authority to make an emergency withdrawal. In addition, the committee-directed emergency withdrawal provision has been controversial; the constitutionality of Section 204(e) has been the subject of litigation.

In 1991, the BLM published a proposal to remove all regulations in 43 CFR part 2300 related to emergency withdrawals (56 FR 59914 (Nov. 26, 1991)). In addition to raising the constitutional issue, the preamble for that proposed rule included an explanation that the first sentence of Section 204(e) is redundant, since public lands can be protected rapidly through the normal exercise of the general withdrawal authority, without invoking FLPMA Section 204(e). That proposed rule was never finalized, and it was withdrawn from the Semi-Annual Regulatory Agenda in 1993.

The BLM published another proposed rule on October 10, 2008 (73 FR 60212 (2008)) that would remove all regulations that provide for emergency withdrawals. The rationale for that proposed rule was the same as that for the 1991 proposal—i.e., that the existing regulations are redundant and that the committee-directed withdrawal presents constitutional issues. The public comment period on the proposed rule closed on October 27, 2008.

We received approximately 800 comments during the comment period. All comments were carefully reviewed. More than 90 percent of the comments were form letters or duplicates, some of which opposed the proposed rule, and some of which supported it. All relevant comments are discussed below.

In response to many of these comments and after additional internal deliberation, we are now promulgating a final rule that, instead of removing the BLM's regulations regarding emergency withdrawals in their entirety, removes