F. Tampering or attempting to tamper with property or real property, or moving, manipulating, or setting in motion any of the parts thereof.

Violation of the prohibition listed in 43 CFR part 423 is punishable by fine or imprisonment for not more than 6 months, or both.

Dated: March 2, 2005.

Michael J. Ryan,

Area Manager, Northern California Area Office, Mid-Pacific Region.

[FR Doc. 05–6112 Filed 3–28–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Review of Existing Coordinated Long-Range Operating Criteria for Colorado River Reservoirs (Operating Criteria)

AGENCY: Bureau of Reclamation (Reclamation), Interior.

ACTION: Notice of final decision regarding the operating criteria.

SUMMARY: The purpose of this action is to provide public notice that the Secretary of the Interior (Secretary) has made a number of limited modifications to the text of the Operating Criteria developed pursuant to section 602 of the Colorado River Basin Project Act of 1968. The bases for the changes are: (1) Specific change in Federal law applicable to the Operating Criteria, (2) language in the current text of the Operating Criteria that is outdated, and (3) specific modifications to Article IV(b) of the Operating Criteria that reflect actual operating experience. The review of the Operating Criteria has been conducted through a public review process, including consultation with the seven Colorado River Basin States, tribal representatives, and interested parties and stakeholders.

DATES: *Effective Date:* March 21, 2005.

FOR FURTHER INFORMATION CONTACT: Jayne Harkins, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, Nevada 89006–1470; telephone (702) 293–8411; faxogram (702) 293–8614; e-mail: *jharkins@lc.usbr.gov*; or Tom Ryan, Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3732; faxogram (801) 524–5499; e-mail: *tryan@uc.usbr.gov*.

SUPPLEMENTARY INFORMATION: The public review process began with a **Federal Register** notice published on January 15, 2002, announcing the sixth review of the Operating Criteria and inviting comments regarding whether the Operating Criteria should be modified, and if so, how they should be modified (67 FR 1986). The January 15, 2002, notice provided for a comment period that ended on March 18, 2002. On March 6, 2002, a second notice was published in the **Federal Register** extending the comment period to March 29, 2002, and inviting public feedback on whether or not Reclamation should conduct a public meeting to solicit comments as part of the sixth review of the Operating Criteria (67 FR 10225). A letter was then sent to all interested parties, tribes, and stakeholders on March 7, 2002, that included copies of both **Federal Register** notices and the Operating Criteria.

On June 27, 2002, a Fact Sheet providing information on the Operating Criteria, scope of the review process, public participation, timeline for the review process, and contact information was sent to all interested parties and stakeholders. In addition to the Fact Sheet, Reclamation set up a Web site (*http://www.usbr.gov/lc/region/g4000/lroc*) for the sixth review of the Operating Criteria that contained further information on the review, copies of all comment letters received, and links to technical documents Reclamation felt would be useful during the review process.

Detailed written comments were received from 16 interested parties providing Reclamation with numerous issues, comments, and concerns regarding possible changes to the Operating Criteria. The names of the parties that provided comments, as well as the corresponding number assigned by Reclamation to the comment letter, are as follows:

1. Western Area Power Administration, Phoenix, Arizona.
2. Quechan Indian Tribe.
3. Metropolitan Water District of Southern California.
4. National Park Service.
5. Arizona Department of Water Resources.
6. Sierra Club, Southwest Rivers, Defenders of Wildlife, Land and Water Fund of the Rockies, Environmental Defense, Pacific Institute, Friends of Arizona Rivers, Living Rivers, and American Rivers.
7. Interested Party (this entity requested that their name be withheld from public disclosure).
8. Colorado River Board of California.
9. Western Area Power Administration, Salt Lake City, Utah.
10. Upper Colorado River Commission.
11. Irrigation & Electrical Districts Association of Arizona.
12. Colorado Water Conservation Board, State of Colorado.
13. New Mexico Interstate Stream Commission.
14. Office of the Attorney General, Water & Natural Resources Division, State of Wyoming.
15. International Boundary and Water Commission, United States and Mexico.
16. State of Utah, Department of Natural Resources, Division of Water Resources.

The comment letters were reviewed for identification of and analysis of the issues. Responses to the comment letters, as well as the corresponding number of the party that made the comment, are provided under the *Synopsis of Comments and Responses* section of this notice.

As required by Federal law, formal consultation with the seven Basin States, interested parties and stakeholders, as well as government-to-government consultation with tribal representatives, was conducted during this review of the Operating Criteria. The January 15, 2002, **Federal Register** notice stated that open public meetings would be conducted as part of this review, and in the March 6, 2002, **Federal Register** notice, Reclamation asked for comments on whether or not a public meeting should be held. At the end of the comment period (March 29, 2002), several of those who provided comments stated that a public meeting to solicit comments on the need to revise the Operating Criteria was not needed. Accordingly, Reclamation did not conduct a public meeting at that point in the review process.

On November 3, 2004, a Notice of Proposed Decision Regarding the Operating Criteria and Announcement of Public Consultation Meeting was published in the **Federal Register** (69 FR 64096). The Notice identified the proposed changes to the Operating Criteria as Reclamation's response to comments received and invited public input on those changes. The notice announced that a public consultation meeting would be held in Henderson, Nevada, on November 19, 2004, and provided for a comment period that ended on December 6, 2004. On November 4, 2004, a letter was sent to all interested parties, tribes, and stakeholders containing a copy of the November 3, 2004, **Federal Register** notice.

On November 19, 2004, a public consultation meeting was conducted to (1) Discuss the proposed changes to the Operating Criteria as Reclamation's response to comments received, (2)

identify any new issues, (3) answer questions from interested parties, and (4) update the public on the remainder of the review process. This meeting was considered a formal consultation with the seven Basin States, interested parties and stakeholders, as well as government-to-government consultation with tribal representatives as described in the November 3, 2004, **Federal Register** notice.

During the comment period ending December 6, 2004, written comments were received from 11 interested parties. The names of the parties that provided comments, as well as the corresponding number assigned by Reclamation to the comment letter, are as follows:

17. Sierra Club, High Country Citizens' Alliance.
18. Upper Colorado River Commission.
19. Friends of Lake Powell.
20. Brynn C. Johns.
21. State of Utah, Department of Natural Resources, Division of Water Resources.
22. Page Electric Utility.
23. Colorado Water Conservation Board, State of Colorado.
24. City of Page, Arizona.
25. Grand Canyon Trust.
26. Metropolitan Water District of Southern California.
27. Colorado River Board of California.

The additional comment letters were reviewed for identification of and analysis of the issues. Responses to all of the comments received, as well as the corresponding number of the party that made the comment, are provided under the *Synopsis of Comments and Responses* section of this notice.

Following analysis of all comments received as a result of this review, the National Environmental Policy Act was applied to the Secretary's proposed final decision. It was determined that the proposed modifications to the text of the Operating Criteria were administrative in nature and did not constitute a major federal action significantly affecting the quality of the human environment. Therefore, a Categorical Exclusion was prepared by Reclamation.

Background: The Operating Criteria, promulgated pursuant to section 602 of the 1968 Colorado River Basin Project Act (Pub. L. 90–537), were published in the **Federal Register** on June 10, 1970 (35 FR 8951). In order to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty, the Operating Criteria provide for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act. The Operating Criteria state that the Secretary will sponsor a formal review of the Operating Criteria at least every five years with participation by Colorado River Basin State representatives as each Governor may designate and other parties and agencies as the Secretary may deem appropriate. As required by Public Law 102–575 (the Grand Canyon Protection Act of 1992), the Secretary also consults in this review process with the general public including representatives of academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of federal power produced at Glen Canyon Dam.

Previous reviews of the Operating Criteria were conducted in 1975, 1980, 1985, 1990, and 1995. These reviews did not propose any changes to the Operating Criteria. Prior to 1990, reviews were conducted primarily through meetings with and correspondence among representatives of the seven Basin States and Reclamation. Because the long-range operation of Colorado River reservoirs is important to many agencies and individuals, in 1990, through an active public involvement process, Reclamation expanded the review of the Operating Criteria to include all interested stakeholders. A team consisting of Reclamation staff from Salt Lake City, Utah, and Boulder City, Nevada, was organized to conduct the 1995 review. For the current review, Reclamation staff from Boulder City and Salt Lake City followed a similar public process.

The scope of the review has been consistent with the statutory purposes of the Operating Criteria which are ''to comply with and carry out the provisions of the Colorado River Compact, Upper Colorado River Basin Compact, and Mexican Water Treaty'' 43 U.S.C. 1552(a). Long-range operations generally refer to the planning of reservoir operations over several decades, as opposed to the Annual Operating Plan which details specific reservoir operations for the next operating year, as required by 43 U.S.C. 1552(b).

Modifications to the Operating Criteria: As a result of this review, the following modifications will be made to the Operating Criteria (additions are shown bolded inside of less than or greater than signs < > and deletions are shown bolded inside of brackets []):

Long-Range Operating Criteria

Amended March 21, 2005

Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (Pub. L. 90–537)

These Operating Criteria are promulgated in compliance with section 602 of Public Law 90–537. They are to control the coordinated long-range operation of the storage reservoirs in the Colorado River Basin constructed under the authority of the Colorado River Storage Act (hereinafter ''Upper Basin Storage Reservoirs'') and the Boulder Canyon Project Act (Lake Mead). The Operating Criteria will be administered consistent with applicable Federal laws, the Mexican Water Treaty, interstate compacts, and decrees relating to the use of the waters of the Colorado River.

The Secretary of the Interior (hereinafter the ''Secretary'') may modify the Operating Criteria from time to time in accordance with section 602(b) of Pub. L. 90–537. The Secretary will sponsor a formal <**public**> review of the Operating Criteria at least every 5 years, with participation by State representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate.

I. Annual Report

(1) On [**January 1, 1972, and on**] January 1 of each year [**thereafter**], the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report describing the actual operation under the adopted criteria for the preceding compact water year and the projected plan of operation for the current year.

(2) The plan of operation shall include such detailed rules and quantities as may be necessary and consistent with the criteria contained herein, and shall reflect appropriate consideration of the uses of the reservoirs for all purposes, including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors. The projected plan of operation may be revised to reflect the current hydrologic conditions, and the Congress and the Governors of the Colorado River Basin States be advised of any changes by June of each year.

II. Operation of Upper Basin Reservoirs

(1) The annual plan of operation shall include a determination by the Secretary of the quantity of water

considered necessary as of September 30 of each year to be in storage as required by section 602(a) of Pub. L. 90–537 (hereinafter ''602(a) Storage''). The quantity of 602(a) Storage shall be determined by the Secretary after consideration of all applicable laws and relevant factors, including, but not limited to, the following:

(a) Historic streamflows;

(b) The most critical period of record;

(c) Probabilities of water supply;

(d) Estimated future depletions of the upper basin, including the effects of recurrence of critical periods of water supply;

(e) The ''Report of the Committee on Probabilities and Test Studies to the Task Force on Operating Criteria for the Colorado River,'' dated October 30, 1969, and such additional studies as the Secretary deems necessary;

(f) The necessity to assure that upper basin consumptive uses not be impaired because of failure to store sufficient water to assure deliveries under section 602(a)(1) and (2) of Pub. L. 90–537.

(2) If in the plan of operation, either:

(a) the Upper Basin Storage Reservoirs active storage forecast for September 30 of the current year is less than the quantity of 602(a) Storage determined by the Secretary under Article II(1) hereof, for that date; or

(b) the Lake Powell active storage forecast for that date is less than the Lake Mead active storage forecast for that date;

the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet for that year. [**However, for the years ending September 30, 1971 and 1972, the release may be greater than 8.23 million acre-feet if necessary to deliver 75,000,000 acre-feet at Lee Ferry for the 10-year period ending September 30, 1972.**]

(3) If, in the plan of operation, the Upper Basin Storage Reservoirs active storage forecast for September 30 of the current water year is greater than the quantity of 602(a) Storage determination for that date, water shall be released annually from Lake Powell at a rate greater than 8.23 million acre-feet per year to the extent necessary to accomplish any or all of the following objectives:

(a) to the extent it can be reasonably applied in the States of the Lower Division to the uses specified in Article III(e) of the Colorado River Compact, but no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead,

(b) to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and

(c) to avoid anticipated spills from Lake Powell.

(4) In the application of Article II(3)(b) herein, the annual release will be made to the extent that it can be passed through Glen Canyon Powerplant when operated at the available capability of the powerplant. Any water thus retained in Lake Powell to avoid bypass of water at the Glen Canyon Powerplant will be released through the Glen Canyon Powerplant as soon as practicable to equalize the active storage in Lake Powell and Lake Mead.

(5) Releases from Lake Powell pursuant to these criteria shall not prejudice the position of either the upper or lower basin interests with respect to required deliveries at Lee Ferry pursuant to the Colorado River Compact.

III. Operation of Lake Mead

(1) Water released from Lake Powell, plus the tributary inflows between Lake Powell and Lake Mead, shall be regulated in Lake Mead and either pumped from Lake Mead or released to the Colorado River to meet requirements as follows:

(a) Mexican Treaty obligations;

(b) Reasonable consumptive use requirements of mainstream users in the Lower Basin;

(c) Net river losses;

(d) Net reservoir losses;

(e) Regulatory wastes.

(2) [**Until such time as mainstream water is delivered by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met.**] <**(Adopted: June 10, 1970, Deleted: March 21, 2005)**>

(3) After commencement of delivery of mainstream water by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met to the following extent:

(a) Normal: The annual pumping and release from Lake Mead will be sufficient to satisfy 7,500,000 acre-feet of annual consumptive use in accordance with the decree in *Arizona* v. *California,* 376 U.S. 340 (1964).

(b) Surplus: The Secretary shall determine from time to time when water in quantities greater than ''Normal'' is available for either pumping or release from Lake Mead pursuant to Article II(b)(2) of the decree in *Arizona* v. *California* after consideration of all relevant factors, including, but not limited to, the following:

(i) the requirements stated in Article III(1) of these Operating Criteria;

(ii) requests for water by holders of water delivery contracts with the United States, and of other rights recognized in the decree in *Arizona* v. *California*;

(iii) actual and forecast quantities of active storage in Lake Mead and the Upper Basin Storage Reservoirs; and

(iv) estimated net inflow to Lake Mead.

(c) Shortage: The Secretary shall determine from time to time when insufficient mainstream water is available to satisfy annual consumptive use requirements of 7,500,000 acre-feet after consideration of all relevant factors, including, but not limited to, the following:

(i) the requirements stated in Article III(1) of these Operating Criteria;

(ii) actual and forecast quantities of active storage in Lake Mead;

(iii) estimate of net inflow to Lake Mead for the current year;

(iv) historic streamflows, including the most critical period of record;

(v) priorities set forth in Article II(A) of the decree in *Arizona* v. *California;* and

(vi) the purposes stated in Article I(2) of these Operating Criteria.

The shortage provisions of Article II(B)(3) of the decree in *Arizona* v. *California* shall thereupon become effective and consumptive uses from the mainstream shall be restricted to the extent determined by the Secretary to be required by section 301(b) of Public Law 90–537.

IV. Definitions

(1) In addition to the definitions in section 606 of Public Law 90–537, the following shall also apply:

(a) ''Spills,'' as used in Article II(3)(c) herein, means water released from Lake Powell which cannot be utilized for project purposes, including, but not limited to, the generation of power and energy.

(b) ''Surplus,'' as used in Article III(3)(b) herein, is water which can be used to meet consumptive use [**demands**] in the three Lower Division States in excess of 7,500,000 acre-feet annually. The term ''surplus'' as used in these Operating Criteria is not to be construed as applied to, being interpretive of, or in any manner having reference to the term ''surplus'' in <**either**> the Colorado River Compact <**or the 1944 Mexican Treaty**>.

(c) ''Net inflow to Lake Mead,'' as used in Article III(3)(b)(iv) and (c)(iii) herein, represents the annual inflow to Lake Mead in excess of losses from Lake Mead.

(d) ''Available capability,'' used in Article II(4) herein, means that portion

of the total capacity of the powerplant that is physically available for generation.

Synopsis of Comments and Responses: Cited below is a synopsis of the comments received during the sixth review of the Operating Criteria and responses to those comments. The number(s) in parentheses following each comment refer(s) to the party that made the comment (please see the **SUPPLEMENTARY INFORMATION** section of this notice for a numbered list of the commenting parties).

Comment No. 1—(Letter No. 2): Reclamation must draft and implement the Operating Criteria in accordance with Federal law, which includes * * * treaties establishing Indian reservations and their reserved water rights. * * * Accordingly, the Quechan Tribe is extremely concerned that the Operating Criteria and its implementation not interfere with the tribe's senior perfected federal reserved water rights. * * * The tribe requests that Reclamation review its Operating Criteria in that light, and make any necessary modifications.

Response: The Operating Criteria do not affect the Quechan Tribe's senior water rights to use all of its Present Perfected Rights, including any additional rights granted in a supplemental decree. The Operating Criteria specifically state that they will be administered consistent with applicable federal laws. Some issues regarding the water rights of the Quechan Tribe are pending in active litigation before the United States Supreme Court in *Arizona* v. *California.* The Operating Criteria will be administered in a manner consistent with any further decisions from the Court in this regard. The Department of the Interior notes that the Court has established a priority date of January 9, 1884, for the federal reserved rights awarded to the tribe to date.

Comment No. 2—(Letter No. 2): The Quechan Tribe is also concerned that the Operating Criteria and its implementation not inappropriately facilitate, validate, or permanently secure use by others of Colorado River water that the tribe is not beneficially using. * * * Reclamation should therefore not designate water as ''surplus'' to the extent that such designation makes the water available for others.

Response: On an annual basis, determinations of availability of ''surplus'' water are made as part of the Annual Operating Plan process, and are based upon the Interim Surplus Guidelines adopted by the Secretary of the Interior (66 FR 7772–82). Determinations of ''surplus'' conditions are consistent with the provisions of Article II(B)(2) of the Decree entered by the United States Supreme Court in *Arizona* v. *California,* 376 U.S. 340, 342 (1964). The Department does not believe that the Operating Criteria or the Interim Surplus Guidelines inappropriately facilitate, validate, or permanently secure use by others of Colorado River water that the tribe is not using at this time. Nor does the Department believe that the Operating Criteria would preclude the tribe or any entitlement holder from using their Colorado River entitlement in the future. In short, the Operating Criteria do not alter the quantity or priority of tribal entitlements.

Comment No. 3—(Letter No. 2): The Quechan Tribe asks that Reclamation consider whether the present and future plans for tribal water marketing and banking mandate modification to the Operating Criteria, particularly in light of Reclamation's trust responsibilities to Indian tribes and their members.

Response: The Department does not believe that a change to the Operating Criteria is warranted due to any plans that the tribe may have with respect to future marketing and banking of tribal water. The Operating Criteria do not define nor will they alter the quantity or priority of tribal entitlements. The Operating Criteria provide for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act and the Boulder Canyon Project Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact, Upper Colorado River Basin Compact, and Mexican Water Treaty.

Comment No. 4—(Letter No. 2): The Quechan Tribe asks that Reclamation consider whether Arizona's and Nevada's full use of their allotments mandates modification to the Operating Criteria, particularly in light of Reclamation's trust responsibilities to Indian tribes and their members.

Response: The Department does not believe that a change to the Operating Criteria is warranted due to Arizona's and Nevada's current estimated use of Colorado River water. The Operating Criteria do not define nor will they alter state apportionments or the rights of individual entities to Colorado River water.

Comment No. 5—(Letter No. 2): The Quechan Tribe asks that Reclamation consider whether the overallocation of the Colorado River mandates modification to the Operating Criteria, particularly in light of Reclamation's trust responsibilities to Indian tribes and their members. Please note that the tribe has proposed a Tribal Accounting Pool in Lake Mead to allow undeveloped tribal waters to be tracked by an in-reservoir accounting system.

Response: The Department does not believe that a change to the Operating Criteria is warranted due to allocations of the Colorado River. The Operating Criteria implement and carry out the provisions of the Colorado River Compact, Upper Colorado River Basin Compact, and Mexican Water Treaty, as well as federal statutory law. These sources of the basin and state allocations to Colorado River water control Reclamation actions pursuant to the Operating Criteria. While annual yield calculations made early in the 20th century have been revised pursuant to additional data, the Operating Criteria do not define or alter any rights of individual entities to Colorado River water.

The Department acknowledges that the Ten Tribes Partnership (in comments to Reclamation on the Draft Interim Surplus Criteria Environmental Impact Statement) proposed the Tribal Accounting Pool (TAP) in Lake Mead. The TAP was a proposed methodology to track the amounts of undeveloped tribal water and determine the portion of surplus, normal, and shortage water delivered to other non-partnership Lower Basin users as a result of undeveloped Ten Tribes' water in the Lower Basin. The Department of the Interior did not include the TAP methodology as part of the Interim Surplus Guidelines and does not believe that revision of the Operating Criteria to include the TAP methodology is appropriate. See *e.g.*, U.S. Department of the Interior, Response to Ten Tribes Partnership, Interim Surplus Guidelines, Final Environmental Impact Statement, Volume III at page B–208 (Comment 13).

Comment No. 6—(Letter No. 2): The Quechan Tribe asks Reclamation to consider whether Reclamation should adopt the Operating Criteria as a rule, pursuant to the Administrative Procedure Act.

Response: The Administrative Procedure Act (APA) was originally enacted in 1946, was significantly amended in 1966, and has been subsequently modified by Congress. Primary purposes of the APA are (1) to require agencies to keep the public informed on organization, procedures, and rules; (2) to provide for public participation in the rulemaking process; (3) to prescribe uniform standards of conduct for rulemaking and adjudicatory proceedings; and (4) to

address judicial review of agency decisionmaking.

The APA addresses rulemaking. A ''rule'' is defined as: ''the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *'' 5 U.S.C. 551(4). Rulemaking is usually referred to as either formal or informal. While developed pursuant to specific provisions of the Colorado River Basin Project Act, the review of the Operating Criteria should be categorized as informal rulemaking.

Consistent with the APA, Reclamation has provided for public participation and review of the Operating Criteria. Reclamation has developed a thorough administrative record. Notices regarding five-year reviews are also publicly noticed through the **Federal Register**. All comment letters received and notes from public meetings, as well as any analysis performed by Reclamation, are part of the public record. The public has been kept informed of the intent of the review and encouraged to participate. The Department believes that it is meeting the requirements of the APA and all actions are in accordance with applicable federal law.

Comment No. 7—(Letter No. 2): The Quechan Tribe is also concerned about the Operating Criteria's cumulative effects on the Colorado River and on its senior rights in the river when considered with the many other federal activities that affect the flow of the Colorado River.

Response: See response to Comments No. 1 and 2.

Comment No. 8—(Letter No. 2): The Quechan Tribe requests that Reclamation comply with the National Environmental Policy Act if it (1) modifies the Operating Criteria or (2) determines that application of the Operating Criteria has or will have significant adverse effects (short- or long-term) on the environment, the tribe's water rights, or the Fort Yuma Reservation.

Response: Reclamation complies with the National Environmental Policy Act (NEPA) with respect to its activities. In the past, Reclamation elected to utilize its NEPA process to evaluate the five-year review process and any proposed changes.

The Department is making a number of changes to the Operating Criteria through this notice that are editorial in nature. These changes fall into several categories: a minor textural addition, textural clarification of facts, and deletions of text referring to operational requirements and/or other events completed in the past. All of these editorial changes are administrative in nature and their implementation would not individually or cumulatively have a significant effect on the quality of the human environment or tribal resources. Reclamation has completed a Categorical Exclusion checklist supporting a Departmental Categorical Exclusion for this action.

Comment No. 9—(Letter No. 3): If there is no Quantification Settlement Agreement, Reclamation should review the Operating Criteria to better achieve the purposes of the 1922 Colorado River Compact.

Response: The Department of the Interior and the California entities completed the Quantification Settlement Agreement on October 10, 2003.

Comment No. 10—(Letter No. 4): National Park protection should be one of the factors considered in development of the annual plan of operation (Article I(2)), including provisions for any experimental flows necessary to meet the purposes of the Grand Canyon Protection Act.

Response: Article I of the Operating Criteria concerns the Annual Report. In Article I(2) it states: ''The plan of operation shall include such detailed rules and quantities as may be necessary and consistent with the criteria contained herein, and shall reflect appropriate consideration of the uses of the reservoirs for all purposes, including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors.'' Because the Operating Criteria are ''administered consistent with applicable Federal laws'' (which include the Grand Canyon Protection Act), National Park protection is already currently considered in the annual plan of operation under the existing Operating Criteria. See introductory paragraph of Operating Criteria. Moreover, Reclamation has promulgated Glen Canyon Operating Criteria (and operating plans) pursuant to the requirements of section 1804(b) and (c) of the Grand Canyon Protection Act that specifically address the applicable requirements of that Act. As provided in the Grand Canyon Protection Act, these Glen Canyon Operating Criteria (and operating plans) are ''separate from and in addition to those specified in section 602(b) of the Colorado River Basin Project Act of 1968.'' See Grand Canyon Protection Act at section 1804(c)(1)(A). The reference to section 602(b) is the statutory provision which requires preparation of the Colorado River Annual Plan of Operation referenced in Article I(2) of the Operating Criteria. Accordingly, the Department does not believe that it is necessary for the Operating Criteria to be specifically modified to reflect that fact.

Comment No. 11—(Letters No. 4 and 17): The Grand Canyon Protection Act should be specifically mentioned as one of the relevant factors to be considered in the operation of Upper Basin reservoirs (Article II(3)).

Response: The existing Operating Criteria contain language stating that the Operating Criteria are administered consistent with applicable federal laws, which by definition, includes the Grand Canyon Protection Act. The Grand Canyon Protection Act is not mentioned explicitly in Article II(3), but is considered in the context that it is an applicable federal law. In addition, see response to Comment No. 10.

Comment No. 12—(Letters No. 4 and 17): With provisions now in place for Beach/Habitat-Building Flows from Glen Canyon Dam, Article II(4) is no longer completely accurate as written. We propose the following rewording: ''Annual releases will be made through the powerplant to the extent practicable except when above powerplant capacity releases are determined by the Secretary, after giving consideration to other applicable factors, to be necessary to meet the provisions of the Grand Canyon Protection Act.''

Response: The scheduling of Beach/Habitat-Building Flows (BHBFs) from Glen Canyon Dam has been controversial since the mid-1990s. The preferred alternative in the Final Environmental Impact Statement for the Operation of Glen Canyon Dam called for BHBFs to take place when Lake Powell storage was low. The Colorado River Basin States expressed significant reservations with that approach. Subsequently, in the 1996 Record of Decision, the Secretary of the Interior adopted a strategy for scheduling BHBFs that was anticipated to apply during high-reservoir storage conditions and that was based to a greater extent on spill avoidance and dam safety considerations. Through the Glen Canyon Dam Adaptive Management Program (AMP), BHBF triggering criteria have been further defined based upon spill avoidance and dam safety. These BHBF triggering criteria are workable and consistent with the Operating Criteria.

In 2002, a sequence of experimental flows was recommended by the AMP. This AMP recommendation was forwarded to the Secretary for her consideration and was adopted in

November 2002. In this experimental flow sequence, one or more BHBFs may be made outside of the established BHBF triggering criteria. These experimental flows are considered test releases and will be made to advance the scientific knowledge of physical and biological process in the Grand Canyon ecosystem. The long-term implementation of BHBFs will continue to be carried out consistent with the Colorado River Storage Project Act, Colorado River Basin Project Act, and BHBF triggering criteria.

In November 2004, the first of these experimental flows that utilized releases greater than powerplant capacity was conducted. In this high-flow test, 41,000 cubic feet per second was released from Glen Canyon Dam for a period of 60 hours. The objective of the test was to evaluate the conservation of fine sediments that form beaches, riparian plant substrate, and endangered fish habitats. It will take approximately 18 months to fully evaluate the test.

Comment No. 13—(Letter No. 4): Under the Operation of Lake Mead, the National Park Service thinks that the Interim Surplus Criteria should replace the language in Article III(3)(b) defining ''Surplus.'' At least for the next 15 years, the Interim Surplus Criteria Record of Decision defines the relevant factors that the Secretary must consider in determining whether water quantities greater than ''normal'' are available for pumping or release from Lake Mead.

Response: The Department does not agree that Article III(3)(b) language should be updated to reflect adoption of the Interim Surplus Guidelines Record of Decision by the Secretary. The Department of the Interior specifically considered, and sought public input on, the concept of modifying Article III(3)(b) of the Operating Criteria during the process that led to adoption of the Interim Surplus Guidelines. See 64 FR 27010 (May 18, 1999). After reviewing the public comments received, the Department announced its intention to adopt ''interim implementing criteria pursuant to Article III(3) of the Long-Range Operating Criteria'' rather than modifying the actual text of the Operating Criteria. See 64 FR 68373 (December 7, 1999). This approach was carried through and set forth in the Record of Decision adopted by the Secretary. See 66 FR 7772, 7780 at section XI(5) (''These Guidelines, which shall implement and be used for determinations made pursuant to Article III(3)(b) of the [Operating Criteria] * * * are hereby adopted * * *'').

Comment No. 14—(Letters No. 4 and 6): The Department should begin a process for shortage determination.

Response: In the past year Reclamation has provided data and information regarding drought analysis and reservoir operations to representatives of the seven Colorado River Basin States, the Western Area Power Administration, and non-governmental organizations that have expressed an interest. Reclamation continues to monitor reservoir storage and basin hydrologic conditions and anticipates beginning a process in spring 2005 to evaluate alternatives regarding the development of shortage guidelines for the delivery of water to the three Lower Division States (Arizona, California, and Nevada).

Comment No. 15—(Letter No. 6): As noted in the January 15, 2002, **Federal Register** notice (67 FR 1986), the Secretary's consultation responsibilities have been specifically extended to encompass the general public. We recommend that this responsibility be reflected in the Operating Criteria by adding the phrase ''and the public'' to the end of the second introductory paragraph.

Response: The Department agrees that section 1804 of the Grand Canyon Protection Act specifically modifies Federal law applicable to the Operating Criteria, and by that Act, Congress extended the consultation process to encompass the general public. The Department has included a modification to reflect this responsibility.

Comment No. 16—(Letters No. 6 and 17): The Grand Canyon Protection Act (Pub. L. 102–575) charged the Secretary with operating Glen Canyon Dam ''in such a manner as to protect, mitigate impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established.'' We recommend that the protection and enhancement of these values be inserted as reservoir uses that are considered in developing the annual operating plan under Article I(2) of the Operating Criteria by adding the phrase ''protection of cultural resources'' after ''water quality control'' and before ''recreation'' and by adding the phrase ''protection and enhancement of fish and wildlife'' before ''and other environmental factors.''

Response: See response to Comment No. 10.

Comment No. 17—(Letter No. 6): Although the phrase ''recurrence of critical periods of water supply'' that is included in Article II(1)(d) may have been universally understood when the Operating Criteria were originally established, its meaning is unclear to us. We recommend that either a definition of this phrase be included in the definitions section or that the entire clause beginning with the word ''including'' be deleted.

Response: The term ''critical period'' is used twice in the Operating Criteria. A ''critical period'' is a general concept used in water supply planning representing a sequence of drier than average years with below normal runoff. Water supply management must account for these periods of below normal runoff and their ''recurrence'' to assure a consistent supply of water. As used in the context of Colorado River management, the phrase ''recurrence of critical periods'' means: the frequency at which critical periods (sequences of years with below normal runoff) have occurred in the past and are likely to recur in the future. The Department believes that the current language in the Operating Criteria is relevant and should remain in the Operating Criteria. The Department does not agree that this term requires a specific definition.

Comment No. 18—(Letter No. 6): We question whether the ''Report of the Committee on Probabilities and Test Studies to the Task Force on Operating Criteria for the Colorado River,'' dated October 30, 1969, which is referenced in Article II(1)(e) of the Operating Criteria, still has relevance in determining 602(a) Storage. We request either that Reclamation provide us with a copy of that report or a summary of it, or that Article II(1)(e) be deleted from the Operating Criteria.

Response: As requested, a copy of the ''Report of the Committee on Probabilities and Test Studies to the Task Force on Operating Criteria for the Colorado River'' has been made available on our Web site at *http://www.usbr.gov/lc/region/g4000/lroc.*

Comment No. 19—(Letters No. 6 and 17): The Secretary and her agencies are engaged in modification of river operations in various parts of the basin in order to meet their responsibilities under the Endangered Species Act. In order to reflect these changes, we recommend that a new subsection be added to Article II(1) that reads: ''Streamflow requirements of fish and wildlife, and other environmental values.''

Response: The Department notes that Article II(1) of the Operating Criteria is applicable to, and lists relevant factors for, determination of 602(a) Storage. The Operating Criteria are ''administered consistent with applicable Federal laws'' (which include the Endangered Species Act). See introductory paragraph of Operating Criteria. As with

other aspects of applicable federal law, the Endangered Species Act applies to proposed discretionary actions undertaken by federal agencies and its consideration is implicit in the existing Operating Criteria. Accordingly, the Department does not believe that it is necessary for the Operating Criteria to be modified.

Comment No. 20—(Letter No. 6): The last sentence in Article II(2) of the Operating Criteria refers to operations in 1971 and 1972, and is no longer relevant. We recommend that this sentence be deleted.

Response: The Department concurs with the recommendation. The references to operations in 1971 and 1972 are no longer relevant and the Department has deleted those sentences from the Operating Criteria.

Comment No. 21—(Letters No. 6 and 17): In recognition of the Secretary's responsibilities under the Grand Canyon Protection Act and the Endangered Species Act, we recommend that a new subsection (d) be added to Article II(3) that reads: ''to meet the requirements of the Grand Canyon Protection Act and the Endangered Species Act.''

Response: See response to Comments No. 11 and 19.

Comment No. 22—(Letter No. 6): Given that the Colorado River Storage Project Act lists generation of hydroelectric power as an incidental purpose for Glen Canyon Dam, and that the Record of Decision on the operation of Glen Canyon Dam interprets the mandates of the Grand Canyon Protection Act to allow bypass of water at the Glen Canyon Powerplant under limited conditions and for specified purposes, we suggest that the language in Article II(4) is not appropriate. We recommend that this section be deleted.

Response: Article II(4) specifies the method that water will be released from Lake Powell when such releases are needed in the application of Article II(3)(b) to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell. The Glen Canyon Dam Record of Decision does not address spilling water released for storage equalization purposes. Article II(4), as written, is necessary in specifying how storage equalization releases from Lake Powell should be made.

Comment No. 23—(Letters No. 6 and 17): In recognition of the Secretary's responsibilities under the National Environmental Policy Act, the Endangered Species Act, as well as the Law of the River, we recommend inserting the following phrase at the beginning of Section III(1): ''Consistent with applicable federal laws, including but not limited to the National Environmental Policy Act and the Endangered Species Act.''

Response: The existing Operating Criteria contain language stating that the Operating Criteria are administered consistent with applicable federal laws, which by definition, includes the National Environmental Policy Act and the Endangered Species Act. In addition, see response to Comments No. 11 and 19.

Comment No. 24—(Letter No. 6): Article III(2) is no longer pertinent and we recommend that it be deleted.

Response: The Department agrees that Article III(2) is no longer pertinent since the Central Arizona Project began delivering water in 1985. The Department has deleted the language in Article III(2).

Comment No. 25—(Letter No. 6): To reflect the mandates of the Grand Canyon Protection Act within the universe of project purposes at Glen Canyon Dam, we recommend adding the phrase ''and the protection and enhancement of national park values in Grand Canyon National Park and/or Glen Canyon National Recreation Area'' at the end of Article IV(1)(a).

Response: The Department believes that Article IV(1)(a), as written, adequately defines spills. The language, as written, enables appropriate flexibility in the operation of Glen Canyon Dam to accomplish project purposes.

Comment No. 26—(Letter No. 6): Delete the word ''demands'' in Article IV(1)(b) of the Operating Criteria.

Response: To maintain consistency with Article III of the Operating Criteria and the 1964 Decree in *Arizona* v. *California*, the Department agrees that the word ''demands'' should be deleted in Article IV(1)(b). The Department has deleted the word ''demands'' from Article IV(1)(b).

Comment No. 27—(Letter No. 6): Since Article IV(1)(d) defines a term used solely in Section II(4), we recommend that it be deleted along with Article II(4).

Response: As Article II(4) remains relevant in the Operating Criteria (see response to Comment No. 22), Article IV(1)(d) needs to remain in the Operating Criteria. The term ''available capability,'' as defined in Article IV(1)(d), is used in Article II(4).

Comment No. 28—(Letter No. 6): The Interim Surplus Guidelines are having a negative effect on the Colorado delta.

Response: The Record of Decision for the Colorado River Interim Surplus Guidelines Final Environmental Impact Statement states that five-year reviews of the Interim Surplus Guidelines may be conducted, and if so, such reviews would be coordinated with the Operating Criteria review. The Interim Surplus Guidelines became effective in February 2001 and were first applied in the 2002 Annual Operating Plan. At this time, there is no need for a review of the Interim Surplus Guidelines. In the future, however, actual operating conditions may warrant a review of the Interim Surplus Guidelines.

Comment No. 29—(Letters No. 6 and 17): Conduct an environmental review of the Operating Criteria under the National Environmental Policy Act.

Response: See response to Comment No. 8.

Comment No. 30—(Letter No. 6): A Categorical Exclusion is arbitrary and capricious because the actual promulgation of the Operating Criteria has not been evaluated in a National Environmental Policy Act process.

Response: See response to Comment No. 8.

Comment No. 31—(Letter No. 16): The development and implementation process for the Interim Surplus Guidelines more than fulfilled the requirements for a five-year review. The Colorado River Basin States and the Secretary of the Interior have already agreed on how to operate the Colorado River for the next 15 years. The state of Utah does not see the need to spend time and resources on a review of the Operating Criteria.

Response: The Operating Criteria explicitly call for their own formal review at least every five years. The Department intends to follow the requirements of the Operating Criteria. The last review was completed with a **Federal Register** notice published on February 24, 1998 (63 FR 9256). The Interim Surplus Guidelines serve to implement Article III(3)(b) of the Operating Criteria. The Interim Surplus Guidelines may be reviewed concurrently with the five-year review of the Operating Criteria pursuant to Section 3 of the Interim Surplus Guidelines.

Comment No. 32—(Letters No. 1, 3, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, and 27): No changes to the Operating Criteria are warranted at this time.

Response: The Secretary of the Interior has made a number of limited modifications to the Operating Criteria in this **Federal Register** notice. However, in making those modifications, the Secretary found that in all other respects the Operating Criteria continue to meet the purpose and goals for which they were developed and the requirements of section 602 of the 1968 Colorado River Basin Project Act. The Secretary

believes that neither the structure, format, nor content of the Operating Criteria require significant revisions as a result of actual operating experience. By this **Federal Register** notice, based on information submitted for review by the Department of the Interior, the Secretary has made a number of limited modifications to the text of the Operating Criteria. The bases for the changes are: (1) Specific change in Federal law applicable to the Operating Criteria, (2) language in the current text of the Operating Criteria that is outdated, and (3) specific modifications to Article IV(b) of the Operating Criteria that reflect actual operating experience.

Comment No. 33—(Letter No. 18): We do not object to the changes proposed in the **Federal Register** notice.

Response: Comment noted.

Comment No. 34—(Letter No. 18): The Upper Colorado River Commission does not endorse the assumption and objective in the Operating Criteria of a minimum release of water from Lake Powell of 8.23 million acre-feet every year. If such a number is used in the Operating Criteria, it must be understood that this is a planning objective which may be modified in the Annual Operating Plan (AOP) to reflect current conditions and in accordance with Colorado River Compact requirements. We remain concerned about the drought and depletion of storage at Lake Powell. It is imperative that the Operating Criteria be interpreted to have sufficient flexibility to allow for modifications in the AOP as needed to reflect critical conditions and Colorado River Compact requirements.

Response: Article III of the Colorado River Compact contains several provisions relating to the release of water from the Upper Basin to the Lower Basin. The specification of a minimum annual release objective from Glen Canyon Dam is found only in Article II(2) of the Operating Criteria which states that ''* * * the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet * * *.''

Because the minimum annual release objective is higher than inflow during periods of drought, storage in Lake Powell is drawn down during a drought. The more severe the drought, the more significant the drawdown is at Lake Powell. Storage in Lake Powell recovers during normal or wet years. Lake Mead storage decreases during drought as well, but does so at a slower rate because of the presence of the minimum annual release objective from Lake Powell.

Representatives of the seven Colorado River Basin States, Reclamation, and the Western Area Power Administration are investigating impacts of prolonged drought where reducing the release from Lake Powell below the 8.23 million acre-foot per year objective would protect the minimum power pool at Lake Powell and the water supply for the Upper Division States of Colorado, New Mexico, Utah, and Wyoming. The 2005 Colorado River Annual Operating Plan (AOP) calls for an April 2005 mid-year review of the 2005 annual release amount from Lake Powell to determine if the runoff forecast warrants an adjustment to the annual release for water year 2005.

Determinations of Upper Basin annual deliveries (annual releases from Lake Powell) are made in the AOP. The AOP is prepared each year by the Department of the Interior through the Bureau of Reclamation in consultation with the seven Basin States Governors' representatives; the Upper Colorado River Commission; Native American tribes; appropriate federal agencies; representatives of the academic and scientific communities, environmental organizations, and the recreation industry; water delivery contractors; contractors for the purchase of federal power; others interested in Colorado River operations; and the general public through the Colorado River Management Work Group. The Department, through Reclamation, will continue to address issues related to low reservoir storage caused by drought in the AOP consultation process.

Comment No. 35—(Letter No. 18): Decisions regarding the timing for the next review should be left open.

Response: The Department has made no decision regarding the timing of the next review of the Operating Criteria.

Comment No. 36—(Letter No. 19): It is critical for the Operating Criteria for reservoir operations to uphold the intent of the 1922 Colorado River Compact. The Operating Criteria should be flexible and responsive to variations in hydrologic conditions, and should not jeopardize the interests of the Upper Basin.

Response: See response to Comment No. 34.

Comment No. 37—(Letter No. 19): The 1922 Colorado River Compact anticipating fluctuating hydrologic conditions specified Upper Basin water deliveries as a 10-year progressive series. We note that the existing Operating Criteria dictate the minimal annual release of 8.23 million acre-feet which is counter to Article III(d) of the 1922 Colorado River Compact.

Response: See response to Comment No. 34.

Comment No. 38—(Letter No. 19): We are also concerned that the Operating Criteria contain a requirement to equalize Lake Mead with Lake Powell during times of Upper Basin water surpluses, but that there are no provisions to equalize the level of Lake Powell with Lake Mead during times of Upper Basin drought for so long as the Upper Basin is conditionally satisfying its 10-year water delivery obligations.

Response: Article II(3) of the Operating Criteria contains a requirement that releases greater than 8.23 million acre-feet be made only when reservoir storage in the Upper Basin is greater than 602(a) Storage. Article II(1) of the Operating Criteria describes 602(a) Storage.

There is no provision in the Operating Criteria to equalize the level of Lake Powell with Lake Mead during times of drought when reservoir storage in Lake Powell is lower than Lake Mead. However, river simulation modeling of the Colorado River system shows that in the future there will be times when Lake Powell storage will be greater than Lake Mead. This will occur because of the application of 602(a) Storage provisions. See Colorado River Basin Project Act at section 602(a). Following a drought, the 602(a) Storage provision in the Operating Criteria allows Lake Powell to refill to a level sufficient to protect the Upper Basin from future droughts. Releases greater than the objective minimum are not made from Lake Powell until this level of storage is achieved. It is likely that when the current drought comes to an end, during a year (or series of years) with above average inflow to Lake Powell, reservoir storage in Lake Powell will exceed that of Lake Mead.

In 2004, an Interim 602(a) Storage Guideline was adopted that set 14.85 million acre-feet of storage (elevation 3,630 feet) at Lake Powell as the minimum level for 602(a) Storage through the year 2016. See 69 FR 28945 (May 19, 2004). Under this interim guideline, releases greater than the minimum objective release will not be made when Lake Powell is projected to be below elevation 3,630 feet. Thus, while Lake Powell storage decreases faster than Lake Mead during periods of drought, the 602(a) Storage provision allows Lake Powell storage to rebound quicker than Lake Mead when there is a return to average or wetter than average hydrology. In addition, see response to Comment No. 34.

Comment No. 39—(Letter No. 19): Presently, there exists a large imbalance between the water volumes in Lake Mead and Lake Powell (14.3 million acre-feet to 8.8 million acre-feet), which

has jeopardized the interests of the Upper Basin and put at risk the future generation of hydroelectric power at Glen Canyon Dam.

Response: The severity of the drought over the past five years in combination with the objective to maintain a minimum release of 8.23 million acre-feet has caused a significant drawdown of Lake Powell. The minimum release objective contained in the Operating Criteria results in Lake Powell storage decreasing during periods of drought. From 1988 through 1992, there was a five-year drought in the Colorado River Basin and the water surface elevation of Lake Powell decreased by 89 feet. The drought of the past five years (2000–2004) is more severe than the drought that occurred from 1988 to 1992. Records show the current drought to be the most severe five-year drought in the Colorado River Basin in over 100 years of recordkeeping. Because of this, Lake Powell has experienced a significant reduction in storage.

Elevation 3,490 feet at Lake Powell has been identified as the minimum level at which hydropower can be generated at Lake Powell. The river bypass tubes at Glen Canyon Dam can release water as low as elevation 3,370 feet, but no hydropower can be generated by the release of water through the river bypass tubes. Elevation 3,370 feet is the lowest elevation at which water can be released from Lake Powell. Between elevations 3,490 feet and 3,370 feet, there is four million acre-feet of storage. The Operating Criteria do not reference these elevations at Lake Powell. Previous river simulation modeling of the Colorado River system performed by Reclamation showed no occurrences of Lake Powell reaching 3,490 feet in the next 50 years when subject to the most severe droughts of the 20th century. However, since the current five-year drought is worse than any of the 20th century droughts, there is now some risk that Lake Powell could reach minimum power pool (elevation 3,490 feet) under a scenario of continued drought in combination with the continuation of the minimum release objective from Lake Powell. The Department will continue to address the issue of low reservoir storage at Lake Powell in the Annual Operating Plan consultation process. In addition, see response to Comments No. 34 and 38.

Comment No. 40—(Letter No. 19): Over the past 10 years, the Upper Basin has delivered more than 100 million acre-feet of water to the Lower Basin, which now in combination with drought conditions has prejudiced the interests of the Upper Basin.

Response: During the past 10-year period (water years 1995–2004), over 100 million acre-feet has flowed past Lee Ferry. The majority of this flow occurred during the five-year period of 1995 through 1999 which was a period with above average flow on the Colorado River. In July 1999, Lake Powell storage was 97 percent of capacity. During the five-year period of 1995 to 1999, 59.5 million acre-feet flowed past Lee Ferry, with reservoirs throughout the Upper Colorado River Basin, including Lake Powell, releasing excess water because they were full. Release of this water from Lake Powell was necessary because of the physical storage limitation of Lake Powell and dam safety considerations. During the past five years, the objective in the operation of Lake Powell has been to release 8.23 million acre-feet per year, consistent with the Operating Criteria. It should also be noted that during the late 1990s, flood control releases were taking place from Lake Mead in the Lower Basin resulting in a significant volume of water, approximately 5 million acre-feet, being released from Lake Mead in excess of Lower Basin demands. In addition, see response to Comment No. 34.

Comment No. 41—(Letter No. 19): The existing Operating Criteria need clarification that the minimal objective release of 8.23 million acre-feet stated in the Operating Criteria is an ''operating target'' which is subject to revision in the Annual Operating Plan process.

Response: See response to Comment No. 34.

Comment No. 42—(Letter No. 19): The Friends of Lake Powell strongly endorse the Annual Operating Plan process. Furthermore, we believe that operation of the Colorado River reservoirs can be optimized with each Basin sharing more equitably in the burden of drought. This would be best accomplished by maintaining, as equally as practicable, the active water stored in Lake Powell and Lake Mead (for so long as Upper Basin 10-year water delivery obligations are satisfied).

Response: Under the Operating Criteria, Lake Powell storage drops below Lake Mead storage during periods of drought. When there is a return to average or above average inflow, Lake Powell storage recovers faster than storage recovers in Lake Mead. The 602(a) Storage requirement allows water storage in Lake Powell to be greater than water storage in Lake Mead in the period following a drought. Maintaining storage equal in Lake Powell and Lake Mead as an operating strategy would be counter to the 602(a) Storage requirement and could put the Upper Basin at risk of not having enough water in storage for future droughts. The Department will continue to address low reservoir storage caused by drought in the Annual Operating Plan consultation process. In addition, see response to Comments No. 34 and 38.

Comment No. 43—(Letter No. 20): The Operating Criteria of Glen Canyon Dam need to be revisited. When all needs are considered, it would be better to treat Lakes Mead and Powell more similarly, or better yet, to apply your normal system Operating Criteria to the operation of Glen Canyon Dam.

Response: See response to Comments No. 34, 38, and 42.

Comment No. 44—(Letter No. 21): The technical changes proposed in the current Operating Criteria review seem to make sense in order to keep the document current with regards to updated legislation and rules.

Response: Comment noted.

Comment No. 45—(Letter No. 21): With the current drought and the ongoing discussions by the seven Colorado River Basin States as to how to cope with low storage levels in the system, it would be appropriate for this review of the Operating Criteria to serve as the current review for at least the next five years. During this time, the seven Basin States will be working together to provide additional guidelines dealing with shortages. Similar to the Interim Surplus Guidelines process, if and when shortage guidelines are agreed to and given time to develop operational experience, it would be appropriate to again review the Operating Criteria.

Response: See response to Comment No. 35.

Comment No. 46—(Letter No. 22): Page Electric Utility strongly believes that the water level of Lake Powell should be maintained at or above elevation 3,490 feet to maintain the minimum power pool.

Response: See response to Comments No. 34 and 39.

Comment No. 47—(Letter No. 23): We have no objections to the proposed removal of obsolete provisions in the Operating Criteria.

Response: Comment noted.

Comment No. 48—(Letter No. 23): An amount less than the minimum release objective may be released from Lake Powell, if the states of the Upper Division are in compliance with Article III(d) of the Colorado River Compact, in order to avoid impairment or potential impairment of the beneficial consumptive use of water in any Upper Division State.

Response: See response to Comment No. 34.

Comment No. 49—(Letter No. 23): The Operating Criteria have been flexible enough to allow for adjustments following the floods of the 1980s, they have been flexible enough to allow for the development of the interim operating criteria to aid California in reducing its use of Colorado River water to 4.4 million acre-feet per year, and they have been flexible enough to allow for experimental flow tests from Glen Canyon Dam in 1996 and again in 2004. All these were accomplished within the limitations provided by the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty. The Operating Criteria cannot be used to modify these basic documents, as some would suggest.

Response: The Department concurs. The Operating Criteria cannot be used to modify the Colorado River Compact, the Upper Colorado River Basin Compact, or the Mexican Water Treaty.

Comment No. 50—(Letter No. 24): The Operating Criteria should meet the intent of the 1922 Colorado River Compact, yet be flexible enough to take into consideration variations in hydrologic conditions and drought.

Response: The Operating Criteria were developed to provide sufficient flexibility in the operation of Colorado River reservoirs while meeting the requirements of interstate compacts, federal laws, treaties, decrees, and regulations germane to the Colorado River. Over the past 34 years, the Operating Criteria have provided the flexibility to properly manage the Colorado River through periods of average, above average, and below average inflow.

Comment No. 51—(Letter No. 24): The 1922 Colorado River Compact intended for a flexible water delivery schedule based on 10-year averages. The existing Operating Criteria appear to dictate a minimal release that does not consider drought conditions.

Response: See response to Comment No. 34.

Comment No. 52—(Letter No. 24): A new minimal annual release given current conditions should be considered in the 6.5 to 7 million acre-foot range for the stabilization of both reservoirs.

Response: See response to Comments No. 34 and 38.

Comment No. 53—(Letter No. 24): The cost effective generation of hydroelectric power should not be jeopardized at Glen Canyon Dam; therefore, a minimum lake elevation should be established at Lake Powell.

Response: See response to Comments No. 34, 38, and 39.

Comment No. 54—(Letter No. 25): The following changes should be made to the Operating Criteria: In Article I(2), after the word, ''recreation,'' add the phrase, ''protection of Grand Canyon National Park and Glen Canyon National Recreation Area.''

Add the following paragraph as Article II(6): ''In the application of Article II, Glen Canyon Dam will be operated and releases from Lake Powell made in accordance with the Grand Canyon Protection Act in order to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National recreation Area were established. Annual releases will be made through the powerplant to the extent practicable except when above-powerplant releases are determined by the Secretary to be necessary to meet the provisions of the Grand Canyon Protection Act. Water releases pursuant to this paragraph will not affect allocations of water secured to the Colorado River Basin States by any compact, law, or decree.''

In Section IV(1)(a), after the phrase, ''power and energy,'' add the phrase, ''and protection of natural and cultural resources in Grand Canyon National Park and Glen Canyon Recreation Area.''

Response: See response to Comments No. 10, 11, and 12.

Comment No. 55—(Letter No. 26): The Metropolitan Water District of Southern California (Metropolitan) urges Reclamation not to commit to a five-year hiatus in beginning the next review of the Operating Criteria. A five-year hiatus prior to beginning the next review would amount to an eight-year period between reviews, while the Operating Criteria commit to a review at least every five years. Metropolitan believes that Reclamation should leave open the date that the next review will commence, basing that date instead upon actual operating experience or unforeseen circumstances.

Response: See response to Comment No. 35.

Comment No. 56—(Letter No. 27): The Colorado River Board of California (Board), in its March 2002 letter, indicated that there was a need to provide additional specificity to provide guidance as the Annual Operating Plan (AOP) is developed. This specificity is needed to address reservoir operations over the full range of expected operations and include releases during high water events and conditions, as well as, during low water conditions and shortages. Although there was an identified need to provide sufficient detail and substance to guide development of the AOP, there is a greater need to bring this five-year review to a conclusion within this five-year review period. Accordingly, the Board finds that Reclamation's proposed modifications to the Operating Criteria are acceptable. It is the Board's position that consideration of any substantive modifications to the Operating Criteria should be delayed until the next review is undertaken.

Response: Comment noted.

Comment No. 57—(Letter No. 27): It is unclear from the **Federal Register** notice whether Reclamation plans in some way to note for the reader that certain text has been inserted or deleted through this review. As such, it is recommended that additions and deletions to the text of the Operating Criteria be noted in footnotes to the Operating Criteria.

Response: The Department will denote additions and deletions to the text of the Operating Criteria using a combination of text strikeout, bolding, less than or greater than signs, and/or brackets.

Comment No. 58—(Letter No. 27): At the public meeting held in Henderson, Nevada, on November 19, 2004, Reclamation staff indicated an intent that the next review not begin until five years after the current review is concluded. Such a schedule would depart from the review process required by the Colorado River Basin Project Act of 1968. No such intent should be specified in a final decision regarding the current review. A decision regarding the timing of the beginning of the next review should be left open as it may be necessary to begin the next review prior to the time suggested at the public hearing.

Response: See response to Comment No. 35.

Public Consultation Meeting—November 19, 2004

Reclamation conducted a public consultation meeting in Henderson, Nevada, on November 19, 2004. Two attendees provided oral comments at the meeting. A summary of the comments made and responses to those comments is as follows:

Kara Gillon— Defenders of Wildlife: Why were no changes proposed to the Operating Criteria to reflect the Grand Canyon Protection Act? Will Reclamation conduct National Environmental Policy Act compliance to the proposed changes?

Response: See response to Comments No. 8, 10, 11, 12, and 15.

Jerry Zimmerman—Colorado River Board of California: The Colorado River Board of California (Board) previously sent in a letter that stated that there is no need to change the Operating Criteria. The Operating Criteria need to

provide specificity on operations over a full range of water conditions. Specificity on shortage and surplus and on deliveries to the United States and Mexico is needed in the Operating Criteria. This specificity would help in the development of the Annual Operating Plan each year. The Board finds the proposed changes acceptable and that the current review needs to be completed soon. Substantive changes should be included in the next review. The Board will also be providing written comments.

Response: See response to Comments No. 56 and 58.

Final Decision: After a careful review of all comments received, and after formal consultation with the Governor's representatives of the seven Basin States, tribal representatives, and interested parties and stakeholders, the Secretary of the Interior has made a number of limited modifications to the text of the Operating Criteria. However, in making those modifications, the Secretary found that in all other respects the Operating Criteria continue to meet the purpose and goals for which they were developed and the requirements of Section 602 of the 1968 Colorado River Basin Project Act. The Secretary believes that neither the structure, format, nor content of the Operating Criteria require significant revisions as a result of actual operating experience. The bases for the changes are: (1) Specific change in Federal law applicable to the Operating Criteria, (2) language in the current text of the Operating Criteria that is outdated, and (3) specific modifications to Article IV(b) of the Operating Criteria that reflect actual operating experience.

Dated: March 21, 2005.

Gale A. Norton,

Secretary, Department of the Interior.

[FR Doc. 05–6160 Filed 3–28–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–534]

In the Matter of Certain Color Television Receivers and Color Display Monitors, and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 24, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Thomson Licensing S.A. of Boulogne, France, and Thomson Licensing Inc. of Princeton, New Jersey. A letter supplementing the complaint was filed on March 18, 2005. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain color television receivers and color display monitors, and components thereof, by reason of infringement of claims 1 and 3 of U.S. Patent No. 4,836,651, claim 1 of U.S. Patent No. 5,041,888, claims 1, 5, and 7 of U.S. Patent No. 5,153,754, claims 1, 3, 5, and 6 of U.S. Patent No. 5,389,893, and claims 1 and 2 of U.S. Patent No. 5,452,195. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are 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., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may 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) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Steven R. Pedersen, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2781.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2004).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 18, 2005, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain color television receivers or color display monitors, or components thereof, by reason of infringement of claim 1 or 3 of U.S. Patent No. 4,836,651, claim 1 of U.S. Patent No. 5,041,888, claim 1, 5, or 7 of U.S. Patent No. 5,153,754, claim 1, 3, 5, or 6 of U.S. Patent No. 5,389,893, or claim 1 or 2 of U.S. Patent No. 5,452,195, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Thomson Licensing S.A., 46 quai Alphonse Le Gallo, 92648 Boulogne, France.

Thomson Licensing Inc., 2 Independence Way, Princeton, NJ 08540.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

BenQ Corp., 157 Shan-Ying Rd., Gueishan, Taoyuan 333, Taiwan.

BenQ Optronics (Suzhou) Co., Ltd., 169 Zhujiang Rd., New District, Suzhou, Jiangsu, China 215011.

BenQ America Corp., 53 Discovery, Irvine, California 92618.

AU Optronics Corp., No. 1, Li-Hsin Road 2, Science-Based Industrial Park, Hsinchu 300, Taiwan.

(c) Steven R. Pedersen, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20