

Supporting Statement
Western Area Power Administration Applicant Profile Data
OMB Control No: 1910-5136

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.**

Western Area Power Administration (Western) is a Federal agency under the Department of Energy (DOE) that markets and transmits wholesale electrical power from 56 Federal hydropower plants and one coal-fired plant. Western sells about 40 percent of regional hydroelectric generation in a service area that covers 1.3 million square miles in 15 states. To deliver this electric power to the western half of the United States, Western markets and transmits about 10,000 megawatts of hydropower across an integrated 17,000-circuit mile, high voltage transmission system. Western's mission is to deliver this power to its statutorily defined preference customers, which include municipalities, cooperatives, public utility and irrigation districts, Federal and State agencies, and Native American tribes.¹ These customers, in turn, provide retail electric service to millions of consumers in Arizona, California, Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Texas, Utah, and Wyoming.

The amount of Federal power Western has to market is limited. Western has discretion to determine who will receive an allocation of Federal power. Due to the high demand for Western's power and limited amount of available power, Western needs to be able to collect information to evaluate who will receive an allocation of Federal power. As a result, the information Western collects is both necessary for the proper performance of its functions, and is useful in performing those functions. Western will use the information collected in conjunction with its marketing plan, to determine an entity's eligibility and ultimately who will receive an allocation of Federal power.

The basis of Western's authority is in Reclamation Laws, which are a series of laws arising from the Desert Land Act of 1872 and includes, but is not limited to: the Desert Land Act of 1872, Reclamation Act of 1902, Reclamation Project Act of 1939, and the Acts authorizing each individual project such as the Central Valley Project Authorizing Act of 1937.² The Reclamation Act of 1902 established the Federal reclamation program.³ The basic principle of the Reclamation Act of 1902 was that the United States, through the Secretary of the Interior, would build and operate irrigation works from the proceeds of public land sales in the sixteen arid Western states (a seventeenth was added later). The Reclamation Project Act of 1939 expanded the

¹ See, e.g., 43 U.S.C. § 485h(c).

² See Ch. 107, 19 Stat. 377 (1872), Ch. 1093, 32 Stat. 388 (1902), Ch. 418, 53 Stat. 1187 (1939), Ch. 832, 50 Stat. 844, 850 (1937), all as amended and supplemented.

³ See Ch. 1093, 32 Stat. 388, as amended and supplemented.

purposes of the reclamation program and specified certain terms for contracts the Secretary of the Interior enters into to furnish water and power.⁴ Congress enacted the Reclamation Laws for purposes that include enhancing navigation, flood protection, reclaiming arid lands in the western United States, and for fish and wildlife.⁵ Congress, generally, intended that the production of power would be a supplemental feature of the multi-purpose water projects authorized under the Reclamation Laws.⁶ No contract entered into by the United States for power may impair the efficiency of the project for irrigation purposes.⁷ Section 5 of the Flood Control Act of 1944 is read *in pari materia* with Reclamation Laws.⁸ In 1977, the Department of Energy Organization Act transferred the power marketing functions of the Department of Interior to Western.⁹ Pursuant to this authority, Western markets Federal hydropower.

The applicable portions of the main authorizing statutes, specifically the Reclamation Project Act of 1939 (providing for contracts to provide power) and the 1977 Department of Energy Organization Act (transferring power marketing functions of the Department of Interior to a yet to be named agency under DOE) are included in the OMB package submission.

There is no other DOE collection tool in place to collect this needed information.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection .

The information collected will continue to be used by Western (and specifically the individual Regions within Western) to determine eligibility and amount of allocation. The Energy Planning and Management Program¹⁰ and the individual project marketing plans provide the methodology and criteria Western must follow in performing its resource allocation duties. The information collected will be used (and has been used under the current collection number) to determine whether an applicant is an eligible preference entity, whether it falls within a marketing area, and whether it is ready, willing and able to receive and/or distribute Federal power. Given the high demand and limited available power, Western will use (and under the current collection number has used) the capacity and energy requirements of all eligible applicants to pro-rate how much power will be allocated.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection

⁴ See Ch. 418, 53 Stat. 1187 (1939), as amended and supplemented.

⁵ See, e.g., Ch. 832, 50 Stat. 844, 850 (1937), as amended and supplemented.

⁶ See, e.g., Ch. 832, 50 Stat. 844, 850 (1937), as amended and supplemented.

⁷ 43 U.S.C. § 485h(c).

⁸ See Act of December 22, 1944, Ch. 665, 58 Stat. 887), as amended and supplemented.

⁹ See 42 U.S.C. § 7152(a)(1)(E).

¹⁰ See 10 C.F.R § 905.

techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Applicant Profile Data (APD) will be accessible for downloading via Western's website. Taking into consideration the use of information technology to reduce the burden, Western will accept electronic-mail submission of the APD. Western also took into consideration that some of the applicants may not have the technology available to submit electronic-mail submissions, so submission via fax or regular mail will also be accepted. At this time, applicants cannot enter the information in an electronic form on Western's website; however, Western is in the process of developing an on-line form.

4. Describe efforts to identify duplication.

The collection of information under the APD will not be a duplication of reporting or available information. In fact, the information sought under the APD is not collected by other means or in another form by DOE or Western. To avoid unnecessary duplication, only entities who desire a new Western allocation are required to submit an APD.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

As indicated in item #5 of the OMB Form 83-I, this collection of information will not have a significant impact on small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Without the collection of this information, Western will not be able to fulfill its mission required by statute, implementing regulations, and its marketing plans because Western will have no information on who desires an allocation of Federal power or whether such entities qualify for preference under Federal law. This information collection is a one-time collection when Western has available power available under an allocation process.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to product valid and

reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in stature of regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no special circumstances, and the information collected will be conducted in a manner consistent with OMB guidelines.

- 8. If applicable, provide a copy and identify the date and page number of publication in the *Federal Register* of the agency's notice, required by 5CFR 1320.8(d), soliciting public comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside DOE to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.**

The 60-day *Federal Register* notice required under 5 C.F.R. 1320.8(d), which requests comments, was published in the *Federal Register* at Vol. 76, No. 66, at page 19067, Wednesday, April 6, 2011. In addition to requesting comments through publishing the 60-day *Federal Register* notice and in an effort to consult with those outside the agency, Western sent a notice to over 850 potentially interested entities informing them of the publication of the *Federal Register* notice and invitation for comments. This notice took the form of an e-mail to interested entities from Western's Regional Offices located in California, Arizona, Montana, Colorado and Utah. The notices were sent to stakeholders in Western's service territory, which includes (but is not limited to) California, Nevada, Arizona, Utah, New Mexico, Colorado, Wyoming, Montana, Texas, North Dakota and South Dakota. The summary of comments resulting from the *Federal Register* notice and responses is as follows:

Comment: The comment supports the continued use of the APD and sees no reason its use should not be extended beyond September 30, 2011.

Response: Western agrees the APD should be extended.

Comment: The comment raised a concern about the *Federal Register* notice. In particular, while the commenter understands that in drafting *Federal Register* notices brevity sometimes begets generalities, the commenter requested that in future *Federal Register* notices Western be more descriptive and provide a more accurate representation of Reclamation Law rather than general statements.

Response: Western appreciates the commenter’s point that individual projects have unique attributes defined by specific legislation. Reclamation Laws are not a single act, but rather is comprised of numerous acts for multiple projects. The Department of Interior has a publication that spans five volumes and 2 supplements annotating Reclamation Laws.¹¹ Within the confines of a *Federal Register* notice for the Paperwork Reduction Act, it would be impractical to delve into the nuances of provisions contained in multiple acts for multiple projects located within Western’s service region. As stated in the 60 day *Federal Register* notice, Reclamation Laws are a series of laws arising from the Desert Land Act of 1872 and include but are not limited to: the Desert Land Act of 1872, Reclamation Act of 1902, Reclamation Project Act of 1939, and the Acts authorizing each individual project such as the Central Valley Project (CVP) Reauthorizing Act of 1937.¹² Each project also may be comprised of additional components. Given the APD’s use spans all of Western’s Regions and its multiple projects, Western’s *Federal Register* notice was necessarily of wide applicability. Furthermore, for a Paperwork Reduction Act process, given the sheer volume of Reclamation Laws, it is impractical to identify the statutory authority for each and every project and each and every project component. Western has included and will continue to include phrases such as “including”, “but not limited to” and “for instance” in future *Federal Register* notices that have applicability to multiple projects throughout Western’s Regions.

Comment: The comment also mentioned concerns regarding the potential impact general statutory references made in this proceeding could have on pending legislation on the remarketing of the Boulder Canyon Project in the United States Congress.

Response: As mentioned in the response above, Western believes use of general statutory references are necessary in this *Federal Register* notice given the broad applicability of the APD. The Boulder Canyon Project remarketing effort is outside the scope of this process and any concerns about the impact of general statutory references of this *Federal Register* process should be addressed in that proceeding.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

Western will not, and has not provided any payment or gift to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Western provided notice that the proposed collection of information in this program will not be part of a system of records covered by the Privacy Act¹³ and will be available under the Freedom of Information Act.¹⁴

¹¹ See *Federal Reclamation and Related Laws Annotated*, (1972), as supplemented (2001).

¹² See Ch. 107, 19 stat. 377 (1872), Ch. 1093, 32 Stat. 388 (1902), Ch. 418, 53 Stat. 1187 (1939), ch. 832, 50 Stat. 844, 850 (1937), all as amended and supplemented.

¹³See 5 U.S.C. § 552(a).

¹⁴See 5 U.S.C. § 552. Western reserves the right to redact information to protect confidential or sensitive information, as provided under FOIA.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why DOE considers the questions necessary, the specific uses to be made of the information., the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

None of the information requested in the APD is of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, DOE should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

There is only one collection instrument proposed, specifically the APD. Western has identified the following class of respondents as the most likely to apply: municipalities, cooperatives, public utilities, irrigation districts, Native American Tribes, Federal and State agencies. The respondents will be located in Arizona, California, Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Texas, Utah, and Wyoming. Depending on the amount of power that becomes available for allocation, Western anticipates it will receive approximately 100 requests for power during the 3-year period when the OMB Clearance Number is in effect. The responses will be periodic and occur when Western has power available under an allocation process.

The number of Burden Hours for completing the APD is estimated as follows. Western anticipates that it will take less than 8 hours to complete the APD, which includes the time needed to search any data sources, gather the information, and review the information. Western based this estimate on input from prospective applicants during previous processes. Once the respondent completes the APD, it will submit the APD to Western for Western's review. After submitting the APD, provided the APD is complete and no clarification is required, Western does not anticipate requiring any further information for the APD from the applicant, unless the applicant is successful in obtaining a power allocation. The applicant submits only one APD. It does not submit an APD every year. If the applicant receives a power allocation, the applicant will need to complete a standard contract to receive its power allocation. Western's standard contract terms are outside the scope of this process.

The annual recordkeeping burden is estimated as follows. There are no mandatory recordkeeping requirements on the applicant if it does not receive an allocation of Federal power. In such case, any recordkeeping of the APD by a respondent is voluntary. For those entities that receive a Federal power allocation, Western requires the successful applicant keep the information for 3 years after the applicant signs its

Federal power contract. The 3-year, record retention policy will allow Western sufficient time to administer the contract and to ensure the applicant provided factual information in its application. A 3-year, record retention policy will have little impact on most businesses in the electric utility industry. Western anticipates that it would take less than 1 hour per successful candidate, per year, for recordkeeping purposes. Western anticipates that in a 3-year period, Western will have approximately 30 successful applicants.

Based on the total number of burden hours and the total number of applications described above, Western expects that over a 3-year period, the total burden hours to complete the APD is 800 hours over 3 years (100 applicants over 3 years x 8 hours per applicant). This converts to an annual hourly burden of 266.667 hours. An entity will only complete the APD once. It is not required each year.

Additionally, based on the above, Western anticipates that there will be a burden for recordkeeping of 1 hour per year for each successful applicant, i.e., each applicant who receives a Federal power allocation. Western anticipates that over the course of 3 years there will be 30 successful applicants. The power may be allocated in year 1, year 2 or year 3. For the purposes of determining the cost burden, Western will presume all 30 applicants received an allocation in year 1. As a result, the annual hourly burden for recordkeeping is 30 hours.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

For the purposes of this cost burden analysis, Western is assuming that a utility staff specialist will complete the APD. Western estimates a utility staff specialist rate, including administrative overhead, to be approximately \$108/hour. For recordkeeping, Western estimates an administrative support rate of \$54/hour. Based on the above, Western estimates the total annual cost as $(266.667 \text{ hour/year} \times \$108/\text{hour}) + (30 \text{ hour/year} \times \$54/\text{hour}) = \$30,420.00$ per year.

Using the above estimates, on a per applicant basis, assuming the applicant receives a Federal power allocation, the total cost for the applicant over a 3-year period is \$1,026. The cost to complete the APD is a one time cost of \$864. In addition to the one time cost, the applicant, if it successfully receives a power allocation, will incur an additional expense of 1 hour for recordkeeping per year x \$54 per hour for a total recordkeeping cost of \$162 for 3 years.

14. Provide estimates of annualized cost to the Federal government.

There are no annualized costs to the Federal Government.

15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.

There are no program changes or adjustments.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The information contained in the response to the collection of information (APD) will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Western will display the OMB number and expiration date on the APD.

18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.

Western has no exceptions to the certification statement in item 19 of OMB Form 83-I.

B. Collections of Information Employing Statistical Methods.

The information collection does not employ statistical methods.