had under PODRA to refunds for overcharges on the purchases of refined petroleum products. They also identified and appropriated a substantial portion of the funds being held by the DOE to pay refund claims (including the funds paid by Intercoastal and Gulf States). Congress specified that these funds were to be used to fund other DOE programs. As a result, the petroleum overcharge escrow accounts in the refined product area contain substantially less money than before. In fact they may not contain sufficient funds to pay in full all pending and future refund claims (including those in litigation) if they should all be found to be meritorious. *See Enron Corp./Shelia S. Brown*, 27 DOE ¶ 85,036 at 88,244 (2000) (*Brown*). Congress directed OHA to ''assure the amount remaining in escrow to satisfy refined petroleum product claims for direct restitution is allocated equitably among all claimants.'' *Omnibus Consolidated and Emergency Supplemental Appropriation Act, 1999*, Pub. L. No. 105–277 § 337, 112 Stat 2681, 2681–295 (1998) (language added to PODRA); *Brown*, 27 DOE at 88,244. In view of this Congressional directive and the limited amount of funds available, it may become necessary to prorate the funds available for the meritorious claimants in the Intercoastal and Gulf States refund proceedings. However, it could be several years before we know the full value of the meritorious claims and the precise total amount available for distribution. It will be some time before we are able to determine the amount that is available for distribution for each claimant.

In light of the above considerations, we will pay successful applicants using the following mechanism. All successful small claimants (refunds under $10,000) will be paid in full. To require small claimants to wait several more years for their refunds would constitute an inordinate burden and would be inequitable. *See Brown*, 27 DOE at 88,244. For all others granted refunds, including reseller claimants who have elected to take presumption refunds, we will immediately pay the larger of $10,000 or 50 percent of the refund granted. Once the other pending refund claims have been resolved, the remainder of the Intercoastal and Gulf States claims will be paid to claimants to the extent that it is possible through an equitable distribution of the funds remaining in the petroleum overcharge escrow account.

C. Refund Procedures for Crude Oil Pricing Violations

With regard to the portion of the consent order funds arising from alleged pricing violations of crude oil ($264,471 plus accrued interest), these funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, (MSRP), *see* 51 FR 27899 (August 4, 1986).[6] Pursuant to the MSRP, OHA will distribute 40 percent of crude oil overcharge funds will be disbursed to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specified that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts.

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 Fed. Reg. 11,737 (April 10, 1987) (April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations would be presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users would not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *See City of Columbus Georgia*, 16 DOE ¶ 85,550 (1987).

1. Individual Refund Claims

The amount of money attributed for restitution of crude oil pricing violations is $264,471 plus accrued interest. In accordance with the MSRP, we shall initially reserve 20 percent of those funds ($52,894 plus accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges. We shall base refunds on a volumetric amount which has been calculated in accordance with the methodology described in the April 10 Notice. That volumetric refund amount is currently $0.0016 per gallon. *See* 57 FR 15562 (March 24, 1995).

The filing deadline for refund applications in the crude oil refund proceeding was June 30, 1994. This was subsequently changed to June 30, 1995. *See* Filing Deadline Notice, 60 FR 19914 (April 20, 1995); *see also* DMLP PDO, 60 FR 32004, 32007 (June 19, 1995). Because the June 30, 1995, deadline for crude oil refund applications has passed, no new applications for restitution from purchasers of refined petroleum products for the alleged crude oil pricing violations of Intercoastal and Gulf States will be accepted for these funds. Instead, these funds will be added to the general crude oil overcharge pool used for direct restitution.

2. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the crude oil violation amounts subject to this Decision, or $211,577 plus accrued interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or $105,788 plus interest, into an interest bearing subaccount for the states, and one-half or $105,789 plus interest, into an interest bearing subaccount for the federal government.

It Is Therefore Ordered That:

(1) The payments remitted to the Department of Energy by Intercoastal Oil Corporation and Gulf States Oil & Refining, pursuant to consent orders signed on January 25, 1983 and February 1, 1983 respectively, will be distributed in accordance with the forgoing Decision.

(2) Applications for Refund in the Intercoastal Oil Corporation Refund Proceeding, Case No. LEF–0057, and the Gulf States Oil and Refining Refund Proceeding, Case No. LEF–0073, must be postmarked no later than November 30, 2001.

Dated: September 6, 2001.

George B. Breznay,

Director, Office of Hearings and Appeals.

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[6] The MSRP was issued as a result of the Settlement Agreement approved by the court in *The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986). Shortly after the issuance of the MSRP, the OHA issued an Order that announced that this policy would be applied in all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29,689 (August 20, 1986) (the August 1986 Order).

DEPARTMENT OF ENERGY

Western Area Power Administration

Casper Creek Crossing, Spence-Thermopolis 230-kV and Alcova-Copper Mountain 115-kV Transmission Lines

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Floodplain Statement of Findings.

SUMMARY: This Floodplain Statement of Findings for the Casper Creek Crossing, Spence-Thermopolis 230-kilovolt (kV) and Alcova-Copper Mountain 115-kV Transmission Lines was prepared in accordance with the U.S. Department of Energy's (DOE) Floodplain/Wetland Review Requirements (10 CFR part 1022). Western Area Power Administration (Western), a power marketing agency of the U.S. Department of Energy (DOE), is the lead Federal agency for a proposal to make repairs and correct erosion problems at the Casper Creek Crossing for the Spence-Thermopolis 230-kV and Alcova-Copper Mountain 115-kV

Transmission Lines. This project is located in Natrona County, Wyoming, approximately 40 miles west of Casper, Wyoming. Western plans to replace an existing culvert crossing at the Casper Creek with a rock filled gabion type structure. Approximately 50 yards downstream, additional rock filled gabion type structures will be placed in the creek. A crossing at Casper Creek is necessary to provide access for transmission line inspection and transmission line maintenance. All proposed work will occur within the floodplain of the Middle Fork Casper Creek.

Western prepared a floodplain assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. This action is categorically excluded under DOE's National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR part 1021). A 15-day public review period will be provided before the action is taken.

DATES: Comments on the floodplain action are due September 28, 2001.

ADDRESSES: Comments should be sent to Mr. Rodney Jones, Environmental Specialist, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003; fax: (970) 461–7213, e-mail rjones@wapa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Jones, at the above address, telephone (970) 461–7371. For further information on DOE Floodplain/Wetlands Environmental Review Requirements, contact: Ms. Carol M. Borgstrom, Director, NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This Statement of Findings for the proposal to make repairs and correct erosion problems at the Casper Creek Crossing for the Spence-Thermopolis 230-kV and Alcova-Copper Mountain 115-kV Transmission Lines was prepared in accordance with 10 CFR part 1022. A notice of floodplain involvement was published in the **Federal Register** (FR) on June 25, 2001 (66 FR 33678). The State of Wyoming, Office of Federal Land Policy, responded to the notice stating that no State agencies brought up concerns to be addressed in the floodplain assessment. The State of Wyoming requested a copy of the floodplain assessment when it was completed.

The Casper Creek Crossing is located at the Middle Fork Casper Creek, in Natrona County, Wyoming, in T.3 N., R. 86 W., Sections 3 and 4. The road used to access and maintain Western's Spence-Thermopolis 230-kV and Alcova-Copper Mountain 115-kV Transmission Lines has been washed out by flows within the Middle Fork Casper Creek. Since construction of the power lines, the culverts at the stream crossings have been washed out and replaced numerous times. After each wash out, it was necessary to move the stream crossings further upstream to avoid the deeply incised stream channel. The proposed project would construct drop structures and a stream crossing that are designed to stabilize the stream channel, dissipate stream flow velocities during peak flow events, minimize erosion, restore stream banks to reasonable slopes, and allow continued access by Western to inspect and maintain its transmission lines.

Drop structures would be placed at two locations on the Middle Fork Casper Creek. The uppermost location will be approximately 350 feet west (upstream) of the transmission line's rights-of-way. A series of three drop structures is anticipated at the uppermost location. The low water crossing, consisting of riprap, will be located immediately upstream of first drop structure. Drop structures will also be placed at or near the original road crossing (downstream) directly below the existing power lines. A series of four drop structures is anticipated at the downstream location.

The drop structures will be constructed of one-quarter inch thick steel plate, rock riprap, gabion wire, silt liner, and steel pipe. Additionally, riprap will be placed upstream and downstream of the drop structures to provide grade stabilization upstream and downstream of the drop structures. The stream banks between the upper and lower drop structures will be contoured and vegetated. Slopes along this stream reach will be cut back to a 2 to 1 slope ratio (2:1) or less. Upon completing the bank contouring, the slopes will be seeded with native vegetation to promote slope stability.

Western considered an alternative to the proposed project that would involve reinstallation of larger culverts at the present crossing site. However, given the past experience with culverts washing out during heavy rain events, this was not considered a long-term solution to the problem. Repeated culvert washouts were contributing to stream bank erosion and stream channel degradation downstream.

Environmental impacts associated with the proposed project are expected to be minimal. Based on the hydrology of the Middle Fork Casper Creek and apparent lack of hydrophytic vegetation and hydric soils, wetlands are not present at the site. Implementation of the proposed project will stabilize the stream channel, dissipate stream flow velocities, stabilize stream banks, and maintain the chemical, physical, and biological integrity of the Middle Fork Casper Creek. Direct and indirect impacts to other resources (*e.g.,* wildlife and air quality) are expected to be negligible as well.

The project is located within the boundaries of a National Register of Historic Places-eligible archaeological site. Through a conversation between the Western Historic Preservation Officer and the Wyoming State Historic Preservation Office (SHPO), Western contracted to perform archaeological testing to determine if this project will have an effect on the eligibility of the site. A field visit indicated that it is unlikely intact buried features are located in the project area. An extensive augering program will be done within the area to be impacted along the creek, as well as along the access road to the east. Western will consult with the SHPO on the findings of this augering program prior to implementation of the project.

The construction of the project would not affect existing flood characteristics. No measurable change in flood stage is anticipated. Construction activities, which will take approximately 14 days to complete, will be scheduled during late summer to early fall, under low flow conditions. The action conforms to all applicable State and local floodplain protection standards.

A small increased risk of pollution could result from having construction equipment working in the floodplain. This includes the risk of accidental oil or fuel spills from malfunctioning equipment. Given the size of equipment involved and the amount of potential spill material, this risk is considered very low. If a spill were to occur it would be minor and could be readily contained and cleaned up.

Dated: September 5, 2001.

Michael S. Hacskaylo,

Administrator.

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