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April 24, 1985

Kenneth F. Plumb
Secretary
Federal Energy Regulatory Commission
831 North Capitol Street, N.E.
Washington, D.C.

Re: Project Nos. 5 and 2776

Dear Mr. Secretary:

Enclosed for filing in the above proceeding is prepared direct testimony and exhibits of Messrs. Wm. R. Jensen and Robert H. Sarikas on behalf of the Flathead, Mission, and Jocko Valley Irrigation Districts, Intervenors.

Copies of this testimony and exhibits were served by mail on the Presiding Administrative Law Judge Bruce L. Birchman and the parties yesterday, which was the due date under Judge Birchman's order. This filing with your office, one day late, is due to difficulties experienced in this office late yesterday with duplication of exhibits.

An executed affidavit of Mr. Jensen will be supplied on receipt by this office.

It is respectfully requested that this filing be accepted one day late, and subject to supplying an executed affidavit of Mr. Jensen.

Respectfully submitted.



Frank J. Martin, Jr.

Enclosure

cc: Bruce L. Birchman, Administrative Law Judge
Richard L. Miles, Esq.
Nicholas Fels, Esq.
Foster DeReitzes, Esq.
Ann Crichton, Esq.
James C. Paine, Esq.

P.S. This filing contains corrected Exhibits No. (WRJ-4 and -6). Accordingly these corrected Exhibits WRJ-4 and -6 are also being served on the Presiding Judge and all parties.

F.J.M.

1985 APR 24 PM 5:00
FEDERAL ENERGY REGULATORY COMMISSION

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UNITED STATES OF AMERICA

Before the Federal Energy Regulatory Commission

The Montana Power Company)	Project No. 5
The Confederated Salish and)	
Kootenai Tribes of the)	Project No. 2776
Flathead Reservation)	

DIRECT TESTIMONY

OF

Wm. Ray Jensen

Joint Board of Control
of the Flathead, Mission,
and Jacko Valley Irrigation
Districts

✓
6/19/92

1984 APR 24 11 5:00
FEDERAL ENERGY
REGULATORY COMMISSION

1 UNITED STATES OF AMERICA

2 FEDERAL ENERGY REGULATORY COMMISSION

3 Joint Board of Control of the Flathead, Mission, and
4 Jocko Valley Irrigation Districts

5 Prepared Direct Testimony of Wm. Ray Jensen

6 INTRODUCTION - PERSONAL

7 Q. Please state your name and address.

8 A. Wm. Ray Jensen, Route 1, Box 75, St. Ignatius, Montana
9 59865.

10 Q. In what capacity are you appearing in this proceeding?

11 A. I am the Secretary of the Joint Board of Control of the
12 Flathead, Mission, and Jocko Valley Irrigation Districts
13 on the Flathead Reservation in Montana (the Joint Board).

14 **The Flathead, Mission, and Jocko Valley Irrigation Dis-**
15 **tricts (the Districts) are intervenors in this proceeding.**

16 Q. What is the address of the Joint Board?

17 A. Box 607, St. Ignatius, Montana 59865.

18 Q. How long have you been Secretary of the Joint Board?

19 A. Since the organization of the Joint Board of Control on
20 September 26, 1981. Before that, beginning in 1975, I
21 served as Secretary to the informal joint meetings of the
22 Commissioners of the three Districts. I also served as
23 Secretary of the Mission Irrigation District from July
24 1953 up to the formation of the Joint Board on September
25 26, 1981.

26 Q. What are your duties as Secretary of the Joint Board?

1 A. I record the minutes of the meetings of the Joint Board and
2 have other duties comparable to those of the Secretary of
3 a corporation. In addition, I am frequently asked by the
4 Joint Board to be its spokesman on issues of concern and to
5 act for the Joint Board as its representative. I am acting
6 as the Joint Board's spokesman now in giving this testimony
7 before the Commission. I am appearing here at the explicit
8 request and direction of the Joint Board.

9 Q. What is the composition of the Joint Board?

10 A. All the Commissioners of the three constituent Districts
11 are members of the Joint Board, and there is one additional
12 member elected at large.

13 Q. Are you otherwise interested in this proceeding?

14 A. Yes, as an irrigator and power customer served by the Flat-
15 head Irrigation Project, and as a resident of the Flathead
16 Reservation. My son and I, as partners, operate a dairy
17 farm on 400 acres of former Indian land located 3 miles
18 east of St. Ignatius. Our farm is located in the Mission
19 Division of the Project, and our lands are included in
20 the Mission Irrigation District, one of the three inter-
21 venor Districts which I represent here.

22 Q. How long have you resided on the Reservation, Mr. Jensen?

23 A. I moved here with my family when I was three years old. In
24 1925 my father purchased an Indian allotment of 160 acres
25 and moved the family here from Idaho. Our present dairy
26 farm consists of this original 160 acres and other lands
27 which we have added since that time.

1 Q. Do you hold any elected political office?

2 A. Yes, I am a member of Legislature of the State of Montana
3 from District 53 which comprises the southern half of Lake
4 County. I have been a State Representative since I was first
5 elected in 1976. I was most recently reelected in 1982.

6 PURPOSE OF TESTIMONY

7 Q. What is the purpose of your testimony, Mr. Jensen?

8 A. I will first state the Joint Board's understanding of the
9 background and reasons for the low cost power now provided
10 under Article 26 of the original license as implemented
11 by to the operating agreement of June 23, 1980 between the
12 Project and the incumbent licensee, and in repayment con-
13 tracts between the Districts and the United States. In
14 the course of this I will cover the origins of, and de-
15 scribe, the Flathead Irrigation Project (the Project),
16 the three Districts, the contractual relations between
17 the United States and the Districts, and related matters.
18 Then I will state the position of the Joint Board as to
19 why a provision for low cost Project power, and certain
20 other provisions, are required in any renewed or new
21 license. Finally I will detail the license provisions
22 that the Joint Board believes should be included in any
23 new or renewed license.

24 UNDERSTANDING OF BACKGROUND

25 Q. Please state the Joint Board's understanding of the origin
26 and reason for the low cost power provision in the original
27 License No. 5 for the Kerr Hydroelectric Development.
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1 A. In brief, the Joint Board believes that, as evidenced by
2 the Districts' repayment contracts and authorizing legis-
3 lation discussed later, Congress has recognized that the
4 Flathead Irrigation Project (the Project) is essential to
5 the economic wellbeing of the Indian and non-Indian resi-
6 dents of the Reservation, and that in order to succeed
7 the Project must have cheap power for irrigation pumping
8 and for resale to generate power revenues to help pay the
9 high construction and other costs of the Project. To this
10 end, recognizing that rentals would be paid to the Tribes
11 for the use of Tribal lands, Congress long ago reserved and
12 appropriated for the Project the water power rights at the
13 site of the present Kerr Development on the Flathead River,
14 and authorized construction of a Project power development
15 there.

16 When it was later decided that it would be better for all
17 concerned to build a larger facility making use of Flathead
18 Lake storage, and that it might be more advantageous to per-
19 mit a private company to develop such a facility rather than
20 the Project, Congress provided in the act authorizing such
21 licensing, the Act of 1928, 45 Stat. 200, 212-13 (the 1928
22 Act), that the Federal Power Commission, with the approval
23 of the Secretary of the Interior (the head of the Depart-
24 ment which administers the Project), should see to it that
25 these water rights of the Project, which would necessarily
26 be taken away from the Project for use by a private licensee,
27 were compensated for by a block of low cost power.

1 including the water power rights in the navigable Flathead
2 River at the site of the present Kerr Development (Kerr
3 site), remained the unencumbered and absolute property of
4 the United States, subject to control and disposition by
5 Congress. As stated, Congress exercised its power by re-
6 serving and appropriating water power rights at the Kerr
7 site for the Project, and by authorizing the Secretary to
8 contract with the Districts with respect thereto.

9 **HOW WATER RIGHTS CREATED**

10 **Q. Would you explain how you understand Congress to have**
11 **reserved or appropriated water power rights at the Kerr**
12 **sight for the Project?**

13 A. During the planning stage for allotments to Indians and
14 the opening of unallotted Reservation lands to settlement
15 pursuant to the 1904 Act, the Government conceived a great
16 irrigation system to irrigate allotted Indian and unal-
17 lotted non-Indian farms, which were to be, and are, inter-
18 spersed throughout the Reservation. There was to be, and
19 is no segregation of Indian and non-Indian lands on this
20 Reservation or in this Project, the idea being that the
21 Indians would more quickly learn to participate in the ag-
22 ricultural economy in this way.

23 Development of up to 21,000 horsepower of electricity
24 at the Kerr site on the Flathead River was planned as an
25 integral and necessary part of the development of agricul-
26 ture on the Reservation. This is shown by Exhibit ____
27 (WRJ-2), a November 11, 1907 Flathead Project Report by
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1 Robert S. Stockton, Project Engineer, outlining possible
2 Project irrigation and power development for the Supervising
3 Engineer of the Reclamation Service, H. N. Savage.

4 Beginning about the time of enactment of the amendment
5 to the 1904 Act authorizing the Irrigation Project (Act of
6 May 29, 1908, 35 Stat. 444, 448-50), Congress authorized
7 funds which were used by the Reclamation Service for plan-
8 ning and the beginning of construction of a Project power
9 development at the Kerr site known as the Newell Tunnel
10 (e.g., Act of April 30, 1908, 35 Stat. 70, 83-84; Act of
11 March 3, 1909, 35 Stat. 781, 795; Act of April 4, 1910, 36
12 Stat. 269, 277; Act of March 3, 1911, 36 Stat. 1058, 1066;
13 Act of August 24, 1912, 37 Stat. 518, 526; Act of June 30,
14 1913, 38 Stat. 77, 90; Act of August 1, 1914, 38 Stat. 582,
15 593). Construction on the Newell Tunnel, which was to be
16 used to divert the River so that a Project power dam could
17 be constructed, began in December of 1909. In connection
18 with this work, the Reclamation Service (which ran the Pro-
19 ject until it was turned over to the BIA's Indian Irriga-
20 tion Service in the 1920s) made water filings pursuant to
21 Montana statutes to appropriate the water power rights of
22 the Flathead River. Exhibit No. _____ (WRJ-3) consists of
23 copies of 18 such filings made beginning January 3, 1910,
24 to December 8, 1936. Each filing is certified as a true,
25 full and correct copy of documents on file in the office
26 of the Clerk and Recorder of Lake County, Montana, and has
27 a cover sheet prepared by the Joint board for identifica-
28 tion purposes.

1 Lands valuable as power sites, including the Kerr site,
2 were withdrawn from allotment or settlement under the 1904
3 Act, pursuant to the Act of March 3, 1909, 35 Stat. 781,
4 796, to assure that allottees and settlers could not
5 acquire rights in land needed for the Project power devel-
6 opment. Then in 1926 and 1927 Congress recognized that
7 hard economic times had delayed completion of the power
8 development, placing the economy and future of the whole
9 region in jeopardy. It accordingly voted funds specifi-
10 cally earmarked for completion of Project power construc-
11 tion at the Kerr site by the Acts of May 10, 1926, 44
12 Stat. 453, 464, and January 12, 1927, 44 Stat. 945.


13 Congress conditioned availability of these funds on
14 formation of Montana Irrigation Districts by the Project
15 irrigators, and on execution by such Districts of repay-
16 ment contracts with the United States. This was so that
17 legal entities, with authority under Montana law to levy
18 assessments to meet obligations to the Government, could
19 secure repayment to the Government of the large debt for
20 irrigation construction and other charges which had ac-
21 crued, and would continue to accrue against irrigable
22 lands as the Project was finally brought to completion.
23 The Districts were not to include, and do not include,
24 Indian trust or Tribal lands, because these lands are
25 not liable for construction costs.

26 The three intervenor Districts were promptly formed
27 by necessary Montana court proceedings, and they in turn
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1 executed repayment contracts of the kind required. In
2 the repayment contracts, the contracting parties -- that
3 is, the United States and the Districts -- acknowledged
4 that the Project possessed appropriated or reserved water
5 rights for power purposes and agreed that these rights,
6 if not to be developed by the Project for the benefit of
7 irrigators, would be licensed by the United States to
8 others upon terms deemed proper by the Secretary of the
9 Interior and designed to secure ample and cheap electri-
10 cal power for pumping and other Project purposes, and for
11 resale to aid in repayment of construction debt and other
12 charges. The first such District contract was executed
13 by the Secretary of the Interior, on behalf of the United
14 States, and by the Flathead Irrigation District, on January
15 14, 1928. This contract is specifically referred to in the
16 Act of March 4, 1929, 45 Stat. 1623, 1640.

17 Exhibit No. ____ (WRJ-4) consists of copies of the three
18 original repayment contracts executed by the three inter-
19 venor Districts and the United States acting by the Sec-
20 retary of the Interior. Exhibit No. ____a (WRJ-4a) is the
21 Flathead Irrigation Project contract just referred to.

22 Thus, it is the Joint Board's view that the Federal
23 Government, by appropriations and expenditures for Irri-
24 gation Project power construction including construction
25 at the Kerr site, by federal water filings pursuant to
26 Montana statutes, and by explicit legislation calling for
27 the completion of the Project's own power development,
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1 reserved or appropriated the water power rights at the
2 Kerr site for the benefit of the Irrigation Project irri-
3 gators. Then United States undertook by formal agreement
4 with the irrigators to honor those reserved or appropriated
5 water rights either by developing them for the irrigators'
6 benefit, or by leasing them for low cost power. 

7 HOW MPC CAME TO DEVELOP KERR SITE

8 Q. How did it happen that the Montana Power Company came to
9 be the licensee of the Project's water power rights?

10 A. A private company, the Rocky Mountain Power Company (a
11 subsidiary of the incumbent licensee Montana Power Com-
12 pany), offered to compensate the Project by providing a
13 block of low cost power, at less than it would cost the
14 Project to develop its own power, if the Project would
15 give up its prior right to develop the Kerr site.

16 By the 1928 Act already mentioned (Act of March 7,
17 1928, 45 Stat. 200, 212-13), in which Congress explicitly
18 recognized the Project's reserved or appropriated water
19 rights previously recognized by the United States in the
20 repayment contract referred to above (Exhibit No. ___a
21 (WRJ-4a)), Congress authorized continuing construction
22 of the Project's own power plant at the Kerr site or, as
23 an alternative (anticipated by the referenced repayment
24 contract), the licensing of the reserved or appropriated
25 water rights of the Project along with the use of Tribal
26 lands to a private developer in accordance with the Fed-
27 eral Water Power Act, and upon terms satisfactory to the
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1 Secretary of the Interior. As Congressman Cramton explains
2 in Exhibit No. ____ (WRJ-1), this was to assure that an ap-
3 propriate provision for low cost Project power would be
4 included in any license issued by the Commission.

5 Congress also provided in the 1928 Act that if the lat-
6 ter alternative was to be taken, funds previously autho-
7 rized for completion of the Project's own power development
8 at the Kerr site should be used instead to construct a Pro-
9 ject power distribution system to enable the Project to
10 sell power at retail throughout the Reservation.

11 ORIGINAL LICENSE PROVISION

12 Q. What provision was placed in the original license?

13 A. The original license issued to the Rocky Mountain Power Com-
14 pany for Project No. 5 in 1930, which was approved by the
15 Secretary, contained in Article 26 a provision for low cost
16 power for the Irrigation Project which by that time was run
17 by the Indian irrigation service of the Bureau of Indian
18 Affairs (BIA). Exhibit No. ____ (WRJ-5), portions of the
19 Federal Power Commission's Tenth Annual Report dealing
20 with the original license for the Kerr Development, re-
21 flect the foregoing and, at page 222, that the Commission,
22 by its fifty-year original license, authorized use by the
23 licensee of "water rights for power purposes reserved or
24 appropriated for Indian irrigation projects."

25 RATIFICATION BY 1948 ACT

26 Q. Have there been any modifications of the Districts' repay-
27 ment contracts with the United States related to the orig-
28 inal license issued in 1930?

1 A. Yes. In section 2(g) of the Act of May 25, 1948, 62 Stat.
2 267, Congress expressly provided that to effectuate the
3 benefits for the irrigators provided for in the previous
4 legislation and in the repayment contracts between the Dis-
5 tricts and the United States, Project power rates should
6 be set by the Secretary of the Interior in such way as to
7 produce revenues sufficient to cover Project power system
8 operating and maintenance (O and M) costs and maturing
9 power construction installments and then, in addition, a
10 reasonable return on investment plus an additional profit
11 attributable to the low cost power received in exchange
12 for Project water and other rights. Congress specified
13 that these net power revenues should be applied annually
14 first to benefit the irrigators by paying maturing irrig-
15 ration construction installments, then by anticipating
16 power and irrigation construction installments in tandem,
17 in the order in which they would mature in the future, and
18 then to pay construction costs chargeable against Indian
19 owned land (payment of which was otherwise deferred), and
20 finally to pay irrigation O and M charges. At the direc-
21 tion of Congress, these provisions were incorporated into
22 supplemental repayment contracts between the three Dis-
23 tricts and the United States which are set forth in Ex-
24 hibit No. ___ (WRJ-6).

25 The Joint Board believes that this legislative and con-
26 tractual action contemplates and requires continuation of
27 the low cost power provision in any new license to be is-
28 sued.

1 Q. What is the Joint Board's position on whether the low cost
2 power provision has had, or if continued in a new license
3 will or should have, an adverse effect on the rental paid
4 to the Tribes?

5 A. Exhibit No. ____ (WRJ-7) consists of two reports by Assis-
6 tant Commissioner of Indian Affairs Henry J. Scattergood
7 based on, and forming a part of the record supporting the
8 original license issued by the Federal Power Commission in
9 1930. These reports show that the Indian rental was not,
10 and should not be, affected by the low power provision for
11 the Project. In the Joint Board's view, the issue as to
12 past rentals has been litigated and resolved against a
13 claim of the Tribes to the contrary in a judgment of the
14 Court of Claims. Confederated Salish and Kootenai Tribes
15 v. United States, 467 F.2d 1315 (Ct. Cl. 1972).

16 JOINT BOARD'S POSITION ON LOW COST POWER

17 Q. What is the position of the Joint Board on behalf of the
18 Districts in this proceeding?

19 A. On behalf of its constituent Districts, the Joint Board
20 advocates a continuation of the low cost Project power
21 provision, along lines similar to Exhibit No. ____ (WRJ-8),
22 which is the current operating agreement between the Pro-
23 ject and the Montana Power Company, at rates approximating
24 the licensee's current cost of production at Kerr. The
25 basis of the Joint Board's proposal will be explained in
26 the testimony of its witness Mr. Robert H. Sarikas of
27 Foster Associates, Inc.

1 irrigation construction charges maturing in that year,
 2 and of BIA's estimated or projected irrigation operating
 3 and maintenance charges, would assess their members for
 4 these charges and, upon receipt, pay them over to the BIA
 5 Project Management. The Districts also assess their mem-
 6 bers for an administration fee to cover District and Joint
 7 Board administration costs, including direct-hires and
 8 items such as the cost of Joint Board participation in
 9 this proceeding.

10 Total power and irrigation construction charges,
 11 amounts repaid, and balances remaining unpaid as of April
 12 16, 1984, are as follows:

	<u>Total</u>	<u>Repaid</u>	<u>Balance</u>
Irrigation	\$12,477,282.16	\$6,596,358.31	\$5,880,923.82
Power	<u>5,527,911.40</u>	<u>2,842,996.06</u>	<u>2,684,915.34</u>
	\$18,005,193.56	\$9,439,354.37	\$8,565,839.16

17 The 35th maturing installments on these balances due in
 18 1984 apparently have not yet been determined by Project
 19 Management. However, the 34th maturing installments,
 20 paid in 1983, were \$287,303.83 for power construction
 21 costs, and \$196,900.00 for irrigation construction costs.
 22 Since \$22,556.56 of these construction charges were attri-
 23 butable to Indian lands (that is, lands owned by Tribal
 24 members or by the Tribes and held in trust) this amount
 25 was not reimbursible and was not chargeable to the Dis-
 26 tricts. Accordingly, the total of the above chargeable
 27 to the Districts, reduced by the \$22,556.56, produced a
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1 total District construction installment of \$461,647.27.
2 When allocated on a per acre basis among irrigated lands,
3 this installment has in recent years come to approximately
4 \$1.50 per acre. The Districts are advised by Project Man-
5 agement that the January 1984 installment will be approxi-
6 mately the same.

7 Under the 1948 Act and corresponding provisions in the
8 current District repayment contracts, already mentioned,
9 these construction installments chargeable to District
10 lands are paid out of net power revenues generated by
11 Project sales of power, including the low cost power pur-
12 chased from the Kerr licensee pursuant to Article 26 of
13 the original license.

14 Net power revenue credits accrue as to Indian lands,
15 in per-acre amounts equal to the per-acre charge for con-
16 struction costs against District and non-District land.
17 These credits are either applied to payment of the Indian
18 O and M charges discussed later, or they are eventually
19 realized upon sale by Indians, or as credits against
20 future construction installments in the case of non-
21 District lands eventually petitioned into the Districts.
22 Total accumulated credits in this category now amount
23 to \$108,066.99.

24 Operating and maintenance charges determined by BIA
25 Project Management and assessed against the District
26 lands are as follows for 1984:

	<u>Total</u>	<u>Per Acre</u>
Jocko Irrigation District	\$ 48,015.11	\$13.00
Mission Irrigation District	\$113,873.88	\$11.00
Flathead Irrigation District	\$571,153.10	\$11.28

As stated, these O&M assessments are based on BIA projections and included for 1984 the following administrative charges:

Jocko Irrigation District	\$6.50
Mission Irrigation District	\$4.00
Flathead Irrigation District	\$4.94

Indian lands, which don't have to pay construction installments, do have to pay irrigation O and M if they are currently irrigated. But the O and M for Indian lands, as well as for so-called non-District lands, is limited to actual costs for the past year and do not include the additional District administration charge. These charges for 1984 are:

Jocko Division	\$9.58 per acre
Mission Division	\$9.13 per acre
Camas Division	\$9.77 per acre

Q. Are Indian as well as non-Indian lands served by the Project?

A. Yes, but as I stated Indian lands are not included in the Districts, and hence are not liable for construction installments or the higher O and M until sold to non-Indians or taken out of trust status by the Indian owner and petitioned into the Districts. Indian landowners, including

1 the Tribes of course, get credits against O and M in the
2 amount of their pro-rata share of net power revenues, if
3 their lands are being irrigated. Indian lands which are
4 not actually being worked, like other irrigable lands tem-
5 porarily in that category, are classed as Class 3 lands
6 (i.e., irrigable but temporarily not irrigated). Class 4
7 lands are not irrigable, but lie within the boundaries of
8 the Project. I don't believe that there are any Class 2
9 lands any more.

10 Q. Have the Districts taken on new functions recently, in ad-
11 dition to their responsibilities in regard to assessments
12 already described?

13 A. Yes. The Irrigation Project is supposed to have some 138
14 employees to perform duties necessary for Project opera-
15 tions, Some positions are vacant and have been for some
16 time.

17 Because for about the past ten to fifteen years, the
18 Government has been the victim of budget cutting in vari-
19 ous guises. Sometimes the cuts deal with actual funds to
20 pay employees. More often, they are in the form of a
21 ceiling, or the number of positions, or on the number of
22 people that can be hired. Over a period of six or seven
23 years, beginning about 1968, the BIA's budget/ceiling was
24 reduced. The Billings Area Office, then having jurisdic-
25 tion over the Irrigation Project, began a practice designed
26 to prevent having to reduce staff reductions in the Area
27 Office, and took ceiling from Indian Agencies, and the
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1 Irrigation Project, whenever it discovered a position to
2 be vacant. By 1975, numerous Project positions were va-
3 cant which were considered vital to day-to-day operation.
4 Efforts to convince the Area Director to permit the Pro-
5 ject to recruit for these positions were rejected. The
6 Project Manager explained the situation to the Joint Board
7 and asked if there was anything the Joint Board could do
8 to help. The Joint Board decided to provide the workers to
9 do these essential jobs. But, the situation deteriorated
10 further. The ceiling was continually reduced and the Pro-
11 ject was unable to add workers to do these jobs using Fed-
12 eral procedures. The Project Manager continued to turn to
13 the Joint Board for help. The result has been a gradually
14 increasing number of so-called direct-hire workers paid by
15 the Joint Board. These workers now number about twenty-
16 five. A few are Indian, yet these people are hired with-
17 out regard for the Indian Preference provisions, as the
18 Joint Board is not bound by these provisions. The Joint
19 Board has been able to locate people experienced in the
20 types of jobs needed, such as payroll, secretarial, or in
21 one case a watermaster, or irrigation supervisor, and to
22 put them into the jobs quickly, without waiting for the
23 time-consuming Federal recruitment procedures. These
24 direct-hire positions are all on the irrigation side of
25 the Project.

26 Also in recent years the Districts have increasingly
27 felt that they had to get involved in matters like the
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1 instant hearing, where important interests of the irriga-
2 tors are at stake but the Project or the Secretary for
3 whatever reason do not adequately represent the irriga-
4 tors' interests.

5 GENERAL INFORMATION REGARDING IRRIGATION AND CROPS

6 Q. Please describe the Project's irrigation system.

7 A. The Flathead Project contains three divisions: the Jocko
8 Division lying in and watered by Jocko River drainage;
9 (10,726.57 acres of irrigated Class 1 lands, 722.67 acres
10 of irrigable but not irrigated Class 3 lands, total of
11 18,403.72 acres); the Camas Division lying in and watered
12 by Little Bitterroot River drainage; (13,168.48 acres of
13 Class 1 lands, 334.43 acres of Class 3 lands, total of
14 17,058.65 acres); and the Mission Division lying in and
15 watered by Mission Range drainage, plus a small tranbasin
16 diversion from the Jocko River and pumping from the Flat-
17 head River.

18 For administrative purposes, the largest of these, the
19 Mission Division, is subdivided into the following sub-
20 divisions: the Mission Subdivision (usually referred to
21 as the Mission Division) comprised of the area lying south
22 of Post Creek (19,699.89 acres of irrigated Class 1 lands,
23 840.55 acres of irrigable but not irrigated Class 3 lands
24 total of 25,782.11 acres); the Post Subdivision which in-
25 cludes the area between Post Creek and Crow Creek (32,285.65
26 acres of Class 1 lands, 1,826.72 acres of Class 3 lands,
27 total of 43,451.46 acres) and the Pablo Subdivision which
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1 includes the lands north of Crow Creek to Flathead Lake.
2 The lateral system for the Subdivisions generally serve
3 only those areas, but the water supply for all the areas
4 is interconnected through storage and feeder canals.

5 Q. How do the Districts relate geographically to the Project
6 Divisions?

7 A. The Districts relate to the Divisions of the Project as
8 follows. The two smaller Districts are the Jocko Valley
9 Irrigation District, and the Mission Irrigation Division.
10 The Jocko Valley District corresponds to the Jocko Division;
11 the Mission Irrigation District corresponds to the Mission
12 Subdivision (usually called the Mission Division); the much
13 larger Flathead Irrigation District corresponds to the rest
14 of the Mission Division and the Camas Division.

15 Q. Please describe how ownership of lands within the various
16 divisions are owned as between Indians and non-Indians.

17 A. This breakdown is shown on an Exhibit No. ___ (WRJ-9). I
18 am advised by Project Management that approximately 3500
19 of the 12,146.62 acres of Class 1 Indian lands are owned
20 by the Tribes, as distinguished from individual Indians.

21 Q. Describe the facilities of the Project.

22 A. Although construction was begun in 1909, with the first
23 water delivered through constructed project facilities in
24 1911, all existing facilities were not constructed until
25 well into the 1960s. Storage reservoirs have been con-
26 structed on several drainages that enter the valleys, at
27 the most advantageous places within the Project area for
28

1 storage and return flows. Fifteen storage dams have been
2 constructed ranging in capacity from the 95 acre-foot Hill-
3 side Reservoir, to the largest 27,100 acre-foot capacity
4 reservoir behind Pablo Dam. There are some 108 miles of
5 main supply canals and about 1,077 miles of distribution
6 canals and laterals with 10,000 structures in all.

7 LICENSING PROVISIONS

8 Q. What licensee provisions does the Joint Board propose?

9 A. The Joint Board and the Districts propose the following
10 provisions, numbered here in a manner corresponding to
11 comparable provisions of the original license:

12 Article 11. The licensee shall allow
13 officials or employees of the United
14 States or of the Flathead Irrigation
15 Project Management free and unrestricted
16 access in, through and across the said
17 Project and project works, in the per-
18 formance of their official duties.

19 Article 18. The licensee hereby recog-
20 nizes the right of the United States or
21 of the Flathead Irrigation Project Man-
22 agement to pump from Flathead Lake, or
23 from Flathead River above licensee's dam,
24 for all purposes of irrigation on the
25 Flathead Irrigation Project or lands of
26 the Flathead Reservation whether included
27 in the Irrigation Project or not.

28 Article 22. The licensee agrees that all
29 rights acquired in connection with the
30 Project covered by this license, and the
use of water for the development of power,
shall be held subject to the rights which
may be reasonably necessary for the com-
plete development of the irrigable lands
of the Reservation, and domestic water
supply requirements. The licensee fur-
ther agrees to waive objections to the
use of water by the United States or by
the Flathead Irrigation Project Manage-
ment up to a minimum flow of 216 cubic
feet per second.

1 Article 23. The licensee may regulate
2 the Flathead Lake and Flathead River
3 above the licensee's dam and below the
4 Flathead Lake between elevations 2883
5 and 2893 and the licensee shall furnish
6 without cost or charge to the United
7 States or the Flathead Irrigation Pro-
8 ject Management any additional power and
9 energy as may be required to pump water
10 for purposes of the Flathead Irrigation
11 Project, by reason of the lowering of
12 the water level from the original agreed
13 minimum level of 2883 feet.

14 Said elevations are in general above mean
15 sea level as determined by reference to
16 a certain United States Geological Survey
17 benchmark elevation 2910.882 feet stamped
18 "2900GN" as now located and established
19 at Sumers Flathead County or to such
20 other benchmarks as may be established
21 by the United States Geological Survey
22 having the same datum.

23 Article 26. Throughout the license term
24 the licensee shall make available to the
25 project at the project's Kerr Substation
26 as now established, or at such other
27 points mutually agreed upon, and the
28 United States or the Flathead Irrigation
29 Project Management for the benefit of
30 the Flathead Irrigation Project may take,
and having taken, shall pay for the elec-
trical energy as follows:

- a) 11.2 Megawatts during all months
of the year at 100 percent load
factor, at the rate of 2.088 mills
per Kilowatt-hour.
- b) 7.46 additional Megawatts during the
months of April through October at
100 percent load factor, at the rate
of 2.088 mills per Kilowatt-hour.

The above deliveries shall be at a demand
not to exceed 11.2 Megawatts for which
there shall be no demand charge. This
demand shall be the highest thirty (30)
minute metered demand during each cal-
endar month, excepting that demand caused
by accidents, line faults, the starting
of motors, or other abnormal conditions,
shall not be taken into account.

1 Article 28. The United States reserves
2 to itself or the Flathead Irrigation
3 Project Management for the Flathead Ir-
4 rrigation Project the exclusive right to
5 sell power within the boundaries of the
6 Flathead Indian Reservation, and the
7 licensee agrees that it will not compete
8 with the Flathead Irrigation Project in
9 the sale of electricity to consumers on
10 the Flathead Indian Reservation.

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29 Q. Does that conclude your testimony?

30 A. Yes.

AFFIDAVIT

County of Lake

ss.

State of Montana

Wm. R. Jensen, being first duly sworn, deposes and says:

(1) That he has read the foregoing "Prepared Direct Testimony of Wm. R. Jensen" and

(2) That the contents thereof are true and correct to the best of his knowledge, information and belief.

Subscribed and sworn before me this _____ day of April,
1984.

Notary Public

My commission expires: _____

FIP 13

FERC. EXH

Exhibits to 1984 Ray Jensen FERC Testimony

Exhibit No.

1. Survey of conditions of the Indians in the U.S.
- removed
2. Flathead Project Report 1907
- removed
3. Water rights filings regarding power
4. Repayment Contracts a and b
5. 1930 Federal Power Commission Report regarding Kerr
6. 1950 Amendatory Repayment Contract a and b and c
- 7.a. Supplemental Memorandum 1930 regarding power development and water rights
8. 6-23-80 letter of MPC to George Moon FIP regarding low cost block

Survey of Conditions
of Indians in U.S.
1930

(removed for TO research
6/19/92)

1907

Flothead Project

Report - 58 pages

(removed for TO research
6/19/92)

FILING DATE: 1-3-1910 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 4881 (Flathead County) B-198

DESCRIPTION:

TWP'S 20-21-22 N, RG'S 19-20-21-22 W.

GENERAL PURPOSE:

Irrigating 50,000 acres of land on the Flathead Reservation. For domestic uses and for developing Power for pumping and other purposes. A dam and tunnel 11 X 11 feet and such other tunnels as are needed and pumps, pipes and canals to carry water to the lands. Said tunnels are to lead to suitable machinery to pump water, and furnish power for other purposes and pipelines and pumps are to be located Southwest of Polson at the Big Rock Rapids and at such other points as are suited to reach the lands requiring irrigation.

The development of Power is contemplated by turbines located at the outlet of the proposed tunnels, and at such points along the river as proper fall exists, throughout the reservation.

LAKE COUNTY, MONTANA

notice and that the matters and things therein stated are true.

H. N. Savage

Subscribed and sworn to before me this 27th day of Dec. A. D. 1909.

Julius Barney

Notary Public in and for the State of Montana, residing at
Helena, Montana. My Commission expires June 19, 1910.

(SEAL)

Recorded at request of E. F. Tabor, this 3rd day of Jan. 1910 at 9-06 oclock AM.

C. T. Young, County Recorder.

By J. R. Sauser, Deputy.

No. 4881-

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Transcribed from Flathead County Records, Book 71 Water:Rights, Page 401. ✓

NOTICE OF WATER APPROPRIATION

TO WHOM THESE PRESENTS MAY CONCERN: I, Francis P. Ryder, of Bigfork, Montana, by virtue of Sections 4840 to 4891 inclusive of the Revised Codes of Montana, and all acts amendatory thereof, have appropriated and hereby do appropriate two and one half cubic feet per second of time of the waters of Glen Creek which runs through sections twenty-two twenty-eight and twenty-nine of Township twenty -five north, range nineteen west, emptying into Flathead Lake in said Section twenty-nine in Flathead County, Montana.

United States in that behalf, does hereby publish and declare as a legal notice to all the world as follows, to-wit:

I. That the said United States has a legal right to the use, possession and control of and claims 100,000 cubic feet per second of the waters of Flathead River in said County and State for irrigating and other purposes.

II. That the purpose for which said water is claimed, and the place of intended use is for the purpose of irrigating 50,000 acres of land on the Flathead Indian Reservation, for domestic uses, and for developing power for pumping and other purposes.

III. That the means of diversion, with size of flume, ditch, pipe or aqueduct, by which it is intended to divert the said water, is as follows; A dam and tunnel 11 x 11 feet and such other tunnels as are needed and pumps, pipes and canals to carry water to the land. Said tunnels are to lead to suitable machinery to pump water and furnish power for other purposes, and pipe lines and pumps are to be located south-west of Polson at the Big Rock Rapids and at such other points as are suited to reach the lands requiring irrigation. The lands to be irrigated lie in Tps. 20, 21, 22 N. Rs 19, 20 21 and 22. W. M. P. M. The development of power is contemplated by turbines located at the outlet of the proposed tunnels and at such points along the river as proper fall exist, thruout the Reservation.

IV. That the said United States of America, is the appropriator of said water and said appropriation was made on the 27th day of December, A. D. 1910, and said appropriation and the diversion of said waters is to be effected and consummated by means of said dam, tunnels, pumps, pipes and canals.

V. That the said United States also hereby claims said ditch and the right of way therefor, and for said water by it conveyed, or to be conveyed, from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of any dams, flumes, reservoirs, constructed or to be constructed by United States in appropriating, and impising said water.

VI. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time, and the right to dispose of said right, water, ditch, or said appurtenances in part or whole at any time.

CLAIMING the same, all and singular, under any and all laws, National and State and in accordance with the rulings and decisions thereunder, in the matter of water rights.

TOGETHER with all and singular, the hereditaments thereunto belonging and appertaining or to accrue to the same.

THE UNITED STATES OF AMERICA

By H. N. Savage

Its officer and agent in that behalf and thereunto duly authorized by the Secretary of the Interior.

State of Montana,)
(ss
County of Lewis & Clark.

H. N. Savage, having first been duly sworn, deposes and says, that he is of lawful age and an officer and agent of the United States of America, the appropriator and claimant of the water and the water right mentioned in the foregoing notice of appropriation and claim, and that he makes the said appropriation of said water and claims the said water right for and on behalf of the said United States, as its agent thereunto duly authorized, that he is the person whose name is subscribed thereto as officer and agent of the appropriator and claimant, the said United States; that he knows the contents of the said foregoing

and the matters and things therein stated are true.

B - 198

H. N. Savage

Subscribed and sworn to before me, this 27th day of December, A. D. 1909.

Julius Barney

Notary Public in and for the State of Montana, residing at Helena, Montana. My commission expires June 19, 1910.

(SEAL)

Recorded at request of E. F. Tabor, this 3rd day of January, 1910 at 9-05 oclock AM.

C. T. Young, County Recorder.

No. 4880

By J. R. Sauser, Deputy.

Transcribed from Flathead County Records, Book 71 Water Rights, Page 400.

NOTICE OF APPROPRIATION

The United States of America,)

State of Montana (ss

County of Flathead.) TO ALL WHOM THESE PRESENTS MAY CONCERN:

BE IT KNOWN That the United States of America, under and by virtue of an Act of the Legislative Assembly of the State of Montana, entitled " An Act authorizing the Government of the United States to appropriate the waters of the streams in the State of Montana, subject to certain restrictions ", approved February 27, 1905, and acting by and through H. N. Savage Supervising Engineer, thereunto duly authorized by the Secretary of the Interior of the said

R/10

Project Nos. 5 and 2776
Exhibit No. _____ (WRJ-3a)
Page 4 of 4

Notice of Appropriation - Flathead River

Page 2

FILING DATE: 1-28-1910 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 5278 (Flathead County) B-201

DESCRIPTION: TWP'S 20-21-22 N., RG'S 19-20-21-22 W.

GENERAL PURPOSE:

For Domestic uses and for developing Power for pumping and other purposes. A dam or dams and tunnel 11 X 11 feet and such other tunnels as are needed and pumps, pipes and canals to carry the water to the land. Said tunnels are to lead to suitable machinery to pump water and furnish Power for other purposes, and pipe lines and pumps are to be located Southwest of Polson at the Big Rock Rapids and at such other points as are suitable to reach the lands requiring irrigation.

The development of Power is contemplated by turbines located at the outlet of the proposed tunnels, and at such points along the river as proper fall exists, throughout the reservation.

Subscribed and sworn to before me, this fourteen th day of January in t's year nine-
teen hundred ten.

C. H. Foot

Notary Public for the State of Montana, residing
at Kalispell, Montana. My Commission expires August
10, 1912.

(SEAL)

Recorded at request of F. O. Williams this 15th day of Jan. 1910 , at 4-50 oclock PM.

C. T. Young, County Recorder.

No. 5144-

By Fred S. Perry, Deputy.

Transcribed from Flathead County Records, Book 71 Water Rights, Page 403. ✓

NOTICE OF APPROPRIATION

The United States of America,)
State of Montana (as
County of Flathead)

TO ALL WHOM THESE PRESENTS MAY CONCERN:

BE IT KNOWN, That the United States of America, under and by virtue on an Act of the
Legislative Assembly of the State of Montana, entitled ; " An Act authorizing the Government
of the United States to appropriate the water of the streams in the State of Montana, subject
to certain restrictions", approved February 27, 1905, and acting by and through H. R.
Savage, Supervising Engineer, thereunto duly authorized by the Secretary of the Interior
of the said United States in that behalf, does hereby publish and declare as a legal notice
to all the world, as follows, to-wit:

I. That the said United States has a legal right to the use, possession and control of
and claims 100,000 cubic feet per second of the waters of The Flathead River in said County and
State, for irrigating and other purposes.

II. That the purpose for which said water is claimed and the place of intended use is for
the purpose of irrigating 50,000 acres of land on the Flathead Indian Reservation for domestic
uses, and for developing power for pumping and other purposes.

III. That the means of diversion, with size of flume, ditch, pipe or aqueduct, by which
it is intended to divert the said water, is as follows; a dam or dams and tunnel 11 x 11 feet
and such other tunnels as are needed and pumps, pipes and canals to carry the water to the
land. Said tunnels are to lead to suitable machinery to pump water and furnish power for
other purposes, and pipe lines and pumps are to be located southwest of Polson at the Big Rock
Rapids and at such other points as are suited to reach the land requiring irrigation. the lands
to be irrigated lie in Tps. 20, 21, 22 N. Rs 19 20, 21 & 22, W. K. P. M. The development of
power is contemplated by turbines located at the outlet of the proposed tunnels and at such
other points along the river as proper fall exist, throught the Reservation.

IV. That the said United States of America is the appropriator of said water and said app-
ropriation was made on the 22 day of Jan. A. D. 1910 and said appropriation and the diversion
of said waters is to be effected and consummated by means of said dams, tunnels, pumps, pipes
and canals.

V. That the said United States also hereby claims said ditch and the right of way there-
for, and for said water by it conveyed, or to be conveyed, from said point of appropriation
to said land or point of final discharge, and also the right of location upon any lands of

Notice of Appropriation - Flathead River

FILING DATE: 4-11-1910

AMOUNT: 100,000 C.F.S.

FILING NUMBER: 6304 (Flathead County) B-204

DESCRIPTION: TWP'S 19 to 25 N., RG'S 19-20-21-22 W.

GENERAL PURPOSE:

For domestic use and for developing Power for pumping and other purposes. A dam across the Flathead River near this notice and canals and tunnels with a capacity of 10,000 second feet leading from same to a power house, suitable hydraulic and electrical machinery to develop power and to elevate water to the bench lands along the River together with pumps, pipes, flumes, reservoirs and canals to convey, store and distribute water to the lands described including electric transmission lines to convey power to distant points for pumping water and other purposes.

by dams, flumes, reservoirs, constructed or to be constructed, by the United States, in appropriation, and using said water.

VI. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time and the right to dispose of said right, water, ditch or said appurtenances, in part or whole at any time.

CLAIMING the same, all and singular, under any and all laws, National and State, and in accordance with the rulings and decisions thereunder in the matter of water rights. TOGETHER WITH ALL THE SINGULAR the hereditaments, and appurtenances thereunto belonging and appertaining or to accrue to the same.

THE UNITED STATES OF AMERICA

By H. H. Savage,

Its officer and agent in that behalf and thereunto duly authorized by the Secretary of the Interior.

State of Montana,)
County of Missoula.) ss

H. H. Savage, having first been duly sworn, deposes and says that he is of lawful age and an officer and agent of the United States of America the appropriator and claimant of the water and the water right mentioned in the foregoing notice of appropriation and claim and that affiant makes the said appropriation of said water and claims the said water right for and on behalf of the said United States as its agent thereunto duly authorized, that affiant is the person whose name is subscribed thereto as officer and agent of the appropriator and claimant, the said United States; that he knows the contents of said foregoing notice and that the matters therein stated are true.

H. H. Savage

Subscribed and sworn to before me this 11 day of Jan. A. D. 1910.

George H. Beckwith

Notary Public for the State of Montana, residing at St. Ignace, Missoula County, My commission expires ninth day of Sept. 1911.

(SEAL)

Recorded at request of E. F. Tabor Jan'y 28th, 1910. C. T. Young, Co. Recorder.

No. 5278-

Transcribed from Flathead County Records, Book 71 Water Rights, Page 405. ✓

Location of Water Right.

NOTICE OF APPROPRIATION

State of Montana,)
County of Flathead.) ss To All whom these Presents may Concern:-

BE IT KNOWN, That Lucinda Markle of Camas in the County of Sanders in the State of Montana, does hereby publish and declare, as a legal notice to all the world, as follows, to-wit:

That Lucinda Markle has a legal right to the use, possession and control of and claims one Hundred (100) inches, Miners' measurement, equal to 2½ cubic feet, of the waters of a certain spring and seepage therefrom in the County and State aforesaid, for irrigating and other useful and beneficial purposes.

Notice of Appropriation - Flathead River

Page 3

FILING DATE: 4-11-1910 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 6304 (Flathead County) B-204

DESCRIPTION: TWP'S 19 to 25 N., RG'S 19-20-21-22 W.

GENERAL PURPOSE:

For domestic use and for developing Power for pumping and other purposes. A dam across the Flathead River near this notice and canals and tunnels with a capacity of 10,000 second feet leading from same to a power house, suitable hydraulic and electrical machinery to develop power and to elevate water to the bench lands along the River together with pumps, pipes, flumes, reservoirs and canals to convey, store and distribute water to the lands described including electric transmission lines to convey power to distant points for pumping water and other purposes.

Transcribed from Flathead County Records, Book 71 Water Rights, Page 406.

NOTICE OF APPROPRIATION

The United States of America)
 State of Montana (ss
 County of Flathead) TO ALL WHOM THESE PRESENTS MAY CONCERN:

BE IT KNOWN, That the United States of America, under and by virtue of an Act of the Legislative Assembly of the State of Montana, entitled: " An Act authorizing the Government of the United States to appropriate the waters of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, and acting by and through E. N. Savage, Supervising Engineer, thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world, as follows, to-wit:

I. That the said United States has a legal right to the use, possession and control of and claims 1 0,000 cubic feet per second of the waters of Flathead River insaid County and State, for irrigating and other purposes.

II. That the purpose for which said water is claimed , and the place of intended use is for the purpose of irrigating 50,000 acres of land on the Flathead Indian Reservation, for domestic uses, and for developing power for pumping and other purposes.

III. That the means of diversion with size of flume, ditch, pipe or aqueduct by which it is intended to divert the said water is as follows; a dam across the river near this notice and canals and tunnels with a capacity of ten thousand second feet leading from same to a power house, suitable hydraulic and electric machinery to develop power and to elevate water to the bench lands along the river together with pumps, pipes flumes, reservoirs and canals to convey, store and distribute water to the lands described including electric transmission lines to convey power to distant points for pumping water and other purposes. the lands to be irrigated lie in Tps. 19 to 25 N. Rs. 19 to 22 W. M. P. M. The development of power is contemplated by turbines at above named power house and at other suitable sites within the Flathead Indian reservation.

IV. That the said United States of America is the appropriator of said water and said appropriation was made on the 29th day of March A. D. 1910, and said appropriation and the diversion of said waters is to be effected ^{and consummated} by means of said dams, cuts, tunnels, pumps, pipes, reservoirs, flumes, canals and hydraulic and electric machinery.

V. That the said United States also hereby claims said ditch and the right of way therefor, and for said water by it conveyed, or to be conveyed, from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of any dams, flumes, reservoirs, constructed or to be constructed, by the United States in appropriating , and using said water.

VI. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time, and the right to dispose of said right, water ditch or said appurtenances in part or whole at any time.

Claiming the same, all and singular, under any and all laws, National and State, and in accordance with the rulings and decisions thereunder, in the matter of water rights.

Together with all and singular, the hereditaments and appurtenances thereunto belonging and appertaining, or to accrue to the same.

The United States of America

By E. N. Savage

Its Officer and agent in that behalf and thereunto duly authorized by the Secretary of the Interior.

State of Montana,)
County of Lewis & Clark. (as

E. N. Savage having first been duly sworn, deposes and says, that he is of lawful age and an officer and agent of the United States of America, the appropriator and claimant of the water and the water right mentioned in the foregoing notice of appropriation and claim, and that affiant makes the said appropriation of said water and claims the said water right for and on behalf of the said United States, as its agent thereunto duly authorized that affiant is the person whose name is subscribed thereto as the officer and agent of the appropriator and claimant, the said United States; that he knows the contents of the said foregoing notice and that the matters and things therein stated are true.

E. N. Savage

Subscribed and sworn to before me this 29th day of March, A. D. 1910.

Julius Barney

(Julius Barney)

(Notarial Seal)

(Lewis & Clark County, Montana)

Notary Public in and for the State of Montana, re-

siding at Helena, Mont. My commission expires June 19th,

1910.

Recorded at request of E. F. Tabor this 11th day of April, 1910 at 2-20 o'clock PM.

J. F. Young, County Recorder.

No. 6304-

By Fred S. Perry, Deputy.

Transcribed from Flathead County Records, Book 71 Water Rights, Page 408.

NOTICE OF APPROPRIATION

The United States of America,)
State of Montana (as
County of Flathead.)

TO ALL WHOM THESE PRESENTS MAY CONCERN:

BE IT KNOWN, That the United States of America, under and by virtue of an act of the Legislative Assembly of the State of Montana, entitled: "An Act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, and acting by and through E. N. Savage, Supervising Engineer, thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world, as follows, to-wit:

1. That the said United States has a legal right to the use, possession and control of and claims 100,000 cubic feet per second of the waters of the Flathead River in said County and State, for irrigating and other purposes.

11. That the purpose for which said water is claimed, and the place of intended use is for the purpose of irrigating 50,000 acres of land on the Flathead Indian Reservation for domestic uses and for developing power for pumping and other purposes.

Notice of Appropriation - Flathead River

Page 4

FILING DATE: 4-11-1910 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 13097 (Missoula County) A-50

DESCRIPTION: TWP'S 18-19 N., RG'S 19-20-21-22 W.

GENERAL PURPOSE:

Irrigating, domestic use and power purposes. Dam across River near this notice and canals and tunnels leading to power house below dam, also suitable hydraulic and electric machinery to develop power and pump water.

I certify that I received and filed this instrument on
March, 19 at 10:30 o'clock A. M.

F. W. Kuphal,
County Recorder,

P 50

Transcribed from Missoula County Records, Book "D" Water Rights, Page 554.
Compared.

13096.

Compared

NOTICE OF APPROPRIATION

The United States of America,

State of Montana)
County of Missoula) ss

TO ALL WHOME THESE PRESENTS MAY CONCERN:

BE IT KNOWN, That the United States of America under and by virtue of an Act of the Legislative Assembly of the State of Montana, entitle "An act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, and acting by and through H. N. Savage, Supervising Engineer, ther unto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare, as a legal notice to all the world, as follows, to-wit:

I. That the said United States has a legal right to the use, possession and control of and claim one hundred thousand cubic feet per second of the water of Flathead River in said County and State, for irrigating and other purposes.

II. That the purpose for which said water is claimed, and the place of intended use is for the purpose of irrigating 50,000 acres of land on the Flathead Indian Reservation, for domestic uses, and for developing power for pumping and other purposes.

III. That the means of diversion, with size of flume, ditch, pipe or aqueduct, by which it is intended to divert the said water is as follows: A dam across the river near this notice and canals and tunnels leading therefrom to a power house below dam, said conduits to have a capacity of ten thousand second feet also suitable hydraulic and electric machinery to develop power and pump water at this point and by electric transmission line, at other points together with pumps, pipes, flumes, reservoirs and canals, to raise, convey and distribute water over the lands described, also suitable works as above located at other points on this stream within the Flathead Indian Reservation for the purposes of irrigation and development of power for other purposes the lands to be irrigated lie in Tps. 16 & 18, N., Rs. 19 to 24 W. M. P. M. the development of power is contemplated by turbines placed as above described and at other suitable points within the reservation.

IV. That the said United States of America is the appropriator of said water, and said appropriation was made on the 29th day of March A. D. 1910, and said appropriation and the diversion of said waters is to be effected and consummated by means of said dams, canals, tunnels, pumps, pipes, flumes, reservoirs and other hydraulic and other electric machinery.

V. That the said United States also hereby claims said ditch and the right of way therefor and for said water by it conveyed, or to be conveyed, from said point of appropriation to said land or point of final discharge, also the right of location upon any lands of said dam, flumes, reservoirs, constructed or to be constructed by the United States in appropriating, and in using said water.

VI. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time, and the right to dispose of said right, water, ditch or said appurtenances in part or whole, at any time.

Claiming the same, all and singular, under any and all laws, National and State, and in accordance with the rulings and decisions thereunder, in the matter of water right.

Together with all and singular, the hereditaments and appurtenances therunto belonging and appertaining or to accrue to the same.

The United States of America,

By H. N. Savage,
Its officer and agent in that behalf and thereunto duly
authorized by the Secretary of the Interior.

State of Montana }
County of Lewis & Clark) ss

H. N. Savage, having first been duly sworn, deposes and says, that he is of lawful age, and an officer and agent of the United States of America, the appropriator and claimant of the water and the water right mentioned in the foregoing notice of appropriation and claim, and that affiant makes the said appropriation of said water and claims the said water right for and on behalf of the said United States as its agent thereunto duly authorized that affiant is the person whose name is subscribed thereto as officer and agent of the appropriator and claimant, the said United States: that he knows the contents of the said foregoing notice and that the matters and things therein stated are true.

H. N. Savage,

Subscribed and sworn to before me, this 29th day of March A. D. 1910.

(SEAL)

Julius Barney,

LAKE COUNTY, MONTANA

Project Nos. 5 and 2776
Exhibit No. (WRJ-3d)
Page 4 of 4

Notary Public in and for the State of Montana,
Residing at Helena, Mont.,
My commission expires June 19th, 1910.

I certify that I received and filed this Instrument for record on the 11th day of
April, 1910, at 1:36 o'clock P. M.

F. W. Kuphal,
County Recorder,

Transcribed from Missoula County Records, Book "D" Water Rights, Page 556. ^{Compared} Compared,
13097. 93.

NOTICE OF APPROPRIATION

The United States of America)
State of Montana) SS
County of Missoula)

TO ALL WHOM THESE PRESENTS MAY CONCERN:

Be it Known, that the United States of America under and by virtue of an Act of
the Legislative Assembly of the State of Montana, entitled "An Act authorizing the Govern-
ment of the United States to appropriate the water of the streams in the State of Montana,
subject to certain restrictions", approved February 27, 1905, and acting by and through H.
N. Savage, Supervising Engineer thereunto duly authorized by the Secretary of the Interior,
of the said United States in that behalf does hereby publish and declare, as a legal notice

Notice of Appropriation - Flathead River

Page 5

FILING DATE: 4-11-1910 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 13098 (Missoula County) A-53

DESCRIPTION: TWP'S 17-18-19 N., RG'S 19-20-21-22-23-24 W.

GENERAL PURPOSE:

A dam across the river and canals and tunnels leading therefrom to a power house below dam, said conduits to have a capacity of 10,000 second feet, also suitable hydroaulic and electric machinery to develop power and pump water at this point and by electric transmission lines at other points, together with pumps, pipes, flumes, reservoirs and canals to raise, convey and distribute water over lands described; also suitable works as above described at other points on this stream within Flathead Indian Reservation for the purposes of irrigation and development of power for other purposes.

Together with all and singular the hereditaments and appurtenances thereunto belong-
ing and appertaining, or to accrue to the same.

The United States of America,

By H. N. Savage,
Its officer and agent in that behalf and thereunto
duly authorized by the Secretary of the Interior.

State of Montana)
) ss
County of Missoula)

H. N. Savage having first been duly sworn, deposes and says, that he is of lawful
age and an officer and agent of the United States of America, the appropriator and claimant
of the water and the water right mentioned in the foregoing notice of appropriation and
claim, and that affiant makes the said appropriation of said water and claims the said
water right for and on behalf of the said United States, as its agent thereunto duly author-
ized, that affiant is the person whose name is subscribed thereto as officer and agent of
the appropriator and claimant, the said United States; that he knows the contents of the
said foregoing notice and that the matters and things therein stated are true.

H. N. Savage,

Subscribed and sworn to before me this 2nd day of April A. D. 1910.

(NOTAL)

George H. Beckwith,
Notary Public in and for the State of Montana,
Residing at St. Ignatius, Montana,
My commission expires Sept. 9th, 1911.

I certify that I received and filed this instrument for record on the 11th day of
April, 1910, at 1:37 o'clock P. M.

F. W. Kuphal,
County Recorder,

P53

Transcribed from Missoula County Records, Book "D" Water Rights, Page 557. Compared.
13098.

NOTICE OF APPROPRIATION

The United States of America,

State of Montana)
) ss
County of Missoula)

TO ALL TO WHOM THESE PRESENTS MAY CONCERN:

BE IT KNOWN, That the United States of America, under and by virtue of an act of the
Legislative Assembly of the State of Montana, entitled "An Act authorizing the Government
of the United States to appropriate the water of the Streams in the State of Montana,
subject to certain restrictions", approved February 27, 1905, and acting by and through
H. N. Savage, Supervising Engineer, thereunto duly authorized by the Secretary of the In-
terior of the said United States in that behalf, does hereby publish and declare as a legal
notice to all the world, as follows, to-wit:

I. That the said United States has a legal right to the use, possession and control
of and claims 170,000 cubic feet per second of the waters of the Flathead River in said
County and State for irrigating and other purposes.

II. That the purpose for which said water is claimed and the place of intended use
is for the purpose of irrigating 50,000 acres of land on the Flathead Indian Reservation
for domestic uses, and for developing power for pumping and other purposes.

III. That the means of diversion, with size of flume, ditch, pipe or aqueduct,
by which it is intended to divert the said waters is as follows: A dam across the river

754

near this notice and canals and tunnels leading therefrom to a power house below dam, said conduits to have a capacity of ten thousand second feet, also suitable hydraulic and electric machinery to develop power and pump water at this point and by electric transmission lines at other points, together with pumps, pipes, flumes, reservoirs and canals to raise, convey and distribute water, over the lands described; also suitable works as above described at other points on this stream within the Flathead Indian Reservation for the purposes of irrigation and development of power for other purposes. The lands to be irrigated lie in Tps. 17 to 19 N., Ra. 19 to 24 W. M. P. M. the development of power is contemplated by turbines placed as above described and at other suitable points within the reservation.

IV. That the said United States of America is the appropriator of said water, and said appropriation was made on the 29th day of March A. D. 1910, and said appropriation and the diversion of said waters is to be effected and consummated by means of said dams, canals, tunnels, pumps, pipes, flumes, reservoirs, and other hydraulic and electric machinery.

V. That the said United States also hereby claims said ditch and the right of way therefor, and for said water by it conveyed, or to be conveyed, from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of any dams, flumes, reservoirs, constructed or to be constructed, by the United States in appropriating and in using said water.

VI. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time and the right to dispose of said right water, ditch or said appurtenances in part or whole, at any time.

Claiming the same, all and singular, under any and all laws, National and State, and in accordance with the rulings and decisions thereunder in the matter of water rights together with all and singular the hereditaments and appurtenances thereunto belonging and appertaining or to accrue to the same.

The United States of America

By H. H. Savage,
Its officer and agent in that behalf and thereunto
duly authorized by the Secretary of the Interior.

State of Montana)
County of Lewis) ss
& Clark)

H. H. Savage having first been duly sworn deposes and says, that he is of lawful age, and an officer and agent of the United States of America, the appropriator and claimant of the water and the water right mentioned in the foregoing notice of appropriation and claim, and that affiant makes the said appropriation of said water and claims the said water right for and on behalf of the said United States, as its agent thereunto duly authorized, that affiant is the person whose name is subscribed thereto as officer and agent of the appropriator and claimant, the said United States, That he knows the contents of the said foregoing notice and that the matters and things therein stated are true.

H. H. Savage,

Subscribed and Sworn to before me, this 29th day of March A. D. 1910.

(SEAL)

Julius Barney,
Notary Public in and for State of Montana,
Residing at Helena, Montana,
My commission expires June 10th, 1910.

I certify that I received and filed this instrument for record on the 11th day of April 1910 at 1:38 o'clock P. M.

F. W. Kuyhal,
County Recorder,

STATE OF MONTANA }
County of Lake } ss.

I hereby certify that the instrument to which this certificate is affixed is a true, full and correct copy of the recording or filing in the office of the Clerk and Recorder.

Witness my hand and official seal this 17 day of
April 1984
EENEEL M. HARDING Clerk and Recorder
Wilhelmina Laughlin Deputy

Notice of Appropriation - Flathead River

Page 6

FILING DATE: 3-17-1913 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 976 (Missoula County) A-83

DESCRIPTION: SECTIONS 28 to 34, TWP 19 N, RG. 21 W; SECTIONS 2 to 5,
9, 10, 15 & 16, TWP 18 N., RG. 21 W.

GENERAL PURPOSE:

Irrigation, domestic use and power purposes. Dam,
tunnels, penstocks and power house, pumping plant, pipe
lines, reservoirs, 6' X 16' canal, etc.

Transcribed from Missoula County Records, Book "D" water Rights, Page 615. Compared. 976.

Approved by Director, Nov. 21, 1912.

NOTICE OF APPROPRIATION OF WATER

UNITED STATES OF AMERICA)
State of Montana) ss
County of Missoula)

TO ALL WHOM THESE PRESENTS MAY CONCERN:

Be it Known that the United States of America, pursuant to the provisions of the act of June 17, 1902, (32 Stat., 386) and under and by virtue of an act of the Legislative Assembly of the State of Montana, entitled: "An Act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, acting by and through H. N. Savage, Supervising Engineer, thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare, as a legal notice to all the world, as follows, to-wit:-

1. That the said United States has a legal right to the use, possession and control of, and claims 100,000 cubic feet per second of time of the waters of Flathead River.

2. That the purposes for which said water is claimed are for irrigating, domestic use and power purposes, and the place of intended use is to irrigate and use said water upon 7,000 acres of land, described as follows, to-wit: Sections 28 to 34, T. 19 N., R. 21 W. Sections 2 to 5 and 9, 10, 15 and 16, T. 18 N., R. 21 W. also for domestic use in connection with the said land, and for developing power for pumping and other purposes at the point of diversion, and along the irrigating ditches and water conduits to be constructed in connection therewith.

3. That the means of diversion, with size of flume, ditch, pipe or aqueduct by which it is intended to divert said waters is as follows: A dam where this notice is posted tunnels, penstocks, power house, pumping plant, pipe lines, reservoir and 6 ft. by 16 ft. canal and also such other works as will fully utilize all the fall available including hydraulic and electrical machinery and transmission lines to develop power convey it to points of use for pumping and other purposes. The canal 6 ft. by 16 feet, which will carry and conduct 325 cubic feet of water per second of time from said Flathead River which said canal will divert the water from said stream at a point upon its left bank S. 49° 41' W. 1266' from the corner of East Boundary of Section 31, T. 19 N., R. 21 W. and run thence easterly thence over and upon said lands.

4. That the said United States appropriated said water on the 1st day of March A. D. 1913, and on that day caused a notice of appropriation to be posted in a conspicuous place at the point of diversion hereinbefore described, which said notice stated, among other things:

- A. Number of cubic feet of water per second claimed as herein set forth;
B. The purpose for which the water was claimed and the place of intended use, as hereinbefore described.
C. The means of diversion, as herein set forth;
D. The date of appropriation, to-wit, the date on which the said notice was posted.
E. The name of the appropriator as herein set forth.

5. That the name of the appropriator of the said water is the United States of America.

P 84

6. That the said United States also hereby claims said ditch and the right of way therefor and for said water by it conveyed, or to be conveyed from said point of diversion and appropriation to said lands or point of final discharge, and also the right of location upon any lands of any dams, flumes and reservoirs constructed or to be constructed by the said United States in appropriating and using said water.

7. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time and to change the point of diversion and the right to dispose of said right, water, ditch or said appurtenances in part or whole, at any time.

Claiming the same all and singular under any and all laws, National and State, and in accordance with the rulings and decisions thereunder in the matter of water rights.

Together with all and singular the hereditaments and appurtenances thereunto belonging and appertaining, or to accrue to the same.

UNITED STATES OF AMERICA.

By H. N. Savage,
Its Agent in that behalf and thereunto duly authorized
by the Secretary of the Interior of the said United
States.

State of Montana)
County of Missoula)

F. LeRoy Cooper, having been first duly sworn deposes and says that he is a citizen of the United States and over the age of twenty-one years, that on the 1st day of March A. D. 1913, in the course of his employment by the United States he posted the above notice at the place named therein at the point described as the point of diversion, and that the matters and facts contained in said notice are true.

F. LeRoy, Cooper.

Subscribed and sworn to before me this 3rd day of March, 1913. My commission expires.

(SEAL)

Addison K. Lusk,
Notary Public in and for the State of Montana,
Residing at
Notary Public for the State of Montana,
Residing at St. Ignatius, Missoula County,
My commission expires 7th day of July, 1914.

State of Montana)
County of.....)

H. N. Savage, having been first duly sworn, deposes and says that he is a citizen of the United States over the age of twenty-one years, that on March 10, 1913, he was and is now an employee of the United States, being Supervising Engineer in charge of the work of the United States in the State of Montana, under the Act of June 17, 1902 (32 Stat., 388); that he knows the contents of the foregoing notice, and that the matters and facts contained therein are true.

That he caused said notice to be posted on behalf of the United States at the place named therein, and that said notice was so posted as he verily believes.

H. N. Savage,

Subscribed and sworn to before me this 10th day of March, 1913. My commission expires March 13, 1917.

(SEAL)

Chas. E. McCulloch,
Notary Public in and for the District of Columbia,
at Washington, D.C.

I hereby certify that I received this instrument for record on the 17th day of March, 1913 at 9:00 o'clock A.M.

W. J. Babington, County Recorder,
By R. J. Cyr, Deputy.

Witnessed by H. E. Sadler.

STATE OF MONTANA }
County of Lake } ss.

I hereby certify that the instrument to which this certificate
is affixed is a true, full and correct copy of the recording or filing
in the office of the Clerk and Recorder.

Witness my hand and official seal this 17 day of

April, 19 84.

ETHEL M. HARDING Clerk and Recorder

Wilhelmina Laughlin Deputy

Notice of Appropriation - Flathead River

Page 7

FILING DATE: 3-31-1913 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 1154 (Missoula County) A-99

DESCRIPTION: TWP'S 19-20-22 N., RG 21 W.

GENERAL PURPOSE:

Irrigating, domestic use and power purposes. A diversion dam and canal 10' wide on bottom and 4' deep.

1154.

Compared

P99

Approved by Director Nov. 21, 1912.

3-4-13.

NOTICE OF APPROPRIATION OF WATER

UNITED STATES OF AMERICA }
State of Montana }
County of Missoula }

TO ALL WHOM THESE PRESENTS MAY CONCERN:

Be it known that the United States, pursuant to the provisions of the Act of June 17, 1902 (32 Stat., 238), and under and by virtue of an act of the Legislative Assembly of the State of Montana, entitled: "An Act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, acting by and through H. N. Savage, Supervising Engineer, therunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world as follows, to-wit:

1. That the said United States has a legal right to the use possession and control of, and claims 100,000 cubic feet per second of time of the waters of Flathead River.

2. That the purposes for which said water is claimed are for irrigating, domestic use and power purposes, and the place of intended use is to irrigate and use said water upon 10,000 acres of land, described as follows, to-wit:

Soc. 5 to 8, 16, to 21, 28 to 30, T. 19 N. R. 21 W.
Soc. 1 to 12, T. 20 N. R. 21 W.
Soc. 25 to 30, T. 22, N. R. 21 W, also for domestic use in connection

with the said land, and for developing power for pumping and other purposes at the point of diversion and along the irrigating ditches and water conduits to be constructed in connection therewith.

3. That the means of diversion, with size of flume, ditch, pipe or aqueduct by which it is intended to divert said waters is as follows: A storage and power dam where this notice is posted, and such penstocks, tunnels, power houses, transmission lines and pumping plants as will fully utilize the water claimed and flumes, pipe lines, reservoirs and canal systems as will convey, elevate store and distribute the water to the land described and such other transmission lines, hydraulic and electrical apparatus as will fully develop all the power available and convey it to other points for pumping and other purposes which will convey and conductcubic feet of water per second of time from said Flathead River which said ...will divert the water from said stream at a point upon its left bank which bears N. 46° 45' W. (Magnetic) distant 469 feet from the S $\frac{1}{4}$ corner of Soc. 1 T. 19 N. R. 22 W. M. P. K. and run thence over and upon said lands.

4. That the said United States appropriated said water on the 15th day of March A. D. 1913, and on that day caused a notice of appropriation to be posted in a conspicuous place at the point of diversion hereinbefore described, which said notice stated among other things.

- A. Number of cubic feet of water per second claimed as herein set forth;
- B. The purpose for which the water was claimed and the place of intended use as hereinbefore described.
- C. The means of diversion, as herein set forth.
- D. The date of appropriation, to-wit; the date on which the said notice was posted;
- E. The name of the appropriator as herein set forth.
- F. The name of the appropriator of the said water is the United States of America.

P 100

6. That the said United States also hereby claims said ditch and the right of way therefor and for said water by it conveyed, or to be conveyed from said point of diversion and appropriation to said lands or point of final discharge, and also the right of location upon any lands of any dams, flumes, and reservoirs constructed or to be constructed by the said United States in appropriating and using said water.

7. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time and to change the point of diversion and the right to dispose of said right, water, ditch or said appurtenances in part or whole at any time.

Claiming the same all and singular under any and all laws, national and state, and in accordance with the rulings and decisions thereunder in the matter of water rights.

Together with all and singular the hereditaments and appurtenances thereunto belonging and appertaining, or to accrue to the same.

UNITED STATES OF AMERICA

By H. N. Savage,
Its agent in that behalf and thereunto duly
authorized by the Secretary of the Interior of the
said United States.

STATE OF MONTANA }
 } ss
County of Missoula }

E. W. Tapran, having been first duly sworn deposes and says that he is a citizen of the United States and over the age of twenty-one years; that on the 15th day of March A. D. 1913, in the course of his employment by the United States he posted the above notice at the place named therein at the point described as the point of diversion, and that the matters and facts contained in said notice are true.

E. W. Tapran,

Subscribed and sworn to before me this 24 day of March, 1913. My commission expires
Aug. 26, 1915.

(SEAL)

A. B. Bickford,
Notary Public in and for the State of Montana,
Residing at Eolsen, Montana.

State of Montana }
 } ss
County of Lewis & Clark }

H. N. Savage, having been first duly sworn, deposes and says that he is a citizen of the United States over the age of twenty-one years; that on March 15, 1913, he was and is now an employee of the United States, being Supervising Engineer in charge of the work of the United States in the State of Montana, under the act of June 17, 1902 (32 Stat., 239); that he knows the contents of the foregoing notice, and that the matters and facts contained therein are true.

That he caused said notice to be posted on behalf of the United States at the place named therein, and that said notice was so posted as he verily believes.

H. N. Savage,

Subscribed and sworn to before me this 29th day of March, 1913. My commission expires
Sept. 16th, 1914.

(SEAL)

E. W. Prosser,
Notary Public in and for the State of Montana,
Residing at Helena,

I hereby certify that I received this instrument for record on the 31st day of March, 1913, at 10:12 o'clock A. M.

W. J. Babington, County Recorder,
By R. J. Cyr, Deputy.

STATE OF MONTANA }
County of Lake } ss.

I hereby certify that the instrument to which this certificate is affixed is a true, full and correct copy of the recording or filing in the office of the Clerk and Recorder.

Witness my hand and official seal this 17 day of
April 19 84
ETHEL M. BANDING Clerk and Recorder
By: Wilhelmina Laughlin Deputy

Notice of Appropriation - Flathead River

Page 8

FILING DATE: 4-1-1913 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 128 (Flathead County) B-239

DESCRIPTION: SECTIONS 19 to 36, TWP. 22 N., RG. 21 W.
 SECTIONS 19, 20, 29 to 32, TWP. 22 N., RG. 20 W.
 SECTIONS 1 to 10, TWP. 21 N., RG. 21 W.

GENERAL PURPOSE:

Irrigating, domestic use and power purposes. A storage and power dam where this notice is posted, and such penstocks, tunnels, power houses, transmission lines and pumping plans, flumes, pipe lines, reservoirs, and canal systems as will elevate, convey, store and distribute the water to the lands described, and such other transmission lines hydraulic and electrical apparatus as will fully develop all the power available and convey it to suitable points for pumping and other purposes.

Also for domestic use in connection with the said land, and for developing power for pumping and other purposes at the point of diversion, and along the irrigating ditches and water conduits to be constructed therewith.

The undersigned also hereby claims a right of way over all unappropriated lands of the United States through which said ditch or ditches shall pass, together with the right to repair and enlarge said ditches whenever and wherever the same may be necessary to convey the waters hereby appropriated.

J. D. Lott, Appropriator and Claimant.

State of Montana)
County of Flathead) ss

J. D. Lott, being first duly sworn, says: That he is the appropriator and claimant named in the foregoing notice of appropriation; that he has read said notice of appropriation and knows the contents thereof, and that all the matters therein stated are true.

J. D. Lott.

Subscribed and sworn to before me this 4th day of March in the year nineteen hundred twelve.

(Harry M. Rude)
(Notarial Seal)
(Flathead County, Mont.)

Harry M. Rude,
Notary Public for the State of Montana,
Residing at Bigarm, Montana.
My commission expires April 4, 1914.

Recorded at request of L. A. Foot this 7th day of March 1912 at 3-35 oclock P. M.

Fred S. Perry, County Recorder. By J. R. Sauser, Deputy. No. 686-

Transcribed from Flathead County Records, Book 71 Water Rights, Page 466.
Approved by Director Nov. 21, 1912.

128

NOTICE OF APPROPRIATION OF WATER.

United States of America)
State of Montana) ss
County of Flathead)

TO ALL WHOM THESE PRESENTS MAY CONCERN; Be it known that the United States of America, pursuant to the provisions of the Act of June 17, 1902 (32 Stat. 388), and under and by virtue of an Act of the Legislative Assembly of the State of Montana, entitled; "An Act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, acting by and through L. H. Savage, Supervising Engineer thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world as follows, to-wit:

1. That the said United States has a legal right to the use, possession and control of and claims 100,000 cubic feet per second of time of the waters of Flathead River.

2. That the purposes for which said water is claimed are for irrigating and domestic use and power purposes, and the place of intended use is to irrigate and use said water upon 20,400 acres of land, described as follows, to-wit:

Sections - 19 to 36 - T. 22N., R. 21 W.

" " - 19, 20 to 32 - T. 22 N., R. 20, W.

" " - 1 to 10, T. 21 N., R. 21 W., also for domestic use in connection with the said land, and for developing power for pumping and other purposes at the point of diversion, and along the irrigating ditches and water conduits to be constructed in connection therewith.

3. That the means of diversion, with size of flume, ditch, pipe or aqueduct, by which it

is intended to divert said waters in as follows-. A storage and power dam where this notice is posted, and, such pen stocks, tunnels, power houses, transmission lines and pumping plants as will fully utilize the water claimed, and flumes, pipe lines, reservoirs and canal systems as will elevate, convey, store and distribute the water to the lands described, and also other transmission lines, hydraulic and electrical apparatus as will fully develop the power available and convey it to suitable points for pumping and other purposes,- which will carry and conduct _____ cubic feet of water per second of time from said Flathead River which said -- will divert the water from said stream at a point upon its left bank which bears N 7 ^{10'} A. 519' from M. C. on left bank of river between sec. 21 & 22, T. 22, R. 1. 21 W. P. . . E. and run thence thence over and upon said lands.

4. That the said United States appropriated said water on the 17th day of March A.D. 1913, and on that day caused a notice of appropriation to be posted in a conspicuous place at the point of diversion hereinbefore described, which said notice stated, among other things;

- A. Number of cubic feet of water per second claimed as herein set forth.-
- B. The purpose for which the water was claimed and the place of intended use, as hereinbefore described.
- C. The means of diversion as herein set forth;
- D. The date of appropriation, to-wit; the date on which the said notice was posted.
- E. The name of the appropriator as herein set forth.

b. That the name of the appropriator of the said water is the United States of America. That the said United States also hereby claims said ditch and the right of way therefor and for said water by it conveyed, or to be conveyed, from said point of diversion and appropriation to said lands or point of final discharge, and also the right of location upon any lands of any dams, flumes, and reservoirs constructed or to be constructed by the said United States in appropriating and in using said water.

7. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time and to change the point of diversion and the right to dispose of said right, water ditch or said appurtenances in part or whole, at any time.

Claiming the same all and singular under any and all laws, national and state, and in accordance with the rulings and decisions hereunder in the matter of water rights.

Together with all and singular the hereditaments and appurtenances thereunto belonging and appertaining, or to accrue to the same.

United States of America.
By H. N. Savage,
Its agent in that behalf and thereunto duly authorized by the Secretary of the Interior of the said United States.

State of Montana)
County of Flathead)

H. N. Lappan having first been duly sworn deposes and says that he is a citizen of the United States and over the age of twenty one years; that on the 17th day of March A. D. 1913, in the course of his employment by the United States he posted the above notice at the place named therein at the point described as the point of diversion, and that the matters

and facts contained in said notice are true.

E. W. Tarpan

Subscribed and sworn to before me this 24th day of March 1913. My commission expires Aug. 3rd, 1915.

(A. B. Bickford)

(Notarial Seal)

(State of Montana) (seal)

A. B. Bickford, Notary Public in and for the State

of Montana, residing at Polson, Mont.

State of Montana }
County of Lewis & Clark } ss

H. N. Savage, having first been duly sworn, deposes and says that he is citizen of the United States over the age of twenty one years that on March 17, 1913, he was and is now an employee of the United States, being Supervising Engineer in charge of the work of the United States in the State of Montana, under the act of June 17, 1902, (32 Stat. 388) that he knows the contents of the foregoing notice, and that the matters and facts contained therein are true.

That he caused said notice to be posted on behalf of the United States at the place named therein, and that said notice was so posted as he verily believes.

H. N. Savage.

Subscribed and sworn to before me this 29th day of March 1913. My commission expires Sept. 16th., 1914.

(E. W. Prosser)

(Notarial Seal)

(State of Montana)

(Seal)

E. W. Prosser,

Notary Public in and for the State of Montana.

Residing at Helena.

Recorded at request of E. F. Tabor this 1st day of Apr. 1913 at 10.10 oclock A. M.

Fred S. Perry, County Recorder. By J. R. Sauser, Deputy. No. 1080-

Transcribed from Flathead County Records, Book 71 Water Rights, Page 468.

Approved by Director.

127.

NOTICE OF APPROPRIATION OF WATER.

UNITED STATES OF AMERICA. }
State of Montana } ss
County of Flathead }

WHEREAS THESE PRESENTS MAY CONCERN- BE it known that the United States of America, pursuant to the provisions of the act of June 17, 1902 (32 Stat. 388) and under and by virtue of an act of the Legislative Assembly of the State of Montana, entitled " An act authorizing the Government of the United States to appropriate the water^{of the} streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, acting by and through F. N. Savage Supervising Engineer thereunto duly authorized by the Secretary of the Interior of the said United States, do hereby publish and declare as a legal notice to all the world as follows,

to -wit:

- 1. That the said United States has a legal right to the use, possession and control of, and claims 100,000 cubic feet per second of time of the waters of Flathead River.

STATE OF MONTANA }
County of Lake } M.

I hereby certify that the instrument to which this certificate is affixed is a true, full and correct copy of the recording or filing in the office of the Clerk and Recorder.

Witness my hand and official seal this 17th day of

Ethel M. Harding, 19 84.

ETHEL M. HARDING .. Clerk and Recorder

By: *Loring Jacobson* Deputy

Notice of Appropriation - Flathead River

Page 9

FILING DATE: 4-1-1913 AMOUNT: 100,000 C.F.S.

FILING NUMBER: (Flathead County) B-241

DESCRIPTION: SECTIONS 3 to 10, 14 to 23, TWP. 21 N., RG. 21 W.

GENERAL PURPOSE:

Irrigating, domestic use and power purposes. A storage and power dam where this notice is posted, and such penstocks, tunnels, power houses, transmission lines and pumping plants, flumes, pipe lines, reservoirs, and canal systems as will elevate, convey, store and distribute the water to the lands described, and such other transmission lines hydraulic and electrical apparatus as will fully develop all the power available and convey it to suitable points for pumping and other purposes. Also for domestic use in connection with the said land, and for developing power for pumping and other purposes at the point of diversion, and along the irrigating ditches and water conduits to be constructed therewith.

(Seal)

Recorded at request of E. F. Tabor this 1st day of Apr. 1913 at 10.10 oclock A. M.

Fred S. Parry, County Recorder. By J. R. Sauser, Deputy. No. 1080-

Transcribed from Flathead County Records, Book 71 Water Rights, Page 468.

Approved by Director.

127.

Nov. 21, 1912

NOTICE OF APPROPRIATION OF WATER.

UNITED STATES OF AMERICA.)
State of Montana) ss
County of Flathead)

TO ALL WHOM THESE PRESENTS MAY CONCERN- BE it known that the United States of America, pursuant to the provisions of the act of June 17, 1902 (32 Stat. 388) and under and by virtue of an act of the Legislative Assembly of the State of Montana, entitled " An act authorizing the Government of the United States to appropriate the water ^{of the} streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, acting by and through H. N. Savage Supervising Engineer thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world as follows,

to -wit:

1. That the said United States has a legal right to the use, possession and control of, and claims 100,000 cubic feet per second of time of the waters of Flathead River.

Project Nos. 5 and 2776
Exhibit No. (WRJ-3i)
Page 2 of 5

15-247

2. That the purpose for which said water is claimed are for irrigating, domestic use and power uses, and the place of intended use is to irrigate and use said water upon 11,500 acres of land described as follows, to-wit:

Sections 3 to 10, 14 to 23- T. 21 N. R. 21 W. also for domestic use in connection with the said land, and ^{for} developing power for pumping and other purposes at the point of diversion, and along the irrigating ditch and water conduits to be constructed in connection therewith.

3. That the means of diversion, with size of flume, ditch, pipe or aqueduct by which it is intended to divert said waters is as follows-

A storage and power dam where this notice is posted, and such penstocks tunnels, power houses, transmission lines, and pumping plants as will fully utilize the water claimed and flumes, pipe lines, reservoirs, and canal systems as will elevate, convey store and distribute the water to the land described and such other transmission lines, hydraulic and electrical apparatus as will fully develop all the power available and convey it to other points for pumping and other purposes. which will carry and conduct..... cubic feet of water per second of time from said Flathead River, which said will divert the water from said stream at a point upon its left bank, which bears N. 47° 12' W. (magnetic) distant 1434 feet from the SW corner of Sec. 6, T. 22 N. R. 21 W. L. P. M. and runs thence thence over and upon said lands.

4. That the said United States appropriated said water on the 17th day of March A. D. 1913, and on that day caused a notice of appropriation to be posted in a conspicuous place at the point of diversion herein before described, which said notice stated, among other things-

A. Number of cubic feet of water per second claimed as herein set forth.

B. The purpose for which the water was claimed and the place of intended use, as herein before described.

C. The means of diversion, as herein set forth.

D. The date of appropriation, to-wit:- the date on which the said notice was posted.

E. The name of the appropriator as herein set forth.

5. That the name of the appropriator of the said water is: the United States of America.

6. That the said United States also hereby claims said ditch and the right of way therefore, and for said water by it conveyed, or to be conveyed, from said point of diversion and appropriation to said lands or point of final discharge, and also the right of location upon any lands of any dams, flumes, and reservoirs constructed or to be constructed by the said United States in appropriating and using said water.

7. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time and to change the point of diversion and the right to dispose of said right, water ditch or said appurtenances in part or whole, at any time.

Claiming the same, all and singular under any and all laws, national and state, and in accordance with the rulings and decisions thereunder in the matter of water rights.

Together with all and singular the hereditaments and appurtenances thereunto belonging and appertaining or to accrue to the same.

United States of America.

By E. H. Savage, Its agent in that behalf and thereunto duly authorized by the Secretary of the Interior of the said United States.

State of Montana)
) (SS
County of Flathead)

E. W. Tappan, having first been duly sworn deposes and says that he is a citizen of the United States and over the age of twenty one years; that on the 17th day of March ^{A. D.} 1913, in the case of his employment by the United States he posted the above notice at the place named therein at the point described as the point of diversion, and that the matters and facts contained in said notice are true.

E. W. Tappan,

Subscribed and sworn to before me this 24 day of March 1913. My commission expires Aug. 3, 1915.

(A. B. Bickford)
(Notarial Seal)
(State of Montana) (Seal)

A. B. Bickford,
Notary Public in and for the State of Montana,
Residing at Polson, Mont.

State of Montana)
) (SS
County of Lewis & Clark -

H.N. Savage having first been duly sworn, deposes and says that he is a citizen of the United States over the age of twenty one years; that on March 17, 1913, he was and is now an employe of the United States, being Supervising Engineer in charge of the work of the United States in the State of Montana, under the Act of June 17, 1902, (32 Stat., 388) that he knows the contents of the foregoing notice, and that the matters and facts contained therein are true.

That he caused said notice to be posted on behalf of the United States at the place named therein, and that said notice was so posted as he verily believes.

H.N. Savage,

Subscribed and sworn to before me this 29th-day of March 1913. My commission expires Sept. 16, 1914.

(A. W. Prosser)
(Notarial Seal)
(State of Montana) (Seal)

A. W. Prosser,
Notary Public in and for the State of Montana,
residing at Helena.

Recorded at request of E. F. Tabor this 1st day of Apr. 1913 at 10-11 o'clock A. M.

Fred S. Perry, County Recorder. By J. E. Sausser, Deputy. No. 1081-

Transcribed from Flathead County Records, Book 71 Water Rights, Page 471.
Approved by Director No. 21, 1912. 162.

Notice of appropriation for use where part of the water claimed has been previously diverted.

NOTICE OF APPROPRIATION OF WATER.

UNITED STATES OF AMERICA.)
STATE OF MONTANA (SS
COUNTY OF FLATHEAD)

WHEREUPON THESE PRESENTS MAY CONCERN, Be it known that the United States of America, pursuant to the provisions of the act of June 17, 1902, (32 Stat. 388) and under and by virtue of an act of the Legislative Assembly of the State of Montana, entitled; " An act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions, " approved February 27, 1905, acting by and through

STATE OF MONTANA }
County of Lake } ss.

I hereby certify that the instrument to which this certificate is affixed is a true, full and correct copy of the recording or filing in the office of the Clerk and Recorder.

Witness my hand and official seal this 17 day of

April, 1984.

ETHEL M. HARDING

Clerk and Recorder

Wilhelmina Laughlin Deputy

Notice of Appropriation - Flathead River

Page 10

FILING DATE: 3-15-1913 . AMOUNT: 100,000 C.F.S.

FILING NUMBER: Flathead County) B-373

DESCRIPTION:

TWP'S 20-21-22-23 N; RG'S 19-20-21-22 W.

GENERAL PURPOSE:

For domestic uses and for developing Power for pumping and other purposes. A dam and tunnel 12 X 12 feet leading from the dam to power house, also such other dams, tunnels as to fully utilize the water claimed; pumping plants at the Big Rock Rapids and other and furnish power for other purposes and pipelines and suitable points, pipe lines, flumes, reservoirs and Rock Rapids and at such other points as are suited to canal systems to elevate, convey, store and distribute the water to lands described and such other transmission lines, hydraulic and electrical apparatus as will fully develop all the power available and convey it to suitable points for pumping and other purposes. Also domestic use in connection with said land, and for developing power for pumping and other purposes at the point of diversion, and along the irrigating ditches and water conduits to be constructed in connection therewith.

(State of Montana)

My commission expires Sept. 16, 1914.

Recorded this 26th day of November 1912 at 9-10 oclock A. M.

Fred B. Perry, County recorder. By C. J. Morrill, Deputy. No. 4180-

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Transcribed from Flathead County Records, Water Rights, Book 129, Page 327. ✓

Approved by Director Nov. 21, 1912.

Notice of Appropriation of Water.

United States of America)

State of Montana)ss

County of Flathead)

To all whom these Presents may concern: Be it known that the United States of America, pursuant to the provisions of the act of June 17, 1902(32 Stat. 388) and under and by virtue of an act of the Legislative Assembly of the State of Montana, entitled: "An act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, acting by and throughthereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world as follows, to-wit:

1. That the said United States has a legal right to the use, possession and control of, and claims 100,000 cubic feet per second of time of the waters of Flathead River.

2. That the purposes for which said water is claimed are for irrigation, domestic use and power purposes, and the place of intended use is to irrigate and use said water upon 50,000 acres of land, described as fol. ws, to-wit:

Project Nos. 5 and 2776
Exhibit No. (WRJ-3j)
Page 2 of 5

sec. 1 to 11, 14 to 20, 23 to 30 in T. 21 N. R. 20 W./ 1 to 6, 8 to 11, 12 to 17, 20 to 26,
sec. 21 N. R. 21 W.: 1 to 11, 15 to 17 and sec. 21, T. 20 N. R. 21 W.: 1 to 13, T. 20 N. R. 22 W.:
sec. 23 N. R. 22 W.: 4 to 9, 16 to 19, T. 22 N. R. 19 W.: 1 to 6, 8 to 13, 19, 29 to 32,
T. 22 N. R. 20 W.: 14, 22 to 36, T. 22 N. R. 21 W.: 16, 19 to 21, 28 to 32, 35 to 36, T. 23 N. R.
T. 23 also for domestic use in connection with the said land, and for developing power for
pumping and other purposes at the point of diversion, and along the irrigating ditches and
water conduits to be constructed in connection therewith.

3. That the means of diversion, with size of flume, ditch, pipe or aqueduct by which
it is intended to divert said waters is as follows: A storage and power dam, where this
notice is posted, A tunnel 12 by 12 ft. leading from dam to power house, also such other
dams, tunnels as to fully utilize the water claimed: pumping plants at the Big Rock rapids
and other suitable points, pipe lines, flumes, reservoirs and canal systems to elevate,
convey, store and distribute the water to the lands described and such other transmission
lines, hydraulic and electrical apparatus as will fully develop all the power available
and convey it to suitable points for pumping and other purposes, which will carry and con-
duct.....cubic feet of water per second of time from saidwhich saidwill divert
the water from said stream at point upon its left bank, N 64°05' E. 745 from SE corner of the
NW 1/4 Sec. 12 T. 22 N. R. 21 W. M. P. M. and run thence.....thence over and upon said lands.

4. That the said United States appropriated said water on the 15 day of February, A. D.
1910, and on that day caused a notice of appropriation to be posted in a conspicuous place
at the point of diversion hereinbefore described, which said notice stated, among other things:

- A. Number of cubic feet of water per second claimed as herein set forth.
- B. The purpose for which the water was claimed and the place of intended use, as herein-
before described:
- C. The means of diversion, as herein set forth:
- D. The date of appropriation, to-wit: the date on which the said notice was posted.
- E. The name of the appropriator as herein set forth.
- F. That the name of the appropriator of the said water is the United States of America.
- G. That the said United States also hereby claims said ditch and the right of way
therefor and for said water by it conveyed, or to be conveyed, from said point of diversion
and appropriation to said land or point of final discharge, and also the right of location
upon any lands of any dams, flumes, and reservoirs constructed or to be constructed by the
said United States in appropriating and using said water.

7. That the said United States also claims the right to keep in repair and to enlarge
said means of water appropriation at any time and to change the point of diversion and the
right to dispose of said right, water ditch or said appurtenances in part or whole, at any
time.

Claiming the same all and singular under any and all laws, national and state, and in
accordance with the ruling and decisions thereunder in the matter of water rights.
Together with all and singular the hereditaments and appurtenances thereunto belonging
and appertaining, or to accrue to the same.

United States of America.

By E. H. Savage, Its agent in that behalf and
thereunto duly authorized by the Secretary of the Interior of the
said United States.

State of Montana)
)ss
County of Flathead)

F. LeRoy Cooper, having been first duly sworn deposes and says that he is a citizen of the United States and over the age of twenty one years; that on the 15th day of February 1. E. 1913, in the course of his employment by the United States he posted the above notice at the place named therein at the point described as the point of diversion and that the matters and facts contained in said notice are true.

F. LeRoy Cooper

Subscribed and sworn to before me this 15th day of February 1913. My commission expires Dec. 31, 1914.

F. C. Bailey,

Justice of the Peace in and for the State of Montana, residing at Polson, Mont.

(Seal)

State of Montana)
)ss
County of Lewis and Clark)

H. N. Savage, having been first duly sworn, deposes and says that he is a citizen of the United States over the age of twenty one years; that on February 15, 1913, he was and is now an employee of the United States, being Supervising Engineer in charge of the work of the United States in the State of Montana, under the act of June 17, 1902, (32 Stat. 388) that he knows the contents of the foregoing notice, and that the matters and facts contained therein are true:

That he caused said notice to be posted on behalf of the United States at the place named therein, and that said notice was so posted as he verily believes.

H. N. Savage

Subscribed and sworn to before me this 24th day of February 1913. My commission expires June 15th, 1913.

(W. H. Dickinson)

W. H. Dickinson, Notary Public in and for the State of Montana. Residing at Helena, Mont.

(Notarial Seal) (Seal)
(State of Montana)

Recorded at request of E. F. Tabor this 5th day of March 1913, at 9-15 o'clock A. M.

Fred S. Perry, County Recorder. By J. E. Sauser, Deputy. No. 737.

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Transcribed from Flathead County Records, Water Rights, Book 124, Page 330. ✓

Approved by Director Nov. 21, 1912.

Notice of appropriation of Water.

United States of America)
State of Montana)ss
County of Flathead)

To all whom these Presents may concern: Be it known that the United States of America, pursuant to the provisions of the act of June 17, 1902 (32 Stat.388) and under and by virtue of an act of the Legislative Assembly of the State of Montana, entitled: "An act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, acting by and through.....thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world as follows, to-wit:

1. That the said United States has a legal right to the use, possession and control of, and claims 1000 cubic feet per second of time of the waters of Big Creek.
2. That the purposes for which said water is claimed are for irrigating,

STATE OF MONTANA }
County of Lake } ss.

I hereby certify that the instrument to which this certificate is affixed is a true, full and correct copy of the recording or filing in the office of the Clerk and Recorder.

Witness my hand and official seal this 17 day of
April, 19 84

ETHEL M. HANLON

Clerk and Recorder

By Wilhelmina Laughlin Deputy

Notice of Appropriation - Flathead River

Page 11

FILING DATE: 2-8-1919 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 238 (Flathead County) B-430

DESCRIPTION: TWP'S 20-21-22-23 N., RG'S 19-20-21-22 W.

GENERAL PURPOSE:

For Domestic uses and for developing Power for pumping and other purposes. A dam or dams and tunnel 11 X 11 feet and such other tunnels as are needed and pumps, pipes and canals to carry the water to the land. Said tunnels are to lead to suitable machinery to pump water and furnish Power for other purposes, and pipe lines and pumps are to be located Southwest of Polson at the Big Rock Rapids and at such other points as are suitable to reach the lands requiring irrigation.

The development of Power is contemplated by turbines located at the outlet of the proposed tunnels, and at such points along the river as proper fall exists, throughout the reservation.

W. C. Christopher, having been first duly sworn, deposes and says that he is a citizen of the United States and over the age of twenty-one years; That on September 17, 1918 he was and is not an employee of the United States; that on said day he posted the above notice at the place named therein; that he knows the contents of the foregoing notice and that the matters and facts contained in the notice are true.

W. C. Christopher
Assistant Engineer (Title)

Subscribed and sworn to before me this 19th day of September 1918
(J. P. Siebeneicher)
(Notarial Seal)
(State of Montana)

J. P. Siebeneicher
Notary Public for the State of Montana
Residing at St. Ignatius, Montana.
My commission expires Jan'y. 23, 1920.

Filed for record at request of F. T. Crowe, Oct. 7th, 1918 at 10.20 A. M.

E. J. Green, County Clerk & Recorder. By S. C. Bibbe, Deputy. Recept. No. 9520.

Transcribed from Flathead County Records, Water Rights, Book 129, Page 440. ✓

NOTICE OF APPROPRIATION OF WATER RIGHT.

United States of America;

State of Montana ; SS

No. 238

County of Flathead ;

TO ALL WHOM THESE PRESENTS MAY CONCERN; Be it known that the United States of America pursuant to the provisions of the Acts of Congress of March 3, 1909 (35 Stat. 795) and April 30, 1909 (35 Stat. 35), and under and by virtue of an Act of the Legislative Assembly of the State of Montana, entitled; "An act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1906, acting by and through C. J. Moody, Acting Project Manager, U. S. Reclamation Service, therunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world as follows, to-wit:-

1. That the said United States has a legal right to the use, possession, and control of, and claims 100,000 cubic feet per second of time of the waters of Flathead River.

2. That the purpose for which said water is claimed are for irrigating, domestic use and power purposes, and the place of use is to irrigate and use said water upon 50,000 acres of land Described as follows, to-wit;

Secs. 2 to 11, 14 to 23, 28 to 30 in T. 21 N., R. 20 W. \1 to 6, 8 to 11, 13 to 17, 20 to 26 in T. 21 N., R. 21 W. \1 to 11, 15 to 17, and Sec. 21, T. 20 N., R. 21 W. \1 to 13, T. 20 N., R. 21 W., \Sec. 36, T. 21 N., R. 22 W. \4 to 9, 16 to 19, T. 22 N., R. 19 W. \1 to 6, 8 to 13, 19, 29, to 32 T. 22 N. R. 20 W. \14, 22 to 36 T. 22 N. R. 21 W. \16, 19 to 21, 28 to 32, 35 to 36 T. 22 N. R. 20 W.

also for domestic use in connection with said land, and for developing power for pumping and other purposes at the point of diversion, and along the irrigating ditches and water conduits to be constructed in connection therewith.

3. That the means of diversion, with size of flume, ditch, pipe or aqueduct by which it is intended to divert said waters is as follows; Storage dam, etc. which carries and will conduct 100,000 cubic feet of water per second of time from said Flathead River which said works diverts the water from said stream at a point upon its left bank, N. 80° 50' E. 2500 feet

from the SW corner of Sec. 12 T. 22 N. R. E1 W. and runs thence power plant and from the pumping plants thence easterly and southeasterly thence over and upon said lands thence over and upon said lands.

4. That the said United States appropriated said water on the 29th day of January A. D. 1919, and on that day caused a notice of appropriation to be posted in a conspicuous place at the point of diversion hereinbefore described, which said notice stated, among other things;

- A. Number of cubic feet of water per second claimed as herein set forth;
- B. The purpose for which the water was claimed and the place of intended use, as hereinbefore described;
- C. The means of diversion, as herein set forth;
- D. The date of appropriation to-wit; the date on which the said notice was posted.
- E. The name of the appropriator as herein set forth.
- 6. That the name of the appropriator of the said water is the United States of America.
- 6. That the said United States also hereby claims said ditch and the right of way thereof and for said water by it conveyed, or to be conveyed, from said point of diversion and appropriation to said lands or point of final discharge, and also the right of location upon any lands of dams, flumes and reservoirs constructed or to be constructed by the said United States in appropriating and using said water.

7. That the United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time and to change the point of diversion and the right to dispose of said right, water, ditch or said appurtenances in part or whole, at any time.

Claiming the same all and singular under any and all laws, national or state, and in accordance with the rulings and decisions thereunder in the matter of water rights.

Together with all and singular the hereditaments and appurtenances thereunto belonging and appertaining, or to accrue to the same.

UNITED STATES OF AMERICA
By C. J. Moody
Its agent in that behalf and thereunto
duly authorized by the Secretary of the
Interior of the said United States.

State of Montana)
)SS
County of Missoula)

C. J. Moody, having been first duly sworn deposes and says that he is a citizen of the United States and over the age of twenty-one years; and that he is the person duly authorized by the Secretary of the Interior of the said United States to make the foregoing appropriation and notice thereof in behalf of the said United States, the appropriator and claimant of the water and water right mentioned in the foregoing notice of appropriation; that as such person and agent, he signed the foregoing notice and makes this verification on behalf of the said United States; that he knows the contents of said foregoing notice and that the matters and facts therein stated are true.

C.J. Moody

Subscribed and sworn to before me this 29th day of January, A. D. 1919.

(SEAL)
(J. P. Siebeneicher)
(Notarial Seal)
(State of Montana)

J. P. Siebeneicher
Notary Public for the State of Montana, residing at
St. Ignatius Mont. My commission expires Jan. 23, 1920
Notary Public for the State of Montana
residing at St. Ignatius Missoula County,
My commission expires January 23rd, 1920.

LAKE COUNTY, MONTANA

State of Montana)
) SS
County of -----)

W. C. Christopher, having been first duly sworn, deposes and says that he is a citizen of the United States and over the age of twenty-one years; that on January 29, 1919 he was and is now an employee of the United States; that on said day he posted the above notice at the place named therein; that he knows the contents of the foregoing notice and that the matters and facts contained in the notice are true.

W. C. Christopher

Assistant Engineer (Title)

Subscribed and sworn to before me this 31st day of January, 1919.

(SEAL)

(J. P. Siebeneicher)

(Notarial Seal)

(State of Montana)

J. P. Siebeneicher

Notary Public for the State of Montana

Residing at St. Ignatius, Montana.

My commission expires Jan. 23, 1920.

Filed for record at request of C. J. Moody Feb. 8, 1919 at 9.00 A. M.

S. C. Bibee, County Clerk & Recorder. By J. F. McDavid, Deputy. recpt. No. 402

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Transcribed from Flathead County Records, Water rights, Book 129, Page 445. ✓

Water Right Appropriation Notice.

Know All Men By These Presents- That the Undersigned, R. B. Woody, did on the 10th day of May 1918 appropriate zand claim, and does by these presents appropriate, locate

Project Nos. 5 and 2776
Exhibit No. _____ (WRJ-3k)
Page 4 of 5

I hereby certify that the instrument to which this certificate
 is affixed is a true, full and correct copy of the recording or filing
 in the office of the Clerk and Recorder.
 Witness my hand and official seal this 17th day of April
1984
 ETHEL M. HARDING
 Clerk and Recorder
 State of Iowa }
 County of Lake }

Notice of Appropriation - Flathead River

Page 12

FILING DATE: 2-1-1922 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 23B (Flathead County) B-459

DESCRIPTION: TWP'S 20-21-22-23 N., RG'S 19-20-21-22 W.

GENERAL PURPOSE:

Irrigating, domestic use and power purposes. Storage dam etc. which carries and will conduct 100,000 cubic feet of water per second. Also for domestic use in connection with said land, and for developing power for pumping and other purposes at the point of diversion and along the irrigating ditches and water conduits to be constructed in connection therewith.

...holes, springs and points of diversion
...in the foregoing notice, by fastening them to a board, driven in the
ground at point of diversions at each pothole or spring.

F. M. Keeler

Subscribed and sworn to before me this the 7th day of November 1921.

(A. J. Lowary)

A. J. Lowary

Notarial Seal)

Notary Public for the State of Montana
Residing at Polson, Montana.

(State of Montana)

My Commission expires July 9th, 1922.

Filed for record at the request of A. J. Lowary, November 9, 1921 at 1¹⁰ P. M.

S. C. Bibee, County Clerk & Recorder By A. C. Hanson, Deputy. Recept. No. 4036.

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Transcribed from Flathead County Records, Water Rights, Book 129, Page 518. ✓ 459

Notice of Appropriation of Water Right.

United States of America:

State of Montana

: ss

No. 238

County of Flathead

To All Whom These Presents May Concern: Be it known that the State of America,
pursuant to the provisions of the act of Congress of March 5, 1909 (35 Stat. 795) and
April 30, 1908 (35 Stat. 85) and under and by virtue of an Act of the Legislative
Assembly of the State of Montana, entitled "an act authorizing the Government of the

5 and 2776
Exhibit No. _____
Page 2 of 5
Project Nos.:
(WRJ-31)

State of Montana)
County of Missoula) ss.

C. J. Moody, having been first duly sworn deposes and says, that he is a citizen of the United States and over the age of twenty-one years, and that he is the person duly authorized by the Secretary of the Interior of the said United States to make the foregoing appropriation and notice thereof in behalf of the said United States, the appropriator and claimant of the water and water right mentioned in the foregoing notice of appropriation, that as such person and agent, he signed the foregoing notice and makes this verification on behalf of the said United States; that he knows the contents of said foregoing notice and that the matters and facts therein stated are true.

C. J. Moody

Subscribed and sworn to before me, this 28th day of January A. D. 1922.

(J. P. Siebeneicher)
(Notarial Seal)
(State of Montana)

J. P. Siebeneicher
Notary Public for the State of Montana,
residing at St. Ignatius, Mont.
My commission expires January 24, 1923.

State of Montana)
County of Missoula) ss.

C. J. Moody, having been first duly sworn, deposes and says that he is a citizen of the United States and over the age of twenty-one years; that on January 28, 1922 he was and is now an employee of the United States; that on said day he posted the above notice at the place named therein; that he knows the contents of the foregoing notice and that the matters and facts contained in the notice are true.

C. J. Moody

Project Manager (Title)

Subscribed and sworn to before me this 30th day of January 1922.

(J. P. Siebeneicher)
(Notarial Seal) (Seal)
(State of Montana)

J. P. Siebeneicher
Notary Public for the State of Montana
Residing at St. Ignatius, Montana.
My commission expires January 24, 1922.

Filed for record February 1, 1922 at 1:35 P. M.

S. C. Bibee, County Clerk & Recorder By P. A. Beebe, Deputy. Recept. No. 448

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Transcribed from Flathead County Records, Water Rights, Book 129, Page 523. ✓

Notice of Appropriation.

Know All Men By These Presents, That the undersigned did, on the tenth day of June, 1922, appropriate and claim, and by these presents do appropriate, and now have a legal right to the use, possession and control of five cubic feet per second of time, legal measurement, of the waters of the outlet of Lake Mary Ronan, which outlet is known as Gardner Creek, and also as Ervin or Irvin, or Ronan Creek, in the County of Flathead, State of Montana, for irrigation and other useful purposes, and did, on the above named date, mark the point of intended diversion by posting thereat a notice of appropriation in a conspicuous place which point of diversion is 2000 feet due east and 660 feet due north of the Southwest corner of the Northwest Quarter of Section Twenty-five, in Township Twenty-five, North, of Range Twenty-two West, K. M.

The said water is claimed and appropriated for domestic, irrigation and other useful and beneficial purposes, and the place of intended use is on Lots one, Two Three and Four of Section Thirty-six, in Township Twenty-five, North, of Range Twenty-two West, and the Southeast Quarter of the Southwest Quarter and the Southwest Quarter of the

Township twenty-five north of Range twenty-two

STATE OF MONTANA }
County of Lake } ss.

I hereby certify that the instrument to which this certificate is affixed is a true, full and correct copy of the recording or filing in the office of the Clerk and Recorder.

Witness my hand and official seal this 17th day of

April, 1984
ETHEL M. HARDING
Clerk and Recorder

By: Larvin Jacobson Deputy

Notice of Appropriation - Flathead River

Page 13

FILING DATE: 3-2-1916 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 196 (Flathead County) C-351

DESCRIPTION: TWP 21 N., RG 20-21 W.

GENERAL PURPOSE:

Irrigating, domestic use and power purposes. A storage and power dam where this notice is posted. A tunnel 12' X 12' leading from dam to power house, also such other dams and tunnels as to fully utilize the water claimed, pumping plants at the Big Rock Rapids and any other suitable points, pipe lines, flumes, reservoirs and canal systems to elevate, convey, store and distribute the water to the lands described, and such other transmission lines hydraulic and electrical apparatus as will fully develop all the power available and convey it to suitable points for pumping and other purposes.

State of Montana.

10¢ rev. stamp attached and cancelled My commission expires July 9th, 1916. Page 2 of 4

Filed for record February 6th, 1916, at 9:10 A. M.

E. J. Green, County Recorder, By J. R. Wotring, Deputy Recpt. No. 454.

Transcribed from Records of Flathead County Book 144-Miscellaneous Page 46

7-7-15

NOTICE OF APPROPRIATION

196

of Water Right.

UNITED STATES OF AMERICA :

State of Montana :

ss.

County of Flathead :

TO ALL WHOM THESE PRESENTS MAY CONCERN: Be it known that the United States of America, pursuant to the provisions of the Acts of Congress of March 3, 1909 (35 Stat. 795) and April 30, 1908 (35 Stat., 85) and under and by virtue of an Act of Legislative Assembly of the State of Montana, entitled: "An Act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, acting by and through E. F. Tabor, Project Manager, U. S. Reclamation Service, thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf does hereby publish and declare as a legal notice to all the world as follows, to-wit:

- 1. That the said United States has a legal right to the use, possession and control of, and claims 100,000 cubic feet per second of time of the waters of Flathead River.
- 2. That the purposes for which said water is claimed are for irrigating, domestic use and power purposes, and the place of use is to irrigate and use said water upon 50,000 acres of land, described as follows, to-wit:

Secs. 2 to 11, 14 to 23, 28 to 30 in T. 21 N. R. 20 W.; 1 to 6, 8 to 11, 13 to 17, 20 to 36 in T. 21 N. R. 21 W.; 1 to 11, 15 to 17 and Sec. 21 T. 20 N. R. 21 W.; 1 to 13, T. 20 N. R. 22 W; Sec. 36 T. 21 N. R. 22 W; 4 to 9, 16 to 19, T. 22 N. R. 19 W.; 1 to 6, 8 to 13, 19, 29 to 32, T. 22 N. R. 20 W; 14, 22 to 36, T. 22 N. R. 21 W; 16, 19 to 21, 28 to 32, 35 to 36, T. 23 N. R. 20 W.

also for domestic use in connection with the said land, and for developing power for pumping and other purposes at the point of diversion and along the irrigating ditches and water conduits to be constructed in connection therewith.

- 3. That the means of diversion, with size of flume, ditch, pipe or aqueduct by means of which it is intended to divert said water is as follows:

A storage and power dam where this notice is posted. A tunnel 12 by 12 feet leading from dam to power house, also such other dams and tunnels as to fully utilize the water claimed, pumping plants at the Big Rock Rapide and any other suitable points; pipe lines, flumes, reservoirs and canal systems to elevate, convey, store and distribute the water to the lands described, and such other transmission lines, hydraulic and electrical apparatus as will fully develop all the power available and convey it to suitable points for pumping and other purposes, which carry and will conduct 100,000 cubic feet of water per second of time from said Flathead River, which said works will divert the water from said stream at a point upon its left bank N. 60 degrees, 50 minutes E. 2300 ft. from the SW corner of Sec. 12, T. 22 N. R. 21 W., MPM and runs thence west to power plant, and from the pumping plants named easterly and southerly, thence over and upon said lands.

4. That the said United States appropriated said water on the 29th day of February, A. D. 1916, and on that day caused a notice of appropriation to be posted in a _____ at the point of diversion hereinbefore described, which said notice stated, among other things:
 - A. Number of cubic feet of water per second claimed as herein set forth.
 - B. The purpose for which the water was claimed and the place of intended use, as hereinbefore described.
 - C. The means of diversion as herein set forth.
 - D. The Date of appropriation, to-wit: The date on which the said notice was posted.
 - E. The Name of the appropriator as herein set forth.
5. That the name of the appropriator of the said water is the United States of America.
6. That the said United States also hereby claims said ditch and the right of way therefor and for said water by it conveyed, or to be conveyed, from said point of diversion and appropriation to said lands or point of final discharge, and also the right of location upon any lands, of any dams, flumes and reservoirs constructed or to be constructed by the said United States in appropriating and using said water.
7. That the United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time and to change the point of diversion and the right to dispose of said right, water, ditch or said appurtenances in part or whole at any time.

Claiming the same all and singular under any and all laws, national or state, and in accordance with the rulings and decisions thereunder in the matter of water rights.

Together with all and singular the hereditaments and appurtenances thereunto belonging and appertaining, or to accrue to the same.

United States of America By E. F. Tabor
 Its Agent in that behalf and thereunto
 duly authorized by the Secretary of
 the Interior of the said United States.

State of Montana)
 County of Missoula) SS

E. F. Tabor, having been first duly sworn deposes and says that he is a citizen of the United States and over the age of twenty one years; and that he is the person duly authorized by the Secretary of the Interior of the said United States to make the foregoing appropriation and notice thereof in behalf of the said United States, the appropriator and claimant of the water and the water right mentioned in the foregoing notice of appropriation; that as such person and agent, he signed the foregoing notice and makes this verification on behalf of the said United States; that he knows the contents of said foregoing notice and that the matters and facts therein stated are true.

E. F. Tabor

Subscribed and sworn to before me this 29th day of February A. D. 1916.

A. P. Morse

A. P. Morse

Notarial Seal

Notary Public for the State of Montana.
 Residing at St. Ignace
 My commission expires 6-6-1917.

State of Montana.

Recorded at request of E. F. Tabor, March 2nd, 1916, at 9:25 A. M.

E. J. Green, County Recorder, By I. G. McCully, Deputy. Recpt. No. 728

STATE OF MONTANA }
County of Lake } ss.

I hereby certify that the instrument to which this certificate is affixed is a true, full and correct copy of the recording or filing in the office of the Clerk and Recorder.

Witness my hand and official seal this 17th day of April 19 84.

ETHEL M. HARDING Clerk and Recorder
Landace Le Miller Deputy

Notice of Appropriation - Flathead River

Page 14

FILING DATE: 1-29-1925 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 238-1 (Lake County) 1-298

DESCRIPTION: TWP'S 20-21-22 N., R6'S 19-20-21-22 W.

GENERAL PURPOSE:

Irrigation, domestic use and power purposes. Storage
dam, etc.

K473

P 298

District }
of } ss.
Columbia }

On this 8th day of January in the year one thousand nine hundred and twenty-five before me James L. McAgnon, a Notary Public in and for the District of Columbia, personally appeared David C. Trott, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year above written.

James L. McAgnon.

Notary Public for the District of Columbia.

Residing at Washington, D.C.

My Commission expires July 14, 1926.

(NOTARIAL SEAL)

Recorded January 20th, A.D. 1925, at 1:55 o'clock P.M.

M. M. Marcy, County Clerk and Recorder.

By Lee Butcher, Deputy.

3451

NOTICE OF APPROPRIATION OF WATER RIGHT.

UNPAID
1/19/25

UNITED STATES OF AMERICA : No. 238-1
STATE OF MONTANA : ss.
County of Lake. :

TO ALL WHOM THESE PRESENTS MAY CONCERN: Be it known that the United States of America, pursuant to the provisions of the Acts of Congress of March 3, 1909 (35 Stat. 795) and April 20, 1908 (35 Stat. 85), and under and by virtue of an act of the Legislative Assembly of the State of Montana, entitled "An Act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions," approved February 27, 1906, acting by and through C. J. Moody, Project Engineer, U. S. Indian Irrigation Service, thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world as follows, to-wit:

1 That the said United States has a legal right to the use, possession, and control of, and claims 100,000 cubic feet per second of time of the waters of Flathead River.

2. That the purpose for which said water is claimed, ^{for} is irrigating, domestic use and power purposes, and the place of use is to irrigate and use said water upon 50,000 acres of land described as follows, to-wit:

- Secs. 2 to 11, 14 to 23, 28 to 30 in T. 21 N., R. 20 W.; 1 to 6, 8 to 11, 13 to 17, 20 to 36 in T. 21 N., R. 21 W.; 1 to 11, 16 to 17 and 21, T. 20 N., R. 21 W.; 1 to 13, T. 20 N., R. 21 W.; Sec. 36, T. 21 N., R. 22 W.; 4 to 9, 16 to 19, T. 22 N., R. 19 W.; 1 to 6, 8 to 13, 19, 29 to 32 T. 22 N., R. 20 W.; 14, 22 to 36 T. 22 N., R. 21 W.; 16, 19 to 21, 28 to 32, 35 to 36, T. 23 N., R. 20 W.

also for domestic use in connection with said land, and for developing power for pumping and other purposes at the point of diversion and along the irrigating ditches and water conduits to be constructed in connection therewith.

3. That the means of diversion, with use of flume, ditch, pipe or aqueduct by which it is intended to divert said waters is as follows:

Storage dam, etc.

which carries and will conduct 100,000 cubic feet of water per second of time from said

Notice of Appropriation - Flathead River

Page 16

FILING DATE: 12-6-1930 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 23630 (Lake County) 4-347

DESCRIPTION: TWP'S 20-21-22 N., RG'S 19-20-21-22 W.

GENERAL PURPOSE:

Irrigating, domestic use and power purposes. Storage
dam.

347

Horsemanship: Not mounted
Battles, engagements, skirmishes, expeditions: None
Knowledge of any vocation: Laborer
Wounds received in service: None
Physical condition when discharged: Mentally deficient.
Typhoid prophylaxis completed October 18/17
Married or single: Single

CHARACTER: _____

Remarks: Discharged per S. C. D. ordered by 4th Ind. Hqs. 91st Div. 1/11/18 on
a/c Mentally deficient, unable to do duties of a soldier,--No A. W. O. L. Soldier
entitled to travel pay.

Signature of soldier: Jonas F. Snyder

Is not recommended for reenlistment.

Issued under Act of Feb. 1919,
the clothing on attached list.
Richard K. Smith
Captain, U. S. Corps.

J. R. Montgomery
Capt. Inf. R. C.
Commanding Co. "B" 362d Inf.

W. Almond Shely
W. Almond Shely
Captain, 21, Infantry,
Asst. Post Supply Office

Filed for record December 6th, 1930 at 9:15 o'clock A. M.

O. H. Peltier, County Clerk and Recorder By Ruth Herreid, Deputy.

23630

COMPARED

NOTICE OF APPROPRIATION OF WATER RIGHT.

UNITED STATES OF AMERICA)
STATE OF MONTANA) SS
County of Lake)

No. 238 -3

TO ALL WHOM THESE PRESENTS MAY CONCERN: Be it known that the United States of America,
pursuant to the provisions of the Acts of Congress of March 3, 1909 (35 Stat. 795) and
April 30, 1908 (35 Stat. 85), and under and by virtue of an Act of the Legislative Assembly
of the State of Montana, entitled: "An Act authorizing the Government of the United States
to appropriate the water of the streams in the State of Montana, subject to certain restric-
tions", approved February 27, 1905, acting by and through C. J. Moody, Project Engineer,
U. S. Indian Irrigation Service, thereunto duly authorized by the Secretary of the Interior
of the said United States in that behalf, does hereby Publish and declare as a legal notice
to all the world as follows, to-wit:

1. That the said United States has a legal right to the use, possession, and control
of, and claims 100,000 cubic feet per second of time of the waters of Flathead River.
2. That the purpose for which said water is claimed is for irrigating, domestic use
and power purposes, and the place of use is to irrigate and use said water upon 50,000
acres of land described as follows, to-wit:

Secs. 2 to 11, 14 to 23, 28 to 30 in Township 21 N., R. 20 West;
1 to 6, 8 to 11, 13 to 17, 20 to 36 in Township 21 N., R. 21 West;
1 to 11, 15 to 17 and 21, Township 20 N., R. 21 West; 1 to 13,
Township 20 N., R. 21 West; Sec. 36, Township 21 N., R. 22 West;
4 to 9, 16 to 19, Township 22 N., R. 19 West; 1 to 6, 8 to 13, 19,
29 to 32, Township 22 N., R. 20 West; 14, 22 to 36 Township 22 N.,

R. 21 West; 16, 19 to 21, 28 to 32, 35 and 36, Township 23 N., R. 20 West, also for domestic use in connection with said land, and for developing power for pumping and other purposes at the point of diversion and along the irrigating ditches and water conduits to be constructed in connection therewith.

3. That the means of diversion, with size of flume, ditch, pipe, or aqueduct by which it is intended to divert said waters is as follows:

Storage dam, etc.

which carries and will conduct 100,000 cubic feet of water per second of time from said Flathead River which said works diverts the water from said stream at a point upon its left bank N. 80°50' E 2300 feet from the SW corner of Sec. 12 T. 22 N., R. 21 W. and runs thence power plant and from the pumping plants thence easterly and southeasterly thence over and upon said lands.

4. That the said United States appropriated said water on the 4th day of December, A. D. 1930, and on that day caused a notice of appropriation to be posted in a conspicuous place at the point of diversion hereinbefore described, which said notice stated, among other things:

- A. Number of cubic feet of water per second claimed as herein set forth;
- B. The purpose for which the water was claimed and the place of intended use, as hereinbefore described;
- C. The means of diversion, as herein set forth;
- D. The date of appropriation, to-wit: the date on which the said notice was posted;
- E. The name of the appropriator as herein set forth.

5. That the name of the appropriator of the said water is the United States of America.

6. That the said United States also hereby claims said ditch and the right of way therefor and for said water by it conveyed, or to be conveyed, from said point of diversion and appropriation to said lands or point of final discharge, and also the right of location upon any lands of dams, flumes, and reservoirs constructed or to be constructed by the said United States in appropriating and using said water.

7. That the United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time and to change the point of diversion and the right to dispose of said right, water, ditch or said appurtenance in part, or whole, at any time.

Claiming the same all and singular under any and all laws, national or state, and in accordance with the rulings and decisions thereunder in the matter of water rights.

Together with all and singular the hereditaments and appurtenances thereunto belonging and appertaining, or to accrue to the same.

UNITED STATES OF AMERICA,

By C. J. Moody

Its agent in that behalf and thereunto duly authorized by the Secretary of the Interior of the said United States.

State of Montana)
County of Lake) ss.

C. J. Moody, having been first duly sworn, deposes and says that he is a citizen of the United States and over the age of twenty-one years; and that he is the person duly authorized by the Secretary of the Interior of the said United States to make the foregoing appropriation and notice thereof in behalf of the said United States, the appropriator and claimant of the water and water right mentioned in the foregoing notice of approp-

340

Notation; that as such person and agent, he signed the foregoing notice and makes this verification on behalf of the said United States; that he knows the contents of said foregoing notice and that the matters and facts therein stated are true.

C. J. Moody

Subscribed and sworn to before me, this 4th day of December, A. D., 1930.

(NOTARY PUBLIC SEAL)
(P. A. FLATTEN) (Notarial Seal)
(STATE OF MONTANA)

P. A. Flatten
Notary Public for the State of Montana
Residing at St. Ignatius
My Commission Expires March 9, 1932.

State of Montana)
)ss.
County of Lake)

C. J. Moody, having been first duly sworn, deposes and says that he is a citizen of the United States and over the age of twenty-one years; that on December 4th, 1930 he was and is now an employee of the United States; that on said day he posted the above notice at the place named therein; that he knows the contents of the foregoing notice and that the matters and facts contained in the notice are true.

C. J. Moody

Project Engineer

(Title)

Subscribed and sworn to before me this 4th day of December, 1930.

(NOTARY PUBLIC SEAL)
(P. A. FLATTEN) (notarial seal)
(STATE OF MONTANA)

P. A. Flatten
Notary Public for the State of Montana
Residing at St. Ignatius
My Commission Expires March 9, 1932

Filed for record December 6th, 1930 at 9:20 o'clock A. M.

O. K. Peltier, County Clerk and Recorder By Ruth Herreid, Deputy.

.....

23637

COMPARED

NOTICE OF APPROPRIATION

STATE OF MONTANA,)
)ss.
County of Lake)

TO ALL WHOM THESE PRESENTS MAY CONCERN:

BE IT KNOWN, That R. S. Vollenwider of Arlee, Montana in said County and State, do hereby publish and declare, as a legal notice to all the world, as follows, to-wit:

I. That he did on 6th day Dec. 1930, appropriate and now has a legal right to the use, possession and control of and claim of all water miner's inches (being _ cubic feet per second of time) of the waters of four springs on the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 32-17-19 in said County and State, for irrigating and other purposes.

II. That the purpose for which said water is claimed, and the place of intended use is Irrigation and domestic use in section thirty two and Thirty one Twp 17 Range 19 west of the Montana Meridian Montana.

III. That the means of diversion, with size of flume, ditch, pipe or aqueduct by which he intends to divert the said water is as follows: A 40 inches inches by ditch which carries and conducts 40 inches of water from said springs which said ditch diverts the water from said stream at a point upon its left bank, and runs thence west and North to the N. E. $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 31 Twp. 17 Range 19 west of the Montana Meridian Montana. to be used for Irrigating purpose. thence over and upon said land (or mining claim,

STATE OF MONTANA }
County of Lake } **CL**

I hereby certify that the instrument to which this certificate is affixed is a true, full and correct copy of the recording or filing in the office of the Clerk and Recorder.

Witness my hand and official seal this 17th day of April, 1984

ETHEL M. HARDING Clerk and Recorder
By: Lavin Jacobson Deputy

Notice of Appropriation - Flathead River

Page 17

FILING DATE: 12-11-1933 AMOUNT: 100,000 C.F.S.

FILING NUMBER: 33966 (Lake County) 5-512

DESCRIPTION: TWP'S. 20-21-22-23 N., RG'S 19-20-21-22 W.

GENERAL PURPOSE:

Irrigating, domestic use and power purposes. A storage
dam, etc.

7512

33966

NOTICE OF APPROPRIATION OF WATER RIGHT

UNITED STATES OF AMERICA :
STATE OF MONTANA : SS
Court of Lake :

No. 238 -4.

TO ALL WHOM THESE PRESENTS MAY CONCERN: Be it known that the United States of America, pursuant to the provisions of the Acts of Congress of March 3, 1909 (35 Stat. 795) and April 30, 1908 (35 Stat. 85), and under and by virtue of an Act of the Legislative Assembly of the State of Montana, entitled: "An Act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, acting by and through Henry Gerharz, Project Engineer, U. S. Indian Irrigation Service, thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world as follows, to-wit:

1. That the said United States has a legal right to the use, possession, and control of, and claims 100,000 cubic feet per second of time of the waters of Flathead River

2. That the purpose for which said water is claimed is for irrigating, domestic use and power purposes, and the place of use is to irrigate and use said water upon 20,000 acres of land described as follows, to-wit:

Secs. 2 to 11, 14 to 23, 28 to 30 in Township 21 N., R. 20 West; 1 to 6, 8 to 11, 13 to 17, 20 to 36 in Township 21 N., R. 21 West; 1 to 11, 15 to 17 and 21, Township 20 N., R. 21 West; 1 to 13, Township 20 N., R. 21 West; Sec. 36, Township 21 N., R. 22 West; 4 to 9, 16 to 19, Township 22 N., R. 19 West; 1 to 6, 8 to 13, 19, 29 to 32, Township 22 N., R. 20 West; 14, 22 to 36 Township 22 N., R. 21 West; 16, 19 to 21, 28 to 32, 35 and 36, Township 23 N., R. 20 West.

also for domestic use in connection with said land, and for developing power for pumping and other purposes at the point of diversion and along the irrigating ditches and water conduits to be constructed in connection therewith.

3. That the means of diversion, with size of flume, ditch, pipe, or aqueduct by which it is intended to divert said waters is as follows:

Storage dam, etc. which carries and will conduct 100,000 cubic feet of water per second of time from said Flathead River which said works diverts the water from said stream at a point upon its left bank N. 80° 50' E. 2300 feet from the SW corner of Sec. 12, T. 22 N., R. 21 W. and runs thence down right and from the pumping plants thence easterly and southeasterly thence over and across said lands.

4. That the said United States appropriated said water on the 4th day of December, A. D., 1933, and on that day caused a notice of appropriation to be posted in a conspicuous place at the point of diversion hereinbefore described, which said notice stated, among other things:

- A. Number of cubic feet of water per second claimed as herein set forth;
- B. The purpose for which the water was claimed and the place of intended use, as hereinbefore described;
- C. The means of diversion, as herein set forth;
- D. The date of appropriation, to-wit: the date on which the said notice

244

5. That the name of the appropriator of the said water is the United States of America.

6. That the said United States also hereby claims said ditch and right of way therefor and for said water by it conveyed, or to be conveyed, from said point of diversion and appropriation to said lands or point of final discharge, and also the location upon any lands of dams, flumes, and reservoirs, constructed or to be constructed by the said United States in appropriating and using said water.

7. That the United States also claims the right to keep in repair to enlarge said means of water appropriation at any time and to change the point of diversion and the right to dispose of said right, water, ditch or said appurtenance in part, or at any time.

Claiming the same all and singular under any and all laws, national and state, and in accordance with the rulings and decisions thereunder in the matter of water rights.

Together with all and singular the hereditaments and appurtenances thereunto belonging and appertaining, or to accrue to the same.

UNITED STATES OF AMERICA,

By Henry Gerharz

Its agent in that behalf and thereunto authorized by the Secretary of the Interior of the said United States.

State of Montana)
County of Lake) ss

Henry Gerharz, having been first duly sworn, deposes and says that he is a citizen of the United States and over the age of twenty-one years; and that he is a person duly authorized by the Secretary of the Interior of the said United States to execute the foregoing appropriation and notice thereof in behalf of the said United States, the appropriator and claimant of the water and water right mentioned in the foregoing notice of appropriation; that as such person and agent, he signed the foregoing notice and made verification on behalf of the said United States; that he knows the contents of said foregoing notice and that the matters and facts therein stated are true.

Henry Gerharz

Subscribed and sworn to before me, this 3rd day of December, A. D. 1936

J K Beckwith

(NOTARY PUBLIC SEAL)
(J. K. BECKWITH)
(STATE OF MONTANA)

Notary Public for the State of Montana,
Residing at St. Ignatius, Montana.
My Commission expires June 5, 1937

State of Montana)
County of Lake) ss.

Henry Gerharz, having been first duly sworn, deposes and says that he is a citizen of the United States and over the age of twenty-one years; that on December 1936 he was and is now an employee of the United States; that on said day he posted the foregoing notice at the place named therein; that he knows the contents of the foregoing notice and that the matters and facts contained in the notice are true.

Henry Gerharz

PROJECT ENGINEER.
(Title)

COMPANED

Chp

Subscribed and sworn to before me this 4th day of December, 1930.

Wm A. Taylor

NOTARY PUBLIC for the State of Montana
Residing at St. Paul, Montana
My Commission expires January 17, 1932

TAYLOR
PUBLIC SEAL

Filed for record December 6th, 1930 at 9:15 o'clock A. M.

O. H. Peltier, County Clerk and Recorder
By Gertrude Newton, Deputy.

ASSIGNMENT OF ROYALTIES AND RENTALS

FOR VALUE RECEIVED, we hereby assign to the Land Bank Commissioner, all

leases and rentals to become due us under a certain oil and gas lease dated March 2, 1921

by W. S. Glenn to C. A. Nitz, and recorded April 9, 1921 in Book 3 of Leases, Page

Montana County, Montana Records, and in Book 4 of Leases, Page 197, Transcribed

of Lake County, Montana.

This assignment is given as additional security to a loan for \$2500.00 to the

Bank Commissioner, dated July 1st, 1926 and any payments made hereunder are to be applied

to loan and when this loan has been paid in full this assignment shall become null

IN WITNESS WHEREOF, we have hereunto set our hands on this 31 day of August,

J H Hudabeth

Gertrude O. Hudabeth

Notarized
Oct. 14 - 1943
Book 5, Page 374

On this 31 day of August, 1930, before me, the undersigned, a Notary Public

State of Montana, personally appeared J. H. Hudabeth and Gertrude O. Hudabeth, husband

known to me to be the persons who executed the foregoing instrument, and whom-

as that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year

STATE OF MONTANA }
County of Lake } ss.

I hereby certify that the instrument to which this certificate is affixed is a true, full and correct copy of the recording or filing in the office of the Clerk and Recorder.

Witness my hand and official seal this 17 day of April, 1984.

ETHEL M. BARDING

Clerk and Recorder

Wilhelmina Laughlin Deputy

United States appropriate the water of the streams in the State of Montana, subject to certain restrictions" approved February 27, 1906, acting by and through C. J. Moody, Project Manager, U. S. Reclamation Service, thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world as follows, to-wit;

1. That the said United States has a legal right to the use, possession, and control of, and claims 100,000 cubic feet per second of time of the waters of Flathead River.

2. That the purpose for which said water is claimed is for irrigating, domestic use and power purposes, and the place of use is to irrigate and use said water upon 50,000 acres of land described as follows, to-wit:

Secs. 2 to 11, 14 to 23, 28 to 36 in T. 21 N., R. 20 W; 1 to 6, 8 to 11, 13 to 17, 20 to 36 T. 21 N. R. 21 W; 1 to 11, 15 to 17 and 21 T. 20 N. R. 21 W; 1 to 13, T. 20 N. R. 21 W, Sec 36 T. 21 N. R. 22 W. 4 to 9, 16 to 19, T. 22 N. R. 19 W.; 1 to 6, 8 to 13, 19, 29 to 32 T. 22 N. R. 20 W; 1 4, 22 to 36 T. 22 N. R 21 W; 16, 19 to 21, 28 to 32, 35 to 36 T. 23 N., R. 20 W. also for domestic use in connection with said land, and for developing power for pumping and other purposes at the point of diversion and along the irrigating ditches and water conduits to be constructed in connection therewith.

3. That the means of diversion, with size of flume, ditch, pipe or aqueduct by which it is intended to divert said waters is as follows:

Storage dam, etc. which carries and will conduct 100,000 cubic feet of water per second of time from said Flathead River which said works diverts the water from said stream at a point upon its left bank, N. 80° 50' E. 2300 feet from the S W corner of Sec 12 T. 22 N. R. 21 W. and runs thence power plant and from the pumping plants thence easterly and southeasterly thence over and upon said lands thence over and upon said lands.

4. That the said United States appropriated said water on the 28th day of January, A. D. 1922, and on that day caused a notice of appropriation to be posted in a conspicuous place at the point of diversion hereinbefore described, which said notice stated, among other things;

- A. Number of cubic feet of water per second claimed as herein set forth.
- B. The purpose for which the water was claimed and the place of intended use, as hereinbefore describe;
- C. The means of diversion, as herein set forth;
- D. The date of appropriation, to-wit; the date on which the said notice was posted;
- E. The name of the appropriator as herein set forth.

5. That the name of the appropriator of the said water is the United States of America.

6. That the said United States also hereby claims said ditch and the right of way therefor and for said water by it conveyed, or to be conveyed, from said point of diversion and appropriation to said lands or point of final discharge, and also the right of location upon any lands of dams, flumes, and reservoirs constructed or to be constructed by the said United States in appropriating and using said water.

7. That the United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time and to change the point of diversion and the right to dispose of said right, water, ditch or said appurtenance in part, or whole, at any time.

Claiming the same all and singular under any and all laws, national or state, and in accordance with the rulings and decisions thereunder in the matter of water rights.

Together with all and singular the hereditaments and appurtenances thereunto belonging and appertaining, or to accrue to the same.

United States of America
By C. J. Moody, Its Agent in that behalf
and thereunto duly authorized by the
Secretary of the Interior of the said

FLATHEAD IRRIGATION PROJECT
Contract With
FLATHEAD IRRIGATION DISTRICT

This agreement made this 14th day of Jan, 1928, in pursuance of the Act of April 23, 1904 (33 Stat., 302), and acts amendatory thereof or supplementary thereto, and especially the act of May 10, 1926 (44 Stat. 464-466) and the Act of January 12, 1927 (44 Stat., 945), and between the United States of America, hereinafter styled the United States, acting by the Secretary of the Interior, and such of the following Irrigation Districts as sign this agreement, i.e., the Flathead Irrigation District, the Mission Irrigation District, and the Jocko Valley Irrigation District, public corporations duly formed under the laws of the State of Montana, their respective successors and assigns,

WITNESSETH:

1. Whereas the said Act of May 10, 1926, entitled "An Act Making Appropriations for the Department of the Interior for the Fiscal Year ending June 30, 1927, and for other purposes," provides among other things, as follows:

For continuing construction, maintenance and operation of the irrigation systems on the Flathead Indian Reservation in Montana, by and under the direction of the Commissioner of Indian Affairs, including the purchase of any necessary rights of property, \$575,000; Provided, That of the total amount herein appropriated not to exceed \$15,000 shall be available for operation and maintenance of the project, the balance to be available for the construction items hereinafter enumerated in not to exceed the following amounts: Pablo Feed Canal enlargement, \$100,000; Moiese Canal enlargement, \$15,000; South Side Jocko Canal, \$40,000; Hubbart Feed Canal, \$7,500; Camas A Canal, \$2,500; continuing construction of Power Plant, \$395,000, of which sum \$15,000 shall be immediately available for additional surveys and preparation of plans; Provided further, That no part of this appropriation, except the \$15,000 herein made immediately available, shall be expended on construction work until an appropriate repayment contract, in form approved

by the Secretary of the Interior, shall have been properly executed by a district or districts organized under State law embracing the lands irrigable under the project, except trust patent Indian lands, which contract, among other things, shall require repayment of all construction costs heretofore or hereafter incurred on behalf of such lands, with provision that the total construction cost on the Camas Division in excess of the amount it would be if based on the per acre construction cost of the Mission Valley Division of the project, shall be held and treated as a deferred obligation to be liquidated as hereinafter provided.

Such contract shall require that the net revenues derived from the operation of the power plant herein appropriated for shall be used to reimburse the United States in the following order: First, to liquidate the cost of the power development; Second, to liquidate payment of the deferred obligation on the Camas Division; Third, to liquidate construction cost on an equal per acre basis on each acre of irrigable land within the entire project; and Fourth, to liquidate operation and maintenance costs within the entire project. Provision shall also be contained therein requiring payment of operation and maintenance charges annually in advance of each irrigation season, and prohibit the granting of a water right to or the use of water by any individual for more than one hundred and sixty acres of land irrigable under constructed works within the project after the Secretary of the Interior shall have issued public notice in accordance with the Act of May 18, 1916 (39 Statutes at Large, pages 123-130): all lands except lands owned by individual Indians at the date of public notice in excess of one hundred sixty acres not disposed of by bona fide sale within two years after said public notice, shall be conveyed in fee to the United States free of encumbrance to again become a part of the public domain under contract between the United States and the individual owners at the appraised price fixed at the instance of the Secretary of the Interior, such amount to be credited in reduction of the construction charge against the land within the project retained by such owner. All lands so conveyed to the United States shall be subject to disposition by the Secretary of the Interior in farm units at the appraised price, to which shall be added such amount as may be necessary to cover any accruals against the land and other costs arising from conditions and requirements prescribed by said Secretary; Provided further, That trust patent Indian lands shall not be subject to the provisions of the law of any District created as herein provided for, but shall, upon the issuance of fee patent therefor, be accorded the same rights and privileges and be subject to the same obligations as other lands within such district or districts: Provided further, That all construction, operation and maintenance costs, except such construction costs on the Camas Division held and treated as a deferred obligation herein provided for, on this project shall be and are hereby made a first lien against all lands within the project, which lien upon any

particular farm unit shall be released by the Secretary of the Interior after the total amount charged against such unit shall have been paid, and a recital of such lien shall be made in any instrument issued prior to such release by the said Secretary. The contracts executed by such District or Districts shall recognize and acknowledge the existence of such lien. Provided further: That pending the issuance of public notice, the construction assessment shall be at the same rate heretofore fixed by the Secretary of the Interior, but upon issuance of public notice the assessment rate shall be $2\frac{1}{2}$ per centum per acre, payable annually, in addition to the net revenues derived from operations of the power plant as hereinbefore provided, of the total unpaid construction costs at the date of said public notice; Provided further: That the public notice above referred to shall be issued by the Secretary of the Interior upon the completion of the construction of the power plant.

2. And whereas the said Act approved January 12, 1927, entitled "An Act making Appropriations for the Department of the Interior for the Fiscal Year ending June 30, 1928, and other purposes," provided, among other things, as follows:

For operation and maintenance, \$25,000 to be immediately available: Provided, That of the unexpended balance of the appropriation for this project for the fiscal year 1927, there is hereby reappropriated and made available for the fiscal years 1927 and 1928 \$40,000 for construction of the South Side Jocko Canal, available when the Jocko Irrigation District shall properly execute an appropriate repayment contract in form approved by the Secretary of the Interior, which contract shall, except as hereinafter provided, conform to the conditions provided for a contract in the appropriation for this project for the fiscal year 1927: Provided further, That of said unexpended balance there is hereby reappropriated and made available for the fiscal years 1927 and 1928 not to exceed the following amounts: Pablo Feed Canal enlargement, \$100,000; Moiese Canal enlargement, \$15,000; Hubbard Feed Canal, \$7,500; Camas A Canal, \$2,500; available when the Flathead Irrigation District shall properly execute an appropriate repayment contract in form approved by the Secretary of the Interior, which contract shall, except as hereinafter provided, conform to the conditions provided for a contract in the appropriation for this project for the fiscal year 1927: And Provided Further, That the remainder of the unexpended balance of the appropriation for this project for the fiscal year 1927 shall at once become available, and remain available for the fiscal years 1927 and 1928, for continuing construction of power plant, when an appropriate repayment contract in form approved by the Secretary of the Interior, and which, except as hereinafter provided

contains the provisions set forth for such a contract in the appropriation for this project for the fiscal year 1927, shall have been executed by a District or Districts organized under State law embracing not less than eighty thousand acres of the lands irrigable under the project: And Provided Further, any contract provided for in this paragraph shall require that the net revenues derived from operation of the power plant shall be used to reimburse the United States in the following order: First, to liquidate the cost of the power development; Second, to liquidate payment of the deferred obligation on the Camas Division; Third, to liquidate construction cost on an equal per acre basis on each acre of irrigable land within the District or districts contracting; and Fourth, to liquidate operation and maintenance costs within such District or Districts.

3. And whereas the United States is and has been constructing an irrigation and power system for the benefit of lands in said Flathead Reservation embraced within its project for that purpose, and has been and is operating the same, and now under said two Acts last mentioned and hereinabove in part quoted, and under such future appropriations as may be made therefor by Congress, contemplates carrying on and completing said system through the aid in part of the Irrigation Districts which are parties hereto, which Districts together embrace all or nearly all of the lands included in said project except trust patent Indian lands, and as to these contemplates their inclusion as and when they shall be patented in fee.

4. And whereas the works of said project already constructed by the United States have not been paid for as yet by the owners of the lands to be benefited, and also certain charges for the operation and maintenance of said works remain unpaid, and it is among the purposes of the formation of the aforesaid districts severally to provide for the payment of all such charges, and all charges of every nature in connection with said project in so far as said project lands are included within the said districts respectively, and otherwise to assist the

United States in carrying on and completing said project.

NOW THEREFORE, in order to carry out the purpose of the aforesaid Acts of Congress and in consideration of the covenants herein contained, it is agreed by each of said Districts signing this contract and by the United States with each of said Districts which sign the same, as follows:

5. Unless and until he shall in the future turn over the management thereof, the Secretary of the Interior shall have control and management of said project and all of the works and rights thereof. He shall distribute the water of said project between said Districts and the lands thereof, and to lands remaining or being placed outside of said Districts, and to lands remaining in said Districts but not designated by him as being assessable thereunder; and he shall, from time to time, fix the duty of water for said lands and all of them, and shall apportion the water between them in times of shortage. He shall have full power to improve and extend the existing works of said project and build new works including pumping plants and either or both a power plant and/or an electric transmission line, and to apportion the cost thereof between the said Districts or otherwise as he shall think equitable and proper, provided only that the limit of costs for any and all of said works, and the construction charges for said project as assessed against each of said Districts and the lands therein shall not exceed those hereinafter provided for or those which hereafter may be agreed upon between the Districts involved and the said Secretary. The Districts executing this contract severally agree to aid the said Secretary and his agents in deciding questions of policy concerning said

project, including those as to construction works, by their advice and recommendations volunteered by them or made at his request.

6. The Secretary of the Interior shall have full power to designate the lands in each of said Districts which shall be subject to construction and other charges on account of said project, and no lands not so designated by him shall be assessed by any of the said Districts therefor; and no lands shall hereafter be included in or excluded from any of said districts without the approval of the Secretary of the Interior, and none of said Districts shall incur any obligation, except for ordinary administrative expenses, without his approval.

7. Trust patent Indian lands, and any other irrigable land on the Flathead Reservation irrigated under said project, embraced within the exterior boundaries of any of said Districts, shall be included in the District within which they are embraced when the fee patent therefor shall issue upon the petition of the owner or owners thereof, and when so included shall enjoy all of the benefits of said Districts and shall be subject to the obligations thereof, and until so included shall bear their proportionate share of construction and operation and maintenance costs as shall be determined by the Secretary of the Interior.

8. The United States retains in full force all obligations and liens of, against or upon all and any lands in said project whether contained in any of said Districts or not, and of and against the owners thereof for construction and operation and maintenance charges, which it has by virtue of any and all laws, contracts or agreements heretofore made, or otherwise, and retains and shall have the full right to enforce the same by shutting off water or otherwise as it

shall see fit.

9. The Secretary of the Interior is hereby authorized and empowered, in so far as the Districts executing this contract may authorize the same, to construct, operate, maintain, improve and extend the power plant authorized by the Act of May 10, 1926, aforesaid, together with such accessory works, including a proper transmission line and pumping plants, as he shall deem proper and concerning which he may be authorized by law to act; or to consent to the licensing by the Federal Power Commission of a corporation or corporations to build, operate and maintain said plant, transmission line or other works or any part thereof, instead of or in connection with his building the same or any part thereof himself; and, in connection with the licensing aforesaid, to permit the use of water and other rights and privileges appropriated or reserved for said project for power purposes, all upon such terms, designed to secure ample and cheap electrical power for pumping water for irrigation and other project purposes, and for sale, and to aid in paying project construction and other charges as contemplated by said quoted statutes, as the said Secretary may deem proper. The Secretary of the Interior is further authorized to purchase any and all sites, rights of way and other rights and privileges needed in carrying out the provisions and purposes covered by this paragraph.

10. Within the limits of cost hereinafter fixed for the several Districts, depending in each instance upon their signing this contract, the United States will make such improvements and extensions of the irrigation system of such project and such power development in

connection with the same as or may be authorized and appropriated for by Congress; but to the extent only that the Secretary of the Interior may determine the same to be feasible and for the best interests of said project and the Districts and lands affected.

11. Construction costs, repayment of which is provided for by this contract, shall embrace all expenses of whatever kind incurred by the United States on account of said project, except the deferred obligations of the Camas Division, and shall include all accruals and unpaid operation and maintenance costs and penalties which Congress may authorize to be consolidated with construction charges, and shall include the cost of labor, material, equipment, engineering, legal work, superintendence, administration, overhead, rights of way, property, electrical energy, and damages of all kinds; and to determine the amount of such costs, the books and records of the United States relating to the Flathead Irrigation Project, subject to the approval of the Secretary of the Interior, shall be accepted as conclusive, and such costs, unless and until greater costs are agreed to by future contracts, shall be limited, within the Flathead Irrigation District, to \$65.00 per acre of land designated by the Secretary of the Interior as irrigable and assessable under said project; within the Jocko Valley Irrigation District to \$40.00 per acre of such land; and within the Mission Irrigation District to \$65.00 per acre of such land; provided, however, that the work proposed to be done within the limits of the costs herein fixed and within appropriations of funds therefore by Congress, shall include the following principal features; for the Camas Division of the project, completion of the Hubbard Feed

This Section of the Contract authorized by District Appropriation Act of 1930

This Section of the Contract authorized by District Appropriation Act of 1930

Canal, enlargement of Dry Fork Reservoir, betterment work on the Camas A. Canal and lateral system; for the Mission Valley Division of the Project, construction of Mission, Kickinghorse, Lower Crow and Twin Reservoirs; completion of the Ninepipe reservoir, enlargement of Tabor and Pablo reservoirs, construction of the Crow Creek Canal, completion of the Dry Creek Lined Canal, and the Ninepipe Feeder Canal, enlargement of the Pablo Feeder Canal and the Loiese Canal, extension of the lateral system to approximately 12,000 acres of land, replacement of wooden structures on laterals, construction of pumping plants, purchase of reservoir sites and power development and transmission lines; and for the Jocko Valley Division of the Project, construction of diversion dam for Jocko Lateral A, replacement of wooden structures on the lateral system, extension of the lateral system, construction of the South Side Jocko Canal, concrete lining for laterals, construction of pumping plant to supplement the gravity water supply for lands under the Revals Creek lateral; provided, however, that said Secretary of the Interior shall not expend on the work to be done within the respective districts any sum in excess of the limitation to be reimbursed as provided for unless and until such district or districts shall by future agreement or agreements provide for the reimbursement of such proposed additional expenditures in excess of said limitations for the respective districts.

12. Within the limit of costs thus fixed, each of said Districts agrees to repay to the United States all construction costs heretofore or hereafter incurred on behalf of lands thus designated within its boundaries, and agrees that the decision of the Secretary of the

Interior as to the proper apportionment of such, and any and all charges between the several districts and between lands within said Districts and lands in said project remaining or being placed outside of said districts, and between trust patent Indian lands and other lands in said project, shall be final; provided, however, that the total construction costs of the Canas Division of said project in excess of the amount it would be if based on the Mission Valley Division of said project, shall be held and treated as a deferred obligation to be liquidated as hereinafter provided, and also that all power revenue received from said project shall be used as hereinafter provided. The net revenues derived from the operation of the power plant or power transmission line, or both, or from the sale of power and from the rentals of power sites or interests therein, and from the rentals of the Newell tunnel and water rights held for power purposes, and from the rentals or revenues derived from power development of any sort made by or on account of said project, shall be used to reimburse the United States in the following order: First, to liquidate the cost of the power development; Second, to liquidate the payment of the deferred obligation on the Canas Division; Third, to liquidate construction cost on an equal per acre basis on each acre of irrigable land within the entire project to the extent that said lands shall be designated by the Secretary of the Interior as subject to the obligation to pay for and be assessed on account of the cost of such power development; and Fourth, to liquidate operation and maintenance costs of lands within said project and obligated and assessable thereunder. Any sum which may be received by the United States in repayment

of its investment of about \$101,000 to build the Jewell tunnel, shall be credited to the United States or to said project as Congress or the Secretary of the Interior shall direct.

13. Payment of operation and maintenance charges shall be made annually in advance of each irrigation season; and no water right shall be granted to, or, (subject to the provisions of paragraph 17 hereof) the use of water permitted (except in the discretion of the Secretary of the Interior or his agents if so authorized by future legislation), by any individual owning more than one hundred sixty acres of land irrigable under construction works within the project after the Secretary of the Interior shall have issued public notice in accordance with the Act of May 18, 1915 (39 Statutes at large, pages 123-140); all lands, except lands owned by individual Indians, at the date of public notice in excess of one hundred sixty acres not disposed of by bona fide sale within two years after said public notice shall be conveyed in fee to the United States free of encumbrance to again become a part of the public domain under contract between the United States and the individual owners at the appraised price fixed at the instance of the Secretary of the Interior, such amount to be credited in reduction of the construction charge against the land within the project retained by such owner, provided, however, that amounts so received in excess of the unpaid construction charges against said remaining lands shall be paid to the individual whose lands are sold.

14. All lands so conveyed to the United States shall be subject to disposition by the Secretary of the Interior in farm units at

the appraised price, to which shall be added such amount as may be necessary to cover any accruals against the land and other costs arising from conditions and requirements prescribed by said Secretary. Trust patent Indian lands shall not be subject to the provisions of the law of any of said districts, but as hereinabove provided, upon the issuance of fee patent therefor if included in the Irrigation District or Districts, shall be accorded the same rights and privileges and be subject to the same obligations as other lands within such District or Districts. All construction, operation and maintenance costs, except such construction costs on the Camas Division held and treated as a deferred obligation herein provided for, on said project, shall be and are hereby made a first lien against all lands within the project, which lien upon any particular farm unit shall be released by the Secretary of the Interior after the total amount charged against such unit shall have been paid, and a recital of such lien shall be made in any instrument issued prior to such release by the said Secretary. The said Districts do hereby recognize and acknowledge the existence of such lien. Pending the issuance of public notice, the construction assessment shall be at the same rate heretofore fixed by the Secretary of the Interior, but upon issuance of public notice, the assessment rate shall be $2\frac{1}{2}$ per centum of the balance unpaid of the construction cost per irrigable acre, payable annually in addition to the net revenue derived from operation of the power plant or derived otherwise from power development as hereinbefore provided, of the total unpaid construction costs against each unit or legal subdivision at the date of said public notice, and payments shall con-

time at that rate until all construction charges and costs incurred after as well as before the issuance of said notice shall have been paid in full. The public notice above referred to shall be issued by the Secretary of the Interior upon completion of the construction of the power plant, or, if said power plant shall not be built by the Secretary of the Interior, said notice shall be issued on November 1st, 1928, or on such other date as may be fixed by law or by the written order of the Secretary of the Interior.

15. Operation and maintenance charges not consolidated with construction charges as hereinabove provided for shall be paid as now provided by law and by rules made or to be made thereunder by the Secretary of the Interior. Operation and Maintenance charges shall be determined and apportioned by the Secretary of the Interior, and in apportioning the same, the said Secretary, if he deems it wise, may make different charges for lands in the different parts of the project, i.e., the Camas Division, the Jocko Division and the Mission Division, or for any part thereof.

16. The Secretary of the Interior shall have full power to refuse to designate as lands to be retained in and be assessable under the said irrigation Districts or any of them, or to enjoy the benefits of lands within said Districts and the future developments of said project and the benefits to be enjoyed under this contract, any lands in excess of one hundred sixty acres, the owners thereof refuse or fail to enter into a contract with the Secretary of the Interior for the disposal of such excess holdings as hereinabove provided for; or any lands the owners of which now claim, decreed or fully or

partially paid-up water rights for, and who refuse or fail to agree by contract with the Secretary of the Interior that their lands shall be brought into or retained in the District within the exterior boundaries of which their lands are or may be included, and shall be subject to all obligations of lands in said District; provided, however, that if the Secretary of the Interior shall find it feasible so to do, he may consent to the admission of such lands upon terms that he deems just and equitable.

17. Each of the said Irrigation Districts promises and agrees that it will levy annual assessments against the lands within its borders, designated by the Secretary of the Interior as assessable as hereinabove provided, in such amounts that the total thereof shall not be less than the aggregate amount of the obligations due or estimated by the Secretary of the Interior or his agents to become due the United States, and from time to time as occasion may require will cause to be done whatever may be legally necessary to be done by it or its officers and agents in order to procure and insure in each year the due assessment, levy and collection of an amount sufficient to discharge all obligations of this contract, and will comply promptly with all the provisions of the laws of the State of Montana for the assessment, levy and collection of taxes necessary to carry out this contract.

18. Pursuant to the provisions of Section 3 of the Act of May 15, 1922 (42 Stat., 541), unentered public lands and entered lands for which no final certificate has been issued, located within the said Districts or any of them are hereby designated as subject to the

provisions of the Act of August 11, 1916 (39 Stat. 506); provided, however, that unentered public lands and vacant unsold school lands, while in that status, shall not be assessed by the Districts or any of them for any purpose.

19. The United States reserves the right to refuse to deliver water to any District or individual landowner, in the event of the default by that District or landowner for a period of more than one year in any payment due the United States under this contract. The provisions of this paragraph are not exclusive, and shall not in any manner hinder the United States from exercising any other remedy to enforce collection of any amount due hereunder.

20. If the Secretary of the Interior shall find any lands within any of said Districts temporarily incapable of successful cultivation under irrigation, on account of seepage, alkaline conditions, or for any other reason, if he thinks proper, he may exempt the land from the payment of construction and operation and maintenance charges, for such lands for a specified period, or until further notice, whereupon the District shall exempt from assessment and levy the lands so specified during the period named. If the Secretary of the Interior shall find any such lands permanently incapable of successful cultivation on account of seepage, alkaline conditions or for any other reason, he may, in his discretion, with the consent of the landowners concerned, contract with the District for severance of the water rights from the same, and for such rights becoming appurtenant to other lands within the District, or to lands which, by appropriate proceedings, are brought within the District. No suspension of any charges

THIS SYSTEM OF RECORDS IS CONTROLLED BY THE DISTRICT ADMINISTRATOR, DISTRICT OF COLUMBIA

shall be made by the District without the consent of the Secretary of the Interior.

21. Title to all works and rights in connection with said project now existing in the United States shall so remain unless and until otherwise provided by law.

22. The proper officials of the Districts, parties hereto, shall have full and free access to the project books and official records of the United States Indian Irrigation Service, so far as they relate to the matters covered by this contract, with the right at any time during office hours to make copies of and from the same; and the representatives of the United States shall have the same right in respect to the books and records of said Districts.

23. There is given and reserved to the Secretary of the Interior the right to make regulations and to modify the same in his discretion, in general harmony, however, with this contract, to the end that the true intent of the law and of this contract shall be carried into full effect.

24. While this contract is in effect no change shall be made in the organization of the Districts or any of them, by consolidation or merger with another district, by proceedings to dissolve, or otherwise, nor as above provided shall lands be excluded from or included in the said Districts, except upon the written assent thereto by the Secretary.

25. The execution of this agreement shall be authorized by the qualified holders of title or evidence of title to lands of the said Districts as provided by law. Thereafter, without delay, the Boards

of Commissioners of the Districts shall levy a special tax or assessment on all the lands of the Districts for the benefit of which said Districts were organized, sufficient in amount to pay all sums agreed in this contract to be paid by the Districts to the United States, and if directed so to do by the Secretary of the Interior shall prosecute a proceeding in court for a judicial confirmation of the organization of the Districts, the making of this agreement, and the confirmation of a special tax or assessment sufficient in amount to carry out the terms and conditions of this agreement. The United States shall not be obligated to make any expenditure hereunder, until a confirmatory judgment in such proceeding shall have been rendered; and, if ground for appeal from such judgment shall have been laid, until decision favorable to the contract shall have been finally made, the Districts shall furnish the United States, for its files, certified copies of all proceedings relating to the organization of the Districts and to the authorization of this agreement.

26. No member of or delegate to Congress, or resident commissioner, after his election or appointment, or either before or after he has qualified and during his continuance in office, and officer, agent or employee of the Government shall be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company, as provided in Section 116 of the Act of Congress approved March 4, 1909 (35 Stat., 1109).

27

28

This agreement shall inure to the benefit of and be binding upon those of the aforesaid Irrigation Districts which execute the same, and their successors and assigns, and the United States and its assigns.

IN WITNESS WHEREOF the parties have hereto signed their names the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
Secretary of the Interior

ATTEST:

Secretary

FLATHEAD IRRIGATION DISTRICT

By _____
President

ATTEST:

Secretary

MISSION IRRIGATION DISTRICT

By _____

ATTEST:

Secretary

JOCKO VALLEY IRRIGATION DISTRICT

By _____

Approved as to form: Dec. 16, 1927.

Assistant Secretary

The execution of this agreement by the Secretary of the Interior is conditioned upon the execution by the Flathead Irrigation District of a supplemental contract complying with the provisions of the amendatory legislation affecting the Flathead project, namely, the Act of March 7, 1928 (45 Stat., 212-213).

Assistant Secretary of the Interior

1 This agreement made this 13th day of NOVEMBER 1934,
2 in pursuance of the Act of April 23, 1904 (33 Stat., 302), and acts
3 amendatory thereof or supplemental thereto, and especially the Act
4 of May 10, 1926 (44 Stat., 464-466); the Act of January 12, 1927 (44
5 Stat., 945); the Act of March 7, 1928 (45 Stat., 212-213), the acts
6 of March 4, 1929 (45 Stat. 1574 and 45 Stat. 1639-1640); the Act of
7 May 14, 1930 (46 Stat. 291), the Act of February 14, 1931 (46 Stat.,
8 1127); the Act of April 22, 1932 (47 Stat., 101), and the Act of
9 February 17, 1933 (47 Stat., 830, 831), and between the United State

10 of America, hereinafter styled the United States, acting by the Sec-
11 retary of the Interior, and the Jocko Valley Irrigation District, a
12 public corporation, duly formed under the laws of the State of
13 Montana, its respective successors and assigns,

14 WITNESSETH:

15 1. Whereas the said Act of May 10, 1926, entitled "An Act
16 making appropriations for the Department of the Interior for the
17 fiscal year ending June 30, 1927, and for other purposes", provides,
18 among other things, as follows:

19 For continuing construction, maintenance, and operation
20 of the irrigation systems on the Flathead Indian Reservation, in
21 Montana, by and under the direction of the Commissioner of Indian
22 Affairs, including the purchase of any necessary rights or property,
23 \$575,000: Provided, That of the total amount herein appropriated
24 not to exceed \$15,000 shall be available for operation and mainten-
25 ance of the project, the balance to be available for the construc-
26 tion items hereinafter enumerated in not to exceed the following
27 amounts: Pablo Feed Canal enlargement, \$100,000; Moiese Canal
28 enlargement, \$15,000; South Side Jocko Canal, \$40,000; Hubbart Fee
29 Canal, \$7,500; Camas A Canal, \$2,500; continuing construction of
30 power plant, \$395,000, of which sum \$15,000 shall be immediately
31 available for additional surveys and preparation of plans: Provided
32 further, That no part of this appropriation, except the \$15,000
33 herein made immediately available, shall be expended on construction

34 work until an appropriate repayment contract, in form approved by
35 the Secretary of the Interior, shall have been properly executed by
36 a district or districts organized under State law embracing the
37 lands irrigable under the project, except trust patent Indian lands,
38 which contract, among other things, shall require repayment of all
39 construction costs heretofore or hereafter incurred on behalf of
40 such lands, with provision that the total construction cost on the
41 Camas Division in excess of the amount it would be if based on the
42 per acre construction cost of the Mission Valley Division of the
43 project, shall be held and treated as a deferred obligation to be
44 liquidated as hereinafter provided. ✓ Such contract shall require
45 that the net-revenues derived from the operation of the power plant
46 herein appropriated for shall be used to reimburse the United States
47 in the following order: First, to liquidate the cost of the power
48 development; second, to liquidate payment of the deferred obliga-
49 tion on the Camas Division; third, to liquidate construction cost
50 on an equal per acre basis on each acre of irrigable land within
51 the entire project; and fourth, to liquidate operation and main-
52 tenance costs within the entire project. ✓ Provision shall also
53 be contained therein requiring payment of operation and maintenance
54 charges annually in advance of each irrigation season and prohibit
55 the granting of a water right to or the use of water by an indi-
vidual for more than one hundred and sixty acres of land irrigable

1 under constructed works within the project after the Secretary of
2 the Interior shall have issued public notice in accordance with the
3 Act of May 18, 1916 (Thirty-ninth Statutes at Large, pages 123-130);
4 all lands, except lands owned by individual Indians, at the date
5 of public notice in excess of one hundred and sixty acres not dis-
6 posed of by bona fide sale within two years after said public no-
7 tice shall be conveyed in fee to the United States free of encum-
8 brance to again become a part of the public domain under contract
9 between the United States and the individual owners at the ap-
10 praised price fixed at the instance of the Secretary of the In-
11 terior, such amount to be credited in reduction of the construc-
12 tion charge against the land within the project retained by such
13 owner. All lands so conveyed to the United States shall be sub-
14 ject to disposition by the Secretary of the Interior in farm units
15 at the appraised price, to which shall be added such amount as may
16 be necessary to cover any accruals against the land and other
17 costs arising from conditions and requirements prescribed by said
18 Secretary;

19 Provided further, That trust patent Indian lands shall not be
20 subject to the provisions of the law of any district created as
21 herein provided for but shall, upon the issuance of fee patent
22 therefor, be accorded the same rights and privileges and be sub-
23 ject to the same obligations as other lands within such district
24 or districts; Provided further, That all construction, operation,
25 and maintenance costs, except such construction costs on the Camas
26 Division held and treated as a deferred obligation herein pro-
27 vided for, on this project shall be, and are hereby, made a first
28 lien against all lands within the project, which lien upon any
29 particular farm unit shall be released by the Secretary of the
30 Interior after the total amount charged against such unit shall
31 have been paid, and a recital of such lien shall be made in any
32 instrument issued prior to such release by the said Secretary.
33 The contracts executed by such district or districts shall recog-
34 nize and acknowledge the existence of such lien; Provided further,
35 That pending the issuance of public notice the construction assess-
36 ment shall be at the same rate heretofore fixed by the Secretary
37 of the Interior, but upon issuance of public notice the assessment
38 rate shall be $2\frac{1}{2}$ per centum per acre, payable annually, in addi-
39 tion to the net revenues derived from operations of the power
40 plant as hereinbefore provided, of the total unpaid construction
41 costs at the date of said public notice; Provided further, That
42 the public notice above referred to shall be issued by the Secre-
43 tary of the Interior upon the completion of the construction of
44 the power plant.

45 2. And whereas the said Act approved January 12, 1927, en-
46 titled "An Act making appropriations for the Department of the
47 Interior for the fiscal year ending June 30, 1928, and for other

48 purposes", provides, among other things, as follows:

49 For operation and maintenance, \$25,000, to be immediately
50 available: Provided, That of the unexpended balance of the ap-
51 propriation for this project for the fiscal year 1927 there is
52 hereby reappropriated and made available for the fiscal years
53 1927 and 1928, \$40,000 for construction of the South Side Jocko
54 Canal, available when the Jocko irrigation district shall properly
55 execute an appropriate repayment contract, in form approved by
56 the Secretary of the Interior, which contract shall, except as
57 hereinafter provided, conform to the conditions provided for a
58 contract in the appropriation for this project for the fiscal
59 year 1927: Provided further, That of said unexpended balance
60 there is hereby reappropriated and made available for the fiscal
61 years 1927 and 1928 not to exceed the following amounts: Pablo
62 Feed Canal enlargement, \$100,000; Moiese Canal enlargement,
63 \$15,000; Hubbart Feed Canal, \$7,500; Camas A Canal, \$2,500; avail-
64 able when the Flathead Irrigation district shall properly execute
65 an appropriate repayment contract, in form approved by the Secre-
66 tary of the Interior, which contract shall, except as hereinafter
67 provided, conform to the conditions provided for a contract in
68 the appropriation for this project for the fiscal year 1927; And

1 Provided Further, That the remainder of the unexpended balance of
2 the appropriation for this project for the fiscal year 1927 shall
3 at once become available, and remain available for the fiscal years
4 1927 and 1928, for continuing construction of power plant when an
5 appropriate repayment contract, in form approved by the Secretary
6 of the Interior, and which, except as hereinafter provided, con-
7 tains the provision set forth for such a contract in the appropria-
8 tion for this project for the fiscal year 1927, shall have been ex-
9 ecuted by a district or districts organized under State law embrac-
10 ing not less than eighty thousand acres of the lands irrigable
11 under the project; And provided further, Any contract provided
12 for in this paragraph shall require that the net revenues derived
13 from operation of the power plant shall be used to reimburse the
14 United States in the following order; First, to liquidate the cost
15 of the power development; second, to liquidate payment of the defer-
16 red obligation on the Camas Division; third, to liquidate construc-
17 tion cost on an equal per acre basis on each acre of irrigable
18 land within the district or districts contracting; and fourth, to
19 liquidate operation and maintenance costs within such district or
20 districts.

21 3. And whereas the said Act approved March 7, 1928, entitled
22 "An Act making appropriations for the Department of the Interior for
23 the fiscal year ending June 30, 1929, and for other purposes",
24 provides, among other things, as follows:

25 Flathead irrigation project, Montana: The unexpended
26 balance of the appropriation for continuing construction of the
27 irrigation system on the Flathead Indian Reservation, Montana, con-
28 tained in the Act of May 10, 1926 (Forty-fourth statutes at large,
29 pages 464-466), as continued available in the Act of January 12,
30 1927 (Forty-fourth Statutes at Large, page 945), shall remain
31 available for the fiscal year 1929, subject to the conditions and
32 provisions of said Acts; Provided, That the unexpended balance of
33 the \$595,000 available for continuation of construction of a
34 power plant may be used, in the discretion of the Secretary of the
35 Interior, for the construction and operation of a power distributing
36 system and for purchase of power for said project but shall be
37 available for that purpose only upon execution of an appropriate
38 repayment contract as provided for in said Acts; Provided further,
39 That the net revenues derived from the operation of such distribu-
40 ting system shall be used to reimburse the United States in the
41 order provided for in said Acts: Provided further, That the Fed-
42 eral Power Commission is authorized in accordance with the Federal
43 Water Power Act and upon terms satisfactory to the Secretary of
44 the Interior, to issue a permit or permits or a license or licenses
45 for the use, for the development of power, of power sites on the
46 Flathead Reservation and of water rights reserved or appropriated
47 for the irrigation projects; Provided further, That rentals from

48 such licenses for use of Indian lands shall be paid the Indians
49 of said reservation as a tribe, which money shall be deposited in
50 the Treasury of the United States to the credit of said Indians
51 and shall draw interest at the rate of 4 per centum; Provided
52 further, That the public notice provided for in the Act of January
53 12, 1927, shall be issued by the Secretary of the Interior upon
54 the 1st day of November 1930; Provided further, That in his dis-
55 cretion the Secretary of the Interior may provide in such repay-
56 ment contracts for covering into construction costs the opera-
57 tion and maintenance charges for the irrigation season of 1928 and
58 all undistributed operation and maintenance cost, and may extend
59 the time for payment of operation and maintenance charges now due
60 and unpaid for such period as in his judgment may be necessary,
61 the charges now due so extended to bear interest payable annually
62 at the rate of 6 per centum per annum until paid, and to contract
63 for the payment of the construction charges now due and unpaid
64 within such terms of years as the Secretary may find to be necessary
65 with interest payable annually at the rate of 6 per centum per
66 annum until paid; Provided further, That not more than \$35,000
67 of said reappropriated balance of \$395,000 shall be immediately

1 available for operation and maintenance, and \$75,000 shall be
2 available for construction of laterals near Ronan upon the execu-
3 tion of appropriate repayment contract as provided for in said Acts.

4 4. And whereas the said Acts approved March 4, 1929, entitled
5 "An Act making appropriations for the Department of the Interior
6 for the fiscal year ending June 30, 1930, and for other purposes",
7 and "An Act making appropriations to supply deficiencies in cer-
8 tain appropriations for the fiscal year ending June 30, 1929, and
9 prior fiscal years, to provide supplemental appropriations for
10 the fiscal years ending June 30, 1929, and June 30, 1930, and for
11 other purposes", respectively, provide, among other things, as
12 follows:

14 The unexpended balance of the appropriation for con-
15 tinuing construction of the irrigation systems on the Flathead
16 Indian Reservation, Montana, contained in the Act of May 10, 1926
17 (44 Stat. pp. 464-466), as continued available in the Act of
18 January 12, 1927 (44 Stat. p. 945), and the Act of March 7, 1928
19 (45 Stat. p. 212), shall remain available for the fiscal year 1930,
20 subject to the reimbursable and other conditions and provisions of
21 said Acts; Provided, That not more than \$10,000 of the unexpended
22 balance of \$395,000 made available by the Act of March 7, 1928
23 (45 Stat. p. 212), for the construction of a power distributing
24 system and for purchase of power, or for construction of power
25 plant, shall be available for operation and maintenance, and
\$40,000 shall be available for construction of laterals near Ronan.

26 Flathead irrigation project, Montana: Not exceeding
27 \$220,000 of the unexpended balance of the appropriation of \$395,000
28 made available by the Interior Department appropriation act for
29 the fiscal year 1929 for the construction and operation of a power-
30 distributing system and for purchase of power for said project,
31 may be used, in the discretion of the Secretary of the Interior,
32 during the fiscal years 1929 and 1930, for the purposes and in the
33 amounts specified, as follows: \$10,000 for betterment work on
34 Camas A Canal; \$25,000 for lateral extensions and replacement of
35 wooden structures in the Mission Valley; \$45,000 for completion
36 of the Dry Creek Canal; \$40,000 for part enlargement of Tabor
37 Reservoir; and \$100,000 for part construction of Kickinghorse Res-
38 ervoir, of which sum not to exceed \$15,000 may be used for class-
39 ification of land in the Flathead Irrigation Project; Provided,
40 That any portion remaining under such unexpended balance (after

41 the diversions hereinbefore made) and applicable during the fiscal
42 years 1929 and 1930 to the construction of power transmission
43 lines and the purchase of power shall be available if and when
44 license for the development of power on the Flathead River shall
45 have been issued by the Federal Power Commission as provided in the
46 Act of March 7, 1928 (45 Stat. pp. 212, 213); Provided Further,
47 That the Secretary of the Interior, in lieu of collecting past-due
48 and unpaid construction charges with interest as provided in the
49 Act of March 7, 1928 (45 Stat. p. 213), shall in determining the
50 construction costs to be fixed in the public notice specified
51 in said Act and in the repayment contract, include the amounts
52 due on account of said past-due construction charges in the con-
53 struction costs chargeable against the respective units or legal
54 subdivisions upon which the same are now a lien; Provided further,
55 That the Federal Power Commission in issuing any permits or li-
56 censes for the development of power or power sites on the Flathead
57 Indian Reservation in the State of Montana, is authorized by the
58 Acts of March 7, 1928 (45 Stat. pp. 212, 213), is hereby authorized
59 and directed to waive payment of the usual administrative fees or
60 commissions charges under existing laws relating to or under regu-
61 lations of said Federal Power Commission in the issuance of any

1 such permits or licenses.

2 5. And whereas the said Act approved May 14, 1930, entitled
3 "An Act making appropriations for the Department of the Interior
4 for the fiscal year ending June 30, 1931 and for other purposes",
5 provides, among other things, as follows:

6 For operation and maintenance of the irrigation systems
7 on the Flathead Indian Reservation, Montana, \$15,000; for continua-
8 tion of construction, Camas A Betterment, \$12,000; to complete
9 construction Kickinghorse Reservoir, \$100,000; Nine Pipe Feed Canal
10 structures, \$15,000; to complete Nine Pipe Reservoir, \$5,000; Twin
11 Reservoir, \$30,000; lateral systems betterment, \$25,000; miscellan-
12 eous engineering surveys and examinations, \$15,000; headquarters
13 buildings, \$15,000; for the construction or purchase of a power
14 distributing system or for construction of a power plant, \$40,000;
15 in all, \$272,000; Provided, That the unexpended balance of the appr-
16 priations for continuing construction of this project now available
17 shall remain available for the fiscal years 1930 and 1931 for such
18 construction of a power plant; Provided further, That in addition
19 to the amounts herein appropriated for such construction of a
20 power plant, the Secretary of the Interior may also enter into con-
21 tracts for the same purposes not exceeding a total of \$200,000,
22 and his action in so doing shall be deemed a contractual obligation
23 of the Federal Government for the payment of the cost thereof and
24 appropriations hereafter made for such purposes shall be considered
25 available for the purpose of discharging the obligation so created;
26 Provided further, That the funds made available herein for contin-
27 uation of construction shall be subject to the reimbursable and
28 other conditions and provisions of said Acts; And provided further,
29 That upon execution by the Jocko and Mission Districts of repayment
30 contracts in pursuance to existing law, the operation and maintenanc
31 charges for those districts for the irrigation season of 1930 shall
32 be covered into construction costs.

33 6. And whereas the said Act approved February 14, 1931, en-
34 titled "An Act making appropriations for the Department of the In-
35 terior for the fiscal year ending June 30, 1932, and for other
36 purposes", provides, among other things, as follows:

37 For operation and maintenance of the irrigation systems
38 on the Flathead Indian Reservation, Montana, \$18,000; for contin-
39 uation of construction, Camas A Betterment \$10,000; beginning con-
40 struction of Lower Crow Reservoir, \$90,000, together with the unex-
41 pended balance of the appropriation for completing the Kicking

42 Horse Reservoir contained in the Interior Department Appropriation
43 Act for the fiscal year 1931; beginning Pablo Reservoir enlargement,
44 \$85,000; lateral systems betterment, \$25,000; miscellaneous engineer-
45 ing, surveys and examinations, \$5,000; purchase of reservoir and
46 camp sites, \$55,000; for the construction or purchase of a power
47 distributing system, \$50,000; in all, \$338,000; Provided, That the
48 unexpended balance of the appropriations for continuing construc-
49 tion of this project now available shall remain available for the
50 fiscal year 1932 for such construction or purchase of a power-dis-
51 tributing system; Provided further, That in addition to the amounts
52 herein appropriated for such construction or purchase of a power-dis-
53 tributing system, the Secretary of the Interior may also enter
54 into contracts for the same purposes not exceeding a total of
55 \$200,000, and his action in so doing shall be deemed a contractual
56 obligation of the Federal Government for the payment of the cost
57 thereof and appropriations hereafter made for such purposes shall
58 be considered available for the purpose of discharging the obliga-
59 tions so created; Provided further, That the funds made available
60 herein for continuation of construction shall be subject to the
61 reimbursable and other conditions and provisions of said Acts;
62 Provided further, That in any district in this project, which has

1 or may hereafter execute a repayment contract in pursuance of
2 existing law, the first payment of construction charges may in the
3 discretion of the Secretary of the Interior be required in the
4 calendar year 1935, but in any event the total repayment of such
5 construction charges shall be required in not more than forty years
6 from the date of public notice heretofore given; And Provided fur-
7 ther, That upon execution by the Jocko and Mission districts of
8 repayment contracts in pursuance to existing law, the operation
9 and maintenance charges for those districts for the irrigation
10 season of 1931 shall be covered into construction costs.

11 7. And whereas the said Act approved April 22, 1932, entitled
12 "An Act making appropriations for the Department of the Interior for
13 the fiscal year ending June 30, 1933, and for other purposes", pro-
14 vides, among other things, as follows:

15 For operation and maintenance of the irrigation systems
16 on the Flathead Indian Reservation, Montana, \$12,000; for continua-
17 tion of construction Camas A betterment, \$2,000; completing con-
18 struction of Lower Crow Reservoir \$135,000, together with the un-
19 expended balance of the appropriations for continuing construction
20 of the Flathead irrigation system contained in the Interior Depart-
21 ment Appropriation Act for the fiscal year 1932; continuing Pablo
22 Reservoir enlargement, \$80,000; lateral systems betterment, \$20,000;
23 miscellaneous engineering, surveys, and examinations, \$5,000; in
24 all, \$254,000; Provided, That the funds made available herein for
25 continuation of construction shall be subject to the reimbursable
26 and other conditions and provisions of said Acts; Provided, further
27 That upon execution by the Jocko district of repayment contract in
28 pursuance to existing law, the operation and maintenance charges
29 for such district for the irrigation season of 1932 shall be cov-
30 ered into construction costs.

31 8. And whereas the said Act approved February 17, 1933, en-
32 titled "An Act making appropriations for the Department of the
33 Interior for the fiscal year ending June 30, 1934, and for other
34 purposes", provides among other things, as follows:

35 For operation and maintenance of the irrigation systems
36 on the Flathead Indian Reservation, Montana, \$12,000; for complet-
37 ing Pablo Reservoir enlargement, \$35,000, to be immediately avail-
38 able; enlargement and improvement of Tabor feed canal, \$22,000;
39 construction of Alder creek and Lost Creek feed canals, \$12,000;
40 purchase of water rights, Mission Creek, \$6,200; continuing con-
41 struction of power distributing system, \$50,000; lateral systems

42 betterment, \$20,000; miscellaneous engineering, surveys, and exam-
43 inations, \$5,000; in all, not to exceed \$152,000, reimbursable;
44 Provided, That the unexpended balance of the appropriation of \$55,000
45 contained in the Interior Department Appropriation Act, fiscal
46 year 1932 (46 Stat. p. 1127), for purchase of sites for reservoirs,
47 construction headquarters and administrative uses, is hereby made
48 available for the same purpose until June 30, 1934; Provided
49 further, That (with the consent of the irrigation districts on
50 the Flathead irrigation project which have executed repayment con-
51 tracts with the United States as required by law) the Secretary
52 of the Interior may modify the terms of such contracts by requir-
53 ing the operation and maintenance charges (not heretofore carried
54 into construction costs and dealt with in the Act of March 7, 1928
55 (45 Stat. pp 212-213) to be paid over the same period of years and
56 in like manner as the construction costs are to be paid under the
57 terms of the public notice issued by such Secretary on November 1,
58 1930, as amended April 20, 1931; Provided further, That the first
59 installment of such operation and maintenance charges shall be due
60 and payable on the same date as the first installment of construc-
61 tion charges is due and payable, where modifications of the con-
62 tracts are made pursuant hereto.

1 9. And whereas the United States is and has been constructing
2 and irrigation and power system for the benefit of lands in said
3 Flathead Reservation embraced within its project for that purpose,
4 and has been and is operating the same, and now under said nine
5 Acts last mentioned and hereinabove in part quoted, and under such
6 future appropriations as may be made therefor by Congress, con-
7 templates carrying on and completing said system through the aid in
8 part of the Jocko Valley Irrigation District which is a party here-
9 to, which District, together with the Flathead and Mission Irriga-
10 tion Districts, embraces all or nearly all of the lands included
11 in said project except trust patent Indian lands, and as to ^{these} ~~these~~
12 contemplates their inclusion as and when they shall be patented in
13 fee.

14. 10. And whereas the works of said project already constructed
15 by the United States have not been paid for as yet by the owners of
16 the lands to be benefited, and also certain charges for the opera-
17 tion and maintenance of said works remain unpaid, and it is among
18 the purposes of the formation of the aforesaid districts, severally,
19 to provide for the payment of all such charges, and all charges of
20 every nature in connection with said project in so far as said
21 project lands are included within the said districts respectively,
22 and otherwise to assist the United States in carrying on and com-
23 pleting said project.

24 NOW THEREFORE, in order to carry out the purpose of the afore-
said Acts of Congress and in consideration of the covenants herein
26 contained, it is agreed by the Jocko Valley Irrigation District and

27 by the United States, as follows:

28 11. Unless and until he shall in the future turn over the
29 management thereof, the Secretary of the Interior shall have con-
30 trol and management of said project and all of the works and rights
31 thereof. He shall distribute the water of said project between
32 said Districts and lands thereof, and to lands remaining or being
33 placed outside of said Districts, and to lands remaining in said
34 Districts but not designated by him as being assessable thereunder;
35 for said lands and all of them, and shall apportion the water
36 in times of shortage. He shall have full power to improve and ex-
37 tend the existing works of said project and build new works includ-

1 ing pumping plants and either or both a power plant and/or an
2 electric transmission line, and to apportion the cost thereof be-
3 tween the said Districts or otherwise as he shall think equitable
4 and proper, provided only that the limit of costs for any and all
5 of said works, and the construction charges for said project as
6 assessed against each of said Districts and the lands therein shall
7 not exceed those hereinafter provided for or those which hereafter
8 may be agreed upon between the Districts involved and the said
9 Secretary. The District executing this contract agrees to aid the
10 said Secretary and his agents in deciding questions of policy con-
11 cerning said project, including those as to construction works, by
12 its advice and recommendations volunteered by it or made at his
13 request.

14 12. The Secretary of the Interior shall have full power to
15 designate the lands in each of said Districts which shall be sub-
16 ject to construction and other charges on account of said project,
17 and no lands not so designated by him shall be assessed by any of
18 the said Districts therefor; and no lands shall hereafter be in-
19 cluded in or excluded from any of said districts without the ap-
20 proval of the Secretary of the Interior, and none of said Districts
21 shall incur any obligation, except for ordinary administrative
22 expenses, without his approval.

23 13. Trust patent Indian lands, and any other irrigable land
24 on the Flathead Reservation irrigated under said project, embraced
25 within the exterior boundaries of any of said Districts, shall be

26 included in the District within which they are embraced when the
27 fee patent therefor shall issue upon the petition of the owner
28 or owners thereof, and when so included shall enjoy all of the
29 benefits of said Districts and shall be subject to the obligations
30 thereof, and until so included shall bear their proportionate
31 share of construction and operation and maintenance costs as shall
32 be determined by the Secretary of the Interior. Fee patent Indian
33 lands embraced within the exterior boundaries of any of said
34 Districts shall, after extinguishment of the Indian title, auto-
35 matically become subject to the district operation and assessments
36 one year after the Indians' interest in the land^{has} terminated,

1 provided in the meantime the owner has not already made application
2 for inclusion of said lands within the District.

3 14. The United States retains in full force all obligations
4 and liens of, against or upon all and any lands in said project
5 whether contained in any of said Districts or not, and of and against
6 the owners thereof for construction and operation and maintenance
7 charges, which it has by ^{virtue} ~~virtue~~ of any and all laws, contracts
8 or agreements heretofore made, or otherwise, and retains and shall
9 have the full right to enforce the same by shutting off water or
10 otherwise as it shall see fit.

11 15. The Secretary of the Interior is hereby authorized and
12 empowered, in so far as the District executing this contract may
13 authorize the same, to construct, operate, maintain, improve and
14 extend the power plant authorized by the Act of May 10, 1926 and
15 supplementary acts aforesaid, or otherwise, together with such
16 necessary works, including a proper transmission line and pumping
17 plants, as he shall deem proper and concerning which he may now
18 or hereafter be authorized to act; or to consent to the licensing
19 by the Federal Power Commission of a corporation or corporations to
20 build, operate and maintain said plant, transmission line or other
21 works or any part thereof, instead of or in connection with his
22 building the same or any part thereof himself; and, in connection
23 with the licensing aforesaid, to permit the use of water and other
24 rights and privileges appropriated or reserved for said project for
25 power purposes, all upon such terms, designed to secure ample and

26 cheap electrical power for pumping water for irrigation and other
27 project purposes, and for sale, and to aid in paying project con-
28 struction and other charges as contemplated by said quoted statutes,
29 as the said Secretary may deem proper. The Secretary of the
30 Interior is further authorized to purchase any and all sites,
31 rights of way and other rights and privileges needed in carrying
32 out the provisions and purposes covered by this paragraph.

33. 16. Within the limits of cost hereinafter fixed for the
34 said District, dependent upon its signing this contract, the United
35 States will make such improvements and extensions of the irrigation
36 system of such project and such power development in connection
with the same as or may be authorized and appropriated for by
38 Congress; but to the extent only that the Secretary of the Interior

1 may determine the same to be feasible and for the best interests of
2 said project and the District and lands affected.

3 17. Construction costs, repayment of which is provided for
4 by this contract, shall embrace all expenses of whatever kind in-
5 curred by the United States on account of the Jocko Valley Division
6 of the Flathead Irrigation Project, except the deferred obligations
7 of the Camas Division, and shall include also accruals and unpaid
8 operation and maintenance costs and penalties which Congress may
9 authorize or has authorized, to be consolidated with construction
10 charges, and shall include the past-due construction charges as
11 provided for in the Act of March 4, 1929, and the cost of labor,
12 material, equipment, engineering, legal work, superintendance, ad-
13 ministration, overhead, rights of way, property, electrical energy,
14 and damages of all kinds, as well as any other proper costs and
15 expenses; and to determine the amount of such costs, the books and
16 records of the United States relating to the Flathead Irrigation
17 Project, subject to the approval of the Secretary of the Interior,
18 shall be accepted as conclusive, and such, costs, unless and until
19 greater costs are agreed to by future contracts, shall be limited,
20 within the Jocko Valley Irrigation District, to \$40.00 per acre
21 of such land designated by the Secretary of the Interior as irrigable
22 and assessable under said project; provided, however, that the work
23 proposed to be done within the limit of cost herein fixed and within
24 appropriations of funds therefor by Congress, shall include the
25 following principal features: for the Jocko Valley Division of

26 the project, purchase of reservoir sites, power development and
27 transmission lines, replacement of wooden structures on the canal
28 and lateral system, extension of the lateral system, construction
29 of the South Side Jocko Canal, concrete lining for laterals, con-
30 struction of pumping plant to supplement the gravity water supply
31 for lands under the Revais Creek Lateral; provided, however, that
32 said Secretary of the Interior shall not expend on the work to be
33 done within the said district any sum in excess of the limitations
34 to be reimbursed as provided for unless and until such district
35 shall by future agreement or agreements provide for the reimburse-
36 ment of such proposed additional expenditures in excess of said
(limitations for such district.

Expenditures hereunder are authorized by
District Engineer, August 1933

"The Jocko Valley Irrigation Project, as authorized by
District Amending Contract of 1933"

1 18. Within the limit of costs thus fixed, the Jocko Valley
2 Irrigation District agrees to repay to the United States all con-
3 struction costs heretofore or hereafter incurred on behalf of
4 lands thus designated within its boundaries, and agrees that the
5 decision of the Secretary of the Interior as to the proper ap-
6 portionment of such, and any and all charges between the said
7 District and between lands within said District and lands in
8 said project remaining or being placed outside of said District,
9 and between trust patent Indian land and other lands in said pro-
10 ject, shall be final; provided, however, that the total construc-
11 tion costs of the Camas Division of said project in excess of
12 the amount it would be if based on the Mission Valley Division
13 of said project, shall be held and treated as a deferred obliga-
14 tion to be liquidated as hereinafter provided, and also that
15 all power revenue except rentals for use of Indian lands under
16 any license or licenses issued in accordance with the Act of March
17 7, 1928, or otherwise provided, which shall be paid to the
18 Indians of said reservation as a tribe as provided for in said
19 Act, or otherwise, received from said project shall be used as
20 hereinafter provided. The net revenues derived from the opera-
21 tion of the power plant or power transmission line, or both, or
22 from the sale of power, and from the rentals of the Newell tunnel
23 and water rights held for power purposes, and from the rentals
24 or revenues derived from power development of any sort made by
25 or on account of said project, exclusive of the above exception,

*This Section of the Contract is superseded by
District Ammulatory Contract of 1930*

26 shall be used to reimburse the United States in the following
27 order: First, to liquidate the cost of the power development;
28 second, to liquidate the payment of the deferred obligation on
29 the Camas Division; third, to liquidate construction cost on an
30 equal per acre basis on each acre of irrigable land within the
31 entire project to the extent that said lands shall be designated
32 by the Secretary of the Interior as subject to the obligation
33 to pay for and be assessed on account of the cost of such power
34 development; and fourth, to liquidate operation and maintenance
35 costs of lands within said project and obligated and assessable
36 thereunder.

19. Payment of operation and maintenance charges shall be
38 made semi-annually in advance of each irrigation season pursuant

1 to orders of the said Secretary; and no water right shall be granted
2 to, or (subject to the provisions of paragraph 27 hereof) the use
3 of water permitted (except in the discretion of the Secretary of
4 the Interior or his agents if so authorized by future legislation),
5 by any individual owning more than one hundred sixty acres of land
6 irrigable under constructed works within the project in accordance
7 with the provisions of the Act of May 10, 1926 (44 Stat. 464, 466)
8 and Acts amendatory and supplementary thereto; all lands, except
9 lands owned by individual Indians, in excess of one hundred sixty
10 acres not disposed of by bona fide sale shall be conveyed in fee
11 to the United States free of encumbrance to again become a part of
12 the public domain under contract between the United States and the
13 individual owners at the appraised price fixed at the instance
14 of the Secretary of the Interior, such amount to be credited in
15 reduction of the construction charge against the land within the
16 project retained by such owner, provided, however, that amounts
17 so received in excess of the unpaid construction charges against
18 said remaining lands shall be paid to the individual whose lands
19 are sold.

20 20. All lands so conveyed to the United States shall be
21 subject to disposition by the Secretary of the Interior in farm
22 units at the appraised price, to which shall be added such amount
23 as may be necessary to cover any accruals against the land and
24 other costs arising from conditions and requirements prescribed
25 by said Secretary. Trust patent Indian lands shall not be sub-
26 ject to the provisions of the State Irrigation district law, but

"This Section amended or corrected by
District Amending Contract of 1937"

27 as hereinabove provided, upon the issuance of fee patent therefor
28 if included in the Irrigation District, shall be accorded the
29 same rights and privileges and be subject to the same obligations
30 as other lands within such District except that such lands as
31 long as title thereto remains in the Indians shall not be subject
32 to construction assessments in the absence of congressional legis-
33 lation modifying the Leavitt Act of July 1, 1932 (47 Stat. 564).
34 All construction, operation and maintenance costs, except such
35 construction costs on the Camas Division held and treated as a
36 deferred obligation herein provided for, on said project, shall
37 be and are hereby made a first lien against all lands within the

1 project, which lien upon any particular farm unit shall be released
2 by the Secretary of the Interior after the total amount charged
3 against such unit shall have been paid, and a recital of such lien
4 shall be made in any instrument issued prior to such release by
5 the said Secretary. The said District does hereby recognize and
6 acknowledge the existence of such lien.

7 21. By virtue of the public notice issued November 1, 1930, as
8 provided for by said Act of March 7, 1928, as amended by supplement-
9 al notice of April 21, 1931, the rate of assessment of the construc-
10 tion charge shall be two and one-half per centum ($2\frac{1}{2}\%$) of the bal-
11 ance unpaid of the construction cost per irrigable acre, payable
12 annually to the United States in two equal semi-annual installments
13 as hereinafter provided, in addition to the net revenue derived
14 from operation of the power plant as hereinbefore provided, of
15 the total unpaid construction costs against each unit or legal sub-
16 division at the date of said public notice, and payments shall
17 continue at that rate until all construction charges and costs
18 incurred after as well as before the issuance of said notice shall
19 have been paid in full. The construction charge shall include all
20 past-due construction charges assessed against such unit or holdings,
21 and in addition shall cover into construction costs all undistribu-
22 ted operation and maintenance cost, all of which costs shall be
23 collected by said District as herein provided.

24 The construction cost of the irrigation systems of the Flathead
irrigation project as of November 1, 1930, set forth in said public

26 notice exclusive of the sum of \$101,685.11, representing the in-
27 vestment in the so-called Newell Tunnel, to which has been added
28 all undistributed operation and maintenance cost as provided in
29 the Act of Congress of March 7, 1928 (45 Stat. 213) is respectively
30 as follows: Jocko Division, \$263,432.18; Mission Valley Division
31 \$4,446,700.10; Camas Division \$1,110,763.36. The total area ul-
32 timately irrigable under the Jocko Division is estimated to be
33 13,500 acres. The annual per acre assessment for construction of
34 the irrigation system on the Jocko Division on said project to
35 November 1, 1930 is determined under said public notice to be
36 \$0.50. The said per acre assessment has been fixed without in-
cluding any portion of the above-named Newell Tunnel investment

1 of \$101,685.11 which sum as provided for under the license issued
2 by the Federal Power Commission to the Rocky Mountain Power Com-
3 pany May 23, 1930, has been reimbursed to the United States by the
4 licensee. The said supplemental public notice recited in the said
5 act of February 17, 1933, provides that the construction cost as
6 of the date of the original public notice, shall be paid within
7 the forty year period provided for by the said original public
8 notice, but that the first installment thereof instead of being
9 payable in 1931 shall be due and payable in 1935 thereby result-
10 ing, as provided for in the supplemental public notice, in the
11 annual per acre rate being increased proportionately so as to
12 distribute the amount that otherwise would have accrued pursuant
13 to said original public notice up to November 1, 1935 over the
14 remaining thirty-five years of the forty year period. Therefore,
15 the seventy semi-annual payments beginning with the year 1935
16 shall be increased proportionately as herein provided and as pro-
17 vided for in said supplemental public notice. After the said
18 seventy semi-annual payments have been made, the 50 cent rate
19 per acre fixed in the original public notice shall thereafter
20 resume and continue until all construction costs incurred sub-
21 sequently to the original public notice have been paid in full.
22 The estimated total area of the Jocko Valley Irrigation System
23 is subject to change from time to time in the discretion of the
24 Secretary of the Interior as surveys to classify project lands
and to determine the irrigable area thereof may indicate to be

26 necessary, and if and when so changed said total per acre con-
27 struction charge will be adjusted accordingly.

28 22. The first annual assessment at the rate hereinabove
29 announced shall be made for the year 1934; the first semi-annual
30 installments thereof shall become due and payable on February 1,
31 1935 and the balance thereof shall become due and payable on
32 August 1, 1935; and such annual assessments shall continue to be
33 levied at said rate and payment thereof shall be made to the
34 United States as herein provided for each and every year follow-
35 ing the year 1935 until the total cost incurred subsequent as
36 well as prior to the date of the issuance of the public notice
37 of November 1, 1930, of the completed irrigation system serving
38 the ultimately irrigable area of the said District, shall have

1 been repaid to the United States in full.

2 23. The time for payment of delinquent operation and mainten-
3 ance assessments or charges including all interest and penalties,
4 assessed against individual farm units and private holdings that
5 accrued prior to December 31, 1928, shall be extended as follows:
6 payment of the total sum including interest and penalties due from
7 each individual landowner shall be made in seventy (70) semi-annual
8 installments with interest on the principal sums only at the rate
9 of 6 per centum per annum, also payable semi-annually, over the
10 same period of years and in like manner as the construction costs
11 are to be paid under the terms of the public notice issued by the
12 Secretary of the Interior on November 1, 1930, as amended and sup-
13 plemented April 20, 1931. Each such semi-annual installment ex-
14 clusive of the 6% interest shall equal as nearly as possible one
15 seventieth (1/70) of the total sum originally due December 31,
16 1928. The first semi-annual installment shall be due and payable
17 on February 1, 1935; the second semi-annual installment shall be
18 due and payable on August 1, 1935; and payment of such semi-
19 annual installments shall continue to be made on February 1 and
20 August 1 of each and every succeeding year until the total sum
21 originally due December 31, 1928, including interest or penalties,
22 with interest at the rate of 6 per centum per annum on the said
23 principal sums as aforesaid, shall be paid in full to the United
24 States.

2 24. Beginning on June 15 of the year immediately following

26 the date of execution of this contract, the United States will
27 furnish the District with a list showing (a) the farm units and
28 separate holdings of private lands within the district upon which
29 there are delinquent water charges and penalties accruing prior to
30 December 31, 1928; (b) the amount of such delinquent charges,
31 penalties and interest accruing prior to December 31, 1928, for
32 each said farm unit or private holding. Beginning on June 15 of
33 the year immediately following the date of execution of this con-
34 tract and continuing on the same date each year thereafter until
35 the total of the delinquent charges of this character shall have
36 been paid in full, the United States will furnish the District on

1 or before June 15 a similar list showing the revised or corrected
2 amounts for each year. The District agrees to levy a sufficient
3 sum to assure the collection of all such sums, and to pay same over
4 to the United States in accordance to and in compliance with cov-
5 enants herein.

6 25. As to delinquent operation and maintenance charges that
7 have accrued after December 31, 1928 and up to the date of execu-
8 tion of this contract, in the event that legislation is enacted
9 to the effect that the time for payment of delinquent operation
10 and maintenance charges may be extended over a period of years by
11 a supplemental contract entered into between the United States and
12 the said Jocko Valley Irrigation District, the District hereby
13 agrees to enforce and make all collections of amounts due under
14 such supplemental contract at the time specified therein, and to
15 turn over such collections to the United States or its properly
16 designated officers. The said Jocko Valley District further agrees
17 that should authority not be granted by Congress authorizing the
18 extension of time in which to pay these delinquencies, the said
19 District will upon request by the United States through its agents,
20 collect ~~these~~ ^{these} delinquencies as required by said agents.

21 26. Operation and maintenance charges not consolidated with
22 construction charges, as hereinabove provided for, and those de-
23 linquent charges, the payment for which has been provided in
24 section 25, shall be paid as now provided or as may be provided
in the future by law and by rules made or to be made thereunder

26 by the Secretary of the Interior. Operation and maintenance
27 charges shall be determined and apportioned by the Secretary of
28 the Interior, and in apportioning the same the said Secretary,
29 if he deems it wise, may make different charges for lands in a
30 different status in various parts of the project.

31 27. The Secretary of the Interior shall have full power to
32 refuse to designate as lands to be retained in and be assessable
33 under the said irrigation district, or to enjoy the benefits of
34 lands within said District and the future developments of said
35 project and the benefits to be enjoyed under this contract, any
36 lands in excess of one hundred sixty acres, the owners of which
37 refuse or fail to sell or enter into a contract with the Secretary
38 of the Interior for the disposal of such excess holdings as here-

1 inabove provided for; or any lands the owners of which now claim,
2 decreed or fully or partially paid-up water rights for, and who
3 refuse or fail to agree by contract with the Secretary of the
4 Interior that their lands shall be brought into or retained in
5 the District within the exterior boundaries of which their lands
6 are or may be included, and shall be subject to all obligations of
7 lands in said District; provided, however, that if the Secretary of
8 the Interior shall find it feasible so to do, he may consent to
9 the admission of such lands upon terms that he deems just and
10 equitable.

11 28. The said Irrigation District promises and agrees that
12 it will levy annual assessments against the lands within its borders,
13 designated by the Secretary of the Interior as assessable as here-
14 inabove provided, in such amounts that the total thereof shall not
15 be less than the aggregate amount of the obligations due or esti-
16 mated by the Secretary of the Interior or his agents to become due
17 the United States, and from time to time as occasion may require
18 will cause to be done whatever may be legally necessary to be done
19 by it or its officers and agents in order to procure and insure
20 in each year the due assessment, levy and collection of an amount
21 sufficient to discharge all obligations of this contract, and
22 will comply promptly with all the provisions of the laws of the
23 State of Montana for the assessment, levy and collection of taxes
24 necessary to carry out this contract.

25 29. Pursuant to the provisions of Section 3 of the Act of May

26 15, 1922 (42 Stat. 451), unentered public lands and entered lands
27 for which no final certificate has been issued, located within the
28 said District, are hereby designated as subject to the provisions
29 of the Act of August 11, 1916 (39 Stat. 506): provided, however,
30 that unentered public lands and vacant unsold state school lands,
31 while in that status, shall not be assessed by the District for
32 any purpose.

33 30. The United States reserves the right to refuse to deliver
34 water to the District or any individual landowner, in the event
35 of the default by the District or landowner for a period of more
36 than one year in any payment due the United States under this con-
tract. The provisions of this paragraph are not exclusive, and

1 shall not in any manner hinder the United States from exercising any
2 other remedy to enforce collection of any amount due hereunder.

3 31. If the Secretary of the Interior shall find any lands with-
4 in the District temporarily incapable of successful cultivation
5 under irrigation, on account of seepage, alkaline conditions, or
6 for any other reason, if he thinks proper, he may exempt the land
7 from the payment of construction and operation and maintenance
8 charges, for such lands for a specified period, or until futher
9 notice, whereupon the District shall exempt from assessment and
10 levy the lands so specified during the period named. If the Sec-
11 retary of the Interior shall find any such lands permanently in-
12 capable of successful cultivation on account of seepage, alkaline
13 conditions or for any other reason, he may in his discretion, with
14 the consent of the landowners concerned, contract with the District
15 for severance of the water rights from the same, and for such
16 rights becoming appurtenant to other lands within the District, or
17 to lands which, by appropriate proceedings, are brought within the
18 District. No suspension of any charges shall be made by the
19 District without the consent of the Secretary of the Interior.

20 32. Title to all works and rights in connection with said
21 project now existing in the United States shall so remain unless
22 and until otherwise provided by law.

23 33. The proper officials of the District, party hereto, shall
24 have full and free access to the project books and official records
25 of the United States Indian Irrigation Service, so far as they

26 relate to the matters covered by this contract, with the right at
27 any time during office hours to make copies of an from the same;
28 and the representatives of the United States shall have the same
29 right in respect to the books and records of said District.

30 34. There is given and reserved to the Secretary of the
31 Interior the right to make regulations and to modify the same
32 in his discretion in general harmony, however, with this contract,
33 to the end that the true intent of the law and of this contract
34 shall be carried into full effect.

35 35. While this contract is in effect no change shall be
36 made in the organization of the District by consolidation or
merger with another district, by proceedings to dissolve, or other-

1 wise, nor as above provided shall lands be excluded from or included
2 in the said District, except upon the written assent thereto by the
3 Secretary.

4 36. The execution of this agreement shall be authorized by
5 the qualified holders of title or evidence of title to lands of the
6 said District as provided by law. Thereafter, without delay, the
7 Board of Commissioners of the District shall levy a special tax or
8 assessment on all the lands of the District for the benefit of which
9 said District was organized, sufficient in amount to pay all sums
10 agreed in this contract to be paid by the District to the United
11 States, and if directed so to do by the Secretary of the Interior
12 shall prosecute a proceeding in court for a judicial confirmation
13 of the organization of the District, the making of this agreement,
14 and the confirmation of a special tax or assessment sufficient in
15 amount to carry out the terms and conditions of this agreement.
16 The United States shall not be obligated to make any expenditure
17 hereunder until a confirmatory judgment in such proceeding shall
18 have been rendered; and, if ground for appeal from such judgment
19 shall have been laid, until decision favorable to the contract
20 shall have been finally made, the District shall furnish the United
21 States, for its files, certified copies of all proceedings relating
22 to the organization of the District and to the authorization of
23 this agreement.

24 37. No member of or delegate to Congress, or resident com-
missioner, after his election or appointment, or either before or

26 after he has qualified and during his continuance in office, and
27 no officer, agent or employee of the Government shall be admitted
28 to any share or part of this contract or agreement, or to any
29 benefit to arise therefrom. Nothing, however, herein contained
30 shall be construed to extend to any incorporated company, where
31 such contract or agreement is made for the general benefit of such
32 incorporation or company, as provided in Section 116 of the Act of
33 Congress approved March 4, 1909 (35 Stat. 1109).

34 This agreement shall inure to the benefit of and be binding

1 upon the aforesaid Irrigation District, its successors and assigns,
2 and the United States and its assigns.

3 IN WITNESS WHEREOF the parties have hereto signed their names
4 the day and year first above written.

THE UNITED STATES OF AMERICA

By (Sgd) OSCAR L. CHAPMAN Feb 25, 1935
Assistant Secretary of the Interior

JOCKO VALLEY IRRIGATION DISTRICT

By (Sgd) H. H. FRANCIS

(Sgd) J. C. RENTFRO

(Sgd) I. C. CHEFFNER

Directors.

ATTEST:

(Sgd) J. C. RENTFRO
Secretary.

Approved as to form: July 26, 1934.

Signed: T. A. Walters
First Assistant Secretary.

1 This Agreement made this 21 day of APRIL 1931
2 in pursuance of the Act of April 23, 1904 (33 Stat. 302), and
3 acts amendatory thereof or supplemental thereto, and especially
4 the Act of May 10, 1926 (44 Stat., 464-466); The Act of January
5 12, 1927 (44 Stat., 945); the Act of March 7, 1928 (45 Stat.,
6 212-213), and the Acts of March 4, 1929 (45 Stat., 1574 and
7 45 Stat., 1639-1640), and between the United States of America
8 hereinafter styled the United States, acting by the Secretary
9 of the Interior, and such of the following Irrigation Districts
10 as sign this Agreement, i.e., the Mission Irrigation District
11 and the Jocko Valley Irrigation District, public corporations
12 duly formed under the laws of the State of Montana, their res-
13 pective successors and assigns.

14. WITNESSETH:

15 1. WHEREAS the said Act of May 10, 1926, entitled "An Act
16 making appropriations for the Department of the Interior for the
17 fiscal year ending June 30, 1927, and for other purposes", pro-
18 vides, among other things as follows:

19 For continuing construction, maintenance, and operation of
20 the irrigation systems on the Flathead Indian Reservation, in
21 Montana, by and under the direction of the Commissioner of
22 Indian Affairs, including the purchase of any necessary rights
23 or property, \$575,000: Provided, That of the total amount
24 herein appropriated not to exceed \$15,000 shall be available
2. for operation and maintenance of the project, the balance to be

26 available for the construction items hereinafter enumerated in
27 not to exceed the following amounts: Pablo Feed Canal enlargement
28 \$100,000; Moiese Canal enlargement, \$15,000; South Side Jocko
29 Canal, \$40,000; Hubbart Feed Canal, \$7,500; Camas A. Canal
30 \$2,500; continuing construction of power plant, \$395,000, of which
31 sum \$15,000 shall be immediately available for additional surveys
32 and preparation of plans; ✓ Provided further, That no part of this

1 appropriation, except the \$15,000 herein made immediately avail-
2 able, shall be expended on construction work until an appropriate
3 Repayment Contract, in form approved by the Secretary of the
4 Interior, shall have been properly executed by a district or
5 Districts organized under State Law embracing the lands irrigable
6 under the project, except Trust Patent Indian Lands, which contract
7 among other things, shall require repayment of all construction
8 costs heretofore or hereafter incurred on behalf of such lands
9 with provision that the total construction cost on the Camas
10 Division in excess of the amount it would be if based on the
11 per acre construction cost of the Mission Valley Division of the
12 Project, shall be held and treated as a deferred obligation to
13 be liquidated as hereinafter provided. Such contract shall
14 require that the net revenues derived from the operation of the
15 power plant herein appropriated for shall be used to reimburse
16 the United States in the following order; First, to liquidate the
17 cost of the power development; second, to liquidate payment
18 of the deferred obligation on the Camas Division; third, to
19 liquidate construction cost on an equal per acre basis on each
20 acre of irrigable land within the entire project; and fourth
21 to liquidate operation and maintenance costs within the entire
22 project. Provision shall also be contained therein requiring
23 payment of operation and maintenance charges annually in advance of
24 each irrigation season and prohibit the granting of a water right
25 to or the use of water by any individual for more than one

26 hundred and sixty acres of land irrigable under constructed works
27 within the project after the Secretary of the Interior shall have
28 issued public notice in accordance with the Act of May 18, 1916
29 (Thirty-ninth Statutes at Large, pages 123-130); all lands, except
30 lands owned by individual Indians at the date of public notice
31 in excess of one hundred and sixty acres not disposed of
32 by bona fide sale within two years after said public notice shall
be conveyed in fee to the United States free of encumbrance to

1 again become a part of the public domain under contract between
2 the United States and the individual owners at the appraised
3 price fixed at the instance of the Secretary of the Interior
4 such amount to be credited in reduction of the construction
5 charge against the land within the project retained by such
6 owner. All lands so conveyed to the United States shall be
7 subject to disposition by the Secretary of the Interior in
8 farm units at the appraised price, to which shall be added such
9 amount as may be necessary to cover any accruals against the
10 land and other costs arising from conditions and requirements
11 prescribed by said Secretary; Provided further, That trust
12 patent Indian lands shall not be subject to the provisions of
13 the law of any district created as herein provided for but
14 shall, upon the issuance of fee patent therefor, be accorded
15 the same rights and privileges and be subject to the same
16 obligations as other lands within such district or districts;
17 Provided further, That all construction, operation and mainte-
18 nance costs, except such construction costs on the Camas
19 Division held and treated as a deferred obligation herein
20 provided for, on this project shall be, and are hereby, made
21 a first lien against all lands within the project, which
22 lien upon any particular farm unit shall be released by the
23 Secretary of the Interior after the total amount charged against
24 such unit shall have been paid, and a recital of such lien shall
25 be made in any instrument issued prior to such release by the

26 said Secretary. The contracts executed by such district or
27 districts shall recognize and acknowledge the existence or
28 such lien: Provided further, That pending the issuance of
29 public notice the construction assessment shall be at the same
30 rate heretofore fixed by the Secretary of the Interior, but
31 upon issuance of public notice the assessment rate shall be
32 $2\frac{1}{2}$ per centum per acre, payable annually, in addition to the net

1. revenues derived from operations of the power plant as
2 hereinbefore provided, of the total unpaid construction costs at
3 the date of said public notice; Provided further, That the
4 public notice above referred to shall be issued by the Secretary
5 of the Interior upon the completion of the construction of the
6 power plant.

7 2. And whereas the said Act approved January 12, 1927,
8 entitled "An Act Making appropriations for the Department of
9 the Interior for the fiscal year ending June 30, 1928, and for
10 other purposes", provided, among other things as follows:

11 For operation and maintenance, \$25,000, to be immediately
12 available; Provided, That of the unexpended balance of the
13 appropriation for this project for the fiscal year 1927 there
14 is hereby reappropriated and made available for the fiscal
15 years 1927 and 1928, \$40,000 for construction of the South Side
16 Jocko Canal, available when the Jocko Irrigation District shall
17 properly execute an appropriate repayment contract, in form
18 approved by the Secretary of the Interior, which contract shall,
19 except as hereinafter provided, conform to the conditions
20 provided for a contract in the appropriation for this project
21 for the fiscal year 1927: Provided further, That of said
22 unexpended balance there is hereby reappropriated and made
23 available for the fiscal years 1927 and 1928 not to exceed the
24 following amounts: Pablo Feed Canal enlargement, \$100,000; Moiese
25 Canal enlargement, \$15,000; Hubbart Feed Canal, \$7,500; Camas

26 A Canal, \$2,500; available when the Flathead Irrigation District
27 shall properly execute an appropriate repayment contract, in
28 form approved by the Secretary of the Interior, which contract
29 shall, except as hereinafter provided, conform to the conditions
30 provided for a contract in the appropriation for this project
31 for the fiscal year 1927; And Provided Further, That the remainder
32 of the unexpended balance of the appropriation for this project
for the fiscal year 1927 shall at once become available

1 and remain available for the fiscal years 1927 and 1928,
2 for continuing construction of power plant when an appropriate
3 repayment contract, in form approved by the Secretary of the
4 Interior, and which, except as hereinafter provided, contains
5 the provision set forth for such a contract in the appropriation
6 for this project for the fiscal year 1927, shall have been executed
7 by a district or districts organized under State law embracing
8 not less than eighty thousand acres of the lands irrigable
9 under the project: And Provided further, Any contract provided
10 for in this paragraph shall require that the net revenues derived
11 from operation of the power plant shall be used to reimburse
12 the United States in the following order: First, to liquidate
13 the cost of the power development; second, to liquidate payment
14 of the deferred obligation on the Camas Division; third, to
15 liquidate construction cost on an equal per acre basis on each
16 acre of irrigable land within the district or districts contracting;
17 and fourth, to liquidate operation and maintenance costs within
18 such district or districts.

19 3. And whereas the said Act approved March 7, 1928, entitled
20 "An Act Making appropriations for the Department of the Interior
21 for the fiscal year ending June 30, 1929, and for other purposes",
22 provides, among other things, as follows:

23 Flathead Irrigation Project, Montana: The unexpended balance
24 of the appropriation for continuing construction of the irrigation
25 systems on the Flathead Indian Reservation, Montana, contained

26 in the Act of May 10, 1926 (Forty-fourth Statutes at Large,
27 pages 464-466), as continued available in the Act of January 12,
28 1927 (forty-fourth Statutes at Large, page 945), shall remain avail-
29 able for the fiscal year 1929, subject to the conditions and provis-
30 -ions of said Acts: Provided, That the unexpended balance of
31 the \$395,000 available for continuation of construction of a power
32 plant may be used, in the discretion of the Secretary of the Interior
for the construction and operation of a power distributing system

1 and for purchase of power for said project but shall be available
2 for that purpose only upon execution of an appropriate repayment
3 contract as provided for in said Acts: Provided further, That the
4 net revenues derived from the operation of such distributing
5 system shall be used to reimburse the United States in the order
6 provided for in said Acts: Provided further, That the Federal
7 Power Commission is authorized in accordance with the Federal
8 Water Power Act and upon terms satisfactory to the Secretary
9 of the Interior, to issue a permit or permits or a license or
10 licenses for the use, for the development of power, or power
11 sites on the Flathead Reservation and of water rights reserved
12 or appropriated for the irrigation projects; Provided further,
13 That rentals from such licenses for use of Indian lands shall be
14 paid the Indians of said reservation as a tribe, which money
15 shall be deposited in the Treasury of the United States to the
16 credit of said Indians, and shall draw interest at the rate of
17 4 per centum: Provided further, That the public notice pro-
18 vided for in the Act of January 12, 1927, shall be issued by the
19 Secretary of the Interior upon the 1st day of November 1930.
20 Provided further, That in his discretion the Secretary of the
21 Interior may provide in such repayment contracts for covering
22 into construction costs the operation and maintenance charges
23 for the irrigation season of 1928 and all undistributed operation
24 and maintenance cost, and may extend the time for payment of
25 operation and maintenance charges now due and unpaid for such

26 period as in his judgment may be necessary, the charges now due
27 so extended to bear interest payable annually at the rate of 6
28 per centum per annum until paid, and to contract for the payment
29 of the construction charges now due and unpaid within such terms
30 of years as the Secretary may find to be necessary with interest
31 payable annually at the rate of 6 per centum per annum until paid:
32 Provided further, That not more than \$35,000 of said reappropriated

1 balance of \$395,000 shall be immediately available for operation and
2 maintenance, and \$75,000 shall be available for construction of
3 laterals near Ronan upon the execution of appropriate repayment
4 contract as provided for in said Acts.

5 4. And Whereas the said Acts approved March 4, 1929, entitled
6 "An Act Making appropriations for the Department of the Interior for
7 the fiscal year ending June 30, 1930, and for other purposes", and
8 "An Act Making appropriations to supply deficiencies in certain
9 appropriations for the fiscal year ending June 30, 1929, and prior
10 fiscal years, to provide supplemental appropriations for the fiscal
11 years ending June 30, 1929, and June 30, 1930, and for other
12 purposes", respectively, provide, among other things, as follows:

13 The unexpended balance of the appropriation for the continuing
14 construction of the irrigation systems on the Flathead Indian Res-
15 ervation, Montana, contained in the Act of May 10, 1926 (44 Stat.,
16 pp. 464-466), as continued available in the Act of January 12, 1927
17 (44 Stat., P. 945), and the Act of March 7, 1928 (45 Stat., P. 212),
18 shall remain available for the fiscal year 1930, subject to the re-
19 imburseable and other conditions and provisions of said Acts:

20 Provided, That not more than \$10,000 of the unexpended balance of
21 \$395,000 made available by the Act of March 7, 1928 (45 Stat., p. 212)
22 for the construction of a power distributing system and for purchase
23 of power, or for construction of power plant, shall be available
24 for operation and maintenance, and \$40,000 shall be available for
2 construction of laterals near Ronan.

26 Flathead Irrigation Project, Montana: Not exceeding \$220,000
27 of the unexpended balance of the appropriation of \$395,000 made
28 available by the Interior Department Appropriation Act for the
29 fiscal year 1929 for the construction and operation of a power
30 distributing system and for purchase of power for said project,
31 may be used, in the discretion of the Secretary of the Interior,
32 during the fiscal years 1929 and 1930 for the purposes and in

1 the amounts specified, as follows: \$10,000, for betterment work
2 on Camas A. Canal; \$25,000, for lateral extensions and replacement
3 of wooden structures in the Mission Valley; \$45,000, for complet-
4 ion of Dry Creek Canal; \$40,000 for part enlargement of Tabor
5 Reservoir; and \$100,000, for part construction of Kickinghorse
6 Reservoir, of which sum not to exceed \$15,000, may be used for
7 classification of land in the Flathead Irrigation Project:
8 Provided, That any portion remaining under such unexpended
9 balance (after the diversions hereinbefore made) and applicable
10 during the fiscal years 1929 and 1930 to the construction of
11 power transmission lines and the purchase of power shall be
12 available if and when license for the development of power on the
13 Flathead River shall have been issued by the Federal Power
14 Commission as provided in the Act of March , 7, 1928 (45 Stat.,
15 pp. 212, 213): Provided further, That the Secretary of the
16 Interior, in lieu of collecting past-due and unpaid construction
17 charges with interest as provided in the Act of March 7, 1928
18 (45 Stat., P. 213), shall, in determining the construction costs
19 to be fixed in the public notice specified in said Act and in the
20 repayment contract, include the amounts due on account of said
21 past-due construction charges in the construction costs,
22 chargeable against the respective units or legal subdivisions upon
23 which the same are now a lien: Provided further, That the Federal
24 Power Commission in issuing any permits or licenses for the
25 development of power or power sites on the Flathead Indian

26 Reservation in the State of Montana, as authorized by the Act of
27 March 7, 1928 (45 Stat., pp. 212-213), is hereby authorized and
28 directed to waive payment of the usual administrative fees or
29 commissions charged under existing laws relating to or under
30 regulations of said Federal Power Commission in the issuance of
31 any such permits or licenses.

1 And Whereas the said Acts approved May 14, 1930, entitled
2 "An Act Making appropriations for the Department of the Interior
3 for fiscal year ending June 30, 1931, and for other purposes",
4 provides, among other things as follows:

5 For operation and maintenance of the irrigation system on
6 the Flathead Indian Reservation, Montana, \$15,000: for contin-
7 uation of construction, Camas A betterment, \$12,000; to complete
8 construction Kicking Horse Reservoir \$100,000; Nine Pipe Feed
9 Canal structures, \$15,000; to complete Nine Pipe Reservoir,
10 \$5,000; Twin Reservoir \$30,000; lateral systems betterment
11 \$25,000; miscellaneous engineering, surveys and examinations
12 \$15,000; headquarters buildings \$15,000; for construction or
13 purchase of a power distributing system or for the construction
14 of a power plant, \$40,000; in all, \$272,000; Provided, That
15 the unexpended balance of the appropriations for continuing
16 construction of this project now available shall remain
17 available for the fiscal years 1930 and 1931 for such construction
18 or purchase of a power-distributing system or for construction of
19 a power plant; Provided further, That in addition to the amounts
20 herein appropriated for such construction or purchase of a
21 power-distributing system or for construction of a power plant, the
22 Secretary of the Interior may also enter into contracts for the
23 same purposes not exceeding a total of \$200,000, and his action in
24 so doing shall be deemed a contractual obligation of the Federal
25 Government for the payment of the cost thereof and appropriations

26 hereafter made for such purposes shall be considered available for
27 the purpose of discharging the obligation so created: Provided
28 further, That the funds made available herein for continuation of
29 construction shall be subject to the reimbursable and other
30 conditions and provisions of said Acts: And Provided Further,
31 That upon execution by the Jocko and Mission Districts of
32 Repayment Contracts in pursuance to existing law, the operation

1 and maintenance charges for those Districts for the Irrigation
2 season of 1930 shall be covered into construction costs.

3 5. And Whereas the United States is and has been constructing
4 an irrigation and power system for the benefit of lands in said
5 Flathead Reservation embraced within its project for that purpose,
6 and has been and is operating the same, and now under said five Acts
7 last mentioned and hereinabove in part quoted, and under
8 such future appropriations as may be made therefor by Congress,
9 contemplates carrying on and completing said system through the
10 aid in part of the Irrigation Districts which are parties hereto,
11 which Districts together, and the Flathead Irrigation District, em-
12 brace all or nearly all of the lands included in said project
13 except trust patent Indian lands, and as to these contemplates
14 their inclusion as and when they shall be patent in fee.

15 6. And Whereas the works of said project already constructed
16 by the United States have not been paid for as yet by the owners,
17 of the lands to be benefited, and also certain charges for the
18 operation and maintenance of said works remain unpaid, and it is
19 among the purposes of the formation of the aforesaid districts
20 severally to provide for the payment of all such charges, and
21 all charges of every nature in connection with said project
22 in so far as said project lands are included within the said
23 districts respectively, and otherwise to assist the United States
24 carrying on and completing said project,

25 NOW THEREFORE, in order to carry out the purpose of the

26 aforesaid Acts of Congress and in consideration of the covenants
27 herein contained, it is agreed by each of said Districts signing
28 this Contract and by the United States with each of said Districts
29 which sign the same, as follows:

30 ✓ 7. Unless and until he shall in the future turn over the
31 management thereof, the Secretary of the Interior shall have
32 control and management of said project and all of the works and

1 rights thereof, he shall distribute the water of said project
2 between said Districts and the lands thereof, and to lands
3 remaining or being placed outside of said Districts, and to
4 lands remaining in said Districts but not designated by him
5 as being assessable thereunder; and he shall, from time to
6 time, fix the duty of water for said lands and all of them, and
7 shall apportion the water between them in times of shortage.
8 He shall have full power to improve and extend the existing works
9 of said project and build new works including pumping plants and
10 either or both a power plant and or an electric transmission line,
11 and to apportion the cost thereof between the said Districts or
12 otherwise as he shall think equitable and proper, provided only
13 that the limit of costs for any and all of said works, and the
14 construction charges for said project as assessed against
15 each of said Districts and the lands there-in shall not exceed
16 those hereinafter provided for or those which hereafter may be
17 agreed upon between the districts involved and the said Secretary.
18 The Districts executing this contract severally agrees to aid
19 the said Secretary and his agents in deciding questions of policy
20 concerning said project, including those as to construction works,
21 by their advice and recommendations volunteered by them or
22 made at his request.

23 8. The Secretary of the Interior shall have full power to
24 designate the lands in each of said Districts which shall be sub-
2. ject to construction and other charges on account of said project,

26 and no lands not so designated by him shall be assessed by any of
27 the said Districts therefor; and no lands shall hereafter be in-
28 cluded in or excluded from any of said Districts without the ap-
29 proval of the Secretary of the Interior, and none of said Districts
30 shall incur any obligations, except for ordinary administrative ex-
31 penses, without his approval.

32 9. Trust patent Indian lands, and any other irrigable land

1 on the Flathead Reservation irrigated under said project, embraced
2 within the exterior boundaries of any of said Districts, shall be
3 included in the District within which they are embraced when the
4 fee patent therefor shall issue upon the petition of the owner or
5 owners thereof, and when so included shall enjoy all of the benefits
6 of said Districts and shall be subject to the obligations thereof,
7 and until so included shall bear their proportionate share of con-
8 struction and operation and maintenance costs as shall be determined
9 by the Secretary of the Interior. Fee patent Indian lands embraced
10 within the exterior boundaries of any of said Districts shall,
11 after extinguishment of the Indian title, automatically become sub-
12 ject to the district operation and assessments one year after the
13 Indian's interest in the land has terminated, provided in the
14 meantime the owner has not already made application for inclusion
15 of said lands within the district.

16. 10. The United States retains in full force all obligations
17 and liens of, against or upon all and any lands in said project
18 whether contained in any of said Districts or not, and of and
19 against the owners thereof for construction and operation and main-
20 tenance charges, which it has by virtue of any and all laws, con-
21 tracts or agreements hereto fore made, or otherwise, and retains
22 and shall have the full right to enforce the same by shutting off
23 water or otherwise as it shall see fit.

24 11. The Secretary of the Interior is hereby authorized and
25 empowered, in so far as the Districts executing this contract may

26. authorize the same, to construct, operate, maintain, improve and
27 extend the power plant authorized by the Act of May 10, 1926 and
28 supplementary acts aforesaid, together with such necessary works,
29 including a proper transmission line and pumping plants, as he shall
30 deem proper and concerning which he may be authorized by law to act;
31 or to consent to the licensing by the Federal Power Commission of a
32 corporation or corporations to build, operate and maintain said

1 plant, transmission line or other works or any part thereof,
2 instead of or in connection with his building the same or any part
3 thereof himself; and, in connection with the licensing aforesaid,
4 to permit the use of water and other rights and privileges appro-
5 priated or reserved for said project for power purposes, all upon
6 such terms, designed to secure ample and cheap electrical power for
7 pumping water for irrigation and other project purposes, and for
8 sale, and to said in paying project construction and other charges
9 as contemplated by said quoted statutes, as the said Secretary may
10 deem proper. The Secretary of the Interior is further authorized
11 to purchase any and all sites, rights of way and other rights and
12 privileges needed in carrying out the provisions and purposes
13 covered by this paragraph.

14 12. Within the limits of cost hereinafter fixed for the said
15 Districts, depending in each instance upon their signing this con-
16 tract, the United States will make such improvements and extensions
17 of the irrigation system of such project and such power development
18 in connection with the same as or may be authorized and appropriated
19 for by Congress; but to the extent only that the Secretary of the
20 Interior may determine the same to be feasible and for the best in-
21 terests of said project and the Districts and lands affected.

22 13. Construction costs, repayment of which is provided for by
23 this contract, shall embrace all expenses of whatever kind incurred
24 by the United States on account of said project, except the deferred
25 obligations of the Camas Division, and shall include all accruals.

Amended by
of May 16, 1951

~~This Section amended or superseded by
District Amending Contract of 1931~~

26 and unpaid operation and maintenance costs and penalties which
27 Congress may authorize to be consolidated with construction charges,
28 including operation and maintenance charges for the 1930 irrigation
29 season provided Congress so authorized, and shall include the past-
30 due construction charges as provided for in the Act of March 4, 1929,
31 and the cost of labor, material, equipment, engineering, legal
32 work, superintendence, administration, overhead, rights of way,
property, electrical energy, and damages of all kinds, as well as

~~This Section amended or superseded by
District Amending Contract of 1931~~

"This Section amended or superseded by
District Ammendatory Contract of 1951"

1 any other proper costs and expenses; and to determine the amount
2 of such costs, the books and records of the United States relating
3 to the Flathead Irrigation Project, subject to the approval of the
4 Secretary of the Interior, shall be accepted as conclusive, and
5 such costs, unless and until greater costs are agreed to by future
6 contracts, shall be limited, within the Flathead Irrigation District
7 to \$65.00 per acre of land designated by the Secretary of the Interior
8 as irrigable and assessable under said project; within the Jocko
9 Valley Irrigation District to \$40.00 per acre of such land; and with-
10 in the Mission Irrigation District to \$65.00 per acre of such land;
11 provided, however, that the work proposed to be done within the limits
12 of the costs herein fixed and within appropriations of funds therefor
13 by Congress, shall include the following principal features; for the
14 Camas Division of the Project, completion of the Hubbart Feed Canal,
15 enlargement of Dry Fork Reservoir, betterment work on the Camas A
16 canal and lateral system; for the Mission Valley Division of the
17 project, construction of Mission, Kickinghorse, Lower Crow and Twin
18 Reservoirs; completion of the Ninepipe Reservoir, enlargement of
19 Tabor and Pablo reservoirs, construction of the Crow Creek Canal, com-
20 pletion of the Dry Creek Canal, and the Ninepipe Feed Canal, enlarge-
21 ment of the Pablo Feed Canal and the Moiese A Canal, extension of the
22 lateral system to approximately 12,000 acres of land, replacement
23 of wooden structures on laterals, construction of pumping plants,
24 purchase of reservoir sites and power development and transmission
25 lines; and for the Jocko Valley Division of the Project, construction

"This Section amended or superseded by
District Amending Contract of 1931"

26 of diversion dam for Jocko Lateral K, replacement of wooden
27 structures on the lateral system, extension of the lateral system,
28 construction of the South Side Jocko Canal, concrete lining for,
29 laterals, construction of pumping plant to supplement the gravity
30 water supply for lands under the Revais Creek lateral; Provided, however
31 that said Secretary of the Interior shall not expend on the work to be
32 done within the respective districts any sum in excess of the

"This Section amended or superseded by
District Amending Contract of 1931"

1 limitation to be reimbursed as provided for unless and until such
2 district or districts shall by future agreement or agreements, pro-
3 vide for the reimbursement of such proposed additional
4 expenditures in excess of said limitations for the respective
5 districts.

6 14. Within the limit of costs thus fixed, each of said Dis-
7 tricts agrees to repay to the United States all construction costs
8 heretofore or hereafter incurred on behalf of lands thus designated
9 within its boundaries, and agrees that the decision of the
10 Secretary of the Interior as to the proper apportionment of such,
11 and any and all charges between the said districts and between
12 lands within said Districts and lands in said project remaining
13 or being placed outside of said districts, and between trust patent
14 Indian land and other lands in said project, shall be final;
15 provided, however, that the total construction costs of the
16 Camas Division of said project in excess of the amount it would be
17 if based on the Mission Valley Division of said project, shall
18 be held and treated as a deferred obligation to be liquidated as
19 hereinafter provided, and also that all power revenues except rent-
20 als for use of Indian lands under any license or licenses issued in
21 accordance to the Act of March 7, 1928, which shall be paid to
22 the Indians of said reservation as a tribe as provided for in
23 said act, received from said project shall be used as hereinafter
24 provided. The net revenues derived from the operation of the
2 power plant or power transmission line, or both, or from the

"This Section amended or superseded by
District Amenity Contract of 1951"

26 sale of power, and from the rentals of the Newell Tunnel and
27 water rights held for power purposes, and from the rentals or rev-
28 enues derived from power development of any sort made by or on ac-
29 count of said Project, exclusive of the above exception, shall be
30 used to reimburse the United States in the following order; First,
31 to liquidate the cost of the power development; Second, to
32 liquidate the payment of the deferred obligation on the Camas

"This Section amended or superseded by
District Amenity Contract of 1951"

1 Division; third, to liquidate construction cost on an equal per acre
2 basis on each acre of irrigable land within the entire project
3 to the extent that said lands shall be designated by the Secretary
4 of the Interior as subject to the obligation to pay for and
5 be assessed on account of the cost of such power development;
6 and fourth, to liquidate operation and maintenance costs of lands
7 within said project and obligated and assessable thereunder. Any
8 sum which may be received by the United States in repayment
9 of its investment of about \$101,000 to build the Newell Tunnel,
10 shall be credited to the United States or to said project as
11 Congress or the Secretary of the Interior shall direct.

12 15. Payment of operation and maintenance charges shall be
13 made annually in advance of each irrigation season; and no water
14 right shall be granted to, or (subject to the provisions of para-
15 graph 21 hereof) the use of water permitted (except in the discre-
16 tion of the Secretary of the Interior or his agents if no author-
17 ized by future legislation, by any individual owning more than one
18 hundred sixty acres of land irrigable under construction works
19 within the project after the Secretary of the Interior shall have
20 issued public notice in accordance with the Act of May 18, 1916
21 (39 Statutes at Large, pages 123-140); all lands, except lands
22 owned by individual Indians, at the date of public notice in excess
23 of one hundred sixty acres not disposed of by bona fide sale within
24 two years after said public notice shall be conveyed in fee to the
25 United States free of encumbrance to again become a part of the

26 public domain under contract between the United States and the
27 individual owners at the appraised price fixed at the instance of
28 the Secretary of the Interior, such amount to be credited in re-
29 duction of the construction charge against the land within the
30 project retained by such owner, provided, however, that amounts so
31 received in excess of the unpaid construction charges against said
32 remaining lands shall be paid to the individual whose lands are sold.

"This Section amended or superseded by
District Amending Contract of 1937"

1 16. All lands so conveyed to the United States shall be sub-
2 ject to disposition by the Secretary of the Interior in farm units
3 at the appraised price, to which shall be added such amount and may
4 be necessary to cover any accruals against the land and other
5 costs arising from conditions and requirements prescribed by said
6 Secretary. Trust patent Indian lands shall not be subject to the
7 provisions of the law of any of said districts, but as hereinabove
8 provided, upon the issuance of fee patent therefor if included in the
9 Irrigation District of Districts, shall be accorded the same rights
10 and privileges and be subject to the same obligations as other
11 lands within such District or Districts. All construction, operation
12 and maintenance costs, except such construction costs on the
13 Camas Division held and treated as a deferred obligation herein
14 provided for, on said project, shall be and are hereby made a first
15 lien against all lands within the project, which lien upon any
16 particular farm unit shall be released by the Secretary of the Inter-
17 ior after the total amount charged against such unit shall have
18 been paid, and a recital of such lien shall be made in any instru-
19 ment issued prior to such release by the said secretary. The said
20 Districts do hereby recognize and acknowledge the existence of
21 such lien. Pending the issuance of public notice, the construction
22 assessment shall be at the same rate heretofore fixed by the
23 Secretary of the Interior, but upon issuance of public notice, the
24 assessment rate shall be 2½ per centum of the balance unpaid of the
25 construction cost per irrigable acre, payable annually in addition

"This Section amended or superseded by
District Amending Contract of 1951"

26 to the net revenue derived from operation of the power plant or de-
27 rived otherwise from power development as hereinbefore provided,
28 of the total unpaid construction costs against each unit or legal
29 subdivision at the date of said public notice, and payments shall
30 continue at that rate until all construction charges and costs
31 incurred after as well as before the issuance of said notice shall
32 have been paid in full. The public notice above referred to shall

"This Section amended or superseded by
District Amending Contract of 1951"

1 be issued by the Secretary of the Interior upon completion of the
2 construction of the power plant, or, if said power plant shall
3 not be built by the Secretary of the Interior, said notice shall
4 be issued on November 1st, 1930 as provided for by said Act of
5 March 7, 1928, or on such other date as may be hereafter fixed
6 by law or by written order of the Secretary of the Interior.

7 And as provided in said Acts of March 7, 1928 and March 4, 1929,
8 said public notice shall include, in the total construction cost
9 chargeable against any individual farm unit or private holdings,
10 all past-due construction charges assessed against such unit or
11 holdings, and in addition shall cover into construction costs
12 the operation and maintenance assessments for 1930 irrigation
13 season, provided the same may be authorized by law, and all
14 undistributed operation and maintenance cost, all of which cost
15 shall be collected by said Districts as herein provided.

16 17. The payment of delinquent operation and maintenance
17 assessments or charges, including all interest and penalties as-
18 sessed against individual farm units and private holdings, that
19 accrued prior to December 31, 1930, is hereby extended to June 30,
20 1934. The principal sum thus extended as and of the date of
21 December 31, 1930, shall bear interest in lieu of the then existing
22 interest or penalties at the rate of 6 per centum per annum until
23 paid. On all such delinquent charges, exclusive of accrued penal-
24 ties or interest so extended the District shall assess sufficient
25 additional sum over and above other assessments against the lands

"This Section amended or superseded by
District Amending Contract of 1931"

26 on which such charges have been extended to assure payment annually
27 of the interest herein provided for, the payments thereof to be
28 made to the United States as other payments due to the United
29 States by the District. On July 9, 1934, the District shall
30 assess, in addition to other assessments including the 6 per cent
31 interest, against the lands on which the operation and maintenance
32 obligations have been extended, as sum equal to 20 per cent of
all such charges hereby extended, including principal, interest and

"This Section amended or superseded by
District Amending Contract of 1931"

Approved by the Board of Directors
District No. 12345
Contract of 1931

1 penalties which shall be in addition to the current assessments
2 levied against the land, and each year thereafter a similar as-
3 sessment shall be levied by the District against all lands on
4 which extension of time has been granted herein until the
5 total back indebtedness due the United States shall have
6 been paid.

7 18. On or before June 15, 1931, the United States will fur-
8 nish the Districts with a list showing (a) the farm units and
9 separate holdings of private lands within the District upon
10 which there are delinquent water charges for 1929 or previous
11 years; (b) the amount of such delinquent charges for each of
12 said farm units or private holdings, and (c) the amount of penalty
13 and interest thereon to December 31, 1930. Beginning with the
14 year 1934, and continuing each year thereafter until the total of
15 the delinquent charges of this character shall have been paid in
16 full., the United States will furnish the Districts on or before
17 June 15 each year a similar list showing the revised or
18 corrected amounts for each year. On or before June 15 of each
19 year, beginning with 1931 and up to and including the year 1933,
20 the United States will furnish the Districts with a list showing the
21 of interests and penalties due and payable on these deferred
22 obligations. The Districts agree to levy a sufficient sum to
23 assure the collection of all such sum, and to pay same over to
24 the United States in accordance to and in compliance with
25 covenants herein.

26 19. Operation and maintenance charges not consolidated with
27 construction charges as hereinabove provided for shall be paid as
28 now provided by law and by rules made or to be made thereunder by
29 the Secretary of the Interior. Operation and maintenance charges
30 shall be determined and apportioned by the Secretary of the
31 Interior, and in apportioning the same the said Secretary, if he
32 deems it wise, may make different charges for lands in the
different parts of the project, i.e. the Camas Division, the Jocko

1 Division and the Mission Division, or for any part thereof.

2 20. The Secretary of the Interior shall have full power to
3 refuse to designate an lands to be retained in and by assessable
4 under the said irrigation districts or any of them, or to enjoy
5 the benefits of lands within said Districts and the future develop-
6 ments of said project and the benefits to be enjoyed under this
7 contract, any lands in excess of one hundred sixty acres, the
8 owners thereof refuse or fail to enter into a contract with the
9 Secretary of the Interior for the disposal of such excess holdings
10 as hereinabove provided for; or any lands the owners of which now
11 claim, decreed or fully or partially paid-up water rights for, and
12 who refuse or fail to agree by contract with the Secretary of the
13 Interior that their lands shall be brought into or retained in the
14 District within the exterior boundaries of which their lands are or
15 may be included, and shall be subject to all obligations of lands
16 in said District; provided, however, that if the Secretary of the
17 Interior shall find it feasible so to do, he may consent to the
18 admission of such lands upon terms that he deems just and equitable.

19 21. Each of the said Irrigation Districts promises and agrees
20 that it will levy annual assessments against the lands within its
21 borders, designated by the Secretary of the Interior as assessable as
22 hereinabove provided, in such amounts that the total thereof shall
23 not be less than the aggregate amount of the obligations due or
24 estimated by the Secretary of the Interior or his agents to become
25 due the United States, and from time to time as occasion may re-

26 quire will cause to be done whatever may be legally necessary to be
27 done by it or its officers and agents in order to procure and insure
28 in each year the due assessment, levy and collection of an amount
29 sufficient to discharge all obligations of this contract, and will
30 comply promptly with all the provisions of the laws of the State
31 of Montana for the assessment, levy and collection of taxes necessary
32 to carry out this contract.

22. Pursuant to the provisions of Section 3 of the Act of

1 May 15, 1922 (42 Stat., 541), unentered public lands and entered
2 lands for which no final certificate has been issued, located
3 within the said Districts or any of them are hereby designated as
4 subject to the provisions of the Act of August 11, 1916 (39 Stat.,
5 506): provided, however, that unentered public lands and vacant
6 unsold state school lands, while in that status, shall not be
7 assessed by the Districts or any of them for any purpose.

8 23. The United States reserves the right to refuse to de-
9 liver water to any District or individual landowner, in the event
10 of the default by that District or landowner for a period of more
11 than one year in any payment due the United States under this
12 contract. The provisions of this paragraph are not exclusive, and
13 shall not in any manner hinder the United States from exercising
14 any other remedy to enforce collection of any amount due hereunder.

15 24. If the Secretary of the Interior shall find any lands
16 within any of said Districts temporarily incapable of successful
17 cultivation under irrigation, on account of seepage, alkaline
18 conditions, or for any other reason, if he thinks proper, he
19 may exempt the land from the payment of construction and operation
20 and maintenance charges, for such lands for a specified period, or
21 until further notice, whereupon the District shall exempt from
22 assessment and levy the lands so specified during the period named.
23 If the Secretary of the Interior shall find any such lands perman-
24 ently incapable of successful cultivation on account of seepage,
2 alkaline conditions or for any other reason, he may in his discre-

This section amended or superseded by
District Amending Contract of 1951"

26 tion, with the consent of the landowners concerned, contract
27 with the District for severance of the water rights from the same,
28 and for such rights becoming appurtenant to other lands within
29 the District, or to lands which, by appropriate proceedings, are
30 brought within the District. No suspension of any charges shall
31 be made by the District without the consent of the Secretary of
32 the Interior.

This section amended or superseded by
District Amending Contract of 1951"

1 25. Title to all works and rights in connection with said
2 project now existing in the United States shall so remain unless
3 and until otherwise provided by law.

4 26. The proper officials of the Districts, parties hereto,
5 shall have full and free access to the project books and official
6 records of the United States Indian Irrigation Service, so far
7 as they relate to the matters covered by this contract, with the
8 right at any time during office hours to make copies of and from
9 the same; and the representatives of the United States shall have
10 the same right in respect to the books and records of said Dis-
11 tricts.

12 27. There is given and reserved to the Secretary of the
13 Interior the right to make regulations and to modify the same
14 in his discretion, in general harmony, however, with this con-
15 tract, to the end that the true intent of the law and of this
16 contract shall be carried into full effect.

17 28. While this contract is in effect no change shall be
18 made in the organization of the Districts or any of them, by
19 consolidation or merger with another district, by proceedings
20 to dissolve, or otherwise, nor as above provided shall lands be
21 excluded from or included in the said Districts, except upon
22 the written assent thereto by the Secretary.

23 29. The execution of this agreement shall be authorized,
24 by qualified holders of title or evidence of title to lands
25 of the said Districts as provided by law. Thereafter without

26 delay, the Boards of Commissioners of the Districts shall levy
27 a special tax or assessment on all the lands of the Districts
28 for the benefit of which said Districts were organized, sufficient
29 in amount to pay all sums agreed in this contract to be
30 paid by the Districts to the United States, and if directed so
31 to do by the Secretary of the Interior shall prosecute a pro-
32 ceeding in court for a judicial confirmation of the organization
of the Districts, the making of this agreement, and the

1 confirmation of a special tax or assessment sufficient in
2 amount to carry out the terms and conditions of this agreement.
3 The United States shall not be obligated to make any expenditures
4 hereunder until a confirmatory judgment in such proceeding shall
5 have been rendered: and, if ground for appeal from such judgment
6 shall have been laid, until decision favorable to the contract
7 shall have been finally made, the Districts shall furnish the
8 United States, for its files, certified copies of all proceedings
9 relating to the organization of the Districts and to the
10 authorization of this agreement.

11 30. No member of or delegate to Congress, or resident com-
12 missioner, after his election or appointment, or either before or
13 after he has qualified and during his continuance in office, and
14 no officer, agent or employee of the Government shall be admitted
15 to any share or part of this contract or agreement, or to any bene-
16 fit to arise therefrom. Nothing, however, herein contained shall
17 be construed to extend to any incorporated company, where such con-
18 tract or agreement is made for the general benefit of such
19 incorporation or company, as provided in Section 116 of the Act of
20 Congress approved March 4, 1909 (35 Stat., 1109).

21 This agreement shall insure to the benefit of and be binding
22 upon those of the aforesaid Irrigation Districts which execute the
23 same, and their successors and assigns, and the United States and
24 its assigns.

25 IN WITNESS WHEREOF the parties have hereto signed their names

Sec. 31 - 1109

26 the day and year first above written.

THE UNITED STATES OF AMERICA

27

BY /s/ Jos. M. Dixon
1ST Assistant Secretary
of the Interior

28

29

30 Attest:

MISSION IRRIGATION DISTRICT

31

/s/ Ray Biggerstaff
Secretary.
Approved as to form: JUL 26 1929
JOS MO DIXON
FIRST ASSISTANT SECRETARY

By /s/ A.J. Riggert
/s/ G.A. Lensman
/s/ J. H. Newton

32

PETITION

IN THE MATTER OF THE PETITION TO THE BOARD OF COMMISSIONERS OF
THE MISSION IRRIGATION DISTRICT.

TO the Board of Commissioners of the Mission Irrigation District
In Lake County, Montana

Gentlemen:

We, the undersigned, holders of title or evidence of title to
lands within the Mission Irrigation District, do petition and,
authorize your Honorable Board to execute the contract between the
Mission Irrigation District and the United States of America, the
form of which was approved by the Department of the Interior on the
26th day of July, 1929 and a copy of which is hereto attached, and
which provides for the completion of the irrigation works of the
Flathead Irrigation Project, and the operation and maintenance of
the same, and for the assumption by said District of an indebted-
ness to the United States on account of district lands, and for
the repayment to the United States of Operation and Maintenance
and Construction costs expended by the United States upon said
Project for the benefit of district lands.

SIGNATURES

SIGNATURES

VERIFICATION OF SIGNATURES

STATE OF MONTANA) SS
COUNTY OF LAKE)

_____ being duly sworn, on his oath deposes
and says: That he is a citizen and a resident of the State of
Montana, and over the age of 21 years; that he is personally ac-
quainted with each of the persons whose names are subscribed to the

26 above and foregoing petition and knows the signature of each of
27 them; that each of the foregoing signatures is a genuine
28 signature of the person whose name is so subscribed.
29
30 Subscribed and sworn to before me this _____ day of _____
31
32 (SEAL)

Notary Public in and for
of Montana, residing at
Montana. My commission expires _____

1 STATE OF MONTANA)
2 COUNTY OF LAKE) SS.

3
4 I, the undersigned, Ray Biggerstaff, do hereby certify
5 that I am the duly appointed, qualified and acting Secretary
6 of the Board of Commissioner of the Mission Irrigation District,
7 a public corporation of the State of Montana, and that the
8 foregoing is a true and correct copy of EXHIBIT "A", same
9 being a copy of the Repayment Contract as approved July 26th,
10 1929, by Jos M. Dixon, First Assistant Secretary to the
11 Secretary of the Interior.

1
12
13 (Sgd) RAY BIGGERSTAFF

14
15 SUBSCRIBED AND SWORN TO before me this 5th day
16 of JANUARY 1931

17
18 (Sgd) W.J. BURKE
19 Notary Public for the State of
20 Montana, residing at Polson,
21 Mont., My commission expires
22 MAY 3, 1931
23
24
25

Tenth Annual Report
of the
U.S. Federal
Power Commission

Fiscal Year Ended June 30, 1930



United States
Government Printing Office
Washington : 1930

FEDERAL POWER COMMISSION

27

involving the construction of a dam and an ultimate installation of 192,000 horsepower.

Among the principal licenses authorized during the year was that to Rocky Mountain Power Co. for a project on Flathead River and Lake on the Flathead Indian Reservation, Mont. The license authorizes the construction of a dam and power house designed to regulate the level of Flathead Lake and to develop 150,000 horsepower under conditions favorable to the interests of the Indians and of the adjacent irrigation district. Licenses, pursuant to the preliminary permits previously issued, were granted to Inland Power & Light Co. and Washington Electric Co. Pursuant to its application earlier in the year, license was issued to Safe Harbor Water Power Corporation for its development on the Susquehanna River, Pa. Construction work in the foregoing cases under license is now in progress. In addition, licenses were authorized for hydroelectric developments proposed by four separate municipalities—namely, Hyrum City, Utah; Sandpoint, Idaho; Allegan, Mich.; and Ottumwa, Iowa.

The following tables show preliminary permit and license authorizations outstanding at the close of the fiscal year:

tive secretary was authorized to place in effect the revised paragraphs upon notification of approval by the members of the commission.

5. The executive secretary presented a request by Senator Walsh, of Montana, that the transcript of the recent hearing relative to conflicting applications for development at Flathead Lake be printed. The commission directed that Senator Walsh be informed of the commission's inability to undertake the publication, costing about \$3,500, within the limits of the present appropriation for such purposes, and that recommendation for a deficiency appropriation for the purpose could hardly be justified in comparison with the requirements for other purposes.

6. The commission directed that a copy of the transcript of the Flathead hearing be referred to Doctor Cottrell, of the Bureau of Chemistry, Department of Agriculture, with request for a review and report on the economic feasibility of manufacturing and marketing fertilizer products utilizing the power possibilities of the site.

At 12.50 p. m. the meeting was adjourned.

F. E. BONNER, *Executive Secretary.*

ONE HUNDRED AND THIRD MEETING, HELD IN THE OFFICE OF THE SECRETARY OF
THE INTERIOR FEBRUARY 19, 1930

Meeting called to order at 3.35 p. m.

Present: Secretary Wilbur, acting chairman; Secretaries Hurley and Hyde, members of the commission; F. E. Bonner, executive secretary; Lieut. Col. M. C. Tyler, chief engineer; W. V. King, chief accountant; Charles A. Russell, solicitor; J. F. Lawson, acting chief counsel; Maj. F. K. Newcomer, assistant chief engineer; F. F. Henshaw and E. R. Randell, engineers.

The executive secretary presented a list of 30 applications, Nos. 1039 to 1068, received since the meeting of November 27, 1929, and stated that 9 applications had been advertised.

Licenses, amendment, and transfer confirmed

The executive secretary presented the following list of instruments which have been executed since the meeting of the commission on November 27, 1929, and recommended that the action in issuing these instruments, pursuant to authority in each case given by the commission, be approved.

The commission thereupon took action as follows:

In order that the minutes of the commission may contain record of the formal approval by the commission of the licenses, amendment, and transfer of license executed and issued by the executive secretary, under authority of the commission's Orders, No. 2, it was voted that the following licenses, amendment of license, and transfer of license accepted and/or issued on the dates respectively named be, and the same are hereby, approved by the commission:

Licenses:

Project No. 38—

Portland Electric Power Co. and Crown Willamette Paper Co.
Willamette River.

Clackamas County, Oreg.

Authorized November 27, 1929.

Accepted by licensees December 18 and 27, 1929.

License issued January 8, 1930.

National Forest in Pend Oreille County, Wash., so as to extend the period thereof from June 14, 1930, to June 14, 1931, which is within the total period of three years authorized by the Federal water power act: It appearing to the commission that said extension is reasonable and necessary for the purposes for which said permit was issued, such extension being desired to enable the permittee to continue his investigations and complete his plans and financial arrangements, it was voted that said permit be amended by extending the period of priority to June 14, 1931.

2. The executive secretary stated that Western Washington Electric Light & Power Co., which holds a preliminary permit issued April 6, 1928, for a period of two years for a power project on North River, in Grays Harbor and Pacific Counties, Wash., on lands and in navigable waters of the United States, has applied for an extension of one year of the period of the permit; that the permittee has been actively engaged in investigational work, including stream gaging; that in view of the immediate need of increased capacity for the Grays Harbor district served by the company, the Grays Harbor Railway & Light Co. installed an additional steam generating unit in 1928, thus postponing the need of the development proposed to be undertaken in connection with this project; and that additional time is also desired in view of the short period, two and one-half years, for which stream-flow records are available. The Chief of Engineers, to whom the application was referred, recommends that that the requested extension be granted. The executive secretary recommended that the period of the permit be extended, as requested, for one year, the maximum allowed by law.

The commission thereupon took action as follows:

In the matter of the application of Western Washington Electric Light & Power Co., a corporation organized under the laws of the State of Washington, and whose address is Aberdeen, in the State of Washington, for an amendment of preliminary permit issued April 6, 1928, for a power project (No. 835) on North River, on lands and navigable waters of the United States, to extend the period thereof from April 6, 1930, to April 6, 1931, to enable it to continue its investigations and complete its plans and financial arrangements, such extension being within the total period of three years authorized by the Federal water power act: It appearing to the commission that said extension is reasonable and necessary for the purposes for which said permit was issued, it was voted that said permit be amended by extending the period of priority to April 6, 1931.

Authorization for License

The executive secretary made the following statement: Rocky Mountain Power Co., a corporation organized under the laws of the State of Delaware and a subsidiary of The Montana Power Co., both concerns having their office and principal place of business at Butte, Mont., made application on January 26, 1921, for preliminary permit for a proposed power project (No. 5) on Flathead River, a tributary of Clark Fork of the Columbia River, and on Flathead Lake in Flathead, Lake, and Sanders Counties, Mont., at five sites extending downstream from a point about four miles below the outlet of Flathead Lake at Polson, affecting tribal lands on the Flathead Indian Reservation and a small area of public lands. The application was presented to the commission at its meeting on April 23, 1923, together with protests of the Kalispell community at the head of Flathead Lake, the State of Washington on behalf of the proposed Columbia Basin project, and the Water Users Association of the Flathead irrigation project, and a statement of the Government

May 19, 1930

FEDERAL POWER COMMISSION

113

interests in the partially constructed Newell Tunnel. The commission voted that action upon the application be suspended until a report should have been received from a commission appointed by the Secretary of the Interior to investigate the proposed Columbia Basin irrigation project. The report of the commission, submitted August 25, 1925, states that Flathead Lake is not needed as a storage reservoir for the Columbia Basin irrigation project, provided the natural outflow is available to the extent that it may be needed. On May 10, 1926, Congress made provision in the Interior appropriation act for the construction and operation of a power plant at Flathead site No. 1 for the benefit of the Flathead irrigation project and made an appropriation for starting work.

Walter H. Wheeler, of Minneapolis, Minn., made application on January 11, 1928, for a preliminary permit for a proposed power development (project No. 868) on Flathead River embracing the above-noted five sites. He proposes to use the power for the development of electrochemical and electrometallurgical industries at or near the power sites. The district engineer of the War Department, to whom the applications were referred for investigation, held a hearing in December, 1927, on the Rocky Mountain Power Co.'s application, and in April, 1928, the Chief of Engineers of the War Department reported on this application, which he recommended be granted, and on that of Walter H. Wheeler, which he recommended be denied. By act of Congress of March 7, 1928 (45 Stat. 212-213), the commission was authorized, in accordance with the Federal water power act and upon terms satisfactory to the Secretary of the Interior, to issue a permit or license for the development of the Flathead power sites. On March 27, 1928, Rocky Mountain Power Co. made application for license for a proposed project at what is commonly known as site No. 1, the upper one of the five heretofore mentioned. The project is to consist of a dam with crest gates to afford an average effective head of about 182 feet and to afford 10 feet of regulated depth of storage on Flathead Lake, water conduits about 770 feet long, a power house with an installed capacity of 150,000 horsepower, and appurtenant works. It is proposed to sell the power to The Montana Power Co. for public-utility and electrometallurgical purposes, except such as may be delivered for use on the Flathead irrigation project. The nominal power capacity of the project is 30,000 horsepower. The commission called upon the Rocky Mountain Power Co. to furnish further information required for an adequate understanding of its project. In compliance with this request, the Rocky Mountain Power Co. provided funds for the Geological Survey to prepare additional maps, to make a study of the variation of groundwater levels at the upper end of the lake and to obtain additional records of the stages, inflow, and outflow of Flathead Lake. Revised designs of structures and studies of reservoir and plant capacities were made by the applicant under the direction of the district engineer of the War Department as the field representative of the commission, and a report was submitted to the commission embodying this information. On July 16, 1929, the Chief of Engineers of the War Department submitted the report of the district engineer on the application for license, concurring in the recommendation that a license be granted to the Rocky Mountain Power Co. with appropriate safeguards to navigation and irrigation in the basin of Flathead Lake.

On August 22, 1929, applicant Wheeler was notified that, subject to his right to request a hearing, his application would be recommended for rejection. He protested this proposed action and requested a hearing, which was held before the commission from October 28 to November 9, 1929, subsequent to which briefs were received from parties in interest. The data therein presented have been critically studied by the staff of the commission, by the Bureau of

May 19, 1930

FEDERAL POWER COMMISSION

115

or in conflict therewith having been filed by any State or municipality; the commission thereupon found that said project will be best adapted to a comprehensive scheme of improvement and utilization for the purposes of navigation, of water-power development, and of other beneficial public uses, and that the license will not interfere or be inconsistent with the purpose for which any reservation affected thereby was created or acquired, and thereupon approved the maps, plans, and specifications of the proposed project and project works, the plans of the dam and other structures affecting navigation having been approved by the Chief of Engineers and the Acting Secretary of War; and in pursuance of such approval and such findings authorized issuance of license for a period of 50 years subject to legal review under the direction of the Secretary of the Interior, to the provisions of said act, to the rules and regulations of the commission pursuant thereto, to the execution of the guaranty and agreement by The Montana Power Co. attached to the license and approval thereof by the executive secretary and the Secretary of the Interior, to the following special conditions, and to such further conditions, if any, as the Chief of Engineers may find necessary or desirable in the interests of navigation, or the Secretary of War shall deem necessary for the adequate protection and utilization of said lake and river:

(a) The licensee shall be liable for all damages occasioned to the property of others, including lands allotted in severalty to the Indians, by the construction, maintenance, or operation of said project works, or of the works appurtenant or accessory thereto, and in no event shall the United States be liable therefor; nor does this license guarantee the validity of any reservations contained in the patent to any allottee or other grantee of Indian lands, whether in trust or in fee.

(b) The licensee shall clear of all trees, logs, brush, or other debris, up to elevation 2803, the margins of Flathead Lake and those portions of Flathead River which shall be used for reservoir purposes under this license, and shall dispose to the satisfaction of the commission, or its designated representative, of all the brush and debris resulting from such clearing, together with all temporary structures and refuse left on public lands and reservations of the United States from the construction and maintenance of said project works. In addition, the licensee shall cut and remove any trees or brush lying above elevation 2803 which may be killed due to the regulation of Flathead Lake for storage purposes.

(c) The licensee hereby recognizes the right of the United States to pump from the Flathead Lake or from Flathead River above licensee's dam for all purposes of irrigation on the Flathead Irrigation project or the lands of the Flathead Reservation, whether included in the irrigation project or not, not more than 50,000 acre-feet of water after July 15 of any one year.

(d) The operations of the licensee, in so far as they affect the use, storage, and discharge from storage of the water of Flathead Lake, shall at all times be controlled by such reasonable rules and regulations as the Secretary of War may prescribe in the interests of navigation and as the Federal Power Commission may prescribe in the interests of flood control and of the fullest practicable utilization of the waters of Flathead River and Clark Fork for power, irrigation, and other beneficial public uses.

(e) The licensee agrees that all rights acquired in connection with the project covered by this license and the use of water for the development of power shall be held subject to the rights which may be reasonably necessary for the complete development of the irrigable land, the domestic water supply requirements, and the water-power possibilities in the watershed above the project

FEDERAL POWER COMMISSION

105th Meeting

The licensee further agrees to waive objections to the subtraction of water up to a maximum flow of 200 cubic feet per second, as may be required under either Federal or State authority for diversion out of the pool above the project works.

The licensee may regulate Flathead Lake between elevations 2883 and 2884, however, that the commission retains the right, at any time to the regulation of commercial operation of the project, to define limits to regulation between elevations 2880 and 2893 in such manner as will not less than 1,100,000 acre-feet of storage capacity available to the licensee. It is expressly understood that licensee shall not be restricted to regulation of Flathead Lake. It is expressly understood that the commission of any limits of regulation which may be fixed as to the regulation of Flathead Lake. It is expressly understood that the licensee shall not affect the rentals provided for in paragraph (1) following, or for Flathead River above licensee's dam after July 15 in any year for purposes of irrigation as provided in paragraph (c) above. The licensee shall be permitted, in the months of January, February, and March of the next year, to regulate Flathead Lake, below the minimum elevation which the licensee has aforesaid, to the extent necessary to enable it to recover the amount of water so pumped for irrigation purposes. Said elevations are to be based on sea level as determined by reference to a certain United States Geological Survey bench mark, elevation 2,910.882 feet, stamped "2900" and located and established at Somers, Flathead County, or to such other bench marks as may be established by the United States Geological Survey on the same datum. As a basis of determination of the aforesaid elevations, the licensee shall complete the mapping of lands bordering Flathead Lake and River and of the lake bed between elevations 2875 and 2885 with the maps already completed by the Geological Survey at the time of the lake and shall continue to finance the collection of ground water elevations in the area at the head of Flathead Lake, and interpretation of such records. The licensee also agrees to finance channel excavation and other work as may reasonably be required by the commission for the purpose of flood control to the end that the levels of Flathead Lake shall not be increased by reason of the project works, and for the purpose of full utilization of the project works, and for the purpose of navigation.

In consideration of the use to be made of the partially completed Newell Dam, the licensee shall pay into the Treasury of the United States the sum of \$100,000 such payment to be made within nine months from and after the date of this license, and to be a part of and included in the licensee's net income from the project.

For the purpose of preventing the entrance of fish into the turbines of the project, the licensee shall install and maintain such fish stops or other devices as may reasonably be prescribed by the Secretary of Commerce.

Effective with the beginning of commercial operation of the project, the licensee shall make available at the project boundary at or near the licensee's station, within the United States, for and on behalf of the Flathead project or Flathead irrigation district, may take and, having taken, shall pay for the price of 1 mill per kilowatt-hour: (1) Electrical energy for pumping water for irrigation; and (2) electrical energy in an amount not exceeding 200 horsepower of demand for all project and farm

May 19, 1930

FEDERAL POWER COMMISSION

uses and for resale. Such deliveries shall be made at such standard voltage as may be selected by the commission. The licensee shall also make available, at the voltage of the line from which service is taken, either at the project boundary at or near the licensee's generating station or at some more convenient place on the project to be agreed upon, and the United States, for and on behalf of the Flathead Irrigation project or the Flathead irrigation district, may take and, having taken, shall pay for, at the price of 2½ mills per kilowatt-hour, additional electrical energy in an amount not exceeding 5,000 horsepower of demand for all project and farm uses and for resale.

(j) The licensee shall, during the period of construction, deliver at line voltage and at a point to be agreed upon on the line or lines which it will construct to supply for construction purposes, power for farm and project purposes on the Flathead Irrigation project or the Flathead irrigation district in quantities required by the United States for said purposes up to a maximum demand of 500 horsepower, at the price of 2½ mills per kilowatt-hour.

(k) The United States reserves to itself or to the Flathead irrigation project management the exclusive right to sell power within the boundaries of the Flathead Indian Reservation, to the extent of 10,000 horsepower to be delivered for use and/or sale as provided in paragraph (f) above.

(l) (A) The licensee shall pay into the United States Treasury as compensation for the use, in connection with this license, of the Flathead Indian tribal lands annual charges computed as follows:

(1) A charge at the rate of \$1,000 per calendar month beginning with the month in which the license is issued and extending to and including the month in which the project is placed in commercial operation. For the purpose of the payments under this paragraph, the beginning of commercial operation shall be considered as the time when one of the licensee's generating units shall have been installed, tested, and demonstrated to be in suitable condition to produce electric energy for commercial purposes with a reasonable degree of reliability.

(2) A charge at the rate of \$5,000 per month beginning with the calendar month next succeeding the date on which the project is placed in commercial operation and extending to the end of the calendar year in which such commercial operation shall commence.

(3) For each full calendar year from and after the first of January next following the date on which the first unit is placed in commercial operation, annual charges will be as follows:

For the first two years.....	-----	\$60,000 per year.
For the third year.....	-----	75,000
For the fourth year.....	-----	100,000
For the fifth year.....	-----	125,000
For the next five years.....	-----	150,000 per year.
For the next five years.....	-----	160,000 per year.
For the next five years and/or until readjustment of the annual charges payable hereunder shall have been effected pursuant to the provisions of paragraph (D) of this paragraph.....	-----	175,000 per year.

(B) Payments shall be made for each calendar year within 30 days after the close thereof on bills rendered by the commission.

(C) Pursuant to the provisions of the act of March 4, 1929 (45 Stat. 1640), all charges for reimbursing the United States for the cost of administration of the Federal water power act are hereby expressly waived.

(D) The annual charges payable under this license may be readjusted at the end of 20 years after the beginning of operation under this license and at periods of not less than 10 years thereafter by mutual agreement between the commission and the licensee, with the approval of the Secretary of the Interior. In case the licensee, the commission, and the Secretary of the Interior can not agree upon the readjustment of such charges, it is hereby agreed that the fixing of readjusted charges shall be submitted to arbitration in the manner provided for in the United States arbitration act (U. S. C. Title 9), such readjusted annual charges to be reasonable charges fixed upon the basis provided in section 5 of regulation 14 of the commission, to wit, upon the commercial value of the tribal lands involved, for the most profitable purpose for which suitable, including power development.

(m) The licensee having submitted a claim of prelicense cost to January 31, 1929, of \$183,312.47 and the solicitor of the commission having recommended the rejection of items contained therein aggregating a total of \$85,088.76, the commission and the licensee hereby mutually agree that the sum of \$98,223.71 shall be entered upon the fixed capital accounts of said project and included in the statement to be submitted to the commission, in accordance with the provisions of article 32 of the license as representing the actual legitimate investment in said project up to and including January 31, 1929; provided, however, that this agreement shall not deny or affect the licensee's right, within one year from and after the date of this license, to submit further evidence to the commission or to any court having jurisdiction for the purpose of establishing the propriety of any part of said \$85,088.76.

(n) The licensee agrees that it will enter into a contract with The Montana Power Co. under which all electrical power or energy generated by the project covered by this license, except that delivered to or reserved for the United States pursuant to the provisions of the license, shall be delivered to or made available for said The Montana Power Co. or its nominees upon the payment to the licensee of an annual amount approximately sufficient to meet the operating expenses and maintenance costs, taxes, accruals for depreciation, and rentals (including the rental charges provided for by this license), and in addition an average return of eight per cent per annum on its actual legitimate investment in all facilities and property covered by this license and used in the generation and delivery of such power, as established under the provisions of the Federal water power act and the rules and regulations of the commission issued in pursuance thereof. A duly certified copy of said power contract shall be filed with the commission.

(o) The licensee agrees that its securities shall be issued only (1) to The Montana Power Co. upon condition that they shall be retained by said The Montana Power Co., it being understood that none of such securities shall be disposed of by said The Montana Power Co. (except to a trustee or trustees under one of its mortgages or deeds of trust as hereinafter provided) without the express approval of the commission previously had and obtained, and/or (2) to a trustee or trustees under any mortgage or deed of trust securing the issuance of bonds or other securities of said The Montana Power Co. to be held subject to the provisions of such mortgage or deed of trust. Such securities shall be sold to The Montana Power Co. for cash or its equivalent.

(p) The licensee agrees that full and complete copies of rate schedules and all contracts of the licensee or of The Montana Power Co. for management and supervision of its or their affairs, or for general construction, which involve the licensee or the project covered by this license, shall be filed with the Federal Power Commission promptly after execution. The licensee agrees to file au-

May 19, 1930

FEDERAL POWER COMMISSION

119

annually with the Federal Power Commission copies of its annual reports and also copies of The Montana Power Co.'s annual report as rendered to the Montana Public Service Commission.

The commission further voted to reject the application of Walter H. Wheeler for preliminary permit for the five sites (project No. 888) without prejudice, however, to submission by him of an application for preliminary permit or license for the lower four sites, and voted to reject the application of Rocky Mountain Power Co. for preliminary permit for the lower four sites (project No. 5).

Amendment of license

The executive secretary stated that Harry V. Gates, to whom a license was issued on February 9, 1928, for a power project on Crooked River, in Jefferson County, Oreg., applied on April 3, 1930, for an extension of time from July 1, 1930, to July 1, 1931, for completion of said project; that the licensee has prosecuted construction work diligently; has expended over \$31,000 on the development, and estimates that it will require about \$8,000 additional to complete the work, the total cost being considerably above the estimates; and that the request for extension was considered reasonable. He recommends that the license be amended to extend the time of completion to July 1, 1931.

The commission thereupon took action as follows:

In the matter of the application of Harry V. Gates, of Hillsboro, Oreg., for amendment of license for a power project (No. 669) on Crooked River on lands of the United States in Jefferson County, Oreg., so as to extend the time for completing construction until July 1, 1931, said extension being necessary because of the excessive cost of construction as compared with original estimates, it was voted that the license be amended so as to extend the time for completion of construction from July 1, 1930, to July 1, 1931.

Transfer of licenses

The executive secretary made the following statement: Inland Power & Light Co. of Oregon, has submitted two applications, each dated March 14, 1930, for approval of transfer to the Chelan Electric Co., of Washington, of the licenses as issued and amended for the following major projects and the properties thereunder:

No. 204. License issued January 19, 1923, to Grangeville Electric Light & Power Co. (Ltd.), for a project in Idaho County, Idaho, transfer of license to Inland Power & Light Co., approved October 19, 1923, effective on January 1, 1928, and leasing to Pacific Power & Light Co., approved August 1, 1929.

No. 021. License issued June 8, 1926, to Inland Power & Light Co. for a project in Nez Perce County, Idaho, and leasing to Pacific Power & Light Co., approved August 1, 1929.

The board of directors of Inland Power & Light Co., at its meeting held on March 14, 1930, authorized the president or vice president of the company to sell, convey, and/or transfer both projects to the Chelan Electric Co. when authority of this commission had been granted. The board of directors of the Chelan Electric Co. on the same day took similar action directing its officers to receive these properties. The executive secretary recommended that transfer of licenses and properties be authorized, subject to appropriate conditions with respect to financial accounting.

The commission thereupon took action as follows:

In the matter of the applications of the Inland Power & Light Co., of Portland, Oreg., for the transfer to Chelan Electric Co., of Spokane, Wash., of the

FEDERAL POWER COMMISSION

106th Meeting

company did not have the funds necessary to make the payment, that no construction work on the project had been done since November 30, 1925, that the company was a family affair, and that no stock had been sold to outsiders, the entire amount being held by the officers of the company. On April 23, 1929, the case was referred to the Attorney General for collection of the annual charges accruing for the year 1928, but it is understood that no collection had been made. The district forester recommended that legal action towards collecting back charges be dropped and that the case be closed. The executive secretary further stated that the company had made all annual payments at a rate of \$21.20 in full to and including the year 1927, and that as no expense had been incurred except for the usual office routine of preparing the license and incidental expenses of inspection the amounts received would reimburse the United States for the expense of administration of the act, he concurred with the district forester.

The commission thereupon took action as follows:

In the matter of the annual charges due in connection with the license for project No. 70 issued August 29, 1921, to the Rock Creek Power Co., of Missoula, Mont., for a power development on public lands of the United States within the Missoula National Forest, it was voted that such charges as have been collected be accepted as reasonable for reimbursing the United States for the cost of administration of the act and that the collection of unpaid charges be waived.

2. The petition of Yosemite Power Co. for a hearing before the commission on its application which conflicts with that of Turlock and Modesto irrigation districts for power development on Tuolumne River, Calif., was presented to the commission, and it was decided to postpone consideration thereof.

3. At the suggestion of the solicitor, the commission directed that Kentucky Utilities Co. be requested to file a brief in support of its claims for construction costs in connection with project No. 530, Kentucky River.

At 4.35 p. m. the meeting was adjourned.

F. E. BONNER, *Executive Secretary.*

ONE HUNDRED AND SIXTH MEETING, HELD IN THE OFFICE OF THE SECRETARY OF THE INTERIOR, JUNE 20, 1930

Meeting called to order at 11.40 a. m.

Present: Secretary Wilbur, acting chairman; Secretaries Hurley and Hyde, members of the commission; F. E. Bonner, executive secretary; Lieut. Col. M. C. Tyler, chief engineer; W. V. King, chief accountant; J. F. Lawson, acting chief counsel; Major F. K. Newcomer, assistant chief engineer; Capt. W. H. Crosson, R. R. Randell, and F. F. Henshaw, engineers.

The executive secretary presented a list of 14 applications, Nos. 654, 755, 758, 835, and 1093 to 1102, inclusive, received since the meeting of May 19, 1930.

License confirmed

The executive secretary stated that the major license listed below had been executed since the meeting of the commission on May 19, and recommended that the action in issuing the instrument, pursuant to authority given by the commission, be approved.

The commission thereupon took action as follows:

In order that the minutes of the commission may contain record of the formal approval by the commission of the license executed and issued by the executive

June 20, 1930

FEDERAL POWER COMMISSION

127

secretary, under authority of the commission's Orders, No. 2, it was voted that the license listed below accepted and issued on the dates respectively named, be and the same is hereby approved by the commission:

License:

Project No. 5—

Rocky Mountain Power Co.
Flathead River and Lake.
Flathead National Forest, Flathead Indian Reservation, and
vacant public lands.
Flathead and Lake Counties, Mont.
Authorized May 19, 1930.
Accepted by licensee May 20, 1930.
License issued May 23, 1930.

Cancellation of preliminary permit

The executive secretary made the following statement: The Red River Lumber Co., of Minneapolis, Minn., has requested that its preliminary permit for a proposed power development on Horse Creek near Pittville, Lassen County, Calif., be canceled, inasmuch as the company's investigations have led it to the conclusion that the project is not economically feasible. The executive secretary recommended that the permit be canceled.

The commission thereupon took action as follows:

In the matter of the preliminary permit for a power project (No. 894) on Horse Creek, in the vicinity of Pittville, Calif., issued to the Red River Lumber Co. on April 2, 1929, for a period of two years, said permittee having concluded that the project is not economically feasible and having requested that the permit be canceled, it was voted that said preliminary permit be canceled.

Authorizations for licenses

1. The executive secretary made the following statement: The city of Sandpoint, Idaho, has made application, pursuant to a preliminary permit, issued April 3, 1929, for a license for a proposed power development on Priest River, a tributary of Clark Fork of the Columbia River, in Bonner County, Idaho, affecting public lands within the Kaniksu National Forest. The project consists of a buttress and rock-fill dam, located about 2 miles below the outlet of Priest Lake, in sec. 7, T. 59 N., R. 4 W., Boise meridian, Idaho, designed to create an average effective head of about 20 feet; a reservoir in Priest River and Lake with a usable storage capacity of about 95,000 acre-feet; and a powerhouse at the dam. The capacity of the site, with storage, is estimated as 650-horsepower. The proposed installation consists of two 700-horsepower units. The power is to be used in and near the city of Sandpoint for street lighting, pumping of water and sewage, and other municipal purposes, for general light and power service, and for sale to other villages in the vicinity. The preliminary permit was issued for four sites, but the application for license embraces only the uppermost, which is of sufficient capacity to serve the present needs of the city. The permittee has done the leveling and made the study of log driving on Priest River as required in the preliminary permit. The applicant has submitted a sworn statement of preliminary cost as of July 31, 1929, in the amount of \$13,322.82, all the items of which appear to be proper and legitimate, and have been audited and approved by the Forest Service. The Forest Service, which has investigated the project, reports that the proposed development appears to be in accord with the best development of:

222

FEDERAL POWER COMMISSION

and approval of the contract with the licensee for timber allocated to said proposed project, it shall specify a date prior to which such contract shall be executed and shall expire immediately thereafter in the event of non-execution.

LICENSES FOR MAJOR PROJECTS

All licenses for major projects are issued subject to the rules and regulations of the commission and to the provisions of the Federal water power act. In general only such prescribed terms are set forth in the license as are required by the act to be expressed in the license, or are necessary to make clear the application of general rules and regulations to the specific conditions of the particular case. Ordinarily only the latter are listed below.

PROJECT No. 5—MONTANA

License issued May 23, 1930, for 50 years.

Licensee: Rocky Mountain Power Co., Butte, Mont.

Location of project: On Flathead River and Flathead Lake, near Polson, in Flathead and Lake Counties, Mont.

Description of project: The project involves the occupation and use of certain public lands of the United States, certain lands of the Flathead Indian Reservation and of the Flathead National Forest, together with all riparian rights appurtenant thereto which are necessary or useful for the purposes of the project and water rights for power purposes reserved or appropriated for Indian irrigation projects. It consists of the following major structures: A concrete gravity dam about 150 feet high and 313 feet long across Flathead River about 4 miles below the outlet of Flathead Lake; 3 concrete-lined pressure tunnels 18 feet 8 inches in diameter extending about 770 feet across a bend in the river from a point adjacent to the west abutment of the dam to a power plant; and a reinforced concrete power house 90 feet wide by 181 feet long situated on the bank of the river and housing three 50,000-horsepower units and appurtenant equipment. Provision will be made for the future installation of a fourth unit. There will be on the crest of the dam 12 disappearing Stoney type gates 20 feet wide by 21 feet high. An additional spillway 425 feet long, paralleling the river and equipped with flashboards to a height of 10 feet, will be located at the east abutment of the dam. The dam will raise the water of Flathead Lake to elevation 2,893 feet and produce a working head at the power plant of 185 feet. The lake storage will be utilized between the above elevation and that of 2,883 feet and will approximate 1,100,000 acre-feet, sufficient to regulate the river at a minimum flow of 5,400 cubic feet per second for 90 per cent of the time. This, it is estimated, will make available 80,000 primary horsepower. The probable average yearly output will be 757 million kilowatt-hours, which will be transmitted over a 132-kilovolt transmission line to Anaconda, Mont., where connection will be made with the system of the Montana Power Co. and over 50-kilovolt transmission line to the system of the Washington Water Power Co. The power will be used for public-utility purposes. The cost of the project is estimated to be about \$8,000,000.

SPECIAL TERMS PRESCRIBED

Relating to construction: (a) Construction shall be begun on or before May 23, 1931, and be completed on or before May 23, 1933. (b) The licensee shall be liable for all damages occasioned to the property of others, including

FEDERAL POWER COMMISSION

223

lands allotted in severalty to the Indians, by the construction, maintenance, or operation of said project works, or of the works appurtenant or accessory thereto, and in no event shall the United States be liable therefor; nor does the license guarantee the validity of any reservations contained in the patent to any allottee or other grantee of Indian lands, whether in trust or in fee. (c) The licensee shall clear of all trees, logs, brush, or other débris up to elevation 2893, the margins of Flathead Lake and those portions of Flathead River which shall be used for reservoir purposes under the license, and shall dispose to the satisfaction of the commission, or its designated representative, of all the brush and débris resulting from such clearing, together with all temporary structures and refuse left on public lands and reservations of the United States from the construction and maintenance of said project works. In addition, the licensee shall cut and remove any trees or brush lying above elevation 2893 which may be killed due to the regulation of Flathead Lake for storage purposes. (d) For the purpose of preventing the entrance of fish into the turbines of the power plant, the licensee shall install and maintain such fish stops or other equipment as may reasonably be prescribed by the Secretary of Commerce. (e) The licensee shall, during the period of construction, deliver at line voltage and at a point to be agreed upon on the line or lines which it will construct to supply power for construction purposes, power for farm and project purposes on the Flathead irrigation project or the Flathead irrigation district in quantities required by the United States for said purposes up to a maximum demand of 500 horsepower, at the price of 2½ mills per kilowatt hour.

Relating to operation: (a) The licensee hereby recognizes the right of the United States to pump from the Flathead Lake or from Flathead River above licensee's dam for all purposes of irrigation on the Flathead irrigation project or the lands of the Flathead Reservation, whether included in the irrigation project or not, not more than 50,000 acre-feet of water after July 15 of any one year. (b) The operations of the licensee, in so far as they affect the use, storage, and discharge from storage of the water of Flathead Lake, shall at all times be controlled by such reasonable rules and regulations as the Secretary of War may prescribe in the interests of navigation and as the Federal Power Commission may prescribe in the interests of flood control and of the fullest practicable utilization of the waters of Flathead River and Clark Fork for power, irrigation, and other beneficial public uses. (c) The licensee agrees that all rights acquired in connection with the project covered by this license and the use of water for the development of power shall be held subject to the rights which may be reasonably necessary for the complete development of the irrigable land, the domestic water supply requirements, and the water-power possibilities, in the watershed above the project works. The licensee further agrees to waive objections to the subtraction of such water up to a maximum flow of 200 cubic feet per second, as may be authorized under either Federal or State authority for diversion out of the watershed above the project works. (d) The licensee may regulate Flathead Lake between elevations 2883 and 2893; provided, however, that the commission retains the right, at any time prior to the beginning of commercial operation of the project, to define limits of such regulation between elevation 2880 and 2893 in such manner as will make not less than 1,100,000 acre-feet of storage capacity available to the licensee, it being expressly understood that licensee shall not be restricted to less than 10 feet between the minimum and maximum elevations within which to carry on its regulations of Flathead Lake. It is expressly understood that variation by the commission of any limits of regulation which may be fixed as aforesaid shall not affect the rentals provided for in article 30 of the license. It is expressly understood that if and when water is pumped from Flathead

FEDERAL POWER COMMISSION

Lake or from Flathead River above licensee's dam after July 15 in any year for purposes of irrigation as provided in subparagraph (a) hereof, the licensee shall be permitted, in the months of January, February, and March of the next succeeding year, to regulate Flathead Lake, below the minimum elevation which may be fixed as aforesaid, to the extent necessary to enable it to recover the amount of water so pumped for irrigation purposes. Said elevations are in feet above mean sea level as determined by reference to a certain U. S. Geological Survey bench mark, elevation 2,910.882 feet, stamped "2900 GN," as now located and established at Somers, Flathead County, or to such other bench marks as may be established by the U. S. Geological Survey having the same datum. As a basis of determination of the aforesaid storage limits, the licensee shall complete the mapping of lands bordering Flathead Lake and River and of the lake bed between elevations 2878 and 2900 uniform with the maps already completed by the Geological Survey at the north end of the lake, and shall continue to finance the collection of records of ground water elevations in the area at the head of Flathead Lake, and the study and interpretation of such records. The licensee also agrees to perform such channel excavation and other work as may reasonably be required by the commission for the purpose of flood control to the end that the normal flood levels of Flathead Lake shall not be increased by reason of the installation of the project works, and for the purpose of full utilization of storage and navigation. (c) Coincident with the beginning of commercial operation of the project works and thereafter throughout the remainder of the term of the license, licensee shall make available, at the project boundary at or near the licensee's generating station, and the United States, for and on behalf of the Flathead irrigation project or the Flathead irrigation district, may take and, having taken, shall pay for, at the price of 1 mill per kilowatt hour: (1) Electrical energy in an amount not exceeding 5,000 horsepower of demand to be used exclusively for pumping water for irrigation; and (2) electrical energy in an amount not exceeding 5,000 horsepower of demand for all project and farm uses and for resale. Such deliveries shall be made at such standard voltage as may be selected by the commission. The licensee shall also make available, at the voltage of the line from which service is taken, either at the project boundary at or near the licensee's generating station or at some more convenient place on the project to be agreed upon, and the United States, for and on behalf of the Flathead irrigation project or the Flathead irrigation district, may take and, having taken, shall pay for, at the price of 2½ mills per kilowatt hour, additional electrical energy in an amount not exceeding 5,000 horsepower of demand for all project and farm uses and for resale. (f) The United States reserves to itself or to the Flathead irrigation project management the exclusive right to sell power within the boundaries of the Flathead Indian Reservation, to the extent of 10,000 horsepower to be delivered for use and/or sale as provided in subparagraph (c) hereof. (g) The licensee agrees that it will enter into a contract with The Montana Power Co. under which all electrical power or energy generated by the project covered by the license, except that delivered to, or reserved for the United States pursuant to the provisions of the license, shall be delivered to or made available for The Montana Power Co. or its nominee upon the payment to the licensee of an annual amount approximately sufficient to meet the operating expenses and maintenance costs, taxes, accruals for depreciation and rentals (including the rental charges provided for by the license) and in addition an average return of 8 per cent per annum on its actual legitimate investment in all facilities and property covered by the license and used in the generation and delivery of such power, as established under the provisions of

FEDERAL POWER COMMISSION

225

the Federal water power act and the rules and regulations of the commission issued in pursuance thereof. A duly certified copy of said power contract shall be filed with the commission. (h) The licensee agrees that full and complete copies of rate schedules and all contracts of the licensee or of The Montana Power Co. for management and supervision of its or their affairs, or for general construction, which involve the licensee or the project covered by the license, shall be filed with the Federal Power Commission promptly after execution. The licensee agrees to file annually with the Federal Power Commission copies of its annual reports and also copies of The Montana Power Co.'s annual reports as rendered to the Montana Public Service Commission.

Relating to fixed capital: (a) In consideration of the use to be made of the partially completed Newell tunnel, the licensee shall pay into the Treasury of the United States the sum of \$101,685.11, such payment to be made within 9 months from and after the date of the license and to be a part of and included in the licensee's net investment in the project.

(b) The licensee having submitted a claim of prelicense cost to January 31, 1929, of \$153,312.47 and the solicitor of the commission having recommended the rejection of items contained therein aggregating a total of \$85,088.76, the commission and the licensee mutually agree that the sum of \$98,223.71 shall be entered upon the fixed capital accounts of said project and included in the statement to be submitted to the commission, in accordance with the provisions of the license as representing the actual legitimate investment in said project up to and including January 31, 1929; provided, however, that this agreement shall not deny or affect the licensee's right, within one year from and after the date of the license, to submit further evidence to the commission or to any court having jurisdiction for the purpose of establishing the propriety of any part of said \$85,088.76. (c) The licensee agrees that its securities shall be issued only (1) to The Montana Power Co. upon condition that they shall be retained by said The Montana Power Co. it being understood that none of such securities shall be disposed of by The Montana Power Co. (except to a trustee or trustees under one of its mortgages or deeds of trust as hereinafter provided) without the express approval of the commission previously had and obtained, and/or (2) to a trustee or trustees under any mortgage or deed of trust securing the issuance of bonds or other securities of The Montana Power Co., to be held subject to the provisions of such mortgage or deed of trust. Such securities shall be sold to The Montana Power Co. for cash or its equivalent.

Annual charges: (a) The licensee shall pay into the United States Treasury as compensation for the use, in connection with the license, of the Flathead Indian tribal lands annual charges computed as follows:

(1) A charge at the rate of \$1,000 per calendar month beginning with the month in which the license is issued and extending to and including the month in which the project is placed in commercial operation. For the purpose of the payments under this article, the beginning of commercial operation shall be considered as the time when one of the licensee's generating units shall have been installed, tested, and demonstrated to be in suitable condition to produce electric energy for commercial purposes with a reasonable degree of reliability.

(2) A charge at the rate of \$5,000 per month beginning with the calendar month next succeeding the date on which the project is placed in commercial operation and extending to the end of the calendar year in which such commercial operation shall commence.

FEDERAL POWER COMMISSION

(3) For each full calendar year from and after the 1st of January next following the date on which the first unit is placed in commercial operation, annual charges will be as follows:

For the first 2 years.....	\$80,000 per year.
For the third year.....	75,000
For the fourth year.....	100,000
For the fifth year.....	125,000
For the next 5 years.....	150,000 per year.
For the next 5 years.....	160,000 per year.
For the next 5 years and/or until readjustment of the annual charges payable hereunder shall have been effected pursuant to the provisions of subparagraph (d) hereof.....	175,000 per year.

(b) Payments shall be made for each calendar year within 30 days after the close thereof on bills rendered by the commission.

(c) Pursuant to the provisions of the act of March 4, 1929 (45 Stat., 1640), all charges for reimbursing the United States for the cost of administration of the Federal water power act have been expressly waived.

(d) The annual charges payable under the license may be readjusted at the end of 20 years after the beginning of operation under the license and at periods of not less than 10 years thereafter by mutual agreement between the commission and the licensee, with the approval of the Secretary of the Interior. In case the licensee, the commission, and the Secretary of the Interior can not agree upon the readjustment of such charges, it is agreed that the fixing of readjusted charges shall be submitted to arbitration in the manner provided for in the United States arbitration act (U. S. C., Title 9), such readjusted annual charges to be reasonable charges fixed upon the basis provided in section 5 of regulation 14 of the commission, to wit, upon the commercial value of the tribal lands involved, for the most profitable purpose for which suitable, including power development.

(e) The annual charges for the use of lands of the United States will approximate \$37.75.

PROJECT No. 785—MICHIGAN

License issued April 11, 1930, for 50 years.

Licensee: City of Allegan, Mich.

Location of project: On Kalamazoo River, in Allegan County, Mich.

Description of project: The project consists of a dam about 1,200 feet long in the Kalamazoo River at Calkins Bridge, to be constructed of earth with a concrete spillway section 120 feet long, and a power house situated on the west bank of the river containing one 600-horsepower unit and one 1,200-horsepower unit with provision for the future installation of a third unit of from 1,200 to 1,800 horsepower capacity. The fixed crest of the spillway section will be at elevation 604 feet, or about 13 feet above the river bed. Six Taintor gates, each 20 feet long by 12 feet high, will be installed on the crest of the spillway and will permit pool regulation and flood discharge. A fishway will be located between the gates and the power house. The dam will create an average head of 14.8 feet. The power capacity of the project is estimated to be 888 horsepower and the average annual output of the plant 6,000,000 kilowatt-hours.

AMENDATORY REPAYMENT CONTRACT

Flathead Irrigation District
Flathead Indian Irrigation Project

Isec-730

This amendatory contract, made this 4th day of APRIL,
1950 in pursuance of the Act of April 23, 1904 (33 Stat. 302),
and acts amendatory thereof or supplementary thereto, and especially
the Act of May 25, 1948 (Public Law 554-90th Congress), by and between
the United States of America (hereinafter called the United States),
-acting by and through the Secretary of the Interior, and the Flathead
Irrigation District (hereinafter called the District), a public
corporation duly organized and existing under the laws of the State
of Montana, their respective successors and assigns, WITNESSETH:

1. WHEREAS, in pursuance of said Act of April 23, 1904, and
acts amendatory thereof or supplementary thereto, the parties to this
amendatory contract have entered into a repayment contract (herein-
after called the original repayment contract), executed by the District
as of the 12th day of May, 1928, and by the United States as of the
24th day of November, 1929, with respect to certain portions of the
lands, costs, charges and benefits of the Flathead Indian Irrigation
Project (hereinafter called the project); and have entered into a
supplemental contract (hereinafter called the first supplemental con-
tract), executed by the District as of the 27th day of February, 1929,
and by the United States as of the 16th day of March, 1929, which
modified certain provisions of the original repayment contract; and

have entered into another supplemental contract (hereinafter called the second supplemental contract), executed by the District as of the 28th day of March, 1934, and by the United States as of the 14th day of May, 1934, which also modified certain provisions of the original repayment contract; and have entered into still another supplemental contract (hereinafter called the third supplemental contract), executed by the District as of the 11th day of July, 1936, and by the United States as of the 26th day of August, 1936, which further modified certain provisions of the original repayment contract.

2. WHEREAS, said Act of May 25, 1948, entitled "An Act To provide for adjustment of irrigation charges on the Flathead Indian irrigation project, Montana, and for other purposes," provides as follows:

"That the repayment to the United States of all reimbursable costs heretofore or hereafter incurred for the construction of the irrigation and power systems of the Flathead Indian irrigation project in Montana (hereinafter called the project), including such operation and maintenance costs as have been covered into construction costs under the Act of March 7, 1928 (45 Stat. 200,212-213), and supplemental Acts, and including the unpaid operation and maintenance costs for the irrigation seasons of 1926 and 1927 which are hereby covered into construction costs, shall be accomplished as prescribed by this Act, notwithstanding any provision of law to the contrary.

"Sec. 2.(a) All costs heretofore or hereafter incurred for the construction of the irrigation system shall be allocated to the Mission Valley, Camas, and Jocko divisions of the project in proportion to the amount of such costs incurred for the respective benefit of each of these divisions.

(b) The net revenues heretofore and hereafter accumulated from the power system shall be determined by deducting from the gross revenues the expenses of operating and maintaining the power system, and the funds necessary to provide for the creation and maintenance of appropriate reserves in accordance with section 3 of the Act of August 7, 1946 (60 Stat. 895; 31 U.S.C., sec. 725s-3).

(c) The deferred obligation established by the Act of May 10, 1926 (44 Stat. 453, 464-466), for repayment of the per acre costs of the Camas division in excess of the per acre costs of the Mission Valley division shall be determined on the basis of the costs heretofore incurred for the construction of those divisions, and shall be liquidated from the net revenues heretofore accumulated from the power system.

(d) The remainder of the net revenues heretofore accumulated from the power system shall be applied to reduce the reimbursable costs heretofore incurred for the construction of the power system, and the reimbursable costs heretofore incurred for the construction of the irrigation system (exclusive of the deferred obligation for the excess costs of the Camas division) as allocated among the several divisions pursuant to subsection (a) of this section, in proportion to the respective amounts of each of the foregoing categories of costs.

(e) The reimbursable costs heretofore incurred for the construction of the irrigation system of each division of the project and not repaid through the credits provided for in subsections (c) and (d) of this subsection shall be scheduled for repayment in annual installments of approximately equal amount, in a manner which will provide for liquidation of such costs over a period of fifty years from January 1, 1950. The reimbursable costs hereafter incurred for the construction of the irrigation system shall be added to the schedule of repayments established pursuant to this subsection by increasing the amount or the number, or both, of the annual installments maturing after the incurrence of such costs, in a manner which will provide for their liquidation within a period not exceeding the useful life of the works involved, or not exceeding fifty years from the time when the additional costs are incurred, whichever period is the lesser. Each annual installment shall be distributed over all irrigable lands within the division on an equal per acre basis, and the costs so charged against any parcel of lands within the division shall constitute a first lien thereon under the Act of May 10, 1926 (44 Stat. 453, 464-466). Upon the maturity or prepayment of any annual installment, the amount of the installment shall be reduced by deducting any sums included therein which are chargeable to lands on which the collection of construction costs is then deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., sec. 386a), or which are chargeable to other lands and have been already repaid to the United States.

(f) The reimbursable costs heretofore incurred for the construction of the power system and not repaid through the credits provided for in subsections (c) and (d) of this subsection, or through other credits from the revenues of the power system, shall be scheduled for repayment in annual

installments of approximately equal amount, in a manner which will provide for liquidation of such costs over a period not exceeding the remaining useful life of the power system as a whole, or not exceeding fifty years from January 1, 1950, whichever period is the lesser. The reimbursable costs hereafter incurred for the construction of the power system shall be added to the schedule of repayments established pursuant to this subsection by increasing the amount or the number, or both, of the annual installments maturing after the incurrence of such costs, in a manner which will provide for their liquidation within a period not exceeding the useful life of the works involved, or not exceeding fifty years from the time when the additional costs are incurred, whichever period is the lesser. Each annual installment shall be repaid to the United States solely out of the revenues from the power system.

(g) Electric energy available for sale through the power system shall be sold at the lowest rates which, in the judgment of the Secretary of the Interior, will produce net revenues sufficient to liquidate the annual installments of the power system construction costs established pursuant to subsection (f) of this section, and (for the purpose of reducing the irrigation system construction costs chargeable against the lands embraced within the project and of insuring the carrying out of the intent and purpose of legislation and repayment contracts applicable to the project) to yield a reasonable return on the unliquidated portion of the power system construction costs, and (for the same purpose) to yield such additional sums as will cover the amount by which the wholesale value of the electric energy sold exceeds the cost thereof where such excess is the result of the electric energy having been obtained on a special basis in return for water rights or other grants.

(h) All net revenues hereafter accumulated from the power system shall be applied annually to the following purposes, in the following order of priority:

(1) To liquidate all matured installments of the schedule of repayments for construction costs of the power system;

(2) To liquidate all matured installments of the schedule of repayments for construction costs of the irrigation system of each division, on an equal per acre basis for all irrigable lands within the division;

(3) To liquidate unmatured installments of the schedule of repayments for construction costs of the power system which will mature at a date not later than the maturity of any unliquidated installment of irrigation system construction costs;

at or before

(4) To liquidate unmatured installments of the schedule of repayments for construction costs of the irrigation system of each division which will mature at a date prior to the maturity of any unliquidated installment of power system construction costs, on an equal per acre basis for all irrigable lands within the division;

(5) To liquidate construction costs chargeable against Indian-owned lands the collection of which is deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., sec. 386a); and

(6) To liquidate the annual operation and maintenance costs of the irrigation system.

(i) In applying net revenues from the power system to the annual installments of irrigation system construction costs for any division of the project under the preceding subsection, allowance shall be made for any construction costs deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., sec. 386a), or already repaid to the United States which have been deducted from such installments under subsection (e) of this section, by distributing the net revenues available for such application over all irrigable lands within the division on an equal per acre basis, and by applying the net revenues distributed to the lands chargeable with the construction costs that have been so deferred or repaid, in amounts proportionate to the deductions made on account of such costs, to any then unpaid or subsequently assessed costs of operating and maintaining the irrigation system which are chargeable against the same lands.

(j) Any matured installment of irrigation system construction costs, or portion thereof, which is not liquidated at or before its maturity through the application thereto of net revenues from the power system under subsection (h) of this section shall be repaid to the United States by an assessment against the lands chargeable with the construction costs included in the installment. Such repayment shall be deferred for any period of time that may be requisite to provide for the assessment and collection of such costs in conformity with the laws of the State of Montana, but shall be completed within two years after the maturity of the installment concerned.

"Sec. 3. The repayment adjustments provided for in sections 1 and 2 of this Act shall not become effective unless, within two years after the approval of this Act, the irrigation districts embracing lands within the project not covered by trust or restricted patents have entered into contracts satisfactory to the Secretary of the Interior, whereby such districts (1) obligate

themselves for the repayment of the construction costs chargeable against all irrigable lands embraced within the districts contracting (exclusive of Indian-owned lands on which the collection of construction costs is deferred) to the extent and in the manner prescribed by sections 1 and 2 of this Act; (2) consent to such revisions in the limits of cost for the project, or any division thereof, as the Secretary and the districts contracting may mutually agree upon in order to facilitate the making of needed improvements and extensions to the irrigation and power systems; (3) provide for redetermination by the Secretary of the irrigable area of the project, or any division thereof, and for the exclusion of lands from the project, with the consent of the holder of any water rights that would be canceled by such exclusion; and (4) make such other changes in the existing repayment contracts as the Secretary and the districts contracting may mutually agree upon for accomplishment of the purposes of this Act. In order to facilitate the commencement of repayment at the earliest practicable time, such contracts may provide for adjusting the maturity dates or amounts of the annual installments in a manner which will ultimately place the repayment schedules on substantially the same basis as though such contracts had been entered into prior to their actual execution, but not earlier than January 1, 1949.

"Sec. 4. Unpaid charges for operation and maintenance of the irrigation system which were assessed prior to May 10, 1926, against any lands within the project, amounting to a sum not exceeding \$40,549.89, and unpaid charges due from consumers for electric energy sold through the power system between July 1, 1931, and June 30, 1942, amounting to a sum not exceeding \$2,195.16, are hereby canceled. The cancellation of the operation and maintenance charges shall be reported in the reimbursable accounts rendered to the Comptroller General of the United States, pursuant to the Act of April 14, 1910 (36 Stat. 269, 270; 25 U.S.C., sec. 145), as deductions from the total indebtedness of the project without regard to the fiscal years in which, or the appropriations from which, the expenditures were made.

"Sec. 5. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the following sums, for the following purposes, to be reimbursed to the United States as hereinafter provided:

(a) The sum of \$64,161.13, with interest thereon at the rate of 4 per centum per annum from May 18, 1916, and the sum of \$409.38, with interest thereon at the same rate from December 1, 1925, to be used to repay the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana

the balance remaining due them under the Act of May 18, 1916 (39 Stat. 123, 141). The aggregate principal amount of \$64,570.56 so repaid shall be added to the construction costs of the project and shall be reimbursable.

(b) The sum of \$400,000 to be deposited in the United States Treasury to the credit of the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana; of which sum one-half shall be in full settlement of all claims of said tribes on account of the past use of tribal lands for the physical works and facilities of the irrigation and power systems of the project, or for wildlife refuges; and the other one-half shall be in full payment to said tribes for a permanent easement to the United States, its grantees and assigns, for the continuation of any and all of the foregoing uses, whether heretofore or hereafter initiated, upon the tribal lands now used or reserved for the foregoing purposes. The said tribes shall have the right to use such tribal lands, and to grant leases or concessions thereon, for any and all purposes not inconsistent with such permanent easement. The amount deposited in the Treasury pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable.

(c) The sum of \$1,000,000 to continue the construction of the irrigation and power systems of the project. Amounts expended pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable.

(d) No expenditure shall be made from any appropriation granted under the authorizations contained in this section until the repayment of all reimbursable construction costs incurred through such expenditure has been secured by contracts conforming to the requirements of section 3 of this Act.

"Sec. 6. In each fiscal year commencing after the approval of this Act for which an appropriation of the power revenues from the project is made in an indefinite amount pursuant to section 3 of the Act of August 7, 1946 (60 Stat. 895; 31 U.S.C., sec. 725s-3), the power revenues so appropriated shall be available, to the extent of not to exceed \$75,000, for the purpose, in addition to those other purposes now required or permitted by law, of making such improvements and extensions to the power system as the Secretary of the Interior may deem requisite for the provision of electric service to persons whose applications for such service could not otherwise be complied with in due course of business. Amounts so expended shall be added to the unmatrued portion of the reimbursable construction costs of the power system in accordance with subsection 2(f) of this Act, so as not to reduce the net power revenues available for application under subsection 2 (h) of this Act.

"Sec. 7. Consistent with the terms of the repayment contracts heretofore or hereafter executed, the Secretary of the Interior is hereby authorized to issue such public notices fixing construction costs and apportioning construction charges, to enter into such contracts, to make such determinations, to effect such adjustments in project accounts, to prescribe such regulations, and to do such other acts and things as may be necessary or appropriate to accomplish the purposes of this Act.

"Sec. 8. All Acts or parts thereof inconsistent with the provisions of this Act are hereby repealed."

3. WHEREAS, the District desires to obtain the benefit of the repayment adjustments provided for in sections 1 and 2 of said Act of May 25, 1948; desires to secure the repayment of its appropriate share of the reimbursable construction costs of the project that are incurred under the authorizations contained in section 5 of said Act, in addition to its appropriate share of all other reimbursable construction costs heretofore or hereafter incurred for the benefit of the project; desires to facilitate the making of needed improvements and extensions to the irrigation and power systems of the project and to promote the more effective utilization of these systems in the interest of the water and power users served or capable of being served therefrom, through revisions in the limits of cost applicable to the portions of the project embraced within the District, through the redetermination from time to time of the irrigable area of such portions of the project, and through other appropriate measures in conformity with the provisions of said Act and other laws applicable to the project; and desires to consolidate in this amendatory contract such provisions of the first supplemental contract, second supplemental contract, and third supplemental contract

as need to be retained in effect in order to provide for the payment, as required by existing laws, of those past-due operation and maintenance obligations covered by such supplemental contracts that are not authorized to be consolidated with construction costs or cancelled by said Act of May 25, 1948, and

4. WHEREAS, the United States desires to provide for the accomplishment of the purposes of said Act of May 25, 1948, in cooperation with the District and with the other irrigation districts that have contracted for repayment of the costs of the project.

NOW THEREFORE, in consideration of the covenants herein contained, it is mutually agreed by the District and by the United States as follows:

5. Section 11 of the original repayment contract is hereby amended to read as follows:

"(a) The reimbursable costs of the project shall comprise all expenses of whatever kind heretofore or hereafter incurred by the United States on account of the project, including the cost of labor, material, equipment, engineering, legal work, superintendence, administration, overhead, rights-of-way, property, electrical energy, and damages of all kinds, as well as all other proper costs and expenses, but excluding any expenses made from funds not subject to a requirement for repayment imposed by law or action taken pursuant to law. The reimbursable costs of the project shall be divided into construction costs and operation and maintenance costs. The construction costs shall comprise all expenses incurred for, or in connection with, the construction or acquisition

of the physical works and facilities of the project, and the replacement or repair of substantial portions of such works and facilities in a manner calculated to increase materially their useful life, including the past-due construction charges provided for in the Act of March 4, 1929 (45 Stat. 1623, 1639-40) and such other construction charges as may have become due under the provisions of the public notice referred to in section 28 of this contract or under the provisions of orders or determinations of the Secretary of the Interior made prior to the first day of January, 1949. The construction costs shall also comprise such operation and maintenance costs, and such interest and penalties on past-due operation and maintenance charges, as the Congress has authorized or may in the future authorize to be consolidated with construction costs, including the undistributed operation and maintenance costs provided for in the Act of March 7, 1928 (45 Stat. 200, 212-213), the operation and maintenance costs for the irrigation season of 1928 (to the extent chargeable against lands within the District and lands held by Indians under trust or restricted patents within the portion of the Mission Valley division of the project north of Post Creek and the Camas division) provided for in said Act; and the unpaid operation and maintenance charges for the irrigation seasons of 1926 and 1927, together with the interest and penalties thereon, provided for in the Act of May 25, 1948 (Public Law 554-80th Congress). The operation and maintenance costs shall comprise all other expenses incurred by the United States on account of the project, except those cancelled

by section 4 of said Act of May 25, 1948, and those heretofore or hereafter cancelled pursuant to other provisions of law. All costs incurred for, or in connection with, the irrigation system of the project shall be allocated to that system; all costs incurred for, or in connection with, the power system of the project shall be allocated to that system; and any joint costs incurred on account of both systems shall be divided between them on a basis that will reflect, as accurately as is practicable, the extent of the intended benefits to each from the expenses involved. The construction costs of the irrigation system of the project shall be allocated among the several divisions and irrigation districts of the project, and shall be charged against the lands therein designated by the Secretary of the Interior as irrigable and assessable for construction costs, in a manner consistent with the applicable provisions of law and this contract; and the operation and maintenance costs of the irrigation system of the project shall be allocated among the several divisions and irrigation districts of the project, and shall be charged against the lands therein designated by the Secretary of the Interior as irrigable and assessable for operation and maintenance costs, in a manner consistent with the applicable provisions of law and this contract.

"(b) The amount of the construction costs of the power system of the project at the date of the enactment of said Act of May 25, 1948 (exclusive of costs repaid through credits from the revenues of the power system made prior to that date), is hereby determined to be \$941,793.79; the amount of the construction costs of the irrigation

system of the project at that date is hereby determined to be \$9,226,811.87; and the amount of the irrigation system construction costs at that date incurred for the benefit of each division of the project is hereby determined to be: for the Mission Valley division \$7,116,178.82, for the Jocko division \$672,450.87, and for the Camas division \$1,438,182.18, of which last-specified sum the amount of \$508,839.90 constitutes the deferred obligation for repayment of the excess costs of the Camas division established by the Act of May 10, 1926 (44 Stat. 453,464-466). Subject to the foregoing determinations, the amount of the various classes of costs of the project, whether heretofore or hereafter incurred, and their proper allocation to the various classes of land within the project, whether owned by Indians or non-Indians, and whether within or without the irrigation districts contracting for the repayment of such costs, shall be determined by the Secretary of the Interior, and such decisions, together with the books and records in which they are entered, shall be accepted as final and conclusive."

6. Section 12 of the original repayment contract is hereby amended to read as follows:

"(a) The District hereby obligates itself for the repayment to the United States of the construction costs chargeable against all irrigable lands embraced within the District (exclusive of Indian-owned lands on which the collection of construction costs is deferred) to the extent and in the manner prescribed by sections 1 and 2 of said Act of May 25, 1948. The District hereby agrees that the construction costs of the project, repayment of which is secured by this contract,

shall include the amounts of \$64,570.56 and \$400,000 provided for in section 5 of said Act, whenever such amounts are appropriated by the Congress for payment to, or deposit to the credit of, the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana, and the further amount of \$1,000,000 provided for in section 5 of said Act, to the extent that such amount at any time may have been appropriated by the Congress and expended for the benefit of the project, together with all other amounts now or hereafter comprised within the construction costs of the project, as defined in section 11 of this contract. The District, however, shall not be obligated (unless and until higher limits of costs are agreed to by later contracts) for the repayment of any construction costs incurred by the United States on account of the irrigation system of the project in excess of the following limits for each acre of land within the several divisions of the project (inclusive of Indian-owned lands on which the collection of construction costs is deferred): for the Mission Valley division \$82.00 per acre, for the Jocko division \$68.00 per acre, and for the Camas division \$82.00 per acre, after the deduction of the deferred obligation for the excess costs of that division from its construction costs. The foregoing limits of cost shall be revised at the end of five years from January 1, 1950, and at the end of each succeeding period of five years, by adding to each such limit one-half of the amount, computed on a per acre basis, by which the construction costs of the irrigation system allocated to the division concerned have been liquidated out of power revenues accumulated subsequent to the enactment

of said Act of May 25, 1948. The construction costs of the power system of the project shall be repaid to the United States solely out of the net revenues from the power system, as provided in said Act, and shall not be subject to the foregoing limits of cost.

"(b) The net revenues from the power system of the project shall be applied to liquidate or reduce the repayment obligations or requirements for the construction costs, or operation and maintenance costs, of the project to the extent and in the manner prescribed by sections 1, 2, and 6 of said Act of May 25, 1948. For the purposes of subsection 2(1) of said Act any allowances made by the Secretary of the Interior on account of individually constructed ditches under the authority of the Act of April 23, 1904 (33 Stat. 302), as amended and supplemented by the Act of May 18, 1916 (39 Stat. 123, 139-142), or on account of other works or facilities acquired in accordance with law from the holders of lands chargeable with construction costs of the project, shall, to the extent that such allowances have not been discharged through prior credits against operation and maintenance charges, be treated as repayments of construction costs and be made the basis for operation and maintenance credits from the net revenues of the power system in the manner authorized by that subsection. The gross revenues of the power system, from which the net revenues are to be computed in accordance with said Act of May 25, 1948, shall include those derived from the sale of electrical energy by the project, from the operation by the project of facilities for the generation, transmission or distribution of electrical energy that have been constructed or acquired by the

project with reimbursable funds, from the rental of such facilities, from the rental of rights-of-way, property or water rights held by the project for present or future use in connection with the generation, transmission or distribution of electrical energy, and from power development of any sort made by or on account of the project; but shall not include those derived from the rental of Indian lands for power development which are payable to the Indians of the Flathead Reservation as a tribe under the Act of March 7, 1928 (45 Stat. 200, 212-213), or those otherwise provided for by or pursuant to law. The expenses of operating and maintaining the power system, to be used in computing the net revenues under said Act of May 25, 1948, shall include those actually incurred during the period covered by the computation, and those estimated to be incurred during subsequent accounting periods for the performance of such current or deferred operation and maintenance work as necessitates, in the judgement of the Secretary of the Interior, the making of advance provision therefor out of the accumulated net revenues, but such estimated expenses shall be adjusted to conform to the actual expenses as these are incurred. The net revenues from the power system accumulated at the date of the enactment of said Act, after all necessary deductions for current or deferred operation and maintenance and for appropriate reserves, are hereby determined to be \$971,388.79. The proper application of such accumulated net revenues under said Act is hereby determined to be as follows: for liquidation in full of the deferred obligation for the excess costs of the Camas division, \$598,839.90; for reduction of the repayment requirements for

the construction costs of the power system, \$36,509.79; and for reduction of the repayment obligations for the construction costs of the irrigation system, \$336,039.10, of which last-specified sum \$277,176.37 is hereby allocated to the Mission Valley division, \$26,073.43 to the Jocko division, and \$32,784.30 to the Camas division. The amount and proper application of the net revenues from the power system accumulated after the date of the enactment of said Act, after all necessary deductions for current or deferred operation and maintenance and for appropriate reserves, shall be determined by the Secretary of the Interior as of the first day of January in each and every year, beginning with the year 1950, and such decisions, together with the books and records in which they are entered, shall be accepted as final and conclusive.

"(c) The repayment obligations for the construction costs of the irrigation system of the project at the date of the enactment of said Act of May 25, 1948, as reduced through the crediting against such obligations of the net revenues from the power system accumulated at that date, are hereby determined to be: for the Mission Valley division \$6,839,002.45, for the Jocko division \$646,372.44, and for the Camas division \$806,557.98. The construction costs covered by such reduced irrigation repayment obligations shall be repaid in fifty annual installments one of which shall mature on the first day of January in each and every year, commencing with the year 1950 and continuing until the construction costs included in such obligations have been repaid in full. The first annual installment for the Mission Valley division shall be in the amount of \$150,502.45, and the remaining annual

installments for that division shall be in the amount of \$136,500 each. The first annual installment for the Jocko division shall be in the amount of \$14,372.44, and the remaining annual installments for that division shall be in the amount of \$12,900 each. The first annual installment for the Camas division shall be in the amount of \$17,657.98, and the remaining annual installments for that division shall be in the amount of \$16,100 each. All sums paid to, or deposited to the credit of, the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana under section 5 of said Act of May 25, 1948, shall be allocated among the several divisions of the project in proportion to their respective shares of the reduced repayment obligations for the past construction costs of the irrigation system as specified in this paragraph, and shall be added to the annual installments maturing more than one year after the appropriation of these sums, in approximately equal amounts which will provide for the full repayment of these sums within the initial repayment period of fifty years, ending on the first day of January, 1999, hereinabove established. Subject to the limitations contained in subsection 2(e) of said Act, all other construction costs of the irrigation system of the project incurred after the date of the enactment of said Act shall be added to the foregoing schedule of repayments by increasing the amount or the number, or both, of the annual installments as the Secretary of the Interior may prescribe, but no annual installment shall be increased to an amount higher than \$162,000 for the Mission Valley division, \$15,800 for the Jocko division, and \$19,100 for the Camas division, unless the

Secretary of the Interior determines that it is necessary to exceed these limits in order to comply with the provisions of said Act. The repayment requirements for the construction costs of the power system of the project at the date of the enactment of said Act, as reduced through the crediting against such requirements of the net revenues from the power system accumulated at that date, are hereby determined to be \$905,284.00. The construction costs covered by such reduced power repayment requirements shall be repaid in twenty-five annual installments one of which shall mature on the first day of January in each and every year, commencing with the year 1950 and continuing until the construction costs included in such requirements have been repaid in full. The first annual installment shall be in the amount of \$39,844.00, and the remaining annual installments shall be in the amount of \$36,060 each. Subject to the limitations contained in subsection 2(f) of said Act, the construction costs of the power system of the project incurred after the date of the enactment of said Act shall be added to the foregoing schedule of repayments by increasing the amount or the number, or both, of the annual installments as the Secretary of the Interior may prescribe. Changes in the schedules of repayments established by this paragraph shall be effected by orders of the Secretary of the Interior, and the District shall be furnished with a copy of each such order.

"(d) Whenever any annual installment of the construction costs of the irrigation system of the project, as established by or pursuant to the preceding paragraph, is not liquidated in full at or before its maturity through the application thereto of net revenues from the power

system of the project, as provided for in the second preceding paragraph, the portion of such installment which has not been so liquidated, or the whole of such installment if none of it has been so liquidated, shall be repayable to the United States by an assessment against the lands chargeable with the construction costs included in such installment. In this event the Secretary of the Interior, as soon after the maturity of such installment as he deems practicable, shall cause a statement showing the amount that has not been liquidated out of power revenues and that is chargeable against any lands within the corporate area of the District to be furnished to the latter. Thereupon the District shall promptly proceed to assess and levy such sums as may be necessary for the payment to the United States of the amount so specified. One-half of such amount shall become payable on the first day of February and one-half on the first day of July in the year following the year at the beginning of which such wholly or partially unliquidated installment matured."

7. Section 14 of the original repayment contract is hereby amended to read as follows:

"All lands so conveyed to the United States shall be subject to disposition by the Secretary of the Interior in farm units at the appraised price, to which shall be added such amount as may be necessary to cover any accruals against the land and other costs arising from conditions and requirements prescribed by said Secretary. Indian-owned lands held under trust or restricted patents shall not be subject to the provisions of the irrigation district laws of the State of Montana.

Indian-owned lands for which a fee patent is issued shall, upon their inclusion within the District as provided in Section 7 of this contract, be accorded the same rights and privileges and be subject to the same obligations as other lands within the District, except that such fee patented lands, so long as title thereto remains in an Indian or Indians, shall not be subject to assessment for any construction costs of the project during any period while the collection of construction costs on these lands is deferred under the Act of July 1, 1932 (47 Stat. 554), or by or pursuant to any other Act of the Congress. All construction costs heretofore or hereafter incurred by the United States on account of the irrigation system of the project (after deduction of the amounts discharged through the application of the net power revenues accumulated on May 25, 1948, as provided in section 12 of this contract) and all uncanceled operation and maintenance costs heretofore or hereafter incurred by the United States on account of the irrigation system of the project shall be, and are hereby made, a first lien under the Act of May 10, 1926 (44 Stat. 453, 464-466), against all lands within the project, including those not yet designated as irrigable, and the existence of such lien is hereby recognized and acknowledged by the District. After the total amount covered by such lien which is chargeable against any particular farm unit or other separately bounded landholding has been paid, and all rights of the United States to incur costs, impose assessments, enforce charges or collect repayments with respect to the lands included in such farm unit or landholding have terminated, the lien against such parcel of lands shall be released by

the Secretary of the Interior, and a recital of the existence of the lien shall be made in any patent or other instrument of title issued by said Secretary prior to such release. The Secretary of the Interior shall issue such public notice or notices as he may deem necessary for the purpose of giving effect to said Act of May 25, 1948, in a manner consistent with this contract, but no such notice or notices shall be requisite in order to make the provisions of said Act and this contract applicable to lands embraced within the District, and such provisions shall become effective with respect to such lands forthwith. The District hereby agrees that it will faithfully perform all of the provisions of this contract and of the Acts of the Congress applicable to the project that pertain to any matter within its jurisdiction; and particularly that it will pay to the United States all sums now due, or that may become due in the future, under this contract which are chargeable against or relate to any lands within the corporate area of the District, at such times as are specified in this contract for the making of these payments or, if no definite date be fixed by this contract for the making of particular payments, at such times, not inconsistent with this contract or any applicable provisions of law, as may be specified by order of the Secretary of the Interior. The said Secretary annually shall have prepared and furnished to the District a financial statement showing the costs and revenues of the irrigation and power systems of the project for the preceding calendar year, and showing the balances on hand in the construction accounts and the operation and maintenance accounts as of the end of such year."

8. The original repayment contract is hereby amended by adding the following new section, to be numbered section 27:

"(a) All interest and penalties accruing up to May 9, 1935, on delinquent charges for the operation and maintenance of the irrigation system assessed prior to May 10, 1926, where such interest and penalties remained unpaid on May 9, 1935, shall be paid by the District, to the extent that such past-due obligations are chargeable against lands within its corporate area, in the manner prescribed by the Act of May 9, 1935 (49 Stat. 176, 187-188). The amount of the interest and penalties to be included in such past-due obligations shall be determined by adding together the following items as of May 9, 1935: (1) the interest and penalties attaching to the operation and maintenance charges described in this section and chargeable against the various farm units and other landholdings within the District which are shown by the books and records of the project to have been outstanding on December 31, 1928, or at the time when the lands involved were included within the District, if subsequent to that date; and (2) the simple interest at the rate of six per cent per annum on the unpaid principal balance of such operation and maintenance charges authorized by the Act of March 7, 1928 (45 Stat. 200, 212-213), as modified by the Act of February 17, 1933 (47 Stat. 820, 830-831), and owing by the District in accordance with said Acts for the period from December 31, 1928, or the date of the inclusion of the lands involved, to May 9, 1935, as computed in accordance with the accounting practices of the project. The total amount of the past-due obligations payable under this section shall be divided into seventy semi-annual installments of approximately equal amount; the first semi-annual

installment shall mature on June 30, 1948; the second semi-annual installment shall mature on December 31, 1949; and the remaining semi-annual installments shall mature on each succeeding 30th day of June and 31st day of December, respectively, until such past-due obligations have been paid in full to the United States. The payments required by this section shall be made through assessments against the individual farm units and other separately bounded landholdings chargeable with the past-due obligations remaining to be paid, or through such supplemental assessments against other lands within the District as may be necessary to prevent or remove deficiencies in such payments.

"(b) In order to reflect the elimination from the past-due obligations covered by this section of those delinquent obligations formerly payable under said Act of May 9, 1935, which have since been covered into construction costs or cancelled, the Secretary of the Interior shall cause to be prepared a revised schedule of the payments required by this section. Such schedule shall set forth in conformity with the provisions of the preceding paragraph the amount and maturity date of each of the seventy semi-annual installments in which the past-due obligations remaining subject to this section are to be paid, shall credit against these installments in the order of their respective maturities all payments made since May 9, 1935, on account of the past-due obligations remaining subject to this section, and shall show the nature and amount of the sums chargeable against the various farm units and other landholdings embraced within the District on account of such past-due obligations. Such revised schedule shall be furnished to the District within four

months after the taking effect of the amendments to this contract made in pursuance of said Act of May 25, 1948. The District shall thereupon proceed to assess and levy sums sufficient to liquidate in full any semi-annual installments shown by such schedule to be unpaid that have matured, or that will mature within one year after the taking effect of such amendments, and shall pay to the United States the amount due under such installments within two years after the taking effect of such amendments. On or before each 15th day of June after the taking effect of such amendments the Secretary of the Interior shall cause the District to be furnished with a list of any changes in the foregoing schedule necessitated by reason of payments made to him by the holders of the lands chargeable with such past-due obligations or by reason of the inclusion or exclusion of lands within or from the District. Upon the basis of such schedule and any lists of changes so furnished, the District shall annually assess and levy sums sufficient to liquidate the remaining semi-annual installments as they mature, and shall pay to the United States the amount of each such installment on or before its maturity date. The District, however, may, at its option, pay to the United States at any time the full amount then outstanding on account of the past-due obligations covered by this section, in lieu of liquidating them by installments, and may, at its option, pay out of general funds of the District any sums due or to become due under this section, in lieu of levying separate assessments for such sums.

"(c) The provisions of this section shall not be effective if the Comptroller General of the United States determines that the interest

and penalties on delinquent operation and maintenance charges assessed prior to May 10, 1926, were cancelled by section 4 of said Act of May 25, 1948, or if the Congress enacts legislation expressly cancelling such interest and penalties. The United States, however, shall not be obligated to refund any payment on account of such interest and penalties made prior to the date of such determination or enactment, as the case may be."

9. Section 20 of the original repayment contract is hereby amended to read as follows:

" The Secretary of the Interior shall, if funds are available therefor, cause the area of the project and the irrigability of the several portions thereof to be redetermined at intervals of approximately five years, and may cause the same to be done at such other times as he deems appropriate, the expenses of such redeterminations to be treated as operation and maintenance costs of the project. He may establish land classification boards, composed in part of water users on the project, to assist in this work with respect to the project as a whole or with respect to any portions thereof he may deem to be in particular need of reexamination. Any lands within the project to which water can be delivered through the irrigation system of the project as actually constructed, except unentered public lands and vacant unsold state school lands, may be designated by the Secretary of the Interior as irrigable for the purposes of this contract, either in connection with the periodic redeterminations required by this section or in such other manner as he deems appropriate, but all such designations shall be subject to revision from time to time. If the Secretary of the Interior

shall find any lands within the project to be permanently incapable of successful cultivation under irrigation, on account of seepage, alkaline conditions, unavailability of water, or for any other reason, he may, in his discretion, exclude these lands from the project, with the consent of the holder of any water rights that may appertain to the lands by reason of their inclusion within the project or of any water rights that would be otherwise cancelled by such exclusion; whereupon any water rights appertaining to the lands by reason of their inclusion within the project shall be severed from them and shall be available for transfer by said Secretary to any other lands theretofore or thereafter brought within the project. If the Secretary of the Interior shall find any lands not within the project to be capable of successful cultivation under irrigation through existing or prospective works of the project, and that a water supply can be made available for them without prejudice to the water supply of the areas already within the project, he may, in his discretion, include these lands within the project upon such terms and conditions, not inconsistent with law or this contract, as he deems appropriate. No lands shall be excluded from or included within the project under the foregoing authorizations if the effect of such action would be to decrease or increase by more than five percent the existing area of any division wherein lands embraced within the District are situated, unless the exclusion or inclusion of such lands has been consented to by the District. For the purposes of this contract the existing area of the project shall be considered to be the area of 138,194.55 acres included in classes 1,

2, and 3 of the project land classification dated October 7, 1930, and approved by the First Assistant Secretary of the Interior on March 28, 1931, whereof 111,659.65 acres are within the Mission Valley division, 13,364.87 acres are within the Jocko division, and 13,170.03 acres are within the Camas division. The liability of the District for the payments required by this contract shall not be increased or reduced by reason of any alterations in the area of the project (except that the basis for applying to such liability the limits of cost established by section 12 shall be the area of the several divisions of the project as diminished or enlarged by such alterations), or by reason of any alterations in the area of the lands designated as irrigable from works of the project, or by reason of any alterations in the area of the lands made assessable for particular charges of the project, provided such alterations are made in pursuance of and in accordance with said Act of May 25, 1948, or this contract. No suspension of any charges shall be made by the District without the consent of the Secretary of the Interior."

10. The original repayment contract is hereby amended by adding the following new section, to be numbered section 28:

"Any provision of this contract which is in conflict with said Act of May 25, 1948, or with the amendments to this contract made in pursuance of said Act, is hereby amended to conform to said Act or to such amendments, as the case may be. The provisions of the public notice fixing construction charges for the project issued on November 1, 1930, as amended and supplemented on April 20, 1931, insofar as those provisions

relate to construction charges against lands embraced within the District, shall be superseded by this contract, and shall be deemed to have become inapplicable to such lands as of the first day of January, 1949, when the deferment of the construction charges fixed by such notice terminates pursuant to the Act of July 26, 1947 (61 Stat. 494). The Secretary of the Interior may, where not inconsistent with law, delegate any of the functions placed in him or in the United States by this contract to the Project Engineer for the Flathead Indian Irrigation Project or to such other official as he may designate."

11. The first supplemental contract, the second supplemental contract, and the third supplemental contract are hereby rescinded and cancelled.

12. Nothing contained in this amendatory contract shall be construed to require the refund of any payments made to the United States prior to the taking effect of this amendatory contract, or to require the refund of any collections made by the District prior to such time, or to invalidate any assessment imposed or any other act or thing done prior to such time, under those provisions of the original repayment contract, the first supplemental contract, the second supplemental contract, or the third supplemental contract which are amended or cancelled by this amendatory contract.

13. The execution of this amendatory contract shall be authorized by qualified holders of title or evidence of title to lands embraced within the District as provided by the laws of the State of Montana. The Board of Commissioners of the District shall thereupon proceed, in

accordance with said laws, to provide for the annual levy and collection of a special tax or assessment upon all lands then included within the District, or subsequently brought therein, that are not covered by trust or restricted patents and are subject to taxation or assessment for the obligations imposed or continued by this contract; such special tax or assessment to be sufficient in amount to meet all payments due or to become due to the United States from the District under the original repayment contract, as amended by this contract, at the times when such payments become due to the United States and payable by the District under such original repayment contract, as so amended. In addition, the Board of Commissioners of the District shall prosecute an action in a court of competent jurisdiction for a judicial confirmation, under the laws of the State of Montana, of the validity of the proceedings had relative to the making of this amendatory contract and to the imposition of the special tax or assessment required to be levied and collected annually for its performance. Certified copies of such proceedings and their judicial confirmation shall be furnished by the District to the United States for its files. This amendatory contract shall not become binding upon the United States until the Secretary of the Interior shall be satisfied that all conditions requisite for the validity and enforceability of the obligations imposed or continued thereby have been met, nor until he shall be satisfied that the other irrigation districts embracing lands within the project not covered by trust or restricted patents have entered into valid and enforceable contracts conforming to the provisions of said Act of May 25, 1948. Such satisfaction shall be

evidenced by the final execution of this amendatory contract by the Secretary of the Interior, and its provisions shall take effect upon the date of such final execution.

14. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefits that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

15. This agreement shall inure to the benefit of and be binding upon the District and its successors and assigns, and the United States and its assigns.

In Witness Whereof, the respective parties hereto have caused this agreement to be executed by the District on the day and year first above written, and by the United States on the 24 day of MAY, 1950.

The United States of America

By ^(s) WILLIAM E. WARNE
Secretary of the Interior

Flathead Irrigation District

By ^(s) GEO. W. SLACK
President

Attest:

^(s) D. A. DELLWO
Secretary

September 15 1949

Approved as to form:

^(sgd) MASTIN G. WHITE
Acting Assistant Secretary

AMENDATORY REPAYMENT CONTRACT

Jocko Valley Irrigation District
Flathead Indian Irrigation Project

Isec-729

This amendatory contract, made this 18 day of APRIL, 1950, in pursuance of the Act of April 23, 1904 (33 Stat.302), and acts amendatory thereof or supplementary thereto, and especially the Act of May 25, 1948 (Public Law 554 - 80th Congress), by and between the United States of America (hereinafter called the United States), acting by and through the Secretary of the Interior, and the Jocko Valley Irrigation District (hereinafter called the District), a public corporation duly organized and existing under the laws of the State of Montana, their respective successors and assigns, Witnesseth:

1. WHEREAS, in pursuance of said Act of April 23, 1904, and acts amendatory thereof or supplementary thereto, the parties to this amendatory contract have entered into a repayment contract (hereinafter called the original repayment contract), executed by the District as of the 13th day of November, 1934, and by the United States as of the 26th day of February, 1935, with respect to certain portions of the lands, costs, charges and benefits of the Flathead Indian Irrigation Project (hereinafter called the project); and have entered into a supplemental contract (hereinafter called the first supplemental contract), executed by the District as of the 5th day of June, 1936, and by the United States as of the 5th day of October, 1936, which modified certain provisions of the original repayment contract; and have entered into another supplemental contract (hereinafter called

the second supplemental contract), executed by the District as of the 4th day of June, 1940, and by the United States as of the 9th day of September, 1940, which also modified certain provisions of the original repayment contract.

2. WHEREAS, said Act of May 25, 1948, entitled "An Act To provide for adjustment of irrigation charges on the Flathead Indian irrigation project, Montana, and for other purposes," provides as follows:

"That the repayment to the United States of all reimbursable costs heretofore or hereafter incurred for the construction of the irrigation and power systems of the Flathead Indian irrigation project in Montana (hereinafter called the project), including such operation and maintenance costs as have been covered into construction costs under the Act of March 7, 1928 (45 Stat. 200,212-213), and supplemental Acts, and including the unpaid operation and maintenance costs for the irrigation seasons of 1926 and 1927 which are hereby covered into construction costs, shall be accomplished as prescribed by this Act, notwithstanding any provision of law to the contrary.

"Sec. 2 (a) All costs heretofore or hereafter incurred for the construction of the irrigation system shall be allocated to the Mission Valley, Camas, and Jocko divisions of the project in proportion to the amount of such costs incurred for the respective benefit of each of these divisions.

(b) The net revenues heretofore and hereafter accumulated from the power system shall be determined by deducting from the gross revenues the expenses of operating and maintaining the power system, and the funds necessary to provide for the creation and maintenance of appropriate reserves in accordance with section 3 of the Act of August 7, 1946 (60 Stat. 895; 31 U.S.C., sec. 725s-3).

(c) The deferred obligation established by the Act of May 10, 1926 (44 Stat. 453, 464-466), for repayment of the per acre costs of the Camas division in excess of the per acre costs of the Mission Valley division shall be determined on the basis of the costs heretofore incurred for the construction of those divisions, and shall be liquidated from the net revenues heretofore accumulated from the power system,

(d) The remainder of the net revenues heretofore accumulated

from the power system shall be applied to reduce the reimbursable costs heretofore incurred for the construction of the power system, and the reimbursable costs heretofore incurred for the construction of the irrigation system (exclusive of the deferred obligation for the excess costs of the Camas division) as allocated among the several divisions pursuant to subsection (a) of this section, in proportion to the respective amounts of each of the foregoing categories of costs.

(e) The reimbursable costs heretofore incurred for the construction of the irrigation system of each division of the project and not repaid through the credits provided for in subsections (c) and (d) of this subsection shall be scheduled for repayment in annual installments of approximately equal amount, in a manner which will provide for liquidation of such costs over a period of fifty years from January 1, 1950. The reimbursable costs hereafter incurred for the construction of the irrigation system shall be added to the schedule of repayments established pursuant to this subsection by increasing the amount or the number, or both, of the annual installments maturing after the incurrence of such costs, in a manner which will provide for their liquidation within a period not exceeding the useful life of the works involved, or not exceeding fifty years from the time when the additional costs are incurred, whichever period is the lesser. Each annual installment shall be distributed over all irrigable lands within the division on an equal per acre basis, and the costs so charged against any parcel of lands within the division shall constitute a first lien thereon under the Act of May 10, 1926 (44 Stat. 453, 464-466). Upon the maturity or prepayment of any annual installment, the amount of the installment shall be reduced by deducting any sums included therein which are chargeable to lands on which the collection of construction costs is then deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., sec. 386a), or which are chargeable to other lands and have been already repaid to the United States.

(f) The reimbursable costs heretofore incurred for the construction of the power system and not repaid through the credits provided for in subsections (c) and (d) of this subsection, or through other credits from the revenues of the power system, shall be scheduled for repayment in annual installments of approximately equal amount, in a manner which will provide for liquidation of such costs over a period not exceeding the remaining useful life of the power system as a whole, or not exceeding fifty years from January 1, 1950, whichever period is the lesser. The reimbursable costs hereafter incurred for the construction of the power system shall be added to the schedule of repayments established pursuant to this subsection by increasing

the amount or the number, or both, of the annual installments maturing after the incurrence of such costs, in a manner which will provide for their liquidation within a period not exceeding the useful life of the works involved, or not exceeding fifty years from the time when the additional costs are incurred, whichever period is the lesser. Each annual installment shall be repaid to the United States solely out of the revenues from the power system.

(g) Electric energy available for sale through the power system shall be sold at the lowest rates which, in the judgment of the Secretary of the Interior, will produce net revenues sufficient to liquidate the annual installments of the power system construction costs established pursuant to subsection (f) of this section, and (for the purpose of reducing the irrigation system construction costs chargeable against the lands embraced within the project and of insuring the carrying out of the intent and purpose of legislation and repayment contracts applicable to the project) to yield a reasonable return on the unliquidated portion of the power system construction costs, and (for the same purpose) to yield such additional sums as will cover the amount by which the wholesale value of the electric energy sold exceeds the cost thereof where such excess is the result of the electric energy having been obtained on a special basis in return for water rights or other grants.

(h) All net revenues hereafter accumulated from the power system shall be applied annually to the following purposes, in the following order of priority.

(1) To liquidate all matured installments of the schedule of repayments for construction costs of the power system;

(2) To liquidate all matured installments of the schedule of repayments for construction costs of the irrigation system of each division, on an equal per acre basis for all irrigable lands within the division;

(3) To liquidate unmatured installments of the schedule of repayments for construction costs of the power system which will mature at a date not later than the maturity of any unliquidated installment of irrigation system construction costs;

(4) To liquidate unmatured installments of the schedule of repayments for construction costs of the irrigation system of each division which will mature at a date prior to the maturity of any unliquidated installment of power system construction costs, on an equal per acre basis for all irrigable lands within the division.

(5) To liquidate construction costs chargeable against Indian-owned lands the collection of which is deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., sec. 386a); and

(6) To liquidate the annual operation and maintenance costs of the irrigation system.

(i) In applying net revenues from the power system to the annual installments of irrigation system construction costs for any division of the project under the preceding subsection, allowance shall be made for any construction costs deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., sec. 386a), or already repaid to the United States which have been deducted from such installments under subsection (e) of this section, by distributing the net revenues available for such application over all irrigable lands within the division on an equal per acre basis, and by applying the net revenues distributed to the lands chargeable with the construction costs that have been so deferred or repaid, in amounts proportionate to the deductions made on account of such costs, to any then unpaid or subsequently assessed costs of operating and maintaining the irrigation system which are chargeable against the same lands.

(j) Any matured installment of irrigation system construction costs, or portion thereof, which is not liquidated at or before its maturity through the application thereto of net revenues from the power system under subsection (h) of this section shall be repaid to the United States by an assessment against the lands chargeable with the construction costs included in the installment. Such repayment shall be deferred for any period of time that may be requisite to provide for the assessment and collection of such costs in conformity with the laws of the State of Montana, but shall be completed within two years after the maturity of the installment concerned.

"Sec. 3. The repayment adjustments provided for in sections 1 and 2 of this Act shall not become effective unless, within two years after the approval of this Act, the irrigation districts embracing lands within the project not covered by trust or restricted patents have entered into contracts satisfactory to the Secretary of the Interior, whereby such districts (1) obligate themselves for the repayment of the construction costs chargeable against all irrigable lands embraced within the districts contracting (exclusive of Indian-owned lands on which the collection of construction costs is deferred) to the extent and in the manner prescribed by sections 1 and 2 of this Act; (2) consent to such revisions in the limits of cost for the project, or any division thereof, as the Secretary and the districts contracting may mutually agree upon in order to facilitate the

making of needed improvements and extensions to the irrigation and power systems; (3) provide for redetermination by the Secretary of the irrigable area of the project, or any division thereof, and for the exclusion of lands from the project, with the consent of the holder of any water rights that would be canceled by such exclusion; and (4) make such other changes in the existing repayment contracts as the Secretary and the districts contracting may mutually agree upon for accomplishment of the purposes of this Act. In order to facilitate the commencement of repayment at the earliest practicable time, such contracts may provide for adjusting the maturity dates or amounts of the annual installments in a manner which will ultimately place the repayment schedules on substantially the same basis as though such contracts had been entered into prior to their actual execution, but not earlier than January 1, 1949.

"Sec. 4. Unpaid charges for operation and maintenance of the irrigation system which were assessed prior to May 10, 1926, against any lands within the project, amounting to a sum not exceeding \$40,549.89, and unpaid charges due from consumers for electric energy sold through the power system between July 1, 1931, and June 30, 1942, amounting to a sum not exceeding \$2,195.16, are hereby canceled. The cancellation of the operation and maintenance charges shall be reported in the reimbursable accounts rendered to the Comptroller General of the United States, pursuant to the Act of April 14, 1910 (36 Stat. 269,270; 25 U. S. C., sec. 145), as deductions from the total indebtedness of the project without regard to the fiscal years in which, or the appropriations from which, the expenditures were made.

"Sec. 5. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the following sums, for the following purposes, to be reimbursed to the United States as hereinafter provided:

(a) The sum of \$64,161.18, with interest thereon at the rate of 4 per centum per annum from May 18, 1916, and the sum of \$409.38, with interest thereon at the same rate from December 1, 1925, to be used to repay the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana the balance remaining due them under the Act of May 18, 1916 (39 Stat. 123, 141). The aggregate principal amount of \$64,570.56 so repaid shall be added to the construction costs of the project and shall be reimbursable.

(b) The sum of \$400,000 to be deposited in the United States Treasury to the credit of the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana; of which sum one-half shall be in full settlement of all claims of said tribes on

account of the past use of tribal lands for the physical works and facilities of the irrigation and power systems of the project, or for wildlife refuges; and the other one-half shall be in full payment to said tribes for a permanent easement to the United States, its grantees and assigns, for the continuation of any and all of the foregoing uses, whether heretofore or hereafter initiated, upon the tribal lands now used or reserved for the foregoing purposes. The said tribes shall have the right to use such tribal lands, and to grant leases or concessions thereon, for any and all purposes not inconsistent with such permanent easement. The amount deposited in the Treasury pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable.

(c) The sum of \$1,000,000 to continue the construction of the irrigation and power systems of the project. Amounts expended pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable.

(d) No expenditure shall be made from any appropriation granted under the authorizations contained in this section until the repayment of all reimbursable construction costs incurred through such expenditure has been secured by contracts conforming to the requirements of section 3 of this Act.

"Sec. 6. In each fiscal year commencing after the approval of this Act for which an appropriation of the power revenues from the project is made in an indefinite amount pursuant to section 3 of the Act of August 7, 1946 (60 Stat. 895; 31 U. S. C., sec. 725s-3), the power revenues so appropriated shall be available, to the extent of not to exceed \$75,000, for the purpose, in addition to those other purposes now required or permitted by law, of making such improvements and extensions to the power system as the Secretary of the Interior may deem requisite for the provision of electric service to persons whose applications for such service could not otherwise be complied with in due course of business. Amounts so expended shall be added to the unamortized portion of the reimbursable construction costs of the power system in accordance with subsection 2 (f) of this Act, so as not to reduce the net power revenues available for application under subsection 2 (h) of this Act.

"Sec. 7. Consistent with the terms of the repayment contracts heretofore or hereafter executed, the Secretary of the Interior is hereby authorized to issue such public notices fixing construction costs and apportioning construction charges, to enter into such contracts, to make such determinations, to effect such adjustments in project accounts, to prescribe such regulations,

and to do such other acts and things as may be necessary or appropriate to accomplish the purposes of this Act.

"Sec. 8. All acts or parts thereof inconsistent with the provisions of this Act are hereby repealed."

3. WHEREAS, the District desires to obtain the benefit of the repayment adjustments provided for in sections 1 and 2 of said Act of May 25, 1948; desires to secure the repayment of its appropriate share of the reimbursable construction costs of the project that are incurred under the authorizations contained in section 5 of said Act, in addition to its appropriate share of all other reimbursable construction costs heretofore or hereafter incurred for the benefit of the project; desires to facilitate the making of needed improvements and extensions to the irrigation and power systems of the project and to promote the more effective utilization of these systems in the interest of the water and power users served or capable of being served therefrom, through revisions in the limits of cost applicable to the portions of the project embraced within the District, through the redetermination from time to time of the irrigable area of such portions of the project, and through other appropriate measures in conformity with the provisions of said Act and other laws applicable to the project; and desires to consolidate in this amendatory contract such provisions of the first supplemental contract and the second supplemental contract as need to be retained in effect in order to provide for the payment, as required by existing laws, of those past-due operation and maintenance obligations covered by such supplemental contracts that are not authorized to be consolidated with construction costs or cancelled by said Act of May 25, 1948, and

4. WHEREAS, the United States desires to provide for the accomplishment of the purposes of said Act of May 25, 1948, in cooperation with the District and with the other irrigation districts that have contracted for repayment of the costs of the project.

Now Therefore, in consideration of the covenants herein contained, it is mutually agreed by the District and by the United States as follows:

5. Section 17 of the original repayment contract is hereby amended to read as follows:

"(a) The reimbursable costs of the project shall comprise all expenses of whatever kind heretofore or hereafter incurred by the United States on account of the project, including the cost of labor, material, equipment, engineering, legal work, superintendence, administration, overhead, rights-of-way, property, electrical energy, and damages of all kinds, as well as all other proper costs and expenses, but excluding any expenses made from funds not subject to a requirement for repayment imposed by law or action taken pursuant to law. The reimbursable costs of the project shall be divided into construction costs and operation and maintenance costs. The construction costs shall comprise all expenses incurred for, or in connection with, the construction or acquisition of the physical works and facilities of the project, and the replacement or repair of substantial portions of such works and facilities in a manner calculated to increase materially their useful life, including the past-due construction charges provided for in the Act of March 4, 1929 (45 Stat. 1623, 1638-40) and such other construction charges as may have become due under the provisions of the public notice referred to in

section 38 of this contract or under the provisions of orders or determinations of the Secretary of the Interior made prior to the first day of January, 1949. The construction costs shall also comprise such operation and maintenance costs, and such interest and penalties on past-due operation and maintenance charges, as the Congress has authorized or may in the future authorize to be consolidated with construction costs, including the undistributed operation and maintenance costs provided for in the Act of March 7, 1928 (45 Stat. 200, 212-213), the operation and maintenance costs for the irrigation season of 1935 (to the extent chargeable against lands within the District and lands held by Indians under trust or restricted patents within the Jocko division of the project) provided for in the Act of May 9, 1935 (49 Stat. 176, 187-188), and the unpaid operation and maintenance charges for the irrigation seasons of 1926 and 1927, together with the interest and penalties thereon, provided for in the Act of May 25, 1948 (Public Law 554-80th Congress). The operation and maintenance costs shall comprise all other expenses incurred by the United States on account of the project, except those cancelled by section 4 of said Act of May 25, 1948, and those heretofore or hereafter cancelled pursuant to other provisions of law. All costs incurred for, or in connection with, the irrigation system of the project shall be allocated to that system; all costs incurred for, or in connection with, the power system of the project shall be allocated to that system; and any joint costs incurred on account of both systems shall be divided between them on a basis that will reflect, as accurately as is practicable, the

extent of the intended benefits to each from the expenses involved. The construction costs of the irrigation system of the project shall be allocated among the several divisions and irrigation districts of the project, and shall be charged against the lands therein designated by the Secretary of the Interior as irrigable and assessable for construction costs, in a manner consistent with the applicable provisions of law and this contract; and the operation and maintenance costs of the irrigation system of the project shall be allocated among the several divisions and irrigation districts of the project, and shall be charged against the lands therein designated by the Secretary of the Interior as irrigable and assessable for operation and maintenance costs, in a manner consistent with the applicable provisions of law and this contract.

"(b) The amount of the construction costs of the power system of the project at the date of the enactment of said Act of May 25, 1948 (exclusive of costs repaid through credits from the revenues of the power system made prior to that date), is hereby determined to be \$941,793.79; the amount of the construction costs of the irrigation system of the project at that date is hereby determined to be \$9,226,811.87; and the amount of the irrigation system construction costs at that date incurred for the benefit of each division of the project is hereby determined to be: for the Mission Valley division \$7,116,178.82, for the Jocko division \$672,450.87, and for the Camas division \$1,438,182.18, of which last-specified sum the amount of \$598,839.90 constitutes the deferred obligation for repayment of the excess costs of the Camas division established

by the Act of May 10, 1926 (44 Stat. 453, 464-466). Subject to the foregoing determinations, the amount of the various classes of costs of the project, whether heretofore or hereafter incurred, and their proper allocation to the various classes of land within the project, whether owned by Indians or non-Indians, and whether within or without the irrigation districts contracting for the repayment of such costs, shall be determined by the Secretary of the Interior, and such decisions, together with the books and records in which they are entered, shall be accepted as final and conclusive."

6. Section 18 of the original repayment contract is hereby amended to read as follows:

"(a) The District hereby obligates itself for the repayment to the United States of the construction costs chargeable against all irrigable lands embraced within the District (exclusive of Indian-owned lands on which the collection of construction costs is deferred) to the extent and in the manner prescribed by sections 1 and 2 of said Act of May 25, 1948. The District hereby agrees that the construction costs of the project, repayment of which is secured by this contract, shall include the amounts of \$64,570.56 and \$400,000 provided for in section 5 of said Act, whenever such amounts are appropriated by the Congress for payment to, or deposit to the credit of, the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana, and the further amount of \$1,000,000 provided for in section 5 of said Act, to the extent that such amount at any time may have been appropriated by the Congress and expended for the benefit of the project, together with all

other amounts now or hereafter comprised within the construction costs of the project, as defined in section 17 of this contract. The District, however, shall not be obligated (unless and until higher limits of costs are agreed to by later contracts) for the repayment of any construction costs incurred by the United States on account of the irrigation system of the project in excess of the following limits for each acre of land within the several divisions of the project (inclusive of Indian-owned lands on which the collection of construction costs is deferred): for the Mission Valley division \$82.00 per acre, for the Jocko division \$68.00 per acre, and for the Canas division \$82.00 per acre, after the deduction of the deferred obligation for the excess costs of that division from its construction costs. The foregoing limits of cost shall be revised at the end of five years from January 1, 1950, and at the end of each succeeding period of five years, by adding to each such limit one-half of the amount, computed on a per acre basis, by which the construction costs of the irrigation system allocated to the division concerned have been liquidated out of power revenues accumulated subsequent to the enactment of said Act of May 25, 1948. The construction costs of the power system of the project shall be repaid to the United States solely out of the net revenues from the power system, as provided in said Act, and shall not be subject to the foregoing limits of cost.

"(b) The net revenues from the power system of the project shall be applied to liquidate or reduce the repayment obligations or requirements for the construction costs, or operation and maintenance costs, of the project to the extent and in the manner prescribed by sections 1,

2, and 6 of said Act of May 25, 1948. For the purposes of subsection 2(1) of said Act any allowances made by the Secretary of the Interior on account of individually constructed ditches under the authority of the Act of April 23, 1904 (33 Stat. 302), as amended and supplemented by the Act of May 18, 1916 (39 Stat. 123, 139-142), or on account of other works or facilities acquired in accordance with law from the holders of lands chargeable with construction costs of the project, shall, to the extent that such allowances have not been discharged through prior credits against operation and maintenance charges, be treated as repayments of construction costs and be made the basis for operation and maintenance credits from the net revenues of the power system in the manner authorized by that subsection. The gross revenues of the power system, from which the net revenues are to be computed in accordance with said Act of May 25, 1948, shall include those derived from the sale of electrical energy by the project, from the operation by the project of facilities for the generation, transmission or distribution of electrical energy that have been constructed or acquired by the project with reimbursable funds, from the rental of such facilities, from the rental of rights-of-way, property or water rights held by the project for present or future use in connection with the generation, transmission or distribution of electrical energy, and from power development of any sort made by or on account of the project; but shall not include those derived from the rental of Indian lands for power development which are payable to the Indians of the Flathead Reservation, as a tribe under the Act of March 7, 1928 (45 Stat. 200, 212-213), or those

otherwise provided for by or pursuant to law. The expenses of operating and maintaining the power system, to be used in computing the net revenues under said Act of May 25, 1948, shall include those actually incurred during the period covered by the computation, and those estimated to be incurred during subsequent accounting periods for the performance of such current or deferred operation and maintenance work as necessitates, in the judgment of the Secretary of the Interior, the making of advance provision therefor out of the accumulated net revenues, but such estimated expenses shall be adjusted to conform to the actual expenses as these are incurred. The net revenues from the power system accumulated at the date of the enactment of said Act, after all necessary deductions for current or deferred operation and maintenance and for appropriate reserves, are hereby determined to be \$971,388.79. The proper application of such accumulated net revenues under said Act is hereby determined to be as follows: for liquidation in full of the deferred obligation for the excess costs of the Camas division, \$598,839.90; for reduction of the repayment requirements for the construction costs of the power system, \$36,509.79; and for reduction of the repayment obligations for the construction costs of the irrigation system, \$336,039.10, of which last-specified sum \$277,176.37 is hereby allocated to the Mission Valley division, \$26,078.43 to the Jocko division, and \$32,784.30 to the Camas division. The amount and proper application of the net revenues from the power system accumulated after the date of the enactment of said Act, after all necessary deductions for current or

deferred operation and maintenance and for appropriate reserves, shall be determined by the Secretary of the Interior as of the first day of January in each and every year, beginning with the year 1950, and such decisions, together with the books and records in which they are entered, shall be accepted as final and conclusive.

"(c) The repayment obligations for the construction costs of the irrigation system of the project at the date of the enactment of said Act of May 25, 1948, as reduced through the crediting against such obligations of the net revenues from the power system accumulated at that date, are hereby determined to be: for the Mission Valley division \$6,839,002.45, for the Jocko division \$646,372.44, and for the Camas division \$806,557.98. The construction costs covered by such reduced irrigation repayment obligations shall be repaid in fifty annual installments one of which shall mature on the first day of January in each and every year, commencing with the year 1950 and continuing until the construction costs included in such obligations have been repaid in full. The first annual installment for the Mission Valley division shall be in the amount of \$150,502.45, and the remaining annual installments for that division shall be in the amount of \$136,500 each. The first annual installment for the Jocko division shall be in the amount of \$14,272.44, and the remaining annual installments for that division shall be in the amount of \$12,900 each. The first annual installment for the Camas division shall be in the amount of \$17,657.98, and the remaining annual installments for that division shall be in the amount of \$16,100 each. All sums paid to,

or deposited to the credit of, the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana under section 5 of said Act of May 25, 1948, shall be allocated among the several divisions of the project in proportion to their respective shares of the reduced repayment obligations for the past construction costs of the irrigation system as specified in this paragraph, and shall be added to the annual installments maturing more than one year after the appropriation of these sums, in approximately equal amounts which will provide for the full repayment of these sums within the initial repayment period of fifty years, ending on the first day of January, 1999, hereinabove established. Subject to the limitations contained in subsection 2 (e) of said Act, all other construction costs of the irrigation system of the project incurred after the date of the enactment of said Act shall be added to the foregoing schedule of repayments by increasing the amount or the number, or both, of the annual installments as the Secretary of the Interior may prescribe, but no annual installment shall be increased to an amount higher than \$162,000 for the Mission Valley division, \$15,800 for the Jocko division, and \$19,100 for the Camas division, unless the Secretary of the Interior determines that it is necessary to exceed these limits in order to comply with the provisions of said Act. The repayment requirements for the construction costs of the power system of the project at the date of the enactment of said Act, as reduced through the crediting against such requirements of the net revenues from the power system accumulated at that date, are hereby determined to be \$905,284.00. The construction

costs covered by such reduced power repayment requirements shall be repaid in twenty-five annual installments one of which shall mature on the first day of January in each and every year, commencing with the year 1950 and continuing until the construction costs included in such requirements have been repaid in full. The first annual installment shall be in the amount of \$39,844.00, and the remaining annual installments shall be in the amount of \$36,060 each. Subject to the limitations contained in subsection 2(f) of said Act, the construction costs of the power system of the project incurred after the date of the enactment of said Act shall be added to the foregoing schedule of repayments by increasing the amount or the number, or both, of the annual installments as the Secretary of the Interior may prescribe. Changes in the schedules of repayments established by this paragraph shall be effected by orders of the Secretary of the Interior, and the District shall be furnished with a copy of each such order.

"(d) Whenever any annual installment of the construction costs of the irrigation system of the project, as established by or pursuant to the preceding paragraph, is not liquidated in full at or before its maturity through the application thereto of net revenues from the power system of the project, as provided for in the second preceding paragraph, the portion of such installment which has not been so liquidated, or the whole of such installment if none of it has been so liquidated, shall be repayable to the United States by an assessment against the lands chargeable with the construction costs included in such installment.

remains in an Indian or Indians, shall not be subject to assessment for any construction costs of the project during any period while the collection of construction costs on these lands is deferred under the Act of July 1, 1932 (47 Stat. 564), or by or pursuant to any other Act of the Congress. All construction costs heretofore or hereafter incurred by the United States on account of the irrigation system of the project (after deduction of the amounts discharged through the application of the net power revenues accumulated on May 25, 1948, as provided in section 18 of this contract) and all uncanceled operation and maintenance costs heretofore or hereafter incurred by the United States on account of the irrigation system of the project shall be, and are hereby made, a first lien under the Act of May 10, 1926 (44 Stat. 453,464-466), against all lands within the project, including those not yet designated as irrigable, and the existence of such lien is hereby recognized and acknowledged by the District. After the total amount covered by such lien which is chargeable against any particular farm unit or other separately bounded landholding has been paid, and all rights of the United States to incur costs, impose assessments, enforce charges or collect repayments with respect to the lands included in such farm unit or landholding have terminated, the lien against such parcel of lands shall be released by the Secretary of the Interior, and a recital of the existence of the lien shall be made in any patent or other instrument of title issued by said Secretary prior to such release. The Secretary of the Interior shall issue such public notice or notices as he may deem necessary

for the purpose of giving effect to said Act of May 25, 1948, in a manner consistent with this contract, but no such notice or notices shall be requisite in order to make the provisions of said Act and this contract applicable to lands embraced within the District, and such provisions shall become effective with respect to such lands forthwith. The District hereby agrees that it will faithfully perform all of the provisions of this contract and of the Acts of the Congress applicable to the project that pertain to any matter within its jurisdiction; and particularly that it will pay to the United States all sums now due, or that may become due in the future, under this contract which are chargeable against or relate to any lands within the corporate area of the District, at such times as are specified in this contract for the making of these payments or, if no definite date be fixed by this contract for the making of particular payments, at such times, not inconsistent with this contract or any applicable provisions of law, as may be specified by order of the Secretary of the Interior. The said Secretary annually shall have prepared and furnished to the District a financial statement showing the costs and revenues of the irrigation and power systems of the project for the preceding calendar year, and showing the balances on hand in the construction accounts and the operation and maintenance accounts as of the end of such year."

8. Section 23 of the original repayment contract is hereby amended to read as follows:

"(a) All delinquent charges for the operation and maintenance of the

irrigation system which became due during the period commencing on May 10, 1926, and ending on February 26, 1935, and which remained unpaid on May 9, 1935, and all interest and penalties accruing up to May 9, 1935, on such charges, or on delinquent operation and maintenance charges assessed prior to May 10, 1926, where such interest and penalties remained unpaid on May 9, 1935 (exclusive of the unpaid operation and maintenance charges for the irrigation seasons of 1926 and 1927, together with the interest and penalties thereon, and the operation and maintenance costs for the irrigation season of 1935, all of which have been covered into construction costs, and exclusive of the operation and maintenance charges for the irrigation season of 1934 and prior years against Indian-owned lands, which have been cancelled by the Secretary of the Interior pursuant to the Act of July 1, 1932 (47 Stat. 564)) shall be paid by the District, to the extent that such past-due obligations are chargeable against lands within its corporate area, in the manner prescribed by the Act of May 9, 1935 (49 Stat. 176, 187-188). The amount of the interest and penalties to be included in such past-due obligations shall be determined by adding together the following items as of May 9, 1935: (1) the interest and penalties attaching to the operation and maintenance charges described in this section and chargeable against the various farm units and other landholdings within the District which are shown by the books and records of the project to have been outstanding on February 26, 1935, or at the time when the lands involved were included within the District, if subsequent to that date; and (2) the simple interest at the rate of six per cent

per annum on the unpaid principal balance of such operation and maintenance charges authorized by the Act of March 7, 1928 (45 Stat. 200,212-213), as modified by the Act of February 17, 1933 (47 Stat. 820, 830-831), and owing by the District in accordance with said Acts for the period from February 26, 1935, or the date of the inclusion of the lands involved, to May 9, 1935, as computed in accordance with the accounting practices of the project. The total amount of the past-due obligations payable under this section shall be divided into seventy semi-annual installments of approximately equal amount; the first semi-annual installment shall mature on June 30, 1949; the second semi-annual installment shall mature on December 31, 1949; and the remaining semi-annual installments shall mature on each succeeding 30th day of June and 31st day of December, respectively, until such past-due obligations have been paid in full to the United States. The payments required by this section shall be made through assessments against the individual farm units and other separately bounded landholdings chargeable with the past-due obligations remaining to be paid, or through such supplemental assessments against other lands within the District as may be necessary to prevent or remove deficiencies in such payments.

"(b) In order to reflect the elimination from the past-due obligations covered by this section of those delinquent obligations formerly payable under said Act of May 9, 1935, which have since been covered into construction costs or cancelled, the Secretary of the Interior shall cause to be prepared a revised schedule of the payments required

by this section. Such schedule shall set forth in conformity with the provisions of the preceding paragraph the amount and maturity date of each of the seventy semi-annual installments in which the past-due obligations remaining subject to this section are to be paid, shall credit against these installments in the order of their respective maturities all payments made since May 9, 1935, on account of the past-due obligations remaining subject to this section, and shall show the nature and amount of the sums chargeable against the various farm units and other landholdings embraced within the District on account of such past-due obligations. Such revised schedule shall be furnished to the District within four months after the taking effect of the amendments to this contract/^{made}in pursuance of said Act of May 25, 1948. The District shall thereupon proceed to assess and levy sums sufficient to liquidate in full any semi-annual installments shown by such schedule to be unpaid that have matured, or that will mature within one year after the taking effect of such amendments, and shall pay to the United States the amount due under such installments within two years after the taking effect of such amendments. On or before each 15th day of June after the taking effect of such amendments the Secretary of the Interior shall cause the District to be furnished with a list of any changes in the foregoing schedule necessitated by reason of payments made to him by the holders of the lands chargeable with such past-due obligations or by reason of the inclusion or exclusion of lands within or from the District. Upon the basis of such schedule and any lists of changes so furnished,

the District shall annually assess and levy sums sufficient to liquidate the remaining semi-annual installments as they mature, and shall pay to the United States the amount of each such installment on or before its maturity date. The District, however, may, at its option, pay to the United States at any time the full amount then outstanding on account of the past-due obligations covered by this section, in lieu of liquidating them by installments, and may, at its option, pay out of general funds of the District any sums due or to become due under this section, in lieu of levying separate assessments for such sums.

"(c) The provisions of this section shall not apply to interest and penalties on delinquent operation and maintenance charges assessed prior to May 10, 1926, if the Comptroller General of the United States determines that such interest and penalties were cancelled by section 4 of said Act of May 25, 1948, or if the Congress enacts legislation expressly cancelling such interest and penalties. The United States, however, shall not be obligated to refund any payment on account of such interest and penalties made prior to the date of such determination or enactment, as the case may be."

9. Section 31 of the original repayment contract is hereby amended to read as follows:

"The Secretary of the Interior shall, if funds are available therefore, cause the area of the project and the irrigability of the several portions thereof to be redetermined at intervals of approximately five years, and may cause the same to be done at such

other times as he deems appropriate, the expenses of such redeterminations to be treated as operation and maintenance costs of the project. He may establish land classification boards, composed in part of water users on the project, to assist in this work with respect to the project as a whole or with respect to any portions thereof he may deem to be in particular need of reexamination. Any lands within the project to which water can be delivered through the irrigation system of the project as actually constructed, except unentered public lands and vacant unsold state school lands, may be designated by the Secretary of the Interior as irrigable for the purposes of this contract, either in connection with the periodic redeterminations required by this section or in such other manner as he deems appropriate, but all such designations shall be subject to revision from time to time. If the Secretary of the Interior shall find any lands within the project to be permanently incapable of successful cultivation under irrigation, on account of seepage, alkaline conditions, unavailability of water, or for any other reason, he may, in his discretion, exclude these lands from the project, with the consent of the holder of any water rights that may appertain to the lands by reason of their inclusion within the project or of any water rights that would be otherwise cancelled by such exclusion; whereupon any water rights appertaining to the lands by reason of their inclusion within the project shall be severed from them and shall be available for transfer by said Secretary to any other lands theretofore or thereafter brought within the project. If the

Secretary of the Interior shall find any lands not within the project to be capable of successful cultivation under irrigation through existing or prospective works of the project, and that a water supply can be made available for them without prejudice to the water supply of the areas already within the project, he may, in his discretion, include these lands within the project upon such terms and conditions, not inconsistent with law or this contract, as he deems appropriate. No lands shall be excluded from or included within the project under the foregoing authorizations if the effect of such action would be to decrease or increase by more than five percent the existing area of any division wherein lands embraced within the District are situated, unless the exclusion or inclusion of such lands has been consented to by the District. For the purposes of this contract the existing area of the project shall be considered to be the area of 138,194.55 acres included in classes 1, 2, and 3 of the project land classification dated October 7, 1930, and approved by the First Assistant Secretary of the Interior on March 28, 1931, whereof 111,659.65 acres are within the Mission Valley division, 13,364.87 acres are within the Jockó division, and 13,170.03 acres are within the Camas division. The liability of the District for the payments required by this contract shall not be increased or reduced by reason of any alterations in the area of the project (except that the basis for applying to such liability the limits of cost established by section 18 shall be the area of the several divisions of the project as diminished or enlarged by

such alterations), or by reason of any alterations in the area of the lands designated as irrigable from works of the project, or by reason of any alterations in the area of the lands made assessable for particular charges of the project, provided such alterations are made in pursuance of and in accordance with said Act of May 25, 1948, or this contract. No suspension of any charges shall be made by the District without the consent of the Secretary of the Interior."

10. The original repayment contract is hereby amended by adding the following new section, to be numbered section 38:

"Any provision of this contract which is in conflict with said Act of May 25, 1948, or with the amendments to this contract made in pursuance of said Act, is hereby amended to conform to said Act or to such amendments, as the case may be. The provisions of the public notice fixing construction charges for the project issued on November 1, 1930, as amended and supplemented on April 20, 1931, insofar as those provisions relate to construction charges against lands embraced within the District, shall be superseded by this contract, and shall be deemed to have become inapplicable to such lands as of the first day of January, 1949, when the deferment of the construction charges fixed by such notice terminates pursuant to the Act of July 26, 1947 (61 Stat. 494). The Secretary of the Interior may, where not inconsistent with law, delegate any of the functions placed in him or in the United States by this contract to the Project Engineer for the Flathead Indian Irrigation Project or to such other official as he may designate."

11. The first supplemental contract, the second supplemental contract, and sections 21, 22, 24 and 25 of the original repayment contract are hereby rescinded and cancelled.

12. Nothing contained in this amendatory contract shall be construed to require the refund of any payments made to the United States prior to the taking effect of this amendatory contract, or to require the refund of any collections made by the District prior to such time, or to invalidate any assessment imposed or any other act or thing done prior to such time, under those provisions of the original repayment contract, the first supplemental contract, or the second supplemental contract which are amended or cancelled by this amendatory contract.

13. The execution of this amendatory contract shall be authorized by qualified holders of title or evidence of title to lands embraced within the District as provided by the laws of the State of Montana. The Board of Commissioners of the District shall thereupon proceed, in accordance with said laws, to provide for the annual levy and collection of a special tax or assessment upon all lands then included within the District, or subsequently brought therein, that are not covered by trust or restricted patents and are subject to taxation or assessment for the obligations imposed or continued by this contract; such special tax or assessment to be sufficient in amount to meet all payments due or to become due to the United States from the District under the original repayment contract, as amended by this contract, at the times when such payments become due to the

United States and payable by the District under such original repayment contract, as so amended. In addition, the Board of Commissioners of the District shall prosecute an action in a court of competent jurisdiction for a judicial confirmation, under the laws of the State of Montana, of the validity of the proceedings had relative to the making of this amendatory contract and to the imposition of the special tax or assessment required to be levied and collected annually for its performance. Certified copies of such proceedings and their judicial confirmation shall be furnished by the District to the United States for its files. This amendatory contract shall not become binding upon the United States until the Secretary of the Interior shall be satisfied that all conditions requisite for the validity and enforceability of the obligations imposed or continued thereby have been met, nor until he shall be satisfied that the other irrigation districts embracing lands within the project not covered by trust or restricted patents have entered into valid and enforceable contracts conforming to the provisions of said Act of May 25, 1948. Such satisfaction shall be evidenced by the final execution of this amendatory contract by the Secretary of the Interior, and its provisions shall take effect upon the date of such final execution.

14. No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefits that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

15. This agreement shall inure to the benefit of and be binding upon the District and its successors and assigns, and the United States and its assigns.

In Witness Whereof, the respective parties hereto have caused this agreement to be executed by the District on the day and year first above written, and by the United States on the 24 day of MAY, 1950.

The United States of America

By ^(s) WILLIAM E. WARNE
ASSISTANT Secretary of the Interior

Joeko Valley Irrigation District

By ^(s) HOWARD NEAL
President

Attest:

(s) GORDON HARVEY
Secretary

SEP 15 1949

Approved as to form:

(s) Martin G. White
Acting Assistant Secretary

In this event the Secretary of the Interior, as soon after the maturity of such installment as he deems practicable, shall cause a statement showing the amount that has not been liquidated out of power revenues and that is chargeable against any lands within the corporate area of the District to be furnished to the latter. Thereupon the District shall promptly proceed to assess and levy such sums as may be necessary for the payment to the United States of the amount so specified. One-half of such amount shall become payable on the first day of February and one-half on the first day of July in the year following the year at the beginning of which such wholly or partially unliquidated installment matured."

7. Section 20 of the original repayment contract is hereby amended to read as follows:

"All lands so conveyed to the United States shall be subject to disposition by the Secretary of the Interior in farm units at the appraised price, to which shall be added such amount as may be necessary to cover any accruals against the land and other costs arising from conditions and requirements prescribed by said Secretary. Indian-owned lands held under trust or restricted patents shall not be subject to the provisions of the irrigation district laws of the State of Montana. Indian-owned lands for which a fee patent is issued shall, upon their inclusion within the District as provided in section 13 of this contract, be accorded the same rights and privileges and be subject to the same obligations as other lands within the District, except that such fee patented lands, so long as title thereto

AMENDATORY REPAYMENT CONTRACT

Mission Irrigation District
Flathead Indian Irrigation Project

I-Sec. 876

This amendatory contract, made this 16th day of May,
1951, in pursuance of the Act of April 23, 1904 (33 Stat. 302), and
acts amendatory thereof or supplementary thereto, and especially the
Act of May 25, 1948 (Public Law 554-80th Congress), by and between the
United States of America (hereinafter called the United States), acting
by and through the Secretary of the Interior, and the Mission Irrigation
District (hereinafter called the District), a public corporation duly
organized and existing under the laws of the State of Montana, their
respective successors and assigns, Witnesseth:

1. WHEREAS, in pursuance of said Act of April 23, 1904, and acts
amendatory thereof or supplementary thereto, the parties to this
amendatory contract have entered into a repayment contract (hereinafter
called the original repayment contract), executed by the District as of
the 9th day of January, 1931, and by the United States as of the 21st
day of April, 1931, with respect to certain portions of the lands,
costs, charges and benefits of the Flathead Indian Irrigation Project
(hereinafter called the project); and have entered into a supplemental
contract (hereinafter called the first supplemental contract), executed
by the District as of the 2d day of June, 1934, and by the United
States as of the 23d day of July, 1934, which modified certain provisions
of the original repayment contract; and have entered into another

supplemental contract (hereinafter called the second supplemental contract), executed by the District as of the 6th day of June, 1936, and by the United States as of the 26th day of August, 1936, which also modified certain provisions of the original repayment contract.

2. WHEREAS, said Act of May 25, 1948, entitled "An Act To provide for adjustment of irrigation charges on the Flathead Indian irrigation project, Montana, and for other purposes," provides as follows:

"That the repayment to the United States of all reimbursable costs heretofore or hereafter incurred for the construction of the irrigation and power systems of the Flathead Indian irrigation project in Montana (hereinafter called the project), including such operation and maintenance costs as have been covered into construction costs under the Act of March 7, 1928 (45 Stat. 200,212-213), and supplemental Acts, and including the unpaid operation and maintenance costs for the irrigation seasons of 1926 and 1927 which are hereby covered into construction costs, shall be accomplished as prescribed by this Act, notwithstanding any provision of law to the contrary.

"Sec. 2. (a) All costs heretofore or hereafter incurred for the construction of the irrigation system shall be allocated to the Mission Valley, Camas, and Jocko divisions of the project in proportion to the amount of such costs incurred for the respective benefit of each of these divisions.

(b) The net revenues heretofore and hereafter accumulated from the power system shall be determined by deducting from the gross revenues the expenses of operating and maintaining the power system, and the funds necessary to provide for the creation and maintenance of appropriate reserves in accordance with section 3 of the Act of August 7, 1946 (60 Stat. 895; 31 U.S.C., sec. 725s-3).

(c) The deferred obligation established by the Act of May 10, 1926 (44 Stat. 453,464-466), for repayment of the per acre costs of the Camas division in excess of the per acre costs of the Mission Valley division shall be determined on the basis of the costs heretofore incurred for the construction of those divisions, and shall be liquidated from the net revenues heretofore accumulated from the power system.

(d) The remainder of the net revenues heretofore accumulated from the power system shall be applied to reduce

the reimbursable costs heretofore incurred for the construction of the power system, and the reimbursable costs heretofore incurred for the construction of the irrigation system (exclusive of the deferred obligation for the excess costs of the Camas division) as allocated among the several divisions pursuant to subsection (a) of this section, in proportion to the respective amounts of each of the foregoing categories of costs.

(e) The reimbursable costs heretofore incurred for the construction of the irrigation system of each division of the project and not repaid through the credits provided for in subsections (c) and (d) of this subsection shall be scheduled for repayment in annual installments of approximately equal amount, in a manner which will provide for liquidation of such costs over a period of fifty years from January 1, 1950. The reimbursable costs hereafter incurred for the construction of the irrigation system shall be added to the schedule of repayments established pursuant to this subsection by increasing the amount or the number, or both, of the annual installments maturing after the incurrence of such costs, in a manner which will provide for their liquidation within a period not exceeding the useful life of the works involved, or not exceeding fifty years from the time when the additional costs are incurred, whichever period is the lesser. Each annual installment shall be distributed over all irrigable lands within the division on an equal per acre basis, and the costs so charged against any parcel of lands within the division shall constitute a first lien thereon under the Act of May 10, 1926 (44 Stat. 453, 464-466). Upon the maturity or prepayment of any annual installment, the amount of the installment shall be reduced by deducting any sums included therein which are chargeable to lands on which the collection of construction costs is then deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., sec. 396a), or which are chargeable to other lands and have been already repaid to the United States.

(f) The reimbursable costs heretofore incurred for the construction of the power system and not repaid through the credits provided for in subsections (c) and (d) of this subsection, or through other credits from the revenues of the power system, shall be scheduled for repayment in annual installments of approximately equal amount, in a manner which will provide for liquidation of such costs over a period not exceeding the remaining useful life of the power system as a whole, or not exceeding fifty years from January 1, 1950, whichever period is the lesser. The reimbursable costs hereafter incurred for the construction of the power system shall be added to the schedule of repayments established pursuant to this subsection by increasing the amount or the number, or both, of the annual installments maturing after the incurrence of such costs, in a manner which will provide for their liquidation within

a period not exceeding the useful life of the works involved, or not exceeding fifty years from the time when the additional costs are incurred, whichever period is the lesser. Each annual installment shall be repaid to the United States solely out of the revenues from the power system.

(g) Electric energy available for sale through the power system shall be sold at the lowest rates which, in the judgment of the Secretary of the Interior, will produce net revenues sufficient to liquidate the annual installments of the power system construction costs established pursuant to subsection (f) of this section, and (for the purpose of reducing the irrigation system construction costs chargeable against the lands embraced within the project and of insuring the carrying out of the intent and purpose of legislation and repayment contracts applicable to the project) to yield a reasonable return on the unliquidated portion of the power system construction costs, and (for the same purpose) to yield such additional sums as will cover the amount by which the wholesale value of the electric energy sold exceeds the cost thereof where such excess is the result of the electric energy having been obtained on a special basis in return for water rights or other grants.

(h) All net revenues hereafter accumulated from the power system shall be applied annually to the following purposes, in the following order of priority:

(1) To liquidate all matured installments of the schedule of repayments for construction costs of the power system;

(2) To liquidate all matured installments of the schedule of repayments for construction costs of the irrigation system of each division, on an equal per acre basis for all irrigable lands within the division;

(3) To liquidate unmatured installments of the schedule of repayments for construction costs of the power system which will mature at a date not later than the maturity of any unliquidated installment of irrigation system construction costs;

(4) To liquidate unmatured installments of the schedule of repayments for construction costs of the irrigation system of each division which will mature at a date prior to the maturity of any unliquidated installment of power system construction costs, on an equal per acre basis for all irrigable lands within the division;

(5) To liquidate construction costs chargeable against Indian-owned lands the collection of which is deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., sec. 386a); and

(6) To liquidate the annual operation and maintenance costs of the irrigation system.

(i) In applying net revenues from the power system to the annual installments of irrigation system construction costs for any division of the project under the preceding subsection, allowance shall be made for any construction costs deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., 386a), or already repaid to the United States which have been deducted from such installments under subsection (e) of this section, by distributing the net revenues available for such application over all irrigable lands within the division on an equal per acre basis, and by applying the net revenues distributed to the lands chargeable with the construction costs that have been so deferred or repaid, in amounts proportionate to the deductions made on account of such costs, to any then unpaid or subsequently assessed costs of operating and maintaining the irrigation system which are chargeable against the same lands.

(j) Any matured installment of irrigation system construction costs, or portion thereof, which is not liquidated at or before its maturity through the application thereto of net revenues from the power system under subsection (h) of this section shall be repaid to the United States by an assessment against the lands chargeable with the construction costs included in the installment. Such repayment shall be deferred for any period of time that may be requisite to provide for the assessment and collection of such costs in conformity with the laws of the State of Montana, but shall be completed within two years after the maturity of the installment concerned.

"Sec. 3. The repayment adjustments provided for in sections 1 and 2 of this Act shall not become effective unless, within two years after the approval of this Act, the irrigation districts embracing lands within the project not covered by trust or restricted patents have entered into contracts satisfactory to the Secretary of the Interior, whereby such districts (1) obligate themselves for the repayment of the construction costs chargeable against all irrigable lands embraced within the districts contracting (exclusive of Indian-owned lands on which the collection of construction costs is deferred) to the extent and in the manner prescribed by sections 1 and 2 of this Act; (2) consent to such revisions in the limits of cost for the project, or any division thereof, as the Secretary and the districts contracting may mutually agree upon in order to facilitate the making of needed improvements and extensions to the irrigation and power systems; (3) provide for redetermination by the Secretary of the irrigable area of the project, or any division thereof, and for the exclusion of lands from the

project, with the consent of the holder of any water rights that would be canceled by such exclusion; and (4) make such other changes in the existing repayment contracts as the Secretary and the districts contracting may mutually agree upon for accomplishment of the purposes of this Act. In order to facilitate the commencement of repayment at the earliest practicable time, such contracts may provide for adjusting the maturity dates or amounts of the annual installments in a manner which will ultimately place the repayment schedules on substantially the same basis as though such contracts had been entered into prior to their actual execution, but not earlier than January 1, 1949.

"Sec. 4. Unpaid charges for operation and maintenance of the irrigation system which were assessed prior to May 10, 1926, against any lands within the project, amounting to a sum not exceeding \$40,549.89, and unpaid charges due from consumers for electric energy sold through the power system between July 1, 1931, and June 30, 1942, amounting to a sum not exceeding \$2,195.16, are hereby canceled. The cancellation of the operation and maintenance charges shall be reported in the reimbursable accounts rendered to the Comptroller General of the United States, pursuant to the Act of April 14, 1910 (36 Stat. 269, 270; 25 U.S.C., sec. 145), as deductions from the total indebtedness of the project without regard to the fiscal years in which, or the appropriations from which, the expenditures were made.

"Sec. 5. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the following sums, for the following purposes, to be reimbursed to the United States as hereinafter provided:

(a) The sum of \$64,161.18, with interest thereon at the rate of 4 per centum per annum from May 18, 1916, and the sum of \$409.38, with interest thereon at the same rate from December 1, 1925, to be used to repay the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana the balance remaining due them under the Act of May 18, 1916 (39 Stat. 123, 141). The aggregate principal amount of \$64,570.56 so repaid shall be added to the construction costs of the project and shall be reimbursable.

(b) The sum of \$400,000 to be deposited in the United States Treasury to the credit of the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana; of which sum one-half shall be in full settlement of all claims of said tribes on account of the past use of tribal lands for the physical works and facilities of the irrigation and power systems of the project, or for wildlife refuges; and the other one-half

shall be in full payment to said tribes for a permanent easement to the United States, its grantees and assigns, for the continuation of any and all of the foregoing uses, whether heretofore or hereafter initiated, upon the tribal lands now used or reserved for the foregoing purposes. The said tribes shall have the right to use such tribal lands, and to grant leases or concessions thereon, for any and all purposes not inconsistent with such permanent easement. The amount deposited in the Treasury pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable.

(c) The sum of \$1,000,000 to continue the construction of the irrigation and power systems of the project. Amounts expended pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable.

(d) No expenditure shall be made from any appropriation granted under the authorizations contained in this section until the repayment of all reimbursable construction costs incurred through such expenditure has been secured by contracts conforming to the requirements of section 3 of this Act.

"Sec. 6. In each fiscal year commencing after the approval of this Act for which an appropriation of the power revenues from the project is made in an indefinite amount pursuant to section 3 of the Act of August 7, 1946 (60 Stat. 895; 31 U.S.C., sec. 725s-3), the power revenues so appropriated shall be available, to the extent of not to exceed \$75,000, for the purpose, in addition to those other purposes now required or permitted by law, of making such improvements and extensions to the power system as the Secretary of the Interior may deem requisite for the provision of electric service to persons whose applications for such service could not otherwise be complied with in due course of business. Amounts so expended shall be added to the unmaturred portion of the reimbursable construction costs of the power system in accordance with subsection 2 (f) of this Act, so as not to reduce the net power revenues available for application under subsection 2 (h) of this Act.

"Sec. 7. Consistent with the terms of the repayment contracts heretofore or hereafter executed, the Secretary of the Interior is hereby authorized to issue such public notices fixing construction costs and apportioning construction charges, to enter into such contracts, to make such determinations, to effect such adjustments in project accounts, to prescribe such regulations, and to do such other acts and things as may be necessary or appropriate to accomplish the purposes of this Act.

"Sec. 8. All Acts or parts thereof inconsistent with the provisions of this Act are hereby repealed."

3. WHEREAS, the District desires to obtain the benefit of the repayment adjustments provided for in sections 1 and 2 of said Act of May 25, 1948; desires to secure the repayment of its appropriate share of the reimbursable construction costs of the project that are incurred under the authorizations contained in section 5 of said Act, in addition to its appropriate share of all other reimbursable construction costs heretofore or hereafter incurred for the benefit of the project; desires to facilitate the making of needed improvements and extensions to the irrigation and power systems of the project and to promote the more effective utilization of these systems in the interest of the water and power users served or capable of being served therefrom, through revisions in the limits of cost applicable to the portions of the project embraced within the District, through the redetermination from time to time of the irrigable area of such portions of the project, and through other appropriate measures in conformity with the provisions of said Act and other laws applicable to the project; and desires to consolidate in this amendatory contract such provisions of the first supplemental contract and the second supplemental contract as need to be retained in effect in order to provide for the payment, as required by existing laws, of those past-due operation and maintenance obligations covered by such supplemental contracts that are not authorized to be consolidated with construction costs or cancelled by said Act of May 25, 1948, and

4. WHEREAS, the United States desires to provide for the accomplishment of the purposes of said Act of May 25, 1948, in cooperation with

the District and with the other irrigation districts that have contracted for repayment of the costs of the project.

Now Therefore, in consideration of the covenants herein contained, it is mutually agreed by the District and by the United States as follows:

5. Section 13 of the original repayment contract is hereby amended to read as follows:

"(a) The reimbursable costs of the project shall comprise all expenses of whatever kind heretofore or hereafter incurred by the United States on account of the project, including the cost of labor, material, equipment, engineering, legal work, superintendence, administration, overhead, rights-of-way, property, electrical energy, and damages of all kinds, as well as all other proper costs and expenses, but excluding any expenses made from funds not subject to a requirement for repayment imposed by law or action taken pursuant to law. The reimbursable costs of the project shall be divided into construction costs and operation and maintenance costs. The construction costs shall comprise all expenses incurred for, or in connection with, the construction or acquisition of the physical works and facilities of the project, and the replacement or repair of substantial portions of such works and facilities in a manner calculated to increase materially their useful life, including the past-due construction charges provided for in the Act of March 4, 1929 (45 Stat. 1623, 1639-40) and such other construction charges as may have become due under the provisions of the public notice referred to in section 31 of this contract or under the provisions of orders or determinations of the Secretary of the Interior made prior to

the first day of January, 1949. The construction costs shall also comprise such operation and maintenance costs, and such interest and penalties on past-due operation and maintenance charges, as the Congress has authorized or may in the future authorize to be consolidated with construction costs, including the undistributed operation and maintenance costs provided for in the Act of March 7, 1928 (45 Stat. 200,212-213), the operation and maintenance costs for the irrigation season of 1931 (to the extent chargeable against lands within the District and lands held by Indians under trust or restricted patents within the portion of the Mission Valley division of the project south of Post Creek) provided for in the Act of February 14, 1931 (46 Stat. 1115, 1127), and the unpaid operation and maintenance charges for the irrigation seasons of 1926 and 1927, together with the interest and penalties thereon, provided for in the Act of May 25, 1948 (Public Law 554- 80th Congress). The operation and maintenance costs shall comprise all other expenses incurred by the United States on account of the project, except those cancelled by section 4 of said Act of May 25, 1948, and those heretofore or hereafter cancelled pursuant to other provisions of law. All costs incurred for, or in connection with, the irrigation system of the project shall be allocated to that system; all costs incurred for, or in connection with, the power system of the project shall be allocated to that system; and any joint costs incurred on account of both systems shall be divided between them on a basis that will reflect, as

accurately as is practicable, the extent of the intended benefits to each from the expenses involved. The construction costs of the irrigation system of the project shall be allocated among the several divisions and irrigation districts of the project, and shall be charged against the lands therein designated by the Secretary of the Interior as irrigable and assessable for construction costs, in a manner consistent with the applicable provisions of law and this contract; and the operation and maintenance costs of the irrigation system of the project shall be allocated among the several divisions and irrigation districts of the project, and shall be charged against the lands therein designated by the Secretary of the Interior as irrigable and assessable for operation and maintenance costs, in a manner consistent with the applicable provisions of law and this contract.

"(b) The amount of the construction costs of the power system of the project at the date of the enactment of said Act of May 25, 1948 (exclusive of costs repaid through credits from the revenues of the power system made prior to that date), is hereby determined to be \$941,793.79; the amount of the construction costs of the irrigation system of the project at that date is hereby determined to be \$9,226,811.37; and the amount of the irrigation system construction costs at that date incurred for the benefit of each division of the project is hereby determined to be: for the Mission Valley division \$7,116,178.82, for the Jocko division \$672,450.87, and for the Camas division \$1,438,182.18, of which last-specified sum the amount of \$598,839.90 constitutes the deferred obligation for repayment of the excess costs of the Camas

division established by the Act of May 10, 1926 (44 Stat. 453,464-466). Subject to the foregoing determinations, the amount of the various classes of costs of the project, whether heretofore or hereafter incurred, and their proper allocation to the various classes of land within the project, whether owned by Indians or non-Indians, and whether within or without the irrigation districts contracting for the repayment of such costs, shall be determined by the Secretary of the Interior, and such decisions, together with the books and records in which they are entered, shall be accepted as final and conclusive."

6. Section 14 of the original repayment contract is hereby amended to read as follows:

"(a) The District hereby obligates itself for the repayment to the United States of the construction costs chargeable against all irrigable lands embraced within the District (exclusive of Indian-owned lands on which the collection of construction costs is deferred) to the extent and in the manner prescribed by sections 1 and 2 of said Act of May 25, 1948. The District hereby agrees that the construction costs of the project, repayment of which is secured by this contract, shall include the amounts of \$64,570.56 and \$400,000 provided for in section 5 of said Act, whenever such amounts are appropriated by the Congress for payment to, or deposit to the credit of, the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana, and the further amount of \$1,000,000 provided for in section 5 of said Act, to the extent that such amount at any time may have been appropriated by the Congress and expended for the benefit of the project, together with

all other amounts now or hereafter comprised within the construction costs of the project, as defined in section 13 of this contract. The District, however, shall not be obligated (unless and until higher limits of costs are agreed to by later contracts) for the repayment of any construction costs incurred by the United States on account of the irrigation system of the project in excess of the following limits for each acre of land within the several divisions of the project (inclusive of Indian-owned lands on which the collection of construction costs is deferred): for the Mission Valley division \$82.00 per acre, for the Jocko division \$68.00 per acre, and for the Camas division \$82.00 per acre, after the deduction of the deferred obligation for the excess costs of that division from its construction costs. The foregoing limits of cost shall be revised at the end of five years from January, 1950, and at the end of each succeeding period of five years, by adding to each such limit one-half of the amount, computed on a per acre basis, by which the construction costs of the irrigation system allocated to the division concerned have been liquidated out of power revenues accumulated subsequent to the enactment of said Act of May 25, 1948. The construction costs of the power system of the project shall be repaid to the United States solely out of the net revenues from the power system, as provided in said Act, and shall not be subject to the foregoing limits of cost.

"(b) The net revenues from the power system of the project shall be applied to liquidate or reduce the repayment obligations or requirements for the construction costs, or operation and maintenance costs,

of the project to the extent and in the manner prescribed by sections 1, 2, and 6 of said Act of May 25, 1948. For the purposes of subsection 2(i) of said Act any allowances made by the Secretary of the Interior on account of individually constructed ditches under the authority of the Act of April 23, 1904 (33 Stat. 302), as amended and supplemented by the Act of May 18, 1916 (39 Stat. 123, 139-142), or on account of other works or facilities acquired in accordance with law from the holders of lands chargeable with construction costs of the project, shall, to the extent that such allowances have not been discharged through prior credits against operation and maintenance charges, be treated as repayments of construction costs and be made the basis for operation and maintenance credits from the net revenues of the power system in the manner authorized by that subsection. The gross revenues of the power system, from which the net revenues are to be computed in accordance with said Act of May 25, 1948, shall include those derived from the sale of electrical energy by the project, from the operation by the project of facilities for the generation, transmission or distribution of electrical energy that have been constructed or acquired by the project with reimbursable funds, from the rental of such facilities, from the rental of rights-of-way, property or water rights held by the project for present or future use in connection with the generation, transmission or distribution of electrical energy, and from power development of any sort made by or on account of the project; but shall not include those derived from the rental of Indian lands for power development which are payable to the Indians of the Flathead Reservation

as a tribe under the Act of March 7, 1928 (45 Stat. 200,212-213), or those otherwise provided for by or pursuant to law. The expenses of operating and maintaining the power system, to be used in computing the net revenues under said Act of May 25, 1948, shall include those actually incurred during the period covered by the computation, and those estimated to be incurred during subsequent accounting periods for the performance of such current or deferred operation and maintenance work as necessitates, in the judgment of the Secretary of the Interior, the making of advance provision therefor out of the accumulated net revenues, but such estimated expenses shall be adjusted to conform to the actual expenses as these are incurred. The net revenues from the power system accumulated at the date of the enactment of said Act, after all necessary deductions for current or deferred operation and maintenance and for appropriate reserves, are hereby determined to be \$971,388.79. The proper application of such accumulated net revenues under said Act is hereby determined to be as follows: for liquidation in full of the deferred obligation for the excess costs of the Camas division, \$598,839.90; for reduction of the repayment requirements for the construction costs of the power system, \$36,509.79; and for reduction of the repayment obligations for the construction costs of the irrigation system, \$236,039.10, of which last-specified sum \$277,176.37 is hereby allocated to the Mission Valley division, \$26,073.43 to the Jocko division, and \$32,784.30 to the Camas division. The amount and proper application of the net revenues from the power system accumulated after the date of the enactment of said Act, after all necessary deductions

for current or deferred operation and maintenance and for appropriate reserves, shall be determined by the Secretary of the Interior as of the first day of January in each and every year, beginning with the year 1950, and such decisions, together with the books and records in which they are entered, shall be accepted as final and conclusive.

"(c) The repayment obligations for the construction costs of the irrigation system of the project at the date of the enactment of said Act of May 25, 1948, as reduced through the crediting against such obligations of the net revenues from the power system accumulated at that date, are hereby determined to be: for the Mission Valley division \$6,839,002.45, for the Jocko division \$646,372.44, and for the Camas division \$806,557.98. The construction costs covered by such reduced irrigation repayment obligations shall be repaid in fifty annual installments one of which shall mature on the first day of January in each and every year, commencing with the year 1950 and continuing until the construction costs included in such obligations have been repaid in full. The first annual installment for the Mission Valley division shall be in the amount of \$150,502.45, and the remaining annual installments for that division shall be in the amount of \$136,500 each. The first annual installment for the Jocko division shall be in the amount of \$14,272.44, and the remaining annual installments for that division shall be in the amount of \$12,900 each. The first annual installment for the Camas division shall be in the amount of \$17,657.98, and the remaining annual installments for that division shall be in the amount of \$16,100 each.

All sums paid to, or deposited to the credit of, the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana under section 5 of said Act of May 25, 1948, shall be allocated among the several divisions of the project in proportion to their respective shares of the reduced repayment obligations for the past construction costs of the irrigation system as specified in this paragraph, and shall be added to the annual installments maturing more than one year after the appropriation of these sums, in approximately equal amounts which will provide for the full repayment of these sums within the initial repayment period of fifty years, ending on the first day of January, 1999, hereinabove established. Subject to the limitations contained in subsection 2(e) of said Act, all other construction costs of the irrigation system of the project incurred after the date of the enactment of said Act shall be added to the foregoing schedule of repayments by increasing the amount or the number, or both, of the annual installments as the Secretary of the Interior may prescribe, but no annual installment shall be increased to an amount higher than \$162,000 for the Mission Valley division, \$15,800 for the Jocko division, and \$19,100 for the Camas division, unless the Secretary of the Interior determines that it is necessary to exceed these limits in order to comply with the provisions of said Act. The repayment requirements for the construction costs of the power system of the project at the date of the enactment of said Act, as reduced through the crediting against such requirements of the net revenues from the power system accumulated at that date, are hereby determined to be \$905,284.00. The construction costs covered by such reduced

power repayment requirements shall be repaid in twenty-five annual installments one of which shall mature on the first day of January in each and every year, commencing with the year 1950 and continuing until the construction costs included in such requirements have been repaid in full. The first annual installment shall be in the amount of \$39,844.00, and the remaining annual installments shall be in the amount of \$36,000 each. Subject to the limitations contained in subsection 2(f) of said Act, the construction costs of the power system of the project incurred after the date of the enactment of said Act shall be added to the foregoing schedule of repayments by increasing the amount or the number, or both, of the annual installments as the Secretary of the Interior may prescribe. Changes in the schedules of repayments established by this paragraph shall be effected by orders of the Secretary of the Interior, and the District shall be furnished with a copy of each such order.

"(d) Whenever any annual installment of the construction costs of the irrigation system of the project, as established by or pursuant to the preceding paragraph, is not liquidated in full at or before its maturity through the application thereto of net revenues from the power system of the project, as provided for in the second preceding paragraph, the portion of such installment which has not been so liquidated, or the whole of such installment if none of it has been so liquidated, shall be repayable to the United States by an assessment against the lands chargeable with the construction costs included in such installment. In this event the Secretary of the Interior, as soon after the maturity of such installment as he deems practicable, shall cause a statement showing

the amount that has not been liquidated out of power revenues and that is chargeable against any lands within the corporate area of the District to be furnished to the latter. Thereupon the District shall promptly proceed to assess and levy such sums as may be necessary for the payment to the United States of the amount so specified. One-half of such amount shall become payable on the first day of February and one-half on the first day of July in the year following the year at the beginning of which such wholly or partially unliquidated installment matured."

7. Section 16 of the original repayment contract is hereby amended to read as follows:

"All lands so conveyed to the United States shall be subject to disposition by the Secretary of the Interior in farm units at the appraised price, to which shall be added such amount as may be necessary to cover any accruals against the land and other costs arising from conditions and requirements prescribed by said Secretary. Indian-owned lands held under trust or restricted patents shall not be subject to the provisions of the irrigation district laws of the State of Montana. Indian-owned lands for which a fee patent is issued shall, upon their inclusion within the District as provided in section 9 of this contract, be accorded the same rights and privileges and be subject to the same obligations as other lands within the District, except that such fee patented lands, so long as title thereto remains in an Indian or Indians, shall not be subject to assessment for any construction costs of the project during any period while the collection of construction

costs on these lands is deferred under the Act of July 1, 1932 (47 Stat. 564), or by or pursuant to any other Act of the Congress. All construction costs heretofore or hereafter incurred by the United States on account of the irrigation system of the project (after deduction of the amounts discharged through the application of the net power revenues accumulated on May 25, 1948, as provided in section 14 of this contract) and all uncanceled operation and maintenance costs heretofore or hereafter incurred by the United States on account of the irrigation system of the project shall be, and are hereby made, a first lien under the Act of May 10, 1926 (44 Stat. 453,464-466), against all lands within the project, including those not yet designated as irrigable, and the existence of such lien is hereby recognized and acknowledged by the District. After the total amount covered by such lien which is chargeable against any particular farm unit or other separately bounded landholding has been paid, and all rights of the United States to incur costs, impose assessments, enforce charges or collect repayments with respect to the lands included in such farm unit or landholding have terminated, the lien against such parcel of lands shall be released by the Secretary of the Interior, and a recital of the existence of the lien shall be made in any patent or other instrument of title issued by said Secretary prior to such release. The Secretary of the Interior shall issue such public notice or notices as he may deem necessary for the purpose of giving effect to said Act of May 25, 1948, in a manner consistent with this contract, but no such notice or notices shall be requisite in order to make the provisions of said Act and this contract

applicable to lands embraced within the District, and such provisions shall become effective with respect to such lands forthwith. The District hereby agrees that it will faithfully perform all of the provisions of this contract and of the Acts of the Congress applicable to the project that pertain to any matter within its jurisdiction; and particularly that it will pay to the United States all sums now due, or that may become due in the future, under this contract which are chargeable against or relate to any lands within the corporate area of the District, at such times as are specified in this contract for the making of these payments or, if no definite date be fixed by this contract for the making of particular payments, at such times, not inconsistent with this contract or any applicable provisions of law, as may be specified by order of the Secretary of the Interior. The said Secretary annually shall have prepared and furnished to the District a financial statement showing the costs and revenues of the irrigation and power systems of the project for the preceding calendar year, and showing the balances on hand in the construction accounts and the operation and maintenance accounts as of the end of such year."

8. Section 17 of the original repayment contract is hereby amended to read as follows:

"(a) All delinquent charges for the operation and maintenance of the irrigation system which became due during the period commencing on May 10, 1926, and ending on April 21, 1931, and which remained unpaid on May 9, 1935, and all interest and penalties accruing up to May 9, 1935, on such charges, or on delinquent operation and maintenance

charges assessed prior to May 10, 1926, where such interest and penalties remained unpaid on May 9, 1935 (exclusive of the unpaid operation and maintenance charges for the irrigation seasons of 1926 and 1927, together with the interest and penalties thereon, and the operation and maintenance costs for the irrigation season of 1931, all of which have been covered into construction costs, and exclusive of the operation and maintenance charges against Indian-owned lands, which have been cancelled by the Secretary of the Interior pursuant to the Act of July 1, 1932 (47 Stat. 564) shall be paid by the District, to the extent that such past-due obligations are chargeable against lands within its corporate area, in the manner prescribed by the Act of May 9, 1935 (49 Stat. 176,187-188). The amount of the interest and penalties to be included in such past-due obligations shall be determined by adding together the following items as of May 9, 1935: (1) the interest and penalties attaching to the operation and maintenance charges described in this section and chargeable against the various farm units and other landholdings within the District which are shown by the books and records of the project to have been outstanding on December 31, 1930, or at the time when the lands involved were included within the District, if subsequent to that date; and (2) the simple interest at the rate of six per cent per annum on the unpaid principal balance of such operation and maintenance charges authorized by the Act of March 7, 1928 (45 Stat. 200, 212-213), as modified by the Act of February 17, 1933 (47 Stat. 820, 830-831), and owing by the District in accordance with said Acts for the period from December 31, 1930, or the date of the inclusion of the lands

involved, to May 9, 1935, as computed in accordance with the accounting practices of the project. The total amount of the past-due obligations payable under this section shall be divided into seventy semi-annual installments of approximately equal amount; the first semi-annual installment shall mature on June 30, 1949; the second semi-annual installment shall mature on December 31, 1949; and the remaining semi-annual installments shall mature on each succeeding 30th day of June and 31st day of December, respectively, until such past-due obligations have been paid in full to the United States. The payments required by this section shall be made through assessments against the individual farm units and other separately bounded landholdings chargeable with the past-due obligations remaining to be paid, or through such supplemental assessments against other lands within the District as may be necessary to prevent or remove deficiencies in such payments.

"(b) In order to reflect the elimination from the past-due obligations covered by this section of those delinquent obligations formerly payable under said Act of May 9, 1935, which have since been covered into construction costs or cancelled, the Secretary of the Interior shall cause to be prepared a revised schedule of the payments required by this section. Such schedule shall set forth in conformity with the provisions of the preceding paragraph the amount and maturity date of each of the seventy semi-annual installments in which the past-due obligations remaining subject to this section are to be paid, shall credit against these installments in the order of their respective maturities all payments made since May 9, 1935, on account of the past-due

obligations remaining subject to this section, and shall show the nature and amount of the sums chargeable against the various farm units and other landholdings embraced within the District on account of such past-due obligations. Such revised schedule shall be furnished to the District within four months after the taking effect of the amendments to this contract made in pursuance of said Act of May 25, 1948. The District shall thereupon proceed to assess and levy sums sufficient to liquidate in full any semi-annual installments shown by such schedule to be unpaid that have matured, or that will mature within one year after the taking effect of such amendments, and shall pay to the United States the amount due under such installments within two years after the taking effect of such amendments. On or before each 15th day of June after the taking effect of such amendments the Secretary of the Interior shall cause the District to be furnished with a list of any changes in the foregoing schedule necessitated by reason of payments made to him by the holders of the lands chargeable with such past-due obligations or by reason of the inclusion or exclusion of lands within or from the District. Upon the basis of such schedule and any lists of changes so furnished, the District shall annually assess and levy sums sufficient to liquidate the remaining semi-annual installments as they mature, and shall pay to the United States the amount of each such installment on or before its maturity date. The District, however, may, at its option, pay to the United States at any time the full amount then outstanding on account of the past-due obligations covered by this section, in lieu of liquidating them by installments, and may, at

its option, pay out of general funds of the District any sums due or to become due under this section, in lieu of levying separate assessments for such sums.

"(c) The provisions of this section shall not apply to interest and penalties on delinquent operation and maintenance charges assessed prior to May 10, 1926, if the Comptroller General of the United States determines that such interest and penalties were cancelled by section 4 of said Act of May 25, 1948, or if the Congress enacts legislation expressly cancelling such interest and penalties. The United States, however, shall not be obligated to refund any payment on account of such interest and penalties made prior to the date of such determination or enactment, as the case may be."

9. Section 24 of the original repayment contract is hereby amended to read as follows:

"The Secretary of the Interior shall, if funds are available therefor, cause the area of the project and the irrigability of the several portions thereof to be redetermined at intervals of approximately five years, and may cause the same to be done at such other times as he deems appropriate, the expenses of such redeterminations to be treated as operation and maintenance costs of the project. He may establish land classification boards, composed in part of water users on the project, to assist in this work with respect to the project as a whole or with respect to any portions thereof he may deem to be in particular need of reexamination. Any lands within the project to which water can be delivered through the irrigation system of the project as actually

constructed, except unentered public lands and vacant unsold state school lands, may be designated by the Secretary of the Interior as irrigable for the purposes of this contract, either in connection with the periodic redeterminations required by this section or in such other manner as he deems appropriate, but all such designations shall be subject to revision from time to time. If the Secretary of the Interior shall find any lands within the project to be permanently incapable of successful cultivation under irrigation, on account of seepage, alkaline conditions, unavailability of water, or for any other reason, he may, in his discretion, exclude these lands from the project, with the consent of the holder of any water rights that may appertain to the lands by reason of their inclusion within the project or of any water rights that would be otherwise cancelled by such exclusion; whereupon any water rights appertaining to the lands by reason of their inclusion within the project shall be severed from them and shall be available for transfer by said Secretary to any other lands theretofore or thereafter brought within the project. If the Secretary of the Interior shall find any lands not within the project to be capable of successful cultivation under irrigation through existing or prospective works of the project, and that a water supply can be made available for them without prejudice to the water supply of the areas already within the project, he may, in his discretion, include these lands within the project upon such terms and conditions, not inconsistent with law or this contract, as he deems appropriate. No lands shall be excluded from or included within the project under the foregoing authorizations

if the effect of such action would be to decrease or increase by more than five percent the existing area of any division wherein lands embraced within the District are situated, unless the exclusion or inclusion of such lands has been consented to by the District. For the purposes of this contract the existing area of the project shall be considered to be the area of 138,194.55 acres included in classes 1, 2, and 3 of the project land classification dated October 7, 1930, and approved by the First Assistant Secretary of the Interior on March 29, 1931, whereof 111,659.65 acres are within the Mission Valley division, 13,364.87 acres are within the Jocko division, and 13,170.03 acres are within the Camas division. The liability of the District for the payments required by this contract shall not be increased or reduced by reason of any alterations in the area of the project (except that the basis for applying to such liability the limits of cost established by section 14 shall be the area of the several divisions of the project as diminished or enlarged by such alterations), or by reason of any alterations in the area of the lands designated as irrigable from works of the project, or by reason of any alterations in the area of the lands made assessable for particular charges of the project, provided such alterations are made in pursuance of and in accordance with said Act of May 25, 1948, or this contract. No suspension of any charges shall be made by the District without the consent of the Secretary of the Interior."

10. The original repayment contract is hereby amended by adding the following new section, to be numbered section 31:

"Any provision of this contract which is in conflict with said Act of May 25, 1946, or with the amendments to this contract made in pursuance of said Act, is hereby amended to conform to said Act or to such amendments, as the case may be. The provisions of the public notice fixing construction charges for the project issued on November 1, 1930, as amended and supplemented on April 20, 1931, insofar as those provisions relate to construction charges against lands embraced within the District, shall be superseded by this contract, and shall be deemed to have become inapplicable to such lands as of the first day of January, 1949, when the deferment of the construction charges fixed by such notice terminates pursuant to the Act of July 26, 1947 (61 Stat. 494). The Secretary of the Interior may, where not inconsistent with law, delegate any of the functions placed in him or in the United States by this contract to the Project Engineer for the Flathead Indian Irrigation Project or to such other official as he may designate."

11. The first supplemental contract, the second supplemental contract, and section 18 of the original repayment contract are hereby rescinded and cancelled.

12. Nothing contained in this amendatory contract shall be construed to require the refund of any payments made to the United States prior to the taking effect of this amendatory contract, or to require the refund of any collections made by the District prior to such time, or to invalidate any assessment imposed or any other act or thing done prior to such time, under those provisions of the original repayment contract, the first supplemental contract, or the second supplemental

contract which are amended or cancelled by this amendatory contract.

13. The execution of this amendatory contract shall be authorized by qualified holders of title or evidence of title to lands embraced within the District as provided by the laws of the State of Montana. The Board of Commissioners of the District shall thereupon proceed, in accordance with said laws, to provide for the annual levy and collection of a special tax or assessment upon all lands then included within the District, or subsequently brought therein, that are not covered by trust or restricted patents and are subject to taxation or assessment for the obligations imposed or continued by this contract; such special tax or assessment to be sufficient in amount to meet all payments due or to become due to the United States from the District under the original repayment contract, as amended by this contract, at the times when such payments become due to the United States and payable by the District under such original repayment contract, as so amended. In addition, the Board of Commissioners of the District shall prosecute an action in a court of competent jurisdiction for a judicial confirmation, under the laws of the State of Montana, of the validity of the proceedings had relative to the making of this amendatory contract and to the imposition of the special tax or assessment required to be levied and collected annually for its performance. Certified copies of such proceedings and their judicial confirmation shall be furnished by the District to the United States for its files. This amendatory contract shall not become binding upon the United States until the Secretary of the Interior shall be satisfied that all conditions requisite for the validity and

enforceability of the obligations imposed or continued thereby have been met, nor until he shall be satisfied that the other irrigation districts embracing lands within the project not covered by trust or restricted patents have entered into valid and enforceable contracts conforming to the provisions of said Act of May 25, 1948. Such satisfaction shall be evidenced by the final execution of this amendatory contract by the Secretary of the Interior, and its provisions shall take effect upon the date of such final execution.

14. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefits that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

15. This agreement shall inure to the benefit of and be binding upon the District and its successors and assigns, and the United States and its assigns.

In Witness Whereof, the respective parties hereto have caused this agreement to be executed by the District on the day and year first above written, and by the United States on the 24th day of May, 1951.

The United States of America

By /s/ Dale E. Doty
Asst. Secretary of the Interior

Mission Irrigation District

By /s/ A.J. Riggert
President

Attest:

/s/ Ray Biggerstaff
Secretary

SEP 15 1949

Approved as to form:

Martin G. White
Acting Assistant Secretary

Def Ex. 13-D-1

SUPPLEMENTAL MEMORANDUM

MAY 14, 1930.

HON. RAY LYMAN WILBUR,
Secretary of the Interior.

SIR: Supplementing Indian Bureau's revised memorandum dated December 30, 1929, in re Flathead power development, we now submit the following further statement:

APPLICANT ROCKY MOUNTAIN POWER CO. SELECTED FOR SITE NO. 1

It will be remembered that the applications received were—

(1) From Rocky Mountain Power Co. for final license for immediate development of Flathead site No. 1, and for preliminary permit for investigating sites Nos. 2, 3, 4, and 5.

(2) From Walter H. Wheeler for preliminary permit for investigating all five sites Nos. 1, 2, 3, 4, and 5.

In the Indian Bureau's memorandum just referred to, the facts and variables relating to power as to both applicants were set forth, without an effort to consider the ability to market and to finance, or the practicability of the plans of applicant Wheeler for fertilizer manufacture, etc. We understand that you have received reports in relation to the feasibility of the manufacture of fertilizer from the experts in the Agricultural Department; also that the Federal Power Commission on the showings made by the applicants have recommended that the Rocky Mountain Power Co. be awarded the license for site No. 1 as applied for, provided satisfactory terms of Indian rental could be agreed upon, and that applications from both applicants for preliminary permits upon the other four sites be rejected.

INDIAN RENTALS

Reference is made to our previous memorandum where we showed the inadequacy of the offers of Indian rentals made by either of the two applicants. We are pleased now to be able to state that this view has been amply supported by the separate studies made by the Federal Power Commission and by the Army Engineers, the latter having been requested by the Secretary of the Interior to make a fresh and independent study. For the sake of the record all of the different studies are here briefly summarized.

THREE METHODS OF CALCULATION OF INDIAN RENTAL

There are three methods by which Indian rentals can be set up: (1) At a fixed rate per horsepower produced; (2) at a combination of fixed charge and energy charge; and (3) at a flat rental basis, regardless of the amount of output. These are further described as follows:

(1) *At a rate per horsepower and estimated at a "spot" of production.*—The first method was prepared in the offers of the two applicants.

Rocky Mountain Power Co. offered \$1 per horse-power-year. At the hearings it estimated on 5,400 cubic feet of water per second, resulting in 89,000 horsepower prime power for site No. 1, which is the same as per the Federal Power Commission formula. However, this

FLATHEAD POWER DEVELOPMENT

applicant further estimated a utilization factor of only 85 per cent, thus reducing the estimate of prime power capacity produced and taken to 68,000 horsepower, which at \$1 per horsepower would have made \$68,000 average Indian rental for site No. 1 on a "spot" basis of 68,000 horsepower.

Applicant Wheeler offered \$1.12½ per horsepower-year. At the hearings he submitted, based on 6,000 cubic feet of water per second, an estimate of prime power capacity for site No. 1 of 105,000 horsepower using a higher over-all efficiency factor (87½ per cent) than the commission and a utilization factor of 100 per cent. On this "spot" basis of 105,000 horsepower, the Indian rental at \$1.12½ per horsepower would be \$118,125 for site No. 1. Applicant Wheeler's figures would, however, be subject to reduction on account of the commission's limitation to 1,100,000 acre-feet of storage (10 feet difference of levels) on account of certain as yet unsolved problems which will result from changing the levels of the lake. As stated in our revision of our previous memorandum, this would result in only 5,440 cubic feet of water per second instead of 6,000 cubic feet and would reduce applicant Wheeler's prime power capacity from 105,000 horsepower to 95,000 horsepower. At \$1.12½ per horsepower Mr. Wheeler's Indian rental on the "spot" basis of 95,000 horsepower would be reduced to \$106,875.

In our previous revised memorandum, an effort was made to develop an Indian rental rate per horsepower comparable to the two offers made by the applicants. This calculation was likewise based upon 5,440 cubic feet of water per second, resulting in a prime power capacity of 80,500 horsepower. On this basis, the cost per horsepower was estimated to be \$13.39 per horsepower-year to Rocky Mountain Power Co., and \$14 (for 95,000 horsepower) for Mr. Wheeler. Rocky Mountain Power Co. proposed in the hearings a selling price of \$18 per horsepower including \$1 per horsepower for the Indian rental and \$1 estimated cost per horsepower of supplying the irrigation district with power at specified low rates. It was also shown that the cost per horsepower including 8 per cent return to Montana Power Co. in the year 1926 was \$17.78, said return being based upon the company's valuation of tangible values. (It may be said in passing, that if this basis of valuation is a pre-war cost plus actual additions since 1913 at cost, it would be comparable with the net investment cost basis used in the above applicants' calculations).

On the further assumption that the Flathead Indian Tribe and the general public are each entitled to about one half (approximately in proportion to their interests in the Flathead River and Lake), this figures that for applicant Rocky Mountain Power Co. on a "spot" basis of 80,500 horsepower, the Indian rental would be \$2.21 per horsepower, which equals \$177,905 per annum. The irrigation district, if it actually costs anything other than secondary power, will be supplied from the public's share. As to applicant Wheeler, his selling price is limited by his plan to \$15 per horsepower; his cost as adjusted would be \$14, leaving only \$1 for the Indians, assuming that they would get it all, and the public's share would be in the low price to the new industries that he would hope to attract. In this case, the irrigation district would not be considered at all.

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FLATHEAD POWER DEVELOPMENT

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(2) *Combination of a fixed rental plus an energy charge.*—This second plan of estimating Indian rental was used by (a) Federal Power Commission in its schedule of January 2, 1930; (b) Army engineers (when specially called upon by the Secretary of the Interior for an independent study of February 27, 1930 and revised March 29, 1930); and (c) by the Indian Bureau in its Schedule No. 2 dated April 1, 1930, and which was discussed by the Secretary of the Interior with the Montana congressional delegation. All of these estimates were based on studies of the variables with a view that after the production cost including fair return to the company had been covered, any further margin of profit should be divided between the Indians and the public (through the company under regulation). The variables were (1) development cost; (2) transmission line cost (in the Army schedule only); (3) annual operation charges; (4) annual transmission charges (in the Army schedule only); (5) revenue at Flathead, and at Anaconda (in the Army schedule only). In effect, this kind of a schedule of rates is one of adopting a minimum fixed rental charge up to a given horsepower development, plus an energy charge for development above that point and at such a rate as will divide the excess between the Indians and the public (through the company under regulation). This plan results in a constantly diminishing cost per kilowatt-hour to the company and in a steadily rising rate of rental per horsepower to the Indians, and is in effect a profit-sharing arrangement and is the kind that is often used in contracts for wholesale power.

The advantage in this plan is that in the higher brackets of power production, the Indians would be able to secure considerably greater rentals. The disadvantage is that in the lower brackets where the profit is insufficient even for a fair return to the company, the Indians must either run the risk of little or no rental or they must be given a fair minimum rental. Even this minimum will then show a heavier loss to the company than it proved willing to agree to. Furthermore a number of difficulties were encountered in all these profit-sharing plans in providing against any possibility of the use of the Flathead plant for peaking purposes only or in dull times the giving to it of only a reduced proportion of the entire system load, and in general the avoiding of the temptation to starve this plant in order to reduce the Indian rental. Four months of negotiations were consumed in discussing those various plans and the variables upon which they were based and we were never able to reach an agreement. Several deadlocks actually developed with the breaking off of negotiations. Finally efforts on these lines were abandoned and a new approach was entered upon with the plan of a flat rental.

For the record there are appended hereto the three schedules referred to above which were proposed for discussion respectively by Federal Power Commission, the Army engineers, and the Indian Bureau.

(3) *Flat rental.*—The third plan of a flat rental basis was finally agreed to on terms as set forth below. This plan of rental has the advantages of (1) reducing all risks to the Indians and providing an assured, definite and uniform rental regardless of the amount of use of the plant by the licensee; (2) it avoids the difficulties of assuring to the Flathead plant its fair porportion of system load; (3) it avoids

FLATHEAD POWER DEVELOPMENT

any inducement that Flathead be used for peaking purposes, or that it be starved unduly at high water periods when other plants of the system could carry an increased share of the load; (4) it avoids all problems arising from any form of partnership of the Indians with the licensee; and (5) it eliminates subjecting the Indians to the ups and downs of business and to industrial depressions, a feature which especially exists in Montana, where the electric demand is so largely industrial in character. In the case of applicant Wheeler, whose plan provided for an exclusively industrial load, this business variation of load would have had its maximum effect upon Indian rentals.

The basis of agreement as to Indian rentals reached with Rocky Mountain Power Co. is as follows:

Article 30: (a) The licensee shall pay into the United States Treasury as compensation for the use, in connection with this license, of the Flathead Indian tribal lands annual charges computed as follows:

(1) A charge at the rate of \$1,000 per calendar month, beginning with the month in which the license is issued and extending to and including the month in which the project is placed in commercial operation. For the purpose of the payments under this article, the beginning of commercial operation shall be considered as the time when one of the licensee's generating units shall have been installed, tested, and demonstrated to be in suitable condition to produce electric energy for commercial purposes with a reasonable degree of reliability.

(2) A charge at the rate of \$5,000 per month, beginning with the calendar month next succeeding the date on which the project is placed in commercial operation and extending to the end of the calendar year in which such commercial operation shall commence.

(3) For each full calendar year from and after the 1st of January next following the date on which the first unit is placed in commercial operation, annual charges will be as follows:

	Per year
For the first two years.....	\$60,000
For the third year.....	75,000
For the fourth year.....	100,000
For the fifth year.....	125,000
For the next five years.....	150,000
For the next five years.....	160,000
For the next five years and, or until readjustment of the annual charges payable hereunder shall have been effected pursuant to the provisions of par. (D) of this article 30.....	175,000

(B) Payments shall be made for each calendar year within 30 days after the close thereof on bills rendered by the commission.

(C) Pursuant to the provisions of the act of March 4, 1929 (45 Stat. 1640), all charges for reimbursing the United States for the cost of administration of the Federal water power act have been and are hereby expressly waived.

(D) The annual charges payable under this license may be readjusted at the end of 20 years after the beginning of operation under this license and at periods of not less than 10 years thereafter by mutual agreement between the commission and the licensee, with the approval of the Secretary of the Interior. In case the licensee, the commission, and the Secretary of the Interior can not agree upon the readjustment of such charges, it is hereby agreed that the fixing of

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FLATHEAD POWER DEVELOPMENT

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readjusted charges shall be submitted to arbitration in the manner provided for in the United States arbitration act (U. S. C., title 9), such readjusted annual charges to be reasonable charges fixed upon the basis provided in section 5 of regulation 14 of the commission, to wit, upon the commercial value of the tribal lands involved, for the most profitable purpose for which suitable, including power develop- ment.

The Indian Bureau believes this scale of rentals forms a very satisfactory settlement. It greatly exceeds the offers made by both applicants. For purposes of ready comparison we append a chart which shows the agreed rentals, the original offers, and also the estimates based upon studies of the variables made by the Indian Bureau, the Federal Power Commission, and the Army engineers.

From this it will be noticed how closely all the estimates converge in the zone of 70,000 to 85,000 horsepower, which are the probable points of usual development.

GUARANTY

The guaranty for performance of Rocky Mountain Power Co. is made—

(1) by Montana Power Co., the parent company, guaranteeing the completion of the installation by Rocky Mountain Power Co. (the subsidiary company) of three units of 50,000 horsepower each or a total of 150,000 horsepower within four years, i. e., to start construction within one year and to complete construction within three years thereafter;

(2) by Montana Power Co. entering into a contract with Rocky Mountain Power Co. for the 50-year period of the lease to take all of its production of electric energy except such current as is taken by the United States for the reservation and the irrigation district up to a maximum of 15,000 horsepower. Said electric energy is to be paid for by the Montana Power Co. on the basis of actual cost, including Indian rental plus 8 per cent return upon the net investment cost. This will be an assurance of a market for the entire period of the license and will in effect act as a guaranty that Rocky Mountain Power Co. will be able to carry out its obligations, including the pay- ment of Indian rentals.

POSSIBLE INCREASE OF WATER FLOW IN FUTURE

As stated above, the Federal Power Commission has set a limit in the present license (and in accordance with the application) of 10 feet of storage in Flathead Lake, making a minimum of 1,100,000 acre-feet. If in the future, the problems of the lake levels can be safely solved, so that the Federal Power Commission will feel warranted in allowing a greater storage to be developed than 10 feet, then it will be in order for an application to be filed for the amending of the license. Such a proceeding will result in a corresponding increase of Indian rental based upon the increased earning power of site No. 1. It is hoped that at least by the time the first readjustment of rental is made at the end of 20 years, it will be possible that this increase of storage will have been found feasible.

CORPORATE SET-UP AND REGULATION IN THE PUBLIC INTEREST

It is especially gratifying to the Indian Bureau that the license as drawn carries out so fully its suggested plan of corporate set-up and regulation and which in these respects forms a model lease. This includes the continuance of the separate corporate existence of Rocky Mountain Power Co., which is a very important consideration in the simplification of accounting and future calculations for Indian rental readjustments. It has also been agreed by the applicant that all of its (the subsidiary's) securities are to be held unless otherwise allowed by the Federal Power Commission in the treasury of the Montana Power Co. (the parent company) or by a trustee for it, and that all of these securities shall be sold to Montana Power Co. for cash or its equivalent. This means no bonus securities and no over-capitalization.

It may be said in passing that so far as proper regulation and corporate set-up is concerned it is not necessary that all of the securities of the subsidiary should continue to be held in the parent company's treasury. It is sufficient that only the equity-bearing common stock be so held and the bonds and preferred stock, if any, could as well be sold to and be held by the public. In this case, however, the company prefers to sell to the public Montana Power Co. securities and to retain in its treasury or in the hands of a trustee all of the securities of the subsidiary.

The license also provides that in the intercompany agreement between the subsidiary and the parent companies, as already stated, the intercompany price of current will be sufficient and only sufficient approximately to cover the actual operating costs, including Indian rental plus an 8 per cent return upon the actual legitimate investment as established under the provisions of the Federal water power act. This means that this intercompany cost-plus-return price will be based upon the prudent investment valuation, and will be a bed-rock price. For regulation as between the Federal and State Commissions, this is an ideal arrangement in that under the Federal license the return will be limited to 8 per cent upon cost, 8 per cent being the prevailing allowed rate in Montana; and there will be turned over to the pool of the Montana Power Co. and be put under State regulation the entire production of the subsidiary (except the power taken by the United States) at this lowest possible price. We have already shown in Indian Bureau's memorandum of December 30, 1929, that this cost at Flathead site No. 1 will be less than the average cost of the Montana Power Co.'s system as shown in the year 1926. Hence the coming into the Montana Power Co.'s system of this lower cost current (with its return on generating investment already taken care of) should have the effect of lowering the average cost of the entire system, and, under the State regulation, be of advantage to all of the consumers on its lines. The gain at Thompson Falls will likewise have a favorable effect. Thus, not only the Indians but the general public of Montana should be the gainers by the Flat head development.

In this connection it is important to note that this low intercompany price will be a matter of open publicity through the annual reports of the subsidiary and the parent companies as rendered to the

FLATHEAD POWER DEVELOPMENT

55

State commission. This will therefore serve as the "yardstick," so often referred to in public-ownership cases, by which the actual cost-plus return on cost will be always available. This clean cut and open publicity is one of the most important factors in successful regulation of public utilities. We believe that this Flathead case as arranged can be taken as a model lease in this respect.

IRRIGATION DISTRICTS

It will be remembered that in 1927, and again in 1928, the applicant had voluntarily agreed to sell to the United States for the irrigation district up to 15,000 horsepower at prices of 1 mill for 10,000 horsepower and 2½ mills for 5,000 horsepower. In Indian Bureau's memorandum of December 30, 1929, it was shown that the latter price of 2½ mills is greater than the estimated cost at Flathead site No. 1, including return and Indian rental. Hence, on the 5,000 horsepower block there will be no loss. On the block of 5,000 horsepower at 1 mill for pumping and 5,000 horsepower at 1 mill for general uses and for sale, there will probably be very small loss, if any, because much of this use will be at the time of secondary power. However, even if the load factors are as the applicant has estimated and a part is primary power, we have shown in our memorandum of December 30, 1929, that after the calculation of the Indian rental, by a slight increase in the intercompany price, the small cost of this power will be provided for without in any way affecting the Indian rental.

It may be added that in all our negotiations regarding the Indian rentals this matter of the irrigation power was completely ignored. It was recognized by the company's representatives, as well as by those representing the Government, that at Thompson Falls there will be developed, because of Flathead storage, more than twice as many additional kilowatt-hours than can possibly be used in the entire irrigation 15,000 horsepower demand. Hence, this delivery of this power can and will be provided without the slightest effect in reducing the Indian rental.

Accordingly there have been included in the license the features desired by the irrigation project and already agreed to, as stated, viz:

- (1) The agreement to supply the 15,000 horsepower at the prices previously stated.
- (2) To refund the \$101,000 to the Government for the cost of Newell Tunnel, which will be completed and used by applicant for river diversion during construction.
- (3) The supplying to the project up to 500 horsepower at line voltage during the construction period.
- (4) The right to use Flathead Lake and River water above the dam for irrigation purposes, provided not more than 50,000 acre-feet shall be used after July 15 in any year.

AMORTIZATION

It will be recalled that in the Indian Bureau's memorandum of December 30, 1929, we recommended that if legally possible under the special powers of the Secretary of the Interior in this case it would be desirable to provide for an amortization charge of 0.6 per cent

56

FLATHEAD POWER DEVELOPMENT

to be included in the licensee's operating expenses and that such charges should be set aside in an amortization fund and kept invested and reinvested in such fund, so that at the end of the 50 years of the lease the property might be recaptured and be turned back to the Indians fully paid for. This desirable feature proved to be impossible of accomplishment because under the Federal water power act, no such setting up of an amortization charge is provided for, nor could the Secretary's powers be stretched to include such a power against the licensee's resistance. There is, however, provision that after 20 years of the license, certain provisions in reference to surplus earnings being used for amortization shall become operative. As under the set-up of this license there will be no appreciable surplus earnings, this provision will not be operative.

However, the right of recapture for the Indians at the end of 50 years exists under the Federal water power act, and can be exercised provided a fund will be available to meet the outstanding net investment cost to the licensee. To provide such a fund it would be possible, if thought desirable and if approved by the Indians, for Congress to set aside each year from the funds of the Indians an amount sufficient at compound interest to build up such an amortization fund.

RECOMMENDATIONS

- (1) The Indian Bureau recommends the issuance of the license for site No. 1 for immediate development as now agreed upon to Rocky Mountain Power Co.
- (2) The Indian Bureau repeats its hope, as expressed in the previous memorandum, that a way may be found for the early exploration with a view to development, of the Flathead sites Nos. 2 to 5 so that the Indians may have a revenue from them at the earliest possible date.

Applicant Rocky Mountain Power Co. has stated in the hearings that it would not soon proceed to such development even if granted the preliminary permit. Applicant Wheeler has urged that if granted a preliminary permit, he believes he could secure actual contracts for the sale of power. Although it is recognized that he has not yet made a sufficient showing of ability to market the power, yet it is hoped that he may be at least given an extension of time to do so, so far as sites Nos. 2 to 5 are concerned, rather than be rejected outright. If there is any real chance of his exploiting the possibilities of these other four sites for industrial development, it would seem desirable to give him opportunity for a limited time to show what he can do.

Respectfully submitted.

Approved:

J. HENRY SCATTERGOOD,
Assistant Commissioner.

C. J. RHOADS, Commissioner.

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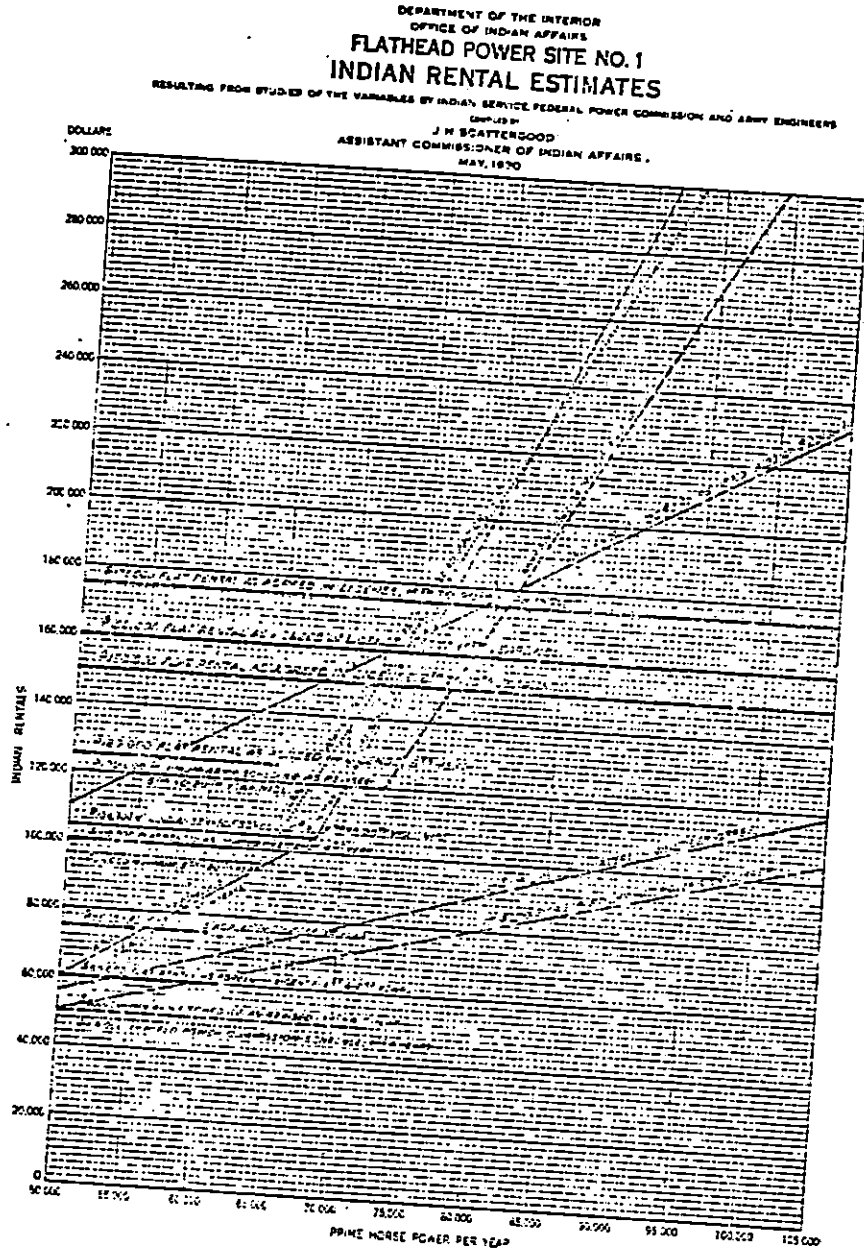
Federal Power Commission schedule, January 2, 1930.
Army Engineers' schedule, February 27, 1930; revised March 29,
1930.
Indian Bureau schedule No. 2, April 1, 1930.
Copy of license issued May 23, 1930, to Rocky Mountain Power Co.
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SCATTERGOOD,
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FLATHEAD POWER DEVELOPMENT



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SUGGESTED FEDERAL POWER COMMISSION SCHEDULE

Proposed Charge for Indian Land

JANUARY 2, 1930.

In the event the commission decides to authorize a license for site 1 in the above case, it appears that the following may offer a rough outline of a logical method for determining the reasonable charge to be fixed for the use of the Indian land.

The uncertainties make this problem difficult. Obviously, there is no exact answer. The appraisal of a water-power site value constitutes a most complex engineering study under any circumstances and when the project is for public utility purposes the difficulties are magnified. This is because no tangible basis for comparison is offered. Any advantage of one site over another may not be capitalized by the developing public utility agency and, therefore, the value to the utility lies only in the more economical or reliable service it may be permitted to give the public. Under these circumstances it would appear that the four primary factors which will probably operate to limit, but not necessarily fix, the appraised value are the following:

1. Cost of power at load centers from alternate sources.
2. Present value of power at load centers.
3. Possibility of marketing power site with some other agency.
4. Value of lands for some other purpose than power development.

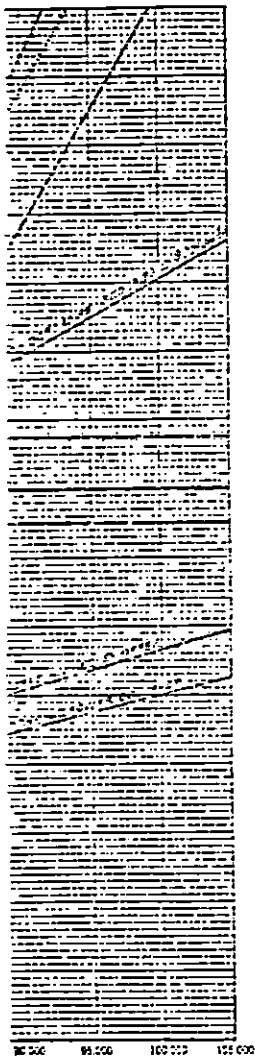
Section 5 of regulation 14 provides:

When licenses are issued involving the use of tribal lands embraced within Indian reservations, the commission will fix a reasonable annual charge for the use thereof, based upon the commercial value of the land for the most profitable purpose for which suitable, including power development. The charge shall commence upon date license is issued.

It will be noted that the regulations contemplate specific consideration of the fourth factor noted above; but in the present case the value for any other purpose than water power, in so far as the Indian lands are concerned, may be dismissed from consideration. The Indian land bordering the lake shore will not be affected above the natural high-water level, and the very small area actually to be occupied by the project works below the lake outlet is confined to the precipitous canyon territory where there are no commercial values.

The third factor likewise is of little importance in this case. In many respects the Flathead Lake site is highly attractive but with the abundant supply of cheaply developed water power resources throughout the Northwest, it will probably be many years before the development of markets will progress to the point where the isolation of this site may be overcome and its full development warranted by some agency other than the public utility now serving that immediate territory.

It seems necessary, therefore, to relate the appraisal to the first two factors noted above. Factor No. 1, which contemplates comparison with an alternate source of power, has already been studied to a considerable extent by Mr. Henshaw. It appears that the most favorable alternate source for developing a block of power similar in



FLATHEAD POWER DEVELOPMENT

quantity and characteristics to that possible at Flathead will be a combination of site C on the Missouri River and the reconstruction of the Canyon Ferry project. Site C would have to be built first in order to provide spare capacity for the system and thus allow the existing Canyon Ferry plant to be dismantled. The main elements of these two units are presented by Table 1 and a comparison with Flathead by Table 2. These are based mainly on Mr. Henshaw's data. On this rough basis of comparison a differential of \$2.19 per horsepower in favor of Flathead is indicated before consideration of the Indian charge.

Mr. Cochrane stated (Tr. p. 2284) that under present schedules, approved by the State regulatory agency, energy is being wholesaled in large blocks at Anaconda for from \$25 to \$30 a horsepower and at Great Falls for somewhat less. On this basis of about 4 mills per kilowatt-hour at Anaconda and 1.5 mills transmission cost, including losses, it would appear that the Flathead output might be valued at around 2.5 mills switchboard without increasing present rates.

The estimated cost of the Flathead development is approximately \$7,500,000, which seems fair, although in my judgment this figure is more likely to be exceeded than reduced. The annual charges, adopting the 12 per cent basis, will be about \$900,000 a year. The company estimates somewhat more. At 2½ mills a kilowatt-hour the annual generation must reach 360,000,000 kilowatt-hours to offset the annual charge exclusive of any Indian rental. The site is capable of producing a great deal more, and the most specific basis for the charge will be a schedule which makes equitable division of revenue beyond costs between the Indians on the one hand and the public interests of the State on the other. Necessarily, such a schedule must incorporate various safeguards such as minimum charges, etc., which protect the Indian interests, but at the same time encourage the company to make the largest practicable utilization of the available resources.

An approximation of an equitable division of interest between the Indians and the public may be derived as follows: As Mr. Henshaw points out, a development confined exclusively to tribal lands and without artificial regulation of the lake might be made which would have a primary capacity of 37,440 horsepower (2,600 × 180 × 0.05). Ownership of the resources for such a project lies entirely with the Indian tribe. Constructed to 60,000 horsepower installed capacity, such a project would probably cost around \$5,000,000.

From preliminary calculations and subject to correction by the detailed status check now being made by Mr. Orcutt, it appears that tribal lands affected by regulation of the lake itself will amount to about 25 per cent of the total. The division of interest in the entire project between Indian and public interest combining these various factors may be calculated as follows:

$$\frac{37,500}{80,000} = 46.875 \text{ per cent (of project exclusively Indian).}$$

$$\frac{\$5,000,000}{37,500} = \$133 \text{ per horsepower (for project without regulation).}$$

$$\frac{\$2,500,000}{42,500} = \$59.50 \text{ per horsepower (for additional power from regulation).}$$

$$\frac{\$133}{\$59.5} = 2.2 \text{ (ratio of value in favor of storage power).}$$

TEXT

FLATHEAD POWER DEVELOPMENT

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Indian interest:		
46.875×1-----	46.875	
53.125×2.2×0.25-----	29.218	
Indian total-----	76.093=	46.5%
Public interest=53.125×2.2×0.75-----	87.654=	53.5%
Combined total-----	163.747=	100 %

Such computation is by no means conclusive, but it serves as an indication of the comparative interests.

The schedule of Indian charge, attached hereto, aims to apply the principles outlined in the foregoing discussion. While merely tentative and probably embracing some defects, it should at least be helpful in offering something tangible for further study and discussion. The schedule embodies the principles which by long experience have been found most sound for power sale contracts and at the same time it disposes automatically of the questions of efficiency factors, utilization factors, etc., regarding which there has been considerable futile discussion in this case. It will be desirable, of course, that the charge be divided between a peak charge and an energy charge in order to prevent the plant being utilized primarily for peak and stand-by purposes. Also, certain substantial minimum rentals are provided to protect the Indian interests. A discount of the energy charge during the season of high flow might be suggested with the thought that by such means more complete utilization would be attained and consequently larger revenue obtained for the Indian fund than the minimum charges which otherwise may logically result. This feature, however, has been omitted in this presentation in order that the schedule may be kept as simple as practicable. It will be noted that the plan provides for no deduction from the Indian charge on account of energy that may be furnished to the irrigation district. The company will be required to pay the same charges on such energy as it does on the energy transmitted to Anaconda and elsewhere. On the whole, the plan appeals to me as being eminently fair not only to the Indians but also to the company and the consuming public.

The following tabulation illustrates the operation of the schedule for varying rates of production at 75 per cent load factor:

Output at rate of kilowatt hours per month	Equivalent average horsepower	Peak load charge	Annual charge energy	Total rental	Average per horsepower
30,000,000	55,074	\$34,050.00		1 \$45,000.00	\$0.57
35,000,000	64,253	41,100.00	\$55,200.00	50,800.00	1.50
40,000,000	73,432	48,150.00	110,400.00	120,500.00	2.17
45,000,000	82,611	55,200.00	165,600.00	230,700.00	2.72
50,000,000	91,790	62,250.00	220,800.00	340,900.00	3.15
55,000,000	100,969	69,300.00	276,000.00	451,100.00	3.52
60,000,000	110,148	76,350.00	331,200.00	561,300.00	3.83

¹ Established by minimum charge of \$1,000 per month during first 5 years and would be doubled in case this low output occurred after fifth year of operation.

A chart which offers ready means for estimating the charges under different conditions is attached hereto. It is of interest to note that the Indian revenue from operation at the rate of 50,000,000 kilowatt-hours a month which reasonably may be anticipated as the market and

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FLATHEAD POWER DEVELOPMENT

the site reach full development will amount to \$289,000 a year. Capitalized at 6 per cent this represents a valuation of practically \$5,000,000 for the Indian interest in the project.

F. E. BONNER,
Executive Secretary.

MR. BONNER'S PROPOSED SCHEDULE OF INDIAN CHARGE

The licensee shall pay into the United States Treasury as compensation for the use of Flathead Indian tribal lands (and administrative expenses of the United States) in connection with this license as annual charge for each calendar year subject to the following conditions:

A. The amount of the charge will be the sum of the 12 monthly charges each of which shall be calculated as follows:

(1) *Peak load charge.*—First 45,000 kilowatts or less of maximum load, \$2,250 per month: next 15,000 kilowatts of maximum load, \$0.06 per kilowatt: next 10,000 kilowatts of maximum load, \$0.07 per kilowatt; next 10,000 kilowatts of maximum load, \$0.08 per kilowatt; next 10,000 kilowatts of maximum load, \$0.09 per kilowatt; all over 90,000 kilowatts of maximum load, \$0.10 per kilowatt.

(2) *Energy charge* (to be added to demand charge): First 30,000,000 kilowatt-hours per month, no charge: all over 30,000,000 kilowatt-hours at following rates: First 400 kilowatt-hours per kilowatt of proportional peak load, \$0.001 per kilowatt-hour: next 150 kilowatt-hours per kilowatt of proportional peak load, \$0.0007 per kilowatt-hour; all over 550 kilowatt-hours per kilowatt of proportional peak load, \$0.0004 per kilowatt-hour.

(3) *Minimum charge* will be \$1,000 per month beginning with the month in which license is issued and extending to the month next preceding that within which the project is placed in commercial operation; thereafter the minimum charge (inclusive of the combined peak and energy charges) for each month shall be \$4,000 per month until the beginning of the fifth calendar year after the date on which the project is placed in commercial operation; and thereafter the minimum monthly charge shall be \$8,000 per month.

B. The licensee shall be required to install, operate, maintain, and periodically test such meters and other equipment as may be required for measuring, in terms of kilowatts of peak load and kilowatt-hours, the output of electric energy produced by the generating units of the plant, and representatives of the commission may at any time have the right to inspect and test such meters and other equipment in the presence of a representative of the licensee. The record of meter measurement shall be used as the basis of the charge calculations: *Provided, however,* That in case any installed meter shall during any period of time for any reason fail to register the output correctly the record of output for such period shall be estimated from the best data available.

C. Promptly after January 1 of each year the licensee shall forward to the commission a record of the peak load and total energy output for each month of the preceding calendar year. After such verification as may be deemed desirable by the commission this record will be made the basis of the annual charge and a statement rendered the licensee which shall be paid within 30 days of receipt.

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FLATHEAD POWER DEVELOPMENT

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F. E. BONNER,
Executive Secretary.

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D. For calculating the peak load charge the maximum load of each month will be considered as that average kilowatt output of the 30-minute interval in which the output of electric energy is greater than in any other 30-minute interval in the same month. For calculating the energy charge the proportional peak load will be derived by taking the proportion of the maximum load that the output for the month in excess of 30,000,000 kilowatt-hours bears to the total output for the month.

E. The annual charge may be readjusted at the end of 20 years after the beginning of operation under this license and at periods of not less than 10 years thereafter upon the basis used in the original determination and upon the facts as found by the commission at such times of readjustment.

SUGGESTED ARMY ENGINEERS' SCHEDULE

WAR DEPARTMENT,
Washington, February 27, 1930.

The SECRETARY OF THE INTERIOR,
*Acting Chairman Federal Power Commission,
Department of the Interior, Washington, D. C.*

DEAR MR. SECRETARY: 1. In response to your recent request for a recommendation on the amount which the Rocky Mountain Power Co. should pay to the Indian Bureau for flowage rights in connection with a license for the construction of a power plant on the Flathead River, you are advised that based on the data submitted I have had a study made under the direction of the Chief of Engineers, who advises that the conclusions of that study are as follows:

(a) That the revenue should be derived, first, from a fixed yearly demand charge, and second, from an energy charge, the latter to be sufficiently low to make it worth while for the company to generate as much power as can be absorbed in the system.

(b) That no unnecessary restrictions should be placed on the method of operating the plant by the power company, such as a peak load penalty, as it is believed that this will have the effect of reducing the usefulness of the plant and will not provide additional return to the Indian Bureau.

2. The following conditions are recommended as being fair to all parties concerned and are based on computations made from information supplied by your office:

Fixed charge: The power company shall pay to the Indian Bureau for the privileges granted under this license a fixed charge at the rate of \$1,000 per month from the time that this license is issued until the time when the plant starts generating power for other than test purposes. As soon as the plant starts generating power for other than test purposes, the company shall pay at the rate of \$60,000 per year until the beginning of the fifth calendar year, at which time the fixed charge shall be increased to \$125,000 per year, and shall be continued until the expiration of this license, unless modified under the terms thereof.

Energy charge: In addition to the fixed charge, the company shall pay for energy generated as follows: For the first 420,000,000 kilowatt-hours per annum during the time that the fixed charge is \$60,000 per

64

FLATHEAD POWER DEVELOPMENT

annum, and for the first 475,000,000 kilowatt-hours per annum thereafter, no additional charge shall be made. For all energy generated over these amounts, the company shall pay at the rate of 1 mill per kilowatt-hour.

The energy shall be metered at the plant at generator voltage.

3. In arriving at the above recommendations, certain assumptions were made and certain figures were accepted, as follows:

- Cost of development, not including transmission line, \$8,000,000.
- Installed capacity, 150,000 horsepower.
- Regulated low flow 90 per cent of time, 5,400 second-feet.
- Average head, 185 feet.
- Over-all plant efficiency, 85 per cent.
- Prime power capacity, based on 90 per cent time flow, 71,000 kilowatts.
- Prime power output per annum with 100 per cent load factor, 622,000,000 kilowatt-hours.
- Sale price of power delivered at end of transmission line, \$25 per horsepower-year, or 3.83 mills per kilowatt-hour.
- Cost of 2-circuit, 132,000-volt transmission line 140 miles long from plant to Anaconda, \$3,000,000.

4. Based on the above data and the details of the cost as stated by the power company, it was computed that the total annual fixed and operating charges on the plant, not including the transmission line, would be approximately \$1,000,000, divided as follows:

Interest at 7 per cent.....	\$560,000
Operation, maintenance, and overhead.....	200,000
Taxes at 2 per cent.....	160,000
Depreciation, 1 per cent.....	80,000

5. In order to arrive at the net revenue at the plant, a transmission line loss in energy of 12 per cent was assumed, and fixed and operating charges of the transmission line were computed as follows:

Interest at 7 per cent.....	\$210,000
Depreciation at 1½ per cent.....	45,000
Patrol at \$100 per mile per year.....	14,000
Maintenance and repairs at 0.5 per cent.....	15,000
Taxes at 2 per cent.....	60,000
Overhead and contingencies.....	6,000
Total.....	350,000

6. From the above computations, the curves shown on the attached sheet were drawn to show the difference between annual charges and the revenue derived from power generated.

7. It was considered that the fixed charge should be sufficiently large to protect the Indian Bureau in case the company desired to maintain the plant in a stand-by condition, but should also be low enough so that the power company could earn this charge under any foreseen condition. The lowest flow of record, occurring for 8 months during 1919 and 1920, gave a regulated flow under the assumed conditions of 0.62 cubic foot per second per square mile of drainage area. This flow corresponds to a 100 per cent prime power capacity of 57,000 kilowatts, or an output at the rate of 500,000,000 kilowatt-hours per year. It is to be expected that during a dry period of this character the load factor on a storage project of this kind would be at least 95 per cent, and it was therefore concluded that the company could produce under the worst conditions at least 475,000,000 kilowatt-hours per year or 76.4 per cent of the 90 per cent time flow output.

8. From the cost of production therefrom would difference should arrive at the storage derived from

The 90 per cent capacity of 33,300 hours per annum kilowatt-hours per generated with a curve is shown to this kind is estimated charges were calculated with the minimum loss of \$250,000. of \$250,000 per year minimum output, per annum.

9. It is estimated Indian Bureau accrue to the bureau fixed charge.

10. In arriving figure was selected generate as much return to the Indian Sincerely yours

Hon. B. K. WHEELER
United States

MY DEAR SENATOR:
I appeared before you on March 5, I desire to discuss the Flathead power engineers' report and current per kilowatt

I inclose two tables showing rentals and costs of power for the past year and for the present year. The rentals are subject to the rentals, the increased costs of current

From these tables you will see that the engineers' statement encourages the power to be sold and thus increased. You will realize that which both of the parties it will not be possible for their growth at development elsewhere.

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FLATHEAD POWER DEVELOPMENT

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8. From the curve it will be seen that the difference between the cost of producing this amount of power and the revenue derived therefrom would be approximately \$250,000. Obviously, all of this difference should not be credited to the Indian Bureau. In order to arrive at the proportion which should be so credited, the value of storage derived from the use of Indian lands was computed as follows:

The 90 per cent time unregulated flow corresponds to a prime power capacity of 33,300 kilowatts, or an output of 291,000,000 kilowatt-hours per annum. Using 76.4 per cent of this figure of 220,000,000 kilowatt-hours per annum as the minimum power which would be generated with a run of river plant, the revenue derived from the curve is shown to be \$400,000. The cost of a run of river plant of this kind is estimated at \$5,000,000, on which the fixed and operating charges were calculated to be \$650,000 per annum. Therefore, with the minimum output mentioned above, there would be a net loss of \$250,000. The effect of storage therefore is to convert a loss of \$250,000 per year into a profit of \$250,000 per year based on a minimum output, or in other words the value of storage is \$500,000 per annum.

9. It is estimated that 25 per cent of the storage lands belong to the Indian Bureau and therefore the minimum amount which should accrue to the bureau is \$125,000 per year, which is the recommended fixed charge.

10. In arriving at the recommendations for the energy charge, a figure was selected which would encourage the power company to generate as much power as could be sold, and thus insure the maximum return to the Indian Bureau.

Sincerely yours,

PATRICK J. HURLEY,
 Secretary of War.

MARCH 12, 1930.

Hon. B. K. WHEELER,
 United States Senate.

MY DEAR SENATOR WHEELER: In response to your request when I appeared before the Senate Interstate Commerce Committee on March 5, I desire to assure you that the larger the development of the Flathead power site under the figures contained in the Army engineers' report the lower will be the estimated generating costs of current per kilowatt-hour.

I inclose two tables which set out, respectively, the approximate rentals and costs of current for the period before the fifth calendar year and for the period from the fifth year to the twentieth year when the rentals are subject to revaluation. These tables show the total rentals, the increasing rates per horsepower, and the decreasing estimated costs of current per kilowatt-hour.

From these tables it is easy to observe the basis for the Army engineers' statement that a schedule was recommended "which would encourage the power company to generate as much power as could be sold and thus insure the maximum return to the Indian Bureau." You will realize also that when the full installation has been made which both of the applicants have specified (viz, 150,000 horsepower) it will not be possible for either of them to obtain the needed current for their growth at as low a cost as one mill per kilowatt-hour through development elsewhere.

FLATHEAD POWER DEVELOPMENT

I also have your letter of the 6th, with inclosures from Mr. Walter H. Wheeler addressed to you and Senator Walsh, which I have noted and return herewith. Mr. Wheeler's figures do not readily convey the whole story of the Army engineers' recommended basis for Flathead Indian rentals.

As you are aware, the two propositions before the commission are entirely different and not directly comparable. One is an application for a license for and the prompt construction of the Flathead Lake storage and the upper power site at the foot of Flathead Lake. The other is for a preliminary permit granting the permittee the right to investigate during a period of three years the possibilities of the Flathead Lake storage, the upper power site at the foot of Flathead Lake and the four lower power sites on the Flathead River, with the option of applying for a license prior to the expiration of the permit, but with no obligation to apply for such license. The figures submitted by the Chief of Engineers, United States Army, show what he considers should be paid to the Indian Bureau for its interest in the Flathead Lake storage and the power site at the foot of Flathead Lake. The figures do not cover the four lower sites on Flathead River, nor can they be extended to apply to those sites. Neither of the applicants has the information on the physical conditions existing at the four lower sites to enable him to make even general estimates of the cost of development nor is such information in possession of the Government. Under these circumstances, you will appreciate, I think, that it is impossible at this time to fix upon a rental for the four lower sites with any degree of fairness to the Indians.

Mr. Wheeler bases the rental which he would pay for site No. 1 on an estimated average output of 105,000 horsepower, and that which the Rocky Mountain Power Co. would pay on 71,000 horsepower after the fifth year of operation. Obviously, the potential power of the site is the same in either case; the differences merely result from the judgment of the two applicants, and would not be realized in practice. The estimate of the engineers of the War Department assumes an average output of 95,000 horsepower, which seems more reasonable than estimated by either of the applicants.

For Senator Walsh's information, I am also sending him a copy of this letter.

Very sincerely,

RAY LYMAN WILBUR.

REVISION OF SUGGESTED ARMY ENGINEERS' SCHEDULE

WAR DEPARTMENT,
 OFFICE OF THE CHIEF OF ENGINEERS,
 Washington, March 29, 1930.

The EXECUTIVE SECRETARY FEDERAL POWER COMMISSION,
 Department of the Interior, Washington, D. C.

DEAR SIR: 1. In accordance with your letter of March 26, 1930, Montana-Rocky Mountain Power Co., the estimate submitted by the Rocky Mountain Power Co. on the capital and annual cost of a transmission line proposed for the Flathead Lake project, has been reviewed.

2. It is considered that the costs as given by the Rocky Mountain Power Co. are higher than can be reasonably expected. An estimate based on such data as are available in this office has been made on a

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FLATHEAD POWER DEVELOPMENT

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RAY LYMAN WILBUR.

NEERS' SCHEDULE

DEPARTMENT,
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ER COMMISSION,
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double transmission line on wooden H-type supports, including a separate telephone line and a 100,000 kilovolt-ampere substation. The first cost of such a line, 140 miles long, and of the substation is estimated at \$2,950,000. Annual fixed and operating charges, including interest at 7 per cent per annum, are estimated to be \$369,000.

3. In the letter from the Secretary of War to the Secretary of the Interior, dated February 27, 1930, the fixed and operating charges on a double circuit line were given as \$350,000. In view of the above increased cost of transmitting energy under the conditions outlined by the Rocky Mountain Power Co., the following modifications in the charges for flowage rights on the Indian lands as recommended in the letter referred to above are considered to be equitable:

(a) The fixed charge given as \$60,000 per year should be reduced to \$50,000 per year.

(b) The fixed charge given as \$125,000 per year should be reduced to \$120,000 per year.

(c) All other charges and conditions should remain as originally recommended.

4. A chart dated March 27, 1930, showing the difference between annual charges revised as above and the revenue derived at various rates of output, is inclosed.

Very truly yours,

HERBERT DEAKYNE,
 Brigadier General,
 Acting Chief of Engineers.

Interpretation of Flathead Site No. 1, Army engineers' rental recommendations
 UNTIL FIFTH CALENDAR YEAR

Capacity developed			Esti- mated gener- ating cost per kilowatt- hour before rental	Indian rental			Rate per horse- power	Rate per kilo- watt	Esti- mated gener- ating cost per kilowatt- hour, including rental
Horse- power	Kilo- watts	Kilowatt- hours		Fixed charge	Energy charge	Total			
<i>Mills</i>									
65,000	48,750	427,050.00	2.42	\$60,000.00	\$7,050.00	\$67,050.00	\$1.63	\$1.37	2.55
70,000	52,500	450,000.00	2.19	60,000.00	39,000.00	99,000.00	1.43	1.91	2.41
75,000	56,250	492,750.00	2.03	60,000.00	72,750.00	132,750.00	1.77	2.56	2.30
80,000	60,000	525,000.00	1.90	60,000.00	105,000.00	165,000.00	2.07	2.76	2.22
85,000	63,750	557,450.00	1.79	60,000.00	138,450.00	198,450.00	2.34	3.11	2.15
90,000	67,500	590,000.00	1.69	60,000.00	171,000.00	231,000.00	2.57	3.43	2.05
95,000	71,250	622,500.00	1.60	60,000.00	204,000.00	264,000.00	2.78	3.71	2.02
100,000	75,000	655,000.00	1.52	60,000.00	237,000.00	297,000.00	2.97	3.96	1.97
105,000	78,750	687,500.00	1.45	60,000.00	270,000.00	330,000.00	3.14	4.15	1.93
110,000	82,500	720,000.00	1.38	60,000.00	302,700.00	362,700.00	3.29	4.30	1.86

FIFTH TO TWENTIETH YEAR

65,000	48,750	427,050.00	2.42	\$125,000	0	\$125,000	\$1.92	\$2.58	2.71
70,000	52,500	450,000.00	2.19	125,000	0	125,000	1.78	3.37	2.46
75,000	56,250	492,750.00	2.03	125,000	\$173,750	142,750	1.90	2.53	2.32
80,000	60,000	525,000.00	1.90	125,000	60,000	175,000	2.19	2.62	2.23
85,000	63,750	557,450.00	1.79	125,000	\$3,450	28,450	2.45	3.27	2.16
90,000	67,500	590,000.00	1.69	125,000	110,000	215,000	2.58	3.67	2.10
95,000	71,250	622,500.00	1.60	125,000	140,150	270,150	2.84	3.85	2.04
100,000	75,000	655,000.00	1.52	125,000	182,000	307,000	3.07	4.09	1.99
105,000	78,750	687,500.00	1.45	125,000	214,000	339,000	3.23	4.31	1.94
110,000	82,500	720,000.00	1.38	125,000	247,500	372,500	3.39	4.52	1.89

* Includes 7 per cent interest on \$5,000,000 investment and 1 per cent interest for depreciation.

FLATHEAD POWER DEVELOPMENT

69

THE FEDERAL POWER COMMISSION LICENSE ON GOVERNMENT
LANDS PROJECT NO. 5, MONTANA—ROCKY MOUNTAIN POWER CO.

Whereas by act of Congress, approved June 10, 1920 (41 Stat. 1063) designated therein as the Federal water power act and hereinafter called the act; the Federal Power Commission, hereinafter called the commission, is authorized and empowered, inter alia, to issue licenses for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development, transmission, and utilization of power across, along, from or in any of the navigable waters of the United States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam; and

Whereas by act of Congress, approved March 7, 1928 (45 Stat. pp. 212, 213), the commission was specifically authorized, in accordance with the Federal water power act and upon terms satisfactory to the Secretary of the Interior, to issue a permit or permits or a license or licenses for the use, for the development of power, of power sites on the Flathead Reservation and of water rights reserved or appropriated for the irrigation projects; and

Whereas Rocky Mountain Power Co., hereinafter called the licensee, a corporation organized and existing under the laws of the State of Delaware and having its office and principal place of business in the city of Butte, in the State of Montana, has made application in due and proper form to the commission for a license for a power project designated as project No. 5 on the records of the commission, and for authority to construct, maintain, and operate, in Flathead River and Flathead Lake, in the vicinity of Polson, in the counties of Flathead and Lake, State of Montana, certain project works, as hereinafter described, necessary or convenient for the development and improvement of navigation and for the development, transmission and utilization of power across, along, from and in navigable waters of the United States; and to occupy and use therefor certain public lands and reservations of the United States, as hereinafter described, together with all riparian rights appurtenant thereto which are necessary or useful for the purposes of the project; and water rights for power purposes reserved or appropriated for Indian irrigation projects; and

Whereas the licensee has submitted to the commission satisfactory evidence of its compliance with the laws of the State of Montana as required by section 9, subsection (b) of the act, and the commission is satisfied as to the ability of the licensee to carry out the plans for said project as filed with said application; and

Whereas notice of said application has been given and published by the commission, as required by section 4 of the act; full opportunity has been given to all interested parties to be heard, and no application for said project, or in conflict therewith, has been filed by any State or municipality; and

Whereas the maps, plans, and specifications of said project and of said project works, as hereinafter described, have been approved by the commission, and the plans of the dam and other structures affecting navigation have been approved by the Chief of Engineers and the

Minimum, at \$4,700. High energy charge at 37,000,000 k ilowatt-hours per month.
+ Operation and maintenance, \$60,000; overhead, \$10,000; taxes, 2 per cent, \$151,100; depreciation, 1 per cent, \$75,551; total, \$152,652.
+ Operation and maintenance, \$60,000; overhead, \$10,000; taxes, 2 per cent, \$150,000; depreciation, 1 per cent, \$75,000; total, \$195,000.

FLATHEAD POWER DEVELOPMENT

Acting Secretary of War; and the terms set forth in this license are satisfactory to the Secretary of the Interior as required by the act of March 7, 1928 (45 Stat., pp. 212, 213); and

Whereas all charges for defraying the expense of administering the provisions of the Federal water power act were waived by the provisions of the act of March 4, 1929 (45 Stat. 1640); and

Whereas the commission has found that said project, as herein-after described, will be best adapted to a comprehensive scheme of improvement and utilization of said waterway for the purposes of navigation, of water-power development, and other beneficial public uses; and

Whereas the licensee on the 20th day of May, 1930, pursuant to an authorization of its board of directors, a copy of the record thereof being hereto attached, accepted in writing all the terms and conditions of the act and of this license:

Now, therefore, the commission hereby issues this license to the licensee for the purpose of constructing, operating, and maintaining certain project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in the Flathead River and Flathead Lake, navigable waters of the United States, and constituting a part of the project hereinafter described, said license, including the period thereof, being subject to all the terms and conditions of the act and of the rules and regulations of the commission pursuant thereto as amended and made effective on the 1st day of May, 1928, as though fully set forth herein, which said rules and regulations are attached hereto and made a part hereof, and being subject also to the following express conditions and limitations, to wit:

ARTICLE 1. This license is issued for a period of 50 years from the date hereof, and in consideration of such license and the benefits and advantages accruing thereunder to the licensee, it is expressly agreed by the licensee that the entire project, project area, and project works as hereinafter designated and described, whether or not located in, on, or along said Flathead River and Lake or upon lands of the United States, shall be subject to all the terms and conditions of this license, including the terms and conditions of the act and of the rules and regulations of the commission pursuant thereto and made a part of this license.

ART. 2. The project covered by and subject to this license is designated as Flathead site No. 1, is located partly on public lands and reservations of the United States and consists of—

A. All lands constituting the project area and inclosed, or the location of which is shown, by the project boundary, and/or interests in such lands necessary or useful for the purposes of the project, whether such lands or interests therein are owned or held by the licensee or by the United States; such project area and project boundary being more fully shown and described by certain exhibits which accompanied said application for license and which are designated and described as follows:

Exhibit J.—Map in one sheet, designated Flathead development general map (F. P. C. No. 5-1).

Exhibit K.—Map in four sheets, designated Flathead development project map (F. P. C. No. 5-4, 5, 6, 7).

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FLATHEAD POWER DEVELOPMENT

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Exhibits J and K.—Signed Rocky Mountain Power Co., by F. M. Kerr, vice president.

B. All project works consisting of a concrete dam in and across the Flathead River, about 4 miles below the outlet of Flathead Lake; a reservoir in said Flathead River and Lake; water conduits about 770 feet long, including an intake at the upper end of each such conduit; a power house and appurtenant equipment; such project works being more fully shown and described by certain exhibits which accompanied said application for license and which are designated and described as follows:

Exhibits J and K.—Cited above.

Exhibit L.—Map in two sheets, designated Flathead development general plan (F. P. C. No. 5-8) and Flathead development dam analysis (F. P. C. No. 5-9).

Exhibit M.—Four typewritten sheets, designated general description of plant and equipment, Flathead development.

Exhibits L and M.—Signed Rocky Mountain Power Co., by F. M. Kerr, vice president.

C. All other structures, fixtures, equipment, or facilities used or useful in the maintenance and operation of the project and located upon the project area, including such portable property as may be used and useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project works is approved or acquiesced in by the commission; also all other rights, easements, or interests, the ownership, use, occupancy, or possession of which is necessary or appropriate in the maintenance and operation of the project or appurtenant to the project area.

ART. 3. The maps, plans, specifications, and statements designated and described in article 2 hereof as Exhibits J, K, L, and M, respectively, and approved by the executive secretary for the commission in accordance with its authorization of May 19, 1930, are hereby made a part of this license, and no substantial change shall hereafter be made in said exhibits, or any of them, until such change shall have been approved by the commission: *Provided, however,* That if the licensee deems it necessary or desirable that said approved maps, plans, specifications, and statements, or any of them, be changed, there shall be submitted to the commission for approval amended, supplemental, or additional maps, plans, specifications, and statements covering the proposed changes, and upon approval by the commission of such proposed changes such amended, supplemental, or additional maps, plans, specifications, and statements shall become a part of this license and shall supersede, in whole or in part, such map, plan, specification, or statement, or part thereof, theretofore made a part of this license as may be specified, respectively, in the order or indorsement of approval.

ART. 4. Said project works shall be constructed in substantial conformity with the approved maps, plans, and specifications thereof made a part of this license and designated and described in articles 2 and 3 hereof, or as changed in accordance with the provisions of said article 3. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed under this license

without the prior approval of the commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the commission shall direct. Minor changes in or divergence from such approved maps, plans, and specifications may be made in the course of construction, if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any such minor changes made without the prior approval of the commission which in its judgment have produced or will produce any of such results shall be subject to such alteration as the commission may direct.

ART. 5. The work of construction under this license, whether or not conducted upon lands of the United States, shall be subject to the inspection and approval of the district engineer, United States engineer office, Seattle, Wash., or of such other officer or agent as the commission may designate, who shall be the authorized representative of the commission for such purposes. The licensee shall notify such representative of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of construction for a period of more than one week, and of its resumption and completion.

ART. 6. Subject to the provisions of section 13 of the act, the licensee shall begin the construction of said project works within one year from the date of issuance hereof, shall thereafter, in good faith and with due diligence, prosecute such construction, and shall within three years thereafter complete the installation of three units of not less than 150,000 horsepower aggregate capacity.

ART. 7. Upon the completion of the project works, or at such other time as the commission may direct, the licensee shall submit to the commission for approval revised maps, plans, specifications, and statements, in so far as necessary to show any divergence from or variations in the project area as finally located or in the project works as constructed when compared with the area shown and the works designated or described in this license or in the maps, plans, specifications, and statements approved by the commission under the provisions of article 3 hereof, together with a statement in writing setting forth the reasons which in the opinion of the licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statements shall, if and when approved by the commission, be made a part of this license and shall, to the extent and in the particulars set forth in the order or indorsement of approval, be substituted for the maps, plans, specifications and statements theretofore approved by the commission under the provisions of article 3 hereof. The maps finally approved by the commission and made a part of this license under the provisions of article 3 and/or 7 hereof shall show the project area to an adequate scale and the boundary thereof either by legal subdivisions, by metes and bounds survey, or by uniform offsets from center-line survey. Said project area shall include all lands without respect to ownership and whether or not the exact boundaries can be definitely fixed and determined, the use and occupancy of which are or will be valuable or serviceable in the maintenance and operation of the project; on which are located or to which are appurtenant the

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FLATHEAD POWER DEVELOPMENT

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and any emergency shall be subject to such as shall direct. Minor maps, plans, and specifications, if such changes result in a material increase in cost, development; but any approval of the commission will produce any of the commission

under this license, whether or not the licensee shall be subject to the supervision of the engineer, United States district engineer, or agent as the authorized representative. The licensee shall determine when such work will begin, and the licensee may reasonably suspend or terminate any suspension of work, and of its resumption.

Under section 13 of the act, the licensee shall complete the project works within one year hereafter, in good faith and diligence, and shall within a period of three units of not more than one year.

The licensee shall submit to the commission, and state-ments of the project works as required by the act, and the works designed, plans, specifications, and drawings, under the provisions of the act, and the writing setting forth the details necessitated or justified by the act, maps, plans, specifications, and drawings, and commission, be made a part of the license. In the particulars set forth in the license, the commission may be substituted for the provisions of the act, and before approved by the commission. The maps required by section 13 hereof. The maps required by section 13 hereof shall show the project area hereof either by legal description or by uniform offsets from the boundaries of all lands without regard to the occupancy of which are required by the act, and operation of the project works appurtenant the

project works (other than portable property) and the rights, easements, or interests likewise valuable and serviceable; and the ownership or possession, or the right of use and occupancy, of which are subject to acquisition by the United States under the provisions of section 14 of the act. Said maps shall show the ownership of each parcel of land in said project area, and with respect to each parcel to which the licensee has not the fee title, the character of the right of use and occupancy possessed by the licensee together with the terms of such right.

ART. 8. For the purpose of determining the stage and flow of the stream or streams from which water is to be diverted for the operation of said project works and of the amount of water held in and drawn from storage, the licensee shall install, as soon as practicable and thereafter maintain standard recording gages in Flathead Lake at the northern and southern ends, on Flathead River below the power plant, and on the principal streams tributary to Flathead Lake; and shall provide for the required readings of such gages and for the adequate rating of said station or stations. The licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the commission or its authorized representative or upon the specific direction of the commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of or in cooperation with the district engineer of the United States Geological Survey having charge of stream gaging operations in the region of said project, and the licensee shall advance to the said United States Geological Survey the amounts estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the commission, shall make return of such records annually, at such time and in such form as the commission may prescribe.

ART. 9. The licensee shall be liable for all damages occasioned to the property of others, including lands allotted in severalty to the Indians, by the construction, maintenance, or operation of said project works, or of the works appurtenant or accessory thereto, and in no event shall the United States be liable therefor; nor does this license guarantee the validity of any reservations contained in the patent to any allottee or other grantee of Indian lands, whether in trust or in fee.

ART. 10. In the construction and maintenance of the project works herein specified, the licensee shall place and maintain suitable structures to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone, and other signal wires or power transmission lines not owned by the licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroad roads.

ART. 11. The licensee shall allow officers and employees of the United States free and unrestricted access in, through, and across the said project and project works in the performance of their official duties.

ART. 12. The licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands (except lands referred to in other provisions of this license), or other similar property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto constructed under the license. Arrangements to meet such liability either by compensation for such injury or destruction, reconstruction, or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

ART. 13. Timber upon public lands and reservations of the United States, to be used or destroyed in the construction of the project works, shall be paid for in accordance with the requirements and estimates of the department concerned.

ART. 14. The licensee shall, before placing any transmission line into operation, make provision satisfactory to the commission for avoiding inductive interference between such transmission line and any existing telephone line or lines of the United States, or with any such line or lines for which location has been made and specifications prepared but upon which construction has not begun at the time of erection of said transmission line. Such provisions may be applied either to the transmission line or to the telephone line or to both, as may be determined upon the basis of least cost. The licensee hereby agrees to assent to such changes in the location or design of any of its transmission lines as may in the opinion of the commission be necessary or desirable in order to avoid inductive interference with any telephone line or lines of the United States hereafter constructed or proposed to be constructed, provided such changes are made at the expense of the United States.

ART. 15. The licensee shall clear off all trees, logs, brush, or other debris, up to elevation 2,893, the margins of Flathead Lake and those portions of Flathead River which shall be used for reservoir purposes under this license, and shall dispose to the satisfaction of the commission, or its designated representative, of all the brush and debris resulting from such clearing, together with all temporary structures and refuse left on public lands and reservations of the United States from the construction and maintenance of said project works. In addition, the licensee shall cut and remove any trees or brush lying above elevation 2,893 which may be killed due to the regulation of Flathead Lake for storage purposes.

ART. 16. The licensee shall permit the use of any reservoir included in the project for the temporary storage or for the transportation of logs, ties, poles, lumber, or other forest products: *Provided*, That the use of said reservoir by owners of such logs, ties, poles, lumber, or other forest products, shall be under such rules and regulations adopted by the licensee as may be approved by the Secretary of Agriculture.

ART. 17. The licensee will interpose no objections to, and will in no way prevent, the use of water for domestic purposes by persons or corporations occupying public lands and reservations of the United States under permit along or near any stream or body of water, natural or artificial, used by the licensee in the operation of the project works covered by this license.

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ART. 18. The licensee hereby recognizes the right of the United States to pump from the Flathead Lake or from Flathead River above licensee's dam for all purposes of irrigation on the Flathead irrigation project or the lands of the Flathead Reservation whether included in the irrigation project or not, not more than 50,000 acre-feet of water after July 15, of any one year.

ART. 19. The licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the Forest Service, or other agents of the United States, to prevent and suppress fires on or near the lands to be occupied under this license.

ART. 20. Whenever the United States shall desire to construct, complete, or improve navigation facilities the licensee shall convey to the United States, free of cost, such of its lands and its rights of way and such right of passage through its dam or other structures, and permit such control of pools as may reasonably be required to construct, maintain, and operate such navigation facilities.

ART. 21. The operations of the licensee, in so far as they affect the use, storage, and discharge from storage of the water of Flathead Lake, shall at all times be controlled by such reasonable rules and regulations as the Secretary of War may prescribe in the interests of navigation, and as the Federal Power Commission may prescribe in the interests of flood control and of the fullest practicable utilization of the waters of Flathead River and Clark Fork for power, irrigation, and other beneficial public uses.

ART. 22. The licensee agrees that all rights acquired in connection with the project covered by this license and the use of water for the development of power shall be held subject to the rights which may be reasonably necessary for the complete development of the irrigable land, the domestic water supply requirements, and the water-power possibilities, in the watershed above the project works. The licensee further agrees to waive objections to the subtraction of such water up to a maximum flow of 200 cubic feet per second, as may be authorized under either Federal or State authority for diversion out of the watershed above the project works.

ART. 23. The licensee may regulate Flathead Lake between elevations 2,883 and 2,893; *Provided, however*, That the commission retains the right, at any time prior to the beginning of commercial operation of the project, to define limits of such regulation between elevations 2,880 and 2,893 in such manner as will make not less than 1,100,000 acre-feet of storage capacity available to the licensee, it being expressly understood that licensee shall not be restricted to less than 10 feet between the minimum and maximum elevations within which to carry on its regulations of Flathead Lake. It is expressly understood that variation by the commission of any limits of regulation which may be fixed as aforesaid, shall not affect the rentals provided for in article 30 hereof. It is expressly understood that if and when water is pumped from Flathead Lake or from Flathead River above licensee's dam after July 15, in any year, for purposes of irrigation as provided in article 18 hereof, the licensee shall be permitted, in the months of January, February, and March, of the next succeeding year, to regulate Flathead Lake, below the minimum elevation which may be fixed as aforesaid, to the extent necessary to enable it to recover

FLATHEAD POWER DEVELOPMENT

the amount of water so pumped for irrigation purposes. Said elevations are in feet above mean sea level as determined by reference to a certain United States Geological Survey bench mark; elevation 2,910.882 feet, stamped "2900 GN," as now located and established at Somers, Flathead County, or to such other bench marks as may be established by the United States Geological Survey having the same datum. As a basis of determination of the aforesaid storage limits, the licensee shall complete the mapping of lands bordering Flathead Lake and River and of the lake bed between elevations 2,878 and 2,900 uniform with the maps already completed by the Geological Survey at the north end of the lake, and shall continue to finance the collection of records of ground water elevations in the area at the head of Flathead Lake, and the study and interpretation of such records. The licensee also agrees to perform such channel excavation and other work as may reasonably be required by the commission for the purpose of flood control to the end that the normal flood levels of Flathead Lake shall not be increased by reason of the installation of the project works, and for the purpose of full utilization of storage and navigation.

ART. 24. In consideration of the use to be made of the partially completed Newell Tunnel, the licensee shall pay into the Treasury of the United States the sum of \$101,685.11, such payment to be made within nine months from and after the date of this license and to be a part of and included in the licensee's net investment in the project.

ART. 25. For the purpose of preventing the entrance of fish into the turbines of the power plant, the licensee shall install and maintain such fish stops or other equipment as may reasonably be prescribed by the Secretary of Commerce.

ART. 26. Coincident with the beginning of commercial operation of the project works and thereafter throughout the remainder of the term of the license, licensee shall make available, at the project boundary at or near the licensee's generating station, and the United States, for and on behalf of the Flathead irrigation project or the Flathead irrigation district, may take and, having taken, shall pay for, at the price of 1 mill per kilowatt-hour: (1) Electrical energy in an amount not exceeding 5,000 horsepower of demand to be used exclusively for pumping water for irrigation; and (2) electrical energy in an amount not exceeding 5,000 horsepower of demand for all project and farm uses and for resale. Such deliveries shall be made at such standard voltage as may be selected by the commission. The licensee shall also make available, at the voltage of the line from which service is taken, either at the project boundary at or near the licensee's generating station or at some more convenient place on the project to be agreed upon, and the United States, for and on behalf of the Flathead irrigation project or the Flathead irrigation district, may take and, having taken, shall pay for, at the price of 2½ mills per kilowatt-hour, additional electrical energy in an amount not exceeding 5,000 horsepower of demand for all project and farm uses and for resale.

ART. 27. The licensee shall, during the period of construction, deliver at line voltage and at a point to be agreed upon on the line or lines which it will construct to supply power for construction purposes, power for farm and project purposes on the Flathead irrigation

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FLATHEAD POWER DEVELOPMENT

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project or the Flathead irrigation district in quantities required by the United States for said purposes up to a maximum demand of 500 horsepower, at the price of 2½ mills per kilowatt-hour.

ART. 28. The United States reserves to itself or to the Flathead irrigation project management the exclusive right to sell power within the boundaries of the Flathead Indian Reservation, to the extent of 10,000 horsepower to be delivered for use and/or sale as provided in article 26 hereof.

ART. 29. The licensee shall pay to the United States reasonable annual charges for recompensing it for the use, occupancy, and enjoyment of public and reserved lands (not including Indian tribal lands) or other property hereinbefore described. The payment by the licensee of such annual charges for any calendar year shall be made to the United States at the end of the year, or within 30 days thereafter, upon bills rendered or approved by the commission. Such charges shall be determined in accordance with the provisions of regulation 14 of said rules and regulations of the commission, and for the purposes of such determination the prime power capacity of the project shall be taken as 80,000 horsepower.

ART. 30. (A) The licensee shall pay into the United States Treasury as compensation for the use, in connection with this license, of the Flathead Indian tribal lands annual charges computed as follows:

(1) A charge at the rate of \$1,000 per calendar month beginning with the month in which the license is issued and extending to and including the month in which the project is placed in commercial operation. For the purpose of the payments under this article, the beginning of commercial operation shall be considered as the time when one of the licensee's generating units shall have been installed, tested, and demonstrated to be in suitable condition to produce electric energy for commercial purposes with a reasonable degree of reliability.

(2) A charge at the rate of \$5,000 per month beginning with the calendar month next succeeding the date on which the project is placed in commercial operation and extending to the end of the calendar year in which such commercial operation shall commence.

(3) For each full calendar year from and after the 1st of January next following the date on which the first unit is placed in commercial operation, annual charges will be as follows:

	Per year
For the first two years.....	\$60,000
For the third year.....	75,000
For the fourth year.....	100,000
For the fifth year.....	125,000
For the next five years.....	150,000
For the next five years.....	160,000
For the next five years and/or until readjustment of the annual charges payable hereunder shall have been effected pursuant to the provisions of paragraph (D) of this article 30.....	175,000

(B) Payments shall be made for each calendar year within 30 days after the close thereof on bills rendered by the commission.

(C) Pursuant to the provisions of the act of March 4, 1929 (45 Stat. 1640), all charges for reimbursing the United States for the cost of administration of the Federal water power act have been and are hereby expressly waived.

FLATHEAD POWER DEVELOPMENT

(D) The annual charges payable under this license may be readjusted at the end of 20 years after the beginning of operation under this license and at periods of not less than 10 years thereafter by mutual agreement between the commission and the licensee, with the approval of the Secretary of the Interior. In case the licensee, the commission, and the Secretary of the Interior can not agree upon the readjustment of such charges, it is hereby agreed that the fixing of readjusted charges shall be submitted to arbitration in the manner provided for in the United States arbitration act (U. S. C., title 9), such readjusted annual charges to be reasonable charges fixed upon the basis provided in section 5 of regulation 14 of the commission, to wit, upon the commercial value of the tribal lands involved, for the most profitable purpose for which suitable, including power development.

ART. 31. The licensee having submitted a claim of prelicense cost to January 31, 1929, of \$183,312.47 and the solicitor of the commission having recommended the rejection of items contained therein aggregating a total of \$5,088.76, the commission and the licensee hereby mutually agree that the sum of \$98,223.71 shall be entered upon the fixed capital accounts of said project and included in the statement to be submitted to the commission, in accordance with the provisions of article 32 hereof as representing the actual legitimate investment in said project up to and including January 31, 1929: *Provided however*, That this agreement shall not deny or affect the licensee's right, within one year from and after the date of this license, to submit further evidence to the commission or to any court having jurisdiction for the purpose of establishing the propriety of any part of said \$5,088.76.

ART. 32. Upon the completion of the construction of said project or of each of the separable parts thereof for which dates of completion are specified in article 6 hereof, or of any addition to or betterment of said project, the licensee shall file with the commission a statement under oath in duplicate showing the actual legitimate cost of construction thereof and the price paid for water rights, lands, or interest in lands appurtenant to such construction as required by regulation 20, section 2, of said rules and regulations of the commission. Any such statement shall include all proper and legitimate costs, whether incurred prior to issuance of license or on and after such date; and the licensee shall, if requested by the commission, show separately on any such statement, or on a special report or reports, the items and amounts of cost incurred prior to date of issuance of license, with such other details as the commission may require. Each and every item of cost included in any such statement shall be supported by proper voucher or other evidence; and any such voucher or evidence or certified copy thereof, in support of any item properly includable in said cost shall become a part of the permanent records of said project and shall be kept and retained by the licensee in the manner required by the commission. Any statement or report submitted to the commission under the provisions of this article shall be subject to the provisions of section 6 of said regulation 20.

ART. 33. Whenever the licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the licensee shall reimburse the owner of such reservoir or other improvement for

such part of the a ciation thereon, as portion of such ch from time to time other improvemen shall pay similar bills rendered by

ART. 34. After this license, out in excess of a sp legitimate investm and determined b regulations of the tain amortization the commission, applied from time specified rate of A, section 3, of weighted average the bona fide inte ing, in whole or in ning of the perio after; such weigh as provided in par *Provided*, That if of any calendar debt of the licen license, together nection therewith investment of the such event for the return shall be tv which the project

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FLATHEAD POWER DEVELOPMENT

79

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ART. 34. After the first 20 years of operation of said project under this license, out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return upon the actual, legitimate investment of the licensee in said project, all as defined in and determined by the provisions of regulation 17 of said rules and regulations of the commission, the licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return shall, subject to the proviso of paragraph A, section 3, of said regulation, be one and one-half times the weighted average annual interest rate payable on the par value of the bona fide interest-bearing debt of the licensee actually outstanding, in whole or in part, on account of project property at the beginning of the period of amortization and of each calendar year thereafter; such weighted average annual interest rate being determined as provided in paragraphs B and C of section 3 of said regulation 17: *Provided*, That if at the beginning of the period of amortization or of any calendar year thereafter the outstanding interest-bearing debt of the licensee on account of the project or projects under license, together with any other works or property operated in connection therewith, is less than 25 per cent of the actual, legitimate investment of the licensee in said project or projects, then and in such event for the calendar year next following the specified rate of return shall be two times the legal rate of interest in the State in which the project or major part thereof is located.

Subject to the provisions of section 6 of said regulation, the following proportions of such surplus earnings shall be paid into and held in such amortization reserves: Of all surplus earnings up to and including 2 per cent upon the actual, legitimate investment, 30 per cent thereof shall be so paid; of all surplus earnings in excess of 2 per cent and not in excess of 4 per cent upon such investment, 50 per cent thereof shall be so paid; of all surplus earnings in excess of 4 per cent and not in excess of 6 per cent, 70 per cent thereof shall be so paid, and of all surplus earnings in excess of 6 per cent, 90 per cent thereof shall be so paid: *Provided*, That if at the end of any calendar year of the amortization period the commission shall find that the accumulated earnings of the licensee during the period of operation, including the first 20 years thereof, have not yielded a fair return upon the actual, legitimate investment in the project or projects under license, the proportion of such surplus earnings for such calendar year and for succeeding calendar years to be paid into such amortization reserves shall be 10 per cent thereof until such time as the accumulated earnings of the licensee represent, in the judgment of the commission, a fair return upon such investment for such period of operation.

FLATHEAD POWER DEVELOPMENT

ART. 35. No lease of said project or part thereof whereby the lessee is granted the exclusive occupancy, possession, or use of project works for purposes of generating, transmitting, or distributing power shall be made without the prior written approval of the commission; and the commission may, in its judgment the situation warrants, require that all the conditions of this license, of the act, and of said rules and regulations of the commission shall be applicable to such lease and to such property so leased to the same extent as if the lessee were the licensee hereunder: *Provided*, That the provisions of this article shall not apply to parts of the project or project works which may be used by another jointly with the licensee under a contract or agreement whereby the licensee retains the occupancy, possession, and control of the property so used and receives adequate consideration for such joint use, or to leases of land while not required for purposes of generating, transmitting, or distributing power, or to buildings or other property not built or used for said purposes, or to minor parts of the project or project works the leasing of which will not interfere with the usefulness or efficient operation of the project by the licensee for said purposes. The licensee agrees that it will continue its separate corporate existence under the regulations of the Federal Power Commission, and that it will not enter into any merger with any other corporation or individual without the approval of the Federal Power Commission, previously obtained.

ART. 36. The licensee agrees that it will enter into a contract with the Montana Power Co. under which all electrical power or energy generated by the project covered by this license, except that delivered to or reserved for the United States pursuant to the provisions of this license, shall be delivered to or made available for said the Montana Power Co. or its nominee upon the payment to the licensee of an annual amount approximately sufficient to meet the operating expenses and maintenance costs, taxes, accruals for depreciation, and rentals (including the rental charges provided for by this license) and in addition an average return of 8 per cent per annum on its actual legitimate investment in all facilities and property covered by this license and used in the generation and delivery of such power, as established under the provisions of the Federal water power act and the rules and regulations of the commission issued in pursuance thereof. A duly certified copy of said power contract shall be filed with the commission.

ART. 37. It is hereby understood and agreed that the licensee, its successors and assigns will, during the period of this license, retain the possession of all project property covered by this license as issued or as hereafter amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and that none of such properties valuable and serviceable to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the commission: *Provided*, That a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. The licensee further agrees, on behalf of itself, its successors and assigns, that, in the event said project is taken over by the United States upon the termination of this license,

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FLATHEAD POWER DEVELOPMENT

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as provided in section 14 of the act, or is transferred to a new licensee under the provisions of section 15 of the act, it will be responsible for and will make good any defect of title to or of right of user in any such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge or will assume responsibility for payment and discharge of all liens or incumbrances upon said project or project property created by said licensee or created or incurred after the issuance of this license: *Provided*, That the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the licensee for the purpose of transferring the project to the United States or to a new licensee to acquire any different title or right of user in any such project property than was necessary to acquire for its own purposes as licensee.

ART. 38. The licensee shall abide by such reasonable regulation of the services to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged; and in case of the development, transmission, distribution, sale or use of power in public service by the licensee or by its customers engaged in public service within a State which has not authorized and empowered a commission or other agency or agencies within said State to regulate and control the services to be rendered by the licensee or by its customers engaged in public service, or the rates and charges of payment therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of this license that jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control: *Provided*, That the jurisdiction of the commission shall cease and determine as to each specific matter of regulation and control prescribed in this article as soon as the State shall have provided a commission or other authority for the regulation and control of that specific matter.

ART. 39. The licensee agrees that its securities shall be issued only (1) to the Montana Power Co. upon condition that they shall be retained by said the Montana Power Co., it being understood that none of such securities shall be disposed of by said the Montana Power Co. (except to a trustee or trustees under one of its mortgages or deeds of trust as hereinafter provided) without the express approval of the Commission previously had and obtained, and/or (2) to a trustee or trustees under any mortgage or deed of trust securing the issuance of bonds or other securities of said the Montana Power Co., to be held subject to the provisions of such mortgage or deed of trust. Such securities shall be sold to the Montana Power Co. for cash or its equivalent.

ART. 40. The licensee agrees that full and complete copies of rate schedules and all contracts of the licensee or of the Montana Power

FLATHEAD POWER DEVELOPMENT

Co. for management and supervision of its or their affairs, or for general construction, which involve the licensee or the project covered by this license, shall be filed with the Federal Power Commission promptly after execution. The licensee agrees to file annually with the Federal Power Commission copies of its annual reports and also copies of the Montana Power Co.'s annual reports as rendered to the Montana Public Service Commission.

Art. 41. With the written consent of the licensee, the commission may by order made under its seal, and after the public notice required by section 6 of the act, modify, alter, enlarge, or omit, in so far as authorized by law, any one or more of the conditions or provisions of this license; provided, however, that any such change in the terms of this license that may affect the interests of the Flathead Indians shall also be subject to approval by the Secretary of the Interior.

Art. 42. The enumeration herein of any rights reserved to the United States or to any State or municipality under the act, or of any requirements of the act, or of said rules and regulations of the commission shall not be construed in any degree as impairing any other rights so reserved by the act or as limiting the force of any other requirement of said act or of said regulations.

In witness whereof the Federal Power Commission has caused its name and seal to be hereto signed and affixed by its executive secretary, F. E. Bonner, this 23d day of May, 1930, pursuant to authority given at its meeting of May 19, 1930, a certified copy of the record thereof being hereto attached.

FEDERAL POWER COMMISSION,
By F. E. BONNER, *Executive Secretary.*

Approved May 23, 1930:

RAY LYMAN WILBUR,
Secretary of the Interior.

In testimony of acceptance of all the terms and conditions of the Federal water power act of June 10, 1920, and of the further conditions imposed in the foregoing license, the licensee, this 20th day of May, 1930, has caused its name and corporate seal to be hereto signed and affixed by John D. Ryan, its president, pursuant to a resolution of its board of directors, passed on the 20th day of May, 1930, a certified copy of the record thereof being hereto attached.

ROCKY MOUNTAIN POWER CO.,
By JOHN D. RYAN, *President.*

Attest:

J. F. DENISON, *Secretary.*

In consideration of the benefits to accrue to the Montana Power Co., a corporation organized and existing under the laws of the State of New Jersey, from the operation of the project which is the subject of the foregoing license, said the Montana Power Co., hereunto duly authorized by resolution of its board of directors, a certified copy of which is hereto attached, hereby guarantees the full performance by Rocky Mountain Power Co., licensee thereunder, of all the terms and conditions of article 6 of said license relating to the commencement of construction of the project works, to the due prosecution of such construction, and to the completion of the installation

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FLATHEAD POWER DEVELOPMENT

83

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of three units of not less than 150,000 horsepower aggregate capacity,
all as provided in said license. The undersigned company further
agrees that it will enter into a power contract with said licensee as
provided for in article 36 of said license.

MONTANA POWER Co.,
By FRANK SILLIMAN, Jr., *Vice President.*

Attest:

J. F. DENISON, *Secretary.*

Approved and accepted this 23d day of May, 1930.

FEDERAL POWER COMMISSION,
By F. E. BONNER, *Executive Secretary.*

Approved May 23, 1930:

RAY LYMAN WILBUR,
Secretary of the Interior.

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Secretary of the Interior.

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GENERAL INDEX

A	Page
American Power & Light Co.....	47, 3
Amortization.....	8, 19, 54
Anaconda Copper Co.....	3
Analysis of proposals.....	47
Army Engineers' suggested rental schedule.....	50, 62-68
B	
Bonner, F. E.....	61
C	
Capacity, power.....	10, 14
Capitalized value of power site.....	39
Commission regulation.....	7, 53
Conowingo per cent.....	8
Conversion table.....	31
Corporate set-up.....	7, 8, 53
Cost-plus return on cost basis.....	7, 53
Costs. (See Development, generating, transmission, distribution.)	
Cramton, Congressman.....	43
D	
Dam.....	12
Depreciation.....	18
Development costs.....	15-17
Development cost.....	17
Distribution costs (of Montana Power Co. system).....	25-28
Dredging.....	12, 17
E	
Efficiency factor.....	12
Electric Bond & Share Co.....	3, 8
F	
Fair return. (See Return.)	
Federal Power Commission suggested schedule.....	50, 58-62
Fees waived.....	2
Financing costs.....	15
Flat rental basis.....	50
Flathead power sites:	
Description.....	2
Four lower sites.....	46, 55
First important Indian power development.....	6
Forestry rule for charges now discontinued.....	36, 37
G	
Generating costs:	
Flathead.....	9, 20
Montana Power Co. system.....	25-28, 32
Guaranty.....	52

INDEX

	H	Page
Head.....		
Henshaw, Fred.....		12
Hungry Horse Reservoir.....		58, 59
	I	2
Indian rentals. (See Rentals.)		
Indian Bureau suggested schedule No. 2.....		
Installations.....		50, 67
Insurance cost.....		14
Intercompany contract.....		18
Intercompany price of current.....		7, 52
Interest during construction.....		29, 30
Irrigation project:		
History.....		16
Power rates, etc.....		40
		6, 43-46, 54
	K	
King, William V.....		21, 25
	L	
Lake levels.....		
Leases of power sites, general remarks.....		12
Legal provisions specially for Flathead.....		6
License.....		1
		69
	M	
Management contracts.....		8
Minimum rental.....		
Montana Power Co. system.....		37, 55-62, 62-65, 67
Development cost.....		3, 21
Guarantee.....		17, 21-24
Generating cost, transmission cost, distribution cost.....		52
Need for enlargement.....		21-28
Power capacity.....		4
Profit and return.....		14, 21, 23
Undeveloped sites.....		27
Utilization factor.....		5
Valuation.....		13
		22-24
	N	
Newell Tunnel.....		16, 42, 54
	O	
Obsolescence.....		
Operating expenses.....		18
Overhead costs of development.....		18
Overhead operating expenses.....		15
Overhead operating expenses, Montana Power Co., distributed.....		18
		24, 25
	P	
Pacific Power & Light Co.....		
Power capacity:		
Flathead.....		3, 12
Montana Power Co. system.....		10, 14
Power sites.....		14
Public interests.....		2, 46, 55
Publicity.....		6, 7, 53
Puget Sound Power & Light Co.....		53
		3, 12

INDEX

87

.....	Page
.....	12
.....	58, 59
.....	2
.....	50, 67
.....	14
.....	18
.....	7, 52
.....	29, 30
.....	16
.....	40
.....	6, 43-46, 54
.....	21, 25
.....	12
.....	6
.....	1
.....	69
.....	8
.....	37, 58-62, 62-66, 67
.....	3, 21
.....	17, 21-24
.....	52
.....	21-28
.....	4
.....	14, 21, 23
.....	27
.....	5
.....	13
.....	22-24
.....	16, 42, 54
.....	18
.....	18
.....	15
.....	18
.....	24, 25
.....	3, 12
.....	10, 14
.....	14
.....	2, 46, 55
.....	6, 7, 53
.....	53
.....	3, 12

R	
Rate base.....	7, 53
Recommendations.....	47, 55
Regulation.....	7, 53
Rental (Indian):	
Regulations.....	1
Offers made.....	3, 4, 49
Provisions of license.....	51, 57
Three methods of calculating.....	48
"Spot" method.....	9, 48
Fixed charge plus energy charge method.....	50, 58, 62, 67
Flat charge method.....	50, 51
Federal Power Commission study.....	50, 58-62
Army Engineers' study.....	50, 62-66
Indian Bureau's study—	
"Spot" study.....	32-37
No. 2 study.....	50, 67
Repairs.....	18
Return.....	7, 20, 24-28
Rocky Mountain Power Co.....	3
S	
Secretary of Interior's special powers.....	1
T	
Taxes.....	18
Thompson Falls.....	31, 32, 47, 54
Transmission costs (Montana Power Co. system).....	25, 28
Transmission to Anaconda.....	59, 60, 63
U	
Utilization factor.....	13
V	
Valuation:	
Montana Power Co. system.....	22-24
No "fair value" ever determined.....	29
W	
Waiving of usual fee.....	1
Washington Water Power Co.....	3, 12
Water flow.....	1
Possible increase later.....	52
Water levels.....	12, 52
Water from different watersheds.....	12
Wheeler, Walter H.....	3
Agreement with Flathead Indians.....	16
Disadvantages of his proposals.....	15, 16, 37, 38, 45, 49
Wheeler, Senator B. T.....	64
Wilbur, Hon. Ray Lyman.....	65
Y	
"Yardstick" of power cost.....	54

FLATHEAD POWER DEVELOPMENT

DECEMBER 30, 1929.

Hon. RAY LYMAN WILBUR,
Secretary of the Interior.

Hon. FEDERAL POWER COMMISSION.

GENTLEMEN: You have before you for consideration applications for the development of Flathead River power sites, Montana, from (1) Rocky Mountain Power Co., of Montana, application No. 5; (2) Walter H. Wheeler, of Minneapolis, Minn., application No. 888.

Hearings upon these applications were held before the full commission beginning October 25, 1929, and lasting 11 days. The record covers 2,295 pages.

SPECIAL LEGAL PROVISIONS RELATING TO FLATHEAD

Under the act of March 7, 1928 (45 Stat. 212-213), provision is made—

That the Federal Power Commission is authorized in accordance with the Federal water power act, and upon terms satisfactory to the Secretary of the Interior, to issue a permit or permits or a license or licenses for the use, for the development of power of power sites on the Flathead Reservation and of water rights reserved or appropriated for the irrigation projects.

And it is—

Provided further, That the rentals from such licenses for the use of Indian lands shall be paid to the Indians of said reservation as a tribe, which money shall be deposited in the Treasury of the United States to the credit of said Indians and to draw interest at the rate of 4 per cent.

It has also been enacted in the act of March 4, 1929, that—

The Federal Power Commission in issuing any permits or licenses for the development of power of power sites on the Flathead Indian Reservation in the State of Montana, as authorized by the act of March 7, 1928, is hereby authorized and directed to waive payment of the usual administrative fees or commissions charged under existing laws relating to or under regulations of said Federal Power Commission in the issuance of any such permits or licenses.

Thus in the case of the Flathead River power development on the Flathead Indian Reservation, Congress has made two unique provisions in addition to the general application of the Federal water power act. These are (1) that the permits or licenses shall be "upon terms satisfactory to the Secretary of the Interior," and (2) that the usual fees charged by the Federal Power Commission for administration and for use of lands shall be waived in favor of the Indians.

GENERAL PROVISION AS TO POWER SITES ON INDIAN RESERVATIONS

Under regulation 14, section 3, of the regulations of the Federal Power Commission, it is provided that—

When licenses are issued involving the use of tribal lands embraced within Indian reservations, the commission will fix a reasonable annual charge for the

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FLATHEAD POWER DEVELOPMENT

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o applicants' set-ups.
 hich are involved:

Flathead Lake has an area of 1,200,000 acres. Its elevation ranges from 2,882 to upwards of 2,893 feet above sea level. At levels above 2,895 prohibitive damages to farms at the head of the lake would be occasioned, so that the engineers are not calculating upon the high level of the lake being above this point. On the other hand the low level could be reduced to 2,875 feet by dredging down the outlet of the lake. Very strong protests were presented by the town of Polson and others against dredging below 2,880. The possible range of draw down would seem, therefore, to be limited to 13 feet. Various studies of storage acreage have been made. Between 2,883 and 2,893, the range proposed by Rocky Mountain Power Co., these show:

	Acre-feet
By using Columbia River Board table.....	1,243,000
By Rocky Mountain Power applicant.....	1,160,000
By study of Federal Power Commission engineer.....	1,205,000

The capacity between 2,880 and 2,893 feet is 1,582,000 acre-feet as calculated by the Federal Power Commission's engineer, and 1,600,000 acre-feet as per Columbia River Board.

Applicant Rocky Mountain Power Co. calculates that the draw down of 10 feet between 2,883 and 2,893 levels will supply 5,400 cubic feet per second flow 90 per cent of the time. Applicant Wheeler proposes to dredge the outlet of the lake to 2,882 which he calculates will supply 6,000 cubic feet per second 90 per cent of the time. He estimates this dredging will cost \$100,000.

During the hearings much discussion was had as to possible damages of various kinds at the head of the lake, especially those caused by floods in the upper river causing the lake to rise above the 2,893-foot level. It was shown that this difficulty could be largely obviated by enlarging the lake outlet by dredging, so as to enable the carrying off of the floods faster than can now be done with the outlet as it is. This important reason, together with the development of greater storage in accordance with the conservation principle of developing all power possible, would seem to be of such paramount consideration as to demand that dredging be done. This could be made a condition of the license to be done at the beginning or later. In either case it seems to the Indian Bureau so certain that dredging will be done that in calculating for the period of 20 years it feels safe in assuming a flow of 6,000 cubic feet per second as a minimum for 90 per cent of the time. It is to be noted that if the full draw down of 13 feet were thus to be made available the 1,600,000 acre-feet storage would create 6,400 cubic feet per second. Applicant Wheeler proposes to dredge for only 11 feet draw down, creating 6,000 cubic feet per second, and this basis seems conservative for the Indian rental calculation.

Revision.—The above was written before the determinations of the Federal Power Commission as to lake levels and estimated flow became available to the Indian Bureau on January 3, 1930. Accordingly it became necessary thereafter to revise this figure of 6,000 cubic feet per second to 5,440 cubic feet per second and to revise in accordance therewith the resulting calculations in this memorandum. This figure of 5,440 cubic feet per second arises from an expected storage of 1,200,000 acre-feet. However, the commission proposes at this time to guarantee only 1,100,000 acre-feet of storage using 10 feet of storage somewhere between levels 2,880 and 2,893. This

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FLATHEAD POWER DEVELOPMENT

use thereof, based upon the commercial value of the land for the most profitable purpose for which suitable, including power development. The charge shall commence upon date license is issued.

In order, therefore, to fix the proper rental basis for the use of Indian lands, it is necessary to determine the value of the power sites from their earning standpoint for power purposes. This involves a careful study of (1) the two applicants' proposals; (2) the actual earning power of the Montana Power Co. system, guarantor of one of the applicants; and (3) suggested modifications of the two applicants' proposals.

GENERAL DESCRIPTION OF THE FLATHEAD POWER DEVELOPMENT

The Flathead River power sites, five in number, and all within the Flathead Reservation, are among the most important undeveloped power sites of the United States. This is because of (1) the existence of Flathead Lake, a very large natural reservoir which can be very easily enlarged in capacity, and which will serve as storage for all five power sites; (2) the relatively low cost of development; (3) the possible development of Hungry Horse Reservoir upon the head waters of South Flathead River above Flathead Lake, and which would increase the potential capacity of all five sites by 50 per cent; (4) the additional power to be created at the existing Thompson Falls plant of the Montana Power Co. down the Flathead River below the five power sites by the immediate increased storage to be created by the raising of Flathead Lake and the eventual increase of this by the potential development of Hungry Horse Reservoir. Thus these Flathead sites form the key to a very large and cheap development.

Flathead Lake, southwest of Glacier National Park in northwestern Montana, lies on the western side of the Rocky Mountain watershed and is 120,000 acres in area. The south half of the lake is in the Indian reservation. By the building of a dam in the Flathead River Canyon about 4 miles below the present lake outlet, a head of 185 feet at site No. 1 can be developed, and the lake level can thus be raised about 10 feet so as to develop about 1,200,000 acre-feet. By dredging 3 feet from the present lake outlet the draw-down of the lake can be further increased so as to provide almost 1,600,000 acre-feet. Both applicants propose to build such a dam; one proposes also to do as much dredging as will create 1,400,000 acre-feet, giving 6,000 cubic feet per second. As will be shown later, one applicant estimates an average annual output of 68,000 horsepower, the other 105,000 horsepower, both of prime power. The immediate proposals concern site No. 1, but the ultimate development of the other four sites should together involve about as much additional power as site No. 1, the head for each site being as follows:
Site No. 2, 51 feet, located 5 miles below site No. 1.
Site No. 3, 26 feet, located 12 miles below site No. 1.
Site No. 4, 88 feet, located 39 miles below site No. 1.
Site No. 5, 17 feet, located 43 miles below site No. 1.
This would be based on Flathead storage alone and would be increased 50 per cent with Hungry Horse in addition.

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THE APPLICANTS

Two present applicants under your consideration are:

(1) Rocky Mountain Power Co., a subsidiary of the Montana Power Co. and guaranteed by the latter. The Montana Power Co. is a very large and powerful company with capital of nearly \$100,000,000 and with a long record of great success. It now operates nine hydro plants with total installed capacity of 327,750 horsepower, and a further capacity will shortly be completed of 60,000 horsepower. It described itself in the hearings as in urgent need of immediate further development to provide for its present service to the public and its constant growth. It was stated that by the time Flathead site No. 1 could be built its system could immediately absorb at least 50,000 horsepower. Mr. Kerr also indicated (p. 1141) that "for a short period, perhaps a year or so, we might be able to dispose of 30,000 horsepower to the West." This company has been an applicant for the Flathead power site since 1920 when the Federal water power act was passed. It is anxious immediately to fully develop site No. 1 by the installation of 150,000 horsepower.

The Montana Power Co. would, if granted the license, merge the Flathead power into its general system, and would connect it up so that not only all of its plants west (including Flathead) as well as east of the Rocky Mountains (p. 457) would be connected up together, but also they would be tied in with its allied companies to the west (p. 1350), namely, Washington Water Power Co., Pacific Power & Light Co., and also further west with Puget Sound Power & Light Co., a Stone & Webster Co. The first two, like the Montana Power Co. itself, are parts of the American Power & Light Co., which in turn forms one of the Electric Bond & Share Co. groups. The Montana Power Co. has offered a yearly rental to the Indians of \$1 per measured horsepower.

(2) Walter H. Wheeler, of Minneapolis. Mr. Wheeler is a civil engineer of good standing and with an excellent record of accomplishment. He has been interested in the Flathead power development since 1927 and proposes to develop through a corporation to be formed all five sites through the sale of very cheap power, viz, at \$15 per horsepower-year to new industries to be attracted there. These would be chiefly fertilizer and electrochemical plants which would use raw materials to be found in Montana and neighboring States. The sale of power to other than industrial plants would be only of secondary consideration in Mr. Wheeler's plans, although he would be prepared to sell wholesale to other power companies at the same rate. He expects that the industries would locate in close proximity to Flathead and that they would bring largely increased population, enlarged markets, and other material advantages to the neighborhood. Mr. Wheeler's plan, if successful, would also introduce new industries in competition with the Anaconda Copper Co. interests, which latter have always been very closely allied with the Montana Power Co. Mr. Wheeler expects, if granted the license, to be able to market the power from and also to finance the construction of not only site No. 1 at Flathead but also the other four sites by the attraction of new industries through his low-cost power offers. He claims this plan would call for a much higher load factor than the other applicant: in fact, he expects a continuous demand for all the prime power possible

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FLATHEAD POWER DEVELOPMENT

to be delivered, and he estimates a much higher capacity for the Flathead development than the other applicant.

In point of time, if granted the preliminary permit, Mr. Wheeler hopes to proceed immediately to sign up parties to take the power and also to close with banking interests to finance the proposition. He would simultaneously complete preliminary borings and then proceed with construction work. It will, of course, not be possible for Mr. Wheeler to get the plant at site No. 1 in operation at as early a date as the Rocky Mountain Power Co. can even if all of his plans materialize, because that company has already made its preliminary borings and is ready now to do actual construction work. Mr. Wheeler has made an agreement with the Indians to pay an annual rental of \$1.12½ per measured horsepower.

The Indian Bureau is limiting this memorandum regarding the two applications to an analysis of their power features and to necessary regulatory provisions for proper control in their relation to the question of rentals for the Indian power sites. No attempt is here made to consider the feasibility of the plans of either applicant for marketing the power or their respective ability to finance their proposals. For purposes of comparison these factors are here assumed. Nor is any effort here made to analyze the possibility or probability of applicant Wheeler's fertilizer and electrochemical industrial demands. It is our understanding that Government experts in these fields are being consulted on these subjects.

IMMEDIATE NEED OF MONTANA POWER CO. FOR ADDED CAPACITY AND ITS CONSEQUENT ANXIETY TO LEASE THE FLATHEAD SITE

There is one feature, however, which was stressed in the hearings, and being of large public interest in Montana, should be mentioned. This is the immediate need for a large amount of added capacity of the Montana Power Co. system. Mr. Kerr, its vice president, stated that because of the dry season last summer the company's reservoirs were at present very low and that a shut down this winter of some of their capacity seemed inevitable. Since the hearings this has actually resulted and already 40,000 horsepower has shut down. But it has not been only the water shortage that was the cause; even more of a factor was the fact that the company's load has outgrown its production capacity, as is also shown by the high utilization factor of 103 per cent in 1928. The company must immediately have another plant to render its service to the public. Being for a long time one of the applicants for the Flathead site, and waiting for the matter to be brought to a decision, it has not seen fit to make other present plans. In fact, from what Mr. Kerr represents, it would appear that it would be almost impracticable for the company to obtain from any other site than Flathead the amount of new power development that it must have as fast as construction can take place. Their other sites that are undeveloped are much smaller units and less desirable, and to fill the immediate and early future requirements more than one development would no doubt have to be made. As the Flathead is a cheaper as well as a larger site, it is naturally to their interests to develop that first. Mr. Kerr stated in regard to Flathead (p. 469): "It is the next logical one to be added to the present system." He then

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was asked by Secretary Wilbur: "Is it the most economical one to add?" and replied, "I think so, Mr. Secretary. The first cost of the plant is low, and it has a little disadvantage in transmission. But that is pretty much the case with what power is left, although there is a large amount of power left." The undeveloped power sites controlled by the Montana Power Co., and to which Mr. Kerr was referring, were shown later to be the following (pp. 1044-1047):

	Horsepower
Site C, Great Falls.....	40,000
Canyon Ferry enlargement.....	40,000
Canyon Ferry affecting other plants.....	13,000
Fish Creek.....	24,000
Snake River.....	40,000
Total.....	157,000

As stated, none of these are as desirable as Flathead, and none of them appear to be able to produce as much added capacity as the company immediately needs, nor to approach the capacity of even site No. 1 at Flathead, not to speak of the future ahead in the other four sites, should these be also obtainable. Mr. Kerr also stated (p. 1070) that Flathead "is the cheapest power at the power house."

The Canyon Ferry "redevelopment" was represented by Mr. Kerr (p. 1070) as "very close to the same cost (as Flathead), and far better located because it is in the center of the system." But thus to redevelop Canyon Ferry would first involve providing other capacity while it is out of commission during rebuilding, which Mr. Kerr stated (p. 479) could not be done. "We could not shut it (Canyon Ferry) down even if we wanted to, because we have got to have every kilowatt we can get, and we can not rebuild that plant or build another one." He later repeated (p. 1155) that he "did not think it would be a wise move. We can't afford to tear it down (Canyon, Ferry); but we have got to start something new." Even this plan he said (p. 1056) would only provide "five-eighths" of the capacity of Flathead. The shortage of present power for the system was stressed many times. (See pp. 460, 461, 466, 1567.) It is also to be noted that at Canyon Ferry a yearly charge must be paid to the Forest Service (p. 1136) for water stored in Hebgen Reservoir.

It is very clear, therefore, that the Montana Power Co., is very anxious that its next and immediate development should be at Flathead through its subsidiary, the Rocky Mountain Power Co. This is further shown by Mr. Kerr's expressed anxiety that if his company should be granted the license prompt decision should be made so that the work of enlarging the Newell Tunnel can be started in January, 1930, in order thereby to deflect the Flathead River in the low water season of 1930 and thus save a year's time in the construction of the dam and thus of the whole proposition. He stated that his company has a large construction gang that he could immediately start upon this work. So far as site No. 1 is concerned, there was no evidence to indicate that the Montana Power Co. does not need it, and is merely attempting to control it and "sit on it" without using it. The use of the other four sites is further referred to below.

FLATHEAD POWER DEVELOPMENT

FLATHEAD IS FIRST IMPORTANT POWER SITE ON INDIAN LANDS

The Flathead power development is the first important one upon an Indian reservation wherein power is the controlling factor. In the Coolidge Dam in Arizona power has, of course, been developed, but there it was only as an incidental factor in connection with a great irrigation and reclamation project. This Flathead case is therefore of great importance to the Indians in establishing principles. It has attracted wide attention, and at the hearings two United States Senators and two Congressmen addressed the commission. The Federal Power Commission itself is newly constituted and it has a new executive secretary and new general counsel. Accordingly it would seem unusually appropriate that special care be taken to develop the factors for regulation under the Federal water power act and upon terms satisfactory to the Secretary of the Interior, and for the preparation of a model lease.

In an ordinary power site lease under the Federal water power act there would be only two parties having an interest in the financial results of operating, viz, the successful licensee and the general consuming public. In such a case the power site is either purchased outright by the licensee, and its cost made a part of the developmental cost of the project, or if on Government lands other than Indian, the title to the site remains vested in the United States Government, and the site is leased for 50 years for the nominal fees charged by the Government by way of rental. In this latter case the licensee is saved the necessity of using any capital in the securing of the site.

In the case of a power development upon Indian lands, the title to the site also remains vested in the United States Government but in trust for the Indian tribe, and the site is rented for the 50-year period of the lease to the licensee. Thus the licensee is here also saved the necessity of using any capital in the acquiring of the site, and in lieu thereof pays an annual rental to the Government for the benefit of the Indians. Thus in an ordinary Indian case there are three interests to be adjusted, viz, the successful licensee, the United States for the Indian tribe, and the general consuming public.

In the particular case of the Flathead there is a fourth interest, viz., a special part of the consuming public consisting of (1) individual Indian land holders and (2) white settlers who have bought Indian lands, which two groups together comprise the Flathead irrigation project. It is this irrigation project that is referred to in the legislation already referred to. Thus in the case of Flathead the Federal Power Commission and the Secretary of the Interior are called upon to make an adjustment between four interests, viz, (a) the successful licensee, which is, of course, entitled to the usual return of 8 per cent under the practice of the Montana Public Service Commission; (b) the Indian tribe, which is entitled to a fair rental for the use of the power sites; (c) the particular part of the public forming the irrigation project, and to which certain low rates for power up to 15,000 horsepower have been promised by one applicant as further explained below; (d) the general consuming public.

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CORPORATE SET-UP AND COMMISSION REGULATION

Under the Wheeler set-up, there will be a very simple plan of incorporation and of Federal and State commissions' regulation. Applicant Wheeler proposes to have one corporation which will be the licensee of the Federal Power Commission. Its securities are to be issued for actual values only and there is to be no bonus stock. It will be directly subject in its engineering and accounting features to the Federal Power Commission. Its rates made to consumers will, of course, have to be filed with the Montana Public Service Commission.

In the case of applicant, Rocky Mountain Power Co., however, the situation involves two corporations and is more complicated. There will be the Rocky Mountain Power Co., which will be the holder of the Federal license and which will be the generating company. There will also be the Montana Power Co., of which the Rocky Mountain Power Co. will be a controlled subsidiary. The latter's financing and performance are guaranteed by the former. The Montana Power Co. will buy the current (except 15,000 horsepower reserved by the United States as explained below) from the Rocky Mountain Power Co., presumably at the latter's plant, and will transmit and sell same to its consumers. The Rocky Mountain Power Co. will, as stated, hold the Federal license and be accountable to the Federal Power Commission. The Montana Power Co. will be subject to the regulations of the Montana Public Service Commission, as will also the Rocky Mountain Power Co.

It is suggested that the regulation of these two interlocking corporations be accomplished, and the conditions herein stated be appropriately set forth in the license, if granted to this applicant, as follows:

(1) That the Rocky Mountain Power Co. be required to continue its separate existence under the regulations of the Federal Power Commission, and that it shall not be allowed to merge with any other corporation without the approval of the Federal Power Commission.

(2) That the securities of the Rocky Mountain Power Co. be issuable only under regulation of the Federal Power Commission. The Montana State law does not give to the Montana Public Service Commission jurisdiction over the issuance of securities. Hence, the Federal Power Commission upon its own motion can and should properly assume said jurisdiction over these security issues.

(3) That the legitimate investment in the project including pre-license costs of Rocky Mountain Power Co. as determined by the Federal Power Commission under the law and its regulations, shall be accepted as the base upon which return of said Rocky Mountain Power Co. is to be calculated, and that the license shall so provide.

(4) That said return allowed Rocky Mountain Power Co. shall be limited to the percentage allowed from time to time by the Montana Public Service Commission in its regulation of public utility companies. At present this is 8 per cent.

(5) That to accomplish this limitation of return a suitable contract be required between Rocky Mountain Power Co., the seller of the electricity, and Montana Power Co., the buyer of same. Said contract to be satisfactory to the Federal Power Commission and to be filed by said companies for approval by Montana Public Service

Commission. Said contract to arrange for fixing from year to year or as may be satisfactory to the Federal Power Commission the inter-company price of electricity but always at a price sufficient and only sufficient to cover the Rocky Mountain Power Co.'s expenses, overhead, repairs, taxes, insurance, depreciation and obsolescence, amortization, rentals to Indians, and a reasonable return. Said contracts also to provide that all electric current generated by Rocky Mountain Power Co. shall be sold to and bought by the Montana Power Co. with the exception of a maximum of 15,000 horsepower as may be required, to be reserved for sale to the United States Government for account of the Flathead irrigation district in its various parts, as more fully described below.

(6) That all of the common stock to be issued by Rocky Mountain Power Co. be subscribed for by Montana Power Co. and be retained by same unless and until authorized by Federal Power Commission to sell same.

(7) That voting power in the Rocky Mountain Power Co.'s securities be limited to its common stock, all of which will be held as above provided in the ownership of Montana Power Co.

It may be said that this plan is substantially in accordance with the precedent of the Conowingo case in its regulation by the Federal Power Commission and the State commissions concerned. The above arrangement will put full control in the hands of the parent company, where it belongs. It will also provide under regulation by the Federal Power Commission a full return (at present of 8 per cent) on the Rocky Mountain Power Co.'s actual investment after payment of all expenses and rentals to the Indians. And it will bring to the Montana Power Co., under regulation by the Montana Public Service Commission, all of the revenues obtained by it from the resale of the electricity which will be sold to it, as generated by the Rocky Mountain Power Co.

(8) That any and all contracts of Montana Power Co. with Electric Bond & Share Co. or others for management and supervision of its affairs, or for construction, which involve the Rocky Mountain Power Co. and the Flathead project shall be subject to review and approval of the State and Federal commission. This is a very important feature of regulation at the present time, and it is one to which the State commissions pay very little attention. It is possible, under present conditions, for a large part of the revenues of a public utility controlled by a holding company to be diverted directly or indirectly to the controlling company or its affiliated concerns through the payments of fees, commissions, refunds of expenses, reimbursement for salaries, payments of overheads, etc.

(9) That bearing in mind the special powers vested by law in the Secretary of the Interior in this case, provision should be made for the complete amortization of the entire development cost within the 50-year period of the lease. This can readily be done by the requirement and allowance as an annual operating expense of a charge of 0.6 per cent to be used annually either (1) to create a sinking fund for the purchase and keeping alive the securities of the licensee until fully redeemed, or (2) to build up an amortization fund to be annually invested and kept invested. This amount of 0.6 per cent will be large enough to pay off the whole investment at the end of the 50-year lease if annually invested at about 4½ per cent or better. This would

FLATHEAD POWER DEVELOPMENT

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enable the project in addition to the annual rental to the Indians to pay itself off during the lease and to be turned over to the Government for the Indians as a going concern, to be at that time retained or released as may seem best.

SUGGESTED METHOD FOR FIXING RATE OF INDIAN RENTALS WHICH ARE FIRST SET UP FOR 20 YEARS WITH REVISIONS THEREAFTER EVERY 10 YEARS

Under section 6 of regulation 14 of the Federal Power Commission it is provided that Indian rentals "may be readjusted at the end of 20 years after the beginning of operation and at periods of not less than 10 years thereafter in a manner to be prescribed in each license." This regulation thus calls for a prescription for calculating the Indian rental. The Indian Bureau accordingly submits in this memorandum a suggested pro forma method of making this calculation to be used (1) in fixing the original rental for the first 20-year period; (2) for later readjustments; (3) for each additional Flathead site as and when developed

The suggested method consists of determining (1) the estimated and later the actual average annual generating cost, including return but excluding rental per horsepower year; (2) the fixing by the Federal Power Commission of a fair wholesale bus bar price for the current generated at each Flathead site. In the case of Wheeler application, the applicant himself has proposed the single price of \$15, which it would seem in justice to the value of the site and the interests of the Indian could not be made lower. In the case of the application of the Rocky Mountain Power Co., the commission would have to determine in the light of all the circumstances what would be a fair wholesale intercompany price at the bus bar of each site, of electricity generated and sold by Rocky Mountain Power Co. to its parent company, Montana Power Co. (3) The difference between the annual average generating cost so found and the intercompany price so determined represents the economic rental value of the site, and should be divided between the Indians and the general public in proportion to their respective interests. This pro forma method of calculation would thus fix the rate of rental for the period of the lease in question. The amount of rental based upon this rate will then be calculated and paid to the United States for the account of the Indian tribe under accounting supervision of the Federal Power Commission, said amounts to be found by using this rate upon the monthly measured kilowatt-hours generated at each plant. We suggest that payments of rentals should be made preferably monthly, but certainly at least quarterly.

PRO FORMA METHOD OF FINDING ANNUAL GENERATING COST

To determine item (1) above of fair annual average generating cost, the method suggested is set out in the accompanying comparative table marked "Flathead Power Applications—Analysis of Power Features for Site No. 1." (See table following p. 48.) In this table are set out in parallel columns: (1) The estimates of the two applicants; (2) the actual showing for the year 1926 of the Montana Power Co., as taken from its report to Federal Power Commission; (3) Indian

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FLATHEAD POWER DEVELOPMENT

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the actual as compared nd electric machinery. losses, conduit losses, nd transformer losses. sion for its calculation ncy with 100 per cent ncer of Rocky Moun- basis is conservative. ent fees, and is lower or projects. A good over efficiency factor ct on power capacity. admittedly conserva- s very high figures for er cent efficiency and cent; while the latter cent utilization, or a the Rocky Mountain ents that it would be r developer of the site at could be developed e even better use of it uld be because of the (1350) with which it e of it being east and fering run-off periods ould be tied in with ver & Light Co., its ver & Light Co. of r different periods of ots" of power it was i be better developed

ncy in the hearings, to 88 per cent. Mr.

Cochrane said the Montana Power Co.'s Volta plant, built in 1915, has 74 per cent efficiency and that new machinery would be about 2 per cent higher (p. 1504). No one will know better than the Executive Secretary of the Federal Power Commission, Mr. Bonner, about efficiency factors of various plants. His own recently published book on "Water Powers of California" shows an average of plants in that State, similar in general characteristics to flathead, of 77 per cent. In this and in the utilization factor, the Indian Bureau is desirous of being safe and conservative in any proposals that it makes for the calculation of the Indian rentals. Accordingly, it feels safe in suggesting 77 per cent for the over-all efficiency factor for this calculation, believing that this figure will certainly be exceeded in the average during the first 20 years of flathead operation. (See also page 1505 for Mr. Bonner's discussion of these factors.)

(5) Utilization factor.—This factor indicates the amount of water actually used related to the water available; in other words, a ratio between output and prime power. Applicant Wheeler claims that the kind of load that he will have in large plants with continuous demand will enable him to use all the available water up to the prime capacity and thus have a utilization factor of 100 per cent. In addition, he expects to dispose of some secondary power produced at periods of excess water flow. Rocky Mountain Power Co. on the other hand presents a utilization factor of 85 per cent, which Mr. Cochrane, the chief engineer, explained as the average of the past 10 years plus 5 per cent for the diversification feature produced by the different run-off times west and east of the Rocky Mountains (p. 1578). Mr. Cochrane claimed a low percentage of use of plant capacity in order to allow for times when their plant capacity would be ahead of their market. As the market increases it catches up to the plant capacity (prime) and may even exceed it as was the case in 1928. On page 1706 the actual figures of the Montana Power Co. for the last 10 years were represented as follows:

Year	Prime power	Average load	Utilization factor	Year	Prime power	Average load	Utilization factor
	Kilowatts	Kilowatts	Per cent		Kilowatts	Kilowatts	Per cent
1919.....	155,000	88,000	56	1924.....	136,000	128,000	94
1920.....	155,000	123,000	79	1925.....	163,100	140,000	86
1921.....	155,000	67,000	42	1926.....	163,100	156,000	95
1922.....	155,000	110,000	70	1927.....	155,100	156,000	99
1923.....	155,000	128,000	82	1928.....	173,300	181,000	103

1 Dry year.

2 Wet year.

Mr. Kerr, in speaking of the steady growth of the Montana Power Co. system, said "and it seems now that it makes no difference whether we get 10 per cent business, 20 per cent business, or 40 per cent business, it all gets back to the power houses; and the load factor year by year is growing higher and higher, meaning the more complete use of the equipment."

In view of this unusually uniform load of the Montana Power Co. system and this steady growth, it would seem conservative to take the average of the utilization factors for the last five years, namely, 91 per cent, as a proper figure for use in calculating the

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FLATHEAD POWER DEVELOPMENT

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II. DEVELOPMENT COSTS

The applicants' estimates are as follows:

	Rocky Mountain Power	Wheeler
Preliminary surveys and drilling.....	\$40,000	\$50,000
Roads and railroad.....	210,000	210,000
Camp and equipment.....	180,000	150,000
Construction plant.....	495,000	450,000
Coferdams.....		175,000
River diversion.....	257,000	
Dam.....	1,235,000	1,312,000
Intake.....	150,000	
Pressure tunnels.....	390,000	
Tailrace and wiponing channels.....	75,000	
Tunnel and trash racks.....		435,000
Power house.....	540,000	606,650
Hydraulic machinery.....	357,000	
Electrical machinery.....	1,195,000	1,700,000
Miscellaneous power-house equipment.....	50,000	
Newell Tunnel purchase.....	101,000	
Dredging lake outlet.....		100,000
Land and buildings, etc.....	424,160	500,000
General expenses of construction.....	775,700	
Engineering and contingencies.....		\$500,000
Overhead expenses.....		340,000
Insurance, etc.....		100,000
Contractor's profit.....		300,000
Interest during construction.....	915,000	1,270,000
Cost of financing.....		1,000,000
"Development cost".....	492,160	873,150
Total.....	7,947,500	8,511,500

As adjusted above

Horse-power	Kilowatts	Kilowatt-hours generated
80,500	60,375	528,885,000
105,000	78,750	689,000,000
125,000	91,250	625,000,000

Montana Power Co. l:

Kilowatts	Kilowatt-hours generated
163,100	1,375,218,770
163,100	1,392,157,497
175,300	1,584,078,104

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power as calculated

Estimates	As adjusted
Per cent	Per cent
43	59
70	70
	71

(1) *Direct expenses of development.*—The direct estimates of the two applicants are thus seen to be remarkably close together on the direct expenses of development and do not call for comment here.

(2) *Overhead expenses, including cost of financing.*—Both applicants appear to have figured liberally for overhead, especially Wheeler. In the case of Rocky Mountain Power Co. the figure of \$775,700 is more than 13 per cent of the actual construction items. No doubt this includes contractor's profit, not mentioned separately, and perhaps also some additional preclicense costs beyond the \$40,000 for preliminary survey and borings as listed. Wheeler's figure of \$1,250,000 is nearly 22 per cent of actual construction items, and taken in conjunction with his high cost of interest during construction of 14 per cent and his cost of financing of 11 per cent (which through its high credit the other applicant is saved), he has total overhead of \$3,123,180 on top of direct construction costs of \$5,088,650, nearly 55 per cent. If these figures are not overestimates, this heavy loading on the development cost will handicap Wheeler as contrasted with the Rocky Mountain Power Co.'s cost as corrected below to the extent of about \$12 per horsepower capacity, assuming Wheeler's output for both in order to make the comparison. This would be reflected in an annual handicap of about \$1.70 per horsepower per year, assuming other factors the same for both applicants. On the reasonable assumption that the two applicants, in spite of their respective claims, can develop about the same output at about the same costs, this loss of \$1.70 per horsepower per year would be very serious if it should result in the diminishing the Indian rental by even one-half of such an amount.

FLATHEAD POWER DEVELOPMENT

In this connection attention may be called to the agreement between Wheeler and the Flathead Indian Tribal Council (see Wheeler Exhibit 3) made in December, 1927, in which that council agreed to accept Wheeler's offer of \$1.12½ per developed horsepower. This agreement has of course no standing in law, because the Secretary of the Interior alone has the legal right to bind the Government in its trust for these Indians. Naturally the Indians have never been then or now in a position to analyze the actual earnings of their power sites, and it would manifestly be unfair to them and to their interests for the Secretary now either to confirm on their behalf the bargain they themselves made two years ago, or to fail to take into consideration the above-mentioned handicap in annual power cost. This disadvantage of Wheeler will thus have to be weighed against the advantages that Wheeler's plan, if successful, would bring to the Indians in added opportunities for remunerative employment in the new industries to be established on or near their reservation, improved market for their products, etc.

It is to Wheeler's disadvantage that his amount of actual investment to be fixed by the commission will be more than \$1,250,000 higher than the other applicant's, and that this will be just that much more to be amortized during the 50 years' lease. This factor is included, however, in the annual cost comparison that follows.

(3) *Interest during construction.*—Both applicants appear to be high in their estimates as to interest. The Rocky Mountain Power Co.'s estimate is \$915,600; Wheeler's, \$1,000,000. The usual estimate for this item is 6 per cent for half the construction period and some commissions allow four months additional. For three years' construction period this basis would mean 11 per cent for interest during construction. The above estimates of the applicants are about 14 per cent. However, the licensee in the final accounting of the net investment will be allowed under the commission's regulations, all the interest actually paid and no more. We therefore suggest no modifications.

(4) *Financing cost.*—(See under (2) overhead expenses, above.)

(5) *Development cost.*—In the estimated cost of the Rocky Mountain Power Co. there is an item of \$492,100 put down as "Development cost" and explained on its Exhibit 10 as follows: "Development cost is the accumulated deficit below a fair return on the invested capital up to the time that a fair return begins."

This subject was discussed in the hearings (see pp. 1418, 1422-1428). It was made clear that under the Federal water power act only expenditures actually made can form a part of the "net investment" or project cost. As this item is only an estimate of alleged lag in return on this investment, and is not money paid out, there is no basis for its inclusion. Mr. Brown, counsel of the commission (p. 1428), asked the applicant to submit in its brief its view and authorities sustaining it, if it had any.

As the brief is silent on the subject, presumably none could be found. Accordingly, this item is omitted in the adjusted computation for calculating Indian rental.

(6) *Newell Tunnel.*—The Rocky Mountain Power Co. has offered (see Flathead irrigation district Exhibit 13, sec. D) to refund the Government \$101,000 for its cost in constructing the unfinished Newell Tunnel. The applicant finds it to its advantage to complete

FLATHEAD POWER DEVELOPMENT

the small remaining unfinished part of the tunnel, and then to enlarge it and line it for use in the project. The Flathead River will be deflected through it during construction of the dam according to their plan. If it were not there already, another tunnel would have to be built. This tunnel was built by the Government in connection with the Flathead irrigation project and its cost charged against the project as reimbursable. If this amount is received by the Government, it will be credited to the irrigation project.

In Mr. Wheeler's proposals there appears no mention of the Newell Tunnel or whether he would pay anything for its use.

(7) *Dredging*.—The need of dredging the outlet of Flathead Lake has already been explained. Mr Wheeler has carefully confirmed (p. 2169) his original estimate of \$100,000, as the cost of doing this work. The Rocky Mountain Power Co. did not plan to do this dredging, but stated its willingness to do so if required by the commission (p. 1220, 1325). On the assumption that this dredging will be done, the estimated cost of \$100,000 should, therefore, be added to the Rocky Mountain estimate and this is done in the adjusted figures for calculating Indian rental.

(S) *Development cost per horsepower*.—After thus making the two adjustments of the Rocky Mountain estimate, viz., eliminating \$492,100 for "development cost," and adding \$100,000 for dredging the outlet of the lake, the following are found to be the comparable figures.

Rocky Mountain Power Co.:	\$7,947,500
Estimate.....	7,555,499
Adjusted.....	8,611,830
Wheeler.....	8,611,830

Dividing these by the respective power capacities, we reach the conclusion of the development cost at Flathead per horsepower or kilowatt as follows:

	Investment cost	Average prime power capacity horsepower	Investment cost	
			Per horsepower	Per kilowatt
Rocky Mountain Power Co.:				
Estimate.....	\$7,947,500.00	68,000	\$116.97	\$175.83
Adjusted.....	7,555,499.00	80,500	93.85	125.13
Wheeler.....				
Estimate.....	8,611,830.00	105,000	\$3.92	111.65
Adjusted (5,440 cubic feet of water).....	8,511,830.00	95,000	92.75	123.65

For comparative purposes, the Montana Power Co. system is here added. The investment cost figures are taken from the company's report for 1926, made to the Federal Power Commission.

	Investment cost	Average prime power capacity horsepower	Investment cost	
			Per horsepower	Per kilowatt
Montana Power Co. system:				
1927 ¹	\$28,374,074.00	232,709.00	\$121.41	\$161.55
1926.....	27,620,832.00	217,467.00	127.04	169.39

¹ Later figures not at hand.

² Year 1925.

³ Year 1926.

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FLATHEAD POWER DEVELOPMENT

III. ANNUAL GENERATING COSTS

(1) *Operating expenses.*—The Rocky Mountain Power Co. estimates this item at \$63,000 which is 0.8 per cent upon their development estimate of \$7,947,500 and 0.85 per cent upon the adjusted figure of \$7,555,400. Minor repairs are probably included. Mr. Wheeler figures his operating expenses at 1½ per cent of his development estimate, making \$132,177.45. He also added one-half per cent for repairs, \$44,059.05. These Wheeler figures seem very high when compared with the actual experience of the Montana Power Co. as given below.

(2) *Overhead expenses.*—The Rocky Mountain Power Co. estimates this item also at \$63,000, which is 0.8 per cent upon their development estimate of \$7,947,500 and 0.85 per cent upon the adjusted figure of \$7,555,400. Mr. Wheeler figures his overhead expenses at 1 per cent of his development estimate, making \$88,118.35, which is clearly high.

(3) *Repairs.*—See under (1) above.

(4) *Taxes, insurance, etc.*—The Rocky Mountain Power Co. estimates this item at 2 per cent of their development estimate, making \$158,940. In the adjustment the rate of 2 per cent is retained; applied to adjusted development estimate it gives \$151,080. Although this is the company's own rate, it is lower than the rate for all taxes in the Montana Power Co. system as given below. Perhaps the explanation is that the company's practice apportions to generation, etc., only the property taxes. Its New Jersey corporation tax, Montana State license tax, and Federal taxes on income, etc., are not apportioned. In the figures used below, however, Mr. King, the commission's accountant, included all taxes, apportioning them in the same ratios as the company's apportionment of property taxes.

Mr. Wheeler estimates his taxes, insurance, etc., at 1½ per cent, making \$132,177.45. This probably is too low, in view of the above.

(5) *Depreciation, obsolescence.*—On this item, Rocky Mountain figures 2 per cent on development estimate, making \$158,940. In the adjustment, the 2 per cent rate is retained; applied to adjusted development estimate, it gives \$151,080. There was some discussion in the hearings upon the proper rate for depreciation, where major repairs should be charged, etc. Mr. Cochran, the company's engineer, expressed the belief that 2 per cent was about right for an overall charge for all classes of property. This would include major repairs and obsolescence. The rate of 2.07 per cent for generating plants, including dams, of the Montana Power Co. system was recommended by their appraisal engineer, Mr. W. J. Hagenah, of Chicago, as of December 31, 1922. However, the actual amounts charged annually for depreciation upon the books of the company have been much smaller round sums; thus the \$350,000 for all property in 1926 was at a rate of about three-fourths of 1 per cent. For further details see below under Montana Power Co., actual 1926.

We understand that the Federal Power Commission has not as yet determined or adopted a rate for depreciation and obsolescence. Although the 2 per cent rate seems high, and although it is not in the public interest, nor to the interest of the Indians, to build up an unnecessarily large depreciation fund, yet in the absence of further information, it seems wise to use the company's own suggestion of

FLATHEAD POWER DEVELOPMENT

19

2 per cent for the pro forma calculation of the Indian rental. It may be added, however, that it is to the interest of the Indians that the property be fully maintained and kept modern in view of the proposal for amortization within the 50-year period of the lease. The depreciation and obsolescence fund should therefore be large enough to accomplish this, without furnishing any excuse or justification for the licensee to let the property run down in the closing years of the lease. Any balance remaining in the depreciation fund at the close of the lease would of course be subject to the regulations of the commission.

Mr. Wheeler has estimated 3 per cent for sinking fund, a total of \$264,354.90. This liberally covers depreciation, obsolescence, and amortization, which latter is referred to more particularly in the next section. In the adjustment for Indian rental calculation, Wheeler's 3 per cent is adjusted and divided between depreciation, obsolescence at 2 per cent and amortization, 0.6 per cent, reduced from 1 per cent.

(6) *Amortization.*¹—Rocky Mountain Power Co. did not estimate an item for amortization separate from whatever may have been assignable to this from depreciation and obsolescence. Mr. Wheeler, as stated above, estimated 3 per cent for sinking fund, manifestly intending to cover amortization.

As already explained above, the Indian Bureau strongly recommends the establishment of an annual operating charge to be set aside in an amortization fund to be kept invested or to be used as a sinking fund for the redemption of the licensee's securities, said securities then to be kept alive in said sinking fund until all the securities are fully redeemed. This can be done¹ in this first Indian rental case under the special powers vested in the Secretary of the Interior. And it is especially appropriate in connection with the plan proposed in this memorandum for corporate set-up and regulation, under which the licensee will be limited to the allowed return upon the net investment after payment of all operating charges, depreciation, amortization and rental. Under this plan, it is to be noted that there will not develop either before or after 20 years, any "excess of a specified reasonable rate of return upon the actual, legitimate investment of a licensee," the disposition of which is provided for under the water power act and under regulation 17 of the commission. Under the year-to-year accounting to the Federal Power Commission, the licensee will be limited to the fair return of 8 per cent through the fixing of the wholesale rate to be charged to the parent company in the case of applicant Rocky Mountain Power Co., or to his own wholesale price of \$15 to consumers in the case of applicant Wheeler, either case of course, being subject to the approval of the Montana Public Service Commission. In the case of Rocky Mountain Power Co., this approval would be had upon the approval of the proposed contract between Rocky Mountain Power Co. and Montana Power Co. as already explained. In the absence of any possible such excess above fair return, it would therefore seem appropriate, as stated, that provision for amortization should thus be made from year to year in lieu of the amortization contemplated in the act and the regulations from excess earnings after the twentieth year.

¹ This was later determined not to be legally enforceable.

FLATHEAD POWER DEVELOPMENT

By this method assurance is had that the amortization fund will actually amortize the whole investment cost, and make possible the turning over of the project as a going concern at the end of the lease to the Government for the benefit of the Indians. The annual charge necessary to accomplish this is only 0.6 per cent—\$45,324 for the Rocky Mountain Power Co. and \$52,871 for Wheeler. This is on the assumption that the amortization fund will be invested annually at 4¹/₂ per cent or better.

It may be suggested that the commission may determine that 2 per cent for depreciation and obsolescence is too high a rate. In such case the reduction for same might be applied toward this proposed charge for amortization, and thus bring the sum of the two charges approximately to the amounts suggested by the applicants themselves. In Wheeler's case, as already explained, his figures can be reduced. In any way that the Secretary and the commission may determine, it is to be hoped that provision will be separately made for this amortization fund.

(7) *Fair return and excess earnings.*—A return of 8 per cent upon Rocky Mountain Power's development estimate is \$635,800. The applicant divides this into bond interest at 5¹/₂ per cent, \$423,867, and net 2³/₄ per cent, \$211,933, in accordance with the usual practice of total earnings being one and one-half times bond interest. Mr. Wheeler has made a different kind of set-up. He calculates interest at 6 per cent upon his development estimate, \$528,709.50, and finds a net surplus of \$267,278, which is 3.03 per cent additional, making a total of \$795,987.50. Under regulation and limitation to 8 per cent return this total would be reduced to \$704,946.40.

It need hardly be stated that so long as either applicant remains within the limits of an 8 per cent return and issues securities under the regulation of the commission only for value, it may make any division between bonds, preferred stock and common stock that it may find to be to its advantage in facilitating its financing.

(8) *Annual estimated generating cost per horsepower-year, including 8 per cent return at Flathead (this is before including Indian rental):* Assembling the above annual operating charges, and using the average capacity outputs of prime power, we have:

Estimated annual revenue or generating cost including 8 per cent return

	Annual charge		Capacity in horse-power	Cost		
	Per cent	Amount		Per horse-power-year	Per kilo-watt-year	Per kilo-watt-hour (mills)
Rocky Mountain Power Co.:						
Estimated.....	13.6	\$1,079,689.00	68,000	\$15.55	\$21.57	2.42
Adjusted.....	14.2	1,077,804.00	50,500	13.39	17.83	2.04
Wheeler:						
Estimate (includes 9.03 per cent return and based on 6,000 cubic feet water).....	10.53	1,450,875.00	100,000	13.57	15.49	2.11
Adjusted to 8 per cent return and based on 6,000 cubic feet water.....	15.10	1,391,595.00	100,000	12.67	16.89	1.93
Adjusted to 8 per cent return and based on 8,440 cubic feet water.....	12.10	1,322,387.00	95,000	14.09	15.67	2.13

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FLATHEAD POWER DEVELOPMENT

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may determine that 2 too high a rate. In such and toward this proposed sum of the two charges the applicants themselves. figures can be reduced. Commission may determine, it made for this amortiza-

turn of 8 per cent upon amount is \$635,800. The 5 per cent, \$423,867, and with the usual practice of les bond interest. Mr. He calculates interest \$528,709.80, and finds a limitation to 8 per cent \$6.40.

either applicant remains d issues securities under value, it may make any l common stock that it is its financing.

horsepower-year, includ- before including Indian ating charges, and using we have:

cluding 5 per cent return

Capacity horse- power	Cost		
	Per horse- power- year	Per kilo- watt-year	Per kilo- watt- hour (mills)
68,000	\$15.88	\$21.17	2.42
80,000	13.39	17.85	2.04
100,000	13.87	18.49	2.11
105,000	12.67	16.99	1.93
95,000	14.00	18.67	2.13

Against this for comparison is here inserted the actual for Montana Power Co. for the year 1926. (See also below.)

Annual revenue from generating 1,375,308,770 kilowatt-hours, i. e., cost including 13.84 per cent return

Montana Power Co. system (including 13.84 per cent return):	
Per cent.....	19.23
Amount.....	\$5,325,640
Actual horsepower generated.....	209,316
Per horsepower.....	\$25.44
Per kilowatt.....	\$33.02
Per kilowatt-hour.....	3.873

MONTANA POWER CO. SYSTEM

We now turn to the analysis of these Montana Power Co. costs, with a view to their guidance in helping to determine the proper basis of Indian rental.

Montana Power Co. system, year 1926.—The year 1926 is used for analysis. The reason is as follows: Toward the close of the hearings it was remembered that in March, 1928, responding to call from Mr. W. V. King, Chief accountant, the commission had received from the Montana Power Co. copies of the latter's reports to the Montana Public Service Commission for 1923, 1924, 1925, 1926, and 1927. The 1927 report was in somewhat different form than the others. Mr. King had then made from these reports a careful study of the costs for 1924, 1925, and 1926 of generating, transmission, and distribution per kilowatt-hour generated and kilowatt-hour sold. He had not determined these costs for 1927. In this study elimination had been made of all nonelectric or nonutility revenues and costs. The Indian Bureau exhibits presented at the hearings used these 1926 calculations, as there was not time to develop the figures for 1927, and 1928 data were not available. The year 1926 was therefore not "selected because it was a good year," as suggested in the Rocky Mountain Co.'s brief. (See also hearings, pp. 2279, 2280.) In fact, the year 1928 would probably make an even better showing. Then the company had 103 per cent utilization factor as against 96 per cent in 1926; its gross revenues from operation (see Wheeler Exhibit I) were \$10,489,777 as against \$8,635,755 in 1926; and its net return from operation was \$6,877,138 as against \$5,439,034 in 1926.

The figures relating to the Montana Power Co. follow:

Installation: 1928-29—327,750 horsepower; 245,000 kilowatts (see Wheeler Exhibit 17 and Major Butler's report; 1930 will be 357,750 horsepower, 290,000 kilowatts.

Average output capacity of prime power: 1928-29—233,700 horsepower, 175,300 kilowatts; 1926—217,467 horsepower, 165,100 kilowatts (see Major Butler's report; 1930 will be 268,400 horsepower, 201,300 kilowatts.

Kilowatt-hours generated: 1926—1,375,308,770 kilowatt-hours (company report); 1927—1,362,157,457 kilowatt-hours (company report); 1928—1,584,078,104 kilowatt-hours (hearings, p. 1445).

Kilowatt-hours sold: 1926—1,165,227,847 (Indian Exhibit 3); average price realized 7.41122 mills; 1927—1,171,162,327 (company report); average price realized 7.55506 mills; 1928—1,500,000,000 approximate (hearings p. 1477); average price realized 7.20 mills.

Maximum demand factor: Maximum load for 15 minutes, 1926, 83 per cent; maximum capacity of system, 1927, 78 per cent. (Company reports.)

FLATHEAD POWER DEVELOPMENT

Load factor: Total kilowatt-hours generated in year 1926, 83 per cent; maximum load in kilowatts for 15 minutes by 8,760 kilowatt-hours, 1927, 81.4 per cent. (Company reports.)
 "Plant values" (see Indian Exhibit 3 taken from company's statement to Federal Power Commission).

Plant values

	1925	Per cent	1927
Generating plants.....	\$27,629,333.37	69.4	\$28,574,074.21
Transmission and transportation.....	6,961,637.05	13.2	7,014,049.95
Other electric.....	3,702,214.63	12.5	4,694,492.26
Nonelectric.....	5,443,423.29	11.9	4,890,511.77
Water rights, contracts, franchises, etc.....	45,745,808.35	100.0	46,832,039.29
Total.....	51,492,292.56		51,699,422.37
	97,237,567.92		98,651,462.57

These figures were built up by Mr. Hogenah, of Chicago, appraisal engineer, December 31, 1922, and book-cost additions have been added thereafter, as an "appraisal of physical property determined (italic supplied) as of December 31, 1913, plus additions to property from December 31, 1913, to December 31, 1922." Does this language mean that the appraisal was determined December 31, 1913, or that the property was determined historically as of December 31, 1913, plus additions to December 31, 1922, and then the property so determined was appraised as of December 31, 1922? Mr. Kelly, the company's attorney, took the former view very positively, but from the testimony of Mr. Cochrane, the company's chief engineer, it is clear that he considered the appraisal values as applying to December 31, 1922. Mr. Hogenah had been employed in 1913 and again in 1922 to make depreciation studies, and it would appear that he made a fresh start on the valuations as of December 31, 1922. But how interpret the above language? In order to throw as much light as possible on this moot point, we submit the discussion which took place on the last day of the hearings (pp. 2247-2250):

Mr. SCATTERGOOD. Now, just for the purpose of explanation to the commission, that first set of figures, namely, tangibles, were calculated on the basis, were they not, of an engineer's report by Mr. Hogenah? That was made as of December 31, 1922, and thereafter book values of actual additions to property were added from year to year. Isn't that the way it was calculated?

Mr. COCHRANE. That is my understanding.

Mr. SCATTERGOOD. So that as a matter of fact, these first tangible figures represent that engineer's idea—and he was also your own engineer—of the real value of tangible property?

Mr. COCHRANE. Yes.

Mr. SCATTERGOOD. And the other items—water rights, contracts, franchises, etc.—were what you might call intangibles?

Mr. COCHRANE. Yes.

Mr. SCATTERGOOD. In other words, what those whole figures total for 1927, which is fifty-one millions and upward, really represents what is customarily called "water," doesn't it?

Mr. COCHRANE. I think somebody suggested that a column might be put for that water. But I don't think as a matter of fact that it is all water.

Mr. SCATTERGOOD. I don't suppose it is. I have no doubt that if you were asked to set a value a "fair value" on it, you would maintain that you had a going-concern value and various other considerations that would have to be included, such as good will, that would be properly includable in the item of these intangibles, would you not?

Mr. COCHRANE. Yes.

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FLATHEAD POWER DEVELOPMENT

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 att-hours, 1927, 81.4 per cent.

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1925	Per cent	1927
625,331.37	60.4	\$28,574,074.21
934,635.05	13.2	7,014,016.56
702,214.65	12.5	5,964,403.26
484,415.25	11.9	5,592,514.77
746,595.35	100.0	46,952,069.29
491,280.59		31,990,422.37
537,967.92		89,651,462.57

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Mr. SCATTERGOOD. So that that ("fair value"), as I understand, has never been determined—what is a fair value of the property?

Mr. COCHRANE. No.

Mr. SCATTERGOOD. Now, these represent the average 1922 reconstruction cost values plus actual investments afterwards?

Mr. COCHRANE. Yes.

Mr. SCATTERGOOD. Now, the prices prevailing about the end of 1922 were not quite the peak of the postwar prices, were they? They were a little under the peak?

Mr. COCHRANE. You mean that they had gone down a little by that time?

Mr. SCATTERGOOD. Yes.

Mr. COCHRANE. I think so.

Mr. SCATTERGOOD. But still they were fairly near the peak of 1921, were they not?

Mr. COCHRANE. I presume so.

Mr. SCATTERGOOD. So that those values that are given as of that date are probably outside of what would be a real reconstruction cost less depreciation to-day?

Mr. COCHRANE. Yes.

At this point Mr. Kelly, the company's attorney, called attention to a footnote on the engineer's valuation reading "Represents appraisal of physical property determined as of December 31, 1913, plus additions to property from December 31, 1913, to December 31, 1922." He then said:

Mr. KELLY. So that the original appraisals were made upon a basis of property values as of December, 1913, and not 1922; so that the question is misleading. The exhibit does not show that and it is not a fact.

Mr. SCATTERGOOD. Well, of course, in 1913 you did not have all of your plants built.

Mr. KELLY. No. This figure represents the 1913 valuation of such plants as were then built, plus the actual cost of such plants as were built since then, many of which were built before the war prices—the plants that were built between 1913 and 1918.

The status as to plants is as follows (see p. 1472 et seq. and Major Butler's report):

Montana Power Co.'s plants, 1929

Plant	Built	Maximum		Average		Capacity factor
		Kilowatts	Horsepower	Kilowatts	Horsepower	
Black Eagle.....	1927	18,000	24,000	15,200	20,300	0.84
Canyon Ferry.....		7,500	10,000	5,000	7,500	.75
Hauser Lake.....	1918	18,000	24,000	14,500	19,500	.80
Holter.....	1918	50,000	67,000	25,500	34,000	.61
Madison.....		9,000	12,000	5,500	11,500	.95
Mystic Lake.....		11,200	16,750	6,500	8,666	.53
Rainbow.....	{ 1910 1916	36,000	48,000	30,500	40,667	.55
Thompson Falls.....	1916	25,000	47,000	22,000	29,333	.63
Volta.....	1916	60,000	80,000	47,000	62,667	.75
Total, 1929.....		247,000	327,750	175,300	234,717	.72
Mareney (now building).....		48,000	60,000	24,000	34,700	.56
Total, 1930.....		295,000	387,750	199,300	269,417	.69

From this table it is evident that the larger plants have been built during or since the war. Allowing half of Rainbow to pre-war and half during the war, it is seen that about two-thirds of the capacity dates during or since the war.

Some light is also furnished by Mr. Kerr's and Mr. Cochrane's answers on pages 1153 and 1193-1194 in regard to basis of valuations. Mr. Kerr and Mr. Cochrane had testified, respectively, that in round

FLATHEAD POWER DEVELOPMENT

figures the installation cost of the Montana power system and of the Flathead would be about \$100 per horsepower.

Mr. SCATTERGOOD. Did you use the same general scheme of valuation?
 Mr. KERR. I would say so; yes.
 Mr. SCATTERGOOD. Present-day reproduction costs?
 Mr. KERR. Yes.

It was later shown by Mr. Cochrane that in the company's set-up of 68,000 horsepower and \$7,947,500 development cost of Flathead, the installation cost per horsepower would be \$116.87, not \$100, as Mr. Kerr had roughly calculated it. Also it has been shown that the system's installation cost on their own figures of valuation for 1927 was \$121.41 per horsepower. Inasmuch, therefore, as Mr. Kerr said that on a present-day reproduction cost basis the cost would be \$100 horsepower, it is evident that the company's valuation figures of 1927 used above can not be less than reproduction cost figures of present day, as Mr. Kelly's interpretation would seem to indicate.

Whatever the proper interpretation of these figures may be, it can at least be said that they form the company's own statement of values as made to the Federal Power Commission. They are the only valuation figures in the record except the assessed valuation for taxation of all the property (electric and nonelectric) at \$52,000,000 (see p. 1683). There has never been a rate case, nor has any "fair valuation" ever been placed upon this company either by the Federal Power Commission or the Montana Public Service Commission.

In the use of the word "return" as applied to the Montana Power Co., it will therefore be understood that the return is calculated upon the company's own figures, as above set forth. It is to be noted also that these valuations of the company certainly can not be less than the basis of actual investment provided in the Federal water power act, and they may and probably are much higher than said basis.

Investment cost.—Using the above generating plants figures of 1927 and the 1928 capacity figures, we have as the unit cost of development of the whole Montana Power Co.'s system: \$121.41 per horsepower; \$161.88 per kilowatt.

Actual generating revenue or generating cost including return and excess for year 1937

	Per cent on company valuation	Cost per kilowatt-hour generated	Amount
Operating expenses.....		<i>MWh</i>	
Overhead expenses (apportioned).....	1.30	0.28	\$84,594.82
All taxes, insurance, etc. (apportioned).....	.41	.07	132,701.85
Depreciation, obsolescence.....	2.81	.54	76,878.06
	.75	.150	292,013.69
Return at—			
8 per cent.....			\$1,500,151.73
5.84 per cent excess.....	13.54	1.607	2,210,102.64
		1.173	1,615,322.36
Total.....	19.23	3.573	5,325,642.73

	Per horse-power-year	Per kilowatt-year	Per kilowatt-hour
Generating cost, including—			<i>MWh</i>
Return at 8 per cent.....	17.72	23.63	2.625
Excess at 5.84 per cent.....	1.51	10.25	1.173
Total.....	19.23	33.88	3.873

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FLATHEAD POWER DEVELOPMENT

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turn and excess for year 1926

Per watt- year	Amount
0.283	\$384,566.82
0.07	132,701.85
0.56	776,845.00
0.150	206,045.00
	\$1,500,181.73
1.007	2,210,106.64
2.175	1,615,352.36
3.873	5,325,640.73

Per horse- power-year	Per kilo- watt-year	Per kilo- watt-hour	Milts
517.72	\$23.63		2.608
7.72	10.29		1.175
25.11	33.92		3.873

The basis for the above figures is found in Mr. King's figures as set out in Indian Exhibit 3. He therein included the items general and undistributed expenses, totaling \$466,335.58, entirely in "Distributing and all other costs." As this applies pro rata to generating and transmission costs, it is subdivided and prorated as follows:

Generating.....	60.4 per cent	} \$410,841.65
Transmission.....	15.2 per cent	
Distribution, etc.....	12.5 per cent	
Nonelectric.....	11.9 per cent	55,493.93
Total.....	100.0 per cent	466,335.58

This \$410,841.65 for electric property is further subdivided in proportion to direct expenses as follows:

		Per ct.	
Generating.....	\$384,566.82	32.3	\$132,701.85
Transmission.....	237,869.02	19.9	\$1,757.49
Distribution, etc.....	567,801.48	47.8	196,382.31
Total.....	1,190,237.32	100.0	410,841.65

We then have adjusted costs for 1926 as follows:

Generating:		
Operating expenses (direct).....	\$384,566.82	
General and undistributed (prorated).....	132,701.85	
Depreciation actually charged (prorated).....	206,045.00	
All taxes (prorated).....	776,845.00	
Total.....	1,500,181.73	
Transmission:		
Operating expenses (direct).....	237,869.02	
General and undistributed (prorated).....	81,757.49	
Depreciation actually charged (prorated).....	65,065.00	
All taxes (prorated).....	194,999.52	
Total.....	579,691.03	
Distribution and other costs (electric operations):		
Distributing, commercial, consumption.....	567,801.48	
General and undistributed (prorated).....	196,382.31	
Depreciation actually charged (prorated).....	54,845.00	
All taxes (prorated).....	160,382.93	
Total.....	979,411.72	

To divide return and excess between the three divisions, we proceed:

Income from electric operations, 1926 (from company report)...	\$8,635,755.33
Expenses as above:	
Generating.....	\$1,500,181.73
Transmission.....	579,691.03
Distribution, etc.....	979,411.72
	3,059,284.48
Return, 8 per cent.....	3,221,054.64
Excess, 5.84 per cent.....	2,355,416.21
	5,576,470.85

This shows that return and excess together are 64.6 per cent of gross revenue.

* In proportion to plant values, as per company statement.

FLATHEAD POWER DEVELOPMENT

This return and excess is then distributed in proportion to investments in plant values (electric only) as per company's statement, as follows:

Generating, 68.6 per cent:		
8 per cent return.....	\$2, 210, 106. 64	
5.84 per cent excess.....	1, 615, 352. 36	
		\$3, 825, 459. 00
Transmission, 17.2 per cent:		
8 per cent return.....	554, 770. 80	
5.84 per cent excess.....	404, 382. 19	
		959, 152. 99
Distribution, 14.2 per cent:		
8 per cent return.....	456, 177. 20	
5.84 per cent excess.....	335, 681. 66	
		791, 858. 86
Total.....		5, 576, 470. 85

Assembling the direct costs and the return and excess distributed, we then finally have:

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FLATHEAD POWER DEVELOPMENT

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Proportion to investment-
 company's statement, as

106.64
 352.36
 \$3,325,459.00
 770.80
 382.19
 959,152.99
 177.20
 681.06
 791,838.86
 5,570,470.85
 Excess distributed,

Cost and profit of Montana Power Co. System, 1926

		Generated			Sold		
		Per kilo- watt-hour	Per horse- power	Per kilo- watt	Per kilo- watt-hour	Per horse- power	Per kilo- watt
Generating:							
Operating expenses.....	\$384,540.82	Mills 0.280			Mills 0.330		
General expenses.....	132,701.85	.097			.114		
Depreciation actually charged.....	206,045.00	.150			.177		
All taxes.....	770,808.00	.561	\$17.72	\$23.63	.600	\$20.92	\$27.89
Return 8 per cent.....	2,210,106.61	1.091			1.287		
Excess 5.84 per cent.....	1,615,352.36	1.007	7.72	10.20	1.897	9.11	12.15
	3,825,430.00	1.175			1.387		
	5,325,640.73	3.873	25.41	33.92	4.571	30.03	40.04
Transmission:							
Operating expenses.....	247,869.02				.204		
General expenses.....	81,757.49				.070		
Depreciation actually charged.....	65,065.00				.056	6.39	8.52
All taxes.....	194,989.52				.167		
Return 8 per cent.....	554,770.80				.497		
Excess 5.84 per cent.....	404,382.19				.470	2.28	3.04
	959,152.99				1.320	8.67	11.56
	1,538,844.02						
Distribution, etc.:							
Distributing, etc.....	507,804.48				.487		
General expenses.....	190,382.31				.160		
Depreciation actually charged.....	54,845.00				.047	8.09	10.70
All taxes.....	160,382.93				.138		
Return 8 per cent.....	456,477.99				.811		
Excess 5.84 per cent.....	335,091.66				.588	1.80	2.52
	791,858.80				1.520	19.09	13.31
	1,771,270.58						
Gross revenue from operations.....	8,635,755.33				7.411	48.63	61.91

* These figures vary from Indian Exhibit No. 6 because of the distribution of general expenses and because of including here \$87,655.42 miscellaneous earnings from operation which had been erroneously omitted.

FLATHEAD POWER DEVELOPMENT

From the above table it will be seen that in 1926 the earnings of the company showed per horsepower sold:

	Per horse- power-year	Mills per kilowatt- hour
Cost, including 6 per cent return.....	\$35.40	5.29
Excess of 5.84 per cent.....	13.28	2.02
Gross.....	48.68	7.41

It also shows:

Actual direct cost on current sold

	Mills per kilowatt- hour	Per horse- power	Per kilowatt-
Generating cost.....	1.287	\$6.45	\$11.27
Transmission cost.....	.497	3.29	4.85
Distribution and other.....	.841	5.53	7.37
Total.....	2.625	15.24	23.49
And--			
8 per cent return.....	2.764	15.16	24.21
5.84 per cent excess.....	2.022	13.28	17.71
Total.....	4.786	31.44	41.92
Grand total.....	7.411	45.68	64.91

In other words, \$31.44 out of \$48.68 per horsepower-year is return including excess or 64.8 per cent, i. e. of every dollar in gross revenue, 64.8 cents is return on the company's own valuation basis.

In passing it is of general interest to note:

(1) Here is a public utility hydro power company with a remarkably low average selling price of its power. In 1926 it was 7.411 mills per kilowatt-hour sold, i. e. \$48.68 per horsepower-year. In 1928 it was 7.2 mills per kilowatt-hour sold, i. e., \$47.36 per horsepower-year. Mr. Kerr, its vice president, probably is well advised in his claim that it has the lowest general average selling price of any power company in the United States. He claims it is half a cent less in average selling price than the much discussed Province of Ontario Government project.

(2) Its prices to its special large load customers are very low indeed. To its largest customer it sells at \$25 per horsepower-year with a sliding scale reducing this price even lower when certain metal prices go down. Also, its general prices to small customers throughout Montana are claimed to be uniform throughout the State, and to compare very favorably with such prices generally charged elsewhere by power companies.

(3) Yet in spite of these prices which compare so favorably with the rates for electricity generally charged throughout the United States, this company has been able to make current so cheaply through the natural advantages of its water-power sites that it actually earned 13.84 per cent in 1926 (taken as a sample year) upon its own valuation of about \$41,350,000 for its tangible property.

(4) These earnings have supported and paid returns upon a securities structure of bonds and stock totalling about twice the value of all of its tangible property. Its own valuation of its intangibles, consisting of "water rights, contracts, franchises, etc.," was about \$51,500,000.

DEVELOPMENT

FLATHEAD POWER DEVELOPMENT

in 1926 the earnings of the

	Per horse-power-year	Mills per kilowatt-hour
	\$35.40	5.29
	13.28	2.02
	48.68	7.41

rent-sold

	Mills per kilowatt-hour	Per horse-power	Per kilowatt-hour
	1.257	\$8.45	\$11.27
	.497	3.26	4.37
	.841	5.23	7.37
	2.625	17.24	22.99
	2.764	18.16	24.21
	2.022	13.28	17.71
	4.786	31.44	41.92
	7.411	48.68	64.91

per horsepower-year is return every dollar in gross revenue, on valuation basis.

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(5) The valuation upon which this return is calculated is, as stated, the company's own valuation of its tangibles. As already pointed out, it is not entirely clear from the testimony just what the basis of values is. Assuming on the one hand that it represents the appraised value as of December 31, 1913, plus actual investments made since that date, then the tangibles approximate the basis of valuation provided for in the Federal water power act. If, on the other hand, it represents appraised values of the property December 31, 1922, plus actual investments made since then, it would represent approximately "present-day reproduction-cost values."

The so-called "fair value" fixed as a rate base by a commission in a rate case would probably be somewhere between these two ways of estimating values.

(6) No rate case has ever been brought to test this company's rates and no "fair value" basis of valuation has ever been established. Such reductions in rates as have been made have been made voluntarily by the company itself.

(7) It is apparent from the above figures that further rate reductions averaging \$13.28 per horsepower-year, or 2.02 mills per kilowatt-hour—i. e., about 27 per cent—could be made and still the rates would provide to the company an allowed return of 8 per cent upon its own valuations of its tangible property.

(8) The Flathead site No. 1 reveals \$4.33 lower generating cost per horsepower-year, including 8 per cent return, than the Montana Power Co. system generating cost in 1926, also including an 8 per cent return; and this does not include \$7.22 per horsepower generated excess earnings actually made.

(9) In the face of these figures it is apparent that the \$1 per horsepower-year offered by the company for Indian rental is far from proper compensation based on the value of the site. This will be referred to further.

(10) With regard to regulation, the jurisdiction of the Federal Power Commission and of the Secretary of the Interior in this case do not extend beyond the applicants. The Montana Power Co. is subject, as already stated, only to the jurisdiction of the Montana Public Service Commission. It would seem all the more important, therefore, that full powers of regulation be exercised by the Federal Power Commission upon the licensee, whether Rocky Mountain Power Co. or Wheeler.

IV. INTERCOMPANY PRICE

In the case of applicant Wheeler, this subject has no bearing because he sets up only one company, and fixes his output price wholesale at \$15 per horsepower. He did quote, however, a price of 2½ mills, which is \$16.34 per horsepower-year, to H. M. Byllesby & Co.'s Mountain States Power Co. at Kalispell, Mont., and found this price would interest them. Mr. Kerr, when asked, said this was a very favorable price, if there were no maximum demand.

In the case of applicant Rocky Mountain Co., the applicant's set-up in Exhibit S was based on \$18 per horsepower-year, which is 2.75 mills per kilowatt-hour wholesale price at bus bar. See also Rocky Mountain brief, page 6, where the explanation is made "Total cost

FLATHEAD POWER DEVELOPMENT

(and proposed selling price) per horsepower sold, \$18." Also see pages 1333-1334.

Further references to intercompany prices in the record are also cited as follows:

(1) Mr. Kerr told the story of the pick-up bargain rate of \$10 per horsepower-year, or 1.52 mills per kilowatt-hour prevailing for a time from the Washington Water Power Co. to the Intermountain Power Co., not a criterion for present day conditions (p. 1192); also of a rate prevailing between a Stone & Webster Co. further west of \$16 per horsepower for 10,000 horsepower, plus three-fourths mill per kilowatt-hour for high-water months and 2½ mills for low-water months, which figured out is \$21 per horsepower-year, or 3.20 mills per kilowatt-hour.

(2) The price between Washington Water Power Co. and Montana Power Co. now prevailing when power is exchanged is 3 mills per kilowatt-hour (p. 1190). This is, according to Mr. Kerr, "so-called 'dump power' furnished when and as they have it, with nothing to bind them to furnish it." When asked, if it were primary power whether it would be an even higher price, he replied "Oh, yes; no doubt."

(3) Mr. Cochrane stated that if the Wheeler plan of selling only to large consumers were changed, and he developed a plan similar to that of the Rocky Mountain Power Co. and offered a price comparable to it, the Montana Power Co. might do business with him (p. 1402).

(4) Before the consolidation of its subsidiary operating companies with the Montana Power Co., the intercompany price for power exchanged was 5 mills or \$32.84 per horsepower-year (p. 2091).

(5) Finally, as to the suggested price for power between Rocky Mountain Power Co. and Montana Power Co., the record on pages 2290 to 2292 is as follows:

Mr. SCATTERGOOD. What would be the right price, do you think, for the Rocky Mountain Power Co., if its entity were continued, to charge to the Montana Power Co.?

Mr. KERR. I can't say any figure. I can't make an offhand guess at a figure, because I told you here the other day that I didn't know what the final cost would be; but I can tell you what is a common price, one that is offered by the Government, for instance, at Boulder Dam, 3 mills (or \$19.60 per horsepower); and in make dump power, so-called dump-power contracts where we charge 2½ mills (or \$16.84 per horsepower) and 2 mills (or \$13.07 per horsepower).

Mr. SCATTERGOOD. Would you feel that the commission would be well advised if it used that price of 3 mills as a price between the two companies at the bus bar?

Mr. KERR. If you charge 3 mills to the other company, I say that is all right, if it would give a proper return. It would have to be a proper return. You are asking generally what these kinds of prices are. I have told you.

Mr. SCATTERGOOD. That is what I want, because it would go into the whole picture.

Mr. KERR. And I want to emphasize that the Montana Power Co.'s 5-mill price was simply a convenient figure. It is easy to multiply by 5, and it don't make a bit of difference in the final answer.

Mr. SCATTERGOOD. Of course if you did offer the Montana Power Co. wholesale current at Flathead at 3 mills, you (the Montana Power Co.) would have to put on the additional transmission cost and your interest on your transmission machinery, and all your other charges, wouldn't you?

Mr. KERR. Yes, sir.
Mr. SCATTERGOOD. But that would be a fair price that you think could—
Mr. KERR. That is one of the prices that is around in the neighborhood that might be sold.

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FLATHEAD POWER DEVELOPMENT

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For purposes of easy comparison, the following conversion table is submitted:

Conversion table

Per kilowatt-hour	Horsepower year (at 6335 mills)	Kilowatt year	Per kilowatt-hour	Horsepower year (at 6335 mills)	Kilowatt year
2 mills	\$13.07	\$17.52	2.85 mills	\$18.62	\$24.97
2.10 mills	13.72	18.49	2.90 mills	18.95	25.49
2.20 mills	14.28	19.27	2.95 mills	19.28	25.98
2.25 mills	14.70	19.71	3 mills	19.60	26.48
2.30 mills	15.09	20.15	4 mills	26.14	35.04
2.35 mills	15.36	20.39	5 mills	32.65	43.50
2.40 mills	15.69	21.02	6 mills	39.21	52.56
2.45 mills	16.01	21.46	7 mills	45.74	61.22
2.50 mills	16.34	21.90	8 mills	52.28	70.05
2.55 mills	16.69	22.34	9 mills	58.81	78.84
2.60 mills	16.96	22.78	1 cent	65.35	87.69
2.65 mills	17.32	23.22	5 cents	325.75	435.00
2.70 mills	17.64	23.65	6 cents	392.89	509.99
2.75 mills	17.97	24.09	10 cents	633.59	876.00
2.80 mills	18.30	24.53			

V. THOMPSON FALLS AND ITS SAVINGS TO MONTANA POWER CO. IF FLATHEAD POWER SITE NO. 1 IS DEVELOPED

One further feature remains to be considered. This is the benefit which will automatically accrue to the Thompson Falls plant of the Montana Power Co., located as it is down the Flathead River on Clarks Fork of the Columbia River, and which will be caused by the regulation of flow through the increased storage at Flathead. This increase of power at Thompson Falls will accrue whether the Rocky Mountain Power Co. or Wheeler is the developer of the Flathead site No. 1.

There was considerable reference in the hearings to Thompson Falls. Suffice it here to say that the Montana Power Co. itself admitted an estimated increase of 10,000 horsepower distributed over eight months of the year (pp. 1502, 1625), making about 66,000,000 kilowatt-hours additional (p. 1633). This is based on an increased flow of 2,600 cubic feet per second due to Flathead storage (p. 1626) and an average head of 50 feet and 70 per cent efficiency (pp. 1640, 1708). Taking the 1926 basis of sale and net return as already calculated, we have 66,000,000 kilowatt-hours by 7.411 mills, equals \$488,400; and 64.8 per cent for return including excess shows \$310,483 additional profit from Thompson Falls. This is on the admitted assumption that no additional transmission lines would have to be built (p. 2065), although if this added load were to be constantly transmitted east, it would be an economy to build an additional line to supplement the Milwaukee Railroad transmission line now used. If this extra Thompson Falls current were sold to the west to Washington Power Co. at 3 mills (p. 207), it would lower the average price used above.

At the hearings the increased amount shown to be available at Thompson Falls because of Flathead storage was conservatively calculated as only 43,000,000 kilowatt-hours additional, showing net gains of \$193,000.

Based on the 1928 generated output of 1,584,000,000 kilowatt-hours this increase of 66,000,000 kilowatt-hours at Thompson Falls is an increase of more than 4.1 per cent for the whole system. Using again

FLATHEAD POWER DEVELOPMENT

the 1926 cost figures and adding the \$316,483 added profit to the system shows the following:

Generating cost, 1926

	Mills per kilowatt-hour	Per horsepower	Per kilowatt
Montana Power Co. system: 6 per cent return.....	2.695	\$17.72	\$23.63
3.84 per cent excess.....	1.175	7.72	10.29
Total, 13.84 per cent.....	3.873	25.44	33.92
Montana Power Co. system with Thompson Falls added production because of Flathead storage:			
6 per cent return.....	2.695	17.72	23.63
6.69 per cent excess.....	1.340	8.69	11.73
Total, 14.99 per cent.....	4.035	26.42	35.36

Thus Thompson Falls's increase because of Flathead storage would add \$1.08 per horsepower-year to the Montana Power Co.'s system on the basis of the 1926 figures and would increase the return, including excess, to 14.99 per cent. Presumably this would be available for rate reductions to consumers. (See p. 1542.) It is not claimed here as available for the Indian rental, but, as will shortly be shown, it is an element that must enter into the calculation of the interests of the general public and of the irrigation project in particular.

VI. INDIAN RENTAL

We are now in position to assemble the elements already considered and to develop what they reveal to be available for (1) the company's return, (2) Indian rental, (3) general consumers, and (4) the special consumers in the irrigation projects. In order that full justice be done to the Indians, it is proposed here to consider the case first as if there were only the first three parties and no irrigation project, and thus to fix the proper intercompany price for the pro forma calculation of the Indian rental; then secondly to make such slight modification in said intercompany price as may be necessary to provide under existing conditions the reservation by the United States for the irrigation project of 15,000 horsepower at the prices agreed upon in advance by one of the applicants.

If the license is given to applicant Wheeler, and if the lake regulation permitted 6,000 cubic feet per second of water, as he estimated, there would then be a margin of \$2.33 per horsepower-year between his price to consumers of \$15 and his cost as adjusted to an 8 per cent return and 0.6 per cent amortization charge, of \$12.67. Out of this the Indians and the irrigation project would have to be provided for. If, however, only 5,440 cubic feet per second of water is allowed in the lake regulation, Wheeler's prime power capacity will be reduced to 95,000 horsepower, and his cost will be increased to \$14 per horsepower. There would then be a margin of only \$1 per horsepower-year between his price to consumers of \$15 and this \$14 cost. Manifestly, so far as Indian rental goes, Wheeler's proposition of selling power at \$15 per horsepower can not compare with applicant Rocky Mountain Power Co.'s intercompany price of \$18 in advantage to the Indians. Furthermore, it is to be remembered, as already shown,

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FLATHEAD POWER DEVELOPMENT

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that applicant Wheeler's high cost of financing and overhead and his high operating estimates penalize him about \$1.70 per horsepower-year when compared with the other applicant on the same basis of capacity, and which would otherwise be available at least in part for Indian rental.

If the license is given to Rocky Mountain Power Co., we have the following assembled elements:

Average annual generating cost

Mills per kilowatt-hour	Per horsepower	Per kilowatt
2.668	\$17.72	\$21.67
1.175	7.72	10.29
3.873	23.44	33.92
2.695	17.72	22.65
1.340	8.80	11.75
4.035	26.52	35.36

	Per horsepower year	Per kilowatt-hour (mills)
Rocky Mountain Power Co.'s estimate, at 5 per cent return excluding rentals.....	\$15.88	2.42
Rocky Mountain Power Co.'s estimate as adjusted, at 5 per cent return, excluding rentals.....	13.39	2.64
Rocky Mountain Power Co.'s estimate, at 8 per cent return, including Indian rentals.....	16.63	2.56
Montana Power Co. system, 1926:		
8 per cent return.....	17.72	2.695
5.84 per cent excess.....	7.72	1.175
Total, 13.51 per cent.....	25.44	3.873
Montana Power Co. system, 1926, with Thompson Falls additional power added:		
8 per cent return.....	17.72	2.695
6.99 per cent excess.....	8.80	1.340
Total, 14.99 per cent.....	26.52	4.035

Flathead storage would increase the return, in this would be available. It is not claimed here shortly be shown, it is of the interests of the particular.

elements already considered for (1) the company's interests, and (4) the special interest that full justice be considered the case first as if no irrigation project, for the pro forma calculation to make such slight adjustment necessary to produce by the United States at the prices agreed.

and if the lake regulates water, as he estimated, horsepower-year between adjusted to an 8 per cent of \$12.67. Out of this should have to be provided second of water is allowed capacity will be reduced increased to \$14 per horsepower only \$1 per horsepower and this \$14 cost. Manufacturer's proposition of selling are with applicant Rocky of \$18 in advantage to absorbed, as already shown,

From the above it is to be seen that—
 The adjusted estimated average generating cost for 80,500 horsepower including 8 per cent return at Flathead (\$13.39 per horsepower) is:

- (1) \$2.49 per horsepower less than applicant's own estimate of \$15.88 at 8 per cent return and excluding rentals, for 68,000 horsepower.
- (2) \$4.49 per horsepower less than applicant's own estimate of \$17.88 (round figures \$18) at 8 per cent return and including Indian rental and irrigation cost, at 68,000 horsepower.
- (3) \$4.33 per horsepower less than Montana Power Co.'s system generating cost of 1926 at 8 per cent return.
- (4) \$12.05 per horsepower less than Montana Power Co.'s system generating cost of 1926 at actual return and excess.
- (5) \$13.13 per horsepower less than Montana Power Co.'s system generating cost of 1926 with Thompson Falls additional power due to Flathead storage added at actual return and excess.

As already pointed out, the difference between the intercompany wholesale price and the annual average generating cost represents the economic rental value of the site and this should be divided between the Indians as a tribe and the general public interests (of which of course the Indians as individuals also form a part) in fair proportion. In other words, the Indians have the ownership of the five sites and of that portion of the Flathead Lake that lies within the reservation, while the State of Montana owns the remainder of Flathead Lake and the right to control the use of the waters in the lake and river over and above the prior rights of the Indians. Thus both the Indians and the general public have rightful interests in the

FLATHEAD POWER DEVELOPMENT

Flathead power development. Hence it would seem fair that whatever economic rental value this site has should be divided either approximately half to the Indians as a tribe and half to the public, or if it is really possible to determine their respective interests more exactly, that this rental value should be apportioned pro rata between them. In this connection it may be said that there are now being made in the Federal Power Commission and in the General Land Office studies of the Indian-tribal lands and of Indian allotment lands, and that these seem to indicate that the Indian interests in the power development are 46.5 per cent and the non-Indian interests 53.5 per cent. However, as these studies appear to be somewhat tentative and perhaps open to certain legal uncertainties relating to the easements upon lands bordering on the lake, it seems best for the purposes of this memorandum to assume 50 per cent of the economic rental value of the site as belonging to the Flathead Indians as a tribe, and the other 50 per cent as belonging to the general public of the State of Montana. It is perhaps superfluous to add that the Indian rental will be paid to the Federal Government in trust for the Indians, and the public's interest will be under the care and protection of the Montana Public Service Commission in its regulation of the Rocky Mountain Power Co. and the Montana Power Co.

Applying the above, we have:

	Per horse-power	Round figures
Intercompany price as fixed by applicant.....		
Average annual generating cost at Flathead.....	\$17.85 13.39	\$18.00 13.39
	4.46	4.61

One-half for Indians would equal, say, \$2.25 per horsepower as the proper rental, as calculated from an annual average of \$0,500 per horsepower.

Another slightly more conservative way of estimating the economic rental value of Flathead site No. 1 would be to use as our intercompany wholesale price the average annual generating cost including the same basis of 8 per cent return of the Montana Power Co. system.

Thus we have:

	Per horse-power
Intercompany price, using cost of Montana Power Co. system.....	\$17.72
Average annual generating cost at Flathead.....	13.39
	4.33

One-half for Indians would equal \$2.16½ per horsepower as the proper rental, as calculated from an annual average of \$0,500 horsepower.

Using the mean of these two calculations, we have \$2.21 per horsepower as a fair rental for the Indians.

If we take \$2.21 per horsepower as Indian rental we have \$15.00 per horsepower, i. e., 2.387 mills per kilowatt-hour as the adjusted average generating cost, including 8 per cent return and Indian rental. This price of 2.387 mills per kilowatt-hour for an intercompany price would

FLATHEAD POWER DEVELOPMENT

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pay to Rocky Mountain Power Co. a return of 8 per cent and provide all the operating expenses including depreciation of 2 per cent and amortization charge of 0.6 per cent, which will fully amortize the investment in 50 years, if invested at 4 1/4 per cent, and pay an annual rental to the Indians of \$2.21 per horsepower per year. All of the public's share above referred to would under this basis through the low intercompany price be transferred from the Rocky Mountain Power Co. to the Montana Power Co. and be under regulation in that company. If, however, the higher intercompany price of 2.75 mills per kilowatt-hour, (\$18 per horsepower) were utilized the public's share would remain in the Rocky Mountain Power Co., also under regulation. There would be no difference, so far as the public interest is concerned, because in the proposed license it will be required that the securities of the Rocky Mountain Power Co. shall be regulated by the Federal Power Commission and that no bonus stock will be possible, and that all the equity-carrying common stock of the Rocky Mountain Power Co. shall be owned and be retained by the Montana Power Co. This will make possible complete regulation.

As has been shown the Indian rental for Flathead site No. 1 is obtainable only from the licensee, Rocky Mountain Power Co., and to the amount of one-half of the advantage of this site over the average of the Montana Power Co.'s system. However, the other one-half from the Rocky Mountain Power Co. accruing to the public will be added to the existing excess of the Montana Power Co. and be available under regulation for the general consumers. Thus, combining the figures for the two companies, with such a price of 2.387 mills per kilowatt-hour after paying the Rocky Mountain Power Co.'s 8 per cent return and the Indians' \$2.21 per horsepower, there would still be available for the irrigation project and general consumers under regulation the following:

	Per horse- power	Round figures
	\$17.58	\$18.00
	13.39	13.39
	4.49	4.61

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	Per horse-power
With 8 per cent return only	\$2.13
With 8 per cent return and present excess	9.90
With 8 per cent return and excess, and including additional power at Thompson Falls due to Flathead	10.98

The above figures apply to generation alone. If the return on the whole system were limited under regulation to 8 per cent, the possible rate reductions might be still further increased, as already indicated. It is especially to be noted that the above figures, including \$2.21 per horsepower to the Indians, make the estimated cost to the applicant less than its own estimated cost at Flathead by \$1.88 per horsepower, or 0.288 mills per kilowatt-hour. Thus if it were to its advantage to lease Flathead under its own estimates rather than to develop another one of its smaller and less desirable sites, it remains so still even with this higher rental to the Indians.

Another opportunity to compare the low cost of current at Flathead with general costs for current, resulting in a difference in favor of an increased Indian rental, is found in the following extract from the hearings (p. 1549):

Mr. SCATTERGOOD. There is no more virtue in that figure of a dollar to the Indians per horsepower? There is no final virtue. I would say, because you offered it?

Mr. COCHRANE (chief engineer). That figure, I can explain, was a figure which was made because in our—without making any detailed estimate as to what

FLATHEAD POWER DEVELOPMENT

we could afford to pay for this particular site we said general power at a site like this may be worth \$20 a horsepower. We are selling that at Great Falls and used that as a general figure without making any estimates, and that a dollar a horsepower—that is, 5 per cent of that probably would not be a ruinous figure.

Mr. Cochrane was here speaking "by the book" when he spoke of "power like this being worth \$20 a horsepower at a site like this." As a matter of fact the system generating cost of current sold at their plants, including an 8 per cent return on the company's own valuation, has been shown above to have been, in 1926, \$20.92; if the 5.84 per cent excess is added it was \$9.11 per horsepower more, or a total of \$30.03 per horsepower on all system sales.

Now if this general figure of "\$20 per horsepower" is set over against the \$13.30 cost conservatively estimated to be the cost, including 8 per cent return, at Flathead site No. 1, it would seem proved from Mr. Cochrane's own statement that \$2.21 for the Indian rental could amply be afforded without reducing at all the company's present high basis of earnings.

Another slant on the "nominal" offer of \$1 per horsepower made without regard to the site's earning power is found in its origin in the nominal charge of \$1 per horsepower formerly made by the United States Forest Service, but now no longer in use.

The following developed in the hearings (p. 1549-1550):

Mr. KERR (when Mr. Cochrane was on the stand). Mr. Cochrane did not make that price (the \$1 per horsepower rental). I made that price. I will tell you how I made it. It was the forest rule.

Mr. SCATTERGOOD. But that rule is no longer in existence.

Mr. KERR. It was at that time, and we are paying at that rate now. (He refers to some other plants of the system on forest lands.)

Mr. SCATTERGOOD. You have passed from that time, have you not?

Mr. KERR. Yes. They predicated that rule—

Mr. SCATTERGOOD. Because it was not an adequate rule?

Mr. KERR. That is what it was based on.

Mr. SCATTERGOOD. Thank you very much for enlightening us on that, Mr. Kerr. I thought it was not based on any calculation of the earning power of this site, because it is, of course, inadequate in that respect.

The next day the hearings proceeded (pp. 1615-1617):

Mr. SCATTERGOOD. Mr. Cochrane, you heard Mr. Kerr mention that the \$1 a horsepower proposed to be paid to the Indians for rental had been taken from the scale that had been used by the Forestry Department. Do you know anything about that?

Mr. COCHRANE. Well, that refreshes my memory on the subject a little bit, and I presume that that was where the figure originated, but as for our average—that is, in assuming that figure, we assumed that it was not based on detailed calculations as to how much we thought this site was worth or how much we could be forced to pay for it, or anything of that kind; it was just a fair nominal figure taken without analysis.

Mr. SCATTERGOOD. That is just what I thought it was. Now, in the matter of this Forestry scale, do you know whether that scale is still in existence in the Forestry Department?

Mr. COCHRANE. I don't know for sure; no.

Mr. SCATTERGOOD. Do you know anything about it?

Mr. COCHRANE. No.

Mr. SCATTERGOOD. You don't know whether I am right in the impression that I gained from the head of the Forestry Service that it no longer exists?

Mr. COCHRANE. I don't know of my own knowledge; no.

Mr. SCATTERGOOD. Well, do you know whether or not, when it was in existence, it measured anything on the basis of actual values of sites, or was it, just as you say, nominal?

Mr. COCHRANE. That is my impression, that it was nominal, arbitrary.

Mr. SCATTERGOOD. Would there have been any particular reason for the United States Government on public lands to charge anything but a nominal

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FLATHEAD POWER DEVELOPMENT

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value? There would be no object in the Government doing it, would there? I mean nominal rental when I say value.

Mr. KELLY. Five per cent of the gross value of the product is hardly nominal. Mr. COCHRANE. I think perhaps "arbitrary" should be used instead of the word "nominal" in this computation.

Mr. SCATTERGOOD. What I meant to say was wouldn't it be a fact that whatever charge was made by the United States Government would have to be carried through into the rate and be loaded upon the consumers.

Mr. COCHRANE. In the same way that any other charge would be; yes, sir. Mr. SCATTERGOOD. So that in public lands and forestry cases, where there is no special ownership involved as there is in the case where Indian property is held in trust, there is no reason for the Government to make the consumer pay anything more than the real fair cost and the proper return to the company?

Mr. COCHRANE. I wouldn't think there would be any object in the Government requiring the customer to pay more than a fair charge in any event.

Mr. SCATTERGOOD. That is what I think, too, and I want to just bring it out, that so far as that nominal charge is concerned, it was nominal and was not meant to in any way measure the value of the site; and as a matter of fact that scale no longer exists.

From the above tracing of the origin of the \$1 offer it is apparent that the company was working on the assumption that the basis of rental for an Indian site might be the same as for forest or public lands, overlooking the distinction between the Government trust for the Indians in the first case and outright ownership by the Government in the second. The company was accustomed to paying the nominal \$1 per horsepower rental for the forest lands, and apparently assumed that this would be considered sufficient for Indian lands. Admittedly as Mr. Cochrane says, the company "did not base its offer on detailed calculations as to how much we thought this site was worth."

It is this lack of "detailed calculations" as to what the site is really worth to the Government in trust for the Indians that the Indian Bureau is now attempting to supply in this memorandum, and we believe a sound basis is found to be furnished for the rate of \$2.21 per horsepower in the figures above presented on the basis of 80,500 horsepower.

It may also be added that so far as the Indians are concerned from a direct financial standpoint alone, the above rental payments would lie to the advantage of the Rocky Mountain Power Co. The general consumers of the State would also profit more in possible rate reductions from the Flathead development than would be the case if the license were given to Mr. Wheeler. On the other hand, Mr. Wheeler's plans, if successful, would bring real advantages of other kinds through the introduction of new industries, new employment, new markets, etc.

MINIMUM RENTAL PAYMENTS

Another phase of Indian rental besides its rate remains to be considered.

Under Regulation 14, section 5 of the commission, it is provided that "The charge (for Indian rental) shall commence upon date license is issued."

There will necessarily be a considerable period for construction before the power will be available and earnings begin. Both applicants estimate a construction period of three years. Mr. Wheeler will take longer to get started because he has not made preliminary borings. He will also have to complete his financing and marketing plans which will take some time. He will lose 1930 low-water season. Rocky Mountain Power Co., as already pointed out, has not only

FLATHEAD POWER DEVELOPMENT

made borings, but is ready to start a construction gang immediately to work, and hopes, if granted the license, to divert the Flathead River for building the foundation of the dam in the low-water season of 1930. It is also to be noted that Mr. Wheeler at this stage is applying only for a preliminary permit for all his sites, while Rocky Mountain Power Co. is applying for both preliminary permit for four sites, and license for site No. 1. Hence in Wheeler's case, rental to the Indians will be delayed; if Rocky Mountain Power Co. is given the license, a rental will begin immediately.

The basis of rental calculation and the rates for the first 20 years suggested above are upon the assumption of the actual development of the estimated prime power. The factors in the calculation are purposely conservative, and, as heretofore stated, the estimate will probably be exceeded over the 20-year period. However, a rental so calculated would clearly not be applicable to a long construction period when no income would be obtainable. Accordingly, the Indian Bureau would suggest that for said construction period, i. e., from the date of the license to the date when the first power from Flathead is sold, an arbitrary fair minimum amount be fixed in the license by the commission and the Secretary of the Interior, say at the rate of \$20,000 per annum.

If the license is granted to the Rocky Mountain Power Co., another consideration must also be provided against for the proper protection of the Indians. That is to provide that the Flathead plant shall not be used any more than any of the other plants as a "peak load plant" in the Montana Power Co. system. This means that it should and must be so operated as to develop at least its pro rata share of the system annual load factor, and not be used only at peak times and "starved" at other times. It is not to be expected that the merging of the Flathead plant into the full-load factor of the system can be obtained the first year, probably not for three or four years. It would therefore seem fair to suggest that in the license it be provided that from the date when the first power from Flathead is sold, the rate of \$2.21 per developed horsepower shall apply, but that the company be given time to develop its full-load factor at Flathead on the following basis of progressive minimums for the early years, viz:

First year, applicant shall operate Flathead at an annual load factor (calculated the same as for the system) of not less than 60 per cent, based on the actual peak for 15 minutes.

Second year, the same except of not less than 67½ per cent load factor.

Third year, the same except of not less than 75 per cent load factor.

Fourth year and thereafter at not less than the system load factor.

In case the load factors developed at Flathead should fall below these minimums, then rentals to be based at the \$2.21 rate on the minimums, the same as if they had been reached.

If Mr. Wheeler is given the license, it would seem from his own plans that he hopes to be able to start off immediately with his load more fully developed than on the usual company basis. He should, however, be required to pay progressive minimum rentals, and after say the fourth year, be required to pay not less than 83 per cent of his full load, using there the same load factor as applies to the other applicant.

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FLATHEAD POWER DEVELOPMENT

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CAPITALIZED VALUE OF SITE NO. 1 BASED (1) ON INDIAN RENTALS;
 (2) ON MONTANA POWER CO.'S VALUATION OF "INTANGIBLES"

The full annual earning power of site No. 1 for the Indians from Mr. Wheeler would be:

(1) $105,000 \times \$1.12\frac{1}{2} = \$118,125$ on his own basis of 6,000 cubic feet per second of water.

(2) $95,000 \times \$1.12\frac{1}{2} = \$106,875$ on the basis of 5,440 cubic feet per second of water. Capitalizing these at 8 per cent (the return allowed the licensee) gives: (1) \$1,476,562; (2) \$1,335,937.

A similar calculation for Rocky Mountain Power Co. as adjusted gives: $80,500 \times \$2.21 = \$177,905$ per annum. Capitalizing this at 8 per cent (the return allowed the licensee) gives \$2,223,812. It is clear that on this basis the latter applicant is better for the Indians on direct financial results.

Let us now make a further comparison with the Montana Power Co. system.

If this were a power development other than on Indian or public lands, the cost of site would be included in the prelicense cost of development allowed by the commission. For comparison let us add this to the estimated plant cost to find what the total investment cost per horsepower would be. We would have:

Estimated plant cost.....	\$7, 555, 400
Site, if purchased.....	2, 223, 812
Total.....	9, 779, 212

$\$9,779,212 \div 80,500 = \121.48 per horsepower as development cost. This compares with \$127.04 for the Montana Power Co. system in 1926, assuming that the company's own valuation of its generating plants at \$27,626,333 includes the values of power sites. Also it is to be seen that \$121.48 is very reasonable and is in fact low as compared to the great majority of power sites.

If, however, these company valuations do not include the values of the sites, then the values of the sites must be included in the company's "intangibles," which it describes as "water rights, contracts, franchises, etc." For purposes of comparison, let us now apply to the Flathead project the company's own valuation of these intangibles and so determine a figure comparable to the company's valuation set up, and find what per horsepower the site would be worth on this basis.

In the Montana Power Co. system the 1927 report shows:

Tangibles.....	\$46, 952, 039 = 47. 6%
Water rights, etc.....	51, 699, 423 = 52. 4%
Total.....	98, 651, 462 = 100%

Assume the same proportion for Flathead.

Now the estimated plant cost at Flathead without any value for site is.....	\$7, 555, 400
This is 47.6 per cent of.....	15, 872, 639
52.4 per cent of \$15,872,639 is.....	\$8, 317, 289

We then have:

Tangible plant.....	\$7, 555, 400
Intangibles, including water rights, etc., would be.....	8, 317, 289
Total value would be.....	15, 872, 639

FLATHEAD POWER DEVELOPMENT

The development cost would then be: \$15,872,689 ÷ 80,500 horsepower = \$197.18 per horsepower.

Using the same operating ratio of 14.3 per cent including the 8 per cent return as is used in the Rocky Mountain estimate as adjusted, we would have:

	Per horsepower
Annual generating cost, including 8 per cent return.....	\$28. 00
As compared to.....	13. 39
Increase due to "Intangibles".....	14. 61

On this basis of the company's own "watered" valuations, Flathead site No. 1 would show \$7.30, that is one-half of \$14.61 per horsepower for the Indians instead of the proposed \$2.21 per horsepower. Manifestly the company would not wish to see the Indians claim the same basis of valuation as it has used itself.

VII. THE FLATHEAD INDIAN IRRIGATION PROJECT, AND 15,000 HORSEPOWER FOR PUMPING AND OTHER USES

Early in this memorandum (p. 8) attention was called to the four interests involved in the Flathead power development, viz., (1) the company, which is entitled to its return of 8 per cent; (2) the Indian tribe, which is entitled to a fair rental for the power sites; (3) the general consuming public; (4) the special part of the public forming the irrigation project, being about 20 per cent Indian and 80 per cent white, and to whom have been promised by one of the applicants certain low rates for power up to 15,000 horsepower under certain restrictions.

Having considered the first three interests, we now turn to the fourth, the Flathead irrigation project.

Before considering the power features, however, it seems desirable at this point to insert a brief historical account of the Flathead Indian irrigation project with some comments on the water rights involved, which has been prepared by our counsel, Mr. Reeves:

HISTORY OF FLATHEAD IRRIGATION PROJECT

The Flathead Indian Reservation, Mont., embracing some 1,500,000 acres, was established in 1855 by treaty with the Confederated Flathead Tribes, being a part of the original area occupied and claimed by these Indians from time immemorial. The northern boundary of this reservation (from east to west) bisects Flathead Lake, a considerable body of navigable water some 30 miles long (north and south) by some 20 miles at its widest extremity, which is within the lower or south half of the lake and within the Indian reservation. The waters from this lake are discharged at its southern extremity into Flathead River, which traverses the reservation in a general southerly and westerly direction for a distance of some 60 miles or more. Without water for irrigation, the lands within this reservation are practically valueless for agricultural purposes and under a doctrine now well settled, the establishment of an Indian reservation, ipso facto also reserves for the Indians sufficient water for their needs for agricultural and other purposes. Of this paramount right the Indians can not be deprived by appropriation or application to beneficial use of such water by third parties. This remains true even though the application to beneficial use by third parties antedates such use of the water by the Indians themselves. As to this see *Winters v. United States* (204 U. S. 564), and *Conrad Investment Co. v. United States* (161 Fed. 529).

The reservation so established for these Indians remained practically intact until after the passage of the act of April 23, 1904. By this statute Congress directed that allotments in severalty be made to these Indians in accordance with the allotment laws of the United States and provided for the classification and disposal of the surplus or unallotted and unreserved lands for the benefit of

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FLATHEAD POWER DEVELOPMENT

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the Indians, under the homestead, mineral, and town site laws of the United States, at not less than the appraised value of such lands.

It appearing at an early date that some 135,000 acres within this reservation could be greatly enhanced in value by irrigation, of which approximately 78,000 acres could be furnished with water by gravity and the remainder by pumping, a comprehensive irrigation plan was inaugurated, which project has since been commonly known as the Flathead Indian irrigation project. In furtherance of the plans in connection with this work something over \$5,000,000, reimbursable funds appropriated by Congress have already been expended in order to supply these lands with water. With a view of giving timely warning of the intention of the Government in this matter "notices of appropriation" of the waters of Flathead River, including of course, those from Flathead Lake, were duly filed by the Reclamation Service in behalf of the United States and placed of record pursuant to the statutes of the State of Montana. Such action was first had early in the year 1909 and renewal or additional notice filed from time to time in compliance with the laws of the State down to and inclusive of the year 1927. As such notices will show, the purposes for which said water was appropriated were for the irriga- tion of lands within the Flathead Indian Reservation, for domestic uses, and for developing power for pumping and other purposes. In furtherance of these plans under authority of section 22 of the act of March 3, 1909 (35 Stats. L. 795), some 2,500 acres of land chiefly valuable for power-site purposes along Flathead River within the reservation, were withdrawn from sale, entry, or any other form of appropriation. The most valuable of the power sites along this river, within the Indian reservation, commonly referred to as site No. 1, lies 4 miles below where Flathead Lake discharges into the river of the same name. With a view of utilizing the lake as a reservoir in connection with its plans for the development of power in connection with this project, by the act of March 3, 1911 (36 Stats. L. 1066), as amended August 24, 1912 (37 Stat. L. 527), Congress directed—

"That an easement in, to, and over all lands bordering on or adjacent to Flat- head Lake, Montana, which lie below an elevation of nine feet above the high- water mark of said lake for the year nineteen hundred and nine, is hereby reserved for uses and purposes connected with storage for irrigation or development of water power, and all patents hereafter issued for any such lands shall recite such reservation."

Actual development of power by the Government at site No. 1, or elsewhere within the Flathead Reservation, has not yet been had, although considerable sums have been expended and much preliminary work done with that end in view. Subsequent to the passage of the Federal water power act of June 10, 1920 (41 Stats. L. 1063), it was suggested that the power possibilities at Flathead be developed by outside interests rather than by the Government. Accordingly, an item in the act of March 7, 1928 (45 Stats. L. 212-213), authorized the Federal Power Commission upon terms satisfactory to the Secretary of the Interior to issue licenses "for the use, for the development of power sites on the Flathead Reservation and of water rights reserved or appropriated for the irrigation projects."

It was also provided that the rentals from such licenses for the use of Indian lands should be deposited in the Treasury of the United States to the credit of these Indians as a tribe. It will be observed, however, that this statute contem- plates the use of both the power sites on the reservation and of the water rights reserved or appropriated for this irrigation project.

Manifestly under this situation two interests are primarily involved, (a) that of the Indians and (b) the irrigation project, meaning, of course, the landowners under that project. More accurately speaking, the interests of the Indians are twofold, first, as a tribe in the revenue to be derived from these power resources developed from their tribal lands, and, secondly, as individual allottees owning lands under an irrigation project to be supplied in part with water by pumping, power at a cheap rate being essentially for the latter purpose. Approximately 20 per cent of the irrigable lands within the Flathead irrigation project are still owned by individual members of the tribe. Necessarily the Federal Government is concerned in seeing that the Indians receive adequate compensation for the use of their lands for power-site purposes and also that its obligation to the land- owners under this project is fulfilled by supplying an adequate quantity of water for irrigation at a minimum cost, it being here borne in mind that the landowners under this system, both Indian and white, are obligated to repay to the United States the cost of irrigation, on a per acre basis.

The Rocky Mountain Power Co., in its brief in support of its application for a license to develop power at Flathead (pp. 63 to 68), alleges that the lands included

FLATHEAD POWER DEVELOPMENT

within the power-site area constitute 50 per cent of the value of these power resources and water the remaining 50 per cent; that the water belongs to the State of Montana, and hence the Indians are without right therein. Further, that the Indians are without right or interest in the river and lake bed. This assumption, however, is erroneous. We have just shown that the Indians have a prior right to sufficient of the waters within their reservation for irrigation and other uses, which right is augmented in no small measure by the filings made on these waters by the Government in behalf of this project, pursuant to the statutes of the State. It is also to be recalled that the south half of this lake and the river into which these waters are discharged are within the Indian Reservation. The power-site withdrawal made by the Government in behalf of this project covers certain lands lying along both sides of this stream, and as to such lands, including the river bed embraced therein, the Indian title has not been extinguished. That is to say the withdrawal for power-site purposes in no way operated to extinguish the Indian title to such lands. These Indians, therefore, have a tremendously greater interest in this situation than as alleged or represented by the Rocky Mountain Power Co.

Basing its calculations on the erroneous assumption that the 2,500 acres or less of tribal Indian lands involved represents only 1 per cent of the value of power site No. 1, the Rocky Mountain Power brief proceeds to show that its offer of \$1 for horsepower as rental for these lands would yield to the tribe a minimum annual rental of \$68,000. On this basis (1 per cent of the value yielding \$68,000 annually) the value of the entire site, including both land and water (100 per cent) would be equivalent to an annual yield in rental of \$8,400,000—manifestly fallacious.

We now return to the matter of the cost of power for pumping, etc., for the irrigation project and its association with Indian rentals.

During the past few years much discussion as well as debates in congressional committees and on the floors of Congress have taken place in regard to these alleged conflicting interests of the Indians and of the irrigation project. It was vigorously argued, on the one hand, that the Indians' ownership of the power sites is absolute; that this carried with it the right of the Indians to every cent of rental moneys obtainable; and that any reduction of power rates to the irrigation project must necessarily come out of the Indians' rental and thereby cause an unwarranted reduction thereof. On the other hand, it was as stoutly maintained that the irrigation project can not be successful without pumping; that cheap power is essential for pumping; that the Indian owners of project lands and the white settlers who have purchased lands of the project from former Indian owners, are alike vitally interested in this cheap power; and have through all their years of ownership depended upon the government's plans and promises to secure it; that the United States Government itself through its Reclamation Bureau began even though it did not complete a pumping development known as the Newell project, to pump water to the irrigation projects; that the United States irrigation project itself had made water filings under the laws of Montana to make sure of the necessary water for this pumping project; that in an appropriation act approved January 12, 1927, and in every subsequent appropriation act, Congress has provided the money and authorized the procedure with a Government power project for pumping in the event that power is not procurable from the licensing of the Flathead site. Thus has arisen an unfortunate dispute on the question of the legality of the irrigation project's rights. Certainly no one has or can successfully contest the equitable grounds of the irrigation project to consideration in the matter of cheap power, even if the legal position has been questioned by some. One of the applicants, the Rocky Mountain Power Co., has recognized this equity from the beginning and has since 1927 put on record its willingness, if granted the license,

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to supply 15,000 horsepower at special prices to the irrigation project. The revised terms for this 15,000 horsepower are set forth in Exhibit 13 of the Flathead irrigation district, an intervening party in this case, and are as follows:

A. The power company would agree to deliver at its plant to be erected at the Newell site (No. 1 site) electrical energy to be used by the irrigation project exclusively for pumping water for irrigation, power required by the Government for that purpose up to 5,000 horsepower, at the price of 1 mill per kilowatt-hour delivered, and also such power up to 5,000 horsepower as may be demanded by the United States for all project and farm uses and for sale at the price of 1 mill per kilowatt-hour delivered.

B. The power company will deliver either at the Newell plant or at some place more convenient on the project, to be agreed upon, such additional power up to 5,000 horsepower, as may be demanded by the United States for all project and farm uses and for sale at the price of 2½ mills per kilowatt-hour delivered.

The Indian Bureau has the double responsibility of protecting fully the tribal rights of the Indians in the matter of power rentals and also of doing everything possible to make a success of the Flathead Indian irrigation project committed to its care. It does not consider that these interests are really conflicting in the sense of the unfortunate dispute above referred to. We have therefore first considered in this memorandum the matter of the Indian rental on its merits just as if there were no irrigation district at all; we have accordingly proposed what seems to be a fair rate of rental, of \$2.21 per horsepower; and we have indicated that in the pro forma estimated basis of calculation this involves, if the license is granted to the Rocky Mountain Power Co., an intercompany price of 2.387 mills for the current sold by the Rocky Mountain Power Co. to the Montana Power Co.

This Indian rate of rental having thus been fixed, we can properly turn to the irrigation project and consider it as one special group of general consumers that the United States Government is particularly interested in protecting to the extent of 15,000 horsepower for pumping and for the project and for sale. The justification for this is that the irrigation project is the Government's own project, and the Government's hope of reimbursement depends upon the project's success. The provision for sale of current in the above quotations was based on the expectation that a profit can be realized on the retail sale of electric current purchased at low wholesale prices, and that this profit will enable the Flathead irrigation district to be an assured success and thus reimburse the project's construction costs to the Government more rapidly than would otherwise be possible. In anticipation of this profit from power as first proposed to be made by the Government itself, Congress in the act of May 10, 1926, provided for its disposition in an order of precedence not necessary to state here, and which was fully explained in the hearings by Congressman Cramton, chairman of the House subcommittee on Appropriations for the Department of the Interior.

Now of the prices for power quoted above, that for 10,000 horsepower at 1 mill is lower than the above proposed intercompany price of 2.387 mills; but that for 5,000 horsepower at 2½ mills is actually a trifle higher. Our problem then is to see how much the intercompany price for the large amount of current sold to the Montana Power Co. needs to be raised in order to offset these relatively small amounts of current at these prices to be reserved by the applicant for the United States for the use of the irrigation project.

FLATHEAD POWER DEVELOPMENT

This involves an estimate of the load factors of pumping, of resale for farms, etc.; also the number of days of pumping required for the project and the dates. From this a study has been made of the overlap of the irrigation period with the surplus water period, and the consequent proportion of secondary power and of primary power. There was much discussion in the hearings on this subject. Suffice it here to say that the testimony showed an outside demand of 111 days for pumping for irrigation purposes, and that for the purpose of an estimate about 51 per cent would be secondary power and 49 per cent primary power. (See Indian Exhibit 7 prepared by the Rocky Mountain Power Co.) The Rocky Mountain Power Co. submitted in its Exhibit 12 an estimate of its loss through the sale of this block of 15,000 horsepower at the prices quoted. It showed (see below) that the sale of this power would bring \$60,500, but that it would cost \$123,000, showing a loss of \$62,500. Allowing 4,000 horsepower as primary power for the irrigation project, the company deducted this from its estimated capacity of 68,000 horsepower and charged the remaining 64,000 horsepower with the above cost of \$62,500, making its estimated cost for the irrigation power \$0.98 per horsepower, or \$1 in round figures. This estimate of \$123,000 cost for this power was figured on a basis of arbitrarily including a maximum demand factor of—

15,000 maximum horsepower at \$5.45.....	\$82,000
4,000 average horsepower at \$10.20.....	41,000
Total.....	123,000

Attention should be called to the fact that in making the above quotations to the irrigation project no maximum demand factor was therein included, the quotations being straight kilowatt-hour prices. Why, then, should not a straight kilowatt-hour average cost be likewise used in reckoning the difference between actual revenue and actual cost? This average basis would surely be true to facts in this company's load, because what power under the maximum the irrigation project will not take will not thereby be lost, but will be otherwise absorbed into the system and realized on.

Assuming the company's own calculations of load as set forth in Exhibit 12, we then have:

Maximum horsepower	Average horsepower	Average kilowatts	Kilowatt-hours	Price	Revenue
10,000 3,000	12,000 2,500	2,250 1,375	19,650,000 10,590,000	\$0.981 .625	\$19,650 40,500
15,000	5,500	4,125	35,950,000		60,500

* 30 per cent load factor.

* 50 per cent load factor.

For the sake of conservatism, let us assume that all of the 5,500 horsepower is prime power.

The average sale price of the 35,950,000 is \$0.0016824 per kilowatt-hour; i. e., \$11.05 per horsepower.

The estimated cost with 8 per cent return and including \$2.21 Indian rental has been shown to be \$15.60 per horsepower or 2.387 mills per kilowatt-hour.

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FLATHEAD POWER DEVELOPMENT

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 this subject. Suffice
 outside demand of 111
 that for the purpose
 dary power and 49 per
 epared by the Rocky
 Power Co. submitted
 the sale of this block
 it showed (see below)
 500, but that it would
 wing 4,000 horsepower
 he company deducted
 horsepower and charged
 above cost of \$62,500,
 power \$0.98 per horse-
 e of \$123,000 cost for
 y including a maximum

Then 35,960,000 kilowatt-hours by 2.387 equals \$5,836 is the cost of this power.

Hence, on the company's own basis of load factors, and even dis- regarding secondary power, and on the basis of average cost, this block of 15,000 horsepower at the prices quoted will produce an out- of-pocket loss of only \$25,336. This represents about \$0.32 per horsepower for the 50,500 capacity at Flathead instead of \$0.98 per horsepower the way the company figured it.

Now returning to the necessary adjustment of the intercompany price to provide for these 15,000 horsepower for the irrigation district, we have:

525,800,000 kilowatt-hours at 2.387 mills (at \$15.60 per horsepower) - \$1,262,246
 35,960,000 kilowatt-hours at 1.6824 mills:----- 60,500
 492,840,000 kilowatt-hours at 2.439 mills (at \$15.94 per horsepower) - 1,201,746

Hence by the raising of the intercompany price from 2.387 mills to 2.439 mills; i. e., from \$15.60 per horsepower to \$15.94 per horsepower, for the 492,840,000 kilowatt-hours sold by Rocky Mountain Power Co. to Montana Power Co., the 15,000 horsepower for the irrigation project can be sold at the prices quoted and the Rocky Mountain Power Co. will still have its full average revenue of 2.387 mills; i. e., \$15.60, which will enable it to pay the undiminished Indian rental of \$2.21 and preserve its own 8 per cent return.

Mr. Wheeler stated at the hearings that if granted the license he would be willing to supply the irrigation district with power as the commission might require.

Assuming, then, the same power requirements and the load factors as used above for the other applicant, we would have for Wheeler on his estimate of 6,000 cubic feet per second of water:

(1) The same revenue, viz, \$60,500, based on the average price of 1.6824 mills per kilowatt-hour.

(2) His cost of \$15 per horsepower at 8 per cent return and includ- ing \$2.33 for Indian rental is 2.2313 mills per kilowatt-hour.

We have then on Wheeler's estimated capacity of 689,000,000 kilowatt-hours:

689,000,000 kilowatt-hours at 2.2313 mills (\$15 per horsepower)---- \$1,571,816
 35,960,000 kilowatt-hours at 1.6824 mills:----- 60,500
 653,040,000 kilowatt-hours at 2.3143 mills (\$15.20 per horsepower)-- 1,511,316

This would mean either (1) Mr. Wheeler would have to raise his price to consumers from \$15 to \$15.20 per horsepower; or (2) he would have to cut the Indian rental by \$0.20 as suggested above; or (3) he would have to be satisfied with \$0.20 per horsepower less return than he is entitled to.

If only 5,440 cubic feet per second of water is available, a similar calculation will result in a cost of \$15.23, so that there would be a \$0.23 adjustment as above instead of \$0.20.

CONCLUSION IN RE 15,000 HORSEPOWER FOR IRRIGATION PROJECT

The Indian Bureau believes that the matter of this 15,000 horse- power for the irrigation project has had far more adverse discussion than it deserves; that it would be most fortunate for the best interests

----- \$82,000
 ----- 41,000

----- 123,000
 at in making the above
 num demand factor was
 ht kilowatt-hour prices.
 our average cost be like-
 een actual revenue and
 r be true to facts in this
 ic maximum the irriga-
 e lost, but will be other-
 E.
 s of load as set forth in

Price	Revenue
\$0.001	\$19,665
.0025	40,950
-----	60,500

per cent load factor.

sume that all of the 5,500
 s \$0.0016824 per kilowatt-
 turn and including \$2.21
 0 per horsepower or 2.387

of the Indians and of their neighbors if all would realize that they have common interests in making the irrigation project a success for the good of all; that accordingly the obtaining of this cheap power for the project's use in pumping and for farms, etc., is highly desirable; and in fact that it is unthinkable that the opportunity to get it shall not be availed of. This does not mean, as some friends of the Indians may have feared, that the Indian Bureau does not recognize fully the rights of the Flathead Indian Tribe as the equitable owner of the power sites concerned. These rights are fully recognized and preserved and no precedent to the contrary can be set up from the disposition of this case. And further, while thus recognizing the tribal interest, the Indian Bureau also recognizes the rights and equities of individual members of the tribe as residents in and owners of land in the community chiefly to be benefited by the erection of the power project or projects including the Flathead irrigation project, dependent in part, as it is, on power at a reduced rate to supply water for irrigation and other purposes.

Accordingly, we urge the Secretary of the Interior and the Federal Power Commission in granting a license for site No. 1 to either of the applicants, to insert in said license conditions for the reserving to the United States Government for the use and benefit of the Flathead irrigation project of 15,000 horsepower of electric power substantially as set forth in paragraphs A, B, D, E, K, L, and N of the Rocky Mountain Power Co.'s memorandum of February 17, 1927, as amended December 30, 1928, by agreement with the Flathead irrigation district, and on the terms and conditions therein stated. See Exhibit 13 of Flathead irrigation district, intervening party to the proceedings.

VIII. THE FOUR OTHER FLATHEAD POWER SITES.

It is the task of the Indian Bureau to secure all possible advantages to the Indians while preserving the interests of the public. Hence, the fullest possible development of the Flathead sites would seem to be desirable from the standpoint of the Indians' interests.

Applicant Wheeler has applied for a preliminary permit for all five sites but is not ready to apply for a license to proceed with any immediate development. Applicant Rocky Mountain Power Co., on the other hand, has applied for a license for immediate development of site No. 1, and for a preliminary permit for the other four sites, but it stated in the hearings it could not tell when, if at all, it would develop these four sites.

In view of the immediate and financial advantage to the Indians in the development of site No. 1 by the Rocky Mountain Power Co., provided an adequate rental basis can be agreed upon, the Indians' interest would seem to be secured by the issuance of such a license for site No. 1. If site No. 1 should be thus licensed to this applicant, the Indian Bureau would hope that a preliminary permit for one or more of the other four sites for a limited period might also be issued to applicant Wheeler, so that if he can be successful in bringing new industries to the Flathead neighborhood, as he hopes, the chance may be given him to do so. It is the Indian Bureau's understanding that the license for site No. 1 would have in it an article that will provide for

Flatland power applications— analysis of power features for site No. 1

Estimates		Actual		Indian Office adaptations	
Wheeler's estimates		Montana Power Co. System—Actual		Rocky Mountain Power Co.	Wheeler's
With dredging of outlet, 6,400.				With dredging if required, 5,410.	With dredging (as estimated, 6,000; as adjusted, 5,410.
175 feet.		Volta plant, 74 per cent.		175 feet.	175 feet.
Calculated on effective head, 87½ per cent.		Company average for last 5 years, 61 per cent.		87½ per cent.	87½ per cent.
100 per cent.				100 per cent.	100 per cent.
150,000		1926, 227,760 1/2		150,000	150,000
112,500		1926, 245,812 1/2		112,500	112,500
105,000		1926, 233,700; 1926, 217,467 1/2		As estimated, 105,000.	As estimated, 105,000.
78,750		1926, 175,300; 1926, 163,100 1/2		As adjusted, 95,000.	As adjusted, 95,000.
680,000,000		Actual kilowatt-hours generated, 1926, 1,375,238,770; 1926, 1,594,078,101.		As estimated, 680,000,000.	As adjusted, 621,150,000.
		280,316 1/2			
		156,057 1/2			
124,000		83 per cent (1926 company report)		124,000	As estimated, 124,000.
91,500				72,750	As estimated, 91,000.
105,000	70 per cent.	233,700		60,500	105,000
170,000		327,750 71 per cent.		150,000 53 per cent.	150,000 as estimated, 70 per cent.
48,811,830		1926 company report, \$27,626,333.37; 1927 company report, \$28,374,074.21		\$7,535,900 1/2	\$8,811,830.
\$83.02		Based on average output: 1926, \$127.04; 1927 investment cost, 1928 capacity, \$124.41		\$93.85	As estimated.
\$111.69		Based on average output: 1926, \$160.39; 1927 investment cost, 1928 capacity, \$161.68.		\$125.13	As estimated.
					As adjusted.
\$04,080	1.5 per cent.				\$81.92
67,000	0.5 per cent.	1.39 per cent, 0.250 mill. 1	\$381,560.62		93.76
158,910	1 per cent.	0.44 per cent, 0.097 mill. 1	132,701.83		141.89
158,910	1.5 per cent.	2.81 per cent, 0.561 mill. 1	776,864.06	\$1,500,181.73	123.68
	3 per cent.	0.75 per cent, 0.150 mill. 1	206,015.00		
424,847	0 per cent 1/2	13.81 per cent (1.007 mills, 1,103,088.15 (8 per cent return)	2,210,106.61		
211,503	3.03 per cent 1/2	(1.176 mills, 2,722,370.85 (5.81 per cent excess)	1,614,352.36		
635,100				601,320	8 per cent 1/2
					701,916.40
679,680	16.53 1/2 per cent.	10.23 per cent, 3.873 mills, 3,825,459.00	5,325,610.73	14.30 per cent.	1,320,854.30
68,000	1.31 per cent, 105,000 horsepower at \$1.125				
68,000					
215,680	17.87 per cent 1/2				
\$13.67		Return, at 8 per cent.	17.72	\$13.50	As estimated.
		Excess at 5.81 per cent.	7.72		As adjusted.
\$18.49		Return, at 8 per cent.	21.61	\$17.85	As estimated.
		Excess, at 5.81 per cent.	10.29		As adjusted.
\$15.00				\$15.00	Including rentals to Indians, \$2.43 per horsepower (as estimated), \$15. For settlers, 10.20 per horsepower (as estimated).
\$20.00				\$20.80	As estimated, 1.94 mills.
2.14 mills		Return, at 8 per cent, 2.628 mills.	3.673 mills	2.61 mills.	As adjusted, 2.13 mills.
2.28 mills		Excess, at 5.81 per cent, 1.176 mills			As estimated, 2.28 mills.

1 Changing company's figures by deducting development cost \$162,100 and adding dredging cost, \$100,000.
2 Cost per kilowatt-hour generated.
3 All taxes.

4 Reduced.
5 Wheeler's return is 9.03 per cent.

1,371,000 kilowatt-hours generated 1926, 1,684,078,101; kilowatt-

NOTE: No allowance is here included for Thompson Falls added profit to Montana Power Co. Commission.

This will be under regulation of Montana Public Service Commission. 1934 3, Dec. 15, 21 2. (16)

Flathead power applications - analysis of power features for site No. 1

Factors	Estimates		Actual
	Rocky Mountain estimates	Wheeler's estimates	
Capacity of reservoir, 70 per cent of the lake	Without dredging of lake outlet, 5,400	With dredging of outlet, 6,000	
Static head	185 feet	175 feet	
Effective head	Calculated on static head, 70 per cent	Calculated on effective head, 87 1/2 per cent	Volta plant, 74 per cent
Overall efficiency	65 per cent	100 per cent	Company average for last 5 years, 91 per cent
Installation:			
Horsepower	150,000	150,000	1928, 327,750 ¹
Kilowatts	112,500	112,500	1928, 245,812 ²
Average output:			
Prime, horsepower	68,600	105,000	1928, 233,700; 1929, 217,467 ²
Prime, kilowatts	51,000	78,750	1928, 175,300; 1929, 161,100 ²
Average output, kilowatt-hours	416,000,000	680,000,000	Actual kilowatt-hours generated, 1926, 1,376,203,770; 1928, 1,781,078,101
Actual output:			
Horsepower			209,316 ²
Kilowatts			156,987 ²
Peak load of plant on basis of 83 per cent annual load factor:			
Horsepower	82,000	125,000	83 per cent (1926 company report)
Kilowatts	61,500	91,700	
Annual capacity factor based on installation	43 per cent	70 per cent	53,700
Total investment cost, site No. 1	\$7,917,500	\$8,811,800	1926 company report, \$7,626,433.37; 1927 company report, \$8,374,071.31
Investment cost per--			
Average prime horsepower	\$116.87	\$83.92	Based on average output: 1926, \$127.04; 1927 investment cost, 1928 capacity
Average prime kilowatts	\$155.87	\$111.80	Based on average output: 1926, \$160.39; 1927 investment cost, 1928 capacity
Annual generating cost site No. 1 (including return):			
Operating expenses	\$30,000	\$132,177.45	1.39 per cent, 0.280 mill, ³ \$63,566.52
Repairs	63,000	41,050.05	0.41 per cent, 0.057 mill, ³ 132,701.83
Overhead expenses	156,910	88,118.25	2.81 per cent, 0.561 mill, ³ 736,867.36
Taxes, insurance, etc.	158,930	264,351.30	0.75 per cent, 0.150 mill, ³ 266,045.00
Depreciation, obsolescence			
Amortization			
Return on investment--			
Bond interest	421,867	528,709.80	13.81 per cent (1.007 mills, 1,103,688.15 (8 per cent return)
Net	211,923	267,378.00	(1.175 mills, 2,722,370.85 (5.81 per cent excess)
	635,800	795,987.80	
Total	1,079,680	1,456,875	19.23 per cent, 3.873 mills, 3,825,450.00
Rentals (inflation)	68,000	118,125	
Settlers allowances	68,000		
Revenue or generating cost, including rentals (including return)	1,215,680	1,575,000	
Annual generating cost, including return and excluding rentals:			
Per horsepower year	\$15.53	\$13.57	(Return, at 8 per cent
Per kilowatt year	\$21.17	\$18.40	(Excess, at 5.81 per cent
Annual generating cost, including return and rentals:			
Per horsepower year	\$17.88	\$15.00	(Return, at 8 per cent
Per kilowatt year	\$23.81	\$20.00	(Excess, at 5.81 per cent
Operating cost per prime kilowatt-hour only, excluding rentals	2.42 mills	2.11 mills	(Return, at 8 per cent, 2.688 mills
Operating cost per prime kilowatt-hour only, including rentals	2.72 mills	2.28 mills	(Excess, at 5.81 per cent, 1.175 mills)

¹ Changing company's figures by deducting development cost \$102,100 and adding dredging cost, \$160,000. ² (b) ³ (c) ⁴ (d) ⁵ (e) ⁶ (f) ⁷ (g) ⁸ (h) ⁹ (i) ¹⁰ (j) ¹¹ (k) ¹² (l) ¹³ (m) ¹⁴ (n) ¹⁵ (o) ¹⁶ (p) ¹⁷ (q) ¹⁸ (r) ¹⁹ (s) ²⁰ (t) ²¹ (u) ²² (v) ²³ (w) ²⁴ (x) ²⁵ (y) ²⁶ (z) ²⁷ (aa) ²⁸ (ab) ²⁹ (ac) ³⁰ (ad) ³¹ (ae) ³² (af) ³³ (ag) ³⁴ (ah) ³⁵ (ai) ³⁶ (aj) ³⁷ (ak) ³⁸ (al) ³⁹ (am) ⁴⁰ (an) ⁴¹ (ao) ⁴² (ap) ⁴³ (aq) ⁴⁴ (ar) ⁴⁵ (as) ⁴⁶ (at) ⁴⁷ (au) ⁴⁸ (av) ⁴⁹ (aw) ⁵⁰ (ax) ⁵¹ (ay) ⁵² (az) ⁵³ (ba) ⁵⁴ (bb) ⁵⁵ (bc) ⁵⁶ (bd) ⁵⁷ (be) ⁵⁸ (bf) ⁵⁹ (bg) ⁶⁰ (bh) ⁶¹ (bi) ⁶² (bj) ⁶³ (bk) ⁶⁴ (bl) ⁶⁵ (bm) ⁶⁶ (bn) ⁶⁷ (bo) ⁶⁸ (bp) ⁶⁹ (bq) ⁷⁰ (br) ⁷¹ (bs) ⁷² (bt) ⁷³ (bu) ⁷⁴ (bv) ⁷⁵ (bw) ⁷⁶ (bx) ⁷⁷ (by) ⁷⁸ (bz) ⁷⁹ (ca) ⁸⁰ (cb) ⁸¹ (cc) ⁸² (cd) ⁸³ (ce) ⁸⁴ (cf) ⁸⁵ (cg) ⁸⁶ (ch) ⁸⁷ (ci) ⁸⁸ (cj) ⁸⁹ (ck) ⁹⁰ (cl) ⁹¹ (cm) ⁹² (cn) ⁹³ (co) ⁹⁴ (cp) ⁹⁵ (cq) ⁹⁶ (cr) ⁹⁷ (cs) ⁹⁸ (ct) ⁹⁹ (cu) ¹⁰⁰ (cv) ¹⁰¹ (cw) ¹⁰² (cx) ¹⁰³ (cy) ¹⁰⁴ (cz) ¹⁰⁵ (da) ¹⁰⁶ (db) ¹⁰⁷ (dc) ¹⁰⁸ (dd) ¹⁰⁹ (de) ¹¹⁰ (df) ¹¹¹ (dg) ¹¹² (dh) ¹¹³ (di) ¹¹⁴ (dj) ¹¹⁵ (dk) 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Note: No allowance is here included for Thompson Commission.

FLATHEAD POWER DEVELOPMENT

47

regulation of the lake under such reasonable rules and regulations as the Federal Power Commission may prescribe for the fullest practicable utilization of the waters of Flathead River; and that under this protection, applicant Wheeler could successfully develop the lower sites. Such an arrangement would assure an early income to the Indians from site No. 1 and would also exploit the possibilities of the other sites for industrial development, which would furnish opportunities for development, the opening of a local market, etc.

So far as concerns the fixing of a rental to the Indians for these lower sites, the Indian Bureau believes that the facts concerning each site can best be considered separately at the time of the issuance of a license for it, and that the rental can then be fixed for it as a separate proposition following the precedent and the experience gained in the way that site No. 1 works out.

CONCLUSION

In concluding this memorandum on the Flathead power development, we are pleased to state that it seems possible at last to solve this complex problem which has been so fraught with disputes for such a long time, and do it to the satisfaction of all of the interests involved. Upon analysis it has developed that the advantages and resulting low costs of this power site will make it possible (1) to give the developing licensee a full return upon the investment; (2) to considerably increase the Indian rental beyond the offers made or even the expectations of the Indians; (3) to provide for the full amortization of the power development cost during the 50-year period of the lease and at the close of the lease its return to the Government for the Indians as a going concern fully paid for, then to be released or otherwise disposed of as may then seem best; (4) to accommodate the irrigation project by the granting in full of its request for cheap power; (5) should the license be granted to the Rocky Mountain Power Co., to make available from the Flathead development itself and from the beneficial effects therefrom upon the Thompson Falls plant of the Montana Power Co. certain further amounts which under the regulation of the Montana Public Service Commission will be available for rate reductions for the benefit of the general consumers of the latter company; (6) should the license be granted to Mr. Wheeler, to make available from the Flathead development advantages to the Indians and other people of that section from the introduction of new industries, with resulting opportunities for new employment, new markets, etc.; (7) to establish a method of calculation of Indian rentals for power sites; (8) to provide for proper regulation by the Federal Power Commission in conjunction with the State public service commission that is involved, of the licensee that makes the development.

Respectfully submitted.

J. HENRY SCATTERGOOD,
Assistant Commissioner.

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Art Comm'n
B.A.*

71st Congress }
2d Session }

SENATE

{ DOCUMENT
No. 153 }

FLATHEAD POWER DEVELOPMENT

MEMORANDUM
ON THE DEVELOPMENT OF
FLATHEAD RIVER POWER SITES, MONTANA



PRESENTED BY MR. WALSH, OF MONTANA
MAY 23, 1930.—Ordered to be printed with an illustration

UNITED STATES
GOVERNMENT PRINTING OFFICE.
WASHINGTON: 1930

6. FLATHEAD POWER DEVELOPMENT

FLATHEAD IS FIRST IMPORTANT POWER SITE ON INDIAN LANDS

The Flathead power development is the first important one upon an Indian reservation wherein power is the controlling factor. In the Coolidge Dam in Arizona power has, of course, been developed, but there it was only as an incidental factor in connection with a great irrigation and reclamation project. This Flathead case is therefore of great importance to the Indians in establishing principles. It has attracted wide attention, and at the hearings two United States Senators and two Congressmen addressed the commission. The Federal Power Commission itself is newly constituted and it has a new executive secretary and new general counsel. Accordingly it would seem unusually appropriate that special care be taken to develop the factors for regulation under the Federal water power act and upon terms satisfactory to the Secretary of the Interior, and for the preparation of a model lease.

In an ordinary power site lease under the Federal water power act there would be only two parties having an interest in the financial results of operating, viz, the successful licensee and the general consuming public. In such a case the power site is either purchased outright by the licensee, and its cost made a part of the developmental cost of the project, or if on Government lands other than Indian, the title to the site remains vested in the United States Government, and the site is leased for 50 years for the nominal fees charged by the Government by way of rental. In this latter case the licensee is saved the necessity of using any capital in the securing of the site.

In the case of a power development upon Indian lands, the title to the site also remains vested in the United States Government but in trust for the Indian tribe; and the site is rented for the 50-year period of the lease to the licensee. Thus the licensee is here also saved the necessity of using any capital in the acquiring of the site, and in lieu thereof pays an annual rental to the Government for the benefit of the Indians. Thus in an ordinary Indian case there are three interests to be adjusted, viz, the successful licensee, the United States for the Indian tribe, and the general consuming public.

In the particular case of the Flathead there is a fourth interest, viz, a special part of the consuming public consisting of (1) individual Indian land holders and (2) white settlers who have bought Indian lands, which two groups together comprise the Flathead irrigation project. It is this irrigation project that is referred to in the legislation already referred to. Thus in the case of Flathead, the Federal Power Commission and the Secretary of the Interior are called upon to make an adjustment between four interests, viz, (a) the successful licensee, which is, of course, entitled to the usual return of 8 per cent under the practice of the Montana Public Service Commission; (b) the Indian tribe, which is entitled to a fair rental for the use of the power sites; (c) the particular part of the public forming the irrigation project, and to which certain low rates for power up to 15,000 horsepower have been promised by one applicant as further explained below; (d) the general consuming public.

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FLATHEAD POWER DEVELOPMENT

9

enable the project in addition to the annual rental to the Indians to pay itself off during the lease and to be turned over to the Government for the Indians as a going concern, to be at that time retained or released as may seem best.

SUGGESTED METHOD FOR FIXING RATE OF INDIAN RENTALS WHICH ARE FIRST SET UP FOR 20 YEARS WITH REVISIONS THEREAFTER EVERY 10 YEARS

Under section 6 of regulation 14 of the Federal Power Commission it is provided that Indian rentals "may be readjusted at the end of 20 years after the beginning of operation and at periods of not less than 10 years thereafter in a manner to be prescribed in each license." This regulation thus calls for a prescription for calculating the Indian rental. The Indian Bureau accordingly submits in this memorandum a suggested pro forma method of making this calculation to be used (1) in fixing the original rental for the first 20-year period; (2) for later readjustments; (3) for each additional Flathead site as and when developed.

The suggested method consists of determining (1) the estimated and later the actual average annual generating cost, including return but excluding rental per horsepower year; (2) the fixing by the Federal Power Commission of a fair wholesale bus bar price for the current generated at each Flathead site. In the case of Wheeler application, the applicant himself has proposed the single price of \$15, which it would seem in justice to the value of the site and the interests of the Indian could not be made lower. In the case of the application of the Rocky Mountain Power Co., the commission would have to determine in the light of all the circumstances what would be a fair wholesale intercompany price at the bus bar of each site, of electricity generated and sold by Rocky Mountain Power Co. to its parent company, Montana Power Co. (3) The difference between the annual average generating cost so found and the intercompany price so determined represents the economic rental value of the site, and should be divided between the Indians and the general public in proportion to their respective interests. This pro forma method of calculation would thus fix the rate of rental for the period of the lease in question. The amount of rental based upon this rate will then be calculated and paid to the United States for the account of the Indian tribe under accounting supervision of the Federal Power Commission, said amounts to be found by using this rate upon the monthly measured kilowatt-hours generated at each plant. We suggest that payments of rentals should be made preferably monthly, but certainly at least quarterly.

PRO FORMA METHOD OF FINDING ANNUAL GENERATING COST

To determine item (1) above of fair annual average generating cost, the method suggested is set out in the accompanying comparative table marked "Flathead Power Applications--Analysis of Power Features for Site No. 1." (See table following p. 48.) In this table are set out in parallel columns: (1) The estimates of the two applicants; (2) the actual showing for the year 1926 of the Montana Power Co., as taken from its report to Federal Power Commission; (3) Indian

FLATHEAD POWER DEVELOPMENT

the 1926 cost figures and adding the \$316,483 added profit to the system shows the following:

Generating cost, 1926

	Mills per kilowatt-hour	Per horsepower	Per kilowatt
Montana Power Co. system: 8 per cent return	2.625	\$17.72	\$23.83
0.84 per cent excess	1.175	7.72	10.29
Total, 11.84 per cent	2.873	25.44	33.92
Montana Power Co. system with Thompson Falls added production because of Flathead storage:			
8 per cent return	2.625	17.72	23.83
0.66 per cent excess	1.840	8.80	11.72
Total, 14.99 per cent	4.059	26.52	35.55

Thus Thompson Falls's increase because of Flathead storage would add \$1.08 per horsepower-year to the Montana Power Co.'s system on the basis of the 1926 figures and would increase the return, including excess, to 14.99 per cent. Presumably this would be available for rate reductions to consumers. (See p. 1542.) It is not claimed here as available for the Indian rental, but, as will shortly be shown, it is an element that must enter into the calculation of the interests of the general public and of the irrigation project in particular.

VI. INDIAN RENTAL

We are now in position to assemble the elements already considered and to develop what they reveal to be available for (1) the company's return, (2) Indian rental, (3) general consumers, and (4) the special consumers in the irrigation projects. In order that full justice be done to the Indians, it is proposed here to consider the case first as if there were only the first three parties and no irrigation project, and thus to fix the proper intercompany price for the pro forma calculation of the Indian rental; then secondly to make such slight modification in said intercompany price as may be necessary to provide under existing conditions the reservation by the United States for the irrigation project of 15,000 horsepower at the prices agreed upon in advance by one of the applicants.

If the license is given to applicant Wheeler, and if the lake regulation permitted 6,000 cubic feet per second of water, as he estimated, there would then be a margin of \$2.33 per horsepower-year between his price to consumers of \$15 and his cost as adjusted to an 8 per cent return and 0.6 per cent amortization charge, of \$12.67. Out of this the Indians and the irrigation project would have to be provided for. If, however, only 5,440 cubic feet per second of water is allowed in the lake regulation, Wheeler's prime power capacity will be reduced to 95,000 horsepower, and his cost will be increased to \$14 per horsepower. There would then be a margin of only \$1 per horsepower-year between his price to consumers of \$15 and this \$14 cost. Manifestly, so far as Indian rental goes, Wheeler's proposition of selling power at \$15 per horsepower can not compare with applicant Rocky Mountain Power Co.'s intercompany price of \$18 in advantage to the Indians. Furthermore, it is to be remembered, as already shown,

FLATHEAD POWER DEVELOPMENT

that applicant Wheeler's high cost of financing and overhead and his high operating estimates penalize him about \$1.70 per horsepower-year when compared with the other applicant on the same basis of capacity, and which would otherwise be available at least in part for Indian rental.

If the license is given to Rocky Mountain Power Co., we have the following assembled elements:

Average annual generating cost

	Per horse-power year	Per kilo-watt-hour (mills)
Rocky Mountain Power Co.'s estimate, at 8 per cent return excluding rentals	\$15.88	2.42
Rocky Mountain Power Co.'s estimate as adjusted, at 8 per cent return, excluding rentals	13.39	2.04
Rocky Mountain Power Co.'s estimate, at 8 per cent return, including Indian rentals	15.88	2.56
Montana Power Co. system, 1926:		
8 per cent return	17.72	2.688
6.84 per cent excess	7.72	1.175
Total, 12.94 per cent	25.44	3.873
Montana Power Co. system, 1926, with Thompson Falls additional power added:		
8 per cent return	17.72	2.688
6.99 per cent excess	8.80	1.340
Total, 14.90 per cent	26.52	4.028

From the above it is to be seen that—

The adjusted estimated average generating cost for 80,500 horsepower including 8 per cent return at Flathead (\$13.39 per horsepower) is:

- (1) \$2.49 per horsepower less than applicant's own estimate of \$15.88 at 8 per cent return and excluding rentals, for 68,000 horsepower.
- (2) \$4.49 per horsepower less than applicant's own estimate of \$17.88 (round figures \$18) at 8 per cent return and including Indian rental and irrigation cost, at 68,000 horsepower.
- (3) \$4.33 per horsepower less than Montana Power Co.'s system generating cost of 1926 at 8 per cent return.
- (4) \$12.05 per horsepower less than Montana Power Co.'s system generating cost of 1926 at actual return and excess.
- (5) \$13.13 per horsepower less than Montana Power Co.'s system generating cost of 1926 with Thompson Falls additional power due to Flathead storage added at actual return and excess.

As already pointed out, the difference between the intercompany wholesale price and the annual average generating cost represents the economic rental value of the site and this should be divided between the Indians as a tribe and the general public interests (of which of course the Indians as individuals also form a part) in fair proportion. In other words, the Indians have the ownership of the five sites and of that portion of the Flathead Lake that lies within the reservation, while the State of Montana owns the remainder of Flathead Lake and the right to control the use of the waters in the lake and river over and above the prior rights of the Indians. Thus both the Indians and the general public have rightful interests in the

FLATHEAD POWER DEVELOPMENT

Flathead power development. Hence it would seem fair that whatever economic rental value this site has should be divided either approximately half to the Indians as a tribe and half to the public, or if it is really possible to determine their respective interests more exactly, that this rental value should be apportioned pro rata between them. In this connection it may be said that there are now being made in the Federal Power Commission and in the General Land Office studies of the Indian tribal lands and of Indian allotment lands, and that these seem to indicate that the Indian interests in the power development are 46.5 per cent and the non-Indian interests 53.5 per cent. However, as these studies appear to be somewhat tentative and perhaps open to certain legal uncertainties relating to the easements upon lands bordering on the lake, it seems best for the purposes of this memorandum to assume 50 per cent of the economic rental value of the site as belonging to the Flathead Indians as a tribe, and the other 50 per cent as belonging to the general public of the State of Montana. It is perhaps superfluous to add that the Indian rental will be paid to the Federal Government in trust for the Indians, and the public's interest will be under the care and protection of the Montana Public Service Commission in its regulation of the Rocky Mountain Power Co. and the Montana Power Co.

Applying the above, we have:

	Per horse-power	Round figures
Intercompany price as fixed by applicant	\$17.00	\$18.00
Average annual generating cost at Flathead	12.39	12.39
	4.61	4.61

One-half for Indians would equal, say, \$2.25 per horsepower as the proper rental, as calculated from an annual average of 80,500 per horsepower.

Another slightly more conservative way of estimating the economic rental value of Flathead site No. 1 would be to use as our intercompany wholesale price the average annual generating cost including the same basis of 8 per cent return of the Montana Power Co. system.

Thus we have:

	Per horse-power
Intercompany price, using cost of Montana Power Co. system	\$17.72
Average annual generating cost at Flathead	12.39
	4.33

One-half for Indians would equal \$2.16½ per horsepower as the proper rental, as calculated from an annual average of 80,500 horsepower.

Using the mean of these two calculations, we have \$2.21 per horsepower as a fair rental for the Indians.

If we take \$2.21 per horsepower as Indian rental we have \$15.60 per horsepower, i. e., 2.387 mills per kilowatt-hour as the adjusted average generating cost, including 8 per cent return and Indian rental. This price of 2.387 mills per kilowatt-hour for an intercompany price would

FLATHEAD POWER DEVELOPMENT

135

pay to Rocky Mountain Power Co. a return of 8 per cent and provide all the operating expenses including depreciation of 2 per cent and amortization charge of 0.6 per cent, which will fully amortize the investment in 50 years, if invested at 4 1/2 per cent, and pay an annual rental to the Indians of \$2.21 per horsepower per year. All of the public's share above referred to would under this basis through the low intercompany price be transferred from the Rocky Mountain Power Co. to the Montana Power Co. and be under regulation in that company. If, however, the higher intercompany price of 2.75 mills per kilowatt-hour, (\$18 per horsepower) were utilized the public's share would remain in the Rocky Mountain Power Co., also under regulation. There would be no difference, so far as the public interest is concerned, because in the proposed license it will be required that the securities of the Rocky Mountain Power Co. shall be regulated by the Federal Power Commission and that no bonus stock will be possible, and that all the equity-carrying common stock of the Rocky Mountain Power Co. shall be owned and be retained by the Montana Power Co. This will make possible complete regulation.

As has been shown the Indian rental for Flathead site No. 1 is obtainable only from the licensee, Rocky Mountain Power Co., and to the amount of one-half of the advantage of this site over the average of the Montana Power Co.'s system. However, the other one-half from the Rocky Mountain Power Co. accruing to the public will be added to the existing excess of the Montana Power Co. and be available under regulation for the general consumers. Thus, combining the figures for the two companies, with such a price of 2.387 mills per kilowatt-hour after paying the Rocky Mountain Power Co. a 8 per cent return and the Indians' \$2.21 per horsepower, there would still be available for the irrigation project and general consumers under regulation the following:

	Per horsepower
With 8 per cent return only	\$2.18
With 8 per cent return and present excess	9.90
With 8 per cent return and excess, and including additional power at Thompson Falls due to Flathead	10.98

The above figures apply to generation alone. If the return on the whole system were limited under regulation to 8 per cent, the possible rate reductions might be still further increased, as already indicated. It is especially to be noted that the above figures, including \$2.21 per horsepower to the Indians, make the estimated cost to the applicant less than its own estimated cost at Flathead by \$1.88 per horsepower, or 0.288 mills per kilowatt-hour. Thus if it were to its advantage to lease Flathead under its own estimates rather than to develop another one of its smaller and less desirable sites, it remains so still even with this higher rental to the Indians.

Another opportunity to compare the low cost of current at Flathead with general costs for current, resulting in a difference in favor of an increased Indian rental, is found in the following extract from the hearings (p. 1549):

Mr. Sparracoop. There is no more virtue in that figure of a dollar to the Indians per horsepower? There is no final virtue, I would say, because you offered it?

Mr. Cockman (chief engineer). That figure, I can explain, was a figure which was made because in our—without making any detailed estimate as to what

36 FLATHEAD POWER DEVELOPMENT

we could afford to pay for this particular site we said general power at a site like this may be worth \$20 a horsepower. We are selling what at Great Falls and used that as a general figure without making any estimates, and that a dollar a horsepower—that is, 5 per cent of that probably would not be a ruinous figure.

Mr. Cochrane was here speaking "by the book" when he spoke of "power like this being worth \$20 a horsepower at a site like this." As a matter of fact the system generating cost of current sold at their plants, including an 8 per cent return on the company's own valuation, has been shown above to have been, in 1926, \$20.92; if the 5.34 per cent excess is added it was \$9.11 per horsepower more, or a total of \$30.03 per horsepower on all system sales.

Now if this general figure of "\$20 per horsepower" is set over against the \$13.39 cost conservatively estimated to be the cost, including 8 per cent return, at Flathead site No. 1, it would seem proved from Mr. Cochrane's own statement that \$2.21 for the Indian rental could amply be afforded without reducing at all the company's present high basis of earnings.

Another slant on the "nominal" offer of \$1 per horsepower made without regard to the site's earning power is found in its origin in the nominal charge of \$1 per horsepower formerly made by the United States Forest Service, but now no longer in use.

This following developed in the hearings (p. 1549-1550):

Mr. KERR (when Mr. Cochrane was on the stand). Mr. Cochrane did not make that price (the \$1 per horsepower rental). I made that price. I will tell you how I made it. It was the forest rule.

Mr. SCATTERGOOD. But that rule is no longer in existence.

Mr. KERR. It was at that time, and we are paying at that rate now. (He refers to some other plants of the system on forest lands.)

Mr. SCATTERGOOD. You have passed from that time, have you not?

Mr. KERR. Yes. They predicated that rule.

Mr. SCATTERGOOD. Because it was not an adequate rule?

Mr. KERR. That is what it was based on.

Mr. SCATTERGOOD. Thank you very much for enlightening us on that, Mr. Kerr. I thought it was not based on any calculation of the earning power of this site, because it is, of course, inadequate in that respect.

The next day the hearings proceeded (pp. 1615-1617):

Mr. SCATTERGOOD. Mr. Cochrane, you heard Mr. Kerr mention that the \$1 a horsepower proposed to be paid to the Indians for rental had been taken from the scale that had been used by the Forestry Department. Do you know anything about that?

Mr. COCHRANE. Well, that refreshes my memory on the subject a little bit, and I presume that that was where the figure originated, but as for our average—that is, in assuming that figure, we assumed that it was not based on detailed calculations as to how much we thought this site was worth or how much we could be forced to pay for it, or anything of that kind; it was just a fair nominal figure taken without analysis.

Mr. SCATTERGOOD. That is just what I thought it was. Now, in the matter of this Forestry scale, do you know whether that scale is still in existence in the Forestry Department?

Mr. COCHRANE. I don't know for sure; no.

Mr. SCATTERGOOD. Do you know anything about it?

Mr. COCHRANE. No.

Mr. SCATTERGOOD. You don't know whether I am right in the impression that I gained from the head of the Forestry Service that it no longer exists?

Mr. COCHRANE. I don't know of my own knowledge; no.

Mr. SCATTERGOOD. Well, do you know whether or not, when it was in existence, it measured anything on the basis of actual values of sites, or was it, just as you say, nominal?

Mr. COCHRANE. That is my impression, that it was nominal, arbitrary.

Mr. SCATTERGOOD. Would there have been any particular reason for the United States Government on public lands to charge anything but a nominal

FLATHEAD POWER DEVELOPMENT

37

value. There would be no object in the Government doing it, would there? I mean nominal rental when I say value.

Mr. KELLY. Five per cent of the gross value of the product is hardly nominal.

Mr. COCHRANE. I think perhaps "arbitrary" should be used instead of the word "nominal" in this computation.

Mr. SCATTERGOOD. What I meant to say was wouldn't it be a fact that whatever charge was made by the United States Government would have to be carried through into the rate and be loaded upon the consumers.

Mr. COCHRANE. In the same way that any other charge would be; yes, sir.

Mr. SCATTERGOOD. So that in public lands and forestry cases, where there is no special ownership involved as there is in the case where Indian property is held in trust, there is no reason for the Government to make the consumer pay anything more than the real fair cost and the proper return to the company?

Mr. COCHRANE. I wouldn't think there would be any object in the Government requiring the customer to pay more than a fair charge in any event.

Mr. SCATTERGOOD. That is what I think, too, and I want to just bring it out, that so far as that nominal charge is concerned, it was nominal and was not meant to in any way measure the value of the site; and as a matter of fact that scale no longer exists.

From the above tracing of the origin of the \$1 offer it is apparent that the company was working on the assumption that the basis of rental for an Indian site might be the same as for forest or public lands, overlooking the distinction between the Government trust for the Indians in the first case and outright ownership by the Government in the second. The company was accustomed to paying the nominal \$1 per horsepower rental for the forest lands, and apparently assumed that this would be considered sufficient for Indian lands. Admittedly as Mr. Cochrane says, the company "did not base its offer on detailed calculations as to how much we thought this site was worth."

It is this lack of "detailed calculations" as to what the site is really worth to the Government in trust for the Indians that the Indian Bureau is now attempting to supply in this memorandum, and we believe a sound basis is found to be furnished for the rate of \$2.21 per horsepower in the figures above presented on the basis of 30,500 horsepower.

It may also be added that so far as the Indians are concerned from a direct financial standpoint alone, the above rental payments would lie to the advantage of the Rocky Mountain Power Co. The general consumers of the State would also profit more in possible rate reductions from the Flathead development than would be the case if the license were given to Mr. Wheeler. On the other hand, Mr. Wheeler's plans, if successful, would bring real advantages of other kinds through the introduction of new industries, new employment, new markets, etc.

MINIMUM RENTAL PAYMENTS

Another phase of Indian rental besides its rate remains to be considered.

Under Regulation 14, section 5 of the commission, it is provided that "The charge (for Indian rental) shall commence upon date license is issued."

There will necessarily be a considerable period for construction before the power will be available and earnings begin. Both applicants estimate a construction period of three years. Mr. Wheeler will take longer to get started because he has not made preliminary borings. He will also have to complete his financing and marketing plans which will take some time. He will lose 1930 low-water season. Rocky Mountain Power Co., as already pointed out, has not only

FLATHEAD POWER DEVELOPMENT

made borings, but is ready to start a construction gang immediately to work, and hopes, if granted the license, to divert the Flathead River for building the foundation of the dam in the low-water season of 1930. It is also to be noted that Mr. Wheeler at this stage is applying only for a preliminary permit for all his sites, while Rocky Mountain Power Co. is applying for both preliminary permit for four sites, and license for site No. 1. Hence in Wheeler's case, rental to the Indians will be delayed; if Rocky Mountain Power Co. is given the license, a rental will begin immediately.

The basis of rental calculation and the rates for the first 20 years suggested above are upon the assumption of the actual development of the estimated prime power. The factors in the calculation are purposely conservative, and, as heretofore stated, the estimate will probably be exceeded over the 20-year period. However, a rental so calculated would clearly not be applicable to a long construction period when no income would be obtainable. Accordingly, the Indian Bureau would suggest that for said construction period, i. e., from the date of the license to the date when the first power from Flathead is sold, an arbitrary fair minimum amount be fixed in the license by the commission and the Secretary of the Interior, say at the rate of \$20,000 per annum.

If the license is granted to the Rocky Mountain Power Co., another consideration must also be provided against for the proper protection of the Indians. That is to provide that the Flathead plant shall not be used any more than any of the other plants as a "peak load plant" in the Montana Power Co. system. This means that it should and must be so operated as to develop at least its pro rata share of the system annual load factor, and not be used only at peak times and "starved" at other times. It is not to be expected that the merging of the Flathead plant into the full-load factor of the system can be obtained the first year, probably not for three or four years. It would therefore seem fair to suggest that in the license it be provided that from the date when the first power from Flathead is sold, the rate of \$2.21 per developed horsepower shall apply, but that the company be given time to develop its full-load factor at Flathead on the following basis of progressive minimums for the early years, viz:

First year, applicant shall operate Flathead at an annual load factor (calculated the same as for the system) of not less than 60 per cent, based on the actual peak for 15 minutes.

Second year, the same except of not less than 67½ per cent load factor.

Third year, the same except of not less than 75 per cent load factor.

Fourth year and thereafter at not less than the system load factor.

In case the load factors developed at Flathead should fall below these minimums, then rentals to be based at the \$2.21 rate on the minimums, the same as if they had been reached.

If Mr. Wheeler is given the license, it would seem from his own plans that he hopes to be able to start off immediately with his load more fully developed than on the usual company basis. He should, however, be required to pay progressive minimum rentals, and, after say the fourth year, be required to pay not less than 83 per cent of his full load, using there the same load factor as applies to the other applicant.

MONTANA POWER DEVELOPMENT

CAPITALIZED VALUE OF SITE NO. 1 BASED (1) ON ESTIMATED COSTS OF MONTANA POWER CO.'S VALUATION OF INTANGIBLES

The full annual earning power of site No. 1 for the Indians from Mr. Wheeler would be:

(1) $105,000 \times \$1.124 = \$118,125$ on the basis of 6,500 cubic feet per second of water.

(2) $95,000 \times \$1.124 = \$106,875$ on the basis of 5,415 cubic feet per second of water. Capitalizing these at 6 per cent (the return allowed the licensee) gives: (1) $\$1,476,532$; (2) $\$1,322,937$.

A similar calculation for Rocky Mountain Power Co. as adjusted gives: $\$7,500 \times \$2.21 = \$17,905$ per annum. Capitalizing this at 8 per cent (the return allowed the licensee) gives $\$2,237,500$. It is clear that on this basis the latter applicant is better for the Indians, on direct financial results.

Let us now make a further comparison with the Montana Power Co. system.

If this were a power development other than on Indian or public lands, the cost of site would be included in the preference cost of development allowed by the commission. For comparison let us add this to the estimated plant cost to find what the total investment cost per horsepower would be. We would have:

Estimated plant cost	\$7,555,400
Site, if purchased	223,812
Total	\$7,779,212

$\$7,779,212 \div 80,500 = \121.48 per horsepower as development cost. This compares with $\$127.04$ for the Montana Power Co. system in 1926, assuming that the company's own valuation of its generating plants at $\$27,626,333$ includes the values of power sites. Also it is to be seen that $\$121.48$ is very reasonable and is in fact low as compared to the great majority of power sites.

If, however, these company valuations do not include the values of the sites, then the values of the sites must be included in the company's "intangibles," which it describes as "water rights, contracts, franchises, etc." For purposes of comparison, let us now apply to the Flathead project the company's own valuation of these intangibles and so determine a figure comparable to the company's valuation set up, and find what per horsepower the site would be worth on this basis.

In the Montana Power Co. system the 1927 report shows:

Tangibles	\$5,651,432 = 67%
Water rights, etc.	\$2,682,233 = 32%
Total	\$8,333,665 = 100%

Assume the same proportion for Flathead.

Now the estimated plant cost at Flathead without any value for site is $\$7,555,400$. This is 47.8 per cent of $\$15,812,689$. 52.4 per cent of $\$15,812,689$ is $\$8,317,289$.

We then have:	
Tangible plant	\$7,555,400
Intangibles, including water rights, etc., would be	8,317,289
Total value would be	15,872,689

40

FLATHEAD POWER DEVELOPMENT

The development cost would then be: \$15,872,689 ÷ 80,500 horsepower = \$197.18 per horsepower.

Using the same operating ratio of 14.3 per cent including the 8 per cent return as is used in the Rocky Mountain estimate as adjusted, we would have:

Annual generating cost, including 8 per cent return.....	Per horsepower
As compared to.....	\$28.00
	13.39
Increase due to "Intangibles".....	14.61

On this basis of the company's own "watered" valuations, Flathead site No. 1 would show \$7.30, that is one-half of \$14.61 per horsepower for the Indians instead of the proposed \$2.21 per horsepower. Manifestly the company would not wish to see the Indians claim the same basis of valuation as it has used itself.

VII. THE FLATHEAD INDIAN IRRIGATION PROJECT, AND 15,000 HORSEPOWER FOR PUMPING AND OTHER USES

Early in this memorandum (p. 8) attention was called to the four interests involved in the Flathead power development, viz., (1) the company, which is entitled to its return of 8 per cent; (2) the Indian tribe, which is entitled to a fair rental for the power sites; (3) the general consuming public; (4) the special part of the public forming the irrigation project, being about 20 per cent Indian and 80 per cent white, and to whom have been promised by one of the applicants certain low rates for power up to 15,000 horsepower under certain restrictions.

Having considered the first three interests, we now turn to the fourth, the Flathead irrigation project.

Before considering the power features, however, it seems desirable at this point to insert a brief historical account of the Flathead Indian irrigation project with some comments on the water rights involved, which has been prepared by our counsel, Mr. Reeves:

HISTORY OF FLATHEAD IRRIGATION PROJECT

The Flathead Indian Reservation, Mont., embracing some 1,500,000 acres, was established in 1855 by treaty with the Confederated Flathead Tribes, being a part of the original area occupied and claimed by these Indians from time immemorial. The northern boundary of this reservation (from east to west) bisects Flathead Lake, a considerable body of navigable water some 30 miles long (north and south) by some 20 miles at its widest extremity, which is within the lower or south half of the lake and within the Indian reservation. The waters from this lake are discharged at its southern extremity into Flathead River, which traverses the reservation in a general southerly and westerly direction for a distance of some 60 miles or more. Without water for irrigation, the lands within this reservation are practically valueless for agricultural purposes and under a doctrine now well settled, the establishment of an Indian reservation, ipso facto also reserves for the Indians sufficient water for their needs for agricultural and other purposes. Of this paramount right the Indians can not be deprived by appropriation or application to beneficial use of such water by third parties. This remains true even though the application to beneficial use by third parties antedates such use of the water by the Indians themselves. As to this see *Winters v. United States* (204 U. S. 564), and *Conrad Investment Co. v. United States* (161 Fed. 829).

The reservation so established for these Indians remained practically intact until after the passage of the act of April 23, 1904. By this statute Congress directed that allotments in severalty be made to these Indians in accordance with the allotment laws of the United States and provided for the classification and disposal of the surplus or unallotted and unreserved lands for the benefit of

FLATHEAD POWER DEVELOPMENT

the Indians, under the homestead, mineral, and town site laws of the United States, at not less than the appraised value of such lands.

It appearing at an early date that some 135,000 acres within this reservation could be greatly enhanced in value by irrigation, of which approximately 78,000 acres could be furnished with water by gravity and the remainder by pumping, a comprehensive irrigation plan was inaugurated, which project has since been commonly known as the Flathead Indian irrigation project. In furtherance of the plans in connection with this work something over \$5,000,000, reimbursable funds appropriated by Congress have already been expended in order to supply these lands with water. With a view of giving timely warning of the intention of the Government in this matter "notices of appropriation" of the waters of Flathead River, including of course, those from Flathead Lake, were duly filed by the Reclamation Service in behalf of the United States and placed of record pursuant to the statutes of the State of Montana. Such action was first had early in the year 1909 and renewal or additional notice filed from time to time in compliance with the laws of the State down to and inclusive of the year 1927. As such notices will show, the purposes for which said water was appropriated were for the irrigation of lands within the Flathead Indian Reservation, for domestic uses, and for developing power for pumping and other purposes. In furtherance of these plans under authority of section 22 of the act of March 3, 1909 (35 Stat. L. 795), some 2,500 acres of land chiefly valuable for power-site purposes along Flathead River within the reservation, were withdrawn from sale, entry, or any other form of appropriation. The most valuable of the power sites along this river, within the Indian reservation, commonly referred to as site No. 1, lies 4 miles below where Flathead Lake discharges into the river of the same name. With a view of utilizing the lake as a reservoir in connection with its plans for the development of power in connection with this project, by the act of March 3, 1911 (36 Stat. L. 1066), as amended August 24, 1912 (37 Stat. L. 527), Congress directed—

"That an easement in, to, and over all lands bordering on or adjacent to Flathead Lake, Montana, which lie below an elevation of nine feet above the high-water mark of said lake for the year nineteen hundred and nine, is hereby reserved for uses and purposes connected with storage for irrigation or development of water power, and all patents hereafter issued for any such lands shall recite such reservation."

Actual development of power by the Government at site No. 1, or elsewhere within the Flathead Reservation, has not yet been had, although considerable sums have been expended and much preliminary work done with that end in view. Subsequent to the passage of the Federal water power act of June 30, 1920 (41 Stat. L. 1063), it was suggested that the power possibilities at Flathead be developed by outside interests rather than by the Government. Accordingly, an item in the act of March 7, 1928 (45 Stat. L. 212-213) authorized the Federal Power Commission upon terms satisfactory to the Secretary of the Interior to issue licenses "for the use, for the development of power sites on the Flathead Reservation and of water rights reserved or appropriated for the irrigation projects."

It was also provided that the rentals from such licenses for the use of Indian lands should be deposited in the Treasury of the United States to the credit of these Indians as a tribe. It will be observed, however, that this statute contemplates the use of both the power sites on the reservation and of the water rights reserved or appropriated for this irrigation project.

Manifestly under this situation two interests are primarily involved, (a) that of the Indians and (b) the irrigation project, meaning, of course, the landowners under that project. More accurately speaking, the interests of the Indians are twofold, first, as a tribe in the revenue to be derived from these power resources developed from their tribal lands, and, secondly, as individual allottees owning lands under an irrigation project to be supplied in part with water by pumping, power at a cheap rate being essentially for the latter purpose. Approximately 20 per cent of the irrigable lands within the Flathead irrigation project are still owned by individual members of the tribe. Necessarily the Federal Government is concerned in seeing that the Indians receive adequate compensation for the use of their lands for power-site purposes and also that its obligation to the landowners under this project is fulfilled by supplying an adequate quantity of water for irrigation at a minimum cost, it being here borne in mind that the landowners under this system, both Indian and white, are obligated to repay to the United States the cost of irrigation, on a per acre basis.

The Rocky Mountain Power Co., in its brief in support of its application for a license to develop power at Flathead (pp. 63 to 68), alleges that the lands included

FLATHEAD POWER DEVELOPMENT

within the power site, area constitute 50 per cent of the value of these power resources and water the remaining 50 per cent; that the water belongs to the State of Montana, and hence the Indians are without right therein. Further, that the Indians are without right or interest in the river and lake bed. This assumption, however, is erroneous. We have just shown that the Indians have a prior right to sufficient of the waters within their reservation for irrigation and other uses, which right is augmented in no small measure by the filings made on these waters by the Government in behalf of this project, pursuant to the statutes of the State. It is also to be recalled that the south half of this lake and the river into which these waters are discharged are within the Indian Reservation. The power site withdrawal made by the Government in behalf of this project covers certain lands lying along both sides of this stream, and as to such lands, including the river bed embraced therein, the Indian title has not been extinguished. That is to say the withdrawal for power site purposes in no way operated to extinguish the Indian title to such lands. These Indians, therefore, have a tremendously greater interest in this situation than as alleged or represented by the Rocky Mountain Power Co.

Based on its calculations on the erroneous assumption that the 2,500 acres or less of tribal Indian lands involved represents only 1 per cent of the value of power site No. 1, the Rocky Mountain Power brief proceeds to show that its offer of \$1 for horsepower as rental for these lands would yield to the tribe a minimum annual rental of \$68,000. On this basis (1 per cent of the value yielding \$68,000 annually) the value of the entire site, including both land and water (100 per cent) would be equivalent to an annual yield in rental of \$3,400,000—manifestly fallacious.

We now return to the matter of the cost of power for pumping, etc., for the irrigation project and its association with Indian rentals. During the past few years much discussion as well as debates in congressional committees and on the floors of Congress have taken place in regard to these alleged conflicting interests of the Indians and of the irrigation project. It was vigorously argued, on the one hand, that the Indians' ownership of the power sites is absolute; that this carried with it the right of the Indians to every cent of rental moneys obtainable; and that any reduction of power rates to the irrigation project must necessarily come out of the Indians' rental and thereby cause an unwarranted reduction thereof. On the other hand, it was as stoutly maintained that the irrigation project can not be successful without pumping; that cheap power is essential for pumping; that the Indian owners of project lands and the white settlers who have purchased lands of the project from former Indian owners, are alike vitally interested in this cheap power; and have through all their years of ownership depended upon the government's plans and promises to secure it; that the United States Government itself through its Reclamation Bureau began even though it did not complete a pumping development known as the Newell project, to pump water to the irrigation projects; that the United States irrigation project itself had made water filings under the laws of Montana to make sure of the necessary water for this pumping project; that in an appropriation act approved January 12, 1927, and in every subsequent appropriation act, Congress has provided the money and authorized the procedure with a Government power project for pumping in the event that power is not procurable from the licensing of the Flathead site. Thus has arisen an unfortunate dispute on the question of the legality of the irrigation project's rights. Certainly no one has or can successfully contest the equitable grounds of the irrigation project to consideration in the matter of cheap power, even if the legal position has been questioned by some. One of the applicants, the Rocky Mountain Power Co., has recognized this equity from the beginning and has since 1927 put on record its willingness, if granted the license,

FLATHEAD POWER DEVELOPMENT

43

to supply 15,000 horsepower at special prices to the irrigation project. The revised terms for this 15,000 horsepower are set forth in Exhibit 13 of the Flathead irrigation district, an intervening party in this case, and are as follows:

A. The power company would agree to deliver at its plant to be erected at the Newell site (No. 1 site) electrical energy to be used by the irrigation project exclusively for pumping water for irrigation, power required by the Government for that purpose up to 5,000 horsepower, at the price of 1 mill per kilowatt-hour delivered, and also such power up to 5,000 horsepower as may be demanded by the United States for all project and farm uses and for sale at the price of 1 mill per kilowatt-hour delivered.

B. The power company will deliver either at the Newell plant or at some place more convenient on the project, to be agreed upon, such additional power up to 5,000 horsepower, as may be demanded by the United States for all project and farm uses and for sale at the price of 2½ mills per kilowatt-hour delivered.

The Indian Bureau has the double responsibility of protecting fully the tribal rights of the Indians in the matter of power rentals and also of doing everything possible to make a success of the Flathead Indian irrigation project committed to its care. It does not consider that these interests are really conflicting in the sense of the unfortunate dispute above referred to. We have therefore first considered in this memorandum the matter of the Indian rental on its merits just as if there were no irrigation district at all; we have accordingly proposed what seems to be a fair rate of rental, of \$2.21 per horsepower; and we have indicated that in the pro forma estimated basis of calculation this involves, if the license is granted to the Rocky Mountain Power Co., an intercompany price of 2.387 mills for the current sold by the Rocky Mountain Power Co. to the Montana Power Co.

This Indian rate of rental having thus been fixed, we can properly turn to the irrigation project and consider it as one special group of general consumers that the United States Government is particularly interested in protecting to the extent of 15,000 horsepower for pumping and for the project and for sale. The justification for this is that the irrigation project is the Government's own project, and the Government's hope of reimbursement depends upon the project's success. The provision for sale of current in the above quotations was based on the expectation that a profit can be realized on the retail sale of electric current purchased at low wholesale prices, and that this profit will enable the Flathead irrigation district to be an assured success and thus reimburse the project's construction costs to the Government more rapidly than would otherwise be possible. In anticipation of this profit from power as first proposed to be made by the Government itself, Congress in the act of May 10, 1926, provided for its disposition in an order of precedence not necessary to state here, and which was fully explained in the hearings by Congressman Cramton, chairman of the House subcommittee on Appropriations for the Department of the Interior.

Now of the prices for power quoted above, that for 10,000 horsepower at 1 mill is lower than the above proposed intercompany price of 2.387 mills; but that for 5,000 horsepower at 2½ mills is actually a trifle higher. Our problem then is to see how much the intercompany price for the large amount of current sold to the Montana Power Co. needs to be raised in order to offset these relatively small amounts of current at these prices to be reserved by the applicant for the United States for the use of the irrigation project.

FLATHEAD POWER DEVELOPMENT

This involves an estimate of the load factors of pumping, of resale for farms, etc.; also the number of days of pumping required for the project and the dates. From this a study has been made of the overlap of the irrigation period with the surplus water period, and the consequent proportion of secondary power and of primary power. There was much discussion in the hearings on this subject. Suffice it here to say that the testimony showed an outside demand of 111 days for pumping for irrigation purposes, and that for the purpose of an estimate about 51 per cent would be secondary power and 49 per cent primary power. (See Indian Exhibit 7 prepared by the Rocky Mountain Power Co.) The Rocky Mountain Power Co. submitted in its Exhibit 12 an estimate of its loss through the sale of this block of 15,000 horsepower at the prices quoted. It showed (see below) that the sale of this power would bring \$60,500, but that it would cost \$123,000, showing a loss of \$62,500. Allowing 4,000 horsepower as primary power for the irrigation project, the company deducted this from its estimated capacity of 68,000 horsepower and charged the remaining 64,000 horsepower with the above cost of \$62,500, making its estimated cost for the irrigation power \$0.98 per horsepower, or \$1 in round figures. This estimate of \$123,000 cost for this power was figured on a basis of arbitrarily including a maximum demand factor of—

15,000 maximum horsepower at \$5.45.....	\$82,000
4,000 average horsepower at \$10.20.....	41,000
Total.....	123,000

Attention should be called to the fact that in making the above quotations to the irrigation project no maximum demand factor was therein included, the quotations being straight kilowatt-hour prices. Why, then, should not a straight kilowatt-hour average cost be likewise used in reckoning the difference between actual revenue and actual cost? This average basis would surely be true to facts in this company's load, because what power under the maximum the irrigation project will not take will not thereby be lost, but will be otherwise absorbed into the system and realized on.

Assuming the company's own calculations of load as set forth in Exhibit 12, we then have:

Maximum horsepower	Average horsepower	Average kilowatts	Kilowatt-hours	Price	Revenue
10,000	1,000	2,280	19,000,000	\$0.001	\$19,000
5,000	2,500	1,875	16,360,000	.0025	40,900
15,000	4,000	4,155	35,360,000		60,500

* 20 per cent load factor.

* 25 per cent load factor.

For the sake of conservatism, let us assume that all of the 5,500 horsepower is prime power.

The average sale price of the 35,960,000 is \$0.0016824 per kilowatt-hour; i. e., \$11.05 per horsepower.

The estimated cost with 8 per cent return and including \$3.21 Indian rental has been shown to be \$15.80 per horsepower or 2.32 mills per kilowatt-hour.

FLATHEAD POWER DEVELOPMENT

45

Then 35,960,000 kilowatt-hours by 2.387 equals \$85,836 is the cost of this power.

Hence, on the company's own basis of load factors, and even disregarding secondary power, and on the basis of average cost, this block of 15,000 horsepower at the prices quoted will produce an out-of-pocket loss of only \$25,336. This represents about \$0.32 per horsepower for the 80,500 capacity at Flathead instead of \$0.98 per horsepower the way the company figured it.

Now returning to the necessary adjustment of the intercompany price to provide for these 15,000 horsepower for the irrigation district, we have:

528,800,000 kilowatt-hours at 2.387 mills (at \$15.60 per horsepower)	\$1,262,246
35,960,000 kilowatt-hours at 1.6824 mills	60,500
492,840,000 kilowatt-hours at 2.439 mills (at \$15.94 per horsepower)	1,201,746

Hence by the raising of the intercompany price from 2.387 mills to 2.439 mills; i. e., from \$15.60 per horsepower to \$15.94 per horsepower, for the 492,840,000 kilowatt-hours sold by Rocky Mountain Power Co. to Montana Power Co., the 15,000 horsepower for the irrigation project can be sold at the prices quoted and the Rocky Mountain Power Co. will still have its full average revenue of 2.387 mills; i. e., \$15.60, which will enable it to pay the undiminished Indian rental of \$2.21 and preserve its own 8 per cent return.

Mr. Wheeler stated at the hearings that if granted the license he would be willing to supply the irrigation district with power as the commission might require.

Assuming, then, the same power requirements and the load factors as used above for the other applicant, we would have for Wheeler on his estimate of 6,000 cubic feet per second of water:

- (1) The same revenue, viz, \$60,500, based on the average price of 1.6824 mills per kilowatt-hour.
- (2) His cost of \$15 per horsepower at 8 per cent return and including \$2.33 for Indian rental is 2.2813 mills per kilowatt-hour.

We have then on Wheeler's estimated capacity of 689,000,000 kilowatt-hours:

689,000,000 kilowatt-hours at 2.2813 mills (\$15 per horsepower)	\$1,571,816
35,960,000 kilowatt-hours at 1.6824 mills	60,500
653,040,000 kilowatt-hours at 2.2143 mills (\$15.20 per horsepower)	1,511,316

This would mean either (1) Mr. Wheeler would have to raise his price to consumers from \$15 to \$15.20 per horsepower; or (2) he would have to cut the Indian rental by \$0.20 as suggested above; or (3) he would have to be satisfied with \$0.20 per horsepower less return than he is entitled to.

If only 5,140 cubic feet per second of water is available, a similar calculation will result in a cost of \$15.22, so that there would be a \$0.22 adjustment as above instead of \$0.20.

CONCLUSION IN RE 15,000 HORSEPOWER FOR IRRIGATION PROJECT

The Indian Bureau believes that the matter of this 15,000 horsepower for the irrigation project has had far more adverse discussion than it deserves; that it would be most fortunate for the best interests

of the Indians and of their neighbors if all would realize that they have common interests in making the irrigation project a success for the good of all; that accordingly the obtaining of this cheap power for the project's use in pumping and for farms, etc., is highly desirable; and in fact that it is unthinkable that the opportunity to get it shall not be availed of. This does not mean, as some friends of the Indians may have feared, that the Indian Bureau does not recognize fully the rights of the Flathead Indian Tribe as the equitable owner of the power sites concerned. These rights are fully recognized and preserved and no precedent to the contrary can be set up from the disposition of this case. And further, while thus recognizing the tribal interest, the Indian Bureau also recognizes the rights and equities of individual members of the tribe as residents in and owners of land in the community chiefly to be benefited by the erection of the power project or projects including the Flathead irrigation project, dependent in part, as it is, on power at a reduced rate to supply water for irrigation and other purposes.

Accordingly, we urge the Secretary of the Interior and the Federal Power Commission in granting a license for site No. 1 to either of the applicants, to insert in said license conditions for the reservation to the United States Government for the use and benefit of the Flathead irrigation project of 15,000 horsepower of electric power substantially as set forth in paragraphs B, D, E, K, L, and the Rocky Mountain Power Co.'s memorandum of February 17, 1928, as amended December 30, 1928, by agreement with the Flathead irrigation district, and on the terms and conditions therein stated. See Exhibit 13 of Flathead irrigation district, intervening party to the proceedings.

VIII. THE FOUR OTHER FLATHEAD POWER SITES

It is the task of the Indian Bureau to secure all possible advantages to the Indians while preserving the interests of the public. Hence, the fullest possible development of the Flathead sites would seem to be desirable from the standpoint of the Indians' interests.

Applicant Wheeler has applied for a preliminary permit for all five sites but is not ready to apply for a license to proceed with any immediate development. Applicant Rocky Mountain Power Co., on the other hand, has applied for a license for immediate development of site No. 1, and for a preliminary permit for the other four sites, but it stated in the hearings it could not tell when, if at all, it would develop these four sites.

In view of the immediate and financial advantage to the Indians in the development of site No. 1 by the Rocky Mountain Power Co., provided an adequate rental basis can be agreed upon, the Indians' interest would seem to be secured by the issuance of such a license for site No. 1. If site No. 1 should be thus licensed to this applicant, the Indian Bureau would hope that a preliminary permit for one or more of the other four sites for a limited period might also be issued to applicant Wheeler, so that if he can be successful in bringing new industries to the Flathead neighborhood, as he hopes, the chance may be given him to do so. It is the Indian Bureau's understanding that the license for site No. 1 would have in it an article that will provide for

FLATHEAD POWER DEVELOPMENT

47

regulation of the lake under such reasonable rules and regulations as the Federal Power Commission may prescribe for the fullest practicable utilization of the waters of Flathead River; and that under this protection, applicant Wheeler could successfully develop the lower sites. Such an arrangement would assure an early income to the Indians from site No. 1 and would also exploit the possibilities of the other sites for industrial development, which would furnish opportunities for development, the opening of a local market, etc.

So far as concerns the fixing of a rental to the Indians for these lower sites, the Indian Bureau believes that the facts concerning each site can best be considered separately at the time of the issuance of a license for it, and that the rental can then be fixed for it as a separate proposition following the precedent and the experience gained in the way that site No. 1 works out.

CONCLUSION

In concluding this memorandum on the Flathead power development, we are pleased to state that it seems possible at last to solve this complex problem which has been so fraught with disputes for such a long time, and do it to the satisfaction of all of the interests involved. Upon analysis it has developed that the advantages and resulting low costs of this power site will make it possible (1) to give the developing licensee a full return upon the investment; (2) to considerably increase the Indian rental beyond the offers made or even the expectations of the Indians; (3) to provide for the full amortization of the power development cost during the 50-year period of the lease and at the close of the lease its return to the Government for the Indians as a going concern fully paid for, then to be released or otherwise disposed of as may then seem best; (4) to accommodate the irrigation project by the granting in full of its request for cheap power; (5) should the license be granted to the Rocky Mountain Power Co., to make available from the Flathead development itself and from the beneficial effects therefrom upon the Thompson Falls plant of the Montana Power Co. certain further amounts which under the regulation of the Montana Public Service Commission will be available for rate reductions for the benefit of the general consumers of the latter company; (6) should the license be granted to Mr. Wheeler, to make available from the Flathead development advantages to the Indians and other people of that section from the introduction of new industries, with resulting opportunities for new employment, new markets, etc.; (7) to establish a method of calculation of Indian rentals for power sites; (8) to provide for proper regulation by the Federal Power Commission in conjunction with the State public service commission that is involved, of the licensee that makes the development.

Respectfully submitted:

J. HENRY SCATTERGOOD,
Assistant Commissioner.

June 23, 1980

Mr George L Moon
Project Engineer
United States Department of
the Interior
Bureau of Indian Affairs
Flathead Irrigation Project
St Ignatius, MT 59865



Re: 1003-091(7)

Dear Mr Moon:

Because, as you have pointed out, the agreement between the Flathead Irrigation Project (Irrigation Project) and The Montana Power Company (Company) expired on May 23, 1980 and because the Company will remain obligated to provide service to the Irrigation Project under Article 26 of the license for Kerr Project No. 5 so long as the Company is awarded annual renewals of that license during the pendency of the relicensing proceeding, it is appropriate that the parties continue their relationship which implements the Article 26 conditions, as follows:

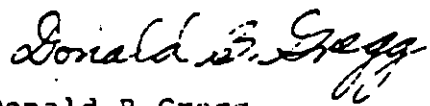
1. Beginning on May 23, 1980 and continuing as long as the Company is licensed to operate the Kerr Project under annual licenses subject to the terms and conditions of the original May, 1930, license, the Company will make energy deliveries to the Irrigation Project in compliance with the terms and conditions of Article 26 of the Project No. 5 license as follows:
 - a. During all months of the year, the Company will deliver energy to the Irrigation Project at a maximum demand of 7.466 MW at 100 percent load factor, to be paid for by the Irrigation Project at the rate of 1.75 mills per kWh.
 - b. During the months of April through and including October, the Company will provide additional energy at a maximum demand of 3.734 MW at 100 percent load factor, to be paid for by the Irrigation Project at the rate of 1 mill per kWh.

Mr George L Moon
June 23, 1980
Page 2.....

- 2. The existing interconnection, delivery, metering and other billing facilities and arrangements will remain in effect.

Would you please indicate by your signature below that the arrangements outlined immediately above represent full and complete satisfaction of our obligations to the Irrigation Project under Article 26 of the Project No. 5 license?

Sincerely yours,




Donald B Gregg
Manager of Power Contracts,
Resources and Planning

RFC/jd

ACCEPTED:

FLATHEAD IRRIGATION PROJECT

By 

Date 6-25-80

DIVISION	PROJECT	ACRE	CONTROL			TOTAL
			CLASS 1	CLASS 3	CLASS 4	
JOCKO	INDIAN	2985.85	471.20	2730.02	6187.07	
	NON-DIST	355.71	6.45	99.01	461.17	
	DISTRICT	7385.01	241.08	4129.39	11755.48	
	TOTAL	10726.57	718.73	6958.42	18403.72	
MISSION VALLEY	INDIAN	9032.79	2635.26	3652.64	15320.69	
	NON-DIST	1448.83	295.30	492.57	2236.70	
	MISSION D	16236.69	315.62	4163.50	20715.81	
	FLATHEAD D	76465.68	2231.11	22241.02	100937.81	
	TOTAL	103183.99	5477.29	30549.73	139211.01	
CAMAS	INDIAN	127.98	25.66	39.30	192.94	
	DISTRICT	13040.50	308.77	3516.44	16865.71	
	TOTAL	13168.48	334.43	3555.74	17058.65	
GRAND TOTAL		127079.04	6530.45	41063.89	174673.38	

INDIAN	JOCKO	2985.85	471.20	2730.02	6187.07
	MISSION V.	9032.79	2635.26	3652.64	15320.69
	CAMAS	127.98	25.66	39.30	192.94
	TOTAL	12146.62	3132.12	6421.96	21700.70
NON-DISTRICT	JOCKO	355.71	6.45	99.01	461.17
	MISSION V.	1448.83	295.30	492.57	2236.70
	CAMAS	0.00	0.00	0.00	0.00
	TOTAL	1804.54	301.75	591.58	2697.87
DISTRICT	JOCKO	7385.01	241.08	4129.39	11755.48
	MISSION	16236.69	315.62	4163.50	20715.81
	FLATHEAD	76465.68	2231.11	22241.02	100937.81
	CAMAS	13040.50	308.77	3516.44	16865.71
	TOTAL	113127.88	3096.58	34050.35	150274.81
GRAND TOTAL		127079.04	6530.45	41063.89	174673.38