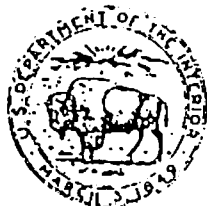


COMPREHENSIVE REVIEW REPORT
FLATHEAD INDIAN IRRIGATION PROJECT

VOLUME 1 of 3
EXECUTIVE SUMMARY

PREPARED AT THE DIRECTION OF
THE SECRETARY OF THE INTERIOR

BUREAU OF RECLAMATION
PACIFIC NORTHWEST
REGIONAL OFFICE



BUREAU OF INDIAN AFFAIRS
PORTLAND AREA OFFICE

OCTOBER 1985

List of Abbreviations Used

BAO	Billings Area Office of BIA
BIA	Bureau of Indian Affairs
BPA	Bonneville Power Administration
CSKT	Confederated Salish and Kootenai Tribes
DOI	Department of the Interior
FIIP	Flathead Indian Irrigation Project
FJB	Flathead Joint Board
GAO	General Accounting Office
NEPA	National Environmental Policy Act
OEDP	Overall Economic Development Plan
OIG	Office of the Inspector General
PAO	Portland Area Office of BIA
SEED	Safety Evaluation of Existing Dams
USBR	U.S. Bureau of Reclamation
USGS	U.S. Geological Survey

Definitions of Recommendation Categories

Category 1 - Recommendations requiring Department or Congressional input or action.

Category 2 - Important, high-priority recommendations for agency-level implementation.

Category 3 - Recommendations necessary for efficient and cost-effective management, for field-level implementation.

EXECUTIVE SUMMARY

INTRODUCTION

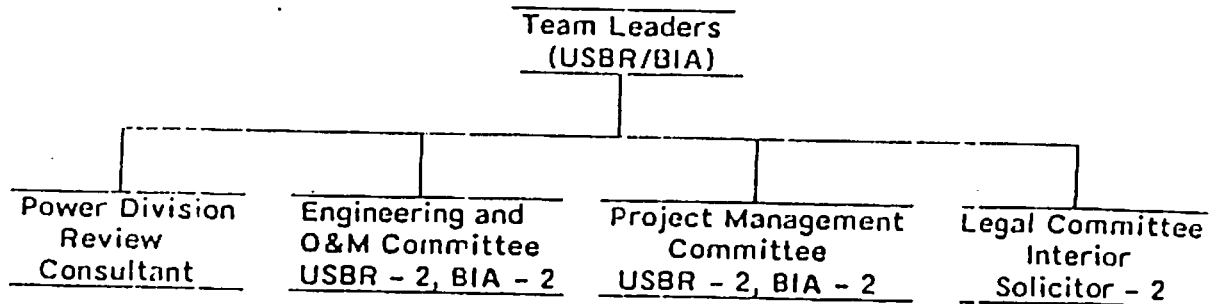
FIIP is an irrigation and power project operated since 1910 by BIA on the Flathead Indian Reservation in Montana. The project serves about 2600 water users on 127,000 acres and about 14,000 power meters. Approximately 90 percent of the water users are non-Indian and about 90 percent of FIIP revenue is from power. - 1600-1900

Local water and power users have become increasingly dissatisfied with the management of FIIP. Some of these users contacted Senator John Melcher and requested assistance in improving the management and physical condition of FIIP.

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trained* (Non-Indian) water users, represented by the FJB, asked Senator Melcher to assist in taking control of FIIP from BIA. These users support transfer of FIIP to USBR, a specialized irrigation agency which contracts operation and maintenance of facilities to water users. This transfer is opposed by CSKT.

Senator Melcher met with Secretary of the Interior William Clark and discussed this issue of mutual concern. Both BIA and USBR are Interior agencies. In an October 3, 1984, followup letter to Senator Melcher, Secretary Clark said, "I am requesting the Bureaus of Reclamation and Indian Affairs to conduct a comprehensive examination of the Flathead Irrigation Project, to document outstanding problems, and to recommend corrective measures." This Comprehensive Review Report documents the findings and recommendations of the joint BIA/USBR team which investigated the status of FIIP, in response to Secretary Clark's request.

The Comprehensive Review was accomplished by a 13-person Study Team organized as follows:

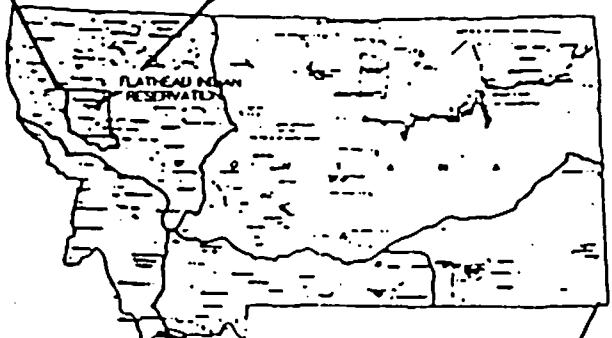
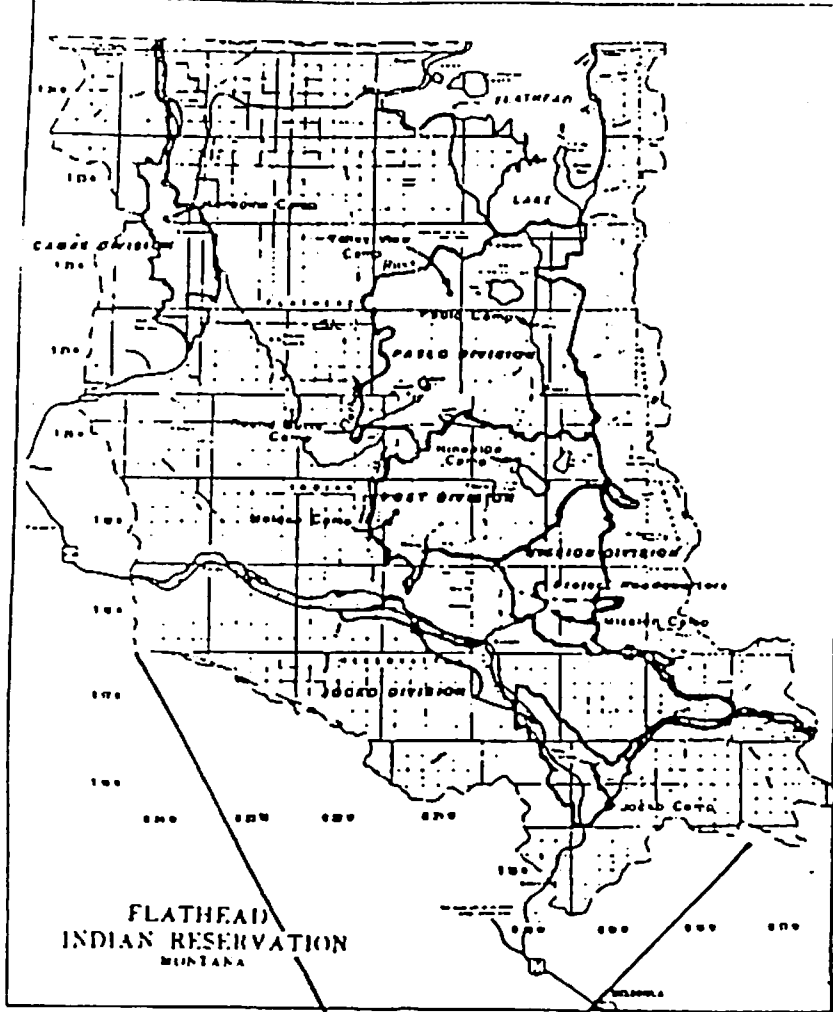


Financial issues were also examined by BIA staff. Environmental issues were examined by the Engineering Committee. To collect data, the study team conducted meetings, field examinations, interviews and public hearings on the Flathead Indian Reservation, and extensively researched all aspects of FIIP.

BACKGROUND

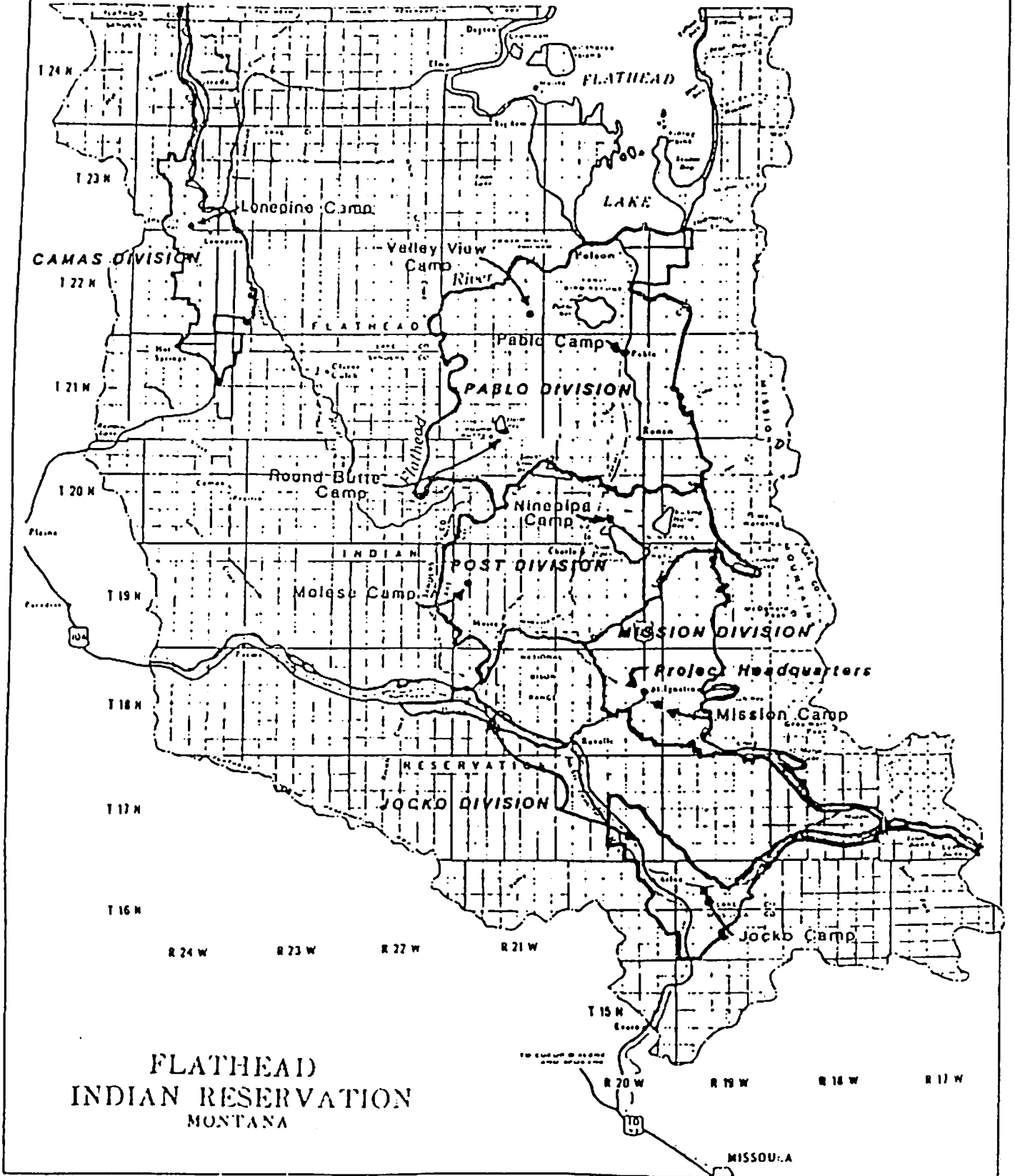
The FIIP is located in the heart of the 1.2 million acre Flathead Indian Reservation in northwestern Montana. FIIP is operated as a single project and is under the immediate administration of the BIA.

Flathead Indian Irrigation Project
Watermaster Divisions



LOCATION MAP

Flathead Indian Irrigation Project Watermaster Divisions



History

The irrigation portion of FIIP was authorized by Congress in the 1904 Flathead Allotment Act. Subsequent amendments to that act and various Congressional appropriations provided the basis for operation through the depression and up until the end of World War II. The power portion of FIIP was authorized in 1926 when Congress appropriated funding for completion of a power facility (the Newell Tunnel) intended to pump water from Flathead River for irrigation. In 1930 a subsidiary of the Montana Power Company offered FIIP a substantial block of power for relinquishment of the investment at the hydroelectric site. The offer was accepted and after the issuance of the 50-year license No. 5 for the operation of Kerr Dam, FIIP began construction of an electrical transmission and distribution system across the Reservation.

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In 1936, Congress called for a report on the status of FIIP, which was to consider among other things, delinquent construction and operation and maintenance payments due the Irrigation Division of FIIP. As a result of that report, called the "Walker Document," Congress passed the first piece of comprehensive legislation for FIIP. The Act of May 25, 1948, provided for several things, including establishment of a permanent subsidy of the irrigation system construction and operation and maintenance costs.

In 1957, FIIP presented to the DOI a comprehensive proposal for turnover of the FIIP management and operation to the water users. Water users

refused to accept FIIP until construction had been completed. The plan was abandoned.

After FIIP construction completion in the middle 1960's, both the water user districts and the CSKT investigated the possibility of accomplishing turnover of the operation and management of the FIIP to their respective organizations. In 1977, the water users filed a petition for turnover. This petition remains active, having never been responded to by DOI. The CSKT's most recent resolution concerning project management, adopted in 1984, states that they do not presently plan to apply to contract for the operation and management of either division of FIIP. However, the resolution states that the CSKT feel they have the legal authorization to assume management and operation of FIIP; that they will direct a concerted effort toward ensuring FIIP compliance with established law and procedure with respect to tribal property, resources and rights; and that they maintain the position that FIIP remain under the management of BIA.

The State of Montana amended its Water Use Act in 1979, to provide for adjudication of all water rights, including federal reserved rights and Indian reserved rights, in the State Court system.

Water filings required under this law were made by the U.S. on behalf of FIIP, CSKT and individual Indians. Duplicate filings for water rights associated with FIIP were filed on behalf of the various water user districts. The adjudication process over all those competing water claims continues today.

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Talks were initiated in 1983 between the FJB, an organization formed with the intent of achieving turnover of FIIP management to the water user districts, and the CSKT over a number of issues. Discussions broke down after several meetings. The FJB then contacted Senator Melcher of Montana and requested his assistance in effecting a turnover of FIIP operation and management to the USBR. Senator Melcher held a public hearing on the turnover in August 1984. Secretary of the Interior, William Clark, then advised Senator Melcher in October 1984 that this Comprehensive Review would be done.

Racial Conflict

During the course of conducting the comprehensive examination of FIIP, it became apparent to the Study Team that racial conflict between Indians and non-Indians exists on the Flathead Indian Reservation. The Study Team noted that the underlying problem of racial conflict would not be resolved by transfer of the management of FIIP from the BIA to USBR, but may in fact be intensified by the transfer.

The Study Team recommended that the existing racial conflict situation on the Flathead Reservation be recognized in all decisions concerning management of FIIP. Steps can and should be taken by local management to improve Indian/non-Indian communication. Further, steps can and should be taken to assure balancing of opposing values. These actions would contribute to the easing of racial

conflict on the Reservation and would reduce the potential for expensive, time-consuming litigation.

Governmental Structure, Relationships and Jurisdiction

The CSKT are considered to be a sovereign governmental entity on the Flathead Indian Reservation. They exercise governing powers over tribal and reservation activities, except as limited by Congress.

The federal government, through the BIA, acts as trustee for the CSKT and individual Indian land and resources.

The State of Montana has jurisdiction over Indian affairs on the Flathead Indian Reservation concurrently with the CSKT and federal government pursuant to an agreement concluded under Public Law 83-280.

Water Rights Controversy

Water rights and the apportioning of water are issues of immediate importance on the Flathead Indian Reservation and throughout the State of Montana. Under current Montana law, all water right claims that have not been adjudicated will be in the litigation process by July 1, 1987.

The determination of priority dates and quantification of water on the Flathead Indian Reservation will affect FIIP and other water claimants. FIIP's operations may be adversely affected by such a determination to the extent that FIIP may not have sufficient water to irrigate all land currently designated at the quantity currently allocated.

While it is not appropriate to discuss in a report of this type the various strategies for defending federal reserved water rights on the Flathead Indian Reservation, including Indian reserved rights, it should be pointed out that policy decisions shaping such a defense are long overdue.

Additionally, until the water rights quantification for FIIP has been completed, transfer of care, operation and maintenance to USBR or local operators will be extremely complicated.

The May 1, 1972, request for transfer of FIIP to the water users was frustrated by the lack of such a quantification. In his reply to the request dated June 22, 1972, the Assistant Secretary for Indian Affairs advised the irrigation districts that the delay in the transfer of FIIP was due principally to the necessity of establishing ownership of the water rights, and of making a determination of the extent and scope by which water usage on the Reservation may be controlled by FIIP.

It is anticipated that the current State of Montana proceedings will establish ownership and regulatory responsibility. However, anticipating the worst possible case, this determination may not be made prior to 1990.

MANAGEMENT REPORT
IRRIGATION DIVISION

The Management Committee reported on the status of FIIP organizational structures, administrative functions, and irrigation system management. Emphasis is on the irrigation management and administrative services common to both the Irrigation and Power Divisions. The Power Consultant studied Power Division management.

Conclusions

Conclusions of the Management Committee are based on information secured from FIIP staff, district board members, tribal officials, reviews of numerous documents and reports, and analysis of FIIP's past and current organizational and operational problems.

The FIIP Irrigation Division faces a basic financial problem. As determined by the Engineering Committee, the water users cannot adequately fund operation and maintenance of the storage and distribution system. This situation exists in spite of the fact that power revenues are used to repay the original irrigation construction. Any gains in the efficiency of use of water user funds should be applied to improved operation and maintenance of the irrigation system. Consequently, desperately needed rehabilitation work is beyond the financial capability of the water users. The deterioration of the irrigation facilities is such that, without rehabilitation, portions of the system will soon stop functioning.

Administrative consideration of the future of FIIP should be based on the premise that the Irrigation Division cannot continue to operate without additional financial subsidy.

The Management Committee found many problems with the management of FIIP. Problem areas include poor communications, lack of records, inadequate training, inadequate staff support and utilization, little accountability to executive and legislative overseers, Indian/non-Indian friction, unresolved personality conflicts, and lack of operating policies and procedures.

The Management Report reveals a serious lack of communication and coordination between FIIP, the CSKT, the FJB, and the Flathead Agency. Such interaction is essential for efficient project operation and for the resolution of controversial issues. Failure to communicate and coordinate has been the cause of delays, misunderstandings, and conflict.

The Management Committee suggests that a federal agency should not be in the retail power and water business. A federal retail business is unusual. Generally, a local organization is more efficient and responsive in operating a retail utility. Federal regulations and laws have limited the responsiveness of FIIP, particularly in the areas of staffing, procurement and contracting. The Committee further suggests, however, that the transition from federal to local operation with federal oversight be a staged process and contingent upon the satisfactory resolution of the complex and sensitive issues identified below.

The recommended first stage of the transition is the separation of the Irrigation and Power Divisions while still under BIA operation. The separated organizations would prepare for "transfer"¹ to local operation during this "problem solving" stage. Such unresolved issues as rights-of-way, water rights, repayment contracts, and user representation should be negotiated, legislated, or litigated before transfer. Physical improvements should be made before transfer. The local operators should prepare to assume operation.

The Management Committee recommends that operation of the storage facilities and feeder canals not be transferred. The BIA should continue to operate the multi-purpose reservoirs and distribute water to the new entities. This would maintain Secretarial control of the water resource.

The first stage should include the following steps:

1. Administration of FIIP and the Flathead Agency should be under one BIA field manager.
2. Administrative functions such as personnel, procurement and finance should be centralized under the BIA field manager.
3. Charges for administrative services should be billed to the division served.
4. The Irrigation Supervisor and Power Supervisor should report directly to the BIA field manager.

¹ "Transfer" refers to an arrangement whereby BIA would contract with local operators for the care, operation and maintenance of FIIP facilities.

5. The Irrigation and Power Divisions should have separate headquarters and shop facilities.

Each division should budget, requisition and maintain its own equipment.

7. The irrigation districts should consolidate into the FJB with a uniform assessment.

The first stage would end with complete documentation of the rights and controls of all parties. Federal, tribal and water user interests should be protected and signature by all would be required.

The second and final stage would transfer FIIP facilities to local operators. The Management Committee suggests transfer of the irrigation distribution system to the water users, and transfer of the power distribution system to the CSKT. The BIA should enter into operating contracts with the FJB and CSKT. These contracts would establish terms under which the care, operation and maintenance of FIIP facilities would be performed. Title to the facilities would remain with the federal government and BIA would assume an oversight role. Power revenues would continue to subsidize irrigation.

The Management Committee is strongly aware of the proposal by many water users to transfer the operation of FIIP to USBR, and of the opposition of CSKT to USBR operation. Transfer to USBR is not recommended for the following reasons:

1. Transfer of operation can be done under BIA management.
2. Management improvements can be made by BIA.

3. USBR has no retail power distribution experience and no technical staff to support this function.
4. USBR must operate under the same Federal regulations and laws as BIA.
5. USBR can continue to provide irrigation system technical assistance to BIA.
6. Racial, political and legal issues would not be solved by transfer to USBR.

The Management Committee has also suggested many irrigation system management improvements which will be useful to BIA and the FJB.

Recommendations

Category 1

1. After a transition period under administration by BIA, transfer the irrigation and power distribution systems of FIIP to the FJB and CSKT, respectively, for care, operation and maintenance.

Category 2

1. Separate the FIIP Irrigation and Power Divisions under BIA management for a specified transition period in preparation for transfer to local operation.
2. During the transition period, resolve rights-of-way, water right, repayment contract, and user representation conflicts at FIIP.
3. Negotiate contracts with the FJB and CSKT for care, operation and maintenance.
4. Give more personnel action authority to the area office/field level.
5. Place FIIP and the Flathead Agency under control of a strong manager with good public involvement skills.

6. Audit Indian Preference compliance at FIIP. ~~cancel~~
7. Establish emergency reserve and replacement reserve funds of appropriate size at FIIP.
8. Periodically review FIIP personnel performance standards.
9. Determine the number of watermasters and ditchriders required, raise their grade level, and make ditchrider positions full time.

Category 3

1. Improve the safety program at FIIP and evaluate the need for a loss prevention program.
2. Clarify FIIP/FJB operating authorities.
3. Establish uniform FIIP-wide irrigation assessment rates.
4. Strengthen administrative controls at FIIP.
5. Institute a training program at FIIP.
6. Institute a comprehensive program planning process at FIIP.
7. Conduct annual public meetings with all water and power users.
8. Institute an equipment management program.
9. Institute training in procurement and property management procedures, and maintain compliance with federal regulations.
10. Institute a preventive maintenance program for FIIP equipment.
11. Schedule all shop work through one responsible management official.
12. Prepare written operating and emergency procedures for FIIP facilities.
13. Improve water supply forecasting procedures.
14. Institute a record management program.

15. Establish separate radio frequencies for the Irrigation and Power Divisions.
16. Hold annual and periodic reviews of FIIP irrigation facilities with FIIP and FJB personnel.

FINANCIAL MANAGEMENT

Conclusions

The PAO Finance Officer and Assistant reviewed the financial operations of FIIP in March 1984 to address concerns identified in a February 1984 report by the OIG and a May 1984 report by the GAO, as well as to determine if additional problems existed. Recommendations for resolving deficiencies and concerns were proposed. The USBR did not participate in preparation of the Financial Management Report.

The areas addressed by the April 1984 PAO Finance Officer's report were:

1. BIA participation in the proposed hydroelectric facility at Kootenai Falls, Montana.
2. Accounting and finance systems staff, audits and internal controls.
3. FIIP use of nonfederal personnel.
4. Financial reports.
5. Reconciliation of general ledger accounts.
6. Recommended changes of general ledger accounts.
7. Federal investments in FIIP irrigation and power.
8. Deferred irrigation construction costs for Indian lands.
9. Irrigation and operation and maintenance costs expended by the Districts.

Since the PAO financial review was conducted, many recommendations have been implemented. Implementation resolved problems with FIIP's Kootenai Falls participation, the accounting system, FIIP's use of nonfederal personnel, financial reports, reconciliation of general ledger accounts, and maintenance of general ledger accounts.

Recommendations

Those outstanding recommendations still requiring action are as follows:

Category 1

1. The Districts' repayment contracts should be renegotiated to allow payment of increased annual construction repayment installment. These increased installments would be paid from power revenues.
2. Legislation should be proposed to amend Section 6 of the Act of May 25, 1948 to provide for payment of the debt to the United States at an accelerated rate. Suggested language is provided in the Financial Report.
3. The Act of May 25, 1948 should be amended to allow the irrigation construction cost on Indian land to be paid from net power revenues using priority (2) of Section 2(h) of the Act, as is done for non-Indians. Further, it is recommended that Section 2(i) of the Act be eliminated.
4. The FIIP accounting system should not be merged with the BIA accounting system at this time.

Category 2

1. A further review of FIIP financial reports should be conducted by the PAO Finance Officer after the FIIP finance office is fully staffed. This staffing is underway and should be completed.

2. BIA Central Office should respond to the recommendation made by the PAO Branch of Finance on May 24, 1984, regarding handling of advance deposits currently carried under a suspense account.

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3. The BIA should decide which of three proposed alternatives should be implemented to resolve the payment of past deferred construction charges when Indian land passes into non-Indian ownership.

X 4. The BIA should act on the recommendation that outstanding accrued net power revenue credits be paid to the Indian land owner and that no further credits be assigned.

5. Act on the recommendation that a review or audit be conducted of the funds expended by the irrigation districts to determine conformance with state laws.

6. PAO should fill the GS-11 Irrigation Accountant Position. This position should conduct annual audits of the FIIP accounting system.

7. PAO Finance should continue to work with FIIP Finance during Fiscal Year 1986 to obtain reimbursement of \$134,070.89 to the United States for appropriated funds transferred to irrigation operation and maintenance to cover deferred operations and maintenance charges on Indian lands.

Category 3

1. FIIP staff should attend financial training scheduled for Fiscal Year 1986.
2. FIIP should hereafter use net power revenue remaining after payment of the matured installments to apply against the other priorities in subsection 2(h) of the May 25, 1948 Act.
3. FIIP should establish a reserve to meet emergency expenses and ensure continuous operation of the power system.

4. FIIP and PAO should establish definitions and guidelines directing which costs should be charged to improvement and extension of the power system and which costs should be charged to power operation and maintenance.

5. FIIP should follow provisions contained in 25 CFR 159 regarding the sale of irrigable lands and special contracts. When Indian irrigated lands pass into non-Indian ownership, contracts for repayment of deferred construction charges should be executed, and collection should occur.

ENVIRONMENTAL COMPLIANCE

General

A review of the environmental compliance responsibilities and practices of FIIP was conducted in the spring of 1985, in conjunction with the Engineering Committee's review of FIIP irrigation facilities. The review report acknowledges adequacies, points out deficiencies, analyses needs, and lists recommendations for achieving program improvement.

FIIP has only very recently begun to acknowledge environmental compliance responsibilities. Pesticide application programs and contaminated materials disposal programs are presently adequate. Other areas of environmental compliance are inadequate and need improvement.

The report concludes that the need for FIIP environmental compliance would continue under alternative management. The report notes that any administrative decision to transfer FIIP operational responsibility to local interests may require NEPA compliance.

Recommendations

Category 2

1. Determine whether an administrative decision to transfer FIIP to local operation will require NEPA compliance.
2. Environmental compliance should be recognized as a legitimate and necessary cost of carrying out FIIP operations, and adequate funding should be provided.
3. The improvements in support and oversight of FIIP environmental activities should continue.

Category 3

1. Initial training efforts for management and technical staff should be continued. Introductory training programs for field staff should be initiated.
2. Up-to-date environmental guidelines applicable to FIIP activities, such as permit requirements and environmental quality standards, should be obtained and maintained.
3. Coordination and communication among FIIP, the CSKT and the Flathead Agency, relative to management of a common resource base, should be improved.
4. Environmental staff capability should be established at FIIP.

5. A management plan including day-to-day and emergency operations should be developed as an alternative to developing NEPA documentation on each individual FIIP activity.

6. The feasibility of contracting for services necessary to bring FIIP into environmental compliance and to establish environmental planning should be studied.

LEGAL REPORT

The Legal Committee addressed a number of questions raised by local people and Study Team members during the course of conducting the FIIP Comprehensive Review. Responses to the questions outline basic issues pertinent to the questions and indicate additional research and analysis that may be necessary.

Questions Considered

In responding to the question of whether the Irrigation and Power Divisions of FIIP can be transferred to the USBR or another Interior agency without authorizing legislation, the Legal Committee concluded that such legislation is not necessary. They note, however, that each of the 75 substantive statutes and appropriation measures affecting FIIP should be reviewed to ensure that there are no constraints on the Secretary's authority to direct which agency will fulfill the Secretary's responsibilities. Additionally, legislative requirements and constraints applicable to the USBR may become applicable to FIIP upon transfer. The question of whether the USBR can be authorized to operate the FIIP Power Division needs additional investigation.

The Committee advised that it is the Secretary's responsibility to delegate an Interior agency the Indian trust responsibility, in the event of transfer of FIIP functions from BIA.

Only the federal government, the Legal Committee concludes, has regulatory authority over the operation and management of FIIP. FIIP's management and operational activities, must adhere to applicable statutes and regulatory programs administered through other federal agencies.

The question of the validity of FIIP's easements and rights-of-way was one to which the Committee could not respond except in general terms. The allegations concerning invalid easements should be investigated on a case-by-case basis. Such investigations should include review of applicable legislation, the legislative history of that legislation, the procedure used to acquire the easements and rights-of-way, and a documented history of the status and use of each easement or right-of-way in question.

The Legal Committee concluded that there is no statutory or regulatory provision limiting the "service area" of FIIP power sales to the Reservation in responding to the question of whether FIIP had authority to sell power to off-reservation users. They advise that specific requests for service should be considered in the context of whether the requested service provides a logical extension of the service area and maximizes the benefits of FIIP for the Indians of the Reservation.

The Legal Committee, in responding to the question of what requirements must be met before transfer of the irrigation works to the water users can occur, concludes that requests for transfer must be analyzed on a case-by-case basis. The Committee presented four areas that must be investigated and satisfied in such an analysis:

a. It must be determined whether the transfer of the care, operation and maintenance of the irrigation works can occur only when all land, irrigation system construction costs, and current irrigation system charges have been paid, or whether transfer can occur when only certain of the various charges have been paid.

b. It must be determined that all payments have been made for the "major part" (full payment for a major part of the lands comprising the system and not a major part of the aggregate amount of payments required) of affected unallotted lands.

c. Because the transfer provision applies only to irrigation systems serving unallotted lands, it must be determined if a transfer request refers to such a discrete segment of unallotted lands.

d. The proposed form of organization and regulation which are to govern the operation of the irrigation system must be reviewed and approved.

In responding to the question about what standard must be used in determining appropriate power rates, the Legal Committee notes that Subsection 2(g) of the 1948 Act establishes both maximum and minimum power rates and that the Act should be consulted and followed in the rate-making process. The rates

established by FIIP should reflect consideration of the elements necessary to obtain the minimum revenue required by the terms of the Act.

Subsection 2(h) of the 1948 Act sets out a priority schedule for application of revenue from the power system. The question was asked whether all unpaid power and irrigation costs, both matured and unmatured, under subsections (3) and (4) must be paid before any payments are made to items in subsections (5) and (6). The Legal Committee determined that Subsection 2(h) of the Act of 1948 requires application of net revenues to the prioritizing items on an annual basis and that the most logical interpretation of the provision requires application on an annual basis of remaining net revenues to priorities (5) and (6) once payments to priorities (3) and (4) are equalized at the same maturity date.

In responding to the question regarding the proper disposition of net power revenue credits to owners of trust Class 3 lands, the Legal Committee points out that the legal problems occur when trust land passes to fee status. There is no clear statutory guidance as to disposition in this case. The Committee suggests that a reasonable solution would be the proposal of legislation to provide such guidance.

The Legal Committee in responding to the question of whether the authorization of \$750,000, or 20 percent of FIIP's gross revenue for the preceding year, available for improvements and extensions of the power system, is intended to be an annual appropriation, states that it is clear that the intent of the acts authorizing the funds is that they are to be annual appropriations.

The Legal Committee agrees with the PAO Finance Officer's conclusion that expenditures for replacement of the power system are non-reimbursable.

The irrigation districts' repayment contracts set out maximum annual limitations to be repaid to the United States. A question was raised as to whether these contractual limitations apply only to the districts' apportioned share or whether they apply to the districts' share added to the Indians' apportioned deferred share. The Legal Committee concludes that since the districts are not obligated to repay costs against Indian-owned land, that the limitation applies only to the districts' apportioned share. The Committee agreed with the PAO Finance Officer's interpretation of Section 6(c) of the repayment contracts.

The Legal Committee was asked whether Indian-owned fee patented land should be treated the same as non-Indian land for irrigation construction cost assessments. The response was that the matter had been addressed in previous solicitor's opinions which concluded they should be treated the same. The Committee noted further that any reassessment of those opinions would have to consider the impact of the interpretation of the Leavitt Act on deferral practices at all BIA irrigation projects.

The Legal Committee was asked if a default cancellation of deferred irrigation construction costs on Indian lands taken out of trust would occur because no arrangements for repayment had been made. The Committee advised that at least in some cases the deferred charges remain collectible. The circumstances surrounding each case need to be examined.

Recommendations

Category 1

1. In the event operational transfer of FIIP to the USBR is contemplated, further legal investigation and analysis is recommended prior to the final transfer decision.
2. Requests, petitions, or proposals for transfer of the irrigation system made pursuant to the transfer embodied in Section 15 of the 1908 Act should be considered on a case-by-case basis. Such a consideration must include analysis of four areas as listed above.
3. Legislation should be proposed to reasonably solve the problem of equitable disposition of net power revenue credits accruing to Class 3 lands passing out of trust or restricted status to fee status.

Category 2

1. Specific requests for power service should be addressed in the context of whether the requested service provides a logical extension of the service area and maximizes the benefits of the project for the Indians of the Reservation.

Category 3

1. A comprehensive inventory of FIIP property records should be conducted to determine the status of easements and rights-of-way. Allegations of invalid easements should be investigated on a case-by-case basis. Additional rights-of-way necessary should be acquired pursuant to applicable procedures.
2. Power rates established by FIIP should reflect consideration of the elements necessary to obtain the minimum revenue required by the terms of the 1948 Act.

3. Application of revenue from the power system should be applied to the priority schedule set out in Subsection 2(h) of the 1948 Act by first, applying the net revenues to the priorities (5) and (6) once payments to priorities (3) and (4) are equalized at the same maturity date.
4. FIIP, in calculating the maturing installment should not deduct expenditures for extensions and replacements of the power system from the "matured" annual installment, but should add them to the "unmatured" to make up in future years the amount that would have been available in the current year to apply to any or all of the purposes in Section 2(h) of the Act.
5. When calculating the annual maturing installment for irrigation system construction, the installment should first be reduced by the amount of the construction costs chargeable against Indian-owned land. The districts are obligated to pay that amount, ^(revenue) or the maximum payment due, whichever is lesser.
6. FIIP should investigate the circumstances surrounding the fee patenting of Indian lands which has occurred to date, to determine whether or not FIIP retains a right to enforce collection. In future cases, arrangements should be made for the payment of such deferred costs before the sale is approved.

POWER CONSULTANT REPORT

Conclusions

The FIIP Power Division is a power utility operated by the BIA. The utility serves approximately 14,000 meters. The total power system input in 1984 was

about 250,000,000 kilowatt-hours. Average power demand in 1984 was about 28 megawatts.

The investigation of the Power Division of FIIP included an inspection of the physical plant and a review of operation and management of the Division by electrical engineering consultant Edward F. Dibble, of Redlands, California.

FIIP Power Division management has performed adequately in the past, but there is substantial room for improvement. Some managers have adequate expertise in their fields, but managerial skills could be improved. Management would be improved by requiring managers, not necessarily engineers, to have experience and competency in running an electrical utility.

The physical plant of the FIIP Power Division is in need of renovation. Computer modeling for future requirements for capital expansion indicates about \$25 million is needed. An amount of about \$2 million immediately, and \$1 million each year through the year 2010 would be adequate for the needed upgrade. Those estimates do not include service extensions, but do assume a 2.07 percent compounded annual growth rate. This required capital could be derived from power revenues.

The greatest inadequacy in Power Division operation is the lack of meaningful long-range planning. It is recommended that appropriate long-range plans for the FIIP Power Division would be 25-year plans with 2 to 3-year work plans.

Another area in which operations suffer is a lack of work experience in the power area. Current staff do not have diversified work backgrounds. Most employees are recruited locally and are promoted through the ranks at FIIP without acquiring outside work experience.

A third problem hampering effective operations is the use of too much old equipment. An equipment replacement plan is needed. It is recommended that equipment be purchased new, rather than acquired through the government surplus process. It is recommended that FIIP's purchasing authority be increased to accomplish timely equipment replacement.

An appropriate rate-setting process needs to be established at FIIP. The current "pass through" authority possessed by the BIA Portland Area Director is sufficient to pass through to consumers any increase in the wholesale cost of the power FIIP purchases from the BPA. However, a rate setting process should be established which reflects the legal requirements established by the 1948 Act. Additionally, the rate setting process should include an administrative appeals and hearing process in order to provide adequate consumer protection.

The financial report forms used by FIIP should be improved. Current reports and FIIP records contain information necessary to make responsible managerial decisions, but the information needs to be displayed in a more meaningful manner. There is a need for managers to assist in report form development.

The FIIP Power Division has been authorized by law to maintain two reserves. One reserve is used for power system extensions and improvements. The other reserve, for emergencies, has not been established. It is estimated that an emergency power reserve of \$1 million is appropriate. This amount would be accumulated over a period of three years and would be maintained once achieved.

Future revenue generation capabilities, after meeting legal requirements, are projected in a number of tables. It is anticipated that there will be sufficient revenue available to begin immediate upgrading of the power system and to continue the upgrade over the estimated 25-year period needed for completion.

The calculations for the possible upper limits of gross revenues shows two different ways revenues could pay off irrigation construction and begin to pay irrigation operation and maintenance. If net revenues are applied to all priorities annually, including irrigation operation and maintenance, construction will be paid off by 1996. If net revenues are applied only to priorities No. 1 through No. 4 annually, construction will be paid off by 1991 and operation and maintenance payments would then begin at a higher rate. After all construction costs are repaid, net revenues would continue to pay power operation and maintenance costs and would offset irrigation operation and maintenance costs.

The Power Consultant recommended that transfer of the Power Division be a lower priority than establishing long-range planning, short-term work plans, concomitant budgeting, acquisition and purchasing plans, and proper rate setting.



If the Power Division is transferred, several arrangements would be workable. The Power Consultant identified a possible conflict of interest if operation and maintenance of the power system is transferred to the water users, because the power system subsidizes the irrigation system. Transfer to CSKT would help CSKT prepare for operation of Kerr Dam, and would give CSKT an opportunity to optimize other hydropower resources on the Flathead Reservation. A third potential arrangement is to transfer to a separate organization such as a REA or electric utility.

Any transfer would be dependent on settlement of issues including water rights for bargain power, repayment to the United States of remaining obligations, financial obligation from power revenues to irrigation, and authority of the United States to serve power on the entire Flathead Reservation.

The Power Consultant recommends that the United States continue oversight responsibility as owner of FIIP facilities and as trustee.

Recommendations

Recommendations contained in the Power Consultant's Report are as follows.

Category 2

1. Appropriate staff with experience in managing electrical utilities should be acquired at the BIA Central Office and PAO in order to provide adequate technical assistance and support to FIIP's Power Division.

2. Vacancies in the Power Division should be filled with individuals possessing a diverse background in the power business rather than by those with limited backgrounds acquired in-house.
3. The purchasing authority of FIIP should be increased to allow for timely purchasing of supplies, materials and equipment.
4. The PAO and BIA Central Office should acquire outside agency assistance to establish a rate-setting process for FIIP which would include an administrative appeals and hearing process.
5. A cash working allowance should be established at FIIP in the amount of one-eighth of annual operation and maintenance expenses for use as a working fund.
6. An emergency reserve fund should be established for the Power Division in the amount of \$1,000,000 and controlled by the Area Director.

Category 3

1. Management should institute a long-range planning process. Planning should be projected at least 25 years into the future, and 2-3 year work plans should be prepared.
2. Moderately urgent work in the amount of \$1.7 million is required to repair or upgrade the power system to prevent system failure.
3. The physical plant of the Power Division should be upgraded at the rate of \$1 million per year through the year 2010 using power revenues to pay for the cost of upgrading.
4. Managers and supervisors in the Power Division should be required to attend management training in order to improve managerial and supervisory skills.

5. The Power Division should develop an equipment replacement plan to replace old equipment currently being used.
6. A sectionalizing study should be done to determine the fault interrupting capability of the system.

ENGINEERING REPORT
IRRIGATION DIVISION

General

The Engineering Study Team assessed the condition of FIIP irrigation facilities, estimated costs for needed repairs and replacements, and analysed the ability of the water users to fund needed work. Both the storage facilities and the distribution system were analysed.

FIIP irrigation facilities are in a deteriorated condition. The storage facilities are being analysed in the SEED program by the USBR. This analysis is well underway but will not be complete until about September 1986. Potential safety of dams problems being investigated include inadequate spillway capacity, lack of a spillway, inadequate outlet works capacity, foundation seepage and piping, foundation liquefaction and embankment stability during earthquakes, static stability, outlet works condition, condition of mass concrete, lack of electrical power for gate operation, trees on embankments, and poor personnel safety conditions. Each of the 12 dams which has "high" or "significant" downstream hazard ratings has identified dam safety deficiencies.

The FIIP distribution system is also deteriorated due to age and lack of adequate maintenance resources. There are 108 miles of main supply canals and about 1,077 miles of distribution canals with 10,000 structures. Water is being delivered and major efforts are concentrated on continuing water delivery.

Field examinations of water distribution facilities at FIIP were made by the Engineering Study Team during the weeks beginning April 9, April 22, May 6, and May 20, 1985. The major canals and laterals were covered intensively. The smaller laterals were viewed in sufficient detail to determine the condition of the structures and the hydraulic sections. During the first two weekly periods, the systems were dry or contained only small water flows from natural runoff. In the last two weekly periods most of the main canals were nearly full and the smaller canals carried partial capacity flows.

Examinations in the watermaster divisions were made in the company of ditchriders or watermasters. Discussions with these personnel covered site conditions, operation methods/problems, and maintenance methods/programs. The watermasters felt that there was not much assistance from FIIP headquarters and that there was not enough consideration of their budgetary needs.

Rights-of-way have never been delineated, either in the field or on paper. Rights-of-way and access to canals and laterals are restricted in many areas. There has been encroachment on canal and lateral rights-of-way by fences, corrals, and even buildings. Ditchriders must walk to turnouts on those laterals which

do not have a roadway. This wastes many man-hours. In those areas with restricted access, weed control, brush/tree control, and cleaning/shaping are neglected until an emergency occurs.

One of FIIP's most obvious and time consuming restrictions is the fencing across canal roadways. There is a need for installation and acceptance of cattle guards in lieu of gates.

The distribution systems are a major source of stockwater. However, cattle pasturing along the open canals and laterals tear down the banks. Consequently, the canals and laterals need more frequent cleaning and reshaping. FIIP forces have not kept up with cleaning and reshaping the canals.

The use of herbicides at FIIP for control of land weeds and aquatic weeds is very limited. Grass growth, cattails, and moss restrict flows and cause encroachment on the freeboard of many canals and laterals. Rodents are present on the waterways throughout FIIP. During the non-irrigation season rodent burrowing may extend into vulnerable portions of canal sections. The burrows can act as erosion channels to carry away the soils until the bank collapses. A successful rodent control program must cover not only the distribution system, but the adjacent areas as well.

Many of the laterals and some of the smaller canals do not have banks wide enough for vehicular travel. On most such reaches, the trees and brush have not been removed and the fences do not have gates. On some stretches of the

Jocko K canal, FIIP personnel have removed the trees and brush, widened the bank, and gravelled and graded the roadway. Turnouts are now readily accessible to the ditchrider and access for maintenance equipment has been provided. Such efforts should be expanded.

Replacement of small structures such as turnouts and small checks is being performed by FIIP personnel. Varying materials and methods have been used in the replacement and repairs with varying life expectancy. Many of the larger structures are still functioning but need repairs or replacement. Many canals and laterals have poor hydraulic sections and are wider and more shallow than desirable. This tends to slow the velocity and increase the area subject to seepage.

It is obvious that there is excessive seepage from many of the canals and laterals. Indications include lush vegetation, swampy fields, and standing pools or running streams of water. Where these conditions exist, the waterway should be lined. Lining the canals and laterals with compacted earth, concrete or plastic membrane should be considered.

The ends of canals and laterals of less than 4 ft³/s capacity are often subject to cattle grazing. Frequent cleaning and reshaping is required. Such small laterals should be placed in pipeline where possible.

There are measuring stations in the main canals, laterals, and weirs at most lateral turnouts. There are some weirs at individual farm turnouts. Water is being

delivered, but the fairness of distribution is questionable at FIIP because of inadequate measurement.

In many areas within FIIP the opportunity exists for gravity pressure water delivery. This can be done by placing the open laterals in pipelines. This has been accomplished by cooperative installation by water users or groups of water users. It may be cost effective for FIIP to install pipelines in some leaking or high maintenance parts of the system. In general, the ends of small laterals should be placed in pipelines.

The Engineering Committee recommends that FIIP have maintenance foremen with crews. To effectively utilize such crews it is necessary for headquarters management to establish work priorities. The watermasters should determine the work required in their divisions and present it to management. In order for management to set priorities, it should have on-site knowledge of all work requests. Management should be involved in regular system reviews with all watermasters. Management should standardize all designs and construction.

The operation and maintenance construction crews must be properly equipped. Manpower for these crews could possibly be supplied by utilizing seasonal personnel on a year-round basis.

Cost Estimates

Storage facilities at FIIP are in the process of being examined and analyses are being made as part of the SEED Program. The USBR has agreed to perform this work for BIA for the storage dams at FIIP. Twelve dams at FIIP are being analysed in a multi-year program which is proceeding on schedule. Until the SEED analyses for the 12 dams are complete, the extent of required safety of dams work will not be known. Therefore, an overall cost estimate cannot be made at this time.

However, required work has been identified and an estimate has been prepared for Crow Dam. This reconnaissance cost estimate for safety of dams work at Crow Dam is \$9.5 million in 1982 dollars. Based on this figure and an understanding of the overall condition of FIIP storage facilities, the Engineering Committee believes that the ultimate repairs will be very costly.

For administrative discussion only, the Engineering Committee provides an order-of-magnitude cost range of \$55 million to \$80 million for FIIP dams. This is a guess, not an estimate.

The Engineering Committee has prepared reconnaissance cost estimates for rehabilitation of the irrigation facilities. These estimates are presented in the following table. The estimates are based on prices for construction by contract. Total estimated replacement/betterment cost is \$9.2 million.

RECONNAISSANCE CONTRACT COST SUMMARY

Watermaster Division	Structures	Canal Lining	Total
Jocko	\$ 613,000	\$	\$ 613,000
Camas	555,000	959,000	1,514,000
Mission	296,000		296,000
Post	1,312,000	3,803,000	5,115,000
Pablo	989,000	676,000	1,665,000
Total	\$3,765,000	\$5,438,000	\$9,203,000

The table does not include costs for much needed maintenance work which FIIP should perform itself. Such work as canal cleaning and reshaping, weed control, concrete patching, and road rebuilding/maintenance is not included.

Repayment Capacity

An analysis of the payment capacity of FIIP was performed in the USBR Pacific Northwest Regional Office. The accuracy of the analysis is commensurate with that achieved in reconnaissance level studies. The analysis shows that the Irrigation Division of FIIP has no payment ability to apply to new debt. In fact, the water users cannot afford to pay current water charges without accepting a return on labor, management, and accumulated equity that is substantially below the average expected by agricultural interests in general. The analysis is based on a full-time farm unit that fully utilizes the operator's labor. Any FIIP farm unit of smaller size has even less payment capacity per acre.

The Irrigation Division of FIIP is not eligible for the USBR's Rehabilitation and Betterment Program. However, if it were eligible, it could not qualify for a loan because it cannot service additional debt. Only additional direct subsidy

to the water users can rehabilitate the irrigation distribution system. Where the subsidy may come from, or whether the distribution system should be rehabilitated at all, are serious departmental, administrative and political questions.

Recommendations

Category 1

1. Decide if the expenditure of resources required to rehabilitate the FIIP irrigation system is justified.
2. If rehabilitation expenditures are justified, develop alternatives for financing rehabilitation of the irrigation system. Payback of a loan by the water users has been determined to be not feasible by the Engineering Committee.
3. With Department and Congressional commitment and a financing solution, rehabilitate the FIIP irrigation system as determined by the SEED Program and the Engineering Committee.

Category 2

1. Institute a planned and budgeted maintenance program for the irrigation storage and distribution facilities.
2. Institute management participation in examination of the distribution system with each watermaster to develop priorities for annual work items to be included in budget programming.
3. Create a construction division to perform minor work in maintenance and rehabilitation of the system.

Category 3

1. Adopt standard, state-of-the-art structural designs and construction methods for all watermaster divisions.
2. Institute a comprehensive water measurement program for the FIIP distribution system.
3. Construct and/or maintain roadways on all FIIP canals and laterals to provide maintenance personnel and ditchriders with vehicular access to all points of delivery.
4. Remove all gates from canal roadways and replace with cattle guards.
5. Determine the feasibility of establishing a FIIP policy denying livestock access to the canals and laterals.
6. Line canal reaches as recommended by the Engineering Committee only after considering the 1986 CSKT/USGS groundwater report.
7. Place all laterals of 4 ft³/s or less capacity in pipe.
8. Institute herbicide and rodenticide programs in compliance with federal, state, and local laws.
9. Formulate a FIIP policy and program for developing gravity pressure pipe systems with the water users.