MONTANA INDIANS

TUESDAY, SEPTEMBER 6, 1955

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INDIAN AFFAIRS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Flathead Indian Reservation, Mont.

The subcommittee met, pursuant to call, at 10:10 a. m., in the hall of the tribal council, Hon. James A. Haley presiding.

Mr. HALEY. The committee will be in order.

I would first like to say that I am very happy to be here in the treasure State of Montana. While Florida and Montana may be miles apart, this is my second State. If I did not live in Florida I would want to live in Montana.

As a matter of fact, my wife is a Montanan and three children reside here, and I have been threatening your able Representative in Congress with some dire things if he did not perform just like I wanted him to because I also have 10 grandchildren, so that would be just about enough, sometime, to maybe vote the gentleman out of office. So I am sure he is going to be very respectful to me here today.

Montana has been very fortunate in the representation she has sent over a good number of years to the National House of Congress. You have furnished some outstanding and very distinguished men. You now have representing you in the United States Senate two very able men. One of them we love to classify down in Washington as one of our elder statesmen, talking of your great Senator Murray. The other one, whom you well know, of course, is Senator Mike Mansfield. Mike is one of the outstanding men of that great body, probably one of the best informed men in the United States Senate on our foreign affairs today.

He is rendering you great service there. Both of them are rendering distinguished service to their community, State and Nation.

I am very happy to be here in this First Congressional District, the district of my good friend, Lee Metcalf. Lee is a kind of a modest fellow, so I think I must say a little something about him. He came to the 83d Congress, of course, for the first time and he is making an outstanding record there. As a matter of fact, he was picked in his first year in the Congress to deliver one of the main addresses to the House of Representatives. We are very fond of him down there. I hope you people are here. He is young and vigorous. He has the integrity and the ability to represent you for many years.

I served on one of the committees, of course, with him, he is a member of the Committee on Interior and Insular Affairs. He is also a member of my Subcommittee on Indian Affairs. He has another standing committee of the House which is a rather distinguished honor, and there he has served ably. You have an opportunity to study a man and appraise him when you serve with him on the com-

mittee. It is about like going fishing with a fellow, or hunting. You find out very quickly his good points, and probably, if he has some, his bad points. But Lee is doing a fine job in Washington for you. He has the confidence not only of the members of his own party, his ability, outstanding ability, I might say, is recognized even across the aisle.

He has been with me on ~~this trip~~ since the hearings started in Oklahoma. He is probably more familiar with your problems here than I. Probably he is more familiar with your problems than most any man in the Congress.

So I am going to ask Lee here today to let me step down and turn over to him this gavel and let him preside while this committee is in Montana.

I want to again reiterate that he is doing a fine job down there. I hope you continue to send him back because I think that Montana should be proud of him. I am happy to call on my able distinguished colleague, Lee Metcalf. [Applause.]

Mr. METCALF. Thank you, Congressman Haley.

Congressman Haley told you that he has some roots in Montana. I want you to know that we Montanans owe a great deal to Jim Haley. We feel we share him as our Congressman with Florida, and he has done a great deal for us. He is always ready to help in any problem or any project with which Montana is concerned. He is not deceiving you when he tells you that if he had an opportunity to make a second choice Montana would be that choice. I am not at all fearful that he is going to sick his 10 grandchildren and the other relatives he has over there in Montana onto me because Jim Haley and I get along very well. I look to him for guidance and advice and we really have three Congressmen from Montana because of the roots that Jim Haley has in Montana and the interest he has in our problems and our welfare.

Senator Murray is unable to be here today. He asked me to advise you that he is concerned about the welfare and all the problems you have in Lake County as well as the problems with which we are immediately concerned today.

Senator Mansfield is abroad on a foreign-relations tour and also unable to be here.

Both are going to ask me for a report on this hearing and this meeting and for suggestions. With the usual unanimity that we have demonstrated in the last session of Congress, we will, as a result of these hearings—Senator Mansfield, Senator Murray, and I—ask for some legislation or whatever else is necessary as a result of this meeting.

I think before we go into the hearing you should meet some of the members of the staff that are accompanying Mr. Haley's subcommittee.

We have over here at my right Dr. John Taylor, who is our staff authority on Indian affairs.

We have two regular witnesses, Mr. Dellwo and Mr. Decker. And if any of the rest of you want to testify, will you come up and give your names to Dr. Taylor and he will make a list of other witnesses to testify on this matter that we have before us today.

In addition to Dr. Taylor, we are accompanied by your indefatigable reporter, who has probably the hardest job of anyone with the subcommittee, Mr. Karl Veley. He has the job of taking down all of

the testimony, and it sometimes runs into long hours of reporting and transcribing this testimony.

Then along with the party and representing the Department of the Interior and the Bureau of Indian Affairs is an assistant legislative counsel, Mr. Lewis Sigler. We may hear from Mr. Sigler later on today. Mr. Sigler has also been of outstanding service to us in assisting us in the hearings in Oklahoma and in Arizona, and I know that you will continue your service here with us. We are glad to have you with us today.

We have two members of the Indian Bureau who should be introduced.

Mr. John Cooper of the Billings' office. Mr. Cooper, I was proud and heartened when I was in the Southwest to find the love and admiration and respect that the Indians and the men in the Bureau have for you in that area. I am very happy that you are here in charge of the Montana office.

And of course you all know our own superintendent, Mr. Forrest Stone.

Mr. Stone, we are also happy to have you here and are looking forward to working with you and working out the problems that will be presented today.

The purpose of the hearing is to try to get some additional evidence and some insight into a problem that has been worrying your Congressmen and your Senators for a number of years, and we hope that we will get some of the facts upon which we can do some research and together with the Department work out a solution. That is the problem of the Flathead Irrigation District, the Flathead project, and three irrigation districts of it.

We have two principal witnesses who are going to testify. Mr. Dellwo, who has been connected with the project for many years and is probably the outstanding authority on it, and then we are going to ask Mr. Decker to present some of the administration's viewpoint.

So without further ado, Mr. Chairman, I will open the hearings.

Mr. HALEY. Mr. Chairman, If I may be recognized.

Mr. METCALF. Mr. Haley.

Mr. HALEY. To tell these people here Mr. Metcalf, who is a rather retiring kind of a fellow, he forgets or he is too timid, I suppose, to recognize the real part of this team back there, Mrs. Metcalf. I wonder if you would not stand up.

Mr. Chairman, prior to calling the witness, I would like to place in the record at this point a brief history of the Flathead Agency and Reservation.

Mr. METCALF. Without objection, it will be inserted in the record at this point.

(The document referred to follows:)

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WASHINGTON, D. C.

FLATHEAD AGENCY AND RESERVATION, MONT.

(William H. Gilbert, History and General Research Division, August 17, 1955)

The People

The Indians of Flathead Agency and Reservation are compounded of two distinct Indian groups or tribes; the Salish (Flathead) and Kutenai. "Flathead"

is a term applied to certain Indian groups who are thought to have artificially deformed the heads of their children. It is asserted that the Salish, who were here called "Flatheads" never resorted to this practice. The name "Kutenai" is thought to be derived from a Blackfeet expression for one of the names used by the Kutenai Tribe for itself. The Salish element is part of a widespread group of bands known throughout the Northwest, while the Kutenai are a small and possibly related group of Indians confined to limited areas of the Northern Rockies. The present area (1950) of Flathead Reservation totals 645,155 acres and the total resident Indian population 2,166. This Indian population is highly mixed with white blood and the number reported as fullbloods approximates only 300. In the census of 1934, almost all had English or French surnames.

Economy

Agricultural and grazing activities predominate but somewhat over half of the acreage is operated by non-Indians. Most of the Indians live in frame houses but a minority reside in log houses. The annual average income per family is reported to be $1,100. Timber sales account for a considerable revenue as does also the payments involved in rental of power site. As a tribe the Flathead are comparatively well off, their total resources totalling over $70,802,000, the per capita worth being $16,805.

Culture

Culturally, the Flatheads are also well advanced. Many are well educated and the number of adults accounted unable to read and write is only 73. However, about 15 percent of children of school age are reported not in school. Religious affiliations are predominantly Roman Catholic. The tribe is organized under the Indian Reorganization Act and has an efficient and active tribal government, conducting several tribal enterprises very successfully. Hospitalization, welfare, and law and order services are provided by the tribe for its members. A large part of the land has been trust allotted but a considerable area is in fractional heirship status.

History

This reservation dates back to treaty of July 16, 1855, with the Flathead Nation. Subsequent acts have confirmed and defined the rights of Indians at Flathead Reservation. The most important was perhaps the act of March 7, 1928, which authorized the Federal Power Commission to issue licenses for water-power developments on the reservation, the rentals to be paid to the tribe and deposited in the Treasury at 4-percent interest.

Source: H. Rept. No. 2503, 82d Cong.; H. Rept. No. 2680, 83d Cong.

Mr. METCALF. The first witness to be called will be Mr. Dennis Dellwo.

Will you come forward and indentify yourself for the record and proceed in any way in which you see fit.

STATEMENT OF DENNIS DELLWO, SECRETARY, FLATHEAD IRRIGATION DISTRICT

Mr. DELLWO. Thank you, Mr. Chairman.

Mr. Chairman and——

Mr. METCALF. Do you have a prepared statement?

Mr. DELLWO. Yes.

Mr. METCALF. Do you have an extra copy for the reporter?

Mr. DELLWO. Yes.

Mr. METCALF. Fine.

Mr. DELLWO. Mr. Chairman, the responsibility which has fallen to my lot here today is a great deal appreciated. It is appreciated in two different ways. One is, it is an expression of regard and respect from my people. It is appreciated in another way.

It is a tremendous responsibility for any one person to have the job of presenting to your committee the facts involved in the history

of the problem which is confronting us and which we are going to try to present to you today.

My name is Dennis Dellwo. I am secretary of the Flathead Irrigation District and one of the commissioners of that district.

I have asked, Mr. Chairman, to read my statement into the record. My people here will probably be surprised to see me before anybody reading a statement. They have seen me bounce up right out of the audience and begin and keep going until I finish, as a rule. I asked to do it this way today so that everybody present will know what I am offering in the way of evidence and so that later on the facts that I offer here will not be disputed by anyone. They will be a matter of record.

I want to say, aside, Mr. Chairman, that we would have this hall full of people today except that up here in the valley crops are being harvested and we have not had a drop—I mean a drop— of rain for 6 weeks this morning. People are irrigating and harvesting to a point where they could not come to this hearing. They are depending upon us.

Mr. METCALF. Mr. Dellwo, I know that the people have demonstrated their confidence in you in having you here. I am glad that we have so many people here. I feel that I should say that it is an auspicious thing to be meeting here in the hall of the tribal council and discussing a problem that is a joint one between the Indians and the non-Indians on the reservation. And we feel as if this is a symbol of the good will and the fine relationship between the two groups here in this area.

Mr. DELLWO. I am glad you mentioned that, Mr. Chairman.

I want to stress it. On the Flathead project, our irrigation districts and the tribal organization, the four groups are equally interested in this. And I feel perfectly safe in saying that they all have the same viewpoint. We are in accord. We are not only in accord because we have a financial interest here but we are in accord because we have a kindly feeling toward one another.

Mr. METCALF. Mr. Dellwo, you have a long statement here. I wonder if you would prefer to sit down.

Mr. DELLWO. It might be easier at that, thank you.

I have been authorized and instructed by the Board of Commissioners to present to you today the matter of fair compensation to the Flathead irrigation project for electrical energy which that project was required to supply to the Bureau of Reclamation for use in the construction of Hungry Horse Dam which utility lies more than 100 miles to the north of us, and has no connection whatever with this project. The representatives of the other interested groups have indicated approval of my appearing in their behalf also.

I shall make every effort to present this matter to you with the utmost brevity consistent with the disclosure of all relevant facts essential to the making of a fair decision.

It seems the record made here today should bear a terse chronology of early events which went into the building of this area, into the development of the Flathad irrigation project as it is today; and, definitely, into the problem now before us.

I think, Mr. Chairman, I must show you this map. It is hanging where you can see it without my removing it, I believe.

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Right now we are right here. The Mission Range of Mountains runs along just about as my finger travels here. The summit of the Mission Range is the eastern boundary of the former Flathead Indian Reservation. The Flathead River which drains Flathead Lake meanders down to the west here and the area in between, which constitutes the larger part of the Flathead irrigation project is known as the Mission Valley, the St. Ignatius Mission being right here. The smaller part of the project, the Jocko division, is down here by Arlee and another part of the project lies away over here to the northwest, the Camas division of the project, in the Hot Springs area. Hungry Horse is way up here somewhere, about three times the length of this map from where we are. That is where Hungry Horse Dam is and one of the reasons that we are so much upset about it is that it is so far away from us and so completely disconnected from us that we do not believe we have any responsibility with it.

Mr. METCALF. Mr. Dellwo, we may keep the map?

Mr. DELLWO. Yes. I think you had better.

Mr. METCALF. Without objection then, it will be made a part of the file.

(The map referred to will be found in the files of the committee.)

Mr. DELLWO. You will notice the areas of the irrigation project are colored and that is one reason I chose this little map. It is large enough to be seen and the colors indicate the areas. You will notice almost the entire Mission Valley here is under irrigation from the mountains to the river.

The Flathead Indian Reservation was open to settlement under the homestead and reclamation laws, in 1910. Construction had been started upon the irrigation project including a powerplant intended for use in pumping water for irrigation. That plant was to be at the site of present Kerr Dam. It was known as the Newell tunnel site. A 1,700-foot tunnel was driven by pick, shovel, powder, and mule cart, lacking 300 feet of reaching daylight. Power development was then temporarily abandoned when further reconnaissance disclosed the possibility of sufficient water from gravity sources.

Construction of a diversion system reaching far into the mountains and of a distribution system covering some 140,000 acres was then pursued intermittently when appropriations could be had from Congress. The area proposed to be irrigated covered both trust-patent land and the unallotted lands which had been homesteaded. There were roughly 70 percent homestead lands and 25 percent trust lands.

Today the percentages are right at 87 percent nontrust and—I have a figure here of 13. I have been told it is a little greater than that. Let us say that trust-patent land would be between 15 and 20 percent, I believe. Those figures have to do, of course, with trust-patent land in the project.

In the early years construction was financed out of the tribal funds. It was 1916 before someone discovered that this was unfair and impracticable. In 1916, by special act of Congress, tribal funds were reimbursed for previous expenditures; and, since that time, construction has been financed from the United States Treasury. The project was under the Bureau of Reclamation until 1924, when it was transferred to the Bureau of Indian Affairs. This project now has no connection with the Bureau of Reclamation at all.

Getting into the twenties, the demand for water and the movement from dry-farming into the irrigation type of farming had outgrown the ability of the project to supply water. Those of us who were bent upon seeing this area through its travail and upon the high road to economic stability, began to do something about it. We organized water user's associations. We began to harass our Congressmen and Senators. We had come here with a picture in our minds of these irrigated farms with their lush crops and a prosperous dependable way of life. We wanted the picture finished. We had never doubted when we came here that Uncle Sam would finish the picture in jig time.

By 1925 our efforts bore fruit. A Congressman from Michigan, Hon. Louis C. Cramton, who was chairman of the Subcommittee on Appropriations for the Interior, came here in person. He attended giant mass meetings of water users. He sat at the conference table with the officers of our associations. When he left here, he seemed to have in his mind a clear vision of the area and of what had to be done. Two years later I listened to Mr. Cramton tell the House about the Flathead and about the people out here. He made me very proud of my people.

That brings us up to the act of May 10, 1926. That act provided an appropriation of $395,000 for continuing construction of the powerplant, with other amounts for other items. The act enumerated the tems of construction which were then in mind toward completion of the project. The act required of the landholders that they organize irrigation districts and that those districts would execute repayment contracts (fairly strict ones). The act authorized the generation of power for sale, with net revenues going to pay certain project costs. This last provision is what we are concerned with today. That far back and all the way up to now, net revenues have been considered basic to the stability of this project.

Those of us who were active in getting all of this done ran into tremendous resistance when we undertook to organize the irrigation districts and to set up the required repayment contracts. A lien upon their lands for all costs including power costs was something which people here had not foreseen. Many leading men on the project considered the proposed power development as a dangerous dream. Even congressional committeemen shook their heads in doubt when it was suggested that rural electrification could be accomplished and that it could be made to pay. There were then just a few tiny examples of rural electrification and their rates were very high.

The act of January 12, 1927, gave us more time to get going. Finally the project was organized into three irrigation districts; namely, the Flathead irrigation district, covering about 70,000 acres, or all of the nontrust land north of Post Creek, including the Camas Division, that would be all of the project from this creek on north and that division over there; the Mission district, covering about 13,000 acres in the St. Ignatius area; and the Jocko district, with about 6,000 acres in the Arlee area. The Flathead district was organized and its contract was set up somewhat in advance of the other districts.

Immediately a new phase in power development was precipitated. The project powerplant then in mind would have been one with a prime output of around 7,500 horsepower. The Montana Power Co.

had made application for full development of the site in 1920. With the imminent prospect of the occupation of the site by a "coffee-mill" type plant, as they called it, representatives of the power company became active. The project had begun the construction of a plant (1909), it had maintained its appropriation of a water right on the river as required by law, it had money to continue construction, it was in possession. The situation was such that they were certain that FPC would not grant them a license to build at that site against the interests of another Government agency. Officials of the company were eager to bargain their way out of the dilemma. They were willing to recognize our "squatter's rights" and make allowance for them.

The evident intent of the project, with the approval of the irrigation district, to proceed with a "run of river" plant had the desired effect. Representatives of the company sought our cooperation. Their first approach was angry criticism of the Flathead project.

I remember three of those fellows walking in on a joint session of irrigation district commissioners. Excuse me, ladies. They wanted to know what the hell we were thinking of to build a "coffee-mill" plant on a site that would turn out 150,000 horsepower. We said, "O. K., what do you have to offer?" We laughed at them. We had the advantage. Our response was, "O. K., show us something better." Later conferences were at the summit. Mr. F. M. Kerr, then president and general manager of the company took over. We had many meetings with him. The result was the act of March 12, 1928, which authorized the leasing of the site to some reliable concern instead of development by the irrigation project.

In late 1928, A. B. Inkster, Charles Leavall, and I, a majority of the Flathead district board, with our attorney, Walter Pope, now district judge, in conference with Mr. Kerr, agreed that in lieu of our proposed "coffee mill," whose output would cost 4 to 6 mills per kilowatt-hour, we would approve a license to the company in consideration of its agreement to deliver to the Flathead irrigation project certain amounts of power as follows. You will understand that this was the culmination of a year or two of battling back and forth back in Washington and here on the project, and so on. This did not happen out of a clear sky.

Five thousand horsepower for pumping only at 1 mill per kilowatt-hour; 5,000 horsepower for project use and for sale at 1 mill per kilowatt-hour; 5,000 horsepower for project use and for sale at 2½ mills per kilowatt-hour.

Note, there was to be, and has been no demand charge on this power. I suppose the deal was unusual. We bargained for and we pay for when we take, just the kilowatt-hours, under this agreement, that we take.

Today, the main point in narrating in some detail the process which led to our present source of power, is to stress the fact that during all of that period it was the commissioners of the irrigation district who bore the brunt of negotiations with the company. From the way it all has turned out, the Lord must have been on our side.

We did the bargaining. The Government did not do it. The Federal Power Commission takes over.

Following the passage of the act of March 1928, and the agreement between the power company and us, the Rocky Mountain Power Co., a subsidiary of the Montana Power Co., applied to the Federal Power

Commission for a license to develop Newell site (project 5, Flathead River). In late October 1929, began hearings before the Federal Power Commission. In the interim the understanding concerning the delivery of power for project use was cleared with Mr. Cramton and with the Interior (Mr. Joseph Dixon, former United States Senator, was then Assistant Secretary). The hearings before FPC went on for 2 weeks. Every possible phase of the situation was given a full airing. Two of the commissioners of the Flathead Irrigation District and our attorney attended the hearing and testified. It seemed to all present, I would say, that the governing fact which led the FPC to favor the Montana Power Co. over several other plans for development was their agreement to deliver power at those low rates for the benefit of the Flathead project. On May 23, 1930, the company received its license.

I wish now to offer for the record a copy of the license issued by the FPC.

Mr. METCALF. Without objection, it will be made a part of the record at this point.

(The license referred to follows:)

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, powerhouses, 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 waterpower 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 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).

Whereas the Commission has found that said project, as hereinafter described, will be best adapted to a comprehensive scheme of improvement and utilization of said waterway for the purpose of navigation, of waterpower 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 first 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 enclosed, 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. O. No. 5–4, 5, 6, 7).

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 powerhouse 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 endorsement 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 1 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 1 year from the date of issuance hereof, shall thereafter, in good faith and with due diligence, prosecute such construction, and shall within 3 years thereafter complete the installation of 3 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, insofar 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 endorsement 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 centerline 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 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 term 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 worko 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 powerplant, 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 railroads.

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 2893, 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 2893 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.

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, insofar 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 2883 and 2893: *Provided, however*, That the Commission retains the right, at any time

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prior to the beginning of commercial operation of the project, to define limits of such regulation between elevations 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 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 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 benchmark, elevation 2910.882 feet, stamped "2900 GN," as now located and established at Somers, Flathead County, or to such other benchmarks 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 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.

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 9 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 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, the of 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 2 years	$60, 000
For the 3d year	75, 000
For the 4th year	100, 000
For the 5th year	125, 000
For the next 5 years	150, 000
For the next 5 years	160, 000
For the next 5 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.

(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 cannot 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 Arbitraiton 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 $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 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 1 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.

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 includible 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 annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by the Licensee shall be determined from time to time by the Commission. Whenever such reservoir or other improvement is constructed by the United States the Licensee shall pay similar charges into the Treasury of the United States upon bills rendered by the Commission.

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 percent 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 percent upon the actual, legitimate investment, 30 percent thereof shall be so paid; of all surplus earnings in excess of 2 percent and not in excess of 4 percent upon such investment, 50 percent thereof shall be so paid; of all surplus earnings in excess of 4 percent and not in excess of 6 percent, 70 percent thereof shall be so paid, and of all surplus earnings in excess of 6 percent, 90 percent 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 percent 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.

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, if 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 percent 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, 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 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, insofar 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 of 3 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.

THE 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.

Mr. DELLWO. I offer this mainly that you might study the provisions of section 26 which prescribes the delivery of power to the project. The language of that section should put aside for good the contention of certain administration officers in the Interior that the power here is "the Government's own power." I ask you to ponder this language. You see, they do not say they are going to sell to the United States.

Licensee shall make available, * * * and the United States, for and on behalf of the Flathead irrigation project * * * may take; and, having taken, shall pay for * * *.

The section then enumerates the three blocks of power. Amendments to the license made since all bear this same language. The United States may take for the benefit of the Flathead irrigation project.

Under all of these circumstances, could anyone resist the conclusion that there was here set up a trust; the United States, acting through Interior, being the trustee? Mr. Smith, attorney for the irrigation district, treats that point in studious fashion, in a memorandum which I now offer for the record.

Mr. METCALF. It is a rather voluminous brief. I suggest it be made a part of the file.

Are you referring to it?

Mr. DELLWO. I refer to it very briefly. And it is a very studiously prepared thing.

Mr. METCALF. This will be made a part of the file.

(The document referred to will be found in the files of the committee.)

Mr. DELLWO. It is too bad that Interior officials do not apply themselves in similar fashion before they reach their conclusions.

Then began the construction of a power distribution system covering the area of the former Indian reservation. Under the terms of the company's license, they were not permitted to retail power in that area. The Montana Power Co. is not permitted to retail any power in the former Flathead Reservation.

A 320-kilowatt hydro plant in the Mission Range was purchased by the Irrigation Service, thus leaving the project unmolested in its service here. Our power business has presented a phenomenal growth. Our web of lines reaches almost everyone in our area. Our 5,000 and more customers enjoy rates which are said to be the lowest anywhere. The remotest farmstead on the end of the wire is served at the same

rates as the city residence—I suppose that is completely unusual—namely, 100 kilowatt-hours per month for $3 with further load at diminishing rates.

Our average rate, I believe, last month was about 1⅞ cents per kilowatt-hour, city, town, industry, everything.

The skepticism which existed in the twenties with respect to rural electrification resulted in a hesitancy on the part of Congress to depend upon net revenues as a source of reimbursement to the Government for costs of construction of either the irrigation system or the power system. Consequently all of the early acts required full per acre charges annually with net power revenues, if there should be any, applied in such fashion as to shorten the repayment period. That of course was unfair. Power users of today would be paying construction charges which normally would come due many years hence. In 1948 we went before Congress to rectify this error. At that time right at $1,400,000 in net revenues were in the Treasury, since the beginning of our power business here, about 15 years.

In February and March of 1948 attorneys of the Department and we of the Flathead spent many days with members of the Subcommittee on Indian Affairs of the Committee on Public Lands developing H. R. 5669, which became Public Law 554 of the 80th Congress. Of that law, I would say the main features are: Definite provisions for the application of net revenues to the payment of or the reduction of the annual construction assessments and a very definite requirement that there shall be net revenues.

At this point I shall offer for the record copies of the law which I am now referring to and of the repayment contract which was set up under the provisions of that law. The pamphlet begins with the act and then goes on into the contract.

Mr. METCALF. Unless there is objection, it will be placed in the record at this point.

Mr. DELLWO. That could go in the files. That is a pretty big thing, is it not? I suggest the one section to which I am going to refer should go into the record.

Mr. METCALF. That is subsection (*g*) on page 6. It will be inserted in the record at this point and the entire repayment contract will be made a part of the file.

(Subsec. (*g*), p. 6 of the repayment contract as referred to above follows:)

(*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.

(The repayment contract referred to above will be found in the files of the committee.)

Mr. DELLWO. I also want to offer to the committee marked copies of the original repayment contract set up under the act of 1926.

Those are also marked and there are only two quotations that I use out of that section.

Mr. METCALF. Section 5 and section 9.

Mr. DELLWO. Yes.

Mr. METCALF. On pages 6 and 7, sections 5 and 9 will be inserted in the record at this point and the balance of this contract will be made a part of the file.

(Secs. 5 and 9 of the repayment contract above referred to follow:)

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 powerplant 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 of works, by their advice and recommendations volunteered by them or made at his request.

9. The Secretary of the Interior is hereby authorized and empowered, insofar as the districts executing this contract may authorize the same, to construct, operate, maintain, improve, and extend the powerplant 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.

(The repayment contract referred to above will be found in the files of the committee:)

Mr. DELLWO. And I want to offer a copy of the hearings, and I will quote the pages there. I do not think you will want that in the record.

Mr. METCALF. These are official hearings of the previous Congress, on record with the committee, and quotations that you make will be made in the record and you will refer to these.

Mr. DELLWO. Yes.

Mr. METCALF. There is no need to put this in the file.

Mr. HALEY. I think you can further identify them by saying they are hearings on H. R. 6473, H. R. 5669, and S. 1874, held February 16, 17, 18, and 19 and March 4 of 1948.

Mr. METCALF. Right; committee hearing No. 33 of the 80th Congress.

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Mr. DELLWO. Section 5 of the original contract, among other things, provides:

> The districts executing this contract severally agree to aid the said Secretary of the Interior and his agents in deciding questions of policy concerning said project by their advice and recommendations.

In 1928 the then Secretary apparently felt the need for grassroots wisdom. In 1948, apparently, the then Secretary had outgrown any such need.

In section 9 of the same contract is the following language. This has a very definite bearing on our problem today, the language in section 9, and it was put in there for a purpose. That first contract was drafted by a man by the name of Mr. Truesdale, and he took—I have had people read through that and tell me they did not believe he forgot anything. That section says, in part, this:

> The Secretary is empowered insofar as the district may authorize the same to construct, operate, maintain, improve, and extend the power system—

He is authorized to do that insofar as the districts would authorize him to do it. I do not think right out of the clear sky he issues an ultra vires directive telling the project engineers whether or not to do it and to keep still—

> all upon such terms designed to secure ample and cheap power for pumping and for sale and to aid in paying project construction and other charges * * *.

That part of the act of May 25, 1948, with which we are concerned today will be found on page 6 of the pamphlet copies which I have handed in. Section 2 (g) was given deep study by those who were striving to write a mandate which could not be misunderstood.

That is a long section and I shall not read it here, but it provides definitely that our power business here should sell power at such rates that would first bring in sufficient net revenue to pay the annual assessments, construction assessments on the account of the power system itself. Secondly, for the purpose of assisting in paying construction costs of the irrigation system, that it should bring in sufficient net revenues to cover a reasonable income on the unliquidated indebtedness of the power system. That was nothing more than a yardstick. It is subject to Commission interpretation. Somebody might say, "Why should you fellows have income on this money?" It was not designed that anybody really should have income; it was designed as a yardstick by which the rates at which we sell power would be measured.

And then it goes on and very definitely takes care of—and in a very practical manner—of the fact that the large bulk of our power was bargained for with the power company in return for our giving up our water rights and our possibilities of building a big project plant there. And I contend that when we get power from the Montana Power Co. today at 1 mill that we are really not buying power at 1 mill. When we pay them the 1 mill we pay them the balance due on that power. We made the big payment when we gave up those rights to them back in 1929. And yet the Bureau of Reclamation insisted on getting such 1-mill power as was available here delivered to Hungry Horse at 1 mill. Russell handles that very nicely in his brief.

At the moment when that section of the law was being composed in the minds of legislative attorneys of the Department and us who were in Washington from the Flathead, Mr. Krug, then Secretary of the Interior, apparently in a great hurry, under the impression that if his edict went out before Congress would have taken action, that then his word would stand even in defiance of Congress, issued his directive of January 29, 1948, ordering the project engineer of the Flathead irrigation project to deliver power to the Bureau of Reclamation at Hungry Horse at cost. He did that in complete defiance of the requirements of our repayment contract.

I want to digress here a moment. In bringing it to our Congressmen, including our very good Congressman who is present today, concerning this matter, they naturally submit the problem to the Department for a report, and I have a half a dozen or more letters in my files which came back, all virtually copies of the first one, in which they contend that this power belonged to the Government, that the Flathead project would be benefited by the construction of Hungry Horse, that the issuance of Mr. Krug's directive—that is why I put this paragraph in here—that the issuance of Mr. Krug's directive before the passage of the act of 1948 resulted in his directive taking precedence over the act of Congress. They come right back. I do not know whether Aandahl's letter had that in or not, but it is in the others.

Mr. METCALF. That is right. Mr. Aandahl's letter, which is one of the series of letters to which you refer, does take the position that the Krug directive is binding upon the Department and overrides any legislation.

Mr. DELLWO. Yes.

Mr. METCALF. As I understand it.

Mr. DELLWO. That is right. They have come right out and said it.

Mr. METCALF. I want to say, Mr. Dellwo, it is customary for all of us before we make any approach to any of these problems to find out what the administrative attitude is. And we submit these problems to the administration and I, you understand, have been over the file with Senator Mansfield and Senator Murray's correspondence with you and Congressman Mansfield—before he was Senator—and your correspondence. Nevertheless, it was necessary for me to submit your letter to the Department as a starting point from which this hearing moved. We hope this will be the culmination.

I also propose to submit the record we are making here today to the Department to ask them if they cannot either change their administrative ruling or to make some other suggestions as to how we can work out justice along the lines suggested by Russell Smith's brief and your correspondence with me.

Mr. DELLWO. Thank you.

Then followed the hearings which resulted in the passage of the act of which Mr. Krug apparently was afraid.

I would not talk that way about a Secretary of the Interior if I did not have their own letter saying that.

There is no doubt that his arbitrary action resulted in the application of more than ordinary care in the drafting of section 2 (g). If anyone could doubt the intent of that section, let him read the hearings, pages 43 to 51, especially page 50. Now, on page 50——

Mr. METCALF. That is the Committee Hearing No. 33 to which we previously referred.

Mr. DELLWO. Yes. On page 50 there is a long discussion between committee members and Mr. Slaughter. And by the way, Mr. Slaughter was the legislative attorney of the Department, and a very wonderful fellow. He worked days without number there with us drafting this law, act of 1948, which I think is a very wonderful piece of legislation. But they spent—oh, there are pages and pages in the hearings where one member of the committee or another was trying to make sure through Mr. Slaughter whether section 2 (g) was composed in such form as to be adequate to protect our power business and finally, on page 50, I believe it was, either Fernandez or D'Ewart said to Slaughter—he was the Secretary's own attorney, mind you—he said, "How about a case like this where the Secretary of the Interior tries to take power from the Flathead without profit?" And Slaughter said, "The Bureau of Reclamation tries to take?" Slaughter said, "The Bureau of Reclamation pays just like anybody else." Still they go on and do it.

Mr. METCALF. But they have not paid yet.

Mr. DELLWO. No; they have not even paid the cost. But if anybody wants to know what the intent of that section was, there it is on page 50 of the hearings.

The incorporation of section 2 (g) in the act of 1948 was nothing less than a directive to the Secretary of the Interior to administer the power business of this project for the benefit of the landholders of the project. The Secretary was plainly told that he must not administer a trust as a plaything—that he must not make the substance of the trust his own, to be cast about as his whim or ill temper might dictate.

I use that word "ill temper" advisedly. I went before Secretary Krug and, as I cite later on, after he got through listening to me he complimented me and told me that I should be selling power for these big corporations, and so forth and so forth, and then he pounded the table and swore by the Creator's name, et cetera, that he was not going to do this, no matter—in other words, he was going to take this power.

When all of this was being done, I was in Washington, and I went to Mr. Krug and made protest. Later, in behalf of the Flathead district, I sent him a brief in remonstrance covering the matter in some detail. No results. I want to offer a copy of that brief for the record.

Mr. METCALF. It will be incorporated in the record at this point.

Mr. DELLWO. This is mainly to show we did not sit down on the job. We went right at it.

(The brief referred to follows:)

MEMORANDUM RELATIVE TO USE OF AND PAYMENT FOR POWER TAKEN BY HUNGRY HORSE FROM FLATHEAD INDIAN IRRIGATION PROJECT

It is the purpose of this memorandum to outline the legal relationship between the Department of the Interior and the Flathead Indian irrigation project and to demonstrate that—

1. The Department of the Interior confiscated private power when it took power from the Flathead for the use of Hungry Horse; and
2. The $180,000 additional credit provided in H. R. 9205 is a modest amount to be paid for the power taken.

I. THE OWNERSHIP OF THE POWER TAKEN

Since 1855, the date of the Flathead Treaty, the United States has had no beneficial ownership of the lands or the waters on the Flathead Indian Reservation. It held title only as a trustee for the benefit of the Indians.[1]

This title situation remained in status quo until after the act of April 23, 1904,[2] providing for the allotment of lands and the disposal of surplus unallotted lands. Under the authority of the act of May 29, 1908,[3] patents were issued to settlers. Such title as the settlers received were titles from the Indians through the United States, acting as trustee.[4] After the issuance of patents pursuant to the act of May 29, 1908, the title to the lands in the project were owned by Indians and by whites who succeeded to tribal titles. It seems further clear that the waters of the reservation then became appurtenant to the lands owned by the whites and Indians alike.[5] As early as 1909 the power potentialities were recognized[6] and reservation of power sites authorized. By 1926 money had been appropriated for power development,[7] and irrigation districts embracing the non-Indian lands, by their repayment contracts, had obligated themselves to repay to the United States the moneys advanced for power development.[8] Again, however, the basic ownership in the assets comprising the power project was in the landowners in the project, subject to the lien of the United States for repayment under the terms of the district contract.

The waters of the Flathead River were appropriated under the provisions of State law on behalf of the Flathead project for power and other purposes by formal notices of appropriation. These notices were probably unnecessary in view of the fact that the waters were then appurtenant to the lands under Federal law, but they were nevertheless sufficient to publicly indicate the claims of the project to the water.

When, therefore, in the 1920's the Montana Power Co. through its subsidiary, the Rocky Mountain Power Co., sought a license to construct a dam in the Flathead River, there were two basic ownerships with which it had to deal. The Indians owned the dam site. The irrigation project (embracing both white and Indian owners) had an ownership in the use of the waters and 1,700 feet of tunnel which had been bored in contemplation of a small plant at the present site of Montana Power Co.'s Kerr Dam. The United States (though Government money had been used for the power project it was used on a loan basis subject to repayment by the landowners) in its proprietory capacity owned nothing except a lien for the repayment of the amounts which had been advanced for the construction of the irrigation and power systems.

By reason of these ownerships in the landowners of the Flathead project, the project itself was one of the bargainers at the hearings leading to the issuance of the Federal Power Commission license for the Kerr development. The claims of ownership by the project as distinguished from the claims of the Indians were vigorously asserted at that time.[9] Actually those claims had been recognized

[1] Flathead Treaty, 12 Stat. 975. The effect of this treaty was to reserve the lands and waters for the Indians. After the treaty (whatever it may have been previously) the ownership of the United States was that of a trustee with all of the beneficial rights in the Indians. This was the effect of Indian treaties in general (*Winters* v. *U. S.*, 207 U. S. 564, 28 S. Ct. 207, 52 L. Ed. 340; *Minnesota* v. *Hitchcock*, 185 U. S. 373, 22 S. Ct. 650, 46 L. Ed. 954) and of the Flathead Treaty in particular (*United States* v. *McIntire*, 101 F. (2d) 650). The reservation of waters was for the benefit of the Indians, not the United States (*United States* v. *Powers*, 94 F. (2d) 783).

[2] 33 Stat. 302.

[3] 35 Stat. 448.

[4] This is made apparent from the provisions of sec. 14 of the act of May 29, 1908, providing that the receipts from the sale of unallotted lands should be used for the construction of the irrigation system and the balance paid to the Indians. Later Congress by act of May 18, 1916 (39 Stat. 139), determined that the tribal funds which had been used for the construction of the irrigation system should be repaid to the tribe. By sec. 5 (a) of the act of May 25, 1948, the remaining part of the tribal funds which had been used for construction were reimbursed to the tribe.

[5] Thus the act of May 29, 1908, contemplated the construction of an irrigation project and the use of the waters by the purchasers of the surplus unallotted lands. Subsequent appropriation bills all indicated a congressional intention that the surplus unallotted lands would be irrigated. (All recognized, by providing for the construction of irrigation works and the repayment therefor, that the lands in the project had appurtenant water rights.) Act of March 3, 1909 (35 Stat. 795); act of April 4, 1910 (356 Stat. 277); act of March 3, 1911 (36 Stat. 1066); act of August 24, 1912 (37 Stat. 526); act of June 30, 1913 (Peck Act No. 4, 62d Cong.); act of August 1, 1914 (Public Act 160, 63d Cong.); the acts of May 10, 1926 (44 Stat. 453, 464–466); January 12, 1927 (44 Stat. 945); March 7, 1928 (45 Stat. 200); August 7, 1946 (60 Stat. 895); and May 25, 1948 (Public Law 554, 80th Cong.).

[6] Act of March 3, 1909 (35 Stat. 795).

[7] Act of May 10, 1926 (44 Stat. 465).

[8] Repayment contract between United States of America and Flathead Irrigation District, approved by Department of Interior, December 16, 1927.

[9] Flathead power development—Memorandum on development of Flathead River power site, Montana 71st Cong. 2d sess.; S. Doc. No. 153, May 23, 1930, serial No. 9220.

by the United States in the repayment contract of December 16, 1927,[10] and were given congressional recognition in section 2 (g) of the act of May 28, 1948.[11] It is unnecessary to here argue the equities which the project held, since they were recognized; and, whether the claims were strong or weak, had sufficient bargaining might to enable the project to secure favorable treatment from the Montana Power Co. More important, the equities which were asserted were equities belonging to the landowners and not to the United States, and the benefits which were derived from those equities were benefits belonging to the landowners and not the United States.

In the dealings culminating in the license to build the Kerr Dam, the United States exchanged one type of trust assets for another type, for example, the equities of the Flathead project, in water and a tunnel site, for a contract for power at a low rate. The exchange of assets by a trustee under the most elementary principals of law would not discharge the trust or change the nature of the trustee's title.

We stress this matter because it is apparent that Secretary of the Interior has never fully appreciated the fact that the assets of the Flathead irrigation project are not assets of the United States with which the Government may deal as it pleases.[12]

In the ordinary trustee relationship, a trustee would be required to use the greatest of good faith in dealing with the trust property and particularly so if the trustee were devoting the property to its own use.[13] Whether this same rule applies to the United States acting in its trust capacity may be questionable, but it is clear that an act of the United States in dealing with trust property in contravention of the trust is a violation of the fifth amendment, and that the mere power to control does not carry with it a power to take.[14] In the absence of specific legislation, the Secretary of the Interior certainly had no right to divert trust property in the Flathead irrigation project's power to the use of the United States without just compensation; and a taking even pursuant to valid legislation would raise a just compensation problem under the fifth amendment.[15]

II. THE SECRETARY DID APPROPRIATE THE POWER WITHOUT PAYING FOR IT IN ACCORDANCE WITH LAW

Secretary Krug's directive of January 29, 1948, on its face, discloses that the Secretary did not realize that he was dealing with private property. The directive as amplified by Mr. Aandahl's letter of January 26, 1954, reading in part:

"The Office of Indian Affairs will provide power service for construction purposes at Hungry Horse Dam immediately on the basis of the incremental cost of the power as purchased from the Montana Power Co. plus other actual incremental

[10] Sec. 9 provides: "* * * 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."

[11] Sec. 2 (g) reads in part: "* * * 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*." (Italics supplied.)

[12] The mistaken conception of the Government's ownership crops out in the letter of January 26, 1954, from Fred G. Aandahl, Assistant Secretary of the Interior, to Senator Mansfield wherein Mr. Aandahl says: "Furthermore, it was believed major savings would accrue to the Government through the use of the Government's own power in connection with the construction of the project by the Government." The same misconception is apparent in the letter of April 22, 1954, from Mr. Sidney L. McFarland to Hon. Wesley A. D'Ewart wherein it is said: "In effect, Secretary Krug's directive required one Government agency to transmit electric energy over its lines to another Government agency at no loss but also without profit—in other words, at cost."

[13] The strict character of this rule is indicated in *Magruder* v. *Drury*, 235 U. S. 106, where the court said: "It is a well-settled rule that a trustee can make no profit out of his trust. The rule in such cases springs from his duty to protect the interests of the estate, and not to permit his personal interest to in anywise conflict with his duty in that respect. The intention is to provide against any possible selfish interest exercising an influence which can interfere with the faithful discharge of the duty which is owing in a fiduciary capacity. 'It therefore prohibits a party from purchasing on his own account that which his duty or trust requires him to sell on account of another, and from purchasing on account of another that which he sells on his own account. In effect, he is not allowed to unite the two opposite characters of buyer and seller, because his interests, when he is the seller or buyer, on his own account, are directly conflicting with those of the person on whose account he buys or sells.' "

[14] See *Shoshone Tribe of Indians* v. *United States*, 299 U. S. 476, 57 S. Ct. 244, wherein the Court said, speaking of a partial taking from the Indians: "Nor does the nature of the right divested avail to modify the rule. Power to control and manage the property and affairs of Indians in good faith for their betterment and welfare may be exerted in many ways and at times even in derogation of the provisions of a treaty. *Lone Wolf* v. *Hitchcock*, 187 U. S. 553, 564, 565, 566, 23 S. Ct. 216, 47 L. Ed. 299. The power does not extend so far as to enable the Government to give the tribal lands to others, or to appropriate them to its own purposes, without rendering, or assuming an obligation to render, just compensation; * * * for that 'would not be an exercise of guardianship, but an act of confiscation.' "

[15] "* * * nor shall private property be taken for public use without just compensation." Fifth Amendment, Constitution of the United States.

costs incurred in delivering said power to the Bureau of Reclamation. No 'profit' will be charged. This basis for service will continue until the Bureau of Reclamation completes a transfer arrangement with the Montana Power Co. which can take its place."

makes it perfectly clear that the Secretary felt that he was dealing with Government property. It is perhaps out of this misconception that the whole difficulty arises.

The Secretary of the Interior seeks to evade the provisions of section 29 of the Act of May 25, 1948, by the simple statement that the Krug directive of January 29, 1948, preceded the legislation. In this connection it should be noted that the directive was not a contract entered into between two competent parties. The directive was completely unilateral; and, while it did have the effect of procuring the power, it did not and could not bind the persons who owned the power; it could not and did not abrogate the power of Congress to fix rates. The act of May 25, 1948, which does bind the landowners, because of the contract which incorporates it, is equally binding upon the United States. When it is considered that the power deliveries to Hungry Horse started March 11, 1948, and ended October 16, 1952, it is difficult to see how the secretarial directive could possibly affect the rates for power delivered after the date of the congressional action. Even if the Secretary were empowered to take private property at whatever rate he chose, in the absence of specific legislation, the taking could at the most, fix the rates for power delivered between March 11, 1948, and May 25, 1948, a period of 75 days out of over 4½ years of power deliveries. Consequently it is submitted that the United States is required to pay for the power in accordance with the formula prescribed in section 2 (g) of the act.

Section 2 (g) of the act requires that the power be sold at the lowest rate which will produce net revenues sufficient to (1) liquidate the annual installments of the power system construction costs established pursuant to subsection (f) of this section, and (2) (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 (3) (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.

It is the obvious intention of the act that the power should be sold at a profit. Otherwise the language in section 2 (g) relative to the repayment of the irrigation construction costs is meaningless. If this is conceded, as it must be, then it is perfectly clear that the arguments which have been advanced to support the Secretary's position cannot stand.

1. The "no profit" idea expressed in the directive is directly contrary to the act.

2. The idea expressed in Mr. McFarland's letter of April 22, 1954, to the effect that the project, unless the Hungry Horse power could have been sold at a higher rate than Hungry Horse paid the district, can claim no profit, is without merit. The act requires that all power sold produce a return; and, in view of the act, and the Government's contractual obligation created pursuant to it, the Government cannot now claim that it purchased surplus power and is entitled to it at cost.

3. The idea that Hungry Horse was entitled to share in the cost of the low-bracket power, which the project got under its agreement with the Montana Power Co., is completely at variance with the idea expressed in concluding words of section 2 (g).

III. THE AMOUNT OF $180,000 PROVIDED IN H. R. 9205 IS A MINIMUM FIGURE

Once the completely erroneous notion that the Government was dealing with its own property is eliminated from this controversy, then there are two methods by which the rate can be established:

1. Under the act of May 25, 1948.
2. By determining the fair market value of the power sold to Hungry Horse.

A. Rates under section 2 (g)

If the first method is adopted, then the careful and realistic report made by Messrs. Brown and Dibble discloses that there was due to the Flathead irrigation

project as of November 17, 1952, at a minimum [16] the sum of $206,694.02. We shall not here reargue all the propositions so ably set forth in that report. However, by reference to the Aandahl letter of January 26, 1954, the disparity between the positions of the project and the Department may be seen. It is apparent upon an examination of the two positions [17] that the report of Brown and Dibble, except to the extent hereafter noted, is based upon the requirements of section 2 (g) [18] and that the Department of the Interior position is based upon the notion that Interior could do what it liked with its own power. In the succeeding numbered paragraphs the two positions are analyzed.

(1) The difference of $11,349.36 in item (1) is due to the Interior's insistence that it was entitled to share in the so-called low-cost block of power furnished to Flathead by the Montana Power Co. The justification for the project figure is clearly stated on page 35 of the Brown-Dibble report and the failure of Interior to concur is due to its arbitrary conclusion that the act of May 25, 1948, is not effective. Congress recognized in explicit words that the "project" should have the benefit of the low-cost power in this language: "* * * 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 wtaer rights or other grants." Even if Interior can ignore the acts of Congress, still there is no reason why the project should share its low-cost power with Hungry Horse. It was not the rights of Hungry Horse which were bartered for the Flathead-Montana Power contract. The rights of the landowners of the project paid for the low-cost power. The cost cannot be computed in terms of the rate paid by Flathead for the low-cost power because other items of value were traded off. Even if the sale cost to Flathead were the rate paid, still Interior would have no right to take it, at that rate. The Montana Power contract is a property right and if Interior wants to take property from any private individual it is required to pay not the cost but the value. Cost and value may or may not be synonymous terms, but clearly they are not here.

(3) Interior disallowed the full amount of item No. 3. Apparently there is no disposition to argue that the costs incurred in planning for the Hungry Horse power are not reimburseable. Any actual costs for such temporary service would necessarily have to be repaid unless the project itself were to sell the power at something less than its actual cost. The position of the Interior seems to be summed up in the Director's letter of February 8, 1952, in this language:

"The amounts listed for the various items appear to be rounded estimates and not accounting figures. They are, therefore, probably subject to some margin of error. It would be difficult if not impossible at this time for the Division of Water and Power to check each of the items as to accuracy, the need for incurring the expense, and the propriety of the proposed allocation to Hungry Horse."

Interior has made no effort, apparently, to verify the figures submitted by Messrs. Brown & Dibble and it is submitted that an item of cost in the amount of $27,010.95 should not be dismissed because of the accounting difficulties. After all the Secretary might have negotiated a contract for the purchase of the power on a basis mutually agreeable to all parties. Had that been done, no cost accounting

[16] The Brown-Dibble report was actually prepared on an incremental cost basis and at least to the extent that sec. 2 (g) required a return on the unliquidated portion of the investment is low because it does not provide for that return.

[17] The table appearing in the Aandahl letter is as follows with the designating numerals added at the extreme left for purposes of clarity:

Power and energy:		
(1) Power and energy sold	$388,355.40	$377,006.04
(2) Possible power demand penalty	23,295.00	23,295.00
Total	411,650.40	400,301.04
Other charges:		
(3) Planning and promotion	27,010.95	0
(4) Kerr substation investment	80,000.00	7,318.00
(5) Overhead on Kerr substation	2,000.00	0
(6) Return on investment	13,539.47	0
(7) Rental payment to Bonneville Power Administration	39,224.00	15,975.00
(8) Operation and maintenance of facilities	27,583.33	0
(9) Customer expense	1,375.00	0
(10) Administrative and general	10,227.37	* 6,405.96
Total	200,960.12	29,698.96
Grand total	612,610.52	430,000.00

* Promotional, planning, overhead and general expenses estimated at 27.5 percent of other costs allowed.

[18] Attention is again called to the fact that Brown and Dibble did not provide for a return on the unliquidated part of the investment. See footnote 16.

would have been necessary. If, however, he chose to commandeer the power, the costs should be paid even though the determination of them represents some accounting problem.

The attitude of the Secretary in regard to item 3 appears to be completely arbitrary. He apparently does not realize that the amount of $27,010.95 is money which the landowners of the Flathead will be required to pay to the United States. If it can be demonstrated that the costs as determined by Brown & Dibble are not accurate, there would be no objection to a revision of the amount claimed. Certainly, however, the item cannot be dismissed on the basis of the generalities put forward to date by the Secretary acting through the Power Division.

(4) The disallowance of the major portion of item 4 seems to be based on a misconception of the facts. The facts are precisely stated in the Brown & Dibble report, pages 7 to 10, and no point would be served by reiterating them here. This much, however, is clear. Prior to the Hungry Horse demand for power, the Montana Power Co. did, as it was required to do under its license, furnish the substation for the delivery of power to the Flathead project. In the absence of the Hungry Horse demand Montana Power would have continued to furnish that substation. When, however, the Flathead was required to procure deliveries of 100 kilovolts to supply Hungry Horse, it could not require the Montana Power Co., under the existing contracts, to deliver at both 100 kilovolts and 34.5 kilovolts. Montana Power agreed to deliver at 100 kilovolts but in order for Flathead to step down the 100 kilovolts delivery it was required to own the substation. This cost $80,000 which the landowners will be required to repay. The landowners get no benefit from it even though they own it and deliver power through it. Had it not been for Hungry Horse, Flathead would have gotten its 34.5 kilovolt delivery for the duration of the license without any investment in the substation and without the cost of maintaining it for the remainder of the life of the Montana Power Co. contract. It may be categorically stated that the ownership of the substation, under the circumstances here, is of absolutely no value to Flathead and that the substation is owned only because of the Hungry Horse requirements. The fact that the Hungry Horse power was not delivered through it and that the substation is now being used to deliver Flathead power is not important. The point is that had it not been for Hungry Horse the Flathead landowners would be getting exactly the same service they are now getting from Montana Power and would owe the United States $80,000 less than they now owe.

(5) Item 5 is adequately discussed in page 11 of the Brown-Dibble report.

(6) Interior's position on item 6 is simply a denial of Flathead's right to any return on its investment either in actual money or in the assets which resulted in the Montana Power contract. It is at this point that the Krug directive runs headlong into section 2 (g) of the act. Just how Interior's position can be justified (at least as to power delivered after May 25, 1948) in view of the language of section 2 (g) is indeed a mystery. In this connection it should be remembered that not only the act but the repayment contract itself binds the Secretary of the Interior to sell the power at a rate which will yield a "reasonable return." Neither the act nor the contract provide that the Secretary may honor previous commitments that the Secretary has in effect made to himself contrary to the terms of the act.

Actually the Brown-Dibble report is most conservative on this item. Section 29, as indicated, requires a reasonable return on the unliquidated portion of the power construction costs. Brown and Dibble used a figure of $82,000 as the unliquidated construction cost and used an actual interest cost figure of 3½ as a basis for computing a reasonable return. The $82,000 is that portion of the unliquidated construction cost specifically attributable to Hungry Horse. Certainly in building a rate structure which is required to make a reasonable return on investment no one in establishing the rates would attempt to allocate specific items of construction costs to specific customers.

If, however, the act is taken at face value and the power is to be sold at a rate which will yield a "reasonable return" on the unliquidated portion of the power system construction costs, a much larger figure is obtained. The average unliquidated power construction costs during the period involved were $1,592,150. A reasonable return, as distinguished from the cost of borrowed money, would be at least 5 percent.[19] To make such a return the entire system would be required to produce net revenues of $343,500 in the 4.58 year period. On a basis of the power used by Hungry Horse as against total power deliveries (73,803,000 divided

[19] We are advised that the Federal Power Commission approved a return of 8 percent for the Montana Power Co. Kerr Dam operation.

68829—55——5

by 330,277,000) the portion of the reasonable return attributable to Hungry Horse would be 22 percent or $75,570. It is our belief that under the terms of the act the method here used is one which could be reasonably urged in a court. In any event the amount of this item 6, $13,539.47, as computed by Brown & Dibble is exceedingly conservative.

(7) The problems raised as to item 7 are adequately discussed in pages 18 to 24 of the Brown-Dibble report.

(8) There seems to be no controversy about item 8 except the basic dispute as to whether item 4 is proper. If item 4 is allowed, as we believe it should be, then item 8 follows. So far as we are advised there is no dispute as to the propriety of the 7½ percent item.

(9) We do not understand the disallowance of item 9. It seemed to be agreed that $25 per month would be a reasonable sum for the meter reading and billing service. Perhaps Interior's position in this respect is based on the notion that Reclamation furnished the service as it apparently intended to but did not do.

(10) Admittedly the costs involved in item 10 are difficult to compute. As a fact we know that the maintenance of the offices, the payment of secretarial salaries and such matters cost money. We know, too, that all of the amounts so expended are required to be paid by the landowners of the project. At a time when Hungry Horse was using Flathead power it certainly in fairness should be required to pay some of the costs of that general overhead. The 15 percent figure was initially suggested by the Division of Water and Power. The difficulty arises out of the items to which it should be applied. If, as we believe, items 7, 8 and 9 should be allowed, then the percentage should be applied to that total. It is to be noted in connection that item 10 as to the extent that the same is allowed in the Interior's computations is computed at 27½ percent but that the items which form the base figure are greatly trimmed. It should also be noted that the $6,405.96 allowed by Interior purports to allow for item 3 whereas Brown & Dibble have determined direct costs of $27,010.95 as to item 3.

If any attention is to be paid to section 2 (g) in the determination of the amount to be charged to Hungry Horse, then we submit that the Brown-Dibble report most conservatively reflects the amounts of costs involved.

B. Rate on basis of wholesale rates

If on the other hand the amont is to be computed without reference to the act of May 25, 1948, then we submit that the amount which should be paid is the fair market value of the power at the time it was taken. That fair market value would be determined by the price a willing buyer would pay in purchasing from a willing seller. In an area where big volume power was short, that price would be higher than in an area where it was relatively plentiful. A comparison could not be made with Bonneville rates which Aandahl suggests would be 3.5 mills per kilowatt hour because after all, as Aandahl suggests, Bonneville power was not available and its very absence would mean an increased rate.

At a time when Bonneville Power was not available the Mountain States Power Co. paid Flathead an average of 8⅛ mills (5 mills plus a demand charge). This rate was the result of free bargaining between the Secretary of the Interior and Mountain States Power and would be strong evidence of the market value of power during the period prior to the availability of Bonneville Power. In a court a reasonable argument could be made to support the Mountain States Power rate and if that rate were established, the charge to Hungry Horse would be roughly $599,649.75 and the balance due would be $187,999.35.[20] A trustee as was the Secretary might have a difficult time explaining why power sold by him to a third party is worth more than the same power converted by the trustee to his own use.[21]

Mr. DELLWO. We here on the Flathead firmly believed that this wrong would be righted. I am sure it would have been difficult for anyone to persuade us that an administrative officer of the United

[20] In this computation the amount is calculated on the basis of 73,803,000 kilowatt-hours, the energy metered at Hungry Horse.

[21] In the event of any contention that the rate of 4 mills plus the demand charges as fixed in the Montana Power-Flathead project contract is evidence of the wholesale rate of power, it should be borne in mind that the Montana Power deliveries are made at the Kerr Dam while both Mountain States and Hungry Horse deliveries were made at substantial distances from the dam. In addition, when Flathead got the 4-mill rate it was required to make an $80,000 investment in a substation and assume the burden of the operation and maintenance of that station through the life of the contract. Mountain States Power was required to make no similar investment. For these reasons the Montana Power rate to Flathead is not as fair an index of wholesale rates as the Flathead rate to Mountain States. Note here that if the problem is approached from a fair market value standpoint, all of the incremental costs including the substation cost are absorbed in the return from the wholesale rate and that Hungry Horse would not pay separately for the substation.

States would be purposely dishonest—that he would brazenly flaunt the provisions of laws and contracts which his own office had helped to draft. Apparently Members of Congress believed likewise. Numerous times over the years since 1948, especially during the last 2 years, we have besought one or another of them to make our problem his own, and to make the Department understand that the landholders of this project must have what is theirs. The replies which they and we have received each time the matter has been presented to the Department have been evasive, illogical, and untruthful. We do not believe this comes from stupidity. Let us scan a few of those replies:

A letter from Mr. William Warne—that letter was to me—then Assistant Secretary, dated May 27, 1948, says in part:

> I am confident that your people would not wish to enjoy a "windfall" inconsistent with the public interest.

Would it not be too bad if, after 40 years of toil here, these farmers should fall heir to a "windfall"? With respect to the "public interest" feature of his letter, I wonder if dropping a block of concrete in the path of the river up at Hungry Horse is more "in the public interest" than the job these 2,000 farmers here have done toward building a new rural empire. They put their lives into the building of roads, schools, churches, cities, farmsteads, and the purchase of machinery into the millions, all at a cost and with a value of hundreds of millions. Certainly this was all in the "public interest." They couldn't take it with them. Most of the old 1910-ers are gone now, and all they have out of it is their burial plot.

Again, Mr. Warne says—

> The benefits which will accrue to the Flathead will far outweigh the amount in question.

The net result to the Flathead up to now has been the loss of two very good customers; namely, the Mountain States Power Co. and the Flathead REA. I suppose Mr. Warne has in mind the ability of the Flathead to get power from Hungry Horse.

By the way, at the moment our contract to deliver power to Mountain States Power Co. up in the Kalispell area, you know, Congressmen, terminated, that is, they, too, were taking power from us. They felt they could buy at a lower rate from BPA. Their demand charge to this project was running at $108,000 a year, just their demand charges, plus their kilowatt-hour charges of 5 mills per kilowatt-hour. That is the benefits we get from Hungry Horse, we lose that customer.

Let us see how it would work. Let us say the Flathead was obliged right now to take steps to secure some of that power. That is Hungry Horse power. We would have to deal with BPA of course, and their rate is $17.50 per kilowatt-year of reserve. With our load factor, rural lines and all, our power would cost us right at 5 mills per kilowatt-hour; that against our present average rate of around 1.1 mills per kilowatt-hour. And yet they have the brazenness to contend it is to the benefit of the Flathead to be able to get Hungry Horse power.

If that is so beneficial to the Flathead, let us try on for Hungry Horse itself. The Bureau of Reclamation demanded a reserve of 10,000 kilowatts. That is what they demanded of the Flathead project. That is why, as you will learn later, we had to buy an

$80,000 transformer. All of a sudden when the Bureau of Reclamation and the Bureau of Indian Affairs and the power company had reached an agreement back in 1946 and 1947 on delivering power up to Hungry Horse and this project was going to build a line up the west shore and they were going to buy at Mountain States rates, and all that, all of a sudden the Bureau of Reclamation says, "Say, by the way, we want a reserve of 10,000 kilowatts instead of 5,000. Right out of a clear sky. That is why we had to buy an $80,000 transformer at Kerr Dam, which now they do not want to pay us for and which then we did not need at all.

Now, let us say Hungry Horse had to buy power at BPA rates. They say it is beneficial to us to be able to get them. But their demand at 10,000 kilowatts, running 6 years it would have cost them $875,000 for power and they want to pay us less than half of that.

The lack of study evident in Mr. Warne's letter is amazing. For instance, Hungry Horse is in the vicinity of Kalispell. It is in Flathead County. That county and its school districts, and that city will be drawing taxes from industries attracted up there on account of Hungry Horse way on into the years. Were they expected to contribute to the construction of Hungry Horse? No. The ACM Co. has just finished a $65 million aluminum plant up there. As a result of Hungry Horse, they saw fit to invest $65 million up there, to make a profit on. You know they are going to make lots of profit. Were they asked to contribute to Hungry Horse? No. But the farmers of the Flathead? No, they were not expected to.

Mr. Chairman, the bill for power delivered by this project to Hungry Horse will be paid. If it be not paid by the debtor, the Bureau of Reclamation, then it will have to be paid by the farmers here. We want you to ponder that fact. The bill is going to be paid. If the Bureau of Reclamation skips two, three, or four hundred thousand dollars, the farmers on the Flathead are going to have to dig that up for the reason, very plainly, that their net revenues will be short just that much.

Another letter of the same import is by Mr. Fred G. Aandahl, Assistant Secretary, to Senator Mansfield, dated January 26, 1954. I consider this letter a public document and therefore offer it for the record together with a copy of my letter pointing out to the Senator about five errors in the Aandahl letter.

Mr. METCALF. Without objection, the two letters will be incorporated in the record at this point.

(The letters referred to follow:)

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
January 27, 1954.

DENNIS A. DELLWO,
Secretary, Flathead Irrigation District,
Charlo, Mont.

DEAR DENNIE: When the officials of the Interior Department came up to my office to discuss the matter of the settlement with the Flathead Irrigation District for the power charge at Hungry Horse, I was in the hospital, but this matter was thoroughly discussed with members of my staff.

For your information I am enclosing herewith letter I have today received which confirms the information given to my office during the meeting. I realize that some of this information has been sent to you previously; however, as a result of the discussions I do not believe that there is anything further the Depart-

ment of Interior would be willing to do. The matter has been reviewed several times by officials not connected with the Indian Bureau or the Reclamation Bureau, and they all seem to believe that the amount determined is a reasonable figure.

I do not know of anything further I can do on this, and the only alternative left, it would appear, would be for the irrigation district to discuss the matter with an attorney. As you know, Dennie, I am not an attorney myself, and I do not know whether there would be any recourse through legal channels, but that is the only suggestion I can make at this time.

With best personal wishes, I am,

Sincerely yours,

MIKE MANSFIELD.

Enclosure.

WASHINGTON 25, D. C., *January 26, 1954.*

Hon. MIKE MANSFIELD,
United States Senate, Washington 25, D. C.

MY DEAR SENATOR MANSFIELD: This is in response to a verbal request from members of your staff for information to assist you in answering a letter dated December 18, 1953, from Mr. Dennis Dellwo, secretary, Flathead Irrigation District, concerning the settlement of the Hungry Horse construction power charge between the Bureau of Reclamation and the Flathead Irrigation District. Reference is also made to your letter of January 12, with which you forwarded two additional letters dated January 2 and 4, 1954, from Mr. Dellwo.

Mr. Dellwo, in his letter of December 18, states that the problem came about as a result of the issuance by Secretary of the Interior Krug of an order or directive that power be delivered by the Flathead irrigation project for construction purposes at Hungry Horse Dam. Secretary Krug's instructions of January 29, 1948, to the Commissioners, Bureau of Reclamation and Bureau of Indian Affairs, stated in part that "The Office of Indian Affairs will provide power service for construction purposes at Hungry Horse Dam immediately on the basis of the incremental cost of the power as purchased from the Montana Power Co. plus other actual incremental costs incurred in delivering said power to the Bureau of Reclamation. No 'profit' will be charged. This basis for service will continue until the Bureau of Reclamation completes a transfer arrangement with the Montana Power Co. which can take its place." The service arrangement was put into effect on the basis that Hungry Horse Dam was being constructed for the benefit of the entire region including the Indian population of the Flathead Reservation. Furthermore, it was believed major savings would accrue to the Government through the use of the Government's own power in connection with the construction of the project by the Government. The contemplated transfer arrangement with the Montana Power Co. was never made.

Negotiations were conducted for a long period with the Flathead project by Reclamation to obtain a suitable agreement for delivery of construction power at Hungry Horse. It was only after these unsuccessful negotiations that the then Secretary believed it to be in the public interest to order the project to make delivery to Hungry Horse. The instructions also stated that "The Office of Indian Affairs will present to the Bureau of Reclamation and the Division of Power a detailed statement of the incremental costs actually incurred by it in connection with power supply for Hungry Horse and, after discussion, the Division of Power will submit its recommendation as to the amount to be paid by the Bureau of Reclamation."

It is believed that Mr. Dellwo's claim that the provisions of the act of May 25, 1948, Public Law 554, 80th Congress, have been abrogated is unfounded. The Secretary's order predates Public Law 554 and, therefore, it is believed Public Law 554 has no bearing on the situation.

The procedures in the instructions of January 29, 1948, were followed, and on November 17, 1952, the Flathead project forwarded a report to the Department in which it estimated that the cost of providing the construction power to Hungry Horse project was $612,610.52. Several preliminary estimates of the amount were considered prior to this final report. The data in this report were thoroughly analyzed by two separate groups in the Office of the Secretary, and on July 31, 1953, it was agreed by Assistant Secretaries Fred G. Aandahl and Orme Lewis that an amount of $430,000 was proper. The breakdown of the items claimed and the amounts requested and allowed are summarized in the following tabulations:

	Amount claimed by Flathead project (Nov. 17, 1952)	Amount allowed by Interior Department (July 31, 1953)
Power and energy:		
Power and energy sold	$388,355.40	$377,006.04
Possible power demand penalty	23,295.00	23,295.00
Total	411,650.40	400,301.04
Other charges:		
Planning and promotion	27,010.95	0
Kerr substation investment	80,000.00	7,318.00
Overhead on Kerr substation	2,000.00	0
Return on investment	13,539.47	0
Rental payment to Bonneville Power Administration	39,224.00	15,975.00
Operation and maintenance of facilities	27,583.33	0
Customer expense	1,375.00	0
Administrative and general	10,227.37	[1] 6,405.96
Total	200,960.12	29,698.96
Total	612,610.52	430,000.00

[1] Promotional, planning, overhead, and general expenses estimated at 27.5 percent of other costs allowed

The reduction for the amount for power and energy sold resulted from allowing Reclamation the benefit of the unused portion of the 1 mill and 2½ mills per kilowatt-hour blocks of energy that the Flathead project obtained from the Montana Power Co. The Flathead project calculated this saving would be $11,349.36. The Department believes that several of the items claimed are not justified and accordingly no allowance was made for these items. A portion of the Kerr substation investment was allowed on the basis that the annual charges on the unused capacity in the 15,000 kilovolt-ampere transformer might be chargeable to the Hungry Horse load. In fact, the Hungry Horse power did not flow through this substation. Furthermore, the Flathead project purchased the substation prior to the date of service to Hungry Horse project. The rental payment to Bonneville Power Administration was adjusted based on the consideration of charging costs in the ratio of use of the facility for serving the Hungry Horse load. An administrative and general expense of 27½ percent was considered adequate to cover items including promotional, planning, overhead, and general expenses. Generally, an allowance of 15 percent is considered sufficient to cover administrative and general expenses. The difference between the amount claimed by the project and the amount believed to be proper by the Department is $182,610.52. During the period from March 11, 1948, to October 16, 1952, 73,803,000 kilowatt-hours of energy were used to supply the Hungry Horse load. The payment of $430,000 represents an average return of 5.83 mills per kilowatt-hour to the Flathead project.

Mr. Dellwo's calculation of the cost of 10,000 kilowatts of BPA power at $17.50 per kilowatt-year is oversimplified and cannot properly be used for a comparison to this situation in this manner. BPA would make available as much as 440 million kilowatt-hours for the $875,000 which is about 6 times the 73,803,000 kilowatt-hours of energy used to serve the Hungry Horse load. If BPA could have supplied the Hungry Horse construction power load, it would probably have used its E–4 demand and energy type rate schedule under which the average cost of energy would have been a maximum of about 3.50 mills per kilowatt-hour. BPA power was not available to serve the Hungry Horse construction power load.

It is hoped this material will be helpful to you in answering Mr. Dellwo's letter of December 18. Mr. Dellwo's three letters are returned herewith.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

FEBRUARY 2, 1954.

Hon. MIKE MANSFIELD,
Senator, Washington, D. C.

DEAR SENATOR: I have your letter of January 27 enclosing a letter from Mr. Aandahl, Assistant Secretary of the Interior, providing you with "information"

with which to answer my letter of December 18 concerning the matter of settlement for power delivered by the Flathead project to Hungry Horse.

I should think it would be considered abjectly impertinent and unethical for an administrative officer when requested for information, to reply to a Senator of the United States with the number of misrepresentations contained in the letter of Mr. Aandahl. When the matter was "thoroughly" discussed with members of your staff, it is too bad that some of your staff did not pin him down for basic facts on his statements. For instance:

(1) He points out that everything was done in compliance with the order or directive issued by Krug in February of 1948, but he does not even suggest where Krug would get authority to issue such a directive.

(2) He contends that the act of Congress fixing the method by which power rates shall be computed on this project is of no significance since Krug's order was issued prior to the signing of that act. Now wouldn't that be nice? The Secretary of the Interior would only have to anticipate the acts of Congress, and then issue appropriate orders in contravention of them, and he would build up an independent little government of his own.

(3) He contends that the Secretary was dealing with the Government's own power, when he must know that the power at the disposal of this project, under the terms of the FPC license, is "delivered to the United States for the benefit of the Flathead project."

(4) He belittles my use of the BPA peak-demand rate under which that body sells power wholesale, and says: "Under a 10,000-kilowatt deal with BPA they would be ready to furnish up to 440 million kilowatt-hours, while the Flathead furnished only 73,803,000 kilowatt-hours." He knew, when he said that, that under the order of Mr. Krug, the Flathead also was required to furnish up to 440 million kilowatt-hours.

(5) You were led to believe that persons not connected with Interior made the questioned computation. You will note from the letter of Aandahl that he and Orme Lewis made it.

No more now, Mike. Too bad you couldn't do this for us.

Yours sincerely,

D. A. DELLWO.

Mr. DELLWO. My files are replete with letters of this sort from the Department of the Interior attempting to justify their arbitrary action in this matter. One would think that it would be considered beneath the dignity of an administrative officer to evade the truth when requested for information by a Member of Congress.

Upon completion of Hungry Horse the Irrigation Service secured the services of Mr. Barry Dibble, who is a consulting engineer of national renown, and who has been in touch with the power development on the Flathead project since the beginning, to assist Mr. Firman Brown, area engineer, in making a computation of the costs to the Flathead of delivering power to Hungry Horse. Their study was, of course, made under the terms of Mr. Krug's directive. That is, they were to compute costs only. They were not allowed, were not permitted, to consider the requirements of law which say that we shall have net revenues. Their computations were based upon costs. Mr. Dibble and Mr. Brown came up with a very thorough report involving intense study. Their report justified a claim of the Flathead, on a cost basis, of $612,610.52. The Bureau of Reclamation, with the advice of the Water and Power Division, eliminated numerous items reducing the claim to $405,000. Later that Bureau, for purposes of promoting good will, paid the project an additional $25,000, leaving the Flathead project still short more than $180,000 plus of being reimbursed for its out-of-pocket costs. I now offer the Brown-Dibble report for the record. I have partially indexed it for your convenience, the parts which you would be particularly concerned with.

Mr. METCALF. This will be incorporated in the files of the committee.

(The document referred to will be found in the files of the committee.)

Mr. DELLWO. Mr. Chairman, we here on the Flathead do not believe that Hungry Horse was such a touchy financial risk that the farmers of the Flathead project should be required to pay a part of its cost.

We want your committee to sponsor legislation authorizing and directing the Secretary of the Interior to cause such accounting entries to be made as will result in making such compensation to the Flathead irrigation project for power delivered to the Bureau of Reclamation at Hungry Horse as will be in compliance with the requirements of laws and contracts applicable thereto regardless of the terms of the Secretary's directive with respect thereto.

We do not believe that an appropriation is necessary. The Accounting Division knows all about that. I have in mind the type of accounting entries which should be made. It will not be necessary for me to suggest that here. It seems that all that is required is to direct the Secretary of the Interior to cause his Accounting Division to charge Hungry Horse with an additional amount, whatever your committee decides the project is entitled to here, and make such entries as will add that much to the net revenue of the Flathead irrigation project.

At this point, Mr. Chairman, I want to thank you very kindly. This has been a long, and I imagine, rather tiresome thing to listen to. But to us here on the Flathead it is putting our big problem here just about as briefly as I, with my limited faculties, would be able to put it.

Mr. Barry Dibble, the author of that report, is present. And he is so familiar with the Flathead project here, he used to sit in with us back in 1931 and 1932 when we were talking about putting in a pumping plant and all of that, and I think that sometime Mr. Barry Dibble should be questioned. For that reason I have indexed that to that extent, so that you could ask him to take up those certain items. It will save a lot of time, perhaps, and save him a lot of effort.

Mr. METCALF. Thank you, Mr. Dellwo. Will you remain for a moment?

Do you have any questions?

Mr. HALEY. Mr. Chairman, I do not have any questions at this particular time. I think the witness has made a very, very clear and concise statement here in view of the situation that is involved, and I want to commend the witness for a fine presentation of apparently the many factors in there. I am very happy I have been here to hear it.

Mr. DELLWO. Thank you, very, very kindly, sir.

Mr. METCALF. Mr. Dellwo, I want to join my chairman in commending you on a statement that I believe succinctly summarizes a very long and difficult series of transactions.

Now, as I understand it, the $180,000 that you have suggested would just reimburse the project for costs.

Mr. DELLWO. That is all, a little short of that.

Mr. METCALF. Now if the provisions of the statutes and the repayment contract were carried out and the sale of the power was to be used as it was originally contemplated to help pay off the project, you would have to reimburse the project for more than the cost.

Mr. DELLWO. Considerably more. For instance, in Mr. Smith's brief there, he makes a rather hurried computation on the basis of Mountain States rates. And he comes up with the figure that is just about even with the figure that the Brown and Dibble came up with, for the reason that he does not use in his computation the 10,000-kilowatt demand which the Bureau of Reclamation has made and he did not use in his computation the added costs of going off to serve a customer way off in another country way up in the mountains, building lines and servicing it and the expenses of holding conferences which led up to that and items which Mr. Dibble and Mr. Brown used. I would say, roughly, that computing the power they used on a kilowatt-hour basis you would have to add somewhere between $200,000 and $300,000 for those items.

Mr. METCALF. That is in addition to the $180,000.

Mr. DELLWO. Yes; that is right. If you computed the power that Hungry Horse took at Mountain States rates with a 10,000-kilowatt demand, our bill to them would have been $915,000; see?

Mr. METCALF. That would be $300,000 more than that $612,000 you have computed as the actual cost.

Mr. DELLWO. That is what it would be.

Mr. METCALF. So actually, if legislation were drafted, it would be somewhere between $450,000 and $500,000 to make an actual repayment to the project.

Mr. DELLWO. That is right. And if—I have worked in this so long, if I gave all that material here orally today it would take me 3 or 4 hours. But I set up a computation one time, for instance, under section 2 (g) and took those 3 subsections, and what our power business, the entire project's power business, would have to receive in net revenues during that 55-month period—I do not have it in my brief there—and I came up with a figure right at $940,000. I went at it this way: I totaled up the amount of net revenues that section 2 (g) would require over that 55-month period and they totaled up $1,565,000, a million and a half, we will say. I divided that million and a half by the number of kilowatt-hours that we sold that year. The number of kilowatt-hours sold at Hungry Horse was 73,800,000; the total number of kilowatt-hours sold during that period was 330,000. So we set up a fraction there which is roughly 22 percent. I believe Russell has that in his brief there. And I charged Hungry Horse with 22 percent of the net revenues which our project was required to produce in that period and then added the costs, all costs, peculiar to Hungry Horse to that, and I came up with very near a million dollars. They tried to get away with $405,000.

Mr. METCALF. Thank you very much, Mr. Dellwo.

Mr. DELLWO. Thank you.

(A document submitted by Mr. Dellwo follows:)

POLSON, MONT., *April 17, 1948.*

To: The Secretary of the Interior.
The Commissioner of Indian Affairs.
From: The Flathead Irrigation District, Montana.
In re Construction power for Hungry Horse Dam, Hungry Horse project, Montana, and the Memorandum dated January 29, 1948, by the Secretary of the Interior with respect thereto.

BRIEF IN REMONSTRANCE

The Secretary of the Interior, under date of January 29, 1948, issued a memorandum, in the nature of a directive, to the Office of Indian Affairs and to the

Bureau of Reclamation to the effect that electrical energy available for sale by the Flathead Indian Irrigation project, Montana, be transferred to the Bureau of Reclamation for use for construction at Hungry Horse Dam, at a rate which would result in no profit to the Flathead project.

The said memorandum or directive was issued without any notice to the irrigation districts of the Secretary's intention to issue the same, and without any previous advice or recommendations from or by such districts. Up to the present moment the irrigation districts representing the lands of the Flathead project, under the terms of contracts with the United States, have not been regularly apprised or notified of the issuance of the said memorandum or directive, all of which is in violation of the terms and intent of repayment contracts between the districts and the United States.

The act of May 10, 1926 (44–464), provides for continuing construction, operation, and maintenance of the irrigation system(s) of the Flathead Indian Reservation "by and under the direction of the Commissioner of Indian Affairs."

The dominant thought in the act above cited was power development as a feature of the irrigation project. That is borne out by the fact that, out of an appropriation of $575,000, $395,000 was designated for the construction of a project powerplant with a provision that the net revenues resulting from the sale of power from the plant therein authorized should be used for the purpose of repayment of certain power and irrigation system costs.

All of the legislation concerning the Flathead project enacted since the act of 1926 has recognized the development of power as a project feature and, the use of net revenues from the sale of power to repay project costs, as a prime purpose of project power development.

It has been the consistent policy of the Bureau of Indian Affairs to establish rate schedules for the sale of power by the Flathead project which would result in returns, in the form of net revenues, sufficient to accomplish the definite purpose of the acts of 1926 and 1927 and supplemental acts.

The irrigation districts representing the non-Indian lands of the project have executed repayment contracts under the requirements of the acts above cited. The project has been administered for 20 years under the policies established by those acts and those repayment contracts. The contracts thus executed were confirmed by the District Court of the State of Montana. They were drafted by authorized representatives of the Bureau of Indian Affairs. Those representatives were in frequent conference with the officials of the irrigation districts during the process of drafting tentative contracts. The policy of deriving the greatest possible returns, consistent with reasonable rates to the customers, in the operation of the power feature of the project, was well established in the minds of the people, both town and country. There is no evidence at this time that anyone being served by the power system of the project is dissatisfied with the rates set up.

The contracts, when executed by the districts, and confirmed by the District Court of the State of Montana, were approved by the Secretary of the Interior.

With respect to numerous matters, the districts, through their repayment contracts, granted broad authority to the Secretary of the Interior. They did that under the definite and conclusive assumption that the authority so granted would be exercised in the interests of the Flathead project.

It was assumed of course that the granting of certain authorities precluded the arrogation by the Secretary or other authorities not specifically granted.

Paragraph 9 of the repayment contract executed by the Flathead District provides inter alia: "The Secretary of the Interior is hereby authorized and empowered 'insofar as the districts executing this contract may authorize the same' to construct, operate, maintain, improve, and extend the powerplant * * *" "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." It was not remotely suggested in that paragraph that the purpose of power development on the Flathead project was for the purpose of aiding in, or keeping down the costs of, the construction of other projects. It was specifically set forth that the purpose of power development here was a Flathead project purpose, and that the aim was to return net revenues (profits).

The protecting clause in section 9 "insofar as the districts executing this contract may authorize the same" was not put into this section inadvertently or by chance. It was very definitely insisted upon by the representatives of the landholders on the project as a safeguard against attempts, which might occur in the then future, by persons then unknown, who might come into power, to misuse an unlimited authority, or to divert the advantages of the thing which they were building.

It should be noted, with appropriate evaluation, that the power enterprise on the Flathead project was not initiated by the Secretary of the Interior. It was not initiated by the Bureau of Indian Affairs. It was initiated by the people on that project, through their chosen representatives, in conference with a Congressman who was then chairman of the Subcommittee on Appropriations for the Department of the Interior. It was set underway through the acts of 1926 and 1927, and the Commissioner of Indian Affairs was made its director and administrator.

In paragraph 23 of the repayment contracts we find the language "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." We believe the action of the Secretary of the Interior in issuing his directive to the Commissioner of Indian Affairs, to do that which is plainly harmful to the Flathead project, is in overt violation of this paragraph. It is difficult to believe that the Secretary of the Interior would flaunt the provisions of a contract solemnly approved by him.

Paragraph 5 of the contract provides, "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 of works, by their advice and recommendations volunteered by them or made at his request."

This language did not get into the contract inadvertantly or by accident. It was definitely the intent of the contracting parties that they would be mutually helpful in solving the problems and in surmounting the difficulties which it was foreseen would arise in the management of this project.

We believe the Secretary of the Interior is in complete error when he assumes that he has authority to deal with the power business of the Flathead irrigation project in any manner except one which will tend to the achievement of the intent and purpose for which that business was set up.

We believe he is in error when he assumes that the Flathead project is "just another Government unit" which might be molded into some standard pattern.

We believe he is in error when he adopts the policy of using the Flathead irrigation project power business to reduce the costs of a Government project being constructed at Hungry Horse and which has no relation at all with the Flathead project.

We believe he is in error when he assumes that he is not obliged to secure the consent and approval of the irrigation districts in the fixing of rates for the sale of power.

We believe that if he had such authority, he would be in error to use that authority oppressively as in making especially advantageous rates to one customer over other customers.

We respectfully contend that the Flathead irrigation project is set up as a trust with the United States acting as trustee; that that trust cannot be made a plaything by the trustee and that the trustee is in duty bound to administer that trust in such manner as will be most profitable to the beneficiaries of the trust.

We believe that under the provisions of the act of May 10, 1926 (44–464) the Secretary of the Interior does not have any authority to issue directives to the Commissioner of Indian Affairs inconsistent with the express provisions of the repayment contracts, or otherwise, except as expressly provided in such contracts.

We most vehemently remonstrate against the unilateral action of the Secretary of the Interior in attempting to compel the Bureau of Indian Affairs to sell power to favored customers at rates fixed without the consent or approval of the irrigation districts who are parties to the repayment contracts above cited.

We respectfully recommend that power be sold to the Bureau of Reclamation at rates which will produce a reasonable return or at rates comparable to those which the Bureau would expect to pay in the open market buying at wholesale.

We respectfully recommend that electrical energy, available for sale on the Flathead project, be sold at rates which will return reasonable net revenues with a view to accomplishing the intent and purpose of the power feature of that project in the reduction or payment of the costs of the power and irrigation systems.

We further recommend that the favored customer theory or policy in the fixing of rate schedules be abandoned insofar as the Flathead project is concerned, this theory or policy being exemplified in the contention of Bureau of Reclamation engineers that a Government agency should be considered a preferential customer over a private user (memorandum by David S. Culver, March 23, 1948), as well

as in the contention of rural electrification associations that they are entitled to delivery of power from the Flathead project upon demand and at rates lower than those published in the regular schedules of that project.

We further recommend that the boards of commissioners of the irrigation districts which encompass the lands of the project chargeable with project costs be consulted and that their advice and recommendations be sought by the Secretary of the Interior and the Commissioner of Indian Affairs prior to the consummation of transactions of such far-reaching effects as the one herein referred to.

CERTIFICATE

STATE OF MONTANA,
County of Lake, ss:

I, D. A. Dellwo, the duly elected qualified and acting secretary of the Flathead Irrigation District, do hereby certify that the foregoing brief in remonstrance, in the matter of the sale of power at Hungry Horse Dam, was read and considered at a regularly called meeting of the board of commissioners of the Flathead Irrigation District, and that the same was duly approved as the sense of that board, and that the secretary of the board was instructed to transmit the same to the Secretary of the Interior and to the Commissioner of Indian Affairs.

In witness whereof I hereunto place my hand and affix the official seal of said district this 17th day of April 1948.

[SEAL]

D. A. DELLWO,
Secretary, Flathead Irrigation District.

Mr. METCALF. The next witness will be Mr. E. L. Decker.

I will say for the record that when this hearing by this subcommittee was set up for this subject by the chairman, I requested the chairman to ask Mr. Decker to be present and to testify on behalf of the administration, and he is here as the area engineer, Mr. Decker, at our request.

Mr. DECKER. Yes.

Mr. METCALF. Mr. Decker, give your name and title for the record, and then proceed in any way you see fit. I see you have a prepared statement.

E. L. DECKER, AREA IRRIGATION ENGINEER, INDIAN IRRIGATION SERVICE

Mr. DECKER. My name is E. L. Decker, and at present I am area irrigation engineer of the area office in Billings. But I am submitting this record partially on the basis of a former project engineer during some of the time these transactions took place.

Mr. METCALF. You may sit down if you wish.

Mr. DECKER. I would like to say I express my appreciation, Mr. Chairman, to you and the committee and to all of the people here today. I think I can say there would be a great many people that would be very happy to be here if conditions were such that they could. I am very happy that there are as many as there are now.

I would like to say this is a short statement, Mr. Chairman, and in introducing it I would like to read it for the simple reason that I expect these people who are present here would like to know what is in the statement. And since it will take only a short time, I would like to do that.

Mr. METCALF. You may proceed in any way in which you wish. I was hoping you would read your statement because I know all of us are interested and concerned as well as the ones who will read the printed record.

Mr. DECKER. Following a period of negotiations, verbal and written, initiated during the latter part of 1946 and extending into 1947,

between the Bureau of Reclamation and the Bureau of Indian Affairs, a tentative agreement of understanding dated June 3, 1947, was reached, providing for the purchase and delivery of power by and to the Bureau of Reclamation from the Flathead irrigation project for use during the construction of Hungry Horse Dam. In general this agreement of understanding provided for the purchase of power at the same rates and under the same conditions contained in a contract in force with the Mountain States Power Co. for the purchase of power from the Flathead irrigation project. The purchased power was to be delivered to Kalispell by means of a 66,000-volt transmission line to be constructed by the Flathead irrigation project beginning at the bus bar of the Montana Power Co. transformer bank at Kerr Dam and extending along the shore of Flathead Lake to Kalispell, at which point connection was to be made to a 66,000-volt transmission line to be constructed by the Bureau of Reclamation between Kalispell and Hungry Horse Dam site. The 66,000-volt line to be constructed by the Flathead project was to be financed by a loan from the Mountain States Power Co. to be repaid by partial rebatement of charges for power consumed by the Mountain States Power Co. under their contract with the Flathead irrigation project.

Following the negotiation culminating in the agreement of understanding and prior to official approval by the Secretary of the Interior, a request was made by the Bonneville Power Administration to permit that agency to construct a 110,000-volt transmission line from Kerr Dam to the terminal at Hungry Horse, in place of the 66,000-volt line proposed by the Flathead irrigation project. Following a number of conferences, including all parties involved, an agreement was reached providing for the construction of the 110,000-volt line by the Bonneville Power Administration, to be used by the Flathead irrigation project under a facilities rental agreement, payment for which was to be the cost of capitalizing the construction of the proposed 66,000-volt line. This agreement was formalized by an authorization by the Secretary of the Interior.

Under date of January 29, 1948, a directive was issued by the Secretary of the Interior providing that power should be delivered to the Bureau of Reclamation at Hungry Horse Dam by the Flathead irrigation project on the basis of costs plus incremental costs. The directive also provided that these costs were to be calculated at a later date when power requirements and conditions of delivery had been more fully determined. Complying with the directive the Flathead project commenced the delivery of power on March 11, 1948. Since no decision had been reached as to what the final rate or costs would be, bills could not be rendered and current payments made. To meet this emergency and provide income with which the Flathead irrigation project could meet operating costs, the Secretary of the Interior, under date of March 9, 1950, issued a directive that interim payments should be made by the Bureau of Reclamation at the rate of 5.5 mills per kilowatt-hour of energy received. The directive further provided that the actual costs, plus incremental costs, should be determined as soon as information was available, and reported to the Bureau of Reclamation.

Complying with the directive of January 29, 1948, a report dated April 6, 1949, was prepared by Mr. F. H. Brown, project engineer for the Flathead project and transmitted to Mr. C. H. Spencer, construc-

tion engineer at Hungry Horse Dam. Since many factors of costs were as yet indeterminate, the report was prepared on an estimate basis in the total amount of $625,000. The report was transmitted by Mr. Spencer to the regional office of the Bureau of Reclamation at Boise, Idaho, where it was reviewed and recalculated to total $422,416. The report was then referred to the Commissioner of the Bureau of Indian Affairs for review and was there recalculated to total $435,556. The report was then referred to the Division of Water and Power, Office of the Secretary, where a compromise figure was arrived at totaling $430,000. The Flathead project was then advised of the findings of the Division of Water and Power and requested to submit additional justification should the project be not in agreement with the findings of the Division of Water and Power.

Under date of October 6, 1952, Mr. H. T. Nelson, director, region 1 of the Bureau of Reclamation, Boise, Idaho, advised Mr. F. H. Brown, project engineer, for the Flathead project, that delivery of power would cease on October 16, 1952. In a memorandum dated October 17, 1952, Mr. Vernon D. Northrop, Director of Division of Water and Power, Office of the Secretary, advised the Commissioner of the Bureau of Indian Affairs that the sum of $24,500 in addition to the interim payments of $405,116 would be considered to be a fair and equitable charge as a final payment and that the findings would be considered as final unless a greater amount could be justified by the Flathead irrigation project within a period of 30 days. Following the receipt of a copy of the Director's memorandum to the Commissioner by the Flathead irrigation project, a second report dated November 17, 1952, was prepared recalculated upon the basis of actual and known conditions, since delivery of power had been terminated and a new total was arrived at in the sum of $612,610. This report was submitted to the Commissioner, Bureau of Indian Affiars, under date of November 17, 1952.

Under date of July 31, 1953, a memorandum prepared by Mr. John G. Marr, Director, Technical Review Staff, and concurred in by Assistant Secretaries Mr. Orme Lewis and Mr. Fred G. Aandahl, the final payment was determined to be $24,500, making a total as previously determined of $430,000. This total as compared to the $612,610 arrived at in the last report of cost calculated by the Flathead irrigation project represented a difference of $182,610 as between the two Bureaus.

Mr. METCALF. Do you have any questions, Mr. Haley?

Mr. HALEY. I do not believe I have, Mr. Chairman.

Mr. METCALF. Mr. Decker, you heard the testimony that Mr. Dellwo gave, and I think you are familiar with the Dibble report, are you?

Mr. DECKER. Yes.

Mr. METCALF. Would you, for the record, tell us how this report that you have testified to of $430,000 plus $24,500 is different from the $612,610 cost figure testified to by Mr. Dellwo and submitted by Mr. Dibble?

Mr. DECKER. Mr. Chairman, I would prefer, if it would be agreeable to the committee, since Mr. Dibble is present, to have him answer that question. I think he is better equipped——

Mr. METCALF. Very well.

Mr. DECKER. In electrical engineering than I am and I think it will save time for you.

Mr. METCALF. Then thank you for your testimony, Mr. Decker. I thank you on behalf of the committee for coming here. You will be available if there are any further questions?

Mr. DECKER. Yes; I wish to thank you and thank the committee.

Mr. METCALF. Is Mr. Dibble here?

Mr. DIBBLE. Yes, sir.

Mr. METCALF. Would you come forward and testify?

Will you give your name to the reporter for the record?

STATEMENT OF BARRY DIBBLE, CONSULTING ENGINEER, REDLANDS, CALIF.

Mr. DIBBLE. My name is Barry Dibble.

Mr. METCALF. And you are the man who prepared the report that was previously testified to by Mr. Dellwo and is a part of the file in this hearing?

Mr. DIBBLE. Mr. Firman Brown and I worked jointly on it, in different parts.

Mr. METCALF. Is Mr. Brown here?

Mr. DIBBLE. No; he is not.

Mr. METCALF. Mr. Brown was area irrigation engineer of the Bureau of Indian Affairs.

Mr. DIBBLE. Yes.

Mr. METCALF. And you are a consulting engineer.

Mr. DIBBLE. Yes.

Mr. METCALF. Where is your home?

Mr. DIBBLE. Redlands, Calif.

Mr. METCALF. You have been called up here without previous notice, but I know from the report that you have filed and from mention made of you that you are well aware of all of the phases of this controversy.

I wonder if you could answer the question I asked Mr. Decker: In what respects the charges you made for power differ from those that were provided by the Bureau?

Mr. DIBBLE. The $430,000 that was agreed to at the settlement omits several items, some of them very large, and the differences arise from those omissions. That is the principal difference.

Mr. METCALF. Can you itemize those items?

Mr. DIBBLE. I can mention a few of them.

Mr. METCALF. Since your report is a part of the file, you can refer to it during your testimony and we will be able to refer to it when we read your testimony again in the printed record.

Mr. DIBBLE. My figures will be general and will not add up, probably, to the differences that are involved, but I can point to the principles that are involved.

Mr. METCALF. We understand that you are here under some difficulties and have not had a chance to prepare answers to these questions.

Mr. DIBBLE. I really am here in connection with another matter.

Mr. METCALF. I understand.

Mr. DIBBLE. On table 9 on page 40 of the report to which you have referred, dated November 17, 1952, there are several items which were

eliminated by the Secretary's Office either entirely or in major portions. One of them is the first item marked "Item A (1)," in table 9, covering the planning and promotional work which was done to prepare to supply power to Hungry Horse prior to March 31, 1949. That amounts to $27,010.95, and, by the way, is the item to which Mr. Brown gave his particular attention.

We assembled, in arriving at those figures, the diaries and the vouchers as far as they could be secured and selected from the files that covered the early work he had done in planning to deliver power to Hungry Horse. That began several years before Hungry Horse appeared to be under serious consideration. We recognized the thought at that time that the power that was available on the Flathead project offered the only opportunity to supply power to Hungry Horse for construction purposes unless they put in their own plant up there, diesel plant or steam plant, something of that sort, to develop the power.

With Mr. Brown, who was at that time the project engineer on the Flathead project, I went to Boise, Idaho, the area office of the Bureau of Reclamation, and talked with their electrical engineer there, whom I knew from previous association, and discussed the possibilities. At that time we discussed how much power might be needed for construction purposes. And after looking up the amount of power that was used by several other projects, arrived at a 5,000-kilowatt figure as being the quantity we might need to have reserved for them for that work. That appeared to be a feasible figure to meet and we went ahead in discussion. Later, Mr. Wahthen, who was the chief engineer of the Bureau of Indian Affairs at that time, went to Denver and talked with the chief electrical engineer of the Bureau of Reclamation, Mr. L. M. McClelland, who is now the chief engineer of the Bureau, and found him very much interested in securing power. Later, there was a meeting at Billings at which the Boise office of the Bureau of Reclamation was represented and some of the men from this Flathead project and I talked over with the people in Billings and their attorneys the question of drafting a contract and we submitted at that time a formal contract for supplying the power to the Bureau of Reclamation at Hungry Horse.

Mr. Decker sketched some of those. It was the cost of that work and so forth that we regarded as promotional charge and should be brought in under the Secretary's directive which provided for incremental costs to be paid by the Bureau of Reclamation. I will say that if we had not gone through that work and made those plans and got things out, it would have been impossible for Hungry Horse to have secured power as promptly as it did when they were ready to use it. We went at it in good faith and very seriously to try to prepare to deliver power because we thought Hungry Horse would be a desirable customer and fitted in with the supply of power which the project was already making to Kalispell which needed some supplementation at that time.

That item was thrown out by the Bureau of Reclamation in their consideration and throwing it out was adopted by the Secretary's Office. The Bureau of Reclamation threw it out on the grounds that anything that had happened so long before they took power was not a proper charge.

Mr. METCALF. But you feel that the Hungry Horse gained $27,000 because of this planning you had made. Otherwise they would have lost that or more in delays after the dam began to get under construction.

Mr. DIBBLE. That is correct.

Now the next item is the second item on the list, A (2) (b) in table 9, $80,000 for substation at Kerr Dam. That substation was built by the Montana Power Co. under the terms of the license for project No. 5 which provided that the Montana Power Co. would deliver power to the Flathead project at a voltage to be selected by the project. And the project selected 34,500 volts for the delivery. The Montana Power Co. went ahead and put in the substation.

When we completed the negotiations with the Bureau of Reclamation, the Bureau determined that it needed 10,000 kilowatts instead of 5, or at least they should have that much available.

That was a new thing that came up just at the last minute, and when that was presented to the Montana Power Co., that requirement, I was there and Mr. Byrd was present at that time. They said, "Now, boys, you are just going too far. That is going to require that you get power at two points for delivery, one at 110,000 volts going north on the Bonneville line and another one would be this 34,000-volt delivery for the project." They said, "We will live up to the license to the extent of supplying 1 point of delivery, 1 voltage, but you must select that voltage it is going to be," and under the circumstance, the only thing that was possible was to use the 110,000-volt delivery.

That, then, made it necessary that we take power for the project also at 110,000 volts and made it necessary for us to purchase the 80,000-volt substation. Previously it had been arranged with the power company that they could supply enough power to take care of the 5,000-kilowatt delivery for Hungry Horse without making this change. It was the raise to 10,000 kilowatts by the Bureau of Reclamation that made it necessary for the project to incur that expense. So we very definitely regarded it as an incremental expense caused by the Hungry Horse transaction, and it is put in in that way. The Bureau of Reclamation had disputed it because none of the Hungry Horse power or very little of it went through that transformer bank and they said it was not their part of the costs. On the other hand, it would never have been incurred if it had not been for the delivery to Hungry Horse.

Mr. METCALF. Is the Montana Power Co. using that substation now?

Mr. DIBBLE. They deliver the power to the Flathead project.

Mr. METCALF. Through that?

Mr. DIBBLE. On the high side of it, and the Indian Service takes the power at 110,000 volts and brings it through that transformer bank. But the metering is done, at least the delivery is done, on the high side of the transformer bank.

Mr. METCALF. I see. Go on to the next item then, Mr. Dibble.

Mr. DIBBLE. The next item is "Overhead charge." On that item the Division of Power in the Secretary's Office made the statement in one of their presentations of this matter that the charge for overhead we provided which included both the first item and other overhead items should be taken care of in another way and they suggested the

addition of 15 percent to all of the items as surcharge to take care of overhead.

In this discussion we concluded that 15 percent against this $80,000 item was not warranted and while it did cause some expense it was not that great, and we proposed $2,000 to cover the overhead over and above what we paid the Montana Power Co., and that is what this third item is.

Then we pointed out—going just a little bit further, perhaps, on this matter of overhead, one of the difficulties that developed was that 15 percent was a pretty fair—was a pretty good allowance for overhead on the items. Then they proceeded to eliminate all of the items that would be applicable to, so we finally wound up with practically no allowance for the overhead charges.

Mr. METCALF. 15 percent of nothing still was nothing.

Mr. DIBBLE. That is right.

Item A (3) is a figure that is return on investment. I think it is 3 percent, but I do not recall exactly.

That, of course, immediately has the look of profit, which the Secretary definitely eliminated in his order. However, in this report we have developed the fact and set out the figures that because of failure to secure the settlement and secure the money, the Indian Bureau and the Flathead project had to borrow money in effect from the REA to construct 2 REA projects which cost in total about $200,000, and that the cost to the Flathead project for those loans amounted to about 3½ percent. And that is what the out-of-pocket cost of borrowing that money from REA amounted to. Not only the interest we paid REA, but the other charges which they added to the loan to support the REA expenses.

I recall now the fact that this interest item, return on the investment, is figured at 3½ percent which is practically equivalent, amounts to practically the same amount of money that we paid REA during the time that this money was not available because it was tied up on the Hnugry Horse deal.

Mr. HALEY. In other words, you were just trying to collect what you had paid out.

Mr. DIBBLE. That is right. Along the line the Secretary stipulated the project was to get back its incremental cost and we thought that was a legitimate item.

Now the next item, item A (4) (a). Proration of BPA charges. I think there is some allowance made for that item in the final settlement but not as much as we calculated was due.

The contract we had with the Bonneville Power Administration for the operation of the transmission line provided that the project would pay $1,386 a month for transmittal of power to Kalispell, and we had intended to turn the Hungry Horse power over to the Bureau of Reclamation at Kalispell and let the Hungry Horse take care of the burden of charges beyond Kalispell. That is where this amount arises. I think we have set up half of it against half of the payments that were made during this period, as a charge to Hungry Horse. In any event, that is a legitimate charge.

Mr. METCALF. The total amount was about $80,000, and you said half of it was charged to Hungry Horse.

Mr. DIBBLE. Yes. This covers a period of years in which the line was operated partly for supply of power to Kalispell and partly to supply power to Hungry Horse.

I will say that the delivery to Kalispell was commensurate with the delivery to Hungry Horse. Hungry Horse, Reclamation asked for $10,000 kilowatts for Hungry Horse but never took that much. They have taken about 5,000 kilowatts and the deliveries to Kalispell were also in the vicinity of 5,000 kilowatts.

The next item, item A (4) (b), is O. and M. and replacement of this $80,000 substation we talked about up above.

There always are costs involved in maintaining and operating and for depreciation and so forth on a substation of this kind, and this was estimated to be of that nature. It is not an exactly determinable figure, but it was arrived at to cover that part of the costs.

Mr. METCALF. That figure of $27,000 is quite a large fraction of $80,000. How long was it operated?

Mr. DIBBLE. My recollection is it was about 6 years. That is quite a time.

Mr. METCALF. Yes.

Mr. DIBBLE. I could find it in here, I think, just how that was arrived at.

Here is the memorandum on it. It was—we were at that time dealing with the Bonneville Power Administration in connection with some of their substations which they were supplying to deliver the power to the Bureau of Reclamation, and the charges which they set up were 7½ percent of the original cost. And I think that is the basis by which that was arrived at.

Anyhow, these figures are in the report.

Mr. METCALF. You have a memorandum on that in this report?

Mr. DIBBLE. Yes. Each of these items is covered in some detail to arrive at the figures. I think part of the difficulty of the report was that we went into things rather fully and I do not believe anybody ever read it back in Washington.

Mr. HALEY. That is entirely possible.

Mr. DIBBLE. Some of the comments that have been made on it quite definitely indicated they did not.

Mr. METCALF. Maybe we can get someone to read your testimony here at least.

Mr. DIBBLE. I am not sure what part of these other small items left may go in. The demand and energy charges which were paid the Montana Power Co. for delivery of power from Kerr Dam were calculated quite carefully and that cost alone, including the process required at Kerr Dam in order for the power company to deliver to Hungry Horse, those items alone amount to $411,650. So they are the big end of what Reclamation finally paid in the $430,000 that were set up.

Mr. Dellwo pointed out the Bureau of Reclamation claimed the privilege of taking any of the cheap power available from the Montana Power under contract as part of their prerogative with the idea that there should be no profit added to it. I think the calculations that were made here covers that, at least the figures are in here, I remember, but that could not about to as much as I think the Reclamation men hoped that it would. In other words, the project itself has used most of that 1 mill and 2½ mill power. But the project had to buy a major portion from the Montana Power Co. at 4 mills a kilowatt-hour plus the 50 cents a month per kilowatt demand charge for the power supplied to Hungry Horse. As I say, that amounted to the $411,000.

That is the principal analysis of this.

Mr. METCALF. In order to clarify Mr. Dibble's testimony, I am going to ask unanimous consent that the table on page 40 be inserted as part of the record.

Without objection, it is so ordered.

(The table referred to follows:)

TABLE 9.—*Summary of Flathead project claims as of Nov. 17, 1952*

A (1). Planning and promotional to Mar. 31, 1949	$27,010.95
A (2) (b). 115/34.5-kilovolt substation at Kerr Dam	80,000.00
A (2) (f). Overhead charge on item A (2) (b)	2,000.00
A (3). Return on investment	13,539.47
A (4) (a). Proration of BPA's charge	39,224.00
A (4) (b). Operation and maintenance replacement of 115/34.5-kilovolt substation	27,583.33
A (4) (c). Customers expense	1,375.00
A (4) (d). Administrative and general	10,227.37
Subtotal	200,960.12
B and C. Demand and Energy charges	411,650.40
D. Available for later charges	----------
Total	612,610.52
Credit for interim charges	405,916.50
Additional amount due Nov. 17, 1952	206,694.02

Mr. METCALF. Now, Mr. Dibble, this is the out-of-pocket expense that you figure that the Flathead project incurred.

Mr. DIBBLE. It is not all out-of-pocket, but it is incremental expense.

Mr. METCALF. It reimburses the cost.

Mr. DIBBLE. Most of it is out-of-pocket.

Mr. METCALF. Now the repayment contract about which Mr. Dellwo testified and which is in the record, provides that the power shall be sold for the purpose of reducing the irrigation system construction costs chargeable against the land at the lowest rate which would produce net revenues sufficient to liquidate annual installments.

Now if the power about which you testified that was delivered to Hungry Horse were sold under the provisions of that agreement in the repayment contract, how much would the Flathead project be entitled to receive?

Mr. DIBBLE. Mr. Dellwo suggested another.

Mr. METCALF. $300,000?

Mr. DIBBLE. We are using 10,000 kilowatts. I have not done that in the studies I have previously made. We have based it on the actual requirements, month by month, which ran around, as I say, around 5,000, putting the demand charge on that basis, and doing that, it would add about $20,000 to the cost, make about $800,000 as a total bill.

Mr. METCALF. That is on the actual amount delivered and not on the basis of the 10,000 demand that they put in in the beginning?

Mr. DIBBLE. Yes.

Mr. METCALF. That would be around 200,000 in addition to the 180,000 or a total of $380,000.

Mr. DIBBLE. Yes.

Mr. METCALF. In order to carry out the terms of the repayment contract?

Mr. DIBBLE. Yes.

Mr. HALEY. Mr. Chairman, I note that the witness did not discuss 2 small items here, 1 of $1,375, which is customers' expense, and one is administrative and general, of $10,227.37. They are small items so far as the total bill is concerned, and I think very obviously the table as presented by the witness will be clear enough on that. They are unusual administrative and other incidental expenses and I am sure, at least to me, they seem to be reasonable items to exclude in a computation of this kind.

Mr. DIBBLE. I think the $1,300 item was allowed by the Bureau of Reclamation.

Mr. HALEY. It was allowed.

Mr. DIBBLE. That covered the reading of meters up there at Hungry Horse and the expenses for doing so.

Mr. HALEY. I was just wondering if that was the situation, of somebody reading the meters to find out.

Mr. DIBBLE. Then the other item I do not believe was fully agreed to as far as the Bureau of Reclamation is concerned, but in the settlement, $430,000, that, with the power items, would about make up the amount.

My study, of course, indexes each of those items by corresponding number and that table is a summary of the conclusions that were reached.

Mr. METCALF. Thank you very much for a most informative bit of testimony, Mr. Dibble, and we appreciate having you before the committee.

Mr. HALEY. We are very happy you could be here this morning.

(Discussion off the record.)

Mr. METCALF. Mr. Johnson, will you come forward?

Mr. HALEY. Mr. Chairman, I have received a telegram from Senator Murray which I would like to have read.

Mr. METCALF. This telegram is addressed to Hon. James A. Haley.

Deeply regret my inability to participate in your hearing at Dixon today. We are grateful to you and the members of your committee for the interest you are taking in our Indians' problems and pledge our full cooperation in efforts to obtain remedial legislation during the next session.

Without objection, the telegram will be made a part of the record.

(The telegram referred to follows:)

WASHINGTON, D. C., *September 6, 1955.*

Hon. JAMES A. HALEY,
Care Forrest Stone, Superintendent,
Dixon, Mont.:

Deeply regret my inability to participate in your hearing at Dixon today. We are grateful to you and the members of your committee for the interest you are taking in our Indians' problems and pledge our full cooperation in efforts to obtain remedial legislation during the next session.

JAMES E. MURRAY,
United States Senator.

Mr. HALEY. I also have a telegram from James Sullivan, administrative assistant to Senator Mike Mansfield, that I would like to have read.

Mr. METCALF. This, too, is addressed to Hon. James A. Haley [reading]:

Senator Mansfield has not returned from his assignment overseas for the Senate Foreign Relations Committee and therefore it will not be possible for him

to be with you and the other Members who are looking into various matters affecting our Indians in Montana. However, the Senator will be waiting for a report from you on your return, and you may be assured of his continued cooperation on this very important matter. It is his hope that your committee will be able to make some recommendations which will help to alleviate the plight of the Indians in Montana.

Regards.

This, too, will be made a part of the record, without objection.

(The telegram referred to follows:)

WASHINGTON, D. C., *September 6, 1955.*

Hon. JAMES A. HALEY,
Care Forrest R. Stone, Dixon, Mont.:

Senator Mansfield has not returned from his assignment overseas for the Senate Foreign Relations Committee and therefore it will not be possible for him to be with you and the other Members who are looking into various matters affecting our indians in Montana. However, the Senator will be waiting for a report from you on your return, and you may be assured of his continued cooperation on this very important matter. It is his hope that your committee will be able to make some recommendations which will help to alleviate the plight of the Indians in Montana.

Regards.

JAMES SULLIVAN,
Administrative Assistant to Senator Mike Mansfield.

Mr. METCALF. Mr. Johnson, will you give your name.

STATEMENT OF ADOLPH JOHNSON, JOCKO VALLEY IRRIGATION DISTRICT

Mr. JOHNSON. Adolph Johnson.

Mr. METCALF. Representing whom?

Mr. JOHNSON. Jocko Valley Irrigation District.

Mr. METCALF. Proceed in any way you see fit.

Mr. JOHNSON. I have no prepared statement to make. I am kind of new on the job anyway. But we are in full agreement, Mr. Grazier and I, with Mr. Dellwo's statement. I think he spoke for all of us. That is all I have to say.

Mr. METCALF. Do all in the irrigation district and board of directors you represent concur in Mr. Dellwo's statement?

Mr. JOHNSON. Yes; we do.

Mr. METCALF. Thank you very much. We are pleased to have you here to testify.

Mr. Strong from the Mission district. We are glad to have you here, Mr. Strong.

STATEMENT OF R. H. STRONG, COMMISSIONER, MISSION IRRIGATION DISTRICT

Mr. STRONG. My name is R. H. Strong. I am a member of the Mission Irrigation District.

It is my purpose at this time to have shown in the record we are in complete accord with the testimony offered this subcommittee by Mr. Dennis Dellwo who is the secretary of the Flathead Irrigation District, and I would like to thank him for that splendid work. Our district is very happy that he has allowed us to be represented by him because he has the ability to compile the facts in their true form. And I know there is nothing I could state to add to it. I sure thank Dennie for his splendid performance.

Mr. Chairman, if I could take maybe 5 minutes.

Mr. METCALF. Fine.

Mr. STRONG. While I have nothing to add to the testimony, it is all generalities, I would like to point up a few of the things that have been brought up as the water user sees it, sort of grassroots.

Mr. METCALF. We are glad to have you here as a water user. The purpose of the committee being at the grassroots is to hear just this sort of testimony.

Go right ahead and feel free to testify in any way you see fit.

Mr. STRONG. Thank you, Mr. Chairman.

I just often wonder what the dignitaries and the powers that may be think when we mention the Flathead project. All of us water users feel that when we mention the Flathead project we feel like we are talking about something that belongs to us, it is a piece of property that belongs to the water users of this Flathead Valley who are paying for its maintenance and operation and also for its construction.

We also feel that when we mention the Flathead project we think not only of irrigation but we think of the entirety which includes the power system as belonging to the farmers of this valley.

We think of it just as though we feel of the farmer union which we built and owned, or the consolidated dairies which are cooperative dairies. I wanted it thrown out amongst the committee here that the Flathead project, we feel as water users, is ours and we are going to pay for it.

I wanted to point up the fact that has been brought out many times, that we are certain as water users who negotiated in good faith with the Secretary of the Interior, that we are going to be allowed net power revenues, that it has been provided for in the contract that we have negotiated severally, and we are in good faith that when this thing is aired that the Secretary can see, and he will be sure that has been provided for them and it is just.

And a word in connection with net power revenues.

A farmer, when he speaks of net, he does not feel he has any net until his income-producing property has been paid for as well as maintained along the line. So I just point out that while Mr. Dibble and Mr. Brown and Mr. Dellwo and Mr. Decker who have done all of this work for us, they are speaking of net power revenues, and it will hold up in court what they figure is net power revenue. Still we do not feel we will have net power revenues until that far distant day when our project has been paid for, both the power system and the irrigation system, and at that time we shall enjoy some profit which would be net to us.

Also in regard to the net power revenue in the case with Hungry Horse, we feel that our representatives who have done so much work for us, Mr. Decker, Mr. Dellwo and the ones I have mentioned, have been so patient and so generous in their claim for just wanting—I will not say just wanting—but are willing to settle for just costs. Now I get to the word "costs." I feel especially in the case of that power substation which cost $80,000 we will be left with that. So that we own it all right, $80,000.

But in reality, it is a $80,000 loss to us. In reality we own it but we have no way of using it and I suppose it deteriorates like other income-producing property; and other phases of this cost proposition,

it seems to me, has been very, very generous. As a grassroots view, we figure that certainly it is below cost.

Then I did want to mention another thing about federally owned hydroelectric plants. And while I am not here to criticize, because when you start criticizing you are generally asked for figures to prove it and I am no statistician, but I will say this: In all federally owned hydroelectric plants, if they fail to produce a profit, if they fail to produce even enough revenues to liquidate the costs or even maintain the costs of operating the system, there is always a place where they can be subsidized by direct or indirect taxation. But we of this Flathead project who are struggling, have built and are struggling to maintain and produce a net revenue out of our power system, know that if we fail in this aspect we have no one to turn to for subsidy. All of these costs must be met and our lands are heavily mortgaged by Federal liens.

Mr. Chairman, I believe that is all I have to offer at this time and I thank you very much for your patience.

Mr. METCALF. On behalf of the subcommittee, I thank you for coming and testifying.

I wish a good many Members of Congress could have been here to hear the way in which you said "we feel that the Flathead project is our project." We have been trying to sell it to some of the eastern Congressmen that these irrigation projects are something besides just boondoggling out here and the way in which you identified yourself with your project is encouraging.

Mr. STRONG. Thank you. [Applause.]

Mr. METCALF. Mr. Logan.

STATEMENT OF S. R. LOGAN, CHARLO, MONT., WATER USER

Mr. LOGAN. S. R. Logan, Charlo.

I would like to speak just very briefly as a citizen and water user of some 46 years, in this project, 45 years. First, I would like to commend Mr. Dellwo, Mr. Strong, for their testimony and for the long service they have had, and faithful service. I think they expressed the feelings, convictions and beliefs of probably all the people of the project, certainly of those with whom I am in contact and the various organizations with which I am associated. The feeling is very strong, incidentally.

I speak also with the additional interest of having been superintendent of schools here from 1913 on for a number of years and having had part in admitting Indians and whites on an absolutely equal basis in the public schools.

I take some pride in the fact that the Flathead Indian Tribe and Flathead Indians individually have been adjudged at various times relatively very advanced in this country.

When this job was undertaken, we were not fortunate—that is, the irrigation part of the costs was not apportioned particularly to power. But largely as a result of a good deal of local initiative and willingness to take a risk and responsibility, this project did acquire a considerable amount of power and favorable conditions. Of course, people's land was pledged for that as well as for the rest of the project. As Mr. Strong says, we consider it—the water and the irrigation—as merely divisions of one entity.

Now the burden falls very heavily—as a matter of fact, I do not believe the lands irrigated in this valley would sell for what it is pledged on to the Government for the debt to the Government.

Do you see what I mean? The farmers' debts to the Government for irrigating this land, I think, is greater than the price he can get for his land.

In addition to that, the farmers, most of them, are very heavily in debt otherwise.

Since 1950 this county has lost about 10 percent of its population. Mostly farmers. Those who are retiring and have the money and some leisure to enjoy the joys, beauty of our valley, are continuously coming in. Despite that, our county is losing population rapidly. Farmers are small farmers. They have no reserves. They are caught in the economic squeeze and it is a pretty desperate situation.

I think you all feel with us that statesmanship and equity call not only for concurrence with the viewpoint expressed in Mr. Dellwo's testimony but it calls for a degree of encouragement so far as the Government is in position to give encouragement to these hard driven small farmers in this valley who have put up a heroic fight and have shown willingness to cooperate and provide initiative and take full responsibility.

I think that is all I wanted to say but I did feel that those certain aspects ought to be expressed in addition to the comments that they have already received.

Thank you very much.

Mr. HALEY. Mr. Logan, I want to commend you and the entire group of people who have appeared here this morning. I thoroughly agree with the chairman that I wish that every Member of the Congress could come to, you might say, the grassroots and listen to the testimony as we have here and as we are hearing it over this great Nation of ours. You are to be commended. You are proud, individualistic people out here, and we need more of you.

I also want to touch very briefly on something else that is very dear to my heart, and that is the education. I was glad to hear you say that the public schools here are open to the Indians, that they have taken advantage of that situation. I think that the Indian problem, as we call it down in Washington, can be solved by a matter of education with some of the other things that go along.

Mr. LOGAN. Thank you.

Mr. HALEY. Thank you very much.

Mr. METCALF. Thank you, Mr. Logan.

Mr. Walter McDonald.

STATEMENT OF WALTER McDONALD, PRESIDENT, FLATHEAD TRIBAL COUNCIL, CHARLO, MONT.

Mr. MCDONALD. My name is Walter McDonald, president of the Flathead Tribal Council. I am glad to be here and see you gentlemen here, Congressmen.

About once a year I always have to differentiate between the Flathead irrigation project and the Flathead Tribe. There is no connection, but we had years ago what is referred to now as Flathead Indian project. It is not an Indian project. I speak for the minority group, I might say, to the extent that probably 140,000 acres of non-Indian

acres against 16,000 acres of Indian-owned land, tribal land under jurisdiction of this council is probably down to 80 or 100 acres. And the other Indian land is private allotment.

I speak as a minority group, sort of. When Public Law 554 was formed we were in the project with the districts by law. And certainly we are 100 percent behind Mr. Dellwo's statement this morning and the other people who spoke.

It gives me pleasure to note that recoveries of any money when it goes to that project, power net revenue applied on an amount, whatever it may be, is to our benefit. And there is not anything else I can say but I have one differentiation I have to make once a year, and it has been a pleasure to be here and I might say I welcome you and thank you for Montana.

Mr. METCALF. We thank you, Walter, for your testimony and for your concurring in Mr. Dellwo's splendid testimony.

Again, I want to reiterate that your attendance and your testimony here, I think, indicates to you, Mr. Haley—and I wish some of the other members of the subcommittee could be here—the spirit of good will and cooperation between the Indians and non-Indians that exist here on the Flathead Indian Reservation. We probably should make another differentiation, if members of the Bureau of Reclamation have failed to do so, and that is, there is a county up here, Flathead County, that is entirely separate from the reservation or the project.

Thank you, Walter.

Mr. DELLWO. On that map there, that is an old map, the ancient county line is right across the center of the valley and when they created Flathead County out of old Missoula County, they named it Flathead County on the supposition that would settle the division, nobody would ever divide them again. So when we created our new county here we called it Lake for the same reasons. Nobody would want to give up the name of Lake County. So consequently, we hoped we would never have division of this county. But the boundary line now between Flathead County and Lake County is up a mile above the old reservation line.

Mr. METCALF. Thank you, Mr. Dellwo.

Before the hearings close, Mr. Cragun, who is attorney for the tribal council, is here.

Would you have anything to contribute, Mr. Cragun, at this time?

STATEMENT OF JOHN A. CRAGUN, TRIBAL ATTORNEY, FLATHEAD TRIBE, WASHINGTON, D. C.

Mr. CRAGUN. I have nothing to contribute to the narrow subject which is before this committee.

I could, on behalf of the tribes, go into the legal status of the water and power that is involved, but the payment that is due here is due from the Hungry Horse development to the Flathead project which, as Mr. McDonald has indicated, is completely distinct and a separate entity from the Flathead Tribes; it is overwhelmingly non-Indian even though it is administered by the Office of Indian Affairs, and in only an incidental way and as to particular individual members of the tribe does it affect Indians.

For the reason, I feel that it would probably be better that I not launch into some matters which could even verge on the controversial side but which do nothing to solve the problem presented to the committee.

Mr. METCALF. It is good of you to make that statement, Mr. Cragun. Mr. Cragun has often appeared before this committee and other subcommittees of our parent committee, the House Interior and Insular Affairs Committee, and undoubtedly will again appear during the next session of Congress concerning some of those very controversial matters. But I just wanted you to talk about the narrow subject before us today.

Mr. CRAGUN. Thank you.

Mr. METCALF. Mr. Lavern Dondanville, chairman of the Flathead Irrigation Board.

STATEMENT OF LAVERN DONDANVILLE, CHAIRMAN, FLATHEAD IRRIGATION BOARD

Mr. DONDANVILLE. There is just one thing I would like to bring out and that is I do not think we can stress too much on the fact that somebody is going to have to pay this bill as Mr. Dellwo said. If it is not charged against Hungry Horse, it is doing to be charged against the farmers. I have not talked to the other boys, but I am sure they would be in agreement with me. We are facing a situation here that is not too pleasant in the fact that during the war materials and laborers were insufficient to keep the project up and later on we were forced into a rehabilitation.

So that it necessitated the fact we had to raise our water up to $3.90 an acre. It will be down next year. While our power business is in its infancy, it is growing and at the present time is not enough to take care of construction charges. If we can get what we feel is coming to us, that would be a reserve for us to take care of our constructing charge until the time comes when our power business will be sufficient to take care of it. And at the present time it would be very hard for the farmers to pay the high cost of water, meet the pressing engagements that they have, or depressing engagements they have to meet, and on top of that have to go ahead and pay construction charges. It would be very hard for them to do it.

Mr. METCALF. Thank you very much.

Mr. HALEY. You are then pretty much in accord with the statement made, I believe, by Mr. Logan, that probably the actual lien against the property is greater than the entire net worth of it.

Mr. DONDANVILLE. I do not know. I think enough of our country, I would hate to sell out a lien agency. I think we have a wonderful country and while we are being pressed right now, I think we have a wonder. We are not situated and developed in such a way as to be as close to the markets as some midwestern countries are. I do feel we have a wonderful valley.

Mr. METCALF. However, if it were not for power revenues and potential power revenues, this project could not pay out.

Mr. DONDANVILLE. It would be very, very difficult with the high taxation that we have for schools, roads, and everything like that. Putting construction charge on top of it, I just do not believe we could meet it. It would be very hard.

Mr. METCALF. Thank you very much for your testimony.

Mr. DONDANVILLE. Thank you.

We certainly appreciate having you gentlemen give us a hearing.

Mr. METCALF. Mr. Cooper, John Cooper; we are very, very glad to have you here.

STATEMENT OF JOHN COOPER, AREA DIRECTOR, UNITED STATES BUREAU OF INDIAN AFFAIRS, BILLINGS, MONT.

Mr. COOPER. John Cooper, area director.

I fully realize I will probably have to answer to my friends, including Mr. Dellwo, and possibly to some of my fellow employees for the short statement I am about to make.

However, throughout the last year that I have served in this area as area director, I have frequently wondered about the logic and justification for the operation of this project by the Bureau of Indian Affairs. Perhaps I should say for the continued operation by the Bureau. It has been brought out here by several of these speakers this morning that the Indian trust land for which the Bureau of Indian Affairs and the United States Government has a responsibility is a very minor portion of the total of the land within the project. Similarly, the proportion of water users is overwhelmingly non-Indian. Now while I assure you that I would not advocate precipitous action, I do hope, however, that with due regard to the interests and rights of everyone, including the Flathead Tribe, individual landowners within the project, non-Indian and Indian alike, that arrangements can be made and that we can plan toward the time when the water users can operate their irrigation project.

It has occurred to me, as I have listened here this morning, that under a situation where the water users were operating the Flathead project that a situation such as the one now under discussion could possibly have been avoided.

One other thing that I would like to mention—not, I assure you, in an attempt to get into technicalities, because I would not be qualified to do so, but merely to bring out facts—that is, despite the difference of opinion as to any balances owed by the Bureau of Reclamation for power delivery during the construction of the Hungry Horse Reservoir, if my advice is correct and I believe it is, the net power revenues for the past 5 years, I believe, have been adequate to take care of the annual construction obligation.

Thank you very much.

Mr. METCALF. Thank you, Mr. Cooper.

I know that I am speaking for the entire committee when I say that I am glad you brought up the subject of whether or not this should be under the Indian Bureau. It is something that we should consider, I think, very carefully. When these hearings were set up I was wondering whether this thing was under the jurisdiction of this particular subcommittee. However, we are members also of the Irrigation and Reclamation Subcommittee, and some others. And it is certainly under the jurisdiction of the Interior Committee.

But I think that matter should be investigated and carefully thought about during the months and years ahead.

Mr. COOPER. If I may add this further thing, Mr. Chairman, I would like to stress the fact that I do not think it should be presump-

tuous. I think the interests of everyone should be carefully considered and possibly there may be some continuing obligation on the part of the Government, either for completion of some phases of the project or for bringing the project up into a better operating condition. The point was mentioned here that during the war years there was a lag in the maintenance of project facilities. And certainly all of those things would have to be considered.

Mr. METCALF. Surely.

Mr. LOGAN. I just want to ask a question.

If when the water users take over the operation of the project which I think they should eventually, it should be a completed project, should it not? It seems to me 46 years is too long for the Government to take to construct an irrigation project like this. And it is not finished yet. I am trying to find out how much it lacks of being finished.

Mr. METCALF. I am sure Mr. Cooper cannot answer that question and I do not know whether this committee and the Members of Congress can answer it either.

Mr. LOGAN. I know this and you all know it. The longer it takes the more it costs per acre.

Mr. METCALF. And those are things that certainly will have to be taken into consideration.

Mr. LOGAN. It has piled up and piled up on water users here, and they paid everything back, absolutely everything. The Government pays nothing. And I think the Government ought to try to expedite this business and finally try to finish the job.

Mr. DELLWO. Mr. Chairman, the last minute or two brought up three different very controversial questions I would not want to have us penetrate too deeply today but Mr. Logan's statement, "the longer it draws out the more it costs," is subject to explanation. We have had a large number of rehabilitation jobs done under construction. If the project had been completed and turned over to us 20 years ago we would have to do those under operation and maintenance at great cost to us. As it is, they were done under construction and will be paid for 65 or 70 years from now, and who is kicking?

I have to take Mr. Cooper to task too. He suggested that the last 5 years our power revenues have been very good. They have been very good because we have had Mountain States and REA for two profitable customers. Mountain States is still paying us and will pay us 2 more years $109,000 a year for reserve demand because they quit their contract before their contract was completed.

So far as transferring us to the Bureau of Reclamation, we resist that for the reason that this project is set up under unique legislation. The Bureau of Reclamation is inclined to fit its projects into a uniform groove. In 1948 they were completely revising the Reclamation Act for that purpose. It seems to me all reclamation projects under the Bureau of Reclamation must be handled exactly alike. This one cannot be handled that way because it is set up on a different kind of a foundation and so forth. So far as the people taking over the project is concerned, it must come to that sometime, but it is not yet ready for two basic reasons.

Mr. Logan gave one. The project has not yet become static; that is, completed, and just a matter of operating from year to year. The people have not yet become static. We do not yet have, as they have

to the north of us, the sixth or seventh generation of people living up there. Their great great great great-grandfather settled there way back in the 1890's. When the people here have reached that status so they are people of the Mission Valley, the people of the Flathead project, so that there is a uniformity of interest there, then I think the people maybe could take it over.

Mr. METCALF. Thank you, Mr. Dellwo.

Mr. Sigler, do you have something to say?

STATEMENT OF LEWIS A. SIGLER, SOLICITOR'S OFFICE, DEPARTMENT OF THE INTERIOR

Mr. SIGLER. Mr. Chairman, I have three points I would like to touch on very briefly.

In the interest of making your record here complete, I would like to ask for an opportunity to file within a short time after the hearings are over an explanation for your benefit on the adjustment of these payments that have been testified to here today. The reasons for the departmental adjustment down, I think, might well be put in your record in order to clarify the situation. I can get such a statement for you from the Assistant Secretary's Office shortly after my return.

Mr. METCALF. Mr. Sigler, as you know, in Oklahoma we said we would keep the record open for 30 days. Can you get a statement within that period?

Mr. SIGLER. Yes, I can.

Mr. METCALF. Then, unless there is objection, such a statement will be filed and incorporated at the conclusion of these hearings to present the administration's position on that.

Mr. SIGLER. Thank you. And I suggest that not for purposes of continuing a controversy, but merely for purposes of completing the record so you will have a complete record before you.

Mr. METCALF. That is what the committee wants.

Mr. SIGLER. The second two things I would like to mention, Mr. Cooper just touched upon and I am not sure they were emphasized sufficiently. I want to point out again—with no purpose of arguing at all—I would like to point out under existing legislation the power revenues are devoted to payment of power construction costs and then to irrigation construction costs, and up until the present time all assessments for irrigation construction costs have been paid out of power revenues. Which means, if that trend continues, it means that ultimately the entire costs of the irrigation structure will have been paid for by power revenues and will not be any cost to the individual landowners.

As the last witness indicated, you cannot be sure those power revenues will continue at that volume but at any rate, that is one of the distinguishing features between this project and other irrigation projects because the ultimate irrigation construction costs may not be a lien against the land at all when the project is finally completed.

I again offer that without any intention of arguing, but as a mere statement of facts.

The other point about ultimate responsibility for operation of the project, I think needs to be clarified. The suggestion was not necessarily that the project be turned over to the Bureau of Reclamation

rather than the Indian Bureau but it was a suggestion that perhaps the water users themselves should take over the operation of the project. And in that connection I should like to indicate that the Department is now working on proposed legislation which we hope to submit to the Congress which would be in the nature of authorizing legislation, authorizing us to contract with water users associations or with State districts for the operation and maintenance of irrigation projects or power projects that are under the jurisdiction of the Bureau of Indian Affairs. I believe that is what Mr. Cooper had in mind. As much as this project is so largely composed of non-Indian water users, perhaps it would be a workable scheme agreeable to everybody for the transfer to be made to the districts rather than to another Government bureau.

Thank you.

Mr. METCALF. Thank you, Mr. Sigler.

Now, Mr. Haley, before I turn the committee back to you, I want to thank you on behalf of all of the people of this area, Flathead project, of Lake County, and the people of Montana, for bringing your subcommittee here to hold these hearings and to discuss and air and clarify this situation that has been presented to us today.

Thank you. [Applause.]

Mr. HALEY. Congressman Metcalf, I want to again say that I am happy to be here. I am very happy to be in this great Congressional District that you represent.

I hope that the people, especially you good voters out there, have had an indication of how thoroughly your Congressman conducts a meeting and how thoroughly he goes into a proposition.

I am very happy that I have such able help because he is a young man and I am getting along, a little older. I can always rely on him; he has the ability and integrity and the youth necessary to carry on the work of the Congress. It is gratifying to me to see men of Lee Metcalf's ability come into the Congress. They are needed there; they are needed very badly and I think that the people of this great Congressional District are to be congratulated on the selection of such a fine man as you have representing you there.

With that, the committee will adjourn.

(Whereupon, at 1 p. m., the subcommittee adjourned.)