

TABLE 1: History and Background of Flathead Irrigation and Power Project (FIPP)

Date	What	Explanatory Language
1908	35 Statute 83,84 Amendment to 1904 Flathead Allotment Act	“For preliminary surveys, plans, and estimates of irrigating systems to irrigate the allotted lands of the Flathead Reservation in Montana and the unallotted irrigable lands to be disposed of under the Act of April twenty-third, nineteen hundred and four, entitled “An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation in the State of Montana, and the sale and disposal of all surplus lands after allotment,” and to begin the construction of the same, fifty thousand dollars, the cost of said entire work to be reimbursed from the proceeds of the sale of the lands within said reservation.”
1908	35 Statute 450 Turnover Provision	“When the payments required by this Act have been made for the major part of the unallotted lands irrigable under any system and subject to charges for construction thereof, the management and operation of such irrigation works shall pass to the owners, of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior.”
1926	44 Statute 465 Formation of Irrigation Districts Pursuant to this act, three irrigation districts were formed in accordance with Montana State law. These districts were the Flathead, Mission and Jocko, who executed repayment contracts with the U.S. on March 2, 1928, April 21, 1931 and November 13, 1934, respectively	“Provided further, that no part of this appropriation, except the \$15,000 herein made immediately available, shall be expended on construction work an appropriate repayment contract, in form approved by the Secretary of the Interior, shall have been properly executed by a district or districts organized under State law embracing the lands irrigable under the project, except trust patent Indian lands, which contract, among other things, shall require repayment of all construction costs heretofore or hereafter incurred on behalf of such lands, with provision that the total construction cost on the Camas Division in excess of the amount it would be if based on the per acre construction cost of the Mission Valley Division of the project, shall be held and treated as a deferred obligation to be liquidated as hereinafter provided. Such contract shall require that the net revenues derived from the operation of the power plant herein appropriated for shall be used to reimburse the United States in the following order : First, to liquidate the cost of the power development ; second, to liquidate payment of the deferred obligation on the Camas Division ; third, to liquidate construction cost on an equal per acre basis on each acre of irrigable land within the entire project ; and fourth, to liquidate operation and maintenance costs within the entire project.”
1928	45 Statute 200-212 Federal Power Commission authorized to issue a permit for the development of power sites on the Flathead Reservation Subsequent to 1926 the Rocky Mountain Power Co., a subsidiary of Montana Power Company entered into negotiations with the U.S. concerning the building of a large dam for the purpose of generating power, the site of this dam being the same as the one selected for the irrigation Project	“Flathead irrigation project, Montana : The unexpended balance of the appropriation for continuing construction of the irrigation systems on the Flathead Indian Reservation, Montana, contained in the Act of May 10, 1926 (Forty-fourth Statutes at Large, pages 464 4 66), as continued available in the Act of January 12, 1927 (Forty-fourth Statutes at Large, page 945), shall remain available for the fiscal year 1929, subject to the conditions and provisions of said Acts : Provided, That the unexpended balance of the \$395,000 may be used for power available for continuation of construction of a power plant may be distributing system . used, in the discretion of the Secretary of the Interior, for the construction and operation of a power distributing system and for purchase of power for said project but shall be available for that purpose only upon execution of an appropriate repayment contract as provided for in said Acts : Provided further, That the net revenues derived from the operation of such distributing system shall be used to reimburse the United States in the order provided for in said Acts : Provided further, That the Federal Power Commission is authorized in accordance with the Federal Water Power Act and upon terms satisfactory to the Secretary of the Interior, to issue a permit or permits or a license or licenses for the use, for the development of power, of power sites on the Flathead Reservation and of water rights reserved or appropriated for the irrigation projects.”

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1930	<p>Flathead Power Development Report p6</p> <p>pages 42-43 discuss LCBP in exchange for use of irrigation projects valuable water right.</p>	<p>“In the case of a power development upon Indian lands, the title to the site also remains vested in the United States Government but in trust for the Indian tribe, and the site is rented for the 50 year period of the lease to the licensee. Thus the licensee is here also saved the necessity of using any capital in the acquiring of the site, and in lieu thereof pays and annual rental to the government for the benefit of the Indians. Thus in an ordinary Indian case there are three interests to be adjusted, viz, the successful licensee, the United States for the Indian Tribe, and the general consuming public. In the particular case of the Flathead there is a fourth interest, viz., a special part of the consuming public consisting of (1) individual Indian land holders and (2) white settlers who have bought Indian lands, which two groups together comprise the Flathead irrigation project. It is this irrigation project hat is referred to in the legislation already referred to. This in the case of the Flathead, the Federal Power commission and the Secretary of the Interior are called upon to make an adjustment between four interests, viz, (a) the successful licensee, which is, of course, entitled to the usual return of 8 per cent under the practice of the Montana Public Service Commission; b) the Indian tribe, which is entitles to a fair rental for the use of power sites; (c) the particular part of the public forming the irrigation project, and to which certain low rates for power up to 15,000 horsepower have been promised by one applicant as further explained below; (d) the general consuming public.”</p>
1930-1935	<p>Federal Power Commission License for Kerr Dam</p> <p>(From 1930 Flathead Power Development Report)</p>	<p>“Article 26: Coincident with the beginning of commercial operations 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 standard voltage as my 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 2 ½ mills per kilowatt-hour, additional electrical energy in an amount no exceeding 5,000 horsepower of demand for all project and farm uses and for resale.”</p>
1948	<p>62 Statute 269</p> <p>Act to provide for adjustment of irrigation charges on the Flathead Irrigation Project</p>	<p>Low Cost Block of Power Provisions (62 Stat. 270, 271): “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.”</p>

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		<p>Net Revenues of the Power System (62 Stat. 271): “All net revenues hereafter accumulated from the power system shall be applied annually to the following purposes, in the following order of priority (1) To liquidate all matured installments of the schedule of repayments for construction costs of the power system; (2) To liquidate all matured installments of the schedule of repayments for construction costs of the irrigation system of each division, on an equal per acre basis for all irrigable lands within the division; (3) To liquidate unmatured installments of the schedule of repayments for construction costs of the power system which will mature at a date not later than the maturity of any unliquidated installment of irrigation system construction costs; (4) To liquidate unmatured installments of the schedule of repayments for construction costs of the irrigation system of each division which will mature at a date prior to the maturity of any unliquidated installment of power system construction costs, on an equal per acre basis for all irrigable lands within the division; (5) To liquidate construction costs chargeable against Indian owned lands the collection of which is deferred under the Act of July 1,1932 (47 Stat . 564 ; 25 U . S. C., see. 386a); and (6) To liquidate the annual operation and maintenance costs of the irrigation system”</p>
1984	GAO report to Senator Max Baucus on Bureau of Indian Affairs’ Participation in a Proposed Hydroelectric Facility at Kootenai Falls, Montana	<p>“This report discusses how the BIA improperly spent Flathead Indian Reservation Irrigation and Power Project revenues and did not report to congressional appropriations committees its reprogramming of irrigation and power system construction funds to pay a portion of its share of Kootenai Falls participation expenses. Also, the Flathead project’s financial system was not in compliance with two of the Comptroller Generals internal control standards.”</p> <p>The BIA was required to reimburse the Flathead project power revenues from an available appropriation account or seek a deficiency appropriation from the Congress for that purpose (p.13)</p>
1986	Indian Self Determination Act Contract for Management of the Flathead Irrigation Project Power Division was awarded to the CSKT by the BIA	<p>The last 4 pages of Volume 2 of the “ 1985 Comprehensive Review Report of the Flathead Indian Irrigation Project” prepared by the BIA at the direction of the Secretary of the Interior discussed different options for Operation and Management of the Power Division: 1) Transfer of the Power Division to the supervision and control of the irrigation water users 2) Transfer the Power Division to the CSKT to operate and maintain and 3) Transfer of operation and maintenance of the power system to some entirely separate organization such as an REA cooperative, selling the power to an electric utility.</p> <p>In 1986, the BIA arbitrarily chose to award a 638 management contract to the CSKT and it has been in effect ever since.</p>
2006	Federal Register /Vol. 71, No. 196	<p>“Repayment of Project construction conditions were fulfilled in early January 2004.” p. 59809</p> <p>In preparation for project turnover, an audit was done of the construction cost repayments and completion of repayment was reported in the federal register, but liens on the irrigator properties were never released.</p>
2007	Flathead Project638 Contract Denial Letter written by Edith Blackwell, Deputy Associate Solicitor, Division of Indian Affairs	<p>In 2006-2007, the CSKT attempted to work around the turnover provisions in the 1908 act by requesting the award of a 638 contract to operate and manage the irrigation division of the project. That request was soundly rejected when it was concluded:</p> <p><i>The transfer provision of the 1908 Act has been triggered, and the Department is committed to facilitating the transfer of the operation and management of the Project to the owners of the lands irrigated thereby. Although the Department recognizes the potential advantages that could come from issuing the Tribes a self-determination contact for the operation and management of the Project, the ISDEAA cannot be read in a vacuum and must be</i></p>

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		<p><i>considered in light of the language of the 1904 and 1908 Acts.</i></p> <p><i>The 1904 legislation authorizing the construction of irrigation ditches for the benefit of Indians on the Reservation was subsequently amended to require the construction of and irrigation system that would benefit both Indian allottees and non-Indian purchasers of lands on the Reservation. Since its inception, the Project has been operated to benefit both Indian and non-Indian irrigators, and all of those irrigators contribute to the costs of operating and maintaining this system. Applying the standard set forth in Navajo and Hoopa Valley, the operation and management of the Project is not "specifically targeted" to the Tribes, but instead benefits both Indians and non-Indians alike. (5) Accordingly, we cannot conclude that the Project is "for the benefit of Indians because of their status as Indians" such that the Tribes would be entitled to a self-determination contract under the ISDEEA.</i></p>
2010-2013	Establishment and Operation of the Cooperative Management Entity Agreement	Cooperative management entity agreement established in an attempt to fulfill federal provisions to turn management of the project over to the owners of the lands served by it. The entity gave a disproportionate share of representation to the tribes (a minimum of 50%, although more than 90% of the lands served by the project are privately owned by non Indians.
2014	Collapse of the Cooperative Management Entity	Cooperative management entity collapses as the result of CSKT Water Compact politics related to the collapse of the Flathead Joint Board of Control in late 2013. The Bureau of Indian Affairs resumed takeover of project management, and under the protest of irrigators.
2019	Federal Register/Vol. 84, No. 26	2019 O&M rate increase from \$29.00 per acre to \$33.50