

1 UNITED STATES OF AMERICA  
2 FEDERAL ENERGY REGULATORY COMMISSION

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

5 Prepared Direct Testimony of Wm. Ray Jensen  
6

7 INTRODUCTION - PERSONAL

8 Q. Please state your name and address.

9 A. Wm. Ray Jensen, Route 1, Box 75, St. Ignatius, Montana  
10 59865.

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

12 A. I am the Secretary of the Joint Board of Control of the  
13 Flathead, Mission, and Jocko Valley Irrigation Districts  
14 on the Flathead Reservation in Montana (the Joint Board).  
15 The Flathead, Mission, and Jocko Valley Irrigation Dis-  
16 tricts (the Districts) are intervenors in this proceeding.

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

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

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

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

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

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

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

13 Q. Are you otherwise interested in this proceeding?

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

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

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

1 Q. Do you hold any elected political office?

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

6 PURPOSE OF TESTIMONY

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

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

24 UNDERSTANDING OF BACKGROUND

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

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

1           These and related matters were gone into at the Federal  
2 Power Commission Hearings in 1929 which resulted in issu-  
3 ance of the original license for the Kerr site. Exhibit  
4 No. \_\_\_\_ (WRS-1) is the testimony of the Honorable Louis C.  
5 Cramton of Michigan, who was the Chairman of the House Ap-  
6 propriations Subcommittee which reported the bill (H.R.  
7 9136) which, without significant change, became the Act  
8 of March 7, 1928 already referred to.

9       Q. How do you understand the Project's reserved and appro-  
10 priated water power rights relate to Winters rights?

11       A. Under the Supreme Court's Winters decision (Winters v.  
12 United States, 207 U.S. 564 (1908)), creation of the  
13 Reservation reserved, for the benefit of practicably ir-  
14 rigable Reservation lands, that portion of Reservation  
15 streams and other water sources necessary to achieve ir-  
16 rigation of such lands. When later, pursuant to the Act  
17 of April 23, 1904, 33 Stat. 302 (the 1904 Act), as amended,  
18 allotment of the best lands was made to individual Indians,  
19 and unallotted lands were opened for sale to settlers for  
20 payments credited or paid to the Tribes, the Joint Board  
21 believes that ownership of appurtenant Winters irrigation  
22 water rights passed with the allotted and unallotted lands  
23 to the landowners and their successors in interest; that  
24 is, to the individual Indians and non-Indians who, in addi-  
25 tion to the Tribes, now own the irrigable Reservation lands.  
26 The Joint Board understands that the remainder of the Reser-  
27 vation waters and water power rights in Reservation streams,

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

#### 9 HOW WATER RIGHTS CREATED

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

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

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

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

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

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

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

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

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

7 HOW MPC CAME TO DEVELOP KERR SITE

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

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

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

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

#### 11 ORIGINAL LICENSE PROVISION

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

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

#### 25 RATIFICATION BY 1948 ACT

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

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

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

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

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

16 JOINT BOARD'S POSITION ON LOW COST POWER

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

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

1 In the Joint Board's view, such a provision is as  
2 necessary now as it ever was in order to compensate the  
3 Project and its water users for continuing use of their  
4 water power rights which were preempted by the Kerr De-  
5 velopment, and in order to protect the vital public inter-  
6 est in securing the continued viability of the Project,  
7 which is the basis of the economy on the Reservation, and  
8 in securing the federal investment in the Project. Such  
9 a provision is necessary, we think, in order to carry out  
10 the will of Congress as expressed in the 1928 and 1948  
11 legislation, referred to, and as embodied in solemn con-  
12 tracts between the Districts and the United States.

13 The Joint Board is convinced that such a provision for  
14 low cost power for the Project will not in any way affect  
15 the Tribal rental to be established in this proceeding.  
16 This is because the Joint Board believes that the Tribal  
17 rental must be fixed in accordance with a now reasonably  
18 well established procedure of first determining the net  
19 value of the Tribal site (by a net benefit, profitability  
20 or other method), and then allocating a part of that value,  
21 not in excess of 50% attributable to lands, to the Tribes  
22 on account of their contribution of land. This is the  
23 basic approach which was employed with respect to adjust-  
24 ment of the Tribes' rental in Federal Power Commission Opin-  
25 ion No. 529, Montana Power Company, 38 F.P.C. 766 (1967).  
26 Also this is the approach of the Federal Energy Regulatory  
27 Commission in Docket No. RM83-13, 48 Fed. Reg. 15,134.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 Also in recent years the Districts have increasingly  
27 felt that they had to get involved in matters like the  
28

1 instant hearing, where important interests of the irriga-  
2 tors are at stake but the Project or the Secretary for  
3 whatever reason do not adequately represent the irriga-  
4 tors' interests.

5 GENERAL INFORMATION REGARDING IRRIGATION AND CROPS

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

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

18 For administrative purposes, the largest of these, the  
19 Mission Division, is subdivided into the following sub-  
20 divisions: the Mission Subdivision (usually referred to  
21 as the Mission Division) comprised of the area lying south  
22 of Post Creek (19,699.89 acres of irrigated Class 1 lands,  
23 840.55 acres of irrigable but not irrigated Class 3 lands  
24 total of 25,782.11 acres); the Post Subdivision which in-  
25 cludes the area between Post Creek and Crow Creek (32,285.65  
26 acres of Class 1 lands, 1,826.72 acres of Class 3 lands,  
27 total of 43,451.46 acres) and the Pablo Subdivision which  
28

1 includes the lands north of Crow Creek to Flathead Lake.  
2 The lateral system for the Subdivisions generally serve  
3 only those areas, but the water supply for all the areas  
4 is interconnected through storage and feeder canals.

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

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

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

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

21 Q. Describe the facilities of the Project.

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

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

7 LICENSING PROVISIONS

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

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

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

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

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

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

8 Said elevations are in general above mean  
9 sea level as determined by reference to  
10 a certain United States Geological Survey  
11 benchmark elevation 2910.882 feet stamped  
12 "2900GN" as now located and established  
13 at Sumers Flathead County or to such  
14 other benchmarks as may be established  
15 by the United States Geological Survey  
16 having the same datum.

13 Article 26. Throughout the license term  
14 the licensee shall make available to the  
15 project at the project's Kerr Substation  
16 as now established, or at such other  
17 points mutually agreed upon, and the  
18 United States or the Flathead Irrigation  
19 Project Management for the benefit of  
20 the Flathead Irrigation Project may take,  
21 and having taken, shall pay for the elec-  
22 trical energy as follows:

- 18 a) 11.2 Megawatts during all months  
19 of the year at 100 percent load  
20 factor, at the rate of 2.088 mills  
21 per Kilowatt-hour.
- 22 b) 7.46 additional Megawatts during the  
23 months of April through October at  
24 100 percent load factor, at the rate  
25 of 2.088 mills per Kilowatt-hour.

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



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

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29           Q.    Does that conclude your testimony?

30           A.    Yes.

AFFIDAVIT

County of Lake  
State of Montana

ss.

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

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

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

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

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_