

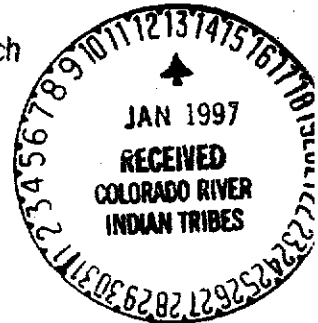
JAN 09 1997

Superintendent, Colorado River Agency

/s/ Allen J. Anspach

Executive Summary - Repayment of Federal Investment in the
Headgate Rock Dam Powerplant

Phoenix Area Director



The issues addressed here substantiate the fact that Congress directed that Headgate Rock Dam Hydro Electric Project (Powerplant), be constructed under the Authority of the Snyder Act (Act of November 2, 1921, 42 Stat. 208), and did not intend to include an interest component to the amount expended in the construction of the Powerplant. Further, this memorandum addresses the fact that the Secretary of the Interior (Secretary), is empowered with wide discretion and authority in determining repayment issues on projects authorized and funded under the Snyder Act, (25 U.S.C. Sec. 13).

The information presented below was formulated utilizing data and reference documentation from the Phoenix Field Solicitor Office (PFSO), opinion dated October 8, 1996, and the Headgate Rock Hydro Electric Project Advanced Planning Report of June 1980 (1980 Planning Report), prepared by the Bureau of Reclamation (Water and Power Resource Service), both attached hereto.

The Headgate Rock Dam (Dam), was authorized under the River and Harbors Act of 1935. The construction of the Dam was initiated by the BIA in 1938 and was completed in 1941. The Dam was designed to provide permanent diversion facilities for irrigation of land in Arizona on the Colorado River Indian Tribes' (CRIT) Reservation. Generation of the electric power necessary to irrigate Indian lands was authorized. The United States owns and operates Headgate Rock Dam and the Powerplant, through the BIA, Colorado River Agency.

The CRIT Tribal Council, in its January 31, 1977, resolution, requested Federal assistance in the construction of facilities to generate hydro electric power on the Reservation so that CRIT would be able to expand its irrigated agricultural land and provide affordable electrical energy to the Tribes and its members for water pumping.

In 1980, the BIA requested the Bureau of Reclamation (Reclamation), to update a 1967 feasibility report for the construction of a low head power generation plant at Headgate Rock Dam to supply additional power to the CRIT. In response to that request, Reclamation updated the 1967 feasibility report and subsequently prepared the 1980 Planning Report for the BIA.

The 1980 Planning Report concluded that a hydro electric powerplant at Headgate Rock Dam was economically justifiable and financially feasible, would provide a total of 19,500 kilowatts of capacity (19.5 MW), and an annual average production of 86.5 million kilowatt-hours of energy. The 1980 cost estimate for the Powerplant was \$35.5 million. The report anticipated that all the power produced would be used by CRIT to operate irrigation and drainage facilities

and to supply a portion of the residential and commercial power requirements of the Reservation (26.3% of the power for irrigation and 73.7% for Reservation commercial and domestic needs).

As of September 30, 1992, Reclamation determined the estimated total construction cost of the Powerplant (without interest), to be \$57.1 million and \$70.6 million (with interest). This represents a cost over run (without interest), of \$21.6 million or 161% over Reclamation's 1980 Planning Report cost estimate of \$35.5 million.

The funds that Congress appropriated for the construction of the Powerplant were appropriated pursuant to the Snyder Act to be expended by Reclamation for the purpose of designing and constructing the Powerplant. Prior to commencement of construction, the Reclamation Commissioner and the Secretary concurred (Secretarial Decision Memorandum, dated October 16, 1985, attached), that Reclamation's standard repayment regime was not applicable to the Powerplant by stating,

“at the explicit direction of P.L. 99-88, the Powerplant will be constructed under the authority of the Snyder Act. (Act of November 2, 1921, (42 Stat. 208), (25 U.S.C. 13). The Snyder Act gives the Secretary of the Interior broad authority to undertake programs and projects for the benefit, care and assistance of Indians.”

BIA's current policy of establishing power rates which are sufficient to amortize, (without interest), the construction costs of the Powerplant are consistent with congressional intent. To repay a \$57,072,102 construction cost debt on the Powerplant would require a rate increase which would adversely affect the ratepayers and may create a hardship on the BIA electric system customers.

Statements contained in Reclamation's 1980 Planning Report concerning repayment and interest are irrelevant in determining whether the law requires an interest component or repayment. Construction of the Powerplant was not performed under Reclamations authority, but rather under BIA's Snyder Act authority as Congress subsequently directed. Unlike the general statutes governing Reclamation's activities, the Snyder Act gives the Secretary wide discretion to determine how, and on what terms, money appropriated under the Snyder Act will be expended.

In conclusion, based on the facts as summarized, referenced, and documented herein, the law does not require the addition of an interest component to the amount expended in the construction of the Powerplant to determine the construction cost of the Powerplant.

Further, the purpose of the statute authorizing and funding the Powerplant was to displace high cost electric energy then being purchased from Arizona Public Service Company and help mitigate financial hardship being placed on the Tribes and its members.

Finally, based on the PFSO's findings and supporting documentation, it appears that the Secretary has wide discretion and authority in determining repayment issues on projects authorized and funded under the Snyder Act in order to fulfill the purposes of the Act. Therefore, it is the view of the Bureau of Indian Affairs, Colorado River Agency and that of the PFSO, that the Secretary is empowered to grant such additional relief, to include waiver of the Powerplant construction costs, as the Secretary determines appropriate.

We also request a meeting with the Area Director or designee to discuss the appropriate proceedings to have repayment of the Powerplant construction costs waived.

If you have any questions, please call me at (520) 669-7111 or contact Mr. Neil Messer, Supervisory Electrical Engineer, at (520) 669-7126.

Attachments

cc: Mr. Allen Anspach (Supt.)
Mr. Neil Messer (Elec. Serv.)
Mr. Gary Stein (Elec. Serv.)
Mr. Daniel Eddy, Jr., Chairman (CRIT)

COLORADO RIVER INDIAN TRIBES ADMINISTRATION			
ATTN:	ACTIVITY	DATE	INITIAL
	CHAIRMAN		
	VICE CHAIRMAN		
	SECRETARY		
	TREASURER		
	<i>Chief Mike General, Water Resources</i>		
	<i>01/13/97</i>		