

## BONNEVILLE PROJECT

An act to authorize the completion, maintenance, and operation of Bonneville project for navigation, and for other purposes. (Act of August 20, 1937, ch. 720, 50 Stat. 731)

[**Sec. 1. Completion of dam by Secretary of War—Surplus power to be disposed of by Power Administrator.**]—For the purpose of improving navigation on the Columbia River, and for other purposes incidental thereto, the dam, locks, power plant, and appurtenant works now under construction at Bonneville, Oregon and North Bonneville, Washington (hereinafter called Bonneville project), shall be completed, maintained, and operated under the direction of the Secretary of War and the supervision of the Chief of Engineers, subject to the provisions of this Act relating to the powers and duties of the Bonneville power administrator provided for in section 2(a) (hereinafter called the administrator) respecting the transmission and sale of electric energy generated at said project. The Secretary of War shall provide, construct, operate, maintain, and improve at Bonneville project such machinery, equipment, and facilities for the generation of electric energy as the administrator may deem necessary to develop such electric energy as rapidly as markets may be found therefor. The electric energy thus generated and not required for the operation of the dam and locks at such project and the navigation facilities employed in connection therewith shall be delivered to the administrator, for disposition as provided in this Act. (50 Stat. 731; 16 U.S.C. § 832)

**Sec. 2. [Administrator appointed by Secretary of the Interior—Advisory Board of representatives of War, Interior, Federal Power Commission, and Agriculture departments—Office of Administrator to be an officer of the Department of the Interior—Secretary of War to install necessary machinery—Powers and duties of Administrator.]**—(a) The electric energy generated in the operation of the said Bonneville project shall be disposed of by the said administrator as hereinafter provided. The administrator shall be appointed by the Secretary of the Interior; shall be responsible to said Secretary of the Interior; and shall maintain his principal office at a place selected by him in the vicinity of the Bonneville project. The administrator shall, as hereinafter provided, make all arrangements for the sale and disposition of electric energy generated at Bonneville project not required for the operation of the dam and locks at such project and the navigation facilities employed in connection therewith. The form of administration herein established for the Bonneville project is intended to be provisional pending the establishment of a permanent administration for Bonneville and other projects in the Columbia River Basin. The Secretary of War shall install and maintain additional machinery, equipment, and facilities for the generation of electric energy at the Bonneville project when in the judgment of the administrator such additional generating facilities are desirable to meet actual or potential market requirements for such electric energy. The Secretary of War shall schedule the operations of the several electrical generating units and appurtenant equipment of the Bonneville project in accordance

with the requirements of the administrator. The Secretary of War shall provide and maintain for the use of the administrator at said Bonneville project adequate station space and equipment, including such switches, switchboards, instruments, and dispatching facilities as may be required by the administrator for proper reception, handling, and dispatching of the electric energy produced at the said project, together with transformers and other equipment required by the administrator for the transmission of such energy from that place at suitable voltage to the markets which the administrator desires to serve. The office of the Administrator of the Bonneville project is hereby constituted an office in the Department of the Interior and shall be under the jurisdiction and control of the Secretary of the Interior. All functions vested in the Administrator of the Bonneville project under this Act may be exercised by the Secretary of the Interior and, subject to his supervision and direction, by the Administrator and other personnel of the project.

(b) In order to encourage the widest possible use of all electric energy that can be generated and marketed and to provide reasonable outlets therefor, and to prevent the monopolization thereof by limited groups, the administrator is authorized and directed to provide, construct, operate, maintain, and improve such electric transmission lines and substations, and facilities and structures appurtenant thereto, as he finds necessary, desirable, or appropriate for the purpose of transmitting electric energy, available for sale, from the Bonneville project to existing and potential markets, and, for the purpose of interchange of electric energy, to interconnect the Bonneville project with other Federal projects and publicly owned power systems now or hereafter constructed.

(c) The administrator is authorized, in the name of the United States, to acquire, by purchase, lease, condemnation, or donation, such real and personal property, or any interest therein, including lands, easements, rights-of-way, franchises, electric transmission lines, substations, and facilities and structures appurtenant thereto, as the administrator finds necessary or appropriate to carry out the purposes of this Act. Title to all property and property rights acquired by the administrator shall be taken in the name of the United States.

(d) The administrator shall have power to acquire any property or property rights, including patent rights, which in his opinion are necessary to carry out the purposes of this Act, by the exercise of the right of eminent domain and to institute condemnation proceedings therefor in the same manner as is provided by law for the condemnation of real estate.

(e) The administrator is authorized, in the name of the United States, to sell, lease, or otherwise dispose of such personal property as in his judgment is not required for the purposes of this Act and such real property and interests in land acquired in connection with construction or operation of electric transmission lines or substations as in his judgment are not required for the purposes of this Act: *Provided, however*, That before the sale, lease, or disposition of real property or transmission lines, as herein provided, the administrator shall secure the approval of the President of the United States.

(f) Subject only to the provisions of this Act, the Administrator is authorized to enter into such contracts, agreements, and arrangements, including the amend-

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ment, modification, adjustment, or cancellation thereof and the compromise or final settlement of any claim arising thereunder, and to make such expenditures, upon such terms and conditions and in such manner as he may deem necessary. (50 Stat. 732; Act of March 6, 1940, 54 Stat. 47; Act of October 23, 1945, 59 Stat. 546; 16 U.S.C. § 832a)

## EXPLANATORY NOTES

**1945 Amendment.** The Act of October 23, 1945, 59 Stat. 546, amended subsection 2(f) to read as it appears above. Before amendment, the subsection authorized the Administrator "to negotiate and enter into such contracts, agreements, and arrangements as he shall find necessary or appropriate to carry out the purposes of this Act."

**1940 Amendments.** The Act of March 6, 1940, 54 Stat. 47, amended subsection 2(a) by adding to it its last sentence concerning the jurisdiction of the Secretary of the Interior. The 1940 Act also provided authority for the Secretary to appoint an Assistant Administrator, chief engineer and general

counsel, who would serve under fixed salary limitations. This provision was repealed by the Act of October 23, 1945, 59 Stat. 546, which act, however, also amended section 10 of the 1937 Act and, as amended, section 10 includes a provision similar to the one repealed.

**Advisory Board Abolished.** The Bonneville Power Advisory Board authorized in section 2 to be composed of representatives of the Secretaries of the Army, Interior, and Agriculture and the Federal Power Commission was abolished by Reorganization Plan No. 4 of 1965, effective July 27, 1965, and its function transferred to the Secretary of the Interior.

## NOTES OF OPINIONS

Contracting authority 1  
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## 1. Contracting authority

The legislative history of section 2(f) of the Bonneville Project Act as amended on October 23, 1945 (59 Stat. 546, 16 U.S.C. § 832a(f)), expresses an intent on the part of Congress to authorize the Bonneville Power Administrator to conduct his affairs in a manner which equates his authority with that of private business enterprises. Solicitor Barry Opinion, 71 I.D. 315, 326 (1964), in re Canadian Entitlement Exchange Agreements.

In view of the express legislative intent of section 2(f) of the Bonneville Project Act to vest discretion in the Administrator of the Bonneville Power Administration as to the terms and conditions of contracts made to carry out the purposes of that Act, and assuming that Congress authorizes Atomic Energy Commission participation in the plan to sell steam from the New Production Reactor at Hanford, Washington, the contingent liability provision in a proposed agreement that BPA would reimburse the Washington Public Power Supply System for expenses incurred in the event construction of the reactor should be discontinued, will not be questioned, notwithstanding the general provision of sections 3679 and 3732, Revised Statutes (31 U.S.C. § 665 and 41

U.S.C. § 11). Dec. Comp. Gen. B-149016, B-149083 (letter of Assistant Comptroller General Weitzel to Chairman Holifield, Joint Committee on Atomic Energy, July 16, 1962).

The legislative history of section 2(f) of the Bonneville Project Act indicates a purpose to enable the Administrator to conduct the business of the project with a freedom similar to that conferred on public corporations carrying on comparable activities. Dec. Comp. Gen. B-105397 (September 21, 1951).

Under the broad authority of section 2(f) of the Bonneville Project Act the Administrator is authorized to enter into contracts and expend appropriated funds to increase precipitation in the watershed above Grand Coulee Dam through artificial nucleation and cloud modification if he determines that such services are necessary for the proper administration of the act. Dec. Comp. Gen. B-105397 (September 21, 1951).

## 2. Weather modification

Under his general authority to dispose of electric energy, establish rates, and enter contracts, the Bonneville Power Administrator may enter into a contract and expend appropriated funds for a survey to determine the feasibility of providing additional firm power by increasing precipitation through artificial nucleation and cloud modification. Dec. Comp. Gen. B-104463 (July 23, 1951).

**3. Intertie**

The Secretary of the Interior has authority under subsection 2(b), 2(f), 5(a), 5(b) and 9(b) of the Bonneville Project Act; section 5 of the Flood Control Act of 1944; sections 9(c) and 14 of the Reclamation

Project Act of 1939; and section 2 of the Act of August 30, 1935, 49 Stat. 1039, re-authorizing the Grand Coulee Dam project, to construct transmission lines between the Pacific Northwest and the Pacific Southwest. Solicitor Barry Opinion, 70 I.D. 237 (1963).

**Sec. 3. [Definition of "public body or bodies."]**—As employed in this Act, the term "public body", or "public bodies", means States, public power districts, counties, and municipalities, including agencies or subdivisions of any thereof.

As employed in this Act, the term "cooperative", or "cooperatives", means any form of non-profit-making organization or organizations of citizens supplying, or which may be created to supply, members with any kind of goods, commodities, or services, as nearly as possible at cost. (50 Stat. 733; 16 U.S.C. § 832b)

**Sec. 4. [Preference to public bodies and cooperatives.]**—(a) In order to insure that the facilities for the generation of electric energy at the Bonneville project shall be operated for the benefit of the general public, and particularly of domestic and rural consumers, the administrator shall at all times, in disposing of electric energy generated at said project, give preference and priority to public bodies and cooperatives.

(b) To preserve and protect the preferential rights and priorities of public bodies and cooperatives as provided in section (a) and to effectuate the intent and purpose of this Act at all times up to January 1, 1942, there shall be available for sale to public bodies and cooperatives not less than 50 per centum of the electric energy produced at the Bonneville project, it shall be the duty of the administrator in making contracts for the sale of such energy to so arrange such contracts as to make such 50 per centum of such energy available to said public bodies and cooperatives until January 1, 1942: *Provided*, That the electric energy so reserved for but not actually purchased by and delivered to such public bodies and cooperatives prior to January 1, 1942, may be disposed of temporarily so long as such temporary disposition will not interfere with the purchase by and delivery to such public bodies and cooperatives at any time prior to January 1, 1942: *Provided further*, That nothing herein contained shall be construed to limit or impair the preferential and priority rights of such public bodies or cooperatives after January 1, 1942; and in the event that after such date there shall be conflicting or competing applications for an allocation of electric energy between any public body or cooperative on the one hand and a private agency of any character on the other, the application of such public body or cooperative shall be granted.

(c) An application by any public body or cooperative for an allocation of electric energy shall not be denied, or another application competing or in conflict therewith be granted, to any private corporation, company, agency, or person, on the ground that any proposed bond or other security issue of any such public body or cooperative, the sale of which is necessary to enable such prospective purchaser to enter into the public business of selling and distributing the electric energy proposed to be purchased, has not been authorized or marketed, until after a reasonable time, to be determined by the administrator, has been afforded

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such public body or cooperative to have such bond or other security issue authorized or marketed.

(d) It is declared to be the policy of the Congress, as expressed in this Act, to preserve the said preferential status of the public bodies and cooperatives herein referred to, and to give to the people of the States within economic transmission distance of the Bonneville project reasonable opportunity and time to hold any election or elections or take any action necessary to create such public bodies and cooperatives as the laws of such States authorize and permit, and to afford such public bodies or cooperatives reasonable time and opportunity to take any action necessary to authorize the issuance of bonds or to arrange other financing necessary to construct or acquire necessary and desirable electric distribution facilities, and in all other respects legally to become qualified purchasers and distributors of electric energy available under this Act. (50 Stat. 733; Act of March 6, 1940, 54 Stat. 47; 16 U.S.C. § 832c)

## EXPLANATORY NOTE

**1940 Amendment.** The Act of March 6, 1940, 54 Stat. 47, amended subsection 4(b) by striking out "January 1, 1941" wherever

it occurred and inserting in lieu thereof "January 1, 1942".

## NOTES OF OPINIONS

**1. Preference provision**

The preference provisions of section 5 of the Flood Control Act of 1944 must be read in *pari materia* with the preference provisions of section 5(c) of the Boulder Canyon Project Act (43 U.S.C. § 617d-(c)), the Tennessee Valley Authority Act (16 U.S.C. § 831k), and Section 4 of the Bonneville Project Act (16 U.S.C. § 832c(d)). 41 Op. Atty Gen. 236, 245 (1955), in re disposition of power from Clark Hill reservoir project.

If the marketing area of the Columbia River system were extended to California, the preference provisions of the Bonneville

Project Act would extend thereto. Consequently, legislation would be required to modify the preference provision in order to assure that power sold to California applicants, both preference and non-preference, could subsequently be withdrawn and disposed of in the Pacific Northwest if that power were required in that area. Opinion of Portland Regional Solicitor, Coulter, November 4, 1959, reprinted in *Study of a High Voltage Electrical Interconnection between the Pacific Northwest and California*, submitted to the Senate Committee on Interior and Insular Affairs by Secretary Seaton, February 1960, at 53-57.

**Sec. 5. [Federal Power Commission to approve rate schedules—Administrator to contract for sale of electric energy.]—(a)** Subject to the provisions of this Act and to such rate schedules as the Federal Power Commission may approve, as hereinafter provided, the administrator shall negotiate and enter into contracts for the sale at wholesale of electric energy, either for resale or direct consumption, to public bodies and cooperatives and to private agencies and persons and for the disposition of electric energy to Federal agencies. Contracts for the sale of electric energy to any private person or agency other than a privately owned public utility engaged in selling electric energy to the general public, shall contain a provision forbidding such private purchaser to resell any of such electric energy so purchased to any private utility or agency engaged in the sale of electric energy to the general public, and requiring the immediate canceling of such contract of sale in the event of violation of such provision. Contract entered into under this subsection shall be binding in accordance with the term

thereof and shall be effective for such period or periods, including renewals or extensions, as may be provided therein, not exceeding in the aggregate twenty years from the respective dates of the making of such contracts. Contracts entered into under this subsection shall contain (1) such provisions as the administrator and purchaser agree upon for the equitable adjustment of rates at appropriate intervals, not less frequently than once in every five years, and (2) in the case of a contract with any purchaser engaged in the business of selling electric energy to the general public, the contract shall provide that the administrator may cancel such contract upon five years' notice in writing if in the judgment of the administrator any part of the electric energy purchased under such contract is likely to be needed to satisfy the requirements of the said public bodies or cooperatives referred to in this Act, and that such cancellation may be with respect to all or any part of the electric energy so purchased under said contract to the end that the preferential rights and priorities accorded public bodies and cooperatives under this Act shall at all times be preserved. Contracts entered into with any utility engaged in the sale of electric energy to the general public shall contain such terms and conditions, including among other things stipulations concerning resale and resale rates by any such utility, as the administrator may deem necessary, desirable or appropriate to effectuate the purposes of this Act and to insure that resale by such utility to the ultimate consumer shall be at rates which are reasonable and nondiscriminatory. Such contract shall also require such utility to keep on file in the office of the administrator a schedule of all its rates and charges to the public for electric energy and such alterations and charges therein as may be put into effect by such utility.

(b) The administrator is authorized to enter into contracts with public or private power systems for the mutual exchange of unused excess power upon suitable exchange terms for the purpose of economical operation or of providing emergency or break-down relief. (50 Stat. 734; Act of October 23, 1945, 59 Stat. 546; 16 U.S.C. § 832d)

#### EXPLANATORY NOTE

1945 Amendment. The Act of October 23, 1945, 59 Stat. 546, amended subsection 5(a) by inserting before the period of its

first sentence the words "and for the disposition of electric energy to Federal agencies."

#### NOTES OF OPINIONS

##### 1. Exchange agreements

The advantages at federal hydroelectric projects to be realized from implementing the "Treaty between Canada and the United States of America Relating to Co-operative Development of the Water Resources of the Columbia River Basin" through the execution of exchange agreements, support, as a matter of law, the Bonneville Power Administrator's determination of "economical operation" as required by section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197, 43 U.S.C. § 389) and section 5(b) of the Bonneville Project Act (50 Stat. 734, 16 U.S.C.

§ 832d(b)), Solicitor Barry Opinion, 71 I.D. 315, 326-28 (1964).

Agreements providing for the delivery to the Bonneville Power Administrator of a quantity of power which cannot, with certainty, be determined but which constitutes a valuable power resource, in return for the delivery by the Administrator of stated amounts of power over the same period, constitute power-for-power exchange agreements which the Administrator is authorized to enter into under section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197, 43 U.S.C. § 389) and section 5(b) of the Bonneville Project Act (50 Stat. 734,

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16 U.S.C. § 832d(b)). Solicitor Barry Opinion, 71 I.D. 315 (1964), in re Canadian Entitlement Exchange agreements.

A proposed agreement whereby the Washington Public Power Supply System would furnish to the Bonneville Power Administration the total electric power generated from steam to be purchased from the Atomic Energy Commission's New Production Reactor at Hanford, Washington, and would receive in exchange therefor firm power from BPA, is clearly a contract for the exchange of power and comes within the general authority granted by section 5(b) of the Bonneville Project Act and section 14 of the Reclamation Project Act of 1939, which governs the operation of the Columbia Basin project as provided by section 1 of the Columbia Basin Project Act. Dec. Comp. Gen. B-149016, B-149083 (letter of Assistant Comptroller General Weitzel to Chairman Holifield, Joint Committee on Atomic Energy, July 16, 1962).

As a prerequisite to the execution of a proposed agreement with the Washington Public Power System to furnish firm power

in exchange for the total electric power generated at the Atomic Energy Commission's New Production Reactor at Hanford, Washington, the Bonneville Power Administration must make a determination that the agreement is in the interest of economical operation, as required by section 14 of the Reclamation Project Act of 1939 and section 5(b) of the Bonneville Project Act. Dec. Comp. Gen. B-149016, B-149083 (letter to Chairman Holifield, July 16, 1962).

The provisions of the Bonneville Act with respect to pullback of power from private utilities on five years' notice if power is needed by preference customers and relative to a maximum contract term of 20 years relate only to contracts for the sale of power under section 5(a) of the Bonneville Project Act. Neither of these provisions is applicable to a contract for the exchange of power under section 5(b) of the Bonneville Project Act. Memorandum of Associate Solicitor Weinberg to Administrator, Bonneville Power Administration, July 12, 1962.

**Sec. 6. [Schedules of rates and charges for electric energy.]**—Schedules of rates and charges for electric energy produced at the Bonneville project and sold to purchasers as in this Act provided shall be prepared by the administrator and become effective upon confirmation and approval thereof by the Federal Power Commission; and such rates and charges shall also be applicable to dispositions of electric energy to Federal agencies. Subject to confirmation and approval by the Federal Power Commission, such rate schedules may be modified from time to time by the administrator, and shall be fixed and established with a view to encouraging the widest possible diversified use of electric energy. The said rate schedules may provide for uniform rates or rates uniform throughout prescribed transmission areas in order to extend the benefits of an integrated transmission system and encourage the equitable distribution of the electric energy developed at the Bonneville project. (50 Stat. 735; Act of October 23, 1945, 59 Stat. 546; 16 U.S.C. § 832e)

## EXPLANATORY NOTE

**1945 Amendment.** The Act of October 23, 1945, 59 Stat. 546, amended section 6 by changing the period at the end of its first sentence to a semicolon and adding the

words "and such rates and charges shall also be applicable to dispositions of electric energy to Federal agencies."

## NOTE OF OPINION

**1. Rates and charges**

The provisions relating to power marketing and power rates in section 9(c) of the Reclamation Project Act of 1939, section 5 of the Flood Control Act of 1944, and section 6 of the Bonneville Power Act are *in pari materia*, and each may be examined to shed light on the Congressional intent with respect to the others. Indeed, as a practical

matter, as illustrated by the Bonneville Power Administration, because a single system may be used to market power from different sources, the three statutes have to be read together and interpreted as establishing identical criteria for power rates. Consequently, the mandate of the Flood Control Act of 1944 to market power from Army projects "in such manner as to en-

courage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles," applies also to power marketed from reclamation projects under reclamation law. Letter

of Secretary Udall to Representative Aspinall, May 15, 1965, in re basis for establishing power rates for the Colorado River Storage Project.

**Sec. 7. [Rate schedules to be based on cost of production of energy—Computation of costs.]**—It is the intent of Congress that rate schedules for the sale of electric energy which is or may be generated at the Bonneville project in excess of the amount required for operating the dam, locks, and appurtenant works at said project shall be determined with due regard to and predicated upon the fact that such electric energy is developed from water power created as an incident to the construction of the dam in the Columbia River at the Bonneville project for the purposes set forth in section 1 of this Act. Rate schedules shall be drawn having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of Bonneville project) of the cost of producing and transmitting such electric energy, including the amortization of the capital investment over a reasonable period of years. Rate schedules shall be based upon an allocation of costs made by the Federal Power Commission. In computing the cost of electric energy developed from water power created as an incident to and a byproduct of the construction of the Bonneville project, the Federal Power Commission may allocate to the costs of electric facilities such a share of the cost of facilities having joint value for the production of electric energy and other purposes as the power development may fairly bear as compared with such other purposes. (50 Stat. 735; 16 U.S.C. § 832f)

#### NOTES OF OPINIONS

Allocation of costs 2

Repayment 1

##### 1. Repayment

Neither the Hayden-O'Mahoney amendment nor the power marketing statutes involved in the power operations of the Bonneville Power Administration (section 7 of the Bonneville Project Act, section 9(c) of the Reclamation Project Act of 1939, and section 5 of the Flood Control Act of 1944) require that the costs of each project to be met from power revenues have to be amortized on the basis of a fixed annual obligation. The legal requirements are satisfied if such costs are returned within a reasonable period of years whatever accounting procedure is applied. Statement furnished by Assistant Secretary Holum in regard to statutory authority for revised procedure for presenting Bonneville Power Administration rate and repayment data on a consolidated system basis, printed in *Hearings on H.R. 2337, to Provide for the*

*Construction of the Lower Teton Division, Teton Basin Federal Reclamation Project, Before the Irrigation and Reclamation Subcommittee of the House Committee on Interior and Insular Affairs, 88th Cong., 2d Sess. 36-38 (1964).*

##### 2. Allocation of costs

In allocating costs for the McNary Project, the Federal Power Commission should allocate part of the joint facility costs to recreation, both because recreation is authorized as a part of the project under the general authority of section 4 of the Flood Control Act of 1944, and because section 7 of the Bonneville Project Act specifically directs the Commission to take into account the use of the project for recreation. Memorandum of Solicitor Barry, July 22, 1965, in re authority of FPC under Section 7 of Bonneville Project Act to allocate part of joint facility costs to recreation at McNary Dam.

**Sec. 8. [Advertising required on contracts for supplies or services.]**—Notwithstanding any other provision of law, all purchases and contracts made by the administrator or the Secretary of War for supplies or for services except for



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personal services, shall be made after advertising, in such manner and at such times, sufficiently in advance of opening bids, as the administrator or Secretary of War, as the case may be, shall determine to be adequate to insure notice and opportunity for competition. Such advertisement shall not be required, however, when (1) an emergency requires immediate delivery of the supplies or performance of the services; or (2) repair parts, accessories, supplemental equipment, or services are required for supplies or services previously furnished or contracted for; or (3) the aggregate amount involved in any purchase of supplies or procurement of services does not exceed \$500; in which cases such purchases of supplies or procurement of services may be made in the open market in the manner common among businessmen. In comparing bids and in making awards, the administrator or the Secretary of War, as the case may be, may consider such factors as relative quality and adaptability of supplies or services, the bidder's financial responsibility, skill, experience, record of integrity in dealing, and ability to furnish repairs and maintenance services, the time of delivery or performance offered, and whether the bidder has complied with the specifications. (50 Stat. 735; 16 U.S.C. § 832g)

**Sec. 9. [Accounts to be maintained—Independent commercial audit required—Expenditure of funds.]—**(a) The administrator, subject to the requirements of the Federal Water Power Act, shall keep complete and accurate accounts of operations, including all funds expended and received in connection with transmission and sale of electric energy generated at the Bonneville project, and in the maintenance of such accounts, appropriate obligations shall be established for annual and sick leave of absence as earned. The Administrator shall, after the close of each fiscal year, obtain an independent commercial-type audit of such accounts. The forms, systems, and procedures prescribed by the Comptroller General for the Administrator's appropriation and fund accounting shall be in accordance with the requirements of the Federal Water Power Act with respect to accounts of electric operations of public utilities and the regulations of the Federal Power Commission pursuant thereto.

(b) The administrator may make such expenditures for offices, vehicles, furnishings, equipment, supplies, and books; for attendance at meetings; and for such other facilities and services as he may find necessary for the proper administration of this Act. (50 Stat. 736; Act of October 23, 1945, 59 Stat. 547; 16 U.S.C. § 832h)

(c) [Annual report to Congress.]—*Repealed.*

## EXPLANATORY NOTES

**Provision Repealed.** The Act of June 14, 1966, 80 Stat. 200, repealed subsection (c) of section (9) which read as follows: "In December of each year, the administrator shall file with the Congress, through the Secretary of the Interior, a financial statement and a complete report as to the transmission and sale of electric energy generated

at the Bonneville project during the preceding governmental fiscal year." The 1966 Act appears herein in chronological order.

**1945 Amendment.** The Act of October 23, 1945, 59 Stat. 546, amended subsection 9(a) by adding to it all that follows the words "Bonneville project" in the subsection.

**Sec. 10. [Appointment of officers and employees—Voluntary and uncompensated services.]—**(a) The Secretary of the Interior shall appoint, without regard to the civil-service laws, an Assistant Administrator, chief engineer, and general counsel and shall fix the compensation of each in accordance with the Classification Act of 1949, as amended. The Assistant Administrator shall perform the duties and exercise the powers of the Administrator, in the event of the absence or sickness of the Administrator until such absence or sickness shall cease and in the event of a vacancy in the office of Administrator until a successor is appointed.

(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this Act, the appointment of whom is not otherwise provided for, and to fix their compensation in accordance with the Classification Act of 1949, as amended. The Administrator may employ laborers, mechanics, and workmen in connection with construction work or the operation and maintenance of electrical facilities (hereinafter called 'laborers, mechanics, and workmen'), subject to the civil-service laws, and fix their compensation without regard to the Classification Act of 1949, as amended, and any other laws, rules, or regulations relating to the payment of employees of the United States except the Act of May 29, 1930 (46 Stat. 468), as amended, to the extent that it otherwise is applicable. The Administrator is further authorized to employ physicians, under agreement and without regard to civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carrying out the functions entrusted to them under this Act.

(c) The Administrator may accept and utilize such voluntary and uncompensated services and with the consent of the agency concerned may utilize such officers, employees, or equipment of any agency of the Federal, State, or local governments which he finds helpful in carrying out the purposes of this Act; in connection with the utilization of such services, reasonable payments may be allowed for necessary travel and other expenses. (50 Stat. 736; Act of October 23, 1945, 59 Stat. 547; Act of October 28, 1949, 63 Stat. 972; 16 U.S.C. § 832i)

#### EXPLANATORY NOTES

**1949 Amendment.** The Act of October 28, 1949, substituted the "Classification Act of 1949" for the "Classification Act of 1923" in the text, and by its operation eliminated the provision at the end of subsection "(b)" which read: "and to fix the compensation of each such expert without regard to the Classification Act of 1923, as amended, but at not to exceed \$7,500 per annum."

**1945 Amendment.** The Act of October

23, 1945, 59 Stat. 547, amended section 10 in its entirety. Before amendment, the section read as follows:

"Sec. 10. The administrator, the Secretary of War, and the Federal Power Commission, respectively, shall appoint such attorneys, engineers, and other experts as may be necessary for carrying out the functions entrusted to them under this Act, without regard to the provisions of the civil-service laws and shall fix the compensation

of each of such attorneys, engineers, and other experts at not to exceed \$7,500 per annum; and they may, subject to the civil-service laws, appoint such other officers and employees as may be necessary to carry out such functions and fix their salaries in ac-

cordance with the Classification Act of 1923 as amended."

**Reference in the Text.** The Act of May 29, 1930 (46 Stat. 468), referred to in the text, deals with the retirement of employees in the classified civil service.

**Sec. 11. [Receipts from transmission and sale of electric energy.]**—All receipts from transmission and sale of electric energy generated at the Bonneville project shall be covered into the Treasury of the United States to the credit of miscellaneous receipts, save and except that the Treasury shall set up and maintain from such receipts a continuing fund of \$500,000, to the credit of the administrator and subject to check by him, to defray emergency expenses and to insure continuous operation. There is hereby authorized to be appropriated from time to time, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act, including installation of equipment and machinery for the generation of electric energy and facilities for its transmission and sale. (50 Stat. 736; 16 U.S.C. § 832j)

#### NOTES OF OPINIONS

##### 1. Continuing fund

The primary purpose of the continuing fund for the Bonneville Power Administration, as of the continuing fund first established for the Southwestern Power Administration and the emergency fund created by the Act of June 26, 1948, for the Bureau of Reclamation, is to insure continuous operation of transmission facilities in the face of emergencies that cause or threaten interruption (as distinguished from curtailment) in power service. Dec. Comp. Gen. B-105397 (September 21, 1951).

A seasonal reduction in rainfall and consequent decrease in the output of electrical energy from federal dams on the Columbia River does not constitute such an emergency or interruption of service as to justify expenditure of money from the continuing fund, created by section 11 of the Bonneville Project Act, for artificial nucleation and cloud modification services to increase precipitation. Dec. Comp. Gen. B-105397 (September 21, 1951).

**Sec. 12. [Authority of the Administrator with respect to claims against the United States—Power to sue in the name of the United States.]**—(a) The Administrator is hereby authorized to determine, settle, compromise, and pay claims and demands against the United States which are not in excess of \$1,000 and are presented to the Administrator in writing within one year from the date of accrual thereof, for any losses, injuries, or damages to persons or property, or for the death of persons, resulting from acts or omissions of employees acting within the scope of their employment pursuant to this Act. The Administrator is also authorized to determine, compromise, and settle any claims and demands of the United States for any losses, injuries, or damages to property under the Administrator's control, against other persons or public or private corporations. The Administrator's determination, compromise, settlement, or payment of any of the claims referred to in this subsection shall be final and conclusive upon all officers of the Government, notwithstanding the provisions of any other Act to the contrary. When claims presented to the Administrator under this subsection arise, in whole or in part, out of any damage done to private property, the Administrator may repair all or any part of such damage in lieu of making such payments.

(b) The Administrator may, in the name of the United States, under the supervision of the Attorney General, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented in the prosecution and defense of all litigation, affecting the status or operation of Bonneville project by the United States attorneys for the districts, respectively, in which such litigation may arise, or by such attorney or attorneys as the Attorney General may designate as authorized by law, in conjunction with the regularly employed attorneys of the Administrator. (50 Stat. 736; Act of October 23, 1945, 59 Stat. 547; Act of July 26, 1946, 60 Stat. 701; 16 U.S.C. § 832k)

## EXPLANATORY NOTES

**1946 Amendment.** The Act of July 26, 1946, 60 Stat. 701, amended subsection 12(b) to read as it appears above. Before amendment, the subsection read as follows:

"(b) The Administrator may, in the name of the United States, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented in the prosecution and defense of all litigation, including condemnation proceedings, affecting the status or operation of the Bonneville project by his attorneys: *Provided, however,* That such attorneys shall supply the Attorney General with copies of the pleadings in all such cases and that the handling of litigation which, in the Attorney General's opinion, involves interpretation of the Constitution of the United States or which involves appearance in any United States circuit court of appeals or the United States Supreme Court shall be subject to the Attorney General's direction or supervision. The Administrator may compromise and make final settlement of such litigation and

pay the amount due under any compromise or judgment. Complaints in condemnation proceedings permitted by section 2(c) and 2(d) of this Act shall be signed, verified, and filed by the Administrator."

**1945 Amendment.** The Act of October 23, 1945, 59 Stat. 547, amended section 12 in its entirety. Before amendment, the section read as follows:

"Sec. 12. The administrator may, in the name of the United States, under the supervision of the Attorney General, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented in the prosecution and defense of all litigation affecting the status or operation of Bonneville project by the United States Attorneys for the districts, respectively, in which such litigation may arise, or by such attorney or attorneys as the Attorney General may designate as authorized by law, in conjunction with the regularly employed attorneys of the administrator."

**Sec. 13. [Savings clause.]**—If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby. (50 Stat. 736; 16 U.S.C. § 832l)

## EXPLANATORY NOTES

**1945 Amendments Not Included.** The Act of October 23, 1945, 59 Stat. 546, which amended several sections of this Act, also amended certain sections of the Internal Revenue Code and the Social Security Act. These amendments deal with employees of the Bonneville Power Administration.

Editor's Note, Annotations, Annotations

of opinions are included only to the extent deemed relevant to activities of the Bureau of Reclamation.

**Legislative History.** H.R. 7642, Public Law 329 in the 75th Congress. H.R. Rept. No. 1090. H.R. Rept. No. 1217 (on H. Res. 277). S. Rept. No. 919 (on S. 2092). H.R. Rept. No. 1507 (conference report).