



Montana Legislative Services Division
Legislative Environmental Policy Office

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

To: Water Policy Interim Committee (WPIC)

From: Jason Mohr, research analyst

Date: Oct. 26, 2014

Re: A discussion of "net power revenues" and how that relates to the proposed CSKT water rights settlement

The WPIC asked staff Sept. 8 to research how "net power revenues" might aid upkeep and upgrades to the Flathead Indian Irrigation Project (FIIP). This memo outlines a brief history of the term, the status of those funds, and how these funds may be used in the future if a settlement is reached with the Confederated Salish and Kootenai Tribes (CSKT).

1948 Act, disposition of power revenues

In 1948, Congress passed an act related to the power project for the Flathead Indian Irrigation Project. The act stated:

The net revenues heretofore and hereafter accumulated from the power system shall be determined by deducting from the gross revenues the expenses of operating and maintaining the power system, and the funds necessary to provide for the creation and maintenance of appropriate reserves...¹

The act requires electricity sold through the power system should have the lowest rates to produce net revenues to liquidate power system construction costs and other costs.² The act also lays out six spending priorities for net revenues, including repaying irrigation system and power system construction costs, and to pay annual operation and maintenance costs of the irrigation system.³

The act also forgives some unpaid construction costs and appropriates \$1 million for the construction of the irrigation project and power systems for later reimbursement.

Net power revenue collected on the Flathead irrigation project or Indian irrigation projects are to be deposited into the U.S. Treasury.⁴ These funds are then returned to the power company for one of the uses defined under the act.⁵

Because construction of the irrigation project has been completed and paid for, of the seven possible uses of net power revenue provided for in the act, two uses appear to remain:

- "the funds necessary to provide for the creation and maintenance of appropriate reserves"
- "to liquidate the annual operation and maintenance costs of the irrigation system."⁶

MVP keeps revenues as reserves

Mission Valley Power (MVP) operates the power system that feeds the FIIP. Mission Valley Power is a federally owned electric utility operated by the CSKT⁷; it was formerly known as the

¹ The Act of May 25, 1948, Public Law 80-554, 62 Stat. 269 (1948).

² Ibid.

³ The Act of May 25, 1948, Public Law 80-554, 62 Stat. 269 (1948).

⁴ 60 Stat. 895, 31 U.S.C. Sec. 725s-3 (1946).

⁵ Conversation with Jeff Harlan, regional irrigation engineer, Bureau of Indian Affairs (Oct. 15, 2014).

⁶ The Act of May 25, 1948, Public Law 80-554, 62 Stat. 269 (1948).

Flathead Indian Power Project. Mission Valley Power acquires its power from the Bonneville Power Administration.⁸

According to officials at MVP, they have been collecting extra revenues into a reserve fund, which appears to be allowed under the 1948 act. However, MVP does not technically define the extra revenues as “net power revenues,” and MVP only expects annually to have enough revenue to meet expenses.⁹

MVP staff also referenced federal law (the Indian Self-Determination and Education Assistance Act of 1974 or Public Law 93-638) allowing them to reserve any money left over at the end of the year until that balance reaches \$4.5 million.

Regardless of how MVP defines net power revenues, the following table¹⁰ shows the reserve fund balance and the funds (whether these are defined as “net power revenues” or not) that have been added since 2003:

Fiscal year	Operating reserve level	Revenue added
2003	\$1,501,559	\$0
2004	\$1,501,559	\$0
2005	\$1,503,000	\$1,441
2006	\$1,613,860	\$110,860
2007	\$1,613,860	\$0
2008	\$1,900,000	\$286,140
2009	\$1,930,000	\$30,000
2010	\$1,930,000	\$0
2011	\$1,940,000	\$10,000
2012	\$1,945,000	\$5,000
2013	\$1,985,000	\$40,000
2014	\$2,035,000	\$50,000

⁷ Mission Valley Power Operations Manual (2014), 7.

⁸ “CSKT to pay \$18.3M for Kerr Dam; new name planned,” *Missoulian*, March 5, 2014.

⁹ Email from Jean Matt, general manager, Mission Valley Power (Oct. 16, 2014)

¹⁰ *Ibid.*

References in proposed CSKT water rights settlement

The proposed CSKT water rights settlement includes an appendix known as the Water Use Agreement (WUA). The WUA delineates the “exercise and control of the water rights for instream flow and for use on the FIIP.”¹¹

The WUA also provides for “net power revenue distribution authorized by the 1948 Act.”¹² Irrigators pay the cost of powering the irrigation project. Any money remaining after paying to maintain and operate the power system and to create and manage a reserve fund is called “net power revenue”¹³ and may be used for certain purposes, as outlined above.

As a reminder, the WUA referenced in this memo was negotiated two years ago between the tribe and the Flathead Joint Board of Control. After the FJBC subsequently dissolved (and later reformed), the Reserved Water Rights Compact Commission initiated a renegotiation of the agreement. This renegotiation has not concluded.

Section XXI of the Water Use Agreement would adjust the future use of net power revenues, as the agreement:

- Reiterates that the 2010 Transfer Agreement (where the operation and management of the Flathead Indian Irrigation Project to the Cooperative Management Entity of the Flathead Joint Board of Control and the CSKT) clarifies that net power revenues provided for in the 1948 Act would only be used for work on the irrigation project that has “significant fisheries, water conservation, or water management benefits”
- Anticipates \$200,000 annually in net power revenues, which “may require a revision to the rate schedule”
- Splits net power revenues equally between the irrigation project and the power utility (MVP) for use
- Revisits the distribution of the net power revenues after nine years by the agreeing parties, and every 10 years thereafter.¹⁴

¹¹ Proposed Water Use Agreement between the Confederated Salish and Kootenai Tribes of the Flathead Nation, the United State, acting through the Bureau of Indian Affairs of the United State Department of the Interior, and the Flathead Joint Board of Control, of the Flathead, Mission, and Jocko Valley Irrigation Districts (2012), 5.

¹² Ibid, 26.

¹³ Ibid, 26.

¹⁴ Ibid, 26-27.