



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

HSF

E-105397

The Honorable

The Secretary of the Interior

SEP 21 1951

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My dear Mr. Secretary:

Reference is made to letter of August 31, 1951, from the Administrative Assistant Secretary, requesting to be advised whether the Bonneville Power Administrator is authorized to enter into an agreement providing for the artificial inducement of precipitation in a designated area above Grand Coulee Dam.

It is stated that a survey (considered in decision of this Office, E-104463, dated July 23, 1951) presently is being made to determine the feasibility of this means to increase the run-off of the Columbia River at Grand Coulee Dam, and should the survey disclose that artificial nucleation and cloud modification are a feasible means of accomplishing that purpose the Administrator proposes to enter into an agreement for the inducement of precipitation in the area of the Grand Coulee Dam during the coming fall and winter months. It is explained that should minimum water conditions prevail during the coming winter, the Administrator would be forced to curtail some 310,000 kilowatts of interruptible power largely utilized in the nation's defense effort and that non-Federal utilities in the area would have to be reduced 290,000 kilowatts of firm power. Consequently, any increase in stream flow during the coming fall and winter months would result in a direct increase in the amount of electrical energy which would be available

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for sale and would thereby serve to avert a severe hardship on the economy of the Northwest which a deficiency in the steam flow would create.

It was held by this Office in the decision referred to above that since the Administrator had determined that the negotiation of a contract providing for a survey to ascertain the physical and economic feasibility of artificial nucleation and cloud modification as a means of increasing the run-off of the Columbia River at Grand Coulee Dam would aid in accomplishing the purposes of the act of August 20, 1937, 50 Stat. 731, 16 U.S.C. 832-832L, this Office would not object to the expenditure of funds to defray the cost thereof. However, it does not necessarily follow that appropriations of the Bonneville Power Administration are available for financing an agreement providing for the actual artificial inducement of precipitation as above mentioned. Such a survey well might be authorized with a view to presenting the results thereof to the Congress with a request for authority and funds to enter into an agreement of the nature involved.

I think there might be some doubt that in directing the encouragement of "the widest possible use of all electric energy that can be generated"—16 U.S.C. 832a(b)—the Congress contemplated the acquisition of all possible electric energy by any means, natural or otherwise, and were the instant question presented by the head of a department or agency having only the ordinary authority usually granted to the heads thereof, I would not hesitate to advise that appropriated funds were not available for the purpose proposed. However, included

in the broad authority vested in the Bonneville Administrator by the act of August 20, 1937, as amended, is the authority to contract, as contained in 16 U.S.C. 832a(f), as follows:

"Subject only to the provisions of this chapter, the Administrator is authorized to enter into such contracts, agreements, and arrangements, including the amendment, 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."

The legislative history of the foregoing provision of law indicates that its purpose was to free the Administration from the requirements and restrictions ordinarily applicable to the conduct of Government business and to enable the Administrator to conduct the business of the project with a freedom similar to that which has been conferred on public corporations carrying on similar or comparable activities. In view of such broad authority, it appears that the scope of the activities contemplated under the act and the appropriate means of accomplishing same, are matters for determination by the Administrator. Hence, while I cannot approve such a contract as herein contemplated, you are advised that if the Administrator should determine that the services to be performed under the proposed contract are necessary for the proper administration of the act, and I might add parenthetically that the responsibility for arriving at such determination is solely his, this Office would not be required to question the legal availability of appropriations made to the Administration for carrying out the purposes of the act, for expenditures made thereunder.

There remains for consideration the question whether, as proposed in the letter of August 31, 1951, the agreement properly may be financed

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under the continuing fund established and maintained pursuant to 16 U.S.C. 832j which provides in part that:

"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. * * * "

In this connection it is stated that there is not sufficient flexibility in the Administrator's fiscal year 1952 program to permit the agreement to be financed from funds contained in the Interior Department Appropriation Act, 1952, ^{65 Stat. 248} and since, if the artificial inducement of precipitation is to be effective, operations must begin in September of this year, it will not be possible to obtain a supplemental appropriation soon enough to avoid curtailment of services.

An examination of the legislative history concerning the continuing fund throws no light on what was intended by the Congress to be covered by the words "emergency expenses" or "continuous operation." However, language similar to that considered herein is contained in the First Supplemental National Defense Appropriation Act, 1944, 57 Stat. 621, with respect to the Dennison and Norfolk Dams. In explaining the purpose of the continuing fund therein provided for there appears at page 390 of the Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 79th Congress, the following statements:

"THE CHAIRMAN. There is some language here that is somewhat obscure. You provide that—

all receipts from the transmission and sale of energy generated at these two projects, or purchased in relation thereto, shall be covered into the Treasury of the United States to the credit of miscellaneous receipts, except that the Treasury shall set up and maintain from such receipts a continuing fund of \$100,000 to the credit of the Administrator and subject to check by him to defray emergency expenses and to insure continuous operations.

What is the need for a continuing fund of \$100,000?

"MR. WRIGHT. Suppose a generator burned out, or something happened so that we had to make repairs to carry on this continuous service. In other words, we have no emergency fund to which we can go in case of a physical break-down or when we would have to make repairs. We have no way of defraying any expenses of that character. We do not believe it is appropriate to put that in the appropriation.

"THE CHAIRMAN. You are asking for an appropriation of \$135,000. Does not that provision make this language equivalent to providing an appropriation of \$235,000? Is not that really what you are getting at—to get an appropriation of \$235,000?

"MR. GOLDSCHMIDT. This emergency fund item has been included by Congress in many of the major systems, but to my knowledge has never been used, as a practical matter.

What it gives us, as Mr. Wright pointed out, is the possibility, if there is some cataclysmic occurrence on our system, of going in immediately and making the necessary repairs.

"THE CHAIRMAN. Then it is rather out of an abundance of precaution?

"MR. GOLDSCHMIDT. That is right.

"THE CHAIRMAN. To take care of a contingency which might arise?

"MR. GOLDSCHMIDT. That is right—at any time. Fort Peck has it; Bonneville has it; T. V. A. has it; but I do not think any of them has ever used one cent of it.

"THE CHAIRMAN. This is a common provision, then; all projects have a provision of this character?

"MR. GOLDSCHMIDT. I do not want to say 'all of them' but the three I mentioned do.

"THE CHAIRMAN. You say Bonneville does?

"MR. GOLDSCHMIDT. Bonneville does, Fort Peck does, T. V. A. does—only these are somewhat higher, I think than this. T. V. A. has a million dollars.

"THE CHAIRMAN. You say some of those funds have been used?

"MR. GOLDSCHMIDT. I knew at Bonneville and Fort Peck they have never been used, and I am reasonably certain, the last time I looked at T. V. A., they had never had to use it. It is insurance, pure and simple. It assures the customers of those projects, that when the operators need to do something they can do it quickly, if they have a disastrous occurrence on their electric systems.

"MR. LUDLOW. Mr. Wright, first I should like to say I am sure the committee has been very much impressed by your able presentation of this matter. Your knowledge of the subject and the clarity of your presentation has been, in my opinion, most remarkable."

In view of the foregoing, it would appear that the primary purpose of establishing the continuing fund was to insure continuous operation of transmission facilities in the face of emergencies, viz., unforeseeable happenings identified with physical breakdowns, repairs, etc., of equipment transmitting electrical energy.

Also, in similar legislation, the Congress has defined the term "unusual or emergency conditions" to mean canal bank failures, generator failures, damage to transmission lines; or other physical failure or damage, or acts of God or of the public enemy, fires, floods, drought, epidemics, strikes, or freight embargoes, or conditions causing or threatening to cause interruption (as distinguished from curtailment) in water or power service. See Public Law 790, 80th Congress, approved June 26, 1948, 62 Stat. 1052. In view of the foregoing, it appears that the seasonal reduction in the amount of rainfall is not an emergency condition and the decrease in the output of electrical energy during such periods would not appear to constitute an interruption of service since it is merely a normal consequence resulting from such seasonal variation.

Accordingly, it is the opinion of this Office that the proposed
contract properly may not be financed from the continuing fund.

Sincerely yours,

Windsor C. Warren
Comptroller General
of the United States