

From: "Ron Ketchum" <rketchum\_2000@yahoo.com>  
To: <Post2017BCP@wapa.gov>  
CC: <rketchum@engineeralum.berkeley.edu>  
Date: 1/17/2010 4:48 PM  
Subject: Comments on FRN dated 11/20/09 regarding remarketing of BCP power resources post 2017

A few comments follow;

1. During the repayment period 1937-1987, current "A" contractors were enjoying lease of power privileges during the 50yr repayment period.
2. Under the original power lease contracts, Contractors were given "one right of renewal".
3. That right of renewal was exercised in 1987-2017 and combined with the Advance of Funds contracts for the uprating activities and the visitor center construction.
4. Please advise how a subsequent "right of renewal" (even 95%) is consistent with the original act of 1928, and subsequent related acts as follows;

"The preference provisions of section 5 of the Flood Control Act of 1944 must be read pari material with the Boulder Canyon Project Act.." That section of the Boulder Canyon Project Act is reiterated below.

The Boulder Canyon Project Act of December 21, 1928, Section 5(c), provides guidelines on how the United States, through the Secretary of Interior, should grant contract privileges for the water and power from the BCP.

This section states, in pertinent part:

(c) Contract for the use of water and necessary privileges for the generation and distribution of hydroelectric energy or for the sale and delivery of electrical energy shall be made with responsible applicants therefor who will pay the price fixed by the said Secretary with a view to meeting the revenue requirements herein provided for. In the case of conflicting applications, if any, such conflicts shall be resolved by the said Secretary, after hearing, with due regard to the public interest.

The principal factor in disposing of the excess project use power is economic and not efficiency driven. There is also the issue determining the power disposal resulting in the highest level of "public interest". One of the current allottees is not a public entity.

These stipulations incumbent upon Secretary of Interior were transferred in total to Secretary of Energy under the Agency creation act of 1977.

There are other references from Reclamation law and Regulatory body which outline reclamation preference power policy which must be followed under disposal of any excess project use power, including BCP.

The DOE proposal of applying its PMI to the BCP remarketing effort must address these issues, as well as others, to reduce vulnerability to legal challenges.

Sincerely,

Ron Ketchum, President, Ketchum Consulting Services