

From: DSW-PowerMarketing

Sent: Tuesday, May 17, 2016 11:22 AM

To: Buck, Darren; Easton, Robert; Gallardo, Sylvia; Hansen, Gregory; Henry, Troy; Kendrick, Jimmy; Kral, John; Marianito, Linda; Mathieu, Leonard; Moulton, Ronald; Murray, Jack; Paulsen, John; Redhair, Ethel; DSW-G6100Group; Camp, Anthony; Redhair, Ethel; Ramsey, Christina; Young, Brian; Simonton, Michael

Subject: Boulder Canyon Project FY17 Base Charge

Dear Boulder Canyon Project Contractors and Interested Parties,

During the Public Information Forum on April 27, 2016, there were two inquiries that Western was unable to respond to; both inquiries related to the collection of post-retirement benefits (PRB).

The first inquiry was whether Western's portion of the PRB is included in amounts the Bureau of Reclamation retains in the Colorado River Dam Fund. Western has confirmed that PRB collected through the base charge are transferred to the Bureau of Reclamation and retained in the Colorado River Dam Fund.

The second inquiry was a request for the legal support behind the collection of PRB. This legal support was later identified as a memorandum from a Deputy General Counsel at the Department of Energy dated January 13, 1998. A copy of the memorandum is attached.

As a reminder, the Public Comment Forum will be held on May 25, 2016 at 10:30am MST at the Desert Southwest Regional Office located at 615 S 43rd Ave, Phoenix, AZ.

Sincerely,

Jack D. Murray | Vice President of Power Marketing

Western Area Power Administration | Desert Southwest Region

(O) 602.605.2442 | jmurray@wapa.gov



Department of Energy

Washington, DC 20585

January 13, 1998

**MEMORANDUM FOR ELIZABETH A. MOLER
DEPUTY SECRETARY**

FROM:

MARY ANNE SULLIVAN *mas*
**DEPUTY GENERAL COUNSEL
ENVIRONMENT AND CIVILIAN
AND DEFENSE NUCLEAR PROGRAMS**

SUBJECT:

**PMA AUTHORITY TO COLLECT IN RATES, AND
REIMBURSE TO TREASURY, GOVERNMENT'S FULL
COSTS OF POST-RETIREMENT BENEFITS**

This memorandum responds to your request for the Office of General Counsel's legal opinion on the authority of the Power Marketing Administrations (PMAs) to collect in rates an amount that would offset the Government's full costs of post-retirement employee benefits.¹

The Administration's FY 1998 budget documentation states that, starting in FY 1998, the Southeastern Power Administration (SEPA), the Southwestern Power Administration (SWPA), and the Western Area Power Administration (WAPA) "will set rates, consistent with current law, to begin to recover the full cost of the Civil Service Retirement System and Post-Retirement Health Benefits for its employees that have not been recovered in the past." Appendix, Budget of the United States Government for Fiscal Year 1998 at 478, 479, 480. It also provides that "[s]tarting in FY 1998 BPA [Bonneville Power Administration] will begin to fully recover, from the sale of electric power and transmission, funds sufficient to cover the full cost of Civil Service Retirement System and Post-Retirement Benefits for their employees." *Id.* at 483. In FY 1998 the incremental costs to SEPA, SWPA, WAPA and BPA to cover fully the Government's share of

¹ The elements of the historically undercollected amounts are approximately 11 percent of salary for CSRS employees (cost of approximately 25 percent of salary less the 7 percent employee contribution and the 7 percent agency contribution), plus the FY 1998 accrual for the Government's share of post-retirement health and life insurance benefits for current employees. These future costs are allocated over the working years of employees. See Testimony of William E. Flynn, Associate Director for Retirement and Insurance of the Office of Personnel Management Before the Senate Committee on Governmental Affairs, Subcommittee on Post Office and Civil Service (May 15, 1995).



post-retirement benefits is \$3 million, \$2 million, \$8 million, and \$2.2 million² respectively. Id. at 478, 479, 480; DOE, FY 1998 Congressional Budget Justification at 448, set forth in House FY 1998 Energy & Water Appropriations Hearings, 105th Cong., 1st Sess., at 1649.

This memorandum reviews the statutory framework to determine whether (1) these four PMAs may, under current law, collect in rates the costs of post-retirement benefits, and (2) pay these rate revenues into a non-revolving Treasury account as an effective offset to appropriations into the OPM funds. We conclude that the PMAs have sufficient statutory authority to include these costs in their rates and can deposit such funds into an appropriate Treasury account so as to effectively offset the appropriations made to the OPM funds from which these post-retirement costs are paid to retirees.

I. Background

The Civil Service Retirement Act provides retirement and disability benefits for federal employees. The employing agency deducts a percentage of an employee's basic pay, combines it with an equal amount contributed by the appropriate governmental agency, and deposits it in the Treasury to the credit of the Civil Service Retirement and Disability Fund (Retirement Fund). Clark v. United States, 691 F.2d 837, 841 (7th Cir. 1982), citing 5 U.S.C. § 8334. Prior to 1969, however, the Retirement Fund had an unfunded deficit created "by the Government's failure to contribute sufficient funds, the gradual increase in liability caused by past increased retirement benefits, and salary increases." S. Rep. No. 91-339, 91st Cong., 1st Sess., reprinted in 1969 U.S. Code Cong. & Admin. News 1168, 1169.

In 1969, Congress addressed the problem of potential shortfalls in the sufficiency of funding for retiree benefits by authorizing a permanent indefinite appropriation for transfer of general funds from the Treasury. Clark v. United States, 691 F.2d at 841. The statute authorizes appropriations to the Retirement Fund to finance the unfunded liability created by new or liberalized benefits payable from the Fund, extension of the coverage of the Fund to new groups of employees, or increases in pay on which benefits are computed. 5 U.S.C. § 8348(f). The cost of CSRS retirement benefits is approximately 25 percent of the annual salary, while the combined agency and employee contributions are only 14 percent.

The Employees' Life Insurance Fund (Insurance Fund) consists of funds withheld from employees plus specified contributions by the employing agencies. 5 U.S.C. §§ 8707, 8708, 8714. There is no statutory provision relating to authorizing appropriations for unfunded liability. OPM staff explained that the Government continues to pay a share of life insurance for retirees and, although agencies do not fund these post-retirement payments, these anticipated future costs are now allocated to agencies for accounting purposes, over the working lives of employees. The Government's actual costs of the post-retirement coverage is funded by annual appropriations to

² The BPA obligation would grow modestly through 2001, when the current BPA rates expire, and then grow to \$55.2 million in 2002.

the OPM fund. Similarly, the Employees' Health Benefits Fund (Health Fund) consists of funds withheld from employees plus specified contributions by the employing agencies. 5 U.S.C. §§ 8906, 8909. The Government's post-retirement liability to contribute to these benefits is allocated over the working life of employees for accounting purposes, but agencies make no payment to the fund for this liability, and the necessary funding comes from annual appropriations to the Health Fund.

The statute establishing the Civil Service Retirement and Disability Fund provides that government contributions for an employee shall be "contributed from the appropriation or fund used to pay the employee," 5 U.S.C. § 8334(a)(1), and the statutes creating the Insurance and Health Funds contain similar language. 5 U.S.C. §§ 8708(a), 8906(f)(1). With respect to Bureau of Reclamation (Bureau) and Corps of Engineers (Corps) employees that are involved in power operations and maintenance, the Bureau and Corps make the agency contributions to the OPM Funds directly.

II. Authority to Collect in Rates the Government's Full Costs Related to Post-Retirement Benefits

A. Statutory Framework for PMA Rate Setting

1. SEPA, SWPA, AND WAPA: The Flood Control Act and the Reclamation Project Act

SEPA, SWPA, and WAPA are required to set rates for electric power that cover costs, but the relevant statutes leave considerable discretion to the PMAs in applying this standard. The Flood Control Act of 1944, which applies to projects built by the Army Corps of Engineers, provides that the rates shall be set "having regard to the recovery ... of the cost of producing and transmitting such electric energy." 16 U.S.C. § 825s. The Reclamation Project Act of 1939, which provides direction with respect to some projects constructed by the Bureau of Reclamation, provides that the rates for the sale of electric power shall "cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment..., and such other fixed charges as the Secretary deems proper." 43 U.S.C. § 485h(c). The rate provisions applicable to the other Bureau projects are the same or similar. See 43 U.S.C. § 617c(b) (revenues from Hoover Dam must be adequate to ensure payment of all operations and maintenance expenses and repayment of capital and interest); 43 U.S.C. § 620c (the Colorado River storage projects governed by Federal reclamation laws); 43 U.S.C. § 1554 (Lower Colorado River Basin projects governed by Federal reclamation laws, except as otherwise specifically provided).

2. BPA: The Northwest Power Act

Section 7(a)(1) of the Northwest Electric Power Planning and Conservation Act (the Northwest Power Act) provides that the Administrator shall set, and revise, rates "to recover, in accordance

with sound business principles, the costs associated with the acquisition, conservation and transmission of electric power." 16 U.S.C. § 839e(a)(1); see 16 U.S.C. § 838g (Federal Columbia River Transmission System Act provides similar cost principle).³ The Northwest Power Act "sets forth directives, stressing cost recoupment, for the Administrator [of the BPA] to follow in establishing rates both for electric energy sales and for the transmission of non-federal power." Central Lincoln Peoples' Utility Dist. v. Johnson, 735 F.2d 1101, 1107 (9th Cir. 1984). The provisions of the Northwest Power Act reflect the concern that BPA's customers pay all costs necessary to the production of the power they consume. Id. at 1115.

B. Reasonable Interpretation of "Cost"

DOE and FERC ratemaking policy and limited PMA precedent indicate that it is reasonable to interpret the term "cost" in the organic statutes to include the total costs to the Government of post-retirement benefits for PMA-related employees. And courts accord considerable weight to an executive department's "construction of a statutory scheme it is entrusted to administer." Chevron v. Natural Resources Defense Council, 467 U.S. 837, 844 (1984). In reviewing actions of the PMAs, courts give substantial deference to PMA interpretations of their organic statutes. E.g., Department of Water & Power of the City of Los Angeles v. Bonneville Power Admin., 759 F.2d 684, 690-91 (9th Cir. 1985). The courts need not find that an agency's interpretation of its organic statutes "is the only reasonable one, or even that it is the result [the court] would have reached had the question arisen in the first instance in judicial proceedings." ALCOA v. Central Lincoln Peoples' Util. Dist., 467 U.S. 380, 389 (1984) (quoting American Paper Inst. V. American Elec. Power Service Corp., 461 U.S. 402, 423 (1983)). The court need only conclude that the interpretation is a reasonable one. See Chevron v. Natural Resources Defense Council, 467 U.S. at 845.

Given the PMAs' previous failure to seek recovery in rates of the unfunded portion of employee retirement benefits, it may be argued that the PMAs' inclusions of such costs would represent a change in agency interpretation. However, an agency "is not locked into the first interpretation it espouses." Sacred Heart Medical Center v. Sullivan, 958 F. 2d 537, 544 (3d Cir. 1992) "[A]n agency's reinterpretation of statutory language is ... entitled to deference, so long as the agency acknowledges and explains the departure from its prior views." Mobil Oil Corp. v. E.P.A., 871 F.2d 149, 152 (D.C.Cir. 1989).

³ This statutory requirement is coupled with an obligation to keep overall rates as low as possible, consistent with sound business principles, and to set rates that encourage the most widespread use of electric power. 16 U.S.C. §§ 825s, 838g, 839e(a)(1).

1. DOE and FERC Policy on Ratemaking

The Department of Energy provides that rates for a power system are adequate if, and only if, a power repayment study indicates that expected revenues are at least sufficient to recover, inter alia, "[a]ll costs of operating and maintaining the power system during the year in which such costs are incurred." DOE Order No. RA 6120.2 § 12. This DOE Order further requires the PMAs to use accounting practices consistent with the principles prescribed by the Financial Accounting Standards Board.⁴ Id. § 6. The requirement to set rates consistent with this DOE order has been judicially recognized. E.g., Overton Power Dist. No. 5 v. Watkins, 829 F.Supp. 1523, 1530 n.5 (D.Nev. 1993).

On a practical, common sense level, there seems little room to dispute that the full amount of the retiree benefits is a "cost" of hiring the employees to operate and maintain the PMA power systems. Thus, recovering those costs in rates is entirely consistent with the Congressional objective that the PMAs operate on a fiscally self-supporting basis. See Department of Water & Power v. BPA, 759 F.2d at 695. Similarly, FERC has recognized that the obligation for such retiree benefits is legitimately treated as a cost. For example, FERC recognizes, as a component of cost-based rates, allowances for prudently incurred costs of post-retirement benefits other than pensions (PBOPs) that are consistent with the accounting principals set forth in FASB Statement No. 106. 61 FERC ¶ 61,330, at 62,200 (1992). FERC interpreted the FASB statement to find "that PBOP plans are deferred compensation arrangements whereby an employer promises to exchange future benefits for employees' current service and that their cost should be recognized over the employees' service periods for financial accounting and reporting purposes." Id. at 62,199. FERC accordingly reached the following conclusion:

⁴ The Financial Accounting Standards Board (FASB) has issued rules and audit procedures for pensions. FASB Statement No. 87. These rules provide for recognition as a cost in any period of "the actuarial present value of benefits attributed by the pension benefit formula to employee service during that period." Id. at 87.21; see id. at 87.20, 87.40. FASB 87 recognizes that unfunded pensions promised to current and retired employees are actual liabilities. Mano, "Fairly Presented, in Accordance with GAAP: What does it Really Mean," Management Accounting (July, 1996). In addition, the FASB has recognized post-retirement benefits to be broader than simply pensions, issuing in December 1990 standards regarding post-retirement benefits other than pensions. FASB Statement No. 106 at 106.518; see id. at 106.06 (post-retirement benefits include post-retirement health care and life insurance provided outside a pension plan to retirees). The FASB stated that "[a] post-retirement benefit is part of the compensation paid to an employee for services rendered." Id. at 106.18. "Because the obligation to provide benefits arises as employees render services . . . , the [FASB] believes that the cost of providing the benefits should be recognized over those employee service periods." Id. at 106.03; see id. at 106.45.

PBOPs are a form of deferred compensation to employees for the services that they provide during their working years. Therefore, the costs of providing these benefits are properly included in the cost of service during the period that the benefits are earned.

Id. at 62,201. FERC's uniform system of accounts recognizes accruals to provide for pensions as an element of operation and maintenance expenses where the utility has, by contract, committed to a pension plan. 18 C.F.R. § 101.926.⁵

2. Rate Practices of PMAs

At present, the four PMAs are recovering in rates the cost of their own direct contributions to the three OPM funds with respect to their own employees. They also are recovering in rates the power-related operation and maintenance expenses of the Corps and the Bureau, which presumably include contributions by those two agencies to the OPM funds for some of their employees. Thus, there is no question as to the authority to include in rates the agency-funded contributions to these funds.

The PMA rates generally have not reflected the cost to the Government of the unfunded liability related to the Retirement Fund or post-retirement health and life insurance benefits. However, the Alaska Power Administration has recovered these costs in rates since FY 1991, and WAPA rates included these costs for two years (FY 1992 and FY 1993).

C. Conclusion

The relevant statutory text provides that the PMAs must set rates that fully recover costs. Because the statutes provide little direction as to how the agencies are to interpret the term "costs" and leave considerable discretion to the PMAs in applying the standard, it is entirely reasonable for the PMAs to interpret costs to include all employer costs of employee retirement benefits. The PMA rate practices to date acknowledge that PMA customers bear responsibility for some of the Government's costs of post-retirement benefits for PMA employees and for the power operations employees of the Bureau and the Corps. DOE policy, FASB principles, and FERC ratemaking policy indicate the inclusion in rates applicable for a given period of all

⁵ To the extent it may be argued that a PMA's inclusion of the full costs of post-retirement benefits would amount to the recovery of past unrecovered costs and therefore constitute retroactive ratemaking, such an argument would fail. The prohibition against retroactive ratemaking contained in the Federal Power Act does not apply to the PMAs. United States Department of Energy -- Southwestern Power Administration, 56 F.E.R.C. ¶ 61,398, 62,469 (1991). Instead, "costs not recouped in one time period [are allowed] to be recovered in another, later time period so as to ensure recovery of both the costs of producing power and the Federal investment. Id. See also United States Department of Energy -- Western Area Power Administration, 65 F.E.R.C. ¶ 61,186, 61,914 (1993).

employer costs accruing in that period is a reasonable interpretation of the statutory obligation to recover costs. A reasonable interpretation adopted by DOE and the PMAs is entitled to judicial deference. On these grounds, we conclude that it is within the discretion of the PMA Administrators to include in rates the allocated undercollections for post-retirement benefits.

III. Authority to Make Payments to the Treasury of Monies Received in Rates to Cover Undercollection for Post-Retirement Benefits

Assuming that rates can be adjusted to address the current undercollection, we understand that the Office of Management and Budget is indifferent between (1) transferring such rate revenue to the OPM funds directly, and (2) depositing such revenue in the Treasury's miscellaneous receipts account or other appropriate Treasury accounts as an offset to appropriations made to the OPM funds. From a legal perspective, the offset approach avoids any issues concerning possible augmentation of appropriations, and is thus preferable.

A. Authority of the PMAs to Make Payments into the General Fund of the Treasury as Miscellaneous Receipts

1. SEPA and SWPA

The flow of rate revenues for both SEPA and SWPA is governed by the Flood Control Act of 1944. Under the Flood Control Act, "[a]ll moneys received from ... [electric] sales shall be deposited in the Treasury of the United States as miscellaneous receipts." 16 U.S.C. § 825s. Accordingly, any monies received in rates to recover the costs of unfunded liabilities would be deposited directly into the miscellaneous receipts fund of the Treasury, and could not be expended without further appropriation.

2. WAPA

WAPA markets power from the Pick-Sloan Missouri Basin Program, a Federal water project that includes some facilities owned and operated by the Bureau of Reclamation and other facilities owned and operated by the Army Corps of Engineers. With regard to those aspects of the Project owned and operated by the Corps, the Flood Control Act requirements control. Under the Flood Control Act, the receipts are deposited into the miscellaneous receipts account, as discussed above.

WAPA also markets power from projects owned by the Bureau under the Reclamation Act, the Colorado River Basin Project Act, the Colorado River Storage Project Act, and the Boulder Canyon Project legislation. Prior to the creation of WAPA in 1977, the receipts from each Bureau project were paid into one of four funds established within the Treasury for particular projects: 43 U.S.C. § 392a (Reclamation Fund); *id.* § 620d(c) (Upper Colorado River Basin Fund); *id.* § 1543(c) (Lower Colorado River Basin Development Fund); *id.* § 617a(a) (Colorado River Dam Fund). After the creation of WAPA in 1977 pursuant to the Department of Energy

Organization Act, the Colorado River Basins Power Marketing Fund was established as a revolving fund⁶ to be administered by WAPA for power revenues from the Colorado River Storage Project, the Colorado River Basin Project, and the Fort Peck Project. See FY 1998 Congressional Budget Request at 373-74. Revenues from the sale of power replenish the fund and are available for expenditure for operation and maintenance expenses, among other expenses. Id.⁷ The Colorado River Basins Power Marketing Fund was established under the authority, in part, of the Colorado River Storage Project Act of 1956 and the Colorado River Basin Project Act of 1968. Under these Acts, WAPA is authorized to make payments from the fund, without further appropriation, for operation and maintenance expenses. 43 U.S.C. §§ 620d(c), 1543(d). Boulder Canyon Project power revenues are deposited into the Colorado River Dam Fund, a revolving fund under the Bureau's control. The Bureau transfers funds from this Fund to a WAPA account when requested by WAPA for WAPA to spend on Boulder Canyon Project O&M. As with the Colorado River Basins Power Marketing Fund, WAPA is authorized to make payments from the Colorado River Dam Fund, without further appropriation, for operation and maintenance expenses. 43 U.S.C. § 618a.

3. BPA

Prior to 1974, all revenues collected by BPA were deposited in the Federal Treasury as miscellaneous receipts and funds for all BPA expenditures were appropriated by Congress. United States Department of Energy, Bonneville Power Administration, 29 FERC ¶ 63,039, 65,122 (1984). The Federal Columbia River Transmission System Act of 1974 established the Bonneville Power Administration Fund (BPA Fund) in the Treasury and provided that "all receipts, collections, and recoveries of the Administrator in cash from all sources" are to be deposited in the Fund. 16 U.S.C. § 8381(a). The Act provided a mechanism for financing expansion of the transmission system from revenues and the proceeds of revenue bonds, freeing BPA from reliance upon the appropriations process. Natural Resources Defense Council v. Hodel, 435 F.Supp. 590, 593 (1977), aff'd, 626 F.2d 134 (9th Cir. 1980), citing 1974 U.S. Code Cong. & Admin. News at 5819.

⁶ A revolving fund is a fund from which expenditures can be made without further appropriation.

⁷ WAPA also transfers money out of the Colorado River Basins Power Marketing Fund to the Lower Colorado River Basin Development Fund and the Upper Colorado River Basin Fund. These latter two funds are also revolving funds, but are under the control of the Bureau of Reclamation. The Bureau spends money out of these funds for O&M expenses and capital construction for facilities under the Bureau's control.

The 1974 Act authorizes the Administrator to make those expenditures from the BPA Fund "which shall have been included in his annual budget submitted to Congress,"⁸ without further appropriation and without fiscal year limitation, but without such specific directives or limitations as may be included in appropriation acts, for any purpose necessary or appropriate to carry out the duties imposed upon the Administrator pursuant to law." 16 U.S.C. § 838i(b). The Administrator has the authority under this provision to make expenditures from the fund "subject only to the limitations of [t]his legislation and future Appropriations Acts." 1974 U.S. Code Cong. & Admin. News 5810, 5815.

The provision establishing the BPA Fund includes a nonexclusive list of permissible expenditures. 16 U.S.C. § 838i(b). The language "including, but not limited to," which immediately precedes the list of permissible expenditures, indicates that the Administrator has broad authority to determine what are "necessary or appropriate" expenditures. In construing Federal statutes, the Supreme Court has held that "the term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle." Federal Land Bank v. Bismarck Lumber Co., 314 U.S. 95, 100 (1941).

BPA is authorized to make expenditures from the BPA Fund that are "necessary or appropriate" to carry out the Administrator's duties. 16 U.S.C. § 838i(b). As previously discussed, BPA's expenditure authority is quite broad, and nowhere in this provision is BPA precluded from making expenditures to other Treasury accounts to offset post-retirement benefit costs borne by the Government. Indeed, BPA has always made partial payment for such benefits for its own employees.

In addition, BPA has made payments to other Treasury accounts indirectly through reimbursement of the Bureau's contributions for its power-related operations and through offset of contributions made by the Corps from its appropriations for its power-related operations. BPA currently relies on authority provided by § 2406 of the Energy Policy Act of 1992 to provide cash funding to the Bureau of Reclamation to fund the Bureau's power-related operation and maintenance expenses. 16 U.S.C. § 839d-1. BPA also currently transfers cash to the Corps for power-related capital investments from the BPA Fund to a Corps account in the Treasury. Thus, there is long-standing precedent for BPA to make payments to another Treasury account to repay expenditures of costs related to power-related operation and maintenance of the FCRPS system.⁹

⁸ As discussed above, the Administration's plan for BPA to take responsibility for unfunded liability for postretirement benefits was expressly noted in the Administration's FY98 budget submission. Appendix, Budget of the United States Government for Fiscal Year 1998 at 483.

⁹ BPA has argued that directing an agency to pay for a share of unfunded employee benefit liabilities out of an agency's revenues requires legislation, citing as an example a congressional directive that the Postal Service pay its share of unfunded liabilities. Congress had
(continued...)

B. Conclusion

All PMA rate revenues are required to be deposited in a statutorily specified fund or account of the Treasury. Pursuant to Flood Control Act requirements, monies received from power rates to recover costs of unfunded liabilities from power marketed by SEPA and SWPA, and the relevant portion of the revenues collected by WAPA from the Pick-Sloan Missouri Basin Program, would be deposited into the general fund of the Treasury as miscellaneous receipts. Payments into the general fund from these sources would therefore offset the appropriation for unfunded liability made to the OPM Funds.

The BPA Fund, the Colorado River Basins Power Marketing Fund, and the Colorado River Dam Fund are revolving funds. To ensure that the incremental rate revenues related to post-retirement benefits cannot be used for a purpose other than the intended offset, the funds can be transferred to the general fund of the Treasury as miscellaneous receipts, from which they would not be available for expenditure without appropriation. Once these post-retirement benefits are characterized as costs, there is no apparent limitation on the ability of BPA to make a transfer of the incremental rate revenues to the miscellaneous receipts account if "necessary or appropriate" to complete the offset of the costs. With regard to WAPA rate revenues deposited into the Colorado River Basins Power Marketing Fund and the Colorado River Dam Fund, WAPA has authority to make transfers out of these funds for operation and maintenance expenses without further appropriations. Accordingly, both BPA and WAPA have the authority to make payments into the general fund of the Treasury as miscellaneous receipts to offset the appropriation for unfunded liability to the OPM Funds.

⁹(...continued)

provided that the United States Postal Service would be liable for any unfunded liabilities resulting from labor-management agreements increasing postal workers' pay. American Postal Workers Union v. USPS, 707 F.2d 548, 552 n.4 (D.C.Cir. 1983). A legislative decision to require that the United States Postal Service pay for increases in the unfunded liability of the fund resulting from particular increases in benefits for their employees, however, does not imply that other agencies are without authority to make such payments absent a similar express Congressional directive. This is particularly true with respect to the PMAs, given the repeated expression of Congressional intent that they operate so as to be self-supporting.