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AN ABSTRACT OF THE DISSERTATION OF Cecil Eugene Reinke for the
Doctor of Philosophy in Urban Studies presented October 29, 1990.


Title: The Relocation of North Bonneville, Washington, by the U.S.
Army Corps of Engineers: A Policy Implementation Study.


APPROVED BY THE MEMBERS OF THE DISSERTATION COMMITTEE:


Jerry Lansdowne, Chair


Carl Abbott


Sy Adler


Deborah Howe


Gordon B. Dodds

This is a policy implementation case study. The case is the
relocation of the Town of North Bonneville, Washington, by the U.S.
Army Corps of engineers.

Three questions are addressed in this study. One, did the U.S. Army Corps of Engineers, in relocating the Town, accomplish what was intended to be accomplished? Two, how and why were Federal policies applicable to the relocation of this town changed during the implementation process? Three, what can the North Bonneville experience contribute to existent knowledge, understanding, and appreciation of policy implementation?

The principal precepts for policy implementation promoted by this study of the relocation of the Town of North Bonneville, Washington, are as follows:

1. Implementing agencies must recognize and consider what they have to do or may have to do to accomplish what they are intended to accomplish, not merely what they want to do or expect to do.

Potential impediments to implementation that are unrecognized and unconsidered may fail to develop, but unless addressed problems cannot be solved.

2. Implementing agencies must expeditiously study and understand the policies that they are assigned to implement. Failure of understanding presents the appearance of ambiguity; indeed, even the clearest policy is effectively ambiguous if it is not understood.

3. Implementing agencies must promptly and plainly explain the policies they are charged with implementing to affected and interested persons or groups. Failure to explain leaves affected and interested persons or groups to form their own expectations of what the policy is, which expectations if erroneous may be difficult to dislodge.

4. Implementing agencies must attend that once a policy is

stated and explained all subsequent actions are consistent with the policy as stated and that any action that may appear to constitute a deviation is adequately explained. Otherwise the credibility of the agency and of the policy being implemented by the agency is undermined.

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I am also grateful to the people of the Town of North Bonneville who shared with me their experiences and what they know and think about the relocation of their town.

Finally, I am indebted to the officers and officials of the U.S. Army Corps of Engineers who supported my study. The Corps has two great strengths that have contributed to its standing as one of the most capable organizations in the world. One, the Corps is an agency unafraid to look at itself, or to allow others to look at it. Two, the Corps is an agency in which constructive criticism is not disdained, but is valued and used in continuing improvement.

Cecil Eugene Reinke

THE RELOCATION OF NORTH BONNEVILLE,
WASHINGTON, BY THE U.S. ARMY
CORPS OF ENGINEERS: A POLICY
IMPLEMENTATION STUDY

by

CECIL EUGENE REINKE

A dissertation submitted in partial fulfillment of the
requirements for the degree of

DOCTOR OF PHILOSOPHY
in
URBAN STUDIES

Portland State University

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TO THE OFFICE OF GRADUATE STUDIES:


The members of the Committee approve the dissertation of Cecil Eugene Reinke presented October 29, 1990.


Jerry Lansdowne, Chair

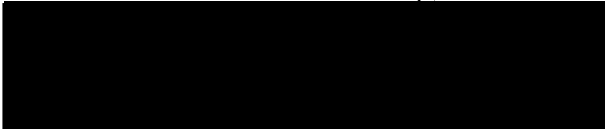

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CHAPTER I

INTRODUCTION

This is a policy implementation case study dissertation.

Policy, for purpose of this study, is defined as a course of action adopted and pursued by a government in order to achieve a goal. A goal, in turn, is understood to be the objective or end toward which policy is directed. "Implementation," according to Pressman and Wildavsky, "means just what Webster and Roget say it does: to carry out, accomplish, fulfill, produce, complete."¹ Policy implementation refers to the process of carrying out a basic policy decision emanating from legislative, judicial, or executive authority.² Implementation study, according to Rein, is concerned with "determining whether policies actually accomplish what they are intended to accomplish," and with "the question of how policies change as they are translated from administrative guidelines into practice."³ The field of policy implementation, an area of policy analysis, is defined by Mazmanian and Sabatier as follows:⁴

To understand what actually happens after a program is enacted or formulated is the subject of policy implementation: those events and activities that occur after the issuing of authoritative public policy directives, which include both the effort to administer and the substantive impacts on people and events. This definition encompasses not only the behavior of the administrative body which has responsibility for the program and the compliance of target groups, but also the web of direct and indirect political, economic, and social forces that bear on the behavior of all those involved, and ultimately the impacts--both intended and unintended--of the program.

A case study, of course, is an examination of experience. "Most implementation studies," according to a review by Edwards, "have been of the case study variety."⁵ Palumbo agrees, "Implementation research is replete with case studies, as this seems to be the method most suited to it."⁶ The strength of case study is that it allows a strong, detailed inquiry into what happened in a specific situation. This method of study enables the researcher to "delve into the nuances that may be lost in broader treatments."⁷ The weakness is that case study, being situation specific, is inherently limited. Simply put, a case study is a sample of one, purposefully selected. Knowledge can be gleaned from research into a unitary experience. In fact, this type of study provides much of what is known about implementation. However, no one implementation case study can support broad generalizations or summary conclusions about the policy implementation process. Indeed, a general concern with the present state of implementation research, noted by Palumbo, is that "the great profusion of case studies has not been integrated into a coherent, systematic body of knowledge."⁸

POLICY IMPLEMENTATION LITERATURE

Policy implementation is a relatively new field of study. Pressman and Wildavsky, commenting on the genesis of the field, observe, "Implementation was conceived during the heyday of the Great Society."⁹ Sabatier and Mazmanian agree, adding that "it was the perceived failure of many Great Society programs--and the related phenomenon of problematic compliance with the Supreme Court's

desegregation and school prayer decisions--that provided much of the intellectual, emotional, and financial spur to investigate the relationship between original decision and subsequent performance."¹⁰ Of course, implementation is related to the older field of public administration, a relationship which "is hardly surprising, as 'to administer' is, in many respects, a synonym of 'to implement.'"¹¹ But until implementation was brought under serious scrutiny by the need to understand performance failure, "there may well have been a period of innocence in which the administration of a statute was viewed as nonproblematic, as simply the matter of handing over a settled legislative decision to civil servants to be carried out faithfully and efficiently."¹² Regardless, it is now clear as Elmore observes that decisions are not self-executing.¹³ Edwards concurs: "Public policies are rarely self-executing."¹⁴

Pressman and Wildavsky observe that, far from being merely a technical process by which already established policies are carried out, implementation is a continuation of the policy-making process. Their conclusions: "Policies are continuously transformed by implementing actions that simultaneously alter resources and objectives."¹⁵ "Implementation is evolution."¹⁶ "When we act to implement a policy, we change it."¹⁷ "Implementation will always be evolutionary; it will inevitably reformulate as well as carry out policy."¹⁸

Williams observes that "decision making and implementation each involve a series of points at which decisions must be made and subsequently implemented."¹⁹ He explains,²⁰

It also will be true that, from different organizational perspectives, an actor may be viewed by some as primarily a decisionmaker and by others as primarily an implementor. An agency head will consider a bureau head responsible for implementing agency decisions. However, organizations in the field that are funded by the bureau will see the bureau generally and the bureau head in particular as a key decisionmaker. These distinctions fit well with our commonsense image of the world, since we are talking about the quite general phenomenon of somebody deciding something and that something having to be carried out. When the situation involves a decisionmaker and an implementor who are different persons or organizations, a series of decisions are likely to be made and implemented before the primary decision becomes implemented or fails to become implemented. Moreover, in the process of implementation it will almost always be necessary for the implementors to make decisions that may modify the primary decision and other decisions. In essence, there will be a number of decisionmakers and implementors all along the way on a major decision/implementation path. . . . This notion is quite straightforward. Problems arise not in trying to appreciate it in some abstract conceptual way but in following the many trails that repeated decision/implementation points may produce.

Scholarly feeling in regard to implementation appears to possess an element of ambivalence. On the one hand, as Rein explains, there is the recognition that "policy and administration, by their very nature, are continuously comingled," that "implementation is a continuation of the political process in another arena." There is the reality of experience: "Implementation involves administrative accountability to Congress to assure that a program works, not merely that the program was faithful to the letter of the law."²¹ Consequently, the "imperatives of the law are redefined to take account of the problems faced in practice."²² On the other hand, there is regard for remembrance that the purpose of implementation is to carry out prior decisions, not to make policy. Most scholars maintain a reasonably clear distinction between the formulation/adoption of a

policy, usually in the form of a statute or landmark court decision; implementation by one or more administrative agencies; and reformation by the original policy maker based, in part, on the successes or difficulties of the implementation experience.²³ There is concern that any effort to blur the distinction between formulation and implementation should be resisted, since viewing policy making as a seamless web obscures one of the principal normative concerns of interest in public policy, namely, the division of authority between authorized policy makers and administrative officials formally charged only with the execution of policy.²⁴ Majone and Wildavsky, while advocating a view of policy making in which goals and programs are continuously modified to adjust to constraints and to changing circumstances, nonetheless regard as illegitimate any effort by implementing officials to alter basic goals and strategies.²⁵ Lowi accepts that policy participation characterizes implementation today but argues that this reality cannot be justified. He suggests that power be delegated to agencies only when accompanied by clear and meaningful legislative standards limiting their discretion.²⁶ Rein explains this concern:²⁷

Because laws are best understood as an expression of citizen will, bureaucratic compliance with legislative intent is morally justified and deemed necessary. Accordingly, when subordinates fail to follow a legislative mandate, the foundations of democracy are seen to be threatened.

Implementation studies to date have produced few theories, one notable exception being the work of Rein and Rabinovitz. However, the works accomplished have gone a long way towards explaining why programs fail, and in suggesting conditions essential for success.

Significant "lessons learned" so far include these: (1) original policy decisions--statutes, executive orders, court decision--should provide goals that are clear, understandable, consistent, and compatible. "Implementation cannot succeed or fail without a goal against which to judge it."²⁸ Ambiguity leaves much of the real policy making to the implementation stage.²⁹ (2) "Implementation should somehow be 'taken into account' in the policy-design and adoption stage."³⁰ Implementation should be assigned to agencies sympathetic with stated goals.³¹ "To assign implementation of a policy to an agency with an inconsistent general orientation is to beg for trouble."³² (3) Authority should be firmly established, and limited to the fewest practicable number of decision makers. A multiplicity of clearance points in the implementation process--particularly the need to obtain approval of numerous semiautonomous actors--can be disastrous to effectiveness.³³ Generally, there is an "inverse relationship between the number of transactions required to implement a decision and the likelihood that an effect, any effect, would result."³⁴ (4) The implementing agency should have sufficient administrative and technical competency and be provided adequate financial resources.³⁵ It should also be supported by strong leadership.³⁶ This requires continuing political support for the program.³⁷ Of particular benefit is the presence of a legislative "fixer."³⁸ Finally, and perhaps most importantly, (5) policy must be based upon effective causal theory. Pressman and Wildavsky contend that a policy decision should be viewed as a hypothesis: "if a, b,

then x."³⁹ Bardach adds: "It is impossible to implement well a policy or program that is defective in its theoretical conception."⁴⁰

Mazmanian and Sabatier offer a conceptional framework for the implementation process--"a set of six sufficient conditions of effective implementation"--suggesting that "a statute or other policy decision seeking a substantial departure from the status quo will achieve its desired goals" if:⁴¹

1. The enabling legislation or other legal directive mandates policy objectives which are clear and consistent or at least provides substantive criteria for resolving goal conflicts.

2. The enabling legislation incorporates a sound theory identifying the principal factors and causal linkages affecting policy objectives and gives implementing officials sufficient jurisdiction over target groups and other points of leverage to attain, at least potentially, the desired goals.

3. The enabling legislation structures the implementation process so as to maximize the probability that implementing officials and target groups will perform as desired. This involves assignment to sympathetic agencies with adequate hierarchical integration, supportive decision rules, sufficient financial resources, and adequate access to supporters.

4. The leaders of the implementing agency possess substantial managerial and political skill and are committed to statutory goals.

5. The program is actively supported by organized constituency groups and by a few key legislators (or a chief executive) throughout the implementation process, with the courts being neutral or supportive.

6. The relative priority of statutory objectives is not undermined over time by the emergence of conflicting public policies or by changes in relevant socioeconomic conditions which weaken the statute's causal theory or political support.

The implementation of any program, posit Mazmanian and Sabatier, can be viewed from three different perspectives: that of the original policy maker, the "Center"; that of field-level implementing officials, the "Periphery"; and that of the private actors at whom the

program is directed, the "Target Group." From the Center's perspective, of concern is "first, the extent to which official policy objectives have been met and, second, the reasons for attainment or nonattainment." From the Periphery, "implementation focuses on the manner in which local implementing officials and institutions respond to the disruptions in their environment caused by the efforts of outside officials to achieve a new policy." Finally, from the perspective of the Target Group, interest centers on the questions: "To what extent are the intended services actually delivered?" And does it "make any real difference in their lives?"⁴²

Ideally, according to Sabatier and Mazmanian, research should adopt the most comprehensive approach and focus on the following three principal topics of implementation analysis:⁴³

1. To what extent were the policy outputs of the implementing agencies and/or the eventual impacts of the implementation process consistent with the official objectives enunciated in the original statute, appellate court case, or other basic decision? In addition, were there other politically significant impacts?
2. To what extent were the objectives and basic strategies in the original decision modified during the course of implementation and/or during the period of policy reformulation by the original policy maker?
3. What were the principal factors affecting the extent of goal attainment, the modifications in goals and strategies, and any other politically significant impacts?

Rein and Rabinovitz offer what is likely the most comprehensive theoretical perspective for understanding how and why policies change as they are translated into practice, a theory that they call "the politics of implementation." Their theory posits that "actors must take into account three potentially conflicting imperatives: the legal imperative to do what is legally required; the

rational-bureaucratic imperative to do what is rationally defensible; and the consensual imperative to do what can attract agreement among contending influential parties who have a stake in the outcome." The legal imperative stresses the importance of subordinate compliance with rules derived from, and presumed consistent with, legislative or judicial mandates. "The law itself becomes the referent for all the actors in the process." The rational imperative requires that an acceptable decision "encompass what, from a bureaucratic point of view, is morally correct, administratively feasible, and intellectually defensible." The consensual imperative "takes as its central concern agreement among contending perspectives represented by the principal actors--the legislature, the executive, and the administrative agency together with the constituency to which each attends." Explicit within the theory is that all three imperatives operate concurrently, and often competitively, in shaping the policy implementation process.⁴⁴

SUBJECT OF STUDY

The case selected for this study is the relocation of the Town of North Bonneville, Washington, by the U.S. Army Corps of Engineers.

The relocation of North Bonneville was not a goal of the United States Government. Rather, it was a policy, a course of action adopted in order to achieve a goal. The goal of the Federal Government, acting through the U.S. Army Corps of Engineers, was the construction of the Bonneville Second Powerhouse. To achieve this goal it became necessary for the Corps of Engineers to take by eminent

domain essentially all of the private and public properties within the town, because the town was located on the site selected for construction of the new powerhouse. Almost all of the lands within the municipality were acquired, and the structures located therein removed or demolished. As compensation to the town, under special legislation enacted by the Congress, a new City of North Bonneville was constructed by the Corps of Engineers.

This case was selected and judged to offer a unique opportunity for insight into the policy implementation process for these reasons:

1. The scope of relocation assistance provided to North Bonneville exceeds that provided by the Corps of Engineers in any previous community relocation. Indeed, as recorded by a Corps of Engineers historian, "the Corps' relocation effort marked the first expenditure of federal funds to plan, design, and develop a new community in connection with a water resources project".⁴⁵

2. The Corps built a model city, but one into which most of the original town residents and businesses could not afford to move. The original town of North Bonneville, at the time the relocation process began, had a population of about 500 persons. Ten years after relocation, the new City of North Bonneville had attained a population of only approximately 400. Less than a third of the original residents ever moved into the new city; two thirds of the current residents never lived in the old town. The original town immediately prior to relocation was the site of thirty retail and service businesses and three small industrial concerns. None of the retail and service establishments survived the relocation. Indeed, only one

of the old town businesses constructed a replacement building in the new city; that business was unsuccessful and closed. Except for this one building, a beauty shop facility, the relocated city to date has been the site of no new commercial construction. Ten years after relocation, the new city had only two small retail outlets, neither of which existed in the original town, and both of which were housed in a building owned by the city, built by and purchased from the Corps of Engineers. Of the three industrial concerns, only one survives in new North Bonneville in any form; that firm, a freight transportation, heavy equipment leasing, and gravel operation, maintains only a storage facility in an industrial building owned by the Corps of Engineers.

3. The new City of North Bonneville was planned, designed, and constructed to accommodate a population of 1500, a level unlikely to be reached in the foreseeable future, if ever. Consequently, the new city is burdened with the expense of operating and maintaining a municipal structure with excess capacity. Economically, the problem faced by those of the original residents that did move into the new city, and by the new residents that have joined them, is substantially as summarized in the following short article found in the Portland

Oregonian:⁴⁶

The future of North Bonneville--if it has one--is not clear.

The city apparently can't afford its new town.

North Bonneville is being relocated for the second powerhouse project of the Army Corps of Engineers. In relocating, the city apparently asked and received at public expense a town that future city property taxes cannot support.

As built by the corps, the new town is a model community for a maximum of 600 residents. Whatever city planners proposed, the corps included.

It appears it may take a minimum of 1,500 residents to support the city government needed to run it, says City Manager David Hussell.

New North Bonneville has highly sophisticated water and sewer treatment facilities, miles of underground mains for each; paved streets, and nearly 50 percent of its total land area is in public owned greenways along Hamilton Creek, parks, berms dividing neighborhoods, a shopping center mall and bicycle and pedestrian paths.

In the new town, city government is housed in four buildings, a city hall, a fire station, a park building and the treatment plant.

It all requires maintenance. Estimates of the city indicate it may take as many as five new employees just to handle the open space. The city didn't have a park employee before.

The city will also have to hire an employee to operate the treatment plant, something else it didn't have.

And the city has acquired an administration of five employees since relocation began.

It all adds up to 16 employees for a city of 600 residents which before relocation could hire only five employees.

Hussell says the law passed by Congress requires the Corps to replace North Bonneville as it was before the project began: "The city was in the black . . . the Corps should leave it capable of operating in the black."

4. The relocation was far more expensive than contemplated by the Corps of Engineers or represented to the Congress. The Corps of Engineers originally planned \$6,320,000 for the acquisition of the private properties within the town, and \$1,307,000 for possible relocation of municipal facilities and utilities, including a school facility not owned by the town.⁴⁷ During testimony before the Congress, the Planning Director for North Bonneville stated that the cost "of planning, acquisition, and planning the site, and to move the town would be in the neighborhood of 1.5 million."⁴⁸ Actual costs for the planning, design, and construction of replacement municipal facilities and utilities exceeded \$36 million. In addition, the Corps

paid more than \$3,000,000 in relocation assistance and over \$6,000,000 for the lands, homes, and businesses in the old town. The total cost of acquiring the original Town was over \$45,800,000. This comes to about \$95,000 for every man, woman and child who lived in old North Bonneville at the time the relocation process began.⁴⁹ After the relocation only 61 families, consisting of approximately 158 people, actually moved into the new town area.⁵⁰ Thus, considering only the \$36,000,000 construction cost of the new city, the cost to the United States for each person that moved from the old town into the new city was over \$225,000. The cost for each family was almost \$600,000.

METHODOLOGY

This study employs qualitative research, with emphasis on discovery. No specific hypothesis is tested; rather, effort is made to produce some increased knowledge, understanding, and appreciation of policy implementation behavior. Qualitative methodologies, as explained by Bogdan and Taylor,⁵¹

refer to research procedures which produce descriptive data: people's own written or spoken words and observable behavior. This approach . . . directs itself at settings and the individuals within those settings holistically; that is, the subject of the study, be it an organization or an individual, is not reduced to an isolated variable or to an hypothesis, but is viewed instead as part of a whole.

The methods by which we study people of necessity affects how we view them. When we reduce people to statistical aggregates, we lose sight of the subjective nature of human behavior. Qualitative methods allow us to know people personally and to see them as they are developing their own definitions of the world. We experience what they experience in their daily struggles with their society. We learn about groups and experiences about which we may know nothing. Finally, qualitative methods enable us to explore concepts whose essence is lost in other research approaches. Such concepts as beauty, pain, faith, suffering, frustration,

hope, and love can be studied as they are defined and experienced by real people in their everyday lives.

The "mainstays of qualitative methodology," noted by Bogdan and Taylor, are "participant observation and personal documents, including unstructured interviewing."⁵²

This research encompasses a review of all documents, reports, letters, memorandums, and notes in the files of the Corps of Engineers related to the relocation, and of related documents obtained from the Town of North Bonneville, the County of Skamania, and the State of Washington. Categories of materials searched include Acts of the Congress of the United States; Senate and House reports; testimony by representatives of the Corps and the Town before Committees of the Congress; correspondence between the Corps and the Town, and between each and members of the Congress; announcements and transcripts of public meetings; agreements and contracts between the Corps and the Town, and between each and private planners, designers, or constructors; planning documents produced by the Corps, the Town, or private consultants for either; minutes of the North Bonneville Town Council; records of litigations filed by the Town against the Corps of Engineers, and by the Corps against the Town; reports of audits of the Town by the Office of the State Auditor, Washington; and news media reports, magazine articles, and books that discuss the relocation.

Interviews were conducted with former Congressman Mike McCormack, the member of Congress most involved with the relocation process; with present and past officials of the Corps of Engineers who participated in the policy implementation process; with officials, representatives, and residents of North Bonneville; and with advisors

to the Town of significant influence. Corps of Engineers personnel interviewed include William E. (Ed) Daugherty, Columbia River Coordinator, Portland District; Nicholas A. Dodge, Chief, Water Management Branch, North Pacific Division; Colonel Clarence D. Gilkey, District Engineer, Portland District; David P. Johnson, Assistant District Counsel, Portland District; E. Manning Seltzer, General Counsel, Office, Chief of Engineers; Paul H. Schroy, District Counsel, Portland District; Leonard J. Stein, Chief, Engineering Division, Portland District; Ernest E. Swanson, Chief, Real Estate Division, North Pacific Division; Colonel Paul D. Triem, District Engineer, Portland District; and Homer B. Willis, Chief, Engineering Division, Office, Chief of Engineers. Persons from the town interviewed include Timothy F. Collins, town council member; Pollard Dickson, Planning Director; Bud Gallanger, business owner; Marie Holcomb, wife of the late Mayor Robert J. Holcomb; Henry A. La Ham, Mayor; Frank Miller, business manager; Jerry Miller, business owner; Elsie Peterson, resident; K. W. Peterson, business owner and town council member; E. M. (Bud) Rhode, town council member; Marian Rhode, resident; and Ernest J. Skala, Mayor. Advisors to the Town interviewed are Lyle Hay, owner of All Engineering, Vancouver, Washington, and Russell Fox, faculty member, The Evergreen State College, Olympia, Washington.

Interviews were open-ended and unstructured. An introductory list of questions was developed before each interview, related to the position occupied by the specific individual interviewed and the time frame in which he or she was involved in the relocation implementation process. Essentially, however, persons interviewed were asked to tell

what they knew, and what they thought, about the whole relocation experience.

ENDNOTES

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⁴Daniel A. Mazmanian and Paul A. Sabatier, Implementation and Public Policy (Glenview, IL: Scott, Foresman and Company, 1983) 4.

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¹²Sabatier and Mazmanian, "Policy Implementation," 143.

¹³Richard F. Elmore, "Backward Mapping: Implementation Research and Policy Decisions," Studying Implementation: Methodological and Administrative Issues, Walter Williams, et. al. (Chatham, NJ: Chatham House, 1982) 22.

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¹⁷Pressman and Wildavsky, Implementation, 191.

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¹⁹Walter Williams, "Implementation Analysis and Assessment," Social Program Implementation, Walter Williams and Richard F. Elmore, eds. (New York: Academic Press, 1976) 273.

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²²Rein, From Policy to Practice, 115.

²³Mazmanian and Sabatier, Implementation and Public Policy, 7; Sabatier and Mazmanian, "Policy Implementation," 145.

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²⁵Giandomenico Majone and Aaron Wildavsky, "Implementation as Evolution," Policy Studies Review Annual--1978, H. Freeman, ed. (Beverly Hills: Sage, 1978) 109-14. See Mazmanian and Sabatier, Implementation and Public Policy, 7-8.

²⁶"The Court's rule must once again become one of declaring invalid and unconstitutional any delegations of power not accompanied by clear standards of implementation." Theodore J. Lowi, The End of Liberalism (New York: Norton, 1969) 298.

²⁷Rein, From Policy to Practice, 114.

²⁸Pressman and Wildavsky, Implementation, xx.

²⁹Theodore J. Lowi, The End of Liberalism (New York: Norton, 1969) 299-303. ". . . broad delegations are a menace to . . . the idea of a Neutral Civil Servant." Lowi 300.

³⁰Eugene Bardach, The Implementation Game: What Happens After a Bill Becomes Law (Cambridge, MA: The M.I.T. Press, 1977) 250.

³¹Sabatier and Mazmanian, "Policy Implementation," 153.

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³³Sabatier and Mazmanian, "Policy Implementation," 155-56.

³⁴Elmore, "Backward Mapping," 24.

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³⁶See Sabatier and Mazmanian, "Policy Implementation," 159.

³⁷Richard Weatherly and Michael Lipsky, "Street-Level Bureaucrats and Institutional Innovation: Implementing Special-Educational Reform," Harvard Educational Review 47 (1977): 179-97.

³⁸Bardach, The Implementation Game, 273-83.

³⁹See Sabatier and Mazmanian, "Policy Implementation," 157.

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⁴¹Mazmanian and Sabatier, Implementation and Public Policy, 41-42.

⁴²Mazmanian and Sabatier, Implementation and Public Policy, 12-13. See Sabatier and Mazmanian, "Policy Implementation," 149-51.

⁴³Sabatier and Mazmanian, "Policy Implementation," 151.

⁴⁴Martin Rein and Francine Rabinovitz, "Implementation: A Theoretical Perspective," Working Paper No. 43 (Cambridge: Joint Center for Urban Studies, March 1977) 8-16.

⁴⁵William F. Willingham, Army Engineers and the Development of Oregon: A History of the Portland District U.S. Army Corps of Engineers (Washington: GPO, 1979) 221-22. Historically, in connection with water resources projects such as the Bonneville Second Powerhouse, the Corps of Engineers has acquired a number of whole towns. Some, for example the towns of Arlington, Boardman, and Umatilla, Oregon, were relocated. Commonly, it is said that these towns were "relocated" by the Corps of Engineers. Technically however, prior to North Bonneville, no town was relocated by the Corps. Instead, each town that was relocated accomplished its own relocation. What the Corps did in support of each town relocated, and all the Corps was legally authorized to do, was provide substitute facilities and utilities at the selected new townsite to the extent required as just compensation under the Fifth Amendment to the Constitution. William F. Willingham, personal interview, 30 October 1990. See dissertation, infra, 83-85. In this case, by unprecedented special legislation applicable exclusively to one town, the Congress authorized the Corps of Engineers "to relocate the town of North Bonneville, Washington, to a new townsite." Water Resource Development Act of 1974, March 7, 1974, 48 Stat. 12, § 83. See dissertation, infra, 179-83.

⁴⁶"North Bonneville Too Expensive," Portland Oregonian, 29 May 1977.

⁴⁷U.S. Army corps of Engineers, Bonneville Lock and Dam Design Memorandum No. 4, Second Powerhouse General Design, Columbia River Basin, Oregon--Washington, (Portland, OR: Portland District, 1972) 18-2. See Town of North Bonneville v. U.S., 11 Cl. Ct. 694, 737 (1987).

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⁴⁹R. W. Beck and Associates, Expert Witness Report, Town of North Bonneville vs. United States (Seattle: R.W. Beck and Associates, 1984) I-23. See Town of North Bonneville v. U. S., 11 Cl. Ct. 694, 722 (1987).

⁵⁰R. W. Beck and Associates, Witness Report, I-24.

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CHAPTER II

THE ORIGINAL TOWN OF NORTH BONNEVILLE

The original Town of North Bonneville was one of two incorporated communities in Skamania County, Washington; the other, the City of Stevenson, is the County seat. A third, unincorporated community in Skamania County is called Carson. The geographical site of old North Bonneville, on the southern edge of Skamania County alongside the north bank of the Columbia River, is approximately forty-two miles east of Portland, Oregon, and Vancouver, Washington. Immediately across the river from North Bonneville, on the south side of the Columbia, is the City of Cascade Locks, Oregon. (See Figure 1.) Collectively, these communities are located in what is known as the Columbia River Gorge, the area where the river cuts through the Cascade Mountain Range which runs north and south through the states of Washington and Oregon.

HISTORY

The Town of North Bonneville originated as a construction town during work on the Bonneville Lock and Dam project in the 1930's.¹ As succinctly stated in the study done for the town by the Evergreen State College Urban Planning Group: "The present town exists because of a dam on the Columbia River which bears the same name."² The early

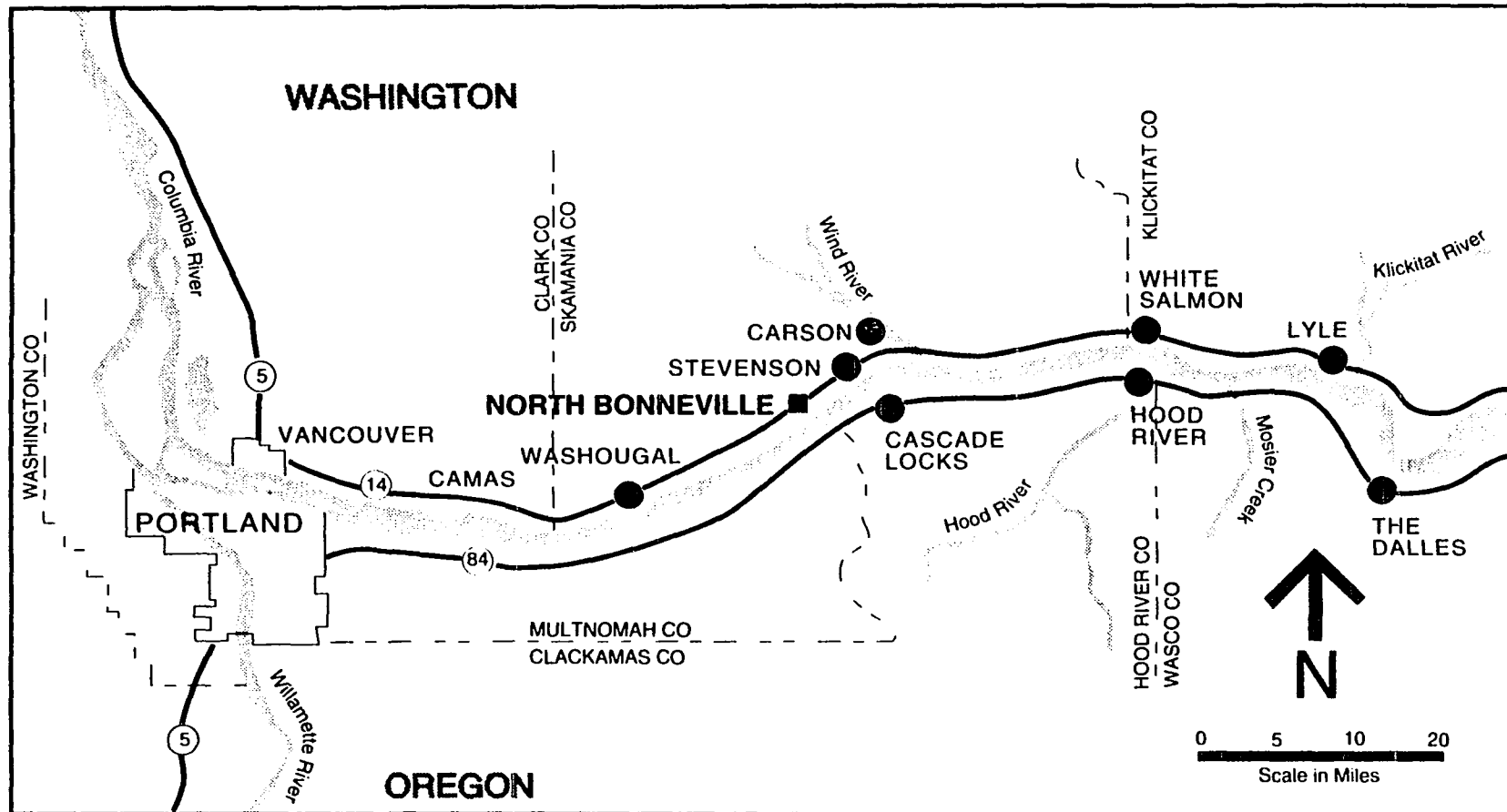


Figure 1. Location of North Bonneville, Washington, Relational to Counties and Municipalities Alongside the Columbia River, Oregon and Washington. Source: Portland District, U.S., Army Corps of Engineers.

development of the town is captured in the following excerpt from an article in the Skamania County Pioneer:³

North Bonneville as we know it today may, in a sense, be said to have been born with the dam project.

In 1933, there was very little there. In '33 and '34, however, as the dam project got under way, throngs of workers poured into the area, many of them bringing their families.

At one time the Columbia Construction Company employed over 2,000; and this was only one of the contractors working on the dam.

All of these people had to be fed, housed, clothed, amused, and provided with various kinds of personal services. Houses and businesses sprang up like mushrooms on both sides of the river.

According to items and advertisements found in the files of the Pioneer for 1934 and 1935, North Bonneville had at least two hotels, several groceries and garages, a men's wear store, ladies' dress shop, a cleaning establishment, a laundry and numerous taverns, restaurants and rooming houses.

An emergency hospital was established adjacent to the offices of one of the doctors, late in 1935.

* * *

Probably the highlight of the town's infancy was the visit of President and Mrs. Franklin D. Roosevelt, in August of 1934.

* * *

The population of North Bonneville on June 11, 1935, was recorded as 632. On that date, an election was held to determine whether or not to incorporate, and to choose by write-in vote a mayor, a treasurer, and five councilmen.

The incorporation carried by a very small margin. . . .

The Bonneville Lock and Dam was a project of the U.S. Army Corps of Engineers. During the Great Depression, the nation was looking at its available resources and their potential for rebuilding the national economy. The National Industrial Recovery Act, which became effective on June 16, 1933, gave President Franklin Delano Roosevelt broad powers in developing and implementing a comprehensive program of public works, specifically including water resources development projects.⁴ In order to increase employment as rapidly as possible, the President was authorized to initiate construction without specific

Congressional authorization.⁵ All that was needed for the start of construction of a river and harbor improvement project was the recommendation of the Chief of Engineers.⁶ President Roosevelt included the Bonneville Lock and Dam project in his comprehensive plan, funding quickly followed, and the Corps of Engineers commenced construction in November, 1933.⁷ Then, in the Rivers and Harbors Act of August 30, 1935, Congress directly authorized the project, adding hydroelectric power development to the initial purposes of flood control and irrigation.⁸ This removed the Bonneville project from the emergency funding powers of the President and put it under the regular Congressional appropriations process.⁹ Finally, Congress enacted the Bonneville Project Act of 1937, which authorized the completion, maintenance, and operation of the project by the Corps of Engineers, and established the Bonneville Power Administration to transmit and market the developed hydroelectric power.¹⁰ Construction of the project, started in 1933, was completed in 1943.¹¹ The total cost was \$83,239,395.¹²

The Bonneville Lock and Dam project was located at the headwater of the Columbia River some 146 miles upstream from the mouth of the river. There the river forms the boundary between Washington and Oregon. The northern half of the spillway portion of the dam lies in the State of Washington, in Skamania County, while the southern half of the spillway, the powerhouse, the navigation lock, and other facilities are on the Oregon side, in Multnomah County. The old Town of North Bonneville was situated directly adjacent to the northern terminus of the dam. (See Figure 2.)

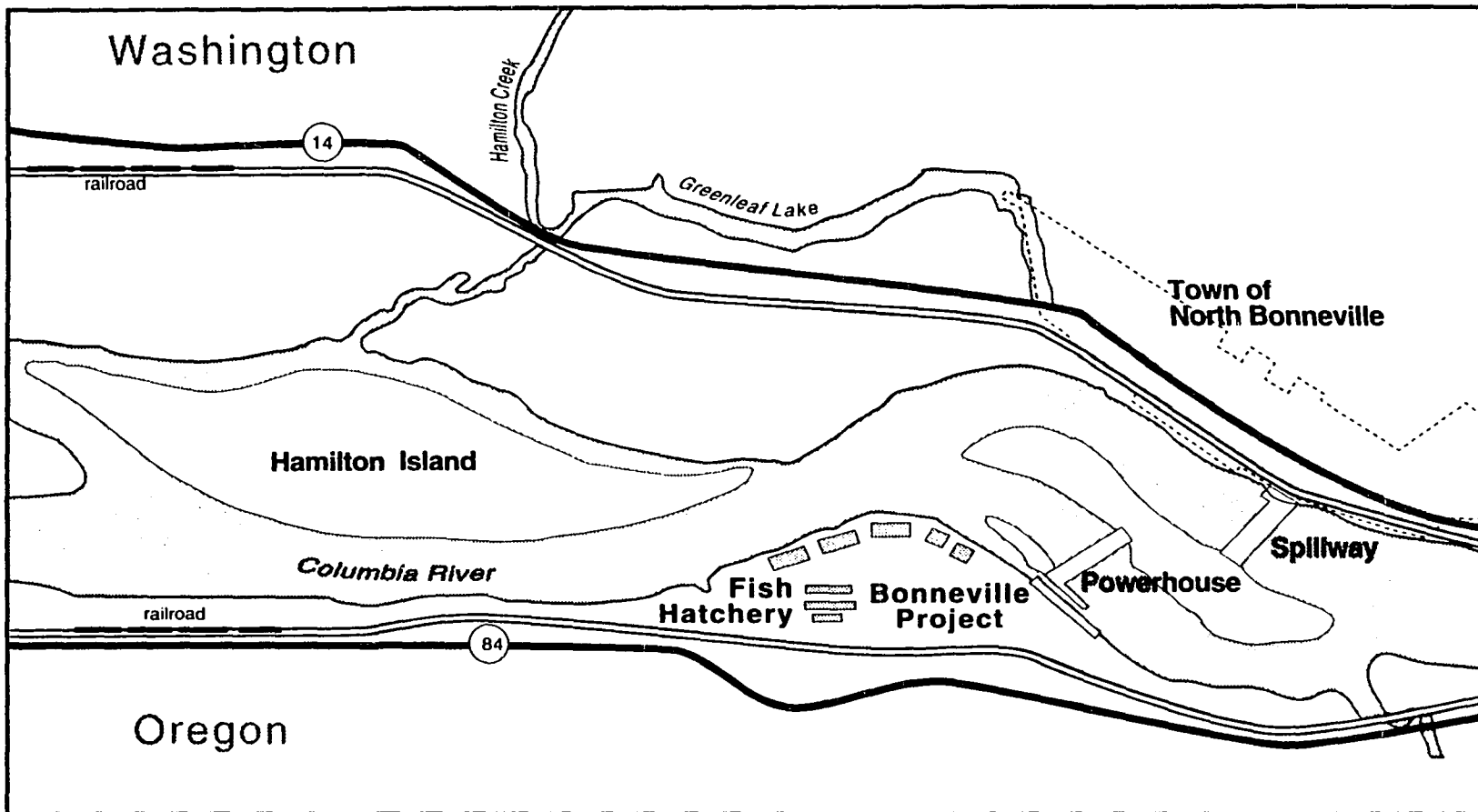


Figure 2. Location of the Town of North Bonneville, Washington, Relational to the Bonneville Lock and Dam, Columbia River, Washington and Oregon. Source: Portland District, U.S. Army Corps of Engineers.

The Town of North Bonneville was originally incorporated as a fourth class town under the laws of the State of Washington on June 25, 1935.¹³ The town boundaries encompassed approximately 225 acres.¹⁴ Importantly, a 22.5 acre parcel of land centrally contiguous to North Bonneville on the east, west, and south, known as the "Brown Tract," was not incorporated.¹⁵ All of the land within this tract, described as "the most highly developed parcel of land" within the community area, was owned by a single person; however, the homes and businesses on this land were owned by other individuals.¹⁶ The residents of this area were felt to be a part of the existing town even though the tract of land was unincorporated.¹⁷ Also, just east of the incorporated town boundaries was a small residential community, encompassing 115 acres, known as the Fort Rains Addition.¹⁸ Residents of this area were likewise identified and tended to identify themselves with North Bonneville.¹⁹ Collectively, the North Bonneville community area, including lands inside the town boundaries and those of the Brown Tract and Fort Rains, encompassed approximately 362.5 acres.²⁰ The municipality retained the designation "town" and was known as the Town of North Bonneville for almost forty years. However, on March 12, 1974, the Town Council adopted the Optional Municipal Code under the Revised Code of the State of Washington. By this action the town was redesignated a noncharter code city.²¹ Subsequently, the municipality, originally the Town of North Bonneville, has been known as the "City" of North Bonneville, Washington.

POPULATION

The period of highest population for North Bonneville occurred during the late 1930's and early 1940's while the Bonneville Lock and Dam Project was under construction. The peak recorded population for the town, the estimate for 1940, was 643 people. Over the next thirty years the number of residents steadily declined. By 1950 the population had dropped to 564; by 1960 to 494; and by 1970 to 459.²² This decline is generally attributed to three factors: "the departure of construction workers after completion of the original Bonneville project";²³ "loss of vehicular traffic associated with the development of the Interstate Highway 80N along the Oregon shoreline";²⁴ and "the generally depressed economic condition of the county overall."²⁵ After 1970, during the period that relocation was pending, the population increased slightly, reaching the most recent peak of 500 in 1974. (See Table I.)

Notwithstanding this general pattern of population decline, expectation existed that North Bonneville would grow. Notably, in the Skamania County comprehensive water and sewer plan prepared by R. W. Beck and Associates, consulting engineers, dated June, 1969, it was projected that the town could anticipate growth to 550 by 1970; 570 by 1975; 700 by 1980; 740 by 1985; and 800 by the year 1990.²⁶ Town officials were informed in November, 1971, by All Engineering, a consultant contracted by its town, that the "actual population in 1970 was 470 by U. S. Department of Commerce, Bureau of Census. This represents a loss of 80 from the projections made in June, 1969."²⁷

TABLE I
POPULATION DATA
(1960-1987)

Year	Skamania County	North Bonneville	Washington State
1960	5,207	494	2,853,200
1970	5,845	459	3,413,200
1971	5,900	470	3,436,300
1972	6,100	469	3,430,300
1973	6,100	480	3,444,300
1974	6,400	500	3,508,700
1975	6,300	477	3,567,900
1976	6,200	387	3,634,900
1977	6,800	327	3,715,400
1978	6,900	312	3,836,200
1979	7,400	412	3,979,200
1980	7,919	432	4,132,200
1981	8,100	424	4,226,600
1982	8,000	418	4,264,000
1983	7,800	427	4,285,100
1984	7,900	415	4,328,100
1985	7,900	414	4,384,100
1986	7,800	423	4,419,700
1987	7,800	419	4,481,100

Source: Washington State Office of Financial
Management, Forecasting Division, Olympia,
Washington.

Nonetheless, it remained "the opinion of Town Officials that the population will be 700 to 750 by 1981."²⁸

Growth projections for Skamania County, necessarily relational to future opportunities for North Bonneville, were not expansive.²⁹ By far the most liberal projection found, by R. W. Beck and Associates contained in the Skamania County comprehensive water and sewer plan of June 1969, offered that the county would grow from the 6,200 figure stated for 1970 to 6,900 in 1975, to 7,500 in 1980, to 8,300 in 1985, and to 9,000 by the year 1990.³⁰ (For more conservative projections, see Table II.)

ECONOMY

A major impediment to growth and economic development of North Bonneville, subsequent to its "boom town" days during the period of dam construction, was geographical.³¹ As observed in a study by R. W. Beck and Associates, undertaken for the Corps of Engineers, "the location of the Town, in some respects, isolates it economically."³² Similarly, a design team headed by the architect-engineer firm of Royston, Hanamoto, Beck and Abey (RHB&A) in a report prepared for the town, concluded that "North Bonneville, like the rest of Skamania County, has the disadvantage of being separated from important residential, commercial and industrial centers."³³ Due to distance and location, the town is generally not considered a part of the Portland-Vancouver economic base.³⁴ Within Skamania County, the town is forced to compete with Stevenson, situated only seven miles away. As noted in a report by R. W. Beck and Associates, "Stevenson enjoys a

TABLE II
POPULATION PROJECTIONS
SKAMANIA COUNTY
(1975-2005)

<u>YEAR</u>	<u>WSFM</u>	<u>BPA</u>	<u>PNB</u>	<u>SICA</u>
1975	5,919	6,100	5,900	6,000
1976	5,975	6,150	6,000	
1977	6,031	6,200	6,100	
1978	6,088	6,250	6,200	
1979	6,145	6,300	6,300	
1980	6,203	6,350	6,400	6,300
1981	6,324	6,350	6,500	
1982	6,444	6,350	6,600	
1983	6,564	6,350	6,700	
1984	6,684	6,350	6,800	
1985	6,801	6,350	6,900	
-				
1990	7,180	6,500	7,300	
-				
1995	7,423	6,725		
-				
2005	7,520			

Source: R. W. Beck and Associates, Expert Witness Report, Town of North Bonneville vs. U.S. (Seattle: R. W. Beck and Associates, 1984) I-6. Projections by Washington State Office of Financial Management, Forecasting Division (WSFM), December 1977; Bonneville Power Administration (BPA), December 1976; Pacific Northwest Bell Telephone (PNB), 1976; and Skamania County Port District Study (SICA), 1971.

stronger ability to sustain itself and attract growth since it is the County seat providing a stronger employment base than the town."³⁵

North Bonneville is located along a strictly linear transportation corridor and potentially could have access to economic areas east and west of the Columbia Gorge. As observed in the Evergreen State College Urban Planning Group study: "River, rail, and highway facilities offer the easiest route connecting the two sides of the mountain range. All pass through North Bonneville."³⁶ Factually, however, the only transportation access available to the town was that provided by State Highway 14. The old town did not have access to the Columbia River; it was cut off by the Burlington Northern track and Bonneville Dam Project land.³⁷ Nor did the town have access to rail transportation. The Burlington Northern Railroad services the Washington side of the Columbia River and its main line traveled directly through the old town; however, the railroad made neither passenger nor freight stops in North Bonneville.³⁸ A siding track existed within the old town but it was used primarily for scheduling east-west rail traffic and for the stacking of cars.³⁹

Equally true, but of perhaps less consequence, there was no local air service in the immediate vicinity of the town. "Portland International Airport, about one hour from the existing town, is the nearest full service, general, and commercial field."⁴⁰ Effectively, the only means of public transportation available to the residents of North Bonneville was the interstate bus service provided by Greyhound. "Four busses a day passed through the town, two traveling east and two going west."⁴¹

Most of the economic activity within the Columbia River Gorge is associated with highway access, and here particularly, North Bonneville suffers from disadvantage. North Bonneville is accessed by Washington State Highway 14, a scenic, two-lane road that follows the Columbia River along the Washington side in an east-west direction. This is the only highway that directly serves the community. Across the river there is an Interstate Highway, I-84, constructed during the 1950's, which parallels the Columbia on the Oregon side. North Bonneville has only limited access to the Oregon side of the river, primarily via the Bridge of the Gods, a toll bridge owned by the City of Cascade Locks, Oregon.⁴² Passenger vehicle traffic on the Interstate, clearly the major east-west corridor serving the region, averages three to four times that on State Highway 14, and the disparity is even greater when considering truck traffic.⁴³

The original North Bonneville was located directly on State Highway 14, which served as the town's "Main Street."⁴⁴ The large majority of the town's commercial establishments fronted on the highway, and although this two-lane road is not the main east-west corridor, it did channel between one and five thousand vehicles per day through the old town.⁴⁵

Subsequent to construction of the Interstate Highway most of the industrial and commercial development in the Columbia Gorge occurred in Oregon. "Skamania County, on the other hand, has received minimal new development of any kind."⁴⁶ The impact of the Interstate is synopsized in an economic analysis by Keyser Marston.⁴⁷

As a result of the better access and heavier traffic on the Interstate, most of the development and growth in the

Columbia Gorge has occurred on the Oregon side. The manufacturing firms (except the lumber mills which are more resource-oriented than highway-access-oriented) have located in Oregon, and the only motels built within the past 20 years are in the towns along the Interstate. The Interstate is also the scene of numerous restaurants, coffee shops, gas stations and several conference centers. The Washington side of the river is notable for its total lack of transient-oriented facilities.

North Bonneville, doubtless due in large part to its locational disadvantage and lack of access to major transportation routes, became a dependent community with little economic base of its own.⁴⁸ As observed in a study by RHB&A, "The majority of employed residents of North Bonneville work in other communities and all residents depend, to some extent, upon other communities for many goods and services."⁴⁹ The nature and extent of the dependency is discussed in the North Bonneville Town Relocation Environmental Impact Statement Supplement, as set forth next:⁵⁰

Economic Relationships: The majority of the employed residents work in the immediate area around North Bonneville, in Stevenson, and at Bonneville Lock and Dam. Commuting to more distant areas or across the river to Oregon locations is uncommon. Less than half the employees work in North Bonneville itself. Other income coming from outside the town includes: social security, pensions, unemployment compensation, and welfare payments, which support the remaining unemployed and retirement households.

The residents find North Bonneville limited as a place for purchasing most retail items because retail outlets are extremely limited. Although residents frequently purchase food in the town, major grocery purchases are made in Stevenson. In general, Stevenson, only 7 miles east of North Bonneville, is most frequently visited for the purchase of most retail items.

With the exception of groceries, Portland is most frequently visited for the purchase of clothing, home furnishings, and hobby goods. Clearly, this is a result of the wide range of shopping opportunities supported by a metropolitan population. In addition, many households indicated that a trip to Portland or Vancouver often includes stopping at specific stores in towns along the way, such as Camas and Washougal. The absence of a sales tax in Oregon

appears to make that state a more attractive place to shop for higher priced items.

The dominant factor in the economic base of Skamania County, and consequently, the major source of employment for persons living in North Bonneville, was the logging and wood products industry.⁵¹ This dominance, of course, reflects the geography of the area: "More than 94% of the county's land is in forests and more than 86% is in commercial forests."⁵² The impact of the logging and lumbering industry was explained to the town by RHB&A: "The major economic activity in Skamania County is forestry and lumber related manufacturing. This activity accounts for over 35 percent of total employment and nearly 100 percent of the 'base' employment, which is employment engaged in providing goods and services for the world outside the County."⁵³ Of the industry existent, North Bonneville was a lesser beneficiary, "because the large sawmills were located in Stevenson and Carson."⁵⁴ Significantly, this largest industry within Skamania County was not growing, but rather, was facing possible decline.⁵⁵ Prospects for the lumber industry were explained within the context of Design Memorandum No. 8:⁵⁶

There is little prospect for major expansion in lumber and wood products manufacturing. An in-depth review of the industry in Skamania County indicates that it is unlikely that existing mills will be making expansions, or that new mills will be located in the County in the foreseeable future. The recently proposed timber management program for Gifford Pinchot National Forest, which accounts for approximately 70% of the county land, could have the impact of substantially reducing lumber related employment in the years ahead. For projection purposes, it is assumed that employment will be fairly stable with some decline projected during the analysis period.

RESIDENTS

Residents of the old North Bonneville were substantially less affluent than Skamania County residents on the average and even more economically disadvantaged than Washington State residents in general.⁵⁷ Illustratively, even when 1974 North Bonneville incomes are compared to 1969 incomes of County and State residents, the averages for North Bonneville were considerably less, with a much larger percentage of families and unrelated individuals in the lower income groups.⁵⁸ (See Table III.) Keyser Marston describes the income and work status of the original town residents as follows:⁵⁹

The census indicates that 12.5% of the County families and nearly 35% of the County unrelated individuals were below poverty level in 1969. Based on the income data . . . it can be estimated that probably over 40% of the North Bonneville unrelated individuals exist below poverty level and approximately 20% of the families are below poverty level according to U.S. government definitions.

The high incidence of persons residing below poverty level is also demonstrated by the large share of families and individuals on welfare and receiving food stamps.

The occupational distribution of the employed residents of North Bonneville is:

Professional, technical, engineering (includes teachers, etc.)	13%
Managerial, proprietors (Includes store owners, etc.)	10%
Clerical	6%
Sales	1%
Skilled Craftsmen	16%
Operators, other non-skilled labor	27%
Service Workers (Includes waitresses, etc.)	16%
Other	11%

That the share of sales workers appears lower than might be expected can be explained by the fact that most persons who work in stores in North Bonneville own them, and thus fall into the "Managerial" category. As the survey indicates, nearly half of the employed persons are either craftsmen or operators, in other words persons who work in the mills within the North Bonneville and Stevenson area.

TABLE III

INCOME DISTRIBUTION FOR FAMILIES AND UNRELATED INDIVIDUALS
NORTH BONNEVILLE COMPARED TO OTHER AREAS
(1969 DOLLARS)

	<u>North Bonneville</u> <u>December</u> <u>1974 Survey</u>		<u>GMA</u> <u>Survey</u>	<u>Skamania</u> <u>County</u>		<u>Washington</u> <u>State</u>	
<u>Income in \$</u>	<u>Number</u>	<u>%</u>	<u>%</u>	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>
Less than 3,000	20	22	19	183	12	69,213	8
3,000 - 4,999	14	15	11	139	9	73,418	9
5,000 - 9,999	28	30	28	625	40	263,478	31
10,000 - 14,999	16	17	18	478	31	259,746	30
15,000 - 24,999	12	13	14	121	8	157,693	18
25,000 or more	0	0	0	0	0	38,994	5
Unknown	<u>3</u>	<u>3</u>	<u>10</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	93	100	100	1,546	100	862,542	101

Note: Percentages for Washington State add to more than one hundred due to rounding.

Source: R. W. Beck and Associates, Expert Witness Report, Town of North Bonneville vs. U.S. (Seattle: R. W. Beck and Associates, 1984) I-14. Data from Keyser Marston Associates based on Social Physical Survey of North Bonneville, Washington by Williams & Mocine, January 1975; North Bonneville Relocation, A Public Opinion Study by GMA Research Corporation, March 4, 1974; U.S. Census.

Not only was the average income of North Bonneville families and unrelated individuals lower than the average for the County and State, but the unemployment rate for North Bonneville was higher. Indeed, according to the town relocation environmental impact statement, "North Bonneville's unemployment situation is typically more severe than exists elsewhere in the county, state, or nation."⁶⁰ This conclusion is echoed within the context of Design Memorandum No. 8:⁶¹

North Bonneville has traditionally had an unusually high level of unemployment. At the time of the December 1974 household survey it approached 40%, due to recession in the national economy reflected locally, particularly the slow down in the lumber industry which had most of the local mills temporarily closed. Normally it is estimated at about 15%, a level which is in excess of both the county and state average.

RESIDENCES

Within the North Bonneville community area, inclusive of the Brown Tract and Fort Rains, there were approximately 260 housing units. The large majority of these, around 190 units, were single family houses. Additional dwellings included a twelve-unit apartment building, ten smaller complexes containing three to six apartments each, totaling thirty-six units, and two duplexes. There were also three trailer courts, offering nine, seven, and three spaces, plus about ten mobile or manufactured homes located on individual lots.⁶² Several housing units were adjuncts to business buildings.⁶³ Residential patterns existent in the old North Bonneville community area were as described in the following excerpt from the town relocation environmental impact statement:⁶⁴

Like most cities of its vintage, North Bonneville's residential areas have grown in response to housing needs without concern for planning. Single family structures are fairly well grouped and the majority of the multiple units are located closer to the town center on the more heavily traveled streets. Trailers and mobile homes are mixed among houses in some areas. There are also a number of apartments, duplexes, and homes or apartments attached to businesses. The combined home/business buildings are generally located on or close to State Highway 14.

The majority of the residential structures were over twenty years old, and almost all were of wood-frame construction.⁶⁵ Some were well maintained, while others were not.⁶⁶ Generally, housing values were low, considerably less than replacement costs.⁶⁷ Rents, for apartment and trailer spaces, were correspondingly minimal.⁶⁸

BUSINESSES

The number and nature of commercial establishments active within the town varied from time to time, as would be expected. However, during 1971, the year in which it was announced with reasonable certainty that the town would be displaced by the Second Powerhouse, there were thirty retail and service businesses operating in North Bonneville. These included gasoline stations, taverns, restaurants, grocery stores, and motels; clothing, variety, furniture, hardware, and other retail outlets; a beauty parlor, a barber shop, and a shoe repair service; a theater, a real estate office, and a bank.⁶⁹ The average age of the existing businesses was seventeen years, although almost half had been in operation less than ten years.⁷⁰

The market for the town's businesses consisted mostly of persons living in North Bonneville, the Brown Tract, and the Fort Rains Addition.⁷¹ Only a "minimal" amount of business volume was generated

by tourists, although "from 20 to 30 percent of sales in a number of establishments comes from non-resident 'regulars' who pass through the area frequently and stop to patronize a North Bonneville establishment."⁷² An indication of the source of business is provided by Keyser Marston Associates:⁷³

The market area served by North Bonneville commercial establishments consists primarily of North Bonneville and study area. The more highway-oriented businesses such as the restaurant/cafe, taverns and gas stations draw more heavily from through traffic on Highway 14, although the majority of support even for these businesses is local. In some cases, the North Bonneville establishments offer services not found in other local towns such as Stevenson and thus, the supporting market area is much larger. The beauty parlor and shoe repair are examples.

Field survey findings indicate that nearly all of the businesses experience increased activity during the summer months. The reasons are twofold; one is the number of tourists and recreational visitors in and around the town during summer months. The second reason cited was increased employment resulting in the residents having more money to spend. The seasonality of employment, particularly lumber related, appears to affect the business activity in general in North Bonneville.

Total demand for retail sales and services was low, much less than would normally be required to maintain operations of equal sizes and numbers in most other communities.⁷⁴ Nonetheless, businesses were able to continue in operation due to the relatively low cost of living and conducting business in the town.⁷⁵ A majority of the business operators owned their own facilities and the site, although a few were renters.⁷⁶ Most of the commercial structures were old and inexpensive. As observed in the Final Environmental Statement for the Second Powerhouse, "The greater portion of the improvements in the town were built during the 1930's, the period when Bonneville Dam was under construction."⁷⁷ Also, two thirds of the businesses were family

operated, with no salaried employees.⁷⁸ The remainder offered only minimal nonowner employment, a measure of which is provided by a 1971 North Bonneville Life Effort (NOBLE) business survey: "Of 17 businesses responding to a question relative to number of employees, a total of 16 full-time and 5 part-time persons were employed besides the owners."⁷⁹ Generally, as observed by R.W. Beck and Associates, "Commercial establishments which existed in the old North Bonneville could be described as marginal at best."⁸⁰

The town was also the site of three small industrial concerns. Two firms were engaged in manufacturing wood products. The largest assembled roof trusses and other components of residential structures and employed approximately five persons.⁸¹ The other, a small sawmill, provided employment for one to two persons.⁸² The third industrial concern was Peterson Hauling. "The business activities of this firm include freight transportation, leasing of heavy equipment for building construction, and a gravel operation. The firm owns 4 or 5 pieces of major equipment and employs 5 or 6 persons."⁸³

CORPORATE CONDITION

The town of North Bonneville, as a corporate entity, was poor but solvent. As may be expected given the profile of income and employment of its citizenry, the town had very limited income. Taxes levied for the years 1971, 1972, and 1973 were \$5,332.73, \$6,164.58, and \$6,374.00 on total assessed valuations of \$711,030.00, \$821,944.00, and \$849,875.00, respectively. Additionally, the town received an \$85,858.34 grant from Skamania County in 1971, following

an earlier allotment from the County of \$8,011.60 in 1970, making a total of \$93,869.94, "to assist in making repairs to its water system." The amounts of \$9,242.04 in 1970 and \$84,627.90 in 1971 were spent "for replacement of water lines" adding to the total grant of \$93,869.94. Over and above this, the town received \$1,242.00 from federal revenue sharing entitlements in 1972 and \$4,090.00 from this source in 1973. Of these funds, only \$858.17 were spent as of December 31, 1973, "\$770.17 for repairs to the roof of the town hall and \$88.00 for publicity costs." The town also gained income from the operation of the water department: in 1971, water department revenues were \$11,159.45 against expenses of \$6,713.71 for a gain of \$4,445.74; in 1972 revenues equalled \$11,235.03 with cost of \$7,720.71, for a profit of \$3,514.32; and in 1973, the water department collected \$12,113.74 with expenditures of only \$9,766.10, producing a surplus of \$2,347.64. Throughout this period, the town was "kept in a solvent condition." The town was in the black, with net cash-balances of \$29,994.35 on December 31, 1971; \$37,734.87 on December 31, 1972; and \$43,324.24 on December 31, 1972.⁸⁴

Reflective of its income, the old Town of North Bonneville had few assets.⁸⁵ The town owned three buildings--a maintenance shed and tool house, a pump house, and a combined City Hall/Fire Station. It held title to and maintained a 0.5 acre park, fenced on two sides containing a picnic table, benches, and playground equipment. The maintenance shed and tool house was located on the park grounds; it was a one-story wood frame building, 25 ft. x 32 ft., with concrete block foundation walls, gravel floor, and sheet metal sides and roof.

It was "in poor physical condition, . . . inadequately lighted and poorly maintained."⁸⁶ The pump house was a one story 12 ft. x 12 ft. wood frame structure with a concrete foundation, concrete floor slab and sheet metal sides and roofing. It was "in poor but serviceable condition."⁸⁷ The town hall was constructed in 1949. The fire station was added to the building in 1954.⁸⁸ The character and condition of the City Hall/Fire Station was as described in Design Memorandum No. 8:⁸⁹

The existing building . . . has exterior concrete block walls (probably unreinforced) with wood joist roof construction supported by interior wood stud bearing partitions and a concrete floor slab on grade. . . . The building is definitely substandard and inflexible in providing for city governmental functions, both in size and plan layout. Its appearance presents the image of a store building rather than a City Hall. . . . The building contains insufficient exits per code. . . . Building electrical system does not meet code. . . . Heating system is inefficient and inadequate. . . . Additional toilet fixtures are required per code.

Replacement value of these buildings, "based on existing quality and capacity at present site," was estimated within Design Memorandum No. 8 to be as follows: City Hall and Fire Station, \$134,400; Maintenance and Tool Shed, \$8,000; Pump House, \$1,440. Replacement costs "on the basis of standards meeting State and Federal requirements on present sites" were estimated in the same document as being \$168,000 for the City Hall and Fire Station; \$16,000 for the Maintenance and Tool Shed; and \$2,880 for the Pump House.⁹⁰

The town had limited streets, roads and related appurtenances, of an estimated replacement cost "based on existing quality and capacity at present site" of \$294,000, and estimated replacement cost "on the basis of standards meeting State and Federal requirements at

present sites" of \$520,600. The town had a municipal street lighting system, with differing estimated replacement costs based on these standards, respectively, of \$43,996 and \$56,008.⁹¹

The town had a comparatively new municipal water distribution system, constructed in 1970-71 as a joint project with Skamania County.⁹² The estimated replacement costs for this facility, in accordance with the standards related, were \$435,300 and \$632,000.⁹³ The town also had a municipal storm drainage system, with estimated replacement costs of \$232,000 and \$401,500.⁹⁴

The town had no sanitary sewage collection system and treatment plant. Waste disposal was accomplished by means of individual septic tanks and cesspools.⁹⁵

Also reflective of its income, the Town of North Bonneville provided little by way of community services. It employed only one police officer, who also served as the Superintendent of Streets and as the Water Superintendent. Police service was limited to the incorporated town. Equipment consisted of a patrol car and radar unit. The police officer used his home as an office. The town had no jail facilities: "Interrogation and jail facilities are at Stevenson."⁹⁶ For fire protection, the town relied on a fire department manned by fourteen volunteers and equipped with two pumper trucks.⁹⁷

Other services were available within but not directly provided by the town. Residents had access to a small library, housed in the City Hall, but "part of the Vancouver Three-County Regional Library District."⁹⁸ Solid waste disposal was available at the Skamania County

Dump near Stevenson. Electrical power was supplied by Public Utility District No. 1 of Skamania County. Natural gas was furnished to the town by the Northwest Natural Gas Company of Portland, Oregon. Telephone service was supplied to North Bonneville by the United Telephone Company of Hood River, Oregon. Town residents also had access to cable television service, provided by Gorge Cablevision with offices in Hope Valley, Washington.⁹⁹

SCHOOL

The town had one school. Although owned and operated by the Stevenson-Carson School District No. 303, the North Bonneville Elementary School was located within the town boundaries and was considered by the residents to be the town's school. The school once served grades one through eight; however, in the years immediately preceding relocation it had been reduced to providing classroom instructions for only grades one through four.¹⁰⁰ It had no principal or other administrators of its own: "the principal of a Stevenson elementary school visits the North Bonneville school as necessary."¹⁰¹ The school had "two full-time teachers; one teacher for grades 1 and 2, and one for grades 3 and 4."¹⁰² Students above grade four, and children in kindergarten, were bussed to schools located in either Stevenson or Carson.¹⁰³

The school building was a one-story 12,200 sq. ft. wood frame structure, with concrete slab floor and asbestos composite shingle roof. Originally built in 1935, the building apparently had been added to later: "Its appearance indicates that it was constructed in

three sections, i.e., the original classroom building, a classroom addition, and a multi-purpose room."¹⁰⁴ Although "generally well maintained," by the early 1970's "the school building is outmoded, is of poor original structural quality, and is in violation of modern code requirements."¹⁰⁵

The school was located on approximately 3.04 acres of land. In addition to the building, facilities consisted of a "275 ft. by 375 ft. grassed playing field"; a "12,200 sq. ft. asphaltic concrete paved play area"; a "30 ft. by 50 ft. covered play structure, which has 6 swings, 1 slide, 1 parallel bar, 3 swinging poles, and 1 set of swinging bars"; and a "4,000 sq. ft. asphaltic concrete paved parking area," with parking spaces for sixteen cars.¹⁰⁶

Replacement value of the school, "based upon existing quality and capacity at present site," was estimated within Design Memorandum No. 8 to be \$438,400. Replacement cost "on the basis of standards meeting State and Federal requirements on present site" was estimated at \$712,400.¹⁰⁷

The presence of this school provided value to the town over-and-above its direct utility in classroom elementary education. It was available for multi-purpose use and served as a center for numerous community activities.¹⁰⁸ It was a symbol of stability, of community. As observed in Design Memorandum No. 8:¹⁰⁹

The school building is an important landmark for the majority of residents. Perhaps as many as half the population attend public meetings and various community activities in the school. The gymnasium facility is a source of community pride. Children frequently play in the school yard after school hours. It is the one public building in town which can be used by all residents and which can accommodate large groups for meetings and other community activities. There is

common sentiment among residents that a school makes a town; that without it there is no solid community identity.

COMMUNITY

Ultimately, of course, the essence of a town is not its municipal facilities, or services, or businesses, or houses. The character of the old town of North Bonneville was imbedded in its people, in their wants and needs, their work and aspirations. As observed by RHB&A, "The people of North Bonneville have determined the character of the town as much as the town's location. Many of the community's needs have been determined by the demographic character and social patterns of the residents."¹¹⁰ The residents of North Bonneville liked their town for reasons expressed in interviews conducted by Williams and Mocine:¹¹¹

The North Bonneville residents include a number of factors in their perception of their community: the beauty of the Gorge, the friendliness of their neighbors and the sense of individual freedom they find in the Town. . . . Social stratification in North Bonneville is minimal. The residents express a strong need for personal privacy. . . . Almost 90 percent of the people interviewed said most of their friends live in North Bonneville and an opportunity to socialize as a group is important to them.

* * *

In looking at interpersonal relationships it became clear that the residents surveyed have a keen sense of personal freedom of action and desire for privacy. They also have a sense of belonging to a neighborhood and a Town. They feel that North Bonneville has very little class distinction. Their social interaction pattern is city-wide, not confined to neighbors. They feel that they have control over their future and that their voices can be heard in solving social and community problems. The current residents feel that the general health and safety needs are being adequately enough met, and although there are severe deficiencies they are outweighed by the advantages of the area. Residents express a keen sense of their proximity to natural features such as the Gorge, woodlands and water. . . .

The residents express their sense of place and security in a variety of ways. They do not oppose new social influences but don't want them all at once. They see the Town as a cohesive whole. They express a strong feeling of unity and value in the smallness and variety in the community.

There are attributes of the community which they feel keep them there: friendliness, smallness, peacefulness, home ownership, single family housing, school, certainty about neighbors and a low crime rate. There are also community problems despite which they choose to live in North Bonneville: physical messiness, lack of maintenance of City facilities, impermanence, inadequate medical service, and limited economic opportunity.

ENDNOTES

¹U.S. Army Corps of Engineers, Bonneville Second Powerhouse Design Memorandum No. 8, Relocation of the City of North Bonneville, Washington, 2 Vols. (Portland, OR: Portland District, 1975) 1: 4-5. Although nominally a product of the U.S. Army Corps of Engineers, this document was prepared by a multidisciplinary design consultation team under a new town planning contract awarded and administered by the City of North Bonneville. The prime contractor was the architect-engineer firm of Royston, Hanamoto, Beck and Abey, San Francisco. Other design team members, subcontractors, were Daniel, Mann, Johnson, and Mendenhall/Hilton, an architect-engineer firm, Portland; Dames and Moore, geo-technical engineering service, Portland; Kirk, Wallace and McKinley, design consultants, Seattle; Williams and Mocine, an economics consultant firm, San Francisco; and Keyser Marston Associates, economic and financial consultants, San Francisco. References to this document must realistically be understood and evaluated as statements, findings, or conclusions derived by the design consultation team or directed by the City of North Bonneville. Pointedly, never should citations to this document be read as indicating statements, findings, or conclusions of the Corps of Engineers. The Corps of Engineers neither contributed to nor was allowed to monitor the work of the City's contractor. See, e.g., Design Memorandum No. 8, 1: 1-1. All documents, reports, letters, memorandums, notes, logs, transcripts, agreements and contracts cited in this dissertation, unless a location elsewhere is evident, are contained in the files of the Portland District, U.S. Army Corps of Engineers.

²Evergreen State College Urban Planning Group, North Bonneville Relocation Planning Study (Olympia, WA: Evergreen State College, 1973) II. 1. 2.

³"North Bonneville Grew From Dam Construction," Skamania County Pioneer, 27 August 1976.

⁴National Industrial Recovery Act, June 6, 1933, ch. 90, 48 Stat. 195, § 202.

⁵National Industrial Recovery Act, § 203.

⁶National Industrial Recovery Act, § 202.

⁷See William F. Willingham, Water Power in the "Wilderness": The History of Bonneville Lock and Dam (Portland, OR: Portland District, 1987) 4.

⁸Rivers and Harbors Act of 1935, Aug. 30, 1935, ch. 831, 49 Stat. 1028, § 1, at 1038.

⁹William F. Willingham, Army Engineers and the Development of Oregon: A History of the Portland District, U.S. Army Corps of Engineers (Washington: GPO, 1979) 95.

¹⁰Bonneville Project Act, Aug. 20, 1937, ch. 720, 50 Stat 720. See Willingham, Water Power, 4.

¹¹Willingham, Army Engineers, 101. It is generally considered that the Bonneville Dam was completed in September 1937, since closure of the spillway was then accomplished. Willingham, Army Engineers, 100. President Roosevelt dedicated the dam on September 28, 1937. Vera Springer, Power and the Pacific Northwest: A History of the Bonneville Power Administration (Portland, OR: Bonneville Power Administration, 1976) 32. However, the project as a whole was completed in December 1943. See Willingham, Army Engineers, 101.

¹²Willingham, Army Engineers, 103.

¹³"A municipal corporation of the fourth class, which shall be known as a town, is one having not less than three hundred inhabitants and not more than fifteen hundred inhabitants at the time of its organization." R.C.W. 35.01.040. For rights, powers, privileges, and responsibilities of towns in the State of Washington, see R.C.W. Chapter 35.27.

¹⁴See U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-1.

¹⁵See U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-1.

¹⁶Evergreen College Planning Group, Planning Study, II. 8. 1. "Private businesses and homeowners lease the land yet own their own buildings." Williams and Mocine, Relocation of North Bonneville, Washington, Background Summary for Prospective Planning and Design Contractors (San Francisco: Williams and Mocine, 1974) 6.

¹⁷Williams and Mocine, Relocation of North Bonneville, Washington, Background Summary for Prospective Planning and Design Contractors (San Francisco: Williams and Mocine, 1974) 6.

¹⁸U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-1.

¹⁹"A number of residents of Fort Rains will face relocation as a result of the need to relocate the Burlington Northern railroad track and State Highway 14." Williams and Mocine, Background Summary, 6.

²⁰U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-1.

²¹Ordinance No. 259, North Bonneville Town Council, 12 March 1974. See Minutes, North Bonneville Town Council, 12 March 1974. See Washington Optional Municipal Code, R.C.W. Chapter 35A. A noncharter

code city "has the broadest powers of local self-government consistent with the Constitution of this state." R.C.W. 35A.01.010.

²²Recorded population levels for North Bonneville cover only the area within the town's corporate limits. See U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 4-5. Although no finite figure is available, it is estimated that during the period 1971-1975 immediately preceding the town relocation, the North Bonneville community inclusive of the Brown Tract and the Fort Rains Addition encompassed approximately 600 to 650 persons. See Design Memorandum No. 8, 1: 4-5 and 2: D-1.

²³U.S. Army Corps of Engineers, North Bonneville Town Relocation Environmental Impact Statement Supplement (Portland, OR: Portland District, 1975) 2-41. This document was prepared from information provided in an Environmental Assessment Report prepared by the design consultation team of Royston, Hanamoto, Beck and Abey; Daniel, Mann, Johnson and Mendenhall/Hilton; Dames and Moore; Kirk, Wallace and McKinley; Williams and Mocine; and Keyser Marston Associates, under contract awarded and administered by the City of North Bonneville. References to this document must be understood and evaluated as statements, findings, or conclusions derived by the design consultation team or directed by the City of North Bonneville. See, e.g., Environmental Impact Statement Supplement, 1-2.

²⁴U.S. Army Corps of Engineers, Bonneville Dam Design Memorandum No. 2, Second Powerhouse Site Selection and Hydropower Capacity (Portland, OR: Portland District, 1971) 2-41. Originally designated I-80, the Interstate Highway has been re-numbered and is currently I-84.

²⁵U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-41. "After the Dam was completed, many of the construction people moved on, but some stayed and formed the core of the resident population of the Town of North Bonneville." Royston, Hanamoto, Beck, and Abey, Comprehensive Plan, North Bonneville Relocation and Optimum New Town Design (San Francisco: RHB&A, 1975) 8.

²⁶R. W. Beck and Associates, Skamania County, Washington, Comprehensive Water and Sewer Plan (Seattle: R. W. Beck and Associates, 1969) Table 4.

²⁷All Engineering, Town of North Bonneville, Skamania County, Washington, Preliminary Engineering Report of Existing Facilities and Relocation (Vancouver, WA: All Engineering, 1971) 4.

²⁸All Engineering, Preliminary Engineering Report, 14.

²⁹"In summary, growth prospects for Skamania County appear to be fairly minor." U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 4-5.

³⁰R. W. Beck and Associates, Skamania County Comprehensive Plan, Table 4.

³¹"North Bonneville's current potential for attracting industrial growth, is affected by its separation from the major transportation routes serving the Columbia region and Pacific Northwest, the lack of large flat sites with good drainage, and a poor resource of skilled labor. Favorable characteristics counteracting this negative climate have been close proximity to resources, potential rail access, potential river access, and high unemployment in the unskilled and female labor groups." U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-29.

³²R. W. Beck and Associates, Expert Witness Report, Town of North Bonneville vs. U.S. (Seattle: R. W. Beck and Associates, 1984) I-4.

³³Royston, Hanamoto, Beck and Abey, Comprehensive Plan, North Bonneville Relocation and Optimum New Town Design (San Francisco: RHB&A, 1975) 13.

³⁴R. W. Beck and Associates, Witness Report, I-4. Skamania County is frequently considered part of the Mid-Columbia Region, along with Klickitat County in Washington, and Hood River, Wasco, and Sherman counties in Oregon. However, according to Keyser Marston Associates, "few North Bonneville residents shop anywhere within the Mid-Columbia Region outside the county, and only a few persons were found to work in other Mid-Columbia counties." Keyser Marston concluded, "Skamania County cannot be properly considered a part of either the Mid-Columbia Region or the Portland Metropolitan Area"; rather, Skamania County is best analyzed "as a region unto itself". See U.S. Army Corps of Engineers, Design Memorandum No. 8, 2: D-3, 4.

³⁵R. W. Beck and Associates, Witness Report, I-4.

³⁶Evergreen College Planning Group, Planning Study, II. 1. 1.

³⁷Williams and Mocine, Background Summary, 6-7. "Outside of logging, the Columbia River is of minor importance to the county as a means of transportation." U.S. Army Corps of Engineers, Design Memorandum No. 8, 2: D-1.

³⁸RHB&A, Comprehensive Plan, 12. "North Bonneville is not directly served by either rail passenger or freight service. However the town is located on the main lines of the Burlington Northern Railroad. This line carries one of the highest freight tonnages of any of the main lines of the system. An average of 11 trains a day pass through the community." U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-31.

³⁹Williams and Mocine, Background Summary, 6.

⁴⁰U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-31.

⁴¹U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-30.

⁴²As observed by Keyser Marston Associates, North Bonneville "is isolated from the major transportation route serving the region (I-80)." U.S. Army Corps of Engineers, Design Memorandum No. 8, 2: D-17. "The river crossing nearest North Bonneville is the Bridge of the Gods, approximately 3 miles east of the town. A 50-cent toll is charged for crossing the bridge, in either direction." U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-30.

⁴³R. W. Beck and Associates, Witness Report, I-3. See U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-30.

⁴⁴"State Highway 14 is a two-lane, 30-ft. wide, asphaltic concrete surfaced roadway. As it passes through the city of North Bonneville it broadens to four lanes and a width of 59 feet." U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 3-5. "The highway is not a limited-access thruway and serves as the main street of the city with curbs and walks lining each side. As the main street, it serves most of the town's commercial business establishments, and provides on-street parking in the business district." Design Memorandum No. 8, 1: 3-1.

⁴⁵Evergreen College Planning Group, Planning Study, II. 6. 1. The average daily traffic volume on State Highway 14 through North Bonneville during the years 1971-1973 was approximately 3,000 vehicles. Of this number, about 6% represented truck or bus traffic. U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-30.

⁴⁶U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 4-1.

⁴⁷See R. W. Beck and Associates, Witness Report, I-3.

⁴⁸Evergreen College Planning Group, Planning Study, II. 1. 2. "The economic base of the Town in the period 1970-1975 just before the relocation was dependent on forest products, tourism, retirement income (social security, pensions, etc.) and the relatively low cost of living and conducting business in the town." R. W. Beck and Associates, Witness Report, I-5.

⁴⁹RHB&A, Comprehensive Plan, 12. "As a result, access to and from the Town is critical to its survival." RHB&A, Comprehensive Plan, 12.

⁵⁰U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-44.

⁵¹U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 4-3.

⁵²U.S. Army Corps of Engineers, Design Memorandum No. 8, 2: D-10.

⁵³RHB&A, Comprehensive Plan, 13. "At the present time tourism and recreation activity contribute very little to the County economy". RHB&A, Comprehensive Plan, 13.

⁵⁴R. W. Beck and Associates, Witness Report, I-17.

⁵⁵Town officials were informed: "As for the lumber industry, there is little prospect of major expansion. There is even the possibility that the proposed timber management program for the National Forest could result in reduced employment." RHB&A, Comprehensive Plan, 13.

⁵⁶U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 4-4.

⁵⁷U.S. Army Corps of Engineers, Design Memorandum No. 8, 2: D-32. "Median household income was estimated at \$7,075, considerably lower than the state average and lower than the county average." Design Memorandum No. 8, 1: 4-6.

⁵⁸U.S. Army Corps of Engineers, Design Memorandum No. 8, 2: D-30.

⁵⁹U.S. Army Corps of Engineers, Design Memorandum No. 8, 2: D-32.

⁶⁰U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-43.

⁶¹U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 4-5.

⁶²See U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-22 to 2-24.

⁶³U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-26.

⁶⁴U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-26.

⁶⁵U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-26.

⁶⁶Like beauty, evaluation of housing conditions appears to be in the eye of the beholder. According to the Evergreen State College Urban Planning Group, "most of the residences are in good condition," with over 70% showing signs of recent paint, repairs or additions, fences and well-kept lawns or gardens. Planning Study, II. 10. 4. As reported by Keyser Marston Associates: "Most of the housing units in North Bonnevile are old and in poor condition," in that "only 6% could be considered sound, 24% were deteriorating and nearly 56% were

dilapidated." U.S. Army Corps of Engineers, Design Memorandum No. 8, 2: D-39. Perhaps the most reliable description was provided by a Portland District employee who observed that "the housing is of lower cost but is not deficient in plumbing and is not seriously overcrowded." Phil F. Moon, Chief, Environmental Quality Branch, Portland District, memorandum to Chief, Engineering Division, Portland District, Subject: Relocation of North Bonneville, 6 June 1972.

⁶⁷As reported by Williams & Mocine, "The average single family house value (including land) is estimated at approximately \$14,000." U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-26. Comparatively, as observed by Keyser Marston Associates, "Current construction costs for the North Bonneville area . . . dictate that the average two bedroom home cannot be built for less than \$28,000 excluding land cost and fees, or over \$30,000 total costs." U.S. Army Corps of Engineers, Design Memorandum No. 8, 2: D-41.

⁶⁸"Monthly rent payments of the rental units surveyed range from \$25 to \$180, with a median rent of approximately \$50 to \$55 per month without utilities and \$110 with utilities. Rentals for trailer spaces in North Bonneville average \$30 per month." U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-26.

⁶⁹U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-26, 27.

⁷⁰Evergreen College Planning Group, Planning Study, II. 5. 2.

⁷¹U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 4-11.

⁷²U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 4-11.

⁷³U.S. Army Corps of Engineers, Design Memorandum No. 8, 2: D-27, 28.

⁷⁴U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 4-11 to 4-16. As observed by Keyser Marston, "the current sales volumes achieved by average existing North Bonneville establishments are insufficient to cover the costs of financing a newly constructed building." Design Memorandum No. 8, 2: D-53.

⁷⁵"The economic base of the Town in the period 1970-1975 just before the relocation was dependent on forest products, tourism, retirement income (social security, pensions, etc.) and the relatively low cost of living and conducting business in the Town." R. W. Beck and Associates, Witness Report, I-5.

⁷⁶"Eighteen of 23 business operators owned their own business and the site. Of those rented, two landlords lived in town." Evergreen College Planning Group, Planning Study, II. 5. 2.

⁷⁷U.S. Army Corps of Engineers, Final Environmental Statement, Second Powerhouse, Bonneville Lock and Dam, Columbia River, Oregon and Washington (Portland, OR: Portland District, 1971) 1-13.

⁷⁸U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-28.

⁷⁹Evergreen College Planning Group, Planning Study, II. 5. 2.

⁸⁰R. W. Beck and Associates, Witness Report, I-19.

⁸¹U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-28.

⁸²U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-28.

⁸³U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-28.

⁸⁴State of Washington, Office of State Auditor, Report of Examination, Town of North Bonneville, Skamania County, Washington, 25th report, Examination No. 40995, 20 September 1974.

⁸⁵For a comprehensive listing of facilities existent within the old town immediately prior to relocation, see U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-1 to 2-34.

⁸⁶U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-5.

⁸⁷U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-5.

⁸⁸U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-4.

⁸⁹U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-21.

⁹⁰U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-12, 13.

⁹¹U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-14, 15, 20.

⁹²U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-2, 3.

⁹³U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-16, 17.

⁹⁴U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-18, 19.

⁹⁵U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-4.
See also, U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-36.

⁹⁶U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-34.

⁹⁷U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-34.

⁹⁸U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-34.

⁹⁹U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-36, 37.

¹⁰⁰U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-32.

¹⁰¹U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-32, 33.

¹⁰²U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-33.

¹⁰³U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-33.

¹⁰⁴U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-22.

¹⁰⁵U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-9.

¹⁰⁶U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-8, 9.

¹⁰⁷U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-12, 13.

¹⁰⁸U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-33.

¹⁰⁹U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-25.

¹¹⁰RHB&A, Comprehensive Plan, 8.

¹¹¹RHB&A, Comprehensive Plan, 8, 14-15.

CHAPTER III

THE BONNEVILLE SECOND POWERHOUSE

Approximately thirty years after construction of the original Bonneville Lock and Dam the Federal Government decided to enlarge the project by addition of a second powerhouse. The site selected for the Bonneville Second Powerhouse was the location occupied by the Town of North Bonneville. In order to build the additional powerhouse it was necessary for the Corps of Engineers to acquire by purchase or condemnation, and raze, essentially all of the public and private properties within the original town. As observed by the Evergreen State College Urban Planning Group: "To obtain this goal the town of North Bonneville, Washington, a town that grew from construction of the Bonneville Dam in the 1930's must now yield its physical place on the river bank to allow the construction of the second powerhouse."¹

The Town faced either disbandment or relocation. To understand the choice confronted, and subsequent actions by the Town and the Corps of Engineers with respect to the relocation, it is necessary to consider the reasons for construction of the second powerhouse and how the Corps of Engineers came to select as a site for this new powerhouse the land area occupied by the town. This in turn requires a comprehension of the hydroelectric development of the Columbia River and an understanding of the provisions and implications of the Columbia River Treaty between the United States and Canada.

DEVELOPMENT ON THE COLUMBIA RIVER

The Columbia River is the mightiest hydroelectric stream on the North American Continent.² It is an international river. Approximately 1,240 miles in length, it originates in the Columbia Lake, in British Columbia, flows northeasterly and then south within that province of Canada for 460 miles, then travels another 780 miles in the United States, first southward through the State of Washington, and finally westward forming part of the Washington-Oregon border, terminating in the Pacific Ocean to the west of Portland. The Columbia and its tributaries--which include such individually important rivers as the Kootenai, Pend Oreille, Yakima, Snake, John Day, Deschutes, Willamette, Lewis, and the Cowlitz--drain a basin of over 259,000 square miles. In terms of water volume, the Columbia is the largest river flowing into the Pacific Ocean from the North American continent, with an average annual discharge of 180,000,000 acre feet. Comparatively, this is a flow ten times that of the Colorado River, and more than twice that of the Nile. Within the United States, only the Mississippi travels farther and carries more water. As the river flows from source to mouth, it experiences an exceptional drop in elevation of 2,650 feet, more than two feet per mile. This rapid rate of fall works with the enormous volume of water to form "a river of awesome power."³ Inclusive of tributaries, the Columbia River system contains about forty percent of the hydroelectric generating capacity of the United States.⁴

The Bonneville Lock and Dam was the first Federal project on the Columbia.⁵ Early on, when construction of the dam was commenced in the

early thirties, the project was considered by some critics to be a monumental overdevelopment of doubtful value other than as a provider of employment in a depressed economy.⁶ Specifically, concern was expressed that the amount of hydroelectric power from the dam would exceed the requirement of any foreseeable market.⁷ However, the criticism soon faded. Before the first two generating units were completed in 1938, the demand for additional hydroelectric power was apparent.⁸ By the time the dam was completed in 1943 its power generating capacity had been increased five-fold, to the maximum of ten units, and even so was insufficient to meet the mounting requirements of the Pacific Northwest.⁹

Hydropower became a mainstay of industrial development and a rising standard of living in the Pacific Northwest. The very availability of low cost electricity from dam projects on the Columbia system attracted users. Inexpensive energy encouraged industrialization in the region, including energy intensive aluminum plants along the river and aircraft factories in Seattle and other cities in Washington.¹⁰ Residential usage of electricity in the Pacific Northwest, on a per capita basis, increased to twice the national average.¹¹ Demand grew exponentially, and future economic development of the Pacific Northwest region came to be considered dependent upon the continuing, and increasing, availability of low-cost electricity generated from dams on the Columbia River system.¹²

Development of the Columbia River system, following construction of the Bonneville Lock and Dam by the Corps of Engineers, progressed

with remarkable rapidity. Within a period of about twenty-five years, there were six Federal and five non-Federal dams erected on the Columbia River main stem, another approximately twenty-two dams were constructed on major tributaries, and some fifty dam projects placed on headwater tributaries.¹³ Federal projects on the Upper Columbia include the Grand Coulee Dam, erected by the Bureau of Reclamation, and the Chief Joseph Dam, a Corps project, both of which provide power, flood control and irrigation.¹⁴ Five projects on the middle reach--Priest Rapids, Wanapum, Rock Island, Rocky Reach, and Wells Dam--are among the largest non-Federal hydroelectric facilities in the United States.¹⁵ On the lower Columbia, the Bonneville, The Dalles, John Day, and McNary dams built by the Corps of Engineers were designed, inter alia, for flood control, navigation, and hydropower.¹⁶

Commercial navigation also became an increasingly important function of the Columbia River. Locks and reservoirs associated with the four lower Corps projects combined to provide a 324 mile slack-water navigable channel up the Columbia to the Kennewick-Pasco-Richland area of eastern Washington, near the confluence of the Columbia and the Snake rivers.¹⁷ Additionally, Corps of Engineers projects constructed on the Snake River--locks at the Ice Harbor, Lower Monumental, Little Goose, and Lower Granite dams--allow barges traveling the Columbia to turn and continue upstream on that major tributary for a further distance of 139 miles, to Lewiston, Idaho.¹⁸

The Bonneville Dam lock, the first constructed, was 76 feet wide by 500 feet long.¹⁹ All of the subsequently constructed locks on the

Columbia-Snake system are 86 feet wide by 675 feet long.²⁰ As a consequence, barge tows grouped for passage through locks of the upstream sizes had to be broken into smaller units to pass through the Bonneville lock and thereafter reassembled for upstream passage.²¹ This situation resulted in a desire by navigational interests, and an investigation of need by the Corps of Engineers, for the construction of a new, larger navigational lock at the Bonneville Dam.²²

THE COLUMBIA RIVER TREATY

On January 17, 1961, President Dwight Eisenhower and Prime Minister John G. Diefenbaker signed the Columbia River Treaty, at Washington, D.C.²³ Before the treaty was signed, dams on the Columbia River had been built only in the United States.²⁴ Under terms of the treaty, Canada was to build three dams in British Columbia. These dams are the Mica and Keenleyside on the main stem of the Columbia, and the Duncan Dam on the Kootenay.²⁵ The treaty also allowed the United States to construct a fourth dam, the Libby on the Kootenai River in Montana, and to back water forty-two miles into Canada.²⁶ The treaty dams would more than double the amount of water that could be stored to regulate flows on the main stem of the Columbia River, enabling water formerly flowing unchecked to the Pacific to be held back to control floods and released as needed to produce power at dams downstream in the United States.²⁷

The United States derives two major benefits from the treaty. One is a large block of low-cost hydroelectric power. The other is flood control, an ending to the danger of serious flooding on the

Columbia and Kootenai rivers.²⁸ In return, Canada was to receive payment from the United States, calculated at \$64.4 million, equal to one-half of the economic value of the flood control benefits inuring to the United States.²⁹ Additionally, the treaty provided that Canada would receive one-half of the increased dependable electricity that could be produced at specified dams within the United States, including the Bonneville Dam.³⁰

The United States ratified the Treaty on March 16, 1961.³¹ Canada, however, delayed ratification pending decision on disposition of the Canadian entitlement. The Treaty provided that Canada's share of the power would be delivered to her international border, but permitted Canada, if it so desired and the United States agreed, to sell its share in the United States.³² Canada decided to sell its entitlement, and entered into a new round of negotiations with the United States. On January 22, 1964, notes were exchanged between the two countries, agreeing that the United States would use its best efforts to arrange a sale of Canada's share of the treaty power for thirty years to a single purchaser in the United States for 254.4 million U.S. dollars.³³ The Canadian Parliament approved ratification in June, 1964, subject to consummation of a sale and payment of the purchase price.³⁴ The Canadian entitlement for the initial period of thirty years following the completion of each treaty project was sold to the Columbia Storage Power Exchange, a non-profit corporation formed for purpose of the purchase, and simultaneously resold to forty-one participating public and private utilities through an exchange agreement with the Bonneville Power Administration.³⁵ The

total price was \$253,930,000 in U.S. dollars, paid in a lump sum on September 16, 1964, thus consummating Canadian ratification of the treaty.³⁶

SECOND POWERHOUSE SITE SELECTION

The Bonneville Second Powerhouse was a direct consequence of the Columbia River Treaty.³⁷ Without the additional water storage capacity to be provided by the treaty dams there was insufficient usable stream flow to justify the installation of additional generating facilities at Bonneville.³⁸ With the advent of the treaty, however, a situation was presented where controllable flows would soon greatly exceed generator capacity. Under this situation, construction of a second powerhouse was seen as essential to avoid the loss of increased available firm and secondary energy.³⁹ Moreover, failure to provide additional generating facilities would result in an inability to realize increased, dependable electricity benefits which had been included in the treaty entitlement payment made to Canada.⁴⁰

On September 22, 1964, only six days after Canadian ratification of the Columbia River Treaty, the Bonneville Power Administration wrote to the North Pacific Division, Corps of Engineers, expressing support for the development of a second powerhouse at Bonneville.⁴¹ Equally expeditiously, by letter dated September 24, 1964, the Division wrote to the Office, Chief of Engineers, requesting the early funding of studies relating to a second powerhouse.⁴²

Authorization for construction of the Second Powerhouse was found in the Bonneville Project Act of 1937.⁴³ On December 3, 1964, E.

Manning Seltzer, General Counsel for the Corps of Engineers, advised the Chief of Engineers and indirectly the Administrator, BPA, that the "language in Sections 1 and 2(a) of the Bonneville Project Act is sufficient legislative authorization for construction of the additional power facilities at the project", subject to request by the Administrator of the Bonneville Power Administration and further subject to the requirement that "additional appropriation by Congress be obtained for such purpose".⁴⁴ The language contained in the two cited sections of this 1937 Act deemed controlling by the Corps' General Counsel was set forth in the opinion as follows:⁴⁵

a. "The Secretary of the Army 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." (16 U.S.C. 832).

b. "The Secretary of the Army 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." (16 U.S.C. 832a).

On January 18, 1965, Major General Jackson Graham, Director of Civil Works, OCE, wrote to the Division Engineer, NPD, advising that upon receipt of a letter request from the Administrator, BPA, the Division should prepare a plan for the conduct of studies for a second powerhouse. The General further advised, however, that actual planning would have to await appropriations by the Congress. Concerning the appropriations process, General Graham stated that "it is impractical to consider the inclusion of initial funds for this purpose in the FY 1966 budget", but that, "Consideration will be given

to the inclusion of a request for advance engineering and design funds in the Chief of Engineers' budget recommendations for FY 1967 to initiate such studies based on the scheduled timing for bringing the power on line in accordance with BPA schedules."⁴⁶

On January 21, 1965, Charles W. Kinney, Acting Administrator, Bonneville Power Administration, wrote to the Division Engineer, North Pacific Division, requesting "that the Corps of Engineers proceed immediately with the necessary plans and studies to enable the most rapid construction of a second powerhouse at Bonneville dam." The letter observed that "completion of the Treaty negotiations with subsequent development of the three Canadian storage projects and Libby will appreciably increase the low water stream flows on the Columbia River"; that these "increased flows will exceed the turbine capacity at the present Bonneville project"; and that without the addition of a second powerhouse at Bonneville "considerable amounts of firm and secondary energy will be wasted." The request was made "pursuant to the authority set forth in sections 1 and 2(a) of the Bonneville Project Act."⁴⁷

Again on February 2, 1965, the Acting Administrator, BPA, wrote to the North Pacific Division. This letter expressed concern that "funds have not been made available to the Corps for planning development of the Second Powerhouse," and stressed, "Any delay in completion of this project will cause considerable energy losses and require development of some alternative source of power to meet Pacific Northwest firm loads." The letter continued,⁴⁸

We should again like to emphasize that the installation of the additional Bonneville units be made as soon as possible

after completion of the Canadian Treaty storage. Present schedules provide that the Treaty storage projects and your Libby project will be completed by the operating year 1973-74. You indicated that the earliest possible time the Second Powerplant at Bonneville could be completed would be about 1975 even with planning money being made available in Fiscal Year 1965. Any delay beyond 1975 will increase firm and secondary energy losses.

Funds for design and location studies for the second powerhouse were made available by the Congress beginning with appropriations for Fiscal Year 1967.⁴⁹ These studies, conducted by the Portland District, Corps of Engineers, considered a large number of alternate sites, and evaluated eleven in detail. Of locations closely studied eight were on the Washington shore of the Columbia, two were situated in Oregon, and one was near the center of the river on Bradford Island. The studies analyzed two types of powerhouses, with varying installations of four, six, eight, ten and twelve generating units.⁵⁰

Study results were reported by the Portland District to the Office, Chief of Engineers, in Design Memorandum No. 2, Second Powerhouse Site Selection and Hydropower Capacity, dated September 1, 1971.⁵¹ The Portland District recommended a powerhouse consisting of eight generators with a hydroelectric capacity of 540 megawatts, which would roughly double the generating capacity at the Bonneville Dam.⁵² The site recommended was coextensive with the town of North Bonneville, on the Washington shore, and would necessitate the acquisition and removal of substantially all of the residences, businesses, municipal facilities, and utilities in the town.⁵³

Site selection was based on engineering considerations only, with little regard to any social costs that might be experienced by the community of North Bonneville.⁵⁴ Essentially this location on the

Washington shore was selected for two reasons. One, it offered maximum power production commensurate with recognized environmental constraints, at the lowest over-all cost per unit.⁵⁵ Two, the Corps did not want to place the Second Powerhouse on the Oregon shore, because to do so would preempt one of the most feasible sites for an enlarged navigational lock at Bonneville.⁵⁶

The thinking of the Corps of Engineers in selecting the land area occupied by North Bonneville as the location for the second powerhouse is explained by Homer B. Willis, who at the time was Chief of the Engineering Division, Directorate of Civil Works, OCE, as follows:⁵⁷

I think you have to look to the whole framework for North Bonneville. First, of course, the additional powerhouse at North Bonneville came about--the need for it came about--as a result of a treaty with Canada back in 1964. Under that treaty, Canada was required to build three reservoirs in British Columbia. The United States was entitled to build one reservoir on the Kootenai River in Montana, a tributary of the Columbia, that would back water across the line into Canada.

In return for the benefits provided in the United States by the reservoirs in Canada, Canada received a fairly substantial payment, a lump sum payment for the flood control storage provided. Canada was entitled to receive one-half of the additional power made possible at power plants along the Columbia in the United States by reason of this additional storage, delivered to the Canadian border.

Well, right off the bat, after signing the treaty, Canada sold that power entitlement for the next thirty years to a Pacific Northwest power combine for some 254 million dollars, and proceeded to build the projects in Canada.

At the time the North Bonneville project was authorized those projects were under construction. And when we were involved in planning the relocation of North Bonneville, two of the projects, Arrow and Duncan, were already constructed, and the third major stage project, Mica on the Columbia itself, as well underway. It was quite evident that the Canadian storage benefits were going to be available soon. We already had a start on a number of additional powerplants being built on the Columbia in the United States, both by the Federal interests and by the local, other owners of power

installations on the Columbia. We were in the situation that if we didn't get a powerhouse built and in operation at Bonneville within a certain time we were going to be losing benefits, benefits that had already been paid for by the purchase of the Canadian entitlement.

So there was a real economic stimulus to go ahead and build the second powerhouse at Bonneville. The economic stimulus was such that it really couldn't be ignored when it came to trying to figure out how you could get the project underway within the planned time.

So the fact that we had selected the site involving the village of North Bonneville--the site of the new powerhouse--that was determined primarily and almost exclusively on engineering considerations. It was determined that by the need to provide for future modernization of the navigation lock so that you would not preempt improvement of the lock for navigation there. Also, at that time it appeared that that location, all things considered, was the best one from a total engineering standpoint, although we did know that we were going to be building the powerhouse in an old slide mass, a pre-historic slide mass there at the site. We had the situation that the site for this large public works development, which ultimately cost a half billion dollars or thereabouts, was determined pretty much by engineering considerations without considering the politics and sociological or other concerns that later became important in the relocation of North Bonneville.

ENDNOTES

¹Evergreen State College Urban Planning Group, North Bonneville Relocation Planning Study (Olympia, WA: Evergreen State College, 1973) Introduction. "Ninety to ninety-five percent of the existing town is located in the area where the second powerhouse is proposed to be constructed." Evergreen College Planning Group, Planning Study, Introduction.

²William F. Willingham, Army Engineers and the Development of Oregon: A History of the Portland District, U.S. Army Corps of Engineers (Washington: GPO, 1979) 95. "Proposed as the first federal dam on the Columbia River in the early 1930's, Bonneville emphasized the Columbia's potential as the greatest hydroelectric power stream in North America. About 40 percent of the nation's potential hydropower lay in the Columbia River system alone." Willingham, Army Engineers, 95.

³I. W. Wilson, People in the Way (Toronto: University of Toronto Press, 1973) 1

⁴Willingham, Army Engineers, 95.

⁵Willingham, Army Engineers, 95.

⁶U.S. Army Corps of Engineers, Bonneville Lock and Dam Project Development Design Memorandum No. 6, Columbia River Basin, Oregon--Washington (Portland, OR: Portland District, 1973) Preface.

⁷"The total cost of the Bonneville project amounted to \$83,239,395. Some had argued that such an investment would be a waste of money. . . . 'Dam of Doubt,' an article in the June 1937 issue of Collier's, was typical of this view. The piece claimed that there is no 'real need for Bonneville,' and that 'there is no market remotely in sight for the power' from Bonneville Dam. The article spoke of the possibility of 'fine concrete monuments scattered up and down the wilderness of the Columbia Gorge, still being paid for by the taxpayers.'" Willingham, Army Engineers, 103.

⁸Willingham, Army Engineers, 101. "Events soon proved the critics incorrect. Power requirements during World War II used all available capacity; indeed occasionally the generators worked above their nameplate capacity. Since the war, the Corps of Engineers and the Bonneville Power Administration have had to construct many generation and transmission facilities to meet the ever-growing demand for power in the Pacific Northwest." Willingham, Army Engineers, 104.

⁹U.S. Army Corps of Engineers, Design Memorandum No. 6, Preface.

¹⁰Gene Tollefson, BPA and the Struggle for Power at Cost (Portland, OR: Bonneville Power Administration, 1987) 148, 161-64,

168-69, 214-18, 222, 256, 258-59, 262, 319-30, 347, 362, 364-65, 374, 403, 405. Development of aluminum products and aircraft manufacturing capacity was accelerated by forewarnings of World War II. Vera Springer, Power and the Pacific Northwest: A History of the Bonneville Power Administration (Portland, OR: Bonneville Power Administration, 1976) 43-48.

¹¹Willingham, Army Engineers, 160.

¹²"Industrial growth has generated an exponential demand for electricity from the date of completion of the Bonneville Dam." Evergreen College Planning Group, Planning Study, Introduction.

¹³Bonneville Power Administration, Columbia River Treaty: Joint United States--Canadian Development of River Resources (Portland, OR: BPA, 1979) 1.

¹⁴The Grand Coulee Dam was authorized by the same Act that authorized the Bonneville Lock and Dam. Rivers and Harbors Act of 1935, Aug. 30, 1935, ch. 831, 49 Stat. 1028, § 2, at 1040. See dissertation, supra, 24. The Chief Joseph Dam was originally known as the Foster Creek dam. Rivers and Harbors Act of 1946, July 24, 1946, Ch. 595, 60 Stat. 634, § 1, at 637.

¹⁵Bonneville Power Administration, Columbia River Treaty, 7-15.

¹⁶Authorization of the Bonneville Dam has been discussed. See dissertation, supra, 23-24. Of these four dams the McNary, originally designated the Umatilla Dam, was authorized second, in 1945. Rivers and Harbors Act of 1945, Mar. 2, 1945, Ch. 19, 59 Stat. 10, § 2, at 22. The Dalles and John Day were authorized at the same time, in 1950. Rivers and Harbors Act of 1950, May 17, 1950, Ch. 188, 64 Stat. 163, § 101, at 167.

¹⁷Pacific Northwest River Basins Commission, Columbia--North Pacific Region Comprehensive Framework Study (Vancouver, WA: PNRBC, 1971) Appendix X, 79-101.

¹⁸Pacific Northwest River Basins Commission, Columbia--North Pacific Region Comprehensive Framework Study, Appendix X, 53-78.

¹⁹U.S. Army Corps of Engineers, Feasibility Study for Modifying Lock, Bonneville Lock and Dam, Oregon and Washington (Portland, OR: Portland District, 1977) Syllabus. At the time of construction the Bonneville lift lock was the largest single-lift lock in the world. Willingham, Army Engineers, 99.

²⁰Willingham, Army Engineers, 224. "Through the years, navigation locks constructed by the Corps of Engineers have been of various sizes. To obtain greater efficiency, the Corps established uniform lock sizes, in the 1940's, for each of the inland waterways of the United States. For the Columbia-Snake River System, the standard

was ultimately established at 86 feet wide and 675 feet long. All locks on the Columbia-Snake River system are of this dimension except Bonneville, which had been constructed before the Columbia-Snake system was established." U.S. Army Corps of Engineers, Feasibility Study for Modifying Lock, Bonneville, 14.

²¹Willingham, Army Engineers, 224.

²²Pacific Northwest River Basins Commission, Columbia--North Pacific Region Comprehensive Framework Study, Appendix X, 29.

²³Bonneville Power Administration, Columbia River Treaty, 26.

²⁴Bonneville Power Administration, Columbia River Treaty, 1.

²⁵"Duncan Dam was completed on July 31, 1967; Keenleyside Dam, October 10, 1968; and Mica Dam, March 29, 1973, all in advance of schedule." Bonneville Power Administration, Columbia River Treaty, 5.

²⁶Bonneville Power Administration, Columbia River Treaty, 1. The river is called the Kootenay in Canada, the Kootenai in the United States.

²⁷Bonneville Power Administration, Columbia River Treaty, 1.

²⁸Bonneville Power Administration, Columbia River Treaty, 1.

²⁹The \$64.4 million required by the Treaty was paid to Canada in three installments. As each of the three projects was completed and began operation for flood control, that portion of the \$64.4 million attributable to its storage became due. Accordingly, \$11,182,000 was paid after Duncan Dam was declared operational on July 31, 1967; \$52,296,000 was paid when Keenleyside Dam was declared operational October 10, 1968; and \$1,200,000 was paid when Mica was declared operational on March 29, 1973. Bonneville Power Administration, Columbia River Treaty, 24.

³⁰Bonneville Power Administration, Columbia River Treaty, 11, 14.

³¹107 Cong. Rec. 4145 (daily ed. Mar. 16, 1961).

³²Bonneville Power Administration, Columbia River Treaty, 11.

³³Bonneville Power Administration, Columbia River Treaty, 27.

³⁴Bonneville Power Administration, Columbia River Treaty, 27.

³⁵Bonneville Power Administration, Columbia River Treaty, 11-12.

³⁶Bonneville Power Administration, Columbia River Treaty, 11.
"The Treaty was proclaimed on September 16, 1964, by President Johnson when he and Prime Minister Pearson met in a ceremony on the

International Boundary at the Peace Arch at Blaine, Washington. At the same time in New York City, bankers handed representatives of the Canadian Government a check in payment for the Canadian entitlement." Springer, Power and the Pacific Northwest, 69.

³⁷Homer B. Willis, personal interview, 18 June 1985.

³⁸R. W. Beck and Associates, Expert Witness Report, Town of North Bonneville vs. U.S., (Seattle: R. W. Beck and Associates, 1984) I-11.

³⁹U.S. Army Corps of Engineers, Bonneville Lock and Dam Design Memorandum No. 4, Second Powerhouse General Design, Columbia River Basin, Oregon--Washington (Portland, OR: Portland District, 1972) 3-1. "The justification for a second powerhouse at Bonneville project results from the economical development of the power potential due to increased flows from the upstream regulation and the peaking releases of upstream projects. Ratification of the treaty with Canada regarding cooperative water resource development of the Columbia Basin and the subsequent development of additional upstream storage capacity will appreciably increase the low water streamflows in the Columbia River. These increased flows will exceed turbine capacity at the present Bonneville project and indicate the necessity for installation of additional generating capacity in order to avoid the loss of increased available firm and secondary energy. Pacific Northwest power demand projections indicate need for early development of the additional power potentially available at Bonneville. . . . The project will perform a two-fold purpose--regulation of peaking releases, and provide needed additional energy and capacity for the Northwest." U.S. Army Corps of Engineers, Design Memorandum No. 4, 3-1. "The increased stream flows exceeded the generating capacity at Bonneville, and unless an additional powerhouse was built, a large amount of potential energy for the expanding Pacific Northwest would be lost." Willingham, Army Engineers, 220.

⁴⁰Homer B. Willis, personal interview, 18 June 1985.

⁴¹See Charles W. Kinney, Acting Administrator, BPA, letter to Gordon C. Fernald, Chief, Engineering Division, NPD, 2 February 1965.

⁴²See Jackson Graham, MG, Director of Civil Works, OCE, letter to Division Engineer, North Pacific, Subject: Studies of Second Powerhouse--Bonneville Lock and Dam, Oregon and Washington, 18 January 1965.

⁴³Bonneville Project Act, Aug. 20, 1937, ch. 720, 50 Stat. 720.

⁴⁴E. Manning Seltzer, General Counsel, OCE, memorandum to Chief, Planning Division, Directorate of Civil Works, OCE, Subject: Power Facilities at Bonneville Dam, 3 December 1964.

⁴⁵Seltzer, memorandum to Chief, Planning Division, Directorate of Civil Works, OCE, 3 December 1964.

⁴⁶Jackson Graham, MG, Director of Civil Works, OCE, letter to Division Engineer, North Pacific, Subject: Studies of Second Powerhouse--Bonneville Lock and Dam, Oregon and Washington, 18 January 1965.

⁴⁷Charles W. Kinney, Acting Administrator, BPA, letter to Division Engineer, North Pacific, 21 January 1965.

⁴⁸Charles W. Kinney, Acting Administrator, BPA, letter to Gordon C. Fernald, Chief, Engineering Division, NPD, 2 February 1965.

⁴⁹"Planning funds for Bonneville Dam and Second Powerhouse were first appropriated for Fiscal Year 1967 in the amount of \$100,000 to perform Site Selection Studies in connection with preparation of Site Selection and General Design Memorandums." U.S. Army Corps of Engineers, Design Memorandum No. 4, 1-3.

⁵⁰U.S. Army Corps of Engineers, Bonneville Dam Design Memorandum No. 2, Second Powerhouse Site Selection and Hydropower Capacity (Portland, OR; Portland District, 1971). "These studies considered 11 sites, two types of powerhouses, comprised of 4, 6, 8, 10 and 12 units. Basis for selection included maximum power production commensurate with proper environmental restraints." U.S. Army Corps of Engineers, Design Memorandum No. 4, 1-3.

⁵¹U.S. Army Corps of Engineers, Design Memorandum No. 2.

⁵²U.S. Army Corps of Engineers, Design Memorandum No. 2, 4-8.

⁵³Evergreen College Planning Group, Planning Study, Introduction.

⁵⁴Homer B. Willis, personal interview, 18 June 1985. "While it was recognized that the relocation of the City would become a major undertaking in the total project, it was deemed that the benefits of this particular site would outweigh the additional costs and time involved in the relocation of the citizens of the City of North Bonneville." Williams and Mocine, Relocation of North Bonneville, Washington, Background Summary for Prospective Planning and Design Contractors (San Francisco: Williams and Mocine, 1974) 1.

⁵⁵U.S. Army Corps of Engineers, Design Memorandum No. 2, 4-1 to 4-7.

⁵⁶U.S. Army Corps of Engineers, Design Memorandum No. 2, 4-1 to 4-7.

⁵⁷Homer B. Willis, personal interview, 18 June 1985.

CHAPTER IV

THE FEDERAL POWER OF EMINENT DOMAIN

The right of a nation, a state, or of those to whom the right has been lawfully delegated to take private property is known as the power of eminent domain. This right is one of the highest powers of government; it is an inherent attribute of sovereignty. The power is founded in the primary duty of government to serve the common need and advance the general welfare. It is justified on the theory that the rights of the individual must yield to the public good. The right can be denied or restricted only by fundamental law. In the absence of such denial or restriction, the power is absolute and without limit. The exercise of the power of eminent domain, generally, is referred to as the condemning of private property, or as an action in condemnation.¹

The Constitution of the United States recognizes but limits the power of eminent domain. Specifically, the Fifth Amendment, in what is referred to as the "Takings Clause," provides that private property may be taken only for public purpose and only upon the payment of just compensation.² Private property, under the federal power of eminent domain, includes the property of a state whether held in a governmental or proprietary capacity.³ Consequently, the United States can condemn the property of a state, as well as the purely private property of individuals, partnerships, corporations, or associations.

Likewise, since cities and towns are creations of the state, the property of a municipality is subject to condemnation by the Federal government.⁴ Indeed, the ownership of property by a municipality, insofar as the federal power of eminent domain is concerned, is the same as the ownership of the state.⁵ Under the constitutional restriction, regardless of ownership or type of property taken, condemnation can be authorized only for a valid public purpose and the taking agency must pay just compensation.⁶

What constitutes a valid public purpose is a matter for legislative determination. Accordingly, federal agencies can take private property for purposes authorized, and only for purposes authorized, by the Congress.⁷ What constitutes just compensation, on the other hand, is a judicial question.⁸ Legislative enactments may increase, but cannot detract from, the basic obligation to pay just compensation. Specifically, when private property is taken by the United States, the Congress can decide to pay more but not less than what is required by the Constitution as construed by the Courts.⁹

Fundamentally, as determined by the United States Supreme Court, just compensation "means the full and perfect equivalent in money of the property taken."¹⁰ Under this principle, the owner is to be put in as good a position pecuniarily as he or she would have occupied if the property had not been taken.¹¹ Notably, however, the measure and elements of compensation when any particular property is taken for public use under the power of eminent domain are not fixed by any hard and fast rule but depend largely on the nature of the right or

interest acquired as well as the injury or benefit to the owner of the property affected.¹²

Generally, in the case of purely private property, as opposed to the property of a state or municipality, or railroad or utility, the measure of just compensation as determined by the Courts is the market value of the property taken.¹³ The market value of property, also commonly referred to as the "fair market value," is defined as the highest price in terms of money that the property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which the property is adapted and for which it is capable of being used. Otherwise stated, market value is defined as the price a property will bring when offered for sale by one who desires but is not required to sell, and is sought by one who desires but is not required to buy, after due consideration of all the elements reasonably affecting value. Under this measure, theoretically, the owner from whom the property is taken is not damaged because he or she can, upon choice, use the money to acquire a similar property at another location.¹⁴

Market or fair market value is not an absolute or exclusive standard or method of valuation. It is a practical standard, merely a tool to assist the courts in determining what is full and just compensation within the purview of the constitutional requirement.¹⁵ Some properties, commonly those held by states and municipalities, utilities or railroads, are not sold in the open market and consequently have no market value that can be readily determined. With respect to these properties, the Courts have developed an

alternative method for determination of just compensation. This alternative standard is commonly referenced as the "substitute facilities rule."¹⁶ The theory supportive of this measurement of just compensation, similar to that requiring the payment of market value for purely private property, is that a state or municipality, or utility or railroad, must be put in as good a condition as it was before the taking. That is, the condemnee must suffer no financial loss.¹⁷

Under the substitute facilities rule, illustratively, when the Federal government takes by eminent domain a highway or street of a state or municipality, the measure of compensation required to be paid is made dependent upon whether or not the continued existence of the highway or street is necessary.¹⁸ If it is necessary for the condemnee to provide a substitute highway or street, then the measure of just compensation is the cost of construction of the necessary substitute facility, whether that be more or less than the value of the highway or street taken.¹⁹ The cost of replacement indemnifies the condemnee for the actual money loss that it occasioned by the condemnation and is the proper measure of damages for the taking. If, on the other hand, no substitute facility is necessary, then no compensation or only nominal compensation is required.²⁰ In this latter situation the Courts reason that the condemnee has suffered no monetary loss because the highway or street taken is unneeded and, consequently, of no value. Indeed, the Courts reason that the condemnee, having been relieved of the burden of maintaining the highway or street taken, is pecuniarily better off as a result of the condemnation.²¹

All that is required, where there is a need for a substitute facility, is that the condemning agency provide a replacement that will serve the condemnee with a utility adequately equal to that of the facility condemned. There is no requirement that the condemning agency provide an ideal or the most desirable replacement.²² Pointedly, the condemning agency is not required to provide what the condemnee wants by way of a substitute facility but only what is required under the circumstances.²³ As explained by the judiciary: "Exact duplication is not essential; the substitute need only be the functional equivalent. The equivalence required is one of utility."²⁴

THE UNIFORM RELOCATION ASSISTANCE ACT

During the 1960's, particularly, attendant to the magnitude of displacements associated with the numerous developmental projects of that decade, the adequacy of the judicially developed market value test for determination of just compensation came under question by the Congress.²⁵ Commonly, it was found that, when private residences, businesses, and farms were acquired under eminent domain, the owners, although paid fair market value, received too little money to enable them to move to other equivalent homes or to acquire similar replacement businesses or farms. Indeed, the developmental activity resulting in the condemnation often created or contributed to a shortage of suitable properties.²⁶ Moreover, it came to be recognized that not only owners are affected by actions in condemnation. Month-to-month tenants, for example, were forced to move but had no compensable property interest.²⁷ Hardships were experienced by persons

of essentially all economic circumstances who were forced to vacate properties they occupied--often on short notice--by governmental agencies that had purchased the property for public projects.²⁸ Most adversely affected were the disadvantaged and elderly, who often simply had no place or no reasonably satisfactory place to go.²⁹ The courts, bound by the doctrine of stare decisis, were locked into position.³⁰ The Congress, upon concluding that the requirement of just compensation had undergone a fundamental change, acted by enacting supplementary legislation.

A number of situation specific legislative initiatives were passed by the Congress of the United States in the attempt to mitigate the adverse impacts on persons affected by the taking of private property. Typical of such legislation was the Housing and Urban Development Act of 1965, which extended relocation benefits to low income families, elderly persons, and handicapped persons displaced by urban renewal.³¹ Another example is the Federal Highway Act of 1968, which contained provisions for replacement housing, moving costs and incidental expenses intended to increase the measure of just compensation and insure the prompt relocation of displaced persons.³² This situational legislative approach, however, while it relieved hardships in particular cases, was soon found to be inadequate. One problem early perceived was that people displaced for one developmental purpose received one measure of just compensation, while people forced to move for another public purpose received a different measure of compensation. This was not always understandable, and certainly was not always fair and equitable.³³

Intent upon relieving perceived hardships, but desiring also to assure equality of treatment, the Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This legislation, commonly referred to as the Uniform Relocation Assistance Act, or simply the Uniform Act, was signed into law by President Richard M. Nixon on January 2, 1971, and became effective on that date.³⁴ The Uniform Act applies to all federal agencies and to all state or local agencies acquiring property under federally assisted programs.³⁵

The most significant requirement of the Uniform Act is that, before any agency can proceed with a developmental project that involves the acquisition of private properties and the consequent displacement of persons occupying the properties, the agency must determine that there is available adequate replacement housing into which the displaced persons can move.³⁶ Adequate replacement housing means dwellings that are decent, safe, and sanitary; that are open to all persons regardless of race, color, religion, sex or national origin; that are located in areas generally not less desirable than the properties acquired in regard to public utilities and to public and commercial facilities; that are reasonably accessible to the places of employment of the persons displaced; that are obtainable at prices or rents within the financial means of the displaced individuals or families; and that are available on the market in sufficient numbers to accommodate all displacees.³⁷

Under the Uniform Act, as before, the acquisition of an interest in real estate by a federal agency, or by a state or local agency

under a federally assisted program, can be accomplished in one of two ways: by agreement between the condemning authority and the owner; or by an action in condemnation. The preferred method of acquisition prior to the Uniform Act, by most if not all agencies, was purchase by negotiation. Prior to the Act, government agencies, as a matter of practice and as a prerequisite to negotiations, made appraisals of the properties to be acquired. During negotiations, however, governmental agencies normally did not inform property owners of the amount of the government appraisal. Generally, effort was made by governmental agencies to negotiate a purchase price that was lower than, or at most equal to, the appraised value.³⁸ Under the Uniform Act, the preference for acquisition by negotiation of a purchase price agreement with the owner is mandated for all agencies. Governmental agencies are required to obtain appraisals of the properties to be acquired. They are also required to allow the property owner to accompany their appraiser during inspection of the property. Moreover, governmental agencies must provide the property owner written notification of and a summary of the basis for the amount of the government appraisal. During negotiations, governmental agencies are required to offer the property owner an amount not less than the full appraisal value.³⁹

Attainment of a property acquisition by negotiation under the Uniform Act, as a consequence, requires that governmental agencies agree to the payment of a price that is equal to or greater than the government appraisal of fair market value. If a negotiated agreement cannot be reached the government can proceed with an action in condemnation. Whether purchase is by agreement or condemnation, a

government agency cannot require the owner to surrender his or her property until he or she has been paid for it.⁴⁰ This means, in the case of condemnation, that the governmental agency must deposit with the Court an amount not less than the appraisal value, withdrawable by the property owner upon application to and approval of the Court.⁴¹

The Uniform Act requires condemning agencies to provide special payments and relocation assistance, inter alios, to eligible individuals, families, and businesses displaced by a federal or federally assisted program or project.⁴² In the case of homeowners, the major benefit is financial assistance in acquiring a replacement home comparable to the home condemned. Most significantly, the Act provided that the displaced owner, if unable to find comparable housing for the amount paid for the condemned property, could receive a supplemental payment of up to \$15,000 to enable him or her to purchase a comparable decent, safe, and sanitary dwelling.⁴³ In the case of renters, the Uniform Act allowed qualified persons a payment of up to but not more than \$4,000, available in one of two forms. The displacee could choose to rent a replacement home and receive the amount necessary to match the difference between the amount of rent that he or she was paying at the condemned location and the amount of rent that he or she was required to pay in order to obtain comparable, decent, safe, and sanitary living quarters in another location, for a period not to exceed four years. Or, if the displaced renter chose to purchase a replacement home, instead of continuing to rent, then the condemning agency was required to pay the first \$2,000 needed for a down payment and to match dollar for dollar, up to another \$2,000, any

amount contributed by the renter toward the down payment on a purchased home.⁴⁴

The Uniform Act provides no supplementary payments to assist the owners of dislocated commercial enterprises with replacement business acquisitions. Rather, the major benefit provided to a business is reimbursement for the reasonable cost of searching for and moving to a replacement site.⁴⁵

By way of relocation assistance, generally, the condemning agencies are required to establish an advisory program to help dislocated homeowners, renters, and businesses obtain information concerning the availability of replacement housing and commercial properties, the benefits provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, and any other federal or state programs that may be available to help those forced to relocate.⁴⁶

THE RELOCATION OF TOWNS

When a whole town is acquired by condemnation, or under threat of condemnation, one of two dispositions must occur: the town can be abandoned and cease to exist, or it can be moved to another location. With respect to these alternatives, the United States has a policy, but no goal. The policy, embedded in the Fifth Amendment, is one of just compensation. Under this policy, condemning agencies of the Federal government are neither obligated nor authorized to relocate a town. Moreover, the Federal government expresses no preference concerning whether a town in this situation should be relocated.

Relocation or disbandment, under standing federal policy, is the choice of the citizens of the town. If the citizens of a municipality so situated choose to relocate, it is the responsibility of the town to select and pay for another townsite. Also, the town must finance and accomplish its own relocation planning. What the condemning federal agency is required to do, and all that it is empowered to do absent specific legislative authorization, is to provide such substitute public facilities as are determined to be necessary in the new town.⁴⁷

The measurement of necessary substitute facilities, and thus of just compensation, works this way. Initially, it must be determined how many citizens of the condemned town can be expected to relocate to the new townsite. Then, the condemning agency of the government is required and authorized to provide replacement facilities sufficient to meet the needs of the number of persons, and only the number of persons, who choose to relocate to the new town. For example, assume that the Federal government acquires an entire town with an original population of 1000 people. Assume further that the town chooses to move and continue existence at a new location but that only 300 persons indicate a decision to move from the old into the new town. In this hypothetical situation, the obligation of the Federal government, and the authority of the condemning agency, is to provide substitute facilities adequate to serve the new population of 300 citizens. With respect to the additional or larger facilities that existed in the old town, that is, the portion of facilities attributable to or originally in place to serve the additional 700

population, either no compensation or only nominal compensation is paid. By providing substitute facilities for the number of persons that elect to move from the old town to the new, the Federal government has met the obligation of providing just compensation to the relocated town.⁴⁸

ENDNOTES

¹29A C.J.S. Eminent Domain §§ 1-4. Fundamental law encompasses those principles, express or implied, that are deemed essential to conserve human liberty, security, equality and happiness, and are not subject to change except in a way calculated to arouse the highest judgment and the most efficient, deliberate, and considered choice. Ballentine's Law Dictionary, 3rd ed., 1969.

²The Takings Clause reads "nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V. The right of eminent domain is an incident of sovereignty and requires no constitutional recognition. This clause imposes a limitation upon use of the power. United States v. Jones, 109 U.S. 513 (1883).

³Nichols' Law of Eminent Domain, ed. Julius L. Sackman, Rev. 3rd ed., 7 vols. (New York: Matthew Bender, 1975) 4A: Section 15.1. "The public property of the states is 'private property' insofar as the federal obligation to make compensation therefore is concerned. It comes within the meaning of 'private property' as set forth in the Fifth Amendment." Nichols' Law 1: Section 2.21.

⁴That property to be condemned is owned by a city, county, or state is no barrier to its condemnation by the United States, and the state's power must yield when in conflict with the constitutional powers of the United States. United States v. 385 Acres of Land in Milwaukee County, Wisconsin, 61 F. Supp. 746 (E.D. Wis. 1945).

⁵Nichols' Law 1: Section 2.211.

⁶United States v. 50 Acres of Land, 469 U.S. 24 (1984).

⁷It is the function of Congress to decide what type of taking is for a public use, and the agency authorized to do the taking may do so to the full extent of its statutory authority. United States ex rel. Tennessee Valley Authority v. Welch, 327 U.S. 546 (1946). The courts have power to determine whether the use for which private property is authorized by the legislature to be taken is in fact a public use. Shoemaker v. United States, 147 U.S. 282 (1893). Also, whether in carrying out the purpose of the Congress an officer of the United States has acted arbitrarily or capriciously is a judicial question. Carmack v. United States, 135 F. 2d 196 (8th Cir. 1943).

⁸"It is universally conceded that the amount of compensation to be paid an owner for the land which has been taken from him by an exercise of the power of eminent domain is a judicial question and cannot be decided by the legislature." Nichols' Law 3: Section 8.9.

⁹Nichols' Law 3: Sections 8.9, 8.10.

¹⁰United States v. Miller, 317 U.S. 369, 373 (1943).

¹¹United States v. Miller, 317 U.S. 369 (1943).

¹²Nichols' Law 3: Section 8.10.

¹³To determine the full monetary equivalent of private property taken for public use, the United States Supreme Court early established the concept of "market value". The owner is entitled to the fair market value of his or her property at the time of taking. This value is normally to be ascertained from what a willing buyer would pay in cash to a willing seller. See, e.g., Almota Farmers Elevator & Warehouse Co. v. United States, 409 U.S. 470 (1973).

¹⁴29A C.J.S. Eminent Domain § 137.

¹⁵29A C.J.S. Eminent Domain § 136.

¹⁶"The 'substitute facilities' doctrine is not an exception carved out of the market value test; it is an alternative method available in public condemnation proceedings." United States v. Certain Property in the Borough of Manhattan, 403 F. 2d 800, 803 (2nd Cir. 1968).

¹⁷29A C.J.S. Eminent Domain §§ 106, 147, 148.

¹⁸"Therefore, because of the special nature of the property involved, when a public street or highway is so taken the measure of just compensation is not, in accordance with the usual rule, the fair market value of the land or improvements taken, but is instead the reasonable cost of furnishing necessary substitute facilities." County of Sarpy, Nebraska v. United States, 386 F. 2d 453, 457 (Ct. Cl. 1967). The rule also applies to other state, county, or municipal properties such as a bridge, a school, a sewage system or a parking lot. Nichols' Law 4A: Section 15.1.

¹⁹United States v. Certain Property in the Borough of Manhattan, 403 F. 2d 800 (2nd Cir. 1968).

²⁰Nichols' Law 4A: Section 15.2. See, e.g., United States v. Certain Lands, 144 F. Supp. 206 (D.N.J. 1956).

²¹Nichols' Law 4A: Section 15.2. "If the Federal Government takes a State road, in connection with a project which is of a scope such as to obviate the need for the road, then the State is relieved of the expense of maintaining the road. Just compensation is therefore nothing, since the State has been relieved of a burden rather than being deprived of a benefit." United States v. Certain Land in the City of Red Bluff, 192 F. Supp. 725, 726 (N.D. Cal. 1961).

²²United States v. Certain Land in the City of Red Bluff, 192 F. Supp. 725 (N.D. Cal. 1961).

²³Nichols' Law 4A: Section 15.2. "The test is not what the State wants to build; not what the property owners want for their properties; and not what is the desirable thing to do. . . . The question is, what is the reasonable thing to do under all the circumstances." United States v. Alderson, 53 F. Supp. 528, 530 (S.D. W.V. 1944). "For the rule compels compensation only when the facts of the individual case show that substitute facilities are reasonably 'necessary.' Lacking such a showing, compensation will be denied." County of Sharpy, Nebraska v. United States, 386 F.2d 453, 457-58 (Ct. Cl. 1967).

²⁴United States v. Certain Property in the Borough of Manhattan, 403 F.2d 800, 804 (2nd Cir. 1968).

²⁵Floyd Wise, Administering the Uniform Relocation Assistance Program (Inglewood, CA: The International Right-of-Way Association, 1980) 1.

²⁶See, e.g., Nichols' Law 3: Section 8.10.

²⁷Wise, Uniform Relocation Assistance Program, 1.

²⁸Wise, Uniform Relocation Assistance Program, 1. See also Nichols' Law 3: Section 8.10.

²⁹See, e.g., Nichols' Law 3: Section 8.10.

³⁰The phrase expressing this doctrine means "to stand by the decisions and not to disturb settled points." Ballentine's Law Dictionary, 3rd ed., 1969.

³¹Housing and Urban Development Act of 1965, Public Law 89-117; 79 Stat. 451.

³²Federal-Aid Highway Act of 1968, Public Law 90-495; 82 Stat. 815.

³³Nichols' Law 3: Section 8:10.

³⁴Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979, Public Law 91-646; 84 Stat. 1844.

³⁵Uniform Act §§ 207, 208.

³⁶Uniform Act §§ 206, 210.

³⁷Uniform Act § 205. See Wise, Uniform Relocation Assistance Program, 5.

³⁸Ernest E. Swanson, personal interview, 20 March 1989.

³⁹Uniform Act § 301.

⁴⁰Uniform Act § 301.

⁴¹Nichols' Law 1: Section 1.13.

⁴²Farm operations and nonprofit organizations are also eligible for specified dislocation payments. Uniform Act § 202.

⁴³Uniform Act § 203.

⁴⁴Uniform Act § 204.

⁴⁵Uniform Act § 202.

⁴⁶Uniform Act § 205.

⁴⁷See United States v. New Woodville, Oklahoma, 152 F. 2d 735 (10th Cir. 1946). See also Comptroller General of the United States, Report to the Congress: Need to Improve Procedures for Compensating Municipalities for Relocation of Facilities Necessitated by Construction of Water Resources Projects, Corps of Engineers (Civil Works Functions), Department of the Army, (B-1060628, 27 February 1968) 3-6.

⁴⁸See Engineer Federal Acquisition Regulation Supplement, Part 6, Reestablishment of Towns, 1 October 1984.

CHAPTER V

RELOCATION EFFORTS UNDER THE SUBSTITUTE FACILITIES RULE

Once it was decided to place the new powerhouse on the land area encompassed by North Bonneville, the nature and scope of necessary acquisitions was established. As earlier described, the town included privately owned lots with houses, duplexes and apartment buildings, and commercial and industrial structures. Passing through the town were sections of Highway 14 owned by the State of Washington and tracks of the Burlington Northern Railroad. Property of the town included streets, municipal water and storm systems, a small park, and three municipal buildings identifiable as a maintenance and tool shed, a pump house, and a combined City Hall/Fire Station.¹

Corps officials should have known what authority existed to allow acquisition of the properties within the town, including what the Corps could and could not provide by way of just compensation. With one exception, the authorities available to the Corps of Engineers and the limitations thereof were identical to those applicable to Federal agencies generally. Fundamentally, the Corps was empowered to condemn the properties within the town under the Federal right of eminent domain. Construction of the second powerhouse was found to have been authorized by the Congress, and therefore to constitute a public purpose within the contemplation of the Fifth Amendment. Just compensation, as construed by the Courts,

would require the payment of fair market value for purely private property acquired. Moreover, supplementary compensation to home owners and renters and benefits to businesses were authorized by the Uniform Relocation Assistance and Real Property Acquisition Policies Act. In the cases of State Highway 14 and the tracks of the Burlington Northern Railroad the requirement of just compensation would mandate that the Corps of Engineers provide substitute facilities for those sections taken. Similarly, for facilities owned by and acquired from the town, if the town chose to relocate, the Corps would be required to provide substitute facilities as necessary to serve the number of residents intent upon relocating to a reestablished municipality.² The indicated exception, the one compensation authority available to the Corps exclusively, concerned the replacement of municipal facilities. Specifically, section 111 of the Rivers and Harbors Act of 1958 provided that the Chief of Engineers may, in connection with navigation, flood control, or water development projects, protect, alter, reconstruct, relocate or replace any structure or facility owned by an agency of government (state, county, city or town or any legally created subdivision thereof) and utilized in the performance of a government function.³

Historically, in connection with water resources development projects such as the Bonneville Second Powerhouse, the Corps of Engineers has acquired a number of whole towns. More accurately, on numerous occasions the Corps has acquired all of the public and private properties within a municipality. Some towns have chosen to relocate; others have disbanded. Prior to 1968, in dealing with and

assisting those towns that chose to relocate, it was the policy of the Corps to apply the substitute facilities rule liberally. Specifically, it was the practice of the Corps to provide replacement facilities adequate to serve the number of people who indicated a desire to move from an original town to a replacement town plus an allowance "for such factors as future expansion and latitude in lot selection."⁴ This policy, while more costly than a literal application of the Federal obligation, apparently worked reasonably well. Nonetheless, approximately three years before the decision to acquire North Bonneville, this Corps policy was subjected to severe criticism by the Comptroller General of the United States. In a report to the Congress, dated February 27, 1968, the Comptroller General concluded that the Corps had acted illegally. Pointedly, this report states that "the Corps' practice of compensating municipalities for facilities to serve an area in excess of demonstrated needs constitutes a payment for indirect and speculative damages, which is prohibited by law."⁵ The Comptroller General concluded,⁶

We therefore recommend that the Secretary of the Army direct the Chief of Engineers to issue instructions to require that, when replacement facilities are necessary to serve eligible residents, no payment be made for facilities beyond those necessary to serve only those individuals who have indicated their intent to move to the relocation area.

The Corps of Engineers has a published regulation, existent prior to and throughout the North Bonneville experience, which sets forth and explains the Corps' authorities and policies relating to the acquisition and reestablishment of towns. This Engineer Regulation, for many years designated ER 1180-1-1, or Engineer Contracting Instructions (ECI), is currently denominated the Engineer Federal

Acquisition Regulation Supplement (EFARS). It expressly states, "There is no authority in the Secretary of the Army (by way of Federal legislation or Federal Court decisions) to pay the cost of physically relocating a town."⁷ The regulation provides that, in the event the governing body of a town and its citizens decide that a new town will in fact be established in lieu of the old town, then the government can participate in financing the cost of comparable streets and utilities in the new town, but only to the extent necessary to accommodate the exact number of persons who indicate a desire to relocate from the old town into the new town.⁸ Continuing, this Corps regulation declares that "the town must formulate plans of its own to relocate the town to a new site", and that the "responsibilities for the selection of a new town site and the acquisition thereof rests entirely with the town."⁹

Upon deciding that the powerhouse would be located on the site occupied by North Bonneville, knowing that it would be necessary to acquire the entire town, the Corps of Engineers should have met with the Town fully prepared to explain all of the implications of the situation. The Corps should have been able to explain to the Town in detail the concept of eminent domain, the requirements of just compensation, and the authority and limitations of the substitute facilities rule. Otherwise stated, the Corps should have been prepared to explain to the town very succinctly the Federal obligation, and what the Corps could and could not do for the town. However, this is not what happened. As will be delineated, the Corps of Engineers hesitated, vacillated, and equivocated for the better

part of a year before definitively telling the Town what its authorities and responsibilities were under the concept of just compensation. The result was frustration experienced by both the Town and the Corps, the development of discontent with and distrust of the Corps by the Town, and the initiation of antipathies that were to persist throughout the entire relocation process.

CONTENTMENT TO CONTENTION

On July 26, 1971, the Portland District of the U.S. Army Corps of Engineers published an announcement of a public meeting to be held on August 24 of that year in the Auditorium Building at the Bonneville Dam. The subject of the meeting was to be the Bonneville Dam Second Powerhouse. The stated purpose of the meeting was "to present and discuss the proposed location of a new powerhouse." The announcement explained that a major impact of selection of the proposed site was that it would require the acquisition of approximately ninety-five percent of all properties within the then existing town of North Bonneville.¹⁰ No reference to relocation of the town was contained in the announcement. However, the publication incorporated a "Position Paper" also dated July 26, 1971, that contained drawings on which there appeared the following notation: "Relocate North Bonneville."¹¹

Of course, the Corps was very much aware of the significance of the ultimate location decision to the town of North Bonneville. For this reason, upon arriving at a site selection recommendation, and prior to release of the recommendation to the news media, copies of the public announcement were hand carried by the Portland District to

the Mayor of North Bonneville, Robert J. Holcomb.¹² As Mayor Holcomb recalled, "When the Corps of Engineers announced they had selected the site for the second power house which would destroy North Bonneville, two representatives of the Corps met with me and requested a public meeting with the people to advise them of the relocation law."¹³ According to Corps reports, "Mayor Holcomb had anticipated this decision and stated that he planned to press for relocation rather than disbandment of the town."¹⁴

The people of North Bonneville were neither surprised nor upset by the announcement that their town was apparently to be the site selected for the new powerhouse. The townspeople had known at least as far back as 1967 that the possibility existed that their community would someday be acquired, destroyed and inundated in order to build a second dam.¹⁵ Indeed, apparently most of the town residents were pleased. Mayor Holcomb explained the town's feelings as follows:¹⁶

The news was exciting when the Corps of Engineers announced they had selected and recommended site "C" to build the second powerhouse to the Bonneville Dam. This site will destroy the town of Bonneville. Residents and businesses will have to relocate to a new town site or other communities. However, this possibility has been hanging over our heads for years and it has stifled our economy to the extent that new businesses were reluctant to relocate here, emphasis on building new school houses was in Stevenson or the Carson area; there has not been any new home starts in the past four years. Homes and businesses that were destroyed by fire were not rebuilt. Our present school has been kept in service with the barest maintenance possible, waiting on the decision of the site location of the second powerhouse.

Generally, according to the Portland Oregonian, the people of North Bonneville were "somewhat happy at the prospect" that their community would be moved to make room for the Bonneville Dam's second

powerhouse.¹⁷ Specifically, "Mayor Robert Holcomb said it would give the town an opportunity to have a 'little model community with new buildings and underground utilities.'"¹⁸ Holcomb was referring to reconstruction similar to that of Arlington, Oregon, and its cross-river neighbor, Roosevelt, Washington, which were relocated in the 1960's to make room for the pool behind the John Day Dam.¹⁹ Further, the mayor noted that "if the Corps' plan for Bonneville Dam is accepted, it also would afford residents and businesses the alternative of 'cashing in, and moving elsewhere.'"²⁰

The attitude of expectation and acceptance apparently prevalent in the town is also reflected in the following portion of an article published in the Vancouver Columbian:²¹

"I think there's a 50-50 chance people here will want to relocate the town," Mayor Bob Holcomb said after announcement Monday that the U.S. Army Corps of Engineers recommend that a second Bonneville Dam powerhouse be built on the Washington shore.

Holcomb is one of the approximately 450 residents of this small community that will be affected by the project, and he is for relocating the town.

"I think we have an opportunity here for building something of beauty, a real showplace for Skamania County," said the mayor, a 15-year resident of North Bonneville.

"We have the facilities today, with planners and engineers, to do a beautiful job on planning a new community," he said.

On the evening of August 2, 1971, the Corps held "an informal meeting for the residents of North Bonneville" in the North Bonneville school. "This meeting was to acquaint the townspeople of the impact of the recommended powerhouse site, land acquisition policies of the Corps, information concerning the Uniform Relocation Assistance Act of 1970 (Public Law 91-646), and to generally provide information for their use preliminary to the formal public meeting scheduled for 24

August 1971."²² The general flavor of this meeting, and an early indication of concern by Fort Rains property owners that they would be adversely affected if not included in the relocation, is reflected in the following excerpt from the Vancouver Columbian:²³

No acquisition of property is planned at North Bonneville by Army Engineers for at least a year and one-half, a large crowd was informed at a meeting here Monday night.

The meeting, conducted by Mayor Robert Holcomb and attended by some engineer officers from Portland, provided information on relocation assistance that will be available from the government for property owners here.

All businesses and practically all houses at North Bonneville will be acquired by the government. Tentative plans call for acquisition of only part of the homes in the Ft. Rains area a short distance east of North Bonneville.

Leonard Stein, Chief of the design branch for the Engineers at Portland, explained some of the reasons for construction of the planned new powerhouse on the north bank of the Columbia near North Bonneville.

* * *

Engineers looked at 11 different sites for location of new power units on the Columbia before deciding on North Bonneville, Stein said. But he also stated that the decision of Portland engineers is subject to approval in Washington, D.C.

* * *

Plans for the new powerhouse and navigation lock need to be approved by Congress, according to Stein.

He also said that "well qualified" appraisers would determine proposed prices before negotiations start for sale of property. No one is "forced" to sign a paper, but the engineers' official conceded that in some cases condemnation may be needed for purposes of eminent domain.

Copies of a brochure on relocation assistance and real property acquisition policies, as provided in a Congressional act of 1970, were distributed to persons attending the meeting.

William Ashworth, chief of the Portland district real estate division, said that normally 90 days to one year is allowed for persons to relocate.

The Army Engineers probably will not be given enough money to buy all of the property in one year, so a total of a year and one-half or two years or even longer could be required for relocation.

Ashworth said the 1970 congressional law on relocation makes it possible for the engineers to provide additional money for moving in addition to funds for the purchase of the present property.

* * *

The people moving may be required to meet building code requirements in some new location. Even if there is no such code, they must be able to go to "decent, safe and sanitary residence," Ashworth said.

He added that the engineers will work with residents on their individual relocation problems.

The relocation policies are "complicated", Ashworth stated.

A discussion of proposed home purchases at Fort Rains indicated that only about one-half dozen would be taken, but this is only tentative, the crowd was told.

One woman complained that taking just part of the houses as well as North Bonneville would "practically ruin it for convenience" of the left-over residents at Fort Rains "if the town moves 15 miles away."

On August 3, the day following the meeting with all citizens, Colonel Paul Triem, District Engineer, and other representatives of the Portland District met with the Town Council for a "get acquainted" session.²⁴ Colonel Triem advised the Council that site studies by the Portland District "strongly supported a Washington shore location for the powerhouse," but that "the recommendation of the District was subject to review by higher authority and furthermore, 'new-start' funds would have to be appropriated by the Congress before any actual work or real estate acquisition could be undertaken."²⁵ Concerning the possible time schedule, Leonard Stein, Chief of the Design Branch, Engineering Division, Portland District, advised that "no action could be taken by the Corps of Engineers until project funding is approved by Congress." Stein explained that funding approval "is expected in fiscal year 1972 which ends June 30, 1973."²⁶ Mayor Holcomb and the Town Council members were accepting of this schedule, noting that this appeared to give the town about seventeen months to make plans. They indicated that they would begin by creating a task force of Council

members, business people, and residents "to study possible sites and narrow them down to about three."²⁷

The Corps representatives agreed that the town should make plans, and specifically that it was a good idea to start thinking about possible relocation sites. During this discussion, however, it became apparent that what the town expected from the Corps and what the Corps was able to do for the town were at variance. The Town Council apparently anticipated that the Corps would build their community a "model" new town totally at federal expense. "Colonel Triem assured the council that he personally would do everything possible, within the framework of the law, to assist the townspeople during the foreseeable social stress which would surely accompany the taking of the townsite."²⁸ At the same time, the District Engineer cautioned that there were limitations on the legal authority of the Corps to assist the town.²⁹ During the conversation, according to the Corps,³⁰

The Town Council was informed that if they desired a new town under the existing laws and Corps regulations, the town would be responsible for the acquisition of a new town site and for the planning of a new town. The Corps could supply replacement municipal facilities to provide for those residents who moved out of the old town into the new town.

Judging from subsequent actions by both the Corps and the Town, the Portland District representatives present were apparently quite firm in advising the Mayor and Town Council that the Corps had no authority to pay their new townsite land acquisition costs. By the same measure, it is doubtful that the Portland District people told town officials explicitly that the Corps could not pay for new town planning costs. Likely, the Portland District officials spoke

cautiously concerning limitations upon the Corps' authority to help with new town planning costs, leaving room for possible further investigation. Regardless, it is evident from the later developments that the town representatives continued either to believe or hope that their relocation planning costs would be paid by the Federal Government. The town's impression of what was said by the Corps on the subject, as recalled by Mayor Holcomb, is that "really no commitment from the Corps of Engineers was made to the city officials."³¹

Approximately two weeks later, during a regular session of the North Bonneville Town Council, on August 16, 1971, Mayor Holcomb announced the appointment of a relocation site selection committee "to explore possible town sites". The committee, "consisting of Bud Rhode, Virgil Dusenberry, Harold Cole, Rev. Payton, Joe Storagee, and Lyle Hay as consultant," was requested to evaluate all of the possible sites where the town might relocate and submit its recommendation to the Town Council in October, 1971.³²

Also during August, 1971, an organization of community citizens known as the North Bonneville Life Effort (NOBLE) conducted a "door-to-door and telephone-to-telephone" survey of residents and businesses within the proposed Corps project limits to determine the number of residents and businesses that intended to relocate to a new town.³³ The survey effort contacted 195 households, and 43 businesses. Of the households contacted, 64% (124) indicated they would relocate to a new town; 23% (45) said they did not know, that it depended on the nature and location of the new town; and 13% (26) indicated they

would not relocate. Of the businesses contacted, 28 would relocate, 6 did not know, and 9 would not relocate.³⁴ An analysis of this NOBLE survey by Lyle Hay of All Engineering, performed under contract with the town, concluded,³⁵

It would appear that 64% of the residents and businesses wish to relocate. This results in approximately 131 residential and 28 business units at this time. If those people which are now undecided until more information becomes available decide to relocate, it would increase the residential units to 192 and the business units to 34.

The disparity between what the town expected and what the Corps was able to do for the town became more clearly identifiable during the public meeting on the proposed new powerhouse site location conducted by the Portland District on August 24, 1971. Mayor Holcomb, citing the NOBLE survey, told the District Engineer that a large majority of the community desired relocation to a new townsite. Moreover, the Mayor specified,³⁶

The new town will be modern in design and meet all the environmental, health and ecology requirements. The town will be larger in area to accommodate 700 population by 1980 as predicted by R. W. Beck and Associates in their comprehensive water and sewer plan of Skamania County.

* * *

North Bonneville City Government will request the Corps of Engineers to finance at no additional cost to the town the engineering, legal fees, replacement of city buildings, water system, drainage system, streets, curbs, sidewalks, parks, landscaping, street lights, access roads, ramps and a sewer system. The town will require a loan from the U.S. Government to purchase the land for the new town site.

The attitude and expectation of the town expressed by the mayor during this public meeting are clearly perceivable in the following excerpt from a news article appearing in the Gazette-Times, Corvallis, Oregon.³⁷

The mayor of North Bonneville, Wash., told an Army Corps of Engineers hearing Tuesday that the people of the community favor its inundation by a proposed extension of Bonneville Dam.

The hearing was held at an auditorium at the dam to gather opinions about addition of a second powerhouse to the dam to almost double its electric generating capacity to 1 million kilowatts.

A larger ship channel and lock is included in the Corps proposal.

Mayor Robert Holcomb of North Bonneville said the townspeople favor the project because it would mean a model community for them if the Corps pays the cost for a new townsite and gives residents fair prices for their homes and businesses.

A landowners meeting will be held in North Bonneville before land is bought for the project, district engineer Col. Paul Triem said.

Colonel Triem, as presiding officer, did not respond to Mayor Holcomb's statement during the public meeting, presumably because that is not the nature of the forum. However, earlier that same day the District Engineer had mailed a letter to the mayor which, while insufficient in scope to clarify the agency's overall position, was adequate to express that the Corps was unprepared to provide assistance of the magnitude desired by the town. This letter, presented in response to questions raised by the town during and following the meeting on August 3, provided information to the mayor "to assist you in your preliminary planning" as stated next:³⁸

a. Enclosure No. 1 is a copy of Public Law 85-500 which was requested by the City Attorney.

b. At the present time, we have found no authority which allows us to assist you in planning the new townsite under our relocation laws. Our assistance is limited solely to design work. At this time we would appreciate an estimate of your design and a description of the work involved.

c. Certain assistance may be available to you from other Federal agencies. We have initiated contacts with several of them and will coordinate in an endeavor to help you get whatever assistance is needed where we may be unable to provide direct help. This will include assistance in securing low-cost housing, if it is determined to be needed.

Interestingly, the August 24, 1971, letter from the District Engineer to Mayor Holcomb foreshadows a much later controversy concerning deannexation. Of note is the penultimate paragraph:³⁹

This office has had no experience in relocating incorporated cities in the State of Washington, but the legal method was discussed with Thomas Carlington, Chief Council for Washington State Highway Department, Olympia. He advised us there are several methods of accomplishing a relocation in the State; examples included shoestring annexation wherein the area is annexed before relocation or wherein incorporation of the new site and abandonment of the existing city is accomplished simultaneously accompanied with the transfer of bonded indebtedness.

Upon receipt of Colonel Triem's letter, Mayor Holcomb requested a meeting for September 7, 1971.⁴⁰ The town at this point seems already somewhat frustrated, unable to believe that the Corps of Engineers could take their town and not have authority to provide a replacement. During this meeting town representatives "advised Colonel Triem that the town had no funds for master planning for a new townsite nor funds for the acquisition of real estate."⁴¹ They pointed to that line of the Colonel's letter which read, "At this time we would appreciate an estimate of your design and a description of the work involved," arguing that this constituted a Corps commitment to pay for the engineering services involved.⁴² Apparently also somewhat frustrated with the existing situation, Colonel Triem acknowledged that his letter was not explicit concerning costs, and agreed that the town's interpretation was reasonable; therefore, he authorized payment to the town in the amount of \$2500.00 from second powerhouse planning funds.⁴³ The sum and substance of what happened, as seen by Mayor Holcomb, is this:⁴⁴

On August 24, 1971, I received a letter stating that they had no authority to aid us in planning a new town site under relocation laws. They requested certain engineering work to

be done and a description of the work involved. This entailed another meeting with the Colonel and staff and at that time I advised that they were requesting an engineering report and the city did not have funds for this purpose, and furthermore, if they wanted this information I expected them to pay for an engineer's service to prepare the report. The Colonel interpreted the letter the same as I did and advised his staff to pay for the services. We received \$2500.00 for this report.

Second powerhouse planning funds were used, it should be noted, because the Portland District had no authority to pay for town planning. The reasoning adopted as justification for this expenditure was that "it was determined advisable to enter into a contract for a town-prepared study containing a summary of existing town facilities and the findings of the New Townsite Selection Committee," for use in preparation of the Second Powerhouse General Design Memorandum.⁴⁵ The final result of this authorization is recorded by the Corps:⁴⁶

Purchase order No. DACW57-72-P-0753 was executed with the town on 20 September 1971 in the amount of \$2,500.00. The town, by hired engineering services completed the report and submitted copies to the Corps on 26 December 1971. Information contained in that report is being used by the Corps in the preparation of the Second Powerhouse General Design Memorandum.

The Town, following the September 7 meeting, proceeded actively with intentions to relocate. The Town Council met on September 20 and authorized the Mayor to contract with All Engineering for the preparation of a survey of town facilities.⁴⁷ During this same meeting, the Town Council received the report of the North Bonneville Relocation Site Selection Committee, appointed on August 16 to explore possible town sites. The report stated the premises upon which the Committee thought relocation planning should be based, as follows:⁴⁸

Due to the future expected population increase, a site of at least two hundred (200) acres is necessary.

It should be located at a spot where it will be in a position to take advantage, business wise, of the expected tourist, recreation and business opportunities of the future.

We need an income of our own instead of trying to survive on the payrolls of Stevenson, Carson and Cascade Locks.

We have at this time a unique opportunity to relocate so we may take full advantage of the highway trade, the river traffic, as well as air travel expected in the future as well as the present.

We also want a beautiful city for the residents who are not engaged in some sort of business but would like a safe, comfortable decent place to live.

We would like a good boat basin for small craft, protected not only from the wind but also close enough to the city so it can be protected from vandals as well.

We would like a good beach where people, young and old alike, can enjoy the fine summer swimming available.

We also want city parks with an attraction, such as the wonderful Spring salmon fishing, so that the parks will make money for the city instead of being supported by local taxes and used by tourists for free.

Following these criteria, the Committee recommended that the town be relocated somewhere within the following described limits: "from Greenleaf Lake to Hamilton Island and to include Hamilton Island, from Hamilton Creek east to the north-south portion of Greenleaf Lake, if we can get the railroad tracks moved to the north of Greenleaf Lake."⁴⁹ Selection of a location within this area, the Committee reported, was the only recommendation: "We see no other location that would fill all these requirements of a new city. We really have no second or third choice if we wish to maintain our identity and to become a livable, beautiful, living community."⁵⁰

No map or drawing depicting the proposed relocation area was provided with the Site Selection Committee Report, presumably unnecessary because the area was well known to members of the Town Council. The area that the report describes, which encompasses approximately 840 acres, is shown in Figure 3.

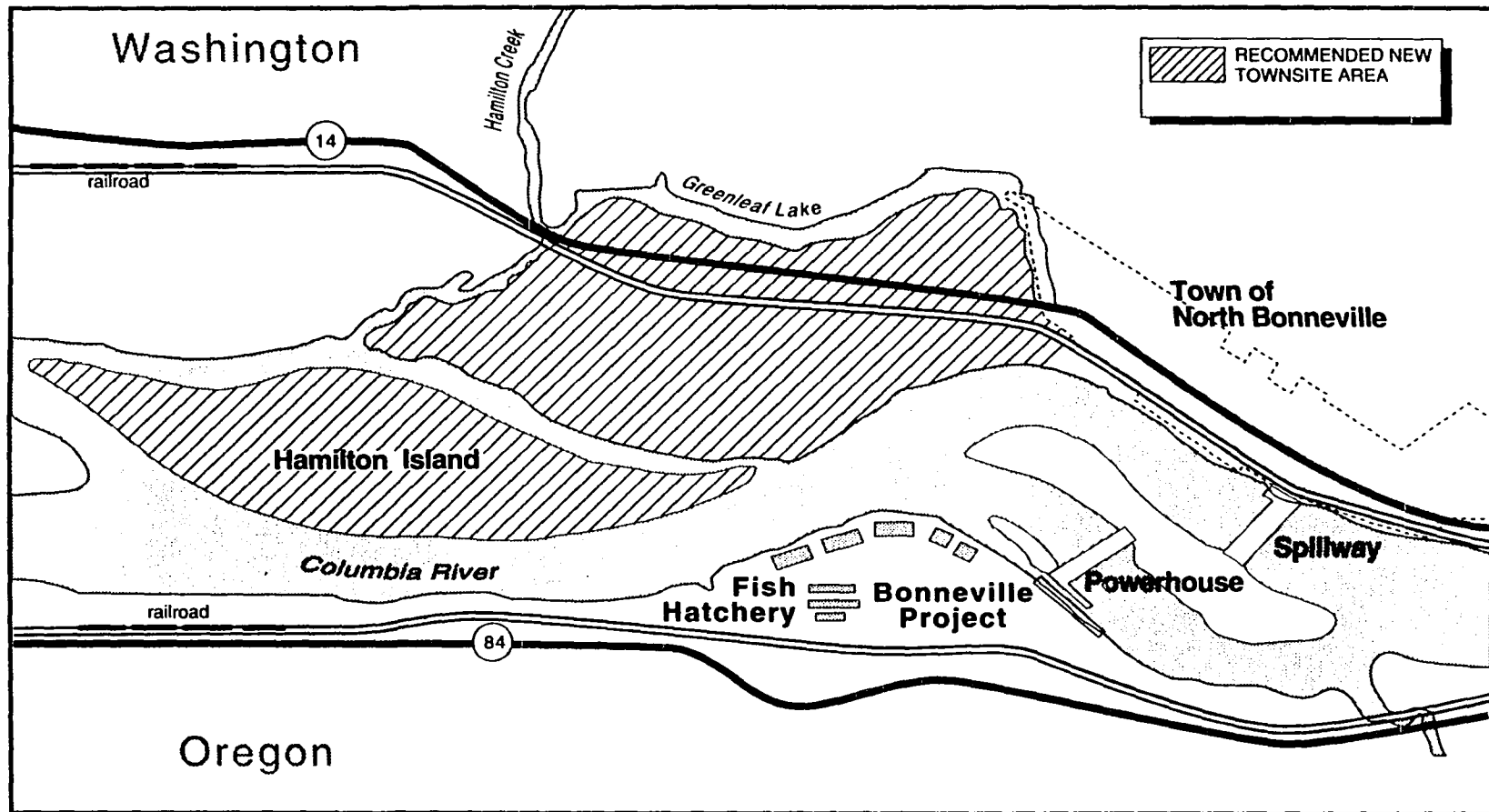


Figure 3. Area from within which the North Bonneville Relocation Site Selection Committee Recommended Selection of a New Townsite. Source: Portland District, U.S. Army Corps of Engineers.

The survey report on town facilities prepared by All Engineering under contract with the Town was furnished to the Town Council in draft form on November 15. As reflected in Council minutes: "Lyle Hay presented a rough draft of the report requested by the Corps of Engineers."⁵¹ The report was adopted by the Council and the final document, entitled Preliminary Engineering Report of Existing Facilities and Relocation, was published on November 22.⁵² Copies were sent to the Portland District on November 29.⁵³ On December 20, 1971, the Town Council authorized payment to All Engineering in the amount of \$2500.00.⁵⁴

The All Engineering report, in addition to providing an inventory of existing municipal facilities, discussed expansion of the town as an incident of relocation. Specifically, the report suggested planning for a larger town than then existed since "it is the opinion of the Town Officials that the population will be 700 to 750 by 1981."⁵⁵ Also, the report raised the likelihood of town growth through annexation, observing,⁵⁶

There has been, and still is, discussion of the so called Brown Tract being annexed to the new town. This area is presently receiving police and fire protection from the Town of North Bonneville.

Whether the Brown Tract annexes to North Bonneville or not, the present residents will have to be relocated for the second power house construction.

Further, the All Engineering report suggested that the town should expect control of, or at least a strong say in, the planning of the relocation. This suggestion is expressed in the report's basic recommendation:⁵⁷

That before commencement of any property acquisition within the town limits, by the Army Corps of Engineers, a master

plan of the new community must be prepared. This master plan must show location, proposed layout, schedule of construction, method of financing and be approved by the Town of North Bonneville.

Another meeting of Town Council members and representatives of the Portland District, arranged at the request of the Town, was held at the District headquarters in Portland on January 10, 1972. The town's purpose for this meeting, according to Mayor Holcomb, was "to get some enlightenment on financial assistance in relocating the town, firm commitment they would pay for engineering and the expected date the town would be moved after they were authorized by Congress to proceed with the second power house."⁵⁸ While the Portland District, in agreeing to pay for the All Engineering report, intended a one-time authorization and nothing more, town officials expected Corps payments for town planning expenses to continue. Presumably the District people present at this meeting tried to explain to the town that the Corps could not pay the town's planning expenses; that the District was able to pay for the one All Engineering study only because the information was considered useful to and would be used in preparation of the design of the second powerhouse. Whether or however this distinction was explained, it was unpersuasive to town officials. Indeed, the town officials apparently believed that all that was needed for the Corps to pay for their planning costs was the approval of the District Engineer. Also during this meeting, as recalled by Mayor Holcomb, the members of the Town Council learned that the Corps "had not contacted any other federal agencies to coordinate any financial aid to us where they could not help, as promised in their letter dated August 24, 1971."⁵⁹ The Town Council had reason to be

upset since Colonel Triem, in the cited letter, had stated that this was done.⁶⁰

c. Certain assistance may be available to you from other Federal agencies. We have initiated contacts with several of them and will coordinate in an endeavor to help you get whatever assistance is needed where we may be unable to provide direct help. This will include assistance in securing low-cost housing, if it is determined to be needed.

Believing that the Corps was being unresponsive, the Town started what was to become a long chain of correspondence complaining to and seeking the intervention of Congressional representatives. On January 12, 1972, Mayor Holcomb wrote letters, each substantially identical in content, to Senators Warren G. Magnuson and Henry M. Jackson, and to Congress member Mike McCormack, all from the State of Washington.⁶¹ The letters summarized the frustration being experienced by town representatives in their efforts to secure a commitment from the Corps of Engineers to finance the relocation of their community, pleading that "We need help and graciously solicit your office to find aid for us to solve this condition which is no fault of ours."⁶² Explaining the local situation, Mayor Holcomb noted, "Skamania County, Washington, is among the areas of the highest unemployment rate in the state. Rebuilding North Bonneville would go a long way in partially alleviating this condition, however, we like any fourth class town in Washington do not have the funds to do any work or purchase a townsite."⁶³ One specific suggestion was that it "would be helpful if the Colonel could be asked to attend all meetings with the town officials regarding relocation of the Town of North Bonneville."⁶⁴ As evidenced by the penultimate paragraph of these letters by Mayor Holcomb, the town was at this point clearly disturbed

with the process, anxious for movement, and critical of the Corps of Engineers:⁶⁵

In summarizing, the situation we are in presently does not build any hope for North Bonneville. There is plenty of money to plan a power plant but not one dime to plan for the people or relocating the existing town. In talks we have had I have the opinion that people are not their problem--the relocation assistance act solves their responsibility as far as they are concerned. I cannot believe people being relocated through no fault of their own for another power plant can be dismissed so lightly. Certainly providing a new town should have been all inclusive in their plan to make way for the power plant construction. People are the greatest assets of America. People's rights and assistance should be the first priority when they are to relocate to another area for another power plant.

Senators Magnuson and Jackson and Representative McCormack each sent a copy of Mayor Holcomb's letter to the Office, Chief of Engineers with a request for consideration by the agency, and information upon which to base a response.⁶⁶ Congress member McCormack specifically noted that "Mayor Holcomb explains that the town needs guidance and financial assistance in connection with this project, and he feels that it would be helpful if the Corps took a more active interest in the meetings and discussions with the town officials."⁶⁷

As is routinely done following the receipt of Congressional correspondence where information necessary to a reply is located in one of the Corps districts, the Office of the Chief of Engineers sent these letters to the Portland District for preparation of draft responses.⁶⁸ Apparently considerable discussion of the relocation situation occurred between the various levels of the Corps. In any event, on February 17, 1972, the District forwarded suggested replies to Senator Magnuson and Representative McCormack through the North Pacific Division to the Office, Chief of Engineers.⁶⁹ Subsequently, on

March 1, 1972, the District furnished a draft response to Senator Jackson.⁷⁰ The suggested replies, presumably substantially identical to the actual responses, explained that the town was "advised that there was no existing authority to provide assistance in their land acquisition" and that "the Corps has not taken a firm lead in contacting other Federal agencies for financial assistance to the town for the purchase of a new townsite" because "We had hesitated to contact other agencies until we could assure them that we have final approval of the site recommended and that the second powerhouse was in the Fiscal Year 1973 budget."⁷¹ The replies noted that,⁷²

To date, final approval of the recommended location for the new powerhouse has not been made. This project is not contained in the President's Budget for either construction or real estate start in Fiscal Year 1973. For these reasons we have been, in a sense, discouraging the town from proceeding too rapidly in order to avoid over-extension of their very limited capabilities and resources.

Notably, Senators Magnuson and Jackson and Representative McCormack were not told positively that the Corps of Engineers had no legal authority to assist in the planning of the town. Rather, the Congressional responses seem to suggest that some further help to the town may be available through continued use of second powerhouse planning funds by inclusion of the following statement:⁷³

We are now studying the desirability of a relocated town master plan, prepared by a competent and experienced architectural-engineering firm, as an aid to our continued planning. The town officials are especially anxious that such a plan be completed at an early date. The scope of that effort and funding ability within our current advance engineering allotments are yet to be determined.

On February 22, 1972, during a Town Council meeting, representatives of the Portland District advised members of the

Council that "the Corps would hire an engineering firm (or do it themselves) for the design and engineering on relocating the town."⁷⁴ Presumably, the District representative assumed this would be both a relief and a satisfaction to the town; however, this was not the reaction obtained. Instead, the Town Council immediately expressed opposition to any selection by the Corps of an architect-engineer. Further, the town objected to design work being accomplished by Corps personnel. Council members expressed clearly that what the community wanted, and all it would accept, was a financial commitment by the Corps to pay for town planning done by the town. Specifically, at this time, the Council members wanted to have their new town planned by All Engineering, as evidenced by the following excerpt from the minutes of this meeting:⁷⁵

Was suggested the Town Council pass resolution opposing the Corps of Engineers doing the preliminary engineering and master planning and request All Engineering do the design and engineering for new town.

Following the Council meeting on February 22, Mayor Holcomb wrote to Colonel Triem expressing the town's opposition to the suggestion that the Corps of Engineers would hire an engineering firm, or do the engineering themselves. This letter, dated February 28, summarizes the then existing community attitude:⁷⁶

In Mr. Basgen's presentation he mentioned the Corps of Engineers would hire an engineering firm or do the engineering themselves for the new town site. This is apparently contrary to my understanding of our meeting at city hall August 3, 1971. At that meeting you were present with Messers. Stein, Donner, Ashworth, and Tubach. It was my understanding then, the city would hire the engineering firm and the Corps of Engineers would pay their fee.

The Town Council and the Mayor negotiated a contract with ALL Engineering as our engineers to relocate the town. This was done through this verbal agreement with your staff at

that time. The town has gone to a great deal of expense in this matter due to poor verbal advice from your staff. Now the questions: Who is responsible for the fees of the present engineering firm? Why is it necessary to change engineering firms now when the arrangements seemed to be satisfactory to your staff when we advised them we had hired the ALL Engineering firm to do the engineering of relocating North Bonneville? We feel they are capable and deserve the job.

On March 23, 1972 Colonel Triem responded to Mayor Holcomb stating that he "would like to clarify the position of the Portland District in regards to the situation at North Bonneville." This letter explained the position of the Corps of Engineers as recounted next:⁷⁷

There are two aspects to the relocation of the town of North Bonneville. One, is the relocation of people, property owners and residents, and the second, is the relocation of town facilities. Whether or not a displaced property owner or resident chooses to relocate in the new town, or somewhere else, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 provides payment for moving and related expenses; supplemental payments for home owners to assist in the purchase and occupancy of a comparable, decent, safe and sanitary house; supplemental payments to tenants to assist in renting a decent, safe and sanitary dwelling; payments of costs of conveying property to the Government; and advisory assistance and help to the individual in his relocations and attendant problems. These new relocations assistance benefits are considered as separate and apart from the payment that the individual receives for just compensation of his real property.

The relocation of the town of North Bonneville is the choice of the town and its citizens and the town must formulate plans of its own to relocate the town to a new site. The selection of a site for the new town and the acquisition of the property is the responsibility of the town and the Corps of Engineers cannot reimburse the town for expenses connected with those activities.

The Corps of Engineers can provide replacement streets and utilities comparable to those in the old town but only to the extent necessary to accommodate the people and businesses who indicate by petition their intention to move from the old town to the new town. If, as you have indicated in our discussions, the town desires to provide space and utilities for expansion beyond the needs of those intending to move to the new town, the costs incidental to that over-building must

be borne by the town. Replacement of necessary city buildings and park facilities is a discretionary authority delegated to the Chief of Engineers. Normally, the Chief of Engineers has accepted the District's recommendations in regard to replacement of these facilities.

The Corps of Engineers is prohibited from providing facilities that do not exist in the old town. Therefore, since the town of North Bonneville does not now have a sewer system, the Portland District cannot provide the town with a sewer system at the new site. . . .

At our meeting you raised the question about the possibility of the District paying some of the expenses of the town incurred as a result of the proposed relocation. As I stated above, site selection and acquisition of a new town site is the responsibility of the town and the Corps cannot reimburse the town for expenses connected with these activities. After the site has been selected and approved the Corps of Engineers will enter into an agreement with the town to provide replacement facilities. We are now planning to hire a competent and experienced architectural-engineering firm to work closely with town officials and develop a re-established town master plan and its relation to other project facilities. This same firm, having wide experience in community planning, would be expected to continue with detail planning and finally would prepare plans and specifications for construction under Government contract.

* * *

I realize from the many discussions that my staff and I have held with you and other officials of the town of North Bonneville that the position that I have taken in this letter regarding the relocation of the town facilities is somewhat more restrictive than you have expected and hoped for. However, it was established after a thorough review of Corps of Engineers' regulations and instructions and study of "A Report to Congress" by the Comptroller General on the relocation of municipal facilities.

The positions outlined to the town by Colonel Triem reflected guidance furnished to the Portland District by the Office of the Chief of Engineers, confirmed by letter dated April 6, 1972, and conditioned, inter alia, as follows:⁷⁸

b. All engineering and design may be accomplished either in-house and/or by contract with an architect-engineer (AE). Any contract with an AE should be between the District Engineer and the AE. Any contact with the town and the AE should be through the Corps.

c. The authority of relocation of the town by the Government is limited to replacement of existing municipal facilities to the extent they are required in the relocated town. The responsibility for the selection of the new town site and the acquisition thereof rests with the town. The Corps has no authority to purchase the land for the relocated town site.

d. In any plans prepared by the Corps, either in-house or AE, there would be no objections to providing a brief description and a drawing or two depicting the master plan for the town development. However, the extent of Corps responsibility would be as outlined in paragraph . . . c., above.

The town refused to accept either the Corps' interpretation of the law or the agency's offer to hire a private firm to do a master plan for the town. Responding to the Corps' letter of March 23, 1972, the Town Council, on April 17, 1972, passed Resolution No. 148, stating these positions. Position No. 1 asserted that any "determination to build a new town without regard to future expansion which could naturally be anticipated is arbitrary and capricious" and that any determination to build a town without provisions for a sewage disposal system "would be contrary to County and State Law." Position No. 2 found the statement that replacement of necessary city buildings and park facilities was discretionary with the Chief of Engineers to be "totally unacceptable," adding that the "town of North Bonneville will not participate in excessive planning for relocation of a town where the very heart of the town depends upon the whim of an administrative officer of the Corps of Engineers." Position No. 3 accepted the position that "the selection of the new town site, the acquisition of the new town property and the planning of the new town are the responsibility of the governing body of the town," but declared that "it is the responsibility of the Corps of Engineers to

provide the finances necessary for the town to obtain the technical assistance necessary to plan the town site," and "to provide the financial vehicle that would enable the town to acquire the land necessary for the new town site." This third position further stated that the Mayor and Town Council "demand that the Corps of Engineers refrain from planning the town site through their offices or through any engineering or consulting firm retained directly by them."⁷⁹

Mincing no words, Resolution No. 148 asserted that the town did not believe that the positions stated by the Corps constituted a correct statement of the law, and requested from the Corps of Engineers a legal opinion from a licensed attorney setting forth verbatim all the law which the Corps contends governs the situation, together with the attorney's opinion interpreting such law and any citations that the attorney might have to substantiate the Corps positions. Finally the resolution concluded with the following declaration: "BE IT YET FURTHER RESOLVED that the Mayor and Council of this town will no longer communicate with the Corps of Engineers in regard to these matters, until the legal opinions requested in each of the matters set out are provided to the town of North Bonneville by the U.S. Army Corps of Engineers."⁸⁰

By letter of April 25, 1972, Mayor Holcomb sent Colonel Triem a copy of Resolution No. 148, which he described as "self-explanatory and in answer to your letter stating the Portland District Corps of Engineers' position." Also by this letter, the town Mayor sent the District Engineer a "statement of costs" for engineering fees requested by All Engineering, which the town was now contending the

Portland District had agreed to pay, as indicated by inclusion of the sentence: "It is hoped the Corps of Engineers pays these charges as per our verbal agreement at a meeting with the Corps in North Bonneville on August 3, 1971."⁸¹ Moreover, the Mayor indicated that "the Town has other expenses against the Government for trips to Portland," for "projected tax loss in the interim of purchasing of homes and the period of relocating the new home in the new town site," and for "loss of utilities revenue and loss of per capita taxes to the town in the interim period." Mayor Holcomb added, "There will also be a cost to the Government for our engineering of the proposed sewer and up-dated water system that is presently in the process of funding." Lastly, the letter asserts that "the town will need help to acquire a loan to purchase the new town site." All of these issues, the letter concluded, "must be resolved before any attempt can be made to relocate the town of North Bonneville."⁸²

On July 12, 1972, Shirley J. Brewers, town clerk, sent the Portland District another statement "for engineering fees . . . performed for the relocation of North Bonneville by ALL Engineering." This letter again suggested that the Corps had agreed to pay these costs, asserting, "It is hoped the Corps of Engineers pays these charges per verbal agreement at the meeting with the Corps in North Bonneville on August 3, 1971."⁸³

Upon receipt of Resolution No. 148, Colonel Triem asked his District Counsel to prepare a legal opinion of the scope requested by the town. In response, a legal opinion was prepared by Michael A. Rea, Assistant District Counsel, and approved by Clifford C. Comisky,

District Counsel. This eight page opinion, dated July 21, 1972, contains extensive statutory citations and references to judicial precedents and addresses in some detail each and every assertion in the town's resolution. Concerning Position No. 1, the opinion states that the reason the Corps proposes to relocate only those streets and utilities necessary to accommodate the exact number of people who propose to move to the new townsite is "that by law this constitutes adequate compensation as per the Fifth Amendment of the Constitution." Further, that this decision cannot be considered arbitrary and capricious since "one can only act in an arbitrary and capricious manner when one has some measure of discretion," and the Corps "cannot, by law, compensate the Town for those streets and utilities which are not necessary to accommodate the portion of the present population intending definitely to relocate in the new community." A fortiori, the Corps "would certainly be acting in an illegal manner by constructing facilities for a population which is presently nonexistent." Addressing Position No. 2, the opinion explains, "Under the provisions of 33 U.S.C. Sec. 303, the Chief of Engineers may in civil works projects, protect, alter, reconstruct, relocate or replace, any structure or facility owned by an agency of the Government (state, county, city or town or any legally created subdivision thereof) and utilized in the performance of a government function. The law does not state that the Chief of Engineers will undertake this action, only that he may do so 'if he deems such action to be in the public interest.' Therefore, the proposition that replacement of city buildings and park facilities is discretionary

with the Chief of Engineers is a true and accurate statement of existing law." On Position No. 3, the opinion concludes,⁸⁴

the Corps cannot legally assume the costs associated with planning under the circumstances set forth by the Town's Resolution. There is no doubt that should the Town retain an architect-engineer firm to plan the new town site they would be solely responsible for paying for those services. It would be illegal for the Corps to assume those costs under the present law. Similarly, it would be illegal under present law for the Corps to assume the responsibility of financing the purchase of lands necessary for a new townsite.

Concerning the issue implicit in this third position--the question of how the Corps could offer to hire a competent and experienced architect-engineer firm to work closely with town officials to develop a re-establishment town master plan, and at the same time maintain that it was legally unable to provide the finances necessary for the town to obtain the technical assistance necessary to plan the townsite--the opinion contains this statement:⁸⁵

In spite of the fact that it would be illegal for the Corps to give the Town funds for procuring planning services and regardless of the fact that planning of the new town site is the responsibility of the Town itself, I would like to point out that it is entirely legal for the Corps to assume some planning functions in this regard. In fact, it will be necessary for the Corps to assume planning responsibilities in connection with replacement facilities. But in addition, it is entirely legal and proper for the Portland District to assist the Town of North Bonneville in planning for a new townsite as long as such planning takes place only in conjunction with project purposes, land utilization and development of resources. This is particularly appropriate when, as in this instance, the relocated town site is likely to be contiguous to the project site.

On August 4, 1972, Colonel Triem responded to the town letters of April 25 and July 12 by providing the Town a copy of the July 21 legal opinion and returning the All Engineering statements with the explanation, "As discussed in our previous meetings and in my letter

of 24 August 1971, I could not find any existing authority under our relocation laws which would permit me to assume the responsibility for your planning costs."⁸⁶

With provision to the Town of the Rea legal opinion, belatedly, dispute concerning what the Corps of Engineers was empowered to do for the Town came to an end.⁸⁷ Finally, after a year dominated by equivocation, the Portland District had stated definitively and documented the legal authorities available to the Corps to assist the Town, including the requirements and limitations of the substitute facilities rule. Exactly why the Corps of Engineers was so hesitant in candidly discussing its authorities and the limitations thereof with the Town is uncertain. Likely, during the first seven months of discussions, between August 1971 and March 1972, the Corps officials in contact with the Town simply did not know what they could and could not do for the Town. This explanation seems incredulous since the law concerning just compensation for the acquisition of municipal facilities was well established and is easily understood.⁸⁸ Further, the Corps of Engineers has a published regulation expressly stating that the Secretary of the Army has no authority to pay the cost of relocating a town, and that a town that chooses to relocate is required to acquire its own relocation site and to accomplish its own relocation planning.⁸⁹ Moreover, North Bonneville was not the first town acquired by the Corps of Engineers, or even by the Portland District.⁹⁰ Nonetheless, no evidence has been found of serious consideration and analysis of Corps authorities prior to preparation of the letter of March 23, 1972, addressed to Mayor Holcomb by Colonel

Triem. This is the letter, quoted previously, in which the District Engineer attempted to clarify the position of Portland District in regards to the situation at North Bonneville.⁹¹ It is in response to this letter that the North Bonneville Town Council passed Resolution No. 148.⁹² As a result of the Council resolution, in turn, the District Engineer asked for and provided to the Town the Rea legal opinion of July 21, 1972.

The apparent reason why the Corps of Engineers waited so long before seriously considering its authority to assist with the relocation of the town is that Portland District officials did not believe that the Town of North Bonneville would in fact ever be relocated.

The original Town of North Bonneville, as detailed earlier, was in exceptionally poor financial condition.⁹³ Indeed, it was "the poorest town in the poorest county in the State of Washington".⁹⁴ How the Corps saw the implications of this with respect to possible relocation is explained by Homer B. Willis, formerly Chief, Engineering Division, Directorate of Civil Works, OCE, as follows:⁹⁵

When we came around to considering what could be done with North Bonneville, we found that some of the usual ways of taking care of relocating a town didn't seem to fit North Bonneville. Normally, the Corps of Engineers would buy out the inhabitants of the town, that is, the local properties, and agree that if the town itself would pick and acquire another site the Corps of Engineers would provide new streets, sidewalks, curbs, gutters, sewer lines and so on to replace the ones in the old town. Now we found out that North Bonneville was a pauper. It couldn't afford to be moved under those circumstances.

Because the town was so lacking in assets and income, the Corps of Engineers had doubts about whether the town could be relocated.⁹⁶

Illustratively, a Corps study dated August 1972 contains the following statement: "North Bonneville . . . town officials indicate they desire to re-establish the town at a new site; whether this desire will prevail . . . is a matter of conjecture at this time."⁹⁷

THE EVERGREEN STATE COLLEGE

The events of the first year of the North Bonneville experience had a profound, alienating effect on the attitude of the Town toward the U.S. Army Corps of Engineers. In late July and early August of 1971, the people of North Bonneville were satisfied with the Corps and welcomed the news that their town would be acquired as a site for the second powerhouse. Indeed, as has been noted, the residents were "somewhat happy at the prospect." Town officials assumed that the Corps of Engineers would build for the community a new town--a "little model community with new buildings and underground utilities."⁹⁸ They expected to be provided "something of beauty, a real showplace for Skamania County."⁹⁹ Clearly, the community anticipated and would have accepted the planning and construction of a reestablished town by the Corps of Engineers. Within only a few months, however, the Town was discontent, distrustful, and demanding that the Corps "refrain from planning the town site through their offices or through any engineering or consulting firm retained directly by them."¹⁰⁰ The Town wanted to control its own planning, to be the "client" of any architect-engineer firm retained. Specifically, the Town wanted to have the new town planned by All Engineering, the firm owned by Lyle Hay.¹⁰¹ What the Town wanted from the Corps of Engineers, and all it

would accept, was a financial commitment to pay for new town planning done by the Town.¹⁰²

Town discontent was perhaps inevitable. The Town, as testified by Mayor Holcomb, wanted a new town modern in design and large enough to accommodate 700 people by 1980. Moreover, the Town expected the Corps of Engineers to finance "the engineering, legal fees, replacement of city buildings, water system, drainage system, streets, curbs, sidewalks, parks, landscaping, street lights, access roads, ramps and a sewer system," all at no cost to the Town.¹⁰³ This expectation was manifestly more than the Corps of Engineers could legally provide. Under applicable law, as belatedly explained to the Town by Colonel Paul Triem, "The Corps of Engineers can provide replacement streets and utilities comparable to those in the old town but only to the extent necessary to accommodate the people and businesses who indicate by petition their intention to move from the old town to the new town."¹⁰⁴ The Corps could not provide space and utilities for expansion beyond the needs of those intending to move to the new town. The Corps was prohibited from providing facilities that did not exist in the old town and, therefore, since the original Town of North Bonneville did not have a sewer system, the Portland District could not provide a new town with a sewer system. Moreover, the Corps had no authority to pay for either new townsite acquisition or the planning of a new town.¹⁰⁵ Arguably, however, the very magnitude of the Town's expectations was fostered by the Corps of Engineers. The Portland District could have acted to mitigate the

Town's expectations by providing an immediate, comprehensive explanation of the law relating to just compensation.

The development of Town distrust of the Corps of Engineers was not inevitable. There is no reason to assume that the Town, early on, would not have been receptive to candid discussions. Town officials, and specifically Mayor Holcomb, expressed very clearly what they wanted. Likely, they would have listened to a definitive explanation of the law relating to just compensation for the acquisition of municipal facilities. The Portland District was able to and did tell the Town Council members during the "get acquainted" meeting on August 3, 1971, that the Town would have to acquire and pay for its own relocation site.¹⁰⁶ This statement was accepted as true and was never disputed. Indeed, in his testimony before the Corps conducted public hearing of August 24, 1971, Mayor Holcomb effectively acknowledged this expense as a town obligation, saying, "The town will require a loan from the U.S. Government to purchase land for the new town site."¹⁰⁷

Two actions by the Corps of Engineers were particularly destructive of Town trust. First, and most specifically, Colonel Triem told the Town by letter to Mayor Holcomb on August 24, 1971, that certain assistance may be available to the Town from other Federal agencies, and stated "We have initiated contacts with several of them and will coordinate in an endeavor to help you get whatever assistance is needed where we may be unable to provide direct help."¹⁰⁸ This statement, the Town learned on January 10, 1972, was not true.¹⁰⁹ Second, and of perhaps more devastating effect, the Portland District

vacillated for months before telling the Town unequivocally what it could and could not do to assist in the planning of a new town. The Corps did tell the Town Council, during the meeting on August 3, 1971, that the town would be responsible for the planning of a new town.¹¹⁰ However, the District representatives present did not state clearly that doing its own planning meant that the town would have to pay for its own planning. Instead, they left the Town believing that the Portland District would search and evaluate applicable authorities to determine whether the Corps could provide funding.¹¹¹ Three weeks later, in the Triem letter to Mayor Holcomb of August 24, the District again hedged, stating, "At the present time, we have found no authority which allows us to assist you in planning the new townsite under our relocation laws. Our assistance is limited solely to design work."¹¹² Still later, during the meeting of September 7, the District Engineer confused the situation by agreeing to provide the town \$2500 to pay for planning work to be done by All Engineering. As noted, this payment was authorized under the rationalization that the information would be useful to second powerhouse planning; however, the authority conjured for the payment was apparently never explained to the Town. What town officials observed, and therefore came to believe, was that all that was needed for the Corps to pay for their planning costs was the approval of the District Engineer.¹¹³ Then, on February 22, 1972, Portland District officials told members of the Town Council that "the Corps would hire an engineering firm (or do it themselves) for the design and engineering on relocating the town."¹¹⁴ This statement, to the Town, was neither understandable nor

acceptable. Council members did not comprehend why the Corps could contract directly with and pay an engineering firm to design the new town but could not provide funds to pay an engineering firm hired by the Town.¹¹⁵ Moreover, the Council members had become inured with the idea of doing their own planning. Pointedly, the Town had been told that it was to be responsible for its own planning, and the Council wanted to have the new town planned by All Engineering.¹¹⁶ Five months later, in the Rea legal opinion, the Corps told the Town Council definitively and documented "that it would be illegal for the Corps to give the Town funds for procuring planning services."¹¹⁷ By this time, however, expectations had turned to demands. Inaccurate and seemingly inconsistent statements, which the Town saw as duplicitous, had generated what was to be a continuing distrust of the U.S. Army Corps of Engineers.

Following receipt of the July 21 legal opinion from the Corps, town officials reportedly considered themselves in "an impossible situation."¹¹⁸ They "were in the position of having the sole responsibility for doing the relocation planning without having the necessary resources."¹¹⁹ As Council members viewed the situation, the Town could either "do the relocation planning by itself without the help of government financial or technical resources or accept the Corps offer to hire a firm to do a master plan with the Corps and its discretionary powers as the client."¹²⁰ Adamant in their desire not to lose control, the town officials decided to "protect their position as client in any relocation planning process or development of a master plan for the building of the new town."¹²¹ It was concluded that "Town

officials would seek the necessary resources through channels other than those controlled by the Army Corps of Engineers."¹²²

Fortuitously, it must have seemed to town officials, the Town of North Bonneville received an offer of planning assistance from a group of urban planning students from The Evergreen State College, in Olympia, Washington. Events leading to contact between the students and the Town, as recalled by faculty sponsor Russell Fox, were these:¹²³

This was the second year of Evergreen academic operation. I was hired to teach an upper level program, or course, in urban planning. . . .

I was teaching what we call a "group contract," which means one faculty and at that time about twenty-five students study together full-time for a year. . . .

The design was to spend full-time the first quarter just doing a lot of background reading in theories of planning, on different avenues of planning, building some skills that planners use . . . with the idea that starting in the second quarter we would look for some applied projects where the students could work in teams on some aspect of planning going on in our local community. . . .

We sent out feelers through a network of planners that I know . . . asking people who know about projects that a group of students, who are mostly seniors, could work on as part of their studies from January to June, 1973. . . .

Among those networks and those contacts . . . was . . . Henry Sharpe who at that time worked for the state O.E.O. office in Olympia. He had been contacted by Henry Stevens. . . .

Stevens was checking different state agencies for potential help for the people of North Bonneville. . . . Henry Sharpe put me in contact with Henry Stevens and Henry Stevens put me in touch with Bob Holcomb, who was at that time still the mayor of North Bonneville.

The gist of it is that through phone and mail correspondence the possibility of a relationship moved ahead.

We developed a set of criteria for the kinds of projects we were looking for. We asked the Town to consider the kind of help they thought they wanted from access to a college and a group of students. Our criteria included that we did not want to do anything for a client based only on campus. We were looking for participating type projects. We weren't interested in doing a literature review.

We went down for a city council meeting. . . .

On January 15, 1973, Fox and several students from The Evergreen State College appeared before the Town Council and "advised of the service they could give the town in relocation efforts."¹²⁴ The students presented a proposed work program, to include a study of the history, population, economy, public facilities, transportation systems, and necessity for relocation of the town. The study plan as developed envisioned three phases: the first phase was directed toward identification of alternatives available to the individual family; the second phase was oriented toward determining the best site for the new town; and the third phase focused upon evaluation of the social impacts and characteristics of the selected site.¹²⁵ All the students asked from the town was an opportunity to participate in an actual planning project and that the community provide food and lodging support when it was necessary for students to work in North Bonneville. This offer of help was welcomed and immediately accepted by the Town Council.¹²⁶

With the advent of the Evergreen State College students, any opportunity that may have existed to develop a working relationship between the Town of North Bonneville and the Corps of Engineers was irretrievably lost. Had the students not arrived, as acknowledged by Russell Fox, it is likely that the Corps would have obtained the "town's full cooperation" in the development of a master plan.¹²⁷ Once on the scene, however, the students wanted to be the planners. Their interest was in being direct participants in the development of a new, ideal town. Any plan developed by the Corps of Engineers or by an architect-engineer firm hired by the Corps would have defeated this

interest. Consequently, although perhaps not consciously, Russell Fox and the Evergreen College students had a vested interest in continuing Town discontent with and distrust of the Corps of Engineers.

An interesting phenomenon, observable in the communications between the Town and the Portland District during the first year of the North Bonneville experience, is that Town officials in their frustration with the Corps began to remember events that never happened. Illustratively, in his letter to Colonel Triem dated April 25, 1972, Mayor Holcomb enclosed a bill for engineering fees incurred by the town for work done by All Engineering, stating, "It is hoped the Corps of Engineers pays these charges per our verbal agreement at a meeting with the Corps in North Bonneville on August 3, 1971."¹²⁸ Unquestionably, the Corps of Engineers never agreed to pay these costs. Indeed, Mayor Holcomb himself, addressing the occurrences of the August 3 meeting in his letters to Senators Magnuson and Jackson and Representative McCormack of January 12, 1972, states that "really no commitment from the Corps of Engineers was made to the city officials."¹²⁹ Similarly, Town officials came to believe that the fact that North Bonneville had not grown and prospered, but had declined in population during the thirty year period since completion of the Bonneville Lock and Dam project, was the fault of the Corps of Engineers. Apparently the belief developed as follows. First, the Evergreen College students, during the course of their study, learned that the authority cited by the Corps for construction of the second powerhouse was the Bonneville Project Act of 1937. Then, misconstruing this fact, the students concluded that the construction

of the second powerhouse and the attendant acquisition of North Bonneville had been foreseeable "for more than 25 years."¹³⁰ This led the students and, in turn, the town officials to believe that the Town of North Bonneville had essentially always been economically encumbered by a "threat" of relocation.¹³¹ The study published by the Evergreen College students expresses this belief as set forth next:¹³²

Just prior to the completion of the Bonneville Dam in 1938 the Congress of the United States approved, August 20, 1937, the Bonneville Project Act. The 1937 Act authorized the construction of a second powerhouse at Bonneville Dam as well as other projects on the Columbia River. Needed was the approval by Congress of the necessary appropriations to develop the plans and implement the program.

Having grown as a boom town at the time Bonneville Dam was constructed, North Bonneville, Washington occupies one of the prime locations for a new powerhouse just north of the existing spillway on the Washington shore. Because of this prime location, conversation almost inevitably included the necessary dispersion or relocation of the town when considering the building of a second powerhouse. An atmosphere of uncertainty and constant rumor has prevailed in North Bonneville for more than 25 years. . . . There can be little question of the fact that the atmosphere of uncertainty has done irreparable harm to the social fabric and economic activity of the existing town.

Incredibly, this belief became so strong that some "remembered" seeing "an artist's conception" of the second powerhouse "exactly where the town sat", published in newspapers back in 1938.¹³³

ESTABLISHMENT OF INTER-AGENCY RELOCATION BOARD

The Portland District continued working on the assumption that the Corps of Engineers would hire a competent and experienced architect-engineer firm to "develop a re-established town master plan" as Colonel Triem said would be done in his letter to Mayor Holcomb of

March 23, 1972.¹³⁴ This work recognized more than just engineering concerns, as evidenced by an internal District memorandum:¹³⁵

The District should . . . contract for a study of the social, cultural, and psychological characteristics of the community and the inhabitants. . . .

North Bonneville . . . like all communities about to be relocated, it and its residents are facing certain difficulties. These difficulties might be divided into those which arise as a result of the process of relocation and those which arise as a result of the community's having been relocated.

In the process of relocating the town and resettling the people, the main problem is likely to be severe stress on the people who live in or work in or identify with the community. Of the "hidden" costs of the project, this is probably one of the most hidden. . . .

The stress is not only hard on the individuals involved but also on the government. Compulsory dislocation is likely to foster resentment even among people who generally favor the idea of resettlement. This resentment is apt to foster anti-government attitudes which make planning for development more difficult and hence increase the possibility of further resentment. The stress thus set up between the people and the agency in charge of the relocation can greatly complicate the work of the agency in that relocation, and also, as a result of antagonisms aroused, in other endeavors. . . .

The new settlement may be unsuccessful to the community socially, economically, or environmentally. Social problems would result if the new community were laid out in such a fashion as to discourage a sense of community and prevent or inhibit the establishment of a community consciousness necessary to maintain the community. Economic problems would result if the community were located or designed such that it is not economically viable. Environmental problems, such as location or design of the community so that it is exposed to the full force of constant winds, could impinge upon the social and economic aspects of the community, resulting in consequences more serious than discomfort or unattractiveness. . . .

Even if the relocation and resettlement is successful in terms of the community as a whole, it may be unsuccessful to individuals or groups within the community. Though the community seems homogeneous when viewed from a distance, it almost certainly is composed of a multitude of groups and agglomerations of persons which will each be affected by the project in slightly different ways. Particular individuals or groups could lose out socially or physically.

Of the many obligations and responsibilities of the Corps of Engineers in this relocation, perhaps the most significant are those which provide a means for the District to have a

pervasive guiding influence on the development of the new community, and hence to alleviate . . . some of the personal and communal difficulties which will arise from the relocation. . . .

On April 4, 1973, representatives of the Portland District met with the Town Council and students from Evergreen College "to discuss a proposed study outline for an A/E study for the relocation of the town of North Bonneville."¹³⁶ The study outline presented by the Corps of Engineers was extensively discussed and, in content, was generally acceptable to the town.¹³⁷ However, town officials, now joined by Russell Fox and Evergreen College students, were still opposed to the Corps planning their town. As the discussion developed, town representatives argued that a good part of the work proposed by the Corps was included in the work of the Evergreen College students, and that there was no need for duplicating what was already done or already being done.¹³⁸ David Hussell, North Bonneville Town Manager, proposed that the Corps of Engineers "instead of hiring another A/E provide the town with money to support the effort going on there."¹³⁹ When this suggestion met with Corps opposition, Hussell offered an alternative approach. He "suggested that a Board made up of Town Officials, State Personnel and the Corps of Engineers be set up to direct the town relocation."¹⁴⁰

On April 5, 1973, the Town Council held a special meeting, with Town Manager David Hussell, former Mayor Robert Holcomb, and Evergreen College students present, "to discuss the meeting with the Corps of Engineers on the previous day."¹⁴¹ At issue was the action proposed by the Corps "when they stated they were going to hire a firm for town site study, etc., which would duplicate study being done by

Evergreen."¹⁴² Addressing this issue, the Town Council "decided to prepare a formal position paper presenting an alternate plan."¹⁴³ As its alternate plan the Council would propose that "a board be set up consisting of representatives from Town, Corps, State, Evergreen College, County Commissioners and Planning Department to direct planning and relocation efforts."¹⁴⁴

Mayor Skala, Town Manager David Hussell, Evergreen College students including Pollard Dickson, and E. M. "Bud" Rhode, Chairman, North Bonneville Relocation Site Selection Committee, met with Don Basgen, Leonard Stein, and Ed Daugherty of the Portland District on April 12, 1973, to discuss the study proposed by the Corps and to present an alternate plan.¹⁴⁵ The town representatives brought to the meeting a letter of the same date, signed by the Mayor and all Council members, and copied, inter alios, to Senators Magnuson and Jackson and Representative McCormack, proposing an inter-disciplinary, inter-agency Relocation Board to be made up of townspeople, state and county people, an Evergreen College member, and a representative from the Corps.¹⁴⁶ Specifically, the Town proposed "that the Corps commit its resources to this committee" and that the "committee would then direct the use of those resources in the relocation of the town."¹⁴⁷ The proposal was outlined and explained in the letter as follows:¹⁴⁸

The Town of North Bonneville appreciates the restrictive political and authoritative position of the Corps with respect to relocation planning. If the main intent of the Corps proposal, April 4, 1973, for planning assistance, was to give notice that there is now the authority available for the Corps to assist the town in undertaking its comprehensive planning effort, North Bonneville is indeed pleased and offers the following alternative proposal for involvement by the Army Corps of Engineers:

1. The Army Corps join with the town of North Bonneville in an inter-disciplinary, inter-agency Relocation Board. Such a Board would include:
 - a. Skamania County - 2 members (Commissioner & Planning Director)
 - b. Town of North Bonneville - 4 members (Mayor, one Councilman, one Planning Commission member, and Town Manager)
 - c. State of Washington - 1 member (PCAA)
 - d. Corps of Engineers - 1 member
 - e. The Evergreen State College - 1 member (Optional)
2. The Relocation Board would coordinate and control planning effort. All meetings of this Board would be open meetings to all the public directly affected by relocation or other generally interested members of the public.
3. All resources available to assist in the resolution of the problems of relocation-resources of the town, the State of Washington, Skamania County, The Evergreen State College, the Corps of Engineers, other governmental units or private interests-would be coordinated by the Relocation Board. Resources could be in form of time and energy, financial commitments, relevant information, professional consultation and advice, etc. If legislative or legal constraints prevent the Corps from contributing directly to the efforts of such a Board, then possibly their funds and resources could be channeled through the State in a contractual agreement between the Corps and the State of Washington.

The letter presented to the Corps of Engineers confirmed that the town had no objection to the content of the Corps' planning proposal: "The town and the Corps are in agreement upon the need for the work program information as outlined by the Corps."¹⁴⁹ Nonetheless, the town was upset that the Corps of Engineers was proceeding, intent upon awarding a contract, under circumstances wherein "North Bonneville was not afforded the opportunity of exposure to the details of the formal contract between the Corps and their selected Architectural-Engineering firm."¹⁵⁰ This was totally unacceptable to the town, as was any form of direct planning of the town controlled by the Corps. As the town explained, "In spite of the good intentions of the content of the Corps' proposal, the procedural implementation places the Corps as client. This position is unacceptable to the town

and is inconsistent with the Corps' own statements of position with respect to the town's responsibility for doing its own planning."¹⁵¹

The reasoning of the town in opposing direct planning by the Corps was further explained in the letter of April 12, 1972:¹⁵²

The direct involvement of the citizens of North Bonneville in the relocation information gathering, generation of site alternatives, selection of site, design programing for the site and the design process for the entire new town is considered essential to any valid comprehensive planning process. The citizens together with the officials of the town must be included in the decision making processes at every stage of development. This type of planning demands understanding of both process and content relating to relocation so that each citizen can exercise reasonable judgment with respect to individual and community options.

Corps representatives present during the April 12 meeting tried to explain, without success, that the Corps could not commit resources to a relocation board of the design proposed. Town planners were insistent, and no conclusion was reached. As reflected in a Portland District record, "After spending the afternoon in discussions, it was finally agreed that the Corps would consider the proposals, discuss them with the Colonel, and reply to the town."¹⁵³

As the next development, Lt. General F. J. Clarke, Chief of Engineers, received a letter dated May 4, 1973, signed by Senators Magnuson and Jackson and Representative McCormack, asserting that "we believe every effort must be made at this time to develop a single relocation plan that will (1) make possible the construction of the Second Powerhouse, and (2) fully satisfy the needs of North Bonneville's citizens. Both objectives are extremely important." The letter concludes,¹⁵⁴

Town officials inform us they hope to establish a Relocation Board comprised of all parties to produce the

relocation plan. This Board would include representatives of the local, county, and state governments as well as Evergreen State College (which is providing consultant services to the town) and the Corps. We understand that on April 12, the Mayor and City Council of North Bonneville wrote to the Portland District Engineer and invited the Corps to participate in the Board.

We are very hopeful that the Corps will accept that invitation and work with the other parties represented on the Board to jointly develop a realistic and satisfactory relocation plan.

Following receipt of the letter by Magnuson, Jackson, and McCormack, Colonel Triem invited Mayor Skala and town representatives to a meeting in his office. During the meeting, held May 25, the District Engineer explained that whether and in what capacity the Corps could participate was dependent upon the charter proposed for the Relocation Advisory Board. If the purpose of the board were to advise the Corps, then the Corps could be an ex-officio member, but the Corps could not be an official member "unless they are chairing the board."¹⁵⁵ If, on the other hand, the purpose of the board were to advise the town, then "the Corps could participate."¹⁵⁶ Colonel Triem was assured that the purpose of the board was to advise the town and not the Corps.¹⁵⁷ Following this discussion, Colonel Triem decided that the Corps would participate. The decision of the District Engineer was published by letter of May 30, 1973, addressed to Mayor Skala, the pertinent paragraph of which reads,¹⁵⁸

As was clarified at the meeting, the relocations board you propose would be an advisory board to the Town Council and would be made up of representatives from a number of State and local bodies and the Corps. On the basis of that clarification I have found that the Corps is not prohibited from participation on such a board. Therefore, we are waiting your invitation to participate on a relocations board whose duties and make-up are as stated at our meeting.

Notably, the Corps of Engineers proposal to develop a town relocation plan was rejected by Town officials, not because of discontent with either scope or content, but because it specified that the work would be done by a professional architect-engineer firm under contract with the Portland District. The content of the Corps plan was acceptable to the Town. Indeed, as stated in the Town's letter to Colonel Triem of April 12, 1973, signed by Mayor Skala and all Council members, "The town and the Corps are in agreement upon the need for the work program information as outlined by the Corps."¹⁵⁹ What Town officials wanted, at this time, was for the work to be paid for by the Corps of Engineers, but done by the students from The Evergreen State College.¹⁶⁰

The effort to establish an inter-agency relocation board was concerned not with planning substance, but with planning control. The officials of the town apparently had no real interest in obtaining input from members that might be appointed to the board, whether representing Skamania County, the State of Washington, or the Corps of Engineers. Instead, what the town officials were looking for was a mechanism through which to gain control of financial resources that they believed could be made available by the Corps of Engineers.¹⁶¹ The board was formed and met on a few occasions. However, it did not provide an avenue for town control of Corps funds. Over time, perhaps expectantly since it had no substantive purpose, the board faded into non-existence. It was never formally disbanded.¹⁶²

The experience with establishment of the inter-agency relocation board was in one respect particularly significant. Specifically, the

events leading to creation of the board provided the first positive demonstration that by contacting members of the Congress the Town could influence the actions of the Corps of Engineers. When the request for participation on the board came only from the Town the Corps declined. Then the Town made its proposal known to Senators Magnuson and Jackson and to Representative McCormack. In turn, these members of the Washington Congressional delegation wrote to the Chief of Engineers. The result was a Corps reversal. Colonel Triem agreed that the Portland District would participate. The effect of this experience is that the credibility and, consequently, the acceptability of Corps positions was adversely impacted. The Town was encouraged to believe that, by the simple act of contacting a member or members of the Congress, Corps decisions could be forcibly rescinded. This belief, as will be seen in subsequent developments, was to be reinforced time and time again with devastating effect.

PROPERTY APPRAISALS AND ACQUISITION

On November 2, 1973, D. H. Nellen, Chief, Real Estate Division, Portland District, mailed a letter to landowners and tenants of North Bonneville announcing that the "initial public meeting for property owners and others who may be affected by the construction of the Bonneville Lock and Dam Second Powerhouse will be held at North Bonneville Elementary School" on November 15, 1973. The topics identified for discussion were project purpose and requirements; land acquisition policies and procedures; appraisal basis, procedures, and schedule; and relocation assistance and benefits under the Uniform

Relocation Assistance and Real Property Acquisition Policies Act to 1970.

Nellen's letter explained,¹⁶³

This meeting is for the purpose of providing information to those who will be directly affected by construction of the Second Powerhouse and is the first step in our program for acquisition of lands for the project. . . . At the present time, it is contemplated that appraisals of individual properties will commence immediately following this initial meeting. Negotiations with individual property owners normally follow completion of appraisals by two to three months.

Town officials immediately objected to the commencement of property appraisals. Their objection was first raised by letter to Colonel Clarence D. Gilkey, District Engineer, Portland District, dated November 8, 1973, in which Mayor Skala noted that the "establishment of an Interagency Relocation Advisory Board has brought new meaning to the word 'cooperation,' and has helped to bridge the communication barrier"; then immediately complained, "We find discussions through the Relocation Advisory Board are not being considered by all department heads at the Portland District Office."¹⁶⁴ The Mayor acknowledged his earlier agreement with Colonel Triem that recommendations of the Relocation Advisory Board were not to be considered binding upon the Corps of Engineers.¹⁶⁵ Nonetheless, the concern expressed was that Nellen did not "check with Lt. Col. Neal Saling regarding Relocation Board proposals, before initiating action that may affect North Bonneville."¹⁶⁶ The clear implication was that appraisals should not be scheduled unless first discussed with, and approved by, the Relocation Advisory Board.

Objection by town officials was again raised at the public meeting for landowners and tenants, held as scheduled on November 15.

During this meeting, which was attended by approximately 300 persons, most of whom were landowners in the North Bonneville area, Corps representatives discussed the procedures that would be followed during the land acquisition process, explaining how real estate appraisals would be made for the project and the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act.¹⁶⁷ The majority of questions during the meeting "were concerned with how comparable safe, decent and sanitary housing was defined and how supplemental payments would be made under the Uniform Relocations Assistance Act."¹⁶⁸ After the meeting was essentially over, however, and most of the residents had departed, the discussion turned to the concerns that town planners had with the scheduling of property appraisals. As Ed Daugherty, an engineer with the Portland District recorded,¹⁶⁹

By this time a good many of the people had left and those that remained were interested primarily in the relocation of the town. There was a group of 10 to 15 students there who were not landowners, but who are doing planning for the town. Most of the questions came from that group. The two main points with which they were concerned were as follows: (1) The town demanded that no real estate actions be taken by the Corps of Engineers until such time as the town had been allowed to complete their planning so that an alternative of relocating to a new townsite could be provided to the landowners. The mayor presented a petition to the Deputy District Engineer which named the Town Council as the bargaining agent for the signers of the petition to determine the methods and procedures by which land would be acquired in the town. Colonel Saling accepted the petition and said he would reserve comment until such time as we had a chance to review it and our legal counsel could issue an opinion.

During the November 15 meeting, Mayor Skala handed the presiding officer, Lt. Col. Saling, "a petition signed by citizens of North Bonneville, Fort Rains, and Brown Tract requesting a re-evaluation of

appraisal schedule now considered by the Army Corps of Engineers."¹⁷⁰ Concurrently, the mayor asserted, "The town of North Bonneville, has in the past, and will continue to reaffirm their position of 'client' in all relocation matters," adding specifically that "North Bonneville will therefore act as agent for those interested citizens, designated by petition, only until such time as those standards of acquisition and policies for negotiation are clearly understood in consideration of all the options."¹⁷¹ The petition, signed by approximately 100 people, reads in material part,¹⁷²

1. To insure fairness and uniformity of appraisals and negotiating procedures for acquisition of private and public property and to further insure that our options as a community are clearly defined, we demand that the Army Corps of Engineers establish with the North Bonneville Town Council and Relocation Planning Program, who we hereby designate as our agent, appropriate market valuation standards and procedures for negotiation.

2. To fulfill an appropriate relocation planning process this community must have the time and resources to clearly define community relocation options as a town, prior to the time we are required to face appraisals of our private property as individuals.

3. Actual appraisals of property should not begin sooner than February 15, 1974.

On November 16, 1973, Saling wrote to Mayor Skala, in response to a telephone conversation with the Mayor on that date and in regard to the petition for delay of appraisals of property in the North Bonneville area until February 15, 1974. This Saling letter asserted that it was the Corps' "intention that all property owners be fully cognizant of our policies and procedures at each step in the land acquisition process" and acknowledged that "in a general meeting such as that held on the 15th of November, all individual questions could not be answered." However, Saling suggested that "the information

provided should aid in the articulation of specific questions." Implicitly denying recognition to the town as bargaining agent for individual landowners, this letter suggested that the Corps would be most appreciative if the Town Council would act as coordinator to identify and bring together for a meeting, as soon as possible, those landowners and residents who had questions with regard to the Corps' appraisal base and techniques that remain after the November 15 landowners meeting. Further, Saling asked that the Town formulate definite questions that need to be answered in order to satisfy the concerns of the landowners and residents.¹⁷³

Saling advised the Mayor, confirming what he had said in the telephone conversation of November 16, that "we cannot halt our appraisals of property in the North Bonneville area until the questions of these individuals are answered." He pointed out that a "number of residents of the town of North Bonneville have expressed a desire to either myself or Don Nellen that they wish early appraisal and purchase of their property." He noted that these landowners have indicated "that they have a firm understanding of all procedures involved." Continuing, Saling advised, "Therefore, it appears that there may be considerable work for us which can be accomplished before the 15th of February. It is mandatory that we pursue our appraisal program vigorously to permit the project to proceed on schedule." Seeking Town cooperation, Saling argued,¹⁷⁴

You should recognize and impress upon your constituents, that appraisals of property in the North Bonneville area are a necessary step in the acquisition of those properties regardless of the ultimate choice of the property owner as to whether he wishes to reside in the new town of North Bonneville or whether he wishes to reside in some other area.

With respect to the contention that property owners may suffer if appraisals are made too early, or too long before actual acquisition, possibly reflecting values not up-to-date, Saling pointed out that "our appraisals will be updated to be current at the time of negotiation." He further noted that early appraisals "provide a basis for future updates which can be done more expeditiously than totally new appraisals accomplished immediately before property negotiations."¹⁷⁵

Apparently attempting to allay the stated concern of the town officials, Saling concluded by advising the Mayor that "We do not believe at this time that we can initiate negotiations for acquisition of property (as distinguished from property appraisals) until the end of March, 1974." This schedule, he suggested, should allow adequate time to provide answers to any questions delineated by the Town.¹⁷⁶

On November 21, 1973, the Town wrote to Senator Magnuson, seeking his intervention. The Senator was told, "Town officials are now opposed to positions taken by the Portland District Corps of Engineers regarding immediate appraisal of property commencing after a scheduled homeowners meeting November 15, 1973." Further, "Residents and town officials believe time must be provided in advance of actual purchase and appraisal of property to provide information on all relocation alternatives, particularly a new town." What the Town wanted was assistance in persuading the Corps "to allow the citizens of North Bonneville the opportunity to review all possible relocation options prior to the appraisal or negotiation for their property."

Specifically, this letter requested the Senator's support for an alternate schedule detailed in the letter, as recounted next:¹⁷⁷

- 1) No appraisal or negotiation for public or private property will take place until all options are available to the people. (Land use plan for North Bonneville Study Area completed by February 1974). Design commencing upon completion of the land use plan.
- 2) Appraisal of property begin no sooner than February 15, 1974.
- 3) Negotiations commence in April 1974 purchasing all lands in the project area in an orderly progressive manner rather than according to construction needs. Citizens thus will be allowed the time to make their decision in relationship to a new town.
- 4) Citizens shall also not be subject to purchases of land and improvements without full knowledge of a new town location and design.
- 5) Waiting until a new site is completed shall not adversely effect any person in consideration of time schedules found within Public Law 91-646.

Senator Magnuson, on December 10, 1973, wrote to Colonel Gilkey "about the Corps' decision to proceed at this time with appraisals of land in the town." Noting that "the Mayor urges that appraisals be deferred until at least February 15, 1974" and that "the Corps not begin actual negotiations with land owners to purchase any of their property until April, 1974," the Senator asked for the District Engineer's response to the following questions:¹⁷⁸

1. Why is it necessary to begin appraisals now rather than next February?
2. Have the owners of any of the land thus far appraised objected to appraisals at this time? If so, what has the Corps' response been? Will the Corps defer appraising land if its owner requests that it not be appraised until next February? Does an owner's decision to permit an appraisal represent any commitment on his part to the Corps?
3. When does the Corps intend to begin actual negotiations with land owners to buy their land? What steps will the Corps take before beginning those negotiations to update appraisals made at this time?

Colonel Gilkey responded to the letter from Senator Magnuson on January 10, 1974, providing answers "to your specific questions" as follows:¹⁷⁹

1. In order to ensure an orderly acquisition program, it is necessary to begin appraisals on land to be acquired for the Bonneville Second Powerhouse Project as soon as possible to permit construction to proceed as presently scheduled.

2. To date no owners have objected to our appraisal activities starting at this time; however, one owner did request a delay until after the holiday season. The Corps' response was that we would contact the owner after the first of the new year. The Corps will continue to schedule the appraisals on lands to best meet the owners' needs, provided it does not affect land acquisition needed for the first construction phase of the project. In any event, an owner's decision to permit an appraisal of his property does not commit him in any way to the Corps.

3. The Corps intends to begin actual negotiations with the landowners in January 1974. Since the Corps will initiate immediate negotiations to purchase, no updating of appraisals is anticipated; however, if any alteration has been made to property in the interval between appraisal and the initiation of negotiation which affects the value of the property, an updating of the appraisal will be accomplished.

On February 6, 1974, Mayor Skala, David Hussell, Pollard Dickson, and attorney J. Richard Aramburu met with Colonel Gilkey and several members of his staff in the District Engineer's Office in Portland. The purpose of the meeting, as Aramburu explained, was to state concerns had by the Town Council. Specifically, "the town council was concerned with the speed of the acquisition program and the lack of definite plans for a relocated town." The Council was "worried" that people who wish to move into the new town were being approached with offers to buy their land, without being informed what the new town plans were and without, in essence, having the option of choosing to move into a new town. The Town spokespersons asked that the Corps write a letter to the citizens of North Bonneville and tell

tell them that the town would be relocated. The Town representatives also asked the Corps to publish a schedule of acquisitions so that people of the town would know when they would be approached about buying their land and when they would have to move once their land was bought.¹⁸⁰ Colonel Gilkey explained that the Corps could not write the requested letter because the relocation of the town was the responsibility of the town itself and the Corps, at that time, could not guarantee that the town would be relocated. What Colonel Gilkey said he could do, "with all clear conscience," was provide a written statement to the effect that, when the decision for a relocated town had been made, the Corps would support the town council in every way it possibly could.¹⁸¹ Concerning an acquisition schedule, when particular lands would be purchased and when individual occupants would have to move, Gilkey explained that the Corps could give that information only in general terms. However, Gilkey pointed out that "the Corps would provide temporary housing for those people who wished to stay in the area until the decisions could be made on a relocated town."¹⁸² The Town was unconvinced: "Mr. Aramburu insisted that the Corps in their letter state the time schedule for the acquisition of property and the moving of people."¹⁸³

Two aspects of the contest over real property appraisals merit special attention. First, it may be concluded that Mayor Skala, David Hussell, and the Evergreen College students, in seeking to delay the appraisal process, were more concerned with the development of a new town as a corporate entity than with the desires of individual residents. Specifically, these persons were trying to prevent the

Corps from acquiring private property in the town, even from those persons who expressly wanted to sell and move. Whether to sell or not, of course, was rightfully the choice of the individual and not the Town. Secondly, the result of the Town's appeal to Senator Magnuson is telling of how, effectively, administrative agencies should deal with Congressional correspondence. As seen, Senator Magnuson did write to the District Engineer asking specific questions concerning why it was necessary to begin appraisals. The District Engineer provided a candid, factual response. He explained, in essence, that what the Corps was doing needed to be done. In consequence, nothing further on the subject was heard by the Portland District from Senator Magnuson. The point to be observed is that administrative agencies are not expected to change positions every time they hear from a member of the Congress. What they are expected to do, and all they are expected to do, is provide a factual explanation of their position. Of course, in order to withstand Congressional inquiry, agency positions must be well-founded.

RELOCATION TOWNSITE SELECTION

The Town Council, on January 17, 1972, passed Resolution No. 146, formally adopting the report of the North Bonneville Relocation Site Selection Committee.¹⁸⁴ The resolution reads in relevant part:¹⁸⁵

WHEREAS, on the 16th day of August, 1971, a Site Selection Committee was appointed to recommend to the Mayor and Council of the Town of North Bonneville a proposed new site upon which to relocate the Town of North Bonneville and,

WHEREAS, on the 20th day of September, 1971, said recommendation was made, now therefore,

BE IT HEREBY RESOLVED that said recommendations is hereby adopted and be it further resolved that at such time as the

present townsite is appropriated for Federal use or as soon as possible before or after, the Town shall be relocated pursuant to said recommendation.

Town council members were cognizant, as they approved Resolution No. 146, that the land area from within which the site selection committee recommended choosing a townsite had been designated by the Corps of Engineers for use as a disposal area for materials excavated during the second powerhouse construction. As Leonard Stein recalls, "In August 1971 the new site for the second powerhouse was presented to the town and to the public at a Public Meeting on 24 August 1971. At that time it was explained that the Hamilton Island area would be required for spoil disposal from the project."¹⁸⁶ As reported in the Evergreen State College study,¹⁸⁷

It was clear to the town that this selection would have a definite impact upon the spoils area selected by the Army Corps of Engineers for the spreading of 18.1 million cubic yards of earth that was to be excavated for the construction of the second powerhouse. It was felt, however, that whatever adjustments had to be made with respect to the spreading of dirt was a small consideration when compared to the major task of relocating an entire town with its community identity intact.

The Town asked the Corps, "Why designate as the spoils area the very location that the town deems most suitable for selection as a new town?"¹⁸⁸ The Corps' response was that the area "was needed for project purposes." Corps officials observed, "Rather than the Corps designating the town's most suitable site as a spoil area, the town has insisted on putting their new town in an area that is needed for project purposes." Further, Corps officials noted that the very reason the town was being acquired was because it was located in an area needed for the second powerhouse project. "Therefore," Corps

officials concluded, "it makes no sense to insist on moving the town into another area that is needed for project purposes."¹⁸⁹

On August 4, 1972, by the same letter that provided the Corps' response to Resolution No. 148, the town was notified that the land area recommended by the site selection committee was not available, that it had been preempted for use by the Corps in connection with the Second Powerhouse Project. The penultimate paragraph of this letter by Colonel Triem addressed to Mayor Holcomb reads,¹⁹⁰

I have received information that the Senate has taken action to add \$1,000,000 to the FY-73 appropriations for engineering, land acquisition and construction on the Bonneville Second Powerhouse Project. In the event the Senate-House conferees and the Office of the President approve this additional appropriation, we would be in a position to initiate limited real estate acquisition during FY-73. Your selection and acquisition of a town site outside of the project development area would permit those residents who intend to move into the new town to proceed with their essential planning and purchase of a site. Under our present plan all lands upstream from Hamilton Creek and lying riverward of the railroad including Hamilton Island will be required for project development and will be used for powerhouse excavation disposal. Upon completion of disposal these same areas will be landscaped and undergo recreational development by one or more agencies. We do not expect that any of the above described areas will be surplus to project needs.

Town officials reacted by accusing the Corps of lack of cooperation; indeed, they apparently came to believe that the Town's site location choice "was in large part the reason for many of the compounded difficulties in getting assistance or cooperation from the Army Corps of Engineers."¹⁹¹ This view on the part of town officials and planners was expressed, to cite one instance, during the landowners meeting held in the North Bonneville School Auditorium on November 15, 1973. This was the meeting announced by D. H. Nellen and

conducted by Lt. Col. Saling to discuss the land acquisition process.

The essence of what was said toward the end of this meeting is

recorded in a memorandum by Ed Daugherty:¹⁹²

The second item of concern to the Town Council and the planning people was the Corps' lack of cooperation in not allowing the town to locate their new site in the spoil disposal area. Considerable discussion revolved around this point with several people making the charge that the Corps of Engineers cared more about \$12 million dollars than they did about the lives of about 550 people.

On or about January 2, 1974, the Corps learned that the town of North Bonneville had scheduled a public meeting for the evening of January 10 to discuss selection of a proposed townsite location. This information came to the Portland District when Mayor Skala requested a meeting with Colonel Gilkey for January 9, to "work out" an agenda.¹⁹³

On the morning of January 10, 1974, the District Engineer and members of his staff met with two members of the North Pacific Division staff, Ernest E. Swanson, Chief, Real Estate Division, and Bob Baunach, Assistant Chief, Engineering Division, to discuss the Town's plan to locate the new townsite within the area designated by the Corps for powerhouse excavation disposal and later recreational development and, specifically, to discuss "what should be said by the Corps at the Town's meeting in the evening."¹⁹⁴ The particular concern of these Corps officials with the Town's plan was clearly one of cost: "Preliminary cost estimates presented at the meeting showed that the Town's proposal would increase railroad relocation costs by \$3,200,000 and waste disposal costs by \$9,331,000, if 3,500,000 c.y. of waste was hauled to Hamilton Island or \$13,006,000 if 3.5 million yards of waste was hauled to Stevenson, for a total increase in cost of \$12,531,000

and \$16,206,000, respectively."¹⁹⁵ Attendees at the meeting discussed "possible reasons for justifying the increased cost and also the necessary budgetary procedures for such a large increase in the project costs and the Division's policy or comments regarding the Town's proposal."¹⁹⁶ Agreement was reached that the Corps could not indorse the Town's plan, at least until the Corps had "time to evaluate it adequately."¹⁹⁷ Also during this meeting, Colonel Gilkey mentioned that he was receiving other requests for the use of essentially the same lands. It was suggested that, since the Corps had competing claims, the Portland District might later have to conduct its own public meeting "to consider the views of others because of the impact on the area." Further, it was expressed, "Some of the organizations that should be considered in public meetings would be surrounding cities, counties and the Columbia River Gorge Commission."¹⁹⁸

During the North Bonneville public meeting on January 10, 1974, townspeople were presented a proposal by town planners for relocation of the town "on a 350-acre site in the Hamilton Island-Greenleaf Slough area downstream of Bonneville Dam on the Washington shore."¹⁹⁹ This proposed site was within the general area recommended by the North Bonneville Relocation Site Selection Committee in its report of September 20, 1971, and approved by the town council by Resolution No. 146 on January 17, 1972. However, it was close to twice the 200 acre size recommended by the Committee. Essentially, as reported in the North Bonneville Relocation Newsletter, "The site virtually included

all lands previously described by the 1971 site selection committee report, excluding Hamilton Island."²⁰⁰

Colonel Gilkey, in his remarks before the meeting, neither approved nor disapproved of the relocation site proposal. "The site selection and acquisition is the choice and responsibility of the town," he said, "I have no policy regarding site selection if within reasonable federal costs." Gilkey offered, "If the people of North Bonneville want a new town then I will do everything in my power to assist."²⁰¹ He added, however, that assessment by the Corps of Engineers of any townsite proposal would be based upon an evaluation of impacts on the Second Powerhouse project. Further, he noted, assessment would consider local interests and desires; regional interest and desires; and federal interest and desires.²⁰²

On January 22, 1974, the Portland District issued a press release announcing that a "proposed site for relocation of the town of North Bonneville, Washington, recently presented to townspeople by city planners at a public meeting January 10, is under study by the Portland District, U.S. Army Corps of Engineers." The release explained,²⁰³

The Corps of Engineers' study of the site proposed, which is located within the project boundaries, will include consideration of the cost for railroad relocation, additional cost for hauling and placing material excavated during construction, the numbers of families who wish to reside in the new town, and compatibility of the site with other activities in that section of the Columbia Gorge. In conjunction with their study of the proposed site, a survey will begin in the near future to determine attitudes of the town residents with regard to relocation alternatives, the District Engineer said.

"The citizens of North Bonneville will be responsible for the decision to relocate the town as a unit at a new site of their selection, or to relocate individually," Colonel Gilkey

said. "Corps of Engineers' primary responsibility is to assure that any relocation be accomplished at reasonable Federal costs, be fair to all parties, and that the site selected be compatible with the second powerhouse project requirements," he said.

During the meeting of February 6, 1974, the same meeting at which Town officials expressed concern about the speed of the Corps' acquisition program and the lack of a definite plan for a relocated town, Colonel Gilkey told Skala, Hussell, Dickson, and Aramburu that he had decided to hold a public meeting to discuss the Town's desire to relocate onto second powerhouse project lands. Specifically, "Colonel Gilkey explained that he was going to use the Public Meeting as a means of determining whether the town should be relocated into the present project boundaries." He further explained that three possible uses of the land had to be considered: "The first was the Corps' plan, which has presently been proposed for this area; the second would be the Town's plan as presented in the 10 January meeting; and the third would be the plan to allow private interests to maintain an industrial area within the project boundary." The final decision, Gilkey commented, "would be based very greatly on the desires expressed by the State of Washington."²⁰⁴

On February 15, 1974, the Portland District issued an announcement of a public meeting, to consider "Utilization of Project Lands, Bonneville Dam Second Powerhouse Project, Columbia River, Bonneville, Oregon," to be held on March 14, 1974, at the North Bonneville, Washington, school auditorium. The opening paragraph of this announcement reads,²⁰⁵

The public is invited to participate in a public meeting to discuss possible alternative uses of land presently

designated for use by the Bonneville Project. This land is located on the north side of the Columbia River about a mile downstream of the town of North Bonneville, between the existing railroad track and the river. The land is presently being acquired for use as a contractor's work area and as a disposal area for materials excavated from the site of the Second Bonneville Powerhouse with ultimate utilization as a day-use recreation area. The Portland District has received proposals to modify its present plans for the use of those lands to permit the development of (1) a relocation site for the town of North Bonneville or (2) an industrial/commercial development by private interests within the presently planned project. The objective of the public meeting is to hear the desires and preferences of interested citizens, groups and governmental agencies with regard to these alternative land uses.

Three observations concerning the site selection issue merit specific attention. First, it is to be noted that the North Bonneville Relocation Site Selection Committee, in its report of September 20, 1971, concluded that, due to future population increases, "a site of at least two hundred (200) acres is necessary."²⁰⁶ The Town Council, by Resolution No. 146, dated January 17, 1972, accepted this report.²⁰⁷ However, the plan proposed by Evergreen College students, presented during the Town's public meeting of January 10, 1974, recommended placement of the new town "on a 350-acre site in the Hamilton Island-Greenleaf Slough area downstream of Bonneville Dam on the Washington shore."²⁰⁸ What this should have told the Corps of Engineers, comparing these specific recommendations, was that the Town's desires were expanding, and capable of further expansion. Second, the recommendations of both the site selection committee and the Evergreen College students placed the new town on second powerhouse project lands. The District Engineer, in his letter to Major Skala of August 4, 1972, specifically told the Town that project lands were not available for use by the town.²⁰⁹ What this

should have told the Corps, at the very least, was that the issue was far from settled. Third, amazingly, it is to be noted that the Portland District Engineer, in his statement before the Town conducted public meeting of January 10, 1974, did not inform the community of a major Corps concern. Colonel Gilkey knew, going into the meeting, that by preliminary estimates selection of the site proposed by the Town would increase Corps costs by \$12,531,000 to \$16,206,000.²¹⁰ This information, logically, could have been expected to affect the thinking of members of the community. Yet, for whatever reason, the District Engineer omitted providing this information to the Town.

ENDNOTES

¹See dissertation, supra, 40-44.

²See dissertation, supra, 74-85.

³33 U.S.C. § 633 (1989). See Engineer Federal Acquisition Regulation Supplement, Appendix Q, Part 7, Relocations and Alterations Made Pursuant to Special Statutory Authority, Paragraph Q-73-703, Relocation of Facilities Owned by Government Agencies (1 October 1984).

⁴Comptroller General of the United States, Report to the Congress: Need to Improve Procedures for Compensating Municipalities for Relocation of Facilities Necessitated by Construction of Federal Water Resources Projects, Corps of Engineers (Civil Functions), Department of the Army (B-1060628, 27 February 1968) 7.

⁵Comptroller General, Report to the Congress, 13.

⁶Comptroller General, Report to the Congress, 15.

⁷Engineer Federal Acquisition Regulation Supplement, Appendix Q, Part 6, Reestablishment of Towns, Paragraph Q-73-601, General (1 October 1984). See Engineer Regulation 1180-1-1, Section 73, Part 6, Reestablishment of Towns, Paragraph 73-601, General (1 December 1969).

⁸EFARS, Appendix Q, Part 6, Paragraph Q-73-601 (1 October 1984). See ER 1180-1-1, Section 73, Part 6, Paragraph 73-601 (1 December 1969).

⁹EFARS, Appendix Q, Part 6, Paragraph Q-73-603, Procedure (1 October 1984). See ER 1180-1-1, Section 73, Part 6, Paragraph 73-603, Procedure (1 December 1969).

¹⁰U.S. Army Corps of Engineers, Portland District, "Announcement of Public Meeting, Bonneville Dam Second Powerhouse, Columbia River, Bonneville, Oregon," 26 July 1971.

¹¹U.S. Army Corps of Engineers, Portland District, "Position Paper, Operating Restrictions at Bonneville Dam," 26 July 1971.

¹²Charles B. Brinkley, Jr., LTC, Acting District Engineer, Portland, 1st Indorsement to 4 February 1972 letter by Woodrow Berge, Director of Real Estate, OCE, Subject: Congressional Inquiry--Bonneville Dam (Re: Mayor Robert J. Holcomb, Town of North Bonneville, Washington), with enclosed draft reply to U.S. Senator Warren G. Magnuson, 17 February 1972.

¹³Robert J. Holcomb, Mayor, Town of North Bonneville, letters to Senator Warren G. Magnuson, Senator Henry M. Jackson, and Representative Mike McCormack, 12 January 1972.

¹⁴Brinkley, 1st Indorsement to 4 February 1972 letter by Berge, 17 February 1972.

¹⁵On December 20, 1967, representatives of the Corps of Engineers went to North Bonneville to advise town officials that planning was in progress and alternative sites were being considered for placement of a second powerhouse, that no decision had been reached, but that construction could result in the acquisition of the town. U.S. Army Corps of Engineers, North Bonneville Town Relocation Environmental Impact Statement Supplement (Portland, OR: Portland District, 1975) 9-1.

¹⁶U.S. Army Corps of Engineers, Portland District, Transcript of Public Meeting Held at Bonneville Dam, 24 August 1971, Bonneville Dam Second Powerhouse Site Selection (Portland, OR: Portland District, 1971) 16.

¹⁷"North Bonneville studies move to new location for small town," Portland Oregonian, 27 July 1971.

¹⁸"North Bonneville studies move to new location for small town," Portland Oregonian, 27 July 1971.

¹⁹"North Bonneville studies move to new location for small town," Portland Oregonian, 27 July 1971

²⁰"North Bonneville studies move to new location for small town," Portland Oregonian, 27 July 1971.

²¹"N. Bonneville relocation is eyed," Vancouver Columbian, 27 July 1971.

²²Brinkley, 1st Indorsement to 4 February 1972 letter by Berge, 17 February 1972.

²³"N. Bonneville won't go before '73," Vancouver Columbian, 3 August 1971.

²⁴Brinkley, 1st Indorsement to 4 February 1972 letter by Berge, 17 February 1972.

²⁵Brinkley, 1st Indorsement to 4 February 1972 letter by Berge, 17 February 1972.

²⁶"No. Bonneville Mulls Move to New Location," Skamania County Pioneer, 6 August 1971.

²⁷"No. Bonneville Mulls Move to New Location," Skamania County Pioneer, 6 August 1971.

²⁸Brinkley, 1st Indorsement to 4 February 1972 letter by Berge, 17 February 1972.

²⁹Brinkley, 1st Indorsement to 4 February 1972 letter by Berge, 17 February 1972.

³⁰U.S. Army Corps of Engineers, Portland District, "Background Information," [c. 1972].

³¹Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972.

³²Minutes, North Bonneville Town Council, 16 August 1971.

³³All Engineering, Town of North Bonneville, Skamania County, Washington, Preliminary Engineering Report of Existing Facilities and Relocation (Vancouver, WA: All Engineering, 1971) 14.

³⁴All Engineering, Preliminary Engineering Report, 14.

³⁵All Engineering, Preliminary Engineering Report, 14

³⁶U.S. Army Corps of Engineers, Portland District, Transcript, Second Powerhouse Site Selection, 17.

³⁷"Doomed Town Backs Dam Expansion," Corvallis Gazette-Times, 25 August 1971.

³⁸Paul D. Triem, Colonel, District Engineer, Portland, letter to Mayor Robert Holcomb, Town of North Bonneville, 24 August 1971.

³⁹Triem, letter to Holcomb, 24 August 1971.

⁴⁰U.S. Army Corps of Engineers, Portland District, "Summary of North Bonneville Relocation Events," 29 December 1972.

⁴¹U.S. Army Corps of Engineers, Portland District, "Summary of North Bonneville Relocation Events," 29 December 1972.

⁴²Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972.

⁴³See Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972.

⁴⁴Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972.

⁴⁵Brinkley, 1st Indorsement to 4 February 1972 letter by Berge, 17 February 1972.

⁴⁶Brinkley, 1st Indorsement to 4 February 1972 letter by Berge, 17 February 1972.

⁴⁷Minutes, North Bonneville Town Council, 20 September 1971.

⁴⁸North Bonneville Relocation Site Selection Committee, "New City Proposal," 20 September 1971.

⁴⁹North Bonneville Relocation Site Selection Committee, "New City Proposal," 20 September 1971.

⁵⁰North Bonneville Relocation Site Selection Committee, "New City Proposal," 20 September 1971. See All Engineering, Preliminary Engineering Report, 12.

⁵¹Minutes, North Bonneville Town Council, 15 November 1971.

⁵²Minutes, North Bonneville Town Council, 15 November 1971. See All Engineering, Preliminary Engineering Report, title page.

⁵³See Holcomb, letter to Magnuson, Jackson, and McCormack, 12 January 1972.

⁵⁴Minutes, North Bonneville Town Council, 20 December 1971

⁵⁵All Engineering, Preliminary Engineering Report, 14.

⁵⁶All Engineering, Preliminary Engineering Report, 13-14.

⁵⁷All Engineering, Preliminary Engineering Report, 18.

⁵⁸Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972.

⁵⁹Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972.

⁶⁰Triem, letter to Holcomb, 24 August 1971. See dissertation, supra, 102.

⁶¹Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972.

⁶²Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972.

⁶³Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972.

⁶⁴Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972.

⁶⁵Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972.

⁶⁶Warren G. Magnuson, U.S.S., referral to U.S. Army Corps of Engineers, 31 January 1972; Henry M. Jackson, U.S.S., referral to Lt. General Frederick J. Clarke, Chief of Engineers, 9 February 1972; Mike McCormack, M.C., letter to Lt. Col. Thomas W. Nelson, Assistant Director of Civil Works for Pacific Divisions, OCE, 2 February 1972.

⁶⁷Mike McCormack, M.C., letter to Lt. Col. Thomas W. Nelson, Assistant Director of Civil Works for Pacific Divisions, OCE, 2 February 1972.

⁶⁸Woodrow Berge, Director of Real Estate, OCE, letter to District Engineer, Portland, Subject: Congressional Inquiry--Bonneville Dam (Re: Mayor Robert J. Holcomb, Town of North Bonneville, Washington), 4 February 1972; Thomas W. Nelson, LTC, Assistant Director of Civil Works for Pacific Divisions, OCE, letter to District Engineer, Portland, enclosing letter from Congressman McCormack, 8 February 1972; Nelson, letter to District Engineer, Portland, enclosing letter from Senator Jackson, 18 February 1972.

⁶⁹Charles B. Brinkley, Jr., LTC, Acting District Engineer, Portland, 1st Indorsement to 8 February 1972 letter by Lt. Col. Thomas W. Nelson, Assistant Director of Civil Works for Pacific Divisions, OCE, 17 February 1972; Brinkley, 1st Indorsement to 4 February 1972 letter by Berge, 17 February 1972.

⁷⁰Paul D. Triem, Colonel, District Engineer, Portland, 1st Indorsement to 18 February 1972 letter by Lt. Col. Thomas W. Nelson, Assistant Director of Civil Works for Pacific Divisions, OCE, 1 March 1972.

⁷¹Brinkley, 1st Indorsement to 4 February 1972 letter by Berge, 17 February 1972; Brinkley, 1st Indorsement to 8 February 1972 letter by Nelson, 17 February 1972; Triem, 1st Indorsement to 18 February 1972 letter by Nelson, 1 March 1972.

⁷²Brinkley, 1st Indorsement to 4 February 1972 letter by Berge, 17 February 1972; Brinkley, 1st Indorsement to 8 February 1972 letter by Nelson, 17 February 1972; Triem, 1st Indorsement to 18 February 1972 letter by Nelson, 1 March 1972.

⁷³Brinkley, 1st Indorsement to 4 February 1972 letter by Berge, 17 February 1972; Brinkley, 1st Indorsement to 8 February 1972 letter by Nelson, 17 February 1972. See Triem, 1st Indorsement to 18 February 1972 letter by Nelson, 1 March 1972.

⁷⁴Minutes, North Bonneville Town Council, 22 February 1972.

⁷⁵Minutes, North Bonneville Town Council, 22 February 1972.

⁷⁶Robert J. Holcomb, Mayor, Town of North Bonneville, letter to Colonel Paul Triem, District Engineer, Portland, 28 February 1972.

⁷⁷Paul D. Triem, Colonel, District Engineer, Portland, letter to Mayor Robert J. Holcomb, Town of North Bonneville, 23 March 1972.

⁷⁸Thomas W. Nelson, Colonel, Assistant Director of Civil Works for Pacific Divisions, OCE, 3rd Indorsement to letter 8 February 1972 by Lt. Col. Thomas W. Nelson, 6 April 1972.

⁷⁹Resolution No. 148, North Bonneville Town Council, 17 April 1972. See Minutes, North Bonneville Town Council, 17 April 1972.

⁸⁰Resolution No. 148, North Bonneville Town Council, 17 April 1972.

⁸¹Robert J. Holcomb, Mayor, Town of North Bonneville, letter to Colonel Paul Triem, District Engineer, Portland, 25 April 1972.

⁸²Holcomb, letter to Triem, 25 April 1972.

⁸³Shirley J. Brenner, Clerk, Town of North Bonneville, letter to Colonel Paul Triem, District Engineer, Portland, 12 July 1972.

⁸⁴Legal opinion by Michael A. Rea, Assistant District Counsel, Portland, Subject: Attorney's Response to Resolution 148, as passed in Regular Session, 17 April 1972, by the Mayor and Town Council of North Bonneville, Washington, 21 July 1972.

⁸⁵Legal opinion by Rea, 21 July 1972.

⁸⁶Paul D. Triem, Colonel, District Engineer, Portland, letter to Mayor Robert J. Holcomb, Town of North Bonneville, 4 August 1972.

⁸⁷David Hussell was later to testify that "the Uniform Relocation Act . . . deals specifically with the individual; the relocation of individual citizens. There is no law that deals with the relocation of a town, and thus the Corps does not have responsibility in this regard, other than to move the facilities." Water Resources Development--1973, Hearings on H.R. 8756 Before the Subcommittee on Water Resources of the House Committee on Public Works, 93rd Cong., 1st Sess. 1220 (1973).

⁸⁸See dissertation, supra, 74-85.

⁸⁹See dissertation, supra, 92-93.

⁹⁰Six towns relocated in connection with water resources projects of the Corps of Engineers are identified by the Comptroller General of the United States, including Arlington, Boardman, and Umatilla,

Oregon, which were relocated as a consequence of land acquisitions by the Portland District. Comptroller General, Report to the Congress, 1-23.

⁹¹See dissertation, supra, 113-15.

⁹²See dissertation, supra, 115-17.

⁹³See dissertation, supra, 29-44.

⁹⁴Town of North Bonneville v. U.S., 11 Cl. Ct. 694, 739 (1987).

⁹⁵Homer B. Willis, personal interview, 18 June 1985.

⁹⁶David P. Johnson, telephone interview, 1 August 1986.

⁹⁷U.S. Army Corps of Engineers, Bonneville Lock and Dam General Design Memorandum No. 4, Second Powerhouse General Design (Portland, OR: Portland District, 1972) 9-3, 4.

⁹⁸"North Bonneville studies move to new location for small town," Portland Oregonian, 27 July 1971. See dissertation, supra, 96.

⁹⁹"N. Bonneville relocation is eyed," Vancouver Columbian, 27 July 1971. See dissertation, supra, 96.

¹⁰⁰Resolution No. 148, North Bonneville Town Council, 17 April 1972. See dissertation, supra, 116.

¹⁰¹Minutes, North Bonneville Town Council, 22 February 1972. See dissertation, supra, 112-13.

¹⁰²Minutes, North Bonneville Town Council, 22 February 1972. See dissertation, supra, 111-13.

¹⁰³U.S. Army Corps of Engineers, Portland District, Transcript, Second Powerhouse Site Selection, 17. See dissertation, supra, 101.

¹⁰⁴Triem, letter to Holcomb, 23 March 1972. See dissertation, supra, 113.

¹⁰⁵Triem, letter to Holcomb, 23 March 1972. See dissertation, supra, 113-14.

¹⁰⁶See dissertation, supra, 99.

¹⁰⁷U.S. Army Corps of Engineers, Portland District, Transcript, Second Powerhouse Site Selection, 17. See dissertation, supra, 101.

¹⁰⁸Gilkey, letter to Holcomb, 24 August 1971. See dissertation, supra, 102.

¹⁰⁹Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972. See dissertation, supra, 108.

¹¹⁰U.S. Army Corps of Engineers, Portland District, "Background Information," [c. 1972]. See dissertation, supra, 98-100.

¹¹¹See dissertation, supra, 98-100.

¹¹²Gilkey, letter to Holcomb, 24 August 1971. See dissertation, supra, 102.

¹¹³See dissertation, supra, 103-04.

¹¹⁴Minutes, North Bonneville Town Council, 22 February 1972. See dissertation, supra, 111-13.

¹¹⁵See dissertation, supra, 111-13.

¹¹⁶Minutes, North Bonneville Town Council, 22 February 1972. See dissertation, supra, 112.

¹¹⁷Legal opinion by Rea, 21 July 1972. See dissertation, supra, 119.

¹¹⁸Evergreen State College Urban Planning Group, North Bonneville Relocation Planning Study (Olympia, WA: Evergreen State College, 1973) 1. 1. 11.

¹¹⁹Evergreen College Planning Group, Planning Study, 1. 1. 15.

¹²⁰Evergreen College Planning Group, Planning Study, 1. 1. 11.

¹²¹Evergreen College Planning Group, Planning Study, 1. 1. 11.

¹²²Evergreen College Planning Group, Planning Study, 1. 1. 11.

¹²³Russell Fox, personal interview, 6 March 1987. The initials O.E.O. identify the Washington State Office of Economic Opportunity. Henry Stevens was the Executive Director of the Klickitat-Skamania Counties Community Action Committee. Evergreen College Planning Group, Planning Study, 1. 2. 4.

¹²⁴Minutes, North Bonneville Town Council, 15 January 1973.

¹²⁵Memorandum to Files by Ed Daugherty, Columbia River Coordinator, Portland District, Subject: Meeting with Town Council of North Bonneville and Others on 4 April 1973, 5 April 1973.

¹²⁶Minutes, North Bonneville Town Council, 15 January 1973.

¹²⁷Russell Fox, personal interview, 6 March 1987.

¹²⁸Holcomb, letter to Triem, 25 April 1972. See dissertation, supra, 117.

¹²⁹Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972. See dissertation, supra, 100.

¹³⁰Evergreen College Planning Group, Planning Study, 1. 1. 2.

¹³¹Mayor Skala contends that the townspeople knew ever since the original Bonneville Lock and Dam project was completed that the town would be acquired and destroyed, and possibly relocated. He asserts, including himself with other citizens of the town, that "we've known it ever since they put the old dam in." Clarifying the nature of this assumed knowledge and expressing his contention concerning its effects he states, "Well, it's always been the rumor that they're going to put another powerhouse in some day. A general rumor. I suppose it came maybe from the government one way or another. I don't know how it started. I haven't the vaguest idea. But its always been--we've always, you know, the town's falling apart and nobody's doing anything. And the answer would always be, 'Well, they're planning on tearing it up so why should I put a lot of money into something?'" Ernest J. Skala, personal interview, 22 August 1986. Doubtless, notwithstanding Mayor Skala's expressed belief to the contrary, there was no expectation of the construction of a second powerhouse at the time of enactment of the Bonneville Project Act of 1937, or at any time prior to commencement of negotiations leading to the Columbia River Treaty. No such expectation could logically have existed because without the additional water storage provided by the treaty dams there was insufficient usable stream flow on the Columbia River to justify the installation of additional generating facilities at Bonneville. R. W. Beck and Associates, Expert Witness Report, Town of North Bonneville vs. U.S. (Seattle: R. W. Beck and Associates, 1984) I-11. See dissertation, supra, 63. It is possible that rumors of the potential construction of a second powerhouse could have existed during negotiations on the treaty, or after the treaty was signed on January 17, 1961. Knowledgeable persons within the Corps and the Bonneville Power Administration presumably would have known that once the treaty was ratified, construction of a second powerhouse would become not only feasible but desirable. Nicholas A. Dodge, personal interview, 29 February 1988. Likely, however, the people of North Bonneville had no inkling that their properties might be acquired as the site for a second powerhouse prior to December 20, 1967, on which date representatives of the Corps went to North Bonneville to advise the town that planning was in progress and alternative sites were being considered for placement of a second powerhouse. U.S. Army Corps of Engineers, North Bonneville Town Relocation Environmental Impact Statement Supplement, (Portland, OR: Portland District, 1975) 9-1.

¹³²Evergreen College Planning Group, Planning Study, I. 1. 1,2.

¹³³See James and Carolyn Robertson, The Small Town's Book (Garden City, NY: Anchor Press/Doubleday, 1978) 27-30. The authors of this book wrote,

Though the town predates the dam, it was the building of the dam and powerhouse in the thirties that brought fortune, both good and ill, to North Bonneville. The good fortune was obvious. The ill fortune was that the powerhouse was only the first of a projected two. At the time the dam was completed in 1938, newspapers carried an artist's conception of the yet-to-be-completed complex. The drawing showed a second powerhouse exactly where the town sat. On August 20 of the preceding year, the Seventy-Fifth Congress had authorized the maintenance and operation of Bonneville Dam--and its eventual completion.

The drawing in the paper was nothing but an artist's conception. But the plan was on file somewhere in Washington, D.C., and it cast one long shadow over the town, down through the years. The people felt it on their lives.

"There are a lot of people who have died here waiting for the Corps to buy them out. You can look around and see all the houses that need paint."

Newcomers would look all up and down the Columbia River Gorge and find real estate scarce. But there was always something available at a good price in North Bonneville. Eventually they'd learn why. "It was only after they'd bought a place that people who knew would say, 'What'd you buy down there for? Don't you know they're going to tear that town down someday?'"

Business people in the community couldn't plan on growth. "How can you plan anything when you don't know if you're going to be here next year?" There were no major improvements made in the town. The banks wouldn't loan money on property in North Bonneville. The Town sagged. And the bitterness grew.

Never official, the Corps' plans were all the more poisonous because they couldn't be fought. "How can you fight an artist's conception?"

* * *

Then on August 3, 1971, officers from the Portland district office of the U.S. Army Corps of Engineers held a meeting with town officials. The purpose of the meeting was to announce that, from a set of alternatives, a site had been chosen for the second powerhouse at Bonneville Dam. The site was on the Washington shore of the river--just as the artist had pictured it back in 1938--and its selection would require that the town of North Bonneville either disperse or relocate.

Attendant to research on this dissertation, Cecil Eugene Reinke wrote to James and Carolyn Robertson, quoted fully next:

I am a Ph.D. student at Portland State University, in the process of researching and writing a dissertation dealing with the relocation of the City of North Bonneville, Washington. The first chapter of The Small Towns Book, written by you and

published by Anchor Books in 1978, deals with the early phases of this relocation.

Your book, at page 27, contains the statement: "At the time the dam was completed in 1938, newspapers carried an artist's conception of the yet-to-be-completed complex. The drawing showed a Second Powerhouse exactly where the town sat." Again, on page 30, in reference to location of the Second Powerhouse, and an August 3, 1971 meeting, you write: "The site was on the Washington shore of the river--just as the artist had pictured in back in 1938. . . ."

I have been unable to find any artist's conception showing the Second Powerhouse in 1938, in either newspapers or elsewhere. I need to find the drawing you refer to, since its existence would refute the finding of a study that I have seen, by R. W. Beck and Associates, Seattle, which concludes that "No additions (to the Bonneville Lock and Dam project) were considered until the mid-1960's. . . ." The R. W. Beck and Associates study notes that "Town Spokesmen" imply that there has been a long-term threat of relocation of North Bonneville because of the prospect of the Second Powerhouse, but concludes: ". . . there was no 'threat of relocation' until at least 1965 since the Second Powerhouse was not even conceived of until that time. Prior to such date, there was no possibility of a Second Powerhouse because of (1) low stream flows (insufficient water); (2) legal considerations because of the need for a treaty between the United States and Canada to build reservoirs; and (3) lack of need. Moreover, the Oregon shore was the preferred site, up to 1971."

Will you please send me a citation that will help me find the "Artist's Conception" to which you refer. Of course, I would particularly appreciate receiving a copy, if you have one among your notes. If you do not have a copy, or have not actually seen the drawing to which you refer, I would appreciate knowing the basis for your statement.

The original of this letter was returned to Cecil Eugene Reinke with the following note penned thereon by Carolyn Robertson:

There was mention of an artist's conception. We never saw it. I'd suggest tracing down one or two of the people in the story and asking them. Good luck with your dissertation.

Cecil Eugene Reinke, letter to James and Carolyn Robertson, 6 August 1985, and note thereon by Carolyn Robertson, [1986].

¹³⁴Triem, letter to Holcomb, 23 March 1972. See dissertation, supra, 113-14.

¹³⁵Phil F. Moon, Chief, Environmental Quality Branch, Portland District, memorandum to Chief, Engineering Division, Portland District, Subject: Relocation of North Bonneville, 6 June 1972.

¹³⁶Memorandum to Files by Daugherty, 5 April 1973.

¹³⁷Memorandum to Files by Daugherty, 5 April 1973.

¹³⁸Memorandum to Files by Daugherty, 5 April 1973.

¹³⁹Memorandum to Files by Daugherty, 5 April 1973. David Hussell became an employee of the Town of North Bonneville in November 1971. See Minutes, North Bonneville Town Council, 15 November 1971.

¹⁴⁰Memorandum to files by Daugherty, 5 April 1973. "Over beer following a frustrating town-Corps meeting, students and town officials developed the idea of creating a Relocation Advisory Board. . . ." Donald C. Comstock and Russell Fox, "Participatory Research as Critical Theory: The North Bonneville, USA Experience," paper presented at the 10th World Congress of Sociology, Mexico City, August 1982.

¹⁴¹Minutes, North Bonneville Town Council, 5 April 1973. Robert W. Holcomb resigned as mayor of North Bonneville on January 15, 1973, to accept an elected position on the Skamania County Commission. Minutes, North Bonneville Town Council, 15 January 1973. Mayor Holcomb, in leaving his position with the town, was in no way diminished in his ardor for support of the town relocation. Rather, as explained by Marie Holcomb, his wife of forty-six years, "He became a County Commissioner thinking he could help the Town of North Bonneville." Marie Holcomb, personal interview, 4 September 1986. Mayor Holcomb's resignation was accepted by the Town Council on February 20, 1973. Minutes, 20 February 1973. On March 19, 1973, Ernest J. Skala was appointed and "sworn in" as Mayor of North Bonneville. Minutes, 19 March 1973.

¹⁴²Minutes, North Bonneville Town Council, 5 April 1972.

¹⁴³Minutes, North Bonneville Town Council, 5 April 1973.

¹⁴⁴Minutes, North Bonneville Town Council, 5 April 1973.

¹⁴⁵Memorandum to Files by Ed Daugherty, Columbia River Coordinator, Portland District, Subject: Meeting with Representatives of the Town of North Bonneville on 12 April 1973, 13 April 1973.

¹⁴⁶Ernest J. Skala, Mayor, and Town Council members, Town of North Bonneville, letter to Colonel Paul D. Triem, District Engineer, Portland, 12 April 1973.

¹⁴⁷Memorandum to Files by Daugherty, 13 April 1973.

- ¹⁴⁸Skala and Town Council, letter to Triem, 12 April 1973.
- ¹⁴⁹Skala and Town Council, letter to Triem, 12 April 1973.
- ¹⁵⁰Skala and Town Council, letter to Triem, 12 April 1973.
- ¹⁵¹Skala and Town Council, letter to Triem, 12 April 1973.
- ¹⁵²Skala and Town Council, letter to Triem, 12 April 1973.
- ¹⁵³Memorandum to Files by Daugherty, 13 April 1973.
- ¹⁵⁴Warren G. Magnuson, U.S.S., Henry M. Jackson, U.S.S., and Mike McCormack, M.C., letter to Lieutenant General F. J. Clarke, Chief of Engineers, 4 May 1973.
- ¹⁵⁵Russell Fox, personal notes, 25 May 1973.
- ¹⁵⁶Russell Fox, personal notes, 25 May 1973.
- ¹⁵⁷Paul D. Triem, Colonel, District Engineer, Portland, letter to Mayor Ernest J. Skala, Town of North Bonneville, 30 May 1973.
- ¹⁵⁸Triem, letter to Skala, 30 May 1973.
- ¹⁵⁹Skala and Town Council, letter to Triem, 12 April 1973.
- ¹⁶⁰Memorandum to Files by Daugherty, 5 April 1973.
- ¹⁶¹Memorandum to Files by Daugherty, 5 April 1973.
- ¹⁶²Russell Fox, personal interview, 6 March 1987.
- ¹⁶³D. H. Nellen, Chief, Real Estate Division, Portland District, letter to landowners and tenants of North Bonneville, Washington, 2 November 1973.
- ¹⁶⁴Ernest J. Skala, Mayor, Town of North Bonneville, letter to Colonel Clarence Gilkey, District Engineer, Portland, 8 November 1973.
- ¹⁶⁵Skala, letter to Gilkey, 8 November 1973.
- ¹⁶⁶Skala, letter to Gilkey, 8 November 1973. Lt. Colonel Neil Saling, Deputy District Engineer, Portland, served as the Corps of Engineers representative on the Inter-Agency Relocation Board.
- ¹⁶⁷Memorandum to File by Ed Daugherty, Columbia River Coordinator, Portland District, Subject: Landowner's Meeting--Bonneville Second Powerhouse, 15 November 1973.
- ¹⁶⁸Memorandum to File by Daugherty, 15 November 1973

¹⁶⁹Memorandum to File by Daugherty, 15 November 1973.

¹⁷⁰Ernest J. Skala, Mayor, Town of North Bonneville, letter to Colonel Clarence Gilkey, 15 November 1973. See Memorandum to File by Daugherty, 15 November 1973.

¹⁷¹Skala, letter to Gilkey, 15 November 1973.

¹⁷²"Relocation Policy Petition," circulated to citizens of North Bonneville, [November 1973].

¹⁷³Neil E. Saling, LTC, Deputy District Engineer, Portland, letter to Mayor Ernest J. Skala, Town of North Bonneville, 16 November 1973.

¹⁷⁴Saling, letter to Skala, 16 November 1973.

¹⁷⁵Saling, letter to Skala, 16 November 1973.

¹⁷⁶Saling, letter to Skala, 16 November 1973.

¹⁷⁷David A. Hussell, Manager, Town of North Bonneville, letter to Senator Warren G. Magnuson, 21 November 1973.

¹⁷⁸Warren G. Magnuson, U.S.S., letter to Colonel Clarence D. Gilkey, District Engineer, Portland, 10 December 1973.

¹⁷⁹Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Senator Warren G. Magnuson, 10 January 1974.

¹⁸⁰Memorandum to File by Ed Daugherty, Columbia River Coordinator, Portland District, Subject: Meeting with Officials of the Town of North Bonneville to Discuss Town Relocation Option, 6 February 1974.

¹⁸¹Memorandum to File by Daugherty, 6 February 1974.

¹⁸²Memorandum to File by Daugherty, 6 February 1974.

¹⁸³Memorandum to File by Daugherty, 6 February 1974.

¹⁸⁴Minutes, North Bonneville Town Council, 17 January 1972.

¹⁸⁵Resolution No. 146, North Bonneville Town Council, 17 January 1972.

¹⁸⁶L. J. Stein, Chief, Engineering Division, Portland District, memorandum to D. H. Nellen, Chief, Real Estate Division, Portland District, Subject: "Public meeting--Bonneville Second Powerhouse, 3 December 1973.

¹⁸⁷Evergreen College Planning Group, Planning Study, I. 1. 12.

¹⁸⁸D. H. Nellen, Chief, Real Estate Division, Portland District, memorandum to L. J. Stein, Chief, Engineering Division, Portland District, Subject: Public Meeting--Bonneville Second Powerhouse, 27 November 1973.

¹⁸⁹Stein, memorandum to Nellen, 3 December 1973.

¹⁹⁰Paul D. Triem, Colonel, District Engineer, Portland, letter to Mayor Robert J. Holcomb, Town of North Bonneville, 4 August 1972.

¹⁹¹Evergreen College Planning Group, Planning Study, I. 1. 12.

¹⁹²Memorandum to File by Daugherty, 15 November 1973.

¹⁹³See Minutes, North Bonneville Town Council, 2 January 1974.

¹⁹⁴Memorandum for the Record by Buddy R. Clemenhagen, Subject: Summary of Meeting Regarding Town of North Bonneville Relocation Proposal 10 January 1974, 22 January 1974.

¹⁹⁵Memorandum for the Record by Clemenhagen, 22 January 1974.

¹⁹⁶Memorandum for the Record by Clemenhagen, 22 January 1974.

¹⁹⁷Memorandum for the Record by Clemenhagen, 22 January 1974.

¹⁹⁸Memorandum for the Record by Clemenhagen, 22 January 1974.

¹⁹⁹U.S. Army Corps of Engineers, Portland District, Press Release, 22 January 1974.

²⁰⁰Town of North Bonneville, Relocation Newsletter, 6 February 1974.

²⁰¹Town of North Bonneville, Relocation Newsletter, 6 February 1974.

²⁰²See Resolution No. 1974-04, Board of Commissioners of Skamania County, Washington, 21 January 1974.

²⁰³U.S. Army Corps of Engineers, Portland District, Press Release, 22 January 1974.

²⁰⁴Memorandum to File by Daugherty, 6 February 1974. For earlier reference to the meeting of February 6, 1974, see dissertation, supra, 145-46.

²⁰⁵U.S. Army Corps of Engineers, Portland District, "Announcement of Public Meeting, Utilization of Project Lands, Bonneville Dam Second Powerhouse Project, Columbia River, Bonneville Oregon", 15 February 1974.

²⁰⁶North Bonneville Relocation Site Selection Committee, "New City Proposal," 20 September 1971. See dissertation, supra, 104.

²⁰⁷Minutes, North Bonneville Town Council, 17 January 1972. See dissertation, supra, 147-48.

²⁰⁸U.S. Army Corps of Engineers, Portland District, Press Release, 22 January 1974. See dissertation, supra, 151.

²⁰⁹Triem, letter to Holcomb, 4 August 1972. See dissertation, supra, 149.

²¹⁰Memorandum for the Record by Clemenhagen, 22 January 1974. See dissertation, supra, 150-51.

CHAPTER VI

THE MCCORMACK LEGISLATION

By early 1973 it was obvious to all concerned that the relocation of North Bonneville, if it were to be accomplished, would require special legislation.¹ "What was needed," as summarized by Evergreen College students, "was an authorization bill giving the Army Corps of Engineers the necessary authority to provide financial and technical assistance earmarked for relocation planning directly to the town."² The Town approached Congressman Mike McCormack.³ Initially, as understood by the Congressman, the townspeople wanted only minimal assistance. McCormack recalls,⁴

Now, the basic idea was really very simple. . . .

When I was made aware of the fact that it would be necessary to destroy the town of North Bonneville, this, of course, did not represent any great loss to society because the town was I think, only at maximum about 300 people, perhaps a good deal less than that. It was mostly a series of shacks with only two or three respectable homes or buildings within it. And so it seemed to me, knowing how these things worked, that as private citizens are adequately compensated for this sort of thing, that it seemed to be a pretty good deal for them. They would have an opportunity to live in better living conditions. And the only persons who could possibly be hurt were the two or three individuals who had tiny little stores there who served the traffic going through.

So the idea of destroying a town was not a particularly bad one. But when the discussion evolved into something of the detail of what would happen it became obvious that the first impression was that each individual would be provided with a piece of property and a home, and a lot of them indicated they wanted to stay in the vicinity.

Well in an unpopulated area such as that, what this meant was--if there's no organization very likely just simply providing individuals with a piece of property here and there

and providing for the building of a home--some money for the building of a home on it.

This is the same time we were talking about water pollution control laws, Economic Development Administration, sewage disposal programs, this sort of thing. And the question immediately arose. What about services for these citizens? What about schools, police protection, disposal, power supply, all these sorts of things. And so the suggestion was made--somewhere along the line, and I really don't know where its origins were, whether in my mind or some other people's minds, or the minds of several individuals simultaneously--to sort of put the people all in one place. In other words to build a new town.

And the idea was really very modest. We were dealing with a small number of individuals who wanted--who were willing to be moved. A lot of them simply said I'll take the money and go. A lot of them said I'm going to Portland, or someplace else. So we're down now I think to less than 100 individuals who said effectively I want to stay and be "a new community." And then--so what we were talking about was having them in a community someplace where they would have, fundamentally more than anything else, a sewer system. That was what we were getting at. To give them a water supply and a sewer system.

Because they had P.U.D. power, and they could be part of the County, they wouldn't have to be incorporated. They could be part of the County government.

That is about where it started. And that was about what the concept was.

* * *

So that was the basic concept. Simply to provide a modest town for maybe a hundred or maybe a few more, maybe a few less, souls. With private homes of reasonably good quality, with a common sewer and water supply system. So they could organize as they saw fit within the County government or not.

HOUSE OF REPRESENTATIVES BILL 8756

On June 15, 1973, Congressman Mike McCormack introduced a bill in the U.S. House of Representatives, designated H.R. 8756.⁵ The bill was offered as an amendment to the Bonneville Project Act of 1937. If enacted, the bil would have authorized the Secretary of the Army, acting through the Chief of Engineers, "to provide technical and financial assistance to the town of North Bonneville in planning a new town"; "to acquire lands necessary for said new town at a location to

be determined by the mayor and town council"; "to construct a central sewage collection and treatment facility and other public facilities in accordance with a comprehensive community relocation plan"; and "to convey title to lots thus acquired in the new townsite, by sale or otherwise, to affected individuals, business entities, and to the municipality." The bill provided that "a relocation plan shall be developed by the town in conjunction with an interagency relocation board and the Regional Planning Council of Skamania County, Washington." The bill further provided,⁶

The town shall have, through such authority as it may establish, the option of purchasing all lands not dedicated as public lands within the new townsite, at a cost proportional to the cost of the land at the time of acquisition by the Corps of Engineers. A twenty-year no-interest loan is hereby authorized to enable such purchase providing such purchase is in accordance with requirements and goals as set forth in a comprehensive community relocation plan. All such planning, acquisition and construction shall include adequate provisions as determined by the Secretary of the Army for future expansion of the town as outlined in the comprehensive community relocation plan, and in any event said new town shall be at least equal in area and capacity to the existing townsite and town facilities.

H.R. 8756 was referred to the House Committee on Public Works. During hearings on the bill the North Bonneville Town Manager, David Hussell, appeared as the principal spokesperson for the town. The Town Manager was accompanied by Robert Leicke, Prosecuting Attorney, Skamania County, and by Pollard Dickson. In his prepared statement, Hussell stressed to the Committee that the Town wanted to do its own planning. Specifically, the Town Manager asked the Congress "to guarantee the right of a local community to control the planning effort."⁷ Implicitly suggesting to the Committee that the Town's

requirements must be satisfied, Hussell referred to establishment of the interagency relocation board and noted, "Unqualified support was given by the Congressional delegation, as well as from the State of Washington and Skamania County."⁸ Moreover, he told the Committee, "The essential fact that spade one on construction of the second powerhouse cannot begin until the town of North Bonneville is completely relocated must not be forgotten."⁹ Attendant to his prepared remarks, Hussell suggested a revised bill, as replacement for H.R. 8756 introduced by McCormack, specifically drafted to provide authorization for Town control. The suggested bill reads,¹⁰

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the project for the Bonneville Second Powerhouse, Oregon and Washington, authorized by the 1937 Bonneville Project Act, approved August 20, 1937 (50 Stat 731) is hereby amended to provide that the Secretary of the Army, acting through the Chief of Engineers, is authorized, in connection with the relocation of North Bonneville, Washington, to participate in planning a new town; to acquire lands reasonably necessary for said new town; to construct a central sewage collection and treatment facility; and to convey title to lots thus acquired in the new townsite, by sale or otherwise, to affected individuals, affected business entities, and the affected municipality; all in such manner and such terms as is determined to be appropriate by the Secretary of the Army, provided that all determinations made pursuant to this section shall be subject to the approval of the Mayor and Town Council of North Bonneville, Washington, and provided further that the Town of North Bonneville shall have, through such authority as it may establish, the option of purchasing all lands not dedicated as public lands within the new townsite at the Corps' actual cost. Such planning, acquisition, and construction shall include appropriate provisions as determined by the Secretary of the Army for future expansion of the town by others.

During his oral testimony, Hussell explained that the Town would welcome Corps assistance, "but did not want to abrogate to the Corps ultimate decisions pertaining to relocation."¹¹ He further explained,

with reference to the hiring of an architect-engineer firm to plan the new town, that the Town did not want "a situation where the Corps and not the town was placed as client."¹² Again Hussell stressed, "The essential fact remains, that construction of the second powerhouse cannot begin until the town of North Bonneville is completely relocated."¹³

McCormack was apparently surprised by the Town's suggestion of substitute language in lieu of the wording of the bill he introduced. The Congressman told his colleagues on the committee, "I would like the record to show at this point that the legislation I submitted, H.R. 8756, was submitted at the request of the community, and that it was the wording they submitted. Mr. Hussell and the representatives of the community are now proposing an amended version of this language."¹⁴

Following Hussell's oral statement there was a question and answer session. The dialogue included these exchanges:¹⁵

Mr. Johnson. And instead of moving those people who are affected under the Relocation Act, which is the responsibility of the Government, you want to move to a new townsite and put your facilities--have it well planned, laid out, and that would take 90 percent of the community to a new site.

Is that about right?

Mr. Hussell. Yes, Mr. Chairman, that is true, while under present law, referring to the Uniform Relocation Act, it deals specifically with the individual: the relocation of the individual citizen. There is no law that deals with the relocation of a town, and thus the Corps does not have any responsibility in that regard, other than to move the facilities.

* * *

Mr. Johnson. I will have to turn the chair over to the gentleman from Washington. I have a mission to take care of on the floor at 12 o'clock here.

Mr. McCormack [presiding]. Thank you, Mr. Chairman.

Mr. Hussell, I would like to reestablish several points for

the record, so that we will have absolutely no confusion in this matter.

It is correct, is it not, that the Corps of Engineers has publicly stated that a second powerhouse has been authorized, and will be built in the very near future?

Mr. Hussell. Yes, sir, that is true.

* * *

Mr. McCormack. This powerhouse, then, is a part of the overall hydrothermal development plan?

Mr. Hussell. Yes, sir, that is true.

Mr. McCormack. And will provide cheaper electricity than we can buy anywhere else in the country, is that correct?

Mr. Hussell. Yes, sir; that is correct.

Mr. McCormack. Now, virtually all of the town must be removed. There will be nothing left due to the building of the powerhouse?

Mr. Hussell. Yes, that is true. Perhaps 5 percent.

* * *

Mr. McCormack. And is it correct that the Corps of Engineers, the State of Washington, the town of North Bonneville, and the county of Skamania all want to work together in solving this problem? There is no difference of opinion about solving the problem, is there?

Mr. Hussell. No sir, there is not.

Mr. McCormack. Under the Uniform Relocation Assistance Act, the Government has the responsibility of moving every individual affected, but moving them individually. What you wish the Committee to do is to allow the Corps of Engineers to move them collectively and not individually: is that not correct?

Mr. Hussell. Yes, sir. Particularly to an area with a sewage system in existence.

Mr. McCormack. Is there a fundamental problem at the present time as far as the perspective of the Corps of Engineers is concerned, between what the Corps would like to do and what the city would like to do?

Is there a fundamental difference of opinion here?

Mr. Hussell. We basically are engaging in a planning effort now that is an ongoing planning effort, and we feel, and I believe the Corps of Engineers do feel that the relocation of the town has to take place, but how the actual control of the planning and the site selection, the things of this nature, are to be controlled is the basic question that we have in difference with the Corps.

They have over the last 2 years--it has been a very frustrating process for us, dealing with the Corps, and they basically look at--want total control over the relocation project, and we feel that due to--since it is our town and it will be our own futures and our destiny, we should have the control over what place is selected to which we relocate. And essentially, we are asking nothing more than what we already have and--

Mr. McCormack. In other words, all you are asking for is veto power over the specific location of the site?

Mr. Hussell. Yes.

Mr. McCormack. And the general nature of the site?

Mr. Hussell. Yes. Of the site, and the total comprehensive planning effort, through the actual implementation of the plan.

* * *

Mr. Clausen. When you make reference to the possibility of a problem between the Corps of Engineers and your community, does it not stem from the lack of basic legal authority initially?

We in effect are breaking new ground. Is this not true?

Mr. Hussell. Yes.

Mr. Clausen. Is this not a precedent?

Mr. Hussell. Yes, it is.

Mr. Clausen. Because it does not qualify under the Relocation Assistance Act?

Mr. Hussell. Yes, sir.

* * *

Mr. Clausen. By the same token, if the Corps in fact is going to be the administering agency, they have a definite responsibility consistent with the basic administrative guidelines set down, and I do not know, is there anything in the way of department reports on this project?

Mr. McCormack. Mr. Clausen, this project has been dangling for many years, and before I was a member of the committee, it was brought in for consideration. I do not know what the historical record is on it. We would have to ask the staff and, certainly, we are going to have to ask the Corps of Engineers for their response.

Mr. Clausen. Because the relocation project is associated with what, the Bonneville project?

Mr. Hussell. Yes.

* * *

Mr. McCormack. May I also clarify one other point: the Corps would move each and every individual under the Uniform Relocation Assistance Act, but what we are talking about here is moving the town group as a unit--

Mr. Clausen. You are asking something in lieu of?

Mr. McCormack. Yes; we are requesting the relocation of the town as a collective unit, rather than the relocation of the citizens of the town individually.

* * *

Mr. Clausen. Has it been established what the cost will be. . . ?

Mr. Dickson. . . . In the initial onset we would think of planning, acquisition, and planning of site, and to move the town would be in the neighborhood of \$1.5 million.

Enactment of legislation as proposed by the Town, either H.R. 8756 as introduced by Congressman McCormack or the revised language presented during Committee hearings by Town Manager Hussell, would have given the Town open ended power to insist that the Corps pay for literally anything the Town wanted, subject, of course, to the appropriation of funds by the Congress. Apparently, however, the prospect of virtually unlimited town control was too much for the members of Committee on Public Works. Under date of July 27, 1973, Colonel Gilkey received a note from Lt. Col. Paul C. Driscoll, Assistant Director of Civil Works for Pacific Divisions, OCE, which reads, "Here is bill as introduced and also language suggested by the Town. Actual language is still being worked on in Committee. I'm told it will be very conservative and gives Government full control. No further word expected until September."¹⁶

H.R. 8756 died in Committee.

HOUSE OF REPRESENTATIVES BILL 10203

On September 12, 1973, H.R. 10203, which became Public Law 93-251, the Water Resources Development Act of 1974, was introduced in the House.¹⁷ The bill, which was referred to the House Committee on Public Works, included, as Section 183, language that would authorize the relocation of North Bonneville.¹⁸ On October 3, 1973, in House Report No. 93-541, the House Committee on Public Works, having considered H.R. 10203, reported favorably thereon with an amendment and recommended that the bill as amended be passed.¹⁹ The bill as reported out of committee included the language authorizing the North

Bonneville relocation, redesignated Section 83.²⁰ H.R. 10203 was passed by the House of Representatives on October 12, 1973.²¹

On October 15, 1973, Congressman McCormack sent letters to the residents of North Bonneville informing them that the House of Representatives had passed H.R. 10203, "including a provision to facilitate the relocation of the Town of North Bonneville."²² McCormack provided copies of Section 83, explaining that "the wording is not exactly that with which we started" but that, "I am firm in the belief that this legislation gives the Town the essential latitude to make the many critical determinations that will affect you once relocated, and gives the Corps of Engineers the necessary authority to cooperate and participate with you in the implementation of some of these determinations."²³ The Congressman also sent the residents copies of a statement by Congressman Ray Roberts, Chairman of the Water Resources Subcommittee, House Committee on Public Works, made during debate on the bill. The statement, offered as further clarification of the necessity for and intent of the legislation, reads,²⁴

Mr. Chairman, I have received a number of questions from the gentleman from Washington (Mr. McCormack) concerning section 83 of the bill, which authorizes the relocation of the town of North Bonneville, Wash. These questions, together with my responses, follow:

Q. Does this provision allow the Corps of Engineers to furnish financial and technical assistance to the Town of North Bonneville in the planning stages of town relocation?

A. Yes, it will allow the provision of such assistance.

Q. Does this provision imply or require in any way that the Corps of Engineers would proceed with planning and relocation of the Town of North Bonneville without close consultation and communication with the Town and residents?

A. No, it does not. It is normal Corps policy to cooperate with local interests in matters such as this.

Q. At this time, the Corps is, at my request, working and participating in a planning group consisting of non-Federal interests in planning for the relocation of the Town. Does this provision foreclose on any continued cooperation of this nature?

A. No, it does not.

Q. Without section 83, is the Corps obligated to cooperate in the pre-relocation planning effort with the Town?

A. No, it is not.

Q. Without this provision, can the Corps construct a new sewage collection and treatment facility in the relocated town?

A. No, the Corps would have no authority.

Q. Without this provision, is the Corps authorized to provide any financial assistance in planning or relocation of the Town?

A. No, the Corps would not have any such authority.

Q. Without this provision, is the Corps obligated to deal with the Town of North Bonneville in any other way than is already mandated by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970?

A. No, it is not.

On October 16, 1973, the House announced passage of H.R. 10203 to the Senate.²⁵ On December 11, 1973, S. 2798, a companion bill to H.R. 10203, was introduced in the Senate.²⁶ Also on December 11, in Senate Report No. 93-615, the Senate Committee on Public Works issued a favorable recommendation.²⁷ The Senate bill as recommended included language authorizing the North Bonneville relocation identical to that contained in H.R. 10203, only designated Section 52.²⁸ H.R. 10203 was amended in the Senate to strike all after the enacting clause and to insert in lieu thereof the text of S. 2798 as amended.²⁹ S. 2798 was indefinitely postponed and H.R. 10203 passed by the Senate on January 22, 1974.³⁰

The reports of both the House and Senate describe the intent of the North Bonneville relocation legislation in identical wording:³¹

This section authorizes the Chief of Engineers to relocate the town of North Bonneville, including cooperating in the planning of the new town with other Federal agencies and

appropriate non-Federal agencies: to acquire lands necessary for the new town and to convey title to said lands to individuals, business or other entities; to construct a central sewage collection and treatment facility and other necessary municipal facilities in connection with the construction of the Bonneville Lock and Dam, Oregon and Washington (Second Powerhouse).

The town of North Bonneville is located on the Washington shore of the Columbia River at the north abutment of the existing Bonneville Dam spillway. The Second Powerhouse will be constructed on the Washington shore just upstream of the end of the existing spillway dam. Construction of the Second Powerhouse in this area along with the required railroad and highway relocations will require the taking of nearly all of the town of North Bonneville. Population of the town is approximately 470 persons with 188 residential units and 47 businesses. Public facilities include the town hall, elementary school, contract post office, and city park. The town has a public water system supplied with wells. Sewage disposal is by individual septic tanks.

The section is designed to ensure that the relocation will be accomplished in a fair and equitable manner, and that no windfalls or unjust enrichment will occur. Individuals and entities will receive the compensation which would be due them for the taking of their property under the usual procedures, less the fair market value of the lot they receive in the new town. If a more or less valuable lot is desired in the new town, this can be accomplished during the planning process.

The non-Federal interests must furnish commitments that all lots in the townsite will be either occupied when available, will be replacements for open space and vacant lots in the existing town, or will be purchased by non-Federal interests. This will ensure that lots reserved for future expansion and in excess of those in the existing town will not be provided at Federal expense. The same applies to the utilities. Those furnished at Federal expense will have the same capacity and be able to serve the same number of users, as those in the existing town.

H.R. 10203 was referred to conference, on Senate amendments totally unrelated to the relocation of North Bonneville.³² A Conference Report which included recommendation for inclusion of language authorizing the North Bonneville relocation as Section 83, was published on February 13, 1974.³³ The House agreed to the report on February 19, 1974.³⁴ On February 21, 1974, the Conference Report

was agreed to by the Senate.³⁵ H.R. 10203 was signed into law on march 7, 1974.³⁶ The legislation became Public Law 93-251, the Water Resources Development Act of 1974.³⁷ Section 83 of the enactment reads as follows:

(a) The project for Bonneville Lock and Dam, Columbia River, Oregon and Washington, authorized by the Act of August 30, 1935 (49 Stat. 1028) and the Act of August 20, 1937 (50 Stat. 731) is hereby modified to authorize the Secretary of the Army, acting through the Chief of Engineers, in connection with the construction of the Bonneville second powerhouse, to relocate the town of North Bonneville, Washington, to a new townsite.

(b) As part of such relocation, the Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate in the planning of a new town with other Federal agencies and appropriate non-Federal interests; to acquire lands necessary for the new town and to convey title to said lands to individuals, business or other entities, and to the town as appropriate; and to construct a central sewage collection and treatment facility and other necessary municipal facilities.

(c) The compensation paid to any individual or entity for the taking of property under this section shall be the amount due such individual or entity under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 less the fair market value of the real property conveyed to such individual or entity in the new town. Municipal facilities provided under the authority of this section shall be substitute facilities which serve reasonably as well as those in the existing town of North Bonneville except that they shall be constructed to such higher standards as may be necessary to comply with applicable Federal and State laws. Additional facilities may be constructed, or higher standards utilized, only at the expense of appropriate non-Federal interests.

(d) Before the Secretary of the Army acquires any real property for the new townsite appropriate non-Federal interests shall furnish binding contractual commitments that all lots in the new townsite will be either occupied when available, will be replacements for open space and vacant lots in the existing town, or will be purchased by non-Federal interests at the fair market value.

ENDNOTES

¹"From the time I arrived at the District to the time the McCormack legislation passed, my own personal attitude, and I think that shared by most of my staff--I can't say all of them--was that the McCormack legislation was the one real hope we had to successfully relocate the town. And at the same time keep that project on schedule." Clarence D. Gilkey, personal interview, 27 June 1985.

²Evergreen State College Urban Planning Group, North Bonneville Relocation Planning Study (Olympia, WA: Evergreen State College, 1973) I. 2. 3.

³K. W. Peterson, personal interview, 22 August 1986.

⁴Mike McCormack, personal interview, 8 July 1987.

⁵119 Cong. Rec. 19898 (daily ed. June 15, 1973).

⁶H.R. 8756, 93rd Cong., 1st Sess. (1973).

⁷Water Resources Development--1973, Hearings on H.R. 8756 Before the Subcommittee on Water Resources of the House Committee on Public Works, 93rd Cong., 1st Sess. 1217 (1973) [hereinafter "Hearings"].

⁸Hearings, at 1217.

⁹Hearings, at 1217.

¹⁰Hearings, at 1217.

¹¹Hearings, at 1220.

¹²Hearings, at 1219.

¹³Hearings, at 1220.

¹⁴Hearings, at 1224.

¹⁵Hearings, at 1120-1126.

¹⁶Paul C. Driscoll, LTC, Assistant Director of Civil Works for Pacific Divisions, OCE, note to Colonel Clarence D. Gilkey, District Engineer, Portland, 27 July 1973.

¹⁷119 Cong. Rec. 29405 (daily ed. Sept. 12, 1973).

¹⁸H.R. 10203, 93rd Cong., 1st Sess. (1973).

¹⁹119 Cong. Rec. 32879 (daily ed. Oct. 3, 1973). See H.R. Rep. No. 93-541, 93rd Cong., 1st Sess. 1 (1973).

²⁰H.R. Rep. No. 93-541, 93rd Cong., 1st Sess. 122-23 (1973).

²¹119 Cong. Rec. 33905 (daily ed. Oct. 12, 1973).

²²Mike McCormack, M.C., letter to residents of North Bonneville, 15 October 1973.

²³McCormack, letter to residents, 15 October 1973.

²⁴119 Cong. Rec. 33881 (daily ed. Oct. 12, 1973).

²⁵119 Cong. Rec. 34197 (daily ed. Oct. 16, 1973).

²⁶119 Cong. Rec. 40643 (daily ed. Dec. 11, 1973).

²⁷119 Cong. Rec. 40641 (daily ed. Dec. 11, 1973); S. Rep. No. 93-615, 93rd Cong., 1st Sess. 1 (1973).

²⁸S. 2798, 93rd Cong., 1st Sess. (1973). See S. Rep. No. 93-615, 93rd Cong., 1st Sess. 108 (1973).

²⁹120 Cong. Rec. 325 (daily ed. Jan. 22, 1974).

³⁰120 Cong. Rec. 325 (daily ed. Jan. 22, 1974).

³¹H.R. Rep. No. 93-541, 93rd Cong., 1st Sess. 122-23 (1973); S. Rep. No. 93-615, 93rd Cong., 1st Sess. 108 (1973).

³²120 Cong. Rec. 325 (daily ed. Jan. 22, 1974); 120 Cong. Rec. 700 (daily ed. Jan 24, 1974).

³³H.R. Rep. No. 93-796, 93rd Cong., 2nd Sess. 1 (1974).

³⁴120 Cong. Rec. 3286 (daily ed. Feb. 19, 1974).

³⁵120 Cong. Rec. 3845 (daily ed. Feb. 21, 1974).

³⁶120 Cong. Rec. 6512 (daily ed. Mar. 13, 1974).

³⁷Water Resources Development Act of 1974, March 7, 1974, 48 Stat. 12.

CHAPTER VII

RELOCATION EFFORTS UNDER THE McCORMACK LEGISLATION

Most of the issues that were to arise or continue and become the subject of disputes between the Town of North Bonneville and the Corps of Engineers after passage of the McCormack legislation, Section 83 of Public Law 93-251, the Water Resources Development Act of 1974, were known to or could have been made known to the Congress before this special legislation was enacted. Presumably, by thoughtful deliberation and skillful legislative drafting, and with adequate information input by the Corps of Engineers, each identifiable issue could have been addressed and clearly and decisively settled by the Congress. In fact, however, several of the issues known to the Congress were not resolved by the legislation. Moreover, a number of issues known to the Corps were apparently never brought to the attention of the Congress.

Perhaps the most significant issue, the one that dominated discussions between the Town and the Corps prior to enactment of the McCormack legislation, was that concerning control of the new town planning process. The Congress knew, from the testimony of David Hussell, that there was a difference of opinion between the Town and the Corps concerning "the actual control of the planning and the site selection, the things of this nature."¹ Hussell told the Subcommittee on Water Resources of the House Committee on Public Works that the

Town wanted to do its own planning. Indeed, he expressly asked the Subcommittee for legislation that would "guarantee the right of a local community to control the planning effort."² His testimony emphasized that the Town would welcome Corps assistance "but did not want to abrogate to the Corps ultimate decisions pertaining to relocation."³ Specifically, with respect to the hiring of an architect-engineer firm, Hussell told the Committee that the Town did not want "a situation where the Corps and not the town was placed as client."⁴ The Corps knew or should have known, and could have made known to the Congress, that this issue demanded clear and definitive resolution if it were not to remain troublesome. The Corps should have understood that the Town was adamant. Certainly the Corps had not forgotten Town Resolution No. 148 wherein the Mayor and Town Council issued a "demand that the Corps of Engineers refrain from planning the town site through their offices or through any engineering or consulting firm retained directly by them."⁵ Corps officials could have stressed to the Congress that what the Town wanted from the Corps of Engineers, and all it would accept absent clear legislation directing that planning be accomplished by the Corps and not by the Town, was a financial commitment to pay for new town planning done by the Town. Adequately forewarned, it is possible that the Congress would have explicitly addressed this issue in the language of the legislation.

There is little doubt, considering the language and history of the McCormack legislation, that the Congress assumed and intended that new town planning would be accomplished by the Corps. Expressly on

this issue, Public Law 93-251, Section 83, states only that "the Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate in the planning of a new town with other Federal agencies and appropriate non-Federal interests."⁶

Significantly, however, the legislation does not provide, as requested by the Town, that all determinations by the Corps of Engineers "shall be subject to the approval of the Mayor and Town Council of North Bonneville."⁷ Congressman Ray Roberts, Chairman of the Water Resources Subcommittee, House Committee on Public Works, in his response to questions propounded by Representative McCormack during legislative debate on H.R. 10203, the bill enacted, clearly indicated that the intent of the legislation was that the Corps of Engineers would control the planning process. Roberts agreed that the Act did not "imply or require in any way that the Corps of Engineers would proceed with planning and relocation of the Town of North Bonneville without close consultation and communication with the Town and residents."⁸ Nonetheless, it is apparent from the text of his answer that no special grant of authority to the Town was intended. To the contrary, Roberts expressly stated, "It is normal Corps policy to cooperate with local interests in matters such as this."⁹

Congressman McCormack, the principal sponsor of the legislation, recalls that he personally expected that the Corps of Engineers would accomplish the planning of the new town. McCormack explains,¹⁰

My feeling was unequivocal that the Corps would do it. There's no question about that at all. This idea of the town saying we'll do it ourselves had not occurred to us at all. Partially because we didn't feel the town had anything like the competence to do that, in the individuals who lived there. It wasn't until they started getting outsiders in,

and help from the Governor's office, which was extremely disruptive, that that sort of problem crept in.

A second particularly significant issue was that concerning new town site selection. The crux of this issue, well known to the Corps of Engineers before and throughout the period of deliberation by the Congress, was whether the new town would be located within the land area contemplated for use by the Corps in conjunction with the second powerhouse project. David Hussell, in his testimony before the Subcommittee on Water Resources, on H.R. 8756, very clearly communicated to the Congress that the town wanted absolute control over selection of the site for the new town. Hussell told the Committee emphatically that the Town wanted a veto power over "the site, and the total comprehensive planning effort, through the actual implementation of the plan."¹¹ The Town knew, but apparently did not explicitly tell the Congress, that it had a specific site in mind. The site desired by the Town was within the land area identified in the report of the North Bonneville Relocation Site Selection Committee. This report recommended a new townsite of at least 200 acres.¹² Subsequently, during the North Bonneville public meeting of January 10, 1974, the Town proposed a new townsite of 350 acres.¹³ The Corps also knew that the Town had a specific site identified. Moreover, the Corps knew that by preliminary estimation the use for the town relocation of the site desired by the Town would increase the cost of second powerhouse construction by \$12,531,000 to \$16,206,000.¹⁴ Nonetheless, Corps officials apparently did not inform the Congress of the site contemplated by the Town or of the cost implications of placement of the new town on this site. Indeed, the Corps left

standing, apparently unchallenged, testimony concerning the prospective cost of the relocation by Pollard Dickson that, while presumably ignorantly so, was grossly misleading. Following testimony by David Hussell, a member of the Subcommittee on Water Resources of the House Committee on Public Works asked the following question: "Has it been established what the cost will be. . . ?" Dickson answered: "In the initial onset we would think of planning, acquisition, and planning of site, and to move the town would be in the neighborhood of \$1.5 million."¹⁵

Related to the issue of site selection was the question of whether or not the Corps of Engineers would relocate the tracks of the Burlington Northern Railroad. Both the Town and the Corps knew, since publication of the report of the North Bonneville Relocation Site Selection Committee in September 1971, that the Town wanted the railroad moved to a new alignment.¹⁶ Moreover, the Corps knew on January 10, 1974, that relocation of the railroad as desired by the Town would cost approximately \$3,200,000.¹⁷ Town representatives, in testimony on H.R. 8756, made no mention of their desire to relocate this railroad.¹⁸ Likewise, apparently, Corps officials neglected to bring this matter to the attention of the Congress.¹⁹ Had this issue been raised with the Congress, it could have been decided and settled. In the absence of notice and information, however, this issue was not addressed by the Congress.

Another major issue concerned the sizing of the new town. The Corps knew that the Town wanted a new townsite more expansive than the original. Mayor Holcomb, in his statement before the Portland

District conducted public meeting of August 24, 1971, stated that the Town expected the relocated municipality to "be larger in area to accommodate 700 population by 1980."²⁰ The Town knew, as explained in the letter from Colonel Triem to Mayor Holcomb of March 23, 1972, that, as just compensation under the Fifth Amendment, the Corps had authority to replace and pay for streets and utilities necessary to accommodate the number of persons, and only the number of persons, who indicated an intent to move from the old to the new town; that if the Town wanted a new townsite larger than the Corps could legally provide, then "the costs incidental to that over-building must be borne by the town."²¹ The Town, in the text of H.R. 8756 introduced by Representative McCormack, requested of the Congress that the Corps be authorized to provide a new townsite with provisions "for future expansion", or at minimum, that the Corps be authorized to provide a new town "at least equal in area and capacity to the existing townsite and town facilities."²² What Corps officials communicated to the Congress concerning this issue, if anything, is not found of record.²³ However, the Congress must be assumed to know the requirements of just compensation under the Constitution, including the provisions of the substitute facilities rule as it relates to the relocation of towns.

The Congress did address the new town sizing issue within this text of Section 83, Public Law 93-251. But it did not do so clearly enough to preclude divergent interpretations of the intent of this legislation. Judging from the text of the legislation alone, without reference to the legislative history, it is arguable that a reasonably impartial, competent legal scholar would have to conclude that the

Congress decided not to grant the town request. Indeed, the language of this legislation would dictate that the Congress had decided that new town facilities provided at Federal expense were to be sized in strict compliance with the provisions of just compensation as determined by the courts. In what reads like a restatement of the substitute facilities rule, Section 83(c) provides,²⁴

Municipal facilities provided under the authority of this section shall be substitute facilities which serve reasonably as well as those in the existing town of North Bonneville except that they shall be constructed to such higher standards as may be necessary to comply with applicable Federal and State laws. Additional facilities may be constructed, or higher standards utilized, only at the expense of appropriate non-Federal interests.

When consideration is given to the legislative history of Section 83, however, it becomes apparent that the Congress did intend to authorize the Corps of Engineers to provide, at Federal expense, a replacement town equal in size and capacity to that of the original town. Additionally, the Congress authorized the Corps to provide lands and facilities for future town expansion, but only at non-Federal expense. Both House Report No. 93-541 and Senate Report No. 93-615, the Committee documents recommending enactment of the McCormack legislation, address the sizing issue in identical wording,²⁵

The non-Federal interests must furnish commitments that all lots in the townsite will be either occupied when available, will be replacements for open space and vacant lots in the existing town, or will be purchased by non-Federal interests. This will ensure that lots reserved for future expansion and in excess of those in the existing town will not be provided at Federal expense. The same applies to the utilities. Those furnished at Federal expense will have the same capacity and be able to serve the same number of users as those in the existing town.

It was incumbent on the Corps of Engineers, as the implementing agency, to know and understand the provisions of Section 83, including the content and implications of its legislative history. The Corps should have been or become prepared to explain and document to the Town of North Bonneville how, to what extent, and under what conditions this special legislation supplemented the substitute facilities measure of just compensation. In fact, however, as will become apparent from developments delineated hereinafter, the Corps of Engineers did not possess and did not undertake timely research to obtain a comprehensive knowledge and understanding of this legislation.

RELOCATION TOWNSITE SELECTION

On March 14, 1974, exactly seven days after the President of the United States signed the McCormack legislation into law, the Portland District conducted the public meeting announced on February 15. Colonel Clarence D. Gilkey, in his opening remarks as presiding officer, recounted that "this meeting has been called to obtain public participation in a discussion of the possible alternative uses of a portion of the land that has been designated for use by the Bonneville Project." He informed or reminded the over 200 persons in attendance that three possible applications of these lands were opened to discussion. Option one, the originally designated project use that would continue unless one of the other alternatives was selected, was "use as a contractor's work area and as a disposal area for materials excavated from the site of the second powerhouse with ultimate

development and utilization as a day-use recreation area." Option two was use as "a relocation site for the Town of North Bonneville." Option three was use for "an industrial/commercial development by private interests." The lands open for discussion were identified as being located on the north side of the Columbia River about two miles downstream of the town of North Bonneville, between the existing railroad track and the river. Drawings reflective of the three alternative uses under consideration, similar to those provided herein as Figures 4, 5, and 6, were made available to all present.²⁶

The District Engineer did not tell the citizens of North Bonneville and other attendees that the use of these lands for a relocation townsite would increase the cost of construction of the second powerhouse by between \$12,531,000 and \$16,206,000.²⁷ Indeed, the District Engineer did not address or invite substantive comments on the costs or benefits of any of the three options under consideration. Instead, Gilkey stated to those in attendance that the purpose of this meeting was "to hear your preferences" concerning the possible uses to which the lands could be put, "not to discuss the merits of the use of these lands for project construction or recreation, or for the townsite or industrial development."²⁸

Opening the meeting to public discussion, Gilkey first called upon Ernest J. Skala, Mayor of North Bonneville. Skala, speaking from a prepared text, told the District Engineer that the Town had already selected its new townsite, implying insistence that the Town be allowed to utilize the lands under discussion. Further, the Mayor asserted that the tracks of the Burlington Northern Railroad would

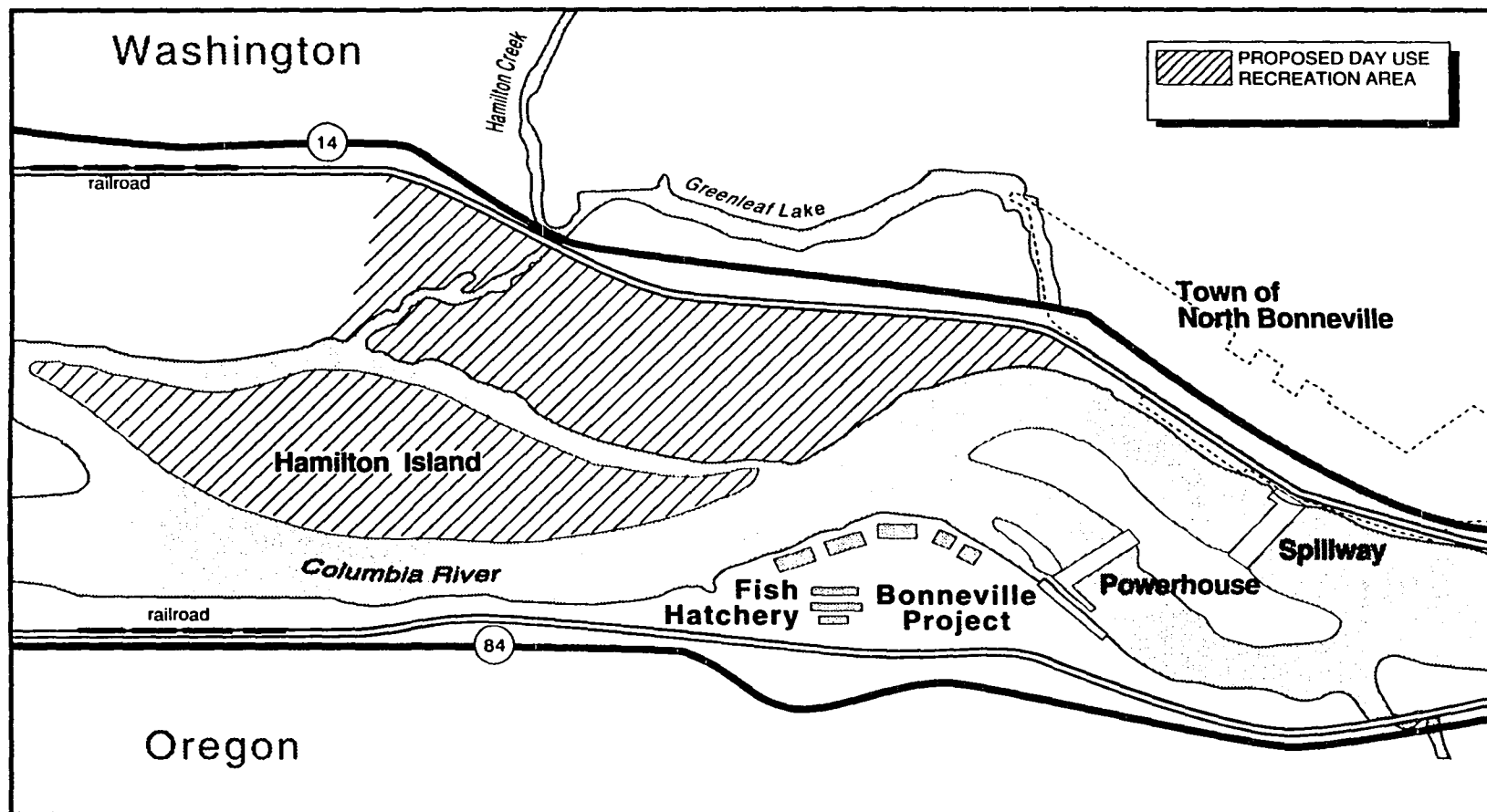


Figure 4. Area Contemplated for Dedication as a Day Use Recreation Area Under the Corps of Engineers Approved Development Plan. Source: Portland District, U.S. Army Corps of Engineers.

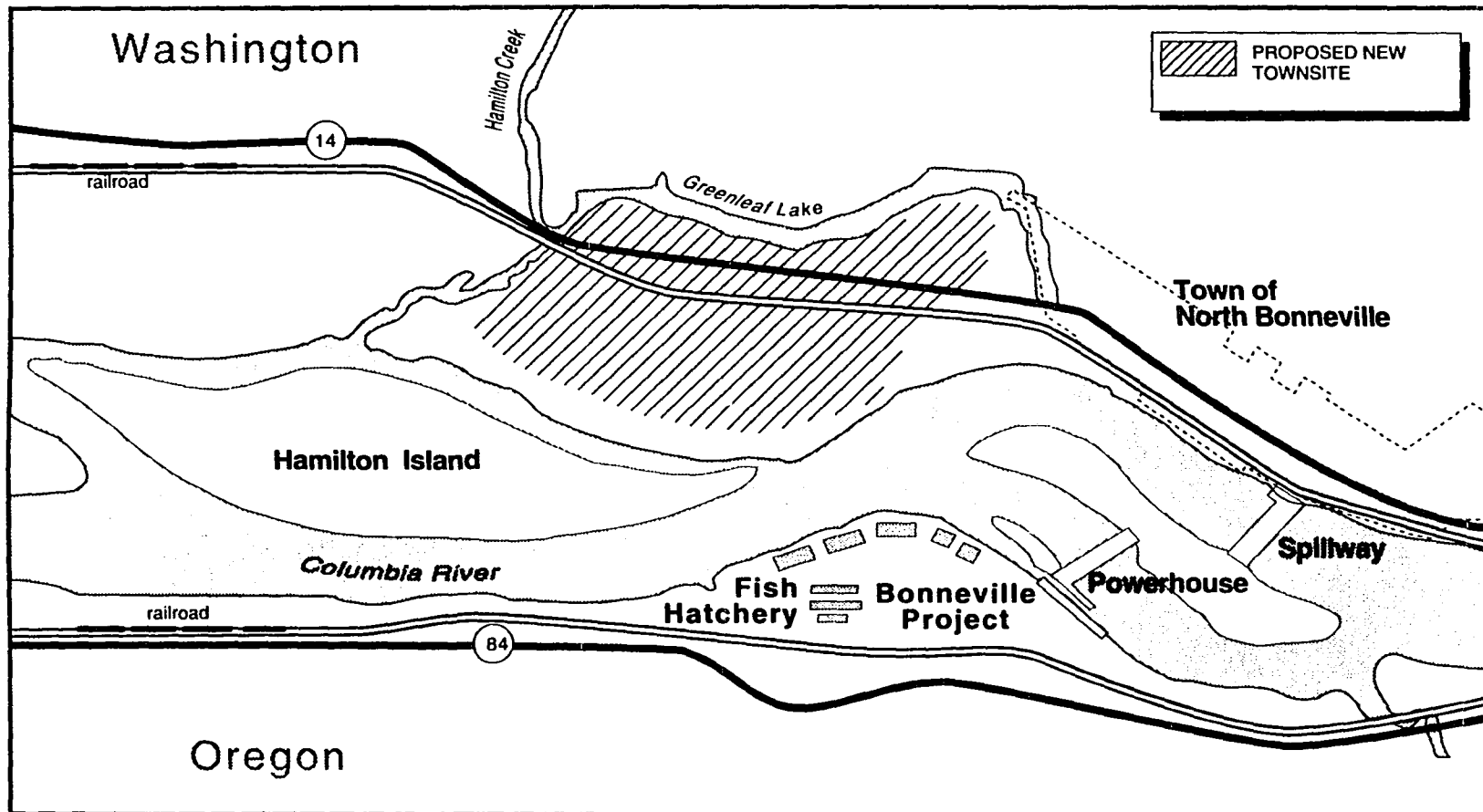


Figure 5. Area Contemplated for Use as a New Townsite Under the Town of North Bonneville Plan. Source: Portland District, U.S. Army Corps of Engineers.

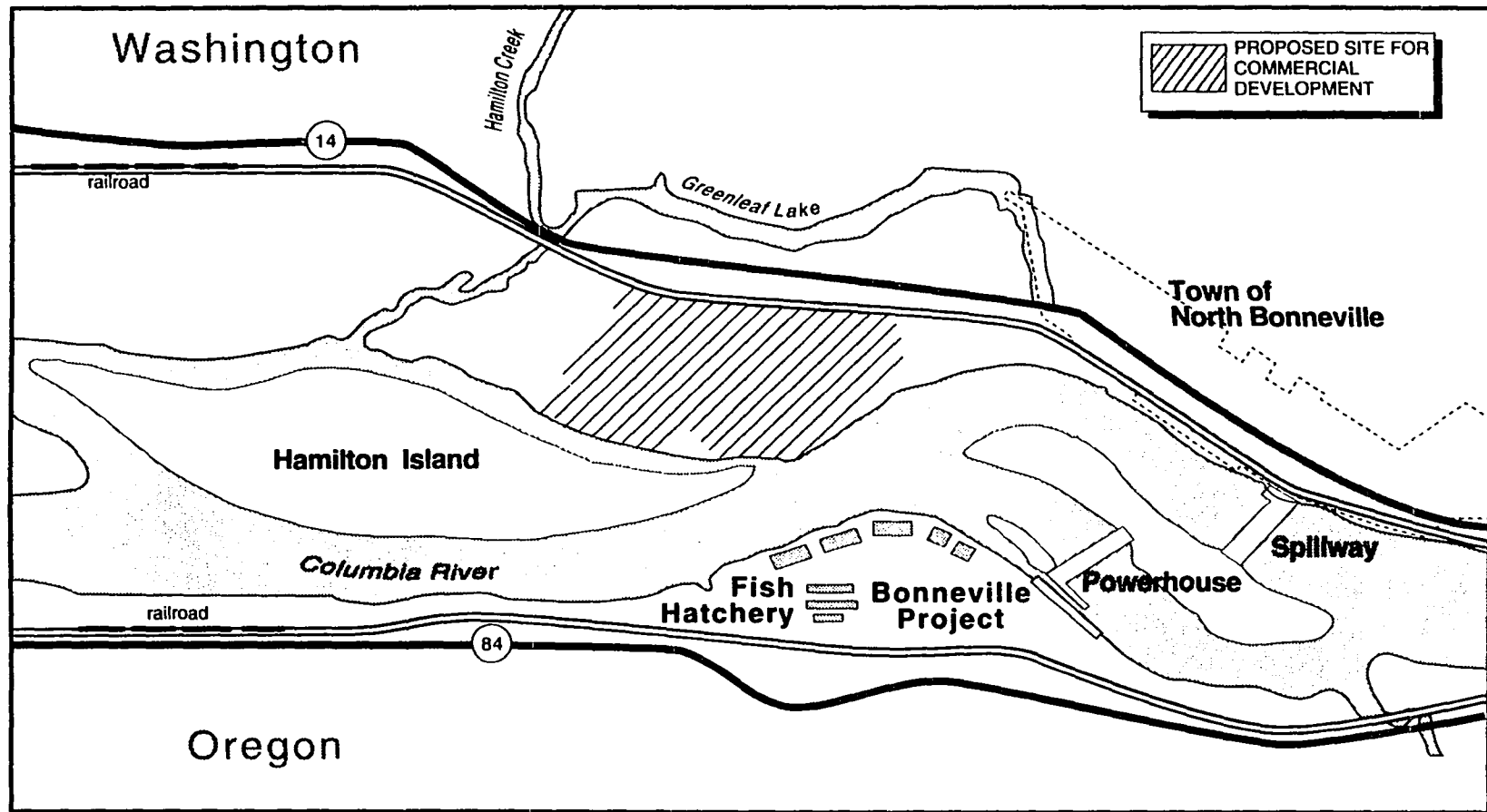


Figure 6. Area Contemplated for Use by Industrial Concerns Under the Commercial Development Plan. Source: Portland District, U.S. Army Corps of Engineers.

have to be relocated by the Corps of Engineers. The statement presented by Mayor Skala reads in part as follows:²⁹

The Town of North Bonneville has selected its site for relocation as a new town. The proposal addresses the need for a balance of land uses. It is our desire to provide for not only our homes, but for the community facilities, commercial district, and industrial uses. We can have park, town, industry for the benefit of all the people of Skamania County. To provide a balance of uses with the development of the townsite, we must have the railroad relocated north of Greenleaf Lake.

The majority of the citizens of this town and adjacent project areas have by four separate surveys expressed a desire to relocate as a new town. The total efforts of this town have been directed toward their desires. The most current survey results expresses that a majority desire to be directly involved in the design changes within the new townsite and surrounding area.

The passage of the "McCormack Legislation" provides for the citizens' direct involvement in the development of their relocation plan. The Town of North Bonneville will be the "CLIENT" in all relocation matters involving the design and development of the new town. The town will act as its own agent to insure the direct involvement of its citizens. Our planning program and efforts have been and will continue to be, directed toward the development of a single relocation plan that fully meets the needs of the citizens of North Bonneville and Skamania County.

Including Mayor Skala, twenty-one people spoke at the meeting, some representing themselves and others representing various governmental, environmental, and business organizations. The principal points made by each speaker and approximate length of presentations are recorded in a memorandum for record prepared by Clifford C. Comisky, then Acting Division Counsel, NPD, as recounted next:³⁰

(a) Mayor Ernest J. Skala of Town of North Bonneville read a prepared statement favoring the town council plan for location within the Corps' planned project area--he emphasized that the majority of the town people favored the plan and wanted to relocate as a new town--(6 minutes).

(b) Clarence Irwin: Washington, Columbia River Gorge Commission--felt North Bonneville town plan was best and supported it (3 minutes).

(c) Nani S. Warren: Oregon, Columbia River Gorge Commission--approves town plan fully--(2 minutes).

(d) Pearl A. Neely: Skamania County Economic Development Committee--people of Skamania County were 100% for town plan. (3 minutes).

(e) Russell M. Maynard: Washington Environmental Council --compliments Corps on plans--favors minimum disturbances--and berms to shield town--relies on Railroad for future uses and in general supports town plan for relocation. (3 minutes).

(f) Elizabeth M. Handler: Columbia Gorge Guardians--supports the town in its plan. Notes the little towns of the region are a tie to the past and history which should be preserved. (4 minutes).

(g) Doris A. Cooney: SW Washington Environmental Action Team. 100% in favor of town plan. Likes Greenleaf area. (2 minutes).

(h) Thomas O. Marlin: Sport fisherman--inquired about Bradford Island and effects of town and Corps plan on other fishing areas. Notes old channel on Hamilton Island will be plugged. (3 minutes).

(i) Carl E. Wolfe: of North Bonneville stated he had recently come out of the military service (2 years ago) and was looking into building in North Bonneville area, but when can he plan on doing so in view of the Corps plans? (1 minute).

(j) Richard W. Hemstad: Director, Office of Community Development, Office of the Governor of Washington. Identified his office as coordinating office of all state agencies in Washington. Overall their policy is to help the town of North Bonneville now and in the future to fullest extent. He then read Governor Evans' letter to COL Gilkey re appeal for state assistance by town--impressed with the town plan and generally supports it. Points out an Urban Center like North Bonneville is needed to be preserved for Skamania County. The alternative plan for spoil disposal has merit. Requests the Corps to cooperate with the town plan. (6 minutes).

(k) Bernard J. Heavey, Jr.: Port of Skamania generally blasted the Corps for not cooperating--for misleading data--for foot dragging and being evasive on details. Feels Omnibus Bill requires no further delay. Port supports town plan--town should remain viable as a town--Port's Resolution supports town--wants Corps to help town in condemnation of required property--points out 82% of lands in Skamania County are owned by State and Federal government. Interests of Port and Town are one and same--town and Corps project should be split off--ends by asserting relocation is a real disaster to

the town and Corps should assist 100% and also leave Port property alone. (8 minutes).

(l) Paul H. Scheel: Elderly resident of area spoke to point Corps should make up their minds now and tell the people what they want to know. (2 minutes).

(m) Donald W. Stevenson: a lumber company representative, and an Engineer stated towns are usually build on emotion. Town plan is in a windy area--is flat and not sheltered--feels the ecologists don't know best uses for area. He personally feels the town should be built on the hillside and leave the more level areas for food growing and agricultural purposes. If town built through sound engineer reasoning then there would be fewer disasters, such as from floods--engineers should control. (3 minutes).

(n) Helen M. Burson: a town resident stated she believed the people of the town knew best on their needs and what would be best suited for their desires. This is a good recreational area and should be developed for parks and suitable landscaping. She supported the Columbia Gorge Society. (4 minutes).

(o) Lee B. Miller: a townsman, said he had lived along the Columbia River for 63 years. Saw the Vanport floods. Saw the fishing in the area and has never seen anything good that the Engineers did--doesn't like to see people pushed. Wanted to know why couldn't the Corps build the town without all this squabble over where to put a "patch of dirt". . . . (5 minutes).

(p) Joseph C. Berberich: doesn't ask too much from the Government, but now the Government is taking away his chosen home. All he wants is a suitable and fair replacement of comparable value. (1 minute).

(q) Robert J. Holcomb: Chairman, Skamania County Commissioners. Read statement from Commissioners to COL Gilkey--supports town plan for North Bonneville. Agrees waste dirt should be for commercial use, not parks--Next 6 years big problem. Then he read a 2nd statement on behalf of the town--supports it and opposes Corps' original plan location. Also pointed out home Valley Recreation is only 13 miles upstream and Stevenson Recreation area is only 5 miles away--this is enough--the Port and other available lands should be used for commercial and industrial development--after all--only 17% of the County lands were privately owned. (5 minutes).

(r) Joachim J. Janovec: a technocracy representative gave the usual spiel on technocracy for the record and supported the Corps plan. (2 minutes).

(s) John W. Tol: a principal landowner objected to moving the railroad as proposed by the town--should stay as is--area is one of extreme fire danger--favors leaving for wildlife development--favors recreation, hiking and outdoor activity. (6 minutes).

(t) Monica M. Jones: Graduate student, Evergreen State College--said Town's plan was from people most concerned and should receive highest priority. (2 minutes).

(u) Pollard Dickson: North Bonneville Planner spoke on retaining the beauty of Hamilton Island and Greenleaf Slough. Said the town had explored all alternatives and then made a rational not emotional decision on location. The site selected and the town's plan (including moving railroad) would permit generating the kind of services needed by the community. They were sincere in their desires but realized they couldn't accommodate all views. (5 minutes).

By the time the public meeting ended, it had become very clear that there was overwhelming public support for the selection of option two, that is, for allowing the use of designated second powerhouse project lands as a relocation site for the new town of North Bonneville. The reality of this support was recognized by Colonel Gilkey, as reflected in the following excerpt from his closing comments:³¹

Well, ladies and gentlemen, as I told you before I called for testimony, we came to listen. We have listened, and I appreciate all of you expressing your views. As I told Mayor Skala and the town council last night, when we met with them, and as I think most of you people know, the final decision doesn't rest with me or the people in my office. However, we will put this package together just as quickly as we can. I've told the Mayor that what I hope to do with it is to hand-carry it back to Washington and try to walk it through, so when I come back I've got an answer.

I don't make a promise because I'm not certain that that's the way it'll work out, but that's certainly what we intend to do. Since we do have the McCormack Legislation, even before we do have a final answer on this, there are certain things that can be done as far as getting a running start on the actual planning that has to be done, and we, working with your town council and your town planning group, will get started on this even without waiting for a final answer on the town location.

At this point, that's really about all I can promise you, but I do feel that we're out of the starting blocks now. I don't think that it will take a very long period of time to get a final decision on whether or not the town is located on this site, and once we have that, then we're ready to move, all out.

The general tenor of this public meeting is captured in the following excerpts from a news article published on the next day in the Vancouver, Washington, Columbian:³²

Overwhelming testimony supporting the relocation of this town was received by the U.S. Corps of Engineers at a hearing held in the North Bonneville school Thursday night.

Col. Clarence D. Gilkey, Portland district engineer said after the hearing that his staff will compile the data and prepare a recommendation concerning use of the land west of the community.

Then, he continued, "I will hand-carry the package to Washington, D.C. and walk it through" the channels of government. The final decision about use of the land will be made by the chief of the Corps.

Although some of the testimony was imprecise and emotional generally all of those present favored relocation the town apparently to the "optimum site" proposed by the townspeople.

Supportive testimony was heard from more than 20 organizations and individuals. Included among these were the town council of North Bonneville, the Skamania County Commission, the Oregon and Washington Columbia River Gorge Commissions, the Skamania County Overall Economic Development Plan committee, the Columbia Gorge Guardians, the Washington Environmental Council, the Skamania County Planning Commission and the state Office of Economic Development.

Lt. Col. Neil Saling, district deputy engineer, said the corps has received some written testimony in addition to the oral testimony. Foremost among the communications was a letter from Governor Daniel Evans supporting the town's relocation plan.

Several reasons were most often given for supporting the town's proposal. Perhaps the main reason was that a majority of the people have indicated they desire to relocate as a unit. Another reason advanced was that a new town would provide a revenue base for the county. Still another was listed as the need for an urban center from which to develop natural resources and serve tourists. . . .

The land selected by North Bonneville for its optimum townsite consists of about 300 acres about a half mile west of the present location. The majority of this property now is owned by the Port of Skamania and the Lewis and Clark Ranch. . . .

The original proposal was to use the area for the staging of construction and for dumping excavation spoils. Then a federal regional day use park would be established.

Within less than a month following the March 14 public meeting, by letter dated April 9, 1974, Colonel Gilkey submitted a report to

the North Pacific Division Engineer in which he made two recommendations concerning townsite selection. First, he requested that the Portland District be granted approval to acquire all lands initially authorized for project purposes and to subsequently deed a portion thereof to the town of North Bonneville for a new townsite upon determination of the exact area and upon obtaining the necessary contractual commitments in accordance with the provisions of Section 83, Public Law 93-251. Second, he requested that the District be granted approval to relocate the tracks of the Burlington Northern railroad to a location outside of the selected townsite. Concerning the first, the basic recommendation, the District Engineer explained that the town, after considering possible sites along the Columbia Gorge, had concluded that the optimum location for a new townsite was in the area lying south of Greenleaf Slough, north of Hamilton Island and east of Hamilton Creek. He pointed out that the proposed townsite would be larger than the existing town, would require the placement of second powerhouse excavation materials to provide windbreaks against the winter east winds, and would necessitate the relocation of the Burlington Northern railroad. Nonetheless, he argued that "the site proposed by the town is the best available site" for the following reasons:³³

a. The site designated is the only location of sufficient size in this section of the Columbia Gorge which is not subject to periodic flooding and in which, therefore, initial relocation could take place without extensive site preparation. The capability to immediately move the town prior to commencement of any significant powerhouse excavation is essential to insure the uninterrupted sequence of operations necessary to maintain present power on line dates.

b. The site designated is the only location with sufficient area to provide the town a reasonable potential area for commercial and residential expansion.

c. The site designated is located adjacent to the proposed alignment of State Route 14. The livelihood of the existing town is derived from tourism, recreation, lumbering and to some extent from U.S. Government operations. Most of those functions depend to a significant degree on close proximity to the highway. Town planners anticipate that the new town will depend even more heavily on tourism and recreation. Thus the extensive highway frontage afforded by the recommended site is considered vital in maintaining the economic stability of the relocated town. Further, the close proximity of the relocated town to the proposed day-use area will enhance the economic viability of the town.

d. Relocation of the town to a site outside the Columbia Gorge would be unacceptable to the majority of the residents of the present town who are sociologically committed to the life style related to living in the gorge.

e. Relocation of the residents of the town of North Bonneville to the town of Stevenson is unacceptable because it would result in only one incorporated town in Skamania county and would thus result in reduction of revenue to the county from state sources. Additionally, animosities resulting from past commercial and political competition make this an unacceptable solution to the majority of North Bonneville residents.

Addressing his second recommendation, relocating the Burlington Northern railroad, Colonel Gilkey advised that this action would increase project costs by approximately \$3,250,000. Nonetheless, he argued, "In order to effectively utilize the selected site the railroad must be relocated for the following specific reasons":³⁴

(1) The existing railroad would constitute a substantial hazard to life and property in the event of a derailment. In addition to the hazard of derailment created by an elevated railroad transversing the community, the passing trains also would constitute a hazard to residents, particularly children who might frequent the railroad right of way.

(2) The physical separation of the town from the highway would be detrimental to the economic life of the new community.

(3) Train traffic in excess of 20 freight trains in each 24-hour period would create an unacceptable noise level in the new town. The location of the railroad on top of the high embankment would contribute to the dissemination of noise throughout the new community. Not only are these noise levels

undesirable to those residents of the present town who would relocate in the new town, but they also would constitute an undesirable attribute for a growing community.

(4) Based on the poll, relocation of the railroad would result in a maximum number of families relocating to the new town. Of those people who indicated a desire to relocate to the new townsite, 44% have stated they will not move unless the railroad is relocated. That reduction of relocatees to the new town would have a significant adverse impact on its viability.

The report makes no reference to the estimate that use of the townsite recommended, exclusive of expenditures related to relocation of the railroad, would increase the cost of construction of the second powerhouse by approximately nine to thirteen million dollars.³⁵ The reason for this omission, it is assumed, is that the District Engineer was reaching to put the Town's expressed site selection choice in the best possible light.

As promised the town, Colonel Gilkey attempted to obtain a decision on his recommendations as expeditiously as possible. His report on relocation site selection was hand carried to the office of the North Pacific Division Engineer, also located in Portland. That same day, April 9, the recommendations contained in the report were favorably indorsed by NPD to the office of the Chief of Engineers. The Division indorsement covered two basic points, as follows:³⁶

1. This office recommends approval of the District's proposed changes in the scope of the project. These changes have been brought about by the recent passage of the Water Resources Development Act of 1974 Public Law 93-251 authorizing the relocation of the Town of North Bonneville in connection with the second powerhouse.

2. A new EIS covering the total Bonneville project will be written to include the details of the relocation of the Town of North Bonneville since these are not specifically covered by the 2nd Powerhouse EIS now on file.

On April 10, 1974, Colonel Gilkey personally traveled to Washington, D.C., carrying his report and the Division indorsement, so that he could explain his recommendations to the various officials within the Office fo the Chief of Engineers that would be involved in the decision making process.³⁷ Apparently town officials expected that Gilky would return with a decision. Indeed, the Town issued a newsletter advising citizens that Colonel Gilkey would be returning on April 15 and that, "A public announcement is anticipated during the week of April 15, with respect to the new townsite and relocation of the Burlington Northern railroad."³⁸ Not unexpectedly, however, the District Engineer was not able to get an immediate decision on his recommendations. Instead, he returned to Portland empty-handed, leaving his report still under consideration by officials in the Office of the Chief of Engineers.

Impatient for a decision, the Town wrote to Colonel Gilkey on April 17, 1974, a letter signed by Mayor Skala, complaining that "we are now faced with another extended delay in arriving at a written commitment and public announcement with respect to our new townsite, relocation of the railroad and a formal relocation plan." The letter, copied inter alios to Senators Magnuson and Jackson and Representative McCormack, expounded the town's frustration as follows: "Considering the time of over 90 days from the January 10, 1974 public presentation of our proposal, over 60 days from our February 11, 1974 letter demanding a complete relocation plan and more than 2 1/2 years since the August 24, 1971 announcement of the powerhouse project location, the Army Corps of Engineers has had more than adequate time to

respond." Implying that the Corps had not acted in good faith, the letter threatened court action if a decision favorable to the town's purposes was not immediately forthcoming, as recounted next:³⁹

There is little question in our minds that instituting a policy of dispersion of our community was set in motion prior to your involvement in the Portland District Office. . . .

The waiting game is over for final official policy decision while the Corps Real Estate appraisal and acquisition programs disperse our citizens. The use of "hardship" forms for early appraisal and acquisition has been used not for its intended purpose, but as an expedient form of dispersion. The City of North Bonneville holds the U.S. Army Corps of Engineers accountable for instituting and implementing a policy that is not in keeping with the intent of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

The United States Army Corps of Engineers has used the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as a license to circumvent our city council as a governmental unit incorporated under the laws of the State of Washington and the duly elected representatives of the citizens of North Bonneville, Washington. My patience as the elected Mayor and spokesman for this governmental unit have come to an end. The Corps policy has made a mockery of our good intentions and struggling efforts for the past 2 1/2 years. It is apparent that an amiable solution, that I have desired and pursued, will not be forthcoming. We have announced through our newsletter and in recent meetings that a decision on the townsite and the railroad would be made public during this week. The citizens will have their announcement and will not be delayed once more.

I have been instructed by the city council to resolve these matters in a court of law. You will be receiving an official demand letter from our legal counsel later this week.

On April 18, 1974, Senator Warren G. Magnuson sent a telegram to Lt. General W. C. Gribble, Chief of Engineers, as quoted next:⁴⁰

I continue to be extremely concerned about the problems associated with the relocation of the Town of North Bonneville, Washington. The Mayor has contacted me expressing the Town's urgent need for early and complete written communications from the Corps answering the following questions: 1) Where, specifically, does the Corps formally propose that a new town site be located? 2) What action, specifically, does the Corps propose to take on the town's request for relocation of railroad tracks? 3) What financial assistance in dollar amounts, does the Corps formally propose

to provide the town at this time to assist it in planning a new townsite? Please immediately advise the Mayor by telegram and me as to when you will provide the information requested above. I believe it is imperative that every effort be made finally to resolve the relocation problems so that the relocation can be accomplished and work go forward on the second powerhouse.

Next, on April 20, 1974, Colonel Gilkey received a letter from J. Richard Aramburu, Special Counsel to the town of North Bonneville, threatening, "If, by April 27, 1974, you do not provide the Town with sufficient evidence that you have ordered the cessation of activities toward the acquisition of properties and other activity in furtherance of construction, we shall be forced to commence a legal action in the United States District Court to enjoin these activities." Two contentions were asserted in support of the proposed action. First, it was alleged that the town had not been provided a relocation assistance advisory program under the terms of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which Aramburu implied was required, and that, "therefore, we assume one does not exist." Second, it was alleged that the Corps was not in compliance with the National Environmental Policy Act of 1970, in that the agency had not prepared an adequate Environmental Impact Statement. This second contention was explained in some detail, as follows:⁴¹

In addition, the Town Council is concerned with the compliance by the Corps of Engineers with the National Environmental Policy Act of 1970, 43 U.S.C. 4321, et. seq. Supposedly in compliance with that federal legislation, the Corps has prepared a Final Environmental Impact Statement for the construction of the Second Powerhouse to Bonneville Dam under date of November 15, 1971. A review of this document indicates that it is completely inadequate to comply with the stated requirements of the National Environmental Policy Act, which requires a detailed analysis of the the environmental

impacts of a federal public works project as well as alternatives to the proposed action. In the Final Environmental Impact Statement, at page 3-1, the Corps has described the environmental impact of the destruction of the Town as follows:

Acquisition of approximately 130 acres used by North Bonneville will affect the human population that resided there and also some mouse, rat, and domestic animal habitat that is normally associated with intense human use areas.

This statement, as well as other parts of the Final Environmental Impact Statement, indicate the conclusionary, self-serving and demeaning nature of that document. The Statement is simply inadequate to comply with the careful and sensitive requirements of the National Environmental Policy Act.

The threat by the Town to commence a legal action to enjoin the acquisition of properties and other activities in furtherance of construction of the second powerhouse, obviously, was not founded in any real concern for protection of the environment. Instead, it was a blatant attempt to force the Corps of Engineers to approve the townsite selected by the Town and to agree to the relocation of the railroad. Pretext notwithstanding, it is patent that the North Bonneville Town Council was not in the least concerned with the compliance by the Corps of Engineers with the National Environmental Policy Act of 1970.⁴²

Sometime between April 18 and 23, the Portland District received an answer from the Office, Chief of Engineers. The response advised the District Engineer that the relocation site requested by the town was approved "as a basis for continuation of planning and preliminary negotiations with the Town" but that alternative townsites would have to be "investigated by the District Engineer with estimated associated Federal and non-Federal costs, projected social viability and financial capability of the town to meet the commitments required

under Section 83 of Public Law 93-251 for each of the alternative townsites." The District Engineer was told specifically, "One of the alternative townsites considered should be the area between Greenleaf Slough and the existing Burlington Northern Railroad."⁴³

No approval was given for relocation of the Burlington Northern Railroad. Rather, the District Engineer was advised,⁴⁴

Further study should be given to the necessity for relocation of the Burlington Northern Railroad. It would appear that objections to leaving the railroad in place could be significantly reduced by provision of fenced buffer spaces to accommodate possible derailments and to exclude trespassers and provision of sound attenuating barriers. The sound barriers could be either of the fence type on the existing railroad embankment or vegetative type on a widened embankment. Further, if the noise level from the railroad is objectionable it would appear that the noise level from the highway would be only marginally, if at all, less objectionable. While the mandate of Public Law 93-251 to cooperate with the town may constitute authority to do whatever is reasonable necessary, it does not reduce the necessity for objectively exploring all feasible alternatives. Relocation of the town should be regarded as a cooperative negotiated effort in which there are limitations on the Federal share of the cost of the reasonable substitute. Accordingly the feasibility of leaving the railroad in place should be intensively explored with the town. In the event it becomes necessary to relocate the railroad, the Town Relocation Design Memorandum should include detailed information and justification. . . .

On April 23, 1974, Colonel Gilkey, in a letter to Mayor Skala, exclaimed "I am happy to inform you, your Council, and the citizens of the Town of North Bonneville that the Office of the Chief of Engineer has approved, in principle, 'as a basis for continuation of planning and preliminary negotiations' the relocation of the Town of North Bonneville to the general location favored by you." However, the Colonel added, "Some problems remain, for example, the specific arrangement of the town and the matter of the relocation of the

highway and railroad must withstand comparative analysis and evaluation in a feature design memorandum beyond the extent covered in your planning efforts. Continuing, the District Engineer suggested "I am sure that we can both work constructively to that end and that much has now been accomplished to ease your concerns." Colonel Gilkey also expressed that "I am anxious to enter into negotiations with you, your staff, and counsel with a view to drafting a memorandum of understanding which will provide the basis for future cooperation in planning the new town." Toward this end, he advised, "I have directed that scoping of an architect-engineer contract be begun. This will permit the Corps to let a contract for the first phase of the work leading as soon as possible to the relocation of the town."⁴⁵

Colonel Gilkey's letter of April 23 was personally delivered and read on that date before a meeting of the North Bonneville town council.⁴⁶ However, while the District Engineer apparently thought he was bringing the town good news, the Town Council clearly did not. Indeed, far from pleasing the town, this letter from Colonel Gilkey was regarded as a source of irritation. The town had wanted an unqualified acceptance of their selected new townsite and a definite commitment to relocation of the railroad away from the site, neither of which the letter provided. Also, the town did not want the Corps of Engineers to engage an architect-engineer firm to plan the new town; instead, the town was insistent on doing its own planning, with costs to be paid by the Corps. The immediate reaction of the town council was to adopt a resolution, Number 157, authorizing the town's attorney to "proceed with paperwork necessary to institute lawsuit for

preliminary injunction." Apparently to leave room for further consideration, the resolution directed that further council approval was "needed to actually file the suit."⁴⁷

Once more, notably, the Town was considering bringing a lawsuit to enjoin construction of the second powerhouse under the National Environmental Policy Act, alleging inadequacy of the Corps' Environmental Impact Statement.⁴⁸ Again, consideration of this action had nothing whatsoever to do with concern for protection of the environment.⁴⁹

On April 24, 1974, the town wrote a letter to Washington Governor Daniel J. Evans, requesting the "direct intervention" of the Governor. Within this letter, signed by Mayor Skala, town planners complained,⁵⁰

The recommendation forwarded from the Portland District Office of the Army Corps of Engineers to the Chief of Engineers on utilization of project lands has resulted in a less than definite statement of approval of our new townsite and relocation of the Burlington Northern Railroad. This continued uncertainty, after such substantial public support illustrated at the March 14, 1974 meeting, has now been compounded by the Corps position that they will be responsible for doing all the planning for the new town. It appears that we are now back to a point where we were in April of 1973. The Corps once again insists on doing a plan for the town through its own contracting arrangements. The town is resolved to do its own planning and having the right to contract with private consultants and engineers as necessary.

On April 25, 1974, Colonel Gilkey responded to Attorney J. Richard Aramburu's letter of April 20, asserting that "I have no present intentions to comply with your demand that I order a cessation of activities directed toward acquisition of properties and other activities in furtherance of construction." The District Engineer did

note, however, by way of information, "that we are presently considering for acquisition only those tracts required for construction or requested by the individual owners for early acquisition." He further explained that "I have recently set up a panel comprised of the Deputy District Engineer, an attorney and a sociologist from our Environmental Quality Branch, to review applications for early acquisition of property within the project area upon allegations of hardship. This is in line with the town's request that dispersal of the population be held to a minimum."⁵¹ Addressing the authorities cited by Aramburu, Colonel Gilkey argued that the Corps was in compliance with both the Uniform Relocation Assistance and Real Property Policies Act of 1970 and the National Environmental Policy Act of 1970. With respect to the Uniform Act, Gilkey observed that "my interpretation of the Act is that a written program is not necessarily required" and added, "I need not tell you that as an operating Federal agency we are guided by regulations handed down by higher authority. These regulations, those supplied to you, were the essential elements of our program." With respect to the National Environmental Policy Act, Gilkey observed that a statement by the Town is included in the Final Environmental Statement, "Second Powerhouse, Bonneville Lock and Dam, Columbia River, Oregon and Washington," and that all of the specific issues raised by the Town are addressed. Moreover, Gilkey continued, the statement "was reviewed by the Town of North Bonneville as well as other local governmental entities and their responses furnished to the Corps through the State of Washington's Office of Program Planning and Fiscal Management, which

acted as the State clearing house for review of this project," and the "Town of North Bonneville expressed no objections to the EIS at that time." Concluding, Colonel Gilkey offered,⁵²

It seems unconscionable that the town would now, at this late date, express objections to the treatment the subject statement gives to relocation. I would urge you to keep in mind that the statement was prepared in 1971, nearly three (3) years ago, at which time it impossible to fully assess the impact of the relocation of the town. At that time it was not certain that the town would be relocated as an entity; it was impossible to predict the number of citizens who would choose to relocate; and the site of the new town was unknown. In other words, the statement could touch only briefly upon town relocation.

Most of those questions concerning relocation of the Town of North Bonneville have only recently been answered. For example, the question of the general location of the new town has only recently been settled. In fact, some questions still remain unresolved as for example, the eventual location of the railroad with respect to the new town. As a result of those decisions and in accordance with the intent of NEPA, additional information is being obtained which will be forwarded to CEQ and which will address in depth the relocation of the Town of North Bonneville. The Corps has planned for some time to let a contract to an architect-engineer firm to gather the necessary information. It is expected that the draft information will be available sometime during the latter part of this year.

By letter dated May 1, 1974, Lieutenant General W. C. Gribble, Chief of Engineers, responded to Senator Warren G. Magnuson's telegram of April 18 regarding the relocation of North Bonneville. General Gribble assured the Senator, "I share your and Mayor Skala's desire for timely actions and decisions regarding the relocation of North Bonneville and yet in so formidable a task we must take the necessary time to fully analyze the situation to assure the protection of the best interest of both the townspeople and the Government." The questions raised by Senator Magnuson were addressed as follows:⁵³

In regard to your specific questions, as of this date a decision has not been made as to the exact boundaries and

size of the town site. However, I have approved for planning the site recommended by the town. We are presently studying the town's proposed railroad relocation to determine the feasibility and necessity for relocation. The Water Resources Development Act of 1974 authorizes the Corps to cooperate in the planning of a new town, to acquire and convey title to lands, and to construct a central sewage collection and treatment facility. We will reimburse the town for certain direct planning expenses incurred as the planning progresses. It is not possible at this time to give an indication of the actual dollar amounts involved. The extent of Corps participation is properly an item to be covered under the terms of a contract with the town to be negotiated at a later date.

CONTROL OF THE RELOCATION PLANNING PROCESS

On May 2, 1974, a meeting was held in the Office of Community Development, Office of the Governor, in Olympia, Washington. In attendance from the Portland District were Colonel Gilkey, Lt. Colonel Saling, and Acting District Counsel Michael A. Rea. Representing the town were Mayor Ernest J. Skala, North Bonneville Planning Director Pollard Dickson, and Attorney J. Richard Aramburu. The State of Washington was represented by the Director, Office of Community Development, and members of his staff, and also by an attorney from the office of State Attorney General.⁵⁴ The principal issue discussed during this meeting, the issue that incited the town to request the direct intervention of the Governor, concerned control of the relocation planning contract.⁵⁵ Town officials continued to believe, as stated in Council Resolution No. 148, that the proper function of the Corps was "to provide the finances necessary for the town to obtain the technical assistance necessary to plan the town site."⁵⁶ As Mayor Skala wrote in his April 24 letter to Governor Evans, resulting in this meeting, "The town is resolved to do its own planning and

having the right to contract with private consultants and engineers as necessary."⁵⁷ The Portland District was operating in consonance with instructions from the Office of the Chief of Engineers, predating enactment of the McCormack legislation but remaining unchanged, directing that any "contract with an AE should be between the District Engineer and the AE. Any contact with the town and the AE should be through the Corps."⁵⁸

Making what was in essence an argument for Corps control, Colonel Gilkey stated the Corps' view of how the relocation planning process should be handled: First, a memorandum of understanding would be drafted by representatives of the Town and the Corps which would set forth the respective responsibilities of each party insofar as planning of the new town is concerned. This document would have to be approved by the North Pacific Division. Second, the Corps would award a contract to an architect-engineer firm for the purpose of drafting a feature design memorandum. The memorandum of understanding would outline the degree of supervision and control each party would exercise over the A-E and the review responsibilities of each party. Third, the Corps would enter into a services contract with the town for reimbursement of its direct expenses associated with the planning of the new town. This contract would require approval of the Office, Chief of Engineers. "The Colonel also noted that the Corps has been for some time anxious to sit down with the town with a view to hammering out the referenced memorandum so that the Corps could get a contract awarded to an A-E firm and therefore get started on the feature design memorandum."⁵⁹

Pollard Dickson, speaking for the town, advised that the town wanted to engage not one A-E firm, but several firms, in what he designated as "a design team approach." Expanding on this concept, Dickson offered, "The lead firm must be one which has demonstrated an ability to take a humanistic approach, one that designs not only a new town but realizes that a town is nothing more than the people who live in that town." This observation generated considerable discussion: Lt. Col. Saling stated that adoption of such a design team approach would be cost prohibitive and, further, that the Corps would be unable to award a contract in this manner. "The town (Dickson) then inquired as to why the Corps could not enter into a cost-reimbursable contract with the town and allow them to approach the planning in this manner, i.e., hire who they wanted to hire." Colonel Gilkey pointed out that such a procedure would require the approval of the Office, Chief of Engineers, "and thus 5-8 months lead time before planning could even get underway." Lt. Col. Saling observed that he was unable to understand why the town should insist upon this multiple A-E approach as it was very probable that a large firm which would have all of the disciplines anyone could possibly want could be found. "Dickson then stated that the town was concerned about using a large firm as it might be insensitive to the town's wants and needs. He kept harping on this theme--how can it be insured that the citizens of the town will have an adequate voice in the planning process?"⁶⁰

Attempting to allay Dickson's expressed concern, "Colonel Gilkey then stated that he would allow representatives of the town to sit on the pre-selection and selection boards in order to insure that the

factors the town wants to be taken into consideration in selection of an A-E are given the proper weight." In response, Dickson stated that the town had a specific firm in mind that they would like to see awarded the contract, and he asked, "Would it be possible to hire this firm?" Colonel Gilkey explained that he was prohibited by law and regulation from influencing the award of a contract to any contractor but that "if the firm that the town has in mind is on our list of approved A-E firms or will take steps to place itself on that list, consideration can be given to that firm along with other qualified firms."⁶¹

Other issues identified and discussed at this meeting are delineated in a memorandum by Michael A. Rea, extracted below:⁶²

The town again brought up the subject of past planning expenses. It was stated by the Corps that we know of no legal method of reimbursing the town. The McCormack legislation is not retroactive. It was stated by the Corps that it would investigate further. . . .

The town insisted that it had a right to have the Corps replace all of the municipal facilities in place as of 1 September 1971, regardless of the number of people who eventually move to the relocated town. It was stated that the law will not allow this and that the Corps always made it clear this was the case. The town could not understand why this inequity existed. . . .

The town again repeated its request that it act as agent for the townspeople in real estate matters, that the Corps provide more detailed information as regards real estate transactions, that the Corps provide to the townspeople a written program as required by the Uniform Relocations Assistance and Real Property Acquisition Act. The town again reiterated its charge that the Corps is responsible for dispersing the population. . . .

A discussion took place concerning the price of lots in the new town, i.e., how will price be determined? Colonel Gilkey stated that the price of lots will be determined by reference to the corresponding price in other towns in the area; for example, Stevenson, etc. The price will not be determined by the cost of the real estate to the Corps. The town stated that it wanted to purchase port property as it believes it can get it cheaper than the Corps. Colonel Gilkey stated

that he thought that this was unlikely and, besides, the cost of that property will in no way affect the cost of lots in the new town.

The matter of railroad relocation was briefly discussed. The town was informed that an in-depth study would be required to determine if railroad relocation was necessary or feasible. The town was told that it would require a great deal of justification but that relocation is by no means a closed issue.

The matter of the town's legal capability to enter into a contract with the Corps in order to "furnish binding contractual commitments" as per Section 83 (McCormack Amendment). It was pointed out by the Corps that unless the town can obtain an attorney general's opinion to the effect that it has the authority to annex, or if not, to solicit passage of a private bill to the effect that it can annex in these circumstances, legal problems may arise which will thwart the relocation. It was explained that at some point in time the old town will cease to exist and therefore it is the Corps' concern that the old town cannot bind the new town. The town's attorney stated that he will look into this matter. As an attorney on the staff of the Attorney General was in on the discussion, it is assumed the Attorney General will look into the matter.

The meeting ended with issues identified, but unresolved.

On May 7, 1974, the subject of entering into a proposed memorandum of understanding with the Corps was brought before a session of the the Town Council by David Hussell. Hussell stated "that the town council had to make a decision that evening on the type of contract that they wanted to negotiate with the Corps."

Elaborating, he explained "that there were three possibilities: (1) Cost reimbursable contract between the city and the Corps in which the city would be the client with the A-E, (2) cost reimbursable contract between the Corps and the State, with the State acting as the prime contractor, (3) contract between the Corps and the A-E with the Corps as client to the A-E, but the city would place controls on the Corps by contract."⁶³ Ed Daugherty, present representing the Portland District, advised the town council that "either 1 or 2 would take 5-6

months for contract to be approved by Washington before A/E firm could be hired. With #3 as soon as a memorandum of understanding is agreed to the A/E firm could be hired."⁶⁴ Daugherty explained that "what the Corps wanted was to have the council propose a scope of work for the A-E and also propose a set of controls that would make the town comfortable with a contract so that they would get the results from the A-E contract that they wished and still let the Corps let the A-E contract."⁶⁵ Daugherty suggested to the town council "that the town was still the client to the Corps of Engineers and the Corps of Engineers was hiring the A-E to supply the product for us to give the town."⁶⁶ Considerable discussion occurred: "Council felt #2 would cause additional red tape and did not have confidence in Corps to wholly approve #3."⁶⁷ The Town Council was advised that the City Planning Commission "came up with same conclusions of Alternate #1 with town as client--the big concern with #3 was lack of confidence in Corps."⁶⁸ No final decision was made. Instead, the town council "decided to meet again . . . to start to hammer out a proposed memorandum of understanding," and they invited Daugherty to return later "to discuss with them the proposal they had worked out."⁶⁹

One week later, during the town council meeting of May 14, 1974, Mayor Skala advised Colonel Gilkey and other Corps representatives present that the Town Council and Planning Commission had chosen "to pursue Alternate #1 with the Town as client."⁷⁰ The District Engineer responded that if this was the town's decision he would have to advise government agencies and all concerned that the scheduled date for power-on-line from the second powerhouse, 1981, would be delayed since

there was no way that a reimbursable contract could be approved and still meet the power-on-line commitment.⁷¹ He advised the Council members that if the Corps hired an A-E firm the town would have approval on all documents and a representative participating in every stage of work by the consultant, but, he assured them: "If town hired A/E firm without contract with the Corps--he could not commit reimbursement of expenses incurred before contract signed."⁷²

Notwithstanding Mayor Skala's pronouncement, it became clear that the town Council had not yet voted. At this meeting, "Rhode moved to accept Alternate Plan #1 for Reimbursable contract with the town as client. No second."⁷³ Nonetheless, recognizing that the town planners would not be moved from this position, and looking for a way not to delay power-on-line, "Colonel Gilkey said possibly they could enter into some sort of service contract that wouldn't have to be approved in Washington. Will check out."⁷⁴

On the very next day, May 15, Colonel Gilkey appeared before another meeting of the town Council to announce that the Portland District and the Town could enter into a services contract with the town that did not need approval from Washington: "It would be a cost reimbursable planning contract."⁷⁵ Gilkey submitted sample copies of a services contract to the town council and suggested that the Town and Corps proceed immediately to develop a scope of work so that an A-E firm could be hired by the Town with Corps approval and reimbursement of costs. The town Council then moved to indorse alternate number one, as reflected in Council minutes:⁷⁶

Peterson made motion to go along with Corps on Planning Contract for Feature Design Memo with the town as client.

Chris seconded and motion passed by all members in attendance.

Rhode moved town endorse Position #1--Cost Reimbursable Contract. Chris seconded and motion passed by all Councilmen in attendance.

On May 30, 1974, the North Pacific Division gave formal approval for the town to contract directly with an A-E firm for the planning of the new town and for the reimbursement of costs by the Portland District. The letter of approval, second paragraph, reads,⁷⁷

While we would have preferred to have the A-E work directly for the Portland District, the political realities are understood and your present course of action is accepted. However, you should stipulate in the service contract with North Bonneville that the selection procedure and final choice of the A-E by the town requires your approval. Also you should include provisions to establish close control, coordination and review of the A-E's work by your office. As you know firm guidance must be given during early planning stages to discourage any tendencies toward grandiose schemes of development. In light of this, it is suggested a coordinator be assigned to work directly with the A-E utilizing frequent on-board reviews of the work. By establishing good rapport with the A-E in the planning phase, it will be possible to obtain a reasonable and economical design acceptable to the town and us, thus avoiding placing the Corps later in the undesirable position of rejecting or revising designs with the resulting adverse publicity.

The District Engineer agreed that the Town could select and hire an architect-engineer firm with Corps approval and reimbursement of costs for two reasons. First, the Corps was committed and under Congressional pressure to complete the construction of the second powerhouse in time to achieve power-on-line not later than May 1, 1981.⁷⁸ Second, the Town was in a position, by refusal to cooperate in any new town relocation planning undertaken by the Corps of Engineers, or possibly, by the institution of a legal action for injunction under the National Environmental Policy Act, to delay both the relocation of the town and the completion of the second powerhouse.⁷⁹

Likely, there was nothing that Corps officials could have said or done to dissuade the Town from insistence or doing its own relocation planning. Even so, it is arguable that whatever opportunity may have existed to persuade the town to accept the planning services and decisional processes of the Corps of Engineers, if any, was lost or at least diminished by two realities. First, the Corps failed to prepare for and aggressively pursue discussion of this issue with the Town. During the public meeting of March 14, 1974, Mayor Skala expressly stated to the District Engineer that "the 'McCormack Legislation' provides for the citizens' direct involvement in the development of their relocation plan" and that the "Town of North Bonneville will be the 'CLIENT' in all relocation matters involving the design and development of the new town."⁸⁰ This statement, a clear assertion that the Congress authorized Town control of the relocation planning process, was unquestionably contrary to the actual intention of the Congress as evident from the legislative history of Section 83.⁸¹ Certainly it was not consistent with the expectations of Representative McCormack.⁸² Had the Corps of Engineers studied the legislative history of Section 83 and been prepared to document the intentions of the Congress on this issue and had Corps officials met with Mayor Skala and other representatives of the town and explained what the legislation in fact provided, it is possible that the town could have been convinced that planning of the new town was intended to be accomplished by the Corps of Engineers. As happened, however, Mayor Skala's statement was allowed to go unanswered, not only during the public hearing but during the weeks

that followed. Indeed, the Corps did not meet with the town to discuss the issue of control of the planning contract until effectively forced to do so during the meeting of May 2, in the office of the Governor of Washington.⁸³ Second, the only substantive argument advanced by the Portland District against allowing the Town to award and administer the contract for the planning of the new town was that it would delay the construction of the second powerhouse. During the meeting of May 2, Colonel Gilkey told the town and state representatives present that such a procedure would require the approval of the Office, Chief of Engineers, "and thus 5-8 months lead time before planning could even get underway."⁸⁴ Further, Gilkey told members of the town Council on May 14 that, if they insisted on selecting and hiring the A-E firm directly, he would have to advise government agencies and all concerned that the scheduled date for power-on-line from the second powerhouse would be delayed.⁸⁵ This argument, ironically, was effective only in emphasizing what the Town knew to be the Corps' achilles heel.⁸⁶ The Town saw the District Engineers' concern with timely completion of the second powerhouse as a weakness to be exploited, not a cause to be supported. Indeed, the Town had twice threatened to initiate a legal action to enjoin construction of the second powerhouse precisely because this was seen as a method to coerce Corps acquiescence in town demands.⁸⁷

Initially, the District Engineer told the Town that he could not agree to letting the Town award and administer an A-E contract for the planning of the new town without the approval of the Office of the Chief of Engineers.⁸⁸ Then, after it became evident that this argument

for Corps control of the planning process was not persuasive, the District Engineer reversed himself, agreeing that he could enter into a services contract with the Town that did not need the approval of OCE.⁸⁹ The intended effect of this reversal was to expedite the decision allowing the Town to select and hire a new town planning firm. An unintended but attendant effect was to reinforce the belief long existent among Town officials that the District Engineer could do anything he wanted to do. Once again, the Town was given reason to believe that statements by the Corps of Engineers were not to be trusted.

The North Pacific Division, in approving the decision by Colonel Gilkey to enter into a services contract with the Town of North Bonneville, assumed that notwithstanding agreement that the Town would select and hire the architect-engineer firm to plan the new town the Portland District could still effectively control the planning process. Attendantly, the Division advised the District Engineer that "you should include provisions to establish close control, coordination and review of the A-E's work by your office," and that "firm guidance must be given during early planning stages to discourage any tendencies toward grandiose schemes of development." By establishing good rapport with the architect-engineer firm hired by the Town, the Division suggested, "it will be possible to obtain a reasonable and economical design acceptable to the Town and us, thus avoiding placing the Corps later in the undesirable position of rejecting or revising designs with the resulting adverse publicity."⁹⁰ As will be related, however, the Portland District was unable to

effect the desired relationship with the A-E firm selected by the Town. Indeed, the whole Corps of Engineers was not able to distract the Town from "tendencies toward grandiose schemes of development."

SIZING OF NEW TOWN FACILITIES AND UTILITIES

On May 16 and 20, 1974, designees of the Town and the Corps met in the Portland District office, at Colonel Gilkey's request, to proceed immediately on the development of a scope of work so that an architect-engineer firm could be hired by the Town with Corps approval and reimbursement of costs."⁹¹ Pollard Dickson served as principal spokesperson for the town, with Mayor Skala attending the opening session. Portland District representation was led by Lt. Col. Saling and Leonard Stein.⁹² Having agreed before the town Council that planning could be done under contract awarded and administered by the town, the District Engineer had reason to be at least somewhat optimistic that the relocation process could now go forward rapidly. After all, he had satisfied town officials on the issue that appeared to be their principal interest; he had agreed in essence that the town could "hire who they wanted to hire."⁹³ Moreover, Colonel Gilkey personally "was willing to do anything within reason, and within my authority, to accommodate the town."⁹⁴ Presumably, the District Engineer expected that negotiations would go smoothly--it was simply a matter of giving the town what they reasonably wanted, within the limits allowable under the law. Optimism if present, however, was soon shattered.

Saling and Stein recommended an agenda for consideration by the Town as follows: first, the parties would negotiate a memorandum of understanding; second, they would negotiate a cost reimbursable planning services contract under which the Town, with Corps approval, would select an architect-engineer firm; and third, they would draft and agree upon the content of the contract to be awarded by the Town to the Architect-Engineer.⁹⁵ Concerning this third item, District personnel recommended having the Architect-Engineer proceed in two phases. Under Phase 1, the contractor would produce a Planning Report, a Relocation Design Memorandum, and an Environmental Assessment Report. Under Phase 2, the Architect-Engineer would produce plans and specifications for the new town.⁹⁶ Actual new town construction, as the last step under this District proposed program, would be accomplished under contract awarded by the Corps of Engineers.⁹⁷

Stein discussed instructions that might be given to the Architect-Engineer to guide the preparation of the Relocation Design Memorandum and stressed that information in the memorandum must be sufficient to permit reviewers in the Office of the Chief of Engineers to make independent determinations.⁹⁸ Items recommended by Stein to be addressed within the scope of work of the A-E contract to be awarded and administered by the Town included the following:⁹⁹

- a. Study four possible townsites: OCE request for further study, town choice, two other possible sites.
- b. Size townsites for 57% of present town to provide a study base. Then study same four sites expanded for population growth, industry, port activities, etc.
- c. Study effect of railroad and highway relocations on these sites. . . .

- e. The Architect-Engineer must forecast population growth for the New Town.
- f. The Architect-Engineer must satisfy the requirements of applicable engineering regulations, copies of which will be supplied.
- g. Studies made by the Architect-Engineer not needed by the Corps should be funded by the Town.
- h. The Public Law authorizing relocation must be closely followed.

It was agreed that the "Architect-Engineer would be required to prepare Phase 1 in the contract but may or may not do Phase 2, at the option of the Town."¹⁰⁰ It was further agreed that the services contract between the Corps and the Town "should be very general in nature," whereas, the "Architect-Engineer Contract should be specific in delineating the work to be performed by the Architect-Engineer."¹⁰¹ No agreement was reached concerning sizing of the new town, number of potential townsites to be studied, study of the effect of railroad and highway relocation, or other items included in the District proposal. Instead, the development of a scope of work for the Architect-Engineer Contract to be awarded by the town was set aside for future discussion and agreement. Also, "whether the Corps or the Town would execute the construction contract was not decided."¹⁰²

Increased progress during these discussions was impeded by a difference of opinion concerning the sizing of new town facilities and utilities to be provided by the Corps of Engineers.¹⁰³ The Portland District, following Corps regulations and existing guidance from the Office, Chief of Engineers, continued to adhere to the position, repeatedly and consistently conveyed to the town, that the Corps of Engineers was legally authorized to provide replacement facilities and utilities only to the extent necessary to accommodate the exact number

of residents in the existing town who desire to relocate to the new town.¹⁰⁴ Town officials, unconvinced, insisted that the Corps replace in kind all facilities existent in the old town, regardless of the number of persons who elect to move from the old town into the new town.¹⁰⁵ There is no question that the Corps position, prior to enactment of the Water Resource Development Act of 1974, was legally sound.¹⁰⁶ However, town representatives contended that under the McCormack legislation the Corps was authorized to provide comprehensive relocation of all facilities in place as of March 7, 1974, the effective date of this special legislation. Indeed, "the town takes the position that the legislation requires no alternative but relocation of those facilities existing on the date of passage of that legislation."¹⁰⁷ Portland District representatives, unable to explain the provisions of the McCormack legislation, concluded that "the Act was loosely written and would need clarification." As most strongly stated, "The McCormack Act is ambiguous and needs clarification."¹⁰⁸

Colonel Gilkey saw this issue as "a legal problem."¹⁰⁹ Accordingly, he asked Michael Rea, the Acting District Counsel, to research the question and provide him with a legal opinion. During the conduct of research on this issue, Rea concluded that Section 83 was ambiguous. Consequently, as he found to be "necessary and proper" in the construction of an ambiguous statute, Rea considered both the language and history of the McCormack legislation.¹¹⁰ Based on this analytical approach, Rea agreed with the town. Unequivocally, he advised the District Engineer that "the Corps must in relocating

the town assume the obligation to relocate all facilities existing in the old town as of the date of passage of the legislation at Federal expense and irrespective of the number of citizens who choose to relocate to the new town."¹¹¹ In formulating his opinion, Rea reasoned,¹¹²

Naturally, one must, first, look to the statutory language itself to determine the legislative will. In the same vein it is essential in interpreting a statute to keep in mind that "the legislative will is the all-important or controlling factor." United States v. N.E. Rosenblum Truck Lines, Inc., 315 U.S. 50. It is not difficult to determine from a literal reading of § 83 that the Legislature intended that the Corps of Engineers take all reasonable steps necessary to accomplish the relocation of the Town of North Bonneville and assist the town financially in that relocation beyond the extent normally required. However, it is also patently obvious that the Legislature intended to avoid a situation wherein the town or any non-Federal entity would be unjustly enriched at Federal expense. The pertinent language of this statute bearing upon the issue in question is set forth below:

"As part of such relocation, the Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate in the planning of a new town with other Federal agencies and appropriate non-Federal interests; to acquire lands necessary for the new town and to convey title to said lands to individuals, business or other entities, and to the town as appropriate; and to construct a central sewage collection and treatment facility and other necessary municipal facilities. . . .

"Municipal facilities provided under authority of this section shall be substitute facilities which serve reasonably as well as those in the existing town of North Bonneville except that they shall be constructed to such higher standards as may be necessary to comply with applicable Federal and State laws. Additional facilities may be constructed, or higher standards utilized, only at the expense of appropriate non-Federal interests. . . .

"Before the Secretary of the Army acquires any real property for the new town site appropriate non-Federal interests shall furnish binding contractual commitments that all lots in the new townsite will be either occupied when available, will be replacements for open space and vacant lots in the

existing town, or will be purchased by non-Federal interests at the fair market value."

The language of the statute, especially that emphasized in the text above, certainly seems to lend support to the conclusion that the Legislature intended to provide by the statute that the Corps of Engineers replace in kind in the new town, municipal facilities, at Federal expense, to the extent that such facilities existed in the old town at the date of passage of that legislation. However, the language is such that it does not lend itself to a conclusive determination as regards replacements of streets, alleys and utilities such a water distribution systems, sewer systems and those other facilities subject to the rule as laid down by Federal courts and as followed by the Comptroller General in reviewing the actions of Federal agencies. The town points to the legislative history for resolution of the problem. It is a well established rule of law that it is clearly improper to resort to extrinsic aids in interpreting a statute where the statute is plain and unambiguous. (See, e.g., Caminetti v. United States, 242 US 470.) Here, however, it appears obvious that the language of the statute when read in light of what is known of the legislative intent is ambiguous on the question of what is required of the Corps insofar as replacement of existing municipal facilities. Thus reference to the legislative history is necessary and proper. Once this is accomplished all doubts as to legislative intent are eliminated. The House Report which accompanied HR 10203 (House Report No. 93-541, 93rd Cong., 1st Sess. (1973)) which bill became Public Law 93-251 and the Senate Report which accompanied Senate Bill S2798, (Senate Report No. 93-615, 93rd Cong., 1st Sess. (11 December 1973)) the companion bill to H.R. 10203 both contain the same identical comment on that section of the statute dealing with authorization to relocate the Town of North Bonneville. The pertinent part of those comments is quoted from page 123 of House Report No. 93-541, supra and follows:

"The non-Federal interests must furnish commitments that all lots in the townsite will be either occupied when available, will be replacements for open space and vacant lots in the existing town, or will be purchased by non-Federal interests. This will insure that lots reserved for future expansion and in excess of those in the existing town will not be provided at Federal expense. The same applies to the utilities. Those furnished at Federal expense will have the same capacity and be able to serve the same number of users, as those in the existing town."

If one interprets utilities to include streets, alleys, water distribution and sewer systems, street lighting facilities and other facilities to which the rule established by the courts set out heretofore would normally apply then the legislative history leaves no doubt but that not only may

the Corps replace lots in a lot-for-lot manner but must also apply that same rule to streets and utilities if the legislative mandate is to be fulfilled, i.e., the Corps must in relocating the town assume the obligation to relocate all facilities existing in the old town as of the date of passage of the legislation at Federal expense and irrespective of the number of citizens who choose to relocate to the new town. It must follow that the Legislature has deemed it appropriate that the Corps of Engineers be granted this authority without regard to the law existing prior to passage of this act which but for the legislation would prevent such action.

By letter dated May 24, 1974, setting forth in detail the reasoning and legal citations provided by the Acting District Counsel, Colonel Gilkey wrote to the office of the Chief of Engineers, through the North Pacific Division, and stated explicitly that "my counsel has concluded that the statute requires replacement of facilities on an item-for-item basis and I concur in that opinion."¹¹³ Implicitly acknowledging that review and reconsideration of the existing Corps position, and determination to agree or disagree with the town on the sizing issue, was within the authority of the higher headquarters, and not the District, he requested guidance on what he termed "the essential question" of whether the Corps of Engineers agrees with the Town of North Bonneville that Section 83 of Public Law 93-251 authorizes the Corps of Engineers to replace in kind those streets and public utilities in place in the old town as of the date of passage of that legislation, "irrespective of the fact that it appears beyond dispute that a substantial percentage of the residents have chosen and will choose not to relocate to the new townsite."¹¹⁴

Gilkey requested an expedited decision and explained,¹¹⁵

As the District is in the process of negotiating with the town for the hiring of an A-E firm to accomplish the planning of the new town it is essential that this question be resolved as expeditiously as possible. It is essential

because it is necessary to brief the A-E firm concerning the scope of this contract. Such scope cannot be finally determined until such time as it is known if the Corps is required to replace existing facilities in kind or only to the extent necessary to accommodate the exact number of residents of North Bonneville, Washington ultimately desiring to relocate to the new town.

On May 28, Leonard Stein appeared before a meeting of the Town Council and reported that a letter seeking an interpretation of the McCormack legislation had been written to the Corps' General Counsel in Washington, D.C. Among other things the letter asked for "clarification of how much facilities Corps could provide in new town --in kind, 57% of present town desiring to relocate or facilities for optimum town."¹¹⁶ The town asked if an answer to the letter was needed prior to the signing of a planning contract. "Stein said no but would be needed prior to hiring of A/E."¹¹⁷

On June 7, 1974, the North Pacific Division forwarded Colonel Gilkey's letter to the office of the Chief of Engineers with what was essentially an expression of non-concurrence, stating in part,¹¹⁸

we are not in complete accord with the District that the legislative intent, as expressed in Section 83, was to require that municipal facilities be replaced to the same quantitative extent that such facilities existed in the old Town, nor do we believe that the Act authorizes a lot-for-lot replacement. . . .

The provision of sub-section (c) relative to replacement of municipal facilities is in accord with established rules of law governing compensation to public authorities. The requirement that substitute facilities serve reasonably as well as those in the existing Town is considered to be a functional or qualitative standard that such facilities be of "equal utility" as those descriptive terms are used in numerous Federal decisions. We find no basis or background intent to construe these terms to mean exact replacement in quantity.

With reference to replacement for vacant lots, we believe that payment of full cash compensation of fair market value to an owner of a vacant lot in the existing Town obviates any obligation of the Government to further acquire land for and

plat a replacement lot in the new Town, and hence there is no need for municipal facilities to serve that lot.

On June 12, 1974, at Gilkey's request, Lt. Colonel Saling wrote a letter to the town's Special Council, J. Richard Aramburu and offered a basis for continuing negotiation pending resolution of the sizing question. The Deputy District Engineer stated, "We would propose to include in the contract language which would permit us to replace or relocate either 100 percent of the facilities or a percentage of the facilities depending on the final determination of the intent of the McCormack legislation." In explaining the proposal, Saling argued, "We cannot pre-judge the determination of the Congressional intent by placing inappropriate language in the contract."¹¹⁹

Gilkey explains the purpose of this proposal for the interim handling of the question of total versus proportional replacement of Town facilities and utilities as follows: "I was interested in getting the job done. Eventually, it was going to be decided one way or the other. In order not to delay things, I said all right, we're going to plan on two tracks."¹²⁰ The purpose is further explained by the Portland District Counsel, Paul H. Schroy, who recalls,¹²¹

Well, we still didn't know our authority. It wasn't until the 8th of July that OCE advised us of their interpretation, or their position on the question of capacity of the town. What's the Corps' obligation. In the meantime, we couldn't sit there. We had to find a way to keep this project on the fast track. Those were the directions to the negotiating team. The staff working on this. That we must keep this thing moving.

So if you have a dispute, its a question that you can't resolve yourself, it must be resolved by higher authority and you're asked for it, then if you're going to accomplish anything, you must then try to negotiate, we thought, both ways. When the authority comes, we'll drop the one that

didn't have authority, and then see what we're already agreed to under the plan that there is authority for.

The Town was initially unreceptive to the suggestion contained in the Saling letter. Apparently attempting to force the issue, town negotiators took the position that they would not enter into any contract that did not unequivocally provide for comprehensive replacement of facilities. As negotiations continued, however, the town agreed to consider this proposal. Attitudes on the issue are reflected in the following excerpt from a Portland District memorandum, dated June 26, 1974:¹²²

The town has stated that in their opinion the statute requires replacement of 100 percent of existing facilities. The other interpretation is that replacement should be on a percentage basis. The town has been told that the matter has been referred to OCE for their interpretation. The town has taken the position that it will not enter into a contract unless it provides for 100 percent replacement. The Corps submitted to the town for its consideration a proposal that the parties remain silent on this point for the time being, let the A-E contract so that the A-E can begin his preliminary work (it was pointed out to the town that there is a great deal the A-E can do before it becomes necessary for him to address the issue of just how much of the proposed relocation the Government will have to pay for as opposed to how much the town will have to pay for), and then when OCE hands down its opinion we can modify the contract as necessary. The town was to consider this proposal.

By indorsement dated June 21, 1974, the Portland District received an answer to Colonel Gilkey's inquiry of May 24. The response was a legal opinion by E. Manning Seltzer, General Counsel, OCE, which differed from and effectively overruled the opinion of Michael Rea. Basically, this opinion concluded that the McCormack legislation did not provide for the total replacement of existing facilities and utilities. Specifically, the General Counsel advised the District Engineer, "The Government is obligated to provide

substitute facilities and utilities which will serve reasonably as well as those presently existing" but "the design and construction thereof shall be sufficient only to serve the estimated number of residents who will relocate to the new town with allowance made for capacity to serve replacement vacant lots only to the extent that existing vacant lots are in fact served or capable of being served by existing facilities and utilities."¹²³

In arriving at this opinion, the Office of the General Counsel apparently considered only the language of Section 83, not its legislative history. This approach to statutory construction was used, presumably, because that office did not find the language of the McCormack legislation ambiguous. As stated in the opinion by Rea, provided to the Office of the General Counsel, reference to legislative history is necessary and proper only when the legislation in question is otherwise ambiguous.¹²⁴ Had the General Counsel considered the legislative history of Section 83, it is arguable that he would or should have come to the same conclusion as the Acting District Counsel. As earlier noted, House Report No. 93-541 and Senate Report No. 93-615, the Committee documents recommending passage of the McCormack legislation, address the issue of the sizing of utilities in the same language, and state clearly, "Those furnished at Federal expense will have the same capacity or be able to serve the same number of users as those in the existing town."¹²⁵ The General Counsel's opinion, received in the Portland District on July 8, reads in pertinent part:¹²⁶

Section 83 of P.L. 93-251 expressly obligates the Government to replace open space and vacant lots in the event the owners

thereof request such replacement. In such event the owner of any existing vacant lot shall be compensated under the provisions of P.L. 91-646 "less the fair market value of the property (replacement vacant lot) conveyed to such individual or entity in the new town."

With respect to the issue of the Government's legal obligation to provide substitute municipal facilities and utilities, it is the opinion of this office that such obligation is limited as follows: The Government is obligated to provide substitute facilities and utilities which will serve reasonably as well as those presently existing. However, the design and construction thereof shall be sufficient only to serve the estimated number of residents who will relocate to the new town with allowance made for capacity to serve replacement vacant lots only to the extent that existing vacant lots are in fact served or capable of being served by existing facilities and utilities. Replacement vacant lots are defined as those which an existing owner desires to retain in the new townsite. In addition, it should be noted that municipal facilities, pursuant to Section 83(c) of P.L. 93-251, may be upgraded to higher standards "as may be necessary to comply with applicable Federal and State laws." Increases in design, capacity, quality or quantity of municipal facilities or utilities beyond that above stated may be considered a betterment and may be provided only at the request and expense of the town.

The above guidance, of course, does not preclude the construction of a central sewage collection and treatment facility and "other necessary municipal facilities" in accordance with Section 83(b) of P.L. 93-251. The design and construction of these facilities shall not exceed the criteria set forth . . . above.

Except for the sewage treatment facility and such municipal facilities as presently exist in the old town, the determination whether any other additional facility constitutes a "necessary municipal facility" within the meaning of Section 83(b) of P.L. 93-251 or a betterment which would require local funding shall be submitted to the Office of the Chief of Engineers for approval.

* * *

It is recognized that the criteria set forth above may not provide the degree of "reasonableness" which is intended by Section 83 of P.L. 93-251. However, in the absence of specific data on existing facilities and utilities and specific proposals for substitute facilities and utilities, it is impossible to make a determination of what may or may not be considered "reasonable." As a first step in the planning process for the new town, therefore, the A-E should be required to submit to the District Engineer for review one or more preliminary proposals setting forth a general town layout and general design criteria for all municipal

facilities and utilities. In addition, the preliminary submittal should include a plot and a listing of facilities and utilities in the existing town and a comparability analysis. The District Engineer should forward, with his recommendations, these proposals to the Office of the Chief of Engineers for review and approval. The District Engineer shall make it very clear to town officials and the A-E that any proposed facilities and utilities which exceed the criteria set forth above may not be considered "reasonable" and, therefore, may be determined a betterment (local interest expense). The proposed facilities and utilities shall be accompanied by appropriate rationale demonstrating reasonable comparability with facilities and utilities in the existing town.

The opinion by General Counsel Seltzer was provided to the Town on July 9, during a meeting of attorneys representing the Town, the State of Washington, and the Portland District.¹²⁷ Not unexpectedly, the town's attorneys would not accept the opinion as conclusive, for two reasons: First, the Town was not prepared to accept a Corps of Engineers opinion from any level, including the Office of the Chief of Engineers, that did not provide for total replacement of facilities and utilities. Second, it could not be clearly explained to the town exactly what the General Counsel opinion meant.¹²⁸

Given that the Seltzer opinion was binding on the Portland District, but unacceptable to the Town, discussions led to agreement that what was needed was an interpretation of the McCormack legislation that would be binding upon both the Corps and the Town. Continuing discussions between the town's attorney, James Mason, and the Portland District Counsel, Paul Schroy, clarified that the only interpretation that would be accepted as binding by the Town would be one by a Federal court of appropriate jurisdiction. Based on this premise, it was agreed that the Town would consider filing an action for declaratory judgment in the United States District Court for the

Western District of Washington to obtain a ruling on the issue, and that the District Counsel would recommend that the Government cooperate in this approach. At the same time, as requested in the Saling letter of June 12, it was agreed that the Town and the Corps would enter into a contract that would permit the replacement of either 100 percent of the facilities and utilities or a percentage thereof, depending on the final determination of the intent of the McCormack legislation. Schroy explains how this agreement came about, from his point of view, as quoted next:¹²⁹

We gave them the exact wording of the OCE endorsement. Which of course, was somewhat difficult to understand. Where it talks about you can only do that which is reasonably required. And yet you are required to provide a lot to any owner who asks for it, however, you will pay him only relocation cost, for that lot and his relocation less fair market value of the new lot that he's going to get. All that language in the OCE opinion was provided, in quotes I believe, to the town. We tried to--there was some disagreement between the Corps and the Town as to exactly what that meant. We attempted, both sides, to take that and see how far we could get in reaching an agreement that we could live with. The contract language.

* * *

Neither the District nor the Town, in all honesty, and no one else really I think, really knew what Congress "intended" by the legislation. . . .

So at this point, Mason and I discussed, we really ought to know our authority before we contract.

I think I took the position first, but I don't know. But we were both in agreement at this point in time that really, to have a contract we ought to know our authority. We disagree what it is, but we ought to decide it before we can sign a contract. And then, of course the Corps, the District, looked to OCE as almost a God of interpretation. The Town didn't. . . .

So recognizing this, and knowing that the town was not disposed to accept, even though the District was, a decision of OCE that was unfavorable to their position. Which meant there was only one other place to go, either they expected us to roll over and play dead or we'd have to submit it to the judiciary.

I suggested that we ought to give some thought--discuss it with our respective clients--to a declaratory judgment. We

would point out that we have a dispute. Before contracting we needed these answers. And we would include all areas of dispute as to what the law meant. No factual disputes. Because once we knew what the law was, then we could negotiate out.

At this juncture during negotiations, notably, there was an attitude of mutual cooperation in the resolution of legal disputes between the Town and the Portland District and, specifically, between the District Counsel, Paul Schroy, and the Town's attorney James Mason. It was agreed that the contract between the Town and the Corps would contain language that would allow for either total replacement of existent facilities, or percentage replacement, depending on final determination of the intent of the McCormack legislation. Moreover, there was agreement that the sizing issue could be resolved by reference to a Federal Court under an action for declaratory judgment. Both Schroy and Mason were convinced that the issue could be concluded expeditiously; both agreed that seeking a declaratory judgment was the only logical way to obtain a ruling that would be accepted as binding by both the Town and the Corps. Attendantly, as recalled by Paul Schroy, there was an attitude of mutual respect for differences of opinion--"that reasonable men and women can disagree upon what it means"--concerning the intent of the McCormack legislation.¹³⁰

This attitude of cooperation, however, was short lived. As will be explained subsequently, neither the new town sizing issue nor any other matter in dispute was in fact allowed to be resolved by declaratory judgment. Mason honored his word; he obtained town approval and filed an action for declaratory judgment in the United States District Court for the Western District of Washington.¹³¹

Schroy honored his word; he requested that the Corps' General Counsel cooperate in this action for declaratory judgment, and solicit the cooperation of the Department of Justice.¹³² However, the agreement was not accepted by the Office of the General Counsel and was not supported by the Department of Justice. By Federal action, resolution by declaratory judgment was delayed and, ultimately, denied.¹³³ The consequence, as will become clear, was twofold: the last opportunity for mutual cooperation in the resolution of legal issues concerning the relocation was lost; and respect for legal imperatives asserted by the Corps of Engineers--the attitude of mutual respect for differences of opinion which Schroy and Mason had attained--was irreparably damaged.

MECHANISM FOR RESOLUTION OF DISPUTES

Another issue of consequence that arose during negotiation of the services contract concerned inclusion of a provision for disputes resolution. The term "disputes" in this context refers to disagreements of fact or law arising under or related to the contract.

The Portland District proposed inclusion of the "Disputes Clause" normally required to be included in all services contracts awarded by the Corps of Engineers. Under this clause, any dispute of fact or law arising during the performance of the contract was to be decided by the Government's Contracting Officer, in this case, the District Engineer. When the contractor, in this instance, the Town, disagreed with the decision, the clause provided for an appeal to the Corps of Engineers Board of Contract Appeals. The Board, after a fair

and impartial hearing, could decide both questions of fact and law. Decisions of the Board on issues of fact were final and conclusive unless fraudulent, capricious, or arbitrary, or not supported by substantial evidence. Board decisions on questions of law were not conclusive, but could be appealed to a Federal court of appropriate jurisdiction. While the appeal was being processed, the contractor was required to proceed with performance in accordance with the decision of the Contracting Officer. If the Contracting Officer's decision was found to be erroneous, an equitable adjustment was required to be paid by the Government.¹³⁴

The Town refused to accept the standard disputes clause. The Town well recognized that the purpose of the clause, as explained by the Portland District, was "to avoid the delays and expense of litigation in resolving problems, if any, arising during contract performance."¹³⁵ However, town planners expressed concern that use of the disputes clause would give the Corps of Engineers too much control.¹³⁶ As an alternative, the town's attorneys proposed inclusion of an Arbitration Clause in lieu of the Corps of Engineers Disputes Clause.¹³⁷ Further, they stated that the town would accept a planning contract that omitted both the Disputes Clause and an Arbitration Clause.¹³⁸ Under an Arbitration Clause, differences over fact or law would be submitted to a third party, an independent adjudicator, for binding determination. The town proposal for use of an Arbitration Clause, in turn, was rejected by the Corps of Engineers. The Town proposal was rejected, not because of thinking that the clause offered by the Town would be ineffective, but because, in contract matters of

the type under consideration, officers of the United States lack authority to commit to conclusive arbitration.¹³⁹

With the issue of disputes resolution stalemated, Gilkey decided to accept deletion of both the Disputes Clause and an arbitration provision. Approval to leave out the Disputes Clause was obtained from the Office of the Chief of Engineers.¹⁴⁰ Agreement to the deletion of both clauses was conveyed to the Town by letter from the District Engineer to Mayor Skala dated July 11, 1974, quoted in part next:¹⁴¹

As you know, a negotiating session was held in Tacoma, Washington on 9 July between attorneys representing the Town of North Bonneville and the Portland District Counsel. Members of the staff of the Attorney General, State of Washington, also attended the negotiating session. It is my understanding that these discussions resolved all but one of the previous impediments to a contract between the Town and the Corps for planning services. This impediment was the unwillingness of the Town to enter into the planning contract so long as it included the standard Corps of Engineers Disputes Clause. As an alternative, your attorneys proposed an Arbitration Clause in lieu of the standard Corps of Engineers Disputes Clause but indicated, as a fall-back position, that they would accept a planning contract which omitted all clauses related to either disputes or arbitration. In the spirit of "going the last mile" within my statutory authority, I am prepared as a final concession to eliminate both the Disputes Clause and the Arbitration Clause in our planning contract.

I'm certain you will agree with me that disputes, if any, arising during the administration of our planning contract need not necessarily be resolved by costly litigation. In spite of the fact that dispute and arbitration clauses are omitted from the agreement, my decisions as Contracting Officer are still subject to review by higher authority. This avenue for resolution of disputes is inherent in the Corps' policies and its organizational structure and is available to the Town at its option even in the absence of a Disputes Clause.

In this letter of July 11, Colonel Gilkey advised the Town that if "agreement cannot be reached by 31 July 1974, it will become necessary

for me to immediately proceed with preparation of a Feature Design Memorandum and an Environmental Assessment Report by an Architect/Engineer firm under direct contract to the Portland District."¹⁴² The District Engineer stressed that "the planning for the relocation of North Bonneville has a direct bearing on the ultimate date for effective completion of the powerhouse project as directed by the Congress" and that "the schedule for powerhouse construction cannot absorb further delays."¹⁴³

By letter dated July 12, 1974, James J. Mason, attorney for North Bonneville, responded to Colonel Gilkey, enclosing "a draft contract reflecting prior negotiations" from which "the arbitration clause has been deleted, as suggested in your letter of July 11, 1974."¹⁴⁴ Responding to pressure with pressure, Mason added,¹⁴⁵

The Mayor and Council share your view that this matter should be concluded. The town's plans cannot absorb further delays; and, if agreement cannot be reached by July 31, 1974, it will be necessary for us to recommend that litigation be commenced to assure adequate protection of its rights and those of its residents.

It was agreed that the Contract for Services would contain no provision for disputes resolution. The effect of this agreement upon the ability of the Corps to manage the relocation process, although delayed, was devastating. Indeed, it is this agreement that allowed the Town to dominate and effectively control the entire relocation process. The effect of the agreement was later to be recognized and commented upon by the U.S. Claims Court as follows:¹⁴⁶

The Corps used the authority conferred by Section 83 to enter a number of contracts with the Town. . . . The Town secured a bargaining advantage at the beginning of the contractual relationship. In its contracts with the Town, the Corps consented to deletion of the customary disputes

clause procedure, and failed to provide a substitute mechanism to resolve disputes during on-going contract performance. During negotiations on the first agreement, a vehicle to reimburse the Town for its planning expenditures, the Town would not agree to inclusion of the standard disputes clause. As alternatives, the Town proposed either an arbitration clause, or the omission of any clause related to disputes or arbitration. The Corps acquiesced and agreed to eliminate both a disputes clause of an arbitration clause. As a result, when the District Engineer could not settle an issue with the Town, and the Town was dissatisfied with the administrative decision at the Division or OCE levels, disputes could only be resolved by litigation. Neither party wanted, and outside forces would not tolerate, litigation to stop either the powerhouse project or the Town's relocation. As a result, decisions on hard issues frequently were deferred, approvals were given on condition, and ambiguous instruments were signed with reservations.

Of course, Colonel Gilkey and other officials of the Corps of Engineers were aware of the significance of this concession. Specifically, Corps officials knew that to leave all provisions for conflict resolution out of the contract meant that if a dispute that could not be resolved arose it would go to litigation, and that, in such event, the Corps would lose control either to the Town or to the Department of Justice, which represents and is authorized to decide the positions that the Federal government will take in litigation. Nonetheless, the Corps of Engineers agreed and accepted this situation because, as Paul Schroy explains, the immediate execution of a services contract was considered necessary in order to "get on with the project, and because a timely contract was needed if the Corps was to meet the May 1, 1981, power-on-line date."¹⁴⁷ The thinking of the Corps, as further explained by Schroy, was that "nothing had higher priority at the time than trying to finalize our agreement with the Town and be able to move forward with getting them out of the way of the area where the second powerhouse construction had started."¹⁴⁸

ENDNOTES

¹Water Resources Development--1973, Hearings on H.R. 8756 Before the Subcommittee on Water Resources of the House Committee on Public Works, 93rd Cong., 1st Sess. 1222 (1973) [hereinafter "Hearings"].

²Hearings, at 1217.

³Hearings, at 1220.

⁴Hearings, at 1219.

⁵Resolution No. 148, North Bonneville Town Council, 17 April 1972. See dissertation, supra, 116.

⁶Water Resources Development Act of 1974, March 7, 1974, 48 Stat. 12, § 83(b). See dissertation, supra, 183.

⁷Hearings, at 1217.

⁸119 Cong. Rec. 33881 (daily ed. Oct. 12, 1973). See dissertation, supra, 180.

⁹119 Cong. Rec. 33881 (daily ed. Oct. 12, 1973). See dissertation, supra, 180.

¹⁰Mike McCormack, personal interview, 8 July 1987.

¹¹Hearings, at 1222.

¹²North Bonneville Relocation Site Selection Committee, "New City Proposal," 20 September 1971. See dissertation, supra, 104-05.

¹³U.S. Army Corps of Engineers, Portland District, Press Release, 22 January 1974. See dissertation, supra, 151.

¹⁴Memorandum for Record by Buddy R. Clemenhausen, Subject: Summary of Meeting Regarding Town of North Bonneville Relocation Proposal 10 January 1974, 22 January 1974. See dissertation, supra, 150-51.

¹⁵Hearings, at 1225. Mayor Skala, upon mention that Pollard Dickson had testified before the Congress that the cost "of planning, acquisition, and planning the site, and to move the town would be in the neighborhood of \$1.5 million" responded, "No, no, that is definitely wrong. Because we had estimates ranging from \$9 million to \$12 million." Asked why Dickson would testify to such a figure the Mayor replied, "He had no idea." Ernest J. Skala, personal interview, 22 August 1986. Colonel Gilkey, queried on the same subject, offered, "There is no way the Town was ever going to be relocated for \$1.5 million. I don't think Pollard Dickson had the technical background

to develop an estimate of \$1.5 million." Clarence D. Gilkey, personal interview, 27 June 1985.

¹⁶North Bonneville Relocation Site Selection Committee, "New City Proposal," 20 September 1971. See dissertation, supra, 105.

¹⁷Memorandum for the Record by Clemenhagen, 22 January 1974. See dissertation, supra, 150.

¹⁸Hearings, at 1215-1226.

¹⁹After enactment of the Water Resources Development Act of 1974, during Senate hearings on the Fiscal Year 1975 budget, Major General John W. Morris, Director of Civil Works, OCE, was asked if the Corps had authority under Public Law 93-251, Section 83, to relocate the railroad to prepare a new townsite. His response: "Yes; the Corps has authority to relocate the railroad if such relocation is necessary in order to accomplish the relocation of the town. . . ." See dissertation, infra, 272.

²⁰U.S. Army Corps of Engineers, Portland District, Transcript of Public Meeting Held at Bonneville Dam, 24 August 1971, Bonneville Powerhouse Site Selection (Portland, OR: Portland District, 1971) 17. See dissertation, supra, 101.

²¹Paul D. Triem, Colonel, District Engineer, Portland, letter to Mayor Robert J. Holcomb, Town of North Bonneville, 23 March 1972. See dissertation, supra, 113-14.

²²H.R. 8756, 93rd Cong., 1st Sess. (1973). See dissertation, supra, 174.

²³As understood by Ernest E. Swanson, Chief, Real Estate Division, NPD, the North Pacific Division did not comment on the McCormack legislation because the Division Counsel, Darwin Anderson, was told by a "staffer" that the Congressional Committee wanted the Corps to "back off", i.e., that the committee did not want comments from the Corps. Ernest E. Swanson, personal interview, 25 March 1988.

²⁴Water Resources Development Act of 1974, March 7, 1974, 48 Stat. 12, § 83(c). See dissertation, supra, 183.

²⁵H.R. Rep. No. 93-541, 93rd Cong., 1st Sess. 122-23 (1973); S. Rep. No. 93-615, 93rd Cong., 1st Sess. 108 (1973) See dissertation, supra, 182.

²⁶U.S. Army Corps of Engineers, Portland District, Transcript of Public Meeting held at North Bonneville, Washington, 14 March 1974, Bonneville Dam Second Powerhouse Project, Utilization of Project Lands (Portland, OR: Portland District, 1974) 1-4.

²⁷Memorandum for Record by Clemanhagen, 22 January 1974. See dissertation, 150-52.

²⁸U.S. Army Corps of Engineers, Transcript, Project Lands, 3.

²⁹U.S. Army Corps of Engineers, Transcript, Project Lands, 5.

³⁰Memorandum for Record by Clifford C. Comisky, Division Counsel, NPD, Subject: Public Meeting re Bonneville Dam 2nd Powerhouse and Relocation of North Bonneville, Washington, 15 March 1974.

³¹U.S. Army Corps of Engineers, Transcript, Project Lands, 24.

³²"Town Relocation Desired", Vancouver Columbian, 15 March 1974.

³³Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Division Engineer, North Pacific, Subject: Bonneville Lock and Dam, Oregon and Washington; Second Powerhouse Project; Supplement No. 2 to General Design Memorandum No. 4, Letter Report, North Bonneville Townsite Selection, 9 April 1974.

³⁴Gilkey, letter to Division Engineer, 9 April 1974.

³⁵Gilkey, letter to Division Engineer, 9 April 1974.

³⁶A. R. Marshall, Colonel, Deputy Division Engineer, North Pacific, 1st indorsement to 9 April 1974 letter from Colonel Clarence D. Gilkey, District Engineer, Portland, Subject: Bonneville Lock and Dam, Oregon and Washington; Second Powerhouse Project; Supplement No. 2 to General Design Memorandum No. 4, Letter Report, North Bonneville Townsite Selection, 9 April 1974.

³⁷Town of North Bonneville, Relocation Newsletter, 12 April 1974.

³⁸Town of North Bonneville, Relocation Newsletter, 12 April 1974.

³⁹Ernest J. Skala, Mayor, Town of North Bonneville, letter to Colonel Clarence D. Gilkey, District Engineer, Portland, 17 April 1974.

⁴⁰Warren G. Magnuson, U.S.S., telegram to Lt. General W. C. Gribble, Chief of Engineers, 18 April 1974.

⁴¹J. Richard Aramburu, attorney for Town of North Bonneville, letter to Colonel Clarence D. Gilkey, District Engineer, Portland, 20 April 1974.

⁴²The attitude and thinking of town officials in filing this and other legal actions to enjoin construction of the second powerhouse is reflected in a letter by James Mason, the attorney who filed all of the legal actions brought by the Town, in which he wrote, "North Bonneville is located in an area of major scenic and environmental

interest, and on several occasions we have been able to secure the cooperation of the Corps on an unrelated matter by threatening to shut the entire project down because of non-compliance with the statutes pertaining to the environment, such as NEPA and the Washington Shorelines Management Act." James J. Mason, letter to Archer D. Smith III, 5 January 1976.

⁴³J. W. Morris, MG, Director of Civil Works, OCE, 2nd Indorsement to 9 April 1974 letter from Colonel Clarence D. Gilkey, District Engineer, Portland, Subject: Bonneville Lock and Dam, Oregon and Washington; Second Powerhouse Project; Supplement No. 2 to General Design Memorandum No. 4, Letter Report, North Bonneville Townsite Selection, 18 April 1974.

⁴⁴Morris, 2nd Indorsement to letter 9 April 1974 by Gilkey, 18 April 1974.

⁴⁵Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Mayor Ernest J. Skala, Town of North Bonneville, 23 April 1974.

⁴⁶Minutes, North Bonneville Town Council, 23 April 1974.

⁴⁷Minutes, North Bonneville Town Council, 23 April 1974.

⁴⁸Minutes, North Bonneville Town Council, 23 April 1974.

⁴⁹See James J. Mason, letter to Archer D. Smith III, 5 January 1976.

⁵⁰Ernest J. Skala, Mayor, Town of North Bonneville, letter to Governor Daniel J. Evans, State of Washington, 24 April 1974.

⁵¹Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to J. Richard Aramburu, attorney for Town of North Bonneville, 25 April 1974.

⁵²Gilkey, letter to Aramburu, 25 April 1974.

⁵³W. C. Gribble, Jr., LTG, Chief of Engineers, letter to Senator Warren G. Magnuson, 1 May 1974.

⁵⁴Memorandum to the File by Michael A. Rea, Assistant District Counsel, Portland, Subject: Meeting, town of North Bonneville; Olympia, Washington, 2 May 1974, 6 May 1974.

⁵⁵Skala, letter to Evans, 24 April 1974. See dissertation, supra, 212.

⁵⁶Resolution No. 148, North Bonneville Town Council, 17 April 1972. See disseration, supra, 115-16.

⁵⁷Skala, letter to Evans, 24 April 1974. See dissertation, supra, 212.

⁵⁸Thomas W. Nelson, Colonel, Assistant Director of Civil Works for Pacific Divisions, OCE, 3rd Indorsement to letter 8 February 1972 by Lt. Col. Thomas W. Nelson, Subject: Relocation, Town of North Bonneville, 6 April 1972. See dissertation, supra, 114.

⁵⁹Memorandum to the File by Rea, 6 May 1974.

⁶⁰Memorandum to the File by Rea, 6 May 1974.

⁶¹Memorandum to the File by Rea, 6 May 1974.

⁶²Memorandum to the File by Rea, 6 May 1974.

⁶³Memorandum to the File by Ed Daugherty, Columbia River Coordinator, Portland District, Subject: Town of North Bonneville Council Meeting 7 May 1974, 9 May 1974. See Minutes, North Bonneville Town Council, 7 May 1974.

⁶⁴Minutes, North Bonneville Town Council, 7 May 1974.

⁶⁵Memorandum to the File by Daugherty, 9 May 1974.

⁶⁶Memorandum to the File by Daugherty, 9 May 1974.

⁶⁷Minutes, North Bonneville Town Council, 7 May 1974.

⁶⁸Minutes, North Bonneville Town Council, 7 May 1974.

⁶⁹Memorandum to the File by Daugherty, 9 May 1974.

⁷⁰Minutes, North Bonneville Town Council, 14 May 1974.

⁷¹Minutes, North Bonneville Town Council, 14 May 1974.

⁷²Minutes, North Bonneville Town Council, 14 May 1974.

⁷³Minutes, North Bonneville Town Council, 14 May 1974.

⁷⁴Minutes, North Bonneville Town Council, 14 May 1974.

⁷⁵Minutes, North Bonneville Town Council, 15 May 1974.

⁷⁶Minutes, North Bonneville Town Council, 15 May 1974.

⁷⁷Phillip L. Cole, Chief, Engineering Division, NPD, letter to District Engineer, Portland, Subject: Bonneville Lock and Dam, Relocation of Town of North Bonneville, Contract for A-E Services, 30 May 1974.

⁷⁸Clarence D. Gilkey, personal interview, 27 June 1985.

⁷⁹Clarence D. Gilkey, personal interview, 27 June 1985.

⁸⁰U.S. Army Corps of Engineers, Transcript, Project Lands, 5. See dissertation, supra, 198.

⁸¹See dissertation, supra, 173-83.

⁸²Mike McCormack, personal interview, 8 July 1987. See dissertation, supra, 188-89.

⁸³This meeting resulted from a letter by the Mayor of North Bonneville to the Governor of Washington. See Skala, letter to Evans, 24 April 1974. See dissertation, supra, 212.

⁸⁴Memorandum to the File by Rea, 6 May 1974. See dissertation, supra, 217.

⁸⁵Minutes, North Bonneville Town Council, 14 May 1974. See dissertation, supra, 220-21.

⁸⁶"Our Achilles' heel is non-negotiable, this power on line date of 81. We had to make that regardless of any other problem." Paul H. Schroy, personal interview, 5 May 1987. "The Town knew that delay would hurt the Corps more than themselves, and the longer they could hold out the more likely they would get some of what they were asking." Paul H. Schroy, personal interview, 12 August 1988.

⁸⁷See dissertation, supra, 208-09, 211-12.

⁸⁸Memorandum to the File by Rea, 6 May 1974. See dissertation, supra, 217.

⁸⁹Minutes, North Bonneville Town Council, 14 May 1974. See dissertation, supra, 221.

⁹⁰Cole, letter to District Engineer, 30 May 1974.

⁹¹Minutes, North Bonneville Town Council, 15 May 1975.

⁹²Memorandum to Design Branch Files by Milton Taxer, Bonneville Design Manager, Portland District, Subject: "Meeting with North Bonneville Representatives to Discuss Architect-Engineer Contract for Relocating Town, 24 May 1974.

⁹³Pollard Dickson, during the meeting in the Governor's office on May 2, 1974, asked that the Corps allow the Town to "hire who they wanted to hire." Memorandum to File by Rea, 6 May 1974. See dissertation, supra, 217.

⁹⁴Clarence D. Gilkey, personal interview, 27 June 1985.

⁹⁵Memorandum to Design Branch Files by Taxer, 24 May 1974.

⁹⁶Memorandum to Design Branch Files by Taxer, 24 May 1974.

⁹⁷Memorandum to Design Branch Files by Taxer, 24 May 1974.

⁹⁸Memorandum to Design Branch Files by Taxer, 24 May 1974.

⁹⁹Memorandum to Design Branch Files by Taxer, 24 May 1974.

¹⁰⁰Memorandum to Design Branch Files by Milton Taxer, Bonneville Design Manager, Portland District, Subject: Meeting with North Bonneville Representatives to Discuss Architect-Engineer Contract for Relocating Town, 28 May 1974.

¹⁰¹Memorandum to Design Branch Files by Taxer, 28 May 1974.

¹⁰²Memorandum to Design Branch Files by Taxer, 28 May 1974.

¹⁰³Memorandum to Design Branch Files by Taxer, 28 May 1974.

¹⁰⁴Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to the Office, Chief of Engineers, Subject: Interpretation of Public Law 93-251, Section 83; Relocation of the Town of North Bonneville, Washington, 24 May 1974. "However, unofficially the District has some misgivings about the legality of continuing to adhere to this position in light of recent legislation". Gilkey, letter to OCE, 24 May 1974.

¹⁰⁵Gilkey, letter to OCE, 24 May 1974.

¹⁰⁶See Comptroller General of the United States, Report to the Congress: Need to Improve Procedures for Compensating Municipalities for Relocation of Facilities Necessitated by Construction of Federal Water Resources Projects Corps of Engineers (Civil Works), Department of the Army. (B-1060628, 27 February 1968) 3-6.

¹⁰⁷Gilkey, letter to OCE, 24 May 1974.

¹⁰⁸Memorandum to Design Branch Files by Taxer, 28 May 1974.

¹⁰⁹Gilkey, letter to OCE, 24 May 1974.

¹¹⁰Gilkey, letter to OCE, 24 May 1974.

¹¹¹Gilkey, letter to OCE, 24 May 1974.

¹¹²Gilkey, letter to OCE, 24 May 1974.

¹¹³Gilkey, letter to OCE, 24 May 1974.

¹¹⁴Gilkey, letter to OCE, 24 May 1974.

¹¹⁵Gilkey, letter to OCE, 24 May 1974.

¹¹⁶Minutes, North Bonneville Town Council, 28 May 1974.

¹¹⁷Minutes, North Bonneville Town Council, 28 May 1974.

¹¹⁸A. R. Marshall, Colonel, Deputy Division Engineer, North Pacific, 1st Indorsement to 24 May 1974 letter from Clarence D. Gilkey, Colonel, District Engineer, Portland, Subject: Interpretation of Public Law 93-251, Section 83; Relocation of the Town of North Bonneville, Washington, 7 June 1974.

¹¹⁹Neil E. Saling, Jr., LTC, Deputy District Engineer, Portland, letter to J. Richard Aramburu, attorney for the Town of North Bonneville, 12 June 1974.

¹²⁰Clarence D. Gilkey, personal interview, 27 June 1985.

¹²¹Paul H. Schroy, personal interview, 5 May 1987.

¹²²Memorandum to the File by Michael A. Rea, Assistant District Counsel, Portland District, Subject: Meeting with Representatives of the Town of North Bonneville, Washington in connection with Service Contract, 26 June 1974.

¹²³E. Manning Seltzer, General Counsel, OCE, 2nd Indorsement to 24 May 1974 letter by Clarence D. Gilkey, Colonel, District Engineer, Portland, Subject: Interpretation of Public Law 93-251, Section 83; Relocation of the Town of North Bonneville, Washington, 21 June 1974.

¹²⁴Gilkey, letter to OCE, 24 May 1974. See dissertation, supra, 231.

¹²⁵H.R. Rep. No. 93-451, 93rd Cong., 1st Sess. 122-23 (1973); S. Rep. No. 93-615, 93rd Cong., 1st Sess. 108 (1973).

¹²⁶Seltzer, 2nd Indorsement to 24 May 1974 letter by Gilkey, 21 June 1974.

¹²⁷Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Mayor Ernest J. Skala, Town of North Bonneville, 11 July 1974.

¹²⁸Paul H. Schroy, personal interview, 5 May 1987.

¹²⁹Paul H. Schroy, personal interview, 5 May 1987.

¹³⁰Paul H. Schroy, personal interview, 5 May 1987.

¹³¹See dissertation, infra, 260.

¹³²See dissertation, infra, 261-62.

¹³³See dissertation, infra, 260-63.

¹³⁴Saling, letter to Aramburu, 12 June 1974.

¹³⁵Saling, letter to Aramburu, 12 June 1974.

¹³⁶See Memorandum to the File by Rea, 26 June 1974.

¹³⁷See Paul H. Schroy, personal interview, 26 June 1986.

¹³⁸See Gilkey, letter to Skala, 11 July 1974.

¹³⁹"We were looking for a way--we knew some disputes would probably come up, between people. . . . And we wanted a way to solve them administratively, and equitably, without the long wait for judicial resolution. And the disputes clause is the Corps' way of doing it. Well, the town didn't buy it. And we didn't have the authority--and this lack of authority was concurred by OCE -- to put in the substitute arbitration clause. So hey, we left it out." Paul H. Schroy, personal interview, 5 May 1987.

¹⁴⁰Paul H. Schroy, personal interview, 26 June 1986.

¹⁴¹Gilkey, letter to Skala, 11 July 1974.

¹⁴²Gilkey, letter to Skala, 11 July 1974.

¹⁴³Gilkey, letter to Skala, 11 July 1974.

¹⁴⁴James J. Mason, attorney for the Town of North Bonneville, letter to Colonel Clarence D. Gilkey, District Engineer, Portland, 12 July 1974.

¹⁴⁵Mason, letter to Gilkey, 12 July 1974.

¹⁴⁶Town of North Bonneville v. United States, 11 Cl. Ct. 694, 703 (1987).

¹⁴⁷Paul H. Schroy, personal interview, 26 June 1986.

¹⁴⁸Paul H. Schroy, personal interview, 5 May 1987.

CHAPTER VIII

CONTRACT FOR SERVICES

A cost reimbursable planning contract, captioned "Contract for Services", was signed on July 26, 1974, by Mayor Ernest Skala and Town Council members representing North Bonneville and by Colonel Clarence D. Gilkey, District Engineer for the U.S. Army Corps of Engineers.¹ Under terms of the contract, site development plans and cost estimates were to be accomplished by an architect-engineer firm employed by the Town of North Bonneville with funding provided by the Federal Government.² Selection of the architect-engineer firm to do the work was to be made by the town; however, the procedure for selection was to be mutually agreed upon by the Town and the Corps of Engineers.³ The contract to be awarded to the A-E by the Town and all modifications or changes thereto were required to be approved in advance by the Portland District Engineer, as the Government's Contracting Officer.⁴

The agreement provided that the contractor to be selected by the town would prepare three documents: a Comprehensive Plan, "based upon the development of an 'Optimum Town'"; a Draft Feature Design Memorandum; and an Environmental Assessment Report.⁵ The first document, the Comprehensive Plan, was to be produced for and belong to the town.⁶ Provision for this plan was included to satisfy the expressed desire of town officials for "long range as well as short

range plans relating to a relocated town."⁷ The second and third specified documents were to become the property of the Corps of Engineers.⁸ The Draft Feature Design Memorandum was intended to delineate the agency's obligation to provide substitute facilities for those existing in the old town and to form the basis for subsequent preparation and award of design and construction contracts effectuating the relocation.⁹ The Environmental Assessment Report was intended to provide information needed by the Corps of Engineers to support preparation of a town relocation Environmental Impact Statement.¹⁰

This first contract between the Corps and the Town was intended primarily as a vehicle for the Federal funding of in-house, relocation related work by the town. Specifically, the Contract provided for reimbursement to the town in an estimated amount of \$334,629.00 to cover the town's expenses, including the salaries of four persons to be employed by the town, identified by position as follows: one Administrative Assistant; one Planning Director; one Senior Planner; and one Secretary.¹¹ Included in the costs to be reimbursed were expenses incurred by the town for planning work accomplished prior to the signing of the contract but performed subsequent to March 7, 1974.¹² The contract for services also provided for reimbursement to the town "for services of a legal counsel as may be reasonable and necessary in conjunction with the relocation."¹³

THE OPTIMUM TOWN

At the time the contract for services was signed the Corps of Engineers did not know, and apparently the Town did not know, exactly what was meant by or what was to be conceived as the composition of an "Optimum Town."¹⁴ Of course, Corps officials either knew or should have known that the optimum town as envisioned by the Town would likely be larger and more expensive of design and construction than the replacement town that the Corps was obligated to provide. Specifically, the Corps was on notice that what the Town wanted as a product of the relocation was a corporate community with room for growth. As far back as August 24, 1971, Mayor Robert Holcomb told the Corps that the new town should be "larger in area as to accommodate 700 population by 1980."¹⁵ The first study undertaken for the town, published on November 22, 1971, recommended plans for a larger town than existed, since "it is the opinion of the Town Officials that the population will be 700 to 750 by 1981."¹⁶ The services contract contains a definition: "The Optimum Town is defined as a town with a central business district, with a population and economic base capable of supporting essential community services, providing adequate land for economic growth through a balance of land uses and meeting the requirements of a viable Neighborhood Unit."¹⁷ However, it was recognized by both the Corps and the Town that this definition was neither sufficient nor self-explanatory of the "Optimum Town" concept.¹⁸

The Corps of Engineers agreed, in the Contract for Services, to pay for the planning of an Optimum Town.¹⁹ However, the Corps did not

agree to pay for the design or construction of, or to provide lands for, anything more than a replacement town.²⁰ Presumably, the Portland District was guided in the negotiation of the services contract by the long-standing Corps of Engineer regulation on town relocations, which, referring to the town as "Owner," provides that "any improvement in design, construction or capacity over and above what is required to provide facilities of service and utility authorized . . . shall constitute a betterment and shall be furnished, or the cost thereof paid, by the Owner."²¹ Consistent with this regulatory requirement the contract provided,²²

Municipal facilities shall be substitute facilities which will serve reasonably as well as those in the existing town of North Bonneville, except that they shall be constructed to such higher standards as may be necessary to comply with applicable Federal and State laws. Additional facilities may be constructed or higher standards utilized only at the expense of appropriate non-Federal interests.

The generalized concept of an "Optimum Town" was apparently accepted by the Corps as an innocuous requirement. As will be seen, however, this concept was to evolve into the dominant factor in the planning of, site selection for, and cost of the new town.

THE SIZING OF NEW TOWN FACILITIES AND UTILITIES

The services contract specified that the selected contractor would plan an optimum townsite with two alternate plans for replacement of municipal facilities. One plan would provide for complete replacement of town facilities existent on March 7, the effective date of the McCormack legislation. A second plan was to provide for replacement of facilities based on the percentage of town

residents who expressed intention to relocate to the new town of North Bonneville.²³ Agreement on this dual planning arrangement was founded, clearly, upon an understanding that the town would seek to have the intent of the McCormack legislation judicially determined. Evidentially, minutes of the July 16, 1974, meeting of the Town Council, attended by Gilkey, Sailing, and Schroy, during which final changes to the contract were "made and mutually agreed by all parties," reflect the following exchange:²⁴

Paul Schroy asked of possible litigation by town? He was advised that if contract was executed promptly then only declaratory judgement would be obtained on the question of McCormack legislation and percentage replacement.

Within days of signing the services contract the town and the Corps of Engineers each received, via Congressman Mike McCormack, a letter from John A. Blatnik, Chairman of the House Committee on Public Works. Earlier, while the Portland District Engineer was seeking guidance from the Office, Chief of Engineers, on interpretation of the McCormack legislation with respect to the sizing issue, the town contacted Congressman Mike McCormack directly and asked the same question. Congressman McCormack, in turn, referred the issue of legislative intent to Chairman Blatnik. The committee chairman, upon consideration of the issue at the request of his fellow member of Congress, supported the town's position. This support was expressed in a letter addressed to Congressman McCormack, dated July 24, 1974, as follows:²⁵

Section 83, in authorizing the relocation of North Bonneville to a new site, provided that municipal facilities provided in the new town "shall be substitute facilities which serve reasonably as well as those in the existing town of North Bonneville except that they shall be constructed to

such higher standards as may be necessary to comply with applicable Federal and State laws." What is intended, as is explained in the Committee report accompanying this legislation, is that the utilities will be able to serve the same number of users as the utilities in the existing town. Any increased capacity would have to be paid for by non-Federal interests.

What the Committee had in mind was that the town was entitled, as compensation, to utilities in the new town of the same capacity as those in the existing town. The fact that fewer people will be moving into the new town than live in the old town does not affect this, as the concept involved is that of replacing the town. The population can be expected to return to its present level or surpass it in the future. I might point out, in this regard, that the legislation requires that non-Federal interests furnish binding contractual commitments that all lots in the new townsite will be either occupied when available, will be replacements for open space or vacant lots in the existing town, or will be purchased by non-Federal interests. This purchasing requirement refers to the time of transfer of the new townsite and facilities to the residents and the town. Either the town must pay for those lots or have other non-Federal financing arranged. If this is not done, and future expansion to the present town's population is thereby precluded, it would of course be difficult to justify the expenditure for utilities to serve more than those who would be occupying the new townsite.

Consistent with the expectation of the Portland District, the Town, on September 11, 1974, filed an action for declaratory judgment in the U.S. District Court, Western District of Washington. The suit asked for a judicial interpretation of the McCormack legislation as that statute relates to the percentage of town facilities and utilities to be relocated at federal expense. The pleadings averred that the the Town did not agree with and would not accept the Corps' interpretation of the statute and that the dispute had resulted in a deadlock in relocation negotiations.²⁶ Inconsistent with the town's expectation of cooperation by the Government, however, the United States Attorney for the Western District of Washington raised objection to the hearing of this lawsuit by the court.²⁷ As a result,

both the town and the Portland District came to recognize that resolution of the issue might be considerably delayed.²⁸ Further, as reported by the District to the Office of the Chief of Engineers and presumably also to the Office of the United States Attorney, "the town accused the Corps of duplicity in that earlier statements had led the town to believe that the Corps had some influence over the U.S. Attorney and that the Federal government would not contest the town's suit."²⁹

A concern of the U.S. Attorney, apparently, was that a suit for declaratory judgment seeking an interpretation of Federal law should be brought by the United States and not by a town. Addressing this concern, on September 24, 1974, the Portland District sent a message to OCE recommending that the Corps of Engineers "officially ask the Department of Justice to institute suit on behalf of the U.S. seeking judicial interpretation of the McCormack Legislation and such other judicial action necessary to remove the deadlock in negotiations."³⁰ The message noted, "It is believed from informal conversation with Department of Justice that the agency will promptly accede to such a request from OCE."³¹ As justification for of this recommendation the District submitted,³²

a. The resolution of the issue at hand has continued to color relations between the Corps and the Town. While the present planning contract may proceed, it will proceed slowly and the subsequent, mandatory Relocations contract will not be consummated until a resolution is at hand. Such delays will unquestionably delay the power-on-line date for the Second Bonneville Powerhouse. In an area of power shortage, such delays are unacceptable.

b. The Town of North Bonneville plans to "try the case in the press" if early judicial review is not forthcoming. Based on statements made by officials of the Portland District supporting early resolution of the issue, the Corps

would be accused of duplicity and obstructionism due to the legal delays manufactured after the town's case was filed. While the Corps has no command over the U.S. Attorney in defending the United States in a suit, the appearance of duplicity and obstructionism is easily created and the resultant publicity would be damaging to the Corps both locally and nationally.

c. Legal counsel for the Town finds the proposed action acceptable and is hopeful that the town will accept the revised course of action. Should it be unacceptable to the town, he believes that a new law firm of much more radical views will be engaged with possible injunctions or similar actions which could halt all work on the project.

The North Pacific Division concurred in the District Engineer's recommendation that a suit for declaratory judgment be instituted by the United States.³³ However, the recommendation was not well-received in the Office of the General Counsel, OCE. That office was apparently convinced that the lawsuit was unnecessary; that the position expressed by the General Counsel concerning the intent of the legislation was both correct and reasonable and should be accepted by the town. In any case, the decision that came back to the Portland District was that the Corps of Engineers would not request the filing of a suit for declaratory judgment. Whether the dynamics of the situation were well understood in distant Washington, D.C., is doubtful. As the District Counsel, Paul Schroy, recalls:³⁴

I think the intent may have been misunderstood by the Deputy Chief Counsel. But whether it was directed to me, or through the Division, it was reported to me that the Deputy Chief Counsel in OCE had said that no way will we institute litigation against the town we're suppose to be relocating. And start filing federal suits against the town.

Well it wasn't really a suit, it was an agreed position of both sides at that point. We were constructively trying to find out what our respective authorities were that Congress had given us.

Also on September 24, 1974, Mayor Skala and James J. Mason, the town's attorney, signed a letter addressed jointly to Lt. General

William C. Gribble, Jr., Chief of Engineers, and William B. Saxbe, Attorney General of the United States, seeking support for judicial resolution of the facilities and utilities sizing issue. The letter noted that the town had filed an action for declaratory judgment, pursuant to agreement with the Portland District, and complained,³⁵

On September 18th, Mr. Charles Mansfield, Deputy United States Attorney in Seattle, informed the undersigned town attorney that the agreement made by the Corps of Engineers representatives exceeded their authority and that he proposed to object to the Court hearing the case. Mr. Mansfield further advised us that the matter would have to be extensively briefed, reports prepared, etc., at various levels with the Department of Justice, and that he could not assure that the case would be reached on the merits soon, if at all.

Concerning action desired, the letter stated, "We respectfully requested that the Department of Justice and the Corps of Engineers direct their respective attorneys to abide by their agreement with the town to submit this issue on its merits to the United States District Court for the Western District of Washington, waiving technical objections."³⁶ Addressing the importance of the issue, the letter noted, "Since the Corps of Engineers is rapidly proceeding with acquisition of occupied homes and businesses, it is absolutely essential that such design move ahead without any delay whatever."³⁷

On October 3, 1974, the town filed another lawsuit in the United States District Court, Western District of Washington. This second action, alleging violation of the National Environmental Policy Act, sought to enjoin all further work on the Bonneville Second Powerhouse.³⁸ The town's purpose in filing this second action, unquestionably, was not to protect the environment. It was to coerce Corps concession.³⁹

On October 4, Colonel A. A. Hight, from the Directorate of Civil Works, and two other OCE representatives met in Portland, Oregon, with the District Engineer and members of his staff and the Chief of the Real Estate Division from NPD. The meeting was arranged in order to communicate to the District Engineer the OCE position on certain major issues relating to the relocation of North Bonneville, including the facilities and utilities sizing issue. The District Engineer was told, essentially, that the Office of the Chief of Engineers had decided to acquiesce to the town's position, that is, to provide at Federal expense facilities and utilities to support the number of people who occupied the old town without regard to the number of people who actually relocate to the new town.⁴⁰ Colonel Gilkey welcomed this decision. "For record purposes, the District requested an official revised OCE interpretation of Section 83, Public Law 93-251."⁴¹

On that same day, October 4, Colonel Gilkey wrote to Mayor Skala, "to communicate the revised OCE position to the town."⁴² This letter, in the part applicable to the sizing issue, states,⁴³

I am now in a position to communicate to you the Corps' position with respect to the replacement of municipal facilities and utilities.

Replacement of municipal facilities and utilities provided at Government expense will have the same capacity and be able to serve the same number of users as those in the existing town, subject to the town furnishing the Government a contractually binding commitment that all lots in the new townsite will be either occupied when available, will be replacements for open space and vacant lots in the existing town, or will be purchased by non-Federal interest at the fair market value.

The above position should permit early resolution of those points of current disagreement related to the replacement of municipal facilities and utilities which now exist in the scope of work.

On October 14, 1974, the services contract between the Corps and the Town was amended to provide that replacement municipal facilities and utilities would have the same capacity and serve the same number of users as those in the existing town. The added contract provision reads,⁴⁴

For municipally owned facilities and utilities, the required substitute system will be considered as full compensation for that taken, and no credit will be claimed for depreciation of the old. Replacement of said municipal facilities and utilities provided at Government expense will, however, have the same capacity and be able to serve the same number of users as those in the existing town, subject to the town furnishing the Government a contractually binding commitment that all lots in the new town site will be either occupied when available, will be replacements for open space and vacant lots in the existing town, or will be purchased by non-Federal interests at the fair market value.

By letter dated October 17, 1974, the General Counsel, OCE, provided a revised legal opinion, addressed through the Division Engineer, NPD, to the District Engineer, Portland. This second opinion reads, in essential text:⁴⁵

a. It is the opinion of this office that with respect to the question of capacity of substitute municipal facilities and utilities, the Government may provide capacity up to that which exists in the town provided the town gives the Government a contractually binding commitment that all lots in the new townsite will be either occupied when available, will be replacements for open space and vacant lots in the existing town or will be purchased by non-federal interests at the fair market value.

b. Prior to any acquisition of real property for the new townsite, a "Section 221 Agreement" (P.L. 91-611) setting forth the requirements of local assurances as stated in Section 83(d) of P.L. 93-251 must be executed and approved. In connection with such agreement, the Government must be assured of the financial ability of the town to meet its commitments.

On October 17, 1974, the action filed by the town to enjoin continuing work at the Second Powerhouse was withdrawn.⁴⁶ On October 22, the town's suit for declaratory judgment was dismissed.⁴⁷

Ostensibly, the Corps of Engineers changed its legal position and agreed to total replacement of facilities and utilities existent within the original town because the Corps' General Counsel ultimately concluded that this was the intention of the Congress. Realistically, however, it appears that the Office of the Chief of Engineers yielded on this issue for essentially the same reasons that the District Engineer acquiesced to the town's insistence on doing its own planning: the Corps was committed and under Congressional pressure to complete the construction of the second powerhouse in time to achieve power-on-line by May of 1981; and the Town was in a position, by refusal to agree to anything less than replacement of all facilities and utilities existent in the old town, and possibly, by continuing the legal action for injunction that it filed under the National Environmental Policy Act, to delay both the relocation of the town and the completion of the Bonneville Second Powerhouse.⁴⁸

What is most significant about the conflict concerning this issue is not what was ultimately decided but how the issue was handled by the Corps of Engineers. Two occurrences are salient. First, the Office of the General Counsel, OCE, refused to honor and support the agreement made by the District Counsel, Paul Schroy, with the Town's attorney James Mason, to cooperate in the action for declaratory judgment filed by the Town. The result, as should have been anticipated, was a loss of confidence by the Town in the authority of

the Portland District to speak for the Corps of Engineers and, consequently, an undermining of the ability of the District to deal effectively with the Town. The message received by the officials of the town, presumably, was that, if they wanted a binding agreement on any issue, they would have to deal directly with the Office of the Chief of Engineers. Second, the Office of the General Counsel, after the Town filed an action to enjoin continuing construction of the second powerhouse, recanted abruptly and, without explanation, agreed that the Corps could in fact provide total replacement of all facilities and utilities existing in the original town. The consequence of this reversal of the previously stated legal position was a diminution of the credibility of legal opinions asserted by the Corps of Engineers. Once again, the message received by the Town was that the Corps could do anything that it wanted to do. Moreover, it was demonstrated to town officials that by filing a court action to enjoin continuing construction of the second powerhouse, they could effectively coerce concessions by the Corps of Engineers. The effect of these events upon the attitude of the Town is recalled by Paul Schroy:⁴⁹

I think their attitude changed at that point. From that point on it appeared that the Town had no real respect for the Corps and their method of approaching the problem. And they felt, from their point of view, that we did have whatever authority we really wanted, and used lack of authority to, because we didn't want to do something. . . . So from that point on they felt that they would have to quit working with us as close as they were.

Notably, this dispute concerning the sizing of facilities and utilities in the new town arose as a result of divergent interpretations of the intent of Section 83, Public Law 93-251. The

Corps opined that under this legislation, as before, it was legally authorized to provide replacement facilities and utilities only to the extent necessary to accommodate the exact number of residents in the existing town who intended to relocate to the new town.⁵⁰ Town officials contended that the Corps was authorized to provide comprehensive relocation of all facilities and utilities in place as of March 7, 1974, the effective date of this special legislation.⁵¹ Under this circumstance, supposedly, once the Chief of Engineers accepted the position asserted by the town, this issue should have been settled. Indeed, it is likely that by careful attention to administration of the contract for services this issue could have been decisively concluded. The Portland District, in drafting the amendment of October 4, 1974, wrote, "Replacement of said municipal facilities and utilities provided at Government expense will . . . have the same capacity and be able to serve the same number of users as those in the existing town. . . ."⁵² By attention to detail, the District could have added the phrase "as of March 7, 1974, the effective date of the McCormack legislation." Since this phrase would have been reflective of the legal position expressed by the Town, it likely would have been accepted. However, given that the amendment as written provided for the replacement of the "existing town", without specifying a date for measurement, town planners saw an opportunity to increase the Corps' obligation by increasing the size of the town. The Town annexed Fort Rains and the Brown Tract. The Town then contended that the facilities and utilities in these annexed areas were part of the "existing town" and were required to be included in

the calculations of facilities and utilities to be relocated at Federal expense.⁵³

RELOCATION TOWNSITE SELECTION

During the meeting of Portland District, NPD and OCE representatives held in Portland, Oregon, on October 4, 1974, there was a discussion of the necessity and authority to relocate a portion of the Burlington Northern Railroad in order to prepare a location for placement of the new town. It was recognized that "the site strongly favored by the town has a railroad bedded on a 20' high embankment running through its center" and that "the railroad would represent a safety hazard to the town's residents as well as a significant source of noise pollution."⁵⁴ It was further recognized that little could be done about this situation: "Measures that could be taken to minimize the environmental impact had not been developed and the effectiveness of suggested measures are speculative."⁵⁵ The District Engineer reiterated to the OCE representatives that he and his staff supported relocating the railroad. The OCE representatives, in turn, acknowledged the desirability of moving the railroad outside of the selected townsite area. Nonetheless, the District Engineer was informed that the Office, Chief of Engineers, had come to the position that "no legal authority for doing so exists at this time."⁵⁶ The District Engineer was told, prospectively, that in order for the Corps to finance the relocation of the railroad for purposes of new town construction, "Special legislation appeared to be the best route."⁵⁷ However, related to the matter of possible additional legislation, the

OCE spokespersons reminded the District and Division representatives present to exercise caution:⁵⁸

It was pointed out that if the District Engineer should discuss the procedures for obtaining special legislation with the town, that it should be made clear that drafting service or any other assistance provided by the District or OCE in bringing this legislation before the public works committee must not be construed as OCE, Department of the Army or Administration support of the legislation.

Within the context of his letter of October 4, addressed to Mayor Skala, Colonel Gilkey advised the town that the Corps of Engineers did not have authority to relocate the railroad for purpose of preparing a new townsite. The applicable paragraph of this letter reads:⁵⁹

The Corps has no present statutory authority for relocating the railroad in conjunction with the relocation of the City of North Bonneville. Therefore, the relocation agreement with the town cannot provide for relocation of the railroad at Government expense.

The town took this latest disclaimer of authority directly to Lt. General William C. Gribble, Jr., Chief of Engineers. By letter dated October 10, 1974, signed by Mayor Skala, with copies provided to Governor Daniel J. Evans, Senators Magnuson and Jackson, and Representative McCormack, the town officials questioned the notification received from the District Engineer, courteously but forcefully, as follows:⁶⁰

In our efforts to resolve the remaining issues on the relocation of North Bonneville the Portland District office has been sincerely responsive. A major issue, however, remains over the interpretation of the authorities granted to the Chief of Engineers through Sec. 83 of Public Law 93-251, commonly referred to as the "McCormack Legislation." In our most recent correspondence from the District Engineer, Col. Clarence Gilkey, he states that "the Corps has no present statutory authority for relocating the railroad in conjunction with the relocation of the City of North

Bonneville." The District Engineer does not make reference to Sec. 83 P.L. 93-251 or any other statutory references to support this position. We have also been confronted in our personal conversations with the term "Legal Justification" for moving the railroad if the analysis of alternative townsites brings forth a solid recommendation that railroad relocation is necessary to insure relocation of North Bonneville in accordance with Environmental Quality in Design of Civil Works Projects, ENGCV-EM 1110-2-38 and the National Environmental Policy Act. The City of North Bonneville is of the opinion that should the analysis of alternatives warrant the relocation of the railroad on the grounds of Environmental Quality there is "legal justification" for any relocation required. Should analysis of alternative also verify the technical feasibility of any railroad realignment, I am certain that the authority for the Chief of Engineers to authorize said relocation is contained within the provision of Sec. 83 of Public Law 93-251.

* * *

This one issue is critical to the citizens of our community. We cannot visualize a railroad running through the middle of a new town on top of a 25 foot berm, with danger of major derailments together with sound levels in excess of 80 dba, at 1000 feet therefrom, as a responsible solution for a quality environment.

As the next development, Lt. General Gribble received a letter from United States Senator Warren G. Magnuson.⁶¹ The content of this letter, dated October 22, 1974, presumably came as an unsettling surprise to the Chief of Engineers. What the Senator had to say, in essence, was that what the Corps was telling the town was exactly the opposite of what the Corps of Engineers, specifically Major General John W. Morris, Director of Civil Works, had told the Senate. Senator Magnuson's communication is set forth, in substantial part, next:⁶²

I am in receipt of a copy of a letter sent you October 10 by Mayor Ernest J. Skala of North Bonneville, Washington, regarding the question of whether or not the Corps of Engineers has legal authority to relocate certain railroad tracks in conjunction with the relocation of North Bonneville.

This has been a matter of concern to the Town for some time and, consequently, I specifically sought to obtain a definitive answer from the Corps during the Senate Public Works Appropriations Subcommittee's consideration of the

Corps' FY 1975 budget. Enclosed you will find copies of the relevant page proofs of the forthcoming Subcommittee hearing record.

I would invite your attention specifically to two questions asked by Chairman Stennis at my request and answered by General Morris as follows:

"Senator Stennis. Does the Corps have authority to relocate the railroad tracks in the new townsite as has been requested by town officials?

"General Morris. Yes; the Corps has the authority to relocate the railroad if such relocation is necessary in order to accomplish the relocation of the town as authorized by section 83 of the Federal Water Resources Development Act of 1974, Public Law 93-251.

"Senator Stennis. Does the Corps intend to relocate the railroad tracks as requested?

"General Morris. The architect engineering firm to be engaged by the town to develop a relocation plan will also study the necessity for relocation of the railroad including the justification for that relocation."

Since the above-referenced questions were submitted for written responses, I would presume that they were answered only after thorough consideration of the relevant laws. Consequently, I am puzzled to learn that there now seems to be some doubt on the Corps part as to its legal authority to relocate the tracks. Your comments will be very much appreciated and are awaited with considerable interest.

On November 5, 1974, the Chief of Engineers personally responded to Senator Magnuson. The response is set forth in full text:⁶³

This is in reply to your 22 October 1974 letter concerning the relocation of the Town of North Bonneville, Washington, and whether or not the Corps has legal authority to relocate a segment of the Burlington Northern Railroad.

General Morris' response to Senator Stennis remains valid and expresses the crucial point over which there has been recent concern. The controversy involves necessity and justification.

I have enclosed a copy of my reply to Mayor Skala that explains the Corps position and interpretation of Section 83, P.L. 93-251, which I believe will help resolve this problem.

On the same day, November 5, General Gribble sent a letter to Mayor Skala reversing what his representatives had told the District Engineer. This letter reads in substance:⁶⁴

This is in reply to your letter of 10 October 1974 in which you requested my consideration of the Portland District Engineer's determination that the "Corps has no present statutory authority for relocating the railroad in conjunction with the relocation of the City of North Bonneville."

Research of Section 83 of Public Law 93-251, together with its legislative history, does not indicate that Congress anticipated or considered the relocation of a railroad from whatever site that might be selected. Nonetheless, it may reasonably be assumed that Congress did intend that the relocated City of North Bonneville should be a suitable replacement for the existing city, one that could offer a quality of life for its people at least equal to that provided by the present town site. Thus should the relocation of a segment of the Burlington Northern Railroad prove necessary to secure these considerations, section 83 would provide authority for the Corps of Engineers to accomplish this.

However, this need for relocating any segment of the railroad must be convincingly demonstrated and properly justified by the city. Final site selection must be supported by economic, social, and environmental determinations demonstrating that the chosen location would best serve the overall public interest. Additional Federal costs resulting from the relocation of a railroad must be considered a negative factor in evaluating sites capable of meeting the town needs.

Current estimates of the cost of relocation to the site currently preferred by the town range from \$3.7 million without relocation of the railroad to \$6.95 million with railroad relocation included. The average cost per family unit ranges from \$26,000 to the extraordinarily high figure of \$49,000.

Costs of this nature and magnitude would be required to withstand a thorough justification process prior to any Corps decision to seek funds from Congress.

Once again the Corps of Engineers had asserted a legal position and then recanted. The effect of this abrupt reversal, presumably, was a further diminution in the credibility afforded by the Town to legal opinions propounded by the Corps. Indeed, the conviction of town officials that the Corps of Engineers could do anything it wanted to do was again strongly reinforced.

In retreating from this skirmish over the relocation of the railroad, notably, the Chief of Engineers did not agree to relocate the railroad. What he told the Town was that "should the relocation of a segment of the Burlington Northern railroad prove necessary", then "section 83 would provide authority for the Corps of Engineers to accomplish this."⁶⁵ He qualified this statement by admonishing the town that "this need for relocating any segment of the railroad must be convincingly demonstrated and properly justified by the city" and that final site selection "must be supported by economic, social, and environmental determinations demonstrating that the chosen location would best serve the overall public interest."⁶⁶ Moreover, he pointed out, "Additional Federal costs resulting from the relocation of a railroad must be considered a negative factor in evaluating sites capable of meeting the town needs".⁶⁷ The position expressed by the Chief of Engineers, in essence, was that the Corps could legally do only what was rationally defensible and that no Federal funds could unnecessarily be expended to relocate the railroad.

Notably, the letter sent to Mayor Skala by the Chief of Engineers told the town that the decision to state that the "Corps has no present statutory authority for relocating the railroad in conjunction with the relocation of the City of North Bonneville" was made by the Portland District Engineer.⁶⁸ This was a misstatement. The record is clear that the decision was made by the Office of the Chief of Engineers, not the Portland District.⁶⁹ Indeed, the District Engineer had specifically requested of OCE, in his letter of April 9, 1974, that the District be granted approval to move the Burlington

Northern railroad tracks to a location away from the new townsite desired by the town.⁷⁰ It must be assumed, therefore, that the District Engineer believed that the Corps could legally relocate the railroad. The effect of this misplacement of responsibility, presumably, was a further diminution of town respect for the authority of the District Engineer and, consequently, a further weakening of the ability of the Portland District to deal directly with the Town of North Bonneville.

ENDNOTES

¹Contract for Services between the Town of North Bonneville and the Portland District, U.S. Army Corps of Engineers, No. DACW57-75-C-0032, 26 July 1974.

²Contract for Services, Article I, Section 2, Paragraphs 1-01, 2-01.

³Contract for Services, Article I, Section 1, Paragraph 1-01.

⁴Contract for Services, Article I, Section 1, Paragraph 1-01.

⁵Contract for Services, Article I, Section 1, Paragraph 1-03.

⁶Contract for Services, Article IV, Section 3.

⁷Contract for Services, Recitals.

⁸Contract for Services, Article IV, Section 1.

⁹Contract for Services, Article I, Section 1, Paragraph 1-03.

¹⁰Contract for Services, Article I, Section 1, Paragraph 1-03.

¹¹Contract for Services, Article I, Section 2, Paragraphs 2-01, 2-03.

¹²Contract for Services, Article I, Section 1, Paragraph 2-04.

¹³Contract for Services, Article I, Section 2, Paragraph 2-02.

¹⁴Paul H. Schroy, personal interview, 5 May 1987.

¹⁵U.S. Army Corps of Engineers, Portland District, Transcript of Public Meeting Held at Bonneville Dam, 24 August 1971, Bonneville Second Powerhouse Site Selection (Portland, Oregon: Portland District, 1971) 17. See dissertation, supra, 101.

¹⁶All Engineering, Town of North Bonneville, Skamania County, Washington, Preliminary Engineering Report of Existing Facilities and Relocation (Vancouver, WA; All Engineering, 1971) 14. See dissertation, supra, 107.

¹⁷Contract for Services, Article I, Section 1, Paragraph 1-03.

¹⁸"The Comprehensive Plan will provide all the necessary data, illustrations, models and materials required to define an Optimum Town plan within the Design Area." Contract for Services, Article I, Section 1, Paragraph 1-03.

¹⁹Contract for Services, Article I, Section 2, Paragraph 2-01.

²⁰"The Corps accepted responsibility for planning the optimum town, but not building it or paying for it. That was an extra to be reimbursed entirely by the Town." Paul H. Schroy, personal interview, 12 August 1988.

²¹See Engineer Regulation 1180-1-1, Appendix A, Forms and Formats for Corps of Engineers Contracts, A-308, Contract for Relocation, Rearrangement or Alteration of Facilities (Cost-Reimbursable), Article 4, Betterments (7 June 1982).

²²Contract for Services, Recitals.

²³Clarence D. Gilkey, personal interview, 27 June 1985.

²⁴Minutes, North Bonneville Town Council, 16 July 1974.

²⁵John A. Blatnik, M.C., Chairman, Committee on Public Works, U.S. House of Representatives, letter to Congressman Mike McCormack, 24 July 1974.

²⁶Town of North Bonneville v. U.S., No. C74-133T, U.S. District Court, Western District of Washington.

²⁷Clarence D. Gilkey, Colonel, District Engineer, Portland, message to Chief of Engineers, Subject: Corps Assistance in Relocating the Town of North Bonneville, Washington, Pursuant to the McCormack Legislation, 24 September 1974.

²⁸Gilkey, message to Chief of Engineers, 24 September 1984.

²⁹Gilkey, message to Chief of Engineers, 24 September 1984.

³⁰Gilkey, message to Chief of Engineers, 24 September 1984.

³¹Gilkey, message to Chief of Engineers, 24 September 1984.

³²Gilkey, message to Chief of Engineers, 24 September 1984.

³³Richard A. Chidlaw, Colonel, Deputy Division Engineer, North Pacific, message to Chief of Engineers, Subject: Corps Assistance in Relocating Town of North Bonneville, Washington, Pursuant to the McCormack Legislation, 24 September 1974.

³⁴Paul H. Schroy, personal interview, 5 May 1987.

³⁵Ernest J. Skala, Mayor, Town of North Bonneville, and James J. Mason, attorney for Town of North Bonneville, letter to Lt. General William C. Gribble, Jr., Chief of Engineers, and William B. Saxbe, Attorney General of the United States, Re: Relocation of Town of North Bonneville, Washington, 24 September 1974.

³⁶Skala and Mason, letter to Gribble and Saxbe, 24 September 1974.

³⁷Skala and Mason, letter to Gribble and Saxbe, 24 September 1974.

³⁸See Town of North Bonneville v. U.S., 11 Cl. Ct. 694, 744 (1987).

³⁹This conclusion is self-evident. The action for injunction was withdrawn fourteen days after filed, manifestly because the Corps acquiesced in the town position on the new town facilities and utilities sizing issue. See dissertation, supra, 266.

⁴⁰Memorandum for the Record by A. A. Hight, Colonel, Directorate of Civil Works, OCE, Subject: Meeting with Portland District Engineer on 4 October 1974, 7 October 1974.

⁴¹Memorandum for the Record by Hight, 7 October 1974.

⁴²Memorandum for the Record by Hight, 7 October 1974.

⁴³Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Mayor Ernest Skala, Town of North Bonneville, 4 October 1974.

⁴⁴Contract for Services, Supplemental Agreement P00001, 14 October 1974.

⁴⁵E. Manning Seltzer, General Counsel, OCE, letter to District Engineer, Portland, Subject: Interpretation of Section 83 of Public Law 93-251; Relocation of the Town of North Bonneville, Washington, 17 October 1974.

⁴⁶Town of North Bonneville v. U.S., 11 Cl. Ct. 694, 744 (1987).

⁴⁷Town of North Bonneville v. U.S., No. C76-133T, U.S. District Court, Western District of Washington. See Town of North Bonneville v. U.S., 11 Cl. Ct. at 744.

⁴⁸Presumably, the change in the legal opinion of the Office of the General Counsel, OCE, was also influenced by the opinion of Congressman John A. Blatnik, Chairman of the House Committee on public Works. Blatnik, letter to McCormack, 24 July 1974. See dissertation, supra, 259-60.

⁴⁹Paul Schroy, personal interview, 5 May 1987.

⁵⁰See dissertation, supra, 228-29.

⁵¹See dissertation, supra, 229.

⁵²Contract for Services, Supplemental Agreement P00001, 14 October 1974. See dissertation, supra, 265.

⁵³See dissertation, infra, 312-16.

⁵⁴Memorandum for the Record by Hight, 7 October 1974.

⁵⁵Memorandum for the Record by Hight, 7 October 1974.

⁵⁶Memorandum for the Record by Hight, 7 October 1974.

⁵⁷Memorandum for the Record by Hight, 7 October 1974.

⁵⁸Memorandum for the Record by Hight, 7 October 1974.

⁵⁹Gilkey, letter to Skala, 4 October 1974.

⁶⁰Ernest J. Skala, Mayor, Town of North Bonneville, letter to Lt. General William C. Gribble, Jr., Chief of Engineers, 10 October 1974.

⁶¹Warren G. Magnuson, U.S.S., letter to Lt. General W. C. Gribble, Jr., Chief of Engineers, 22 October 1974.

⁶²Magnuson, letter to Gribble, 22 October 1974.

⁶³W. C. Gribble, LTG, Chief of Engineers, letter to Senator Warren G. Magnuson, 5 November 1974.

⁶⁴W. C. Gribble, LTG, Chief of Engineers, letter to Mayor Ernest J. Skala, Town of North Bonneville, 5 November 1974.

⁶⁵Gribble, letter to Skala, 5 November 1974. See dissertation, supra, 274.

⁶⁶Gribble, letter to Skala, 5 November 1974. See dissertation, supra, 274.

⁶⁷Gribble, letter to Skala, 5 November 1974. See dissertation, supra, 274.

⁶⁸Gribble, letter to Skala, 5 November 1974. See dissertation, supra, 274.

⁶⁹Memorandum for the Record by Hight, 7 October 1974. See dissertation, supra, 269.

⁷⁰Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Division Engineer, North Pacific, Subject: Bonneville Lock and Dam, Oregon and Washington; Second Powerhouse Project; Supplement No. 2 to General Design Memorandum No. 4, Letter Report, North Bonneville Townsite Selection, 9 April 1974. See dissertation, supra, 203-05.

CHAPTER IX

CONTRACT FOR PROFESSIONAL SERVICES

On November 19, 1974, a contract for the actual planning of the relocation, titled "Contract for Professional Services", was awarded by the Town with Corps approval to the architect-engineer firm of Royston, Hanamoto, Beck and Abey (RHB&A).¹ The contract provided, through obligatory use of subcontractors, for "a design team approach" to the planning of the new town.² Specifically, planning was to be accomplished by a "Design Consultation Team" consisting of the prime contractor, RHB&A, and five subcontractor firms: Daniel, Mann, Johnson, and Mendenhall/Hilton (DMJM/Hilton), also an architect-engineer firm; Dames and Moore, a firm providing geo-technical engineering services; Kirk, Wallace and McKinley, design consultants; Williams and Mocine, an economics consultant firm; and Keyser Marston Associates, economic and financial consultants.³ As contemplated, the contract provided that the contractor would prepare three documents: a Comprehensive Plan for an Optimum Town, intended primarily for the town; and a Draft Feature Design Memorandum and an Environmental Assessment Report, each to be supplied through the Town to the Corps of Engineers.⁴ The contract amount, to be paid by the Town with funds provided by the Corps of Engineers under terms of the earlier services contract, was \$739,761.32.⁵

The contract incorporated the same definition of the Optimum Town contained in the earlier "Contract for Services" between the Corps and the Town, restating, "The Optimum Town is defined as a town with a central business district with a population and economic base capable of supporting essential community services, providing adequate land for economic growth through a balance of land uses and meeting the requirement of a viable Neighborhood Unit."⁶ To further refine the optimum town concept, the Contractor was required "to provide the citizens with an illustrated 'intuitive judgment' of what constitutes an 'Optimum Town.'"⁷

The contract specified, "The 'intuitive judgment' must include the basic abstract concepts of urban design in a rural setting, the concepts of what constitutes a Neighborhood Unit, details as to population ranges, densities, abstract land use patterns, land areas required, identification of essential community services, and analysis of how the concept provides for the essential community services and what influences of scale and character are exerted by the environment of the Columbia River Gorge."⁸ Moreover, the Contractor was required to obtain and document "individual expressions of needs and wants" by citizens of the town and "to place the input of the local community into interaction with the firm's professional, intuitive judgment of what constitutes an 'Optimum Town' by simple definition."⁹

The contract further specified that, once determined, "The 'Optimum Town' concept will then provide the basic information necessary to determine the character, size and location of a townsite that will accommodate the Optimum New Town."¹⁰ Implicitly, the optimum

new townsite was to be sized to accommodate the number of persons that could reasonably be expected to populate the relocated town, over some period of time.¹¹ Expressly, one of the obligations of the optimum town was that it should provide "adequate land areas for growth that will promote the establishment of essential services for citizens both within the new town and the rural areas of Skamania County."¹² To determine the town's potential, the contract provided, "Growth projections of each alternative site shall be made for a 100-year period."¹³

Since the comprehensive plan was intended to address the long range development of the town and not just the immediate relocation, it was recognized within the context of the Contract for Professional Services that the Town could order or direct the planning of features or facilities additional to, or of capacity greater than, those authorized to be provided at Federal expense.¹⁴ Earlier, under terms of the Contract for Services, the Corps of Engineers had agreed to pay for the planning of an optimum town.¹⁵ That earlier agreement was ratified through Corps approval of the contract awarded by the Town to RHB&A.¹⁶ However, as did the earlier agreement, the Contract for Professional Services expressly stated that the Federal government was not obligated to pay for the subsequent design or construction of any features or facilities required exclusively in the interest of the optimum town.¹⁷ To the contrary, the contract specified that all features of the optimum town involving any improvement of design, construction, or capacity over and above what the Corps was required

to provide under Federal law would constitute betterments and would have to be paid for by the Town or some other non-Federal entity.¹⁸

In the planning contract both the Town and the Contractor recognized and acknowledged that the obligation of the Federal Government was limited by the terms of the McCormack legislation.¹⁹ Under that special Act the Corps was authorized "to construct a central sewage collection and treatment facility and other necessary municipal facilities" and to provide replacement facilities for those existing within the old town, subject to the condition: "Municipal facilities provided under the authority of this section shall be substitute facilities which serve reasonably as well as those in the existing town of North Bonneville except that they shall be constructed to such higher standards as may be necessary to comply with applicable Federal and State laws."²⁰ Specifically proscribing any further Federal expenditures, the Act provided, "Additional facilities may be constructed, or higher standards utilized, only at the expense of appropriate non-Federal interests."²¹

Of all aspects of the Corps' legal authority, apparently the least definitive was that allowing the construction of "other necessary municipal facilities."²² To bring this element into focus, the Contractor was to provide a "detailed statement of what elements constitute 'essential community services' and the 'requirements of a viable Neighborhood Unit.'"²³ From this statement, the Contractor was to "make an assessment of 'other municipal facilities' that are not necessarily contained within the existing capacities but constitute

essential community services to insure the relocated community the greatest possible chance of social and economic viability."²⁴

While planning the "Optimum Town," the A-E contractor was required to differentiate between the replacement town or substitute facilities that the Corps was obligated to fund and features of the optimum town that could be provided only if paid for by the town. Specifically, the Contract for Professional Services provided, "Cost estimating and economic analysis must portray the Federal Government cost and responsibilities and the local community cost and responsibilities toward implementation of the initial relocation and development of the Optimum Town".²⁵ Further, the contract contained a provision captioned "SUBSTITUTE FACILITIES AND BETTERMENTS," providing in part,²⁶

Except for the new sewage collection and treatment facility and "other necessary municipal facilities" as indicated in Sec. 83 (b) of PL 93-251, the law requires that municipal facilities shall be substitute facilities which will serve reasonably as well as those in the existing town, except that they shall be constructed to such higher standards as may be necessary to comply with applicable Federal and State laws. Such facilities, are hereinafter referred to as substitute facilities and utilities and will be provided at Government expense. Additional facilities may be constructed, or further higher standards utilized, only at the expense of the appropriate non-federal interests and shall be referred to as betterments.

Town layouts provided during the Land Use and Design Images Workshop will be accompanied by proposed general criteria for all municipal facilities and utilities. The criteria shall describe in detail, preferably with the use of sketches, the size, quantity and quality of all proposed substitute facilities. The detailed information on general criteria will be supplied at the same time the Inventory of Existing Facilities Report and Site Alternative Statement are submitted to the City. . . . The Inventory of Existing Facilities Report shall provide for municipal facilities based upon the Existing Capacity Statement. The apportionment of cost must articulate: (1) the cost of replacement of existing facilities and capacities at existing

qualities and standards at the existing site, (2) Those costs that would be required to replace existing facilities and capacities at the existing site reflecting quality and standards up-grading required by Federal and State laws, and (3) Those cost that may be incurred by replacing the existing facilities and capacities, up-graded to meet Federal and State laws, at proposed new townsite alternatives.

Except as indicated, the Government approved substitute facilities will be those facilities which are later designed and constructed at Government expense. Whenever a substitute facility or utility is being upgraded to comply with the applicable Federal or State law, the law shall be cited and a copy of the relevant law included as part of the general criteria. In those instances where the owner directs betterments, the estimated cost of the approved substitute facilities and utilities will be used as a base for determining the cost of the betterments which are to be at the Owner's expense.

The Draft Feature Design Memorandum was intended to form the basis for preparation of plans and specifications for a later new town construction contract.²⁷ In preparing this document the Contractor was required to to develop the measure of the substitute facilities to be provided by the Corps of Engineers as replacements for those existent within the original town and to delineate the obligation of the Corps of Engineers to provide a replacement town.²⁸ Here again, the Contractor was required to differentiate between the replacement town, which the Corps was obligated to pay for, and the optimum town, which the Federal government was not required to provide. Addressing this necessity for differentiation, the contract specified,²⁹

The Draft Feature Design Memorandum (DFDM) shall be an integrated report covering all significant relevant aspects of the town relocation, giving reasons for all proposals and recommendations. After approval by appropriate government agencies it will serve as the basis for the apportionment of federal cost with respect to design and preparation of plans specifications and physical construction for all aspects of the relocation of municipal facilities and utilities. It will make clear what portions of the cost of all parts of the relocation design and construction are to be at federal expense and what portions are to be at the expense of the

appropriate non-federal interest. It will indicate the non-federal interests that will be paying for the non-governmental portions and shall contain information on how binding contractual commitments for the payments are to be furnished the Government prior to purchases of land for the new townsite.

Under terms of the planning contract, and particularly the requirement for preparation of a Draft Feature Design Memorandum, the Contractor was obligated to conduct a site selection study. The Contractor was to identify and provide a comparative analysis of various alternate townsites within a designated design area for presentation to and consideration by the citizens of the town.³⁰ The study was intended to provide information and data sufficient to guide and justify a reasonable selection by the town of a new townsite location.³¹

The contract expressly required that site selection and planning for a new town relate to the need for a townsite to accommodate an optimum town and specified, "The alternatives will reflect the requirement of the 'Optimum Town Concept.'"³² Generally, the identification of the new townsite alternatives to be studied was "completely open to the Contractor."³³ However, the contract specifically directed, "There shall be a thorough detailed analysis of the particular site alternatives submitted by the Corps or the City in the same manner as those alternatives within the Design Area that will accommodate an optimum town."³⁴ The contract further directed that "all planning work shall be performed and presented in the DFDM in such manner as to permit independent verification by comparison of alternatives to insure that the best overall solution of all facets of the relocation has been proposed."³⁵

The planning contract provided that the "Contractor shall study and make several preliminary town layouts for each alternate site in the Design Area."³⁶ The contract further provided that, based on the preliminary studies and contractor recommendations, the town "will select the most acceptable town layout at each site for further study and development and presentation in the DFDM."³⁷ The selected town layouts were to be presented to the Corps of Engineers in the Draft Feature Design Memorandum and were to be accompanied, at minimum, by the following information and analysis:³⁸

1. The selected town layout.
2. Analysis as to whether the reestablished town would have a reasonable economic potential, as compared to the existing town (economic viability). This should include an economic analysis of municipal income as it was prior to the Government acquisition program, as it is now during the acquisition program, and as it is anticipated to be in the relocated town. . . .
3. Analysis as to whether the reestablished town would have a reasonable social viability potential as compared to the existing town.
4. An analysis of new town access and circulation corridors will be provided.
5. A discussion of any flood hazard.
6. A noise level survey. . . .
7. Where applicable the following shall be included:
 - a. Fenced buffer spaces along the Burlington Northern Railroad to accommodate possible derailments and to exclude trespassers.
 - b. Sound attenuating barriers, either the fence type on the railroad embankment, a vegetative type on a widened embankment, or an earth mound type.
8. The Contractor shall include a site for a new school in planning for the new town.
9. An appraisal of the site's potential for being expanded as compared to the potential of the existing site for expansion. . . .
10. A cost estimate for the relocation. . . . The estimates shall be divided into federal and non-federal costs. . . .
11. An estimate of the earliest time that relocatees could start moving into the new town. . . .
12. A listing of all relevant site advantages and disadvantages. . . .

The Environmental Assessment Report was intended to provide the information that would be needed by the Corps of Engineers to prepare an Environmental Impact Statement for the relocation of the town.³⁹ Although specific in detail, essentially, the contract provided,⁴⁰

The EAR shall be sufficient to serve as an adequate basis for a draft supplement to the existing Environmental Impact Statement for construction of the Second Powerhouse. The EAR shall reflect the interdisciplinary nature of the investigations and studies and shall describe in detail those studies, evaluations and assessments addressing the impacts of the construction of the Second Powerhouse on the existing town of North Bonneville and the effects of relocating the community to a new site.

As part of the planning process, the Contractor was required to prepare and conduct a series of four workshops within the community of North Bonneville. Each of these workshops, ostensibly intended "to maximize citizens involvement," was mandated to cover a period of three days.⁴¹ The scope and purpose of each workshop was specifically detailed in the contract. Abridged, they were a "Needs Workshop", at which the Design Consultation Team was to present its intuitive judgment of what was essential to an Optimum Town and to hear and document individual needs and wants; a "Site Alternatives Workshop", at which the contractor was to display various site alternatives reflective of the requirements of an optimum town; a "Land Use and Design Images Workshop," at which RHB&A and its subcontractors were to provide illustrations of a series of preliminary town layouts for each of the major sites under consideration; and an "Optimum New Town Concept Plan Workshop," at which the Contractor was directed to provide a qualitative and quantitative analysis of the elements of the Comprehensive Plan.⁴²

The contract expressly prohibited any direct communication between the Contractor or other members of the Design Consultant Team and representatives of the Corps of Engineers, except during the conduct of one of the scheduled workshops. Moreover, even communications between the Town and the Contractor were required to be "through a single designated officer" with authority to speak for the Town. The contract provision establishing this control mechanism, in which the reference to "Owner" intends the town, reads as quoted next:⁴³

Based upon the outputs of these community workshops the Owner, through a single designated officer, shall provide formal input to the Contractor. Corps of Engineers' inputs to the Contractor which are not provided at these community workshops will be furnished the Contractor through a single point of contact designated by the Owner.

THE OPTIMUM TOWN

The Contract for Professional Services, although approved by the District Engineer, was clearly not what the Corps of Engineers had wanted and tried to obtain. Particularly, the agency was not content with being effectively excluded from the planning process. Earlier, the North Pacific Division, in approving Colonel Gilkey's decision to allow the Town to contract directly with an architect-engineer firm, had advised the District Engineer that "you should include provisions to establish close control, coordination and review of the A-E's work by your office." The Division emphasized that "firm guidance must be given during early planning stages to discourage any tendencies toward grandiose schemes of development," and added, "By establishing good rapport with the A-E in the planning phase, it will be possible to

obtain a reasonable and economical design acceptable to the town and us, thus avoiding placing the Corps later in the undesirable position of rejecting or revising designs with the resulting adverse publicity."⁴⁴ Furthermore, the A-E firm selected by the Town was not considered to be a good choice from the Federal perspective, because it was believed that the firm of RHB&A was of "radical reputation" and would be too amenable to suggestions by the Town.⁴⁵ Of course, the Corps had a right to expect that the contract would be administered and performed in accordance with the terms as approved, and that professional judgments required of the Contractor would be made by Contractor and not by the Town. Nonetheless, the contractual relationship established was between the Town and RHB&A. What this meant, simply put, was that during contract performance the A-E firm was working for the Town and not for the Corps of Engineers.⁴⁶

On November 22, 1974, only three days after the planning contract was signed, the town Planning Director, Pollard Dickson, in a telephone conversation with Mike Marston of the subcontractor firm Keyser Marston Associates, communicated two desires that were to dominate the entire planning process. First, Dickson suggested that in the preparation of the detailed statement of what elements constitute essential community services, the design consultation team should equate community wants with community needs. Second, the Planning Director indicated that the size of the optimum town should be based on a citizenry of the magnitude necessary to support the services desired by the town. The essence of this conversation is

recorded in a memorandum by Marston, dated November 25, excerpted as follows:⁴⁷

Pollard's definition of essential services really I think means ideal in the sense that he would like to define what the community wants as being essential in terms that the Corps would pay for the services. For example, he asked the question--what is essential in the way of school facilities. Particularly how many people would it take to support a viable school. I think we should be doing some basic research into the population levels required to support both public and private facilities.

On December 12, 1974, the contractor published an initial "Intuitive Optimum Town Statement" for the North Bonneville relocation project. Within this statement the design team identified six "preliminary assumptions" as listed next:⁴⁸

1. The regional potential is limited and North Bonneville is somewhat remote in the region. It is highly unlikely N.B. will attract large scale industrial or commercial development.
2. The most significant economic factor to N.B. is the dam and proposed day use area. The dam provided N.B. with its initial reason for being and the construction of the second powerhouse will provide for the town relocation and improvement.
3. Tourism and recreation appear to be the most likely sources of new long term employment for N.B. based on the anchor of the dam and day use facilities.
4. Permanent public employment will be a significant source of income. A new, attractive N.B. will be the logical residence for the support personnel of the dam and other facilities
5. N.B. can expect to attract a small number of new businesses and manufacturing establishments solely because of its design and location in a recreation environment. Improvement to rail and road access will be significant factors.
6. N.B. will never be a completely self-sufficient economic unit. Commuting to employment will continue.

Facilities clearly not available within the original town but presumably wanted by town officials and classified as "essential community services" in this initial optimum town statement included a

community center, a medical clinic with a helicopter landing area, river access and a marina.⁴⁹

Addressing "Town Size--Population Range," the published intuitive optimum town statement observed, "The population of a place depends on its capacity to support human life and activity. N.B. and its region has a relatively limited economic base and therefore can support only a limited permanent population."⁵⁰ Nonetheless, the statement offered a "Projected Population" suggesting that the new town would have a peak population of 2000 during construction of the second powerhouse, scheduled for the years 1978 through 1981, and a stable long-term population after 1981 of 1000 to 1500 persons.⁵¹

As a caveat to the intuitive optimum town statement, the design consultant team cautioned, "It is dangerous to look for standards in published work and apply them blindly to situations that are not comparable. North Bonneville is a 'non-standard' town."⁵² The team suggested, "Few communities that are analyzed for landscape proportion are as small. The citizens and planners of N.B. should set their own standards based on what is right for the community and what works and should largely forget about published averages, guidelines and rules."⁵³

On January 16, 1975, Mayor Skala, David Hussell, and the town's attorney, Jim Mason, met with members of the design consultation team "to discuss the Town's interpretation of replacement and betterment". Essentially, as pointed out in a memorandum by Mike Marston of Keyser Marston Associates and Meg Monroe of Williams and Mocine, the consultants were told "that the North Bonneville situation is unique

because it is not a typical replacement situation. Rather it is replacement and bringing facilities up to standard." The town spokespersons stressed that the Corps of Engineers has agreed that "bringing facilities up to standard" means "to such higher standards as applicable in State and Federal laws" and that, "Municipal facilities which would be replacements shall serve reasonably as well as those in the existing Town."⁵⁴ The apparent message, by inference, was that the Town wanted everything it could get from the Federal Government. Directly, however, the discussion addressed only somewhat ambivalently the issue of betterments. As Marston records in his memorandum: "At the point of betterment our conversation began to ramble. It was established, however, that a betterment was anything over the capacity needed for 100 percent replacement at the highest required standard."⁵⁵

On January 21, 1975, Pollard Dickson sent a memorandum to RHB&A expressing agreement with the observation that the "citizens and planners of North Bonneville should set their own standards based on what is right for the community and what works and should largely forget about published averages, guidelines and rules."⁵⁶ However, while labeling this a "sensitive statement," Dickson indicated that he did want the "development of a definitive model of an optimum new town based on planning principals and standards."⁵⁷ Expressly, he wanted a plan that was "uniquely North Bonneville and reflective of the rural character of the Columbia River Gorge."⁵⁸ Dickson stressed, "One of the most important considerations in defining an optimum town is how to determine what constitutes an essential community service." He

expressed concern that adequate information had not been provided in the initial intuitive optimum town statement and that, as a result, "the list of 'essential community services' . . . appears to be nothing more than a want list of services desired." He advised the contractor, "Specific support data to articulate what may constitute essential community service must be tied to the definition of an optimum town in the scope of work. It has been the town's effort to use the term 'Viable Neighborhood Unit' as an avenue to explore essential community services based upon a definable planning principal."⁵⁹ The Planning Director specifically noted,⁶⁰

An "analysis of how the 'Optimum Town' provides for essential community services" is a specific requirement of the scope of work . . . and particular importance because of the language of P.L. 93-251, Sec. 83. The reference to "other necessary municipal facilities" provided at government expense allow latitude within the law for new facilities that currently do not exist. It is apparent that unless these facilities are either required by federal or state codes or defined as "essential" the town cannot implement that portion of the law.

As a particular, Dickson advised, "Information is desired on actual numbers of people that are required in a community to support essential services." He further commented, "The optimum town from an economic perspective is not expected to be as intuitive judgment of an optimum town for North Bonneville. The expectation, however, is to have a clear range of choices that adequately illustrates the influence of economics."⁶¹

Under date of February 7, 1975, a memorandum by Meg Monroe of the subcontractor firm of Williams and Mocine, "Re: Optimum Town definition materials to get to Pollard Dickson," declares, "The North Bonneville City Council will determine what is optimum."⁶² The

memorandum acknowledges that "an optimum town should be economically feasible both in its development and its maintenance."⁶³ Nonetheless, specifically applicable to North Bonneville, apparently as directed by Pollard Dickson, the memorandum concludes, "The area should contain a minimum of 1,500 people (based on support of a minimum elementary school) and provide most immediate religions, economic and other services desired by its residents."⁶⁴

Presumably the design consultation team continued to be guided throughout the planning process by the wishes of the Town as conveyed largely through the Planning Director. In any case, the comprehensive plan was completed and delivered to the Town sometime before April 28, 1975.⁶⁵ The document, captioned "Comprehensive Plan, North Bonneville Relocation and Optimum New Town Design," recommended a relocated community "designed to accommodate an initial population of 600 and an optimum population of 1500."⁶⁶ Ostensibly, as stated in the plan, the optimum town size was developed and selected to insure the new town "the greatest opportunity for social and economic success."⁶⁷ Realistically, however, judgment concerning the sizing of the optimum town was based not on the number of persons that could reasonably be expected to remain in or move into the relocated community, or even on economic reality, but on a population of the magnitude considered necessary to support the new infrastructure desired by the Town.⁶⁸ The comprehensive plan, in offering an optimum town of 1500 inhabitants, included the following justification:⁶⁹

Analysis of the County and region reveals that a number of communities in the area have about the same population as North Bonneville (600) and, like North Bonneville, they have marginal viability. Further study indicates that most towns

in the area with about 1,500 population provide an acceptable range of employment, public services, municipal facilities, and a cohesive sense of community. To be really viable, North Bonneville must compete effectively within the region. Therefore, while North Bonneville may survive at 600 population, to meet the universal needs of a community and to provide an optimum living environment, a support population of 1,500 is needed.

* * *

It has been determined that the commercial services shown for the initial Town can be supported by the population along with essential community services and other necessary municipal facilities with a reasonable employment base. The initial Town provides a marginally viable municipal fiscal base. The Town needs the population and activity of the "optimum town" to maintain the new infrastructure which relocation has created.

The Comprehensive Plan, in which it was suggested that the new town population would develop sufficiently to support the identified essential community services and facilities, offered population projections as follows: Year 1975, population 550-600; 1976, 550-650; 1977, 650-750; 1978, 750-850; 1979, 900-1000; 1980, 800-900; 1981, 700-900; 1982, 700-900; 1983-1985, 800-1000; after year 1985, population 1000-1500.⁷⁰ The plan concluded: "The population is anticipated to stabilize at about 1500 sometime after 1990."⁷¹ Moreover, the plan stated: "The possibility of growth in excess of 1500 is not ruled out but is dependent upon factors which are difficult to anticipate at this time."⁷²

RELOCATION TOWNSITE SELECTION

Site selection studies were accomplished in conjunction with a series of four citizen participation workshops. The workshops were held, one each month during the period from December 1974 through March 1975.⁷³ Reportedly, during these workshops "citizen input

influenced the more formal decisions of the Planning Commission and City Council."⁷⁴

At the first workshop, an "initial presentation by the design team provided the citizens with basic abstract concepts of urban design in a rural setting and the team's professional intuitive judgment of an optimum town for the design area."⁷⁵ Presumably, judging from the content of the "Intuitive Optimum Town Statment" published before the workshop began, the citizens were told that North Bonneville would have a peak population during construction of the second powerhouse, 1979-1981, of 2000; and a stable, long-term population after 1981 of 1000 to 1500.⁷⁶ The citizens were also told that the new town would need a long list of "Essential Community Services," to include a community center, a medical clinic with emergency helicopter landing area, and river access and a marina.⁷⁷ Apparently no additions to or deletions from the suggested list of essential community services were developed during or as a result of this workshop; nonetheless, according to the design team, "It provided the basic information required to determine the character, size and location of a townsite that would accommodate the optimum new town."⁷⁸ Criteria for new townsite selection were developed and grouped into five categories: safety, conservation, amenity, strategy, and cost.⁷⁹ These categories were defined by the Contractor as recounted next:⁸⁰

Safety included soil stability, steepness of slope, flooding hazards, wind, noise, proximity to water and consideration of nearby man-made hazards. It was felt to be a basic necessity that the selected town site be safe, or at least be capable of being made safe.

Conservation deals mainly with elements of the natural environment including: fish and wildlife and their habitat, trees and vegetation, quality of soil and water, history and

archeology. The point of view was to evaluate the impact town development would have on the natural environment and thereby employ conservation principles in the site selection process.

Amenity is the term used to describe the potential habitability of a site in terms of human enjoyment. Factors in this category include: relationship of the site to the Columbia River and other bodies of water, views from the site, quality of soil and terrain in terms of supporting development and landscaping, opportunities for shelter from the elements, quiet, open space within and around and the potential for conflicts with existing land uses.

Strategy refers to the opportunities present or absent in a site to exploit political, social and economic goals of the community. Included within this category were: ability to support 1,500 population, availability at the site, access potential, relationship with the proposed Federal Day Use Area and the Dam, ability to establish edges of town that could be protected from inappropriate development, tourist interest and school district boundaries.

The Cost category recognized that some sites may cost more than others to acquire and develop. Factors considered included: land value, improvement costs, existing land use, implied maintenance responsibilities, cost of utilities, railroad and highway relocations, powerline relocation, shape of the site and relative effect of its acquisition on the tax base.

During the second workshop, eleven possible townsites were presented for consideration. Of these, eight were proposed by the consultants, one was suggested by Evergreen College students, and two by the Corps of Engineers.⁸¹ Except for one site immediately to the north, all sites were located to the west and within three miles of the original town.⁸²

The site proposed by the students, initially identified as the "City of North Bonneville Site Alternative," encompassed the land area requested by the Town during the Corps conducted public meeting of March 14, 1974. However, the site was substantially larger, expanded northward to include Greenleaf Lake and areas beyond. (See Figure 7.) This proposal contemplated retention of the existing highway alignment

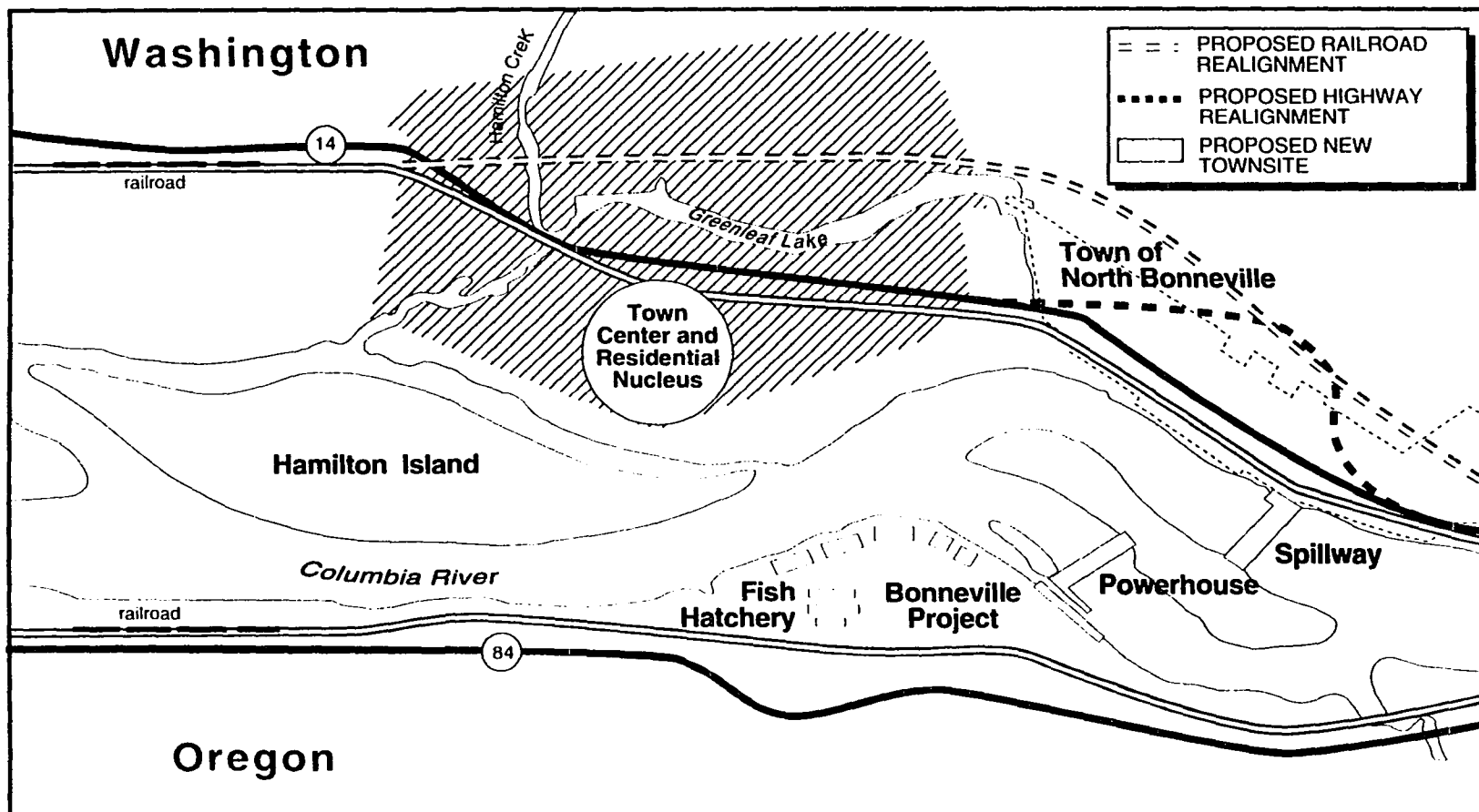


Figure 7. City of North Bonneville Site Alternative. Source: Portland District, U.S. Army Corps of Engineers.

but suggested that the railroad be "relocated . . . north of Greenleaf Lake, circumventing the townsite."⁸³ Most of this site was located below the hundred year flood plain and would require filling and leveling before a new town could be constructed.⁸⁴

One of the two sites offered for comparative analysis by the Corps of Engineers, designated "U.S. Army Corps of Engineers Site Alternative 1," was located to the north and west of the site proposed by the students, generally centered around Greenleaf Lake. (See Figure 8.) This is the site directed for study by the Office, Chief of Engineers.⁸⁵ The majority of this site was above the hundred year flood plain.⁸⁶ Use of this site would not have required the relocation of either the highway or the railroad.⁸⁷

The second site offered by the Corps, designated "U.S. Army Corps of Engineers Site Alternative 2," was a modified version of that proposed by the Town during the public meeting of March 14, 1974.⁸⁸ The site was equal in size to what the Town then wanted but was moved slightly to the south and west below and out of contact with the railroad. (See Figure 9.) Portions of this site were below the hundred year flood plain and would require filling and leveling.⁸⁹ Still, use of this site within the dimensions proposed would avoid necessity for relocation of either the highway or railroad.⁹⁰

The purpose of the second workshop "was to examine townsite alternatives . . . and to select four sites for further evaluation."⁹¹ Following the second workshop presentation, "the consultants placed the sites and criteria on a matrix and evaluated each site; first, according to the criteria, and then by weighing the citizens' choices

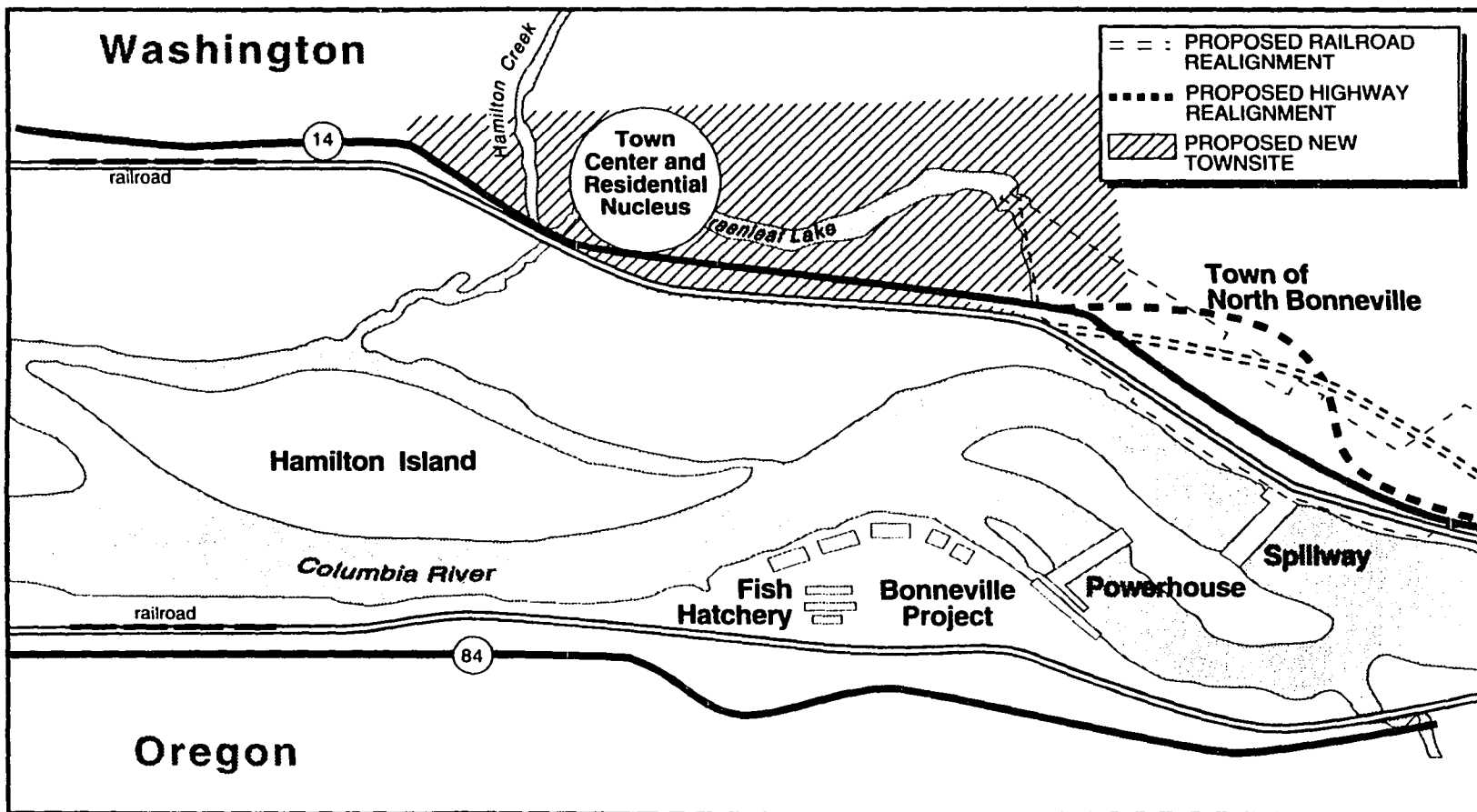


Figure 8. U.S. Army Corps of Engineers Site Alternative 1. Source: Portland District, U.S. Army Corps of Engineers.

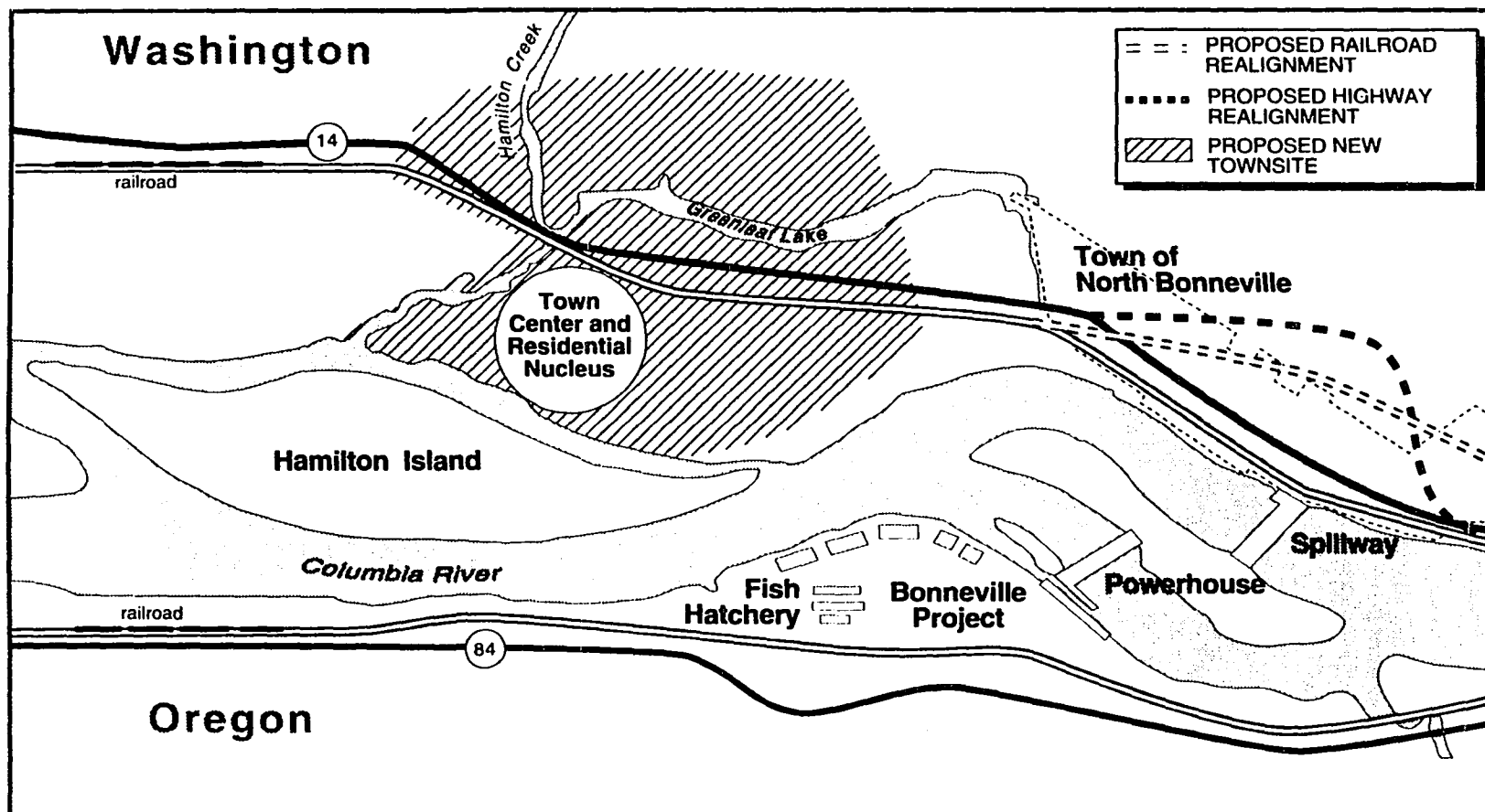


Figure 9. U.S. Army Corps of Engineers Site Alternative 2. Source: Portland District, U.S. Army Corps of Engineers.

of importance, and arrived at a ranking of sites."⁹² Upon concluding this process, the consultants recommended four sites for further study, identified "as being the best from an environmental, physical and socially workable standpoint."⁹³ Two of the sites were survivors from the original eight identified by the design team. The third was the location recommended by the students. The fourth was the Corps of Engineers Site Alternative 2. Continued study limited to these four sites, redesignated as Sites A, D, B and C, respectively, was approved by the Town Council.⁹⁴

The first of the surviving consultant sites, originally identified as "Consultant Site Alternative 1," now site A, was located immediately to the north of the original town. (See Figure 10.) The majority of this location was above the hundred year flood plain.⁹⁵ Use of this site would require no substantial relocation of either the highway or the railroad.⁹⁶

The second continued consultant site was a composite of two originally proposed alternatives, initially designated "Consultant Site Alternative 5a" and "Consultant Site Alternative 5b," both located within the same general area. (See Figures 11 and 12.) The sites, combined and redesignated Site D, were located in the flood plain. Under "5a" the existing railroad alignment would be retained and only the highway would be realigned.⁹⁷ Similarly, in "Site 5b" the existing railroad alignment is maintained and the highway is realigned.⁹⁸

Corps of Engineers Site Alternative 1 was dropped because it was determined that it "encompassed too small an area to provide for an

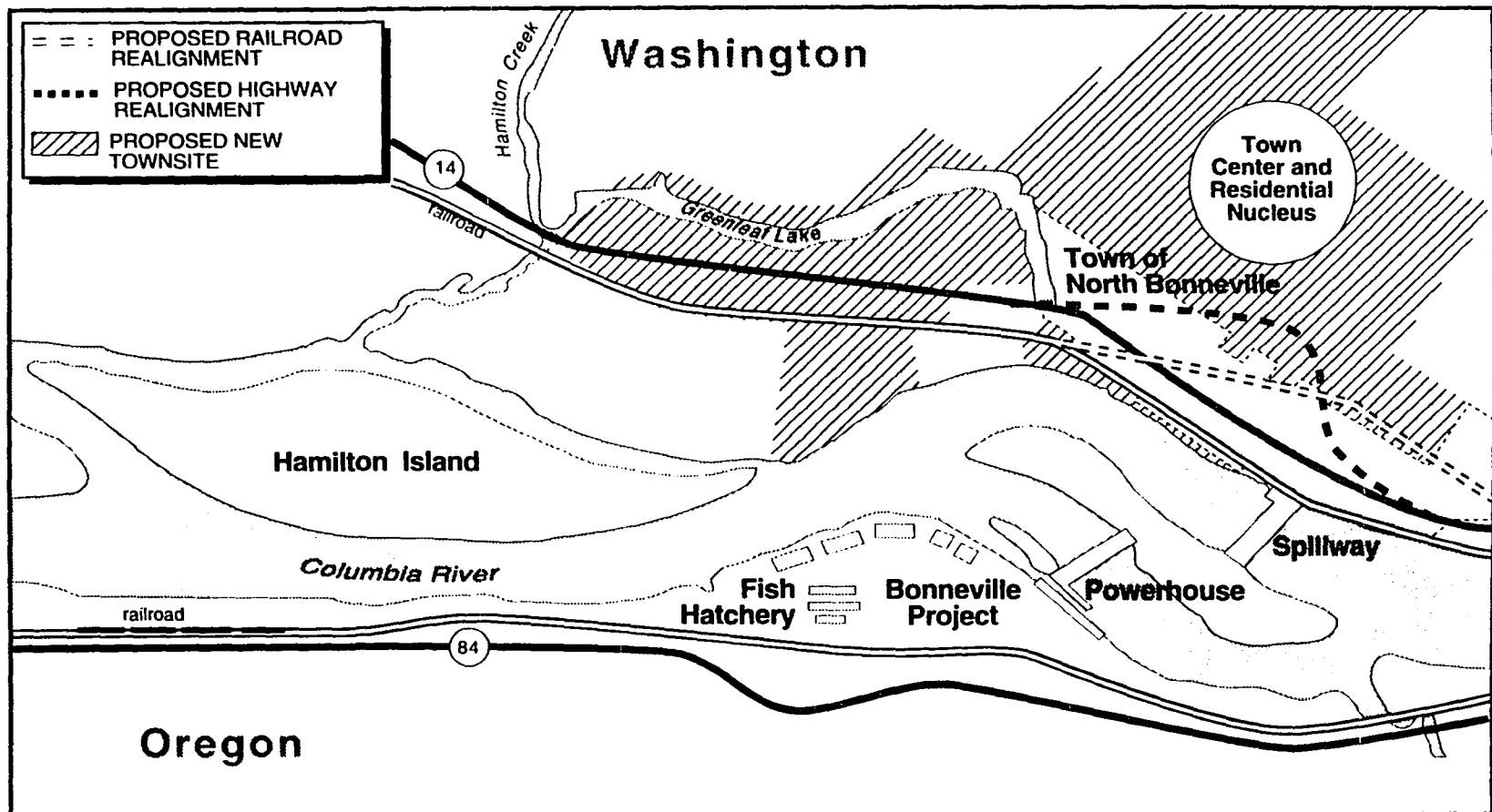


Figure 10. Consultant Site Alternative 1. Source: Portland District, U.S. Army Corps of Engineers.

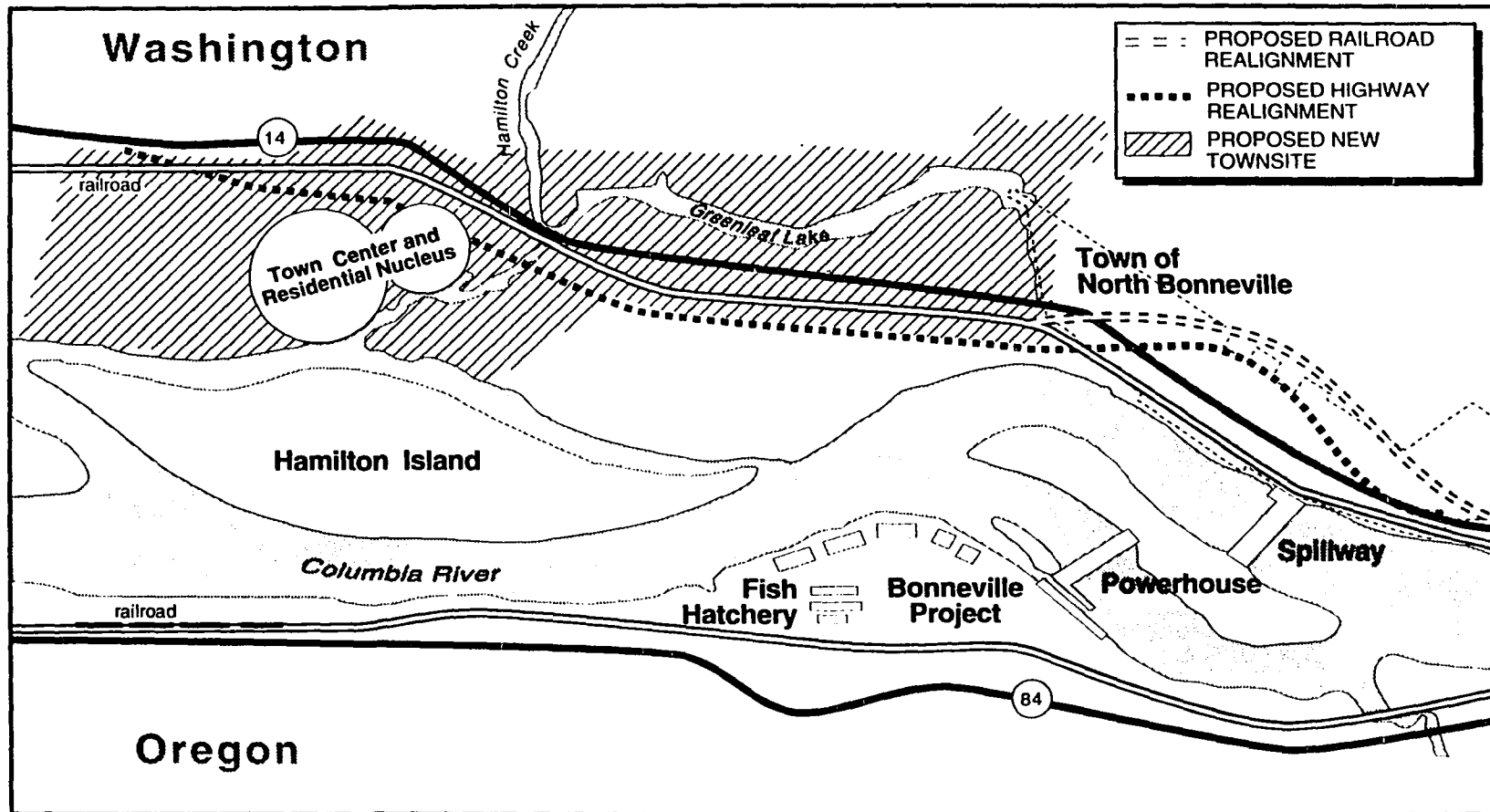


Figure 11. Consultant Site Alternative 5a. Source: Portland District, U.S. Army Corps of Engineers.

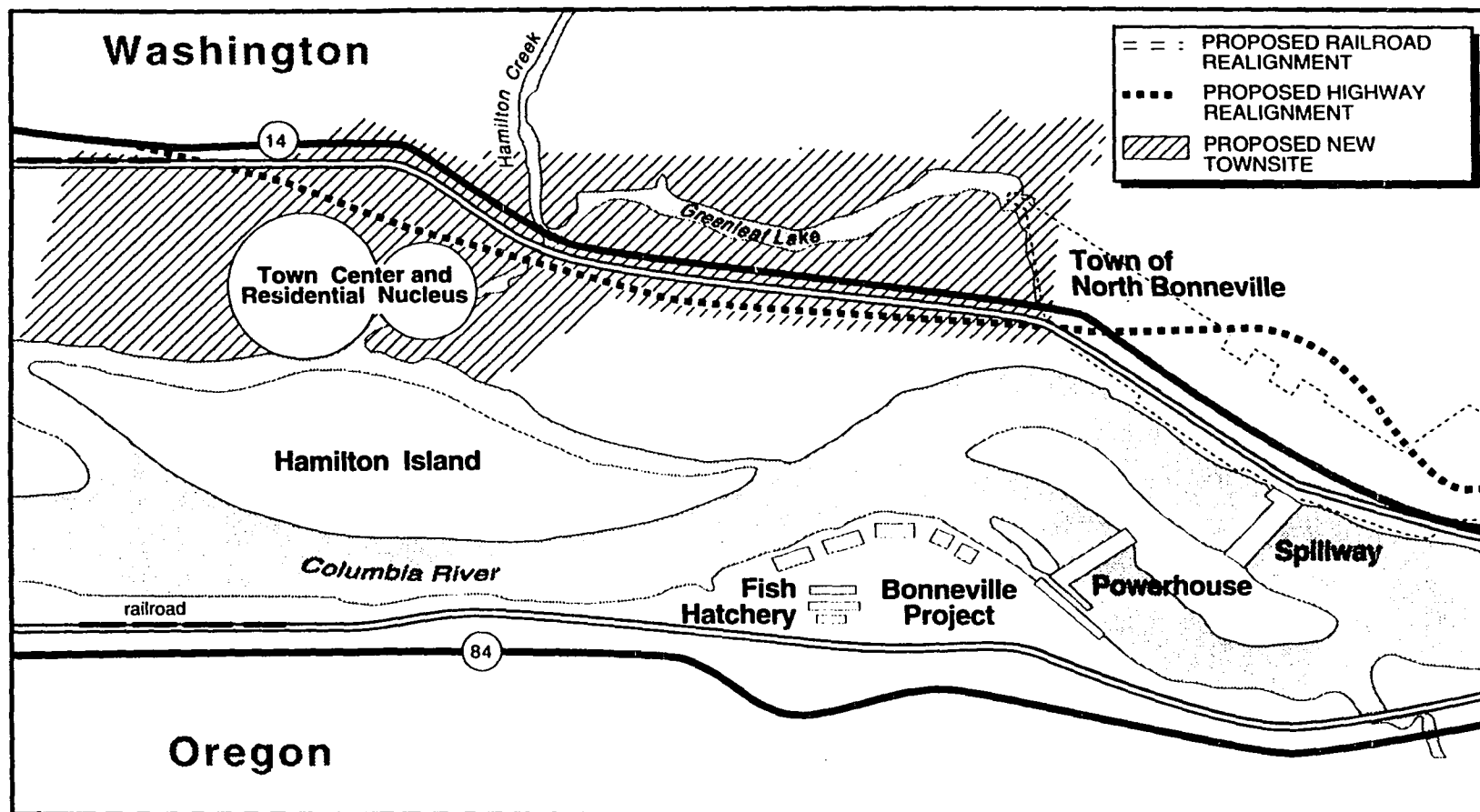


Figure 12. Consultant Site Alternative 5b. Source: Portland District, U.S. Army Corps of Engineers.

eventual optimum town population of 1500."⁹⁹ The Corps agreed that the site, as originally proposed, was "able to accommodate only about 900 people."¹⁰⁰ Nonetheless, the Corps insisted that the site be further studied in accordance with the contract.¹⁰¹ Basically, this "deficiency" was correctable: "In order to meet the deficiency, the consultants suggested that Corps Site 1 be extended to the south, without relocation of the railroad or highway, to include sufficient area to accommodate the 1500 population necessary for the optimum town."¹⁰² This suggestion was welcomed by the Corps. Technically, study of this site alternative was reinstated and continued to final site selection.¹⁰³ Realistically, however, this alternative was not further considered. "The Planning Commission," headed by Pollard Dickson, "recommended to the City Council that Corps Site 1 together with the expanded Corps Site be dropped from further consideration. . . ."¹⁰⁴

At the third workshop, ten design layouts were presented, two for each of the five sites still under consideration.¹⁰⁵ As emphasized by the design team, each of the layouts was "designed in a manner which allows for future expansion to accommodate an optimum population of 1500 and an initial plan, which will accommodate a population of 600."¹⁰⁶ The purpose was "to show the land use and design images that could be achieved at each site."¹⁰⁷ In these presentations the consultants offered a new set of criteria said to have evolved from the set used during the second workshop but to be oriented more to design: "These criteria include access, interface with adjacent land uses and construction operations, expansion potential, and

environmental impacts."¹⁰⁸ Also during this workshop, "it became apparent that Townsite A should be eliminated from further consideration due to unavoidable natural constraints."¹⁰⁹ This left four sites still under consideration.

Following the third workshop "the City Council considered the desires expressed by the citizens in addition to the recommendations of the Planning Commission and the design team in choosing the best design for each of four sites." Under Council direction, "Each of these four designs was then refined and modified by the design team to represent the best design that could be achieved for each site, given constraints and conflicts that arose."¹¹⁰

During the forth and final workshop, "four optimum designs were presented and fully explored."¹¹¹ The consultant team reported that all of the remaining sites "were considered capable of being optimum."¹¹² However, "No consultant recommendations were made for the final selection of a town plan and site at the workshop, so that citizens would not be influenced."¹¹³

Final site selection "was the responsibility of the City Council." However, the Council "decided to refer the subject to the Planning Commission for their recommendation and to solicit the preference of the people." The plans were maintained on display in the town for a week, and design team members remained available to describe the plans and answer individual questions. As recalled, "Public review was well publicized and the people were asked to mark 'ballots' indicating their site preferences."¹¹⁴ Then, on March 27, 1975, the City Council met "to review and tabulate citizens' ballots

and to consider the recommendations of the Planning Commission and the consultant design team."¹¹⁵ The Planning Commission recommended for selection, in order of preference, Site C, D, B, and the Corps Site 1 as expanded. The ballot count showed that 74.6 percent of the people preferred Site C.¹¹⁶ (See Table IV.) This site was selected by unanimous vote of the Council.¹¹⁷

The selected site, although the identification "Site C" is a derivative of the original designation "U.S. Army Corps of Engineers Site Alternative 2," was not the configuration suggested for study by the Corps. (See Figure 13.) Use of Corps Site 2 would have required the relocation of neither the highway nor the railroad; use of the selected site would require relocation of both.¹¹⁸ Moreover, Corps Site 2, reflective of the site requested by the Town on March 14, 1974, included no part of Hamilton Island and was located entirely to the east of Hamilton Creek. The site selected encompassed a part of Hamilton Island and was located on both sides of Hamilton Creek.¹¹⁹ The site selected was similar to the Corps Site 2 in one respect: It was situated almost entirely within the flood plain.¹²⁰

The Corps of Engineers well recognized, as presumably did the Town and its design consultant team, that site selection was the most significant determination of relocation costs.¹²¹ Use of the site selected would necessitate expenditures for relocation of the highway and railroad estimated by the design team to be \$1,590,334 and \$847,220, respectively.¹²² Also, placement of the new townsite on two sides of Hamilton Creek would necessitate the construction of a bridge, estimated by the design team to cost \$1,080,000.¹²³ And, of

TABLE IV
 TABULATION OF CITIZENS' VOTES
 PREFERENCE FOR NEW TOWNSITE

	<u>CORPS</u>	<u>B</u>	<u>C</u>	<u>D</u>
Home Owners and Tenants	18	11	97	4
Absentee Business Owners			8	
Absentee Land Owners	2	1	1	
Design Area Residents			11	2
General Public	<u>3</u>		<u>2</u>	
TOTALS	23	12	119	6

Source: U.S. Army Corps of Engineers, Bonneville Second Powerhouse Design Memorandum No. 8, Relocation of the City of North Bonneville, Washington, 2 Vols. (Portland, OR: Portland District, 1975) 1: 12-1.

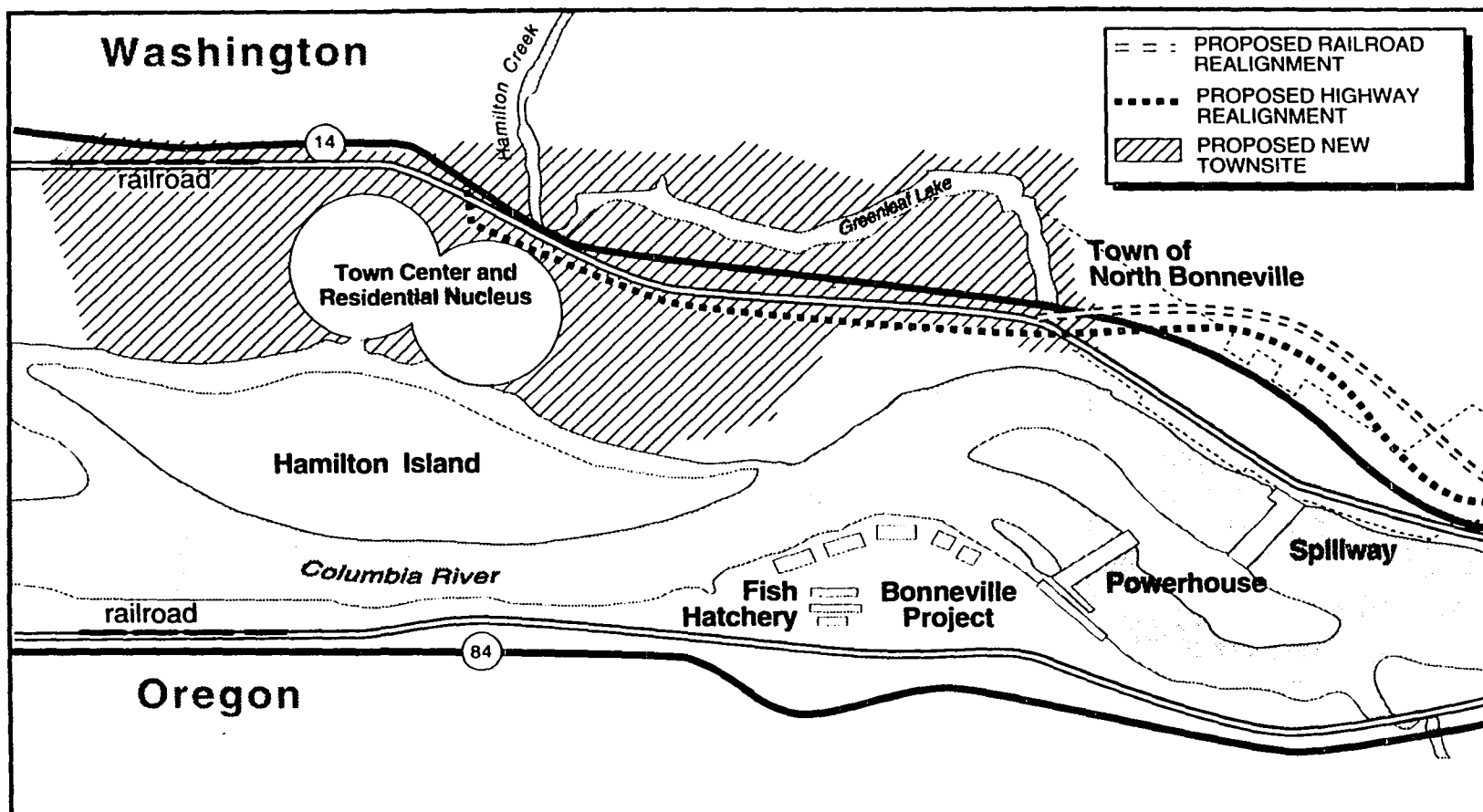


Figure 13 . Selected Site. Source: Portland District, U.S. Army Corps of Engineers.

course, construction of a new town in the flood plain would require incurring costs for filling and leveling of the townsite.¹²⁴

The Corps of Engineers clearly was not satisfied with the Town's site selection. What the Portland District most wanted was a "sincere site selection study."¹²⁵ The work of the design consultant team, as viewed by Corps officials, did not meet this test.¹²⁶ Nonetheless, the Corps chose to approve the selected site "in concept."¹²⁷ Announcement of this decision was made on April 9, 1975, during an open meeting conducted by the Town, Colonel Gilkey speaking:¹²⁸

It has been a long process since last October. We are finally down to the point of Town location. We were up here about a week ago and listened to the planning commission. The people voted on a townsite and the Council made their decision. We have seen a great deal here the last couple of days. Lots of things we'll have to look at more closely when we see the DFDM. To clear the air a little at this point in time, officially we are giving our nod of approval to the site selected so planning can go ahead on the basis of C2. Some features we will have to look at and dig into more deeply, but as far as site for the New Town is concerned, it has our stamp of approval so you can go ahead from there.

SIZING OF NEW TOWN FACILITIES AND UTILITIES

On November 27, 1974, Colonel Gilkey sent a letter through the Division Engineer, NPD, to the Office, Chief of Engineers, addressing "a compendium of future issues that might arise in connection with the relocation of North Bonneville that would require an OCE position."¹²⁹ One of the issues delineated concerned "the matter of size of replacement town that is to be provided," specifically as relates to Fort Rains and the Brown Tract.¹³⁰ The District Engineer explained the situation and articulated his questions as follows:¹³¹

The town's planning staff is presently discussing the possibility of annexation with the residents of Ft. Rains. They have also indicated a desire to incorporate the Brown Tract into the city limits. The issues are: Are these annexations to be included in the land area and capacity computations to be used in the replacement town? Is there to be a cut-off date after which no future annexations will be considered, or are any restrictions to be considered to the size that the town can grow prior to its relocation?

The North Pacific Division, in forwarding this issue to the Office of the Chief of Engineers, saw it as essentially a non-problem. Since the Corps had now allowed that the new town would be sized to be able to serve the same number of residents that occupied the old town and since only slightly more than half of the citizens of the original town expressed intention to relocate into the new town, the Division simply assumed that there would be plenty of room for any person living in either Fort Rains or the Brown Tract who wanted to move into North Bonneville. Accordingly, the Division indorsement to OCE, dated December 20, 1974, contained the following comment:¹³²

Since the new town will be sized larger than that required to accommodate the number of families who have indicated a desire to move into it, the question raised by the town appears to be moot. The residents of the Brown Tract and Ft. Rains are eligible to move into the interim housing and, therefore, are also eligible to acquire a lot in the new town from the Corps. This would still leave a significant number of lots available that would be serviced by facilities the Corps would construct for which the town would be required to purchase under the Act.

The Office, Chief of Engineers evidently recognized that the gist of this issue was not accommodation of the residents of Fort Rains and the Brown tract, but determination of the measure of the government's obligation to contribute to the cost of the new town. The Corps had only recently agreed that municipal facilities and utilities to be provided at Federal expense "will have the same

capacity and be able to serve the same number of users as those in the existing town."¹³³ Of concern was whether the town, by annexation, could increase the size of "the existing town."¹³⁴ Major General John W. Morris, Director of Civil Works, OCE, by indorsement dated February 3, 1975, informed the Division Engineer, NPD, and the District Engineer, Portland, that this issue was "under active consideration and should be resolved in the near future."¹³⁵ The question under study was, as insightfully posed by the District Engineer, "Are these annexations to be included in the land area and capacity computations to be used in the replaced town?"¹³⁶

As the next development, the town of North Bonneville annexed Fort Rains. The annexation was accomplished by Ordinance Number 272, adopted by the town council on December 10, 1974.¹³⁷ The Portland District learned of this action sometime around February 7, 1975.¹³⁸ Report of the annexation of Fort Rains was provided by the District Engineer to the Division Engineer, NPD, and to the office, Chief of Engineers, by letter dated March 21, 1975.¹³⁹ Within the context of his letter, Colonel Gilkey recommended that the Corps of Engineers allow the annexed area to be included in the computation of the size of the existing town for relocation purposes. As argument for this position, the District Engineer observed that the "effect of the annexation of Fort Rains into the town of North Bonneville will be minimal," and that there "is no known legislation nor is provision made under Section 83 that would prohibit the town from continuing to expand at any given time."¹⁴⁰ Implicitly acknowledging that there must come a time when the size of the existing town can expand no further,

the District Engineer offered, "It is the District's opinion that on the date the Relocation Contract is signed, the annexation of any areas be limited to the Project boundaries."¹⁴¹

The North Pacific Division, by indorsement to the Office, Chief of Engineers, dated March 26, concurred with the District Engineer's view, stating that "the effect of annexation of Fort Rains will be nominal" and that "the date of the Relocation Contract is controlling to determine the extent of utility replacement."¹⁴² Again, the Division saw the issue of expansion as insignificant, and suggested, "Because of practical limitations on areas available for annexation within the project boundary, the question of controlling date is near-moot, in any event."¹⁴³

On April 8, 1975, the Office of the Chief of Engineers answered Colonel Gilkey's question of November 27, 1974, advising that areas annexed by North Bonneville subsequent to enactment of the McCormack legislation could not be considered part of the existing town for purposes of determining the extent of the Corps' obligation to provide a replacement town.¹⁴⁴ Specifically, OCE concluded, "Public Law 93-251 approved 7 March 1974 requires the Federal Government to provide facilities only to substitute for such capacity as existed in the town of North Bonneville at the time said public law was approved."¹⁴⁵

Notification of the Corps position was provided to the Town by letter dated April 10, 1975, from the Portland District Engineer to Mayor Ernest J. Skala. Colonel Gilkey told the mayor that the size of the existing town for purposes of determining the capacity of municipal facilities to be provided at Federal expense could not be

increased by annexations subsequent to the date of enactment of the McCormack legislation. The wording of this letter reads in pertinent part:¹⁴⁶

As to the question of capacity and annexation of Fort Rains, Public Law 93-251 approved 7 March 1974 requires the Federal Government to provide facilities only to substitute for such capacity as existed in the town of North Bonneville at the time said public law was approved.

DETERMINATION OF FAIR MARKET VALUE

On May 2, 1974, during the meeting of Town and Portland District representatives in the Office of Community Development, Office of the Governor, in Olympia, Washington, a discussion took place concerning the price of lots in the new town. The District Engineer was asked how the price of lots in the new town would be determined. Colonel Gilkey offered that the price of lots would be determined by references to corresponding prices in other towns in the area, for example, Stevenson. The District Engineer specifically told the town that the price would not be determined by the cost of the real estate to the Corps. The town representatives stated that they would prefer to purchase lands directly, of course on a cost reimbursement basis, believing that it could acquire property at a better price than could the Corps of Engineers. In response, "Colonel Gilkey stated that he thought that this was unlikely and, besides, the cost of the property will in no way affect the cost of lots in the new town."¹⁴⁷

On November 27, 1974, this issue was referred by the Portland District through the North Pacific Division to the Office of the Chief of Engineers as one that "would require an OCE position."¹⁴⁸ The

District Engineer explained the Portland District's position, and that of the Town, as recounted next:¹⁴⁹

Section 83 of Public Law 93-251 provides that lots in the new town will be conveyed to the residents at their fair market value. The District's position is that fair market value is well-defined and the intent of the law is clear. The town has taken exception to this position, and states that the fair market value of the lot should be no more than the cost to acquire the bare land without improvements. The town states that under normal relocation situations the town to be relocated would acquire land for the new town and the improvements would then be constructed on that land by the Corps of Engineers at no cost to the town. Therefore, when lots are conveyed to the citizens in new North Bonneville the cost of those lots should only be the cost of the bare land without improvements because the Government is already obligated to provide the improvements under existing law.

The North Pacific Division, by indorsement to OCE dated December 20, 1974, concurred in the Portland District position, restated as being "that property in the new town should be conveyed by the Corps at the fair market value of the lot in its improved condition." The Division added, "The Act and legislative history, we feel, clearly support this position."¹⁵⁰

While this issue was under active consideration in OCE, the Portland District continued to search for an amicable solution. The District apparently assumed that the Town of North Bonneville was taking the position it did, at least in part, out of concern that it would be financially unable to pay the estimated fair market value as improved for those lots in the new town not conveyed to individuals or other entities. Presumably attempting to ease this concern, Colonel Gilkey, on March 21, 1975, again wrote through NPD to OCE, this time submitting for consideration two proposals "for repayment for the land to the Government by the Town of North Bonneville." The two

proposals, each of which involved extending credit to the town, were detailed as recounted next:¹⁵¹

a. The Water Resources Development Act of 1974 (Public Law 93-251), Section 40, provides methods for installment payments by non-Federal public bodies as a means of reimbursing the United States of America for work undertaken. These payments may be made in annual installments. In the matter of payment for lots in the new town of North Bonneville, it is proposed that the Government may be reimbursed by the town in the following manner, subject to the approval of the Secretary of the Army:

A five-year agreement to be executed by the Town of North Bonneville in which it would be agreed by the town to pay for the lots acquired by the town in equal annual installments. This agreement could be renewable for periods of one year at a time up to three years. In any event, the agreement must be terminated at the time of completion of construction of the project which is presently expected to be the end of 1984.

b. The Federal Property Management Regulations, Subpart 101-47.304-4(a), utilized by the General Services Administration, provides that where the disposal agency has determined that the sale of specific property on credit terms is justified, the following terms may be used:

(1) When the sale price is \$2,500.00 but less than \$10,000.00, a downpayment of not less than 25 percent cash with the balance due in 8 years or less, or;

(2) When the sale price is \$10,000.00 or more, a downpayment of not less than 20 percent cash with the balance due in 10 years or less.

(3) With the above terms the payments would be in equal quarter-annual installments together with interest on the unpaid balance at an annual current rate of 8.25 percent.

The Office, Chief of Engineers, on April 8, 1975, responded to Colonel Gilkey's inquiry concerning determination of fair market value and to his proposals for extending credit to the town.¹⁵² The District Engineer was advised that the town would have to agree to accept all otherwise unsold lots at the fair market value as improved and, moreover, that the town would have to provide payment in full at the time of purchase instead of buying on credit. The text of this OCE statement reads in part:¹⁵³

a. Section 83 of Public Law 93-251 substitutes the "normal" town relocation legal and procedural precedents and is the sole remedy available to the town and its residents in connection with the town relocation.

b. Section 83 of Public Law 93-251 makes it a requirement of the Federal Government to acquire and convey title to the appropriate parties for lots in the new town. . . . These lots should be conveyed at the fair market value as improved. . . .

c. The town must sign a binding contractual commitment to purchase all lots in the new town which are either not occupied when available or replacement for open space in vacant space in the old town prior to acquisition of any land for the new town site. . . . This contract shall provide for payments in full at the time the town purchases these lots.

Notification of the OCE position statement on the issues of fair market value and credit extension was provided to the town on April 10, 1975, by letter from the Portland District Engineer to Mayor Ernest J. Skala. (This is the same letter in which town officials were told that the size of the existing town for purposes of determining the capacity of municipal facilities to be provided at Federal expense could not be increased by annexations subsequent to the date of enactment of the McCormack legislation.) The District Engineer told the Mayor that the town would have to acquire lots from the Government at the improved fair market value and that cash would have to be paid for the land at the time of transfer. The applicable language of this letter reads,¹⁵⁴

Section 83 of Public Law 93-251 makes it a requirement of the Federal Government to acquire and convey title to the appropriate parties for lots in the new town. These lots will be conveyed to all parties at the fair market value as improved.

The town must sign a binding contractual commitment to purchase all lots in the new town which are either not occupied when available or replacement for open space or vacant space in the old town prior to acquisition of any land for the new town site. If relocation of a portion of the new town is in an area which has been or will be acquired for project purposes prior to design of the substitute facilities

this binding contractual commitment must be signed by the town and accepted by the Government. . . . This contract shall provide for payments in full at the time the town purchases the lots.

The positions stated in Colonel Gilkey's letter were unacceptable to the Town. In response, on that same day, April 10, the Mayor of North Bonneville informed the Portland District by telephone of actions that had been or would be taken by the town in reaction to the latest Corps positions. The actions announced by the Mayor were as listed next:¹⁵⁵

- a. The town has ordered the planning firm to stop all work on the planning contract immediately.
- b. The town is going to file for declaratory judgment today for interpretation of the McCormack Act and would include a restraining order in that filing.
- c. The town is going to contact the Congressional delegation by sending delegates to Washington, D.C.
- d. The town delegates will also contact Gen. Gribble while they are in Washington, D.C.
- e. The city may file an injunction to stop the project until the town is moved.

On April 11, 1975, Major General John W. Morris, Director of Civil Works, OCE, received the following telegram from United States Senator Warren G. Magnuson, quoted in full text:¹⁵⁶

The town of North Bonneville, Washington, advises it will seek court injunction blocking further work on the Bonneville Second Powerhouse because of Corps insistence that the town pay fair market value of improved lots as opposed to fair market value of unimproved lots in new town.

I understand the Corps bases its position on its interpretation of Congressional intent when it enacted the North Bonneville relocation legislation. Obviously, the overriding intent of Congress in passing that special legislation was to assist the town. Please provide me with a written statement of the Corps position and reasoning by April 18. Also, include in that report an estimate as to the total amount of money involved in this dispute, an estimate as to how long the power-on-line date could be delayed, and an estimate as to the increased costs the Corps would incur as a result of that delay.

Fastest possible completion of the Second Powerhouse is a matter of the highest priority and of highest concern to me.

By letter of April 18, Major General Morris responded to the telegram from Senator Magnuson. The reply advised the Senator that the amount of money involved in the dispute between the Corps and the town, the estimated difference between the contested methods of determining the fair market value of lots, was approximately \$450,000.¹⁵⁷ The Senator was told that the cost of any delay in construction of the Second Powerhouse would be an estimated \$2.7 million per month and that if the town sought to enjoin work on the powerhouse, the minimum delay in construction time would likely be three months.¹⁵⁸ Delay in the power-on-line date would be identical to the delay in construction.¹⁵⁹ The Corps' position on the fair market value issue was explained to the Senator as set forth next:¹⁶⁰

Currently the Corps and the town are in disagreement over what basis should be used to fix the cost of lots to be sold to individuals and the town in the new townsite. The town contends that the Corps should convey the lots to individuals and to the town at land acquisition cost to the Federal Government rather than at the fair market value of the lots as improved. The town rationalizes that since the Corps is required by Section 83, PL 93-251 to provide municipal facilities and utilities at no cost to the town, the lots should be conveyed at a cost which does not reflect these improvements.

The Corps contends that Section 83 requires it to acquire the land necessary for the new townsite, construct those municipal utilities and facilities to which the town is entitled, and finally convey those lots as improved to individuals and the town at their prevailing fair market value. It is our interpretation that Section 83 contemplated that lots would be sold at their "fair market value" as improved. Since the statute itself includes the term fair market value we have construed it in its traditional sense, that is, the price at which a willing seller and buyer would agree, neither under duress. Determination of this value is based generally on sales of comparable properties in surrounding communities. While the cost of the new lots as improved would reflect to some degree the value of the

improvements constructed by the Corps they by no means represent a value equal to what it will cost to develop the improvements.

It is our opinion that to sell the lots at acquisition cost would be in excess of existing legal authority.

On April 25, 1975, the Town filed suit in the U. S. District Court for the Western District of Washington.¹⁶¹ Ostensibly, this action was brought to seek a judicial determination of the intent of the McCormack legislation as relates to the determination of fair market value, and to enjoin continuing construction of the Second Powerhouse because the project was allegedly not in compliance with the National Environmental Policy Act.¹⁶² In reality, however, the purpose of the lawsuit was not to stop work at the second powerhouse but to bring pressure on the Corps of Engineers to accede to the Town's position on the fair market value issue.¹⁶³ While Corps officials recognized this strategy, it was nonetheless troublesome because the second powerhouse project was considered vulnerable on the environmental issue. Colonel Clarence D. Gilkey explains how he saw this and other legal actions of similar design, and what were his concerns:¹⁶⁴

I don't think they were designed to slow up the Powerhouse. They were designed to twist the arm, to bring additional pressure on the Corps to give in to the town, whenever it disagreed with the position that the Corps was taking. There is a difference here between slowing down both the relocation of the town and of the construction of the Second Powerhouse and applying pressure on the Corps to revise a position, reverse it, to knuckle under to the desires of the town. And in my view that was the prime purpose of all of these legal actions, whether they were actually filed or only threatened.

Now very obviously, the town knew where our weak point was. One of them being the fact that, given '74, '75, very obviously the original Environmental Impact Statement that was filed in '71, a relatively short time after the passage of the Environmental Protection Act, when viewed in terms of guidelines, criteria that had been developed in the

intervening time, was not an adequate EIS for all of the actions involved in a construction project. Personally, I thought that was our most susceptible area of legal action, and quite frankly, I was very concerned that the town might be successful in a legal action that was brought on the basis of the Environmental Protection Act, on the EIS.

As a result, it didn't make any difference really what the issue was--whether it was capacity of the town, the cost of the lots. They were going to use what in their lawyer's view were our susceptible areas as a basis for suits, and in fact that's what they did.

ENDNOTES

¹Contract for Professional Services, between the City of North Bonneville and Royston, Hanamoto, Beck and Abey, 19 November 1974. See Minutes, North Bonneville Town Council, 19 Nov 1974.

²The North Bonneville Planning Director, Pollard Dickson, during the meeting in the Governor's Office on May 2, 1974, stated that the town wanted to engage not one A-E firm, but several firms, in what he called "a design team approach" to new town planning. Memorandum to the File by Michael A. Rea, Assistant District Counsel, Portland, Subject: Meeting, Town of North Bonneville; Olympia, Washington, 2 May 1974, 6 May 1974. See dissertation, supra, 217.

³See "N. Bonneville inks moving pact," Vancouver Columbian, 20 November 1974.

⁴Contract for Professional Services, Exhibit A.

⁵Contract for Professional Services, Paragraph 2.

⁶Contract for Professional Services, Exhibit A.

⁷Contract for Professional Services, Exhibit A.

⁸Contract for Professional Services, Exhibit A.

⁹Contract for Professional Services, Exhibit A.

¹⁰Contract for Professional Services, Exhibit A.

¹¹The Contractor was to "provide a Community Development Plan with adequate land areas for growth." Contract for Professional Services, Exhibit C. The Contractor was also to prepare a preliminary analysis of "the projected economic base for the new town." Contract for Professional Services, Exhibit D.

¹²Contract for Professional Services, Exhibit C.

¹³Contract for Professional Services, Exhibit D.

¹⁴"In those instances where the Owner directs betterments, the estimated cost of the approved substitute facilities and utilities will be used as a base for determining the cost of the betterments which are to be at the Owner's expense." Contract for Professional Services, Exhibit D.

¹⁵Contract for Services, between the Town of North Bonneville and the Portland District, U.S. Army Corps of Engineers, No. DACW 57-75-C-0032, 26 July 1974, Article I, Section 2, Paragraph 2-01. See dissertation, supra, 257-58.

¹⁶The contract awarded by the Town and all modifications and changes thereto were required to be approved by the District Engineer, as the Government's contracting officer. Contract for Services, Article 1, Section 1, Paragraph 1-01. See dissertation, supra, 255.

¹⁷Contract for Professional Services, Exhibit A.

¹⁸Contract for Professional Services, Exhibit A.

¹⁹Contract for Professional Services, Exhibit D.

²⁰Water Resources Development Act of 1974, March 7, 1974, 48 Stat. 12, § 83. See dissertation, supra, 183.

²¹Water Resources Development Act of 1974, § 83. See dissertation, supra, 183.

²²The McCormack legislation authorized the Secretary of the Army "to construct a central sewage collection and treatment facility and other necessary municipal facilities." Water Resources Development Act of 1974, § 83. See dissertation, supra, 183.

²³Contract for Professional Services, Exhibit A.

²⁴Contract for Professional Services, Exhibit A.

²⁵Contract for Professional Services, Exhibit C.

²⁶Contract for Professional Services, Exhibit D.

²⁷Contract for Professional Services, Exhibit D.

²⁸"It will make clear what portions of the cost of all parts of the relocation design and construction are to be at federal expense and what portions are to be at the expense of appropriate non-federal interests." Contract for Professional Services, Exhibit D.

²⁹Contract for Professional Services, Exhibit D.

³⁰Contract for Professional Services, Exhibit D.

³¹Contract for Professional Services, Exhibit D.

³²Contract for Professional Services, Exhibit A.

³³Contract for Professional Services, Exhibit A.

³⁴Contract for Professional Services, Exhibit A.

³⁵Contract for Professional Services, Exhibit A.

³⁶Contract for Professional Services, Exhibit D.

³⁷Contract for Professional Services, Exhibit D.

³⁸Contract for Professional Services, Exhibit D.

³⁹Contract for Professional Services, Exhibit B.

⁴⁰Contract for Professional Services, Exhibit B.

⁴¹Contract for Professional Services, Exhibit A.

⁴²Contract for Professional Services, Exhibit A. "The planning process devised by Pollard Dickson . . . created procedures of monstrous proportions and complexity. . . . The effectiveness of the numerous workshops in illustrating the intuitive judgments desired by the Town's planning director is not apparent on the record. It is clear, however, this contractually imposed planning process required enormous volumes of time and effort that strained the capacities of the A/E organizations that constituted the planning and design teams." Town of North Bonneville v. U.S., 11 Cl. Ct. 694, 708-09 (1987).

⁴³Contract for Professional Services, Exhibit A.

⁴⁴Phillip L. Cole, Chief, Engineering Division, NPD, letter to District Engineer, Portland, Subject: Bonneville Lock and Dam, Relocation of Town of North Bonneville, Contract for A-E Services, 30 May 1974. See dissertation, supra, 222.

⁴⁵"The town selected a firm that was known to be very liberal and assured in advance that the A-E would concur in what the planning staff wanted. Len Stein, Portland District Chief of Engineering, fought a long time against approval of the A-E because of its radical reputation." Paul H. Schroy, personal interview, 19 April 1985.

⁴⁶"The contractor wanted to satisfy the town, who hired them, not the Feds who were providing the money. The A-E had no privity of contract with us." Paul H. Schroy, personal interview, 19 April 1985.

⁴⁷Memorandum to North Bonneville File by Mike Marston, Keyser Marston Associates, 25 November 1974.

⁴⁸Royston, Hanamoto, Beck and Abey, et al., Intuitive Optimum Town Statement, North Bonneville Relocation Project (San Francisco: RHB&A, 1974) 1.

⁴⁹RHB&A, Intuitive Optimum Town Statement, 5.

⁵⁰RHB&A, Intuitive Optimum Town Statement, 6.

⁵¹RHB&A, Intuitive Optimum Town Statement, 6.

⁵²RHB&A, Intuitive Optimum Town Statement, 8.

⁵³RHB&A, Intuitive Optimum Town Statement, 8.

⁵⁴Mike Marston and Meg Monroe, memorandum to North Bonneville Consultation Team, Subject: Replacement/Betterment Issue and Interview with Jim Mason, North Bonneville City Attorney (January 16, 1975), 24 January 1975.

⁵⁵Marston and Monroe, memorandum to North Bonneville Consultant Team, 24 January 1975.

⁵⁶Pollard Dickson, Planning Director, Town of North Bonneville, memorandum to Royston, Hanamoto, Beck and Abey, Subject: Analysis and Feedback on Needs Statement, 21 January 1975.

⁵⁷Dickson, memorandum to RHB&A, 21 January 1975.

⁵⁸Dickson, memorandum to RHB&A, 21 January 1975.

⁵⁹Dickson, memorandum to RHB&A, 21 January 1975.

⁶⁰Dickson, memorandum to RHB&A, 21 January 1975.

⁶¹Dickson, memorandum to RHB&A, 21 January 1975.

⁶²Meg Monroe, Williams and Mocine, memorandum to Dick Brainard, Re: Optimum Town definition materials to get to Pollard Dickson, 7 February 1975.

⁶³Monroe, memorandum to Brainard, 7 February 1975.

⁶⁴Monroe, memorandum to Brainard, 7 February 1975. The optimum town size of 1500 was a goal set by the Town. See Deposition of Asa Hanamoto, of Royston, Hanamoto, Beck and Abey, Town of North Bonneville v. U.S., No. 564-80, United States Claims Court, 28 January 1985.

⁶⁵Preliminary drafts of the DFDM, EAR, and Comprehensive Plan were conveyed to the Portland District by the Town on April 28, 1975. See Pollard Dickson, Planning Director, Town of North Bonneville, letter to Clarence D. Gilkey, Colonel, District Engineer, Portland, 28 April 1975.

⁶⁶Royston, Hanamoto, Beck, and Abey, Comprehensive Plan, North Bonneville Relocation and Optimum New Town Design (San Francisco: RHB&A, 1975) 43.

⁶⁷RHB&A, Comprehensive Plan, 38

⁶⁸See Memorandum to North Bonneville File by Marston, 25 November 1974; See also Monroe, memorandum to Brainard, 7 February 1975.

⁶⁹RHB&A, Comprehensive Plan, 39-40.

⁷⁰RHB&A, Comprehensive Plan, 9.

⁷¹RHB&A, Comprehensive Plan, 9.

⁷²RHB&A, Comprehensive Plan, 9.

⁷³U.S. Army Corps of Engineers, Bonneville Second Powerhouse Design Memorandum No. 8, Relocation of the City of North Bonneville, Washington, 2 Vols. (Portland, OR: Portland District, 1975) 1: 5-1.

⁷⁴U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-1.

⁷⁵U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-1.

⁷⁶RHB&A, Intuitive Optimum Town Statement, 6.

⁷⁷RHB&A, Intuitive Optimum Town Statement, 5.

⁷⁸U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-1.

⁷⁹U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 5-7.

⁸⁰RHB&A, Comprehensive Plan, 41-42.

⁸¹U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-11.

⁸²RHB&A, Comprehensive Plan, 41.

⁸³U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-16.

⁸⁴U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 8-17.

⁸⁵J. W. Morris, MG, Director of Civil Works, OCE, 2nd Indorsement to 9 April 1974 letter by Clarence D. Gilkey, Colonel, District Engineer, Portland, Subject: Bonneville Lock and Dam, Oregon and Washington; Second Powerhouse Project; Supplement No. 2 to General Design Memorandum No. 4, Letter Report, North Bonneville Townsite Selection, 18 April 1974. See dissertation, supra, 210.

⁸⁶William E. (Ed) Daugherty, note to author, 28 september 1990. See Design Memorandum No. 8, 1: 7-13.

⁸⁷U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-16.

⁸⁸William E. (Ed) Daugherty, note to author, 28 September 1990.

⁸⁹William E. (Ed) Daugherty, note to author, 28 September 1990. See Design Memorandum No. 8, 1: Plate 7-4.

⁹⁰U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-17.

⁹¹U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-11.

- ⁹²U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-11.
- ⁹³U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-20.
- ⁹⁴Minutes, North Bonneville Town Council, 21 January 1975. See U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-16.
- ⁹⁵William E. (Ed) Daugherty, note to author, 28 September 1990.
- ⁹⁶U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-17.
- ⁹⁷U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-19.
- ⁹⁸U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-19.
- ⁹⁹U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-20.
- ¹⁰⁰Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Mayor Ernest Skala, Town of North Bonneville, 18 February 1975.
- ¹⁰¹U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-73.
- ¹⁰²U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-20.
- ¹⁰³U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-21. "Although Corps Site 1 was eliminated in its original form from final townsite study, an expanded version of the site incorporating the original site and land south of the highway and the railroad alignments was included." Design Memorandum No. 8, 1: 7-72.
- ¹⁰⁴U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-21. "The justification for dropping Corps Site 1 was promptly provided. However, because of the time requirements to review this information, evaluation of Corps Site 1 was continued on into the final workshop." Design Memorandum No. 8, 1: 7-21.
- ¹⁰⁵U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-20. "This workshop focused on the four selected sites plus the Corps of Engineers Site 1, which was added at the request of the Portland District." Design Memorandum No. 8, 1: 7-20.
- ¹⁰⁶U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-71.
- ¹⁰⁷U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-1.
- ¹⁰⁸U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-20.

- ¹⁰⁹U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-20.
- ¹¹⁰U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-1.
- ¹¹¹U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-2.
- ¹¹²RHB&A, Comprehensive Plan, 49.
- ¹¹³U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 12-1.
- ¹¹⁴RHB&A, Comprehensive Plan, 49.
- ¹¹⁵U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 12-1.
- ¹¹⁶U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 12-1.
- ¹¹⁷Minutes, North Bonneville Town Council, 27 March 1975. See U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 12-1
- ¹¹⁸Relocation, in this instance, consists not of realignment of the railroad, but of the construction of a railroad overpass and grading, drainage, and other changes made necessary by this townsite selection. See U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 14-3, 9.
- ¹¹⁹"This plan focuses around the marina on both sides of the southern part of Hamilton Creek." U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 8-4
- ¹²⁰"None of the sites are completely outside of the flood plain. The two Corps sites and consultant site number 1 were mostly outside of the 100 year flood plain. The selected site was almost entirely in the 100 year flood plain." William E. (Ed) Daugherty, note to author, 28 September 1990.
- ¹²¹William E. (Ed) Daugherty, personal interview, 3 May 1988.
- ¹²²U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 14-3. The reported estimates for relocating the highway and railroad include only those costs directly attributable to the relocation of the City of North Bonneville. Design Memorandum No. 8, 1: 9-2. "In the summary of comparative costs for each site alternative, the cost of relocation of railroad and highway required as part of the Second Powerhouse construction has been deducted." Design Memorandum No. 8, 1: 7-29.
- ¹²³U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-56.

¹²⁴"portions of the existing flood plain within the selected townsite areas will be filled to elevations above the 100-year flood plain." The quantity of fill required was estimated to be 1,360,000 cy. "Additionally, the banks of Hamilton Creek will require erosion protection where the creek passes through the design area." U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 8-17. The cost of "on-site" earth work was estimated to be \$1,325,000. Design Memorandum No. 8, 1: 14-3.

¹²⁵William E. (Ed) Daugherty, personal interview, 3 May 1988.

¹²⁶William E. (Ed) Daugherty, personal interview, 3 May 1988.

¹²⁷"This design was adopted by the City Council upon recommendation by the Planning Commission and was approved in concept by the Corps of Engineers." U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 7-2.

¹²⁸Williams and Mocine, "North Bonneville Relocation, Formal Notes on Presentation, April 9, 1975", 15 April 1975.

¹²⁹Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to OCE, Subject: Issues Which May Require an OCE Position Due to Relocation of North Bonneville, Washington, 27 November 1974.

¹³⁰Gilkey, letter to OCE, 27 November 1974.

¹³¹Gilkey, letter to OCE, 27 November 1974.

¹³²Richard A. Chidlaw, Colonel, Deputy Division Engineer, North Pacific, 1st Indorsement to 27 November 1974 letter by Clarence D. Gilkey, Colonel, District Engineer, Portland, Subject: Issues Which May Require an OCE Position Due to Relocation of North Bonneville, Washington, 20 December 1974.

¹³³Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Mayor Ernest Skala, Town of North Bonneville, 4 October 1974. See dissertation, supra, 264-65.

¹³⁴The Contract for Services between the Town of North Bonneville and the Portland District, U.S. Army Corps of Engineers, No. DACW57-75-C-0032, Supplemental Agreement P00001, provides that replacement municipal facilities and utilities provided at Government expense will "have the same capacity and be able to serve the same number of users as those in the existing town." See dissertation, supra, 265.

¹³⁵J. W. Morris, MG, Director of Civil Works, OCE, 2nd Indorsement to 27 November 1974 letter by Clarence D. Gilkey, Subject: Issues Which May Require an OCE Position Due to Relocation of North Bonneville, Washington, 3 February 1975.

¹³⁶Gilkey, letter to OCE, 27 November 1974.

¹³⁷Ordinance No. 272, North Bonneville Town Council, 10 December 1974. See Minutes, North Bonneville Town Council, 10 December 1974.

¹³⁸See Pollard R. Dickson, Planning Director, Town of North Bonneville, letter to Major Wayne Whitehead, Deputy District Engineer, Portland, 7 February 1975.

¹³⁹Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to OCE, Subject: Issues Which May Require an OCE Position Due to Relocation of North Bonneville, Washington, 21 March 1975.

¹⁴⁰Gilkey, letter to OCE, 21 March 1975.

¹⁴¹Gilkey, letter to OCE, 21 March 1975.

¹⁴²Richard A. Chidlaw, Colonel, Deputy Division Engineer, North Pacific, 1st Indorsement to 21 March 1975 letter by Clarence D. Gilkey, Subject: Issues which may require an OCE position due to Relocation of North Bonneville, Washington, 26 March 1975.

¹⁴³Chidlaw, 1st Indorsement to 21 March 1975 letter by Gilkey, 26 March 1975.

¹⁴⁴Edward Gowen, Acting Director of Real Estate, OCE, 2nd Indorsement to 21 March 1975 letter by Clarence D. Gilkey, Subject: Issues which May Require an OCE Position Due to Relocation of North Bonneville, Washington, 8 April 1975.

¹⁴⁵Gowan, 2nd Indorsement to 21 March 1975 letter by Gilkey, 8 April 1975.

¹⁴⁶Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Mayor Ernest J. Skala, Town of North Bonneville, 10 April 1975.

¹⁴⁷Memorandum to the File by Michael A. Rea, Assistant District Counsel, Portland, Subject: Meeting, Town of North Bonneville; Olympia, Washington, 2 May 1974, 6 May 1974. See dissertation, supra, 218-19.

¹⁴⁸Gilkey, letter to OCE, 27 November 1974.

¹⁴⁹Gilkey, letter to OCE, 27 November 1974.

¹⁵⁰Chidlaw, 1st Indorsement to 27 November 1974 letter by Gilkey, 20 December 1974.

¹⁵¹Gilkey, letter to OCE, 21 March 1975.

¹⁵²Gowen, 2nd Indorsement to 21 March 1975 letter by Gilkey, 8 April 1975.

¹⁵³Gowen, 2nd Indorsement to 21 March 1975 letter by Gilkey, 8 April 1975.

¹⁵⁴Gilkey, letter to Skala, 10 April 1975.

¹⁵⁵Daily Log by Ed Daugherty, Columbia River Coordinator, Portland District, 10 April 1975.

¹⁵⁶Warren G. Magnuson, U.S.S., telegram to Major General John W. Morris, Director of Civil Works, OCE, 11 April 1975.

¹⁵⁷John W. Morris, MG, Director of Civil Works, OCE, letter to Senator Warren G. Magnuson, 18 April 1975.

¹⁵⁸Morris, letter to Magnuson, 18 April 1975. The delay costs reported to Senator Magnuson were conservatively stated. What the Senator requested from the Corps, literally, was an estimate of the increased costs "the Corps would incur" as a result of delay. Magnuson, telegram to Morris, 11 April 1975. In September, 1974, the Corps estimated that the monthly cost to the Federal Government of a delay in completion of the second powerhouse would be \$5,057,000. This figure included increased construction costs of \$2,650,000 per month, interest expense of \$142,000 per month, and "cost to replace power not generated of \$2,265,000." Neil E. Saling, LTC, Deputy District Engineer, Portland, message to Colonel A. A. Hight, Directorate of Civil Works, OCE, 30 September 1974. Nonetheless, the information provided to Senator Magnuson was technically accurate, since only the construction and interest costs would be "incurred" by the Corps of Engineers: \$2,650,000 plus \$142,000 equals \$2,792,000, adjusted downward to 2.7 million per month.

¹⁵⁹Morris, letter to Magnuson, 18 April 1975.

¹⁶⁰Morris, letter to Magnuson, 18 April 1975.

¹⁶¹Town of North Bonneville v. Callaway, C-75-81T, United States District Court, Western District of Washington.

¹⁶²Town of North Bonneville v. Callaway, C-75-81T, United States District Court, Western District of Washington.

¹⁶³According to Mayor Skala, the town was never opposed to the Second Powerhouse and "we weren't opposed to being moved. Sometimes the Town filed lawsuits, which were withdrawn if the Corps did what the Town believed they were required to do." Ernest J. Skala, personal interview, 22 August 1966.

¹⁶⁴Clarence D. Gilkey, personal interview, 27 June 1985.

CHAPTER X

MEMORANDUM OF AGREEMENT

Throughout the new town planning process, the only guidance or instructions provided to the firm of Royston, Hanamoto, Beck and Abey and other members of the design team came from representatives of the town. As specified in the contract, design related input from the Corps to the Contractor occurred either during one of the four public workshops or through the town spokesperson, Pollard Dickson.

As Ed Daugherty recalls, concerning the limited extent of conversations between the Portland District and the Contractor, "We did talk to him somewhat. But we certainly avoided any situation where it appeared that we were giving him any directions."¹ It was not, quite clearly, that either the Corps or the Contractor believed that direct communication between the two would not be beneficial. To the contrary, as earlier noted, the Corps had wanted to work with the town's A-E firm in order "to obtain a reasonable and economical design acceptable to the town and us."² Similarly, a concern expressed by Robert Royston of RHB&A was that on at least some issues the Contractor needed "eyeball to eyeball" contact with representatives of Corps of Engineers, but that, "Our channel to the Corps has been through one man."³ Indeed, it is abundantly clear that the planning contract prohibited the Contractor from working directly with the Corps for one and only one reason: to assure complete and unfettered

Town control. It is equally clear that the Corps of Engineers, in accepting this restriction, knew full well that the town would likely be inclined toward aggrandizement. As further recalled by Daugherty, "We were concerned that they would do exactly what they did, and that was to plan a Taj Mahal. They tried to stick us with building that."⁴

The Corps of Engineers agreed to and stayed away from the town's contractor for the same reason the agency relented and let the town do its own planning in the first instance: to avoid otherwise inevitable delay. As Paul Schroy recalls, "The Corps acquiesced in order to get on with the show."⁵ Delay, not of the North Bonneville relocation per se, but of getting the town out of the way of the proposed Second Powerhouse construction, was the primary concern of the Federal Government throughout the planning process. For example, on April 16, 1975, in a memorandum to officials of the Portland District, Colonel Gilkey emphasized the major objective of the Corps of Engineers as follows:⁶

The district's top priority is the meeting of the construction schedule for Bonneville Second Powerhouse to allow for power-on-line in May 1981. Of the several things that may now be on the critical path, the relocation of North Bonneville is known to be critical. . . . The . . . schedule will be met, either through concurrent design and legal action, or through modified OCE interpretation of the McCormack legislation.

Copies of the Comprehensive Plan, the offered Draft Feature Design Memorandum, and the Environmental Assessment Report as prepared by the town's contractor were presented to the Portland District on April 28, 1975, by letter from Pollard Dickson.⁷ As desired by the town, the planning documents proposed the development of a new, enlarged town of North Bonneville in two stages: an "Interim Town,"

propounded as reflecting the Federal responsibility, to be followed by the phased development of an "Optimum Town." As explained in the Comprehensive Plan, "Initially the town is planned for a population of 600; ultimately the plan projects a population of 1,500 or more people."⁸ The forecast of development, again in the Comprehensive Plan, was represented to be as follows:⁹

The initial phase will include the development of 210 residential lots to house 600 persons and will include the supporting infrastructure of streets and utilities. The replacement public facilities will be constructed, the nucleus of the Town center will be started and some portion of the industrial area will be developed. . . .

During the following eight years or so, the Plan anticipates the addition of approximately 140 residential units, bringing the population to 1,000 persons. Along with this, streets and utilities will be extended, as necessary, and the Town center and industrial areas will see some filling in of development. By the end of this period, powerhouse and Day Use Area construction activity should be completed.

The second, or interim, phase of Town development is reasonably assured; however, there may be relatively long plateau of slow growth to the optimum phase which requires 180 more residential units for a total population of 1,500 persons. The Optimum Town would be a socially and economically viable community with a completed Town center, a wide range of goods and services available and an active industrial park.

A strong concern of the Corps of Engineers was that the plan described a town that not only never existed but likely would never exist. Specifically, the Portland District saw the projected optimum town population of 1500 as grossly unrealistic. For example, a devastating critique of the preliminary Draft Feature Design Memorandum by Kenneth C. Boire, Chief, Economics Studies Section, Portland District, includes the following observations:¹⁰

1. Since design is for an optimum new town, practicality of optimum size must be tested. That has not been done.

2. Economic analysis must assess the potential for success and economic viability of the new town. That has not been done in this analysis. Thus probability of success of the relocated town must be seriously questioned.

3. . . . The . . . assurance of growth to 1500 persons after 1985 is not justified in any way, shape, or form. That would be an increase of more than 300 percent above the relocated population in just over 10 years. That is not feasible. The necessary "ingredients for growth" have neither been defined nor detailed.

* * *

23. . . . This paragraph assumes that North Bonneville will be highly attractive as a living area, and will attract families from other parts of the county. That assumption is heroic--it assumes away the problem. No recognition is made of North Bonneville's unsatisfactory economic base. No recognition is made of the cost of such relocation. Nor is recognition made of the higher estimated cost of living in the new town. No field data has been developed upon which to make such an heroic assumption.

* * *

35. . . . Conclusion that the new area has "the ability to be developed without permanent subsidy or loss of population" is unsubstantiated. . . . Contractor (consultant) still has to demonstrate that there will not be a loss of population in the new town.

36. . . . There is no justification for estimating that the new town will overtake and exceed Stevenson in population during the study period. It must be recognized that Stevenson presently has many of the necessary amenities for expansion and importantly it has a more diversified economic base. . . .

* * *

43. . . . Conclusion on financial viability of new town is unsatisfactory. This paragraph states that a population of 1500 is necessary for financial viability but nowhere in the report is it demonstrated that the necessary population can be or will be attained. . . .

* * *

69. . . . Slow growth in North Bonneville has been due to many factors, most of which will still be present and in effect after town may be relocated. Skamania County has long been a slow-growth area with an unsatisfactory and declining economic base. So far there is nothing to change that situation for Stevenson, for North Bonneville, or for Skamania County. . . .

* * *

75. Economic analysis presented fails to establish that the relocated town or the new town will be economically (or even socially) viable. This is a low income area and evidence that this will change is lacking. No expansion of

the area's presently unsatisfactory economic base is presented; economic income based upon expansion of the presently missing recreational expenditures is grossly overstated and hardly practical. Expansion of the town to a population of 1500 or even 800-900 is not documented. The future success of a town of about 600 has not been demonstrated.

THE "BIG SIX" LETTER

On April 30, 1975, there occurred a meeting between representatives of the Washington and Oregon Congressional delegations and officials of the Office of the Chief of Engineers. The purpose of the assemblage was to discuss the town's suit to enjoin work on the Second Powerhouse and to consider what should be done to avoid the threatened delay. The OCE participants included Major General Morris; Woodrow Berge, Director, Real Estate Division; Pete Ippolito from the Office of Counsel, and Colonel A. A. Hight. Members of Congress present were Senator Warren G. Magnuson and Representative Mike McCormack from the State of Washington, and Senator Mark O. Hatfield and Congressman Robert Duncan of Oregon.¹¹

The principal issue addressed in these discussions was "whether the transfer of properties to the town and individual relocatees would be at 'fair market' value or Government acquisition costs."¹² There was early agreement that conveyance of lands at Government cost was preferable to defending against the Town's suit. However, the Corps representatives maintained that to transfer these properties at other than fair market value was "in excess of our legal authority."¹³ McCormack, for one, was uncertain that the Corps was correct, emphasizing that "it was the intent of the law to give the town a

financial break."¹⁴ Nonetheless, to solve the problem, Congressman McCormack offered to provide clarifying language in the next appropriations bill, i.e., in the Fiscal Year 1976 Public Works Appropriations Act, that would allow the Corps to convey the properties to the town at Government acquisition costs. This approach was accepted as offering the best solution to a difficult situation, and after further discussions of procedure, "McCormack suggested, and all agreed, that the committee reports should be used as the vehicle to express the 'intent of Congress.'"¹⁵

During this meeting, OCE officials took advantage of the opportunity presented to explain to the Congressional delegations that future disagreements between the town and the Corps on a number of issues were certain. Further, the Corps representatives pointed out that the Town, when disagreements arose, had shown a propensity to file for injunctions against the second powerhouse project. The Members of Congress acknowledged this as a material concern and agreed that something would have to be done to both lessen the areas of potential disagreement and to mitigate the Town's propensity to file lawsuits. Toward those ends, the Corps was asked to identify those issues that stood between the Corps and the Town and to meet with the Town to negotiate a Memorandum of Agreement which would essentially say that these are all of the major issues and that the Town would not sue pending clarification of the law and an expression of Congressional intent in the forthcoming appropriations bill and committee reports. Further, it was suggested that town and Corps field representatives should come to Washington where this agreement

would be "hammered out" and appropriate language drafted for inclusion in the bill and committee reports. The Corps was told that Congressional staff aides would notify the Town of the desire of the Congressional delegations for the negotiation and execution of a Memorandum of Agreement.¹⁶

Following the meeting of April 30 the Office of the Chief of Engineers issued revised instructions to the Portland District. As recorded in a memorandum by Leonard Stein, the District was directed by the Office of the Chief of Engineers to review the Draft Feature Design Memorandum, the Environmental Assessment Report, and the Comprehensive Plan on the following three assumptions:¹⁷

- a. Lots in the new town will be sold at the fair market value of the unimproved land.
- b. Time payments will be allowed for the purchase of the land within the new town.
- c. Ft. Rains and the Brown Tract will be included in the capacity of the existing town.

Further, as a follow-up to the conference of April 30 between representatives of OCE and members of the Washington and Oregon Congressional delegations, officials of the Corps of Engineers met specifically to devise an approach toward identification and delineation of the major issues outstanding between the agency and the town. It was decided that, in preparation for negotiations with the town, the Portland District would be asked to separate all issues into one of three categories, described as follows:¹⁸

- (1) Those issues that are reasonable (to the Corps) but are not permitted by law. (Such issues would be clarified with appropriate language in the Appropriations Bill.)
- (2) Those issues that the law provided for (i.e. replacements) but the town's demands are unreasonable (to the Corps). (Such issues would be clarified with appropriate

language expressing the intent of Congress in the committees' reports.)

(3) Those issues that the law does not provide for and are considered unreasonable (by the Corps). Should the members of the Congressional delegations agree that this category of issues are beyond the "intent of Congress", no clarifying language will be included in the bill or the reports. It is expected that the Congressional delegations will prevail upon the town to withdraw their demands.

Under date of May 6, 1975, the Corps of Engineers received what came to be known as the "BIG SIX" letter. The appellation is reflective of the reality that the letter was signed by four United States Senators, Warren G. Magnuson and Henry M. Jackson of Washington, and Mark O. Hatfield and Bob Packwood of Oregon; and by two members of the U.S. House of Representatives, Mike McCormack of Washington and Robert Duncan of Oregon. Within this letter, addressed to Major General Morris and copied to Mayor Ernest Skala, the signatory members of Congress told the Corps that "we are adamant in our view that no delay in the Powerhouse construction schedule can be tolerated", and stressed, "We will look with great disfavor on any failure by the Corps to cooperate in meeting the reasonable requirements of the Town."¹⁹ Apparently attempting balance, the letter also stated that "we will look with equal disfavor on any unreasonable demands made by the Town."²⁰ However, the letter opined that "we believe the positions taken by the Town on several of the issues now in dispute are reasonable positions and can be accommodated by the Corps within the authority granted by Section 83 of PL 93-251."²¹ Specifically, the letter stated that "we believe the law does permit the Corps to convey lots in the new townsite to the Town and

townspeople at the prices paid by the Corps for those lots."²²

Further, the signatory members of the Congress offered,²³

we stand ready to propose report language to the House and Senate Appropriations Committees for inclusion in their Reports on the FY 1976 Public Works Appropriations Act if the Corps feels clarification of Section 83 of PL 93-251 is necessary to permit it to satisfy the reasonable requests of the Town. Although the Act will not become law until late this summer, we will seek to obtain written assurances from the Public Works Appropriations Subcommittee Chairmen prior to June 1st, that they will support inclusion of the language in their reports.

By enclosure to this letter, the four Senators and two Representatives set forth and essentially directed a detailed, five-step program of negotiations to be followed by the Corps and the Town. The program suggested, as a basis for accord, that "the Corps agrees to take specific actions required by the Town . . . by a time certain", and that the Town "agrees to withdraw its present court suit" and to "take no action in court or otherwise to halt construction of the Powerhouse or the Town relocation provided the Corps takes the actions required by the Town by the time certain."²⁴ The enclosure asserted, as the objective to be obtained, "Before May 30, the Corps and the Town sign a Memorandum of Relocation."²⁵

A copy of this letter, with enclosure, is provided as Appendix A.

SIZING OF NEW TOWN FACILITIES AND UTILITIES

On April 8, 1975, the Office of the Chief of Engineers had advised Colonel Gilkey that the size of the existing town for purpose of determining the capacity of municipal facilities to be provided at Federal expense could not be increased by annexations subsequent to

the date of enactment of the McCormack legislation. This OCE directive stated explicitly, "Public Law 93-251 approved 7 March 1974 requires the Federal Government to provide facilities only to substitute for such capacities as existed in the town of North Bonneville at the time said public law was approved."²⁶ On April 10, following OCE instructions, the District Engineer wrote to the Mayor of North Bonneville advising him of this determination.²⁷ Then, following the meeting of April 30, 1975, and the promised expression of the "intent of Congress" to be obtained by members of the Washington and Oregon Congressional delegations, OCE recanted and directed the Portland District to proceed with the relocation on the assumption that Fort Rains and the Brown Tract would be considered part of the existing town for purposes of determining the scope of the Federal relocation responsibility.²⁸

During the period May 8-10, 1975, representatives of the Office of the Chief of Engineers, the North Pacific Division, and the Portland District met in Portland to review the Draft Feature Design Memorandum. The delegation from Washington, D.C., was led by Homer Willis, Chief, Engineering Division, Directorate of Civil Works, OCE. Spokespersons present from NPD included Phillip Cole, Chief, Engineering Division; Ernest E. Swanson, Chief, Real Estate Division; and Clifford C. Comisky, Division Counsel. Principals from the Portland District included Clarence Gilkey, Leonard Stein, Don Nellen, Paul Schroy, and Ed Daugherty. Effort was made during this review to identify areas of agreement and disagreement between the town and the Corps and to categorize the issues of disagreement as earlier

suggested by OCE.²⁹ The principal product of this review was a document dated May 12, captioned: "Corps Positions on Government's Obligation to Replace Municipal Utilities and Facilities for the Town of North Bonneville, WA." A copy of this document, which lists forty-three specific issues requiring resolution, is provided as Appendix B.

Within this position paper, as the last issue itemized, the Corps of Engineers yields to the town position that Fort Rains and the Brown Tract are to be included as part of the capacity of the existing town. Notably, the issue to be decided during this review was never whether to include Fort Rains and the Brown Tract. Determination of this issue was a foregone conclusion, given the attitude of members of the Washington and Oregon Congressional delegations. What needed to be decided was whether the inclusion of these areas could be accommodated under existing law, without receiving supplemental legislation or clarifying language by the Congress.³⁰ What the review team determined, in essence, was that no further legislative action was required. The published conclusion concerning this issue reads,³¹

43. Town size. The Government accepts an initial town size of 600 people with approximately 210 residential lots plus commercial lots. These figures include Fort Rains and the Brown Tract. The size of the commercial lots will be the subject of further discussion. The annexation of Fort Rains is no longer an issue.

DRAFT FEATURE DESIGN MEMORANDUM

The list of issues delineated in the Corps position paper, while extensive, was not comprehensive. To the contrary, after three days of review by Corps of Engineers representatives from three levels of

the organization it was concluded that the Draft Feature Design Memorandum as offered by the town was too embellished a document to be totally deciphered. The situation confronted by the reviewers was this: It was concluded that "it would be impossible to go over the DFDM and review it on a page-by-page basis."³² At the same time, it was recognized that it was too late to start over.³³ Attempting to solve this dilemma, Willis suggested that in order to allow the Corps to accept the offered DFDM and get on with design and construction of the new town, a statement should be made in the early paragraphs indicating that the content presents the town's position and does not necessarily represent the Federal Government's responsibility. This suggestion was accepted by the group as a feasible method of dealing with an otherwise unacceptable document.³⁴

By letter dated May 12, 1975, signed by Major Robert W. Whitehead, Deputy District Engineer, for the District Engineer, addressed to Mayor Skala, the Portland District suggested to the town that the Draft Feature Design Memorandum could be accepted conditionally as a statement of what the town wanted. Specifically the letter offered,³⁵

To enable the Corps to accept the DFDM from the contractor without major revision prior to the agreement on major issues with the town, the following wording can be inserted at the beginning of the DFDM Section 1: "The purpose and scope of the design memorandum is to present a plan for town relocation and recommendation for replacement of municipal facilities but does not delineate the extent of the Federal Government's obligations. The plans in the design memorandum are intended to outline a desirable town development and should not be construed as a description of the Government's obligation. The extent of the Government's obligations will be mutually agreed upon with the Town and defined in the relocation contract."

DETERMINATION OF FAIR MARKET VALUE

Section 83(c) of Public Law 93-251 provides that the "compensation paid to any individual or entity for the taking of property under this section shall be the amount due such individual or entity under the Uniform Relocation and Real Property Acquisition Policies Act of 1970 less the fair market value of the real property conveyed to such individuals or entity in the new town." Section 83(d) further provides, "Before the Secretary of the Army acquires any real property for the new townsite appropriate non-Federal interests shall furnish binding contractual commitments that all lots in the new townsite will be either occupied when available, will be replacements for open space and vacant lots in the existing town, or will be purchased by non-Federal interests at the fair market value."

The Corps of Engineers construed this special legislation to mean that lots in the new town must be conveyed by the Government to the townspeople or to the town at fair market value as well-defined in law.³⁶ Under this interpretation value would be determined at the time of conveyance and would reflect the presence of streets, utilities, and other improvements constructed in the process of relocation. The Town argued that fair market value should be construed to mean the price paid by the Government to acquire the land, unenhanced by improvements.³⁷ The rationalization for the Town's position was explained to the Corps as summarized by the District Engineer:³⁸

The town states that under normal relocation situations the town to be relocated would acquire land for the new town and the improvements would then be constructed on that land by the Corps of Engineers at no cost to the town. Therefore, when lots are conveyed to the citizens in new North

Bonneville the cost of those lots should only be the cost of the bare land without improvement because the Government is already obligated to provide the improvements under existing law.

On April 8, 1975, the Office of the Chief of Engineers advised the District Engineer that, prior to the acquisition of any land for the new town site, the town must sign a binding contractual commitment to purchase all lots in the new town which are either not occupied when available or replacement for open space and that these lots should be conveyed at the fair market value as improved.³⁹ The District Engineer, by the letter of April 10, delivered this determination to the town of North Bonneville, writing that "Section 83 of Public Law 93-251 makes it a requirement of the Federal Government to acquire and convey title to the appropriate parties for lots in the new town. These lots will be conveyed to all parties at the fair market value as improved."⁴⁰

Town officials took two actions in direct protest of the Corps fair market value determination. They appealed to members of the Washington and Oregon Congressional delegations and they filed a legal action to enjoin construction of the Second Powerhouse.⁴¹ These actions generated a series of contacts between members of the Congress and the Office of the Chief of Engineers. Within a day, on April 11, 1975, Senator Magnuson sent a message to Major General John W. Morris in which he stressed, "Fastest possible completion of the Second Powerhouse is a matter of the highest priority and of highest concern to me."⁴² Within this message the Senator asked for a written statement of the Corps position. Senator Magnuson further requested "an estimate as to the total amount of money involved in this dispute,

an estimate as to how long the power-on-line date could be delayed, and an estimate as to the increased costs the Corps would incur as a result of that delay."⁴³ Major General Morris, by letter dated April 18, told Senator Magnuson that the "difference of property value represented by the two positions is estimated to be approximately \$450,000;" that the "minimum delay" attendant to a town filed lawsuit would be approximately three months; and that the increased costs that would be associated with any delay in construction were "estimated at 2.7 million per month."⁴⁴ Then came the meeting of April 30, followed by the "BIG SIX" letter. The message to the Corps of Engineers from the members of the Congress was clear and direct: No delay in construction of the Second Powerhouse can be tolerated! Moreover, opinion was expressed directly to the Corps and indirectly to the Town that the law does permit the Corps to convey lots in the new townsite to the town and townspeople at the prices paid by the Corps for those lots. Expression of this opinion was strengthened with a commitment that if the Corps felt clarification of Section 83 of Public Law 93-251 was necessary, such clarification would be obtained from the Congress.⁴⁵

On May 13, 1975, negotiations were conducted by the Town and the Portland District. The Corps of Engineers position paper prepared during the review of May 8-10 was provided to the Town, and the forty-three items for discussion listed therein served generally as the agenda. Two additional subjects were added, including item 44, Administration of Plans and Specifications (Design Contract).⁴⁶ During this session, as later reported to the town council, the negotiators

"made good headway."⁴⁷ Indeed, all but about ten of the items on the agenda were resolved. The product of these negotiations was a "Joint Position Paper Between the Portland District, U.S. Army Corps of Engineers and the City of North Bonneville, Washington," dated May 16, 1975. A copy of this document is provided as Appendix C.

Among the issues unresolved within the context of the Joint Position Paper was item 41, Fair Market Value. On this issue, of course, the Portland District was well aware of the position expressed by members of the Congress and was fully prepared to proceed on the assumption that lots in the new town would be sold at the fair market value of the unimproved land. This issue was continued as a matter of disagreement, not because the Corps of Engineers was intent upon holding to its expressed position, but because on this issue the Corps believed that additional action by the Congress was required. Otherwise stated, the Corps representatives were prepared to yield in this issue, but only conditionally.⁴⁸ The Town, on the other hand, wanted unconditional surrender.

On May 19 and 20, 1975, in Washington, D.C., representatives of the Town of North Bonneville met with officials of the Portland District, the North Pacific Division and the Office of the Chief of Engineers to continue negotiations as requested in the "BIG SIX" letter. The town was represented by Mayor Ernest J. Skala, Pollard Dickson, James Mason, and Asa Hanamoto of the firm Royston, Hanamoto Beck and Abbey. The Portland District spokespersons included Major Robert W. Whitehead, Deputy District Engineer, Leonard Stein, Don Nellen and Paul Schroy. The NPD delegation was headed by Ernest

Swanson, Chief, Real Estate Division. OCE participants were led by Homer Willis, Chief, Engineer Division, Directorate of Civil Works.⁴⁹

Results of these two days of negotiations are recorded in a May 20 memorandum entitled "Joint Meeting Between the Town of North Bonneville and the U.S. Army Corps of Engineers in OCE on Above Date," copy provided as Appendix D. As reflected in this memorandum, signed by Skala, Willis, and Whitehead, some further progress was made but most of the issues were continued. Among the issues remaining unresolved was that relating to the determination of fair market value. Positions on this issue were summarized as set forth next:

h. Item 41, Fair Market Value. The Corps position is that Section 83 requires the Corps to convey lands to the relocating residents and Town when available at fair market value for those lands, as determined by ordinary real estate practices. Deviation from this would require Congressional direction. The Town's position is that Section 83 authorizes the Corps to convey to relocating residents and the town land acquired by the Corps at the dollar price paid by the Corps for such land.

On May 20, 1975, the Town and the Corps met in the Rayburn House Office Building with Congressman McCormack. Also present were Randall Rawson of McCormack's staff, Michael Steward of Senator Magnuson's office, Steve Hickok representing Senator Hatfield, and Hunter Spillan of the House Appropriations Subcommittee for Public Works. The occurrences of this meeting are recorded in a memorandum by Homer Willis and in notes taken by Leonard Stein. Concerning the issue of fair market value, Willis reports, "No resolution has been made but it was agreed that clarification of Section 83 was needed to effect resolution."⁵⁰ Stein's record reflects what happened:⁵¹

41. Fair Market Value--McCormack says they will get assurances for Corps to give Town the land at cost. Hunter

Spillan says there is no way to side-step "fair market value". He is afraid that report language can't be used in this case to go other than "fair market value". Later reversed himself. Letter of suggested language should come from General Morris.

TIME OF PAYMENT

On April 8, 1975, the Office of the Chief of Engineers advised Colonel Gilkey that the Town would have to sign a binding commitment to purchase all otherwise unsold lots in the new town, and further, that instead of buying on credit the Town would have to provide payment in full at the time of purchase.⁵² This issue appeared as an item of discussion during negotiations between the Town and the Portland District on May 13, unresolved. The subject was again discussed during the meetings in Washington, D.C., on May 19 and 20. During these latter negotiations, the Town initially wanted payment for the lots to become due only upon completion of the construction of the Second Powerhouse. Stances were as recorded in the notes by Leonard Stein: "Corps Position - Cash on the barrel-head. Town position - payback at end of project construction."⁵³ If no agreement had been reached, the conflicting positions on this issue would have been addressed in the joint memorandum of May 20 and taken to Congressman McCormack and the other Congressional representatives for their consideration. However, prior to the meeting in the Rayburn House Office Building, town officials amended their stance, withdrawing insistence on long-term credit. What happened is evident from a reading of Stein's notes:⁵⁴

42. Payback Period--Corps position--the land will be bought by the town when available (cash on barrel-head).

NOT TO CONGRESS. Dropped by mutual consent, no longer an issue. The town agrees to purchase the land when it is available. 120 days was considered reasonable by Corps and by the town.

THE OPTIMUM TOWN

The comprehensive plan proposed the development of an initial town to be followed by the gradual development of an optimum town.⁵⁵ Under the plan it was contemplated that lands needed to accommodate the projected long term growth, generally referred to as the optimum town lands, would be acquired by the Corps of Engineers and sold to the Town.⁵⁶ The Corps was willing to acquire the additional lands for the Town, essentially as a betterment, subject to receipt of a binding commitment for payment from the Town. In the case of these lands outside the initial town, the Corps wanted the Town to repay the purchase price plus the costs of acquisition, or administrative expense.⁵⁷ The Town was willing to reimburse the Corps for the purchase price of the land but did not want to pay the Corps' expense of acquisition.⁵⁸ Moreover, as in the Town's opening position with respect to lots in the initial town, the Town wanted to buy on credit with payment upon completion of the second powerhouse.⁵⁹

This issue was resolved during the negotiations of May 21, 22 and 23, in a session attended by Michael Steward of Senator Magnuson's office and Randall Rawson representing Congressman McCormack. A compromise was suggested by Rawson. The Corps agreed in the case of optimum town lands to extend credit to the Town. The Town agreed to reimburse all Federal cost, including acquisition expenses. How this issue was concluded is evident from the notes made by Leonard Stein:⁶⁰

0800 Convened with Willis . . . Swanson . . . Whitehead,
Schroy, Nellen and Skala, Mason and Dickson.
Started working up final document of Memorandum of
Relocation.

* * *

Problem 2. Town objected to our insistence that Title
II land acquisition costs would be included with the
cost of land outside the initial town which we purchase
for the Town.

* * *

1100 Mike Steward--Magnuson's aide and Randy Rawson of
McCormack's office joined our group at OCE. . . .
1125 Problem 2 as above was run by the Congressional aides. .
. .

Randy Rawson said:

- a. The Corps needs to retrieve its costs.
- b. A time payment plan for repayment of acquisition
costs is the town's best alternative if Corps can do
this legally.

Caucus--It was agreed: Town will have to 1984 to
payback on lands we acquire outside of initial town at
treasury rate interest beginning when land is available
(after spoils are placed and erosion control
completed). Town agrees to take all the land and not
leave the Corps holding parcels of land (Including
Title II cost), P. L. 92-646.

* * *

The lawyers will research the "legal interest rate"
problem so that it will be clarified by time for
relocation contract.

COMMUNITY CENTER IN LIEU OF SCHOOL

There was a school located within the boundaries of the original
town of North Bonneville. The school was considered by the
townspeople to be a part of the town and the building served as a
center for numerous civic activities. Nonetheless, the school
building was not a municipal facility. Instead, as earlier noted, the
school was owned and operated by the Stevenson-Carson School District
No. 303.⁶¹

Within the content of the Draft Feature Design Memorandum as
originally prepared by RHB&A under contract administered by the Town,

both an elementary school and a community center were identified as essential community facilities to be provided by the Corps of Engineers. This duplication was immediately designated as excessive by the Corps of Engineers. The Corps position paper dated May 12, 1975, prepared following the review of May 8-10, contains the following comment:⁶²

18. School or community center. The town has proposed both a replacement school and a community center. It was determined that the Government can not buy the school from the existing school board and also build a community center for the town.

No agreement on this issue was reached during the negotiation of May 13 between the Town and the Portland District. Subsequently, however, upon review of the Corps position paper of May 12, the Town's contract design team apparently came to accept that asking for both a replacement school and a community center was at least questionable. In a letter dated May 15, 1975, the subcontractor firm of Daniel, Mann, Johnson & Mendenhall/Hilton (DMJM) wrote to Major Skala and suggested the following compromise:⁶³

18. School or Community Center. It is recommended . . . the following qualifying sentence; "A community center is proposed as a replacement facility in the new town only in the event that a replacement elementary school with appropriate community use facilities is not agreed to between the Town, Corps and Local School District." A further qualifying statement is recommended . . . under Essential Community Services Description as follows; "Community Center in lieu of such a facility being provided in a new elementary school (if the school is not replaced)."

During the negotiations of May 19 and 20 the Corps representatives expressed a willingness to provide a community center in the new town if the school was not replaced, but maintained that additional legislative action would be required. Specifically, the

position taken by the Corps negotiators was that under existing legislation the Corps could either buy the existing school or provide a new one, but that, in the event the school were purchased Congressional direction would be needed to provide a community center to replace the community functions that had been accommodated in the school.⁶⁴ The Town negotiation team, on the other hand, insisted that no additional authority was necessary. Generally, the tenor of the discussions is reflected in the notes made by Leonard Stein:⁶⁵

18. School or Community Center--Our position (OCE) we pay market value. When it is needed to serve a public function we can furnish. The town will have to work out their school problem with the School Board. We cannot buy the old school and also build a new one. We can replace the old school. We can furnish a community hall in the new town if it is a replacement for the community services provided in the old town by the old school. We cannot provide a community facility in the new town if at the same time we are providing a new school which would also serve the community center function. (The School Board is holding out for a cash settlement for their school and plan to use the money for other purposes).

* * *

18. School--Get the needed legislation to build community center if school situation does not get resolved. If we buy the old school, we need legislation to build community center.

No agreement on the community center was reached. Instead, the joint memorandum of May 20 merely recorded the conflicting positions of the Corps and the Town to be conveyed to McCormack and other Congressional representatives for their consideration, as follows:⁶⁶

d. Item 18, School or Community Center. The Corps considers that it has the authority to either buy or replace the existing school. In the event that the appropriate school authorities decide that replacement of this school is not required the Corps would purchase this school but would not have the authority to provide community center facilities to replace those currently available in the school building. The Corps recognizes that the existing school is being used for community functions. The Town's position is that under

the terms of the planning contract the design team has been obligated to provide plans to relocate the town as a socially viable unit. The conclusions of the design team and the citizens in the planning process have verified that the school is an essential community facility. This facility must therefore be replaced to insure community viability.

This issue was discussed at the meeting with McCormack, Rawson, Steward, Hickok and Spillan on May 20. The essence of what was concluded is captured in the memorandum by Willis, excerpted in pertinent part as follows:⁶⁷

Item 18--School or Community Center represents a special problem because the existing school is in one school district, the relocated town will be in another and, to date, it appears that an agreement among the local entities for relocation of the school facilities will be very difficult to attain. If it became necessary for the Corps to purchase the existing school building from its present owner, the Corps would not have authority to provide replacement facilities in the relocated town. The problem is further complicated by the fact that the Town uses the school facilities for many community activities.

* * *

Apparently all present felt that it was very desirable that the question of school relocation (Item 18) be resolved at local level between the Town and the school authorities. Mr. Spillan reacted negatively to the suggestion that the Appropriations Committee could acquiesce to Corps purchase of existing school and also supplying a new school facility as a replacement item.

ADMINISTRATION OF PLANS AND SPECIFICATIONS

As contemplated by the Corps of Engineers the relocation of North Bonneville was to be accomplished by award and administration of a series of contracts. First was the planning contract intended to identify the location and required features of the new town. Next in order was to be a design contract, under which would be prepared the plans and specifications for construction of the replacement town. Last in sequence was to be a contract for the actual construction of

the relocated town. The Town of North Bonneville, having successfully insisted upon being allowed to award and administer the planning contract, also wanted to control the subsequent design contract. Indeed, as reflected in a memorandum by Ed Daugherty, "The town says the issue is not negotiable."⁶⁸ With equal ardor, presumably strengthened by experience with the Town's administration of the planning contract, Colonel Gilkey told officials of the Portland District, "We will select the Architect/Engineering firm for design through normal channels and they will work directly for the Corps."⁶⁹

This issue was discussed, without change of positions, during the meeting between the Town and the Portland District on May 13. It was added to the agenda as item 44, Administration of Plans and Specifications (Design Contract), and further addressed during the negotiations in Washington, D.C., on May 19 and 20. However, again no movement occurred, and none appeared likely. A record of the positions of both the Corps and the Town was included in the joint memorandum of May 20 and taken to Congressman McCormack and the other Congressional representatives for their consideration. The presented statement of conflicting positions reads,⁷⁰

Item 44, Administration of Plans and Specifications. The Corps position is that once the relocation contract has been signed, facilities called for thereunder are the responsibility of the Corps including the development of plans and specifications. The Town's position is that once the relocation contract has been signed the facilities to be provided thereunder are the responsibility of the Town including the administration of the design contract and the development of plans and specifications.

Discussion of this issue during the meeting in the Rayburn House Office Building on May 20 generated no Congressional support for the

town position. To the contrary, the town representatives were told by both McCormack and Spillan that the Congress expected the Corps of Engineers to retain responsibility for the new town design contract.

A note made during this meeting by Leonard Stein reads, "44.

Administration of Plans and Specifications - McCormack said Corps will do plans and specifications."⁷¹ The essence of what was said by the participants is captured in a memorandum by Homer Willis:⁷²

Item 44--"Administration of Plans and Specifications (Design Contract)" gave the Corps very difficult problems and the Corps felt it must award and direct the design architect-engineer contract to meet its responsibilities for the work to be done at Federal cost.

* * *

The control of the A-E design contract (Item 44) was the subject of vigorous argument by the Town's representatives. In response to the Corps counter-arguments Mr. Spillan and Congressman McCormack told the Town representatives that, in view of the Corps responsibilities, the Town could get no support for its proposal. Mr. Spillan said that the Appropriations Committee would not tolerate direction that the Corps give up the control of the A-E contractor. Congressman McCormack spoke of the extreme measures that had been taken to help the Town and the potential for jeopardizing all support for the Town if it persisted in attempting to direct the design contractor. The Town's representatives then proposed that the Town name the design A-E firm, but the Corps replied that the A-E selection must follow established procedures.

REPORTS OF APPROPRIATIONS COMMITTEES

Negotiations between the Town and the Corps continued on May 21, 22, and 23. During these sessions it was concluded that clarifying language from the Congress was needed on four town demands categorized by the Corps of Engineers as reasonable but not permitted by law. Correspondingly, a product of these negotiations was a mutually agreed paper, entitled "Suggested Language for Appropriations Committee

Report." Copies of this document were provided to Congressman McCormack, Senators Magnuson, Jackson, Hatfield, and Packwood, and to Representative Duncan by letters from Major General Morris.⁷³ The suggested language, offered for use as an expression of Congressional intent, proposed that the Corps of Engineers should do the following:⁷⁴

a. Convey lands in the initial Town development to citizens and the municipality at prices corresponding to fair market value of unimproved land (without enhancement in value from municipal facilities being provided as replacement for facilities in the existing town.)

b. Convey to the municipality without cost those open spaces within the initial town development required for a well-planned town to provide for noise abatement measures, water front conservation areas south of the existing railroad, bike and pedestrian trails and appurtenances thereto and other common use areas not included in platted lots, not to exceed 120 acres.

c. In the absence of standards required by Federal and State laws as referenced in Section 83, P.L. 93-251, furnish replacement municipal facilities meeting standards and criteria recognized by professional technical groups, custom or good practice as representing wise use of resources in space allocations and design.

d. In the event that appropriate school authorities determine that the existing elementary school will not be relocated to the new town site, provide replacement for the community service facilities now available in the existing school.

The first and last items, respectively, address the question of fair market value and the matter of providing a community center in lieu of a school. It was accepted by both the Town and the Corps that Congressional adoption of the language offered in the initial subparagraph would sanction the sale of lots to the townspeople and to the Town at the value of bare land, without consideration of attendant improvements. Correspondingly, it was agreed that a Congressional statement essentially as offered under the fourth item would allow the

Corps to design and construct a community center in the new town if the school were not rebuilt.

The second paragraph of the suggested language was intended to authorize the Corps of Engineers to acquire and provide land for open space within the new town, without cost to the town, even though there was no equivalent municipally owned space in the original town and the land to be provided was not a replacement. This demand was categorized as reasonable by the Corps of Engineers but legislative action was considered necessary because, as observed in the position paper of May 12, "As a general rule, if the Corps acquires land from private land owners then that land cannot be counted as open space and used as the basis for providing open space in a new town under municipal ownership."⁷⁵

The third paragraph was intended to address the situation created when the Town's contractor in the planning of new town facilities either purposely did not or was not able to adhere strictly to the terms of the Contract for Professional Services or the requirements of the McCormack legislation. The special enactment provided, "Municipal facilities provided under the authority of this section shall be substitute facilities which serve reasonably as well as those in the existing town of North Bonneville except that they shall be constructed to such higher standards as may be necessary to comply with applicable Federal and State laws."⁷⁶ The contract, which incorporated the McCormack legislation, was more specific: "Wherever a substitute facility or utility is being upgraded to comply with the applicable Federal and State law, the law shall be cited and a copy of

the relevant law included as part of the general criteria."⁷⁷ What the Town's contractor proposed, without documented reliance on either Federal or State requirements, was that the Federal government provide replacement facilities found by the Corps of Engineers to be "as much as 300% larger than existing facilities".⁷⁸

MEMORANDUM OF AGREEMENT

On May 23, 1975, negotiations were concluded with the execution of a document captioned: "MEMORANDUM OF AGREEMENT BETWEEN THE TOWN OF NORTH BONNEVILLE AND U.S. ARMY CORPS OF ENGINEERS COVERING THE RELOCATION OF NORTH BONNEVILLE IN CONNECTION WITH THE CONSTRUCTION OF THE SECOND POWERHOUSE." This document, signed by Mayor Ernest J. Skala, Major Robert W. Whitehead, and Homer B. Willis, is provided as Appendix E. The purpose of this memorandum, as expressed in the initial paragraph, was "to set forth current understandings, agreements, and planned actions and procedures and relationships between the Town of North Bonneville, Washington and the U.S. Army Corps of Engineers in regard to the relocation of the Town under the provisions of Section 83, P.L. 93-251."

Under the terms of the Memorandum of Agreement, the parties recognize that language to clarify Section 83 of Public Law 93-251 has been furnished to Congressional interests and that the understandings in the memorandum are subject to such clarifying language as may be adopted by the Congress.⁷⁹ Specifically, the memorandum states, "The Corps of Engineers agrees to be bound by and to implement any clarifying language adopted by the Congress."⁸⁰ The agreement commits

the Town and the Corps to develop and execute a relocation contract essentially conforming to the understandings and agreements expressed in the memorandum, "subject to those further agreements necessary regarding the details of such a contract," and expresses, "It is further agreed that both parties will endeavor to execute the Relocation Contract as soon as practicable after the above mentioned clarification of Section 83, P.L. 93-251 by the Congress."⁸¹

The memorandum provides that the Corps of Engineers shall be the contracting officer and shall administer the design contract.⁸² However, in express recognition of the "paramount interest of the Town in the design as the ultimate owner of the municipal facilities to be built," the agreement also provides that the Town shall participate in the design process.⁸³ Specifically, the document states, "The Town will approve in writing the plans and specifications for the municipal facilities prior to advertising for bids and construction. The Town will also approve change orders for the same work."⁸⁴ Further, with respect to control of future work, the memorandum expresses agreement that the Corps of Engineers will award and administer the new town construction contract, but that the "Town will be afforded continuing opportunity to inspect the construction in progress."⁸⁵

Related to new town design, the agreement stipulates that the Corps of Engineers will build what the town wants provided the Town will pay for betterments, but that the District Engineer will decide what the Corps can do for the town and what features constitute betterments. This subject is specifically addressed in paragraph 6 of the memorandum of agreement as recounted next:

6. Betterments: Section 83, P.L. 93-251 defines the conditions under which facilities or designs requested by the Town shall be considered betterments. Responsibility for determination of betterments under this Section, as it may be further clarified, rests with the Corps of Engineers. Facilities including betterments will be constructed if requested in writing by the Town subject to deposit by the Town with the District Engineer prior to award of construction contract of funds sufficient to cover the agreed on cost of the betterments.

With respect to the Federal obligation to provide features included in the plans prepared by the Town's consultation design team, the memorandum expresses agreement that "the planning A-E contractor will be required to complete the Draft Feature Design Memorandum to provide a complete master plan for town development," including making changes required to comply with the comments contained in the Corps of Engineers position paper of May 12 that "are not inconsistent with this memorandum."⁸⁶

Among specific issues resolved within the context of this memorandum is that relating to determination of fair market value. The Town accepts that conveyance of lots in the initial town from the Federal government to the townspeople or to the Town at the fair market value unimproved is conditional upon the provision of clarifying language by the Congress. The Corps agrees to convey lots at this reduced value without reimbursement of Corps administrative expenses if, as contemplated, there is provided an expression of Congressional intent in the forthcoming Appropriations Bill and Committee Reports. The applicable wording of the Memorandum of Agreement, paragraph 7, Conveyance of Real Property, subparagraph a., Fair Market Value, reads in part:

Subject to the condition of obtaining the clarifying language referred to above, it is agreed that the Corps will convey lands in the initial Town consisting of approximately 210 residential lots plus commercial lots to be determined (not to exceed 50) and in addition those lands within the optimum town that lie within currently designated powerhouse project lands at prices corresponding to fair market value of unimproved land paid at time of purchase by the Corps, (without enhancement in value from municipal facilities being provided as replacement for facilities in the existing Town). This price will not include Corps acquisition costs for administration and Title II, P.L. 91-646 payments. The above applies to both individual relocatees and the Town.

Another issue resolved in this Memorandum of Agreement is that concerning time of payment by the town for lots in the initial town. Under terms of the agreement the town is committed to make payment to the Corps within 180 days of notification that the lots are available. The applicable language of the memorandum, under paragraph 7,

Conveyance of Real Property, subparagraph b., reads as follows:

b. Payback Period. (Initial Town development)

The Town agrees to make payment to the Corps within 180 days from the notification in writing by the Corps to the Town of availability for conveyance of lots which have not been acquired by individuals, business or other entities. Land conveyed to the Town for replacement facilities and open areas is not included in this obligation since these lands will be conveyed at no cost to the Town if the appropriate clarifying language is adopted by the Congress.

Concerning optimum town lands, the agreement provides that the Corps of Engineers will acquire and convey to the Town additional lands as requested by the Town, subject to reimbursement of both the purchase price and Corps acquisition costs. The agreement further provides that these lands will be made available to the town on a long-term credit basis, with final payment to become due not later than January 1, 1984. This provision appears under paragraph 7,

Conveyance of Real Property, subparagraph a., Fair Market Value, as follows:

The Corps of Engineers will convey to the Town all those additional lands acquired at the request of the Town at such time as desired by the Town. Provided that all such lands will be conveyed during the construction period of the powerhouse with final payment not later than 1 January 1984. The purchase price for such lands will be the original price paid by the Government for the lands plus Corps acquisition costs (including costs under Title II P.L. 91-646) plus interest at the legal rate for the time the lands are held by the Government before conveyance. Such period for computation of interest will start at the time Government reports to the Town that such separate land is available for conveyance.

Finally, as expressly requested in the "BIG SIX" letter, the agreement contains language providing that the Town will not initiate or pursue any legal action to enjoin either the Second Powerhouse construction or the town relocation pending clarification of the law and an expression of Congressional intent in the forthcoming Appropriations Bill and Committee Reports. This commitment is addressed in the concluding paragraph, as set forth next:

13. Withdrawal from Court Action: In consideration of the agreements set forth herein, and upon enactment of the FY 76 Public Works Appropriation Act into law with the subject clarifying report language the Town agrees to take no action in court or otherwise to halt construction of the Powerhouse or the Town relocation provided the Corps takes the actions set forth herein. The Town further agrees to withdraw its present court suit and to withhold all legal action against the Corps of Engineers between the date of signing this Memorandum and the date of passage of the said FY 76 Appropriation Act into law.

ENDNOTES

¹William E. (Ed) Daugherty, personal interview, 3 May 1988.

²Phillips L. Cole, Chief, Engineering Division, NPD, letter to District Engineer, Portland, Subject: Bonneville Lock and Dam, Relocation of Town of North Bonneville, Contract for A-E Services, 30 May 1974. See dissertation, supra, 222.

³Williams and Mocine, "North Bonneville Relocation, Formal Notes on Presentation, April 9, 1975," 15 April 1975.

⁴William E. (Ed) Daugherty, personal interview, 3 May 1988.

⁵Schroy's recollection continues, "The reason we acquiesced was the Corps' previous commitment to itself and the Congress that we would have power-on-line at the second powerhouse by May, 1981. And so when we came up against a roadblock, the Corps would reassess its importance, balancing time, weighing lost power against the cost of granting the concession." Paul Schroy, personal interview, 19 April 1985.

⁶Clarence D. Gilkey, Colonel, District Engineer, Portland, memorandum to Division and Office Chiefs, Portland District, 16 April 1975.

⁷Pollard Dickson, Planning Director, Town of North Bonneville, letter to Colonel Clarence D. Gilkey, District Engineer, Portland, 28 April 1975.

⁸Royston, Hanamoto, Beck and Abey, Comprehensive Plan, North Bonneville Relocation and Optimum New Town Design (San Francisco: RHB&A, 1975) 56.

⁹RHB&A, Comprehensive Plan, 67.

¹⁰Kenneth C. Boire, Chief, Economic Studies Section, Portland District, memorandum to Chief, Engineering Division, Portland District, Subject: Preliminary Draft Feature Design Memorandum, North Bonneville Relocation and Optimum Town Design, 7 May 1975.

¹¹Memorandum for Record by A. A. Hight, Colonel, Directorate of Civil Works, OCE, Subject: Meeting with Congressional Delegation, Washington--Oregon, 6 May 1975.

¹²Memorandum for Record by Hight, 6 May 1975.

¹³Memorandum for Record by Hight, 6 May 1975.

¹⁴Memorandum for Record by Hight, 6 May 1975.

¹⁵Memorandum for Record by Hight, 6 May 1975.

¹⁶Memorandum for Record by Hight, 6 May 1975.

¹⁷Leonard J. Stein, Chief, Engineering Division, Portland District, memorandum to Division, Office, and Branch Chiefs, Portland District, Subject: Preliminary Draft Feature Design Memorandum, North Bonneville Relocation and Optimum Town Design, 2 May 1975.

¹⁸Memorandum for Record by Hight, 6 May 1975.

¹⁹Warren G. Magnuson, U.S.S., Henry M. Jackson, U.S.S., Mark O. Hatfield, U.S.S., Bob Packwood, U.S.S., Mike McCormack, M.C., and Robert Duncan, M.C., letter to Major General J.W. Morris, Director of Civil Works, OCE, 6 May 1975.

²⁰Magnuson, Jackson, Hatfield, Packwood, McCormack, and Duncan, letter to Morris, 6 May 1975.

²¹Magnuson, Jackson, Hatfield, Packwood, McCormack, and Duncan, letter to Morris, 6 May 1975.

²²Magnuson, Jackson, Hatfield, Packwood, McCormack, and Duncan, letter to Morris, 6 May 1975.

²³Magnuson, Jackson, Hatfield, Packwood, McCormack, and Duncan, letter to Morris, 6 May 1975.

²⁴Magnuson, Jackson, Hatfield, Packwood, McCormack, and Duncan, letter to Morris, 6 May 1975.

²⁵Magnuson, Jackson, Hatfield, Packwood, McCormack, and Duncan, letter to Morris, 6 May 1975.

²⁶Edward Gowen, Acting Director of Real Estate, OCE, 2nd Indorsement to 21 March 1975 letter by Colonel Clarence D. Gilkey, District Engineer, Portland, Subject: Issues Which May Require an OCE Position Due to Relocation of North Bonneville, 8 April 1975. See dissertation, supra, 315.

²⁷Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Mayor Ernest J. Skala, Town of North Bonneville, 10 April 1975. See dissertation, supra, 315-16.

²⁸Stein, memorandum to Division, Office, and Branch Chiefs, Portland District, 2 May 1975. See dissertation, supra, 340.

²⁹Memorandum to the Files by Ed Daugherty, Columbia River Coordinator, Portland District, Subject: Relocation of North Bonneville--Review Conference on Draft Feature Design Memorandum and Environmental Assessment Report, 15 May 1975.

³⁰Memorandum to the Files by Daugherty, 15 May 1975.

³¹U.S. Army Corps of Engineers, "Corps Positions on Government's Obligation to Replace Municipal Facilities for Town of North Bonneville, WA," 12 May 1975.

³²Memorandum to the Files by Daugherty, 15 May 1975.

³³Memorandum to the Files by Daugherty, 15 May 1975.

³⁴Memorandum to the Files by Daugherty, 15 May 1975.

³⁵Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Mayor Ernest J. Skala, Town of North Bonneville, 12 May 1975.

³⁶Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to OCE, Subject: Issues Which May Require an OCE Position Due to Relocation of North Bonneville, Washington, 27 November 1974. See dissertation, supra, 316-19.

³⁷Gilkey, letter to OCE, 27 November 1974.

³⁸Gilkey, letter to OCE, 27 November 1974.

³⁹Gowen, 2nd Indorsement to 21 March 1975 letter by Gilkey, 8 April 1975. See dissertation, supra, 318-19.

⁴⁰Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Mayor Ernest J. Skala, Town of North Bonneville, 10 April 1975. See dissertation, supra, 319-20.

⁴¹Daily Log of Ed Daugherty, Columbia River Coordinator, Portland District, 10 April 1975. See dissertation, supra, 320-22.

⁴²Warren G. Magnuson, U.S.S., telegram to Major General John W. Morris, Director of Civil Works, OCE, 11 April 1975.

⁴³Magnuson, telegram to Morris, 11 April 1974.

⁴⁴J.W. Morris, MG, Director of Civil Works, OCE, letter to Senator Warren G. Magnuson, 18 April 1975.

⁴⁵Magnuson, Jackson, Hatfield, Packwood, McCormack, and Duncan, letter to Morris, 6 May 1974. See dissertation, supra, 341-42.

⁴⁶Memorandum for Record by Robert W. Whitehead, Major, Deputy District Engineer, Portland, 14 May 1975.

⁴⁷Minutes, North Bonneville Town Council, 13 May 1975. See Memorandum for Record by Whitehead, 14 May 1975.

⁴⁸See Memorandum to the Files by Daugherty, 15 May 1975. See also Memorandum for Record by Ernest J. Skala, Mayor, City of North Bonneville; Homer B. Willis, Chief, Engineering Division, Directorate of Civil Works, OCE; and Robert W. Whitehead, Major, Deputy District Engineer, Portland, Subject: Joint Meeting Between the Town of North Bonneville and the U.S. Army Corps of Engineers in OCE on Above Date, 20 May 1975.

⁴⁹Leonard J. Stein, personal negotiation notes, 20 May 1975. See Memorandum for Record by Homer B. Willis, Chief, Engineering Division, Directorate of Civil Works, OCE, Subject: Bonneville 2nd Powerhouse, Relocation of the Town of North Bonneville, Washington, 20 May 1975.

⁵⁰Memorandum for Record by Homer B. Willis, Chief, Engineering Division, Directorate of Civil Works, OCE, Subject: Meeting with Congressional Interests on Relocation of Town of North Bonneville, Washington, 27 May 1975.

⁵¹Leonard J. Stein, personal negotiation notes, 20 May 1975.

⁵²Gowen, 2nd Indorsement to 21 March 1975 letter by Gilkey, 8 April 1975. See dissertation, supra, 318-19.

⁵³Leonard J. Stein, personal negotiation notes, 19 May 1975.

⁵⁴Leonard J. Stein, personal negotiation notes, 20 May 1975.

⁵⁵RHB&A, Comprehensive Plan, 56. See dissertation, supra, 336-37.

⁵⁶RHB&A, Comprehensive Plan, 67.

⁵⁷Leonard J. Stein, personal negotiation notes, 21 May 1975. The Corps position is recorded in these notes: "We charge the town raw value for lands needed for initial town with no acquisition costs. Lands for optimum town we charge raw value plus acquisition cost, with no percentage limitation."

⁵⁸Leonard J. Stein, personal negotiation notes, 23 May 1975. The Town position is recorded in these notes: "Town objected to our insistence that Title II land acquisition costs would be included with the cost of land outside of the initial town which we purchase for the Town."

⁵⁹See Leonard J. Stein, personal negotiation notes, 23 May 1975.

⁶⁰Leonard J. Stein, personal negotiation notes, 23 May 1975.

⁶¹See dissertation, supra, 44-46.

⁶²U.S. Army Corps of Engineers, "Corps position on Government's Obligation to Replace Municipal Facilities for Town of North Bonneville, WA," 12 May 1975.

⁶³James A. Gilmer, Director of Engineering, Daniel, Mann, Johnson & Mendenhall/Hilton, letter to Mayor Ernest J. Skala, City of North Bonneville, 15 May 1975.

⁶⁴Memorandum for Record by Homer B. Willis, Chief, Engineering Division, Directorate of Civil Works, OCE, Subject: "Bonneville 2nd Powerhouse, Relocation of the Town of North Bonneville, Washington", 20 May 1975.

⁶⁵Leonard J. Stein, personal negotiation notes, 19 May 1975.

⁶⁶Memorandum for Record by Ernest J. Skala, Mayor, City of North Bonneville; Homer B. Willis, Chief, Engineering Division, Directorate of Civil Works, OCE; and Robert W. Whitehead, Major, Deputy District Engineer, Portland, Subject: Joint Meeting Between the Town of North Bonneville and the U.S. Army Corps of Engineers, in OCE on Above Date, 20 May 1975.

⁶⁷Memorandum for Record by Willis, 27 May 1975.

⁶⁸Memorandum to the Files by Daugherty, 15 May 1975.

⁶⁹Gilkey, memorandum to Division and Office Chiefs, Portland District, 16 April 1975.

⁷⁰Memorandum for Record by Skala, Willis, and Whitehead, 20 May 1975.

⁷¹Leonard J. Stein, personal negotiation notes, 20 May 1975.

⁷²Memorandum for Record by Willis, 27 May 1975.

⁷³See J. W. Morris, MG, Director of Civil Works, OCE, letters to Congressman Mike McCormack, 22 May and 3 June 1975. See also Morris, letter to Congressman Robert Duncan, 3 June 1975. Identical letters were sent to Senators Warren G. Magnuson, Henry M. Jackson, Mark O. Hatfield, and Bob Packwood. See Memorandum for Record added to Corps of Engineers file copy of Morris letter to Duncan, 3 June 1975.

⁷⁴See, e.g., J. W. Morris, MG, Director of Civil Works, OCE, letter to Congressman Mike McCormack, 3 June 1975.

⁷⁵U.S. Army Corps of Engineers, "Corps Position on Government's Obligation to Replace Municipal Facilities for Town of North Bonneville, WA," 12 May 1975.

⁷⁶Water Resources Development Act of 1974, March 7, 1974, 48 Stat. 12, § 83(c).

⁷⁷Contract for Professional Services, between City of North Bonneville and Royston, Hanamoto, Beck and Abey, 19 November 1974, Exhibit D.

⁷⁸U.S. Army Corps of Engineers, "Corps Position on Government's Obligation to Replace Municipal Facilities for Town of North Bonneville, WA," 12 May 1975.

⁷⁹Memorandum of Agreement Between the Town of North Bonneville and the U.S. Army Corps of Engineers Covering Relocation of the Town of North Bonneville in Connection with Construction of the Bonneville Second Powerhouse, 23 May 1975, Paragraph 2, "Background."

⁸⁰Memorandum of Agreement, Paragraph 2, "Background."

⁸¹Memorandum of Agreement, Paragraph 12, "Execution of Relocation Contract."

⁸²Memorandum of Agreement, Paragraph 3, "Relationships of Parties."

⁸³Memorandum of Agreement, Paragraph 3, "Relationships of Parties."

⁸⁴Memorandum of Agreement, Paragraph 3, "Relationships of Parties."

⁸⁵Memorandum of Agreement, Paragraph 4, "Town Participation in Construction Contract."

⁸⁶Memorandum of Agreement, Paragraph 5, "Completion of Planning Phase."

CHAPTER XI

CONTRACT FOR RELOCATION

The Memorandum of Agreement of May 23, 1975, was not a contract enforceable in law; rather, it was what is commonly referred to as an agreement to agree. The provisions of the memorandum were intended to set forth the basis for negotiation and execution of a relocation contract between the Town of North Bonneville and the Corps of Engineers.¹

Members of the Washington and Oregon Congressional delegations were apparently pleased with the accords reached between the Town and Corps and comfortable with the resultant proposed clarifying language. Senator Magnuson, signifying this pleasure and comfort, sent a letter to Lieutenant General William C. Gribble, Chief of Engineers, specifically commending Homer Willis and Major Whitehead for their contributions. Observing that "the Corps and the Mayor of North Bonneville signed a Memorandum of Agreement which will hopefully facilitate a smooth relocation from this point on," the Senator reemphasized that he was "extremely interested in the timely and satisfactory relocation of the Town of North Bonneville, Washington, because of its importance to my constituents in the town and also because of its immediate relevance to the construction of the Second Powerhouse at Bonneville Dam."²

The Corps of Engineers was also seemingly satisfied. Responding to Senator Magnuson's expression of appreciation, General Gribble lauded the work of Steward of Senator Magnuson's staff and also that of Rawson representing Congressman McCormack. The Chief of Engineers observed, "It is our objective that the Memorandum of Understanding will in the near future become the basis of a relocation contract between the Corps and the town. The execution of the relocation contract will be a milestone towards the Corps' goal of completing the Second Powerhouse at Bonneville by the early 1980's."³

TIME OF PAYMENT

During the negotiations of May, 1975, town negotiators demanded long-term credit, first with respect to payment for otherwise unoccupied lots in the initial town and later with respect to payment for optimum town lands. The Town originally insisted that payment for lands in the initial town become due only upon completion of construction of the second powerhouse, but withdrew this issue as a subject of negotiation before it would otherwise have gone to representatives of the Congress for consideration.⁴ Expressly, the Town agreed to pay for lots in the initial town within 180 days of availability for conveyance.⁵ Then, after the discussions in the Rayburn House Office Building, the Town demanded that payment for optimum town lands become due only upon completion of the second powerhouse.⁶ To this second insistence, the Corps relented. It was agreed that the Town would reimburse all Corps costs for the

acquisition of optimum town lands, with interest, but that no payment would be required before January 1, 1984.⁷

Once the Memorandum of Agreement was signed, however, the town officials reneged on their agreement to pay for lots in the initial town within 180 days of availability. Unabashedly, as a price for execution of a contract for relocation, the Town again insisted on being allowed long-term, interest free credit with payment for replacement lots to become due only upon completion of the second powerhouse project. Moreover, the Town partially refused to honor its agreement to pay interest or to reimburse Corps acquisition cost for optimum town lands. Undoubtedly frustrated, the Portland District yielded. Agreement was reached that the Town would purchase all lots in the initial town not otherwise occupied at prices corresponding to the value of unimproved land paid at the time of purchase by the Government, without interest and without reimbursement of Corps acquisition costs.⁸ Final payment by the Town to the Government for lots in the initial town, like that for optimum town lands, was to be made on or before January 1, 1984.⁹ Concerning to the optimum town, agreement was reached that lands selected from within second powerhouse project boundaries would be sold to the town at the original price paid by the Government, without interest and without inclusion of acquisition costs.¹⁰ For lands selected from outside project borders, the town would pay interest at the treasury rate plus Government acquisition costs.¹¹ Final payment date for all optimum town lands, whether inside or outside Second Powerhouse project boundaries, remained January 1, 1984.¹²

THE BUSINESS AND OCCUPATION TAX

Interestingly, even though the Town insisted that payments both for replacement lots in the initial town and for optimum town lands should become due only upon completion of the second powerhouse, and the Corps ultimately agreed that payments would become due at a time concurrent with the estimated powerhouse completion date, never did anyone from the Corps of Engineers ask the town negotiators why that requested time for payment was selected. No one ever asked, Why do you want payment to become due upon completion of the second powerhouse? What is the relationship, if any, between completion of the second powerhouse and the Town's ability to pay? Indeed, the Corps negotiators never insisted on knowing how the Town planned to get the money to pay for either the lots in the initial town or the optimum town lands, even though they clearly perceived, in the words of Homer Willis, "that North Bonneville was a pauper."¹³ As Ernest Swanson, Chief, Real Estate Division, NPD, recalls, "Corps people just assumed they could come up with it, probably from some kind of a Federal grant."¹⁴

In fact, Town negotiators had in mind a source of revenue.

During all negotiations with the Town leading to the Memorandum of Agreement of May 23, and throughout most of the subsequent negotiations oriented toward execution of a contract for relocation, the Corps of Engineers assumed understanding and agreement by those persons representing the Town that the corporate municipality of North Bonneville was to be relocated in the literal sense of the word, meaning that the town boundaries would be completely removed from

encirclement of the original site and reestablished around a new location.¹⁵ The assumption of the Corps, presumably well understood by and never expressly challenged by town officials, was that North Bonneville would first annex the lands onto which the town was to be relocated and then de-annex those areas within the vacated town.¹⁶

Unknown to the Corps, however, town officials had no such intent. To the contrary, town officials were planning to annex the relocation site without ever de-annexing any of the areas within the boundaries of the old town. What the town officials planned was simple, but quite clever. Mayor Skala, Pollard Dickson, the town's attorney James Mason, and all members of the Town Council knew that the Federal Government was acquiring the old town as the site for construction of the Second Powerhouse. They also knew that the project was estimated to cost approximately \$400 million. By annexing the new townsite, without de-annexation of those lands within the original town, the town officials hoped to obtain the full benefits of relocation while at the same time gaining a new and very large source of revenue. Even as the negotiations of May were going on, the Town Council, on May 21, 1975, enacted a business and occupation tax of .05 percent of the cost of all construction within the corporate limits of the town.¹⁷ By the imposition of this tax the town officials hoped to extract more revenue than they would need from Federal contractors, and indirectly, from the Corps of Engineers. The aim, as later judicially established, was target specific: "This tax was drafted specifically to apply to contractors with the United States who were involved with the construction of the second powerhouse."¹⁸ The prize:

"Town planners estimated revenues from the B&O tax would exceed \$2 million by 1984."¹⁹

Around August 1, 1975, after weeks of discussions concerning the drafting of a relocation contract, the Corps of Engineers became aware of the enactment of the business and occupation tax.²⁰ During conversations that followed, the Corps also learned that town officials did not intend to relinquish municipal jurisdiction over the original townsite even after movement to the new location.²¹ Of course, the Corps of Engineers recognized that the "purpose of this scheme is to enable the Town to tax the construction of the Second Powerhouse and operations and maintenance work on the powerhouse from now on even after the citizens are relocated to the new townsite."²² The concern of Corps officials was twofold. Generally, the B&O tax was questioned as constituting a Constitutionally impermissible imposition of costs on the construction of the Second Powerhouse.²³ Specifically, Corps officials believed the intent of the McCormack legislation to be that, in consideration for being provided new town facilities at federal expense, the Town was to relinquish municipal jurisdiction over the original townsite.²⁴ Corps officials emphasized that Section 83(a) of Public Law 93-251 authorized the Secretary of the Army, acting through the Chief of Engineers, "to relocate the town of North Bonneville, Washington, to a new townsite."²⁵ This statutory language, as read by the Corps of Engineers, intended that the Town would be moved from one area to another and not merely enlarged.²⁶

On August 18, 1975, representatives of the Office of the Chief of Engineers, the North Pacific Division, and the Portland District

met in Washington, D.C., to discuss entering into a contract of relocation with the Town of North Bonneville. Attendees at this meeting included Homer B. Willis from the Directorate of Civil Works and Pete Ippolito from the Office of the General Counsel, OCE; Owen L. Coombe, Chief, Acquisition Branch, Real Estate Division, NPD; and Robert W. Whitehead and Paul Schroy from the Portland District. One of the subjects discussed was the business and occupation tax. Consideration was given to withholding execution of the contract for relocation. However, the participants concluded that the Corps of Engineers could not afford to delay continued work on the town relocation. It was considered that the legality of the B&O tax could be challenged notwithstanding execution of the relocation contract. Accordingly, as reflected in a memorandum by Owen L. Coombe, "It was unanimously agreed that the tax matter is separate and apart from the subject relocation, and that the contract would be considered without reference to the tax."²⁷

DRAFT FEATURE DESIGN MEMORANDUM

Discussion of how to handle the Draft Feature Design Memorandum prepared by the Town's contractor continued during efforts to structure the relocation contract. The Corps of Engineers found the draft to be filled with features, too numerous to be individually identified and deleted or corrected, that the Federal Government could not properly provide.²⁸ Consequently, unable to accept the document as presented, and precluded by circumstances from starting the planning process anew, the Corps proposed to Town officials that the document

be accepted conditionally.²⁹ Specifically, the Corps suggested adding an introductory statement that the document was reflective of the Town's desires but not necessarily descriptive of the Government's obligation.³⁰ The necessity for this disclaimer was never agreed to by the Town. However, the Town did agree that the "relocation contract will be the final statement of the obligation of the Government as to construction of the new town."³¹ It was further agreed to incorporate the memorandum of agreement of May 23 as an enclosure to the final design memorandum.³²

Near the end of July, 1975, work on the Draft Feature Design Memorandum was completed by the town's contractor and delivered to the Portland District.³³ At the express insistence of town officials, the Corps of Engineers made no substantive revisions.³⁴ However, as recounted in a Corps memorandum, "A list of items necessary for RHBA to complete, as based upon the memorandum, was prepared by Design Branch and submitted to the Town. It was the Corps' intent that they be given to RHBA. Pollard would not give the list to the Town until he had reviewed it."³⁵ Consequently, the final Draft Feature Design Memorandum was totally and exclusively a town product.

By letter dated August 8, 1975, the Portland District forwarded a proposed design memorandum for the construction of the new town to the North Pacific Division. The document, designated Design Memorandum No. 8, was essentially a reproduction of the DFDM prepared by the town's contractor. The District acknowledged that the offering did not meet normal standards for acceptability. Even so, consistent with the position argued to the Town, the Portland District

recommended conditional acceptance. The situation confronted and the attendant recommendation were explained as follows:³⁶

2. Design Memorandum was prepared by the town of North Bonneville under the sponsorship of the Portland District. When the draft of the memorandum was first submitted to the District it contained a number of proposals and features that represented a desirable development for the town but did not delineate the extent of the Federal Government's obligations. Moreover, the town indicated that it did not want the Portland District to revise the memorandum. As a result, the District did not revise the memorandum, but returned a list of comments to the town for its consideration. Although the town took action on many of them, it did not act on others. As a result, the Design Memorandum should still be considered as containing a number of features that the town desires, and which do not necessarily represent the Government's obligations. For this reason, the Design Memorandum drawings have not been signed and the recommendation paragraph in the body of the memorandum has been left blank. The extent of the Government's obligations is being mutually agreed upon with the town and defined in the relocation contract. The Memorandum of Understanding between the Town and the Corps covering Relocation of the Town of North Bonneville in connection with construction of the Bonneville Second Powerhouse, dated 23 May 1975, discusses and resolves a number of issues between the Town and the Corps which occurred during the preparation of the Design Memorandum. As stated in paragraph 2 of that Memorandum of Understanding, Congressional action is required before some of the facilities requested by the Town can be provided at federal expense. Betterments will depend to a great extent on the pending Congressional action and will, therefore, be determined during final design. Work is proceeding on the basis that the pending clarifying language to Sec. 83 of PL 93-251 will be adopted. Should that not be the case, revisions will have to be made to the relocations contract that could affect and A-E design contract for the relocated town, which is expected to be in progress in September 1975.

* * *

8. We recommend that the selected site and general concept for the town as proposed in the Design Memorandum No. 8 be approved. We also request approval of our approach in handling the principal problems that have developed. We are not requesting approval of the multitude of details presented as many of them will change or have changed due to subsequent negotiation, agreement, or clarifying Congressional language.

On August 15, 1975, the North Pacific Division indorsed the proposed Design Memorandum No. 8 to the Office of the Chief of Engineers and recommended conditional approval, as recounted next.³⁷

This design memorandum represents the planning efforts of North Bonneville and presents their requirements of a replacement facility for the existing town. We concur with the district's position that this document contains a number of features which do not necessarily represent the obligations of the government; however, the Corps has already agreed to the goals and objectives of the town when we entered into a memorandum of agreement with the town on 23 May 1975. At that time, the major objections of the Corps to the Draft Feature Design Memorandum were resolved. We realize this memorandum does not meet our usual requirements for feature design memorandums; however, we believe it contains sufficient information and guidelines to serve as the basis for development of the design criteria and scope of work for the detailed design of the new town. Therefore, we recommend a qualified approval of this memorandum to the extent that it provides the general criteria and guidelines for the preparation of the plans and specifications. These must be in accordance with the memorandum of understanding, the relocation contract and clarifying Congressional language.

During the meeting of representatives of the Office of the Chief of Engineers, the North Pacific Division, and the Portland District on August 18, 1975, one of the issues addressed was the District Engineer's request for conditional approval of Design Memorandum No. 8. Several concerns with the document were identified; however, "it was agreed that the approval authority should be granted with full knowledge that there will be a multiplicity of problems developing later in all areas, including Real Estate."³⁸

On August 21, 1975, the Office of the Chief of Engineers formally advised the North Pacific Division that Design Memorandum No. 8 "is accepted as an expression of the City's desires for accomplishment of the relocation" and that "approval is hereby granted

for continuation of planning and design as recommended by the District Engineer." However, the OCE approval letter cautioned,³⁹

Extreme care will need to be exercised in the course of the necessary replanning exercise . . . and in the development of plans and specifications generally, in order to insure that the numerous items included in the design memorandum which are not Corps responsibility do not attain the status of Corps approval, and thereby responsibility, by virtue of proceeding with the development of plans and specifications using the design memorandum as a partial basis therefor.

The planning document as finally published, captioned "Bonneville Second Powerhouse Design Memorandum No. 8, Relocation of City of North Bonneville, Washington," contains prefatory comments, under Section 1--General, paragraph 1.01. Purpose, as follow:⁴⁰

a. This design memorandum presents the results of studies made for the purpose of determining the necessity for relocation of the City of North Bonneville, Washington, because of construction of the Bonneville Second Powerhouse, and providing a new townsite for the residents of the existing town. The design memorandum will serve as a basis for construction of the new municipal facilities and utilities and for entering into a relocation agreement with the City of North Bonneville providing for their construction.

b. This report was prepared in draft form by a team of consultants under contract to the City of North Bonneville to meet the needs of the people of the community and the Corps of Engineers as provided for in a planning contract between the City and the Portland District. The consultants prepared the report in compliance with a detailed Scope of Work delineating numerous specific areas to be addressed. The design memorandum should be read recognizing that it responds to the contract Scope of Work and contains information of concern to the City. In this respect, some of the material may be considered in excess of that required in design memorandums prepared for internal use by the Corps of Engineers only.

CONTRACT FOR RELOCATION

On August 19, 1975, the Town of North Bonneville and the U.S. Army Corps of Engineers entered into a contract for relocation of the

town. The agreement, captioned "Contract for Relocation," was signed by Colonel Clarence D. Gilkey as Contracting Officer for the United States of America and by Mayor Ernest J. Skala and all members of the Town Council.⁴¹ Under terms of the contract the Town agreed to convey to the Federal Government all municipally owned interests in lands within the boundaries of the Second Powerhouse project, together with all facilities and utilities therein not moved to the new townsite.⁴² In return, the Corps of Engineers agreed to provide replacement lands and to construct substitute facilities and utilities on the new townsite location selected by the Town.⁴³

The Contract for Relocation specified that the Corps of Engineers would award and administer a contract with an Architect-Engineer firm for the preparation of plans and specifications for the new town.⁴⁴ However, the contract provided that the views of the City "will be considered in the final selection" of the A-E contractor.⁴⁵ Also, the contract provided that the scope of work for the new town design "will be mutually derived by the parties and will be subject to written approval by the City."⁴⁶ Further, the contract specified that "Plans and specifications for municipally owned facilities/utilities will be subject to the approval of the City."⁴⁷

The contract provided that the Corps of Engineers would award and administer the contract for the construction of municipal facilities in the new town.⁴⁸ Specifically, however, construction was required to be in accordance with plans and specifications approved by the City.⁴⁹ Additionally, the contract provided that the "City will be

offered continuing opportunity to inspect the construction in progress."⁵⁰ Further, the contract provided that the Federal Government would reimburse the Town of North Bonneville for all necessary expenses incurred by the town in connection with the relocation.⁵¹

The contract provides that all agreements previously entered into between the Town and the Corps of Engineers, "to the extent that any undertakings therein contained shall not have been completely performed," shall continue in effect.⁵² The referenced agreements are specifically listed in the relocation contract as follows:⁵³

- a) Contract No. DACW57-75-C-0032 between the City and the Government, dated July 26, 1974;
- b) Contract for professional services between the City and Royston, Hanamoto, Beck & Abey dated November 19, 1974; which includes the mutually agreed Scope of Work signed by the City and the Government;
- c) Memorandum of Agreement between the City and the Government dated May 23, 1975.

The contract expresses that Design Memorandum No. 8 is to serve as the "preliminary master plan and general concept for design" of the new town.⁵⁴ Implicitly, the contract recognizes that not everything proposed in the design memorandum is an obligation of the Government. Deviations from the content of Design Memorandum No. 8 were required to be specifically explained or justified by the A-E design contractor and were subject to further evaluation by a joint board of review.⁵⁵ The Board was "to consist of an equal number of representatives from the City, the Government and the A-E firm," with the A-E firm to "serve in an advisory role only."⁵⁶ Concerning standards of design the contract provides,⁵⁷

In the absence of standards required by Federal and State laws as referenced in said Section 83, the Corps of Engineers shall furnish replacement municipal facilities, meeting standards and criteria recognized by professional technical groups, custom and good practice and representing wise use of resources in space allocations and design.

Within the context of this agreement the Town furnished the Government a binding contractual commitment to purchase all otherwise unoccupied lots in the new townsite.⁵⁸ With respect to initial town lands, the agreement provides that lots will be conveyed to individuals relocating from the existing town to the new town at prices corresponding to the value of unimproved land paid at the time of purchase by the Government, without inclusion of Government acquisition costs.⁵⁹ With respect to optimum town lands, the agreement provides that, to the extent that these lands are provided from within the currently designated Second Powerhouse project boundaries, the purchase price will correspond to prices paid by the Government without inclusion of acquisition costs.⁶⁰ Optimum town lands selected from outside Bonneville project boundaries were to be conveyed to the Town at prices paid by the Government plus acquisition costs.⁶¹

REPORTS OF APPROPRIATIONS COMMITTEES

At the time the Contract for Relocation was signed, the Public Works Appropriations Act for Fiscal Year 1976 had not yet been enacted. Consequently, as a condition precedent, all covenants were expressly made subject to the subsequent adoption of clarifying language by the Congress.⁶² The contract, as read by the United State Claims Court, provided that inclusion of clarifying language in reports of the Appropriations Committees of the Congress, when

followed by enactment of the appropriations recommended in the reports, was adequate to resolve the Corps' concerns about authority under Section 83. Actual amendment of Public Law 93-251 was not deemed necessary.⁶³

The Public Works Appropriations Act for Fiscal Year 1976 was passed by the Congress on December 26, 1975.⁶⁴ Accompanying reports of the House Committee on Public Works and the Senate Committee on Public Works incorporated clarifying language concerning the intent of Section 83 of Public Law 93-251, the Water Resources Development Act of 1974, substantially as recommended by the Corps and the Town. The language adopted and provided by the Committees, identical in both reports, reads,⁶⁵

Relocation of the Town of North Bonneville, Washington--This relocation of construction of the second powerhouse at the Bonneville Lock and Dam project, will place great stress on the community and citizens. The Corps should aid the town and citizens by all means practicable under the available authorities, including Section 83, Public Law 93-251. Thus, it is desirable that the Corps:

(a) Sell lots in initial town development at prices corresponding to value of unimproved land with provisions to preclude windfall profits to individuals.

(b) Convey to the municipality without cost those open spaces within the initial town development required for common use areas not to exceed 125 acres; provided that such open spaces shall be dedicated to public use and not available for resale.

(c) In the absence of standards required by Federal and State laws as referenced in Section 83, Public Law 93-251, furnish replacement municipal facilities meeting standards and criteria recognized by professional technical groups, custom or good practice and representing wise use of resources in space allocations and design; provided that the size and type of these facilities shall be fully justified by the reasonable requirements for services to the initial town development.

(d) In the event the appropriate school authorities determine that the existing elementary school will not be relocated to the new town site, provide replacement for the

community service facilities now available in the existing school.

The above is not intended to change the provisions of law as set out in Section 83, Public Law 93-251 but is intended to convey the committee's belief that the above position is reasonable, authorized and constitute equitable treatment of the people to be displaced by the powerhouse construction.

ENDNOTES

- ¹Town of North Bonneville v. U.S., 11 Cl. Ct. 694, 709 (1987).
- ²Warren G. Magnuson, U.S.S., letter to Lieutenant General William C. Gribble, Chief of Engineers, 27 May 1975.
- ³William C. Gribble, LTG, Chief of Engineers, letter to Senator Warren G. Magnuson, 9 June 1975.
- ⁴Leonard J. Stein, personal negotiation notes, 19 and 20 May 1975. See dissertation, supra, 351-52.
- ⁵Memorandum of Agreement Between the Town of North Bonneville and the U.S. Army Corps of Engineers Covering Relocation of the Town of North Bonneville in Connection with the Bonneville Second Powerhouse, 23 May 1975, Paragraph 7.b., "Payback Period". See dissertation, supra, 364.
- ⁶Leonard J. Stein, personal negotiation notes, 23 May 1975. See dissertation, supra, 352-53.
- ⁷Memorandum of Agreement, Paragraph 7.a., "Fair Market Value". See dissertation, supra, 364-65.
- ⁸Contract for Relocation, between the Town of North Bonneville and the Portland District, U.S. Army Corps of Engineers, No. DACW 57-76-C-0039, 19 August 1975, Article 5, Section 1. "Paragraph 7(b) of the May 23, 1975 agreement is rescinded." Contract for Relocation, Article 5, Section 3, Paragraph 3.02.
- ⁹Contract for Relocation, Article 5, Section 3, Paragraph 3.02.
- ¹⁰Contract for Relocation, Article 5, Section 3, Paragraph 3.03.
- ¹¹Contract for Relocation, Article 5, Section 3, Paragraph 3.03.
- ¹²Contract for Relocation, Article 5, Section 3, Paragraph 3.01.
- ¹³Homer B. Willis, personal interview, 18 June 1985.
- ¹⁴Ernest E. Swanson, personal interview, 8 July 1988.
- ¹⁵Paul H. Schroy, personal interview, 13 August 1988.
- ¹⁶See, e.g., Paul D. Triem, Colonel, District Engineer, Portland, letter to Mayor Robert Holcomb, Town of North Bonneville, 24 August 1971, excerpt in dissertation, supra, 103.
- ¹⁷Ordinance No. 285, North Bonneville Town Council, 21 May 1975. See Minutes, North Bonneville Town Council, 21 May 1975.

¹⁸Town of North Bonneville v. U.S., 11 Cl. Ct. at 751.

¹⁹Town of North Bonneville v. U.S., 11 Cl. Ct. at 756.

²⁰See John E. Templeton, Chief, Audit Branch, NPD, letter to Colonel Clarence D. Gilkey, District Engineer, Portland, Subject: Audit Report 75-0-9, Financial Capability Review, City of North Bonneville, Proposed Relocation Contract, 1 August 1975.

²¹After the Memorandum of Agreement of 23 May 1975 was signed, the Corps "learned that the Town did not intend to withdraw its present old town boundaries when it accepted beneficial occupancy of the new town and had actually moved the town and its people into the new townsite." Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Richard W. Hemstad, Director, Office of Community Development, Office of the Governor, Washington, inclosed paper entitled "Items of Interest to the State of Washington Concerning the Relocation of the City of North Bonneville", 22 October 1975.

²²U.S. Army Corps of Engineers, Portland District, "Legal Status of Annexation Issue North Bonneville", 31 December 1975.

²³Paul H. Schroy, personal interview, 13 August 1988. See, e.g., Town of North Bonneville v. U.S., 11 Cl. Ct. at 756.

²⁴Paul H. Schroy, personal interview, 13 August 1988. See U.S. Army Corps of Engineers, Portland District, "Legal status of Annexation Issue North Bonneville", 31 December 1975. See also Town of North Bonneville v. U.S., 11 Cl. Ct. at 756.

²⁵Paul H. Schroy, personal interview, 13 August 1988.

²⁶Paul H. Schroy, personal interview, 13 August 1988.

²⁷Memorandum for the Record by Owen L. Coombe, Chief Acquisition Branch, NPD, Subject: Proposed Contract for Relocation of City of North Bonneville; Summary of Meeting in OCE, 21 August 1975.

²⁸Memorandum to the Files by Ed Daugherty, Columbia River Coordinator, Portland District, Subject: Relocation of North Bonneville--Review Conference on Draft Feature Design Memorandum and Environmental Assessment Report, 15 May 1975. See dissertation, supra, 344-45.

²⁹Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Mayor Ernest J. Skala, Town of North Bonneville, 12 May 1975. See dissertation, supra, 345.

³⁰Gilkey, letter to Skala, 12 May 1975. See dissertation, supra, 345.

³¹Memorandum to the Records by Norman D. Holly, Civil Engineer, Portland District, Subject: Meeting held in Portland District office with staff from North Bonneville, 29 May 1975.

³²Memorandum to the Records by Holly, 29 May 1975.

³³Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Division Engineer, North Pacific, Subject: Bonneville Second Powerhouse Project, Columbia River, Washington; Design Memorandum No. 8, Relocation of North Bonneville, Washington, 8 August 1975.

³⁴See Pollard R. Dickson, Planning Director, Town of North Bonneville, letter to Colonel Clarence D. Gilkey, District Engineer, Portland, 28 April 1975.

³⁵Memorandum to the Records by Holly, 29 May 1975.

³⁶Gilkey, letter to Division Engineer, 8 August 1975.

³⁷Phillip L. Cole, Chief, Engineering Division, NPD, 1st Indorsement to 8 August 1975 letter by Clarence D. Gilkey, Colonel, District Engineer, Portland, Subject: Bonneville Second Powerhouse Project, Columbia River, Washington, Design Memorandum No. 8, Relocation of North Bonneville, Washington, 15 August 1975.

³⁸Memorandum for the Record by Coombe, 21 August 1975.

³⁹Homer B. Willis, Chief, Engineering Division, Directorate of Civil Works, OCE, 2nd Indorsement to 8 August 1975 letter by Clarence D. Gilkey, Colonel, District Engineer, Portland, Subject: Bonneville Second Powerhouse, Columbia River, Washington; Design Memorandum No. 8, Relocation of North Bonneville, Washington, 21 August 1975.

⁴⁰U.S. Army Corps of Engineers, Bonneville Second Powerhouse Design Memorandum No. 8, Relocation of the City of North Bonneville, Washington, 2 Vols. (Portland, OR: Portland District, 1975) 1: 1-1.

⁴¹Contract for Relocation, Signatures.

⁴²Contract for Relocation, Article 2, Section 1.

⁴³Contract for Relocation, Article 3, Section 2.

⁴⁴Contract for Relocation, Article 3, Section 1.

⁴⁵Contract for Relocation, Article 1, Section 2.

⁴⁶Contract for Relocation, Article 1, Section 1.

⁴⁷Contract for Relocation, Article 1, Section 5.

⁴⁸Contract for Relocation, Article 1, Section 6.

⁴⁹Contract for Relocation, Article 1, Section 5.

⁵⁰Contract for Relocation, Article 1, Section 6.

⁵¹Contract for Relocation, Article 3, Section 4.

⁵²Contract for Relocation, Recitals.

⁵³Contract for Relocation, Recitals.

⁵⁴Contract for Relocation, Recitals.

⁵⁵Contract for Relocation, Article 1, Section 4, Paragraph 4.02.

⁵⁶Contract for Relocation, Article 1, Section 4.

⁵⁷Contract for Relocation, Article 1, Section 4, Paragraph 4.02.

⁵⁸Contract for Relocation, Article 5, Section 3.

⁵⁹Contract for Relocation, Article 5, Section 1, Paragraph 1.01.

⁶⁰Contract for Relocation, Article 5, Section 1, Paragraph 1.01.

⁶¹Contract for Relocation, Article 5, Section 1, Paragraph 1.02.

⁶²Contract for Relocation, Article 14.

⁶³Town of North Bonneville v. U.S., 11 Cl. Ct. at 752.

⁶⁴Public Works for Water and Power Development and Energy
Research Appropriation Act, 1976, Public Law 94-180; 89 Stat. 1035.

⁶⁵H. Rep. No. 94-319, 94th Cong., 1st Sess. 50-51 (1975); S. Rep.
No. 94-505, 94th Cong., 1st Sess. 63-64 (1975).

CHAPTER XII

NORTH BONNEVILLE V. UNITED STATES

Under terms of the Contract for Relocation, clearly contrary to experience, judgment, and Congressional intent, the Corps of Engineers relinquished effective control of the design and construction of the new town. The contract provided that the Corps of Engineers would award and administer the new town design contract.¹ However, the contract also specified that the views of the Town "will be considered in the final selection" of the new town design contractor, that the scope of work for the new town will be mutually agreed upon by the Corps and the Town, and that plans and specifications for municipal facilities and utilities "will be subject to the approval by the City."² The effect of these provisions was to enable the Town, and Pollard Dickson, to dominate the new town design process.³ Similarly, the relocation contract provided that the "Government shall be responsible for the supervision and administration of construction contracts."⁴ Even so, the contract specified that construction would be in accordance with plans and specifications approved by the Town.⁵ Moreover, the contract guaranteed, "The City will be afforded continuing opportunity to inspect the construction in progress."⁶ These provisions were sufficient to empower the Town to coerce, if not dictate, decisions on new town construction.⁷

As a consequence of relinquished control, the Portland District was unable to contain relocation costs. At the time the relocation contract was executed, based on figures published in Design Memorandum No. 8, the cost of moving the town including associated railroad and highway relocations was estimated to be approximately \$14 million.⁸ Actual costs exceeded \$36 million.⁹ Relatedly, the Corps was unable to maintain design and construction schedules. The relocation contract targeted that the Town would have beneficial occupancy of new municipal facilities and utilities on November 1, 1976, and that the town relocation would be totally completed by March 1, 1977.¹⁰ In fact, occupancy of the town hall, fire station, and sewage treatment plant occurred on April 1, 1978.¹¹ Work on construction of the initial new town was considered substantially complete on November 15, 1978, and completed by August 24, 1979.¹² In summary, design and construction of the new City of North Bonneville cost more than twice as much and took more than twice as long as initially estimated.

Generally, town officials got what they demanded, with three notable exceptions. The school was not relocated, and in lieu thereof town officials wanted a community center. This facility was not provided at federal expense. Town officials attempted to retain, in perpetuity, a capability to tax work by federal contractors on operation and maintenance of the second powerhouse. This taxing power was effectively lost. Town officials wanted the Corps of Engineers to provide optimum town lands. This the Corps of Engineers did not do. These three objectives fell victim to litigation initiated by the town.

On October 20, 1980, the Town of North Bonneville filed a petition in the United States Court of Claims alleging numerous breaches of contract by the U.S. Army Corps of Engineers. The petition sought damages in the amount of \$14,500,000, which amount was later increased to \$28,436,238.32. The United States, on November 19, 1982, filed a counterclaim in the amount of \$13,400,000, subsequently reduced to \$4,874,639.45. The case was transferred to the United States Claims Court on October 1, 1982.¹³ As observed by the Claims Court, "the complaint and counterclaim when initially filed were efforts to use the court process to harass and to influence negotiations."¹⁴ In this instance, however, the judicial process was carried to completion.¹⁵

The claims alleged by both the Town and the Corps were addressed during a nineteen-day trial held in Portland, Oregon, June 4 through 28, 1985.¹⁶ On February 20, 1987, the United States Claims Court issued an opinion and decision. The Town was awarded \$567,093.10 in damages, itemized as follows: \$191,100.74 for the Corps' failure to provide optimum town lands; \$335,603.94 for construction deficiencies; and \$40,388.42 for salary expenses incurred by the Town that the Corps refused to reimburse.¹⁷ The United States, as an offset to the Town's recovery, was awarded the sum of \$1,421,966.70 for business and occupation taxes found to have been improperly collected by the Town. The United States was also awarded \$365,181.32 for new town operation and maintenance costs paid by the Corps that the Court found to be properly chargeable to the Town.¹⁸ Case disposition, addressing the

Town of North Bonneville as Plaintiff and the Corps of Engineers as Defendant, was ordered as follows:¹⁹

On the basis of the foregoing opinion and the findings of fact, plaintiff is entitled to \$567,093.10 in damages on its claims. However, any judgment that plaintiff would be entitled to in that amount is more than set-off by defendant's entitlement to \$1,421,996.70 as part of its counterclaim. In addition, and apart therefrom, defendant is entitled to recover \$365,181.32 in damages on its counterclaim. The Clerk will enter judgment accordingly. No costs.

The most significant issues involved in this litigation, and results of appeals by both the Town and the Corps, are explained below.

COMMUNITY CENTER IN LIEU OF SCHOOL

The relocation contract recognized and provided that the Corps of Engineers would design and construct in the new town either a replacement school or a community center. As just compensation for Federal acquisition of the school, at the option of the Stevenson-Carson School District No. 303, the Corps offered to make payment based upon the determined value of the old school facility, or to provide a replacement school. If the school district elected not to maintain the school, the Corps expressly agreed to provide the town a substitute community center.²⁰ The relocation contract specified,²¹

The Community Center, provided the school is not relocated, shall be of sufficient size and quality to insure the maintenance of community cohesion and will include the availability of a public facilities and services to assure desirable community growth. . . . A ball field or tennis court will be provided in either a school or a Community Center. . . . Field lighting will not be provided.

The new town design contract, upon suggestion and insistence by the Town, was awarded by the Portland District, Corps of Engineers, to

the Architect-Engineer firm of Daniel, Mann, Johnson and Mendenhall/Hilton.²² Generally, plans were required to conform to the content of Design Memorandum No. 8, designated in the relocation contract as being the "preliminary master plan and general concept for design" of the new town.²³ Design Memorandum No. 8, prepared by RHB&A under contract awarded and administered by the Town, recommended a community center 5,146 square feet in size and costing approximately \$208,610.²⁴ DMJM/Hilton provided preliminary plans prepared under subcontract by the architectural firm of Kirk, Wallace, and McKinley, which plans offered four alternate concepts ranging in size from 4781 to 5169 square feet and in cost from \$229,797 to \$243,212.²⁵ Selection and completion of the final community center design was deferred pending decision on relocation of the existing school.²⁶

On November 10, 1977, the Stevenson-Carson School Board voted not to replace the elementary school.²⁷ Compensation in the amount of \$400,000 was paid to the school district by the Corps of Engineers.²⁸

On June 5, 1978, the Portland District provided a draft scope of work for the completion of the design of the community center to the town for review and approval. The offered draft, based upon the work done under the RHB&A planning contract and the DMJM/Hilton design contract, contemplated a community center 5,169 square feet in size and costing approximately \$385,000.²⁹ In response, on June 27, 1978, the Town notified the Portland District that the proposed scope of work was unsatisfactory. Instead of commenting on the plans provided by the Portland District, the Town announced that it would prepare and

submit to the Corps a scope of work for the design of the community center.³⁰

On January 23, 1979, Pollard Dickson reported to the Town Council that he was "writing the Scope of Work for the Community Center based on DM #8 and existing municipal standards."³¹ The scope of work prepared by Dickson, provided to the Portland District on May 24, 1979, proposed a community center 9,925 square feet in size, a center encompassing, inter alia, a 3,600 square foot multi-purpose gymnasium with a stage of 540 square foot minimum; an all purpose meeting room of a size to accommodate forty to fifty people; and a kitchen equipped to provide full course meals for gatherings of 240 to 300 persons.³² On June 5, the Town Council authorized award of a contract to McKinley Architects to prepare a design and cost estimate for the Community Center.³³ McKinley Architects, formerly Kirk, Wallace, and McKinley, is the same architectural firm that prepared the plans offered for consideration by the Corps of Engineers. Working for the Town, this firm of architects prepared plans for a Community Center 9,925 square feet in size, a center estimated to cost approximately \$1,148,641.00.³⁴

Despite repeated efforts, the Corps of Engineers could not reach agreement with the Town. Indeed, the Portland District became convinced that no community center designed or constructed by the Corps would ever be satisfactory to the Town. Consequently, on November 28, 1978, the District Engineer wrote to the North Pacific Division Engineer requesting authority to offer a lump sum payment to

the Town in lieu of actual design and construction of a community center. The basis for this proposal was outlined as excerpted next:³⁵

1. The clarifying language to section 83 of P.L. 93-251 states that "In the event the appropriate school authorities determine that the existing elementary school will not be relocated to the new town site, (it is desirable that the Corps) provide replacement for the community service facilities now available in the existing school." The new town cannot be considered "relocated" until the town has . . . a community center. . . .
2. The school board has been paid for the old school. . . .
3. Because of the many complications which could arise from a Corps attempt to design a community center meeting the requirements of the town . . . the Portland District proposes to negotiate a cash payment with and to the town for the Government's community center obligation. . . . ECI 73-402(c)(6) requires prior approval of the Chief of Engineers for such a procedure.
4. Although not yet accepted by the Town, an interpretation of the Government's dollar obligation concerning the community center was provided to the Corps by the Corps-employed town design A-E. The A-E arrived at a construction cost estimate for a community center of about \$230,000 to \$240,000 at the May 1976 price level. Adding an amount to cover the costs of negotiation, engineering and design, supervision and inspection, and price leveling to January 1979 gives an estimated total of \$370,000, which would be subject to negotiation with the town.
5. Although not mention above, a tennis court or ball field is a part of the Government obligation as agreed in the relocations contract. That facility is proposed to be handled with and in the same manner as the community center. On the assumption a tennis court would be selected, an estimated additional total amount of \$13,000 would be required, which also would be subject to negotiation.

On January 10, 1979, the North Pacific Division concurred in the District Engineers' proposal to offer the town a cash settlement.³⁶ Approval of the proposal was granted by the Office, Chief of Engineers.³⁷

By letter dated October 11, 1979, the Portland District Engineer formally offered the Town a cash settlement in the amount of \$385,000 in lieu of construction of the Community Center.³⁸ Moreover, the

District Engineer advised that the offered amount was based on January 1979 prices, and could be adjusted for inflationary increases.³⁹ The Town, in response by letter June 16, 1980, offered to reduce its contention of the Government obligation by 1,004 square feet and to "deposit \$66,264.00 to cover the cost of construction of the additional 1004 square feet."⁴⁰ However, the Town insisted that it was entitled to the community center designed by McKinley Architects and added, "This offer is not an acknowledgement of any form of a betterment."⁴¹ Negotiations preceeded and followed this correspondence. Nonetheless, no agreement was ever approached. On this issue the Corps of Engineers would not yield. The Town was told that "the Government agreed to assume the obligation of providing for the Town a community center with a maximum of 5,169 square feet" and that the "Government does not intend to deviate from this obligation."⁴² Equally adamant, the Town returned to insistence that the Corps of Engineers pay for construction of the community center designed for the Town by McKinley Architects.

At trial before the Claims Court, the Town claimed, as a breach of contract, failure of the Corps of Engineers to provide a community center. Specifically, the Town maintained that the Corps was obligated under terms of the Relocation Contract, the Memorandum of Agreement, Section 83 of Public Law 93-251, and clarifying language adopted by the Congress, to provide the community center designed by the Town. Correspondingly, the Town alleged damages in the amount of \$1,707,775.⁴³ The United States, in defense, asserted that Section 83 and the clarifying language authorized but did not require the design

and construction of a community center. Moreover, related to this issue, the United States argued that neither the Memorandum of Agreement nor the Contract for Relocation was sufficiently definitive to establish a contractually binding Federal obligation.⁴⁴

From the bench, on motion by the United States, the Court ruled "that the Town had not established on the record a contractual obligation that could be the basis for damages," and this claim was dismissed.⁴⁵ The consequence: The Town had refused construction of a Community Center 5,169 square feet in size, and no Community Center was built by the Corps of Engineers. The Town had refused a lump sum payment of \$385,000, and no payment in lieu of Community Center construction was made to the Town by the Federal Government. The possibility of this result was to be expected, as explained by the Court:⁴⁶

The community center issue is precisely the kind of dispute that should have been settled prior to trial. Both parties recognized the merit in a community center facility as part of the Town's relocation. The negotiating stance of the parties, however, including the reliance on extraneous political influences and resort to litigation as the final determinant, produced such extreme intransigence that reasonable compromise could not be reached. In the circumstances of this litigation, the rules of contract construction regarding indefinite agreements have no place. The cases cited and relied upon by plaintiff are based on facts that are not apposite to the Town's community center claim. As counsel were warned at trial, resort to litigation on a claim that in all reason should be settled exposes the client to the contingency of total loss if in the final reckoning there is a failure in the evidence to establish liability. That result confronts the Town on its community center claim.

THE BUSINESS AND OCCUPATION TAX

During the period 1975-1982, the business and occupation tax produced revenues to the Town that totaled \$2,011,212.33.⁴⁷ Of this amount, \$1,815,386.39 was collected from contractors of the United States who were engaged to construct the Second Powerhouse and to relocate the Town.⁴⁸ The amounts assessed Federal contractors were in fact paid, indirectly, by the Corps of Engineers.⁴⁹

The United States, in proceedings before the Claims Court, did not challenge the Town's collection of B&O taxes during the period prior to completion of the initial town. However, the United States contended that after the town moved to the new site in July 1978, the Town was obligated to relinquish its old boundary around the powerhouse site.⁵⁰ The question of constitutionality was not before the U.S. Claims Court.⁵¹ Rather, the sole issue before the Court was whether the Town was obligated, under Section 83 and its contractual agreements with the Corps, to withdraw its boundaries from around the powerhouse site.⁵² The Court concluded, "The effect of the Town's retention of its old boundary around the powerhouse site is that the United States, in addition to funding directly the Town's relocation expenditures and the work in the construction phase, pays for the share of relocation expense that Section 83 required to be borne by non-federal interests."⁵³ Accordingly, the Court found that the amount of B&O taxes collected from the United States contractors doing work outside the initial town boundaries after the new town facilities and utilities were occupied by the Town should be charged against the Town. Specifically, the Court found that by December 31, 1978, work

in the construction phase of the Town's relocation to the initial town boundary essentially had been completed.⁵⁴ Rendering judgment, the Court concluded, "The amount of taxes collected from Federal contractors who have been reimbursed by the Corps for the years 1979 through 1982 . . . is \$1,421,996.70."⁵⁵ The Court ruled that this amount was available to the United States for use as an offset against the \$567,093.10 in damages the Corps was found to owe the Town."⁵⁶

THE OPTIMUM TOWN

On June 23, 1976, the District Engineer informed the Town Council that the "Corps cannot participate in any way in the optimum town."⁵⁷ The District Engineer subsequently explained, "We are not saying that the optimum town cannot be built, but only that the Government cannot take part in the acquisition and development of the optimum town."⁵⁸

In the United States Claims Court, the Town alleged that the Corps was in breach of contract for failure to convey optimum town lands and requested damages in the amount of \$1,178,671.00.⁵⁹ In asserting the claim, the Town argued that the Corps was required not only to provide the optimum town lands, but also to fill and level the optimum town lands to a condition usable for town development.⁶⁰

The Claims Court decided that the Corps of Engineers was contractually obligated to provide optimum town lands. However, the Court held that the Corps was not obligated to develop optimum town lands as desired by the Town. As damages, the Court found that the Town was entitled to recovery in the amount of \$191,100.74.⁶¹

NORTH BONNEVILLE V. UNITED STATES

The decision of the United States Claims Court was appealed by both the Town and the United States to the United States Court of Appeals for the Federal Circuit. The Appeals Court noted that the Claims Court "awarded the town \$567,093.10 for (1) the Corps' failure to deliver certain specific relocation lands (\$191,100.74); (2) construction deficiencies (\$335,603.94); and (3) salary expenses of the Town that the Government was obligated to reimburse (\$40,388.42)." The Appeals Court also noted, "The United States was awarded (a) as an offset to the Town's recovery, the sum of \$1,421,966.70 for business and occupation taxes the Town had improperly collected and (b) operation and maintenance costs (\$365,181.32) the Government paid that were chargeable to North Bonneville." The Appeals Court decided that, except on one issue, the Claims Court was correct in its results. The exception was the Claims Court's holding that the Government was liable for failure to convey optimum town lands. On this issue the Appeals Court found that "North Bonneville suffered no damages." Accordingly, the Appeals Court ruled that "the sum of \$191,100.74 must be deducted from the award to the Town."⁶²

The Town filed a Writ of Certiorari to the United States Supreme Court in support of its taxing power. Essentially the Town contended that the Claims Court decision violated the 10th Amendment of the Constitution by implying an obligation on the part of the Town to relinquish jurisdiction over the old town subsequent to relocation.

On April 18, 1988, the Supreme Court denied Certiorari.⁶³

ENDNOTES

¹Contract for Relocation, between the Town of North Bonneville and the Portland District, U.S. Army Corps of Engineers, No. DACW 57-76-C-0039, 19 August 1975, Article 1. See dissertation, supra, 383.

²Contract for Relocation, Article 1. See dissertation, supra, 383.

³"Experience with RHBA's work under the Town's contract administration convinced the Corps that the Town should not be the contracting party for the A/E design work. The Corps sought support in Congress, and at a May 20, 1975, meeting in Washington, D.C., the Town was told by Representative McCormack and Congressional staff members that it could not direct the design contract or name the A/E design contractor. Accordingly, a main feature in both the May 23, 1975, Memorandum of Agreement, and the August 19, 1975, Relocation Contract, was a definition of the relationships of the parties which specifically provided that the Portland District Engineer would be the contracting officer and administer the design contract. Notwithstanding this change in contract administration, the Town was able to continue to dominate the design phase, and its position during the construction phase was not seriously impaired." Town of North Bonneville v. U.S., 11 Cl. Ct. 694, 704-05 (1987). "Pollard Dickson dominated the Town's relocation efforts and its dealings with the Corps." Town of North Bonneville v. U.S., 11 Cl. Ct. at 697.

⁴Contract for Relocation, Article 1, Section 6.

⁵Contract for Relocation, Article 1, Section 6.

⁶Contract for Relocation, Article 1, Section 6.

⁷See Town of North Bonneville v. U.S., 11 Cl. Ct. 694, 705 (1987).

⁸Contract for Relocation, Recitals. Originally, the town's design consultation team estimated the total cost of the relocation project to be \$10,854,400. U.S. Army Corps of Engineers, Bonneville Second Powerhouse Design Memorandum No. 8, Relocation of the City of North Bonneville, Washington, 2 Vols. (Portland, OR: Portland District, 1975) 1:14-1 to 14-4.

⁹Robert P. Flanagan, Chief, Engineering Division, Portland District, memorandum to Office of Counsel, Portland District, Subject: North Bonneville vs. U.S., Court of Claims No. 564-80C; Transmittal of Report on Relocation Costs, with inclosed report captioned "Cost Escalation in the Relocation of North Bonneville," 8 April 1983. See Town of North Bonneville v. U.S., 11 Cl. Ct. 694, 698 (1987).

¹⁰Contract for Relocation, Article 6, Section 3.

¹¹Town of North Bonneville v. U.S., 11 Cl. Ct. 694, 698 (1987).

¹²Town of North Bonneville v. U.S., 11 Cl. Ct. at 698.

¹³Town of North Bonneville v. U.S., 11 Cl. Ct. at 695-96.

¹⁴Town of North Bonneville v. U.S., 11 Cl. Ct. at 725.

¹⁵"Prior to trial, the City rejected a generous offer of settlement of \$1 million plus the land they requested at no cost." Gary R. Lord, Colonel, District Engineer, Portland, letter to Senator Daniel J. Evans, 10 October 1985.

¹⁶Town of North Bonneville v. U.S., 11 Cl. Ct. at 696.

¹⁷Town of North Bonneville v. U.S., 11 Cl. Ct. at 736.

¹⁸Town of North Bonneville v. U.S., 11 Cl. Ct. at 736.

¹⁹Town of North Bonneville v. U.S., 11 Cl. Ct. at 802.

²⁰Contract for Relocation, Exhibit C, Paragraph 14.

²¹Contract for Relocation, Exhibit C, Paragraph 14.

²²William E. (Ed) Daugherty, personal interview, 3 May 1988. Daniel, Mann, Johnson and Mendenhall/Hilton, Portland, Oregon, was one of the firms constituting the design consultation team used in performance under the Contract for Professional Services awarded and administered by the Town. See dissertation, supra, 280.

²³Contract for Relocation, Recitals.

²⁴U.S. Army Corps of Engineers, Bonneville Second Powerhouse Design Memorandum No. 8, Relocation of the City of North Bonneville, Washington, 2 Vols. (Portland, OR: Portland District, 1975) 1: 5-32, 14-10.

²⁵Daniel, Mann, Johnson and Mendenhall/Hilton, North Bonneville New Town Design, Municipal Buildings Design Analysis, Rational and Standards and Criteria for Design Development (Seattle: DMJM/Hilton, 1975) 35. See Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Mayor Ernest J. Skala, Town of North Bonneville, 24 November 1975.

²⁶See Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Daniel, Mann, Johnson and Mendenhall/Hilton, 4 December 1975. See also Town of North Bonneville v. U.S., 11 Cl. Ct. at 710.

²⁷"Board decides against school", Vancouver Columbian, 11 November 1977. "The school district has not and apparently does not intend to put a school in the new town." Town of North Bonneville v. U.S., 11 Cl. Ct. at 796.

²⁸The appraised value of the school was \$282,000. See D. H. Nellen, Chief, Real Estate Division, Portland District, letter to Superintendent Walter C. Seiler, Stevenson--Carson School District 303, 1 September 1976. Payment of \$400,000 was made in accordance with a settlement agreement between Stevenson-Carson School District No. 303 and the Corps of Engineers. David P. Johnson, telephone interview, 10 May 1990.

²⁹L. J. Stein, Chief, Engineering Division, Portland District, letter to Mayor Ernest J. Skala, Town of North Bonneville, inclosed draft scope of work for design and preparation of Plans and Specifications for the Community Center and tennis court, 5 June 1978.

³⁰Ernest J. Skala, Mayor, Town of North Bonneville, letter to Colonel Harvey L. Arnold, District Engineer, Portland, 27 June 1978.

³¹Minutes, North Bonneville Town Council, 23 January 1979.

³²Ernest J. Skala, Mayor, Town of North Bonneville, letter to Colonel Terence J. Connell, District Engineer, Portland, inclosed scope of work, Community Center, 24 May 1979.

³³Minutes, North Bonneville Town Council, 5 June 1979.

³⁴Estimate was based on price levels of August 1979, plus a projected one year inflation of construction costs. Town of North Bonneville v. U.S., 11 Cl. Ct. at 722.

³⁵Harvey L. Arnold, Jr., Colonel, District Engineer, Portland, letter to Division Engineer, North Pacific, Subject: Bonneville Second Powerhouse Project--North Bonneville Community Center, 28 November 1978.

³⁶Richard M. Wells, BG, Division Engineer, North Pacific, 1st Indorsement to 28 November 1978 letter by Colonel Harvey L. Arnold, Jr., District Engineer, Portland, 10 January 1979.

³⁷No approval in writing by the Office of a Chief of Engineers is found of record. Approval is assumed on the following basis. First, approval was required by Corps regulation, as acknowledged in the request by Colonel Arnold. Arnold, letter to Division Engineer, 28 November 1978. See dissertation, supra, 398. Second, the indorsement by Brigadier General Wells specifically stated that "it is desirable that approval of this request be provided by 5 February 1979. If formal approval is not received by that date, it will be assumed that there are no objections and the District will proceed to present the

proposal by letter to the Town." Wells, 1st Indorsement to 28 November 1978 letter by Arnold, 10 January 1979.

³⁸Terence J. Connell, Colonel, District Engineer, Portland, letter to Mayor Ernest J. Skala, Town of North Bonneville, 11 October 1979. This offer was earlier discussed with officials of the Town. See, e.g., Minutes, North Bonneville Town Council, 8 May 1979.

³⁹Terence J. Connell, Colonel, District Engineer, Portland, letter to Mayor Ernest J. Skala, Town of North Bonneville, 23 November 1979.

⁴⁰Ernest J. Skala, Mayor, Town of North Bonneville, letter to Colonel Terence J. Connell, District Engineer, Portland, Subject: Acceptance of Municipal Facilities and Utilities--Contract DACW57-76-C-0039, 16 June 1980.

⁴¹Skala, letter to Connell, 16 June 1980.

⁴²Robert P. Flanagan, Chief, Engineering Division, Portland District, letter to Councilman Don Vanderpool, Town of North Bonneville, 29 May 1980.

⁴³This claim was based on the cost estimate prepared by McKinley Architects, plus inflation. See dissertation, supra, 397. The cost of design and construction of the community center desired by the Town, as of August 1984 was alleged to be \$1,707,775.00. See Town of North Bonneville v. U.S., 11 Cl. Ct. at 721-2.

⁴⁴See Town of North Bonneville v. U.S., 11 Cl. Ct. at 711.

⁴⁵See Town of North Bonneville v. U.S., 11 Cl. Ct. at 711.

⁴⁶See Town of North Bonneville v. U.S., 11 Cl. Ct. at 711-12.

⁴⁷See Town of North Bonneville v. U.S., 11 Cl. Ct. at 801.

⁴⁸See Town of North Bonneville v. U.S., 11 Cl. Ct. at 801.

⁴⁹See Town of North Bonneville v. U.S., 11 Cl. Ct. at 734.

⁵⁰Town of North Bonneville v. U.S., 11 Cl. Ct. at 734.

⁵¹Town of North Bonneville v. U.S., 11 Cl. Ct. at 734.

⁵²Town of North Bonneville v. U.S., 11 Cl. Ct. at 734.

⁵³Town of North Bonneville v. U.S., 11 Cl. Ct. at 735.

⁵⁴Town of North Bonneville v. U.S., 11 Cl. Ct. at 735.

⁵⁵Town of North Bonneville v. U.S., 11 Cl. Ct. at 735.

⁵⁶Town of North Bonneville v. U.S., 11 Cl. Ct. at 735.

⁵⁷Minutes, North Bonneville Town Council, 23 June 1976. See Town of North Bonneville v. U.S., 11 Cl. Ct. at 784.

⁵⁸Harvey L. Arnold, Jr., Colonel, District Engineer, Portland, letter to Mayor Ernest J. Skala, Town of North Bonneville, 28 June 1976.

⁵⁹Town of North Bonneville v. U.S., 11 Cl. Ct. at 725-26.

⁶⁰Town of North Bonneville v. U.S., 11 Cl. Ct. at 725-26.

⁶¹Town of North Bonneville v. U.S., 11 Cl. Ct. at 725-26.

⁶²Town of North Bonneville v. U.S., United States Court of Appeals for the Federal Circuit, No. 87-1261-1300, 28 October 1987. This is an unpublished opinion. 833 F. 2nd 1024 (CA FC 1987).

⁶³Town of North Bonneville v. U.S., 108 S. Ct. 1470 (1988).

CHAPTER XIII

THE RELOCATED CITY OF NORTH BONNEVILLE

Within the relocated city, as observed by the U.S. Claims Court, "the new facilities are substantially superior to the facilities that existed in the old town."¹ The total value of all facilities and utilities in the original town, immediately prior to relocation, was about \$1,015,780. In contrast, the total value of facilities and utilities in the new city, immediately following relocation, was approximately \$10,574,930.² (For an itemized value comparison, see Table V.)

The old town owned only three buildings. These were a maintenance shed and tool house, a pump house, and a combined City Hall/Fire Station. The maintenance shed and tool house was a wood frame structure, 800 square foot, with concrete block foundation walls, gravel floor, and sheet metal sides and roof. It was "in poor physical condition . . . inadequately lighted and poorly maintained."³ The replacement for this building is a 3,600 square foot, wood frame, concrete floor, cedar shingled and sided laboratory and maintenance building.⁴ The pump house was a wood frame building with concrete foundation and concrete slab floor, 144 square foot, with sheet metal sides and roof. It was in "poor but serviceable condition."⁵ The pump house was replaced with a facility 350 square foot, constructed of timber frame, with a concrete slab floor, cedar siding and cedar

TABLE V
VALUATION OF FACILITIES
OLD TOWN V. NEW CITY

<u>Facility</u>	<u>Old Town</u>	<u>New City</u>
Streets	\$ 190,400(1)	\$ 1,514,220(5)
Bridges	0	1,140,230(5)
Curb and Gutter	(4)	208,410(5)
Sidewalks	(4)	339,780(5)
Lighting	30,340(1)	373,690(5)
Storm Sewer	178,800(1)	1,215,380(5)
Water System	334,800(1)	1,413,990(5)
Sanitary Sewer System	0	2,434,700(5)
Maintenance Facility	16,000(1)	(6)
Irrigation System	0	25,000(5)
Open Space	0	375,000(2)
Noise Attenuation	0	500,000(5)
Park (Land and Facilities and CBD)	2,000(2)	223,700(7)
Town Hall	0(3)	313,080(5)
Fire Station	100,000(1)	333,750(5)
R.O.W.	69,000(2)	164,000(2)
Escalation (5%) (2 yr.)	94,440	0
Total	\$1,015,780	\$10,574,930

- (1) - Prices obtained from Design Memorandum No. 8.
- (2) - Based on raw land value of \$.07 per square foot.
- (3) - Included with Fire Station.
- (4) - Included in old town streets.
- (5) - Actual construction contract costs.
- (6) - Included in New Town Sanitary Sewer System.
- (7) - Development costs plus land value.

Source: R. W. Beck and Associates, Expert Witness Report, Town of North Bonnevillle vs. U.S. (Seattle: R. W. Beck and Associates, 1984) V-2.

shingles.⁶ The City Hall/Fire Station was of concrete block construction, 3,360 square feet in size. It looked like "a store building rather than a City Hall," had an inadequate heating system, failed to meet electrical code, and was definitely substandard in both size and plan layout.⁷ This building was replaced with two structures. The new City Hall is 4,261 square feet in size, of wood exterior with a stone veneer entrance. It is modern in design, in full compliance with all codes, and possessive of numerous amenities.⁸ The new fire station is 4,259 square feet in size and fully structured for two fire engines. It is complete with living quarters.⁹

The original town had streets and appurtenances, including rights-of-way, roadways, curbs, pedestrian ways, parking, and lighting. The rights-of-way in the old town consisted of approximately 23 acres with an average width of 47.3 feet. The substitute rights-of-way total 48 acres with an average width of 60 feet. The old town roadways consisted of 68,447 square yards of lightly oiled or gravel roads of varying widths. The substitute roadways encompass 107,664 square yards of 3" asphalt concrete varying in width from 28 to 32 feet. The curbs in the old town were constructed of standard concrete and measured 5,678 feet of which 4,960 linear feet were along the then existing State Highway 14 where the business district was located. The substitute curbs consist of 47,050 linear feet of concrete curbs and gutters, exclusive of the highway. The pedestrian ways in the old town consisted of 4,198 linear feet of 4" concrete sidewalks with a width of 5.5 feet. The substitute pedestrian ways consist of 37,420 linear feet of 3" asphalt

concrete, 8 feet in width, which serve as a pedestrian and bicycle pathway. In addition, the new town has 46,300 square feet of concrete walkways in the new central business district mall. The original town had 210 on-street parking spaces along Highway 14. The new city has 210 off-street parking spaces in municipal and central business district mall parking lots. The old town had 87 mercury vapor street lights. These were replaced by 238 mercury vapor street lights, plus 115 fluorescent pathway lights.¹⁰

The old town had a one-half acre park that included two slides, one picnic table and a metal swing set. The substitute facility is a five-acre park which is landscaped and has a subsurface irrigation system. Included within the new park are a 4,500 square foot sand play area and quiet sitting areas. The single picnic table was replaced by ten picnic tables. The original metal swing set and slides were replaced by a native boulder and fallen-tree climber, a timber-framed spiral slide and swing set, and climbing devices and playhorses. The new park has a 50x84 foot basketball court in oval asphalt and a paved and curbed multi-use area suitable for use as an iceskating rink. The substitute park also has a 480 square foot, timber-framed, cedar shingled picnic shelter, and a 480 square foot timber-framed, cedar sided and shingled rest room facility.¹¹

The storm sewer system located in the old town consisted of 10,320 linear feet of 6"-24" corrugated steel pipe and included 51 basins and 32 manholes. The substitute storm sewer system extends 20,152 linear feet. It is constructed of 4"-36" concrete pipe and includes 130 basins and 69 manholes. The old town system was

undersized and did not comply with federal and state requirements. The substitute storm sewer system is constructed in accordance with federal and state standards and incorporates a five-year storm design.¹²

The old town had a domestic water supply and distribution system. Water was obtained from a deep well with a pump that produced 500 g.p.m. Reservoir storage consisted of two steel tanks of 90,000 gallons capacity each. The water was not chlorinated. The water distribution system consisted of 26,000 linear feet of 1 1/2" to 10" diameter pipe constructed of asbestos cement, PVC (plastic) and iron. The system contained 26 fire hydrants. It failed to meet standards for fire flows. The new water supply system has a deep well pump producing 800 g.p.m., with a reservoir of one 500,000 gallon steel tank and a dual gas chlorination system. The substitute water distribution system consists of 40,536 linear feet of 2" to 4" diameter pipe constructed of asbestos cement, PVC (plastic) and ductile iron pipe material. It provides 48 fire hydrants. The new system meets all federal and state standards and all requirements for fire flows.¹³

The old town had no sanitary sewage collection system and treatment plant. Waste disposal was accomplished by individual septic tanks and cesspools.¹⁴ The new city has a collection system sized for a citizenry of 1000, expandable to accommodate a town of 1500 population. It has a sewage treatment plant of 125,000 gallons per day capacity.¹⁵

The old town had no open space. The new city has 125 acres of open space, landscaped, including noise attenuation berms.¹⁶

POPULATION

The population of North Bonneville has not grown as the town's design consultant team alleged that it would. Indeed, although more than ten years have elapsed since occupancy, the new city has yet to attain a population equal to that existent in the old town during any of the years preceding commencement of the relocation.¹⁷ The last population high in the old town, recorded in 1974, was 500 persons.¹⁸ During the period of new town design and construction the number of residents declined steadily to 477 in 1975, 387 in 1976, 327 in 1977, and to the all time low of 312 in 1978. Once the new town was opened the numbers quickly increased to 412 in 1979 and to the post-relocation high of 432 in 1980. Since then the population has stagnated. Residents numbered 424 in 1981, 418 in 1982, 427 in 1983, 415 in 1984, 414 in 1985, 423 in 1986, and 419 in 1987.¹⁹ (For a comparison of populations projected with numbers of residents actually achieved, see Table VI.)

In 1971, before the relocation process began, it was the opinion of town officials that the population would be 700 to 750 by 1981.²⁰ In September of 1988, without reference to any specific target date, the mayor of North Bonneville, Henry A. La Ham, opined that "with any luck I think we can reach 800."²¹

TABLE VI
NORTH BONNEVILLE POPULATION
PROJECTION-EXPERIENCE COMPARISON

<u>Year</u>	<u>Projected Population</u>	<u>Actual Population</u>
1975	550 to 600	477
1976	600 to 650	387
1977	650 to 750	327
1978	750 to 850	312
1979	900 to 1000	412
1980	800 to 900	432
1981	700 to 900	424
1982	700 to 900	418
1983	800 to 1000	427
1984	800 to 1000	415
1985	800 to 1000	414
1986	1000 to 1500	423
1987	1000 to 1500	419

Sources: Royston, Hanamoto, Beck and Abey, Comprehensive Plan, North Bonneville Relocation and Optimum New Town Design (San Francisco: RHB&A, 1975) 9. Washington State Office of Financial Management, Forecasting Division, Olympia, Washington.

ECONOMY

The geographical location of North Bonneville, subsequent to relocation as before, is not conducive to growth and development. The new city like the old town "has the disadvantage of being separated from important residential, commercial and industrial centers."²² It is still outside the Portland-Vancouver economic base.²³ It is still in Skamania County, "the poorest county in the State of Washington."²⁴ The dominant factor in the economic base of Skamania County is still the logging and wood products industry.²⁵ Within the county, manufacturing associated with this resource now occurs exclusively in Stevenson and Carson.²⁶

The new city, like the old town, is accessed only by State Highway 14. It has no train service and no river access.²⁷ It is no nearer to any airport than was the old town.²⁸ Unlike the old town, the new city enjoys no bus service.²⁹ The old town was located directly on State Highway 14 and benefited substantially from the available through traffic.³⁰ The new city is constructed off the highway. It is more readily bypassed and, consequently, more economically isolated.³¹

RESIDENTS

The residents of the new North Bonneville, in the majority, are not the persons who lived in the old town. Mayor Ernest Skala, in August of 1986, observed that "perhaps a third" were relocatees from the original town.³² It is not that the people from the old town have moved out, but, rather, that most of them never moved into the new

city. As of October, 1980, according to a report by R. W. Beck and Associates, "only 61 families, or approximately 158 of the original townspeople, actually relocated in the new town."³³

The mass departure of original residents with replacement by a largely new citizenry was, or should have been, expected by town officials. It was explained to town planners, back in 1975, that most of the persons living in the original town could not afford to move into the new city. Concurrently, it was forecasted that other persons of sufficient affluence would choose to move into the new town.

Witness the following excerpts from an economic analysis report by Keyser Marston Associates:³⁴

The major residential impacts relate the cost of a new housing unit and the ability to afford it. . . . The characteristics central to this discussion are. . . .

Most of the housing units in North Bonneville are old and in poor condition. The household survey indicated that only 6% could be considered sound, 24% were deteriorating and nearly 56% were dilapidated (2% were abandoned, 12% were trailers).
. . . .

The fair market value of the existing units as indicated by the prices paid by the Corps for houses already purchased in North Bonneville is just under \$14,000 on the average.

The median rent for rental units in North Bonneville is currently \$50--\$55 per month without utilities, and about \$110 per month with utilities.

About 60% of the households own their own homes and 40% of the households are renters.

The median income of North Bonneville households is \$7,075 per year. Using the typical relationship of house value afforded to annual income, the average resident could afford about a \$17,000 home.

The average rent that could be afforded by North Bonneville residents based on median income is about \$140 per month. It should be noted, however, that renters tend to represent the lower income portions of the population, as reflected in the median rent levels. . . .

The key point is that, while North Bonneville residents may be living in housing which is worth less than what they might

afford, the average household cannot afford a home costing more than \$17,000. Current construction costs for the North Bonneville area (estimated by the architectural firm) dictate that the average two bedroom home cannot be built for less than \$28,000 excluding land cost and fees, or over \$30,000 total cost. A minimal size factory built unit can reduce the cost to the low \$20,000's. Therefore the average North Bonneville resident could not ordinarily afford to purchase a new home.

The assistance program designed to close the gap which typically exists between the value of an old home and the cost of a new one is the Uniform Relocation Program. This program permits payments to a maximum of \$15,000 per homeowner to enable the purchase of a comparable replacement dwelling which is safe, decent and sanitary. Renters are eligible for one of two types of payment. They may either receive the amount of money necessary to lease or rent a housing unit for up to four years; or they may receive the amount necessary to make a down payment on the purchase of a dwelling. Rent reimbursement payments may not exceed \$4,000. If the payment is to be used as a down payment on a housing unit, the buyer receives \$2,000, and equal matching money up to \$2,000 again for every dollar the purchaser puts forth himself. . . .

In order to meet the average cost of a \$30,000--\$35,000 single family house, families must have an income of \$7,000 in order to relocate. As noted previously, the median income of existing North Bonneville households is about \$7,075 per year and thus based on annual income, roughly half can afford a new single family home with the maximum relocation assistance.

* * *

The relocated North Bonneville will represent the best supply of new housing in Skamania County in an attractive new town. The lots will be virtually the only available lots in the county on a sewer system. Thus it can be expected that residents of other communities in Skamania County will want to move to the new town. . . .

The major limitation will be the ability to afford a new dwelling unit at today's construction costs (non-residents will not be eligible for assistance payments). Using 1970 Census data on incomes, with adjustment to the present time, it is estimated that approximately 600 Skamania County families or individuals could afford a new residence, of which the new North Bonneville might capture a share of say, 30 to 40 families, or perhaps 100 to 150 new residents.

Another group which could be potentially attracted to the new town because of the supply of good housing and modern community facilities is retired persons. As noted in the economic base analysis, semi-retired and retired couples who move to Skamania County with pensioned incomes are a potential source of income to the economy. The new North

Bonneville should represent the most attractive community in the county for such people.

RESIDENCES

The City of North Bonneville, as of April 1, 1987, has a total of 174 housing units, consisting of 118 single unit structures, 18 apartments in buildings of two or more units, and 38 mobile home trailers.³⁵ The City has 200 single family residential lots, including a 28 lot mobile home subdivision; 126 are occupied and 74 are vacant. The average lot size is 1/3 acre. The City also has thirteen multi-family lots, three occupied and ten vacant.³⁶

The average value of a house in new North Bonneville is "approximately \$50,000--\$55,000 with a few homes in the \$70,000--\$80,000 range."³⁷ This is nearly four times the value of the typical home in the old town.³⁸ To the same effect, "Rental property in the multi-family dwellings rents from \$175 to \$225 per month, three to four times the rents paid in the old North Bonneville."³⁹

BUSINESSES

The new City of North Bonneville has yet to develop a substantial business community. As of September, 1988, the city had only two retail outlets: a small grocery store, called Jermann's Public Market and Deli; and an art shop, designated K & K Ceramics. Each of these establishments was located in a prefabricated metal building owned by the City, purchased from the Corps of Engineers. Both were new businesses that did not exist in or relocate from the old town.⁴⁰

Notably, not one of the thirty commercial retail and service establishments existent in North Bonneville before the relocation survives. All were dissolved or destroyed before, during or after the physical relocation of the town. By the year 1988 every one of the original thirty was gone.⁴¹ (See Table VII.)

The destruction of the original business community was or should have been anticipated by town officials. Town planners knew that the market for the original businesses consisted mostly of persons living in North Bonneville, the Brown Tract, and the Fort Rains Addition and that total demand for sales and services was low, much lower than would normally be required to maintain operations in most other communities.⁴² Indeed, it was evident that old town businesses were able to stay in operation due to the relatively low cost of living and conducting business in the town.⁴³ Commercial structures were old and inexpensive.⁴⁴ Most were owned outright.⁴⁵ Town planners were informed by Keyser Marston Associates that, without some new source of revenue, the businesses in the old town could not afford to relocate. Specifically, town planners were told "that the cost of new construction will be considerably greater than prices which will be paid by the Corps for the old structures and that present sales volumes in existing businesses are inadequate to cover the costs of new construction."⁴⁶

Twenty-four of the thirty original retail and service businesses chose to sell to the Federal Government with no intent to relocate.⁴⁷ The owners of those businesses either did not want to or could not afford to move with the town. In the words of Mayor Robert Holcomb,

TABLE VII
STATUS OF ORIGINAL NORTH BONNEVILLE BUSINESSES

Business	Operating 1971	Operating 1975	Operating 1984	Operating 1988
Tavern	3	2	-	-
Restaurant	2	1	-	-
Clothing Store	1	-	-	-
Grocery Store	2	2	1	-
Variety Store	1	1	-	-
Thirft Store	1	1	-	-
Hardware Store	1	1	-	-
Art Store	1	-	-	-
Gas Station	3	1	-	-
Bait Shop	1	1	-	-
Antique Store	1	-	-	-
Used Furniture	1	-	-	-
Beauty Parlor	1	1	1	-
Barber Shop	1	1	-	-
Shoe Repair	1	1	-	-
Bank	1	1	-	-
Theater	1	-	-	-
Motel	2	-	-	-
Real Estate Office	1	1	-	-
Food Storage	1	-	-	-
Nursing Home	1	-	-	-
Auto Rebuilding	1	-	-	-
Machine Shop	1	-	-	-
Total	30	14	2	0

Sources: R. W. Beck and Associates, Expert Witness Report, Town of North Bonneville vs. U.S. (Seattle: R. W. Beck and Associates, 1974) I-30. Bud Gallanger, personal interview, 26 August 1986. Henry A. La Ham, personal interview, 9 September 1988.

these businesses chose the alternative of "cashing in, and moving elsewhere."⁴⁸

Six businesses, a grocery, cafe, liquor store, art shop, bait and tackle shop, and a beauty parlor, indicated intention to relocate to the new town.⁴⁹ Each of these businesses was acquired by the Federal Government before the new town was completed and, consequently, before they had a commercial lot onto which to relocate. To keep these enterprises operating in the town the Corps of Engineers provided interim commercial facilities for their use, complete with necessary fixtures. The interim facilities were made available on a rent-free basis; the owners were required to pay for only their stock and utilities.⁵⁰ As Ernest Swanson recalls, interim facilities were provided with the understanding that "when the lot was available in the new town to build on, then the individual had a reasonable time in which to construct a new facility."⁵¹

These few businesses operated in interim, rent-free facilities for varying periods of time between November 1975 and August 1978.⁵² After commercial lots were available, all but one of these businesses elected not to build, or found that they could not afford to build.⁵³ For a time, the Corps allowed these businesses to continue operating in the Corps-owned facilities but with the provision that "they would start paying rent."⁵⁴ A flexible rental rate was established, equal to six percent of gross income.⁵⁵

In 1980, the interim commercial building owned by the Corps of Engineers was sold to the City of North Bonneville.⁵⁶ Thereafter, the businesses were required to pay the rent charged by the City, which

rent was considerably higher than the rent charged by the Corps.⁵⁷ One by one, the businesses found that they could not survive. The last of the original North Bonneville businesses, a grocery store, closed in May of 1987.⁵⁸

One business facility, a beauty shop, was actually built.⁵⁹ The new beauty shop, relocated into the only commercial structure yet constructed in the new city, was unsuccessful and closed.⁶⁰

Also as of September, 1988, the City had two non-retail businesses. One is Solder Craft, a small manufacturer of electronic circuit boards located within the incorporated limits of the city in a building owned by the Port of Skamania County. This business neither existed in nor relocated from the old town.⁶¹ The other, and the only North Bonneville business enterprise of any kind still existent from before the relocation process began, is Peterson Hauling. Technically this firm has moved outside the corporate limits and is no longer a North Bonneville business. However, it is counted because it still maintains storage facilities within the municipal boundaries of North Bonneville, in an interim industrial building owned by the Corps of Engineers.⁶²

Town officials were informed, during the relocation planning process, that industrial development in new North Bonneville was uncertain. Specifically, the town was told by Dick Brainard, project manager for RHB&A, "Industry won't come to North Bonneville unless there is a damn good reason. And they, the economic consultants, can't find the damn good reason. The only reason for North Bonneville's existence is the dam."⁶³

CORPORATE CONDITION

The new North Bonneville has considerably more assets than did the old town. It also has one very substantial liability. On the plus side, "The balance in the City's bank account (per books) at September 30, 1988, was \$254,238.47." Other assets include a prefabricated retail commercial building, valued at \$222,250; a cable television system, valued at \$34,740; approximately nineteen vacant commercial lots, valued at about \$8,500 each; two vacant residential lots, valued at \$6,500 each; and two lots on which the community church is built, valued at \$17,000. The city also owns substantial personal property including a police car, two fire engines, lawn equipment, furniture and fixtures, supplies and library books. All properties are owned outright. "The city has no outstanding bonds on debt financing." On the negative side, the City of North Bonneville is indebted to the United States. It is required "to pay the judgment won by the Federal Government in February 1987. The approximate amount of the net judgment was 1.22 million dollars plus interest at 6.01 percent."⁶⁴

SCHOOL

The new North Bonneville has no school and no school building. Students living in the relocated city, kindergarden through high school, are bussed or otherwise transported to educational facilities located in the City of Stevenson.⁶⁵

COMMUNITY

The character of the new city is apparently not that of the old town. Indeed, it is concluded by R. W. Beck and Associates that "the character of the Town in terms of value and its population has changed dramatically."⁶⁶ This conclusion is supported by statements of town officials, businesspersons and residents of the original community.

Pollard Dickson, who served as the Town Planning Director throughout the relocation process was asked, "Is this the same town that existed before?" The response: "Certainly not."⁶⁷

Mayor Ernest J. Skala was asked, "Is it the same town it was before. By that I mean--is it the same kind of people, or has there been a basic change?" His response:⁶⁸

There's been quite a basic change. In the old town, people were more, you might say neighborly. You know, they had their taverns where they met. Had a few beers and things of that sort. But that has kind of went out the window anymore.

The older people are getting old, and the young people coming in--well, maybe later on when they kind of get more acclimated things will be better.

The questioning continued: "But you feel it's basically a different town?" Skala added, "It is, well it's totally different." A question was asked in clarification: "I don't just mean physical layout, the character of the people?" The Mayor confirmed, "The character of the people, yes, of course. It isn't the same as it was."⁶⁹

Bud Gallanger, owner of a grocery store in the old town, and the last of the original retailers to go out of business, was asked, "Is this the same town that it was before?" His answer:⁷⁰

No! No! They've got a group that's moved in here now. A younger group. They are--like I am better than thou attitude. It isn't like the old town. We were a group in the old town. Everybody pulled together. Now it's everybody for themselves and the devil take the hindmost.

Jerry Miller, a woman who owned a restaurant in the old town says, "I'd still rather have the old town, than the new town." Frank Miller, her son and restaurant manager agrees: "I'd rather be in the old town too." Both were asked, "Is the new town the same town that the old town was?" Frank Miller replied, "No. Because its not the same people." Both were further asked, "Are they the same kind of people?" Jerry Miller answered, "No. Its just not the same." Frank Miller responded, "No." The Millers offered an explanation of the difference between the old town and the new, as recounted next:⁷¹

Frank: I'll give you a classic example. When Mom and Dad started out in the restaurant business they had a little restaurant with ten bar stools. And there was three booths in that restaurant. Then they added on and they put a little dining room that had six tables in it. This was their dining room.

They bought the old variety store, which was then the present Jerry's Cafe, Best by a Dam Site.

We had to move this equipment from across the street. The beer distributor brings up his electric hand truck. She must have had 50-60 people helping her transport.

Jerry: Everybody in town helped! Everybody.

Frank: The town helped move from this building to the other building.

Jerry: They scrubbed the floors, and put everything in place. I didn't have to do nothing.

Frank: The floors. Everybody was helping everybody else. And then when the government come in and started giving the people money, the helping hand was gone.

People were close friends, ya know.

Jerry: They're still close.

Frank: They're close, but I mean. It's not the closeness that it was before. Now I'll bet every house in the town of North Bonneville you lock it every night.

Jerry: I'm just as close to everybody. I can't say I'm not.

Frank: Yeah! Yeah! It's just--

Jerry: I could go to anyone of them and get help. I know I could.

Frank: Everybody stuck up for everybody. And then, when this thing happened. . . .

K. W. and Elsie Peterson were interviewed. K. W. Peterson served as a member of the town council throughout the relocation process. He is the owner of Peterson Hauling, the only business existent within the original town with continuing contacts to the new city. By oversight, the interviewer, Cecil Eugene Reinke, almost omitted asking the Petersons if the new city was the same as the original town. Indeed, the interview was closing when Elsie Peterson volunteered, "One reason that we wanted a town was because the people in the old North Bonneville got along real well together. It was a pleasant town, and we wanted to keep it that way. Then when we moved over here, and things are different. People don't get along." Elsie Peterson was then asked, "It's not the same town, in terms of culture?" Her answer: "That's right."⁷²

ENDNOTES

¹Town of North Bonneville v. U.S., 11 Cl. Ct. 694, 697 (1987).

²R. W. Beck and Associates, Expert Witness Report, Town of North Bonneville v. U.S., (Seattle: R. W. Beck and Associates, 1984) V-2. "The total assessed valuation of the Town, including commercial property, was \$1,634,312, adjusted to full market value, in 1970. This compares to \$10,735,640 in 1983." Witness Report, I-22.

³U.S. Army Corps of Engineers, Bonneville Second Powerhouse Design Memorandum No. 8, Relocation of the City of North Bonneville, Washington, 2 Vols. (Portland, OR: Portland District, 1975) 1: 2-5. See dissertation, supra, 41-42.

⁴U.S. Army Corps of Engineers, Portland District, descriptive paper, [c. 1983]. See Town of North Bonneville v. U.S., 11 Cl. Ct. at 800.

⁵U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-5. See dissertation, supra, 42.

⁶U.S. Army Corps of Engineers, Portland District, descriptive paper, [c. 1983]. See Town of North Bonneville v. U.S., 11 Cl. Ct. at 800.

⁷U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-21. See dissertation, supra, 42.

⁸A City Hall 4,261 sq. ft. in size with stone veneer was constructed at the request of the Town. See Memorandum for Record by Richard H. Gates, Major, Acting District Engineer, Portland, Subject: Town Council Meeting, North Bonneville, 13 January 1976, 14 January 1976. It was determined that a building of 3500 sq. ft. with wood exterior would constitute an adequate substitute facility. See Memorandum for Record by Richard H. Gates, Major, Acting District Engineer, Portland, Subject: Town Council Meeting and Extra Workshop, North Bonneville, 6 January 1976. Accordingly, the town paid \$27,638 for 761 sq. ft. oversizing and \$1,822 for stone veneer, as betterments. See Town of North Bonneville v. U.S., 11 Cl. Ct. at 786.

⁹No portion or feature of the fire station was found to constitute a betterment. See Michael A. Maher, Kirk, Wallace and McKinley, letter to Norman Hilton, Daniel, Mann, Johnson and Mendenhall/Hilton, Subject: North Bonneville New Town Design, Municipal Buildings, Finalization of Contract Documents, 17 February 1976. See also Norman Hilton, letter to L. J. Stein, Chief, Engineering Division, Portland District, inclosed "New Town of North Bonneville Workshop Summary Statement," 23 January 1976.

¹⁰Town of North Bonneville v. U.S., 11 Cl. Ct. at 799.

¹¹Town of North Bonneville v. U.S., 11 Cl. Ct. at 800-01.

¹²Town of North Bonneville v. U.S., 11 Cl. Ct. at 799.

¹³Town of North Bonneville v. U.S., 11 Cl. Ct. at 799-800. The 500,000 gallon steel tank reservoir was constructed at the request of the town. A reservoir of 250,000 gallons capacity was determined to constitute an adequate substitute facility. Accordingly, the town paid \$29,153 for the last 250,000 gallons capacity as a betterment. Town of North Bonneville v. U.S., 11 Cl. Ct. at 786.

¹⁴U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 2-4. See dissertation, supra, 43.

¹⁵U.S. Army Corps of Engineers, Portland District, descriptive paper, [c. 1983]. See Town of North Bonneville v. U.S., 11 Cl. Ct. at 800.

¹⁶Town of North Bonneville v. U.S., 11 Cl. Ct. at 800.

¹⁷See Table I, dissertation, supra, 28.

¹⁸See Table I, dissertation, supra, 28.

¹⁹See Table I, dissertation, supra, 28. See also Table VI, dissertation, supra, 416.

²⁰All Engineering, Town of North Bonneville, Skamania County, Washington, Preliminary Engineering Report of Existing Facilities and Relocation (Vancouver, WA: All Engineering, 1971) 14.

²¹Henry A. La Ham, personal interview, 9 September 1988.

²²Royston, Hanamoto, Beck and Abey, Comprehensive Plan, North Bonneville Relocation and Optimum New Town Design (San Francisco: RHB&A, 1975) 13. See dissertation, supra, 29.

²³R. W. Beck and Associates, Expert Witness Report, Town of North Bonneville vs. U.S (Seattle: R. W. Beck and Associates, 1984) I-4. See dissertation, supra, 29.

²⁴Town of North Bonneville v. U.S., 11 Cl. Ct. at 739.

²⁵As recorded through 1983, "timber cut in the County is still below levels in the 1960's and early 1970's." R. W. Beck and Associates, Witness Report, I-48.

²⁶R. W. Beck and Associates, Witness Report, I-42 to I-48.

²⁷Henry A. La Ham, personal interview, 9 September 1988.

²⁸Portland International Airport, about one hour from the new town, is the nearest full service, general and commercial field.

²⁹Henry A. La Ham, personal interview, 9 September 1988. See dissertation, supra, 31.

³⁰K. W. Peterson, personal interview, 22 August 1986.

³¹R. W. Beck and Associates, Witness Report, I-4.

³²Ernest J. Skala, personal interview, 22 August 1986.

³³R. W. Beck and Associates, Witness Report, I-24. See Town of North Bonneville v. U.S., 11 Cl. Ct. at 702. Residences in the old town were acquired by the Federal Government before the new city was completed and, consequently, before residential lots were available upon which to build. Residents who expressed intention to relocate were provided interim housing, mostly in mobile homes, on a rent-free basis. Ernest E. Swanson, personal interview, 13 September 1988. The cost to the Corps of Engineers, as of June 30, 1979, was \$1,580,000. Town of North Bonneville v. U.S., 11 Cl. Ct. at 798.

³⁴U.S. Army Corps of Engineers, Design Memorandum No. 8, 2: D-39 to 41 and D-48. See Keyser Marston Associates, memorandum to North Bonneville Consultant Team, Subject: Transmittal of Economic Analysis Chapter on Impact on the Town of North Bonneville, 19 March 1975. "Mobile homes could be purchased for about \$15,000 at the time. Therefore, most income groups could afford a mobile home in the new town. However, the Town itself chose to limit mobile home lots in the new town to 28." R. W. Beck and Associates, Witness Report, I-27.

³⁵State of Washington, Office of Financial Management Forecasting Division, 1987 Population Trends for Washington State (Olympia, WA: OFM, 1987) 27.

³⁶Skamania Regional Planning Council, Skamania County Databook (Stevenson, WA: Skamania County Economic Development Council, 1985) Section VIII, 2. As of December 1984, "165 residential lots . . . were claimed by eligible townspeople. Of those, 83 were sold by the eligible residents." R. W. Beck and Associates, Witness Report, I-24.

³⁷R. W. Beck and Associates, Witness Report, I-28. The average price of a house for sale in North Bonneville, as of September 1988, was \$50,000 or higher. Henry A. La Ham, personal interview, 9 September 1988.

³⁸U.S. Army Corps of Engineers, North Bonneville Town Relocation Environmental Impact Statement Supplement (Portland, OR: Portland District, 1975) 2-26. In the original town, as reported by Williams and Mocine, "The average single family house value (including land) is

estimated at approximately \$14,000." U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-26.

³⁹R. W. Beck and Associates, Witness Report, I-28. In the original town, "Monthly rent payments for rental units surveyed range from \$25 to \$180, with a median rent of approximately \$50 to \$55 per month without utilities and \$110 with utilities. Rentals for trailer spaces in North Bonneville average \$30 per month." U.S. Army Corps of Engineers, Environmental Impact Statement Supplement, 2-26.

⁴⁰Henry A. La Ham, personal interview, 9 September 1988.

⁴¹For description of the original business community, see dissertation, supra, 38-40.

⁴²U.S. Army Corps of Engineers, Design Memorandum No. 8, 1: 4-11. See dissertation, supra, 38-40.

⁴³R. W. Beck and Associates, Witness Report, I-5. See dissertation, supra, 39.

⁴⁴U.S. Army Corps of Engineers, Final Environmental Statement, Second Powerhouse, Bonneville Lock and Dam, Columbia River, Oregon and Washington (Portland, OR; Portland District, 1971) 1-13. See dissertation, supra, 39.

⁴⁵Evergreen State College Urban Planning Group, North Bonneville Relocation Planning Study (Olympia, WA: Evergreen State College, 1973) II. 5. 2. See dissertation, supra, 39.

⁴⁶Keyser Marston Associates, memorandum to North Bonneville Consultant Team, 19 March 1975. See U.S. Army Corps of Engineers, Design Memorandum No. 8, 2: D-45.

⁴⁷For identification of individual business persons who sold without intention to relocate, see R. W. Beck and Associates, Witness Report, Appendix I.

⁴⁸"North Bonneville studies move to new location for small town," Portland Oregonian, 27 July 1971. See dissertation, supra, 96.

⁴⁹For identification of individual business persons who expressed intention to relocate, see R. W. Beck and Associates, Witness Report, Appendix I.

⁵⁰Ernest E. Swanson, personal interview, 13 September 1988.

⁵¹Ernest E. Swanson, personal interview, 13 September 1988.

⁵²See R. W. Beck and Associates, Witness Report, Appendix I.

⁵³As of September, 1988, the only business to construct a building in the new city was the beauty shop. That business failed, and the structure was not being used by any other commercial enterprise. Henry A. La Ham, personal interview, 9 September 1988.

⁵⁴Ernest E. Swanson, personal interview, 13 September 1988.

⁵⁵Ernest E. Swanson, personal interview, 13 September 1988.

⁵⁶Ernest E. Swanson, personal interview, 13 September 1988.

⁵⁷Bud Gallanger, personal interview, 26 August 1986.

⁵⁸Henry A. La Ham, personal interview, 9 September 1988.

⁵⁹Henry A. La Ham, personal interview, 9 September 1988.

⁶⁰Henry A. La Ham, personal interview, 9 September 1988.

⁶¹Henry A. La Ham, personal interview, 9 September 1988.

⁶²Henry A. La Ham, personal interview, 9 September 1988.

⁶³M. L. Myer, Assistant Planner, Town of North Bonneville, memorandum to Pollard Dickson, Planning Director, Town of North Bonneville, Subject: Report on Existing Conditions Between Townspeople and RHBA, 22 February 1975.

⁶⁴Dennis M. Browner, Certified Public Accountant, memorandum to Department of Justice, Subject: Examination of Accounts of City of North Bonneville, 11 October 1988.

⁶⁵Henry A. La Ham, personal interview, 9 September 1988.

⁶⁶R. W. Beck and Associates, Witness Report, I-28. "The Town today, from a residential standpoint, is not one of a relocated old North Bonneville, but a completely new community. This is especially the case on the commercial side." Witness Report, I-28.

⁶⁷Pollard Dickson, personal interview, 20 October 1987.

⁶⁸Ernest J. Skala, personal interview, 22 August 1986.

⁶⁹Ernest J. Skala, personal interview, 22 August 1986.

⁷⁰Bud Gallanger, personal interview, 26 August 1986.

⁷¹Frank Miller and Jerry Miller, personal interview, 27 August 1986.

⁷²Elsie Peterson, personal interview, 22 August 1986.

CONCLUSION

CHAPTER XIV

The study of policy implementation, according to Rein, is concerned with "determining whether policies actually accomplish what they are intended to accomplish" and with "the question of how policies change as they are translated from administrative guidelines into practice."¹ The first question that must be asked, given this orientation, is this: Did the U.S. Army Corps of Engineers, in relocating the Town of North Bonneville, accomplish what was intended to be accomplished? The second question is as follows: How and why were Federal policies applicable to this relocation of this town changed during the implementation process? Implicit in the second question is a third: What can the North Bonneville experience contribute to existent knowledge, understanding, and appreciation of policy implementation? And a fourth: What does this case suggest in terms of a requirement for future policy implementation research?

ALTERNATIVE PERSPECTIVES ON GOAL ACHIEVEMENT

Judgment concerning whether the Corps of Engineers accomplished what was intended, of course, is dependent upon two factors: how the goal of the relocation is defined, and how the final result is evaluated. Definition and evaluation, in turn, are dependent upon perspective. Severally, as denominated by Mazmanian and Sabatier,

what was done can be viewed from three different perspectives: that of the original policy maker, the "Center," in this case the Congress of the United States; that of the implementing agency, the "Periphery," here the Corps of Engineers; and that of the persons that the relocation was intended to benefit, the "Target Group," in this instance the residents of the original Town of North Bonneville.² Jointly, what was done can be viewed from a fourth perspective, that of the people of the United States, here designated the "Source." This fourth perspective is the perspective of the public interest that the Corps of Engineers is obligated to serve. This "Source" is the source from which, under the Constitution, the authority of the Congress is derived. Further, this is the source to which the Town is accountable for what it demanded, and what it took, because, as observed by Colonel Clarence D. Gilkey: "The relocation of the Town of North Bonneville was paid for by the American taxpayers, not by the citizens of North Bonneville."³

From the perspective of the Congress, it is important to keep in mind that two activities were going on concurrently. One, the Corps of Engineers was engaged in the building of the Bonneville Second Powerhouse. Two, related to the powerhouse construction, and as a necessary prerequisite thereto, the Corps was involved in relocating the Town of North Bonneville. With respect to the first activity, the Congress had a specific goal: the completion of the powerhouse and achievement of power-on-line no later than May 1, 1981. The assertion of this goal is apparent throughout the events related in this study and is expressed most clearly in the "BIG SIX" letter of May 6, 1975.

In that letter Senators Magnuson, Jackson, Hatfield, and Packwood and Representatives McCormack and Duncan tell the Corps and the Town that "we are adamant in our view that no delay in the Powerhouse construction schedule can be tolerated."⁴ With respect to the second activity, the relocation of the town, the Congress had no goal unless, of course, one chooses to conclude that the goal of the relocation was to get the town out of the area of construction of the second powerhouse.⁵ The Town was moved. The second powerhouse was constructed. The specified power-on-line date was met.⁶ Thus, from the perspective of the Congress, the Corps of Engineers accomplished what it was intended to accomplish.

The goal of the Corps of Engineers, clearly, was the timely completion of construction of the Bonneville Second Powerhouse. Correspondingly, the underlying purpose of the relocation of North Bonneville was to remove the original town from the powerhouse construction site. Limited to this objective, it is evident that the Corps accomplished what was intended. The town was moved and the second powerhouse was constructed on schedule. As the U.S. Claims Court observed, "The Corps' objective to complete the second powerhouse and have power-on-line by May 1, 1981, was attained."⁷

From the perspective of the residents of the original town, ironically, the Corps did not accomplish what it was intended to accomplish. The Corps of Engineers built a model city, with facilities and utilities of the size and on the site desired by town officials. Indeed, with few exceptions, the Corps gave the Town everything its representatives asked.⁸ Presumably, however, the town

residents wanted and expected a new town in which they could afford to live. This many of them did not get. As earlier disclosed, approximately two thirds of the original residents never moved into the new city. Most of this group was economically excluded.⁹ Also presumably, the residents wanted and expected a new town in which those in business could reestablish and conduct business. This they did not get. Of the thirty retail and service establishments existent in the original town immediately prior to commencement of the relocation, none survived into the year 1988.¹⁰ Of the three small industrial concerns that operated in the old town, only one survives in any form.¹¹ Generally, the view of the former residents of the original Town of North Bonneville is that the Corps did not in fact relocate their town. Instead, the Corps destroyed their town and built a new, different city.¹² Even from the perspective of only those original residents who did relocate into the new city the Corps did not accomplish what was intended. These town residents wanted and expected a new municipality that would grow to a population of 1000 to 1500 by the year 1986, and "stabilize at about 1,500 sometime after 1990."¹³ This desire and expectation the Corps did not and could not satisfy.

The people of the United States do not directly establish Congressional policies. Policy determination is an obligation entrusted to the members of Congress. Likewise, the citizenry does not directly implement Congressional policy. Policy implementation, in the case of the relocation of North Bonneville, was assigned to the Corps of Engineers. However, the public presumably expects that

national policies both in their establishment and in their implementation will be neither wasteful nor unfounded.

The Corps spent over \$36,000,000 to accomplish the relocation.¹⁴ Half of this cost, over \$18,000,000, was for facilities and utilities.¹⁵ Much of this expenditure was wasteful.¹⁶ Most of the remaining half of the monies expended, approximately \$18,000,000, served no essential purpose.¹⁷ Indeed, at least \$12,604,598 of these funds was expended in the satisfaction of a recognized fiction. The Corps knew that there was no plausible possibility that the new City of North Bonneville could within any foreseeable future attain a population of 1500.¹⁸ Yet, based on this unbelievable and unbelieved premise, the town selected and the Corps allowed the town to select a replacement municipal site that required the relocation of both the Burlington Northern railroad and State highway 14. These relocations cost the United States \$1,471,040 and \$4,865,772, respectively.¹⁹ The site selected is divided by Hamilton Creek, which required the construction of a bridge at the cost of \$1,140,228.²⁰ Moreover, the selected site was almost entirely below the hundred year flood plain and required filling and leveling at a further cost to the Federal government of approximately \$5,127,568.²¹

There were available within the general area to which the residents wanted to relocate a number of potential alternative townsites that would not have required the relocation of both the railroad and the highway, and some would have required the relocation of neither. None of the alternative townsites was divided by any body of water.²² Several of the available sites were mostly above the flood

plain.²³ One of the identified potential townsites, indeed, that recommended by the Office of the Chief of Engineers, was almost entirely above the flood plain, would not have required the construction of a bridge, and would not have required the relocation of either the railroad or the highway.²⁴

From the presumed perspective of the people of the United States, because so much of the cost of the relocation of the town was wasteful or unfounded, it must be concluded that the Corps of Engineers did not accomplish what it was intended to accomplish.

IMPERATIVES OF THE POLITICS OF IMPLEMENTATION

The evolution of Federal policies applicable to the relocation of the Town of North Bonneville can be understood in terms of the theory of the politics of implementation propounded by Rein and Rabinovitz. This theory posits that the implementing agency, in this case the Corps of Engineers, must take into account three potentially conflicting imperatives: the legal imperative to act in compliance with the law, including rules and regulations derived from and presumably consistent with Constitutional, legislative, and judicial mandates; the rational-bureaucratic imperative to do what is morally correct, administratively feasible, and intellectually defensible; and the consensual imperative to do what can attract agreement among contending influential parties with a stake in the outcome, in this instance the officials and representatives of the Town of North Bonneville and members of the Washington and Oregon Congressional delegations.²⁵ As theorized, these three imperatives operated

concurrently and competitively in the structuring of policy implementation decisions.

When it was determined that the Bonneville Second Powerhouse would be located on the site occupied by the Town of North Bonneville, necessitating the acquisition by the Federal government of essentially all of the public and private properties within the municipality, the policy of the Federal government was to provide compensation to the extent and only to the extent required by law. The legal obligation of the United States, under the Fifth Amendment as construed by the Federal judiciary, was one of just compensation. In the case of purely private property, the measure of just compensation was the market value of the property taken, supplemented by the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. In the case of state and municipal properties, utilities and railroads, the obligation of the United States was delineated by the substitute facilities rule. The Corps of Engineers was neither obligated nor authorized to relocate the town. Relocation or disbandment was the choice of the citizens of the town. If the citizens elected to relocate, it was the responsibility of the Town to acquire and pay for a new townsite. Additionally, the Town was required to finance and accomplish its own relocation planning. What the Corps could do if the Town chose to relocate, and all it could legally do, was to provide replacement facilities and utilities sufficient to meet the requirements of the number of persons who chose to relocate from the old to the new town.²⁶

The Corps of Engineers was aware, during the period preceding

enactment of the McCormack legislation, that the Town would find it financially difficult if not impossible to relocate under the prevailing law of just compensation.²⁷ Consequently, as the town became increasingly insistent upon being relocated at Federal expense, and this insistence began to threaten timely construction of the second powerhouse, the Corps was moved to consider what it could do to assist the town over and above the literal application of the law. Two issues received early attention. One was the requirement that the town acquire and pay for its own relocation site. The other was the requirement that the town finance and accomplish its own relocation planning. Concerning the first, there was no way that Corps could provide a new townsite without manifest violation of the law. On this issue, therefore, Corps officials stood firm, expressing clearly to town officials that the Corps of Engineers had no authority to pay their new townsite land acquisition costs.²⁸ On the second issue, however, the Corps found ways to assist in the planning of a new townsite, which Corps officials apparently considered moral, feasible, and defensible. Initially, the Portland District Engineer agreed to pay \$2,500 to reimburse the town for planning services obtained from All Engineering and rationalized that the work done by this firm for the Town could be "used by the Corps in the preparation of the Second Powerhouse General Design Memorandum" and could, therefore, be paid from second powerhouse planning funds.²⁹ Subsequently, unwilling to chance further cash contributions to the town, the Portland District announced that "the Corps would hire an engineering firm (or do it themselves) for the design and engineering on relocating the town."³⁰

The reasoning of the Corps, as expressed in the Rea legal opinion, was that although it would be illegal for the Corps to give the Town funds for procuring planning services directly, "it is entirely legal and proper for the Portland District to assist the Town of North Bonneville in planning for a new townsite as long as such planning takes place only in conjunction with project purposes, land utilization, and development of resources."³¹ Essentially, the Portland District offered to plan the new town, notwithstanding clear expression in the applicable Corps regulation implementing Federal law that "the town must formulate plans of its own to relocate the town to a new site."³² Two of the imperatives identified by Rein and Rabinovitz were reconciled. The legal imperative was modified by the rational-bureaucratic imperative. Nonetheless, the offer by the Portland District to plan the new town, either directly or by contract, was ineffective because it failed to satisfy the third, the consensual imperative. By the time this offer was made what the Town wanted from the Corps of Engineers, and all it would accept, was a financial commitment to pay for relocation planning done by the Town.³³

The most significant issue decided by the Corps following passage of the McCormack legislation concerned control of the relocation planning process. Specifically at issue was whether the Town would be allowed to do its own relocation planning at Federal expense. Members of the Congress assumed and intended that new town planning would be accomplished by the Corps.³⁴ However, the Congress neither expressly provided that the new town must be planned by the Corps nor prohibited direct planning by the Town.³⁵ Resolution of this

issue, therefore, was primarily a contest between what the Corps of Engineers considered rational and what the Town demanded for consent. The Corps wanted to award and administer a contract for the planning of the new town, with town participation and Federal reimbursement of town incurred expenses.³⁶ Town officials demanded that the Corps enter into a cost reimbursable contract with the Town and allow them to award and administer the new town planning contract.³⁷ The District Engineer agreed to enter into a contract for services with the Town, under which the Town could control the planning process, for two reasons. One, the Corps was committed and under Congressional pressure to complete the construction of the second powerhouse in time to achieve power-on-line not later than May 1, 1981. Two, the Town was in a position, by refusal to cooperate in any new town planning undertaken by the Corps, to delay both the relocation of the town and the completion of the second powerhouse.³⁸ In this contest between imperatives, patently, the rational-bureaucratic gave ground to the consensual.

A related issue of pervasive consequence, the determination of which enhanced town control of the planning process, concerned inclusion in the Contract for Services of a provision for disputes resolution. The Portland District proposed use of the standard "Disputes Clause" normally required to be included in all services contracts awarded by the Corps.³⁹ Under this clause disputes would be decided by the District Engineer, as the Government's Contracting Officer, subject to appeal to the Corps of Engineers Board of Contract Appeals.⁴⁰ The Town objected to use of this standard provision,

concerned that it would give the Corps too much control.⁴¹ Instead, the Town proposed placement into the contract of an arbitration clause under which differences would be submitted to a third party, an independent adjudicator, for binding resolution.⁴² The Corps rejected the Town proposal, not because it was considered unreasonable or unworkable but because the Corps could not legally accept binding arbitration.⁴³ Agreement was reached to enter into a contract that contained no provision for disputes resolution, a contract that omitted both the disputes clause and an arbitration clause.⁴⁴

The resolution of this issue involved consideration of all three of the Rein and Rabinovitz imperatives. The Disputes Clause was omitted because the Town would not consent thereto, and because agreement by the town was essential to the execution of a contract. Use of an arbitration provision was legally proscribed, beyond the authority of the Corps. The decision to execute a contract that omitted both was apparently considered by the Corps of Engineers to be rational under the circumstances. As recalled by Paul Schroy, the Corps agreed to enter into a Contract for Services with no provision for disputes resolution in order to expedite progress toward construction of the second powerhouse, "because a timely contract was needed if the Corps was to meet the May 1, 1981, power-on-line date".⁴⁵

An early dispute concerned the sizing of new town facilities and utilities to be provided at Federal expense. Initially, this was a purely legal issue, involving divergent interpretations of the intent of the McCormack legislation. The Corps of Engineers, based upon the opinion of its General Counsel, maintained that under this special

legislation, as before, it had authority to provide replacements sized to accommodate only the number of persons who indicated an intention to relocate from the old to the new town and that, if the town wanted facilities and utilities larger than allowable under this measure, the costs incident to increased sizes would have to be borne by the Town.⁴⁶ The Town contended that under Section 83, Public Law 93-251, the Corps was not only authorized but required to provide replacement of all facilities and utilities existent in the original town as of March 7, 1974, the effective date of the legislation.⁴⁷ Paul Schroy, attorney for the Portland District, and James Mason, attorney for the Town, agreed that this dispute could be determined by the Federal judiciary.⁴⁸ Pursuant to this agreement the Town initiated an action for declaratory judgment.⁴⁹ Despite this agreement, however, which was supported by the Portland District Engineer, the Department of Justice and the Office of the General Counsel, OCE, refused to support judicial resolution.⁵⁰ The Town then filed an action to enjoin continued construction of the second powerhouse, alleging violation of the National Environmental Policy Act.⁵¹ The purpose of the action for injunction, manifestly, was not to impede construction of the second powerhouse but to coerce Corps cooperation in the suit for declaratory judgment.⁵² Faced with this second lawsuit, the Office of the Chief of Engineers decided to yield on the sizing issue rather than risk delay of the powerhouse project. The Corps legal position was changed.⁵³ The General Counsel proclaimed that "with respect to the question of capacity of substitute municipal facilities and utilities, the Government may provide capacity up to that which exists in the town."⁵⁴

In summary, opportunity for exclusive reliance on the legal imperative was refused. The legal imperative was subjugated to the consensual imperative in effecting a resolution.

Then there was the matter of new town site selection. Prior to enactment of the McCormack legislation the responsibility for selection of a new townsite and the acquisition thereof rested entirely with the town.⁵⁵ The Town Council initially wanted to locate the new town on a site of at least 200 acres to be selected from within the area identified in the report of the North Bonneville Relocation Site Selection Committee.⁵⁶ The Corps of Engineers objected to placement of the new town within this area, not because the Corps lacked authority to convey the lands at issue to the town but because the lands identified had been previously designated for use by the Corps in connection with the second powerhouse project.⁵⁷ The Portland District told the Town to look elsewhere, reasoning that the town was being acquired because it was located on lands needed for the second powerhouse project and that, therefore, "it makes no sense to insist on moving the town into another area needed for project purposes."⁵⁸ Nonetheless, the town was insistent. Indeed, the town subsequently increased its relocation townsite size demand to approximately 350 acres, within the same designated project area.⁵⁹ The Portland District recognized that allowing the town to relocate on the project lands of its choice would cause a momentous increase in the cost of the second powerhouse.⁶⁰ However, the District apparently also recognized that town consent would be required before any relocation site could be selected. Discussion of this issue between

representatives of the Portland District and the North Pacific Division addressed "possible reasons for justifying the increased cost and also the necessary budgetary procedures for such a large increase in project costs."⁶¹ Essentially, Corps officials were heeding the power of the consensual imperative. Implicitly, Corps officials were cognizant of the rational-bureaucratic imperative. Effectively, they were considering whether acquiescence to the Town's insistence upon locating the new town on second powerhouse project lands could be justified as morally correct, administrative feasible, and intellectually defensible.

Fundamental to the relocation townsite selection process, following enactment of the McCormack legislation, was whether the Corps was authorized by the Congress to relocate the tracks of the railroad. The Office of the Chief of Engineers told the District Engineer, who in turn told the Town, that the Corps had no legal authority to relocate the railroad for purposes of preparing a location for placement of the new town.⁶² This determination was contested by the town to the Chief of Engineers and protested by the town to Senators Magnuson and Jackson and to Representative McCormack.⁶³ The Corps of Engineers learned, by letter from Senator Magnuson, that what the District Engineer was directed to tell the town was exactly opposite of what Major General John W. Morris, Director of Civil Works, OCE, had told the Senate. In testimony before the Senate, in response to an inquiry as to whether the Corps was authorized to relocate the railroad for purpose of new town construction, Morris had stated, "Yes, the Corps has the authority to

relocate the railroad if such relocation is necessary in order to accomplish the relocation of the town as authorized by section 83 of the Federal Water Resources Development Act of 1974, Public Law 93-251."⁶⁴ Confronted with conflicting Corps positions, the Chief of Engineers was compelled to disavow either the statement by Morris before the Senate or the statement that the District Engineer was directed to make to the town. His choice was to confirm what had been said to the Senate. The legal imperative, the contention that the Corps had no legal authority to relocate the railroad, was modified. The Chief of Engineers told the Town that "should the relocation of a segment of the Burlington Northern Railroad prove necessary," then "section 83 would provide authority for the Corps of Engineers to accomplish this."⁶⁵ However, he admonished the Town that "this need for relocating any segment of the railroad must be convincingly demonstrated and properly justified by the city." He further admonished, "Final site selection must be supported by economic, social, and environmental determinations demonstrating that the chosen location would best serve the overall public interest."⁶⁶

Final site selection was not based on the criteria cited by the Chief of Engineers. Instead, site selection was governed entirely by the consensual imperative. The Town chose the site, and the Corps accepted the Town's selection.⁶⁷ The site selected was approximately 600 acres in size.⁶⁸ This is about three times the 200 acres perceived as the minimum necessary by the North Bonneville Relocation Site Selection Committee. It is almost twice the 350 acre size proposed by the students of The Evergreen State College. Arguably, the site

selected did not meet the requirements of the legal imperative. Extrapolating from what Major General Morris told the United States Senate, it can be assumed that the Corps of Engineers had legal authority to incur whatever expenditures were necessary in order to relocate the town. However, given the alternative sites available, it was not necessary to relocate the railroad or the highway, to construct a bridge across Hamilton Creek, or to locate the new town in an area almost entirely below the flood plain. Manifestly, the site selected by the town did not conform to the rational-bureaucratic imperative. It was neither one that the Corps wanted, nor one that Corps considered to be justified. Indeed, the Corps recognized that this townsite selection was wasteful, and unfounded. Presumably typical of the views of Corps officials is that expressed by the Portland District Counsel, Paul Schroy, recounted next:⁶⁹

The Town of North Bonneville pretended to consider through public meetings and work of their architect-engineer all of the possible town relocation sites. In effect, they never budged from the one that they wanted, the site on which the town is now located.

Other sites, and the one supported by the Corps, would not have required the relocation of the railroad. That's why it was just, you might say, a needless expenditure of twenty million dollars for the railroad. The other sites would have located the town in equally good locations; the railroad would not have been a problem. The town would have been relocated, and the Feds would have saved twenty million dollars.

Obviously, nobody wants a new town with a railroad running through the center of it. But the Town selected the one site where that was necessary and would not budge. Finally, after much consultation by the District Engineer with the Division Engineer and with the Chief of Engineers and his staff, the District Engineer went to a public meeting in North Bonneville and said the Corps is now ready to accept your choice of the site and proceed in that manner. That required the railroad to go through the town or to be relocated.

Two issues arose during the town planning process but were decided subsequent to site selection. One concerned the sizing of new town facilities and utilities. The other involved the determination of the fair market value of commercial and residential lots in the new town.

The new town sizing issue was supposedly settled when the Office of the Chief of Engineers agreed, as argued by the Town, that Section 83, Public Law 93-251, authorized and required the Corps to replace all facilities and utilities existent within the original town as of March 7, 1974, the effective date of the legislation.⁷⁰ Imprecisely, however, this agreement was implemented by a modification to the Contract for Services that did not specify expressly that the facilities and utilities to be replaced were those, and only those, existent on the effective date of the McCormack legislation.⁷¹ Instead, the language of the contract modification states that the replacement facilities and utilities to be provided at Federal expense will "have the same capacity and be able to serve the same number of users as those in the existing town."⁷² Subsequent to the agreement, the Town decided to annex Fort Rains and the Brown Tract. The Town then contended that the annexed areas were part of the "existing town" and that the facilities and utilities located therein were required under terms of the Contract for Services to be replaced at Federal expense.⁷³ The Office of the Chief of Engineers, upon consideration of this issue at the request of the District Engineer, decided that areas annexed by North Bonneville subsequent to enactment of the McCormack legislation could not be considered part of the existing town for

purpose of determining the extent of the Federal obligation to provide a replacement town. Specifically, OCE advised the District Engineer, "Public Law 93-251 approved 7 March 1974 requires the Federal Government to provide facilities only to substitute for such capacity as existed in the town of North Bonneville at the time said public law was approved."⁷⁴

The fair market value issue concerned construction of the intent of the McCormack legislation. The legislation provides that the compensation to be paid to any individual or entity for property taken in connection with the relocation of North Bonneville is the amount due under the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, "less the fair market value of the real property conveyed to such individual or entity in the new town."⁷⁵ Further, the legislation mandates that all lots in the new town will be either occupied when available, will be replacements for open space and vacant lots in the existing town, "or will be purchased by non-Federal interests at the fair market value."⁷⁶ The Portland District construed these legislative provisions to mean the fair market value of the lots as improved, considering the availability of access to streets and utilities.⁷⁷ The town contended that the term fair market value as used in the legislation should be construed to include only the value of the bare land on which the lots are located, without enhancement by improvements. The argument in support of the town's position, as summarized by the District Engineer, was that "under normal relocation situations the town to be relocated would acquire land for the new town and the improvements would then be

constructed on the land at no cost to the town."⁷⁸ Therefore, the argument continued, the costs of lots to the town and its residents and businesses should not include the value of improvements "because the Government is already obligated to provide the improvements under existing law."⁷⁹ The Office of the Chief of Engineers, upon consideration of this issue at the request of the District Engineer, decided that "Section 83 of Public Law 93-251 substitutes the 'normal' town relocation legal and procedural precedents and is the sole remedy available to the town and its residents in connection with the town relocation," and concluded, "These lots should be conveyed at the fair market value as improved."⁸⁰

The Town of North Bonneville, upon being notified of the OCE positions on these two issues by the Portland District Engineer, took two actions intended to coerce reversals. Initially, the Town protested to members of the Congress.⁸¹ Subsequently, the Town filed a legal action in the United States District Court for the Western District of Washington, an action seeking to enjoin continued construction on the second powerhouse, again alleging violation of the National Environmental Policy Act.⁸² The attitude and thinking of the town officials in taking these actions is reflected in a letter later written by the Town's attorney, James Mason, excerpted next:⁸³

We have had to use considerable political pressure to make the Corps move, and in addition to our congressional delegation we have had substantial help from our Governors and from State agencies, particularly those with environmental concerns. North Bonneville is located in an area of major scenic and environmental interest, and on several occasions we have been able to secure the cooperation of the corps on an unrelated matter by threatening to shut the entire project down because of non-compliance with the

statutes pertaining to the environment, such as NEPA and the Washington Shorelines Management Act.

* * *

If you can threaten to stop a project with these or any other regulations, most bureaucrats will consider it easier to give in than to fight and you may get what you want without a trial.

Senator Magnuson sent a telegram to Major General John W.

Morris, Director of Civil Works, OCE, noting that the town of North Bonneville "advises it will seek court injunction blocking further work on the Bonneville Second Powerhouse because of Corps insistence that the town pay fair market value of improved lots as opposed to fair market value of unimproved lots in new town." Implying that the Corps position reflected an incorrect interpretation of Congressional intent, Magnuson asserted, "Obviously, the overriding intent of Congress in passing that special legislation was to assist the town." The Senator demanded "a written statement of the Corps position and reasoning" to include "an estimate as to the total amount of money involved in this dispute, an estimate as to how long the power-on-line date could be delayed, and an estimate as to the increased costs the Corps would incur as a result of that delay." Concluding, Magnuson attested, "Fastest possible completion of the Second Powerhouse is a matter of the highest priority and of highest concern to me."⁸⁴

Major General Morris responded to Senator Magnuson that the difference in the fair market value of the lots involved in this dispute, improved versus unimproved, was approximately \$450,000. Morris told the Senator that the minimum delay in completion of the second powerhouse and consequent achievement of power-on-line that would be caused by the filing of an action for injunction by the Town

was estimated to be three months and that the cost of such a delay would be an estimated \$2.7 million per month. Nonetheless, Morris stated, "It is our opinion that to sell the lots at acquisition cost would be in excess of existing legal authority."⁸⁵

Then came the meeting of April 30, 1975.

Representatives of the Washington and Oregon Congressional delegations, including Senators Magnuson and Hatfield and Congressmen McCormack and Duncan, met with Major General Morris and other officials of the Office of the Chief of Engineers to discuss the Town's suit to enjoin work on the second powerhouse and to discuss what could be done to avoid the threatened delay. Manifestly, the Congressional delegations wanted the Corps to acquiesce in the Town's demands. All present accepted that neither the new town sizing issue nor the fair market value issue was of sufficient significance to justify either the delay or the costs attendant to defending against the town's suit for injunction. Apparently, it was accepted that the Corps could yield on the sizing issue. However, the Corps officials continued to maintain that the Corps had no authority to provide lots to residents or businesses of the town or to the town at less than fair market value as improved. Moreover, the Corps representatives explained to the Congressional delegations that these were not the only issues dividing the Corps and the town, that future disagreements were certain, and that the town had shown a propensity to file for injunction against the second powerhouse whenever any of its demands were challenged.⁸⁶

The members of Congress, intent on resolving not only the

immediate issues but also those issues potentially forthcoming, offered two proposals. First, they suggested that the Corps yield to the town position on the fair market value issue. To protect the Corps from potential charges of acting illegally, they offered to provide clarifying language in the fiscal year 1976 Public Works Appropriations Act that would declare it to be the intent of the Congress that the Corps convey lots in the new town at the fair market value unimproved. Second, they asked that the Corps meet with the Town to identify all of the issues and to negotiate an agreement that the Town would not file any legal action, with respect to any issue, without prior notification to the members of the Washington and Oregon Congressional delegations and allowance of an opportunity for them to obtain clarification of the law by an expression of Congressional intent.⁸⁷

Two agreements emerged. One, it was agreed that the Corps would plan for the town relocation on the assumption that lots in the new town would be sold at the fair market value of unimproved land. Two, it was agreed that the Corps would meet with the Town to negotiate a Memorandum of Agreement in which all of the identifiable issues would be resolved or, if not resolved, referred to the members of the Washington and Oregon Congressional delegations for resolution by the obtaining of an expression of the intent of Congress.⁸⁸

In consonance with these agreements, the Office of the Chief of Engineers issued two instructions to the Portland District. One, the District was told to plan for the relocation on the assumption that lots in the new town would be sold at the fair market value of the

unimproved land and that Fort Rains and the Brown Tract would be included in the capacity of the existing town.⁸⁹ Two, preparatory to negotiation of a Memorandum of Agreement with the town, the District was directed to identify all issues dividing the Corps and the Town and to separate them into three categories, described as follows:⁹⁰

(1) Those issues that are reasonable (to the Corps) but are not permitted by law. (Such issues would be clarified with appropriate language in the Appropriations Bill.)

(2) Those issues that the law provided for (i.e. replacements) but the town's demands are unreasonable (to the Corps). (Such issues would be clarified with appropriate language expressing the intent of Congress in the committees' reports.)

(3) Those issues that the law does not provide for and are considered unreasonable (by the Corps). Should the members of the Congressional delegations agree that this category of issues are beyond the "intent of Congress", no clarifying language will be included in the bill or the reports. It is expected that the Congressional delegations will prevail upon the town to withdraw their demands.

The categorization of issues described by OCE conforms with the three imperatives identified in the theory of the politics of implementation formulated by Rein and Rabinovitz. There is implied recognition of the legal imperative: "Those issues that are reasonable (to the Corps) but are not permitted by law." There is attendance to the rational-bureaucratic imperative: "Those issues that the law provided for (i.e. replacements) but the town's demands are unreasonable (to the Corps)." There is recognition of the consensual imperative: "Those issues that the law does not provide for and are considered unreasonable (by the Corps)." Concerning this last category, the description suggests, "It is expected that the Congressional delegations will prevail upon the town to withdraw their demands."

Then came the "BIG SIX" letter of May 6, 1975!

This is the letter signed by four United States Senators, Magnuson and Jackson of Washington and Hatfield and Packwood of Oregon, and by two Congressmen, McCormack of Washington and Duncan of Oregon. The letter was addressed to Major General Morris and copied to Mayor Skala; thus it was intended as a communication to both the Corps and the Town. Procedurally, the members of Congress proposed that the Corps and the Town enter into a Memorandum of Relocation in which all issues relating to the relocation would be identified and resolved or, if not resolved, referred to them for resolution. Substantively, the letter directed the Corps to provide all relocation assistance necessary to comply with the reasonable requirements of the Town, subject to the understanding that, "if the Corps feels clarification of Section 83 of PL 93-251 is necessary to permit it to satisfy the reasonable requests of the Town," the signatory members of Congress "stand ready to propose report language to the House and Senate Appropriations Committees for inclusion in their Reports on the FY 1976 Public Works Appropriations Act." As a basis for accord, the letter suggested that the Corps "agrees to take specific actions required by the Town . . . by a time certain", and that the Town "agrees to withdraw its present court suit" and to "take no action in court or otherwise to halt construction of the Powerhouse or the Town relocation provided the Corps takes the actions required by the Town by the time certain."⁹¹

Within this letter, the signatory members of Congress emphasized that "we are adamant in our view that no delay in the Powerhouse

construction schedule can be tolerated." The Corps of Engineers was admonished, "We will look with great disfavor on any failure by the Corps to cooperate in meeting the reasonable requirements of the Town." The Town of North Bonneville was told, "Likewise, we will look with equal disfavor on any unreasonable demands made by the Town."⁹²

By the publication of this letter, intentionally or ignorantly, these four Senators and two Congressmen sanctioned the practice by the Town of using the Congress and the Courts to coerce decisions by the Corps of Engineers. They obviously knew that the Town had filed a legal action to enjoin construction of the second powerhouse for alleged noncompliance with the National Environmental Policy Act, not out of any real concern for the environment, but solely to pressure the Corps to agree to Town demands. Yet the letter contains no criticism of this practice. Indeed, the letter supports this practice by suggesting that the Town should agree to withdraw the currently existing suit and refrain from future lawsuits only if the Corps agrees to meet the reasonable requirements of the Town. Further, in this letter these members of the Congress state that "we believe the positions taken by the Town on several of the issues now in dispute are reasonable positions and can be accommodated by the Corps within the authority granted by Section 83 of PL 93-251" and that "we believe the law does permit the Corps to convey lots in the new townsite to the Town and townspeople at the prices paid by the Corps for those lots."⁹³

This letter enhanced the already existent competitive advantage of the consensual imperative. Essentially, the signing members of the

Congress told the Corps to ignore the legal imperative. The Corps was admonished to grant all reasonable requests of the Town. If the Corps believed that it was without legal authority to provide anything reasonably desired by the Town, then the issue of legality was to be referred to the members of the Washington and Oregon Congressional delegations for resolution. Likewise, the Corps was effectively directed to forgo exercise of the rational-bureaucratic imperative. These members of the Congress, and not the Corps, would be the final arbiters of what was reasonable. Of course, the Corps could determine any town demand to be reasonable without risk of offending these members of the Congress. However, judgment concerning what was unreasonable was by the power of elective offices usurped by these four Senators and two Congressmen.

The impact of this letter, which was or should have been anticipated by those who signed it, was devastating to the ability of the Corps to control the increasingly expansive demands of the Town. Members of Congress would tolerate no delay in completion of the second powerhouse! The Corps knew, as certainly did the Town and presumably did those who signed this letter, that the only way to assure an absence of delay caused by litigations initiated by the Town was to give the town everything it asked. Succinctly, as exclaimed by David P. Johnson, an attorney with the Portland District, this letter "put the town, at that time, in the catbird seat."⁹⁴

IMPLICATIONS FOR IMPLEMENTATION

The Corps of Engineers made numerous decisions that effected changes in Federal policies applicable to North Bonneville. These decisions, consistent with the theory of the politics of implementation propounded by Rein and Rabinovitz, were based upon resolutions of conflicts between legal, rational-bureaucratic, and consensual imperatives. However, implementation is broader than decision making. Literally, policy implementation includes everything that an agency does or fails to do that has a bearing on the achievement of policy goals. The most significant determinants of the effectiveness of policy implementation can be actions or inactions generally not considered decisional because, once certain situations are allowed to develop, the decision makers may be left with little real choice.

In this case, all of the decisions by the Corps of Engineers that were actually implemented were made subsequent to the enactment of Section 83 of the Water Resources Development Act of 1974, commonly known as the McCormack legislation. However, how these decisions were made and what was decided were indelibly affected by actions and inactions that occurred before this special legislation was enacted.

Discernible within this context, the principal precepts promoted by the North Bonneville experience are as follows:

1. Implementing agencies must recognize and consider what they have to do or may have to do to accomplish what they are intended to accomplish, not merely what they want to do or expect to do. Potential

impediments to implementation that are unrecognized and unconsidered may fail to develop, but unless addressed problems cannot solved.

North Bonneville was not the first town acquired in essential entirety by the Corps of Engineers. Indeed, the Corps has acquired a number of whole towns in connection with water resources projects. Some were relocated. Others were disbanded. The North Bonneville situation was unique in only one respect. In all previous instances when the Corps acquired entire towns, those towns were located away from the construction site. Typically, a dam was constructed and, only later, as water gradually accumulated behind the dam to form a pool, was it necessary to move those towns situated in the pool area. Thus, under previous circumstances, the removal of a town was never a matter of urgency. In this case, however, the Bonneville Second Powerhouse was to be constructed on the very site occupied by the Town of North Bonneville. Once this site was selected, the town had to be removed from its location before the second powerhouse could be constructed.⁹⁵

It was very important to the Corps of Engineers that the second powerhouse be completed as quickly as possible for two reasons. First, the United States had entered into the Columbia River Treaty with Canada under which Canada constructed three dams, two on the main stem of the Columbia River and one on the Kootenay. Also under this treaty, the United States was allowed to construct the Libby dam on the Kootenai River and to back water into Canada. As a consequence of these treaty dams, additional water was made available for use in the generation of hydroelectric power in the United States. Half of the increased dependable electricity that could be generated at specified dams within

the United States, including the Bonneville Dam, was to belong to the United States and half was to belong to Canada. Canada sold its entitlement to the United States. In order to realize the hydropower benefits made available by the treaty dams, including benefits that had been paid for by the purchase of the Canadian entitlement, it was necessary to construct the Bonneville Second Powerhouse and achieve power-on-line expeditiously.⁹⁶ Second, the additional electricity that could be generated by the second powerhouse was judged to be needed to meet the forecasted power requirements of the Pacific Northwest.⁹⁷

Studies by the Corps of Engineers leading to the selection of a site for the second powerhouse were commenced as soon as possible following ratification of the Columbia River Treaty and continued for approximately four years.⁹⁸ The Corps knew, from the time these studies began, that one of the potential sites for placement of the powerhouse was the location occupied by the town of North Bonneville.⁹⁹ The Corps also knew that, if the location occupied by the town were selected, it would be necessary to acquire essentially all of the private and public properties within the municipality, by condemnation or otherwise. Nonetheless, these studies gave little or no attention to what would happen to the town, or to what the citizens of the town would want to happen, if the location occupied by the town were selected. As remembered by Homer Willis, at the time the highest ranking civilian engineer employed by the U.S. Army Corps of Engineers,¹⁰⁰

the site for this large public works development, which ultimately cost a half billion dollars or thereabouts, was determined pretty much by engineering considerations without considering the politics and sociological or other concerns that later became important in the relocation of North Bonneville.

2. Implementing agencies must expeditiously study and understand the policies that they are assigned to implement. Failure of understanding presents the appearance of ambiguity; indeed, even the clearest policy is effectively ambiguous if it is not understood.

From the time second powerhouse site selection studies began, for years prior hereto and continuing until enactment of the McCormack legislation, the federal policy applicable to the possible relocation of the town of North Bonneville was well settled, clear, and unambiguous. Construction of the second powerhouse was found to be authorized by the Congress and, therefore, to constitute a public purpose within the contemplation of the Fifth Amendment.¹⁰¹ Consequently, the Corps of Engineers was empowered to condemn all of the municipal facilities and utilities within the town under the federal right of eminent domain, subject to the payment of just compensation. Just compensation was to be determined in accordance with the "substitute facilities rule" as devised by the Federal judiciary. Under this concept of just compensation, the Corps of Engineers was not authorized to relocate the town of North Bonneville or to pay the cost of relocating the town. Rather, the town had a choice: it could disband and cease to exist, or it could move to a new location. If the town chose to relocate, it was the obligation of the town to acquire and pay for its own relocation site and to finance and accomplish its own relocation planning. What the Corps of Engineers could do for the town as a corporate entity, and all it was authorized to do as just compensation under the Fifth Amendment, was to provide substitute municipal facilities and utilities in the new

town in replacement for those facilities and utilities that actually existed in the original town. Moreover, replacement facilities and utilities could be provided by the Corps only to the extent and of the size required to accommodate the exact number of people who chose to relocate from the original town to the replacement town.¹⁰²

3. Implementing agencies must promptly and plainly explain the policies they are charged with implementing to affected and interested persons or groups. Failure to explain leaves affected and interested persons or groups to form their own expectations of what the policy is, which expectations if erroneous may be difficult to dislodge.

Once it appeared that the second powerhouse would be located on the site occupied by the Town of North Bonneville, the Corps of Engineers should have prepared to explain and should have explained to the town the federal right of eminent domain and the requirements of just compensation, including the provisions of the substitute facilities rule. Responsibly, this explanation should have been provided to the town as early as possible during the course of the site selection studies. Certainly, prior to or at the time the recommended site for placement of the second powerhouse was publicly announced, the Corps should have been prepared to provide and should have provided the town an adequate, accurate statement of the Federal policy with respect to the relocation of towns.

Instead, Corps officials hesitated, equivocated, and vacillated for almost a year following announcement of the proposed location of the new powerhouse before providing a clear, comprehensive explanation

of the Federal policy applicable to the relocation of towns to the Mayor and other members of the Town Council of North Bonneville.¹⁰³

Representatives of the Portland District did meet with the North Bonneville Town Council, after public announcement of the recommended site for the second powerhouse, for the purpose of explaining Federal policy.¹⁰⁴ Incredibly, however, the District representatives who met with the Town Council either did not know or, for whatever reason, did not explain what the Federal policy was.¹⁰⁵ Two subjects were discussed. One was the acquisition of a new townsite, and the other was the planning of the new town. Addressing the first of these subjects, the District representatives were able to and did tell the town, unequivocally; that the Corps had no authority to pay new townsite land acquisition costs.¹⁰⁶ Concerning the second, the District representatives were less certain. Nominally, they did tell town officials that the town would have to accomplish its own relocation planning.¹⁰⁷ However, they did not state definitely that the town would have to pay for the planning of a new town. Instead, they indicated to town officials that the District would have to research this issue to see if the Corps could pay planning cost.¹⁰⁸

In the absence of an adequate, accurate explanation of Federal policy, town officials developed expectations and became committed to those expectations. Fundamentally, town officials simply assumed that, since the Corps was taking their town, it was the obligation of the Corps to build them a new town. Moreover, town officials not only came to expect that the Corps would build them a new town but that the Corps would build them a larger, better town. Specifically, what the

town officials came to expect from the Corps was a replacement town described by Mayor Holcomb as follows:¹⁰⁹

The new town will be modern in design and meet all the environmental, health and ecology requirements. The town will be larger in area to accommodate 700 population by 1980 as predicted by R. W. Beck and Associates in their comprehensive water and sewer plan of Skamania County.

* * *

North Bonneville City Government will request the Corps of Engineers to finance at no additional cost to the town the engineering, legal fees, replacement of city buildings, water system, drainage system, streets, curbs, sidewalks, parks, landscaping, street lights, access roads, ramps and a sewer system. The town will require a loan from the U.S. Government to purchase the land for the new town site.

4. Implementing agencies must attend that once a policy is stated and explained all subsequent actions are consistent with the policy as stated and that any action that may appear to constitute a deviation is adequately explained. Otherwise the credibility of the agency and of the policy being implemented by the agency is undermined.

When it was first announced that the town would be acquired to make room for the second powerhouse, town officials were content with and apparently had confidence in the Corps of Engineers.¹¹⁰ At that time, doubtless, town officials would have welcomed the planning of a new town by, or under the control of, the Corps. Less than one year later town officials were discontent with and distrustful of the Corps and demanded that the Corps refrain from planning the new townsite.¹¹¹ Emphatically, town officials came to want the new town planned by somebody, anybody, other than the Corps of Engineers!¹¹²

Town discontent with the federal policy under the substitute facilities rule was perhaps inevitable since what the town wanted the

Corps could not provide. However, town discontent with the Corps was not inevitable. Had the Corps provided a timely, candid, unequivocal explanation of what it could and could not do to assist the town, town officials may not have liked what they heard, but they could have understood. Indeed, the Corps did tell town officials unequivocally that the Town would have to acquire and pay for its own relocation site.¹¹³ This statement was accepted as true and was never challenged.¹¹⁴ Presumably, had the Corps with equal unequivocation told the town that it would have to accomplish and pay for its own relocation planning the town would have believed that also. Moreover, town officials could have understood that the source of any unhappiness experienced was the policy being implemented and not the agency doing the implementation. Once the Town understood its obligations, regardless of what the town did or tried to do, it would have had no reason for discontent with the Corps of Engineers.

Two actions by the Corps of Engineers were particularly destructive to Town trust. First, the Portland District spokespersons suggested to the Town Council that the Town would be responsible for the planning of a new town but failed to state clearly that doing its own planning meant that the Town would have to pay for its own planning. Instead, they left the Town believing that the District would search applicable authorities to determine whether the Corps could provide funding. Then, after taking time to research this issue, the District told the town, in a letter to Mayor Holcomb, "At the present time, we have found no authority which allows us to assist you in planning the new townsite under our relocation laws. Our

assistance is limited solely to design work."¹¹⁵ Later, during a meeting requested by the Town to discuss this issue, the District Engineer agreed to provide the town \$2,500 to pay for planning work to be done by an engineering firm under contract with the Town.¹¹⁶ This payment was made with second powerhouse planning funds, under the rationalization that the information obtained would be used in the design of the second powerhouse.¹¹⁷ However, the authority conjured for the payment was apparently never explained to the Town.¹¹⁸ Consequently, what Town officials observed and came to believe was that the Corps could pay for their planning costs if it wanted to do so.¹¹⁹ Later yet, Portland District officials told members of the Town Council that "the Corps would hire an engineering firm (or do it themselves) for the design and engineering on relocating the town."¹²⁰ As before, the Portland District contemplated doing this planning as part of the second powerhouse design process.¹²¹ Once more, however, Corps officials failed to concurrently explain to the Town why the Corps could contract directly with and pay an engineering firm to design the new town but could not provide funds to pay an engineering firm hired by the town.¹²² Again, the impression left with town officials was that the Corps could, if it wanted to, provide funds to pay for new town planning done by a contractor working directly for the town.¹²³

Second, the Portland District told the town by letter to Mayor Holcomb that certain assistance may be available to the Town from other Federal agencies, and stated, "We have initiated contacts with several of them and will coordinate in an endeavor to help you get

whatever assistance is needed where we may be unable to provide direct help."¹²⁴ This statement, the Town learned months after it was made, was not true!¹²⁵

REQUIREMENT FOR FUTURE RESEARCH

In this case the Town filed a number of lawsuits and threatened to file lawsuits to enjoin construction of the second powerhouse, alleging failure of compliance by the Corps of Engineers with provisions of the National Environmental Policy Act. None of these actions or threats was based on any real concern for protection of the environment. Rather, legal actions allegedly intended to protect the environment were filed or threatened solely to coerce the Corps of Engineers to grant concessions on matters totally unrelated to the environment. Uniformly, once the desired concession was granted, the lawsuit or threat to file a lawsuit was withdrawn.

This experience suggests that research may be needed to determine the extent to which legal actions against Federal agencies alleging violations of the environmental laws of the United States are filed, or threatened to be filed, for purposes other than protection of the environment. If what occurred in this case is found to be common practice, research should address the effect of this practice on the implementation of Federal policies generally, and on the implementation of environmental laws and regulations specifically.

ENDNOTES

¹Martin Rein, From Policy to Practice (Armonk, N.Y.: M.E. Sharpe, 1983) 113.

²Daniel A. Mazmanian and Paul A. Sabatier, Implementation and Public Policy (Glenview, Ill.: Scott Foresman and Company, 1983) 12-13; Paul A. Sabatier and Daniel A. Mazmanian, "Policy Implementation," Encyclopedia of Policy Studies, Stuart S. Nagel, ed. (New York: Marcel Dekker, Inc., 1983) 149-51.

³Clarence D. Gilkey, personal interview, 27 June 1985.

⁴Warren G. Magnuson, U.S.S., Henry M. Jackson, U.S.S., Mark O. Hatfield, U.S.S., Bob Packwood, U.S.S., Mike McCormack, M.C., and Robert Duncan, M.C., letter to Major General J. W. Morris, Director of Civil Works, OCE, 6 May 1975.

⁵The interview of Mike McCormack by Cecil Eugene Reinke, 8 July 1987, includes the following dialogue:

Q. I realize that no one Congressman talks for the whole of Congress. But in your understanding, how would you describe the original goal, the original purpose, of Section 83?

A. First, I want you to please understand--to please consider in any use of anything I give you that this is strictly from my memory without any refreshing, and that there will be a good deal of hazy recollection involved. Secondly, I should say that I was virtually the only member of Congress involved, with the exception of the Subcommittee Chairman on the Public Works Committee, Ray Roberts, who was the only other person particularly involved. And Senator Magnuson's Administrative Assistant, Stan Barer, was involved. That's about the sum and substance of Congressional involvement.

* * *

Q. I sat down kind of academically and thought, well, there are three possible things a person could want when you relocated a town. One possibility of what whoever your talking to could have wanted was just to get the town out of the way so you could build the second powerhouse. That's one possibility. Another possibility--I want to move this town to serve the people who want to stay together and to preserve the culture, that sort of thing. Whatever the culture was. And then a third possibility is, I want to build a better town. A big, new and improved town. My impression is that from your standpoint it was clearly the second--keeping these people together because they want to

stay together, to preserve the culture to the extent that you can.

A. Well, I'm not sure. My feeling is very ambivalent on this. I looked at myself as a problem solver. And I think that at that time the people who were in the leadership positions of the town were also problem solvers. They weren't troublemakers. People wanted better homes. They saw an opportunity--and a justified opportunity. They're going to be uprooted. And the trade-off for upsetting to whatever degree there was a cultural cohesion there, they would get better quality homes, and they would get sewer systems and water supply. That didn't seem to be the least bit out of line.

To the degree that you were going to preserve a culture, I don't know. It may have been in the minds of some. I didn't think of cultural existence there as having enough substance to make a lot of difference. And certainly when a number--I think a majority of the inhabitants indicated that they were going to leave. That certainly was not any reinforcement for cultural preservation. Its true that the idea was to get the people out of the way. You had to get them out of the way in order to build the powerhouse. And that was the first step. To just say, ok, we have to move the town. The second one was to provide better quality without robbing--without ripping off the Corps of Engineers, the Federal Government. And provide, of course, some cohesion. If you want to call it cultural stability, why that's fine. You obviously wanted a degree of stability. Cohesion in the community. You could get this by putting the houses together.

Q. Did what the town wanted change over a period of time?

A. Yes. What they asked for changed dramatically as outsiders came in and started ratcheting the whole idea completely out of realistic state. That happened, it seems to me looking back, it happened rather soon. I do not recall the exact chronology of the time between events. I believe that what the people wanted when they first talked to me was simply to have decent houses. And that the ones who were going to stay liked the idea of having minimal utilities, decent services together.

What they really wanted was a better home.

Now a few of them were complaining because they were losing their businesses. My only response to that was to say that's really unfortunate but there's nothing I could do about it. You have a small store right in the middle of where the dam's going to be and you're out of luck. You have to be

compensated in dollars and that's the only way to compensate you. And that was up to negotiation with the Corps.

But I can be quite emphatic--I am absolutely certain--that the original concept of a new town in the minds of these individuals was a very modest one. And that there was no idea that I was aware of --and I think I would have been aware of it very early on--of continual ratcheting of this idea ad infinitum as it happened.

⁶Town of North Bonneville v. U.S., 11 Cl. Ct. 694, 697 (1987).

⁷Town of North Bonneville v. U.S., 11 Cl. Ct. at 697.

⁸See dissertation, supra, 393.

⁹See dissertation, supra, 416-19.

¹⁰See dissertation, supra, 419-23.

¹¹See dissertation, supra, 40, 423.

¹²See dissertation, supra, 425-27. Pollard Dickson was asked, "If I said to you that the Corps of Engineers did not move a town. They destroyed one town and built another. How would that hit you? His response: "That could be a pretty harsh statement. . . . Destroying a town you can say very clearly in the physical sense of infrastructure. I don't think you can destroy what a town is really all about. The town is the sinew of the people. And I don't think you destroyed that." Pollard Dickson, personal interview, 20 October 1987.

¹³Royston, Hanamoto, Beck, and Abey, Comprehensive Plan, North Bonneville Relocation and Optimum New Town Design (San Francisco: RHB&A, 1975) 9. See dissertation, supra, 296.

¹⁴Robert P. Flanagan, Chief, Engineering Division, Portland District, memorandum to Office of Counsel, Portland District, Subject: North Bonneville vs. U.S., Court of Claims No. 564-80C; Transmittal of Report on Relocation Costs, with inclosed report captioned "Cost Escalation in the Relocation of North Bonneville," 8 April 1983.

¹⁵Flanagan, memorandum to Office of Counsel, 8 April 1983.

¹⁶"About \$3,812,000 of the actual costs for town facilities and utilities, or 21 percent of the total costs, went for contract modifications to the major contracts. Of this amount over 1.5 million were payments which provided no physical change to the work." Flanagan, memorandum to Office of Counsel, 8 April 1983.

¹⁷"Interim and temporary facilities, except for sound abatement, cost over \$3,500,000. The majority of this amount went for Interim Housing and Interim Business projects. The costs involve numerous contracts for site preparations, utilities, trailer and prefabricated building procurement, setup and maintenance. These unanticipated projects were costly and again caused by the delays in reaching agreement and completion of the town relocation project and justified by the town's desire to have a viable relocation while maintaining the schedule for powerhouse construction." Flanagan, memorandum to Office of Counsel, 8 April 1983.

¹⁸See dissertation, supra, 336-38.

¹⁹U.S. Army Corps of Engineers, Portland District, "History of North Bonneville Relocation Costs," [c. 1983].

²⁰U.S. Army Corps of Engineers, Portland District, "History of North Bonneville Relocation Costs," [c. 1983].

²¹U.S. Army Corps of Engineers, Portland District, "History of North Bonneville Relocation Costs," [c. 1983].

²²See dissertation, supra, 296-312.

²³See dissertation, supra, 296-312.

²⁴See dissertation, supra, 300.

²⁵Martin Rein and Francine Rabinovitz, "Implementation: A Theoretical Perspective," Working Paper No. 43 (Cambridge: Joint Center for Urban Studies, March 1977) 8-16.

²⁶See dissertation, supra, 74-85.

²⁷See dissertation, supra, 121-22.

²⁸See dissertation, supra, 98-100.

²⁹Charles B. Brinkley, Jr., LTC, Acting District Engineer, Portland, 1st Indorsement to 4 February 1972 letter by Woodrow Berge, Director of Real Estate, OCE, Subject: Congressional Inquiry-- Bonneville Dam (Re: Mayor Robert J. Holcomb, Town of North Bonneville, Washington), with inclosed draft reply to U.S. Senator Warren G. Magnuson, 17 February 1972. See dissertation, supra, 103-04.

³⁰Minutes, North Bonneville Town Council, 22 February 1972. See dissertation, supra, 111-12.

³¹Legal opinion by Michael A. Rea, Assistant District Counsel, Portland, Subject: Attorney's Response to Resolution 148, as passed in Regular Session, 17 April 1972, by the Mayor and Town Council of

North Bonneville, Washington, 21 July 1972. See dissertation, supra, 119.

³²Engineer Federal Acquisition Regulation Supplement, Appendix Q, Part 6, Reestablishment of Towns, Paragraph Q-73-601, General (1 October 1984); formerly Engineer Regulation 1180-1-1, Section 73, Part 6, Reestablishment of Towns, Paragraph 73-601, General (1 December 1969). See dissertation, supra, 92-93.

³³See dissertation, supra, 111-12.

³⁴See dissertation, supra, 187-89.

³⁵See Water Resources Development Act of 1974, March 7, 1974, 48 Stat. 12, § 83.

³⁶See dissertation, supra, 215-19.

³⁷See dissertation, supra, 219-22.

³⁸See dissertation, supra, 222.

³⁹See dissertation, supra, 241-43.

⁴⁰See dissertation, supra, 241-42.

⁴¹See dissertation, supra, 242.

⁴²See dissertation, supra, 242-43.

⁴³See dissertation, supra, 242-43.

⁴⁴See dissertation, supra, 243-245.

⁴⁵Paul H. Schroy, personal interview, 26 June 1986. See dissertation, supra, 245.

⁴⁶E. Manning Seltzer, General Counsel, OCE, 2nd Indorsement to 24 May 1974 letter by Clarence D. Gilkey, Colonel, District Engineer, Portland, Subject: Interpretation of Public Law 93-251, Section 83; Relocation of the Town of North Bonneville, Washington, 21 June 1974. See dissertation, supra, 228-29, 235-38.

⁴⁷Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to the Office, Chief of Engineers, Subject: Interpretation of Public Law 93-251, Section 83; Relocation of the Town of North Bonneville, Washington, 24 May 1974. See dissertation, supra, 228-29.

⁴⁸Paul H. Schroy, personal interview, 5 May 1987. See dissertation, supra, 238-40.

⁴⁹Town of North Bonneville v. U.S., No. C74-133T, U.S. District Court, Western District of Washington. See dissertation, supra, 260.

⁵⁰Paul H. Schroy, personal interview, 5 May 1987. See dissertation, supra, 260-63.

⁵¹See Town of North Bonneville v. U.S., 11 Cl. Ct. at 744. See dissertation, supra, 263.

⁵²This conclusion is self-evident. The action for injunction was withdrawn fourteen days after filed, manifestly because the Corps acquiesced in the town's position on the new town facilities and utilities sizing issue. See dissertation, supra, 266.

⁵³Memorandum for the Record by A. A. Hight, Colonel, Directorate of Civil Works, OCE, Subject: Meeting with Portland District Engineer on 4 October 1974, 7 October 1974. See dissertation, supra, 264-65.

⁵⁴E. Manning Seltzer, General Counsel, OCE, letter to District Engineer, Portland, Subject: Interpretation of Section 83 of Public Law 93-251; Relocation of the Town of North Bonneville, Washington, 17 October 1974. See dissertation, supra, 265.

⁵⁵See dissertation, supra, 92-93.

⁵⁶Resolution No. 146, North Bonneville Town Council, 17 January 1972; Minutes, North Bonneville Town Council, 17 January 1972. See dissertation, supra, 147-48.

⁵⁷Paul D. Triem, Colonel, District Engineer, Portland, letter to Mayor Robert J. Holcomb, Town of North Bonneville, 4 August 1972. See dissertation, supra, 148-49.

⁵⁸L. J. Stein, Chief, Engineering Division, Portland District, memorandum to D. H. Nellen, Chief, Real Estate Division, Portland District, Subject: Public Meeting--Bonneville Second Powerhouse, 3 December 1973. See dissertation, supra, 148-49.

⁵⁹U.S. Army Corps of Engineers, Portland District, Press Release, 22 January 1974; Town of North Bonneville, Relocation Newsletter, 6 February 1974. See dissertation, supra, 151-53.

⁶⁰Memorandum for the Record by Buddy R. Clemenhagen, Subject: Summary of Meeting Regarding Town of North Bonneville Relocation Proposal 10 January 1974, 22 January 1974. "Preliminary cost estimates . . . showed that the town's proposal would increase railroad relocation costs by \$3,200,000 and waste disposal costs by \$9,331,000, if 3,500,000 c.y. of waste was hauled to Hamilton Island or \$13,006,000 if 3.5 million yards of waste was hauled to Stevenson, for a total increase in cost of \$12,531,000 and \$16,206,000, respectively." Memorandum for the Record by Clemenhagen, 22 January 1974. See dissertation, supra, 150-51.

⁶¹Memorandum for the Record by Clemenhagen, 22 January 1974. See dissertation, supra, 150-51.

⁶²Memorandum for the Record by Hight, 7 October 1974; Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to Mayor Ernest Skala, Town of North Bonneville, 4 October 1974. See dissertation, supra, 269-70.

⁶³Ernest J. Skala, Mayor, Town of North Bonneville, letter to Lt. General William C. Gribble, Jr., Chief of Engineers, copied to Senator Warren G. Magnuson, Senator Henry M. Jackson, and Representative Mike McCormack, 10 October 1974. See dissertation, supra, 270-71.

⁶⁴Warren G. Magnuson, U.S.S., letter to Lt. General W.C. Gribble, Jr., Chief of Engineers, 22 October 1974. See dissertation, supra, 271-72.

⁶⁵W. C. Gribble, LTG, Chief of Engineers, letter to Mayor Ernest J. Skala, Town of North Bonneville, 5 November 1974. See dissertation, supra, 272-73.

⁶⁶Gribble, letter to Skala, 5 November 1974. See dissertation, supra, 273.

⁶⁷"I can definitely say that the Corps had recommended a different site location for the new town for a number of reasons. One of the things that was considered is that the Corps' recommended site was less costly since the railroad would not have to be moved. The town didn't like the Corps choice. The town wanted the present location. After a number of public meetings, contacts and so forth, the A-E contractor hired by the town (and reimbursed by the Corps through the town) selected the present town location. After a great deal of discussion in house, the District Engineer stood up at a public meeting and accepted the location proposed by the town. OCE representatives were also present at the time. So the Corps accepted the present location even though it was not our recommendation, and we saw problems with it, including additional cost." The site recommended by the Corps "would have been much cheaper, and just as good, from every standpoint." Paul H. Schroy, personal interview, 19 April 1985. See dissertation, supra, 308-12.

⁶⁸U.S. Army Corps of Engineers, Bonneville Second Powerhouse Design Memorandum No. 8 Relocation of the City of North Bonneville, Washington, 2 Vols. (Portland, OR: Portland District, 1975) 1: 13-1.

⁶⁹Paul H. Schroy, personal interview, 12 August 1988.

⁷⁰Memorandum for the Record by Hight, 7 October 1974; Seltzer, letter to District Engineer, 17 October 1974. See dissertation, supra, 264-65.

⁷¹Contract for Services between the Town of North Bonneville and the Portland District, U.S. Army Corps of Engineers, No. DACW57-75-C-0032, 26 July 1974, Supplemental Agreement P00001, 14 October 1974.

⁷²Contract for Services, Supplemental Agreement P00001, 14 October 1974. See dissertation, supra, 265.

⁷³Clarence D. Gilkey, Colonel, District Engineer, Portland, letter to OCE, Subject: Issues Which May Require an OCE Position Due to Relocation of North Bonneville, Washington, 27 November 1974. See dissertation, supra, 312-13.

⁷⁴Edward Gowen, Acting Director of Real Estate, OCE, 2nd Indorsement to 22 March 1975 letter by Clarence D. Gilkey, Subject: Issues Which May Require an OCE Position Due to Relocation of North Bonneville, Washington, 8 April 1975. See dissertation, supra, 315.

⁷⁵Water Resources Development Act of 1974, March 7, 1974, 48 Stat. 12, § 83(c). See dissertation, supra, 183.

⁷⁶Water Resources Development Act of 1974, § 83(d). See dissertation, supra, 183.

⁷⁷Gilkey, letter to OCE, 27 November 1974. See dissertation, supra, 316-17.

⁷⁸Gilkey, letter to OCE, 27 November 1974. See dissertation, supra, 316-17.

⁷⁹Gilkey, letter to OCE, 27 November 1974. See dissertation, supra, 316-17.

⁸⁰Gowen, 2nd Indorsement to 21 March 1975 letter by Gilkey, 8 April 1975. See dissertation, supra, 318-19.

⁸¹Daily Log by Ed Daugherty, Columbia River Coordinator, Portland District, 10 April 1975. See dissertation, supra, 320-21.

⁸²Town of North Bonneville v. Callaway, C-75-81T, United States District Court, Western District of Washington. See dissertation, supra, 322.

⁸³James J. Mason, letter to Archer D. Smith III, 5 January 1976.

⁸⁴Warren G. Magnuson, U.S.S., telegram to Major General John W. Morris, Director of Civil Works, OCE, 11 April 1975. See dissertation, supra, 320-21.

⁸⁵John W. Morris, MG, Director of Civil Works, OCE, letter to Senator Warren G. Magnuson, 18 April 1975. See dissertation, supra, 321-22.

⁸⁶Memorandum for Record by A. A. Hight, Colonel, Directorate of Civil Works, OCE, Subject: Meeting with Congressional Delegation, Washington--Oregon, 6 May 1975. See dissertation, supra, 338-41.

⁸⁷Memorandum for Record by Hight, 6 May 1975. See dissertation, supra, 338-41.

⁸⁸Memorandum for Record by Hight, 6 May 1975. See dissertation, supra, 338-41.

⁸⁹Leonard J. Stein, Chief, Engineering Division, Portland District, memorandum to Division, Office, and Branch Chiefs, Portland District, Subject: Preliminary Draft Feature Design Memorandum, North Bonneville Relocation and Optimum Town Design, 2 May 1975. See dissertation, supra, 340.

⁹⁰Memorandum for Record by Hight, 6 May 1975. See dissertation, supra, 340-41.

⁹¹Magnuson, Jackson, Hatfield, Packwood, McCormack, and Duncan, letter to Morris, 6 May 1975. See dissertation, supra, 341-42.

⁹²Magnuson, Jackson, Hatfield, Packwood, McCormack, and Duncan, letter to Morris, 6 May 1975. See dissertation, supra, 341-42.

⁹³Magnuson, Jackson, Hatfield, Packwood, McCormack, and Duncan, letter to Morris, 6 May 1975. See dissertation, supra, 341-42.

⁹⁴David P. Johnson, telephone interview, 26 February 1985.

⁹⁵Ernest E. Swanson, personal interview, 25 March 1988. "The Corps got themselves into a tight fix. Because they wanted to start, and they hadn't done the relocation. That was their first--the Corps' mistake. They didn't handle the relocation when they should have. They thought it was probably, give you so many dollars and you'll go away. And so consequently, when it came time to do the work, the town hadn't been moved. The town was sitting right where they want to build this powerhouse. So they were in a bind. That's one of the reasons why the McCormack legislation passed, because the Corps went along with it to get this project underway. They committed themselves to this powerhouse. The people were just secondary. The four hundred people, or whatever the figure was at that time. You could pay them off and it would just be a drop in the bucket. But that isn't the way it worked." Timothy F. Collins, personal interview, 27 August 1986.

⁹⁶Homer B. Willis, personal interview, 18 June 1985. See dissertation, supra, 61-68.

⁹⁷U.S. Army Corps of Engineers, Bonneville Lock and Dam General Design Memorandum No. 4, Second Powerhouse Site Selection and Hydropower Capacity (Portland, OR: Portland District, 1972) 3-1. See Charles W. Kinney, Acting Administrator, BPA, letter to Gordon C.

Fernald, Chief, Engineering Division, NPD, 2 February 1965. See dissertation, supra, 61-68.

⁹⁸Funds for design and location studies for the Bonneville Second Powerhouse were made available by the Congress beginning with appropriations for Fiscal Year 1967. U.S. Army Corps of Engineers, Design Memorandum No. 4, 1-3. Study results were reported by the Portland District to the Office, Chief of Engineers, in September 1971. U.S. Army Corps of Engineers, Bonneville Dam Design Memorandum No. 2, Second Powerhouse Site Selection and Hydropower Capacity (Portland, OR: Portland District, 1971). See dissertation, supra, 63-68.

⁹⁹See dissertation, supra, 157, note 15.

¹⁰⁰Homer B. Willis, personal interview, 18 June 1985. See dissertation, supra, 67-68.

¹⁰¹See dissertation, supra, 63-64.

¹⁰²See dissertation, supra, 74-85.

¹⁰³Public announcement of the recommended site for the Bonneville Second Powerhouse was issued in July 1971. U.S. Army Corps of Engineers, Portland District, "Announcement of Public Meeting, Bonneville Dam Second Powerhouse, Columbia River, Bonneville, Oregon," 26 July 1971. See dissertation, supra, 94. In March of 1972, for the first time found of record, the Portland District offered a comprehensive explanation to the Town of what it could and could not do to assist in the relocation of the town. See Paul D. Triem, Colonel, District Engineer, Portland, letter to Mayor Robert J. Holcomb, Town of North Bonneville, 23 March 1972. See dissertation, supra, 113-14.

¹⁰⁴Brinkley, 1st Indorsement to 4 February 1972 letter by Berge, 17 February 1972. See dissertation, supra, 98-100.

¹⁰⁵See dissertation, supra, 98-100.

¹⁰⁶See dissertation, supra, 98-100.

¹⁰⁷See dissertation, supra, 98-100.

¹⁰⁸See dissertation, supra, 98-100, 101-02.

¹⁰⁹U.S. Army Corps of Engineers, Portland District, Transcript of Public Meeting Held at Bonneville Dam, 24 August 1971, Bonneville Dam Second Powerhouse Site Selection, (Portland, OR: Portland District, 1971) 17. See dissertation, supra, 101-02

¹¹⁰See dissertation, supra, 94-96.

¹¹¹Resolution No. 148, North Bonneville Town Council, 17 April 1972. See Minutes, North Bonneville Town Council, 17 April 1972. See dissertation, supra, 115-16.

¹¹²Early on, the Town Council wanted the new town planned by All Engineering, a small architect-engineer firm owned by Lyle Hay. Minutes, North Bonneville Town Council, 22 February 1972. See dissertation, supra, 112. Later, the Town Council wanted the new town planned by students of The Evergreen State College. Memorandum to Files by Ed Daugherty, Columbia River Coordinator, Portland District, Subject: Meeting with Town Council of North Bonneville and Others on 4 April 1973, 5 April 1973. See dissertation, supra, 132. Ultimately, the Town Council wanted the new town planned by a "Design Consultation Team" consisting of a prime contractor and five subcontractor firms. Contract for Professional Services, between the City of North Bonneville and Royston, Hanamoto, Beck and Abey, 19 November 1974; Minutes, North Bonneville Town Council, 19 November 1974. See dissertation, supra, 280.

¹¹³See dissertation, supra, 98-100.

¹¹⁴U.S. Army Corps of Engineers, Portland District, Transcript, Second Powerhouse Site Selection 17. See dissertation, supra, 101.

¹¹⁵Paul D. Triem, Colonel, District Engineer, Portland, letter to Mayor Robert Holcomb, Town of North Bonneville, 24 August 1971. See dissertation, supra, 102.

¹¹⁶Holcomb, letters to Magnuson, Jackson and McCormack, 12 January 1972. See dissertation, supra, 103-04.

¹¹⁷Brinkley, 1st Indorsement to letter 4 February 1972 by Berge, 17 February 1972. See dissertation, supra, 104.

¹¹⁸Ernest J. Skala, personal interview, 22 August 1986.

¹¹⁹See dissertation, supra, 108.

¹²⁰Minutes, North Bonneville Town Council, 22 February 1972. See dissertation, supra, 111-12.

¹²¹See Legal Opinion by Rea, 21 July 1972.

¹²²The legal authority for this statement was provided to the Town Council approximately five months after it was made. See Legal Opinion by Rea, 21 July 1972.

¹²³See dissertation, supra, 111-12.

¹²⁴Gilkey, letter to Holcomb, 24 August 1971. See dissertation, supra, 102.

¹²⁵Holcomb, letters to Magnuson, Jackson, and McCormack, 12 January 1972. See dissertation, supra, 108-09.

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APPENDIX A

THE "BIG SIX" LETTER

C.M. DISTRICT, WASHINGTON

FEDERAL BUILDING, 300 12TH
(202) 224-5816

COMMITTEE:
PUBLIC WORKS
JOINT COMMITTEE ON
ATOMIC ENERGY
SCIENCE AND ASTRONAUTICS

CHAIRMAN
SUBCOMMITTEE ON ENERGY

Congress of the United States
House of Representatives
Washington, D.C. 20515

May 6, 1975

DISTRICT OFFICES:
U.S. FEDERAL BUILDING
RICHLAND, WASHINGTON 99212
(509) 942-7273
117 N. THIRD, SUITE 102
YAKIMA, WASHINGTON 98501
(509) 248-0103
FEDERAL BUILDING, 300 12TH
VANCOUVER, WASHINGTON 98101
(206) 696-4041, EXT. 645

Major General J. W. Morris
Director of Civil Works
Office of the Chief
U.S. Army Corps of Engineers
Forrestal Building
Washington, D.C.

Dear General Morris:

This will follow-up our meeting with you on April 30th concerning construction of the Bonneville Second Powerhouse and relocation of the Town of North Bonneville. We want to be certain several points made by us at that time are clear.

First, we are adamant in our view that no delay in the Powerhouse construction schedule can be tolerated and feel, therefore, that the Memorandum of Relocation should be signed by June 1st. Achievement of those objectives will require that reason prevail on all sides. We will look with great disfavor on any failure by the Corps to cooperate in meeting the reasonable requirements of the Town. Likewise, we will look with equal disfavor on any unreasonable demands made by the Town.

Second, we believe the positions taken by the Town on several of the issues now in dispute are reasonable positions and can be accommodated by the Corps within the authority granted by Section 83 of PL 93-251. For example, we believe the law does permit the Corps to convey lots in the new townsite to the Town and townspeople at the prices paid by the Corps for those lots.

Third, we stand ready to propose report language to the House and Senate Appropriations Committees for inclusion in their Reports on the FY 1976 Public Works Appropriations Act if the Corps feels clarification of Section 83 of PL 93-251 is necessary to permit it to satisfy the reasonable requests of the Town. Although the Act will not become law until late this summer, we will seek to obtain written assurances from the Public Works Appropriations Subcommittee Chairmen prior to June 1st, that they will support inclusion of the language in their reports.

Major General J. W. Morris
 Page 2
 May 6, 1975

Obviously, there will have to be considerable discussion among the Corps, the Mayor of North Bonneville, ourselves, and others between now and the end of this month if the Memorandum of Relocation is to be signed by June 1st. Attached is a memorandum setting out the steps we feel should be followed in the next several days.

In closing, we reiterate our extreme concern and our firm belief that this matter can be resolved as long as reason and cooperation prevails on all sides.

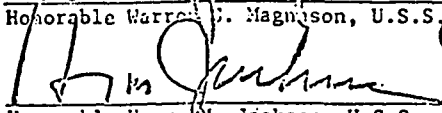
Sincerely,



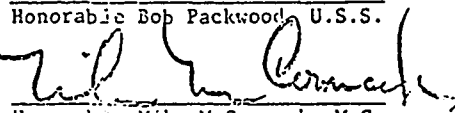
Honorable Warren D. Magnuson, U.S.S.



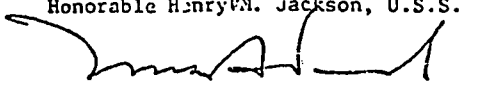
Honorable Bob Packwood, U.S.S.



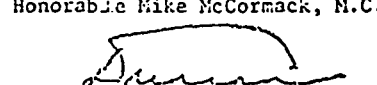
Honorable Henry M. Jackson, U.S.S.



Honorable Mike McCormack, M.C.



Honorable Mark O. Hatfield, U.S.S.



Honorable Robert Duncan, M.C.

cc: Honorable Ernest Skala, Mayor
 Town of North Bonneville

Objective to be Obtained

Before May 30, the Corps and the Town sign the Memorandum of Relocation. In the Memorandum, the Corps agrees to take specific actions (step 1 below) required by the Town. The Corps further agrees to take those actions by a time certain following enactment of the Public Works Appropriations Act into law. In the same Memorandum the Town agrees to take no action in court or otherwise to halt construction of the Powerhouse or the Town relocation provided the Corps takes the actions (step 1 below) required by the Town by the time certain. The Town further agrees to withdraw its present court suit.

Step 1

The Mayor of North Bonneville and the Portland District Corps Office meet immediately to spell out, precisely and in writing, what actions the Corps must agree in the Memorandum of Relocation to take by a time certain after the enactment of the Public Works Appropriations Act in order for the Town to sign the Memorandum. These actions will have to be achievable under the authority of Section 83 of PL 93-251 as clarified, if necessary, by report language in the FY 1976 Public Works Appropriations Reports.

Step 2

The Mayor of North Bonneville, an appropriate staff member from the Portland District Corps Office, appropriate representatives of General Morris, staff from Congressional Offices, and staff from Appropriations Committees meet in Washington, D.C. to work out precise report language required by the Corps to permit it to take the actions spelled out in Step 1.

Step 3

Once language is agreed to, General Gribble writes the Delegation assuring them that if the language is included in the Committee Reports then the Corps will take the actions spelled out in Step 1.

Step 4

The Congressional Delegation proposes that language in writing to the Chairmen of the House and Senate Public Works Appropriations Subcommittee and request written assurance prior to June 1 of their support for inclusion of the proposed language.

Step 5

Once the written assurances are received from the Subcommittee Chairmen (Step 4), the Town and Corps sign the Memorandum of Relocation as described above in "Objective"

APPENDIX B

CORPS POSITIONS ON GOVERNMENT'S OBLIGATION TO REPLACE MUNICIPAL
UTILITIES AND FACILITIES FOR THE TOWN OF NORTH BONNEVILLE,
WASHINGTON

12 May 1975

Hein

Corps Positions on Government's Obligation to Replace Municipal Utilities
and Facilities for the Town of North Bonneville, WA

1. Highway Access. The Government should provide access to the new town from the highway and relocation of the highway appears to be justified. It appears that the town requirement for a new underpass under the existing railroad is questionable and additional justification is required.

2. Streets. The town's proposal is to use the maximum right-of-way width in the State's standards. It was determined that whenever the town proposes any work above applicable minimum State standards, justification for that higher standard is required except when a higher standard already exists in the town.

3. Trails. It appears that the town is proposing to change the Washington State standard for two sidewalks, one on each side of the street, putting only one sidewalk on one side of the street and using the other sidewalk as a trail between the residential houses. If that is the case, then it appears that the Government could accept the trail system. Review of the comprehensive plan revealed that the proposal was to have a minimum 30-foot buffer strip between the property lines and the bicycle paths. This would make altogether a 68-foot right-of-way for the trails. It appears the right-of-way requirements are excessive. However, the Government would have no objection to this type of trail system if the town will buy the additional land. The Government will not pay for any development of trails outside of the initial Town.

4. Open Space. Open space needs to be identified and justifications developed. ~~The Corps does not understand the reference to open space in table 15-1. We do not recognize any municipally-owned open space in the old town which is replaceable. As a general rule, if the Corps acquires land from private land owners then that land cannot be counted as open space and used as a basis for providing open space in a new town under municipal ownership.~~

5. Park. The town has proposed a 16-acre park at an estimated cost of \$322,000. They used as their standard a California State standard. The California standard does not apply in this case. The Bureau of Outdoor Recreation Guidelines indicates a 5-acre park would be adequate for a town the size of North Bonneville. ~~Page 126 of~~ the draft environmental assessment report states that the city needs only minimal parks because of its close proximity to National Forests and State and county parks. The Government has authority to replace the park; however, the size of a park and appurtenances should be justified in the light of the other facilities available in the area.

6. Trees. The Government will not landscape private property. It will provide a reasonable amount of landscaping on the municipal area of initial town. The Government will provide erosion control on lands in initial town designated for private ownership. Areas outside of initial town; which involve spoil of material will be graded and provided erosion control and landscaping per our established practice for spoil areas. Areas outside of initial town, which do not involve spoil will remain as acquired.

7. Lighting. Since the town has street lights existing in the old town the Government is responsible for replacing those lights with street lights in the new town. The town proposal to put street lights on the trail system is judged to be a betterment.

8. Street Signs and furniture. Street signs are reasonable and necessary; however, the request for \$16,000 or more worth of street furniture is judged to be a betterment since the town had only one street bench in the existing town which the architect-engineering firm judged to be of no value.

9. Curbs and gutters. Curbs and gutters are needed for drainage and are considered a reasonable replacement item.

10. Drainage. Storm drainage is a reasonable replacement responsibility of the Government.

11. Water System. There is considerable concern about the sizing of the water system and the proposal to upgrade the town's fire rating status by greatly increasing the capacity of the water system. The size of the water system will require more justification as to current standards before the Government could agree to pay for the proposed system.

12. Sewerage System. There are several concerns with the system proposed by the town. One, the District could not verify the population projections made by the A-E. Additional justification for the population projections is required. Two, additional verification of EPA standards is required. Three, additional justification for sewer line to industrial area is needed. *Also subject to future*

13. Underground Utilities. The placing of ~~power lines~~ ^{utilities} under ground is considered a reasonable replacement; however, the installation of those facilities would be subject to a relocation contract with the utilities.

14. Cable TV. The cable TV system in North Bonneville is a private business and not a utility, public or private. Therefore, the Government has no responsibility to provide a cable TV system relocation in the new town.

15. Utility Connections. The connection charge for utilities provided in the new town incurred by the private owners would be a part of the relocations assistance payments to the individual homeowners. There is no authority to reimburse cost of installation of lines across private property to individual structures.

16. Flood control. The proposed construction of flood control dikes and levees on Hamilton Creek north of the highway is considered a betterment and would have to be paid for by a non-Federal entity.

17. Fill. The Corps does have a need to get rid of 18 million cubic yards of fill material and in so doing they do have an opportunity to help the town if additional costs are not involved. More information is required on the amount and location of fill in question and the costs involved.

18. School or community center. The town has proposed both a replacement school and a community center. It was determined that the Government can not buy the school from the existing school board and also build a community center for the town.

19. Municipal Buildings (Town Hall and Fire Station). Section 83 states that municipal facilities provided under this section shall be substitute facilities which serve reasonably as well as those in the existing town of North Bonneville except that they shall be constructed to such higher standards as may be necessary to comply with applicable Federal and State laws. The size of the proposed replacement municipal building needs additional justification as some proposed facilities are as much as 300% larger than existing facilities. For example, it appears that meeting rooms in the various buildings are a duplication and should be combined with other uses to reduce the size of the replacement facility. While the Government has some minimum design latitude we do not have the authority to more than double the size of existing facilities without additional congressional guidance. Additional congressional guidance should be worded somewhat as follows: "When there are no standards required by Federal or State laws then standards recognized by technical societies, by custom or by recognized good practice may be followed in space allocations, design, etc.".

The planning annex is not considered to be a replaceable item because it was leased solely for the relocation. In the event temporary space continues to be a requirement during the relocation process, this could be accommodated by lease of another government facility.

20. Town Marshal's Office. The town does not now have a municipally owned Town Marshal's office. Without amended legislation, municipal facilities must be substitute facilities.

21. Maintenance Building. The Government has more latitude in connection with the proposed maintenance building because of the sewage treatment plant.

22. Real property only will be replaced. Equipment and furniture are not real property.

23. Medical facilities, not a replaceable item.

- 24. Marina not a replaceable item.
- 25. Cancee lake not a replaceable item.
- 26. Manpower training not a replaceable item.

27. Relocations Staff. The following criteria apply to the services of the relocations staff. The service must be (a) an essential community service, (b) directly related to relocation of the town, and (c) not be a duplication of services supplied by other government agencies. The Housing Advisor and Public Safety Officer are unjustified. The Government is not authorized to provide police services for civil works activities.

28. Reimbursable Legal Council must be limited to town relocation activities and can not be used to provide legal advice to individual relocatees. More justification is required before the government can consider reimbursement for rewriting city codes.

29. Noise mitigation. The Government accepts the concept of noise abatement and will seek practical design solutions to the noise problem. The Corps feels that other design solutions may be more practical. Whatever solution that is developed that encroaches on railroad right-of-way must be acceptable to the railroad.

30. Maintenance Policy. Any lands and facilities provided by the Government and turned over to the town will be maintained by the town.

31. Central Business District Parking. The Government does not have authority to provide both on-street parking and off-street parking. We can trade pavement area on the streets for pavement area on a city supplied parking lot if the state will give a variance. If city does not supply the parking lot the street right-of-way must be reduced to compensate for the additional land in the parking lot.

32. Cemetery Expansion. Must be classed as a betterment.

33. Potential Industrial land, Washington State Game lands and Golf Course expansion. The Government has no authority to replace the above.

34. Golf Course Relocation (of 2 holes). There appear to be two alternatives:

- 1. Rearrange housing layout or
- 2. If town insists on using that land and wants to pay for it, the Government could buy it on a reimbursable basis. That land will not be a part of the initial 210 replacement lots.

35. Private Properties. The Government can not replace private properties which it has acquired and paid for. For example, churches, Greenleaf lake, etc.

36. Government Subsidies to the Town. There is no authority ^{for the Corps} to provide an annual subsidy to operate the town.

37. Cascades Historical Site. Is a part of the Government day-use area and will be developed to protect its historical significance.

38. Trailer Park. The Government does not develop private trailer parks. If the proposed trailer park is a part of the 210 lot initial town development then the Government could provide utilities to the lot line.

39. Utilities to industrial sites. Since the industrial site is not a replaceable item then utilities into the site will have to be provided at non-federal expense.

40. Section 83 is considered to be the sole authority for relocation of the town.

41. Fair market value. The Corps and town positions are well established.

42. Pay back period. The Corps and town positions are well established.

43. Town size. The Government accepts an initial town size of 600 people with approximately 210 residential lots plus ^{commercial lots}. These figures include Fort Rains and the Brown tract. The size of the commercial lots will be the subject of further discussion. The annexation of Fort Rains is no longer an issue.

existing town has 47 lots commercial.
44. Plan's Specs -

45. Annexation

APPENDIX C

JOINT POSITION PAPER BETWEEN PORTLAND DISTRICT, U.S. ARMY CORPS
OF ENGINEERS AND CITY OF NORTH BONNEVILLE, WASHINGTON

16 May 1975

JOINT
POSITION PAPER
BETWEEN
PORTLAND DISTRICT, U. S. ARMY CORPS OF ENGINEERS
AND
CITY OF NORTH BONNEVILLE, WASHINGTON

As a result of the on-board review with representatives from OCE, NPD and NPP of the DFD, the Draft EAR, and the Draft Comprehensive Plan on the relocation of the city of North Bonneville, Washington, during the period 8-10 May 1975, it was understood that Portland District would immediately begin negotiations with the town on the issues involved in order to arrive at a Memorandum of Relocation by 30 May 75 which would be used as the basis for a Relocations Contract.

Corps review comments on the contract documents along with Corps positions on the Government's obligation to replace municipal utilities and facilities were turned over to the city on 13 May 1975 and negotiations began. Inclosure 1 to letter dated 12 May 1975 from Portland District to the city (copy attached) was used as the tool for negotiations.

Pursuant to the above, officials of the town and designated representatives of Portland District met and reached the following agreements on the issues:

- * 1. Highway access. No agreement has been reached to date on the requirement for an additional underpass under the existing railroad. Approximately \$1 million additional cost is involved.
- 2. Streets. Agreement has been reached. We will use minimum right-of-way widths for streets for cities under 1500 population; i.e., a 60' width.
- 3. Trails. Agreement has been reached on the concept for trails within the initial town boundaries but resolution of the surrounding open space as a part of the trail system will revert to and be resolved on the resolution of item 4--Open space.
- * 4. Open Space. Agreement has not been reached on the requirement for open space in the new town at government expense. This question can best be resolved by congressional clarifying language on Section 83, to include language substantially as follows: "When there are no standards required by Federal or State laws, then standards recognized by technical sources, by custom or recognized good practice may be followed in space allocation, design, etc."
- 5. Park. Agreement has been reached on a 5-acre park at government expense together with such reasonable appurtenances as can be justified; real property

for a park to be government expense; person's property for park to be at town's expense. It was agreed that reasonable maintenance for park to be furnished at government expense would consist of play area for children, including a free play area plus open basketball court; quiet sitting areas; picnic area shelter; a minimum small park building with toilets, with cold water only, constructed of materials such as to discourage vandalism; a ball field or tennis court will be provided at government expense in either a school or community center; normal pathway lighting but no field lighting. This agreement assumes that the clarifying language discussed under item 4 above is included in the congressional report.

6. Trees. The government will provide at its cost a reasonable number and kinds of trees. Corps will not provide landscaping on private property. The government will provide erosion control on lands in the initial town designated for private ownership. Areas outside of initial town but within optimum town boundaries and within day-use areas which involve spoil of material, will be graded and provided erosion control and landscaping phased to avoid unusual delay per our established practices for spoil areas and will be coordinated with the town.

7. Lighting. Agreement has been reached to replace the street lights along new streets and sidewalks in the new town. The town proposal to put appropriate lights on the high use trail areas is also included, provided the clarifying language concerning Section 83 referred to above, is placed in the congressional report.

8. Street Signs and Furniture. Agreement has been reached to replace street signs per se (excluding a town entrance sign). Government has agreed to provide trash receptacles in accordance with applicable no-litter laws, the existing town traffic light and the existing town kiosk. The town's new entrance sign is a betterment to be provided at the town's expense; however, the design team will include the landscaping of this new town entrance in the design contract.

9. Curbs and Gutters. Agreement was reached on these two items in accordance with inclosure 1.

10. Drainage. Agreement was reached on this item in accordance with inclosure 1.

11. Water System and Source.

a. Agreement has been reached to design the water system to meet minimum standards for fire flow.

b. The Corps guaranteed, and the town agreed to accept the following water supply for the new town: the Corps agrees to furnish a well of capacity 1,000 gallons per minute and of potable quality. Should the Corps fail to produce this guaranteed well, then the Corps will turn over to the town its present well No. 1220 as a replacement well for the new town. The town agrees that it has no current need to sell water to the new powerhouse.

town does request a present commitment from the Corps authorizing the town to supply water to the Corps day-use area. Should the Corps be required to transfer its well No. 1220 to the town because of the Corps' failure to produce the guaranteed well, then and in that event, the Corps will stand the additional cost of the tie-in distribution system to supply the initial town.

12. Sewerage System. Agreement has been reached to construct the sewerage system in the new town, leaving the size of that system to the designer based on a 10-year period of anticipated growth. Also the planning contractor must justify his population projection in the DFD. Industrial system to initial industrial area to be constructed at government expense.

13. Underground Utilities. Agreement has been reached in accordance with inclosure 1.

14. Cable TV. Agreement has been reached in accordance with inclosure 1.

15. Utility Connections. Agreement has been reached in accordance with inclosure 1.

16. Flood Control. Agreement has been reached to provide flood control in the industrial area north of Highway 14 in the form of fill and erosion control only.

17. Fill. Portland District agrees with the concept of spoil disposal as called for by the planning contractor.

* 18. The School or Community Center. Agreement has been reached in accordance with inclosure 1--if no school is built in the new town the Corps will provide a ball diamond at the community center. *Not E.S.S.*

19. Municipal Buildings (Town Hall and Fire Station). Agreement has been reached to replace these facilities subject to:

a. Securing congressional clarifying language on Section 83 as stated in item 4 above.

b. Subject to town furnishing acceptable justification as to required size of these facilities.

20. Town Marshal's Office. Agreement has been reached as follows:

a. The Town Marshal does not now operate from a municipally-owned Town Marshal's Office;

b. However, he has historically operated from a city-owned office in the Town Hall, hence replacement of this facility is authorized.

21. Maintenance Building. Agreement has been reached in accordance with inclosure 1.

22. Real Property vs. Personal Property. Agreement has been reached in accordance with inclosure 1.

23. Medical Facilities. Agreement has been reached in accordance with inclosure 1. The ambulance parking space will be provided for in the design concept for the fire station.

24. Marina. The term "small boat basin" is substituted for "marina". An agreement has been reached in accordance with inclosure 1 that the small boat basin is not a replaceable item, however, the Corps has agreed to study the location of the marina as a part of the day use area. The town is requesting a spoil disposal plan for the day use area which will accommodate their proposed small boat basin. The planning contractor has recommended the requirement for the small boat basin as a necessary interface between the town and the day use area; and necessary for the economic viability of the town.

25. Canoe Lake. An agreement has been reached in accordance with inclosure 1. The proposed area will simply be a part of the open space concept.

26. Manpower Training.

a. An agreement was reached that the government will provide for the training of a sewer plant operator.

* b. The town requests that priority be given to town citizens for construction work, i.e., jobs, resulting from town's relocation. The District cannot support this request.

* 27. Relocation Staff. No agreement was reached on this item as stated in inclosure 1. The position of Housing Advisor and Public Safety Officer requires additional justification showing its direct relation to the town's relocation if these positions are to be considered.

28. Reimbursable Legal Counsel. Agreement was reached in accordance with inclosure 1.

29. Noise Mitigation. Agreement was reached in accordance with inclosure 1.

30. Maintenance Policy. Agreement was reached in accordance with inclosure 1.

31. Central Business District Parking. Statement contained in inclosure 1 withdrawn. It was agreed that proposed parking is now a trade-off for the reduced parking on the streets inasmuch as the street width right-of-way has now been reduced (see Streets above).

APPENDIX D

MEMORANDUM FOR RECORD: JOINT MEETING BETWEEN THE TOWN OF NORTH
BONNEVILLE AND THE U.S. ARMY CORPS OF ENGINEERS

DAEN-CWE-B

20 May 1975

SUBJECT: Joint Meeting Between the Town of North Bonneville and the
U.S. Army Corps of Engineers in OCE on Above Date

MEMORANDUM FOR RECORD

1. The following represents positions on the issues set forth in the "Joint Position Paper Between Portland District, U.S. Army Corps of Engineers and City of North Bonneville, Washington" dated 16 May 1975 (Inclosure 1).

a. Item 1, Highway Access. The Corps concurs in the functional need for an additional underpass for vehicular and pedestrian traffic under the highway and railroad, located essentially as proposed in the planning report (DFDM).

b. Item 4, Open Space. The Corps of Engineers considers that it does not now have authority to convey to the city the open space requirements shown on the proposed plan at Federal expense. To conform to the desires of the town the Corps needs clarification to provide authority to convey pedestrian paths and other common use areas not included in platted lots within the planned initial town development area, south of the railroad. (This does not include any conservation areas around Greenleaf Lake.)

c. Item 5, Park and Other Municipal Facilities. In order to provide the space allocations and design proposed for municipal facilities the Corps of Engineers needs authority where no federal or state standards or laws apply to provide municipal facilities meeting standards of organized professional technical groups, by custom, or by recognized good practice in space allocation and design, but seeking to achieve a wise use of resources in providing for the necessary municipal facilities.

d. Item 18, School or Community Center. The Corps considers that it has the authority to either buy or replace the existing school. In the event that the appropriate school authorities decide that replacement of this school is not required the Corps would purchase this school but would not have the authority to provide community center facilities to replace those currently available in the school building. The Corps recognizes that the existing school is being used for community functions. The Town's position is that under the terms of the planning contract the design team has been obligated to provide plans to relocate the town as a socially viable unit. The conclusions of the design team and the citizens in the planning process have verified that the school is an essential community facility. This facility must therefore be replaced to insure community viability.

DAEN-CNE-B

20 May 1975

SUBJECT: Joint Meeting Between the Town of North Bonneville and the
U.S. Army Corps of Engineers in OCE on Above Date

e. Item 27, Relocation Staff. The Corps does not feel it has the authority to provide (nor would it be appropriate) for the positions of housing advisor and public safety officer requested by the Town. It is the Town's position that if the positions of the housing advisor and public safety officer cannot be provided under existing authorities that the Corps double their present staff so that the individual problems of the businessmen and home owners may be resolved to facilitate the Town relocation.

f. Item 34, Golf Course Relocation. The Corps position is that in developing plans and specifications, we will seek to avoid relocation of any portion of the golf course at Federal expense. The Town's position is that if the functional requirements of the design as proposed require that a portion of the golf course be relocated, it should be justified.

g. Item 40, Section 83. Dropped from the agenda by mutual consent.

h. Item 41, Fair Market Value. The Corps position is that Section 83 requires the Corps to convey lands to the relocating residents and Town when available at fair market value for those lands, as determined by ordinary real estate practices. Deviation from this would require Congressional direction. The Town's position is that Section 83 authorizes the Corps to convey to relocating residents and the town land acquired by the Corps at the dollar price paid by the Corps for such land.

i. Item 42, Payback Period. The Corps position is that Section 83 requires that the town agree to purchase when available those lands that have not already been deeded to individuals or other entities. The Town concurs in the Corps position with regard to Section 83 with the understanding that the timing of the Town's purchase of these lands will be developed in concert with the Corps and stated in the Town Relocation Contract.

j. Item 44, Administration of Plans and Specifications. The Corps position is that once the relocation contract has been signed, facilities called for thereunder are the responsibility of the Corps including the development of plans and specifications. The Town's position is that once the relocation contract has been signed the facilities to be provided thereunder are the responsibility of the Town including the administration of the design contract and the development of plans and specifications.

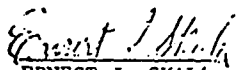
2. The above positions on the issues were mutually agreed at a joint meeting between representatives from the City of North Bonneville and the Corps of Engineers in Washington, D.C. on 20 May 1975.

DAEN-CWE-B

20 May 1975

SUBJECT: Joint Meeting Between the Town of North Bonneville and the
U.S. Army Corps of Engineers in OCE on Above Date

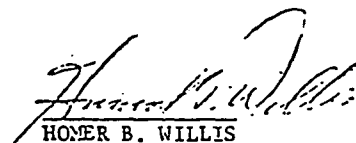
3. It was also mutually agreed that the above positions on the issues representing the views of both parties involved, would be taken to a scheduled meeting with the Congressional Delegation today for further resolution.



ERNEST J. SKALA

Mayor

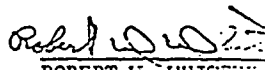
City of North Bonneville



HOMER B. WILLIS

Chief, Engineering Division

Directorate of Civil Works



ROBERT W. WHITER

Major, Corps of

Engineers

Deputy District

Engineer

APPENDIX E

MEMORANDUM OF AGREEMENT BETWEEN THE TOWN OF NORTH BONNEVILLE AND
THE U.S. ARMY CORPS OF ENGINEERS COVERING RELOCATION OF THE
TOWN OF NORTH BONNEVILLE IN CONNECTION WITH CONSTRUCTION OF THE
BONNEVILLE SECOND POWERHOUSE

MEMORANDUM OF AGREEMENT
BETWEEN
THE TOWN OF NORTH BONNEVILLE
AND THE
U. S. ARMY CORPS OF ENGINEERS
COVERING
RELOCATION OF THE TOWN OF NORTH BONNEVILLE
IN CONNECTION WITH
CONSTRUCTION OF THE BONNEVILLE SECOND POWERHOUSE

23 May 1975

1. Purpose: The purpose of this memorandum is to set forth current understandings, agreements, and planned actions and procedures and relationships between the Town of North Bonneville, Washington and the U. S. Army Corps of Engineers in regard to the relocation of the Town under the provisions of Section 83, P.L. 93-251.
2. Background: The Town and the Corps of Engineers have agreed on a site for the relocated town, and the general concept for the development of design of the relocated Town. These are incorporated in a draft design memorandum which has been prepared by the planning team and accepted by the parties as a master plan subject to certain reservations and comments which will be addressed under separate actions as set forth in paragraph 5 below. The master plan and the concept for design have been developed in accordance with the requirements of a mutually derived Scope of Work. Said Scope of Work was agreed to by the Town of North Bonneville and the Army Corps of Engineers as required by Town/Corps Contract No. DACW 57-75-C-0032. The concept for the design and the master plan for the new Town were developed through a planning process that maximized citizens' involvement and included direct participation by the Army Corps of Engineers, Portland District. Further background on the understandings is provided by the inclosed Memorandum for Record dated 20 May 1975; Subject: "Joint Meeting Between the Town of North Bonneville and the U.S. Army Corps of Engineers in OCE on Above Date." (Inclosure 1) The parties agree to be bound by and to implement the agreements reached in that Memorandum. Pertinent agreements set forth in this paper will be considered as resolving the points on which non-agreement is indicated in the 20 May memorandum. The parties also recognize that language (Inclosure 2) to clarify Section 83 P.L. 93-251 has been furnished to Congressional interests and the understandings in this memorandum are subject to such clarifying language as may be adopted by Congress. The Corps of Engineers agrees to be bound by and to implement any clarifying language adopted by the Congress.

3. Relationship of Parties: The parties agree that the Corps of Engineers shall be the Contracting Officer and shall administer the design contract. The Corps of Engineers acknowledges that such administration of the contract is in fulfillment of the intention of the United States Government to relocate the Town of North Bonneville and it recognizes the paramount interest of the Town in the design as the ultimate owner of the municipal facilities to be built. The Town shall participate in the design process. To effectively involve the Town in the design process, the parties agree to the following steps:

a. The scope and statement of work provisions of the design A-E contract and any subsequent modifications of the provisions will be subject to written approval by the Town.

b. The Corps will furnish the Town the list of potential A-E contractors produced in the preselection process called for by Department of Defense regulations. The Town will furnish written comments on the firms on the list and may suggest consideration of other firms not on the list. The Town's views will be considered in the final selection.

c. The final preliminary design stage shall be addressed in two workshops. The first will be a forum-type presentation to advise the officials and citizens of North Bonneville of what will occur during the design stage. The second will be a review of the final preliminary plan and articulation of standards and criteria to be utilized as design determinants.

d. A joint board of review will be established, to consist of an equal number of representatives from the Town, the Corps and the design A-E firm. It will have three functions:

(1) To meet periodically as determined by the Board to review the work done and the progress to date.

(2) To facilitate mutual agreement between the parties on the standards and criteria to be used as design determinants in the development of the final preliminary site plan, municipal building and construction plans and specifications.

(3) To report the results of its reviews and its recommendations to the Mayor and the District Engineer.

e. The Town will approve in writing the plans and specifications for municipal facilities prior to advertizing for bids for construction. The Town also will approve change orders for the same work. (The Town agrees to establish procedures that will eliminate undue delays in approval of change orders.)

4. Town Participation in Construction Contract: The Town will be afforded continuing opportunity to inspect the construction in progress.

5. Completion of Planning Phase: It is agreed that the planning A-E contractor will be required to complete the Draft Feature Design Memorandum to provide a complete master plan for town development including:

a. Changes required by the comments furnished by the Corps of Engineers by letter dated 12 May 1975, that are not inconsistent with this memorandum.

b. Analysis of the interface between the day-use area and the proposed future small boat basin to assure practicable functional inter-connections and modification of the town plan as indicated by the analysis. It is understood that reasonable access between the proposed future small boat basin and the day-use area will be provided with minimum disturbance to the town plan.

c. Analysis of the interface between the existing golf course and the new town to insure that the final plan represents a wise use of resources without undue sacrifice of functional requirements of the design concept for the Town.

d. Economic studies of ownership of the Central Business District and the electric utility system by the Town as needed for design of initial town development.

6. Betterments: Section 83, P.L. 93-251 defines the conditions under which facilities or designs requested by the Town shall be considered betterments. Responsibility for determination of betterments under this Section, as it may be further clarified, rests with the Corps of Engineers. Facilities including betterments will be constructed if requested in writing by the Town subject to deposit by the Town with the District Engineer prior to award of construction contract of funds sufficient to cover the agreed on cost of the betterments.

7. Conveyance of Real Property:

a. Fair Market Value:

Subject to the condition of obtaining the clarifying language referred to above, it is agreed that the Corps will convey lands in the initial Town consisting of approximately 210 residential lots plus commercial lots to be determined (not to exceed 50) and in addition those lands within the optimum town that lie within currently designated powerhouse project lands at prices corresponding to fair market value of unimproved land paid at time of purchase by the Corps, (without enhancement in value from municipal facilities being provided as replacement for facilities in the existing Town). This price will not include Corps acquisition costs for administration and Title II,

P.L. 91-646 payments. The above applies to both individual relocatees and the Town.

The Corps of Engineers will convey to the Town all those additional lands acquired at the request of the Town at such time as desired by the Town. Provided that all such lands will be conveyed during the construction period of the powerhouse with final payment not later than 1 January 1984. The purchase price for such lands will be the original price paid by the Government for the land plus Corps acquisition costs (including costs under Title II P.L. 91-646) plus interest at the legal rate for the time the lands are held by the Government before conveyance. Such period for computation of interest will start at the time the Government reports to the Town that such separate land is available for conveyance.

b. Payback Period. (Initial Town Development)

The Town agrees to make payment to the Corps within 180 days from the notification in writing by the Corps to the Town of availability for conveyance of lots which have not been acquired by individuals, business or other entities. Land conveyed to the Town for replacement facilities and open areas is not included in this obligation since these lands will be conveyed at no cost to the Town if the appropriate clarifying language is adopted by the Congress.

8. Criteria: Subject to the adoption of the clarifying report language mentioned above, and in the absence of standards required by Federal and State laws as referenced in said Section 83, the Corps of Engineers shall furnish replacement municipal facilities, meeting standards and criteria recognized by professional technical groups, custom or good practice and representing wise use of resources in space allocations and design.

The environmental quality standards set forth in Corps regulation EM 1110-2-38 and Consideration of Aesthetic Values as expressed in Corps regulation ER 1165-2-2 are agreed as acceptable policies and criteria by both parties for the development, where applicable and reasonable, of the final preliminary site plan and design of municipal facilities. Said regulations are currently embodied in Town/Corps Contract No. DACW 57-75-C-0032.

9. Further Documents to be Furnished by the Corps of Engineers: It is agreed that it is the responsibility of the Corps, subject to the understandings set forth in this memorandum, to furnish the following documents:

a. The final preliminary plan for the initial town development together with such descriptions and renderings of municipal facilities as required for the Town to approve the proposed developments.

b. Plans and Specifications for the construction of the municipal facilities.

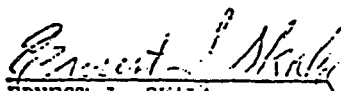
c. Such additional maps, plans and other documents as are reasonably required by the Town to meet obligations arising directly as a result of the town relocation.

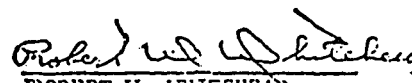
10. Relocation Assistance Advisory Program: The Corps will arrange workshops at a suitable time and place, at which residents and businessmen will be able to meet with and receive advice from representatives of SBA, HUD, and other Federal agencies to render assistance in financing, and other areas that may be available, relative to their relocation, over and above the benefits afforded by P.L. 91-646. The Corps recognizes an obligation to inform in so far as practicable the citizens of North Bonneville of the alternatives available to them.

11. Security Guards: The Corps agrees to study and if legally authorized to assist in the protection of government buildings and equipment within the present Town of North Bonneville during the relocation of the Town.

12. Execution of Relocations Contract: Reference is made to joint letter (Inclosure 3) of Senators Magnuson, Jackson, Hatfield and Packwood and Congressmen McCormack and Duncan to the Director of Civil Works dated 6 May 1975. The Town and the Corps of Engineers both agree that the understandings and agreements herein documented substantially conform to the requirements for a "Memorandum of Relocation" as referred to in the inclosure to the above referenced letter. It is further agreed that Town and the Corps of Engineers are prepared to develop and execute a Relocations Contract essentially conforming to those understandings and agreements, subject to those further agreements necessary regarding the details of such a contract. It is further agreed that both parties will endeavor to execute the Relocations Contract as soon as practicable after the above mentioned clarification of Section 83, P.L. 93-251 by the Congress.

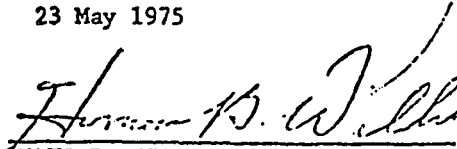
13. Withdrawal from Court Action: In consideration of the agreements set forth herein, and upon enactment of the FY 76 Public Works Appropriation Act into law with the subject clarifying report language (Inclosure 2), the Town agrees to take no action in court or otherwise to halt construction of the Powerhouse or the Town relocation provided the Corps takes the actions set forth herein. The Town further agrees to withdraw its present court suit and to withhold all legal action against the Corps of Engineers between the date of signing this Memorandum and the date of passage of the said FY 76 Appropriation Act into law.


 ERNEST J. SKALA
 Mayor
 City of North Bonneville


 ROBERT W. WHITEHEAD
 Major, Corps of Engineers
 Deputy District Engineer

23 May 1975

3 Inc's
 As stated


 HOMER B. WILLIS
 Chief, Engineering Division
 Directorate of Civil Works
 Office of the Chief of Engineers