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Policies And Practices For Acquiring Land At Three Missouri Water Resources Projects

Corps of Engineers (Civil Functions)
Department of the Army

BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

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~~090358~~

JUNE 26, 1975



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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- u* The Honorable Stuart Symington, United States Senate
- cu* The Honorable Thomas F. Eagleton, United States Senate
- cs* The Honorable William J. Randall, House of Representatives

Pursuant to your joint request of September 18, 1974, and subsequent discussions with our representatives, this is our report on the specific matters that interested you concerning the Corps of Engineers' policies and practices for acquiring land at the Harry S. Truman, Stockton, and Smithville projects in Missouri.

The contents of the report were discussed with Corps officials at the Kansas City district office and at the Washington, D.C. office.

A handwritten signature in dark ink, appearing to read "Thomas P. Blanton".

Comptroller General
of the United States

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D I G E S T

GAO found no basis for changes in the policies and practices under which the Corps operated in the land acquisition area at selected water resources projects in west central Missouri.

GAO assessed these practices at the Truman, Stockton, and Smithville, Missouri, projects on the basis of various constituent complaints the members had received concerning Corps land acquisition practices.

GAO found that appraisal practices and professional qualifications of Government appraisers met accepted norms. Appraisal reports were prepared according to the Uniform Appraisal Standards for Federal Land Acquisitions.

Corps appraisers used comparable open market sales, as defined by the courts, to arrive at value estimates. Government appraisers met the academic and experience requirements of Civil Service Standards for the position, and the courts have accepted Government appraisers as qualified to render opinions on real estate values. (See pp. 3 to 7.)

Corps' negotiators have been very successful in concluding sales agreements on the Truman project. Through March 31, 1975, 4,103 real property tracts had been acquired.

On the basis of Government appraisals, 3,701 tracts (90%) were acquired by negotiation; 197 tracts (5%) by settlement or agreement between the Government and the landowner after the condemnation action was filed; and 205 tracts (5%) by either default, trial in the district court, or by commission hearing. (See p. 6.)

GAO's review did not disclose evidence to support the allegations of misconduct by Corps representatives. Property acquisition under "forced sale" conditions generates a degree of hard feelings. Some property owners are not willing to sell unless it is at their price or do not wish to leave their land at any price. (See pp. 5, 9, and 11.)

The business area of Deepwater will become an isolated peninsula during flood stages on the Truman Reservoir. The Kansas City district recently proposed a solution to the access problem, subject to further study and approval by higher authority. (See pp. 11 to 13.)

The fish and wildlife enhancement areas at Truman were established according to legislative authority. Licensing of these lands to the State of Missouri for management purposes also conforms with existing statutory authority. (See pp. 13 and 16.)

The county judges of the Clinton County court (who administer the county government) alleged that the Corps' road relocation plan for Clinton County was not adequate. They contended that the Corps' relocation plan does not consider future traffic loads on the perimeter county roads around the project. The Corps maintains, and GAO found no basis to question the Corps' view, that the road relocation plan for Smithville Lake complies with applicable law.

Special legislation has been employed at other water resources projects where project-induced traffic has created problems on access or perimeter roads at completed projects. The assessment of projected-induced traffic at Smithville cannot be accurately determined until the project becomes operational. (See pp. 20 to 22.)

The Corps has experimentally flooded the Sac River below the Stockton Dam to confirm computer projections of remedial measures for the downstream flooding caused by power facility operations. These projections indicated that river channelization, coupled with reduced power releases, would provide a solution to the problem.

The Corps maintains that public access to the Orleans Trail public-use area must be limited. At the present time, the legality of a privately constructed access road is being studied in the U.S. District Court for the Western District of Missouri, Southern Division (Civil Action No. 74 CV-278-S). (See pp. 23 to 26.)

CHAPTER 1

INTRODUCTION

In a joint request, Senator Stuart Symington, Senator Thomas F. Eagleton, and Congressman William J. Randall requested us to review selected aspects of the Corps of Engineers' land acquisition policies and practices at the Harry S. Truman, Stockton, and Smithville water resources projects in Missouri. We were asked to advise them on what legislative or administrative changes would help to insure more equitable treatment of property owners.

The requestors showed us correspondence from 41 of their constituents outlining various difficulties experienced with Corps' land acquisition practices. All but four of the constituent complaints dealt with the Truman, Stockton, and Smithville projects.

Many of the allegations involved matters that are, or soon will be, subject to judicial determination in condemnation proceedings; they were therefore excluded from our review.

We examined Corps records at the Kansas City district office and interviewed Corps officials and Department of Justice representatives. Where practicable, we physically observed the properties being acquired and visited several of the landowners who had written to the requestors with their problems. We discussed the matters presented in this report with agency officials and have considered their reviews in preparing this report.

CHAPTER 2

LAND ACQUISITION PROCEDURES

PUBLIC LAWS CONCERNING LAND ACQUISITION PROCEDURES

Section 302 of the Land Acquisition Policy Act of 1960 (33 U.S.C. 597) provides that, within 6 months after the date the Congress authorizes construction of a water resources development project, the responsible agency shall make reasonable effort to advise owners in and adjacent to the project as to the probable timing for land acquisition for the project. Also, within a reasonable time after initial appropriations are made for land acquisition or construction, the agency shall conduct public meetings at locations convenient to owners to tell them of the proposed acquisition plans and to give them an opportunity to comment. Information will be disseminated about appraisal practices, condemnation proceedings, and other real estate acquisition policies and procedures.

Federal agencies' real estate acquisition procedures are further defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601). This act provides that appraisal information will be made available to the owners before negotiations begin and that the Government must open the negotiations at not less than the appraised value. The act further provides that the owners will not be required to surrender possession of their property without compensation and without being given at least 90 days written advance notice.

DETERMINATION OF LAND TO BE ACQUIRED

The Corps considers how much land should be acquired for each authorized project purpose, such as flood control, enhancement, and recreational requirements. After considering all the factors involved, including topography, drainage area, and storms of record, a real property guide-taking line is established.

The guide-taking line for the Truman and Stockton projects was established under the Joint Land Acquisition Policy of the Departments of the Interior and the Army, published in the Federal Register in February 1962 and July 1966. This policy defined the taking line as a point 300 feet horizontally above the full, or flood, pool (the highest level to which water would rise in the reservoir)

or 5 feet vertically above the full pool, whichever resulted in maximum land acquisition. The Corps modified this policy in 1971 to define the taking line as a point 300 feet horizontally from the multipurpose or conservation pool elevation (the normal water level, exclusive of flooding conditions) or 5 feet in elevation vertically above the full pool, whichever is greater. The modified policy was applied to the Smithville project.

The Corps' establishment of the guide-taking line provides the basis for identifying affected ownerships and determining real estate descriptions. The guide-taking line is further used to delineate fee versus easement acquisitions. 1/ Property within the guide-taking line in the main reservoir area is acquired in fee upstream from the dam to a point where the multipurpose pool elevation contour line crosses the main stream and major tributaries. Upstream from this point flowage easement acquisition is used unless fee acquisition is necessary to satisfy project requirements, such as fish and wildlife enhancement or public recreation.

Flowage easement acquisition provides continued use of the land for crop farming, grazing, and related purposes, but not for structures for human habitation. The use of easement acquisition land is subject to State and Federal water pollution laws.

CORPS ACQUISITION POLICIES

The Government may not take private property without due process of law and without payment of just compensation. Under Corps policy, staff or contract appraisers will appraise all property to be acquired for water resources projects to determine its fair market value. Appraisals are developed through analysis of similar properties involved in open market transactions between private parties in the local area. Corps appraisers are required to contact owners to arrange for inspection of the property to be acquired. The property owner is given every opportunity to accompany the appraiser on his inspection. During the appraisal process, title insurance is processed on the property using local abstract or title companies.

1/ Fee acquisition denotes complete title to the land and all its uses. Easement acquisition denotes a limited right in the use of the land for a specified purpose.

A senior appraiser reviews and approves the appraisal report. The owner is notified in writing as to the estimated fair market value of the taking. The Corps negotiator then contacts the owner and the negotiations are opened.

When an agreement on the selling price is reached, the owner executes an Offer to Sell Real Property or Offer to Sell Easement. The negotiator then submits the offer, along with his written recommendation, to a higher authority for acceptance consideration. If the offer is accepted, the Corps notifies the owner by letter.

If a price agreement cannot be reached, the owner can refer the matter to the U.S. district court for a determination of the price the Government must pay for the taking. This procedure is known as eminent domain or condemnation proceeding and is initiated by the Government. The trial in these proceedings, which may be heard by a jury or court-appointed commissioner, is conducted according to the established rules and procedures of the district courts. The Corps deposits the appraised amount for the taking in the court registry, and the court allows the owner to withdraw all or a portion of the amount deposited.

If in the opinion of the Attorney General something is wrong with the owner's title, 40 U.S.C. 255, and it cannot otherwise be resolved, condemnation proceedings may be necessary even though a price is negotiated. The result of a condemnation proceeding is that the United States Government gets any estate that it desires, regardless of the title defects.

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Our review of the Corps' application of the Joint Land Acquisition Policy in land taking at the Truman, Stockton, and Smithville projects, as discussed in the following chapters, showed no basis for recommending changes in the policies and laws under which the Corps operated.

CHAPTER 3

TRUMAN DAM AND RESERVOIR

We assessed specific examples of alleged questionable Corps appraisals, negotiation practices, and land-taking actions at the Truman project. These alleged improprieties included undervaluation of land appraisals, failure to follow the prescribed appraisal techniques, and threats of condemnation during the negotiation process to persuade landowners to settle at a lower price. In addition, we examined the Corps staff's and contract appraisers' qualifications and the results of Corps' condemnation proceedings, as compared to negotiated settlements. We also examined instances of alleged Corps harassment and intimidation of landowners and delays in settlement.

The Truman project has been under construction since 1964 and is estimated to be completed by June 1980 at a total cost of \$385 million. The project was authorized for flood control, power, recreation, and fish and wildlife purposes. The damsite is near Warsaw, Missouri, with the multipurpose pool extending upstream to just above Osceola, Missouri, on the Osage River, and to the vicinity of Clinton, Missouri, on the South Grand River. The reservoir is located in Benton, Hickory, Henry, St. Clair, Bates, and Vernon Counties, Missouri. The project will encompass about 280,000 acres; about 179,000 acres had been acquired by March 31, 1975.

Allegations of Corps employees' impropriety in acquiring land for the project were centered in St. Clair County, particularly in or near Osceola. Osceola is several miles downstream from the point where the Corps' fee acquisitions will end and easement acquisitions will begin. The upstream fee purchase line is that point where the 710-foot elevation contour crosses the main stream and major tributaries. Upstream from these points, flowage easement acquisitions are to be acquired to an elevation of 742 feet. Of the 280,000 acres in the project, 111,000 acres will be in flowage easement acquisitions.

Eminent domain proceedings for condemned property at Missouri projects are heard by three commissioners appointed by the District Court for the Western District of Missouri. The commissioners take sworn testimony and report their findings of land values and just compensation to the district court. The court then decides if any additional compensation is due the landowner (the award less the amount already deposited with the court). The

court also decides the beginning date for interest computation purposes; interest is computed from the date of possession on the amount left on deposit.

The Truman project land acquisitions will encompass about 8,100 tracts. Through March 31, 1975, the Corps had acquired 4,103 tracts--3,701 (90%) by negotiation, 197 (5%) by stipulation, 1/ and 205 (5%) by default (the owners did not contest the court action trial in the district court) or by commission hearing.

The degree of successful negotiations to date for the Truman project is about the same as for the other six active reservoir projects within the Corps' Kansas City district.

APPRAISERS' QUALIFICATIONS

Corps policy states that appraisals be made on all real estate acquisitions by a qualified Corps appraiser or independent contract appraiser. In fiscal year 1974 the Kansas City district completed 363 appraisals on the Truman project, of which 105, or 29 percent, were made by contract appraisers. Individuals making the Government appraisals must meet the academic and experience requirements of the Civil Service Commission.

These requirements call for the individual to possess both general and specialized experience in valuing real and personal property. General experience may have been gained in any of the following types of work: real estate sales or management, mortgage financing, urban planning, construction contracting, or forestry and agriculture requiring a knowledge of rural land values.

Specialized experience may have been gained in past working experience in areas such as appraisal of residential, commercial, agricultural, or industrial properties for acquisition, disposal, mortgage, or liquidation purposes; appraisal of special rights and interests; legal experience in eminent domain law; appraisal of real property for tax purposes; or the appraisal of personal property.

The Civil Service Commission has authorized the Corps to substitute education and training for general and specialized experience. Guidelines have been developed to

1/A settlement or agreement made between the Government and the landowner after the condemnation action was filed.

translate education and training into years of general or specialized experience.

The professional creditability of Corps staff and contract appraisers is a matter of record. They are qualified by the district court to express an opinion on real estate values. The U.S. Attorney's office said that there were no licensing requirements for these appraisers. Most appraisers carry a professional designation, such as M.A.I. (Member of the Appraisal Institute) and/or S.R.P.A. (Senior Real Property Appraiser). Once the commissioners accept a person as a qualified appraiser, there is no procedure to disqualify him. The only opportunity to challenge the appraiser's qualifications is when he appears at the initial hearing. At that time the U.S. Attorney may examine the appraiser and attempt to show that he is not qualified.

We examined the qualification statements of Corps and contract appraisers involved in the Truman Reservoir acquisitions. We found that most appraisers had many years of experience in land appraisal and valuation and that they had provided testimony to many Federal and State courts, Federal agencies, and insurance companies.

APPRAISAL PRACTICES

Joint Corps of Engineers and Department of Justice policy calls for at least two separate appraisals on all tracts. When the indicated value of a property exceeds \$50,000 and when negotiations with the owner reach an impasse and it appears eminent domain proceedings will be necessary, one of the appraisals must be a contract appraisal.

The staff and contract appraisal reports that we examined were found to be highly detailed and documented. The dates and duration of the appraisers' visits to the property were enumerated, as were his contacts with the owner or his representative during the appraisal inspection.

Comparable open market sales were the most frequently used appraisal technique. In all appraisal reports and eminent domain hearing reports that we examined, the Corps used at least five comparable sales to determine property values. Comparable sales, according to the Uniform Appraisal Standards and the courts, must have certain characteristics, such as proximity in time, location, and similarity. The establishment of fair market value also specifically excludes considering prices paid for property

acquired by Government, either through negotiation or by condemnation; availability of replacement property; and unconsummated offers to sell. The appraisal reports that we examined met the Uniform Appraisal Standards for Federal Land Acquisitions published by the Interagency Land Acquisition Conference in May 1973 and used by the Corps in its land-taking transactions. We did not determine land values on specific tracts of land, and we did not examine any related court determinations.

Since early in calendar year 1974, the Kansas City district has had its appraisers give a questionnaire to each property owner contacted. The questionnaire enables the landowner to assess the appraiser's performance and provides the landowner an opportunity to comment on the conduct of other Corps' representatives with whom he has had contact. The landowner was to complete the questionnaire at his discretion and mail it directly to the Kansas City district office.

Although the response rate on the questionnaires was unknown due to the lack of adequate control procedures over the total number of questionnaires distributed, the responses received to date were highly complimentary to the Corps. A question about courteous treatment received 37 affirmative responses and only 1 negative response. To a second question concerning the thoroughness with which the appraiser inspected the property and his willingness to listen to the property owner's comments on salient features that might affect value, 35 responded positively; 2 answered unfavorably. One person did not respond to this question. To a third question, 29 respondents said that other Corps' employees with whom they came in contact were fair and courteous in their discussions; 2 recorded negative answers. Seven people did not respond to this question. The Kansas City district office procedure is to communicate with any individuals expressing dissatisfaction with the appraiser's conduct or procedure, as reflected on the questionnaire.

At our suggestion, the Kansas City district engineer has agreed to institute procedures to control the appraiser questionnaires. The procedures will insure that each landowner or his representative is given a questionnaire; the date of delivery and ultimate response will be recorded. We believe that in the future these questionnaires will be a useful management technique to evaluate the performance of appraisal personnel.

CONDEMNATION PROCEEDINGS

Allegations were made that condemnation proceeding results showed that Corps' appraisals were not adequate assessments of land values. We found, however, that the commission's awards ranged somewhere near midpoint between the Corps' appraisal and the landowner's higher appraisal. There was no evidence to support the contention that the Corps' appraisers were deliberately understating land values.

ALLEGATIONS OF HARASSMENT

Allegations were made that Corps negotiators were less than truthful and discourteous and that harassment and intimidation were employed to force property owners to sell their property at less-than-fair market values.

Our review of 40 condemnation cases revealed that once the appraisal was made and reviewed, the landowner was contacted and given a letter setting forth the Corps' determination of just compensation--this amount was not less than the approved appraisal value. We found that as a minimum, three contacts were made in an effort to negotiate a selling price and that in 23 of the cases more than three contacts were made. The Corps' negotiator can accept offers to sell at certain dollar and percentage limitations above the appraised value.

During the period January 1, 1971, through March 31, 1975, the Kansas City district had successfully negotiated about 9 out of every 10 acquisitions at the Truman project at an average of about 113 percent of the appraised value.

We interviewed seven of the landowners who had made allegations about the Corps negotiators' conduct. They had no tangible evidence to support their allegations, other than their recollections of what transpired. We could not reconstruct the atmosphere that prevailed during the negotiation meetings, nor could we put selected statements purportedly made by the Corps' representatives into the context of the whole negotiation process. Two landowners said they were insulted by the Corps' low appraisal of their property. They felt dishonesty must be the cause of the low appraisal and that the Corps' continued attempts to open negotiations were merely harassment. One landowner said he had no intention of willfully selling and desired condemnation proceedings. The Corps' repeated efforts to settle without going to court might have contributed to the charges of harassment or attempted intimidation.

Since early 1974 the Kansas City district has had its negotiators leave questionnaires with property owners and ask them to complete them and mail them to the district office. The questionnaire was designed to assess negotiators' conduct. The response rate is not known because there are no controls on the number of questionnaires distributed. The district office received 60 responses containing evidence of a high degree of satisfaction with the action of the Corps representatives. The responses about Corps employees' conduct were 87 percent satisfactory and 3 percent unsatisfactory; 10 percent of the respondents had no comment. The response to a question on courteous treatment was 100 percent satisfactory. As with the appraiser questionnaire, the Kansas City district has agreed to control the distribution and evaluation of the questionnaires.

DELAYS IN CONCLUDING OFFERS TO SELL

In a situation at Osceola, allegations were made that Corps employees delayed settlement. We noted that it required 1 year to acquire proper title insurance on a \$2,250 road easement. There was a flaw in the owner's deed and the title abstract company could not issue the title insurance policy until the property in question was resurveyed and the legal description was revised to agree with the engineering specifications. Once this matter was resolved, the Corps attempted to tender payment to the property owner's attorney. The attorney told the Corps that he had taken title to the property on the same day that the Corps attempted to pay his client. The attorney said that he now intends to have the Corps proceed against him in condemnation. The attorney said the contract between his client and the Corps was null and void due to the passage of time. The Corps acknowledged that it took an unreasonable length of time to conclude this matter and to offer payment to the original owner.

To establish the possible frequency of abnormal delays by the Corps to accept offers to sell or to tender payment after acceptance, we made a random sample of the 1,108 negotiated acquisitions at the Truman project during the period January 1, 1971, through September 30, 1974. Using a 95 percent confidence level, we determined the true mean of the elapsed days from the landowner's signing of the offer to sell until the Corps' formal acceptance of the offer to lie within 35 to 43 days. The true mean of elapsed days from the Corps' acceptance of the offer until payment was within 48 to 63 days. It was the Kansas City district policy to close all accepted offers within 90 days; our sample results were well within this criteria.

Our sampling of time frames for concluding acquisitions showed significant ranges. For example, acceptance of offers ranged from 1 to 178 days and acceptance to availability of payment ranged from 1 to 350 days. To determine circumstances that could cause exceptional delays, we reviewed the facts surrounding all cases where the offer had been accepted. However, the case was unsettled for 120 days as of January 1, 1975. We identified nine such cases and found that the delays were not the result of the Corps' inaction but the result of highly complex ownership problems--corporation ownerships, out-of-state heirs, tenant's refusal to sign disclaimers of interest, and multiple heirs dispersed over a wide area.

We also examined instances where landowners had written the Corps inquiring about the causes for delay in settlement. The Corps readily responded to these inquiries. We believe, however, the initiative in these matters should rest with the district office and, when a delay in settlement is anticipated, the district office should routinely tell the landowner the reasons.

The district engineer agreed with our suggestion to tell landowners of the circumstances if an offer to sell could not be concluded within 60 days of acceptance.

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We found no evidence to support the allegations of impropriety by Corps employees in acquiring land at the Truman project. In our opinion property acquisition under "forced sale" conditions generates a degree of hard feelings on the part of landowners and leads to complaints even when a mutually agreeable price is reached. Every negotiation will not be successful since some landowners are not willing to sell unless it is at their price, and frequently landowners do not wish to vacate their property at any price.

EFFECT ON THE BUSINESS AREA
OF DEEPWATER, MISSOURI

At the Truman project issues were also raised concerning the Corps' failure to acquire the business district of Deepwater. The problems cited by the requestors included economic hardship and degraded public safety resulting from limited access to the area.

Deepwater, population 565, is located in south central Henry County, about 8 miles south of Clinton. Before the construction of the Truman Reservoir, the business district

of Deepwater could be reached by residential streets from four directions.

As part of its land acquisitions for the Truman project, the Corps will acquire residential properties and access streets on three sides of the Deepwater business district. The displaced residents will be relocated about 1 mile from the business area. During periods of floodwater storage, the business district will become a narrow deadend peninsula from the remaining and relocated residential portions of the city and will be connected by a single two-lane road. (See map, app. II.)

City officials asked the Corps to acquire the peninsula area since fire and police protection for the business district would be impaired, and they felt the limited access to the area would force the businesses to relocate elsewhere or to go out of business.

The Kansas City district recommended to the Missouri River Division office that the peninsula area be acquired to eliminate the hardship on individual business owners resulting from the relocation of the surrounding residents, depreciation of the business area land values, and reduced business volume. The district also pointed out the problems that a single-access road to the area would have on providing fire and police protection.

The Missouri River Division rejected the district's proposal stating that the peninsula area was outside the project's boundaries and would not be subject to inundation. Therefore, there was no authority under existing legislation which would permit the Corps to assume responsibility for relocating properties located in the peninsula area.

We met with the mayor and a city councilman at the Deepwater City Hall. They told us that they were negotiating with the Corps over access to the business district. The city has proposed that the Corps construct an elevated road (from the end of the peninsula) across part of the project area to connect with a major north-south highway about 1 mile east of the city. This connection would create ingress-egress to the business district from two directions and allow immediate access to the area by Clinton fire and police units. Without the second access route, the Clinton public safety services would have to use a 3-mile circuitous route to the south and access the business district by way of residential streets.

Both the district office and the division office have completed their study on the feasibility of the new roadway and have forwarded their recommendation for approval to the Chief of Engineers. As of May 1975 this matter was still being reviewed.

FISH AND WILDLIFE ENHANCEMENT

As part of the Truman project development, the Corps established fish and wildlife areas. We reviewed the basis for taking such lands and the conditions for their transfer to the State of Missouri for management purposes. We also examined the disposition of revenues that might be produced from agricultural and grazing leases on such acreage.

In November 1964 the Bureau of Sport Fisheries and Wildlife, Department of the Interior, submitted its recommendations to the Corps' Kansas City district office for the designation of fish and wildlife areas at the Truman Reservoir. Such designations are required according to the provisions of the Fish and Wildlife Coordination Act (16 U.S.C. 661-666(c)), as amended, which provides that wildlife conservation receive equal consideration and be coordinated with other features in the development of federally licensed or funded water resources projects. The Missouri Conservation Commission ^{1/} had agreed in August 1964 to administer any lands the Corps turned over to the State for wildlife management.

The Bureau recommended to the Corps the fee acquisition of about 110,600 acres for fish and wildlife at the reservoir. About 49,230 acres, recommended for establishing a National Wildlife Refuge area, were to be operated by Interior; 32,700 acres on the upper reaches of the South Grand River and 28,635 acres in the main reservoir area were to be administered by the Missouri Conservation Department.

The district engineer recommended to Corps headquarters that only the 28,635 acres in the main reservoir area be developed for fish and wildlife purposes; 15,580 acres had

^{1/}A four-member commission, appointed by the Governor, responsible for conserving and restoring the State's wildlife and forest resources and for selecting a director to manage the State's Conservation Department and its fisheries, game, field, and forestry programs.

been planned for fee acquisition as part of reservoir needs and 13,055 acres were outside the previously planned Corps fee acquisition areas. Of these 13,055 acres, 7,875 acres had been planned for acquisition for project needs as flowage easements (i.e., acreages which the Corps could inundate during flood conditions) and 5,180 acres were to be additional fee acquisitions, specifically acquired for fish and wildlife.

The 28,635 acres recommended for development were in 12 designated areas; 6 of these were in St. Clair County and totaled about 11,750 acres.

As noted in the environmental impact statement prepared for the Truman Dam and Reservoir, the district did not recommend fish and wildlife area fee acquisitions upstream on the South Grand River because of strong opposition by the Missouri Water Resources Board, the Missouri Farm Bureau, and local residents. The impact statement also noted that the district did not recommend establishing the National Wildlife Refuge area because it had been rejected by the Congress for authorization earlier in 1962.

In December 1967 the Missouri Conservation Department asked that the district engineer acquire in fee 2,175 additional acres along the Pomme De Terre River for State management as fish and wildlife lands. This additional acreage was adjacent to a designated fish and wildlife area, and the acreage was scheduled to be subject to flowage easement acquisitions.

In the Corps' proposed master plan for land use at Truman Reservoir, 20,225 additional acres, which had been acquired for main reservoir needs, are to be allocated for wildlife management.

The following schedule provides an analysis of planned fish and wildlife management areas at the Truman Reservoir, as compared with Bureau of Sport Fisheries and Wildlife's recommended development.

	<u>Acres</u>
Recommended by the Bureau of Sport Fisheries and Wildlife	110,565
Excluded by the Corps:	
Additional national refuge area not authorized by the Congress	(49,230)
Upper Grand River area opposed by State and local interests	<u>(32,700)</u>
	<u>(81,930)</u>
Accepted by the Corps:	
12 designated areas in the main reservoir area:	28,635
Fee acreage acquired for project purposes	15,580
Easement acreage acquired for project purposes which will now be acquired in fee	7,875
Additional fee acreage needed for fish and wildlife	<u>5,180</u>
	<u>28,635</u>
Additional easement acreage requested by the State for fee acquisition adjacent to one of the 12 designated areas	2,175
Wildlife management acreage proposed in the master plan for land use at the project--all acreage previously acquired in fee for project purposes	<u>20,225</u>
Total	<u>51,035</u>

Landowners near Osceola have questioned the Corps' purchase of additional fee title to their property solely for fish and wildlife and others have objected to having their lands acquired in fee instead of flowage easement.

One complaint concerned a specific 2,100 acre land taking by fee acquisition. If this property had not been in

a designated fish and wildlife area, the Corps would have acquired only about 300 acres in fee with flowage easement on portions of the remaining 1,800 acres. Another landowner produced a June 1974 letter from an information specialist at the Missouri Conservation Department that implied that the Corps had misrepresented the facts in stating that the Department had requested the landowner's property be acquired in fee for wildlife purposes.

We found correspondence dated July 1967 in which the Director of the Conservation Department had requested that the property in question be acquired in fee. This was subsequently confirmed during the course of our work and the Department has since repeated its request that these acreages be obtained in fee. We noted also that this same property was clearly part of the main reservoir land-taking recommendations for fish and wildlife made by the Bureau of Sport Fisheries and Wildlife in 1964.

State management plan
for wildlife areas

The St. Clair County court has objected to the Corps' current licensing of the designated fish and wildlife areas to the Missouri Conservation Commission for management instead of delaying the licensing until after the Truman Reservoir has been completed and made operational. By delaying the licensing, the county would continue to receive revenues from Corps lands leased in the interim for agricultural purposes.

Designated fish and wildlife areas are licensed to the Missouri Conservation Commission for direct management under the authority of section 4 of the Flood Control Act of 1944 (16 U.S.C. 460(d)), as amended. The Missouri Conservation Department's management plan includes the following management practices:

1. The Corps advertises the leases if the land is to be leased for agricultural or grazing purposes, and 75 percent of the funds received from these leases will be paid to the county in which the leased property is situated, as provided in section 7 of the Flood Control Act of 1941 (33 U.S.C. 701c-3).
2. The Department issues special-use permits for food for wildlife that provide for sharecropping arrangements with local farmers. No fees are collected from the sharecroppers for the special-use permits. The Department is allowed to dispose

of its share of any surplus crops and the proceeds from crop sales are held as a reserve against a future poor crop season. Any money the Department collects and does not use to provide food for wildlife in poor crop seasons is to be paid to the Corps at 5-year intervals. These revenues are deposited with the U.S. Department of the Treasury and are not returned to the county.

3. The land could be allowed to remain in its native state, not subject to grazing or agricultural use.

The initial fish and wildlife area license between the Corps and the Missouri Conservation Commission was signed in 1972 and covered about 4,638 acres in 3 of the 12 designated areas. In St. Clair County 1,490 acres were covered by the license. We found that before the license was issued the Corps was receiving annual lease income of \$2,292 from this acreage (\$1,719 was returned to the county by the Corps). Under the current license on the 1,490 acres, 87.5 acres are covered by a grazing lease (\$86 annual rebate to the county); 100 acres are covered by a special-use permit (sharecrop); and the balance is to remain in its native state, subject to reclassification at a later date.

A supplemental agreement to the license is pending that will add 7,452 acres to the administrative control of the Missouri Conservation Commission. This additional acreage is located in two designated areas in Henry County.

The St. Clair County court requested that no land in St. Clair County be turned over to the Missouri Conservation Commission until after the Truman Reservoir has been completed. The Corps contends that it would be difficult to carry out wildlife management plans at all areas around the reservoir simultaneously upon project completion. Therefore, the Corps has been licensing lands to the commission as soon as a group of tracts large enough for wildlife management has become available. We also found that the Missouri Conservation Department had requested this gradual phasing-in of wildlife management activities.

Master plan for land and water use

The Kansas City district is supervising, under special contract, the preparation of a master plan for land use at the Truman Reservoir. The plan calls for classification of all fee acquired project lands as either (1) recreation-intensive use, (2) recreation-low-density use, (3) natural areas, or (4) wildlife management. Eventually, no agricultural use will be allowed in these areas. The agricultural

use of wildlife management areas will be subject to license agreements with the State.

The wildlife management area in the master plan will encompass about 51,000 acres which incorporates all pre-existing designated fish and wildlife enhancement areas. The 20,225 acres added to the wildlife management area in the master plan will be composed of lands acquired in fee for project operations. This additional wildlife management acreage is eligible for licensing to the Missouri Conservation Commission. In May 1975 the master plan was still under development and the uses of specific acreages were subject to change.

Disposition of funds accumulated by licensee

The license agreement between the Corps and State wildlife agencies states the lands covered by the license will not be used by the State for the production of crops or for any other purpose solely to produce revenues to defray costs of management of the wildlife areas. Also, revenues collected by the State agencies from the sale of surplus commodities resulting from the special permit cropsharing arrangements cannot be used by the State to defray management costs. These revenues are to be paid to the Corps at 5-year intervals.

The problem of increasing costs to State agencies, without the benefit of the revenues being generated and with the loss of agricultural lease revenues in the counties where reservoir lands were located, was considered by the Congress in 1972. A bill (S. 3789) was introduced in the 92d Congress, 2d session, to amend the existing law to accomplish two objectives: (1) to authorize the Secretary of the Army to delegate to State agencies the authority to issue agricultural and grazing leases and (2) to provide that 75 percent of the money received from subleasing be returned to counties in which the property was located. Under this bill the lessee would retain the 25-percent balance to defray management costs. The bill was not enacted into law.

Outleasing of reservoir lands

As of December 31, 1974, 86,684 acres at the Truman project were subject to agricultural or grazing leases administered by the Corps. The revenues returned to the various Missouri counties, as required by the provisions of section 7 of the Flood Control Act of 1941 (33 U.S.C. 701c-3), as amended, are shown below.

<u>County</u>	<u>FY period</u>	<u>Total rebate</u>	<u>FY 1974 rebate</u>
Benton	1966-74	\$ 464,003	\$ 87,614
Henry	1967-74	265,899	107,806
Hickory	1967-74	29,935	7,428
St. Clair	1967-74	<u>348,375</u>	<u>55,044</u>
Total		<u>\$1,108,212</u>	<u>\$257,892</u>

As more of the fish and wildlife areas are turned over to the State for administration, and particularly after water is impounded behind the dam, these lease revenues will diminish considerably.

- - - -

Fish and wildlife management areas at the Truman Reservoir were established according to existing legislative authority and requirements. The licensing of these lands to the State of Missouri for management purposes also conforms with existing statutory authority. The planned enlargement of wildlife management areas under the master plan is within the Corps' authority and affects only those lands within the main reservoir boundaries which were acquired in fee for other project needs.

CHAPTER 4

SMITHVILLE LAKE

At the Smithville Lake project, delays were encountered because agreement could not be reached on a road relocation plan that was acceptable to the Clinton County court. We were asked to review the road relocation plan and the effect of project-induced traffic on project perimeter roads.

The Smithville project is under construction with completion scheduled for 1978 at an estimated cost of \$62.5 million. The project was authorized in 1965 for flood control, fish and wildlife, water supply, water quality, and recreation purposes. The project will encompass about 20,600 acres. Land acquisition, which began in December 1972, is about 35 percent complete.

The damsite is located on the Little Platte River in Clay County about 1 mile northeast of Smithville and about 5 miles north of Kansas City, Missouri. The main body of the lake will extend north into Clinton County and will inundate portions of four east-west Missouri highways and several Clay and Clinton County roads. Four of the five public-use areas at the project will be located in Clay County.

ROAD RELOCATION PLAN

The county judges of the Clinton County court (who administer the county government), alleged that the Corps' road relocation plan for Clinton County was not adequate. They said the Corps' relocation plan did not consider future traffic loads on the perimeter county roads around the project.

The Corps maintains that they are limited by law to replacing the area's basic road system and to replacing access to properties losing public access due to project development. The Corps contends that upgrading existing roads outside the project area to serve traffic induced by the existence of the project would be beyond existing Corps authority.

The Corps' road relocation plan calls for the diversion of traffic from three State highways and several northern Clay and southern Clinton County roads over a new bridge in northern Clay County, about midpoint of the reservoir. In addition, a new bridge will be built near the

northern end of the reservoir to accommodate east-west traffic on Clinton County roadways. Existing low spots on the affected county road system are to be raised and new access roads will be constructed to serve rural properties isolated by the severance of the existing road system. The perimeter area of the reservoir will continue to be served by the existing State and county road system.

In a series of meetings from April through September 1974, the Corps attempted to get the Clinton County court to sign a county road relocation contract. This contract would require the county to vacate portions of four county roads that would be inundated by the reservoir in return for the Corps' replacement road system.

The court refused to sign the relocation contract unless the Corps would agree to upgrade certain north-south perimeter county roads to State highway standards. The county roads which the court wants upgraded would effectively link up the new east-west State highway bridge in Clay County with the new Clinton County road bridge near Plattsburg, Missouri. The effect would be to "box" the upper half of the reservoir with a road system upgraded to State highway standards. (See area map, app. III.) The roadway in question was about 10 miles long. An unofficial estimate for upgrading it was \$2.5 million.

Section 207(c) of the Flood Control Act of 1960, as revised by section 13 of Public Law 93-251, states in part:

"(c) For water resources projects to be constructed in the future, when the taking by the Federal Government of an existing public road necessitates replacement, the substitute provided will, as nearly as practicable, serve in the same manner and reasonably as well as the existing road."

The Corps maintains that the intent of the law is met by its road relocation plan.

The Congress has recognized that project-induced traffic has created problem situations on access and perimeter road systems at completed water resources projects. For example, project-induced traffic problems similar to those at Smithville were covered in the Water Resources Development Act of 1974 (Public Law 93-251) dated March 7, 1974. Sections 17 and 18 of the act authorized the Corps to improve surface roads in the vicinity of three operational projects in Kansas. Also, section 28 authorized the Corps to improve perimeter access at Lake Texoma in Texas and Oklahoma using, to the extent feasible, existing roads.

The Corps told the Clinton County court of the roadway funding provisions of Public Law 93-251 and pointed out that in these instances the projects were completed and that the extent of the project-induced traffic could readily be determined. The Corps told the county court that similar legislation could be sponsored at a later date to alleviate any perimeter road problems at the Smithville project.

The Corps told the court that eminent domain proceedings would be instituted to compel the county to vacate the roadways in question. Such action was necessary for the Corps to complete the road relocation plan in a timely manner.

We found no basis for concluding that the Corps of Engineers' road relocation plan for Smithville did not comply with applicable law. Objections to the plan were not concerned with roads directly affected by the construction of the project itself, but with roads located outside the project area. The effect of project-induced traffic on any roads surrounding the Smithville Lake cannot be accurately determined until after the project has become operational.

CHAPTER 5

STOCKTON LAKE

The Stockton Lake project was completed in 1973 at a cost of \$74 million. We examined the Corps' need for additional lands below the Stockton Dam and how the Corps intends to resolve downstream flooding problems resulting from the operation of power facilities at the project.

Stockton Lake is a multipurpose flood control, power, recreation, and augmentation of waterflow resource project on the Sac River in Cedar, Dade, and Polk Counties. Construction began in 1963 and the project was first placed in operation for flood control in 1970. A single 45,200 kilowatt generator and appurtenant facilities were included in the project to produce hydropower.

FLOODING BELOW THE DAM FROM HYDROPOWER RELEASES

The hydropower facilities for the project were completed in mid-1972 and testing of the powerplant began late in 1972. A 16-mile stretch of the Sac River below the dam was flooded in November 1972 when water was released from the reservoir simulating the normal operation of the hydropower facilities. The generator was designed for an outflow of 11,000 c.f.s. ^{1/} for maximum power output. Flooding on the Sac River was produced from discharges of 7,000 c.f.s.

The Corps has acknowledged that studies of the flowage capacity of the river were inadequate and were based on insufficient data. The studies were based on readings taken at certain bridges below the dam but failed to adequately consider flood stages between the bridges.

The Kansas City district investigated alternative actions to correct the flooding situation during 1973 and early 1974. This resulted in the Kansas City district engineer recommending that about 3,700 additional acres below the dam be acquired in fee.

Affected landowners opposed this solution and founded the Sac River Valley Preservation Association to work out a compromise with the Corps. The district engineer told

^{1/}Cubic feet of water per second.

the Association that a plan to reduce power discharges and some flooding easements and a system of channel cutoffs to straighten the river bed would be studied.

In November 1974 the district told the Association of the results of a study to rebuild the generator to run smoothly at slower speeds, thereby reducing the water discharge rate to 5,000 c.f.s. (the river channel capacity). The study showed that it would cost about \$18.5 million over the life of the project and was, therefore, not economically feasible.

On February 3, 1975, the Kansas City district engineer met with the Association and presented the Corps' latest proposal. The Corps would experimentally flood the Sac River below the dam for 6 hours at 7,000 c.f.s. on two occasions to determine whether the flooding pattern would conform to computer calculations. If the results of the tests coincided with the computer calculations, the Corps would rely on a second set of calculations as the basis for proposing channel cuts across three horseshoe bends in the river. The channel cuts would fill some low spots to prevent water from backing up into fields and acquire flowage easements on about 900 acres of lands adjacent to the river bank and about 300 acres of existing channel area. The estimated cost to effect these measures was about \$2.3 million. Power production would be reduced to around 35,000 kilowatts.

As a result of the experimental flooding tests, 32 claims for damages, totaling \$311,253, were filed against the Government. The landowners claimed damages for lost crops and eroded land. The Army Claims Service, Judge Advocate General, was processing the claims.

The solution to the Sac River flooding problem awaits the outcome of the experimental flooding tests. Corps officials have told us that any solution short of the 3,700 acre fee acquisition originally proposed would result in reduced power production and would have adverse effects on farm operations below Stockton Lake.

PRIVATE ACCESS TO PUBLIC-USE AREA

With the completion of the Stockton project, questions concerning rights of access to the lake by adjoining landowners were raised. The requestors asked that we look into the propriety of the Corps' closure of a private access road to a public-use area causing inconvenience to private property owners.

During construction of public facilities at the Orleans Trail area, a private road servicing one set of improvements in the Stockton Lake area was graded and improved to provide access to construction crews and machinery. This road, which bisected an area known as the Edge Subdivision, was not immediately closed after its initial purpose was served and subsequent construction activities in the area prompted its continued use. Residents of the subdivision and others in the general area used the road to travel to the Orleans Trail public marina about 3 miles to the north and to a boat launching ramp about 1 mile to the east. The marina is about 6 miles from the subdivision using existing public roadways and the boat ramp is about 10 miles. (See map, app. IV.)

In June 1973 the Corps closed the contractor road at the Government property line by ditching the roadway and placing a fence at the property line. Property owners of the subdivision protested the Corps' actions, and the Corps attempted to mitigate the situation by issuing a construction license for a boat launching ramp about 1 mile south of the subdivision, accessible by public roads. The property owners said the new boat ramp was not adequate because of restricted vehicle parking.

In July 1973 a major property owner at the subdivision cut a second access trail from his property across Government property to the Orleans Trail hard surfaced road. The property owner said this trail followed a former county road easement, the title to which had not been legally acquired by the Corps. The Corps barricaded this second trail, which prompted several of the subdivision property owners to file suit against the Government to keep the trail open.

The Corps' litigation report to the U.S. Attorney offers evidence that the claimed county road did not exist in fact or as defined by Missouri State law. Testimony was offered from previous landowners, public service employees, and county road officials supporting the nonexistence of the public roadway.

The Corps feels that if either access road was allowed to remain open the subdivision property owners would be unduly enriched to the detriment of other property owners in the same general area. The Corps contends that adequate surveillance and control of visitor populations are necessary in public-use areas, and such control is possible only through limited access situations. According to the Corps, the Orleans Trail area was designed with limited access and to legitimize the access trail from the subdivision

would seriously detract from the recreational experience available in the area.

We toured the Edge Subdivision-Orleans Trail area and visited the new boat launch ramp to the south of the subdivision. We noted that the parking area was limited at the new ramp and that there were no other facilities available comparable to those at the marina in the Orleans Trail area, such as docks, picnic areas, and other recreational and convenience facilities. We also observed a number of lots for sale in the area, but the Edge Subdivision was the only subdivision with any substantial development.

We asked Corps officials if they would allow access from the subdivision if the present private road through the subdivision were somehow improved and dedicated to the county as a public road. Corps officials stated they were under no legal obligation to allow such access. They said that if the Corps was legally required to open the access, the Congress would then need to authorize funding for a road from the subdivision boundary to intersect with the Orleans Trail road. Corps officials said that if access were allowed it could create a precedent that would encourage others to cut similar trespass roads and create an untenable situation.

While the road was open the residents used it, and the enhancement of property values in the subdivision, so long as private access was maintained, was apparent.

We found no legal basis on which to question the Corps authority to close the first access trail. Resolution of the legality of the second access trail, which has also been closed by the Corps, is being pursued in the U.S. District Court for the Western District of Missouri, Southern Division. Five landowners and Cedar County filed suit (Civil Action No. 74 CV-278-2) to settle title to the land on which the trail was located.

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CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, D.C. 20510

September 18, 1974

B-164844

Honorable Elmer B. Staats
Comptroller General
General Accounting Office
441 G Street
Washington, D. C. 20548

Dear Mr. Staats:

We are concerned by a growing number of complaints from our constituents concerning the land acquisition practices of the Army Corps of Engineers. The grievances cover just about every facet of the Corps' land buying policies from initial appraisals to decisions on what properties will or will not be purchased.

A case in point involves the city of Deepwater, Missouri, where the Corps is purchasing a substantial amount of private property, but not the business area itself. In a letter to us, the Corps concedes that "After reservoir project land acquisition, the business area will be a veritable peninsula, and will be one in fact during those infrequent times when the reservoir reaches the full flood pool elevation." The Corps also concedes that "the area could degrade into a health and safety hazard" but it insists, nevertheless, that it has no authority to acquire the affected properties.

Landowners below the Stockton, Missouri, reservoir face a different problem - they have written Senators Eagleton and Symington protesting sale of additional acreage which the Corps insists it must have to solve an unanticipated flood problem created by the Corps' faulty planning.

As another example, Senators Symington and Eagleton have heard from the Clinton County Court which asserts that the Corps has refused to provide adequate access roads to replace those flooded by the Smithville Lake project. The District Engineer in turn replies that "there is no authority available by which the Corps can replace or construct new roads as a part of the road relocation plan to serve new traffic generated by the lake project."

September 18, 1974

Page Two

We also have had numerous complaints charging unfair appraisal of land values many from St. Clair County. One farmer in that county says the Corps' appraiser spent only twenty minutes in appraising the value of his 900-acre farm.

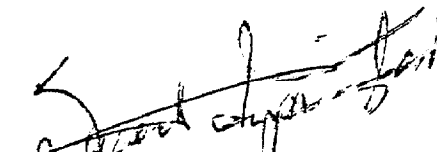
These are only a few examples of the complaints we have heard over the years about the Corps' land acquisition policies. In some cases, it is the law, not the Corps, which is at fault. In others, it appears that an over-zealous effort to hold down project costs regardless of injury to individuals and communities may be at issue.

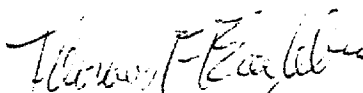
Whatever the cause, we believe the number of complaints justifies an independent study. As a first step, we request you to undertake a complete review of the Corps' policies in this regard and to advise us on what legislative or administrative changes you recommend to help assure more equitable treatment of property owners.

We want to make clear that most of those who have written to us support the Corps' projects in question and are objecting only to the policies of the Corps in acquiring land for the project.

We will be happy to provide you with details of the cases which have been brought to our attention and to discuss the matter with your staff. You may feel free to call Jim McPherson of Senator Symington's staff, 225-6154; Jack Lewis of Senator Eagleton's staff, 225-5721 or Jerry LaPorte of Congressman Randall's staff, 225-2876.

Yours very truly,

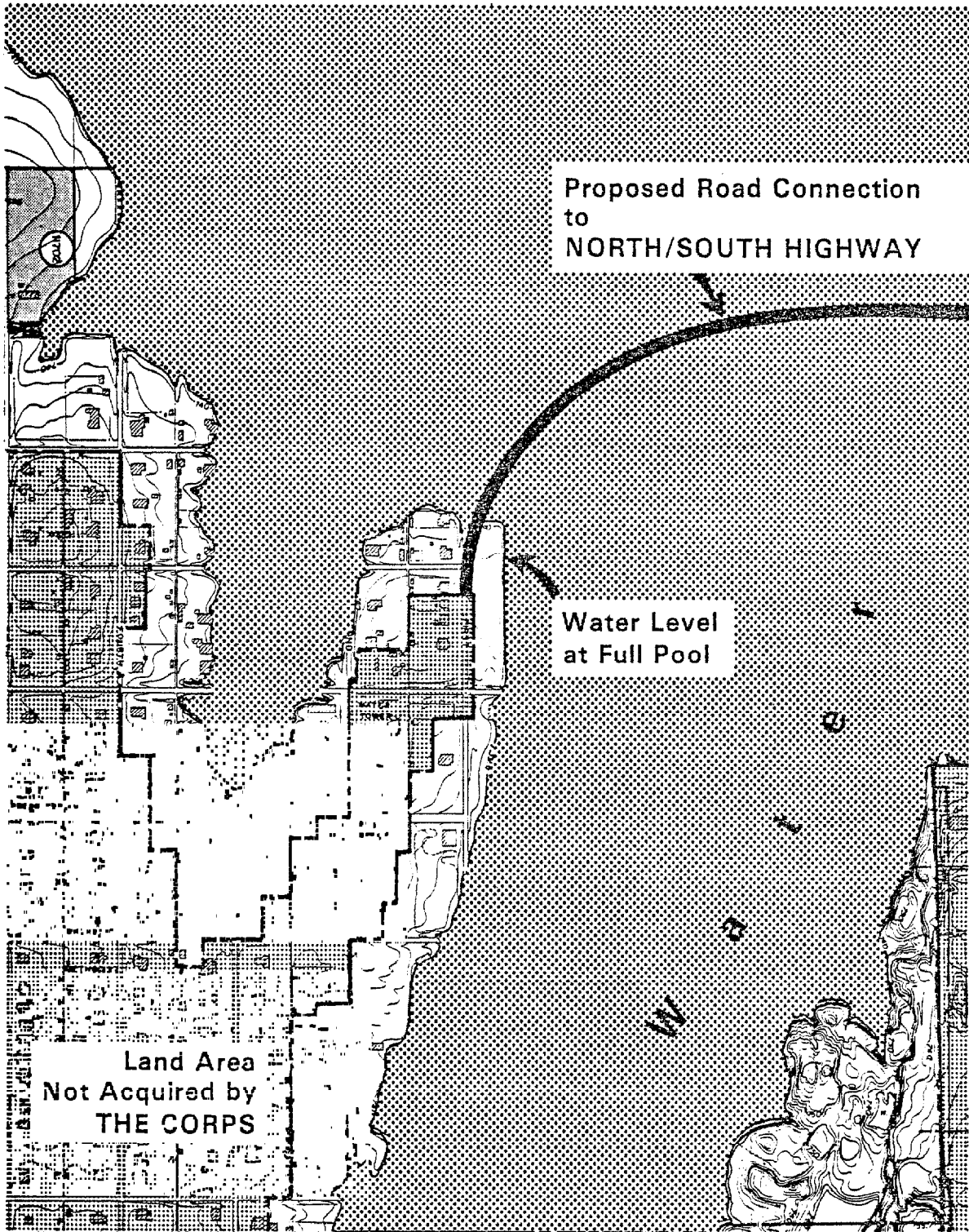

Stuart Symington
United States Senator

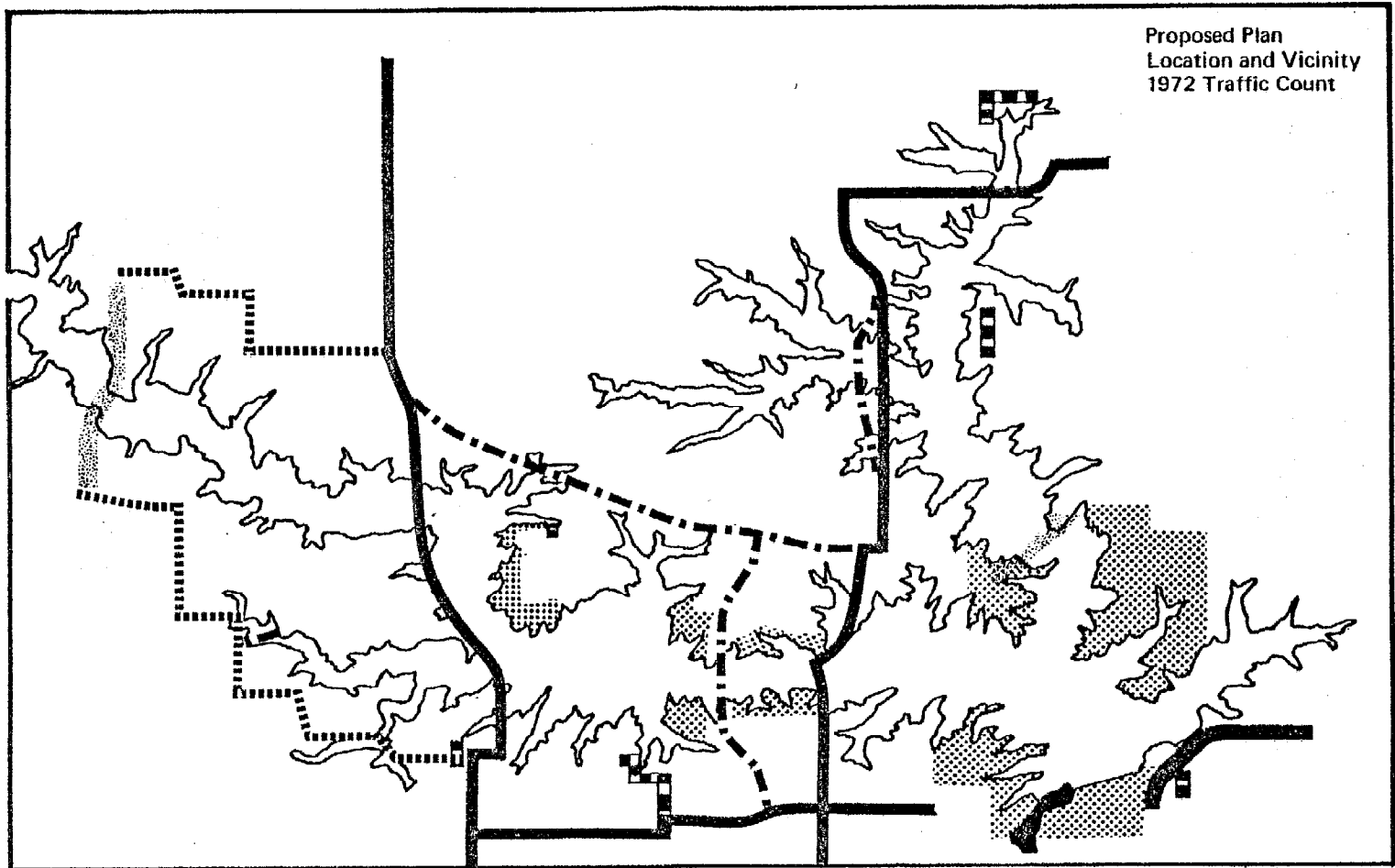

Thomas F. Eagleton
United States Senator


J. Randall
United States Representative

HARRY S. TRUMAN Dam & Reservoir

Town of DEEP WATER, MISSOURI


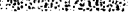









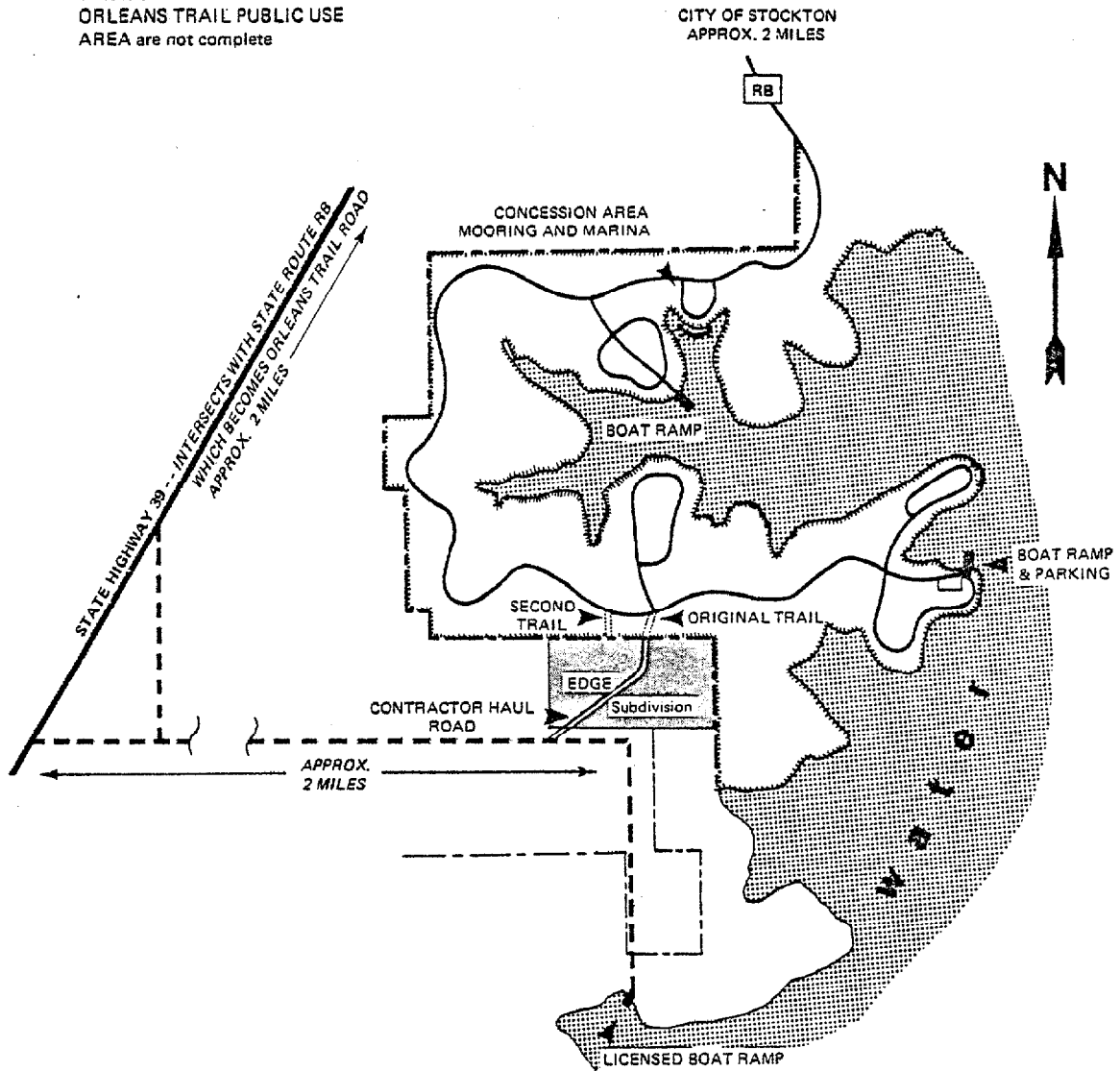
Proposed Plan
Location and Vicinity
1972 Traffic Count

MISSOURI RIVER BASIN
 SMITHVILLE LAKE
 LITTLE PLATTE RIVER
 STATE HIGHWAY and
 COUNTY ROAD RELOCATIONS

LEGEND

- Proposed State Highway Relocation 
- Proposed County Road Relocation 
- Proposed Access Road 
- Proposed Public Use Area 
- Proposed Class II County Road Relocations 
- Proposed Roads by Clinton County 
- Existing Roads 

Not to Scale
 Details of
 ORLEANS TRAIL PUBLIC USE
 AREA are not complete



MILEAGE TABLE

From Edge Subdivision to --	Via trails	Via public roads
Orleans trail marina	3	6
Orleans boat ramp (east)	1	10
Licensed boat ramp (south)		1

LEGEND

- Government Property line
- Orleans Trail boundary
- Improved road (gravel)
- Graded road
- Paved road