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

7/11/75

B-1819#7



The Honorable Les Aspin
House of Representatives

Dear Mr. Aspin:

In response to your request of January 22, 1975, and subsequent arrangements with your office, we have reviewed certain allegations which were set forth in the December 9, 1974, letter to you from residents in the La Farge area of Wisconsin. The letter alleged land acquisition irregularities by employees of the Army Corps of Engineers at the La Farge dam and reservoir project on the Kickapoo River near La Farge.

On February 21, 1975, we informed you of the scope of our review and agreed to look into the following matters:

- The Corps' acquisition of the Huston and Stout properties.
- The application of the Corps' policy for constructing access roads for landowners to the JaDoul property.
- The alleged failure to give a severance allowance to a Mr. Claude Carr.
- The Corps' liability for alleged harm caused by drilling wells.
- The Corps' acquisition of alleged worthless personal property of one landowner.

We made our review at the Corps' district office in St. Paul, Minnesota, and at the Corps' real estate field office in Rock Island, Illinois. We examined documents, records, files, and correspondence and held discussions with Corps officials.

We did not find any evidence of irregularities by Corps employees; therefore we have not obtained written comments from the agency. Information on the specific matters covered by our review follows.

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ACQUISITION OF RUSTON AND STOUT PROPERTIES

Corps acquisition policies and procedures

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 determine the fair market value of all property to be acquired for water resource projects. They develop appraisals by analyzing similar properties involved in open market transactions between private parties in the local area. Corps appraisers must contact owners to arrange for inspection of the property to be acquired and give the owner an opportunity to accompany the appraiser. During the appraisal process, title insurance is processed on the property using local abstract or title companies.

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.

If agreement cannot be reached on the price, the owner has the right to have the U.S. district court determine the price the Government must pay for the taking. This procedure is known as eminent domain or condemnation proceedings and is initiated when the Government files a declaration of taking with the court. The trial in these proceedings, which may be heard by a jury or court-appointed commissioners, is conducted in accordance with established rules and procedures of each court. The Corps deposits the appraised amount for the taking to the registry of the court, and the court may allow the owner to withdraw all or a portion of this amount.

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 U.S. Government gets any estate that it desires, regardless of the title defects.

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Corps procedures and policies for
determining real estate requirements

Postauthorization studies are required for authorized construction projects to establish the most suitable overall plan for the improvement and to establish the basic design of the project features. These studies include an analysis based on current criteria either to reaffirm the basic planning decisions made in the preauthorization survey report or to reformulate the project to be responsive to changed needs after authorization. The results of the postauthorization studies are presented in a report called a general design memorandum.

After the basic design has been established, the land or real estate requirements for the project can be determined. Real estate requirements are governed by the Joint Policies of the Departments of the Interior and the Army that were published in the Federal Register on February 22, 1952. 27 Fed. Reg. 1734 (1962).

This policy states that fee title is acquired in all land required for the dam site, construction area, conservation pool, permanent or multipurpose pool (excluding flood control), and a band of 500 feet in width above pool or the top of the flood control pool plus a reasonable vertical elevation above the flood control pool to allow for backwater effects, or wave wash, erosion, wind, or other factors causing fluctuations in the surface of the water-- whichever is the greater.

Fee title is also required for areas used for recreation, access to the lake, and land acquired for fish and wildlife mitigation and enhancement. Easement interests may be acquired instead of fee title for areas in the upper reaches of the project above the fee acquisition lines if financially advantageous to the Government and not required for project purposes. Easements generally are also acquired for rights-of-way for relocating public highways, public utilities, and railroads.

Real estate requirements
for the La Farge project

In the Corps' survey report supporting the congressional authorization in 1962, the proposed dam for the La Farge project would create a reservoir of some 800 surface

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acres and would require about 4,000 acres of land. A series of changes were made in the basic design of the project, according to the Corps' postauthorization studies.

The adopted design, as shown in the March 1967 general design memorandum, called for an increase in the storage capacity of the reservoir which enlarged the reservoir to 1,780 surface acres and would require the acquisition of more than 9,000 acres of land. The Corps stated that the increased capacity was required to provide a higher degree of flood control, to permit greater flexibility of reservoir operations, and to provide for anticipated increases in recreation and fish and wildlife needs.

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The Corps informed the House and Senate Committees on Appropriations of the revised project design in its budget request for fiscal year 1969. The Congress made an appropriation for the project in that year and has continued to make appropriations in subsequent years.

Acquisition of the Huston Property

Corps officials at the St. Paul district office stated that the Huston land would not have been required under the 1962 project design. However, the 1967 design changes required including certain portions of the Huston property.

Concerning Mr. Gale Huston's contention that he was told on several occasions that his land was not included in the plans for the project, Corps officials said they had no record of such contacts.

In its field surveys, the Corps identified three unimproved tracts of land from the Huston farm as being required for the La Farge project. These tracts account for 23.59 acres of cropland and pasture out of the total 76.10 acres in the highly improved milk-, grain-, and livestock-producing farm. In establishing the taking line for the project, the Corps determined that one tract was needed for relocating Wisconsin Highway 131 and that another was needed for recreational purposes and for fill material that would be used in constructing the earthen dam. A third tract was needed as an access to the spillway, as a recreation area, and as a site for the project operations buildings.

Corps appraisers valued this land at \$5,750 (\$244 an acre) in their first appraisal in September 1968. This formed the basis for the Corps' July 1969 negotiation efforts with the Hustons. At that time Mr. Huston felt that

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his land was worth \$8,000 but did not indicate that he would be willing to sell at that price. The Corps' appraisal was based, in part, on three other land sales that had occurred in the area between 1966 and 1968. The selling price for these sales ranged from \$75 to \$433 an acre.

When direct purchase negotiations with Mr. Huston proved unsuccessful, the Corps started condemnation proceedings. A declaration of taking for this land and other lands was filed with the U.S. district court on July 31, 1972, at which time the appraised value was \$9,500.

In May 1973 Mr. Huston requested that 7.58 acres on the one tract be returned to him after the borrow material had been removed. The Corps agreed to this if a temporary borrow easement was retained. New appraisals which valued the land at \$13,500 were prepared on this basis and furnished to the U.S. attorney on October 30, 1973. The case is still under the jurisdiction of the court.

Acquisition of the Stout property

The Corps identified two tracts of land totaling 41.2 acres from Mr. John J. Stout's 52.7-acre property as being required for the project. One tract was needed for an easement to relocate Wisconsin Highway 131, and the other was needed for borrow material.

In September 1968 Corps appraisals valued the land at \$12,500 on the basis of three comparable sales in the area. Direct-purchase negotiations were begun in 1969; however, Mr. Stout's lowest offer to sell was \$26,100. Since an agreement could not be reached on the price, the Corps included these lands in its July 31, 1972, condemnation proceedings. The appraised value at that time was \$17,000.

In May 1973 Mr. Stout requested the return of 34.45 acres of the property that would be used for borrow material. In November 1973 the Corps told the U.S. attorney of its willingness to do this if the temporary borrow easement was retained. The case is still under court jurisdiction.

ACCESS ROAD TO THE JADOUX PROPERTY

The project design relocates Wisconsin Highway 131. This relocation would leave Mr. Melvin Jadox's unimproved property without ready access to the new highway. Although an access road could be provided, the Wisconsin Department of Transportation estimated that it would cost \$35,000.

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Since the 1972 appraised value for this property was \$6,000, the Corps proposed that it be acquired as part of the project.

During the purchase negotiations, two alternatives were suggested to Mr. JaDoul. He could either obtain a legal right of access over one of the two neighboring properties or sell the property to one of these neighbors. Negotiations were suspended to allow him time to pursue these possibilities.

Mr. JaDoul sold this tract in April 1974 for \$17,000 to an outside party. The new owners have been given the opportunity to negotiate a right of access over one of the neighboring properties. If this is successful, the Corps will grant a waiver and the tract will not be acquired.

SEVERANCE ALLOWANCES GIVEN TO MR. CASS

Mr. Cass applied for relocation payments and reimbursement of expenses in the amount of \$15,296.50 pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646). In his claim Mr. Cass applied for a moving and dislocation allowance of \$500, a fixed payment for business or farm instead of actual expenses of \$2,500, and a replacement housing payment for homeowners of \$12,296.50.

The Corps' real estate field office granted the dislocation allowance and granted \$9,277.50 for the replacement housing payment for homeowners but denied the \$2,500 claim for fixed payment for business or farm. Mr. Cass appealed this determination.

In reviewing the appeal, the Corps' Director of Real Estate concluded that Mr. Cass did not qualify for the \$2,500 claim for business or farm. The act provides that a person displaced from his business or farm operation may elect to receive a fixed payment in an annual amount equal to the average net annual earnings of the business or farm operation and that such payment shall not be less than \$2,500 or more than \$10,000.

In this case the Director considered that only one farming operation was conducted on the premises and that only Mr. Cass' son-in-law was eligible for this payment. It could not be shown that Mr. Cass participated in the farming operation because he cash-rented the farm to his son-in-law.

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In reviewing the replacement housing payment for homeowners, the Director determined that an allowance could be made to include the cost of Mr. Cass' newly built home, less cost of garage, as one of the comparable properties in arriving at the average cost of replacement housing. This increased the average and the replacement housing allowance was increased to \$10,296.50. This allowance and the moving allowance brought the total payments to \$10,796.50. Mr. Cass has not appealed this amount.

HUSTON'S CLAIM FOR ALLEGED HARM
CAUSED BY DRILLING WELLS

On December 28, 1973, Mr. Huston, through his attorney, told the Corps of the difficulties he was having with his mink farm operations because of the increased nitrates in the well water. He contended that this was caused by the Corps' drilling operations at the damsite. On April 25, 1974, Mr. Huston submitted a claim to the Corps for alleged damage.

The Corps rejected the claim as incomplete because it did not show a cause but told only of his operations and losses. Mr. Huston's attorney subsequently submitted a letter on July 22, 1974, which provided some additional information and itemized the claim for the following losses:

Loss on mink for 1972 and 1973	\$222,783
Loss on hogs for 1972	3,360
Loss on cattle for 1972	3,800
Cost for a new well	<u>6,000</u>
Total	<u>\$235,943</u>

On the basis of its review of the information submitted, the Corps' district office denied liability for the claim. Although Mr. Huston's attorney promised additional information, nothing had been received to change the district's opinion. Consequently, on January 6, 1975, the district office forwarded the claim to the Army Claims Service, Fort Monro, Maryland, for disposition. On May 21, 1975, a district official told us that a final determination had not yet been made on the claim.

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ACQUISITION OF ALLEGED WORTHLESS
PERSONAL PROPERTY

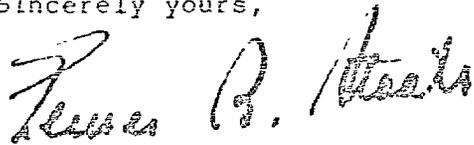
The properties in question were 12,400 mink pens and a child's playhouse.

In his analysis, the appraiser considered the mink pens to be part of realty, even though they were not on foundations. The appraiser's decision was based on an investigation of comparable sales of this type of property where it was noted that individual mink pens were included as realty in other sales of mink ranches. This decision was submitted for a legal determination. The Corps' legal opinion stated that if the Government acquired the land through condemnation proceedings, the mink pens would be included as realty for which the Government would be obligated to pay just compensation.

The appraiser estimated the contribution that these improvements added to the appraised market value of the property as a whole was \$6,200, based on an estimated value of \$0.50 per pen. The Corps later sold the pens to the highest bidder for \$50.

From our review of the records, we were not able to identify the child's playhouse. The appraiser did not remember a playhouse; however, he did recall a small, wood-frame building which may have been mistaken for a playhouse. In his appraisal, this building was valued at \$100 with no salvage value.

Sincerely yours,



Comptroller General
of the United States

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