



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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SEP 13 1948

Commissioner, United States Section,
International Boundary and Water Commission,
United States and Mexico,
First National Bank Building,
El Paso, Texas.

My dear Mr. Lawson:

Reference is made to your letters dated May 14, July 20, and August 23, 1948, in which you request advice on certain questions which have arisen in connection with the construction of the Falcon Dam on the Rio Grande River.

It is understood that your section is engaged in the acquisition of approximately fifty-five thousand acres of land in Starr and Zapata Counties, Texas, to be flooded following the completion of the Falcon Dam, which is to be built jointly between the United States and Mexican sections of the Commission under the Mexican Water Treaty of February 3, 1944, which specifically provides for the construction of 3 stipulated storage dams on the Rio Grande River. The letter of May 14, 1948, states that the construction will necessitate the relocation of approximately 56 miles of United States Highway No. 83, and that, in this connection your section of the commission wishes to enter into a contract with the Texas

State Highway Department whereby the section would pay to the State the cost of the surveys, preparation of plans and specifications, and construction of the new highway, and whereby the State, in turn, would convey to the United States all its right, title and interest in the portion of the present highway within the dam and reservoir site. It is pointed out that this procedure would be more advantageous than would the purchase from the State of the portion of the highway to be flooded, at a purchase price commensurate with the cost to the State of acquiring the right of way for the new highway, and is the procedure consistently employed by the Bureau of Reclamation, Department of the Interior, and the Corps of Engineers, Department of the Army, in similar instances.

Your several letters indicate a belief that authority for your section to enter into the proposed relocation agreement is contained in the basic statutes establishing the International Boundary and Water Commission and authorizing its activities, in section 15 of Public Law 600, 79th Congress, 60 Stat. 810, 5 U.S.C. 552, authorizing the employment of experts or consultants, in the designation of the United States Section as the agency to construct the project, and in the provisions of the appropriation acts appropriating funds for the Commission.

The advantages believed to be inherent in the proposed relocation plan are set forth in your letter of May 14, 1948, as follows:

"* * * In the first place, it is desirable that the exact location of the new highway be immediately determined and agreed upon with the State Highway Commission in order that lands for the reservoir area may be acquired up to and perhaps including the location of the new highway, and this can only be done expeditiously through a cooperative arrangement between this agency and the State Highway Commission. Secondly, the lands embraced within the 56-mile reach of the present highway location within the reservoir area have been acquired by the State in numerous parcels from many different owners, and the abstract and title work involved in establishing the State's title to this stretch of the highway would be difficult and expensive and would require many months' work. It is thought, also, that the title of the State in many instances would have to be based on limitation or adverse possession which, of course, would not be reflected in abstracts or certificates of title. Since the relocation contracts entered into by the Corps of Engineers provide that the State will convey to the United States, without covenant or warranty of any kind, all the right, title and interest of the State of Texas in and to the right-of-way of the abandoned portions of the highway, it seems apparent that the State's title under this procedure need not be approved by the Attorney General as in the case of ordinary land acquisitions. If the first procedure mentioned above [that of purchasing the old right of way from the state] were adopted, however, it would probably be necessary that the approving opinion of the Attorney General as to the State's title would be required and, as I have mentioned, this would involve voluminous and expensive title work covering a long period of time and which in the end would probably not reflect good record title in the State as to some portions of the highway. It is quite evident, however, considering the length of time that has elapsed since the construction of this highway, that the State must have limitation title thereto in cases where its record title may be defective. Moreover, in deeds from owners of lands abutting the highway, it is intended to include the landowners' reversionary interest in the highway."

The specific questions on which you ask to be advised are as follows:

1. Does the United States Section, International Boundary and Water Commission, United States and Mexico, under the authorities cited in your letter of May 14, 1948, and under general provisions of law, have the right, as an essential part of the construction of

the Rio Grande Dam Project, to enter into contracts with the State of Texas for the relocation of the State highway similar to those negotiated by the Corps of Engineers?

2. Is it necessary, if this procedure be approved, to secure the written opinion of the Attorney General, under the provisions of 40 U.S.C. 255, or otherwise, in favor of the validity of the title of the State of Texas to the portion of the highway to be acquired and inundated?

3. If the land acquired for the reservoir area includes that upon which the new highway is to be located, may the State of Texas, as a part of the consideration for the relocation contracts, be permitted, under some form of irrevocable license or easement, the permanent use, for State highway purposes, of a portion of such land?

As pointed out in your letter of May 14, 1948, the general authority for the activities of the United States Section of the International Boundary and Water Commission, United States and Mexico, is contained in the act of May 13, 1924, 43 Stat. 1118, as amended, 22 U.S.C. 277 to 277(f). Section 277(b) authorizes the President of the United States to construct any project or works which may be provided for in a treaty entered into with Mexico and to construct any project or work designed to facilitate compliance with the provisions of treaties between the United States and Mexico. Section 277(e) authorizes the President, or any federal agency which he may designate, in order to carry out these and

other provisions of the act, (1) to enter into agreements with any one or more political subdivisions, under the terms of which agreements there shall be furnished to the United States gratuitously, except for the examination and approval of titles, the lands or easement in lands necessary for the construction, operation and maintenance, in whole or in part, of any such project or works, or the operation and maintenance thereof by any such political subdivision; (2) to acquire by purchase, exercise of the power of eminent domain, or by donation, any real or personal property that may be necessary; (3) to withdraw public lands from sale, public entry or disbursement; and (4) to make necessary rules and regulations.

Section 277(e) quoted in part in your letter of August 23, 1948, provides in part as follows:

"The Secretary of State is further authorized to issue revokable licenses for public or private use for irrigation or other structures or uses not inconsistent with the use of such lands made, or to be made, by the United States, across any lands retained by the United States, and to execute all necessary leases, title instruments, and conveyances, in order to carry out the provisions of this section.

"Whenever the construction of any project or works undertaken or administered by the Secretary of State through the International Boundary Commission, United States and Mexico, results in the interference with or necessitates the alteration or restoration of constructed and existing irrigation or water-supply structures, sanitary or sewage disposal works, or other structures or physical property belonging to any municipal or private corporation, company, association, or individual, the Secretary of State may cause the restoration or reconstruction of such works, structures, or physical

property or the construction of others in lieu thereof or he may compensate the owners thereof to the extent of the reasonable value thereof as the same may be agreed upon by the American Commissioner with such owner."

The Department of State Appropriation Act 1949, Title I, Public Law 597, 80th Congress, provides funds for the International Boundary and Water Commission, United States and Mexico, and reads, in part, as follows:

"International Boundary and Water Commission, United States and Mexico. For * * * services in accordance with section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), at rates for individuals not in excess of \$100 per diem; * * * acquisition by donation, purchase, or condemnation, of real and personal property, including expenses of abstracts and certificates of title * * * as follows:

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"Construction: For detail plan preparation and construction of projects authorized by the Convention concluded February 1, 1933, between the United States and Mexico, the Acts approved August 19, 1935, as amended (22 U.S.C. 277-277d), August 29, 1935 (Public Law 392), June 4, 1936 (Public Law 648), June 28, 1941 (22 U.S.C. 277f), and the projects stipulated in the treaty between the United States and Mexico signed at Washington on February 3, 1944, \$1,500,000 to be immediately available, and to remain available until expended: Provided, That no expenditures shall be made for the Lower Rio Grande flood-control project for construction on any land, site, or easement in connection with this project except such as has been acquired by donation and the title thereto has been approved by the Attorney General of the United States * * *."

It is stated in your letter of May 14, 1948, that the plan which it is desired to employ in connection with the relocation of the highway here involved is similar to that employed by the Bureau of Reclamation in similar circumstances without specific statutory authority. It is to be noted, however, that the act of October 4, 1939, 53 Stat. 1197, 43 U.S.C. 389, authorizes the

Secretary of the Interior to purchase or condemn suitable lands, or interest in lands, for relocation of highways or other properties to enter into contracts with the owners of said property whereby they undertake to acquire any or all property needed for such relocation, or to perform work involved in such relocation, and, for the purpose of effecting relocations, to convey or exchange Government properties acquired or improved for the purpose of relocation or other Government properties owned or held in connection with the project, or to grant perpetual easement therein or thereover. It thus may be seen that the Bureau of Reclamation is not without specific authority for the agreements of the type here involved. Similarly, the act of June 28, 1938, 52 Stat. 1215, as amended, 33 U.S.C. 701c-1, authorizes the Secretary of War (Secretary of the Army) to acquire title to lands, easements, and rights of way necessary for dam and reservoir projects, including land for highway relocation, and permits the reimbursement to States, or political subdivisions thereof, of sums equivalent to actual expenditures, determined reasonable by the Secretary of War (Secretary of the Army) and the Chief of Engineers made by them in acquiring lands, easements, and rights of way. No such specific authority is vested in your agency. It is true that authority is granted to acquire by purchase, exercise of power of eminent domain, or by donation, any necessary real or

personal property. This provision, however, is not sufficiently broad to include an agreement of the type here contemplated. Nor does anything in the wording of 22 U.S.C. 277(e), quoted in part above, or the legislative history of the act which became that section, indicate that the term "municipal corporation" as used therein to indicate entities for whom the Secretary of State may cause the restoration or reconstruction of damaged or destroyed structures or physical property, would include States. On the other hand, in the third proviso of the first paragraph of that section, in enumerating the governmental subdivision to which unneeded lands may be conveyed by the United States, States are specifically included. It must be assumed, therefore, that the omission of States from the following paragraphs of the section was intentional. The fact that an authorization to construct a project of this nature does not carry with it authority to execute relocation agreements of the character here contemplated is evidenced by the fact that the Congress considered it necessary to grant specific authority for relocation agreements to the Department of the Interior and the War Department (Department of the Army). While the authority contained in Section 15, Public Law 600, 79th Congress, 60 Stat. 810, 5 U.S.C. 55a--to procure the temporary or intermittent services of experts or consultants,

or organizations thereof—might be held to include services of the personnel of the Texas State Highway Department, it may not be held as permitting a contract whereby the State, in consideration of the cost of planning and constructing a new highway, would grant to the United States title to a highway to be inundated. It therefore must be held that the United States Section, International Boundary and Water Commission, is not authorized to enter into contracts for the relocation of State highways similar to those negotiated by the Bureau of Reclamation and the Corps of Engineers.

As the first question presented in your letter of May 14, 1948, is thus answered in the negative, no specific answers to the second question contained therein, or to the question contained in the letter of August 23, 1948, are required.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General
of the United States.