

**FILE**

REPORT TO  
THE CONGRESS OF THE UNITED STATES

IMPROPER USE OF FUNDS APPROPRIATED  
FOR OPERATION AND MAINTENANCE EXPENSES

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UNITED STATES SECTION  
INTERNATIONAL BOUNDARY AND WATER COMMISSION  
UNITED STATES AND MEXICO



BY  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES

MAY 1965

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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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MAY 19 1965

To the President of the Senate and the  
Speaker of the House of Representatives

The United States Section, International Boundary and Water Commission, United States and Mexico, for the purposes of conducting preliminary surveys and investigations in connection with the Chamizal boundary dispute and the Colorado River salinity problem, improperly charged about \$83,800 against the operation and maintenance appropriations during fiscal years 1963, 1964, and 1965. The charges were improper because funds for conducting such activities are specifically provided in the salaries and expenses appropriations.

Section 3678 of the Revised Statutes (31 U.S.C. 628) provides that appropriations must be applied solely to the objects for which they are made. Since the expenditures made by the United States Section were for purposes of a type normally considered as surveys and investigations, and since surveys and investigations are specifically provided for in the salaries and expenses appropriations, the United States Section did not have legal authority to use the operation and maintenance appropriations for such purposes.

On October 5, 1964, the General Accounting Office issued to the United States Section notices of exception relating to the improper expenditures made in fiscal years 1963 and 1964. If the expenditures had been properly charged against the 1963 and 1964 salaries and expenses appropriations, these appropriations would have been overobligated by about \$24,700 and \$45,000, respectively, in violation of section 3679 of the Revised Statutes, as amended (31 U.S.C. 665).

The Commissioner of the United States Section informed us that the activities in connection with the Chamizal boundary dispute were urgent and that the Section was the only agency that could perform the necessary work. He stated that the surveys and investigations had a direct connection with the proper execution of the operation and maintenance program and that, since no funds were programmed under the salary and expense program for the specific surveys and investigations for which the funds were used, he believed that the action taken was legally permissible. He advised us that the surveys and

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investigations in connection with the Colorado River salinity problem had an effect on operation and maintenance and that he believed the use of operation and maintenance funds for this purpose was also legally permissible.

Appropriation requests for the United States Section state that programmed survey and investigation projects are only tentative and may be subject to adjustment so that funds can be made available for unscheduled projects. Therefore, it is apparent that salary and expense funds for surveys and investigations are intended to be available for projects other than those specifically programmed.

In 19 Comp. Gen. 892, it was decided that an appropriation for a specific object is available for that object to the exclusion of a more general appropriation. Since surveys and investigations are specifically provided for in the salaries and expenses appropriations, the use of the operation and maintenance appropriations for such purposes is not legally authorized.

The Commissioner of the United States Section advised us that, in the event the exceptions were continued, the Section would use salary and expense funds to reimburse the operation and maintenance appropriation for those survey and investigation expenditures financed from the operation and maintenance appropriation for fiscal year 1965. In view of the Commissioner's statement, we have not issued notices of exception relating to the expenditures charged against the 1965 appropriation. On April 19, 1965, we advised the Section that we still believed that the expenditures previously questioned were properly chargeable to the salaries and expenses appropriations and that we were restating our exception to the expenditures charged against the 1963 and 1964 appropriations.

We are reporting this matter to advise the Congress of the improper expenditures which have been made and to advise the Department of State and the United States Section of the need for action to achieve

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compliance with the law. We are recommending that the Commissioner, United States Section, submit a report concerning the expenditures improperly charged against the 1963 and 1964 operation and maintenance appropriations to the President and to the Congress as required by section 3679 of the Revised Statutes, as amended.

Copies of this report are being sent to the President of the United States; the Secretary of State; and the Commissioner, United States Section, International Boundary and Water Commission.

A handwritten signature in cursive script, reading "Ralph Campbell".

Comptroller General  
of the United States

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REPORT ON  
IMPROPER USE OF FUNDS APPROPRIATED  
FOR OPERATION AND MAINTENANCE EXPENSES  
UNITED STATES SECTION  
INTERNATIONAL BOUNDARY AND WATER COMMISSION  
UNITED STATES AND MEXICO

INTRODUCTION

The General Accounting Office has made a review of certain expenditures made by the UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO, for the performance of preliminary surveys and investigations. Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67). Our review was conducted at the United States Section headquarters in El Paso, Texas, and included an examination of the records relating to the expenditures and a review of applicable legislation. Although our examination disclosed certain deficiencies which require corrective action, they should not be considered typical of the entire program.

The treaty of March 1, 1889 (26 Stat. 1512), establishing the International Boundary and Water Commission, United States and Mexico, authorizes the Commission to examine into and decide questions arising in connection with the fluvial boundary between the two countries including those relating to changes in the beds of the boundary streams, the construction and operation of water resources projects on these streams, and any other matters affecting the boundary. Extension of the Commission's jurisdiction to the overland boundary from El Paso, Texas, to the Pacific Ocean was accomplished by the Water Treaty of February 3, 1944 (59 Stat. 1219).

The Commissioner, United States Section, is appointed by the President and is responsible to the Secretary of State in matters of foreign policy.

Each year separate appropriations are made to the United States Section through the Department of State for (1) construction, (2) operation and maintenance, and (3) salaries and expenses for carrying out other functions including examinations, preliminary surveys, and investigations. During fiscal years 1963, 1964, and 1965, the United States Section has performed preliminary surveys and investigations relating to the Chamizal boundary dispute and the Colorado River salinity problem.

The Chamizal boundary dispute concerned a long-standing disagreement between the United States and Mexico over ownership of certain lands north of the Rio Grande at El Paso, Texas. The dispute was settled by the signing of an agreement between the United States and Mexico on August 29, 1963. This agreement was ratified by the Senate on December 17, 1963.

The Colorado River salinity problem concerns an increase in the salt content of the waters of the Colorado River that flow into Mexico. Mexico has objected to the increased salt content contending that it impairs the usability of the water for irrigation purposes. An agreement to settle the dispute was reached by the United States and Mexico in March 1965.

The principal officials responsible for the activities discussed in this report are listed in the appendix.

## FINDING AND RECOMMENDATION

### IMPROPER USE OF FUNDS APPROPRIATED FOR OPERATION AND MAINTENANCE EXPENSES

The United States Section, for the purposes of conducting preliminary surveys and investigations in connection with the Chamizal boundary dispute and the Colorado River salinity problem, improperly charged about \$83,800 against the operation and maintenance appropriations during fiscal years 1963, 1964, and 1965. The charges were improper because funds for conducting such activities are specifically provided in the salaries and expenses appropriations. If the expenditures for fiscal years 1963 and 1964 had been charged against the salaries and expenses appropriations, however, these appropriations would have been overobligated in violation of section 3679 of the Revised Statutes, as amended (31 U.S.C. 665).

The use of an appropriation for a purpose other than the purpose for which the appropriation is made is contrary to law. Section 3678 of the Revised Statutes--quoting from the code (31 U.S.C. 628)--provides:

"Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

The Comptroller General has stated that an appropriation for a specific object is available for that object to the exclusion of a more general appropriation, and the exhaustion of the specific appropriation does not authorize charging the excess payment to the more general appropriation (19 Comp. Gen. 892).

For fiscal years 1963, 1964, and 1965, as in previous years, the Congress provided, for the use of the United States Section, separate appropriations (1) "for operation and maintenance of

projects or parts thereof \*\*\*" and (2) "for salaries and expenses not otherwise provided for, including examinations, preliminary surveys, and investigations \*\*\*." The following tabulation shows the amounts of these appropriations for fiscal years 1963, 1964, and 1965.

<u>Year</u>	<u>Appropriation</u>	
	<u>Operation and maintenance</u>	<u>Salaries and expenses</u>
1963	\$1,950,000	\$670,000
1964	2,015,000	715,000
1965	1,963,000	785,000

Although the salaries and expenses appropriations were made available specifically for the performance of preliminary surveys and investigations, the United States Section used funds from the operation and maintenance appropriations as well as from the salaries and expenses appropriations to perform these activities during fiscal years 1963, 1964, and 1965 in connection with the Chamizal boundary dispute and the Colorado River salinity problem. The following tabulation shows, by appropriation, the amount of funds spent in performing these activities for each of the projects.

<u>Project</u>	<u>1963</u>		<u>1964</u>		<u>Total</u>	
	<u>Salaries and expenses</u>	<u>Operation and maintenance</u>	<u>Salaries and expenses</u>	<u>Operation and maintenance</u>	<u>Salaries and expenses</u>	<u>Operation and maintenance</u>
Chamizal boundary dispute	\$ 500	\$21,200	\$18,100	\$45,600	\$18,600	\$66,800
Colorado River salinity problem	<u>5,500</u>	<u>3,800</u>	<u>9,900</u>	<u>-</u>	<u>15,400</u>	<u>3,800</u>
Total	<u>\$6,000</u>	<u>\$25,000</u>	<u>\$28,000</u>	<u>\$45,600</u>	<u>\$34,000</u>	<u>\$70,600</u>

During fiscal year 1965, the Section expended an additional \$13,200 from the 1965 operation and maintenance appropriation for surveys and investigations in connection with the Chamizal boundary dispute.

The Section began expending funds from the operation and maintenance appropriation in connection with the Chamizal boundary dispute in July 1962. In November 1963, a supplemental appropriation of \$77,000 was requested for the use of the Section for salaries and expenses in connection with the Chamizal boundary dispute. This supplemental appropriation was not provided, and in December 1963 the Senate Committee on Appropriations, in its report on the 1964 appropriation bill, suggested that \$77,000 of the 1964 salaries and expenses appropriation be used for the above-mentioned purpose (S. Doc. 747, 88th Cong.).

After legislation authorizing the implementation of the agreement with Mexico had been enacted, a separate appropriation was requested, in May 1964, to provide funds for the Section to carry out the agreement. The separate appropriation was provided for in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1965, approved August 31, 1964 (78 Stat. 711), and, consequently, in August 1964 the Section discontinued obligating operation and maintenance funds for expenditures in connection with the Chamizal boundary dispute.

Expenditures in fiscal year 1963 in connection with the Colorado River salinity problem initially were charged to the salaries and expenses appropriation. However, on June 28, 1963, \$3,800 of these charges were transferred to the operation and maintenance appropriation. The Section specifically programmed funds for the salinity problem from its salaries and expenses appropriations for

fiscal years 1964 and 1965 and therefore has discontinued charging such expenditures to operation and maintenance.

On October 5, 1964, the General Accounting Office issued to the United States Section notices of exception relating to the improper expenditures made in fiscal years 1963 and 1964. The unobligated balances remaining in the 1963 and 1964 salaries and expenses appropriations were about \$300 and \$600, respectively. Thus, if the improper expenditures had been properly charged to the 1963 and 1964 salaries and expenses appropriations, these appropriations would have been overobligated by about \$24,700 and \$45,000, respectively.

The improper expenditures represent a violation of section 3679 of the Revised Statutes, as amended (31 U.S.C. 665), which states:

"No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein; nor shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law."

The act requires that the head of the agency concerned immediately report to the President, through the Director of the Bureau of the Budget, and to the Congress all pertinent facts concerning any violation of the above provisions and furnish a statement of the action taken thereon.

#### Agency comments and our evaluation

The Commissioner of the United States Section advised us in November 1964 that funds had not been specifically programmed for preliminary surveys and investigations in connection with the

Chamizal boundary dispute prior to the expenditure of operation and maintenance funds for this purpose. He referred us to a decision of the Comptroller General (29 Comp. Gen. 419) which states that, where an appropriation is made for a particular object, by implication it confers authority to incur expenses which are necessary or incident to the proper execution of the object unless there is another appropriation which makes more specific provision for such expenditures, or unless they are prohibited by law.

The Commissioner stated that the expenditures in question had a direct connection with the proper execution and achievement of operation and maintenance and that, since no funds were programmed under the salaries and expenses appropriations for the Chamizal project, he believed that the action taken was legally permissible. He further stated that precedent had been established for the use of operation and maintenance funds for purposes such as those which we have questioned and that, because of the urgency of the project and to carry out the desires of the President of the United States, there was no reasonable alternative but to utilize funds available from the operation and maintenance appropriations. The Commissioner also stated that the use of available operation and maintenance funds presented a realistic and efficient operation in view of the delays and expense involved in obtaining funds and in view of the necessity for the expeditious handling of the important events.

The Commissioner also advised us that he believed that the use of operation and maintenance funds to perform surveys and investigations in connection with the Colorado River salinity problem was legally permissible since this project also had a direct connection with operation and maintenance and there was precedent for the use of operation and maintenance funds for such purposes.

The Department of State concurred with the Commissioner's comments.

We recognize that funds were not specifically programmed for preliminary surveys and investigations in connection with either the Chamizal boundary dispute or the Colorado River salinity problem prior to the expenditure of funds for these purposes; however, appropriation requests for the United States Section state that programmed survey and investigation projects are only tentative and may be subject to adjustment so that funds can be made available for unscheduled projects if the need should arise. Therefore, it is apparent that salary and expense funds for preliminary surveys and investigations are intended to be available for use on projects other than those specifically programmed. Accordingly, the expenditures of about \$83,800 from the operation and maintenance appropriations for preliminary surveys and investigations were made without legal authority.

The Commissioner of the United States Section advised us that, in the event the exceptions were continued, the Section would use salary and expense funds to reimburse the operation and maintenance appropriation for those survey and investigation expenditures financed from the operation and maintenance appropriation for fiscal year 1965. In view of the Commissioner's statement, we have not issued notices of exception relating to the expenditures charged against the 1965 appropriation. On April 19, 1965, however, we advised the Section that we still believed that the expenditures previously questioned were properly chargeable to the salaries and expenses appropriations and that we were restating our exception to the expenditures charged against the 1963 and 1964 appropriations.

Recommendation

We recommend that the Commissioner, United States Section, submit a report concerning the expenditures improperly charged against the 1963 and 1964 operation and maintenance appropriations to the President and to the Congress as required by section 3679 of the Revised Statutes, as amended.



APPENDIX



PRINCIPAL OFFICIALS RESPONSIBLE  
FOR THE ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office	
	From	To
<u>DEPARTMENT OF STATE</u>		
SECRETARY OF STATE:		
Dean Rusk	Jan. 1961	Present
ASSISTANT SECRETARY FOR INTER-AMERICAN AFFAIRS:		
Edwin M. Martin	Mar. 1962	Jan. 1964
Thomas C. Mann	Jan. 1964	Mar. 1965
Jack H. Vaughn	Mar. 1965	Present
<u>INTERNATIONAL BOUNDARY AND WATER</u>		
<u>COMMISSION, UNITED STATES AND MEXICO</u>		
COMMISSIONER, UNITED STATES SECTION:		
Joseph F. Friedkin	Apr. 1962	Present