



COMPTROLLER GENERAL OF THE UNITED STATES
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The Honorable,

The Secretary of the Interior.

My dear Mr. Secretary:

Reference is made to your letter of March 3, 1949, requesting a decision as to whether there is any objection to settlement by supplemental contract of the obligations of the United States under contract No. 181a-97 by providing a cash payment of \$20,000 to the Town of Hot Sulphur Springs, Colorado.

It appears that by reason of the change in the regimen of the Colorado River below Granby Reservoir occasioned by construction and operation of the Colorado-Big Thompson Project, the Town of Hot Sulphur Springs, Colorado, is obliged to secure a source of water supply independent from the Colorado River from which it heretofore has received its water supply. It further appears that under contract No. 181a-97 the Government agreed to construct the Himsbaugh pipe line and wells and the Town agreed to secure all necessary rights-of-way for which the Government was to reimburse the Town for the actual cost thereof not exceeding \$300. It is stated that the cost of labor and materials for performance by the United States under the contract was estimated on February 3, 1948, as \$20,600.

However, it now is indicated that the Town officials because of

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subsequent developments, including their inability to secure the necessary rights-of-way for which the United States agreed to pay an amount not exceeding \$300, desire to abandon construction of the Hinsbaugh pipe line and wells and, in lieu thereof, to provide a more adequate water supply system, the cost of which is estimated to be \$32,000. It is stated that the Town officials have suggested a cash payment of \$20,000 by the United States to the Town in lieu of performance by the United States of its obligations under contract No. 181r-97; that the Town will furnish the additional \$12,000 which will be required for the enlarged and better water supply system; and that the Town will undertake construction of the more expensive system on its own responsibility.

It is pointed out that from February 3, 1948—the date the cost of the construction work was estimated—to date, cost indices show a 10 percent increase in the cost of construction and that a cash settlement would result in a monetary saving of at least \$2,960. It is pointed out further that the proposed settlement is satisfactory to the Northern Colorado Water Conservancy District.

Section 14 of the Reclamation Project Act of 1939, 53 Stat. 1197, 43 U.S.C. 389, authorizes the Secretary of the Interior "for the purpose of orderly and economical construction or operation and maintenance of any project, to enter into such contracts for exchange or replacement of water, water rights * * * or for the adjustment of water

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rights, as in his judgment are necessary and in the interests of the United States and the project."

It seems apparent that, generally, the only way the Government could be assured of not exceeding its obligation so far as concerns the cost of securing a new source of water in instances where it has deprived a municipality or community of its original water supply, would be to assume direct responsibility for the replacement of such water supply. The above-quoted statute, however, provides for contracts not only for the exchange or replacement of water but also for the adjustment of water rights. Ascribing to the word adjustment its ordinary meaning—and examination of the legislative history of the act fails to disclose that the Congress intended to use the word in any other sense—it would seem that the provision reasonably may be construed as authorizing contracts for cash settlements in lieu of contracts for the exchange or replacement of water where it is to the best interest of the Government to make such settlements.

Accordingly, since it has been determined by your Department that the cash payment here proposed would be advantageous to the Government from a monetary standpoint—and such determination appears to be supported by the facts submitted—there is perceived no basis for objection by this Office to the execution of the proposed supplemental agreement.

Respectfully,

Walter S. Warren

Comptroller General
of the United States.