



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON

A-88353

JUN 18 1938

The Honorable,

The Secretary of the Interior.

Sir:

Your letter of May 28, 1938, is as follows:

"The act of July 9, 1937 (50 Stat. 485) authorizes the acquisition of certain lands for, and the addition thereof to, the Yosemite National Park, in the State of California. The Third Deficiency Appropriation Act, fiscal year 1937, approved August 25, 1937 (50 Stat. 755), contains the following item:

"NATIONAL PARK SERVICE

"Yosemite National Park, California: For the acquisition of certain lands, including expenses incidental thereto, as set forth in the Act of Congress approved July 9, 1937 (50 Stat. 485), there is hereby made available, not to exceed \$2,005,000 of the unexpended balance of the appropriation contained in the Emergency Relief Appropriation Act of 1935, heretofore earmarked thereunder for that purpose, notwithstanding the reappropriating provisions with respect to such unexpended balance in section 1 of the Emergency Relief Appropriation Act of 1937."

"Pursuant to the above-cited statutes, this Department has endeavored to purchase the privately owned lands within the acquisition area described in the Act of July 9, 1937, supra. To date, it has not been possible to contract for any of the desired lands at a reasonable price, although it appears that one small parcel will soon be covered by a contract of sale with this Department. Condemnation proceedings have been instituted by the Attorney General for all parcels of privately owned lands within the proposed park extension, with the exception of one small parcel which, it is believed, will soon be contracted for at a reasonable price. The small parcel excluded from the pending condemnation proceedings will be contracted for, or condemnation proceedings requested and commenced for its acquisition, before July 1, 1938. In any event, funds from the Third Deficiency Appropriation Act, fiscal year 1937, supra, for the acquisition of all of the privately owned lands within the park extension area have been or will be obligated for that purpose before July 1, 1938.

"The major portion of the lands within the park extension area is owned or controlled by an operating lumbering company. Numerous complex and technical problems involving lumbering operations, severance damages, etc., are present in this proposed acquisition. Complex and technical problems are also present in connection with the acquisition of a portion of the holdings of a power company within the park extension area. This Department is now having studies made and data prepared for the approaching court proceedings for acquisition of such holdings. Expert witnesses have been employed; special counsel will be employed to assist in handling the cases; and a limited amount of clerical assistance has been employed to handle the work incidental to proceeding with the acquisition of the lands within the park extension area.

"No provision has been made in the regular appropriations for this Department to cover the unusual expenses which have been and will continue to be incurred in connection with the acquisition of the proposed park lands. It will be noted, however, that the \$2,005,000 made available by the Third Deficiency Appropriation Act, fiscal year 1937, supra, is by the express terms of the statute, available for the expenses incidental to acquisition. Failure by the Government to prepare properly for the approaching trials will undoubtedly result in excessive awards. It is therefore essential that the National Park Service of this Department, in cooperation with the Department of Justice, continue to take steps after July 1, 1938, to protect the interests of the United States by developing adequately all evidentiary needs of the Government. If the \$2,005,000 should be construed to be available only for the payment of lands after June 30, 1938, it would not be possible for this Department to prepare properly for the approaching trials under the regularly appropriated funds for the National Park Service.

"It is the view of this Department that the obligation of funds for payment of lands for the park extension area will result in the obligation of so much of the \$2,005,000 as may be necessary for expenses incidental to the acquisition. The respective amounts for acquisition and expenses incidental thereto cannot, of course, be determined until the acquisition is consummated, which will, of necessity, project into the future. It is possible that unforeseen contingencies entailing unusual acquisition expenses may arise. The purpose for which the funds were made available, viz: acquisition of the privately owned lands, may be defeated if the obligation of funds for the payment of lands after June 30, 1938, is not co-extensive with the obligation of funds for expenses incidental thereto.

"It is requested that your decision regarding the continued availability of funds from the \$2,005,000 item after June 30, 1938, for expenses incidental to acquisition be furnished this Department for administrative guidance at the earliest practicable date."

The authorization in the act of August 25, 1937, specifically includes "expenses incidental" to the acquisition of the lands authorized to be acquired under the act of July 9, 1937. Accordingly, the lands made available for such acquisition may be considered as obligated by the institution of condemnation proceedings for such funds not only for the price to be paid for the lands but also for the expenses incident to the condemnation proceedings. 8 Comp. Gen. 308; ⁴ id. 647; 12 Comp. Dec. 304; 10 id. 538. However, the institution of such condemnation proceedings may not be considered as obligating such funds for strictly administrative expenses of your Department. 17 Comp. Gen. 111.

The question submitted is answered accordingly.

Respectfully,

(Signed) R. N. Elliott

Acting Comptroller General
of the United States.