

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

B-179059

OCT 11 1973

The Honorable Charles M. Teague  
House of Representatives

Dear Mr. Teague:

Further reference is made to your letter of June 26, 1973, forwarding correspondence from your constituent, William A. Brace, Esquire.

Mr. Brace is concerned with efforts of the Forest Service to obtain scenic easements over portions of Pistol Creek Ranch, located on the Middlefork of the Salmon River, Idaho, pursuant to the Wild and Scenic Rivers Act, approved October 2, 1968, Public Law 90-542, 82 Stat. 906, 16 U.S.C. 1271 et seq. Mr. Brace alleges that the actions of the Forest Service violate title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, approved January 2, 1971, Public Law 91-646, 84 Stat. 1894, 42 U.S.C. 4651 et seq., and requests a congressional investigation in this regard. He also raises several related questions concerning implementation of the Wild and Scenic Rivers Act by the Forest Service.

As indicated in our letter to you of July 31, 1973, we requested the Secretary of Agriculture to furnish us a report on the allegations and questions raised by Mr. Brace. In response to our request, we have received copies of correspondence from officials of the Forest Service to the Honorable William M. Ketchum.

This correspondence presents the following background information:

The Pistol Creek property is the first tract to be acquired on the river under the Wild and Scenic Rivers Act. This tract, consisting of 144.37 acres, has been partially subdivided into 40 lots containing 18.92 acres. The property is owned by three corporations and 47 individuals or families. Most of the people involved are also members of the Middle Fork Ranch, Incorporated, which holds title to all the bulk land and several of the undeveloped, subdivided lots.

The proposed scenic easements were first discussed in 1970 with the president of the Middle Fork Ranch, Incorporated. The Corporation has

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changed presidents each year since the Forest Service started discussing the scenic easements. In June 1971, letters were sent to each landowner, along with material explaining the scenic easements program and a request for permission to inspect the property for appraisal purposes.

A Scenic Easement Committee was set up by the Middle Fork Ranch, Incorporated. The Committee was to represent the lot owners, as well as the Corporation. Considerable time was spent by the Forest Service working with this Committee to draft an acceptable scenic easement for the Pistol Creek Ranch. Many suggestions were accepted by the Forest Service, with six revisions being made. Some suggestions by the Committee were not acceptable. In July 1972, the Corporation elected a new president, who was a former member of the Scenic Easement Committee. The new president appointed Mr. Brace as chairman of the Committee. It is assumed that all the information from previous contacts with the Forest Service was passed on by the Committee to Mr. Brace, although Mr. Brace may not be fully informed of meetings, contacts, and correspondence.

Once the final draft of the scenic easement was prepared in June 1972, the Forest Service started in earnest to prepare the appraisals. During February and March of this year, the appraisals were approved by the Forest Service and offers made on April 10 to the owners of each lot. The owners of one undeveloped lot accepted the Forest Service offer. This transaction is now being processed and should be completed shortly. None of the other lot owners accepted the Forest Service offer.

The Forest Service takes the general position that it has fully complied with title III of Public Law 91-646 in its efforts to acquire scenic easements at Pistol Creek Ranch, and that it has not discriminated against any of the property owners involved.

The four specific items which Mr. Brace raises in his letter as violations of title III of Public Law 91-646, and the Forest Service's responses thereto, are set out below.

Item 1:

"There has been no consistent treatment of private property owners in the Wild River area. The terms of the proposed easement that they [Forest Service officials] have demanded differ considerably from one Wild River area to another. So far as we know, none of the other private property owners in the Wild River area on the Middlefork of the Salmon River have even been contacted for an easement, and yet we are threatened with condemnation."

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**Forest Service Response:**

"'Consistent treatment' referred to in P.L. 91-646 does not mean that all acquisitions will be accomplished simultaneously. It means that an appraisal will be made in accordance with uniform appraisal standards; a landowner or his representative will be given an opportunity to accompany the appraiser during the inspection of the property; just compensation will be promptly offered to the landowner after appraisal has been approved; just compensation will not be less than the appraised price; and no owner will be required to surrender possession of real property until he has been paid the agreed purchase price.

\* \* \* \* \*

"Mr. Brace also states the terms of the proposed easement the Forest Service wants to acquire differs considerably from one Wild River area to another. \* \* \* the Restrictions and the Use by Grantees are quite similar in all [Wild River] easements. However, since tracts or ownerships vary in size, location, improvements, etc., the scenic easement provisions are tailored, within limits, to the needs of the servient landowners and the particular landscape qualities desired to be preserved. In general, however, scenic easement forms now in common use include restrictions on buildings, cutting of trees, dumping, signing, mining, utility lines, and changing of the topography."

**Item 2:**

"The Forest Service has certainly not made 'every reasonable effort to acquire expeditiously real property by negotiation.' There has been absolutely no negotiations, merely a demand to accept their terms for an easement at their price or face the expense of condemnation."

**Response:**

"The provisions of P.L. 91-646 were complied with in that every owner was offered the opportunity to accompany our appraiser at the time the appraisals were made, and each owner was given a written statement of and summary of the basis for the amount of just compensation. Every owner has been given the opportunity to discuss the provisions of the scenic

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assessment applicable to his property. We have not offered any owner an amount in excess of the agency-approved estimate of fair market value because it would not be fair to those who were willing to sell for this amount."

Item 3:

"Although we have requested the details on which the Forest Service arrived at the appraised value, they have refused to provide this information."

Response:

"As indicated in No. 2, each owner was given a written statement of valuation as required by P.L. 91-646."

Item 4:

"The proposed offer of compensation does not separately state what, if any, value has been assigned for severance damage to the remaining property, as required by the Act."

Response:

"Mr. Brace is correct that no value has been assigned as severance in the appraisal of the lots owned by the Middle Fork Ranch, Incorporated. The staff appraiser who prepared the appraisals and our appraisal staff carefully considered this point. In their opinion, the purchase of a scenic easement on the lots did not damage the remaining property."

Section 301 of title III of Public Law 91-646, 42 U.S.C. 4651, provides in pertinent part:

"In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

"(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

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"(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

"(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. \* \* \* The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

\* \* \* \* \*

"(9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property."

On the basis of the information supplied, we cannot conclude that the Forest Service's actions in this matter violated the terms of the foregoing provisions. As to "consistent treatment," it is obvious that the terms of scenic easements will vary from one area to another. However, the Forest Service states that the restrictions imposed are generally similar. Moreover, the fact that easements are now being sought only for the Pistol Creek Ranch portion of the Wild River area does not of itself demonstrate an improper discrimination or a lack of consistent treatment. On the matter of "reasonable effort" to acquire the easements by negotiation, the Forest Service states—contrary to Mr. Brace's assertions—that there has been an extended process of negotiation over the terms of the easements, and that several revisions suggested by the property owners were accepted by the Forest Service. Section 301 does not, of course, require that negotiations ultimately succeed or that a Federal agency agree to all revisions suggested by property owners. We have no basis to conclude that the Forest Service did not negotiate reasonably and in good faith. With respect to disclosure of the "details" upon which appraisals were based, the Forest Service indicates that it afforded

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Wild and Scenic Rivers Act  
and scenic rivers Act

each landowner the opportunity to accompany its appraiser and that it furnished written statements of valuation. This complies with the terms of section 301. It is agreed that the Forest Service did not assign any compensation in consideration of that part of property not subject to the easements. However, the Forest Service appraiser apparently concluded that the value of remaining property would not be affected. Accordingly, section 301(9) is not applicable by its terms.

Concerning Mr. Brace's question as to funding of the Wild and Scenic Rivers Act and the use of such funds, the Forest Service states:

"When the Wild and Scenic Rivers Act was passed, Congress set a statutory ceiling of \$17,000,000 for the acquisition needs for all the individual rivers. The money was distributed to the agencies according to an analysis of acquisition estimates and recommended program levels. The amount for the Forest Service for the rivers it administers was \$4,789,950. Approximately 15 percent of the funds are used for administration purposes. As of June 30, 1973, \$3,030,750 had been obligated with a balance of \$1,759,200 available for the program. Nearly all of the funds that are still available are for the Eleven Point River in Missouri and the Rogue River in Oregon."

Finally, Mr. Brace inquires as to the current status of any requests for additional funding to implement the Wild and Scenic Rivers Act. In response, the Forest Service refers to H.R. 4864, 93d Congress, which would, inter alia, increase the authorization for appropriations to implement the act from \$17,000,000 to \$37,600,000. H.R. 4864 is presently before the House Committee on Interior and Insular Affairs.

Sincerely yours,

R. F. Keller

Deputy | Comptroller General  
of the United States