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**DECISION**



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

FILE: B-197623

DATE: June 4, 1980

MATTER OF: [Reformation of Land Purchase Contracts]-Lower  
St. Croix National Riverway

**DIGEST:** The National Park Service, in acquiring private land tracts for the Lower St. Croix Wild and Scenic Riverway Project, erroneously took into account the effect of changes in State zoning regulations in appraising the value of the tracts. In acquiring property, the United States is obligated to pay the landowner "just compensation." By statute, it must also give the landowner an appraisal of the acquired land which uses proper appraisal techniques and standards, and represents the Government's best estimate of the compensation due the landowner. Since its appraisals were based on an erroneous legal premise, the Park Service may reopen negotiations on those parcels of land which have already been acquired by reappraising the tracts in order to pay the owners "just compensation" for their land.

This decision responds to a letter from the Assistant Secretary of the Department of Interior which requests our approval of a plan by the National Park Service (Park Service) to reopen some 465 land purchase contracts at the Lower St. Croix Wild and Scenic Riverway. The Park Service has determined that these tracts were acquired on the basis of appraisals which were made on an erroneous legal premise. As a result, the affected landowners were offered approximately 25% less compensation than they were legally entitled to. Interior wishes to reappraise each tract and negotiate the amount of additional payment due to each landowner. It seeks our "blanket" endorsement of its proposed actions in advance, subject to any post audit of individual transactions we may wish to perform. We have no objection to the Park Service Plan.

In 1968, the Congress passed the Wild and Scenic Rivers Act of 1968, 16 U.S.C. § 1271 (1976) et seq. to provide for the protection of selected rivers in their free flowing condition. The Lower St. Croix Riverway was included in the Wild and Scenic Rivers system in 1972 by the Lower St. Croix River Act, Pub. L. No. 92-560, 16 U.S.C. 1274(a)(9). (The Lower St. Croix lies between the States of Minnesota and Wisconsin.) Section 3 of the Act contemplates a major administrative role for the States of Minnesota and Wisconsin in preparing,

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jointly with the Secretary of the Interior, a development and land use plan for the region. Section 6(b) of the Act requires the States to implement the plan. In 1973 and 1974, Minnesota and Wisconsin respectively passed certain zoning laws, the net effect of which was to lower the density of permissible improvements, which reduced the value of property in that area for development purposes.

The Act directed the Department, through the Park Service to undertake an extensive land acquisition program for the Lower St. Croix. 16 U.S.C. 1277 (1976). Believing that the States' zoning laws were unrelated to the Lower St. Croix project, the Service instructed its land appraisers to take the zoning laws into consideration in determining the fair market value of the parcels it wished to acquire. As a result, the value of the land was appraised at approximately a 25% lower value than if the zoning laws had been disregarded.

By 1977, some of the affected landowners raised questions regarding the propriety of the Park Service taking into account the new zoning restrictions when valuing their property. The question was presented to the Office of the Solicitor of the Department of Interior (Solicitor) and to the Department of Justice. Both determined that the appraisals were erroneous.

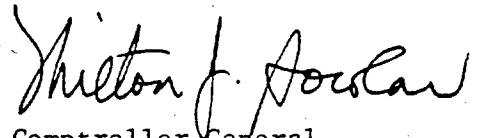
In 1978, the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, issued an opinion which concluded that it was improper for the Park Service to take into consideration the new State zoning restrictions when appraising the land for condemnation purposes. It held that the actions of the States of Wisconsin and Minnesota, in adopting land use restrictions after the passage of the Wild and Scenic River Act, were in furtherance of the congressional intent of the Act. The zoning restrictions were viewed as a consequence of the Federal project for which the acquisition was being made and therefore should not have been taken into consideration in the appraisal of the properties. This ruling was based on the well established rule in condemnation cases that changes in value attributable to the influence of the government project are not proper considerations in evaluating the properties proposed for acquisition. United States v. Miller, 317 U.S. 369, 375 (1943); United States v. Virginia E. & P. Co., 365 U.S. 624 (1961); United States v. Reynolds, 397 U.S. 14 (1970). This rule is also found in § 301(3) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Relocation Act), 42 U.S.C. § 4651(3) (1976). Cf. 58 Comp. Gen. 559, 563 (1979).

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As a result of these opinions, the Park Service commenced a reappraisal of the 175 remaining unacquired tracts in the Lower St. Croix project, disregarding the effect upon the property value of the 1973 and 1974 State zoning restrictions. If the previously acquired tracts are not also reappraised and additional compensation provided, there will be a manifest inequity between the treatment accorded the former owners of the already acquired tracts and the owners of the land acquired after the change in the appraisal policy.

We concur in the Department of Justice and the Interior Solicitor's conclusion that the basis for the original appraisals was erroneous. We do not object to Interior's proposal to reappraise the lands it has already acquired and to renegotiate the purchase price.

Under the Fifth Amendment to the Constitution and the provisions of the Uniform Relocation Act, the United States is obligated to offer to purchase property at an amount determined to be "just compensation" and must give the landowner full and accurate disclosure of the basis on which it determined the property's value before the final acquisition price is negotiated. The landowner is entitled to the Government's best estimate of the compensation due him or her. If, albeit inadvertently, the Government failed to meet its legal obligations in acquisitions for the Lower St. Croix Wild and Scenic Riverway by failing to use the legally correct appraisal standards, the purchase price for the already acquired land may be renegotiated based on an appraisal calculated on legally proper factors. The decisions of this Office have long recognized that authority exists to reform Government contracts where there has been a mutual mistake of law or fact when entering into the contract. 30 Comp. Gen. 220 (1950). Accordingly, the negotiations in these cases may be re-opened.



For the Comptroller General  
of the United States