



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON

B-5441

AUG 29 1939

The Honorable,

The Secretary of State.

Sir:

I have your letter of August 5, 1939, requesting decision upon the question stated in an enclosed letter dated July 24, 1939, from the Acting American Commissioner of the International Boundary Commission, United States and Mexico, as follows:

"One of the projects of the American Section of the International Boundary Commission, United States and Mexico, includes the construction or reconstruction of levees and floodways on the Rio Grande, chiefly in Hidalgo County and Cameron County, State of Texas, and referred to as the Lower Rio Grande Flood Control Project.

"In connection with the work of improving the North Floodway at Mile 16-3/4, Hidalgo County, Texas, it becomes necessary to expend the sum of approximately \$30,000 for the reconstruction of a portion of an existing railroad bridge and for the extension of the said bridge which will be interfered with by work of the Government in the improvement of the North Floodway as an integral part of the Lower Rio Grande Flood Control Project.

"The North Floodway is about 46 miles long, takes water from the Main Floodway near Mercedes, Texas, and conveys it to the Laguna Madre. The railroad company owns the fee simple title to land where the bridge crosses, and the floodway is an artificial channel at that point. When the International Boundary Commission commenced construction work, the North Floodway would carry about 32,000 cubic feet of water per second. On completion of present plans an artificial condition will be accentuated, the North Floodway will have a capacity of 70,000 cubic feet per second, and the railroad bridge should be reconstructed and extended to meet the new conditions.

"The proposed plan, as shown on the drawing attached to the enclosed contract, contemplates the strengthening of the west levee; the excavation of a pilot channel about 100 feet wide and averaging about five feet

deep under the railroad trestle; and, the construction of a new east levee to connect to the railroad embankment 500 feet east of the east abutment of the trestle.

"If the existing railroad bridge should be left as at present, the floodway both above and below the bridge, as reconstructed to carry a greater volume of water, will have been made wider between the levees, while that part under and near the bridge will be comparatively narrow. As a result, the force of the water will be increased through the narrower portion and the greater velocity of the swift moving water as it leaves the narrower section of floodway will increase the hazard of damage to newly constructed Government levees below the bridge. The Commission desires also to avoid the possibility of claims for damages against the Government such as in the case of the United States v. Chicago B. & Q. Railroad Company (90 Fed. Rep. 24, 161), and feels obliged to so reconstruct the floodway as to leave no weak links in the flood control system.

"Letters have been exchanged with the railroad company concerning work which should be done on the bridge and its probable cost. As the railroad company has special equipment and trained construction crews, it would be more economical to have the railroad company do the work and for the Government to reimburse the company, after determination that the sum requested is reasonable and within the estimates of cost furnished by engineers of the Commission.

"The Chief Engineer for the railroad company advises that it will be impracticable to excavate the pilot channel shown on the plans without interfering with the stability of the existing trestle between the banks of the new channel, and that it will be necessary to extend the trestle approximately 500 feet eastward to accommodate the new channel; he also advises that if such action is not taken, the railroad company will have a bad section of trestle with probable loss in case of flood in the pilot channel, and that the company will have an indefensible levee line at the east end of the bridge, and a velocity at maximum flood discharge under the bridge which appears to be excessive. Engineers representing the International Boundary Commission agree that the statements of the Chief Engineer for the railroad are not exaggerated, and recognize that during times of flood there will be an increased elevation of the water, a greater concentration of water and a marked increase in the velocity and strength of the current against the railroad company's levee and bridge, and

that damages may be extensive.

"While some details as to the probable cost remain to be worked out, the Chief Engineer for the railroad company has indicated his willingness to recommend to his superiors a contract following the general form and language of the draft contract enclosed herewith. Before proceeding farther with negotiations, it was deemed advisable to submit the matter for a ruling.

"That part of the Department of State Appropriation Act, 1940 (Public No. 156, 76th Congress), from which funds are provided, reads as follows:

"Lower Rio Grande flood-control project: For the United States portion of the project for flood control on the Lower Rio Grande, as authorized by the Act approved August 19, 1935, as amended (49 Stat. 660, 1370), \$800,000, together with the unexpended balances of the appropriations for this purpose for the fiscal year 1939: Provided, That no part of this appropriation for the Lower Rio Grande flood-control project shall be expended for construction on any land, site, or easement until title thereto has been conveyed to the United States by donation and the same has been approved by the Attorney General of the United States.'

"The County will procure the necessary lands, sites or easements from the railroad company through friendly negotiation or by condemnation. After they have been acquired the County will make a donation to the United States and the Commission will reconstruct the floodway and levees at that point.

"It is planned to do the work incident to reconstruction of the bridge under authority contained in the last paragraph of Act of Congress of August 27, 1935 (49 Stat. 906), relating to work of the Commission, which reads as follows:

"Whenever the construction of any project or work undertaken or administered by the Secretary of State through the International Boundary Commission, United States and Mexico, results in the interference with or necessitates the alteration or restoration of constructed and existing irrigation or water supply structures, sanitary or sewage disposal works, or other structures or physical property belonging to any municipal or private corporation, company, association, or individual, the Secretary of State may cause the restoration or reconstruction of such works, structures or physical property, or the construction of others in lieu thereof or he may compensate the owners thereof to the extent of the reasonable value thereof as the same may be agreed upon by the American Commissioner with such owner.'

The authority granted relates to all projects of the Commission. The language of the Act of Congress above quoted seems sufficiently broad to authorize the proposed reconstruction and restoration of a portion of a railroad bridge interfered with by work of the Lower Rio Grande Flood Control Project. However, it appears that there should also be considered the language of an opinion by the Acting Comptroller General dated April 24, 1939 (18 Comp. Gen. 806), concerning the expenditure of \$1,698.01, for alleged cost of removing overhead telephone line crossings and installing in lieu thereof subsurface cable crossings. The Comptroller General ruled in that case that the relocation of the lines 'was a service required by law to be performed without compensation'. The bridge referred to is the property of the railroad company, and as the existing structure is interfered with by a project of the Government, as referred to in the Act of Congress of August 27, 1935, it would appear that the Government may expend money for its reconstruction.

"It is believed that the railroad company would be willing to accept as full compensation for the interference with its bridge, which will result from the construction of the flood control project, a sum not greater than the estimated cost to the United States of restoring the bridge as set forth above. It would appear to be to the best interests of the United States if the matter could be concluded by the payment to the railroad company thus interfered with, as full compensation under authority of the legislation above quoted, of a sum not greater than the estimated cost to the United States for accomplishing such restoration, inasmuch as the owner under the provisions of the proposed contract would be precluded from any future complaints in connection with such reconstruction or restoration and the payment would constitute a full and final settlement in the matter.

"Considering the language of the ruling by the Acting Comptroller General of April 24, 1939, with reference to the removal of overhead wires, in view of the special legislation cited authorizing the International Boundary Commission to compensate the owners of property interfered with by any project undertaken by the Commission, is that decision applicable in the case of expenditures for reconstructing a bridge owned by a railroad company, when in all probability the bridge will be damaged as a result of Government operations if the reconstruction work indicated is not accomplished.

"Your advice is requested as to whether the American Commissioner may appropriately enter into the proposed contract under the Act of Congress approved August 27, 1935 (49 Stat. 906)."

In view of the facts set forth in the above letter and the provisions of the act of August 27, 1935, quoted therein, with respect to reconstructing or compensating the owners of private property when it is interfered with by projects or work undertaken by the Boundary Commission, the decision in 18 Comp. Gen. 806 is not for application and this office is not required to object to the executing of a contract substantially in the form proposed under which the railroad company will be compensated for the interference with its property by the improvement of the North Floodway. 15 Comp. Gen. 492.

Respectfully,

(Signed) Fred H. Brown

Comptroller General  
of the United States