

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

07507  
SGM**FILE:** B-218982**DATE:** November 1, 1985**MATTER OF:** Claim of Ray M. Waters, Jr. for Taking of  
Real Property

**DIGEST:** On request for reconsideration, we affirm Z-2854316, Jan. 29, 1985, in which we denied a claim for \$175,000 since the record still presents a substantial question about whether a taking of real property by the United States has occurred due to road closings resulting from a Federal construction project.

Mr. Ray M. Waters, Jr. has requested reconsideration of our Claims Group's denial of his claim for \$175,000 resulting from an alleged taking of real property by the United States. Z-2854316, Jan. 29, 1985. For the reasons stated below, we affirm our decision.

The claimant is the owner of approximately 4.3 acres of land and improvements located at the Tennessee-Tombigbee Waterway. The claimant leases the land to Waters Truck and Tractor Co., Inc., which sells and services large trucks and other heavy equipment.

The record shows that the Board of Supervisors of Lowndes County, Mississippi, ordered the permanent closure of Old Macon Road and Mississippi Highway 12 (Old U.S. Highway 82) at the points where these roads are severed by the Waterway Canal being constructed as part of the Tennessee-Tombigbee Waterway, a federally-sponsored project. These closings were made following a request by the United States Army Corps of Engineers. The claimant maintained that the closings effectively denied access to his property since the only means of access remaining is the U.S. Highway 82 bridge across the Tombigbee River. In this regard, the claimant has asserted that height clearance of the bridge is inadequate for transportation of equipment sold by his tenant and that the bridge is old, narrow, unsafe, and restricted as to the types of vehicles that may cross it, and will become increasingly unsafe because of lack of maintenance by local authorities. Accordingly, the claimant argued that the Federal Government's actions amounted to a taking of real property for which he is entitled to compensation pursuant to the fifth amendment to the United States Constitution. The \$175,000 claimed represents the alleged difference in appraised market value of the claimant's property before and after the road closing.

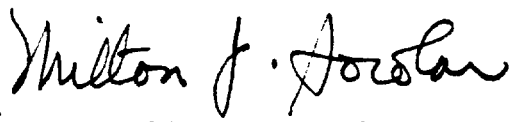
033647

In its administrative report on the claim, the Army Corps of Engineers has recommended denial. Essentially, the Corps found that there had not been a compensable taking since the U.S. Highway 82 bridge provided reasonable access to the property. The Corps also stated that, under Mississippi Code, section 63-5-51 (1973), permits may be obtained to move vehicles of greater height than normally allowed on state highways.

Furthermore, the Corps contended that the claim was based solely on the special access needs of the claimant's tenant, and suggests that such needs cannot be the basis for allowing a claim for taking of property. In his request for reconsideration, the claimant has presented additional arguments to support his position that a taking has occurred.

In Z-2854316, Jan. 29, 1985, we concurred with the United States Army Corps of Engineers' recommendation to deny Mr. Waters' claim. Our denial primarily was based on our very limited role in considering claims based on alleged takings of property by the Federal Government. Thus, we said that "where the record presents a conflict that we cannot resolve administratively, our practice is to disallow the claim and leave the claimant to pursue the matter in the courts."

We think there still exists substantial question about whether a taking has occurred. It is uncertain whether the Highway 82 bridge across the Tombigbee River can provide access to the claimant's property so that the property can continue to be used by the tenant for its business, and if such access is not possible, whether the property can be used for other purposes. Accordingly, consistent with our limited role in adjudicating land condemnation claims, we think it appropriate to affirm the denial of the claim and leave the claimant his remedies in the courts. See B-152725, Feb. 19, 1964; B-136783, Dec. 18, 1958.

*for*   
Comptroller General  
of the United States