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

B-178205.80

April 13, 1976

The Honorable Ken Hechler, Chairman
Subcommittee on Energy Research,
Development and Demonstration
Committee on Science and Technology
House of Representatives

Dear Mr. Chairman:

This is in response to your letter of March 19, 1976, requesting our views on article XXI of the Coalcon contract (No. 14-32-0001-1736), and whether the Coalcon plant and the products thereof can be disposed of by ERDA without regard to the requirements of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §471, et seq., (The Federal Property Act).

With regard to the products generated by the Coalcon plant, Division V, Article XIV of the Coalcon contract provides that the contractor, subject to the approval of the contracting officer, may enter into agreements to sell the products and by-products generated by that demonstration plant where the revenues of such sales are shared by the contractor and the Government on a proportionately equal basis. In our letter of March 16, 1976, we concur in the view expressed by ERDA that that agency has authority, inherent in the enabling statutes, to dispose of any products generated by such demonstration plants. Therefore, it is our opinion that the products generated by the Coalcon plant may be sold without regard to the requirements of the Federal Property Act.

As to the disposal of the Coalcon plant and facilities, we also stated in our letter of March 16, 1976, that, in the absence of an express statutory exemption (such as that proposed in H.R. 3474 and H.R. 12112), non-nuclear demonstration plants and facilities in which the Government has an interest, and over which interest it has disposal power, must be disposed of according to the requirements of the Federal Property Act.

In this regard, article XXI of the Coalcon contract, concerning the sale of the Government's interest in the Coalcon plant, provides:

* * * * *

"Subject to the terms set forth below, the Contractor hereby agrees to purchase the interest of the Government in the Demonstration Plant. The Contractor shall notify the

Contracting Officer of his proposal to purchase the Demonstration Plant within one hundred and eighty (180) days after completion of this contract. In the event that the sale of the Government's interest in the Demonstration Plant is accomplished prior to the end of the contract, the Contractor hereby grants to the Government the unrestricted rights of access and egress, as set forth in Division III, Article X - Special Provisions, until such time as the contract is completed. In the event the Government sells its interest in the Demonstration Plant to the Contractor, the Contracting Officer shall execute a document selling the Government's interest in the Demonstration Plant upon the establishment of the terms and conditions of the sale.

"Nothing in this article shall be construed to preclude the Government and the Contractor from entering into such other arrangement as may be mutually agreeable, or preclude the Government from selling its interest in the Demonstration Plant in a manner other than that outlined above."

Although this contractual provision seems to contemplate that ERDA may sell the Government's interest in the plant property to the contractor, such a sale is not mandatory under the contract. In addition to the fact that Article XXI does not set forth the specific terms of such a sale, the last paragraph of that article allows the Government to sell the property in any manner other than sale to the contractor, thereby leaving open the manner in which the property may be disposed of.

This provision is consistent with the position taken by ERDA and GSA officials in the undated ERDA memorandum (Negotiation of Contract No. 14-32-0001-1736, Entitled "Clean Boiler

Fuel Demonstration Plant," p. 6) you furnished us concerning the negotiation of the Coalcon contract. In that memorandum, the view was expressed by the General Services Administration that the demonstration plant property must be sold in accordance with the Federal Property Management Regulations, which are promulgated pursuant to the Federal Property Act. The memorandum states that it was therefore determined that, at the time of award, the contract would be silent on the terms of sale of the plant, although it would provide a mechanism for arriving at such terms.

In conclusion, it is our opinion that sale of the Coalcon demonstration plant property under Article XXI of the contract is subject to the requirements of the Federal Property Act.

Sincerely yours,

Comptroller General
of the United States

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

APR 13 1976

B-178205 .80

The Honorable Mike Mansfield
Majority Leader
United States Senate

Dear Senator Mansfield:

On March 2, 1976, you called me concerning work we were doing at the request of Chairman Hechler, Subcommittee on Energy Research, Development and Demonstration (Fossil Fuels), House Committee on Science and Technology. The work involved ERDA's proposed reprogramming of "Operating Expense" funds from one fossil energy subprogram to another. On March 17 I advised that our work would not be completed until at or about April 12, 1976.

Pursuant to the interest you expressed, I am enclosing for your information our report to Chairman Hechler responding to his inquiry. If you have any questions or if we can be of assistance, please let me know.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

Enclosure

DIGEST - NO CIRCULATION

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

B-178205.80

APR 13 1976

The Honorable Ken Hechler, Chairman
Subcommittee on Energy Research, Development
and Demonstration (Fossil Fuels)
Committee on Science and Technology
House of Representatives

Dear Mr. Chairman:

Your letter of February 26, 1976, requested our review of a reprogramming request made on February 19 by the Energy Research and Development Administration (ERDA). ERDA proposes to transfer $20 million of operating expense funds from the Coal Direct Combustion and Coal Demonstration Plant programs ($18 million and $2 million respectively) to the Magnetohydrodynamics (MHD) program. These three programs are part of ERDA's "Fossil Energy Development" activity. The reprogramming action is intended to provide funds for the design and construction of a "Component Development and Integration Facility" (CDIF), an intermediate-scale facility for the developmental testing of MHD components and subsystems.

The CDIF, conceived as a Government-owned and contractor-operated facility with an estimated life (including follow-on research programs) of 15-20 years, will be a complex of several buildings--main test building, operations building, office building, warehouse, and various supply buildings. To provide a site for the CDIF, ERDA plans to acquire three parcels of land, totaling 93 acres in the Industrial Park area of Butte, Montana.

The questions to be considered, as set forth in your letter and developed through contacts with your staff, may be summarized as follows:

(1) Does ERDA's current (fiscal year 1976) authorization legislation limit the use of fossil energy operating expense funds insofar as land acquisition is concerned?

(2) May operating expense funds reprogrammed to the MHD program for the CDIF be used for land acquisition purposes?

(3) May ERDA use the unobligated balance of funds appropriated for MHD in fiscal year 1975 to acquire land for the CDIF?

In addition, you asked us to "review and comment on the adequacy of the arrangements proposed by ERDA for acquisition of the three parcels, and

on the value and cost of these parcels." Finally, you asked whether ERDA has prepared an Environmental Impact Statement on the CDIF construction project, and if not, whether it plans to do so.

For the reasons discussed below, we believe that 1976 funds are not available to acquire land for the CDIF, but that the unobligated balance of 1975 funds may be so used.

LEGISLATIVE BACKGROUND

ERDA was created by the Energy Reorganization Act of 1974, Pub. L. No. 93-438 (October 11, 1974), 88 Stat. 1233, 42 U.S.C. §§ 5801 et seq. (Supp. IV, 1974). Section 107(b) of the Act, 42 U.S.C. § 5817(b) authorizes the Administrator of ERDA "to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain facilities and real property as the Administrator deems to be necessary" in connection with "facilities required for the maintenance and operation of laboratories, research and testing sites and facilities * * *." Section 305(a), 42 U.S.C. § 5875, requires that ERDA appropriations be subject to annual authorization. Before ERDA was created, the MHD program was the responsibility of the Office of Coal Research, Department of the Interior.

In the Special Energy Research and Development Appropriation Act, 1975, Pub. L. No. 93-322 (June 30, 1974), 88 Stat. 276, the Office of Coal Research received a lump-sum appropriation of $261,270,000 under the heading "Salaries and Expenses," to remain available until expended. Of this amount, $12.5 million was identified in committee reports for MHD. The Senate Committee on Appropriations, in adding to the amount initially requested, reported as follows:

> "The Committee was concerned that, in an otherwise vastly accelerated program, the request of $7,500,000 for MHD research was held to the same approximate level as 1974. The additional $5,000,000 recommended by the Committee will initiate work on an MHD engineering test facility and provide additional research on MHD techniques and applications at the Montana College of Mineral Science and Technology and other units of the Montana University System. Further, the Committee has learned of recent advances in research on closed-cycle MHD and is impressed with the willingness of the private sector to invest substantial funds in the development of process. Accordingly, the Committee strongly recommends an acceleration of work in this area. The Committee is also disturbed at delays in the MHD research effort at the University of Tennessee and directs that this work be accelerated."

S. Rep. No. 93-903, 18 (1974). The conference retained the increased amount recommended for MHD, "to initiate design and planning work on an engineering test facility and to provide for additional research on MHD techniques and applications at the Montana College of Mineral Science and Technology and other units of the Montana University System." H.R. Conf. Rep. No. 93-1123, 4 (1974).

The Department of the Interior and Related Agencies Appropriation Act, 1975, Pub. L. No. 93-404 (August 31, 1974), 88 Stat. 803, did not appropriate any additional funds to the Office of Coal Research, but included the following as a General Provision:

> "SEC. 107. The sum of $261,278,000 appropriated under the head, Office of Coal Research, Salaries and Expenses, in Public Law 93-322, signed June 30, 1974, included $12,500,000 for a program for magnetohydrodynamics (MHD), of which $5,000,000, as described in Senate Report 93-903 and House Report 93-1123, shall be used in part to initiate design of an MHD engineering test facility, and there shall be undertaken immediately the design and planning of such engineering test facility, to be located in Montana, large enough so as to provide a legitimate engineering basis which when achieved will enable the immediate construction of a commercial scale MHD plant (500 MWe or above) for possible operations in the mid-1980's."

This provision had been added by the Senate Committee on Appropriations, which described it as follows:

> "The Committee has included language in the Bill establishing the high priority for magnetohydrodynamics (MHD) research specified earlier in the Special Energy Research and Development Appropriations Bill. Specifically, the language directs the Office of Coal Research to undertake immediately the design and planning of a commercial-scale engineering test facility in Montana, adjacent to western coal fields, in cooperation with the Montana College of Mineral Science and Technology. It is the Committee's view that research in MHD holds the greatest promise for the clean conversion of coal to energy."

S. Rep. No. 93-1069, 21 (1974).

ERDA appropriation authorizations for MHD for fiscal year 1976 and for the transitional quarter (July 1 through September 30, 1976) are line-item authorizations and are contained in sections 101(a)(1)(L) and 201(a)(1)(L) of Pub. L. No. 94-187 (December 31, 1975), 89 Stat. 1063, under the heading "Operating expenses." Authorizations for "Plant and

capital equipment," including land acquisition, for Fossil Energy Development programs are found in sections 101(b)(1) and 201(b)(1), but do not include MHD. ERDA's appropriation for fossil energy programs for fiscal year 1976 and the transitional quarter is contained in title II, Pub. L. No. 94-165 (December 23, 1975), 89 Stat. 977. The appropriation is divided into two lump-sum appropriations for "Operating Expenses, Fossil Fuels" and "Plant and Capital Equipment, Fossil Fuels," respectively, and contains no line-item subdivisions.

Pub. L. No. 94-187 also contains general provisions relating to the Fossil Energy Development authorizations, set forth in pertinent part below:

> "SEC. 314. Funds appropriated pursuant to this Act for 'Operating expenses' for fossil energy purposes may be used for (1) any facilities which may be required at locations, other than installations of the Administration, for the performance of research and development contracts, and (2) grants to any organization for purchase or construction of research facilities. No such funds shall be used for the acquisition of land. Fee title to all such facilities shall be vested in the United States, unless the Administrator determines in writing that the programs of research and development authorized by this Act shall best be implemented by vesting fee title in an entity other than the United States * * *.
>
> "SEC. 315. Not to exceed three per centum of all funds appropriated pursuant to this Act for 'Operating expenses' for fossil energy purposes may be used by the Administrator to construct, expand, or modify laboratories and other facilities, including the acquisition of land, at any location under the control of the Administrator, if the Administrator determines that (1) such action would be necessary because of changes in the national programs authorized to be funded by this Act or because of new scientific or engineering developments, and (2) deferral of such action until the enactment of the next authorization Act would be inconsistent with the policies established by Congress for the Administration. * * *"

Sections 314 and 315 originated as sections 304 and 305 of the authorization bill, H.R. 3474, and were added by the House Committee on Science and Technology. The Committee report explains these provisions as follows:

> "The Science and Technology Committee adopted three sections (304, 305, and 306) which are designed to facilitate administration of ERDA research, development and demonstration, while affording some degree of Congressional oversight.

They are patterned after similar provisions adopted several years ago for the NASA authorization. They allow ERDA to use operating expense funds for fossil energy for the construction of facilities at non-ERDA locations and for grants to profit and nonprofit organizations, including educational facilities; [and] to use up to one-half of 1 percent of the operating expense funds for fossil energy to construct, expand, or modify ERDA facilities * * *." H.R. Rep. No. 94-294, 185 (1975).

"Section 304 provides that funds appropriated under the bill for operating expenses for fossil energy purposes may be used by ERDA for the construction, acquisition, or modification of capital facilities at non-ERDA locations which are needed to carry out ERDA research and development contracts. Such funds may also be used for grants to profit and nonprofit organizations, including educational institutions, to purchase or construct research facilities. However, none of the funds may be used to acquire land or interests therein.

"The section requires that as a rule title to the facilities should normally be vested in the United States, except where ERDA determines in writing that vesting of title to such facilities in a non-Federal entity would further ERDA's fossil energy R&D program. But before such proposed exception to this general rule is adopted, ERDA must furnish to the Congress, the House Committee on Science and Technology, and the Senate Committee on Interior and Insular Affairs a copy of the written determination which should include all pertinent data concerning the proposal, including the reasons justifying such vesting and the benefits to the United States. The Committees would then have up to 30 calendar days to comment and/or object to such proposal.

"In those cases where the facility to be constructed, acquired, or modified at a non-ERDA location is estimated to cost more than $250,000, ERDA must provide a detailed report on that facility to the Congress, and the above-named Committees would then have 30 days to object.

* * * * *

"Section 305 provides that up to one-half of 1 percent of the funds appropriated ERDA for operating expenses for fossil energy purposes may be used by that agency to construct, expand, or modify laboratories and other facilities at ERDA locations and to acquire land therefore. In such case, ERDA must

> determine in writing that such use is necessary because of a change in fossil energy program direction or because of the advent of new scientific or engineering developments, and that postponement of such work until the next fiscal year authorization Act would not be consistent with fossil energy policies established by Congress. Before obligating or expending such funds, ERDA must give Congress and the appropriate Committees a detailed written report concerning such use of funds. The Committees would then have 30 days to object." (Emphasis added.)

Id., at 201-202. The Senate version of the bill contained no similar provisions. The conference committee redesignated the sections as 314 and 315, increased the .5 percent to 3 percent in the latter section, and adopted both sections without comment.

THE EFFECT OF SECTION 314

As noted previously, both the ERDA authorization and appropriation acts clearly provide separately for operating expenses and capital expenses, the latter specifically including land acquisition. Pub. L. No. 94-187, § 101(b), 89 Stat. 1065. Under this approach, we believe it necessarily follows that operating expense funds subject to these statutes are generally not available for capital expenditures such as land acquisition. See 31 U.S.C. § 628 (1970), which restricts appropriations "solely to the objects for which they are respectively made" except as otherwise provided by law. However, operating expense funds may be made available for capital items by appropriate congressional action. It is apparently in recognition of this principle that sections 314 and 315 have been enacted. Sections 314 and 315 are found in title III, part C of Pub. L. No. 94-187. Title III is entitled "General Provisions." Part C thereof is entitled "Provisions Relating to Fossil Energy Development." Thus, sections 314 and 315 apply to all authorizations in Pub. L. No. 94-187 for Fossil Energy Development programs unless otherwise specified.

Section 314 authorizes the use of funds "appropriated pursuant to this Act for 'Operating expenses' for fossil energy purposes" for construction, acquisition, or modification of facilities needed for the performance of research and development contracts, at locations "other than installations of the Administration." It further provides that "No such funds may be used for the acquisition of land." In its report to us concerning the issues raised in your letter (copy enclosed), ERDA urges that section 314 is discretionary and that the land acquisition prohibition applies only where ERDA has elected to use the authorization for the purposes specified in section 314 itself.

While section 314 may be deemed discretionary in that ERDA is certainly not required to use operating expense funds for the specified capital

expenditures, we do not agree with ERDA's suggested limitation of the scope of the land acquisition prohibition. Rather, the words "such funds" as used in the prohibition must be read, in our opinion, as referring in the more general sense to funds "appropriated pursuant to this Act for 'Operating expenses' for fossil energy purposes." As indicated, we believe section 314 is designed to give ERDA authority to do certain things it could not otherwise do. In this context, the land acquisition prohibition simply makes it clear that the limited authority therein to use operating funds for capital expenditures does not extend to acquiring land "at locations, other than installations of the Administration," which would not be a permissible use of operating expense funds under section 314 even in the absence of the prohibition. Under ERDA's interpretation, operating expenses could be used for land acquisition--clearly a capital expenditure--in any situation other than those specified in section 314. Thus construed, with the implication that operating expense funds would otherwise be available for land acquisition, the section as a whole would operate as a limitation rather than an extension of ERDA's authority. This interpretation in our view inverts the purpose of section 314 and fails to give it full effect.

It is thus our belief that the prohibition in section 314 against the use of operating expense funds for land acquisition is a general limitation on such use, except of course to the extent that adequate authority for such use is to be found elsewhere.

AVAILABILITY OF "REPROGRAMED" OPERATING EXPENSE FUNDS FOR CDIF LAND ACQUISITION UNDER PUB. L. NO. 94-187

Your question as to the availability of operating expense funds for land acquisition through "reprogramming" presumably arose from ERDA's proposal to transfer $20 million to the MHD program pursuant to section 305 of Pub. L. No. 94-187, 89 Stat. 1073. Section 305 reads in part as follows:

> "REPROGRAMING AUTHORITY.--Except as provided in part C of this title--
>
> "(1) no amount appropriated pursuant to this Act may be used for any nonnuclear program in excess of the amount actually authorized for that particular program by this Act,
>
> "(2) no amount appropriated pursuant to this Act may be used for any nonnuclear program which has not been presented to, or requested of, the Congress * * *"

unless the congressional notification and approval requirements specified in that section are satisfied.

As discussed in more detail hereafter, ERDA asserts that it does not intend to use funds reprogrammed pursuant to this section for the land

acquisition here involved. Nevertheless, we can respond to your question in general terms.

Subject to compliance with its procedural requirements, section 305 permits some variation in the application of operating funds from nonnuclear programs as itemized in the authorization act. However, nothing in this section would expand the basic availability of operating expense funds in relation to programs itemized under the operating expense categories so as to permit capital expenditures for such programs. Therefore, we believe the basic issue here is whether operating expense funds authorized by Pub. L. No. 94-187 are available for land acquisition. Whether these are funds under the initial authorization or reprogrammed funds appears to be immaterial.

As discussed in the foregoing section, we believe section 314 prohibits the use of operating expense funds for land acquisition unless adequate authority can be found elsewhere. ERDA contends that it "will own the CDIF, [lock], stock and barrel (except certain realty which it plans to lease), and will have full control of its total operations," and that therefore land acquisition is authorized under section 315, quoted in part supra.

Section 315 authorizes the use of operating expense funds for land acquisition "at any location under the control of the Administrator," subject to limitations not here pertinent. The question thus becomes whether the CDIF is a location "other than [an] installatio[n] of the Administration" under section 314 or a "location under the control of the Administrator" under section 315.

The previously-quoted excerpt from H.R. Rep. No. 94-294 indicates that sections 314 and 315 were patterned after similar provisions in authorizations for the National Aeronautics and Space Administration (NASA). The language "at locations other than installations of the Administration" was first used in the NASA Authorization Act for fiscal year 1973, Pub. L. No. 92-304 (May 19, 1972), § 1(d), 86 Stat. 157, 159. The legislative history shows that the language was included at the request of NASA, but there is no further discussion of its intended meaning. See, e.g., H.R. Rep. No. 92-976, 177, 183 (1972). The language "location under the control of the Administrator" does not appear in the NASA authorization acts. Thus, the meaning and relationship of the two phrases cannot be deduced from NASA precedent.

The statutory language in question is ambiguous. For example, a location "other than installations of the Administration" might nevertheless be deemed a "location under the control of the Administrator," depending on one's definition of "control." The legislative history of Pub. L. No. 94-187 provides minimal guidance, the sole discussion of any relevance

being the cited portions of H.R. Rep. No. 94-294. However, reading sections 314 and 315 together and considering the explanation in H.R. Rep. No. 94-294, supra, the most reasonable conclusion seems to be that these sections are designed to distinguish between facilities operated by contractors or grantees, whether or not ERDA has title to the facility or location (section 314), and "installations of" ERDA or "locations under the control of" ERDA in the sense that they are operated directly by ERDA (section 315).

Information presently available to us indicates that the CDIF will be operated by contractor personnel. Accordingly, we do not believe that section 315 provides authority to acquire land for the CDIF.

For the foregoing reasons, we conclude that "funds appropriated pursuant to" Pub. L. No. 94-187 for operating expenses for fossil energy programs would not be available to acquire land for the CDIF.

AVAILABILITY OF 1975 FUNDS

ERDA states that it has an unobligated balance of $2 million from fiscal year 1975 funds appropriated for MHD. It further states that it plans to use these funds rather than 1976 funds for the land acquisition. The 1975 funds were appropriated by Public Laws 93-322 and 93-404, previously quoted in pertinent part, and are no-year funds.

The 1975 funds were appropriated to the Office of Coal Research, Department of the Interior, under the heading "Salaries and Expenses." While this would normally be considered a noncapital appropriation, the Office of Coal Research did not receive a separate appropriation for capital expenditures. It typically received all its funds under the single "Salaries and Expenses" appropriation, and this appropriation was used for capital as well as noncapital items, consistent with budget presentations endorsed by the cognizant committees. See, e.g., S. Rep. No. 92-263, 14 (1971) on the legislation enacted as Pub. L. No. 92-76. The budget request for MHD for 1975 did not specifically include land acquisition or any other capital expenditures. In fact, it is reasonably clear that construction was not yet anticipated. Hearings on Special Energy Research and Development Appropriation Bill for 1975 Before Subcommittees of the House Committee on Appropriations, 93d Cong., 2d Sess., pt. 1, at 595-596, 666-667 (1974).

It is also clear, however, from the legislative history of the 1975 appropriation, that Congress wanted the MHD program accelerated. See, e.g., the previously cited excerpt from S. Rep. No. 93-903. We must assume from the fact that an unobligated balance exists and the fact that ERDA is now ready to proceed with construction of the CDIF, that the research, design, and planning for which the 1975 funds were requested has been completed, i.e.,

that the congressional desire for acceleration has been met, and that ERDA was able to accomplish this with less money than was originally anticipated. Also it is evident from the history of the project, as well as from the general scheme of similar projects, that a stage would eventually be reached at which construction of test facilities would become necessary.

Section 314 of Pub. L. No. 94-187 is limited by its terms to funds "appropriated pursuant to this Act," and there is no indication in the legislative history of any intent to cover unobligated balances from the prior year. Further, Pub. L. No. 94-187 as a whole must be viewed in its proper context, authorizations and appropriations that separately and specifically provide for both capital and noncapital expenditures, as opposed to the single-appropriation approach used in 1975. In view of this, we do not believe that the considerations discussed herein which lead us to conclude that the 1976 funds are unavailable for the instant land acquisition apply to the 1975 funds which ERDA proposes to use for this purpose.

From the foregoing considerations--(1) 1975 funds were no-year funds, (2) the 1975 appropriation was a single appropriation which could accommodate both capital and noncapital items, and (3) the congressional desire to accelerate the MHD program, combined with the awareness, certainly implicit if not express, that construction of test facilities would be a future stage of the program--we do not believe the lack of specific budget justification for land acquisition in connection with this appropriation is necessarily controlling. On the contrary, these considerations strongly suggest that such justification is lacking only because it was felt at the time that this appropriation would not be sufficient to reach the construction stage. Accordingly, the use of the unobligated balance of 1975 funds to proceed with CDIF construction, including site acquisition, appears to be legally proper. In fact, to conclude otherwise would seem to pervert the congressional intent underlying that appropriation, as well as the continuing intent that construction proceed at this time. See Cong. Rec., December 9, 1975 (daily ed.) S21460 (colloquy between Senators Jackson and Mansfield).

ADEQUACY OF ARRANGEMENTS

As indicated previously, ERDA plans to acquire three parcels of land in the Industrial Park area of Butte, Montana. Two of the parcels (30 and 23 acres) are currently owned by the Butte Local Development Corporation (hereinafter referred to as "Butte"), which has offered to donate the 30-acre parcel to ERDA and to sell the remaining 23 acres. The Anaconda Company owns the third parcel (40 acres), which ERDA plans to lease with option to purchase. Construction apparently will involve the first two parcels only, with the third being reserved for possible future expansion. Of the 53 acres presently owned by Butte, 50 were acquired from Anaconda by deed dated November 14, 1973. Our investigation has revealed no corporate connection between Butte and Anaconda.

ERDA has advised us that final arrangements for acquisition are still being developed, and specific terms have not yet been formalized in legal documents. Thus it is impossible for us to comment on the adequacy of the arrangements. The following general observations are based on the current stages of the negotiations, as reflected in documents made available to us by ERDA.

It appears that acquisition would entail title to the surface only. Anaconda presently holds mineral rights to the 40 acres to be leased. It also specifically retained mineral rights to the 50 acres transferred to Butte in 1973. There is some indication that Anaconda has informally agreed to waive execution of its mineral rights for the period of the Government's occupancy. It would seem advisable for ERDA to attempt to obtain this waiver in legally-binding form.

It also appears that Butte had originally sought to retain reversionary rights in the event the MHD project is abandoned or discontinued. More recent documents indicate that Butte may drop this request in favor of a right of first refusal upon termination of Government use. Whatever the form of the final arrangements, they should contain adequate protection of the Government's interest for the life of the MHD and follow-on research projects.

The 1973 deed from Anaconda to Butte contains a covenant restricting use of the land to an "industrial park and related purposes only," and a reversionary clause in the event of violation of this covenant. Butte has agreed that it would not consider the Government's proposed use of the land for the MHD project a violation of this covenant. It would seem advisable to obtain a similar agreement from Anaconda in legally-binding form.

The 93 acres were recently appraised by J. Jay Brown, a professional real estate appraiser in Bozeman, Montana. Brown was apparently selected after proposals were solicited from several other appraisers. The appraisal is based on four 1975 sales of land and five options to buy, involving properties close to the subject property and with similar characteristics and utility. The results of these transactions were then adjusted to reflect features and characteristics peculiar to the subject property. The appraisal report, dated March 1, 1976, states the estimated market value of the 53-acre site as $90,000, and of the 40-acre site as $50,000 (surface rights only in both cases).

Cost figures have also not yet been finalized, according to ERDA. Butte has suggested a price of $1,500 per acre for the 23-acre parcel, but this is subject to further negotiation. Anaconda has made a preliminary offer to lease the 40 acres at an annual rent equal to the taxes on the property. The price for the purchase option has not yet been determined.

In response to a final question raised by your staff, ERDA officials advise us that they have not prepared an Environmental Impact Statement (42 U.S.C. § 4332(2)(C)) on the CDIF and do not plan to prepare one. We are advised that this decision was based on a study by a private firm which concluded that the project would have minimal impact on the quality of the environment.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

Enclosure

APPROPRIATIONS
No year
Magnetohydrodynamics program
Land acquisition

APPROPRIATIONS
No year
Construction projects
Excess funds

APPROPRIATIONS
Limitations
Fossil fuel operating expenses
Land acquisition prohibited

APPROPRIATIONS
Availability
Objects other than as specified
Prohibition