



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-37747

November 19, 1943

Administrator,

War Food Administration.

My dear Judge Jones:

I have your letter of October 18, 1943, as follows:

"The authority for the construction of Water Conservation and Utilization Projects is provided for in an item of the Department of the Interior Appropriation Act 1940 (53 Stat. 685, 719), hereinafter referred to as the Water Conservation and Utilization Act, which is quoted in full:

"For construction, in addition to labor and materials to be supplied by the Works Progress Administration, of water conservation and utilization projects, including acquisition of water rights, rights-of-way, and other interests in land, in the Great Plains and arid and semiarid areas of the United States, to be immediately available, \$5,000,000, to be allocated by the President, in such amounts as he deems necessary, to such Federal departments, establishments, and other agencies as he may designate, and to be reimbursed to the United States by the water users on such projects in not to exceed forty annual installments: Provided, That expenditures from Works Progress Administration funds shall be subject to such provisions with respect to reimbursability as the President may determine."

"The President, pursuant to the foregoing authorization, has designated the Department of the Interior and the Department of Agriculture as the cooperating agencies to carry out the construction of the projects in question. Further, by a letter to the Secretary of the Interior dated June 14, 1939, the President stated that the \$5,000,000 appropriated by the Water Conservation and Utilization Act was to be allocated to the projects individually. In this regard your attention is called to Senate Document No. 18, 77th Congress, 1st Session, which contains the various Presidential letters approving the construction of Water Conservation and Utilization projects. These letters describe the work to be performed by the various agencies of Government and set forth itemized statements of the amounts to be expended on each project. The Department of Agriculture is also required, pursuant to the

Case-Wheeler Act of August 11, 1939 (53 Stat. 1418) as amended by the Case-Wheeler Act of October 14, 1940 (54 Stat. 1119), hereafter referred to as the Case-Wheeler Act, to cooperate with the Department of the Interior in the construction and development of such projects. The pertinent provisions of that Act are hereafter quoted:

"In connection with the construction or operation and maintenance of projects undertaken pursuant to the authority of this Act, and in order to further in the Great Plains and arid and semiarid areas of the United States an effective rehabilitation program, stabilization of the agricultural economy, and maximum utilization of funds spent for relief purposes, the Secretary of Agriculture is hereby authorized, pursuant to cooperative agreement with the Secretary of the Interior, (1) to arrange for the settlement of the projects on a sound agricultural basis, and, insofar as practicable, the location thereon of persons in need; (2) to extend guidance and advice to settlers thereon in matters of farm practice, soil conservation, and efficient land use; (3) to acquire agricultural lands within the boundaries of such projects, with titles and at prices satisfactory to him; and (4) to arrange for the improvement of lands within the project boundaries, including clearing, leveling, and preparing them for distribution of irrigation water. Contracts between the United States and water users or water users' organizations for the lease or purchase of, or the improvement of, lands within such projects shall provide for annual or semiannual payments to the United States, of the number and amounts fixed by the Secretary of Agriculture. The lease, purchase, or improvement contracts for each tract of land shall provide in the aggregate for the return, in not to exceed fifty years from the date the land is first settled upon, of the costs incurred by the United States in acquiring and improving such tract of land with funds appropriated under authority of section 12 (2), . . ."

"In carrying out the Congressional intent as expressed in these enactments the Department of Agriculture has undertaken to arrange for the development of the projects and the settlement thereof by farm families after the Department of the Interior has constructed the required facilities for the irrigation of the lands.

"The chief difference between the two Acts above referred to in so far as the Department of Agriculture is concerned is the fact that in the first instance the powers, duties and functions of the Department are prescribed by Presidential letter, whereas in the development of the projects under the latter Act the powers, duties and functions are largely prescribed by the Act itself.

It should be pointed out, however, that under the Case-Wheeler Act it is necessary to have Presidential approval of the projects as is true under the Water Conservation and Utilization Act. Again your attention is directed to Senate Document No. 18 wherein Presidential letters of approval of certain Case-Wheeler Projects will be found.

"The Farm Security Administration is the agency within the Department of Agriculture which carries out the work of the Department under both of the Acts. In performing these functions the Farm Security Administration has acquired land and has carried out extensive land clearing and land leveling work which was necessary to make the land susceptible to irrigation. In this and in other ways the various farm units are made suitable for settlement. In addition the Farm Security Administration has instituted a program, to be carried out on privately owned land located within the project areas, which includes leveling, clearing and otherwise preparing the lands for the distribution of irrigation water. To effectively carry out the construction of such projects work of the nature above described is essential. The authority for such land development work on projects established under the earlier Act is provided by that portion of the above-quoted Water Conservation and Utilization Act which authorizes 'construction . . . of water conservation and utilization projects, including acquisition of water rights, rights-of-way and other interests in land . . .' Such authority is recognized in the various Presidential letters appearing in Senate Document No. 18 approving the projects.

"The authority to develop Government and privately owned lands under the Case-Wheeler Act is vested in the Secretary of Agriculture by subdivision 4 of section 5 (a) of the Act which vests in his power 'to arrange for the improvement of lands within the project boundaries, including clearing, leveling, and preparing them for distribution of irrigation water. . . .' The Farm Security Administration will be reimbursed in full for all funds expended in the development of privately owned land situated within Water Conservation and Utilization Projects. In the discretion of the President all of the funds expended on privately owned lands pursuant to the Case-Wheeler Act need not be fully reimbursed. The authority for such expenditure without full reimbursement appears in section 5 (b) of the Act as amended. This section prior to its amendment on July 16, 1943 (Public Law, 152, 78th Cong., Chapter 242, 1st sess.) contained a provision authorizing the Secretary of Agriculture to utilize the services, labor, materials and other property including money, supplied by the Work Projects Administration, the Civilian Conservation Corps, or Office of Indian Affairs. It further provided the extent of

reimbursement for such services would be determined by the President upon the recommendation of the Secretary of Agriculture. By the beforementioned amendment the Secretary of Agriculture was authorized to use in lieu of the services, labor, material and other property including money made available from the various agencies referred to above, funds appropriated pursuant to section 12 of the Case-Wheeler Act or unexpended balances of the 1940 conservation appropriation. In other words, the Secretary of Agriculture may, under the Case-Wheeler Act, use funds appropriated pursuant to that Act or under the Water Conservation and Utilization Act upon privately owned lands and the President is empowered to determine the extent to which these funds must be reimbursed.

"In addition to the work outlined above, there are other types which are needed to properly settle the projects and to bring them into full production. Some of this work would be carried out exclusively on Federally owned land while some of it would be performed on both Federally owned and non-Federally owned land. The nature of these activities may best be described by giving specific examples and describing the proposed construction in some detail.

"On the Buford-Trenton Project, situated in Williams County, North Dakota, which was established pursuant to the Water Conservation and Utilization Act, much needed road construction and repair cannot be carried out because Buford Township, a political subdivision of the State of North Dakota charged with the responsibility of such work, cannot secure the needed labor or heavy equipment. The Farm Security Administration has several units of land development equipment which could well be used by Buford Township and has certain Government personnel which could perform the needed construction and maintenance work. It has been proposed that the Farm Security Administration furnish the equipment and labor and that the Township pay all the costs of operation and maintenance of the equipment including depreciation and in addition pay the salaries and wages to the Farm Security Administration personnel performing such work. The Farm Security Administration would not, under the proposal, assume any responsibility in connection with the road construction or maintenance but would merely perform a service needed in connection with the project and would be compensated for such service equal to the amount which it expends for rendering such services.

"While this specific instance has arisen in regard to a project instituted under the Water Conservation and Utilization Act, this situation may very well arise in relation to any project established under the Act in question or under the Case-Wheeler Act. It is further possible that the Farm Security Administration may find it

necessary to construct and maintain roads using its personnel and equipment without any provision for reimbursement by the agency entrusted with the responsibility. Such work, however, would only be undertaken where it is essential for the proper development and operation of the project. It seems to us that the authority under the Water Conservation and Utilization Act to perform such work arises from the authority to construct such projects which necessarily implies that roads will be constructed for the use of the inhabitants of the project. If the Government does not perform the work in question the construction of the project and its operation after construction will be immeasurably impeded. Similarly under the Case-Wheeler Act the authority to construct and maintain roads would arise from the power vested in the Government by subdivision 1 of section 5 (a) of the Case-Wheeler Act which authorizes it 'to arrange for the settlement of the project on a sound agricultural basis.' The position is taken in regard to this matter that if proper roads are not provided the settlement of the project could not be complete. The ruling of October 19, 1935 (No. A-65126) by the then Comptroller General is, we believe, authority for permitting the Farm Security Administration to carry out such road construction and maintenance.

"Another type of work which has been undertaken and which is essential for the development of projects instituted under both of the legislative enactments is the development and improvement of ditches and canals owned by private ditch companies or irrigation districts supplying water to the water users on the project. An example of this arises in connection with the Mancos Project, situated in Montezuma County, Colorado, which has been established pursuant to the Case-Wheeler Act. Situated on that project are several small privately owned ditch companies, either incorporated or unincorporated, which have maintained the ditches and canals serving the project area for the past several years. Investigation of the project has disclosed that in certain instances the ditches and canals presently in use could be eliminated and that others by rehabilitation, repair and reconstruction could be made to operate more efficiently thus benefiting the water users. In many instances, through improper construction or disrepair in the irrigation systems, the water users are deprived of much needed water thus reducing the productivity of the project and greatly increasing the cost of production. Further, these companies are financially unable to make the necessary expenditures for the purpose of developing their ditches and canals so that the water may be distributed efficiently. It has been determined that the Mancos Project cannot be properly developed unless the Government expends funds upon the irrigation systems of these companies and in all likelihood a similar situation will arise in connection with future projects.

"The authority to perform this work would seem to be implied from the language of the Water Conservation and Utilization Act which authorizes the construction of the projects. Likewise under the Case-Wheeler Act the authority to improve lands as provided for under subdivision 4 of section 5 (a) referred to above would seem sufficiently broad to permit the Government to perform the work in question. It is contemplated that all expenditures from funds appropriated under the Water Conservation and Utilization Act and used for the purpose in question would be reimbursed. Under the Case-Wheeler Act the determination as to reimbursement would be governed by the same criteria which adhere in regard to the development of other privately owned lands. As in the case of road construction and maintenance the ruling of October 19, 1935, referred to above, would appear to be precedent for the work in question.

"Another type of construction which is necessary, if the projects are to be efficiently settled, is the erection of buildings in certain instances. This construction would be limited to property the title of which is vested in the United States or which is in the process of acquisition. The extent of the improvements necessary would depend upon the individual case. It is, however, conceivable that the Government would construct a complete farmstead including the house and other buildings. This would be a logical step in view of the fact that the Government is acquiring lands within the project boundaries and preparing them for occupancy by low-income farmers.

"The authority for the construction of buildings where necessary would seem, therefore, to be implied from the language of the Water Conservation and Utilization Act authorizing the construction of the projects in question. Similarly the construction of buildings under the Case-Wheeler Act would seem to be authorized by the language of section 5 (a) of that Act which is quoted above. Particular reference is made to subdivision 1 thereof which provides that the Secretary of Agriculture is authorized 'to arrange for the settlement of the projects on a sound agricultural basis, and, insofar as practicable, the location thereon of persons in need.' Quite obviously, a person in need would not be financially able to construct a house, barn and other buildings necessary for successful farming operations. This interpretation would, we believe, be necessarily implied by the language of section 4 which is above quoted, authorizing the Secretary of Agriculture to arrange for the improvement of lands within the project. The term 'improvement' as used in the Act in question would ordinarily include within its meaning buildings and structures. This conclusion is further borne out by section 1 of the Act which specifies

that one of the purposes of said Act is to provide opportunities for permanent settlement by farm families. Permanent settlement of the project by low-income farmers could not be accomplished without providing the necessary farm buildings.

"At the present time activities under the Case-Wheeler Act are being greatly expanded for the purpose of increasing food production in connection with the war effort. All of the questions herein referred to become particularly important because of this expansion and questions as to the authority for expenditures of the nature herein considered will be continually arising. You are, therefore, respectfully requested for an opinion as to whether or not the work to which reference is made is authorized and whether the Farm Security Administration under the laws as they now exist may:

"1. Use its equipment and personnel in the construction and maintenance of roads (a) where the Government will be fully reimbursed for all expenditures including wages, operation, maintenance and depreciation on equipment, or (b) where all the expenditures may or may not be repaid by the unit of government responsible for such work. (We have presumed that there is no question under either of the Acts to construct roads on Government land which are necessary for the development or operation of the project.)

"2. Go upon land owned by private ditch companies and irrigation districts serving the water users within the projects for the purpose of rehabilitating, repairing, and otherwise improving their irrigation systems. The ditch companies and irrigation districts on projects constructed under the Water Conservation and Utilization Act will be required to make reimbursement in full for such work when funds appropriated pursuant to that Act are used. This may or may not be true on Case-Wheeler projects.

"3. Pursuant to the Acts in question, construct buildings on lands owned by the Government or in the process of acquisition.

"In every instance where the work involved contemplates going upon lands the title to which is not vested in the Government, there will be, prior to the initiation of such work, the procurement on behalf of the Government of all needed authorizations and contracts which will fully protect the interests of the Government.

"In the event any of the activities now under way, or which are contemplated, may not be carried out under the Water Conservation and Utilization Act but may be performed pursuant to the terms of



the Case-Wheeler Act, immediate steps will be taken to bring the Water Conservation and Utilization projects within the purview of the Case-Wheeler Act. This is authorized by the amendment to the last mentioned Act adopted July 16, 1943, and referred to above. Further, if any of the work now being performed or which is contemplated is, in your opinion, unauthorized under the Case-Wheeler Act an immediate request will be made that necessary legislative power be granted to the Department of Agriculture."

As indicated in your letter the item contained in the Department of the Interior Appropriation Act, 1940, 53 Stat. 719 (referred to as the Water Conservation and Utilization Act) authorizing the construction of water conservation projects is similar in several respects to the Case-Wheeler Act, as amended, 16 U. S. C. 590(y), et seq. This similarity extends not only to the purpose to be accomplished by said acts but to the mechanics of administration. The basic object of both enactments is to effect the irrigation of arid and semiarid areas of the United States; and both programs are carried on under cooperative agreements between the Department of the Interior and the Department of Agriculture. But the present consideration appears to involve more the extent of the authority conferred by said acts in the prosecution of the water conservation and utilization program.

In the first place, there is noted the fact that the Water Conservation and Utilization Act authorizes only the construction of projects, whereas the Case-Wheeler Act authorizes their operation and maintenance as well. Such fact, alone, is of material significance in determining the nature of the expenses for which



the respective funds properly may be considered available. But regarding each of the acts as a whole, it is clear that the provisions of the Case-Wheeler Act contemplate and authorize the undertaking of a far more extensive program than is contemplated or authorized under the Water Conservation and Utilization Act. Of course, since section 4 of the act of July 16, 1943, amending the Case-Wheeler Act, provides that any project authorized for construction under the Water Conservation and Utilization Act may be designated by the Secretary of the Interior, upon agreement with the Secretary of Agriculture, a project under the Case-Wheeler Act, as amended, it may be that such variance in the legislation is of minor consequence for all practical purposes.

It is understood that in the construction of certain water conservation and irrigation projects under these acts, it has been determined that unless proper roads are provided for the use of inhabitants, such projects would not be complete; that, in some instances, the expense of such road construction and maintenance would be borne by the local unit of government but, due to a lack of labor or heavy equipment, such unit of government is unable to have the work done without the assistance of the Farm Security Administration; that, in other instances, it may be necessary to have such work performed solely with Federal funds; and that, in any event, such work would be undertaken only where it is "essential for the proper development and operation of the project."

Reference is made in your letter to decision of October 19, 1935 (A-65186) as authority for the use of project funds to carry out such road construction and maintenance. Said decision reads, in part, as follows:

"Appropriated moneys may not legally be used to improve private property unless specifically authorized by law. However, it is understood from your submission that the proposed expenditures, while involving work upon private property, are for the benefit of and incident to approved projects on lands of the Federal Government."

The submission in that case listed a number of projects undertaken by the Resettlement Administration and, in connection with each, there was described certain work, such as building roads, erection of fences, clearing streams and the construction of fire prevention and control structures--all such work to be performed in some instances upon private lands--which had been determined to be necessary and essential to the success of the project. Said decision continued:

"In view of the nature of some of the projects being undertaken under the provisions of the Federal Emergency Relief Appropriation Act of 1935, and it being stated by you that with respect to certain of the work on which the Resettlement Administration will be engaged, there will be required as a part thereof, and as necessary to completion and use, certain work on adjoining lands in private ownership, there would seem involved not so much the prohibition against improving private lands at public expense as matters of necessity and the right to the use of the private lands for doing and maintaining the public work thereon. In such cases where it clearly appears in the accounts that uses of the Emergency Relief appropriation for work on private lands, such as indicated under Item 1 of your submission, were necessary in connection with completion of an approved Federal project, objection need not be made by this office provided it is also established there were duly and legally secured in advance and

on behalf of the United States, in the nature of easements, such rights for present and future uses of the private lands as to fully protect the public interests involved."

The projects authorized by the acts here involved are water conservation and utilization projects designed to irrigate and make available for agricultural use arid and semiarid areas in the Great Plains and elsewhere. It is true that the Case-Wheeler Act authorizes—presumably as incident to the operation of such projects—the Secretary of Agriculture to arrange for settlement of such lands on a sound agricultural basis by needy farm families, to extend guidance and advice on farm matters to such settlers, to acquire agricultural lands within the boundaries of such projects and to arrange for the improvement of lands within such boundaries. But notwithstanding such facts, these projects are not for consideration as being undertaken in connection with "rehabilitation" or "resettlement" programs in determining the propriety of expenditures thereunder. Compare, for example, projects authorized by the Emergency Relief Appropriation Act of 1935, 49 Stat. 115.

It is stated in your letter that it has been presumed there is authority under either act to construct roads on Government lands which are necessary for the development and operation of a project. However, it would seem that the location of a proposed road—that is, whether on public or private lands—is not the controlling factor in determining whether Federal funds properly

may be expended for its construction. In either case, the criterion would appear to be whether the road may be considered necessary--in fact, essential--to the project as authorized. In other words, it must be recognized as a general proposition that when the Congress authorizes the undertaking of a comprehensive program designed to achieve certain social or economic benefits private as well as public lands may be benefited thereby, but that such fact does not necessarily preclude or prohibit the phase of the work from which such benefit derives.

Were the proposed roads needed in connection with the actual construction work of the water conservation and utilization features of a project, there would be no question as to the authority for their construction. But these roads are proposed to be constructed solely for the use of inhabitants of the project. It is stated that unless the roads are built the projects would not be complete. But, again, the point at which the project is complete depends entirely upon the nature of the project. A water conservation and utilization project well might be considered complete with far less by way of construction or improvement than would be the case were the project for consideration as being a resettlement or rehabilitation project. In the latter event, the improvements authorized might extend beyond the construction of roads and include churches, schools and other essentials of a new community.

Accordingly, there would appear to be no authority under the Water Conservation and Utilization Act to construct--or under the Case-Wheeler Act to construct and maintain--roads designed solely for use by inhabitants, present or future, of lands improved by irrigation projects undertaken pursuant to authority contained in said acts. And in this connection--as indicated above--the fact that title to the land upon which the road would be located is in the United States has no material bearing on the matter. Also, it necessarily follows that any cooperative assistance to local units of government in the performance of work which is beyond the scope of the projects authorized by the pertinent legislation would be objectionable, even though the ultimate burden of expense for such work would not be borne by appropriated funds.

The matter of repairing, reconstructing or otherwise improving irrigation systems owned by private ditch companies or irrigation districts is in an altogether different category. Obviously, the only possible objection to the use of funds appropriated under either the Water Conservation and Utilization Act or the Case-Wheeler Act for such purposes would be that such work would result in an improvement of private lands with appropriated moneys. However, this phase of the program would appear to fall squarely within the above-stated principle that the controlling factor is not so much whether private property would be improved or benefited by certain work under a comprehensive program, but

whether the work is necessary to the successful prosecution of the project or program, as authorized by the applicable legislation. Accordingly, if under certain circumstances it be determined that ditches, canals, etc., located on private lands must be improved with the use or aid of Federal funds in order to make water available to users, or for other purposes connected with these water conservation and utilization programs, this office will not object to such undertakings, it being assumed, of course, that the reimbursement or repayment provisions of the particular act involved will be complied with.

It would seem that what was stated above with respect to the construction and maintenance of roads for the use of inhabitants of the projects applies with equal--if not greater--force to the question of the authority to construct buildings, in some instances complete farmsteads, on lands within the boundaries of the various projects. Reference is made in your letter, with respect to this phase of the problem, to the fact that the Case-Wheeler Act authorizes the Secretary of Agriculture "to arrange for the settlement of the projects on a sound agricultural basis, and insofar as practicable, the location thereon of persons in need" and, also, to the fact that the "improvement" of lands within the projects is authorized thereunder. However, it would seem that the construction of houses, farms and other farm buildings not only would transcend the authority to "arrange" for the settlement

of farm families but are improvements of a vastly different character than are contemplated by the act in question. The term "improvements" as there used seems rather to mean work of the nature specifically mentioned in the act, namely, "clearing, leveling, and preparing \* \* \* for distribution of irrigation water." Hence, it may be concluded that there is no authority to use funds appropriated under either act for construction of the type of buildings described.

Your letter is answered accordingly.

Respectfully,

(Signed) Lindsay D. Warren

Comptroller General  
of the United States