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B-109485, Jul 22, 1952

Number: B-109485

Date: 1952-07-22

B-109485, JUL 22, 1952

THE SECRETARY OF THE INTERIOR:

REFERENCE IS MADE TO YOUR LETTER OF MAY 5, 1952, SUBMITTING FOR DECISION THE LEGALITY OF A PROPOSED PAYMENT OF $70,000 TO THE COUNTY OF SHASTA, STATE OF CALIFORNIA, FOR THE PRESENT AND FUTURE REPAIR, OPERATION AND MAINTENANCE OF THREE ROADS PRESENTLY OWNED BY THE UNITED STATES AS PROVIDED IN A PROPOSED AGREEMENT DATED OCTOBER 24, 1951, BETWEEN THE UNITED STATES AND THE BOARD OF SUPERVISORS OF THE COUNTY. SUCH AGREEMENT WOULD GRANT THE COUNTY A PERMANENT EASEMENT IN THE SAID THREE ROADS AND THE COUNTY IN TURN WOULD BE REQUIRED TO REPAIR, OPERATE AND MAINTAIN SAME AND PAY ALL COSTS FOR SUCH REPAIRS, OPERATION AND MAINTENANCE IN EXCESS OF THE SAID $70,000.

THE INVOLVED ROADS WHICH UNDER THE TERMS OF THE PROPOSED AGREEMENT WOULD BE INCORPORATED IN A COUNTY ROAD SYSTEM ARE DESCRIBED AS FOLLOWS:

(A) KESWICK DAM ROAD, TWO AND ONE-HALF

MILES LONG CONNECTING LEFT ABUTMENT OF KESWICK

DAM WITH SUMMIT CITY - BUCKEYE ROAD.

(B) ROCK CREEK ROAD, ONE MILE LONG CONNECTING

RIGHT ABUTMENT OF KESWICK DAM AND IRON MOUNTAIN

ROAD. (C) COLEMAN FISH HATCHERY ROAD, TWO

MILES LONG LEADING TO COLEMAN FISH HATCHERY.

IT IS STATED IN YOUR LETTER THAT AS A RESULT OF THE CONSTRUCTION OF CERTAIN FEATURES OF THE CENTRAL VALLEY PROJECT, THE GOVERNMENT NOW OWNS THE ABOVE DESCRIBED ROADS; THAT THE FIRST MILE OF THE KESWICK DAM ROAD WAS CONSTRUCTED BY THE GOVERNMENT IN 1941; THAT THE REMAINING ONE AND ONE-HALF MILES TO THE SUMMIT CITY - BUCKEYE ROAD INTERSECTION WAS CONSTRUCTED IN 1941, BY THE ATKINSON-KIER COMPANY TO PROVIDE ACCESS TO THE CONSTRUCTION SITE OF THE KESWICK DAM; AND THAT THIS ROAD IS USED BY THE GOVERNMENT FORCES FOR OPERATION AND MAINTENANCE OF THE KESWICK DAM AND POWER PLANT AND AN ACCESS ROAD TO THE SHASTA-KESWICK AND SHASTA OROVILLE TRANSMISSION LINES. IT IS STATED FURTHER THAT THE ROCK CREEK ROAD WAS CONSTRUCTED IN 1950 BY CONTRACT TO CONNECT THE TOWN OF KESWICK TO KESWICK DAM; THAT THE KESWICK DAM ROAD TOGETHER WITH THE ROCK CREEK ROAD PROVIDES ACCESS TO THE WEST SIDE OF THE SACRAMENTO RIVER AND TO THE AREA SERVED BY THE IRON

MOUNTAIN ROAD; THAT THE COLEMAN FISH HATCHERY ROAD WAS CONSTRUCTED IN 1942 -1943 FOR USE BY THE GOVERNMENT FORCES FOR OPERATION AND MAINTENANCE OF THE COLEMAN FISH HATCHERY; AND THAT ALL OF THE ROADS ARE USED BY THE GENERAL PUBLIC. UNDER THE SAID AGREEMENT, THE COUNTY WOULD BE REQUIRED TO MAINTAIN THE ROADS SO AS NOT TO INTERFERE WITH THE CONSTRUCTION, OPERATION OR MAINTENANCE OF ANY IRRIGATION OR RECLAMATION FACILITY CONSTRUCTED IN CONNECTION WITH THE CENTRAL VALLEY PROJECT FEATURES SERVED BY THE SAID ROADS.

AS TO THE PRESENT CONDITION OF THE ROADS, IT IS STATED THAT THE KESWICK DAM ROAD IS IN NEED OF REPAIRS ESTIMATED TO COST $36,108; THAT THE ROCK CREEK ROAD ALSO IS IN NEED OF REPAIRS ESTIMATED AT $22,400; AND THAT THE AVERAGE YEARLY MAINTENANCE FOR THE ROADS IS $200 PER MILE; THAT IN ADDITION THE ROADS WILL REQUIRE RESEALING EVERY FIVE OR SIX YEARS AT AN ESTIMATED COST OF $1,500 PER MILE. FOR THE PURPOSE OF SHOWING THE ADVANTAGES WHICH WILL ACCRUE TO THE GOVERNMENT FROM THE PROPOSED GRANT AND THE PAYMENT OF $70,000 AS PROVIDED THEREIN, IT IS STATED THAT ON THE BASIS OF 25 YEARS OF OPERATION OF THE ROADS, THE MAINTENANCE COST TO THE GOVERNMENT WOULD BE $1,100 PER ANNUM OR A TOTAL OF $27,500; THAT EACH RESEALING WOULD COST $8,250 OR A TOTAL OF $33,000; THAT SINCE THE KESWICK DAM AND COLEMAN FISH HATCHERY ROADS WILL BE IN EXISTENCE FOR CONSIDERABLY LONGER THAN 25 YEARS, IT IS APPARENT THAT THE 25 YEAR ESTIMATE IS VERY CONSERVATIVE; THAT, IN ANY EVENT, IT IS EVIDENT THAT THE INCORPORATION OF THE THREE ROADS IN THE COUNTY ROAD SYSTEM WILL RESULT IN CONSIDERABLE SAVINGS TO THE GOVERNMENT; THAT IN ADDITION IT WILL ELIMINATE A NEED FOR ADMINISTERING THE ROADS, THEREBY SAVING PERSONNEL COSTS; AND THAT IT WOULD AVOID ANY POSSIBLE CLAIMS FOR DAMAGE ARISING FROM THE USE OF THE ROADS BY THE PUBLIC.

IT IS STATED IN YOUR LETTER THAT YOUR DOUBT AS TO THE PROPRIETY STEMS FROM THE DECISIONS IN 2 COMP.GEN. 308 AND 6 COMP.GEN. 354, HOLDING IN EFFECT THAT APPROPRIATED FUNDS ARE NOT GENERALLY AVAILABLE FOR REPAIR AND MAINTENANCE OF PUBLIC ROADS EVEN THOUGH BENEFICIAL TO THE UNITED STATES. IN ADDITION, IT IS STATED THAT THERE IS A QUESTION AS TO WHETHER THE PAYMENT OF $70,000 IN ADVANCE TO THE COUNTY AS PROVIDED IN THE PROPOSED GRANT WOULD BE REGARDED AS IN VIOLATION OF SECTION 3648 REVISED STATUTES (31 U.S.C. 529), UNLESS SUCH PAYMENT COULD BE REGARDED AS AUTHORIZED UNDER THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949, AS AMENDED (41 U.S.C. 154), WHICH AUTHORIZES AGENCY HEADS TO MAKE ADVANCE PAYMENTS UNDER NEGOTIATED CONTRACTS FOR SUPPLIES AND SERVICES UNDER CERTAIN CIRCUMSTANCES.

SECTION 10 OF THE ACT OF AUGUST 4, 1939, 53 STAT. 1196, AS AMENDED BY THE ACT OF AUGUST 18, 1950, 64 STAT. 463, PROVIDES THAT THE SECRETARY OF THE INTERIOR IN HIS DISCRETION MAY GRANT "EASEMENTS OR RIGHTS-OF-WAY WITH OR WITHOUT LIMITATION AS TO PERIOD OF TIME AFFECTING LANDS OR INTEREST IN LANDS WITHDRAWN OR ACQUIRED AND BEING ADMINISTERED UNDER THE FEDERAL RECLAMATION LAWS IN CONNECTION WITH THE CONSTRUCTION OR OPERATION AND MAINTENANCE OF ANY PROJECT: PROVIDED, THAT, IF A WATER USERS' ORGANIZATION IS UNDER CONTRACT OBLIGATION FOR REPAYMENT ON ACCOUNT OF THE PROJECT OR DIVISION INVOLVED, EASEMENTS OR RIGHTS-OF-WAY FOR PERIODS IN EXCESS OF TWENTY-FIVE YEARS SHALL BE GRANTED ONLY UPON PRIOR WRITTEN APPROVAL OF THE GOVERNING BOARD OF SUCH ORGANIZATION." WITH RESPECT TO THE KESWICK DAM AND ROCK CREEK ROADS, THE PROPOSED GRANT WOULD APPEAR TO BE GENERALLY WITHIN THE PURVIEW OF SECTION 10 OF THE SAID ACT OF AUGUST 4, 1939, AS AMENDED. CONCERNING THE PROVISION IN THE PROPOSED AGREEMENT REQUIRING AN ADVANCE PAYMENT OF $70,000 BY THE UNITED STATES, IT HAS BEEN HELD THAT THE STATUTORY INHIBITION AGAINST SUCH PAYMENTS IS NOT NECESSARILY APPLICABLE TO ADVANCE PAYMENTS TO STATES AND LOCAL GOVERNMENT AGENCIES AND OFFICIALS PRIMARILY ON THE GROUND THAT THE ESTABLISHED RESPONSIBILITY OF SUCH STATE AND LOCAL GOVERNMENT AGENCIES AND

OFFICIALS WOULD REDUCE TO A MINIMUM THE POSSIBILITY OF ANY LOSS TO THE UNITED STATES. B-35670, JULY 19, 1943; B- 36099, AUGUST 14, 1943; AND B-65821, MAY 29, 1947. NO REASON IS PERCEIVED WHY THE PRINCIPLE ENUNCIATED IN THE CITED DECISIONS SHOULD NOT APPLY TO THE PROPER PROPORTION OF THE PROPOSED PAYMENT TO THE COUNTY INSOFAR AS CONCERNS THE KESWICK DAM AND ROCK CREEK ROADS. ALSO, THERE WOULD APPEAR TO BE FOR CONSIDERATION THE PROVISIONS OF SECTION 12 OF THE RECLAMATION PROJECT ACT OF 1939, 53 STAT. 1197, 43 U.S.C. 388, WHICH IS AS FOLLOWS:

"WHEN APPROPRIATIONS HAVE BEEN MADE FOR

THE COMMENCEMENT OR CONTINUATION OF CONSTRUCTION

OR OPERATION AND MAINTENANCE OF ANY PROJECT,

THE SECRETARY MAY, IN CONNECTION WITH SUCH

CONSTRUCTION OR OPERATION AND MAINTENANCE,

ENTER INTO CONTRACTS FOR MISCELLANEOUS

SERVICES, FOR MATERIALS AND SUPPLIES AS

WELL AS FOR CONSTRUCTION, WHICH MAY COVER SUCH

PERIODS OF TIME AS THE SECRETARY MAY CONSIDER

NECESSARY BUT IN WHICH THE LIABILITY OF THE UNITED

STATES SHALL BE CONTINGENT UPON

APPROPRIATIONS BEING MADE THEREFOR." FOR A CONSTRUCTION OF THE FOREGOING STATUTORY PROVISION SEE 28 COMP.GEN. 163. UNDER SUCH CIRCUMSTANCES, IT IS UNNECESSARY TO DETERMINE THE APPLICABILITY OF THE PROVISIONS THE SAID FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949, AS AMENDED, 41 U.S.C. 154, REFERRED TO IN YOUR LETTER.

ACCORDINGLY, YOU ARE ADVISED THAT THIS OFFICE WILL INTERPOSE NO OBJECTION TO AN ADVANCE PAYMENT UNDER AN AGREEMENT SUCH AS HERE PROPOSED LIMITED TO THE PROPORTION OF THE PAYMENT APPLICABLE TO THE KESWICK DAM AND ROCK CREEK ROADS SUBJECT, HOWEVER, TO (A) THE AVAILABILITY OF APPROPRIATIONS, AND IN THE EVENT A WATER USERS' ORGANIZATION IS UNDER CONTRACT OBLIGATION FOR REPAYMENT ON ACCOUNT OF THE PROJECT OR DIVISION INVOLVED, (B) THAT THE PRIOR WRITTEN APPROVAL OF THE GOVERNING BOARD OF THE ORGANIZATION IS OBTAINED.

WITH RESPECT TO THE COLEMAN FISH HATCHERY ROAD, PURSUANT TO AN INFORMAL REQUEST CONCERNING THE STATUS OF THAT ROAD, THERE HAS BEEN FORWARDED TO THIS OFFICE INFORMALLY A COPY OF TELEGRAM DATED JULY 2, 1952, FROM THE FIELD OFFICE OF THE BUREAU OF RECLAMATION AT SACRAMENTO TO THE OFFICE OF CHIEF COUNSEL WHEREIN IT IS STATED THAT PRIOR TO THE FISCAL YEAR 1950, THE EXPENSE FOR OPERATION AND MAINTENANCE OF THAT ROAD WAS FINANCED FROM CONSTRUCTION FUNDS; THAT MEMORANDUM OF AGREEMENT WITH THE FISH AND WILDLIFE SERVICE APPROVED SEPTEMBER 21, 1948, REQUIRED THAT SERVICE EFFECTIVE BEGINNING WITH THE FISCAL YEAR 1950, TO REQUEST FUNDS BY DIRECT APPROPRIATION FOR OPERATION OF CERTAIN FACILITIES INCLUDING ROADS; THAT INFORMATION OBTAINED FROM THE FISH AND WILDLIFE SERVICE IS TO THE EFFECT THAT IT IS MAINTAINING THE COLEMAN FISH HATCHERY ROAD PENDING THE

APPROVAL OF THE PROPOSED AGREEMENT WITH SHASTA COUNTY; AND THAT SAID ROAD PROBABLY SHOULD BE ELIMINATED FROM THE PROPOSED AGREEMENT WITH SHASTA COUNTY WITH A CORRESPONDING REDUCTION IN THE AMOUNT TO BE PAID TO THE COUNTY UNLESS THE FISH AND WILDLIFE SERVICE SHOULD JOIN IN THE PROPOSED AGREEMENT AND CONTRIBUTE ITS PROPORTIONATE AMOUNT.

SINCE IT APPEARS FROM THE FOREGOING THAT THE COLEMAN FISH HATCHERY ROAD PRESENTLY IS NOT BEING ADMINISTERED UNDER THE FEDERAL RECLAMATION LAWS IN CONNECTION WITH THE CONSTRUCTION OR OPERATION AND MAINTENANCE OF ANY PROJECT WITHIN THE MEANING OF THE SAID RECLAMATION PROJECT ACT OF 1939, AS AMENDED BY THE ACT OF AUGUST 18, 1950, THERE OBVIOUSLY WOULD BE NO AUTHORITY OF LAW FOR EFFECTING THE CONVEYANCE OF THAT ROAD UNDER THE CITED ACT NOR HAS THERE BEEN CITED OR CALLED TO MY ATTENTION ANY OTHER ACT THAT MIGHT AUTHORIZE YOU TO EFFECT CONVEYANCE OF A PERMANENT EASEMENT OF THAT ROAD TO THE COUNTY.

PAYMENTS

ADVANCE PAYMENTS TO STATES, COUNTRIES, ETC.

RECLAMATION SERVICE

ROADS CONVEYANCE OF EASEMENT TO SHASTA COUNTY, CALIF.

ROADS

CONSTRUCTION, MAINTENANCE, REPAIR, ETC.

CENTRAL VALLEY PROJECT ROADS

TRANSFER TO SHASTA COUNTY, CALIF.

REAL ESTATE

EASEMENTS, RIGHTS-OF-WAY, WATER RIGHTS, ETC.

AUTHORITY TO GRANT RECLAMATION LANDS ..END :