



2.01.29

REPORT TO THE CONGRESS



25
23

Construction Of
Watershed Projects
Terminated Or Delayed
Because Of
Land Rights Problems B-144269

Soil Conservation Service
Department of Agriculture

BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

095600

~~700654~~

JULY 13, 1971



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

B-144269

To the President of the Senate and the
Speaker of the House of Representatives

This is our report on construction of watershed projects terminated or delayed because of land rights problems. These projects are administered by the Soil Conservation Service, Department of Agriculture.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Office of Management and Budget, and to the Secretary of Agriculture.

A handwritten signature in cursive script that reads "James B. Axtell".

Comptroller General
of the United States

D I G E S T

WHY THE SURVEY WAS MADE

The Soil Conservation Service (SCS) provides technical and direct financial assistance to State and local organizations for watershed improvements to prevent floods; to reduce damage from floodwater, sediment, and erosion; and to conserve, develop, utilize, and dispose of water. The assistance is authorized by two Federal laws: the Flood Control Act of 1944 (Pub. L. 534, 78th Cong.) and the Watershed Protection and Flood Prevention Act of 1954 (Pub. L. 566, 83d Cong.). The laws permit the development of such structures as dams, dikes, and levees and such land treatment measures as seeding, contour farming, and irrigation. (See pp. 6 and 10.)

Public Law 534 designated 11 large watershed projects to be developed with Federal assistance; Public Law 566 provides general open-end authority for Federal assistance in small-scale projects. Projects under both programs are located in the upper reaches of rivers and their tributaries. (See pp. 8 to 10.)

Many of the projects have been terminated prior to completion, or their construction has been delayed unduly. The General Accounting Office (GAO) made a survey to find out the reasons for the terminations or delays and what could be done about them.

FINDINGS AND CONCLUSIONS

The major cause of terminated and delayed projects was the failure or delay of local sponsors to acquire "land rights"; i.e., the land, easements, or rights-of-way needed for the projects. With certain exceptions, local sponsors are responsible for acquiring the land rights at no cost to the Government. (See pp. 13 and 17.) The failures and delays have resulted in

- expenditure of Federal, State, and local funds on projects that may never be completed,
- significant increases in project costs due to general rises in construction price levels, and

--long delays in realizing benefits from projects that may eventually be completed. (See p. 17.)

SCS did not specifically require that a preplanning assessment be made of the sponsors' ability and willingness to acquire, by condemnation if necessary, the land rights needed for their projects. (See p. 18.)

Public Law 566--The Watershed Protection and Flood Prevention Act of 1954

GAO did not ascertain the total effect of the land rights problem, but information obtained during the survey indicated that:

--At least 46 projects initiated under this act had been terminated because the sponsors had not acquired the needed land rights.

--SCS spent an estimated \$2.2 million for planning the 46 terminated projects, plus \$2.1 million as the Federal share of engineering, land treatment, and construction costs before the projects were terminated.

--The 46 projects, if completed, would have resulted in estimated benefits of \$4.1 million a year (in the form of reduced flood damages, increased agricultural productivity, water supply, and recreation). Only \$30,800 of the estimated annual benefits applied to improvement structures completed prior to termination of the projects. (See pp. 19 to 23.)

Public Law 534--The Flood Control Act of 1944

Problems in acquiring land rights were delaying completion of the major watershed projects authorized by this act. As of 1955 scheduled completion dates for the 11 projects ranged from 1960 to 1976. But, as of 1970, only one project was finished and the rescheduled completion dates for the other 10 ranged from 1974 to 2021. (See pp. 24 and 25.)

According to SCS the estimated Federal share of construction cost alone for Public Law 534 projects had increased by about \$150 million from 1955 to 1970 because of general rises in construction price levels. (See p. 24.)

SCS officials advised GAO that the land rights needed for some of the unfinished portions of the Public Law 534 projects would be very difficult to obtain. SCS, however, had not made detailed assessments of the 10 unfinished projects that would identify specifically what had been done, what remained to be done, and the problems that barred completion. (See p. 25.)

RECOMMENDATIONS OR SUGGESTIONS

GAO informed SCS of the results of its survey and requested comments on whether anything could be done to provide assurance that construction of projects, once planned and approved for installation, will not be terminated prior to completion or delayed because of land rights problems. GAO requested SCS to comment specifically on the feasibility of requiring project sponsors, as a condition for SCS approval of projects for planning, to

- have the legal authority (power of eminent domain) to acquire land rights by condemnation,
- demonstrate that they have adequate financial resources to take the necessary action, including condemnation, to acquire land rights, and
- submit written statements that would commit them to take the necessary action, including condemnation, to acquire the needed land rights. (See p. 27.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

SCS agreed that difficulty in acquiring land rights was a major deterrent to steady progress in completing watershed projects and stated that it might be helpful to step up emphasis on

- appraising the authority and willingness of project sponsors to acquire land rights by condemnation,
- fully and correctly informing all concerned people of land rights requirements at each stage of project formulation,
- requiring SCS field offices to reemphasize the importance of providing guidance, assistance, and encouragement to project sponsors regarding land rights requirements and of scheduling regular and continuing follow-up on actions that sponsors must take and are taking to acquire the needed land rights, and
- intensifying the training of employees who work with project sponsors in acquiring land rights.

SCS issued a policy memorandum to its field offices (see app. II) re-emphasizing the importance of having project sponsors with authority, financial resources, and willingness to acquire land rights. The memorandum stated that

- sponsors without the power of eminent domain should not be accepted unless State law precludes the sponsor from getting such authority prior to project planning,

- in those cases where State law precludes the sponsor from obtaining the power of eminent domain prior to planning, assurance must be obtained that the sponsor will acquire such authority as soon as possible during the project planning stage.
- planning authorizations should not be requested by SCS field offices unless it has been judged that the sponsor is willing to proceed with condemnation if necessary, and
- all requests from SCS field offices for planning authorizations are to contain a discussion of the sponsor's authority and willingness to use the power of eminent domain if necessary.

The actions taken and proposed by SCS should, if carried out by its field offices, provide greater assurance that construction of future watershed projects under both Public Law 534 and Public Law 566 will not be terminated prior to completion or delayed, because of land rights problems, after planning has been completed and approved. (See pp. 27 to 29.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

The primary purpose of this report is to inform the Congress of a significant problem in carrying out SCS flood prevention and watershed improvement projects under Public Law 534 and Public Law 566 and of the actions taken and proposed by SCS in an effort to minimize the problem. (See p. 30.)

When the Congress authorized the Public Law 534 projects in 1944, it was the stated intent that the projects be completed as quickly as possible. In view of the long delays in completing the projects, the Congress may wish to consider requesting SCS to examine into and report on

- the general nature and extent of flood control or other water and related land resource problems existing in the incomplete portions of the 10 projects and the types of benefits that can be obtained by completing the projects,
- the specific problems involved in completing the 10 projects under existing legislative and administrative policies and procedures, and
- the nature and extent of additional legislative authority or other actions needed to facilitate completion of the projects.

Information provided by such an SCS examination, along with this report, would provide the Congress with a basis for evaluating the need for completing the incomplete portions of the 10 projects, the desired timeliness of completion, and the need for specific legislative actions to facilitate completion of the 10 projects.

Should the Congress determine that completion of the 10 projects or any portions thereof should be expedited, it may be necessary to modify the law to reduce the extent to which SCS must rely upon local sponsors and residents to initiate Public Law 534 subwatershed projects, to acquire the needed land or land rights, to share in project construction costs, and to maintain the projects. Any such modifications would more than likely increase the Federal share of the costs of the Public Law 534 projects.

Conversely, should the Congress determine that the incomplete portions of the 10 Public Law 534 projects should be given no further priority, a question arises as to whether the Public Law 534 program should be continued as a separate entity. As described on page 10, the basic difference between the Public Law 534 and Public Law 566 programs is that Public Law 566 provides open-end authority for Federal assistance in small-scale projects. Should the Public Law 534 program be discontinued, assistance could be provided under Public Law 566 for any areas within the 10 incomplete Public Law 534 projects for which land rights may be obtained. (See p. 31.)

SCS officials pointed out that a provision in the Department of Agriculture and Related Agencies Appropriation Act for 1971 gave SCS permanent authority to reimburse sponsors of Public Law 534 projects for a proportionate share of the cost of land rights needed for flood prevention features. The officials stated that they could not yet project what effect the new authority would have on completing the 10 incomplete Public Law 534 projects. (See p. 32.)

C o n t e n t s

	<u>Page</u>
DIGEST	1
CHAPTER	
1 INTRODUCTION AND SCOPE	6
2 NATURE OF WATERSHED PROGRAMS AND HOW PROJECTS ARE DEVELOPED	8
3 CONSTRUCTION OF WATERSHED PROJECTS TERMINATED OR DELAYED BECAUSE OF LAND RIGHTS PROBLEMS	17
Public Law 566 projects	19
South Anna project	21
Little River project	22
Public Law 534 projects	24
Actions taken and planned to provide better assurance that land rights will be obtained	27
Conclusion	29
4 MATTERS FOR CONSIDERATION BY THE CONGRESS	30
APPENDIX	
I Letter dated May 25, 1970, from the Administrator, Soil Conservation Service, to the General Accounting Office	35
II Watersheds memorandum--105	38
III Principal officials of the Department of Agriculture responsible for administration of activities discussed in this report	39

ABBREVIATIONS

SCS	Soil Conservation Service
GAO	General Accounting Office

D I G E S T

WHY THE SURVEY WAS MADE

The Soil Conservation Service (SCS) provides technical and direct financial assistance to State and local organizations for watershed improvements to prevent floods; to reduce damage from floodwater, sediment, and erosion; and to conserve, develop, utilize, and dispose of water. The assistance is authorized by two Federal laws: the Flood Control Act of 1944 (Pub. L. 534, 78th Cong.) and the Watershed Protection and Flood Prevention Act of 1954 (Pub. L. 566, 83d Cong.). The laws permit the development of such structures as dams, dikes, and levees and such land treatment measures as seeding, contour farming, and irrigation. (See pp. 6 and 10.)

Public Law 534 designated 11 large watershed projects to be developed with Federal assistance; Public Law 566 provides general open-end authority for Federal assistance in small-scale projects. Projects under both programs are located in the upper reaches of rivers and their tributaries. (See pp. 8 to 10.)

Many of the projects have been terminated prior to completion, or their construction has been delayed unduly. The General Accounting Office (GAO) made a survey to find out the reasons for the terminations or delays and what could be done about them.

FINDINGS AND CONCLUSIONS

The major cause of terminated and delayed projects was the failure or delay of local sponsors to acquire "land rights"; i.e., the land, easements, or rights-of-way needed for the projects. With certain exceptions, local sponsors are responsible for acquiring the land rights at no cost to the Government. (See pp. 13 and 17.) The failures and delays have resulted in

- expenditure of Federal, State, and local funds on projects that may never be completed,
- significant increases in project costs due to general rises in construction price levels, and

--long delays in realizing benefits from projects that may eventually be completed. (See p. 17.)

SCS did not specifically require that a preplanning assessment be made of the sponsors' ability and willingness to acquire, by condemnation if necessary, the land rights needed for their projects. (See p. 18.)

Public Law 566--The Watershed Protection and Flood Prevention Act of 1954

GAO did not ascertain the total effect of the land rights problem, but information obtained during the survey indicated that:

- At least 46 projects initiated under this act had been terminated because the sponsors had not acquired the needed land rights.
- SCS spent an estimated \$2.2 million for planning the 46 terminated projects, plus \$2.1 million as the Federal share of engineering, land treatment, and construction costs before the projects were terminated.
- The 46 projects, if completed, would have resulted in estimated benefits of \$4.1 million a year (in the form of reduced flood damages, increased agricultural productivity, water supply, and recreation). Only \$30,800 of the estimated annual benefits applied to improvement structures completed prior to termination of the projects. (See pp. 19 to 23.)

Public Law 534--The Flood Control Act of 1944

Problems in acquiring land rights were delaying completion of the major watershed projects authorized by this act. As of 1955 scheduled completion dates for the 11 projects ranged from 1960 to 1976. But, as of 1970, only one project was finished and the rescheduled completion dates for the other 10 ranged from 1974 to 2021. (See pp. 24 and 25.)

According to SCS the estimated Federal share of construction cost alone for Public Law 534 projects had increased by about \$150 million from 1955 to 1970 because of general rises in construction price levels. (See p. 24.)

SCS officials advised GAO that the land rights needed for some of the unfinished portions of the Public Law 534 projects would be very difficult to obtain. SCS, however, had not made detailed assessments of the 10 unfinished projects that would identify specifically what had been done, what remained to be done, and the problems that barred completion. (See p. 25.)

RECOMMENDATIONS OR SUGGESTIONS

GAO informed SCS of the results of its survey and requested comments on whether anything could be done to provide assurance that construction of projects, once planned and approved for installation, will not be terminated prior to completion or delayed because of land rights problems. GAO requested SCS to comment specifically on the feasibility of requiring project sponsors, as a condition for SCS approval of projects for planning, to

- have the legal authority (power of eminent domain) to acquire land rights by condemnation,
- demonstrate that they have adequate financial resources to take the necessary action, including condemnation, to acquire land rights, and
- submit written statements that would commit them to take the necessary action, including condemnation, to acquire the needed land rights. (See p. 27.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

SCS agreed that difficulty in acquiring land rights was a major deterrent to steady progress in completing watershed projects and stated that it might be helpful to step up emphasis on

- appraising the authority and willingness of project sponsors to acquire land rights by condemnation,
- fully and correctly informing all concerned people of land rights requirements at each stage of project formulation,
- requiring SCS field offices to reemphasize the importance of providing guidance, assistance, and encouragement to project sponsors regarding land rights requirements and of scheduling regular and continuing follow-up on actions that sponsors must take and are taking to acquire the needed land rights, and
- intensifying the training of employees who work with project sponsors in acquiring land rights.

SCS issued a policy memorandum to its field offices (see app. II) re-emphasizing the importance of having project sponsors with authority, financial resources, and willingness to acquire land rights. The memorandum stated that

- sponsors without the power of eminent domain should not be accepted unless State law precludes the sponsor from getting such authority prior to project planning,

- in those cases where State law precludes the sponsor from obtaining the power of eminent domain prior to planning, assurance must be obtained that the sponsor will acquire such authority as soon as possible during the project planning stage.
- planning authorizations should not be requested by SCS field offices unless it has been judged that the sponsor is willing to proceed with condemnation if necessary, and
- all requests from SCS field offices for planning authorizations are to contain a discussion of the sponsor's authority and willingness to use the power of eminent domain if necessary.

The actions taken and proposed by SCS should, if carried out by its field offices, provide greater assurance that construction of future watershed projects under both Public Law 534 and Public Law 566 will not be terminated prior to completion or delayed, because of land rights problems, after planning has been completed and approved. (See pp. 27 to 29.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

The primary purpose of this report is to inform the Congress of a significant problem in carrying out SCS flood prevention and watershed improvement projects under Public Law 534 and Public Law 566 and of the actions taken and proposed by SCS in an effort to minimize the problem. (See p. 30.)

When the Congress authorized the Public Law 534 projects in 1944, it was the stated intent that the projects be completed as quickly as possible. In view of the long delays in completing the projects, the Congress may wish to consider requesting SCS to examine into and report on

- the general nature and extent of flood control or other water and related land resource problems existing in the incomplete portions of the 10 projects and the types of benefits that can be obtained by completing the projects,
- the specific problems involved in completing the 10 projects under existing legislative and administrative policies and procedures, and
- the nature and extent of additional legislative authority or other actions needed to facilitate completion of the projects.

Information provided by such an SCS examination, along with this report, would provide the Congress with a basis for evaluating the need for completing the incomplete portions of the 10 projects, the desired timeliness of completion, and the need for specific legislative actions to facilitate completion of the 10 projects.

Should the Congress determine that completion of the 10 projects or any portions thereof should be expedited, it may be necessary to modify the law to reduce the extent to which SCS must rely upon local sponsors and residents to initiate Public Law 534 subwatershed projects, to acquire the needed land or land rights, to share in project construction costs, and to maintain the projects. Any such modifications would more than likely increase the Federal share of the costs of the Public Law 534 projects.

Conversely, should the Congress determine that the incomplete portions of the 10 Public Law 534 projects should be given no further priority, a question arises as to whether the Public Law 534 program should be continued as a separate entity. As described on page 10, the basic difference between the Public Law 534 and Public Law 566 programs is that Public Law 566 provides open-end authority for Federal assistance in small-scale projects. Should the Public Law 534 program be discontinued, assistance could be provided under Public Law 566 for any areas within the 10 incomplete Public Law 534 projects for which land rights may be obtained. (See p. 31.)

SCS officials pointed out that a provision in the Department of Agriculture and Related Agencies Appropriation Act for 1971 gave SCS permanent authority to reimburse sponsors of Public Law 534 projects for a proportionate share of the cost of land rights needed for flood prevention features. The officials stated that they could not yet project what effect the new authority would have on completing the 10 incomplete Public Law 534 projects. (See p. 32.)

CHAPTER 1

INTRODUCTION AND SCOPE

The term "watershed" means the area of land from which water drains to a given point, such as a stream, marsh, or lake. The land areas drained by small streams make up the watershed of the larger stream into which they flow. Thus a major river basin is made up of thousands of small watersheds.

Water that runs off the land too rapidly can cause floods that take lives and can damage top soil, crops, homes, highways, and utilities. Soil and other debris carried into streams and lakes can spoil fishing, can decrease storage capacity for municipal water supply, can increase the cost of filtering water for municipal use, and can interfere with hydroelectric plants.

The Soil Conservation Service, Department of Agriculture, is responsible for the administration of section 13 of the Flood Control Act of 1944 (58 Stat. 905) and the Watershed Protection and Flood Prevention Act of 1954 (16 U.S.C. 1001 to 1008). Those acts, commonly referred to as Public Laws 534 and 566, respectively, authorize the Secretary of Agriculture to provide technical and direct financial assistance to State and local organizations in the planning and installation of watershed improvement projects to prevent floods; to reduce damage from floodwater, sediment, and erosion; and to conserve, develop, utilize, and dispose of water.

Construction of many projects under the two SCS watershed programs has been terminated¹ prior to completion or

¹When construction of a project has been unduly delayed because of improper actions or inactions by the sponsor, SCS places the project on an inactive list and terminates SCS assistance until the sponsor takes the action necessary to resume construction. As used throughout this report, the word "terminated" refers to projects that were on the inactive list as of June 30, 1969.

has been delayed for long periods. GAO made a survey to obtain information concerning the causes for the terminations and delays and to identify actions which could be taken by SCS to minimize them.

Although our survey was made primarily at SCS headquarters in Washington, D.C., we also visited the SCS State offices in Maryland and Virginia and one area office and one work unit office in Virginia. Our survey included discussions with SCS officials and reviews of pertinent laws, procedures, directives, and general project data. Because of the actions taken and proposed by SCS near the end of our survey, our examination of detailed records for specific projects was limited to one Public Law 534 subwatershed project and two Public Law 566 projects.

CHAPTER 2

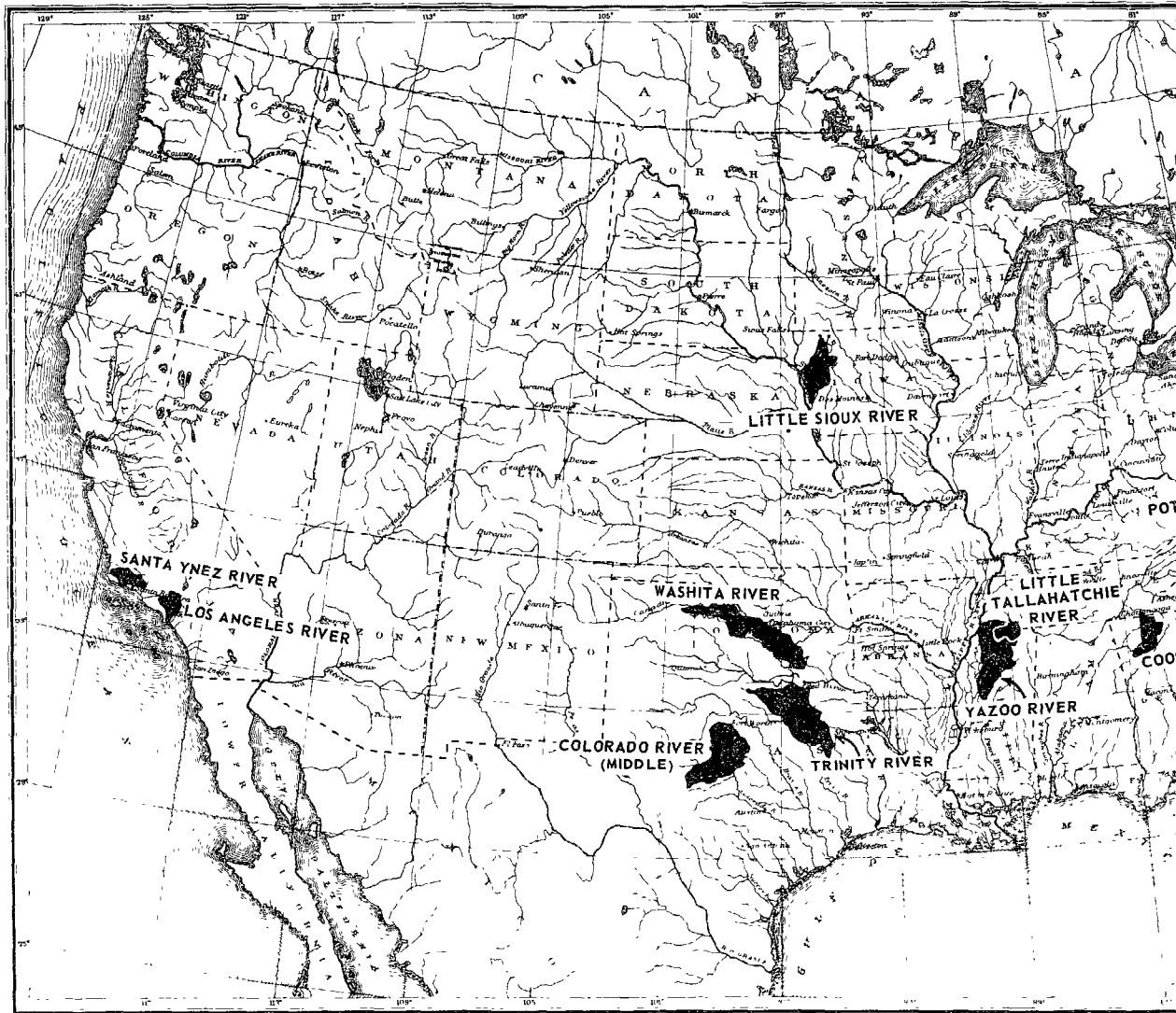
NATURE OF WATERSHED PROGRAMS AND HOW

PROJECTS ARE DEVELOPED

Section 13 of the Flood Control Act of 1944 (Pub. L. 534) designated 11 large watershed projects to be undertaken by the Department of Agriculture. Section 13 states, in part, that those 11 projects

"are hereby adopted and authorized in the interest of the national security and with a view toward an adequate reservoir of useful and worthy public works for the postwar construction program ***: Provided *** that when the existing critical situation with respect to materials, equipment, and manpower, no longer exists and in any event not later than immediately following the cessation of hostilities in the present war, the projects herein shall be initiated as expeditiously and prosecuted as vigorously as may be consistent with budgetary requirements ***."

The following map shows the names and locations of the 11 designated Public Law 534 projects.



9
BEST DOCUMENT AVAILABLE

100 200 300 Miles
0 100 200 300 Kilometers

The Watershed Protection and Flood Prevention Act of 1954 (Pub. L. 566) did not designate specific watershed projects but provided general open-end authority for Federal assistance in small-scale projects. Although Public Law 534 projects are much larger in size than Public Law 566 projects, Public Law 534 projects are divided into numerous sub-watershed projects which are comparable in size to Public Law 566 projects.

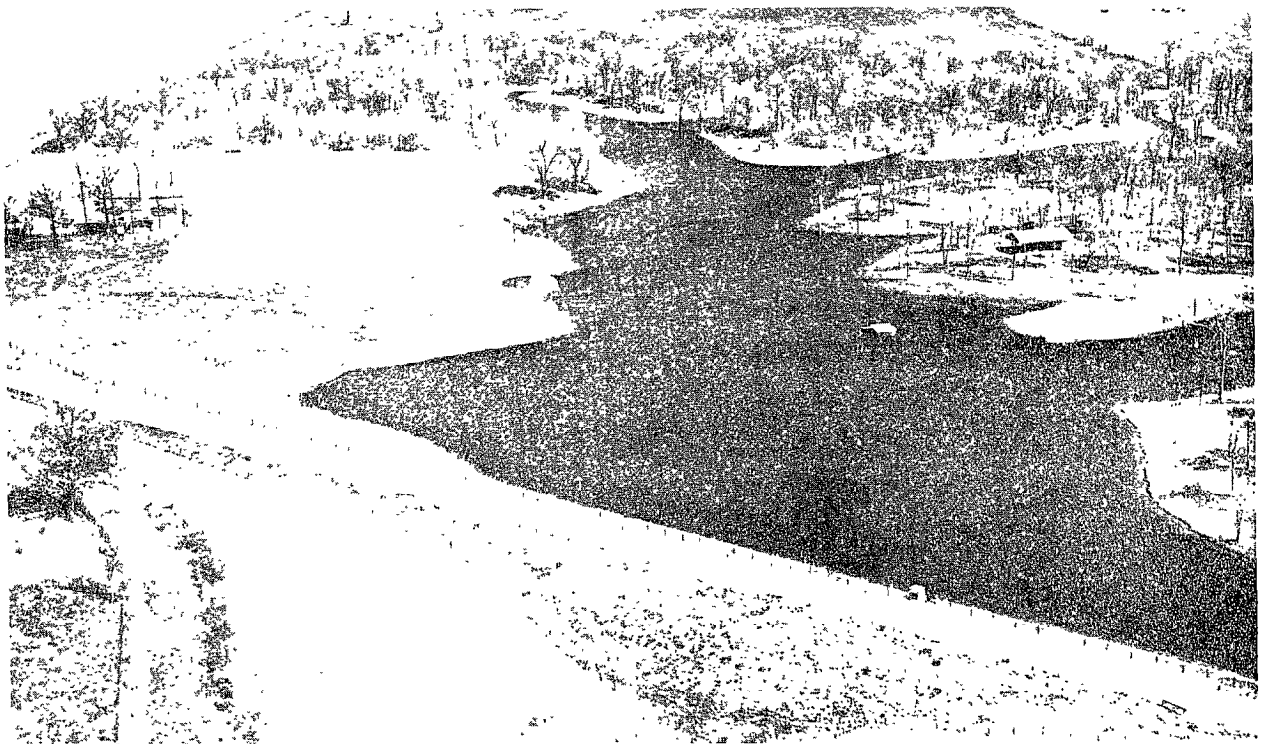
Public Law 534 and Public Law 566 projects usually are located in the upper reaches of rivers and their tributaries. Watershed improvements include such structures as dams, dikes, and levees and such numerous land treatment measures as seeding, contour farming, and irrigation. Some of the various watershed improvement structures and land treatment measures are illustrated in the following SCS photographs.



Swimming beach at earthfill dam in Middle-South Branch Forest River watershed project, Walsh County, North Dakota.



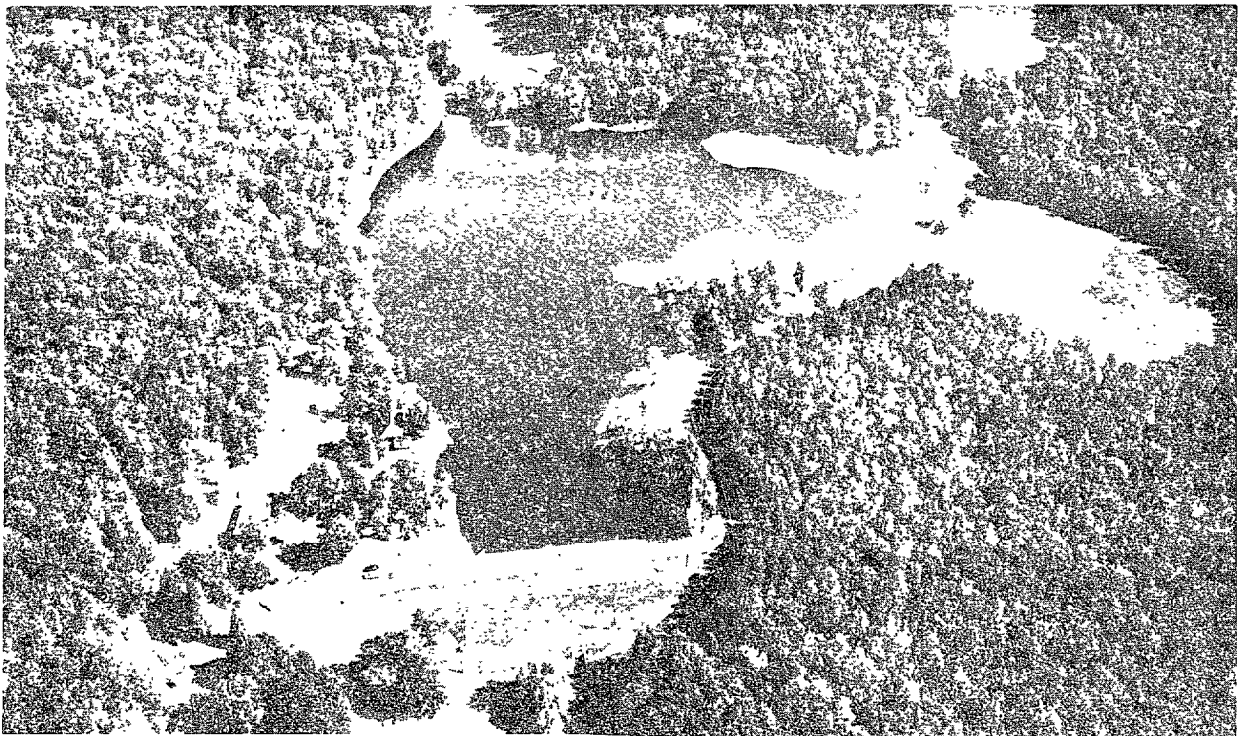
Earthfill dam, grassed waterways, terrace systems, contour farming, and roadside erosion control in the Swedeburg Watershed, Saunders County, Nebraska. Benefits include flood control, improved fish and wildlife habitat, and reduced soil erosion and siltation.



Earthfill dam in Old Tom Creek watershed project, Warren County, Illinois. Benefits include flood prevention, improved fish and wildlife habitat, and recreation.



Channel improvement in Waianae Iki watershed project, Oahu, Hawaii. Primary benefit is reduced flood damages.



Earthfill flood control and recreation dam in Spaulding Pond Brook watershed project. New London County, Connecticut.

Public Law 534 subwatershed projects and Public Law 566 projects are initiated and sponsored by local organizations representing the people living in the project areas. Local sponsoring organizations include conservancy districts, counties, or other local governmental bodies established under State laws to carry out soil and water conservation programs. Generally, the local sponsor or sponsors must obtain State approval of a proposed project prior to submitting an application to SCS for assistance.

Upon receipt of an application, SCS makes a preliminary investigation into the feasibility of the proposed project. If SCS determines that the proposed project is feasible, it will provide technical assistance in developing a detailed project plan. Detailed planning includes making estimates of the benefits and costs of the proposed project.

Watershed project benefits include reduced damages from flooding, sedimentation, and erosion; increased agricultural production; municipal water supply; and recreation. Public Law 566 provides that a proposed project not be eligible for Federal assistance unless the benefits to be derived from the project during its estimated useful life exceed the costs. Although there is no similar legal requirement for Public Law 534 projects, SCS policy requires that Public Law 534 subwatershed projects be justified in the same way.

The detailed project plan sets forth a description of the types of structures and improvements to be installed, their estimated benefits and costs, and the sequence in which they are to be installed. The plan sets forth also the responsibilities to be carried out by SCS and the project sponsors and must be signed by SCS and the sponsors prior to the beginning of project construction.

Under the law and SCS policy, the principal responsibilities of local sponsors, in addition to the responsibility of assisting in the planning of the project, are to

- acquire the land, easements, or rights-of-way needed for the project, generally at no cost to the Government,

--pay a share of the cost of installing watershed improvements, and

--maintain the project.

Project sponsors acquire the land, easements, or rights-of-way by donation from the landowner; by purchase from the landowner; or, if necessary and if the sponsor has the power of eminent domain, by condemnation. Public Law 534 provides that SCS may acquire, in the name of the United States, land needed for flood prevention features (as distinguished from such other features as recreation, agricultural irrigation, and municipal water supply) of the 11 designated projects. SCS officials advised us that it was not SCS policy to use such authority, primarily because of the extra administrative burden that would be placed on the Government as an owner of land within a project. There is no similar legal provision for Public Law 566 projects.

Principal responsibilities of SCS are to provide engineering services and construction contract administration assistance (if requested by the sponsor) and to pay the Federal share of the cost of installing watershed improvement structures and certain land treatment measures. Pursuant to the law, SCS is authorized to pay

--all engineering and construction costs applicable to the flood prevention features of a project,

--all engineering costs and a proportionate share¹ of the construction costs of any improvements for the purposes of conserving, developing, using, or disposing of water for agricultural purposes,

--all engineering costs and a proportionate share¹ of the construction costs of any improvements for public fish and wildlife or recreation development, and

¹Under discretionary authority granted in the law, SCS has determined that a proportionate share is up to 50 percent of the cost.

--in certain instances, up to 50 percent of the cost of land, easements, or rights-of-way and minimum basic facilities for public fish and wildlife or recreation development.

The costs incurred by SCS in providing project planning assistance prior to construction are not considered as part of project construction costs for the purpose of cost sharing. Generally, however, State and local funds are expended on project planning. On the average, State and local planning costs are equivalent to about two thirds of the Federal funds expended for planning.

Because the Federal share of construction costs depends upon the purposes to be served by the project, the amount of the Federal share varies from project to project. On the average, the Federal share has been equivalent to about 58 percent of the total cost of a Public Law 566 project, excluding planning costs. For Public Law 534 projects, SCS records do not show separate amounts for project construction costs and planning costs. On the average, the Federal share of construction cost and the Federal planning costs have been equivalent to about 51 percent of the total cost of a Public Law 534 project.

Under Public Law 566, if the estimated Federal share of the construction cost of a proposed project is \$250,000 or more or if any one structure will retard 2,500 to 4,000 acre-feet of water, the work plan must be approved by the agricultural committees of both the House and the Senate. If any one structure will retard more than 4,000 acre-feet of water, the work plan must be approved by both the House and Senate Committees on Public Works. Work plans for individual Public Law 534 subwatershed projects are not subject to congressional approval.

After the detailed project plan has been approved, construction of the project can begin, provided that sufficient Federal funds are available and the needed land, easements, or rights-of-way have been acquired by the sponsor. The law and related SCS policy require that Federal assistance not be provided for the construction of improvements until the needed land, easements, or rights-of-way either have been acquired by the sponsor or are being acquired under condemnation proceedings by the sponsor.

Under SCS procedures, however, large projects are usually broken down into construction units and work can proceed on a unit when the land, easements, or rights-of-way for that unit have been acquired. There is no legal requirement for the sponsor to assure SCS prior to or during the planning stage that the needed land, easements, or rights-of-way will be obtained.

Appropriations for fiscal years 1969-71 for the two watershed programs, which cover the Federal share of the direct costs of installing watershed improvements and SCS planning and other administrative costs, are shown below.

	<u>Fiscal year</u>		
	<u>1969</u>	<u>1970</u>	<u>1971</u>
	——(millions)——		
Flood prevention (covers planning and Federal share of installation cost of Public Law 534 projects)	\$19.9	\$20.7	\$ 20.7
Watershed works of improvement (covers Federal share of the installation cost of Public Law 566 projects)	57.9	66.3	76.0
Watershed planning (covers planning cost of Public Law 566 projects)	<u>6.4</u>	<u>6.8</u>	<u>6.1</u>
Total	<u>\$84.2</u>	<u>\$93.8</u>	<u>\$102.8</u>

SCS is headquartered in Washington, D.C., and has about 3,150 State, area, and work unit offices throughout the 50 States and in Puerto Rico and the Virgin Islands.

CHAPTER 3

CONSTRUCTION OF WATERSHED PROJECTS

TERMINATED OR DELAYED

BECAUSE OF LAND RIGHTS PROBLEMS

The major cause for numerous watershed projects being terminated prior to completion or their construction being delayed has been the failure or delay of project sponsors in acquiring the land, easements, or rights-of-way needed for their projects. SCS has recognized this fact as a major problem for several years.

Failures and delays in obtaining land, easements, or rights-of-way have resulted in (1) expenditure of Federal, State, and local funds for planning and installation costs on projects that may never be completed, (2) significant increases in project costs due to general rises in construction price levels, and (3) long delays in realizing benefits from projects that may eventually be completed. We did not make a detailed review to measure the total effect of the land rights¹ problem; however, information obtained in our survey showed that:

--At least 46 projects initiated under Public Law 566 had been terminated because the sponsors had not acquired the needed land rights. We estimate that SCS spent \$2.2 million for planning the 46 projects. SCS spent \$2.1 million additional on the 46 projects as the Federal share of engineering costs; land treatment costs; and, in three of the projects, construction costs for certain structural units where land rights were obtained.

--SCS estimated that the 46 terminated Public Law 566 projects, if completed, would result in total benefits of \$4.1 million a year. Watershed improvement

¹Hereinafter, the term "land rights" means the land, easements, or rights-of-way needed to complete watershed projects.

structures were installed in only three of the projects, and the estimated benefits applicable to those structures amounted to about \$30,800 a year.

--As of 1955 SCS-scheduled completion dates for the 11 major projects authorized by Public Law 534 ranged from 1960 to 1976. (See sch. on p. 25.) As of 1970, only one project was finished and SCS-rescheduled completion dates for the 10 other projects ranged from 1974 to 2021. SCS officials advised us that a major cause for the delays in completing these projects had been the failure of project sponsors to acquire land rights.

--According to SCS the estimated Federal share of construction costs alone for the Public Law 534 projects increased by about \$150 million from 1955 to 1970 because of general rises in construction price levels.

Although SCS guidelines and directives provided for a general evaluation, prior to planning, of the ability and willingness of the sponsor to carry out a project plan, SCS did not specifically require that a preplanning assessment be made of the sponsor's ability and willingness to acquire the needed land rights.

The land rights problems are discussed in detail in the following sections.

PUBLIC LAW 566 PROJECTS

The following tabulation shows the status at June 30, 1969, of all applications received by SCS for assistance in watershed protection and flood prevention projects under Public Law 566, as summarized from SCS records.

	<u>Projects</u>
Applications received	2,795
Applications pending action, dis- approved, or withdrawn	<u>-1,284</u>
Approved for planning	<u>1,511</u>
Suspended or terminated during planning stage	183
Still in planning stage	314
Pending final approval of completed plan	77
Terminated during installation stage	57
Still in installation stage	642
Installation completed	<u>238</u>
	<u>1,511</u>

SCS records show that, as of June 30, 1969, cumulative Federal obligations for Public Law 566 projects were about \$587 million, including about \$74 million for planning.

As shown above, 57 projects were terminated during the installation stage--after planning had been completed and approved. Information obtained from SCS headquarters showed that at least 46 of the 57 projects had been terminated because land rights had not been acquired.

SCS records do not show the amount of planning costs incurred for specific projects. On the basis of average planning costs for each project, we estimated that Federal funds of about \$2.2 million had been expended for planning the 46 projects that were subsequently terminated because land rights had not been acquired. In addition, SCS records show that Federal funds of about \$2.1 million were expended on the 46 projects for engineering designs; for accelerated

land treatment; and, in three of the projects, for construction of certain structural units where land rights were acquired.

We did not ascertain the amount of State and local funds expended on the 46 terminated projects. On the basis that State and local planning costs are generally equivalent to about two thirds of the Federal funds expended for planning, we estimate that State and local funds of about \$1.4 million were expended in planning the 46 projects. SCS records show that additional State and local funds of about \$7.4 million were expended on land rights, land treatment, construction contract administration, and construction prior to the termination of the 46 projects.

According to SCS estimates the planned watershed improvement structures in the 46 terminated projects would have resulted in benefits--in the form of reduced flood damages, increased agricultural productivity, water supply, and recreation--of \$4.1 million a year. But watershed structures were installed in certain areas within only three of the 46 projects before the projects were terminated. On the basis of SCS data for the three projects, we estimate that \$30,800 of the annual benefits are applicable to the completed structures.

We inquired into the extent to which the sponsors of the 46 projects had legal authority to acquire land rights by condemnation in the event that they could not persuade land owners to either donate or sell the land rights. Information obtained from SCS showed that the sponsors of eight of the 46 terminated projects did not have the power of eminent domain and that the sponsors of the remaining 38 projects had the power of eminent domain but either did not attempt or were unable to use it. We inquired into 10 of the 38 projects and were told by SCS State office representatives

--that the sponsors of six projects did not have legal authority to levy taxes to obtain funds needed for acquiring land rights and that the people living in the project areas were not willing to grant taxing authority to the sponsors and

--that the sponsors of four projects had taxing authority but that the people living in the project areas were not willing to approve tax levies to obtain funds to acquire land rights.

Our inquiry into 50 of 100 projects approved for planning during fiscal year 1969 showed that the sponsors in nearly all the 50 projects had the power of eminent domain. The information presented above regarding the 38 projects which were terminated even though the sponsors had the power of eminent domain indicates that SCS had no means of ensuring that sponsors would be willing and able to use such power.

The 46 projects discussed previously were specifically identified in SCS headquarters records as being terminated. Information obtained in our survey indicated that completion of certain projects that had not been identified as being terminated--we did not ascertain how many--had been delayed because the local sponsors had not acquired the land rights. To illustrate the type of problems involved, information relating to two such projects--the South Anna and the Little River watershed projects in Virginia--is presented below.

South Anna project

SCS authorized the South Anna project for planning assistance in November 1958. In April 1965 SCS and the sponsor had completed the planning and SCS authorized Federal cost sharing and technical assistance in installing the planned watershed improvements. The project was planned to provide watershed protection and flood prevention for 234,000 acres of land for 100 years. Total costs, excluding planning costs, were estimated at \$5,946,000, of which \$2,947,000 was estimated as the Federal share.

The South Anna project plan provided for constructing 59 structures, consisting of 26 floodwater-retarding structures, three multi-purpose reservoirs for flood prevention and municipal water supply, and 30 stream channel improvement structures. The planned structures were grouped into 12 construction units.

According to the plan the 12 units of the South Anna project were to be completed within 10 years, or by April 1975. As of January 1970 only one unit--consisting of one dam and some channel improvement work--had been substantially completed. Construction had not been started on the other 11 units because the land rights had not been acquired. SCS officials told us that the project sponsors were still making efforts to acquire land rights needed for those units.

On the basis of available data, we estimated that SCS incurred costs of about \$42,000 in planning the South Anna project. As of June 30, 1969, SCS had obligated \$419,650 additional for installation costs; thus the total Federal obligations for the project amounted to about \$461,650. SCS estimated that the benefits from the South Anna project would be about \$171,000 annually over the estimated 100-year life of the project, including about \$6,000 annually from the one construction unit that was substantially completed. Estimated benefits of about \$165,000 a year relate to the 11 construction units that are being delayed because land rights have not been acquired.

We reviewed the files of the SCS field offices involved in the South Anna project to ascertain what information SCS had, prior to planning, to indicate that the needed land rights would be obtained. The files indicated that SCS had received statements from the sponsors that there was considerable local interest in the project but did not indicate whether local sponsors had power of eminent domain. SCS field office representatives advised us that the sponsors did not have power of eminent domain and had attempted to acquire land rights by donation from the landowners.

Little River project

SCS authorized the Little River project for planning assistance in October 1959. In December 1961, after the planning was completed and approved, SCS authorized Federal cost sharing and technical assistance in installing the planned watershed improvements. The project was designed to provide watershed protection and flood prevention for 30,500 acres of land. Total cost of the project, excluding

planning costs, was estimated at \$959,000, of which \$361,000 was estimated as the Federal share.

The Little River project plan was for the construction of four earthfill dams to provide floodwater and sediment storage for the estimated 50-year life of the project. Also, stream channel improvements were planned. The planned improvements were grouped into four construction units, and each unit consisted of a dam and channel work below the dam. As provided in SCS regulations, Federal assistance for the construction of the improvements could not be provided for any part of a construction unit until the land rights were obtained for an entire unit.

According to the Little River project plan, all four construction units were to have been completed within 5 years, or by the end of December 1966. As of March 1970--more than 3 years after the estimated completion date--only one of the four construction units had been completed. Construction had not been started on the other three units because the sponsor had not secured the land rights. SCS officials advised us that the Little River project would probably be terminated.

On the basis of available data, we estimated that SCS had expended about \$45,000 to plan the Little River project. Also, SCS obligated about \$196,000 for installation costs (including preconstruction services and construction costs); thus the total Federal obligations for the project amounted to about \$241,000. As part of the basis for authorizing assistance for the project, SCS estimated that the total benefits of the project would be about \$21,400 a year over the 50-year life of the project, including about \$6,900 a year for the construction unit that was completed. The remaining estimated benefits--about \$14,500 a year--will probably never be realized.

SCS State officials responsible for the Little River project stated that the sponsor did not have the power of eminent domain and had attempted to acquire land rights by donation from the landowners. There was no indication in the field office files that any attempts had been made to acquire the power of eminent domain.

PUBLIC LAW 534 PROJECTS

As previously mentioned, section 13 of the Flood Control Act of 1944 authorized the Department of Agriculture to undertake flood control projects on 11 specific large watersheds. Originally the act limited the authorized flood control measures to land treatment measures designed to reduce water runoff and erosion and to slow down stream flow. The Federal cost for the 11 projects, including the Federal share of construction costs and Federal planning costs, was originally estimated at \$91 million.

Beginning in 1951 the annual appropriations acts authorized the inclusion of floodwater detention structures as part of the 11 projects. The Department of Agriculture and Farm Credit Administration Appropriations Act for fiscal year 1956 (33 U.S.C. 701f-3) provided permanent authority for such structures.

In 1955 SCS revised the cost estimates to include the estimated costs of the floodwater detention structures and to provide for general increases in construction price levels since the original estimates had been made in 1944. As a result, the estimated Federal cost for the projects was increased to \$288 million. As of 1955 SCS-scheduled completion dates for the 11 projects ranged from 1960 to 1976.

As of March 1970, only one of the 11 authorized projects had been completed and SCS-rescheduled completion dates for the 10 remaining projects ranged from 1974 to 2021. As of June 30, 1969, the total Federal obligations for the 11 projects, including Federal planning costs, amounted to about \$330 million.

As of March 1970, SCS estimated that the Federal cost of the 11 projects, including Federal planning costs, had increased from \$288 million (estimated in 1955) to about \$527 million. SCS estimated that \$150 million of the total increase after 1955 was due to construction price level increases. The March 1970 estimate was based on 1966 prices. SCS has observed that price levels in the 1966-70 period have increased even more sharply than during the 1955-66 period and that the 1970 increase alone was about 11 percent. Therefore, the increase in the estimated Federal cost due to

rises in construction price levels since 1955 is substantially greater than the \$150 million estimated by SCS.

The following table shows, for each of the 11 projects, the estimated Federal costs and completion date as of 1955 and the estimated percentage of completion, Federal costs, and completion date as of March 1970.

Projects	As estimated in 1955		As estimated in March 1970		
	Federal cost (millions)	Completion date	Percent complete	Federal cost (note a) (millions)	Completion date
Buffalo Creek, New York	\$ 4.7	1964	100	\$ 4.6	1964
Colorado (Middle) River, Texas	29.9	1968	59	41.9	1978
Coosa River, Georgia and Tennessee	8.1	1970	84	16.4	1974
Little Sioux River, Iowa	25.6	1976	51	40.2	2021
Little Tallahatchie River, Mississippi	14.3	1970	87	27.3	1975
Los Angeles River, California	19.4	1965	50	58.1	1991
Potomac River, Pennsylvania, Maryland, Virginia, and West Virginia	15.5	1976	61	37.9	1976
Santa Ynez River, California	3.8	1960	60	12.9	1981
Trinity River, Texas	80.1	1969	56	111.1	1980
Washita River, Oklahoma and Texas	47.6	1965	78	89.9	1975
Yazoo River, Mississippi	<u>39.3</u>	1970	<u>61</u>	<u>86.4</u>	1977
Total	<u>\$288.3</u>		<u>63</u>	<u>\$526.7</u>	

^aIncludes obligations to June 30, 1969 (total about \$330 million), and estimated costs to complete, based on 1966 prices.

SCS headquarters representatives advised us that the completion of the 10 remaining projects was being delayed primarily because of the failure of local sponsors to acquire land rights. They explained that the land rights for some of the unfinished portions of the 10 projects would be very difficult to obtain. These officials also stated that they had not made detailed assessments of the 10 projects to identify specifically what had been completed, what remained to be done, and the problems that barred completion.

Information obtained by us concerning the Potomac River project confirmed that the failure to acquire land rights was causing long delays in completing that project. The Potomac River project is divided into 27 subwatershed projects, including the South River project in Virginia. Planning for the South River project was completed prior to January 1955, when SCS authorized construction to begin. The project was to provide watershed protection and flood prevention for 156,700 acres during its estimated 50-year life. The total

cost was estimated at \$1.8 million, of which the Federal share was estimated at \$1.4 million.

The South River project plan originally provided for constructing 16 floodwater-retarding structures, all of which were to be completed by 1960. The plan was revised to provide for constructing two additional floodwater-retarding structures. As of January 1970, 10 of the originally planned structures and the two additional structures had been completed and two of the originally planned structures had been deleted from the plans.

Construction of the remaining four structures had not been started because the sponsors had not secured the land rights. SCS inspection reports state that these structures will probably never be built.

We noted that construction of several other subwatershed projects in the Potomac River project, such as New Creek-White's Run in West Virginia and Lower North River in Virginia, was being delayed because land rights had not been acquired.

The failure of local sponsors to acquire land rights for Public Law 534 projects has the same effects as previously described with respect to Public Law 566 projects. In addition to the significant cost increases being experienced, planning costs have been incurred for projects that might never be completed, the realization of projected benefits is being delayed, and, in some cases, projected benefits might never be realized. Regarding delays in realizing benefits, an SCS economist's evaluation of the Public Law 534 program several years ago pointed out that

- without adjustments for price changes or program modifications, it could be assumed that losses in benefits due to delays in project completion were probably equal to at least \$2 for every dollar not being spent on the projects and
- when increased prices and program modifications were considered, the dollar value of lost benefits was greatly increased for each year of delay in completing the projects.

ACTIONS TAKEN AND PLANNED TO
PROVIDE BETTER ASSURANCE THAT
LAND RIGHTS WILL BE OBTAINED

We informed SCS of the results of our survey by letter dated April 20, 1970, and requested SCS to advise us whether there were any actions that could be taken to provide assurance that construction of projects planned and approved will not be terminated or delayed because of the failure of project sponsors to acquire the needed land rights. We requested SCS to comment specifically on the feasibility of requiring project sponsors, as a condition for SCS approval of projects for planning, to

- have the legal authority (power of eminent domain) to acquire the needed land rights by condemnation,
- demonstrate that they have adequate financial resources to take the necessary actions, including condemnation, to acquire the needed land rights, and
- submit written statements that would commit them to take the necessary action, including condemnation, to acquire the needed land rights.

In its letter dated May 25, 1970 (see app. I), SCS agreed that difficulty in acquiring land rights was a major deterrent to steady progress in completing watershed projects and stated that it might be helpful to step up emphasis on

- appraising the authority and willingness of project sponsors to acquire land rights by condemnation,
- fully and correctly informing all concerned people of land rights requirements at each stage of project formulation,
- requiring SCS field offices to reemphasize the importance of providing guidance, assistance, and encouragement to project sponsors regarding land rights requirements and of scheduling regular and continuing follow-up on actions that sponsors must take and are taking to acquire the necessary land rights, and

--intensifying the training of employees who work with project sponsors in acquiring land rights.

SCS stated that the specific actions we had suggested were worthy of consideration but should not be rigidly applied because of the varied types of project sponsors and the differences in State laws under which the sponsors must operate. SCS stated also that a requirement that sponsors firmly commit themselves to using the power of eminent domain before they are thoroughly acquainted with the actual land rights involved could often jeopardize any possibility of initiating projects, particularly in economically depressed areas where a watershed project could be most beneficial.

Although SCS expressed the reservations described above, it issued a policy memorandum to its field offices dated May 22, 1970 (see app. II), reemphasizing the importance of having project sponsors with authority, financial resources, and willingness to acquire land rights. The memorandum stated that

- sponsors without the power of eminent domain should not be accepted unless the applicable State law precludes the sponsor from obtaining such authority prior to project planning,
- in those cases where State law precludes the sponsor from obtaining the right of eminent domain prior to planning, assurance must be obtained that the sponsor will acquire such authority as early as possible during the project planning stage,
- planning authorizations should not be requested by SCS field offices unless it has been judged that the sponsor is willing to proceed with condemnation, if necessary, and
- all requests from SCS field offices for planning authorizations are to contain a discussion of the sponsor's authority and willingness to use the right of eminent domain if necessary.

CONCLUSION

Under the law and SCS policy, SCS must rely upon project sponsors and local residents to acquire land rights for their projects. We believe that SCS should take all reasonable measures, as early as possible in the planning stages of proposed projects, to provide assurance that land rights will be acquired, by eminent domain if necessary. Such assurance would tend to

- avoid premature Federal involvement in watershed projects and reduce the extent to which the Government would incur planning and other costs on projects which may never be completed,
- avoid increased costs that result from rising construction price levels during periods of long delay, and
- speed up the realization of project benefits.

The actions taken and proposed by SCS should, if carried out by its field offices, provide greater assurance that construction of future Public Law 566 watershed projects and Public Law 534 subwatershed projects will not be terminated or delayed, because of land rights problems, after planning has been completed.

CHAPTER 4

MATTERS FOR CONSIDERATION BY THE CONGRESS

The primary purpose of this report is to inform the Congress of a significant problem in carrying out flood prevention and watershed improvement projects under Public Law 534 and Public Law 566 and of the actions taken and proposed by SCS in an effort to minimize the problem.

The Public Law 534 projects were specifically authorized by the Congress in 1944 in the interest of national security and with the intent that they be completed as quickly as possible. (See p. 8.) Although SCS is responsible for assisting local organizations in carrying out the projects, the rate of progress in, and assurance of, completing the projects depend greatly upon the initiative, interest, and capabilities of local sponsors and residents of the project areas.

As previously discussed, the completion of 10 Public Law 534 projects has been delayed for many years, and SCS officials advised us that some portions of those projects would be very difficult to complete because of problems in acquiring land rights. Also, SCS headquarters had not made detailed assessments of the 10 incomplete projects to identify specifically what had been completed, what remained to be done, and the problems that barred timely completion. (See p. 25.)

In view of the status of the 10 incomplete Public Law 534 projects and the apparent difficulties that have been and will be encountered in completing them, we believe that the Congress may wish to request SCS to examine into and report on

- the general nature and extent of flood control or other water and related land resource problems existing in the incomplete portions of the 10 projects and the types of benefits that can be obtained by completing the projects,

--the specific problems involved in completing the 10 projects under existing legislative and administrative policies and procedures, and

--the nature and extent of additional legislative authority or other actions needed to facilitate completion of the projects.

Information provided by such an SCS examination, together with the information in this report, would provide the Congress with a basis for evaluating the need for completing the incomplete portions of the 10 projects, the desired timeliness of completion, and the need for specific legislative actions to facilitate completion of the 10 projects.

Should the Congress determine that completion of the 10 projects or any portions thereof should be expedited, it may be necessary to modify the law to reduce the extent to which SCS must rely upon local sponsors and residents to initiate Public Law 534 subwatershed projects, to acquire the needed land rights, to share in project construction costs, and to maintain the projects. Any such modifications would more than likely increase the Federal share of the costs of the Public Law 534 projects.

Conversely, should the Congress determine that the incomplete portions of the 10 Public Law 534 projects should be given no further priority, a question arises as to whether the Public Law 534 program should be continued as a separate entity. As described on page 10, the basic difference between Public Law 534 and 566 programs is that Public Law 566 provides general open-end authority for Federal assistance in small-scale projects. Should the Public Law 534 program be discontinued, assistance could be provided under Public Law 566 for any areas within the 10 incomplete Public Law 534 projects for which land rights may be obtained.

- - - -

In January 1971 we provided a draft of this report to SCS to obtain its views on the "matters for consideration by the Congress" and to obtain any further comments on the report in addition to those made in its letter to us dated

May 25, 1970. (See pp. 27 and 28.) On January 19, 1971, we met with the SCS Deputy Administrator for Watersheds and other SCS officials who advised us that SCS did not object in concept to our matters for consideration by the Congress and that it had no comments to add to its letter of May 25, 1970.

During the meeting SCS officials pointed out that, under a provision in the Department of Agriculture and Related Agencies Appropriation Act for 1971, Public Law 91-566 enacted on December 22, 1970, SCS now had permanent authority to reimburse sponsors of Public Law 534 projects for a proportionate share of the cost of land rights needed for flood prevention features--the Federal Government's share to be determined by the Secretary of Agriculture giving consideration to the national interest. The officials stated that they could not yet predict what effect, if any, the new authority would have on completing the 10 incomplete Public Law 534 projects.

APPENDIXES

UNITED STATES DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Washington, D. C. 20250

MAY 25 1970

Mr. Victor Lowe
Associate Director, Civil Division
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Lowe:

This is in response to your letter of April 20, 1970, which includes some findings and suggestions for improving the watershed protection and flood prevention programs. We commend the survey team for accurately identifying one of the major deterrents to steady progress in watershed project construction and completion, i.e., the sponsors' difficulty in acquiring needed land rights.

For your convenience, we have first commented on the specific questions you list at the end of your report. Additional comments have been added as supplementary information.

SPONSORS' ABILITY TO ACQUIRE LAND RIGHTS

You asked if it would be feasible for SCS to require as a condition to providing planning assistance that sponsors:

- (a) have legal authority to acquire land rights by eminent domain;
- (b) demonstrate that they have financial resources needed to acquire land rights; and
- (c) submit written statements that would commit them to take necessary action including condemnation to acquire needed land rights.

These items are certainly worthy of consideration. In fact, SCS has gradually changed its policy to include them as the need became apparent. Experience has shown, however, that such requirements in preplanning stage should not all be rigidly applied nationwide because of the varied types of sponsors and differences in State laws under which these sponsors must operate.

Although much progress has been made in recent years to acquaint sponsors and the general public with the social and economic values of the Small Watershed Program in all parts of each State, there are still many sponsors dealing with their first project. In such cases, sponsors are usually quite apprehensive about using their authority to condemn their neighbor's land before they know more precisely what is involved. This problem is especially prevalent in the more economically depressed areas - the very areas where

APPENDIX I

Mr. Victor Lowe

the watershed program can be most beneficial. Often in these areas the residents' major possessions are their home and the land surrounding it. Any action which tends to threaten their right to these possessions is viewed with considerable anxiety. Therefore, to insist that sponsors firmly commit themselves to the use of condemnation authority in such areas before they are thoroughly acquainted with the actual land rights involved can often jeopardize any possibility of completing a watershed work plan. The sponsors are inclined to reject the entire program and deny themselves and their neighbors the one hope for overcoming their economic plight. They would rather accept conditions as they are than risk the possible loss of their home and land for some unknown or, in their estimation uncertain, promised benefits.

Having condemnation authority does not of itself guarantee that local sponsors will use this authority or that it necessarily speeds up project installation. This point is clearly indicated by the fact that condemnation authority was available prior to authorization of planning for 40 of the 57 inactive projects. Sponsors of at least 10 of these projects could not legally commit condemnation authority until a plan was completed and presented to the courts. Thus, it would be legally impossible to require such special purpose district sponsors to exhibit condemnation authority prior to authorization for planning. (See Legislative Examples in the Additional Comments section of this reply.) [See GAO note, p. 37.]

Other factors also significantly affect the sponsors' use of their authorities and the rate of project completion. In recent years the lack of FHA loan funds is delaying actions in obtaining the necessary land rights. In some cases, easements already acquired have expired because of lack of Federal construction funds.

There is no easy solution to this very complex problem. Thus for the reasons cited above, we feel that our policy regarding criteria for planning authorization should remain sufficiently flexible to permit continued work with individual sponsors within their particular authorities. Adopting too rigid requirements would deny PL-566 planning assistance to many qualified and capable sponsors of watershed projects because of lack of adequate condemnation authority at this stage in project development. (See "Policy Changes" and "Recent Emphasis by SCS" sections for further information.)

[See GAO note, p. 37.]

POSSIBLE ACTIONS BY SCS

You also asked if there may be any actions which SCS could take to assure that projects, once planned and approved for installation, will not be inactivated or extensively delayed because of local sponsors' failure to acquire needed land rights.

This is a Federally-assisted program based on local initiative and direction as contrasted to a Federally-controlled program. SCS can move only as fast

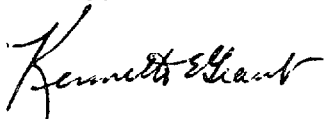
Mr. Victor Lowe

as local sponsors are able and willing to carry out their responsibilities. As indicated above, we feel SCS has gone about as far as it can within the limits of our authority and funding to counsel and encourage sponsors and yet not deny Federal assistance contemplated by the law. Nevertheless, in addition to actions already taken by SCS over the years, continued and stepped-up emphasis on the following items may be helpful:

1. Require State Conservationists to include in their request for planning authorization their appraisal of the sponsors' authority to obtain land rights by condemnation and their willingness to use such authority. (See attached Watershed Memorandum -105 issued as a result of recommendations and discussions with you.)
2. Direct State Conservationists to reemphasize our existing policies to see that all concerned people are fully and correctly informed about project needs, land rights requirements, and recommendations at each major decision point in project formulation.
3. Require State Conservationists to reemphasize the importance of providing SCS guidance, assistance, and encouragement to project sponsors regarding land rights requirements. This would include a review of responsibilities and work assigned to land rights specialists (or others assigned these duties) to make sure that they include a schedule for regular and continuing follow up on actions sponsors must take and are taking to acquire the necessary land rights.
4. Direct the State Conservationists to intensify efforts to properly train SCS personnel who must work with sponsors in acquiring land rights. Experience has shown that line officers - District Conservationists, Area Conservationists, and State Conservationists - must become personally involved and provide strong direct leadership.

We welcome any suggestions your staff may have and look forward to a continuing beneficial relationship as they proceed with their assignment.

Sincerely,



Administrator

Attachments: "Additional Comments" [See GAO notes.]
Watershed Memorandum - 105

GAO note: This attachment is not included in this report.

UNITED STATES DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Washington, D. C. 20250

May 22, 1970

WATERSHEDS MEMORANDUM-105

Re: Authority of Sponsors to Acquire Land Rights

This memorandum reemphasizes the importance of having sponsors of watershed projects with authority, financial resources, and willingness to acquire land rights necessary to install the projects. To date, more than 100 projects have been suspended or terminated during the planning phase and more than 50 have been declared inactive after being approved for operations. The General Accounting Office has called our attention to the fact that (1) lack of legal authority for sponsors to condemn land and (2) lack of sponsors' willingness to condemn may contribute to this inactivity.

Before submitting a request for planning authorization, state conservationists are to personally assure themselves that sponsors who will be expected to acquire land rights have the legal right of condemnation of land for the project purposes, or will acquire such authority through procedures established by state law at the earliest opportunity during the planning phase. Only in those cases where state law precludes the establishment of a proper organization until a plan for works of improvement is submitted to the courts should we accept sponsorship without right of eminent domain.

In addition to having the legal authority to acquire land by condemnation, if necessary, sponsors must also be willing to exercise this right. We recognize that an early discussion of condemnation may be distasteful to some organizations. Nevertheless, we believe state conservationists and their staffs can, in most instances, make a valid appraisal of the sponsors' willingness to condemn. Planning authorization should not be requested unless it has been judged that the sponsors are willing to proceed with condemnation if it is required for timely installation.

All requests for planning authorizations are to contain a discussion of the sponsors' legal right to acquire land, using right of eminent domain if necessary, and a narrative statement concerning the willingness of the sponsors to condemn. Fully describe those cases where legal authority cannot be obtained until a plan has been developed.

Kenneth E. Grant

STC
DIR
FWP
WO

PRINCIPAL OFFICIALS OF
THE DEPARTMENT OF AGRICULTURE
RESPONSIBLE FOR ADMINISTRATION OF ACTIVITIES
DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
<u>DEPARTMENT OF AGRICULTURE</u>		
SECRETARY OF AGRICULTURE:		
Orville L. Freeman	Jan. 1961	Jan. 1969
Clifford M. Hardin	Jan. 1969	Present
ASSISTANT SECRETARY, RURAL DEVELOPMENT AND CONSERVATION:		
John A. Baker	Aug. 1962	Jan. 1969
Thomas K. Cowden	May 1969	Present
<u>SOIL CONSERVATION SERVICE</u>		
ADMINISTRATOR:		
Donald A. Williams	Jan. 1953	Jan. 1969
Kenneth E. Grant	Jan. 1969	Present
DEPUTY ADMINISTRATOR FOR WATERSHEDS:		
Hollis R. Williams	Apr. 1959	Present