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WASHINGTON, D.C. 20548

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SEP 8 1976

The Honorable Alan Steelman  
House of Representatives

Dear Mr. Steelman:

In January 1976 you expressed concern about alleged damage being done to the Big Thicket National Preserve in eastern Texas and asked if anything could have been done by the National Park Service to help prevent additional damage. Accordingly, you asked us to review the Park Service activities relating to the acquisition and management of lands in the Preserve. Specifically, we were asked to determine:

- Whether there was a problem in the Preserve because of alleged damage being done by pine bark beetles, lumbering firms, or other land development activities.
- Whether Park Service Headquarters officials were fully aware of the extent of the problem.
- Whether the Park Service could legally take immediate action to stop the alleged destruction.
- The reasons why the Park Service failed to submit the Preserve land acquisition plan to the Congress by the October 11, 1975, statutory deadline.
- The status of the Preserve land acquisition program.

Our review disclosed that some landowners, including lumber firms, have damaged parts of the Preserve, and that, parts are endangered primarily by continued timber harvesting, oil and mineral exploration, and pine beetle control operations. The project office manager, who is in charge of land acquisition at the Preserve, said that he is attempting to acquire the endangered areas as soon as possible.

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A Park Service Headquarters' official told us that they became aware of the damage being done to the Preserve in early 1975.

To prevent damage to the Preserve, the Federal Government would have to obtain title to the land by using either a declaration of taking or legislative taking.

We believe that the Park Service tried to provide the Big Thicket land acquisition plan to the Congress within the 1-year statutory deadline; however, unforeseen delays in obtaining approval from the Office of Management and Budget, and the need to revise the original plan to include more details resulted in its submission being about five months late. In view of the statutory deadline, we believe the Park Service should have informed the Congress that the plan would be delayed as well as the reasons for the delay and of the expected date of its submission.

The land acquisition progress for each of the 12 units of the Preserve as of June 30, 1976, is shown in the Enclosure.

As your office directed, we did not obtain formal written comments from Department of the Interior officials; however, we did discuss most of the matters presented in the report with them and have included their views and comments where appropriate.

#### BACKGROUND

The Big Thicket National Preserve was authorized by 16 U.S.C. 698 on October 11, 1974, to assure the preservation, conservation, and protection of a significant portion of the Big Thicket area in eastern Texas. The act directed the Secretary of the Interior to substantially complete the land acquisition for the Preserve within 6 years after its enactment at a cost not to exceed \$63,812,000.

The Preserve, as planned, will include about 84,550 acres in 12 distinct land areas dispersed throughout 7 counties. (The 12 areas and the approximate acreage of each are listed in the Enclosure.) Six major timber companies owned approximately 55,700 acres of the land to be included in the Preserve and between 2,300 and 2,500 individual landowners owned the remaining 28,850 acres.

During fiscal year 1975 the Park Service reprogrammed \$200,000 from other areas of the National Park System to provide start-up money for the land acquisition program at Big Thicket. On December 23, 1975, the Congress appropriated \$2,000,000 for fiscal year 1976 and \$1,121,000 for the transition period (July 1, 1976, through September 30, 1976). The Second Supplemental Appropriations Act of 1976, enacted on June 1, 1976, provided an additional \$3.8 million for the Preserve. The Department of the Interior budget request for fiscal year 1977, submitted to the Congress, included \$9.3 million for the Preserve.

During our review we held discussions with representatives of the National Park Service, U.S. Corps of Engineers, U.S. Forest Service, Texas Forest Service, various conservation groups such as the Big Thicket Association, and officials from several lumber companies operating within the geographic area of the Preserve. We reviewed the legislative history of the act establishing the Preserve and legislation and Federal regulations concerning Government land acquisition procedures. We also reviewed Park Service policies, procedures, and priorities relating to the acquisition and management of the land included in the Preserve. We toured parts of the Preserve to view the damaged and endangered areas.

Following are our comments regarding the damaged areas of the Preserve, adequacy of Park Service actions in controlling the damage, alternatives available to the Park Service to prevent additional damage, and acquisition of land for the Preserve.

#### DAMAGED AREAS OF THE PRESERVE

According to the information we obtained from the Park Service and the Big Thicket Association, as of June 30, 1976, an estimated 1,976 acres, or 2.3 percent of the 84,550 acres in the Preserve, had been damaged since the boundaries were identified on March 17, 1975. The following table shows the probable reasons and the number of acres damaged.

<u>Reason for damage</u>	<u>Number of acres</u>
Pine beetle control operations	939
Timber harvesting	423
Residential development	269
Mineral exploration	16
Reasons not available	<u>329</u>
Total	<u>1,976</u>

Damage to Preserve caused by  
pine beetle control operations

On January 9, 1975, aerial observations by one lumber company disclosed a sizeable pine beetle infestation in the Beech Creek Unit of the Preserve. Shortly thereafter, the lumber company contacted the Park Service at Beaumont, Texas, and requested recommendations on how to control the outbreak. The Preserve superintendent informed us that this was his first notification of the pine beetle problem in the Beech Creek Unit. The Park Service requested and received information on the available methods of pine beetle control from the U.S. Forest Service.

In early February 1975 Park Service officials toured the Beech Creek Unit with representatives from the U.S. Forest Service, Texas Forest Service, and the lumber company to assess the situation and discuss possible solutions. On February 21, 1975, the Preserve superintendent answered a request from the lumber company for recommendations on how to control the beetles. The superintendent stated that the Park Service did not own the land, had no funds to acquire the land, and could only relate its preferences as to how the situation should be handled. He advised the lumber company that he could not recommend the cut and leave method to control the beetles because the U.S. Forest Service did not accept it, and he strongly opposed using the chemical insecticide Lindane because of its possible adverse effect on the environment. He stated that the cut and salvage method appeared to be an acceptable solution; however, the aesthetic and environmental impact on surrounding vegetation would be of concern if this method were used.

In March 1975 a Texas Forest Service official told the lumber company that he hoped the Park Service response would permit the company to attack the pine beetle infestation in the Beech Creek Unit as aggressively as it would in areas outside the proposed Preserve. He further mentioned that to cut and salvage the timber was the only realistic alternative. Based on these recommendations, the lumber company salvaged 266 acres of timber between April and September 1975.

On September 26, 1975, the Texas Forest Service informed the lumber company that the pine beetle problem had completely gotten out of hand. In accordance with the Texas Forest Pest Control Act of 1963, Texas Forest Service inspectors were assigned to the area to insure the prompt salvage of as many infested trees as possible and to determine the priority of areas to be cut, the most efficient way to remove infested trees, and the designation of high-activity areas needing immediate attention.

From October 1975 through January 1976, the lumber company substantially increased its salvage operations. The Texas Forest Service inspectors initially reported some areas where control operations were either not implemented or where they failed to stop the pine beetles. However, the inspections continued and on January 16, 1976, the inspectors reported that all major pine beetle activity on the lumber company's land in the Beech Creek Unit had been controlled.

On July 26, 1976, the superintendent told us that the pine beetle infestation problem was still a concern. For example, as of that date, 7 of the 12 units in the Preserve had pine beetle activity to some extent. The most serious infestation appeared to be in the Loblolly Unit where approximately 30 to 50 acres were infested. The Texas Forest Service is closely monitoring this unit; however, as of the above date, no action has been taken to control the infestation.

Damage caused by  
timber harvesting

The Preserve superintendent said that in about 1967 the major lumber companies established a voluntary cutting moratorium on the timber lands in the area of the proposed Preserve; and for the most part, these lumber companies have continued to observe the moratorium. However, many individual landowners and small lumbering firms operating within the proposed Preserve boundaries never agreed to or observed the moratorium and most of the damage caused by timber harvesting has been on lands owned by these individuals.

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As of June 30, 1976, an estimated 423 acres of the Preserve had been harvested since the Preserve boundaries were established in March 1975. Those landowners and lumber companies not complying with the self-imposed cutting moratorium harvested 373 of the 423 acres, with the remaining 50 acres being cut by mistake by one of the major lumbering companies. According to the Preserve superintendent, the company thought the 50 acres were outside the Preserve boundaries.

Damage caused by residential development

As of June 30, 1976, an estimated 269 acres of Preserve lands had been damaged since March 17, 1975, due to land clearance and roadbed improvements for residential development.

Most of the damage occurred in the Hickory Creek Savannah Unit where one landowner ignored appeals from the Park Service and the Big Thicket Association to cease his residential development operations. As of July 26, 1976, the Preserve project office was acquiring the land through condemnation with the use of a declaration of taking in order to prevent further damage.

Damage caused by oil and mineral exploration

As of June 30, 1976, about 16 acres in the Lance Rosier Unit and a small number of acres in the Turkey Creek Unit had been damaged since March 17, 1975, due to oil exploration by private landowners.

The October 11, 1974, act stated that the Secretary of the Interior could not acquire the mineral rights on Preserve lands unless the property was threatened with uses which were detrimental to the purposes and the objectives of the act. Therefore, even though the Federal Government may acquire title to the land, the previous landowner is permitted to explore for minerals and extract them from Preserve lands subject to Park Service rules and regulations.

As of July 26, 1976, we were told that no additional damage occurred to the Preserve due to such activities; however, based on the above provisions, exploration for oil and other minerals may continue on Preserve lands.

ADEQUACY OF PARK SERVICE ACTIONS IN  
CONTROLLING DAMAGE AND ALTERNATIVES  
TO PREVENT ADDITIONAL DAMAGE TO  
PRESERVE LANDS

In accordance with your request, we determined whether the Park Service could have taken any action to help prevent damage to the land at the Preserve.

Two alternatives, "legislative taking" and declaration of taking, were available to the Park Service to prevent any damage to the Preserve. However, in both instances, title to the property would have had to pass to the Federal Government and certain legal and/or monetary considerations were necessary.

Legislative taking

The Federal Government can acquire property through enactment of specific legislation which provides that title to the property is transferred to the Government on the date specified in the act. (See, for example, 16 U.S.C. 79c.)

The legislative history of the October 11, 1974, act creating the Preserve shows that H.R. 11546, 93d Congress, as reported by the House Committee on Interior and Insular Affairs, provided for legislative taking at the Preserve. However, the Senate Committee on Interior and Insular Affairs (S. Rep. No. 93-875, 93d Cong.) deleted the provision in favor of the normal acquisition policy which the House later agreed to. The Senate Committee stated in its report that it believed legislative taking was an extraordinary measure which should be used only in those instances where the qualities which render an area suitable for national park status are imminently threatened with destruction. During hearings the Senate Committee was told that the lumber companies in the area would continue the cutting moratorium. Therefore, the Committee apparently did not feel that the Big Thicket area was threatened. The Senate Committee added that the Secretary of the Interior was authorized to file a declaration of taking should any particular area within the Preserve be threatened.

Declaration of taking

The Federal Government can acquire property by filing a petition for a declaration of taking in the appropriate U.S. District Court. A declaration of taking requires completion of most land acquisition procedures, such as boundary surveys, preparation of ownership maps and legal descriptions, appraisals, and title searches. In addition, the agency must have negotiated with the landowner and concluded that a final settlement cannot be reached.

When a declaration of taking petition is filed in court, title passes to the Government and the Federal agency must deposit with the court a sum of money equal to the appraised value of the property. Interest at the annual rate of 6 percent will be paid to the landowner on the portion of the award exceeding the original deposit.

The legislative history of the act indicated that the Congress, in deleting the legislative taking provision from H.R. 11546, was aware of the potential threat posed by lumbering on Preserve lands. The Senate Interior and Insular Affairs Committee report stated:

"The Committee was assured during the hearings on this legislation that those timber companies with holdings in the area will, in good faith, continue the moratorium once specific boundaries are designated.

"The Secretary of the Interior is authorized to file a declaration of taking in the usual manner however, should any particular area within this Preserve be threatened. The Committee feels that this is adequate for protection and will provide suitable flexibility for the orderly and prompt acquisition and establishment of the Big Thicket National Preserve. The Committee has always cooperated when any request for a declaration of taking has been requested."

When reviewing an April 1975 memorandum of agreement between the Park Service and the U.S. Corps of Engineers, which was acting as the Preserve's land acquisition project office, we noted that the Park Service had restricted the Corps' use of the declaration of taking provision. In part the memorandum stated that:



"In accordance with the mandate of Senate Report No. 1597, 90th Congress, all condemnation actions shall be by complaint only, except to enforce accepted offers or to clear title to land covered by accepted offers."

On March 11, 1976, however, the Acting Secretary of the Interior requested permission from the House and Senate Committees on Interior and Insular Affairs to use declarations of taking at the Preserve when the Park Service feels it is necessary to vest title in the land in the United States. On April 30, 1976, the Chairman of the House Committee on Interior and Insular Affairs advised the Secretary of the Interior that the Department could file declarations of taking but it must first notify the Committee in writing of the land proposed for declaration of taking and justify the use of the procedure. If the Committee has no objection within 10 days after receipt of the notification, the Department may proceed to formalize the declaration of taking. As of July 30, 1976, the Senate Committee on Interior and Insular Affairs had not given the Department blanket permission to use declarations of taking at the Preserve. The Department had requested the Senate Committee's approval for using a declaration of taking for one parcel of land as of June 30, 1976, and the Senate Committee approved the request.

Effects of Government taking  
of Preserve land

The project office manager informed us in March 1976 that both declaration of taking and legislative taking can have adverse economic effects on landowners and local government authorities in the Big Thicket area. Although both methods transfer title to the Government and prevent or reduce environmental damage to Preserve lands, they also stop tax payments by existing landowners, reduce the tax revenue of local government authorities, and, if the Park Service chooses, restrict the use of the land as a source of income. However, these would also occur if the Government acquired the land by negotiation. In addition, the project office manager told us that under legislative taking, some landowners might not be compensated until several years after the Government acquired title to their property.

Adequacy of actions taken  
by Park Service to  
prevent damage

Park Service officials could only rely on general persuasion to have the landowners preserve the land in its natural state, as legally they had no authority to stop adverse activities within the Preserve. In this regard, a Park Service Headquarters' official said that in retrospect, the Park Service might have taken a more vocal stand in persuading the landowners not to harvest the trees or otherwise develop the land and to accept its concept of land management.

REASONS FOR DELAY IN SUBMITTING LAND  
ACQUISITION PLAN TO THE CONGRESS

The October 11, 1974, act authorizing the Big Thicket National Preserve required the Secretary of the Interior to publish a detailed description of the Preserve boundaries in the Federal Register by April 11, 1975, and to submit a detailed land acquisition plan to the Committees on Interior and Insular Affairs and the Committees on Appropriations of the Congress by October 11, 1975. The plan was to indicate the:

- Land areas selected for inclusion in the Preserve.
- Lands previously acquired for the Preserve by purchase, donation, exchange, or transfer.
- Annual acquisition program for the following 5 fiscal years.

The Park Service published the boundary descriptions showing the land areas selected for inclusion in the Preserve in the Federal Register on March 17, 1975. The project office forwarded the information necessary to prepare the rest of the Preserve land acquisition plan to the Park Service Headquarters on September 18, 1975. The plan was then submitted to the Office of Management and Budget for review on October 29, 1975. However, an Office of Management and Budget official told us that the plan was not reviewed immediately because the staff was working on the fiscal year 1977 budget which had a higher priority.

On January 12, 1976, the Office of Management and Budget informed the Department that the plan had to be revised because it lacked sufficient details. The Big Thicket plan was revised and resubmitted to the Office of Management and Budget on February 13, 1976. On February 25, 1976, the Office of Management and Budget informed the Department that the plan was adequate for submission to the Congress, and it was submitted on March 11, 1976.

STATUS OF LAND ACQUISITION  
AT JUNE 30, 1976

As of June 30, 1976, boundary line surveys had been completed on 6 of the 12 units, mapping and legal descriptions had been completed on 4 units, and appraisals had been completed on 2 units. Also as of that date, the Park Service had identified about 4,036 acres as being endangered of being cut or otherwise damaged, and planned to give priority to acquiring this land.

The project office manager told us that, based on the amount of appropriations received to date and those expected for fiscal year 1977, he believes there will be sufficient funds to purchase all presently endangered lands.

The acquisition progress for each of the 12 units of the Preserve as of June 30, 1976, is shown in the Enclosure.

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As agreed with your office, we plan to send copies of the report to the Director of the Office of Management and Budget, the Secretary of the Interior, the Director of the Park Service, and Representative Olin Teague who requested a copy.

If we can be of further assistance in this matter, please let us know.

Sincerely yours,

ACTING

  
Comptroller General  
of the United States

Enclosure

STATUS OF LAND ACQUISITION AT JUNE 30, 1976,

BIG THICKET NATIONAL PRESERVE

<u>Unit</u>	<u>Total acres</u>	<u>Boundary surveys completed (percent)</u>	<u>Mapping and legal descriptions completed (percent)</u>	<u>Appraisals</u>		<u>Negotiations underway</u>	<u>Land acquired</u>	
				<u>Ordered</u>	<u>Completed</u>		<u>Acres</u>	<u>Cost</u>
				acres				
Hickory Creek	668	100	100	668	668	668	100	\$ 90,750
Beech Creek	4,856	100	100	4,856	4,856	4,846	305	163,750
Big Sandy Creek	14,300	100	100	14,300	1,690	1,493	665	354,715
Lance Rosier	25,024	100	45	2,446	1,447	1,447	230	148,000
Turkey Creek	7,800	100	90	-	-	-	-	-
Loblolly	550	100	100	550	-	-	-	-
Jack Gore	13,300	45	-	-	-	-	-	-
Beaumont	6,218	50	-	135	-	-	-	-
Lower Neeches	2,600	10	-	-	-	-	-	-
Upper Neeches	3,775	10	-	-	-	-	-	-
Menard Creek	3,359	10	15	882	-	-	-	-
Pine Island	<u>2,100</u>	<u>40</u>	<u>5</u>	<u>463</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>Total</b>	<u>84,550</u>	<u>76</u>	<u>46</u>	<u>24,300</u>	<u>8,661</u>	<u>8,454</u>	<u>1,300</u>	<u>\$757,215</u>

ENCLOSURE I

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