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Your Land and Public Reservoir Development

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Indiana dam and reservoir projects may contain over 100,000 acres of land by 1970. This acreage will come primarily from privately owned land. Your community or your farm may be in the path of one of these large reservoir developments.

Here is information that will help you answer questions on your legal rights as a landowner, the public's right to take land, the steps involved in land procurement, and the measures taken by the government to insure fair payment for property taken.

Reservoir Developments in Indiana

Q. Has land acquisition for large reservoir projects been increasing in Indiana?

A. Yes. Public land acquisition has been on the increase because of the demands of a growing population for improved water facilities. Indiana has few natural lakes and, in parts of the state, an inadequate water supply. Citizens in many communities are promoting projects that will solve local problems of flood control, water storage and navigation; and for water recreation.

Q. Have any large projects been completed in Indiana?

A. Yes. Since 1950, six large reservoirs have been completed or are under construction. These projects required approximately 70,400 acres of land. Here is the "box score" to date with approximate acreage required for each -

Completed

1. Cagles Mill 7,300 acres
2. Mansfield 5,100 acres

Under Construction

3. Monroe 22,000 acres
4. Salamonie 13,000 acres
5. Mississincwa 14,000 acres
6. Huntington 9,000 acres

Q. Are any other large reservoirs proposed?

A. Yes. At least six more large dam and reservoir projects are either authorized or under study. These include:

- Brookville - Sugar Creek
- Wildcat Creek - Mucatatuck River
- Big Pine Creek - Patoka River

These projects may take another 50-60 thousand acres, and more projects will undoubtedly be proposed in the future.

Q. What government agencies are involved in the large reservoir projects in Indiana?

A. The U.S. Army Corps of Engineers (Louisville District) and the Indiana Flood Control and Water Resources Commission are partners in the large flood control and reservoir developments.

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We are indebted to the following who offered information and reviewed this publication: Fred Morgan, Chief, Real Estate Division, U. S. Army Corps of Engineers, Louisville; and Indiana Flood Control and Water Resources Commission's Office, Indianapolis.
The land acquisition procedure followed by the Corps and the problems involved with the projects they supervise are outlined in this publication. 1/

Q. How are large reservoir projects started?

A. The initial promotion is usually done by local community and special interest groups. These people inform public officials of their desires and plans for improvement projects. Congressional action is needed to authorize feasibility studies on the large dams and reservoirs. Benefit-cost ratios are determined after the project is thoroughly studied. Following approval by state and local officials, congress may vote money for actual construction. Benefits must be greater than cost if the project is ever to be considered for final fund appropriation by Congress. This process of study, approval or rejection may take ten years or more.

Q. How will a new dam and reservoir affect your community?

A. Past experience has shown the entire economic life of nearby communities gets a boost from the new facilities and the alleviation of flooding. The larger the man-made lake, the more impact it will have. Water recreation attracts people to the area and often expands business opportunities. Land values probably will rise, particularly land near the new lake, and new people will move into the area.

But a dam and reservoir upsets the established patterns of land use in the area and call for many adjustments. Where such a project is imminent, there is a need for community wide planning to guide and make the most of the area's development.

Q. What are the chances your land will be needed for future reservoir projects?

A. Parcels of land owned by several hundred people will be affected. In fiscal year 1962 the Army Corps of Engineers acquired 2,600 tracts in Indiana and Kentucky, and in the same year 25,168 tracts were purchased in the United States by this one agency.

Land in the areas where reservoirs are already authorized or under study has a good chance of being taken in the next few years as well as other land along rivers and streams that have a history of flooding.

Q. Will more land be taken along the Ohio River in the near future?

A. Yes. The new high lift dams on the Ohio River will flood additional land and new public access sites will be purchased for water recreation. Land acquisition procedure is about the same as for reservoirs within the state.

1/ Agencies working on smaller projects include the Soil Conservation Service through its small watershed program under Federal Public Law 566; the State Department of Conservation; the U. S. Forest Service and some cities and towns. Land acquisition procedure varies with the regulations of each agency or municipality.
Public and Private Land Rights

Q. What right has the government to take land?

A. The government holds ultimate authority over all property through the exercise of eminent domain. This power is held by state and federal government but can be delegated to public and private corporations. The land taken must be used for a "public purpose" and just compensation paid to the land owners.

Once a reservoir project is started it is unlikely a property owner can successfully prevent the government from taking his land. He must show that the officials involved acted in an "arbitrary or capricious manner" in taking the property. This is very difficult to prove.

Q. What are a property owner's legal rights in land acquisition for reservoirs?

A. Should your land be taken, you are guaranteed "fair and adequate compensation" by law. The Corps of Engineers is extremely careful to see that payment covers the true value of the property. But you can negotiate over the payment and go to court if you are not satisfied with the final offer.

Q. Can the property owner take part in planning the reservoir project?

A. Yes. Individuals have the right to express their views about the location of the structure and the facilities to be built on it.

You may prefer to act jointly with other landowners to see that the opinions of your group are heard. Your suggestions are as much a part of the necessary planning information as are the views and wishes of the water-using public.

The best time to make suggestions is in the early planning stages, for once construction starts it is too late. At the start one has only a vague idea of the land that will be purchased. The agency must withhold information until they have made thorough studies and have determined exactly what land will be flooded. Changes in plans may be needed.

If landowners wish to assure themselves that the completed facility to be constructed will be compatible with their community, a committee of informed citizens should work continuously with the Corps of Engineers.

Determination of Land Needed

Q. How much land is acquired for a large dam and reservoir?

A. Land in the project area is used for many things: the dam site itself, the reservoir area, sites for public access to the water, boat ramps, vehicle parking, picnic areas.

The outer boundaries of land purchased for the reservoir are 300 feet measured horizontally from the water's edge of the maximum flood pool level or approximately 5 feet "freeboard" measured vertically, whichever is greater.
Q. Is all the land needed for the project actually purchased by the Corps of Engineers?

A. No. Although the Corps will acquire fee title to the land permanently flooded, it may choose to obtain flowage easements on land in the upper parts of the watershed, because some land may be flooded only part of the time. About 15 per cent of the land acquired for past reservoir projects has been acquired through easements.

Generally, land purchase starts at the dam site and proceeds upstream because of the longer time required to build the dam.

Q. How does the planning agency determine whose land is needed?

A. Engineers map the exact boundaries of the project area. A legal description of each tract of land included in the map is written by an independent firm. Then a land title and abstract company investigates the ownership of these tracts and checks the title to each parcel from county records.

Owners are listed, and the initial contacts are made to advise the owner of the location and amount of land required for project purposes, the interest to be acquired and the procedures for purchase and payment. On land purchased for reservoir sites the Corps also acquires the oil, gas and mineral rights.

Q. Who owns the frontage on the new reservoir?

A. The public. Property owners are not allowed to retain private access to the lake. The government controls access to prevent undesirable use of the lake front and to keep the facilities open to all citizens.

Determining Fair Payment

Q. What are the guarantees of fair payment to the land owner?

A. "Just compensation" must be paid for the taking of private property according to law. Just compensation is defined as "the highest price in terms of money which a property will bring if exposed for sale on the open market in reasonable time to find a purchaser who is fully aware of all potential property uses for which it is adapted, provided neither buyer nor seller act under compulsion." The market value of property is estimated with the help of a detailed appraisal.

Q. How is the property appraised?

A. Appraisals are made by a professional Corps of Engineers staff appraiser or a private appraiser under contract with the Corps. These men must be familiar with property values in the area and must check comparable sales in the last five years. Local sales are investigated, and the property is examined. Sales made under peculiar circumstances (like forced sales) are not used for comparison purposes.

After these preliminary steps, property owners in the project area are contacted by the appraiser. The owner is invited to accompany the appraiser during his inspection to point out anything bearing on property values. A detailed appraisal form is completed that includes complete physical data and photographs of buildings. Payments for "sentimental attachment" are not included.
If the entire farm or property is to be taken the fair market value of the whole is calculated. In cases of partial takings, the value of the part taken and additional severance damages are calculated.

Q. How is payment for a partial taking estimated?

A. In determining just compensation for a partial taking, the "before" and "after" appraisal methods are used. The "before" method estimates the market value of the entire property before the taking. The "after" method estimates the market value of the remainder after the taking. When the "after" appraisal indicates that market value of the remainder has been diminished as a result of the taking, the loss in value of the remainder is included in the just compensation as severance damage.

In all cases the first appraisal is reviewed by another appraiser who also visits the property and makes his own independent estimates. The two appraisal figures must agree closely. If the property is valued at $50,000 or more, two first appraisals are often made.

Q. What are "severance damages" and how are they estimated?

A. Severance damage is any loss in value of remaining property of an owner caused by the taking of part of his real estate. Severance damage is not a part of the value of the land to be taken—it is a measure of reduction in value as a result of a partial taking of real property.

These damages result when a partial taking lowers the highest and best use or otherwise limits the use of the remainder. Severance damage is not assumed merely because of partial taking, but must be fully supported by the facts in each case.

Severance payments are made for such things as:

(a) The cost of building new fences.
(b) Loss of convenient access to remaining land. Where access is completely cut off the entire property may be purchased, or the landowner reimbursed so he can buy access right-of-way; or a new road may be built to the isolated tract.
(c) Proximity damages—where the value of buildings would be lowered because of their nearness to the project.
(d) Water supply or drainage interference.
(e) Reduction in highest and best use of remainder.
(f) Resulting insufficiency of the remainder to support normal typical operation.
(g) Distortion in plottage or shape which handicaps use or salability.
(h) Leaving a remainder with buildings surplus to needs for normal operation.

Q. What is the next step following the appraisals?

A. The Corps obtains an option on the property to prevent its sale to someone else. A negotiator visits the owner to acquaint him with all the facts connected with acquisition and to negotiate a purchase. The option includes the entire agreement as to price to be paid, date of possession, reservation of buildings and other items pertinent to the transaction.
The appraisal figure is used as a basis for negotiation, and an offer is made by the buyer. After giving the owner time to consider the offer, the buyer may need to return and negotiate a second time. In most cases agreement on payment is reached and title passes to the government.

Q. Suppose the owner refuses to sell or the two parties cannot agree on a fair price?

A. The owner can refuse offers made by the negotiator and demand that compensation be determined by court condemnation proceedings.

In practice there are three situations where condemnation may be used:

(a) The owner refuses to negotiate on the property;
(b) Disagreement on price to be paid;
(c) The property title is not clear or property is held by an estate or trust. Many times the court is asked to determine just compensation in these instances.

Q. How is condemnation action carried out?

A. The local U.S. attorney files a complaint in the U.S. District Court and a declaration of taking signed by the Secretary of Army along with a check for the appraised value of the property. The judge transfers title to the government and gives the owner notice to vacate the property at a specified time. The owner can usually withdraw a substantial amount of funds on deposit, since he may need to purchase other property during litigation.

Court action is considered fair and final as both parties have a chance to present evidence of value. Any offers made during prior bargaining are not binding in the event of condemnation.

Q. How frequently is condemnation used?

A. Every effort is made to avoid court action. In the last few years less than 10 percent of all land purchase cases were brought to court because of disagreement on price and another 4 percent for some other reason.

Special Provisions to Help the Property Owner

Q. Can the owner keep his buildings and move them to a new location?

A. Yes. The government does not usually need buildings. The owner may reserve the buildings by paying their salvage value, and this amount is deducted from his total land payment. The owner must then move the buildings by a specified date. Buildings not reserved by the land owner are sold to the highest bidder.

Q. Must the owner move off the property immediately after it is acquired by the government?

A. No. Owners and tenants are usually permitted to stay on the premises until they are needed for project purposes. Furthermore, the government can not take possession until arrangements are made for payment. Continued occupancy over several months would require renting the
property from the government. Growing crops can often be harvested and kept by the landowner.

Q. Will the government help pay relocating costs?

A. Yes. Most resettlement costs are reimbursed by the Corps of Engineers. The owner or tenants should keep a record of all moving costs and other expenses involved in locating and moving to another place and submit a bill within one year from the time of sale.

Q. Must the property owner pay taxes on money received for property purchased by the Corps of Engineers?

A. Federal Income Taxes

Amounts received as a result of condemnation proceedings or the threat thereof need to be divided into two parts: payment for property taken and payment for severance damages, as they are treated differently for federal income tax purposes.

The part of the award that represents property payment is treated the same as any other sale of property except that the taxpayer is not required to report the gain if the total proceeds are reinvested in similar property within one year from the close of the year of the sale.

Amounts received as severance damages to the remaining property need not be reported as taxable income unless the amount received exceeds the value of the remaining property.

State Income Taxes

Income received by reason of condemnation or in contemplation of such action is taxed unless such income is used to obtain property of a similar kind, or used to repair damages, within a two year period.

Special Provisions for Public Property

Q. How does the government handle the problem of relocating villages or towns that would be flooded?

A. It depends on whether or not the village is incorporated and on the wishes of its citizens. An unincorporated village has no "public property or public works" that the government would be required to replace. But if the inhabitants decide to relocate as a body, they can get some assistance and should discuss their problems with Corps representatives. Available assistance can be determined after construction funds are appropriated.

An incorporated town does have public works that the government would replace if the citizens decide to set up a new town on another site. Examples of public works that would be relocated at government expense are streets and roads, water lines, sewers, public utilities and public buildings.

Q. What happens to public facilities such as schools and roads that are affected by the reservoir project but not located in towns?

A. Whenever a public facility like a school is taken over, and there is a continuing need for the service provided, a plan is worked out to relocate the facility on a new site. Roads that are disrupted may have to be rerouted around the reservoir, or bridges may have to be built over the water impoundment. Plans are worked out between the local governing group and the government agency for new transportation routes.

Q. What is done with churches and cemeteries that would be flooded?

A. The government deals with church officials in the same manner as with an individual property owner.

Cemeteries are relocated at government expense. A reinterment site is selected in
consultation with the cemetery association trustees or the next of kin. A contract is then awarded to a private firm for reinterment in a new site that has facilities equal to or better than the old site. If desired, remains can be taken to any other location by the relatives with the costs paid up to an amount specified in the interment contract. The next of kin may have to pay for the new lot and part of relocation costs.

Q. What procedure is used with commercial and industrial concerns?

A. The same procedure is followed as previously outlined for individual property owners. Claims for loss of good will, business potential and sentimental attachment are not included in determining payment.

Q. Where can property owners get information and help with problems of land acquisition?

A. The Army Corps of Engineers sets up a real estate field office in a city near the project area where affected property owners can get assistance through consultation with office personnel. This office handles all details of acquiring project land.

The Army Corps of Engineers main office for Indiana is in Louisville, Kentucky. The Indiana Flood Control and Water Resources Commission, also involved in planning large dam and reservoir projects, is housed in the State Office Building in Indianapolis.

Reference Sources


2. Your Land and Indiana Highways, Wallace, Sargent and Atkinson, Mimeo to be published.

3. Brochures giving advance information on each reservoir project and a mimeo on land acquisition procedure on projects under construction are available from: U. S. Army Engineer District Office, 830 West Broadway, Louisville, Kentucky.

4. Landowner's Rights and the Right-of-Way, Tax and Legislative Department, Indiana Farm Bureau, Indianapolis.

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6. Watershed Water, Extension Circular 510, Purdue University.

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