

PSOC (28 Nov 78)

SUBJECT: Skagit Levee and Channel Improvement Project - Responsibility for Interior Drainage and Exterior Flooding

TO Proj Mgr, Skagit

FROM Ofc of Counsel

DATE 18 Dec 78 CMT 2
Knowlton/lm/373

1. 33 U.S.C. 702c provides that "No liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood water at any place . . ."
2. You suggest that the construction of dikes along some reaches of the Skagit could result in (1) increased impoundment of surface waters behind the dikes which might otherwise run into the river by reason of the obstruction created by the dike, and (2) an increase of flood water on the other side of the river across from the diked area which during a flood stage might not have otherwise occurred.
3. Under the statute cited it is our opinion that liability on the United States would not be created by condition #2.
4. However, the excess impoundment of surface waters that would have drained into the river except for the constructing of the dike might establish liability on the part of the local cooperating agency unless otherwise accomodated by engineering techniques such as pumping, culverts with flutter valves, or possibly the acquisition of a flowage easement on the uplands that may be so adversely effected.

JAMES F. WALSH
District Counsel

CF:
Real Estate Div
Plng Br/Reg Plng
Cook

RB
Bert
file OFFICE

OP

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P 002352

DISPOSITION FORM

For use of this form, see AR 340-15, the proponent agency is TAGCEN.

REFERENCE OR OFFICE SYMBOL

NPSEN-DB

SUBJECT

Skagit Levee and Channel Improvement Project -
Responsibility for Interior Drainage and Exterior
Flooding

TO OFC of Counsel

FROM Proj Mgr, Skagit

DATE 28 Nov 78

CMT 1

Cook/sd/3455 3450

1. The purpose of this DF is to seek your concurrence with our understanding of the responsibility for interior drainage and exterior flooding on Skagit River, Washington (levee and channel improvements). Confirmation is necessary so we can be specific in public brochures, public meetings, and coordination with local sponsor. This matter was discussed among Messrs. Charles Knowlton, Forest Brooks and I in early November 1978.

2. The two types of flooding considered are:

a. Interior drainage causing flooding landward of the levee (due to rain-fall, snowmelt, springs, underseepage or seepage through the levees from the river) because escape to river is blocked due to project. ?

b. Exterior flooding caused riverward of levees, downstream of levees or upstream of levees, due to project.

3. The Skagit River Levee and Channel Improvement Project is in the third year of advance engineering and design studies, and we are preparing a General Design Memorandum and Environmental Impact Statement. The alternative that will probably be selected as the recommended plan involves improving the levee system in the Skagit River downstream of Mount Vernon to provide protection from the 50-year Skagit flood, and improving the levees at Mount Vernon and Burlington to provide 100-year protection to the urban areas. In general, the plan involves locating the improved levees on the same alignment as the existing levees. In a few cases new levees will be constructed where none exists now. Where the improved levee is on the same alignment as the existing levee, the interior drainage pattern will not be significantly affected by the levee improvement, and lands that currently are flooded by interior drainage will continue to be flooded in the future. This flooding is not expected to cause significant damages. We will not require the local sponsor to obtain estate for these pondage areas because the project does not affect them significantly. For those areas where a levee will be built where none exists today, the existing interior drainage pattern will be interrupted and flooding caused where water would normally run off under existing conditions. At these locations, we will construct pumping plants or require the local sponsor to obtain estates to flood these new ponding areas.

4. After we raise and improve the existing levee system from Burlington to the mouth, the water surface elevation for a given flood event will be higher than without the improved levee system. Thus, for a given discharge, the water will be deeper on lands riverward of the existing levee system and on lands across the river from the improved levee. The amount of increase can vary depending on the configuration and height selected for the improved levee system.

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DA FORM 2496
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REPLACES DD FORM 96, WHICH IS OBSOLETE.

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5. We are proceeding based upon guidance from regulations and our earlier discussions with Mr. Knowlton that:

a. Project-caused interior ponding must be resolved by pumping to previous levels of inundation, or obtaining an estate from property owners for ponding. who?

b. Project-caused raises in water surfaces during floodflows between levees, opposite levees, or upstream from the levees do not involve Corps of Engineers or local liability and, therefore, estate for this increased flooding will not be obtained.

6. Your early action on this matter is requested as we are completing cost estimates, public brochures, and guidance to local interests. The next public meeting where this will be discussed is the week of 18 December 1978. If you have other questions on this matter, please contact me, extension 3455.



VERNON E. COOK

cc:

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