

But to interfere with the use of private property to the extent of preventing its development requires some basis in law, supported by convincing proof that public values are threatened. In all candor, both the record of this protracted case and the visible conditions of the area involved persuaded me that a return to the departmental position of blanket opposition to the permit would constitute arbitrary and capricious action.

Few decisions that reach the secretarial level of our Department are easy ones, with a clear preponderance of merit and rectitude on one side. The case at hand was no exception to the general rule, as evidenced by the amount of controversy it generated before and after the permit was issued. I am here today explaining the process by which a decision was reached and to accept the responsibility for that decision. I am hopeful that this committee will be persuaded that we acted carefully and in good faith, mindful of our responsibilities to the public interest.

Mr. BLACK. I was brought into this controversy for the first time really in April, I believe—early in the second week of April 1968, when I heard for the first time of a dispute with respect to the issuance of the permit by the Corps of Engineers for the Hunting Creek fill which is being considered.

My recollection is that I first heard in a rather informal manner within the Department, perhaps from Secretary Cain's office, perhaps from the Secretary's office, that the matter was in some ferment. And subsequently, perhaps the same day or the next day, I received a call from General Woodbury to the effect that he would like to have a definitive departmental position on this controversy, that the permit had been before the corps for a considerable period of time, and that he had had informal indications of change of position by subordinates of the Secretary, and in the Fish and Wildlife Service, or rather, I think, he referred specifically to Secretary Cain.

Mr. Moss. Do you recall the date of the telephone call from General Woodbury?

Mr. BLACK. I do not. I have not made a record of these calls. I would suspect that it was probably along about the 10th or the 11th, in that area, assuming that does not fall on a weekend. And he referred to the memorandum of understanding, with which we had had rather limited experience at this time, and suggested that it would be appropriate to get a firm departmental position to operate within the framework of that. And I agreed that I would look into the matter.

I was not sufficiently familiar with the merits of the controversy at that time to make any comment to General Woodbury, as I recall, nor did he indicate any strong feeling one way or the other, except that the applicants were interested in proceeding, and that he did not know where the Department stood.

So this is the best way I can reconstruct how it came to my attention.

So I gathered the file together and began to review the rather voluminous history of this matter. I made myself aware of correspondence in very strong terms from you and from Mr. Reuss, vigorously opposing the permit.

I was aware of a history from the very beginning of positions taken and changed for one reason or another, beginning back with the April 8, 1964, original statement from the Bureau's regional office, and then a few days later, after a letter from Washington, that position was changed and communicated to the corps, and then we come down to October 10, and there was another change. And it was, frankly, a rather checkered history. And I determined at this point that this had to be decided on its merits. And I put aside considerations of positions