

PERMIT FOR LANDFILL IN HUNTING CREEK, VA.

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HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES NINETIETH CONGRESS SECOND SESSION

JUNE 24, JULY 8, AND 9, 1968

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PERMIT FOR LANDFILL IN HUNTING CREEK, VA.

MONDAY, JUNE 24, 1968

HOUSE OF REPRESENTATIVES,
NATURAL RESOURCES AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 2203, Rayburn House Office Building, Hon. Robert E. Jones (chairman of the subcommittee) presiding.

Subcommittee members present: Representatives Jones, Roush, Moss, Vander Jagt, Gude, and McCloskey.

Subcommittee staff present: Phineas Indritz, chief counsel, Laurence Davis, assistant counsel, and J. P. Carlson, minority counsel, Committee on Government Operations.

Other members of Committee on Government Operations present: Representative Henry S. Reuss.

Mr. JONES. The subcommittee will come to order.

The purpose of these hearings is to investigate the circumstances in which the Corps of Engineers issued a permit to Howard P. Hoffman Associates, Inc., on May 29, 1968, to fill in a portion of Hunting Creek just south of Alexandria, Va.

Hunting Creek is a small bay on the westerly shore of the Potomac estuary, subject to the ebb and flow of the tides. It is navigable water of the United States, and as such can legally be obstructed or filled only under a permit issued by the Secretary of the Army, acting through the Corps of Engineers.

In 1963, Howard P. Hoffman Associates, Inc., and Hunting Towers Operating Co., Inc., who have property bordering the Hunting Creek Bay, filed two applications with the Corps of Engineers to bulkhead and fill two adjacent wedge-shaped areas in the bay, each containing about 18 acres, and stretching over 2,000 feet across the bay almost to the Virginia-Maryland line on the Potomac. In March 1964, the Virginia Legislature authorized the Governor to convey to the applicants the State's rights to the creekbed in the areas applied for, but the Governor, according to my understanding, has not made that conveyance.

The Fish and Wildlife Coordination Act (16 U.S.C. 662) requires the Corps of Engineers, before issuing any permit to fill in navigable water of the United States, to consult with the U.S. Fish and Wildlife Service, and with the appropriate State wildlife agency, and to consider their views of the impact upon wildlife.

The Corps of Engineers did consult with the U.S. Fish and Wildlife Service. Pursuant to such consultation, the Service's Bureau of Sport Fisheries and Wildlife objected to the applications on the ground that

important waterfowl area and a proposed national park area. Yet the Corps of Engineers was advertising in advance that it intended largely to ignore the public interest, in violation of its own regulations.

The final granting of the permit, on May 29, 1968, was foreshadowed by the Corps of Engineers' action on March 24, 1964: If the main inquiry was whether the fill would hurt navigation, and the fill would obviously not hurt navigation, why bother about the public interest when there is a chance to let some land speculator unjustly enrich himself at the public's expense by upgrading the value of his land from \$1,700 an acre to \$145,000 an acre?

2. Fish and Wildlife Service objects.—The Fish and Wildlife Service has a record as glorious in the Hunting Creek case, as the record of the Corps of Engineers, and of various high functionaries in the Department of Interior is squalid. The Fish and Wildlife Service objected to the proposed fill the moment the Fish and Wildlife Service heard of the proposed fill in late 1963. The Corps of Engineers, all innocence, wrote the Fish and Wildlife Service on May 20, 1964, asking for detailed data concerning the effects upon wildlife in the waters of Hunting Creek of the proposed fill. Walter A. Gresh, Regional Director, Fish and Wildlife Service, Bureau of Sport Fisheries and Wildlife, Atlanta, Ga., let the Corps of Engineers have it in his June 17, 1964, letter, parts of which follow:

"Waters in the mouth of Hunting Creek east of George Washington Memorial Parkway are generally shallow and average 2 to 3 feet deep. Although these waters are fresh, they exhibit tidal influence of about 2½ feet. This area is bordered on the north and south by National Park Service lands (Jones Point and Dyke Marsh) and urban development and on the west by a highway causeway. The shallow waters in the mouth of Hunting Creek are generally turbid and thereby limit the growth of aquatic vegetation. A combination of soft bottom and high fertility provides excellent habitat for native mollusks, Japanese snail, midge larvae, and killifish. The great volume of food these species provide attracts numbers of gulls, terns, and diving ducks, primarily ruddy duck, greater and lesser scaup, ring-necked duck, canvasback, and bufflehead. Approximately 3,000 to 5,000 scaup and ruddy ducks overwinter in the general area.

"Counts by ornithologists and qualified observers show the 5-year average overwintering waterfowl population to be:

"Ruddy duck, 4,000.

"Scaup, 2,000 to 3,000.

"Ring-necked duck, 300 to 400.

"Black duck, 200.

"Canvasback, 100 (occasionally 1,500).

"Mallard, 80.

"Bufflehead, 50.

"Pintail, 50.

"The diversity of wetland habitat provided by Dyke Marsh and Hunting Creek has been historically an attraction to a variety of waterfowl. These areas were formerly heavily utilized by duck hunters but are now closed to hunting by the city of Alexandria and the National Park Service. At present, they are heavily utilized by naturalists and other persons interested in studying or observing the natural flora and fauna of the region. Every species of waterfowl normally occurring along the Atlantic Seaboard, with the exception of American scooters and eiders, has been recorded in the vicinity. Bellehaven picnic grounds at the north end of Dyke Marsh and Jones Point afford the principal means of access for the general public to observe these resources. The esthetic appeal and value of these pursuits are largely intangible and cannot be evaluated in monetary terms.

"For many decades, urban, municipal, and industrial developments have gradually reduced natural wetland habitat in the vicinity of metropolitan Washington, D.C., until at present Dyke Marsh and Hunting Creek constitute two of the better remaining areas. The construction proposed in the subject permit application will further encroach on these remnant wetland habitats. About 35 acres of productive creek bottoms will be filled and permanently lost as waterfowl feeding and resting areas, which, by virtue of location, produce a significant esthetic resource. The obstruction resulting from bulkheading and filling will alter natural silting processes at the mouth of Hunting Creek and may accelerate the formation of mud flats thus further reducing valuable habitat. Ensuing development on the proposed fills will constitute a disturbance factor which will adversely affect waterfowl and shore bird utilization in the general area and seriously obstruct public observation and enjoyment from the National Park Service's access area at Jones Point.

"We conclude that the ecological factors of shallow productive waters, adjacent marshes, and abundant food supply combine to make Hunting Creek an attractive area for waterfowl and other water-oriented wildlife. The combination of available wildlife and public access provides an opportunity for the observation, study, and enjoyment of aquatic life in the immediate vicinity of our Nation's Capital. Therefore, the Bureau feels that every effort should be made to protect these esthetically valuable resources."

To the Fish and Wildlife Service's letter was attached a well-documented report by Francis M. Uhler, biologist, Patuxent Wildlife Research Center, Federal Bureau of Sport Fisheries and Wildlife, who has been studying waterfowl in the Hunting Creek Estuary for 40 years:

"Because of the importance as a diving duck feeding ground of this shallow, open water section in the embayment at the mouth of Big Hunting Creek, every effort should be made to protect this feeding area against destruction by either filling or dredging. These shallow open waters, together with adjacent marshes, compose an unsurpassed opportunity for conservation, enjoyment, and study of aquatic life in the vicinity of our Nation's Capital."

3. *National Park Service objects.*—The National Park Service also protested the proposed fill. The Park Service is now developing the 50-acre tract at Jones Point into a recreational park. Plans for the park include a nature walk along the estuary. If the Hunting Creek fill is permitted, and the proposed high rise apartments built, the principal outlook for this walk would be toward a line of apartment houses. In addition, an unattractive, stagnant backwater would be created between the fill and Jones Point.

4. *The permits are refused.*—Congressmen Moss, Saylor, and Reuss, apprised of the proposed fill in the summer of 1964, vigorously protested to both the Corps of Engineers and the Department of the Interior. The protest of the Fish and Wildlife Service, the National Park Service, and the Congressmen appears to have been effective, for on December 9, 1964, the Corps of Engineers wrote the Congressmen informing them that it was taking no further action to approve the requested permits.

5. *The Cain switch of October 10, 1967.*—The application then rested for almost 3 years. In August–September, 1967, the applicants suddenly began aggressive activities to revive the permit applications. Out of the blue, Assistant Secretary of the Interior for Fish and Wildlife and Parks Stanley A. Cain on October 10, 1967, wrote Colonel Frank W. Rhea, District Engineer, U.S. Army Corps of Engineers District, Baltimore. Assistant Secretary Cain's letter stated that:

"In response to public notices dated March 24, 1964, NABOP-P (Hunting Towers Operating Co., Inc.), and NABOP-P (Hoffman, Howard P., Association, Inc.), the National Park Service and the Bureau of Sport Fisheries and Wildlife advised the Corps of Engineers of their opposition to the granting of the requested permits on the grounds that the construction of the proposed bulkhead and fill would adversely affect fish and wildlife, park and recreation values in the area, and might adversely affect the riparian rights of the United States as owner of the area in Alexandria, Va., known as Jones Point. Revised applications filed in July, 1964, which reduced the area of the proposed fill were reviewed by the same two bureaus of this Department and were opposed on the same basis as the original applications.

"However, since that time we have reconsidered our interests in this matter. In the light of existing conditions in the area, we have concluded that the granting of the applications would not significantly affect recreation or conservation values in the Hunting Creek area. Accordingly, we withdraw the objections interposed to the granting of the permits in accordance with the revised applications."

Assistant Secretary Cain's letter is, to say the least, disingenuous. Its second paragraph three times talks about "we" having changed our requirements about Hunting Creek, and "we" finding that the proposed fill won't hurt conservation values. This clearly implies that the "we" includes the National Park Service and the Bureau of Sport Fisheries and Wildlife. The fact is just to the contrary: both the National Park Service and the Bureau of Sport Fisheries and Wildlife, to their eternal credit, stuck to their guns.

Congress had made it crystal clear that it wanted the judgment as to whether a proposed fill affects wildlife to be made not by political functionaries such as Assistant Secretary Cain, but by the career men of the U.S. Fish and Wildlife Service. Thus, the Fish and Wildlife Coordination Act of 1958 (16 U.S.C. 662(a)) provides that:

"Whenever the waters of any stream * * * are proposed or authorized to be * * * modified for any purpose whatever * * * by any public or private agency under Federal permit or license, such department or agency first shall consult with the U.S. Fish and Wildlife Service, Department of the Interior * * * with a view to the conservation of wildlife resources by preventing loss of and damage to such resources * * *"

The Cain-Corps of Engineers' correspondence is a square violation of the Coordination Act. Congress wanted the Corps of Engineers to consult with the non-political career people of the Fish and Wildlife Service. Instead, the Corps consulted with Assistant Secretary Cain. Mr. Cain, Assistant Secretary for Fish and Wildlife and Parks, proceeded to sell them both down the river—in this case the Potomac—when he erroneously reported that "we" did not oppose the Hunting Creek fill application.

6. *The Congressmen again protest.*—Assistant Secretary Cain, despite the record of the protest by Congressmen Moss, Saylor, and Reuss, against the fill, did nothing to inform the Congressmen of his October 10, 1967, change of heart. This, incidentally, is one of the many things we hope this subcommittee will ask Assistant Secretary Cain to explain. He was invited to be present and testify at the hearings today, but we understand he told the staff investigator he would be out of the country in Japan. We urge that he be promptly called to testify.

The three Congressmen concerned got wind of Assistant Secretary Cain's action some weeks later. On November 16, 1967, Congressman Moss wrote Assistant Secretary Cain, asking whether the Department of the Interior was, in fact, flippopping. On November 24, 1967, Assistant Secretary Cain replied to Congressman Moss:

"This responds to your letter of November 16 concerning the withdrawal of this Department's objections to the proposed fill and bulkhead in the mouth of Hunting Creek in the city of Alexandria, Va.

"While it is true that this Department interposed objections to both the original applications and the revised applications, the conservation values which would have been affected were relatively minimal. I understand that objections on conservation grounds were filed, nevertheless, in support of opposition to the proposed development from other governmental sources. However, much of the opposition has been withdrawn and it seems to us to be the sensible course of action to withdraw our objection to the revised applications, since it was made primarily in support of those who, in part at least, have now changed their minds."

This letter of Assistant Secretary Cain's so shocked Congressman Moss that Congressman Moss wrote Assistant Secretary Cain back on January 3, 1968:

"In all candor, sir, I must confess that I find your letter totally unresponsive to the questions contained in my communication to you.

"I assume the original action of opposition was based on careful studies of the effect upon wildlife (I was not aware that recreation fell within your purview in the Department). If my initial premise is correct, then certainly there must be some sort of study upon which you based your subsequent action. Or is it your intention to tell me that you made 'a judgment' without any additional studies by the experts of the Fish and Wildlife Service?"

To this Assistant Secretary Cain replied to Congressman Moss on January 11, 1968:

"In reply to your letter of January 3, I can tell you that I did make a judgment without any additional studies of the fish and wildlife values at the site."

Congressman Reuss, who heard of the reversal by Mr. Cain in early December 1967, wrote to the Secretary of Interior on December 8, 1967. Reuss' letter referred to the proposed fill as "outrageous":

"Three days ago I was called by an officer of the Corps of Engineers who informed me that the Interior Department's objections had been withdrawn and the corps was considering issuance of the permit sought by Howard P. Hoffman Associates, Inc., possibly without any public hearings. I was surprised, since I had heard nothing from the Department about a change of position, and incredulous since the reasons for opposing the fill are as valid now as ever.

"Subsequently I obtained a copy of a November 24, 1967, letter to Congressman John Moss from Assistant Secretary of Fish and Wildlife and Parks, Stanley A. Cain, who stated that 'I understand that (Interior Department) objections on conservation grounds were filed * * * in support of opposition to the proposed development from other governmental sources. However, much of the opposition has been withdrawn and it seems to us to be the sensible course of action to with-

draw our objection to the revised applications, since it was made primarily in support of those who, in part at least, have now changed their minds.'

"This surely is one of the lamest justifications for governmental action I have encountered. As Congressman Moss and I observed in a joint statement yesterday, it is 'a virtual admission by the Department that it took a position involving its statutory duties without independently determining the validity and soundness of this position. This is an abdication of agency responsibility.'

"It is difficult to see how your Assistant Secretary for Fish, Wildlife, and Parks could permit a project which is so destructive of both wildlife and park values.

"I hope you will study this matter and affirm the position which has given the Department of the Interior such distinction under your administration that no private interest—whether the rapacious would-be developers of the Merrywood Estate, the fast-buck operators seeking apartments on the Glen Echo tract, or those ready to fill in the Potomac for profits—should be permitted to trample the public interest by destroying natural assets along the Potomac."

On December 22, 1967, Assistant Secretary Cain replied to Congressman Reuss:

"The Secretary has asked me to reply to your letter to him of December 8, which I am pleased to do.

"My letter to Colonel Rhea, District Engineer corps, Baltimore, on October 10 said, ' * * * we have reconsidered our interests in this matter [the Hunting Creek fill applications], in the light of existing conditions in the area. We have concluded that the granting of the applications would not significantly affect recreation or conservation values in the Hunting Creek area. Accordingly, we withdrew the objections interposed to the granting of the permits in accordance with the revised applications.'

"In this matter I made a judgment, endeavoring to reach a balance among numerous interrelated values. In such situations there seems to be no action without consequences that are unsatisfactory to persons with particular values in mind."

Meanwhile, on December 12, 1967, Congressmen Moss and Reuss requested Assistant Secretary Cain and other representatives of the Department of Interior and Corps of Engineers to meet with them in Congressman Moss' office at 2353 Rayburn House Office Building. Assistant Secretary Cain was not present, but sent as his representative Mr. Travis Roberts of the Department of Interior. Congressmen Moss and Reuss requested Assistant Secretary Cain, through Mr. Roberts, to furnish them a complete list of all conversations, communications, and other contacts he or other Interior officials, to his knowledge, had had with representatives of the applicants for the fill permits. Since Assistant Secretary Cain had obviously not listened to Congressmen Moss' and Reuss' objection to the fill, the Congressmen were interested in knowing to whom he was talking on the other side. To this date Assistant Secretary Cain has not seen fit to disclose this information. This is another reason why we hope that Assistant Secretary Cain will be compelled to testify before this subcommittee.

7. The career men told not to testify.—On January 17, 1968, the Corps of Engineers set down the fill application for hearings at Alexandria City Hall on February 21, 1968. Congressman Reuss requested the U.S. Fish and Wildlife Service to send representatives to testify against the fill permit, and the professionals of the Fish and Wildlife Service appeared anxious to do so. Assistant Secretary Cain, however, instructed Fish and Wildlife Service and National Park Service personnel not to attend the hearings. On January 30, 1968, Assistant Secretary Cain wrote District Engineer Colonel Frank W. Rhea:

"I have talked with the people in the Bureau of Sport Fisheries and Wildlife and we believe that we do not need to present testimony at the hearing (your notice of January 17, 1968) on the application of Howard P. Hoffman Associates, Inc., for a bulkhead and filling permit in Hunting Creek at Alexandria, Va."

To have allowed the Fish and Wildlife Service and National Park Service to tell the truth at the February 21 hearing would obviously have undermined Assistant Secretary Cain's position, and he thus ordered them not to appear.

8. The February 21, 1968, hearing.—At the Alexandria hearing before Colonel Rhea on February 21, 1968, no one appeared for the Fish and Wildlife Service or the National Park Service. Congressman Reuss presented testimony on behalf of himself and Congressman Moss vigorously opposing the proposed fill, on both Fish and Wildlife and National Park Service grounds. Congressman Reuss included in his testimony personal reports of his inspection of the Hunting Creek estuary, both in 1964 and again on December 9, 1967. His testimony included eyewitness evidence that many hundreds of diving ducks and waterfowl were

using the very section of Hunting Creek estuary sought to be filled. Congressman Reuss also included a written report from Fish and Wildlife Service Biologist Francis M. Uhler, mentioned above, dated January 31, 1968, and including Mr. Uhler's up-to-the-minute observations of the important waterfowl values that would be lost by the granting of the permit:

"I have been watching waterfowl in that vicinity for more than 40 years, and it has been an outstanding area for observing the important part played by the combination of shallow open waters, fresh tidal marshes, and semi-aquatic woodlands in creating a haven for a great variety of aquatic wildlife. In spite of the severely polluted condition of the adjacent Potomac, and drastic changes in the waterfowl feeding grounds of the broad, shallow cove that forms the mouth of Big Hunting Creek, this area still is the most important feeding grounds for diving ducks along the fresh tidal waters of the Potomac. It also attracts a great variety of other waterfowl, and the adjacent Belle Haven picnic grounds have become a mecca for bird students and interested visitors. The convenient accessibility of this section of the Mount Vernon Parkway for persons to enjoy aquatic natural history is unequalled in the Washington region.

"With the continued destruction by sand and gravel dredging in the adjacent Dyke Marshes, and the recent elimination of the colorful natural aquatic gardens through trash dumping and filling the nearby Big Hunting Creek tidal marsh adjacent to the west side of Memorial Parkway, the preservation of the remnants of these unique wildlife habitats has become increasingly important.

"The proposed construction of a 19-acre real estate development in the shallow waters of the mouth of Big Hunting Creek is certain to be detrimental, not only to waterfowl that now feed or rest in this shallow bay, but in the adjacent section where dredging will greatly alter existing depths. Unavoidable increases in turbidity, as well as disturbance by man, are likely to occur in neighboring waters.

"Most important foods for waterfowl are produced in shallow waters, or those that are clear enough to permit sunlight to penetrate to the bottom. Under the polluted conditions that now exist in the tidal Potomac for more than 30 miles downstream from our Nation's Capital, shallow depths (less than 5 feet) have become doubly important in the maintenance of waterfowl feeding grounds. Adequate light penetration facilitates feeding as well as being essential for plant growth. Submerged food plants have been destroyed in all but the shallowest zones. Fortunately certain types of pollution-tolerant invertebrates such as midge larvae (Chironomidae), isopod crustaceans, and a few kinds of mollusks still furnish foods for diving ducks. These foods, together with the protection supplied by the shallow, sheltered waters at the mouth of the cove, continue to attract many kinds of waterfowl. For example, last week I had the pleasure of watching several hundred lesser scaups 'blue-bills' and ruddy ducks, as well as smaller numbers of black ducks, mallards, common goldeneyes, buffleheads, oldsquaws, black-backed gulls, herring gulls, ring-billed gulls, and a whistling swan in this area although some sections were coated with ice."

In forwarding the material to Congressmen Reuss and Moss, Mr. Uhler said on January 31, 1968:

"DEAR MR. REUSS AND MR. MOSS: I prepared the accompanying comments last week in response to your request of January 16 for additional information regarding the waterfowl feeding and resting grounds in the Hunting Creek estuary below Alexandria, Va., but when I tried to send it officially I found that there apparently is 'more than meets the eye' in the background of the proposed fill and real estate development in those waters.

"Therefore, I am taking the liberty of sending this letter to you personally."

Mr. Uhler is a public servant of high courage. We shall make it our business to be alert to any reprisals that may be taken against him for telling the truth. A considerable number of other witnesses testified against the proposed fill. They included representatives of the Izaak Walton League of America, Audubon Society, Daughters of the American Revolution, the Wilderness Society, the Sierra Club, the Northern Virginia Conservation Council, the Washington Urban League, the Alexandria Council on Human Relations, and numerous concerned individuals. The engineer for Howard P. Hoffman Associates, not surprisingly, testified that the permit ought to be granted.

9. *The "Cain Mutiny" begins.*—On March 15, 1968, Assistant Secretary Cain was apparently getting worried. Michael Frome, the distinguished conservation editor of Field & Stream, writer for American Forests and other conservation publications, had heard of the matter and had been calling Mr. Cain. Hence the following memorandum from Mr. Cain to the Bureau of Sport Fisheries and Wildlife, dated March 15, 1968:

"Subject: Hunting Creek Dredging Permit.

"The pot still boils on the decision I made some time ago to remove objections to this permit reversing an earlier decision made before I was Assistant Secretary.

"The latest difficulty raises from Mike Frome who has asked that I reverse myself. His point is not so much the fish and wildlife value of the few acres to be behind bulkhead on the upstream side of the mouth of the creek as it is his assertion that to grant this permit would practically assure a continuous line of high-rise buildings along the shore south of Hunting Creek, which doesn't necessarily follow.

"Today I had a chance to speak to Secretary Udall about the problem. He had earlier relegated the decision to me and had raised no objection to what I did. He merely wishes that we get a scientific-technical basis that can be stood on, whether we go 'yes' or 'no' on issuance of the permit. This being the case, and since I made my earlier decision without asking for a new study of the area, I think that one should be made now. Will you please have two or three of the Bureau staff—types who ordinarily make such judgments in river basins—go over there and take a new look? Whatever the judgment of the Bureau turns out to be, I will go with it, as will the Secretary. Incidentally, I will not be bothered by reversing myself, if it should turn out that way. And if it doesn't, I'll have to take Mike Frome's possible barbs. *C'est la guerre!*"

10. *The National Park Service stands firm.*—On April 4, 1968, National Park Service Director George P. Hartzog sent a memorandum to the Secretary of Interior, through Assistant Secretary for Fish and Wildlife and Parks Cain, as follows:

"Subject: Proposed Landfill in Hunting Creek.

"In March 1964, Hunting Towers Operating Co. and Howard P. Hoffman Associates requested permission from the Corps of Engineers to construct bulkheads and place fill in Hunting Creek from their existing shoreline to a point near the Maryland-Virginia boundary at the mouth of Hunting Creek. It was their contention that their riparian rights extended from the present shoreline to the navigable waters of the Potomac River since in their opinion Hunting Creek was no longer navigable. By action of the general assembly of 1964, the Governor and attorney general of Virginia were authorized to convey the submerged lands to the applicants.

"The Department of the Interior in 1964 opposed the conveyance of the submerged lands and the issuance of the fill permits on the grounds that the bulkhead and fill would adversely affect fish and wildlife and park and recreation values in the area, and might adversely affect the riparian rights of the United States as owner of Jones Point Park. Revised applications filed in July 1964 which reduced the area of the proposed fill were opposed on the same basis as the original applications.

"Recently, the Department reconsidered its interests in this matter in the light of existing conditions in the area and concluded that the granting of the applications would not significantly affect recreation or conservation values in the Hunting Creek area.

"An important principle; that is, the preservation of our fast-disappearing natural environment, which you have creatively defended with great honor and high distinction, would appear to me to be involved here.

"The bills before Congress to preserve estuarine areas, and the Potomac River study as well, highlight the need to preserve the natural environment along the Potomac estuary. Moreover, further studies of the area are being recommended.

"The alteration of wetland areas and the consequent loss of natural values and environmental quality in an area where they are at a premium by virtue of riparian ownership could set a precedent which might have disastrous consequences along the Potomac estuary and elsewhere. In short, this small concession at Hunting Creek might be pointed to as a precedent for the right to undertake far larger and more destructive high-rise projects in other embayments along the Potomac.

"All things considered, I recommend the desirability of the Department restudying its recent decision at Hunting Creek."

In short, National Park Service Director Hartzog was not changing his mind, and stood for the public interest.

11. *Mr. Cain "clarifies his role."*—On April 8, 1968, Assistant Secretary Cain replied to National Park Service Director Hartzog's April 4, 1968, memorandum:

To get an idea of the value of that land, it is interesting to note that 3 years before, in 1961, this same gentleman, Francis T. Murtha, bought dry land right next to the water—4.81 acres of it—for \$700,000. The land under 1 to 3 feet of water that he would get title to from the State of Virginia would cost him \$30,000. Fill is free. So if you want to do a little arithmetic, you will find that, if this fill permit is allowed to go through, he will have paid about \$1,700 an acre for land identical with land for which a couple of years before he paid \$145,000 per acre. I cannot compute how many percentage points profit that is but, obviously, to get the Corps of Engineers and the Department of the Interior to go along on a fill permit is a much simpler way to get land for a high-rise apartment than to go out and buy it at a fair market price. Hence, the energy with which Mr. Murtha's contractor, Howard P. Hoffman Associates, has pursued its application to fill.

As I say, the applications for the whole 36 acres of fill on both the red and the black sections were made back in 1964. Since then Hunting Towers has not pressed its application and the Corps of Engineers has let it sit on the spindle, so to speak. The actual grant of the applicant's permit was made on May 29, 1968, by the Corps of Engineers to Howard P. Hoffman Associates, which is the contractor with Francis T. Murtha, trustee. What they ended up asking for was just the 9 acres in red. Presumably, the Corps of Engineers can at any future time act on these other applications, and I should think, having made the first fill, it would be rather easy to grant the latter applications because the first fill would cause a backwash of stagnant water and siltation in between it and Jones Point, and it would then be very easy to say, "Well, now that this first fill has occurred we might as well allow the fill for a little more."

Quite apart from that, however, the point Mr. Saylor and I want to make is that the very area sought to be filled is a very valuable diving duck area and it also seriously interferes with the proposed national park on Jones Point in two ways: One, it would create a stagnant backwash because it would cut off the flow of the water. Secondly, when you erect some more high-rise apartments on that filled land it will, to say the least, not help the view from the nature walk that the National Park Service intends to build.

Well, to start now with the chronology, back on October 9, 1963, the original application was made, and on March 24 of the next year, 1964, the Corps of Engineers published notice that it was going to act on the application to fill the Potomac. The corps' published notice said this:

Although the decision as to whether or not approval will be forthcoming on the plans as submitted must rest primarily upon the effect of the work on navigation, information concerning other effects of the work will be accepted * * *.

I think it is important to note that, because it indicates one of the things wrong with our conservation coordination procedures. The corps apparently concerns itself mainly with navigation, and if something doesn't ruin navigation their inclination is to say "Go ahead with it, although out of the goodness of our heart we will let you conservationists file any little protest that you want."

You can see how this prejudices a matter like Hunting Creek, because Congressman Saylor and I would be the first to admit that this fill, in water of 1 to 3 feet deep, doesn't really hurt navigation. The

channel of the Potomac used for navigation is very narrow, a few hundred feet right down the center. Therefore, if you are going to say that anything in the Potomac not actually used for navigation is going to be filled, what you have said is: "Let the land developers come along, let them fill the Potomac, all except a little 100-foot-wide open sewer in the middle, and we will give them land at the taxpayers' expense." Well, I don't really think that that is a very good way to preserve the Potomac.

I would hope that the Corps of Engineers would find its conscience one of these days and decide that its job is not just to look at navigation, with a little permission to conservationists to bring up wildlife values, but that its job is also to consider the public interest generally.

Step 2, the Fish and Wildlife Service, immediately after it found out about this, made firm and forthright objection to the fill for just the reasons I have given—that this is the great resting place for the diving ducks in the Washington area, and to ruin any part of it is to go counter to our national policy of trying to save rather than destroy wildlife areas.

Incidentally, the Fish and Wildlife Service and the National Park Service have splendid records throughout this entire matter at all times, including right up to now. The same cannot be said of some of the political officers in the Department of the Interior, or the Corps of Engineers. But the record shows a real dedication to the public interest and the conservation interest, by the Fish and Wildlife Service throughout the course of this Hunting Creek matter.

On pages 3 and 4 of our statement are set forth the reports of the Fish and Wildlife Service 3 years ago as well as the report of their expert biologist, Dr. Uhler, all of which come down to this, and I will give you the conclusion:

"We conclude that the ecological factors of shallow productive waters, adjacent marshes, and abundant food supply combine to make Hunting Creek an attractive area for waterfowl and other water-oriented wildlife. The combination of available wildlife and public access provides an opportunity for the observation, study, and enjoyment of aquatic life in the immediate vicinity of our Nation's Capital. Therefore, the Bureau feels that every effort should be made to protect these esthetically valuable resources."

At the same time, the National Park Service heard about this and vigorously objected, saying "We intend to build a park at Jones Point, and hence we oppose the fill."

Congressman Saylor, Congressman Moss, and myself also heard of this in the spring or summer of 1964 and we, too, vigorously protested it, both to the Corps of Engineers and the Department of the Interior, and due to the protest of the Fish and Wildlife Service, the National Park Service, and perhaps some of the rest of us, the Corps of Engineers, on December 9, 1964, wrote us a very welcome letter saying "We are giving up, we are going to take no further action on these requested permits because of the obvious damage to the public interest if the fill permit were granted."

We then dismissed the matter from our minds for 3 years.

Then in the fall, August and September of 1967, the applicants suddenly became very aggressive again, and out of the blue—though we didn't know it at the time—on October 10, 1967, the Assistant Sec-

retary of the Interior for Fish and Wildlife and Parks, Dr. Stanley A. Cain, wrote a letter to the District Engineer of the Corps of Engineers, Colonel Rhea, at Baltimore, saying the following, in effect: "The Bureau of Sport Fisheries and Wildlife and the National Park Service in 1964 advised the Corps of Engineers of their opposition to the granting of the requested permits." They had opposed the fill, they continued to oppose it in July 1964, when the fill applications were slightly revised to reduce their area. But then, "However, since that time we have reconsidered our interests in this matter, in the light of existing conditions in the area. We have concluded that the granting of the applications would not significantly affect recreation or conservation values in the Hunting Creek area. Accordingly, we withdraw the objections interposed to the granting of the permits in accordance with the revised applications."

Incidentally, I notice a misprint in our statement on page 5. It says October 10, 1964. That should be October 10, 1967.

That October 10, 1967, letter is, to say the least, disingenuous. It talks about "we," having just referred to the National Park Service and the Bureau of Sport Fisheries and Wildlife, as if they had changed their tune. The fact is just to the contrary. Both the Park Service and the Fish and Wildlife Service, to their great credit, have continued to stick to their guns and the only person who changed his tune was the Assistant Secretary for, ironically enough, Fish and Wildlife and Parks, who proceeded to sell both his constituent agencies down the Potomac by misinforming the Corps of Engineers that there had been this change of position.

Mr. GUDE. Mr. Chairman, might I ask a question?

Mr. JONES. Yes.

Mr. GUDE. I was wondering—did they give any reasons for their change?

Mr. REUSS. The entire letter, Mr. Gude, is a part of the staff file, which has been introduced in evidence.

Mr. JONES. It is item No. 3.

Mr. REUSS. The letter that I quoted is substantially verbatim and gives no reasons. It simply says "We have changed our views," although, as I pointed out, the "we," while it seemed to include the Fish and Wildlife Service and the National Park Service, in fact did not. They did not change their views at all.

I make something of this point because Congress has expressed itself pretty clearly as to what kind of coordination it wants. Back in 1958—was that the date, Mr. Indritz? Is that the Fish and Wildlife Coordination Act?

Mr. INDRITZ. 1958 was the last amendment.

Mr. SAYLOR. 1956 was the act itself, and it was amended in 1958.

Mr. REUSS. Right. In 1958 Congress passed the Fish and Wildlife Coordination Act which provides that " * * * whenever the waters of any stream"—that is, the Potomac—"are proposed or authorized to be * * * modified for any purpose whatever"—that is, filled—"by any public or private agency"—in this case the applicant—"under Federal permit or license"—that is, the Corps of Engineers—"such department or agency"—that is, the Corps of Engineers—"first shall consult with the United States Fish and Wildlife Service, Department of the Interior * * * with a view to the conservation of wildlife resources by preventing loss of and damage to such resources * * *."

Now, Congress knew what it was doing. It did not say consult with the Secretary of the Interior, the Under Secretary of the Interior, or the Assistant Secretary of the Interior. It wanted the career men to be consulted. Here, what the Assistant Secretary for Fish and Wildlife and Parks does by using the editorial "we," is to imply that the career men have changed their minds, when in truth and in fact, far from changing their minds—

Mr. JONES. You don't contend that the Secretary of the Interior could not overrule the two bureaus?

Mr. REUSS. I do not. The Secretary of the Interior who, incidentally, has apparently delegated this to the Assistant Secretary and the Under Secretary, could overrule the bureaus, but what Congress wanted in the Coordination Act was the benefit of consultation by the Corps of Engineers with the U.S. Fish and Wildlife Service. That is why we said "United States Fish and Wildlife Service" instead of the Secretary of the Interior or any of the other overhead in the Department.

It is worth noting that even though the Interior Department well knew the objections of Congressman Moss, Congressman Saylor and myself to the bill 3 years before, Assistant Secretary Cain did nothing to inform us of the fact that he had changed his mind. Incidentally, Secretary Cain, I understand, was asked to testify at these hearings. He is out of the country at the moment. I do hope, for reasons that will become apparent, that he will be given an opportunity to testify before the subcommittee.

When the three Congressmen heard of Secretary Cain's action, some weeks later, several of us wrote to the Department. Congressman Moss wrote Assistant Secretary Cain, asking the reason for his change of position. On November 24, 1967, Assistant Secretary Cain replied, and the key words are:

While it is true that this Department interposed objections to both the original applications and the revised applications, the conservation values which would have been affected were relatively minimal. I understand that objections on conservation grounds were filed, nevertheless, in support of opposition to the proposed development from other governmental sources. However, much of the opposition has been withdrawn and it seems to us to be the sensible course of action to withdraw our objection to the revised applications * * *.

This letter so bothered Congressman Moss that he wrote back to Secretary Cain on January 3, 1968, saying:

In all candor, sir, I must confess that I find your letter totally unresponsive to the questions contained in my communication to you.

Those questions were, "What was back of this?" Congressman Moss said:

I assume the original action of opposition was based on careful studies of the effect upon wildlife * * *. If my initial premise is correct, then certainly there must be some sort of study upon which you based your subsequent action. Or is it your intention to tell me that you made "a judgment" without any additional studies by the experts of the Fish and Wildlife Service?

To this Secretary Cain had a reply on January 11:

In reply to your letter of January 3, I can tell you that I did make a judgment without any additional studies on the fish and wildlife values at the site.

I, too, heard of this change of position in early December 1967, and I wrote a letter outlining my position--which is identical with

that of Mr. Moss and Mr. Saylor—to the Department of the Interior on December 8, 1967, which appears on pages 7 and 8 of my statement. I, too, got a letter back from Assistant Secretary Cain, who answered for the Department that he had tried to reach a balance, and so on.

Congressman Moss and I then asked Assistant Secretary Cain and members of the Department and the Corps of Engineers to meet with us in Congressman Moss' office to try to get some of the facts. Dr. Cain was not able to be present, but he sent as his representative Mr. Travis Roberts of the Department of the Interior. Congressman Moss and I formally requested Assistant Secretary Cain, through Mr. Roberts, to furnish us a complete list of all conversations, communications, and other contacts he or other Interior Department officials had with representatives of the applicants for the fill permits. That was 6 months ago. We have never received such a list of conversations and communications. We would very much like to have one, and hope this committee will get one.

Then, due to the request of the Congressmen, the Corps of Engineers agreed to hold a public hearing at Alexandria on February 21, 1968. I asked the professionals of the Fish and Wildlife Service to send representatives to testify against the fill permit and, so far as I could see, the Fish and Wildlife Service people were more than willing to do it. However, they were instructed by Assistant Secretary Cain not to testify at the hearing. On January 30, Assistant Secretary Cain wrote the District Engineer: "I have talked with the people in the Bureau of Sport Fisheries and Wildlife and we believe that we do not need to present testimony at the hearing" in Alexandria. Obviously, had the Fish and Wildlife Service been allowed, and the National Park Service been allowed, to comment and testify to the truth, it would have undermined Secretary Cain's position that there were no more than minimal wildlife values involved.

Then there occurred the February 21, 1968, hearing by the Corps of Engineers. I appeared on behalf of myself and Congressman Moss, testified from my own eyewitness inspection of the area to be filled just a few weeks before, on which I was accompanied by the Fish and Wildlife Service biologist, Dr. Francis M. Uhler. I testified at length that waterfowl in great numbers were using the very section of the Potomac sought to be filled by this permit.

(Subcommittee note.—The transcript of the Feb. 21, 1968, Corps of Engineers hearing is reprinted as part III of the appendix of this hearing record.)

Congressman Moss and I had earlier written to Dr. Uhler of the Fish and Wildlife Service asking him to testify, and he sent along to us on January 31 a very full account, showing once again the enormously valuable character of the waterfowl sites on this section of the Potomac. In forwarding the material to us, Dr. Uhler said in his letter of January 31, 1968, that we reproduce at page 10 of my statement:

Dear Mr. Reuss and Mr. Moss: I prepared the accompanying comments last week in response to your request of January 16 for additional information regarding the waterfowl feeding and resting grounds in the Hunting Creek estuary below Alexandria, Va., but when I tried to send it officially I found that there apparently is "more than meets the eye" in the background of the proposed fill and real estate development in those waters.

Nevertheless, we did present his report which is most illuminating. (The material referred to appears at p. 81.)

Mr. REUSS. Incidentally, I want to say once again that in the judgment of our witnesses, Dr. Uhler is a public servant of great ability and great courage, and we shall make it our business to be alert to any attempt to take reprisals against him for telling the truth.

There were a great number of witnesses at the hearing, all of whom testified against it. They included the Izaak Walton League of America, the Audubon Society, the Daughters of the American Revolution, the Wilderness Society, the Sierra Club, the Northern Virginia Conservation Council, the Washington Urban League, the Alexandria Council on Human Relations, and numerous concerned individuals.

The engineer for Howard P. Hoffman Associates, the applicants, not surprisingly, testified that the permit ought to be granted.

So the matter rested after the hearing, until some events which just came to light as a result of the subcommittee staff's inspection of the Department of the Interior's files in the matter, and they are extremely interesting. This starts on page 12 of our statement.

On March 15 this year Dr. Cain was apparently getting worried. One of the reasons was that Michael Frome, the conservation editor of Field and Stream magazine and columnist for American Forests and other magazines, had heard of the matter and started to call Dr. Cain. In the files of the Department of the Interior is found this memorandum dated March 15, 1968, from Dr. Cain to the Bureau of Sport Fisheries and Wildlife.

I won't read it all, but in summary it says:

The pot still boils on the Hunting Creek decision, which I made some time ago to remove objections to this permit reversing an earlier decision made before I was Assistant Secretary.

He goes on:

The latest difficulty arises from Mike Frome who has asked that I reverse myself.

Then:

Today I had a chance to speak to Secretary Udall about the problem. He had earlier relegated the decision to me and had raised no objection to what I did. He merely wishes that we get a scientific-technical basis that can be stood on.

Later on:

This being the case, and since I made my earlier decision without asking for a new study of the area, I think that one should be made now.

Then he goes on:

Will you please have two or three of the Bureau staff—types who ordinarily make such judgments in river basins—go over there and take a new look? Whatever the judgment of the Bureau turns out to be, I will go with it, as will the Secretary. Incidentally, I will not be bothered by reversing myself, if it should turn out that way. And if it doesn't, I'll have to take Mike Frome's possible barbs. C'est la guerre!

The National Park Service, to its great credit, stood by its guns for the umpteenth time, and on April 4, 1968, Director Hartzog of the National Park Service sent a memorandum to his superiors on the subject of the proposed landfill, saying once again that preserving the estuary areas was of the greatest importance and that this fill would adversely affect the Jones Point Park, and concluding:

All things considered, I recommend the desirability of the Department re-studying its recent decision at Hunting Creek.

Then on April 8, Dr. Cain, in a very significant memorandum to the National Park Service, replying to that April 4 memorandum, clarified his role. Again, reading the relevant portions of this memorandum from Dr. Cain to Director Hartzog:

I have read and surnamed your April 4 memorandum to the Secretary, through me. I would like to clarify my role, which has not been an enviable one. I was told by BSWF that the original field report on the area under discussion was in weak opposition to the permit and that the fish and wildlife values claimed for the area were "upgraded" here in Washington. It was further stated that this was at least partly in response to certain congressional opinions. This was before I was Assistant Secretary.

He also said:

I was informed that some of the congressional objections had been withdrawn. John Dingell had done so in writing to the District Engineer of the Corps. It was implied that others were no longer opposed. It was at this point that I withdrew Interior's opposition, a decision based first on political considerations and second on the feeling that the values were not great in the area to be filled.

Ordinarily, one doesn't put these self-revelations in memorandums, but there it is.

His memorandum continues:

Congressmen Moss and Reuss have let me know their displeasure.

Mr. Saylor had also made known his displeasure but his apparently was not included.

Dr. Cain's memorandum goes on:

More recently, I have asked BSWF to make a field examination of the area, since it had not been looked at for several years. I have not had a report on this yet.

His final paragraph says:

I will be happy to reverse myself if BSWF makes a strong case and if NPS can give me evidence of the important values.

The Bureau of Sport Fisheries and Wildlife has been making a strong case publicly and privately for the last 4 years, and the National Park Service likewise. One wonders where the Assistant Secretary for Sport Fisheries and Wildlife and Park Service has been.

This April 8 memorandum, incidentally, has more than its share of inaccuracies. It says that the Bureau of Sport Fisheries and Wildlife report was weak. As the record shows, it could hardly have been more vigorous. It says that other Congressmen were no longer opposed. Well, Congressman Moss, Congressman Saylor, and myself are not amused at that.

Then there is the admission that the main reason for the October 10, 1967, reversal was "political considerations." I would like to know what those considerations were. Who was pressing Dr. Cain so hard to make the fill? Why, 6 months after Mr. Moss and I requested it of him, did Dr. Cain fail to give us a list of people who were exercising this political muscle of theirs? And what was so strong about this political muscle that it outweighed the professionals in the Fish and Wildlife Service and the National Park Service?

He also asked in this memorandum that the Bureau of Sport Fisheries and Wildlife make a field examination of the area "since it had not been looked at for several years." This is simply erroneous. The

Fish and Wildlife Service biologist, Dr. Uhler, had made a field examination of it in 1967, and again in January 1968, and found it prime waterfowl territory. I know this because I was along in the boats. I saw Dr. Uhler there. His examination was widely reported in the press at the time. His report was introduced into the February 21, 1968, hearing by me. I would hope that Assistant Secretary Cain would explain to the committee how he could make that statement that the Hunting Creek area "had not been looked at for several years."

On April 9, the Bureau of Sport Fisheries and Wildlife once again stood firm in its memorandum back to Assistant Secretary Cain. I won't read it all except the very strong conclusions:

Regardless of protestations to the contrary, granting this permit will have the effect of opening the way for a succession of similar actions both above and below the mouth of Hunting Creek.

And listen to this:

I make that positive statement in the full knowledge that it will be challenged as an opinion, which it is. It is an opinion, hardened after watching situation after situation in which the natural scene has become a victim of the "nibble" phenomenon, one characteristic of which is that each "nibble" is used as justification for the next. * * * This action must be halted, but our reluctance to support a permit denial by the Corps of Engineers at Hunting Creek has made them question our position elsewhere on the Potomac.

I think we must urge the Corps not to grant this permit. We might say, as Webster did about Dartmouth College, that "It is a small thing, but there are those who love it!"

Hurrah for Director Gottschalk of the Bureau of Sport Fisheries and Wildlife.

Then—here the plot thickens—on April 10, 1968, Assistant Secretary Cain, confronted with the repeated findings of both the Fish and Wildlife Service and the National Park Service that this fill permit should not be granted, threw in the sponge. On that day he wrote a memorandum to all concerned, to the Secretary, to Under Secretary Black, to the Bureau of Sport Fisheries and Wildlife, the National Park Service, and Brigadier General Woodbury of the Corps of Engineers, saying:

Thank you very much for your report * * *. Your response is in effect a reiteration of the position of the Bureau back in 1964, and I agree that there has probably been little change since then.

I am in the position of having to accept your statements of the fish and wildlife values associated with the site and those regarding open space, scenic, and recreational values, and I do so gladly.

How gladly, in view of his activities later on in the afternoon of April 10, remains for the subcommittee to decide.

But this is what the memorandum said:

What this means is that I am now reversing the position that I took earlier * * *. I accept your professional judgment.

Let us look at what happened later that afternoon after the memorandum had been prepared.

Dr. Cain telephoned Brigadier General Woodbury, head of Civil Works for the Corps of Engineers, and informed the General that Dr. Cain had changed his position and was now going back to the historical Department of the Interior position opposing the fill permit. Dr. Cain told General Woodbury all about his memorandum which he had just written, and a copy of which was directed to General

Woodbury, who got it almost immediately. Dr. Cain admitted that his October 10, 1967, position, flip-flopping on the Department's earlier position was, in Dr. Cain's words, "naked and indefensible." He went on to say that both the National Park Service and the Fish and Wildlife Service continued firm in their opposition to the fill and that he was, therefore, reversing his stand.

But then listen to what General Woodbury of the corps told Dr. Cain over the phone: "I can get you off the hook on this. I'll refer the matter to Under Secretary Black." This is a new name in the proceeding; Under Secretary Black had nothing to do with the Hunting Creek affair up until this time. It illustrates the desperate search of both the applicants for the fill and the Corps of Engineers to find someone, anyone, in the Department of the Interior, who could give them a green light to continue with the fill.

Then 5 days later, on April 16, Dr. Cain sent General Woodbury of the Corps of Engineers the following memorandum which is fully intelligible only in connection with the events of April 10 which I have described. Here is the Cain-Woodbury memorandum of April 16:

You will remember that I talked to you on the phone late last Wednesday, April 10, 1968. After a meeting with representatives of the Bureau of Sport Fisheries and Wildlife and with my deputy and staff assistants that afternoon at which time they recommended unanimously to me that I reverse the position that I had taken earlier, I prepared the attached memorandum to Director Gottschalk.

That is the April 10 memorandum which I read from, a copy of which was sent General Woodbury presumably on April 10, saying "I give up, I reverse myself."

Then, Dr. Cain's memorandum continues: "I understood from the phone conversation"—that is, the Cain-Woodbury phone conversation shortly after Dr. Cain had written that memorandum—

that you would send the permit request over to Interior, following the procedure that was in the agreement between Secretary Resor and Secretary Udall. This would go to Under Secretary Black, according to the machinery of the agreement, but I understand from his office that it has not yet been received.

I interpolate at that point: There seems to be an almost indecent haste on the part of all concerned to get cracking on this paperwork.

Then Dr. Cain goes on:

Perhaps you are awaiting a paper report from the Bureau, which is the normal reporting level. In that case, I am sending with this memorandum a copy of my memo to the Bureau, of April 10.

Incidentally, that is the same document which General Woodbury was sent on April 10.

The last paragraph of Dr. Cain's memorandum then says:

Under Secretary Black is anxious to get this issue resolved because he is getting numerous telephone calls on the matter.

The memorandum shows that copies were sent to the Under Secretary and others.

Now, let's relate this April 16 document to the events of April 10. According to the "machinery" developed on April 10, General Woodbury was to get Dr. Cain "off the hook" by writing to Under Secretary Black, asking him to OK the permit. Now, Secretary Cain, 5 days later, says:

I understand from Black's office that the Woodbury letter has not yet been received.

Because perhaps General Woodbury was—
awaiting a paper report from the Bureau of Sport Fisheries and Wildlife * * *
I am sending with this memorandum a copy of my memo to the Bureau of
April 10 * * *.

Then he went on to say that Under Secretary Black—
is anxious to get this issue resolved, because he is getting numerous telephone
calls on the matter.

We would like to know from whom Secretary Black was getting
those telephone calls. He was not getting them, so far as we knew, from
any of the conservationists or public interest people. He was certainly
not getting them from Congressman Moss, Congressman Saylor, or
myself, because we were unaware at that time of Under Secretary
Black's sudden involvement.

Then on page 18 of our summary—the day before Dr. Cain, on
April 16, sent General Woodbury the memo saying “Hurry up, Gen-
eral Woodbury, get us that request so that the machinery can start
to work”—General Woodbury had in fact written a long letter to
Under Secretary Black, according to the “machinery” setup, which is
set forth on pages 18 and 19. I won't read the letter, but its essence is
“OK, Under Secretary Black, give us the Department of the Interior's
views.”

The Woodbury letter contains its share of inaccuracies. For instance,
it says: “The Bureaus of the Department of the Interior concerned
with parks, conservation, recreation, and pollution have withdrawn
any objections and have indicated that the project will not adversely
affect the area from these standpoints.” General Woodbury well knew
from his April 10 telephone conversation that, far from withdrawing
their objections, the Fish and Wildlife Service and the National Park
Service had dug in their heels and said, “Over our dead bodies.”

Nevertheless, he states that the Bureaus have withdrawn their ob-
jections.

Then, Under Secretary Black sent back a letter to the Corps of
Engineers on April 26, which is set forth on page 20 of our statement,
simply saying that he had made a visual inspection of the affected
area and there was an indication that he had seen no ducks. Well, I
will tell the Under Secretary why he saw no ducks. It is because the
ducks arrive in November and leave in March. The time to go see the
ducks is when other Members and I have seen them by the thousands—
in November, December, January, and February, not after the ducks
have gone.

So, seeing no ducks, the Under Secretary of our “Conservation De-
partment” announced that they were flip-flopping for the second time
and “Go ahead, Corps of Engineers, grant the permit,” which the
Corps of Engineers, in the last item in this sorry commentary, did on
May 29.

I want to thank you, Mr. Chairman and members of the subcommit-
tee, for bearing with me. You will note that this chronology is made
up largely from Department of the Interior documents.

Mr. Saylor and I ask that the subcommittee compare the record of
the career men of the Fish and Wildlife Service and the National
Park Service with the record of the higher appointees in the Depart-
ment of Interior and with the record of the Corps of Engineers. We
hope that having made such a comparison the subcommittee will vindi-

cate the judgment of the career men of the Fish and Wildlife Service and the National Park Service, the people that Congress asked be the coordinating authority, and direct the Corps of Engineers to take such action as is needed to cause the permit which it has sought to grant to be withheld, and the public interest and conservation thereby be upheld.

Mr. JONES. Thank you, Mr. Reuss.

Mr. Moss. Mr. Chairman, I want to state that I concur very fully in the statement made by Mr. Reuss and acknowledge my close association with Mr. Reuss and Mr. Saylor going back to the beginning of this application.

I want to make the record very clear on one point because an effort has been made to try a little crude intimidation. I own property in the Old City of Alexandria. I own three townhouses in the Old City of Alexandria and my interest is supposed to be predicated on that. My record of interest in conservation goes back long before holding public office. I served as a member of the Committee on Conservation and Public Works in the Legislature of the State of California more than 20 years ago and I have had the privilege of serving on this committee beginning with Chairman Chudoff until now, where my interest has continued.

I have also been interested in the maintaining of historic values, not only in my home city of Sacramento where I was engaged in considerable controversy when efforts were made to destroy much of historic value; but at the request of the citizens' committee of Old Town, I interceded in the original effort to prevent—and we were successful—the location of access highways on Royal and Fairfax Streets in the Old Town of Alexandria which would have successfully destroyed much of the history of that unique bit of Americana.

And so the continuing interest here is a valid one representing many, many years of interest in conservation.

Mr. JONES. Will the gentleman yield?

Mr. Moss. I will be happy to yield.

Mr. JONES. The gentleman from California, who has served on this committee throughout his tenure, has been dedicated, and certainly resourceful and energetic. If there is any implication or any suggestion that he is acting improperly or not motivated by noble principle, it will certainly be discounted. There is no one to my knowledge that has been more loyal or devoted to the public interest than the gentleman from California.

Mr. Moss. I thank the chairman.

I would say from the very beginning we were told, when the engineers first informed us that the applications would not be acted upon further, that in the event of their revival we would receive notice. We received notice by attorneys for the applicants calling on us. At no time did I receive notice from any other source until I had a call from the District Engineer in Baltimore notifying me that the application had finally been granted, at which time I told him that I regretted his action, I would do everything I could to reverse it, and I would request this subcommittee to seek further facts.

The matter has moved with unseemly haste and with a total ignoring of the appropriate agencies' expert opinion. I concur most wholeheartedly in the recommendation of Congressman Reuss that this committee make it its responsibility to see that no act of intimidation

or recrimination is taken against the career men who have demonstrated their adherence to principle and their courage in continuing to support a position founded on fact and professional expertise.

Mr. JONES. Mr. Roush?

Mr. ROUSH. I have no questions, Mr. Chairman.

Mr. JONES. Mr. Vander Jagt?

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I would like to compliment the gentleman for presenting a very well-documented study and a great deal of information. Just a couple of points I want clarified for my own mind.

Is it your contention, Mr. Reuss, that the filling of the red area on the map will create a stagnant backwater in the area that is the dark color there?

Mr. REUSS. That, Mr. Vander Jagt, is part, though a smaller part, of my contention. It stands to reason if you build a projection out into the river, as that red projection is, that it will create greater stagnation, that the silt which washes down the Potomac to the regret of all of us will have a catchment area there. However, I say that is relatively a minor part of my total objection.

My major objection is that if you fill in 9 acres of the last valuable diving waterfowl resting area in the Metropolitan Washington area, you have ruined 9 acres of a priceless resource. Sure there are a number of other acres that would not at the moment be filled in, but it is like somebody coming along and wanting to knock off the top 80 feet of the Washington Monument, and when you protest he tells you there are still quite a few feet of it left.

Obviously, our resources are not such that we can forever nibble at them.

Mr. MOSS. Will the gentleman yield?

Mr. VANDER JAGT. Glad to.

Mr. MOSS. I think it important to recognize that the black area is covered by an additional application which has not been acted upon, but in light of the very recent experience, could suddenly become fired up and move with great rapidity to final approval.

Mr. VANDER JAGT. Again, for the clarification of my own understanding, would an objection by the Department of the Interior have the effect of blocking the permit, or is the exclusive authority for the granting or denial of the permit in the domain of the Corps of Engineers?

Mr. REUSS. It is the latter.

Under the law, the Corps of Engineers, with regard for the total public interest—not just navigation but the total public interest—has to make the decision, and the statute, the Fish and Wildlife Coordination Act, requires that it consult with the Fish and Wildlife Service on wildlife matters. Having consulted, if it did consult, which in this case it did not—having consulted, the Corps may legally come to another conclusion. That, of course, does not preclude the interest of this subcommittee because with a record as squalid as this, the Corps of Engineers, I believe, has some explaining to do.

Mr. VANDER JAGT. Did I understand your statement to indicate that the primary material consideration of the Corps of Engineers is in navigational matters?

Mr. REUSS. That is not what the statute tells them to put into their head, but that is what in fact they, in too many cases, do consider as the primary consideration; and they are sometimes so indiscreet as to let it get into their public pronouncements, as it did when they announced the hearing after the applications were first made in 1964.

You see, if you make a central and overriding factor out of navigation, then the Corps can authorize the fill of every saltwater marsh and every river in the country so as to give some real estate speculator a chance to make a thousand percent profit and always be protected, saying "we did not fill in the navigation channel." In the Potomac, for instance, they could authorize the fill right up to a 100-foot-wide channel right down the middle—which is about all you need for navigation—and thus create giveaway land values for whomever had the artfulness to get a permit from them.

Mr. VANDER JAGT. In your conferences and exchanges of correspondence with Dr. Stanley Cain, did he ever indicate on what basis he reversed the objection of the Department?

Mr. REUSS. It remains a mystery. Congressman Moss had quite a specific exchange with Assistant Secretary Cain on that point and this is set forth on page 7 of Mr. Saylor's and my testimony.

Congressman Moss asked him the same question: "Just what did prompt you to make this change, Dr. Cain, in the departmental position? Did you have any study, any new evidence?" And after a series of letters, Dr. Cain finally admitted on January 11 that he did not have any new studies, and that he made his judgment without any additional studies.

So it is a mystery to me what he based his reversal on. That is why we wanted to know "who has been contacting you, Dr. Cain?" He has not seen fit to tell us, so it remains an enigma.

Mr. VANDER JAGT. I believe in one of the letters or memos he made the statement that the reversal was based "first on political considerations." Did he ever indicate what those "political considerations" were?

Mr. REUSS. No. Admittedly, Congressman Saylor, Congressman Moss, and myself are politicians. We do not apologize for it. However, it was not our political considerations which prevailed, because we lost, as you know.

Mr. VANDER JAGT. After there was an indication they would get them off the hook by referring this to Under Secretary Black, there is a statement here that Mr. Black was receiving numerous telephone calls. Is it my understanding that none of you representing the conservation interests were telephoning Mr. Black at that time?

Mr. REUSS. That is correct. I have never telephoned Mr. Black.

Mr. SAYLOR. I never have.

Mr. MOSS. If the gentleman will yield, I believe I talked with the Under Secretary after I learned of his action. I did not know that he had any role in this; therefore, not anticipating his intervention, I did not contact him before he signed his letter of April 26, 1968.

Mr. VANDER JAGT. At the time that Mr. Black was receiving these telephone calls and gave the impression that he wanted action on a decision, there was no public knowledge, was there, that this matter had been transferred to Under Secretary Black?

Mr. REUSS. On the contrary, there was complete secrecy, although Congressman Saylor or Congressman Moss and myself had made very

clear, by letter and by personal contact months before with the Department of the Interior, our interest in the matter. We were not told of either Dr. Cain's suddenly finding his soul or his losing it again a few minutes later, or Mr. Black's intervention.

Mr. VANDER JAGT. In the efforts of the three of you to obtain the facts and the information regarding this matter, you made the statement that Dr. Uhler was having difficulty forwarding material to you in an official capacity. Is that right?

Mr. REUSS. That is correct. Let me be clear here that Dr. Uhler was not a volunteer. We wanted to get the man who knew most about this area, and Dr. Uhler happens to be a 40-year career biologist stationed here at the Patuxent Wildlife Research Center who all his life has known and worked the Hunting Creek area. We got hold of him in 1964, made an inspection at that time, and then again we asked him to make a further inspection this last December, and this January, because the matter had revived again.

And we also asked him for an official report, and as our testimony indicates, his efforts to get that to us officially were unsuccessful. Nevertheless, and to his credit, having been asked by Congressmen to give us a report, he gave us that report, which we then introduced in evidence at the February 21 Alexandria hearing.

Mr. VANDER JAGT. Why would a career man who made a study, and was requested by the Congressmen for that study, have difficulty transmitting that information to you?

Mr. REUSS. It does not speak well. The only explanation I can offer is one that is inherent from the chronology we presented to you—that the “political considerations” of which Dr. Cain speaks, the “more than meets the eye” of which Dr. Uhler speaks, must be the explanation.

Mr. VANDER JAGT. It would appear that many of the answers to our questions would necessitate the appearance of Dr. Cain.

Mr. REUSS. Yes, I am sorry he was not able to be here and I hope that the subcommittee will have an opportunity to hear his side of the story and have him explain his actions.

Mr. JONES. He has asked to be heard, Mr. Reuss.

Mr. VANDER JAGT. Thank you, Mr. Chairman. I have no further questions.

Mr. JONES. Mr. Gude?

Mr. GUDE. Thank you, Mr. Chairman.

I had the opportunity to visit the Hunting Creek area Friday afternoon, and I certainly want to commend the three Congressmen who have done so much in this fight. We in the metropolitan area of Washington are very fortunate to have a great river going right through the center of our city, as well as the C. & O. Canal and the wonderful features that are associated with it. I found Hunting Creek to be a very handsome area of low shoreland and I do not think there is any doubt that the intrusion of high-rise apartments right at that juncture would harm the park out on the point.

We visited the site of the lighthouse there that is to be restored when we have sufficient funds. It is a beautiful area. We did not see any ducks naturally—as you point out you have to get there in the wintertime—but we did see a heron and he seemed to be happy and able to make out in his feeding. So I think this is great. This is the “camel with his nose

under the tent" operation that we see going on. In fact, it looks like a nose up there on the map.

Is that not the sum and substance—not only that it would actually take land that provides food for wildfowl in addition to spoiling the profile of the shoreline there, but that you feel there would be more to come?

Mr. REUSS. I think the gentleman from Maryland is absolutely correct. I would stress, however, that even if we could be presented with ironclad guarantees for all eternity that there would be no more to come, there still should be every reason vigorously to resist this; because this does take 9-plus acres of valuable diving duck waterfowl resting area and it interferes in a meaningful way with the proposed Jones Point Park.

Mr. GUDE. That is all, Mr. Chairman.

Mr. JONES. Mr. McCloskey?

Mr. McCLOSKEY. I have no questions, Mr. Chairman. I would commend the gentlemen for their presentation.

Mr. JONES. Do you have anything further that you would like to say, Mr. Saylor?

Mr. SAYLOR. Yes, Mr. Jones and members of the subcommittee, I have some comments that I would like to make.

First, I would say that those of us who have keen interest in this matter are deeply indebted to you and members of this committee for setting up this hearing.

Mr. JONES. Mr. Saylor, this is not very far from the Capitol. I just wonder, if it would be convenient, whether it would be helpful to the committee if we were to go down and examine the general area.

Mr. SAYLOR. I can just say to you, sir, that you will not see ducks if you go there now. But if you would go as I have gone in the late fall and during the winter, you will find thousands of ducks.

I would like to comment overall on some things.

First, I think there is a tremendous lack of understanding by the Corps of Engineers, the Department of the Interior, the Assistant Secretary of the Interior, and the Under Secretary of the Interior as to what President Johnson has asked for. Now, there is one thing that has impressed me in all of the years of my life that I have been interested in conservation and that is that politics should play no part in it. It is the one thing in this country that cuts across party lines, it cuts across economic lines, it cuts across religious lines, it cuts across color lines. There is no such distinction amongst those of us who are interested in conservation. The President of the United States, the President of all of us, on the 8th day of March of this year, sent to the Congress a message asking the Congress to preserve the Potomac, and in that message he stated that the failure of Congress to act now will make us the shame of generations to come. All I can tell the Under Secretary of the Interior, if he can read English, is that he has perpetrated a shame that, if it continues, will rise to haunt him when he goes back to the Pacific Northwest; I can tell the Corps of Engineers that they should hang their heads in shame now for what they have done. There is no doubt about it that Assistant Secretary Cain, stupidly or not, told the truth when he said there must be some "political considerations."

Let us figure out what the political consideration has to be. It has to be somebody who is out to make a fast buck and who must have some connection with the members of the Democratic Party. And the only reason I say that to you is that less than 5 years ago this land, 9 acres, was bought for about \$20,000, and if this fill is completed, based upon the price which the trustee paid 5 years ago, you have somewhere between \$1.5 million and \$3.1 million riding on that little 9-acre tract of land. And very frankly, somebody is getting paid. It is just that evident.

That is a hard charge to make, but it is a charge that somebody might as well look at because there is money, and there is big money, involved here. And so the ducks, who have nobody to talk for them, have just a couple of people who have always forgotten politics. I just want to say that John Moss and Henry Reuss and I have been engaged in battles of similar nature ever since we have been Members of Congress. And we have not worried about the fact that some of them are Democrats and I happen to be a Republican.

We have looked at this from the national interest. Let's look a little more at the national interest.

This is in the town of Alexandria, Va. I have been concerned about Alexandria for quite some period of time because it is in the metropolitan area. I went back and looked at the history of the granting of what is now known as the George Washington Memorial Parkway. Congress, back when they celebrated the 200th anniversary of the birth of George Washington, determined there should be on both sides of the Potomac a memorial parkway in the name of George Washington, and, of course, it had to go through the town of Alexandria, Va. And the town of Alexandria has not played fair with the Congress because the Congress agreed with them back in 1928, when they began to make their arrangements, that they would protect the interests of the country and in turn we would build the Mount Vernon Highway. Now the main street of Alexandria, Washington Street, was paved by the Federal Government and the town council. We got an agreement between the Alexandria people and Washington and the Congress that they would protect it.

Now certainly they violated, as far as I am concerned, the very spirit of that agreement when they granted, in the first place, the right to put Hunting Towers, those three high-rise apartments, right there along the area which interfere with the view of that area and interfere with what Congress intended when we decided to build the Mount Vernon Highway.

Mr. JONES. Congress made a mistake by not making limited access, too. Had we done that, we would have preserved the scenic beauty of that area. The parkway is nothing more than an ordinary commercial type of highway.

Mr. SAYLOR. This is right, Mr. Jones, and I say to you I believe that when you make an agreement—or you become a member of the council whose predecessors have entered into an agreement with the Federal Government—whether you would have entered into that agreement today or not is beside the point. If the word of those people over there is not any good, then all the things that we could have put in the agreement would not be any good.

It is about time that some of these people who are involved in making these decisions will realize that there is an interest of the public that overrides any political consideration.

When Mr. Black—I would like to comment. He is here in the room and I have nothing against him. He was picked out to come here and be the Under Secretary of the Interior. His background, of course, was that he worked up with the Bonneville Power Administration. He comes from out in the West. He has come down here and he is now second in command in the Department of the Interior. When he writes a letter to General Woodbury that says there is no doubt that the opinions reached by those concerned with the conservation impact, that their position is founded on subjective judgment considerations rather than factual evidence—I just want to say that I do not think Mr. Black even bothered to go look at the reports.

Sure, he says he went over and took a look and did not see any ducks. You cannot see any ducks if you go over there now and this subcommittee will not see any. But I want to know what is subjective about a count by ornithologists and qualified observers showing a 5-year average wintering over of the population of 4,000 ruddy ducks, 3,000 to 4,000 scaup, 300 to 400 ring-neck ducks, 200 black ducks, and as high as 1,500 canvasbacks, mallards, bubblehead, pintails, and whistling swan. This is not subjective, this is not opinion; these are facts. And he completely ignored them.

All I can say is that not only my faith, but the faith of a good many other people in the Interior Department, has been shaken by the decision that has been reached by these people. And very frankly, I just feel sick at heart that Stewart Udall, who has established a record second to none of the people who have occupied the position of Secretary of the Interior, would have a black mark like this left against him. I certainly hope that this will be reversed, because the Secretary of the Interior, following the President's message, sent to our Interior and Insular Affairs Committee a bill asking that the Potomac be preserved, and while one committee of the Congress is trying to act upon the legislation suggested by the President and the Department of the Interior, the same Department of the Interior is playing hand in foot with the Corps of Engineers, and violating what was intended.

Well, it is just one of those things that makes other people in other countries wonder what has happened to the United States. These are the values that ought to be preserved and there are plenty of places they can go and build a high-rise apartment without coming down and filling in Hunting Creek.

Some of us have had enough interest in this that we have gone and gotten some old maps, and I think we are going to be able to prove that this might not be in Alexandria, this might be in Fairfax County, and we might get a little court case to determine just where the line is in Alexandria, Va., and Fairfax County people have not been asked whether they would like to have it. Of course the commissioners of that area have indicated that they are very much opposed to the granting of this license and they have not given any license to anybody to put up a high-rise apartment in this area.

I hope as a result of this committee hearing that you can impress upon the Corps of Engineers, who have the final responsibility in this, that while it will not interfere with navigation—everybody concedes that point that this fill is not going to interfere with navigation on the

Potomac—it is going to interfere with some values that ought to be preserved, and the values which the President, the Commander in Chief of the Corps of Engineers, has asked be preserved.

Thank you, Mr. Chairman.

Mr. JONES. Thank you very much, gentlemen. We can appreciate your great concern in the fact that you have taken so much effort to apprise and inform the committee of the transactions that have taken place involving this whole matter. Thank you very much.

Our next witness is Mr. Michael Frome, columnist for the American Forests magazine of the American Forestry Association, and conservation editor of Field and Stream.

STATEMENT OF MICHAEL FROME, COLUMNIST, AMERICAN FORESTS MAGAZINE, AMERICAN FORESTRY ASSOCIATION, AND CONSERVATION EDITOR, FIELD AND STREAM

Mr. FROME. Essentially I believe that a writer's words are meant to be read rather than heard. But I appreciate deeply the interest of this committee, and of its members individually, in the tragic affair of Hunting Creek and your willingness to probe the broad implications behind it. Therefore, since I have lived in the area for 17 years, I felt that I must come to be of service to you as best I can.

I might point out that representatives of national conservation organizations—the American Forestry Association, the Wilderness Society, National Wildlife Federation, who I recognize, and others—are in the room today because the issue of Hunting Creek is not a local affair: It is a national crisis in conservation and in morality of government.

How I became involved in Hunting Creek is related in my column in American Forests, copies of which have been given to you and which I offer for the record.

A lady of Alexandria telephoned and asked how I could live in good conscience saving birds and beauty in distant places while watching the desecration of birds and beauty in my own community. "Are you," she asked, "like the Department of the Interior, which screams like a bold hawk but behaves more like a frightened chicken?"

Subsequently, I learned that the Virginia Legislature in 1964 passed H.B. 591, authorizing the sale of the historic and scenic streambed of Hunting Creek, one of the most important resting areas of diving ducks along the Potomac River. I must say, as a Virginia citizen, it grieves me that this action was taken by our legislature without public hearings, without study by the Department of Conservation; and when Mr. Reuss spoke of the need for coordination I felt desperately the need for greater coordination and initiative on the part of the States, particularly my own.

I do hope, when your committee chooses to study Hunting Creek on the site, that you will invite the Commission of Conservation of the State of Virginia, which is headed by Carlisle Humelsine, the president of Colonial Williamsburg, to come and participate with you in your study.

The bill was sponsored by Delegate James Thomson of Alexandria. The purchasers were specified as the Hunting Towers Operating Co. and Francis T. Murtha, trustee, the latter being an official of the In-

ternational Brotherhood of Teamsters in the Miami District and of the Teamsters pension fund.

On May 29, 1968, the Department of the Army issued a permit authorizing Howard P. Hoffman Associates, Inc., to construct a bulkhead and to fill in Hunting Creek. The firm of Hoffman Associates is, I believe, headquartered in New York. It is represented by the politically active law firm of McCormack & Bregman, the former being especially active in Massachusetts and the latter in Washington, D.C., and environs.

On April 11, 1968, I addressed a letter to Secretary Udall at the Interior Department advising him that I was about to write about Hunting Creek and asked for information concerning his personal views and the views of agencies in his Department. I will not go into the whole correspondence, but I think it important to cite my request for the following two specific items:

1. The professional judgment of the National Park Service on the effect of the proposed high rise apartment on the scenic vista of the Potomac, the traffic impact on the Mount Vernon Memorial Highway, and the effect on the Jones Point Park project.
2. The professional judgment of the Bureau of Sport Fisheries and Wildlife on the effect of the landfill on waterfowl which now use the area for resting and feeding, and on the marshes south along the river.

The response came from Under Secretary David S. Black, in Mr. Udall's behalf. It did not furnish the information I requested, but rather Mr. Black's own views, as follows:

1. The National Park Service has expressed concern over the general impact of high rise development on the Potomac scene, but in such general terms that I would hesitate to term it "professional judgment". * * *
2. Similarly, the Bureau of Sport Fisheries and Wildlife has cited reduction of waterfowl habitat as the basis for objection. Again, however, no specific evidence of actual waterfowl displacement has been presented and no persuasive explanation has been provided as to how this particular project would have adverse impact on other areas that have demonstrated wildlife value. * * *

The letters now in the record of this committee from Director Hartzog of the National Park Service, and Director Gottschalk of the Bureau of Sport Fisheries and Wildlife, coupled with such disappointing statements by the Under Secretary of Interior and the strange and distressing behavior of the Assistant Secretary for Fish and Wildlife and Parks, show clearly that the integrity of the finest professional men in Federal service is in danger. I refer to the rangers, naturalists, historians, biologists, foresters, soil scientists and other professionals of our public land management agencies, the protectors of the landed estate of the American people—men of principle and high purpose, whose competence and devotion to the people we have now seen denigrated and disavowed.

This is why I consider Dr. Francis Uhler, the biologist of the Bureau of Sport Fisheries and Wildlife at Patuxent, whom I do not know personally, the most important man before you in the room today. Where the leadership of his Department sacrificed principle to expediency, he refused to be silenced. He held aloft the banner of professional integrity and public interest in the finest tradition. It reminds me of Gifford Pinchot and his battle against Richard Achilles Ballinger early in the century to save Alaska from the Morgan-Guggenheim Wall Street combine.

I pray that you will not allow Hunting Creek to be plowed under by the Department of the Interior and Corps of Engineers. The scientific, biological, scenic, and recreational values are manifestly and undeniably present. It must not be dismissed as merely a case of "ducks versus high rise." This little area deserves preservation as a symbol of what is good and right and decent in the attitude of a people toward their surroundings and their God-given natural resources.

Moreover, I urge this committee to look further into policymaking procedures at Interior, specifically in the following two cases:

1. *Ozark National Scenic Riverways, Missouri*.—Many people in the great State of Missouri, joined by others throughout the land, worked for establishment of this national park area to safeguard the beautiful Current River as a natural legacy to the future. These people are now shocked that the sanctity of their treasured riverway is to be invaded by powerlines designed for the service of mining interests exploiting lead and iron deposits in the Ozarks—with the sanction and blessing of the Department of the Interior.

2. *Delaware Water Gap National Recreation Area, New Jersey-Pennsylvania*.—When the National Park Service published its first plan for management of this new area surrounding the proposed Tocks Island Dam and Reservoir, it wisely designated Sunfish Pond, a beautiful glacial lake on Kittatinny Ridge, for protection in essentially its natural wild character. Presently the public learned the Department had given approval to complete desecration of the pond and ridgetop for a pumped-storage hydroelectric site to benefit the utility companies. We are asked for an expenditure of \$200 million from the Treasury of the United States to operate a daily fluctuation in the water level of the reservoir, exposing mudflats along 100 miles of shoreline. I think we have the right to know the process of decisionmaking in the Department of the Interior that foists such devastation upon the land.

We live in an age when land is scarce and desirable for a multitude of reasons. In northern Virginia the people are trying to save a few precious places. We do not want the Mount Vernon district to look like Manhattan—a complex of dark concrete canyons. We want it to be a fitting companion piece for the Nation's Capital, a region of light, air, and space, with trees, fish, and birds that children can know and enjoy, and thus serve as an inspiration and model to the country.

Alas, northern Virginia has been plagued with indictments and convictions of public officials for complicity with real estate developers; even now the intrigue to despoil and destroy goes on. Less than 3 or 4 miles from Hunting Creek, the people are fighting to save 90 acres of land earmarked for protection as a public park from disaster and destruction through machinations to annex this area into Alexandria.

We receive scant leadership or support from the State of Virginia. It has been said that "Richmond is 100 miles away and 100 years behind," although I have reason to hope that Governor Godwin will exercise his responsibility by refusing to sign the papers transferring the deed to Hunting Creek.

I mention these incidents to underscore the meaning of this investigation by the Committee on Government Operations. By the very simple fact of holding a hearing, you are giving hope and inspiration and even, one might say, restoring faith in the business of democracy.

Thank you.

Mr. JONES. Thank you very much.

Do you know whether the Governor has acted under the 1964 act of the legislature?

Mr. FROME. I have been in touch with the chairman of the conservation commission, who said the matter is now under review by the attorney general of the State for the Governor.

Mr. JONES. And the Governor has made no comment?

Mr. FROME. No; he has not.

Mr. JONES. Are there questions? Mr. Roush?

Mr. ROUSH. No questions.

Mr. JONES. Mr. Moss?

Mr. MOSS. Mr. Chairman, I have no questions at this time; but I do want to compliment you, Mr. Frome, on a most excellent statement. I share your sense of disquiet. I think we are seeing too many beauty spots in this Nation verge on becoming dead completely.

In my State we are concerned about the saving of our redwood forests and the preservation of Lake Tahoe. We know the serious nature of the threat to both of those irreplaceable resources. And I have the same attitude toward the resource which has already been permitted to be significantly downgraded: the Potomac and its tributaries. Thank you.

Mr. FROME. We are very grateful to you, Mr. Moss, for coming and living in our community and exercising your interest as both a resident of the community and a statesman of the Nation.

Mr. JONES. Mr. Vander Jagt?

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I would like to commend Mr. Frome for his interest and concern, as shown in his statement, and parenthetically commend the little old lady in the tennis shoes who whipped up your interest in this particular matter. I have just a couple of questions.

I understand you made the statement that when this public hearing was held in Alexandria on February 21, the career people of the National Park Service and the Bureau of Sport Fisheries were not permitted by their superiors to testify.

Mr. FROME. I did not make that statement; but it is a fact.

Mr. VANDER JAGT. That is a fact?

Mr. FROME. Oh, yes. Dr. Cain told me that.

Mr. VANDER JAGT. One other question: You asked Secretary Udall on what basis, or on what decision process, they concluded that this area really was of little conservation value?

Mr. FROME. Yes.

Mr. VANDER JAGT. The answer came back to you through Mr. Black. Do I understand that the basis of that explanation was that they questioned the competence of people who had examined the area?

Mr. FROME. I think that is a fair conclusion; yes.

I would also like to say I think it is unfortunate that the Secretary had to take refuge behind his Under Secretary. I asked for his judgment, his personal opinion, and I talked with him about this before.

Mr. VANDER JAGT. And you never received an answer from him?

Mr. FROME. No; I did not receive his view. I think it was the Department's decision that the Secretary of the Interior should stand behind it and take responsibility for it.

Mr. VANDER JAGT. That is all I have, Mr. Chairman. Thank you.

Mr. FROME. I would like to offer Mr. Black's letter for the record.

Mr. JONES. Without objection, the letter will be inserted in the hearing record at this point.

(The letter follows:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 26, 1968.

Mr. MICHAEL FROME,
Alexandria, Va.

DEAR MR. FROME: Secretary Udall has referred to me your letter of April 11, concerning a bulkhead and fill permit application now pending before the Corps of Engineers as it would affect Hunting Creek. As you may know, the responsibility for final departmental action under the interagency memorandum of understanding has been assigned to me.

Having completed its public hearing on the matter and on the basis of the last recorded position of this Department, the corps has been free to proceed with a decision for over 2 months so far as our interests are concerned. Solely on the basis of informal indications of renewed concern within the Department, however, we were accorded a belated and eminently reasonable opportunity to review the matter again. To compress a 4-year proceeding into a short space, there is enclosed for your information a copy of a letter which I have today forwarded to the responsible Army official.

In response to the specific questions you have posed, the following information is provided:

1. The National Park Service has expressed concern over the general impact of high-rise development on the Potomac scene, but in such general terms that I would hesitate to term it "professional judgment." As to impact on Jones Point or other park areas, I have inspected those sites in the company of the Park Service representative most knowledgeable about the area. Structures on the proposed project would be visible from only a small segment of the Jones Point property and no more so than the existing buildings on higher ground. From the picnic area on the south side of the creek, those existing buildings will be the backdrop of any new structures; the view will therefore be essentially unchanged.

2. Similarly, the Bureau of Sports Fisheries and Wildlife has cited reduction of waterfowl habitat as the basis for objection. Again, however, no specific evidence of actual waterfowl displacement has been presented and no persuasive explanation has been provided as to how this particular project would have adverse impact on other areas that have demonstrated wildlife value. In both instances, I am convinced that professional judgment has been influenced more by the possible precedent effect of this permit than by its direct and immediate impact on conservation values. This concern is fully appreciated, but its relevance is highly questionable since all but a relatively short stretch of the undeveloped downstream shoreline to Mount Vernon is under Park Service jurisdiction and control. You will recall that the Department entered vigorous opposition to intensive development at the south end of Dyke Marsh and, in conjunction with local citizen effort, prevailed. Our response to the corps with respect to already developed areas north of Hunting Creek in no way alters that policy.

3. The Federal Water Pollution Control Administration is on record with the corps as of December 15, 1967, to the effect that the proposed project would not have adverse effects on water quality. This evaluation was reviewed as recently as April 17, and reaffirmed. Moreover, the corps proposes to insert in any permit which may issue a condition requiring compliance with any requirements or instructions of Federal or State pollution control agencies.

4. I cannot, of course, express Secretary Udall's personal views on the significance of this site. However, based on a visual inspection in the company of professional park and wildlife representatives, I am of the view that modifications of natural conditions on the north side of Hunting Creek over the past half-century have reduced its conservation or scenic significance to a very minor level. With the exception of lands in actual Federal ownership (e.g. Jones Point), in fact, there seems to be little prospect for sound preservationist argument on that side of the creek. So long as any further encroachment can be held to the boundary line described in the enclosed letter (east line of South Royal Street projected to the thread of Hunting Creek), the situation will now become stabilized.

I have noted with particular interest your closing comments on the memorandum of understanding we have with the Department of the Army. The real significance of that arrangement, in my view, is that it establishes the principle of interagency review and prescribes a procedure that assures that opportunity. You are aware, I am sure, that our views are not mandatory on the corps. We have every confidence that our position will be persuasive where the values are demonstrated and significant. But the memorandum of understanding grants us no license to be arbitrarily negative, without regard to private property rights, weight of the evidence or relevance to matters properly within the Department's sphere of responsibility. If such a pattern were adopted, the memorandum would soon become a shell empty of substance.

I trust that your journalistic treatment of this issue will give due recognition to all of the factors involved in spite of the personal preference most of us might have with regard to this project.

Sincerely yours,

DAVID S. BLACK, *Under Secretary.*

Mr. JONES. Mr. Frome, in your article, which I will put in the record immediately after your testimony, on page 53 of the June 1968 issue of *American Forests* magazine, you said you phoned Director Gottschalk, and that he said:

Our report of 1964 is still valid. The marshes below will deteriorate. But the effect of this fill in itself is not our primary concern. We must choose: either we can make the Potomac a model river or we make it a ditch.

Was that a direct quote of a conversation you had with him?

Mr. FROME. Yes.

Mr. JONES. Then the continuing paragraph:

Then I called Director George B. Hartzog, Jr., of the National Park Service, who said, "I am deeply disturbed. I agree completely with Mr. Gottschalk. I am worried about the process of decisionmaking and where it may lead."

Is that too a direct quote of the conversation that you had with Mr. Hartzog?

Mr. FROME. This is correct, Mr. Chairman.

Mr. JONES. Thank you, sir. We appreciate your testimony, Mr. Frome. It has been most helpful.

Mr. FROME. Thank you.

Mr. JONES. Without objection, Mr. Frome's article in the June 1968 issue of *American Forests* magazine will be made a part of the record at this point.

(The article follows:)

[From *American Forests* magazine, June 1968]

By MIKE FROME

I found myself one day enjoying the most delightful daydream, in which I was privileged to spend my career writing about the natural and intellectual glory of America, evoking the love that all must feel for forest, river, prairie, wildlife, and humankind, the diverse land forms and life forms. In this luxurious reverie I was free of issues, crises, and conflicts, and of entangling occupation with the ways of politicians, bureaucrats, and special economic interests.

Then the telephone rang. The dream was done.

It was a little old lady in tennis shoes. I could tell by the tone in her voice—blessed with idealism and honesty, hurt, and anger, determination, confusion, and uncertainty about the weakness and corruption in the world around her.

"I have read your article in *Southern Living* about the Everglades," said she, "but you do not fully impress me. It is one thing to advocate protection of endangered birds a thousand miles away, but why have you been silent about endangered birds at Hunting Creek on the Potomac River, close to your home? Are you, indeed, like the Department of the Interior, which screams like a bold hawk but behaves more like a frightened chicken?"

The lady left me no alternative but to pursue the issue. The details I subsequently discovered are sordid and stench. They reach far beyond the local setting of a potential land fill threatening a resting ground of diving ducks in their involvements and implications. But let us pick up the trail at the start and follow the smells where they may lead.

Hunting Creek empties into the Potomac at the southern border of Alexandria, Va., a dozen or so miles downstream from the heart of the Nation's Capital. It is an historic stream associated with the comings and goings of the master of Mount Vernon, the great shrine that lies about 6 miles south. The stream is crossed near its mouth by the George Washington Memorial Parkway, an eminently worthy component of the national park system.

For thousands of years, or longer, the shallow waters at the mouth of Hunting Creek, touched by tidal inflow from the sea, have provided fertile feeding and resting areas for large numbers of gulls, terns, and diving ducks. In recent years the inner tidelands of the creek have been badly damaged by construction of an Interstate Highway interchange and by unsightly and smoking dumps, part of a landfill awaiting high-rise development by the Marriott motel, hotel, and restaurant family and others. These latter projects were bitterly and bravely protested by the Valley View Citizens Association before the Supervisors of Fairfax County. Their protests were in vain, alas, but then several of the supervisors were later indicted, along with the county planning director and assistant planning director, for complicity in a wide range of real estate adventures.

Despite these intrusions into the estuary, the Bureau of Sport Fisheries and Wildlife reported in 1964 that between 3,000 and 5,000 scaup and ruddy ducks winter in the vicinity. "Because of the importance as a diving-duck feeding ground of this shallow, open-water section in the embayment at the mouth of Big Hunting Creek, every effort should be made to protect this feeding area against destruction by either filling or dredging," the Bureau declared. "These shallow open waters, together with adjacent marshes, compose an unsurpassed opportunity for the conservation, enjoyment, and study of aquatic life in the vicinity of our Nation's Capital."

This testimony, offered by the finest wildlife professionals, echoed and supported fully by the park professionals, was later to be shamefully disavowed and discounted, for reasons that in due course will become clear.

For the present, the statement was occasioned by the introduction and passage of a bill, H.B. 591, in the Virginia Legislature authorizing the sale of 36 acres of estuarine streambed at Hunting Creek, owned by the Commonwealth, to an individual and a private firm. The individual, as it developed, is associated with the pension fund of a large labor organization. No quarrel there—unions have as much right to invest in real estate as anybody else—but the sole sponsor of H.B. 591, Delegate James M. Thomson, a lawyer of Alexandria, is known far better as a stalwart of good old free enterprise and States' rights than of public land rights, civil rights or labor's rights. Strange bedfellows.

The National Park Service felt so strongly about the Hunting Creek issue that it protested and appealed to Virginia authorities. For one thing, high-rise apartments would mar the view of the Potomac. For another, they would overload and commercialize traffic on the Parkway. Further, any development at this estuary would have demonstrable effect on the recently acquired Jones Point Park, which juts into the Potomac nearby. The safest and shortest access to the new park, assuring maximum public benefit, logically should be directly from the Parkway. But this would become impossible with high-rise development.

The Commonwealth turned its back on the Park Service and on the broad needs of its own people. However, the U.S. Army Corps of Engineers has the jurisdiction over navigable waters and must issue permits for dredging, filling and excavation. Thus the views of public agencies and citizen groups in Alexandria and Fairfax County were presented to the corps. "The obstruction resulting from bulkheading and filling will alter natural silting processes at the mouth of Hunting Creek," declared the Bureau of Sport Fisheries and Wildlife. "Ensuing development on the proposed fills will constitute a disturbance factor which will adversely affect waterfowl and shore bird utilization in the general area and seriously obstruct public observation and enjoyment from the National Park Service's access area at Jones Point." This position was buttressed by expressions of interest and support by several Members of Congress, including Representatives John Moss, of California; Henry Reuss, of Wisconsin; and others—all good men, concerned with the welfare of the national river as well as with affairs in their home districts.

Consequently the permit was denied and apparently lay dead for over 3 years. "We thought it over and done with," John Gottschalk, Director of the Bureau of Sport Fisheries, told me a couple of months ago. "Gosh, but we were asleep." It was not, however, so much a case of protectors of public interest being caught off guard as of skillful persistence by the developers, who apparently comprise a national group of investors with elaborate connections.

They are represented, for instance, by the law firm of McCormack and Bregman—the former being the nephew of the Speaker of the House of Representatives, Hon. John McCormack. Contacts were made by the law firm with Members of Congress. At least one or two Congressmen were induced, for one reason or another, to back away from the issues at Hunting Creek. Contacts were made with the Secretary of the Interior, a man who, among his many achievements, has charted a whole course for safeguarding the Potomac shoreline as a model for the treatment of many rivers. But in this case the Secretary was brought to his knees and surrendered, ordering Assistant Secretary Stanley Cain to withdraw previous objections.

On February 21 the Corps of Engineers conducted a public hearing in Alexandria. The National Park Service and Bureau of Sport Fisheries were not permitted by their Department leadership to testify and provide professional judgment. "The applicants were able to find someone in the Department who could give them a green light," Representative Reuss, appearing in behalf of Representative Moss and himself, declared during the hearing. He quoted a personal letter from an Interior Department biologist, Francis Uhler, who refused to be silenced but insisted on following his own pathway of conscience and conviction with a statement that the mouth of Hunting Creek should be preserved as "the most important feeding grounds for diving ducks along the fresh tidal waters of the Potomac."

On March 8 the President issued his proposal for a Potomac National River, warning (in words drafted at the Interior Department) that "failure to act now will make us the shame of generations to come." This led me to feel the hour had come for the Secretary of the Interior to stand up in defense of Hunting Creek, and of the integrity of his own Department.

First, however, I wanted to reassure myself that the cause was just.

I phoned Director Gottschalk, who said, "Our report of 1964 is still valid. The marshes below will deteriorate. But the effect of this fill in itself is not our primary concern. We must choose: either we make the Potomac a model river or we make it a ditch."

Then I called Director George B. Hartzog, Jr., of the National Park Service, who said, "I am deeply disturbed. I agree completely with Mr. Gottschalk. I am worried about the process of decisionmaking and where it may lead."

These two comments were good enough for me, even though apologists at the political level in the Department kept saying, "We can't win them all, you know, and we don't always exercise control. Besides, the damage has been done to most of the estuary. The rest isn't worth saving."

But Joseph Penfold, conservation director of the Izaak Walton League, who has been fighting the battle of Hunting Creek, said, "Sure, this bit of stream and tidal estuary have been badly damaged, though not beyond restoration. We could complete the destruction by granting the subject permit, and then the next one to the north, and then Jones Point would be just about worthless as a piece of green shoreline for the public—so that could be turned over for development, too. Then we can follow with Dyke Marsh to the south, and another hundred miles of estuary down the Potomac. The point is that vast estuarine areas, the 67 percent of California, the 50 percent of Long Island's south shore, have been lost—lost by attrition, small piece by small piece."

I talked to the Secretary of the Interior and then wrote him a letter asking for a recapitulation of the professional judgment of the National Park Service and Bureau of Sport Fisheries and Wildlife, and for an expression of his own personal views. The response came to me in the Secretary's behalf from David S. Black, Under Secretary of the Interior, who provided a long letter with many words and little substance.

What substance there was amounted to a denial of professional competence in the Park Service and Bureau of Sport Fisheries and Wildlife, a disavowal of the best judgment of these two agencies, which I find disturbing and utterly frightening. For what happens along the banks of the Potomac today can happen anywhere tomorrow in our parks, forests and wildlife refuges, wherever the land developers and land despoilers decide to press the button, hire the right attorneys, and apply the squeeze to the political leadership.

Thus, victory in the battle of Hunting Creek, which is still not beyond reach, would be a form of public honor and encouragement to professionals who devote their careers to public service. It would strengthen the muscle of legislators who want to do what is right, and forewarn those willing to do what is wrong. Under Secretary Black reminded me in his letter of the need to recognize private property rights. Surely, a victory at Hunting Creek would remind him and his associates that they must stand up and be strong in defense of public property rights.

Mr. JONES. Our next witness is Mr. George B. Hartzog, Director of the National Park Service.

STATEMENT OF GEORGE B. HARTZOG, JR., DIRECTOR, NATIONAL PARK SERVICE; ACCOMPANIED BY ROBERT C. HORNE, ASSISTANT TO THE DIRECTOR

Mr. HARTZOG. Thank you very much, Mr. Chairman. I would like to ask Mr. Robert C. Horne, my assistant, who during this time was Associate Director of the National Capital region, to join me.

Mr. Chairman and members of the committee, I am here this morning in company with Under Secretary David Black. I do not have a separate prepared statement. The statement for the Department of Interior is to be given by Mr. Black. Mr. Horne and I are here to answer any questions you or any member of the committee may have, and we would be very pleased to do so.

Mr. JONES. I am going to ask the staff director of our subcommittee to interrogate the two witnesses.

Mr. INDRITZ. Mr. Hartzog, on April 4, 1968, you sent a memorandum to the Secretary of the Interior on the subject of the proposed land fill in Hunting Creek. Do you have a copy of that memorandum with you?

Mr. HARTZOG. Yes, sir; I do. I am trying to find it right now. Yes, sir.

Mr. INDRITZ. Had you been requested by the Secretary, or by the Assistant Secretary or by the Under Secretary, for the view that you expressed in that memorandum?

Mr. HARTZOG. No, sir; I had not.

Mr. INDRITZ. What was the occasion for your sending that memorandum?

Mr. HARTZOG. We had been talking with some of the conservationists who continued to express concern about this matter. In the meantime, since our last communication on this matter—as was mentioned to you earlier this morning—the Department had sent up to the Congress the Potomac national river bill and we wrote this memorandum in the context of those two circumstances.

Mr. INDRITZ. Would you describe the recommendation that you made in that memorandum?

Mr. HARTZOG. Briefly, Mr. Indritz, I think the recommendation appears on page 2 in the last paragraph in which, after setting forth the fact that the administration had sent up the Potomac River national bill, and stating that in the light of the pending estuary legislation a decision involving Hunting Creek may be involved in the context of these two pieces of legislation, we suggested perhaps the Secretary may want to restudy the matter. That is the essence of it.

Mr. INDRITZ. Is this a memorandum by which you indicate that you were not in agreement with the results reached by Assistant Secretary Cain in his letter of October 10, 1967?

Mr. HARTZOG. I have that letter here and I am trying to find it. Is that the particular letter in which he withdrew the Department's objection?

Mr. INDRITZ. Yes. The October 10, 1967, letter was the document in which he informed the Corps of Engineers that the Interior Department had withdrawn its objections to the permit.

Mr. HARTZOG. Yes. I think this is a fair inference, yes, sir; although I did not discuss it in my April 4 memorandum.

Mr. INDRITZ. Do you mean by the statement "it is a fair inference" that you did not agree with the results stated in that letter of October 10, 1967?

Mr. HARTZOG. That is correct, and I would like to interpolate here there is a material distinction in the letter of October 10, 1967, to Colonel Rhea that I have here and the decision made by Under Secretary Black in 1968, and that relates to these maps that we have here. We have one over on this side which is a map prepared by us. These are prepared by the Bureau of Sport Fisheries and Wildlife; and Mr. Moss, with deference to you, sir, my understanding of these maps is that the area in dark brown, inclusive of the red area, is the original application of the Hoffman Co. for fill in this area.

Mr. Moss. That is correct.

Mr. HARTZOG. Our objection went to the fact that fill would in our view trespass on the riparian rights of the Federal Government.

Secondly, the application was revised and was in effect at the time of Assistant Secretary Cain's memorandum. This was our understanding of what would be approved in the light of Under Secretary Black's decision, and I call your attention to the fact that by limiting the area of fill, the remaining area of fill no longer involved the question of our riparian interests at Jones Point Park; but that had not been done in October 1967.

Mr. JONES. You refer to the riparian interests of the Federal Government. Designate it on the map, please.

Mr. HARTZOG. Sir, I would say at the northeast corner of the presently approved application, which is a projection of South Royal Street, southward.

Mr. JONES. Was the land just—

Mr. HARTZOG. This is Jones Point Park.

Mr. JONES. What is that area (indicating)?

Mr. HARTZOG. This is the area of the original application, sir. In other words, the point I was trying to make was to clarify what I had understood the distinguished gentleman from California to have said, that this was a pending application. It is possible that there could still be one. I am not advised on that. But at any rate this map is meant to depict the original application and this and this are the same.

Now then, this application was later amended to be roughly this area. And we were still objecting. And on the basis of Under Secretary Black's letter, this became the fill area and this is the point—

Mr. JONES. That is where they cut off three-quarters of an acre?

Mr. HARTZOG. Yes, sir; that is the point where they removed the application entirely from our claim they were trespassing on our riparian interest.

Mr. Moss. I think it is very important now that we also look at another part of your objection.

Mr. HARTZOG. Yes, sir.

Mr. MOSS. And that is to the recreational values.

Mr. HARTZOG. Right, because there were two points.

Mr. MOSS. And those would be impaired almost to the same extent by the present application as by the application, No. 2, I guess, before the three-quarters of an acre was removed.

Mr. HARTZOG. That is correct, sir.

Mr. MOSS. So there still is a substantive area of disagreement by the National Park Service on the granting of the permit.

Mr. HARTZOG. Sir, I believe that our substantive disagreement has been taken care of.

Mr. MOSS. One of your substantive disagreements. According to your letter, as I read it, you mention both recreational values and riparian rights.

Mr. HARTZOG. Right.

Mr. MOSS. One is a right that is justiciable, the other is rather an intangible matter, but one where your professional judgment says that it is impaired. We cannot put a dollar price tag on it, but the impairment continues nevertheless. Am I correct?

Mr. HARTZOG. The gentleman is quite right in summarizing what our objection is. And what it basically involved, sir, is the storm sewer that is in South Royal Street and emptying into this area here.

What we are recommending, and what we did recommend, is that this sewer be extended so as to pass through this fill. Mr. Horne is not only an administrator and my assistant, but by training a professional engineer, and Mr. Horne and our professional people have advised me that our second point can be as easily handled after the fill is made as before the fill. So that just so long as the sewer is ultimately extended through this fill—whether it is made as the fill is made or whether it is made subsequent to the fill—our second point is taken care of.

We do not want this water, as Congressman Reuss was saying earlier, eddying in here and coming back onto Jones Point Park. That is what we did not want. These were our two points of objection.

Mr. MOSS. There will be the continuing problem of the water eddying in there, will there not—the red section on the map over here just south of the highway leading to Woodrow Wilson Bridge. You create a sort of bay or inlet there and the water characteristics are going to change, are they not? There would be silting. You would almost have to set up an experimental model, I guess, of the water in that area in order to determine the exact influence upon the remaining land, would you not?

Mr. HARTZOG. Mr. Horne, if I may, Mr. MOSS.

Mr. HORNE. It is very difficult, Congressman Moss, to determine this since this is a tidal estuary and the flow in Hunting Creek is not very great except during rainstorms. So that the current within the little bay there is very difficult to determine. It would depend largely, except during storms, on the ebb and flow of the tide.

Mr. MOSS. I say then my statement would be correct, it is difficult to forecast—

Mr. HORNE. It would be very difficult to forecast.

Mr. MOSS (continuing). The extent of adverse action, silting, and things of that type, on this little inlet that is created by the additional fill.

Mr. HORNE. I think it would be difficult.

Mr. HARTZOG. I think our best judgment remains that if the condition of approval given by Under Secretary Black is complied with by the corps and by the developer, that our second point will be resolved. In other words, either extend the sewer through there, or provide for its extension through there, so the eddying does not take place in the long run.

Mr. MOSS. Now I am confused because we have just had Mr. Horne indicate there would be some eddying, the extent of which would be very difficult to forecast.

Mr. HARTZOG. That is right, so long as that sewer is not extended. If the sewer comes through the fill you see, if the sewer comes through this fill, then it cannot eddy in here.

The point I was trying to make for your consideration—

Mr. MOSS. But the tidal action and the flow from Hunting Creek can, and therefore the matter is not resolved by the simple expedient of placing a storm sewer through the fill, is it?

Mr. HARTZOG. No.

Mr. MOSS. And what about the recreational values?

Mr. HORNE. I think that the most objectionable thing along this shoreline is the effluent from that sewer which upon occasion is not all storm water. In that particular area this effluent pollutes that area and eddies in the area of the mouth of that sewer, which would not be the case if the sewer were extended.

Mr. HARTZOG. This is the point I was trying to make.

Mr. JONES. It is not just storm water, is it?

Mr. HORNE. It is principally a storm sewer, Mr. Chairman, but it is my understanding, and from the appearance of the bay it is obvious, that there is some sanitary sewage that gets into it.

Mr. MOSS. Mr. Chairman, I ask permission to yield to the gentleman from Wisconsin, a member of the parent committee.

Mr. JONES. Mr. Reuss.

Mr. REUSS. I thank the gentleman for yielding.

Director Hartzog, I am referring to your memorandum of April 4, 1968, in which the National Park Service gave its reasons for objecting to the fill, objections which you have testified were present, though apparently unrecognized on October 10, 1967, when Assistant Secretary Cain wrote his letter. You state in that April 4 memorandum:

The Department of the Interior in 1964 opposed the conveyance of the submerged lands and the issuance of the fill permits on the grounds that the bulkhead and fill would adversely affect fish and wildlife and park and recreational values in the area and might adversely affect the riparian rights of the United States as owner of Jones Point Park.

I call your attention to your own National Park Service map and to the red plaque which indicates the area which would actually be filled under the fill permit issued, or purported to be issued, by the Corps of Engineers on May 29, 1968.

You have said that the National Park Service objected on several grounds. One was the riparian rights legal ground. That did not bother me or my congressional colleagues. That is for technical lawyers in the Department. I am glad you got that straightened out.

Another point that bothered you was the fact that a sewage outflow occurred at the foot of Royal Street and by lopping off a tiny bit of the application, you could get that sewer extended through, so that the crud, when it is poured out, is not poured out on these new high-rise apartments but on the general public just past them. Well, thanks very much for that, but I wasn't particularly interested in that, either.

What I was and am interested in was your very cogently made assertion that here you have a future national park in the Capital area at Jones Point. If the Corps of Engineers is going to allow a 9-acre fill here, two things are going to happen when the harassed citizen, looking for a little bit of nature, comes down to Jones Point Park on a Sunday: First, instead of looking down the broad sweep of the Potomac where George Washington once looked, he is going to be looking at some high-rise apartments built by a fast-buck artist who managed to con the Corps of Engineers into issuing that permit. That obviously is not a very good way to fix up the landscape and the vista from the national park.

Secondly, you made a very cogent objection that the tidal Potomac, silt laden as it is, could well cause a destructive fill in the Hunting Bay estuary if this 9-acre fill is allowed to be made. I now come to my question:

It is a fact, is it not, that the permit issued by the Corps of Engineers on May 29, 1968, offends against both of those reasons for the National Park Service's objection to any fill there, and that the mere fact that you have settled the question of riparian rights, and settled the question of the dumping of raw pollution, while nice, does not make any meaningful contact with the main reasons for the National Park Service's objection?

Mr. HARTZOG. Sir, you pose a very difficult question and I think basically it is a question of judgment. I think the record, as you made it this morning, the memoranda and the file, is replete with the fact that our judgment is that it does affect the park and recreational values. You can get to Jones Point, and I am told by our people who have projected this that at that point you would simply not see all of these buildings, if they were built high rise as the Towers that are there now, but only one part of one building. Now, of course, as a park man—

Mr. REUSS. From where?

Mr. HARTZOG. From Jones Point.

Mr. REUSS. That is true, but irrelevant. I was not talking about Jones Point, where admittedly—particularly if you got on the lee side of the lighthouse, in which you couldn't see a thing—you would see only one building. But how about the nature walk all along the southern lip of the proposed Jones Point Park? I have walked that site of the nature walk and I can assure you that the erection of a high-rise apartment on that 9-acre land fill would squarely block the view across the Hunting Creek estuary. Is that not so?

Mr. HARTZOG. I think that is a fair statement. I would like for Mr. Horne to comment on this, particularly the second part of your observation about that sedimentation there, making that whole area fast land.

Mr. REUSS. I did not suggest that. I simply suggested that there was a possibility that if you put a thumb, sticking out there—

Mr. HARTZOG. Right; that it will silt in.

Mr. REUSS. You don't have to be a great ecologist to figure out that it is likely to cause further siltation. Ironically, it has always been one of the contentions of these people who want to fill in the land that there is so much siltation down there that ultimately there won't be any Hunting Creek estuary but just a filled area. If Mr. Horne disagrees with my thought—that there is a greater likelihood of sedimentation occurring if you erect the 9-acre thumb fill in pursuance of the Corps of Engineers permit—let him so state.

Mr. HORNE. I think it is a matter of degree, Mr. Congressman. The big—

Mr. REUSS. Everything is. But do you agree or disagree with what I said?

Mr. HORNE. There probably would be more; yes, sir. The big area of siltation that occurred in this area occurred during the building of the interstate freeway where there was, shall we say, accidental, but at least there was a big mud flow that came down Hunting Creek and spread out in this area. I don't believe that the natural forces that are now in force would cause the siltation anywhere near the degree to which that mud flow would.

Mr. REUSS. In the light of your answer—in which you agree with me that the likelihood of siltation would be increased by the filling of the 9 acres covered by this application—is it not also a fact that if such partial fill by sedimentation would occur, that it would be easier for a future Corps of Engineers to grant an additional permit for the additional 18 acres, or perhaps 9 acres, lying immediately to the north of the fill which is the subject of the May 29, 1968, permit, on the ground, then, that the area now under water had become a marsh or sand spit?

Mr. HARTZOG. Sir, I wouldn't think we would necessarily want to speculate on that because we took a pretty hard line in the Under Secretary's letter that we would be impelled to object—or the Department did.

Mr. REUSS. I recognize that, yes. However, as you well know, the Corps of Engineers may disregard the Department's advice.

Mr. HARTZOG. They legally may, as I understand it; yes, sir.

Mr. REUSS. May I put to you this question: Would it not be easier in the future for the Corps of Engineers to disregard the Department of Interior's recommendation should the Department of Interior recommend against a fill of the approximately 9 acres lying to the north of the fill which has just been approved by the Corps of Engineers?

Mr. HARTZOG. Sir, I would be very reluctant to speculate on that, especially in light of what happened as a result of the one they have approved already. I wouldn't want to speculate and agree with you on that.

Mr. REUSS. I have one final question: Have you discussed your testimony this morning with Under Secretary Black?

Mr. HARTZOG. We have conferred; yes, sir.

Mr. REUSS. I have no further questions.

Mr. JONES. Mr. Vander Jagt?

Mr. VANDER JAGT. Thank you, Mr. Chairman.

Mr. Director, it is my understanding that in 1964 the National Park Service objected to filling in this area. Among many grounds, one ground was that it would adversely affect the recreational value of that area; is that correct?

Mr. HARTZOG. In the context in which that application was filed at that time; yes, sir.

Mr. VANDER JAGT. It is my further understanding that in your memorandum of April 4, 1968, you still indicated an objection to the filling of that area, and one of the grounds of your objection was that it would adversely affect the recreational values of that area; is that correct?

Mr. HARTZOG. My memorandum of April 4, sir, did not specifically object so much as it suggested that a decision here, in my judgment, would be in the context of the legislation involving estuarine areas as well as the Potomac National River. I suggested it be restudied in that context. It was not directed specifically to the protection at Jones Point at that time.

Mr. VANDER JAGT. I believe in your memorandum you pointed out the great national concern to protect estuarine areas. In light of that, you suggested that they restudy this decision where they had said go ahead and fill it in; is that correct?

Mr. HARTZOG. That is correct.

Mr. VANDER JAGT. And a very valid inference from that would be that you objected to the filling in of that area, wouldn't it be?

Mr. HARTZOG. I think that can be logically inferred; yes, sir.

Mr. VANDER JAGT. All right. Now when did you change your mind and decide that it wouldn't adversely affect the recreational area there if they went ahead and filled it in?

Mr. HARTZOG. The date of my letter is April 4, and the letter to General Woodbury by the Under Secretary is April 26. Is that the sequence of it?

Mr. VANDER JAGT. I believe so.

Mr. HARTZOG. And in the meantime what had happened was that we had gotten some pretty reasonable assurance that this would not be filled. In other words, that the application would be approved on that basis, which gives you a straight line shot for this South Royal Street sewerage line and eliminates the controversy over the riparian rights to this triangle here that we assert. These had been the two major objections which we had asserted here and we had gotten assurances on.

Mr. VANDER JAGT. What you are telling us is that it was the deletion of that tiny pie-shaped white area in there that changed your objection?

Mr. HARTZOG. Well, it didn't change our objection at all; it simply overcame our objections. In other words, our objections were, one, that they were encroaching on our riparian rights and, second, by putting a blockage across the South Royal Street sewerline they were creating the kinds of conditions which Congressman Reuss so eloquently described earlier, of stagnant water with a high degree of sedimentation in there from that outflow. By cutting it back and assuring us that the outflow would be taken care of, our objections were simply overcome. They were not withdrawn.

Mr. MOSS. Would you yield to me for a moment?

Mr. VANDER JAGT. Gladly.

Mr. MOSS. Mr. Hartzog, how do you reconcile the statement you have just made with these two paragraphs in your letter of April 4:

An important principle, i.e., the preservation of our fast disappearing natural environment, which you have creatively defended with great honor and high distinction would appear to me to be involved here.

The bills before Congress to preserve estuarine areas, and the Potomac River study as well, highlight the need to preserve the natural environment along the Potomac estuary. Moreover, further studies of the area are being recommended.

Have those studies been made?

Mr. HARTZOG. Sir, that is in the context of the whole Potomac estuary. So far as I know, they have not all been finished.

Mr. MOSS. So that you raise not only the previous objection, but you pointed to the need for further study.

Mr. HARTZOG. No, sir; I am sorry. That is not the interpretation I place on that. I say "Moreover, further studies of the area are being recommended." These are further studies of the Potomac estuary which is an American Institute of Architects task force study report.

Mr. MOSS. Your April 4 memorandum concludes:

All things considered, I recommend the desirability of the Department re-studying its recent decision at Hunting Creek.

Mr. HARTZOG. That is my specific recommendation.

Mr. MOSS. Was that restudy made?

Mr. HARTZOG. That was in the context of the broader estuary, in the first three paragraphs.

Mr. MOSS. You think then that it would be sound policy, while that study is being made, for us to nibble away?

Mr. HARTZOG. Sir, I am not in a position, and I am sure you understand that, to evaluate my superior's decision on a policy matter here.

Mr. MOSS. We are not asking you to do that. We are asking you solely for your professional judgment—

Mr. HARTZOG. That is set forth here.

Mr. MOSS (continuing). Not the Under Secretary's, and not Secretary Cain's.

Mr. HARTZOG. That is set forth here.

Mr. MOSS. Your professional judgment, as I have gotten it from your answer to my colleague from Michigan, is a little different than in your response to my colleague from Wisconsin. I would like clarification.

Mr. HARTZOG. I beg your pardon. I certainly do not want to convey any difference because my views are set forth in those three paragraphs. I am sure that—if you had known Mr. Indritz; he and I practiced together at Interior as lawyers—

Mr. MOSS. The two paragraphs I read—

Mr. HARTZOG. I dictated this and I rewrote it myself. Those three paragraphs are my views.

Mr. MOSS. Do you stand firmly on those three paragraphs? If that is so, you have satisfactorily answered my question. I thank the gentleman for yielding.

Mr. VANDER JAGT. If those remain his personal views today, then I have no further questions.

Mr. JONES. Mr. Gude?

Mr. GUDE. I agree with Mr. Vander Jagt. If those three paragraphs on the second page of your memorandum are your views, particularly where you allude to the fact that giving in on this area could well mean the beginning of a spreading of high rise all along the Potomac banks, why, I am satisfied.

Mr. JONES. Mr. McCloskey.

Mr. MCCLOSKEY. I have several questions, if I may.

Mr. Hartzog, those four paragraphs end with your recommending the desirability of the Department's restudying its recent decision at Hunting Creek. Was that restudy made before Mr. Black wrote his letter of April 26 to the Corps of Engineers?

Mr. HARTZOG. I do not know, sir, but I did not make it.

Mr. McCLOSKEY. If it had been made, would it not have been made by people partially under your direction and control?

Mr. HARTZOG. Well, not necessarily, sir. The Secretariat has a staff and they use it occasionally to formulate their own recommendations and to get additional study data.

Mr. McCLOSKEY. In your discussions with Mr. Black, and particularly in your conference before testifying here today, was the question discussed as to whether or not such a restudy had been made by the Department?

Mr. HARTZOG. The question was discussed by Mr. Black and me as to whether or not my conclusions here were valid, in his judgment. We did not talk in terms of any additional studies; no, sir.

Mr. McCLOSKEY. No discussion on whether or not the restudy you recommended had been made or not?

Mr. HARTZOG. That is right.

Mr. McCLOSKEY. To your knowledge, has such a restudy been made?

Mr. HARTZOG. I don't know the sequence of this, whether it was after my memorandum was written or before, but you may ask the Under Secretary. He personally went out on the ground, himself, to look at it. What interpretation he puts on this, I assume, would be part of a study; yes.

Mr. McCLOSKEY. This would be a personal study by the Under Secretary?

Mr. HARTZOG. Yes.

Mr. McCLOSKEY. Aside from the personal observation of this area by the Under Secretary, to your knowledge has any restudy been made such as you recommended in this memorandum of April 4?

Mr. HARTZOG. None in which the National Park Service participated; no, sir.

Mr. McCLOSKEY. Mr. Hartzog, are you familiar with the comment made earlier today that representatives of the Department of Interior were instructed not to testify at this February 21 hearing?

Mr. HARTZOG. I certainly am, sir, and I would appreciate very much an opportunity of clarifying that.

Mr. McCLOSKEY. You have it.

Mr. HARTZOG. This is standard operating procedure within the National Park Service growing out of a long series of very difficult, and I think very productive, negotiations with the Corps of Engineers involving the central and southern Florida flood control project. They came about when I took over as Director of the Park Service in which we had local Corps of Engineers people and local National Park Service people appearing in public, testifying at the field level in opposition to each other's views—many times out of context—without a full knowledge of the facts. The agreements were worked out at that time and, as I understand, they have subsequently been incorporated in a departmental agreement between the two departments—I had worked them out with the Director of Civil Works—that thereafter I would not have my field people appear in public to testify on Corps of Engineers projects, but instead the Corps of Engineers would refer its proj-

ects to us for written comments. We have been giving the Corps of Engineers those written comments, all of our field personnel have been participating in them. As a matter of fact, our field personnel prepare the basic comments and if the basic comments include a knowledge of all of the facts, then they go from the field level. Otherwise they go from my level to the Corps of Engineers. So the implication that our people were not allowed to comment on this is not the correct implication.

Mr. McCLOSKEY. Let me see if I understand this correctly. As a result of this earlier project, it is the policy of your Department that at the Corps of Engineers public hearings you will not have your people testify if their views contravene any Corps of Engineers views?

Mr. HARTZOG. No; no. Simply not to have them, whether they confirm or contravene, simply that I do not think it is good practice for Federal employees to testify out of context—because in our organization our research program is directed by our chief scientist in Washington who is not in the line of control of our superintendents.

Mr. McCLOSKEY. Is it fair to say, then, that at a public hearing of the Corps of Engineers the public would not expect to hear the professional judgment of your staff people within the Department?

Mr. HARTZOG. No, sir; that is not it, either. In other words, we will present those, as we have presented them, but they are presented in the total context of all of the knowledge that we have, including the views of our chief scientist. Previously, you see, what was happening is we would have a park biologist or park superintendent appear at a hearing and without a full grounding in the area of this particular hearing he would sound off on his particular views. Now, every individual that we have, in my judgment, is very competent and capable. But as in any large organization, no one scientist has the total picture of what is involved in the resources in that particular area. This came out strikingly in the central and southern Florida water controversy involving the Everglades National Park.

Mr. McCLOSKEY. Let me go back and just limit my inquiry to this hearing on February 21 which the Corps of Engineers held. Was there any individual of the National Park Service at that hearing who testified?

Mr. HARTZOG. No; none, because we had already communicated our views to the Corps of Engineers on this application.

Mr. Moss. Would you yield to me on that point?

Mr. McCLOSKEY. Yes.

Mr. Moss. This was a public hearing called for the purpose of acquainting the public—(1) to give them the opportunity to register their views; and (2) to permit them to become acquainted with the views of the Government agencies involved?

Mr. HARTZOG. Yes.

Mr. Moss. Yet the letter of January 30, 1968, from Assistant Secretary Cain to the district engineer, Colonel Rhea, stated: "I have talked with the people in the Bureau of Sport Fisheries and Wildlife," and I assume because you folks weren't there he must have talked with you, and a decision was made that "we do not need to present testimony at the hearing." How does the public become privy to the nature of the views, not of the field personnel of your Department, but of the Director of the Park Service, of the Director of the Fish and Wildlife Service, if they do not appear at these public hearings?

Mr. HARTZOG. Well, sir, I think they can become apprised of them by the record that is made at the hearing, and I assume that since our views had been transmitted—I don't have a copy of that memorandum that you refer to here. I think reference was made to it in Congressman Reuss' statement. But our views on this application had been transmitted to the district engineer well in advance of this particular time. I have not attended personally one of these hearings at the local level. But I assume that the entire Government record is made available at these hearings. I don't know. But if it is not, certainly it would appear that it should be.

Mr. Moss. Well, of course, it becomes of the greatest value, unquestionably, when you are aware of it after you have had the opportunity to testify. I thought the purpose of a public hearing was to have a contemporaneous discussion and exchange of views, not merely to elicit the views of one side.

Mr. HARTZOG. Well, I would have to defer, sir, to the Corps of Engineers on what the purpose of their hearing is and what it is to achieve. What I have shared with the committee is an operating procedure which I worked out with the Chief of Civil Works involving these local Corps of Engineers public hearings. I did that, believing that in this way the public interest was best served because I wanted my people, when they talked for the National Park Service, to be advised on the facts.

Mr. Moss. If the gentleman would yield further, I would merely like to observe that I think it is certainly meritorious that you undertake to make certain that the departmental position or the Bureau position is clear and unequivocal. But I do not think that is achieved by suppressing appearances. As long as an agreement within the Bureau is made as to what the position should be, I cannot for the life of me understand any reluctance to then make those views known quite publicly as part of the hearing record.

Mr. HARTZOG. They are, sir.

Mr. Moss. I refer to the part that the public participates in.

Mr. HARTZOG. They are, sir; they are. In other words, if you got any other impression from my statement, I am sorry. This is not the procedure.

Mr. Moss. The impression I had is that it is. I yield back to my friend from California.

Mr. McCLOSKEY. The only impression I had was that if there were dissenting opinions within the Department, you did not want those dissenting opinions discussed in public at a Corps of Engineers hearing; is that correct?

Mr. HARTZOG. No, no, no. If there is dissenting opinion within the National Park Service, and I have a man who is talking out of context of his professional competence, I don't want that aired in public at a public hearing. I think this is simply good management to assure that the witnesses that you present, either to the Congress or to the public, are fully informed and competent. This is all I am trying to achieve. Insofar as avoiding controversy, I seriously doubt that anybody has been embroiled in any more controversies with the Corps of Engineers than I have, as the Director of the Park Service, in the last 4½ years—

Mr. McCLOSKEY. This procedure that you stated against your people testifying in public hearings—is that set out in writing in a departmental memorandum anywhere?

Mr. HARTZOG. No, I don't recall that it is. It is a part of our operating procedure with our regional directors when they get the notice of these hearings, that they ascertain if there is any information that the chief scientist or our Office of Archeology and Historic Preservation has on this subject that is not available at the local level, and a position is taken by our professional staff on that particular issue. That is a matter of public record.

Mr. VANDER JAGT. Will the gentleman yield?

Mr. McCLOSKEY. Yes.

Mr. VANDER JAGT. As I understand it, you relay the views and the opinions of the National Park Service and when they have public hearings I assume that those views are laid out and are available to the people.

Mr. HARTZOG. That is right, sir. Sometimes they are presented by a superintendent, sometimes by a regional director, sometimes they are presented by one of our professional staff. It just depends on who is available at that time.

Mr. VANDER JAGT. I think you said you would in fact be shocked if those views weren't made available at that time.

Mr. HARTZOG. That is right. In other words, I think this is what you have your professional staff do, to tell you what this is.

Mr. VANDER JAGT. Now, in 1964 you had felt that the fill would adversely affect the recreational and conservational value of this area; is that correct?

Mr. HARTZOG. That is correct.

Mr. VANDER JAGT. Did the Cain memorandum of October 10, 1967, given at the hearings then, represent your views:

We have concluded that the granting of the applications would not significantly affect recreation or conservation values in the Hunting Creek area.

Mr. HARTZOG. Sir, I think the memorandum speaks for itself.

Mr. VANDER JAGT. I am asking you about February, before this little $\frac{3}{4}$ -acre, pie-shaped area was taken out, whether this Cain statement represented your views in February, when the corps hearing was held:

We have concluded that the granting of the applications would not significantly affect recreation or conservation values in the Hunting Creek area.

Did that represent your best professional judgment as of February?

Mr. HARTZOG. It did not.

Mr. VANDER JAGT. Thank you.

Mr. JONES. Mr. Reuss?

Mr. REUSS. Director Hartzog, I just want to be absolutely clear on the nature of the Park Service's views here.

As I gather it, prior to the removal of the little $\frac{3}{4}$ -acre slice from the 9-acre application—which application was the subject of the permit granted by the Corps of Engineers on May 29, 1968—the National Park Service had four basic objections to the fill proposal:

One, it would interfere with the National Park Service's riparian rights.

Two, because sewage discharge from the outfall on South Royal Street, Alexandria, would discharge into the area lying between the

proposed fill and the mainland, it was felt that that discharge of raw sewage whenever it rained would be unesthetic.

Three, I will refer to your own map. In view of the National Park Service's plan to create a park out of the Jones Point area, and in view of the fact that the park would abut on the Hunting Creek estuary, and in view of the fact that high-rise apartments seemed to be in order on this filled land, objection No. 3 was that the erection of high-rise apartments in the filling of this land would interfere with the vista and hence the recreational value of the park.

And fourth, was the point that quite apart from any discharge of sewage by the Royal Street sewage outfall, the filling of this roughly 9 acres would create a backwash in which the tidal effects and general circulation of the Potomac, including all the other sewage that gets into the Potomac from a thousand other outfalls and all of the silt and sediment that gets into the Potomac in its hundreds of miles of water-course, would create unsatisfactory water conditions in the area between the fill and Jones Point Park.

Am I correct that those were your four objections?

Mr. HARTZOG. Sir, I would say that you have articulated the entire case that we were making much more completely than we had. We had articulated it in terms of two objections. One is the trespass on our riparian rights, and two, that we did not want that outfall from the South Royal Street sewer imbedded in that niche there in front of Jones Point Park. This is as far as we had gone in articulating it.

In our dialog this morning, these things have been refined and clarified to cover the additional two points you make. But the objections that we made to the departmental officers were simply the two I stated at the outset—one, the riparian trespass, and two, that we wanted proper provision made for an appropriate extension and disposition of that sewage water out of the South Royal Street sewer.

These were the two objections on which we are on record.

Mr. REUSS. I refer you again to your memorandum of April 4, 1968—

Mr. HARTZOG. And that memorandum, sir, if I might just say one thing about that memorandum: It was written simply to say, as I feel as a career officer I have the obligation to say, to my superiors—

We have recently endorsed a measure to preserve the Potomac River. I submit for your consideration the desirability of your thinking about this application in the light of that Administration recommendation.

I did not object to this on the basis of the Potomac River legislation; I simply called to my superiors' attention that I thought this was a relevant factor to evaluate in making a decision because it was an intervening circumstance in March after all of the record was in. And that is the only motivation for my writing that memorandum. It was not to raise another objection, it was not to present another reason for the rejection of this application; it was simply to make sure that I had contributed to the extent that I constructively could to my superior's frame of reference in calling his attention to the Potomac River and the possible impact or precedent at this location in the light of that legislation. That is all this memorandum says.

Mr. REUSS. Let me ask you, in this recommendation you referred, did you not, to the need to preserve the estuarine areas?

Mr. HARTZOG. I did.

Mr. REUSS. And does not a fill of 9 acres in an estuarine area interfere with the preservation of estuarine areas?

Mr. HARTZOG. Well, sir—

Mr. REUSS. Would you just answer yes or no?

Mr. HARTZOG. I cannot answer yes or no, and I beg your pardon and I am sorry, because this is not in my area of competence and not in my area of responsibility. I am not an authority on estuaries, and furthermore, while the national park system has many splendid estuarine areas, many years ago we made a cooperative agreement with the Bureau of Sport Fisheries to advise us with respect to their management because we lack sufficient competence in this area.

I simply raised this as a factor I thought was in the frame of reference. That is all, I did not attempt to make any judgment on it. That is why as a layman I may speculate with you as to what my own personal judgment may be on it, but I am here to tell you professionally what I know and I professionally know nothing about it.

Mr. REUSS. Is it not a fact that in your memorandum of April 4 you set forth reference to the destructive nature of high-rise projects along the Potomac?

Mr. HARTZOG. Yes, sir; I certainly did, and I subscribe to that completely.

Mr. REUSS. Leaving aside any memoranda you may have written?

Mr. HARTZOG. Yes, sir.

Mr. REUSS. But just looking at the situation of today, this 24th day of June 1968, is it not a fact that the proposed Jones Point National Park would be less desirable if its waterfront area on the Hunting Creek estuary were confronted by this 9-acre fill and the erection of high-rise apartments on it?

Mr. HARTZOG. That is my judgment; yes, sir.

Mr. REUSS. Is it not further your judgment that the dangers of sedimentation within the area enclosed by the thumb caused by the fill would be increased by the making of the fill, and that increase in sedimentation might have an adverse effect on the recreational potential of the Jones Point Park?

Mr. HARTZOG. As we indicated earlier, I think this is a question that is very difficult to answer precisely, but that would seem to be the presumption of the evidence; yes, sir.

Mr. REUSS. Thank you, Mr. Chairman.

Mr. McCLOSKEY. Mr. Chairman?

Mr. JONES. Yes, Mr. McCloskey.

Mr. McCLOSKEY. Mr. Hartzog, you discussed your memorandum of April 4. On April 8, Dr. Cain sent a directive to you stating that his earlier decision in effect was "based on political considerations" and he would be happy to reverse himself if the Bureau of Sport Fisheries and Wildlife made a strong case "and if the National Park Service can give me evidence of the important values." His memorandum is dated April 8.

Two days later, Dr. Cain had apparently been convinced he should reverse himself. Did you give him evidence of the important values between the 8th and 10th of April?

Mr. HARTZOG. In cooperation with the Director of Sport Fisheries and Wildlife, we helped prepare the memorandum of April 9 to Dr. Cain, and I assume that your file must have a copy of that memorandum. I call your attention to it.

Mr. McCLOSKEY. That memorandum, then, of April 9 from the Director of the Fish and Wildlife Service was prepared in conjunction with the National Park Service and your staff?

Mr. HARTZOG. Yes sir.

Mr. McCLOSKEY. Can you tell me, if you know, Mr. Hartzog, why that memorandum representing the professional judgment of the Park Service and the Bureau of Sport Fisheries and Wildlife is not included in the letter by Under Secretary Black to the Corps of Engineers, dated April 26?

Mr. HARTZOG. I do not know.

Mr. McCLOSKEY. You do not know why there is no reference to your findings and judgments?

Mr. HARTZOG. No, sir.

Mr. McCLOSKEY. I have no further questions.

Mr. JONES. Mr. Indritz?

Mr. INDRTIZ. Mr. Hartzog, is the combined sewer on Royal Street within the boundary lines of Royal Street?

Mr. HARTZOG. Yes. It is underneath the street, as a matter of fact. Is it not?

Mr. HORNE. Yes.

Mr. HARTZOG. Underneath the street.

Mr. INDRTIZ. What is the east boundary of the fill area which is included in the permit issued by the corps on May 29?

Mr. HARTZOG. I would rather look at the permit than to rely on the map, but the map would seem to indicate it is a southerly projection of Royal Street.

Mr. INDRTIZ. Would the east boundary of the fill area be the east boundary of Royal Street extended?

Mr. HARTZOG. I am advised by Mr. Horne, who has been intimately involved in this, that it does involve the east line of Royal Street. The map I have here would not verify that one way or the other.

Mr. Horne calls my attention to a map, which is section AA of a proposed bulkhead and fill-in of Hunting Creek, which is an attachment to the permit which shows that it is a projection to the southward of the east line of Royal Street.

Mr. INDRTIZ. Therefore, if the combined sewer were extended, would it run through the easterly line or the easterly portion of the fill area?

Mr. HARTZOG. Yes, sir; it would.

Mr. INDRTIZ. Have you read the permit issued by the corps on May 29?

Mr. HARTZOG. Yes, sir.

Mr. INDRTIZ. Have you read subsection (k) of that permit?

Mr. HARTZOG. That is the one referring to the Federal Water Pollution Control Administration. Yes, sir.

Mr. INDRTIZ. Where in that provision is there any requirement that the permittee must give a right-of-way through its fill area for the construction of such an extension of the combined sewer?

Mr. HARTZOG. Well, sir; there is no specific language on that point. I have written a memorandum, which I believe you may have in your files, to the Assistant Secretary for Water Pollution calling his attention to the need either to extend it or to make provision for its extension. This subparagraph (k) says that "the permittee shall comply promptly with * * * such regulations, conditions, or instructions in

effect or prescribed by the Federal Water Pollution Control Administration," which "are hereby made a condition of this permit."

You are a much better lawyer than I am on this point. I do not know whether it is covered or it is not covered. But I believe it is covered.

Mr. JONES. All of us lawyers are going to be out of court if you do not hurry up. We are going to have to answer a quorum.

Mr. INDRITZ. Is that sewer owned by the city of Alexandria?

Mr. HARTZOG. Yes, sir; that is my information.

Mr. INDRITZ. Is there anything in the condition of the permit which would place an obligation upon the city to extend that sewer?

Mr. HARTZOG. I have a note, and this is all I have, based on telephone information, that the city of Alexandria conditioned their approval among other things on, one, that an adequate outfall channel is maintained for South Royal Street sewer; and two, that the city retains their rights to the extension of streets to the water's edge.

Mr. INDRITZ. Who would pay for such an extension of the sewer?

Mr. HARTZOG. I do not know, sir.

Mr. INDRITZ. Is it possible that if the Federal Government wanted such a sewer extended in order to channel the outfall beyond the fill area, the Federal Government might have to pay for it?

Mr. HARTZOG. I would not want to speculate on it, sir. I think more appropriately it falls within the jurisdiction of the Corps of Engineers who issued the permit.

Mr. INDRITZ. Would you, as Director of the Park Service, be satisfied that condition (k) would enable the Federal Government to have that sewer, which is owned by the city of Alexandria, extended and channeled through a fill area, which is owned by the permittee, without cost to the United States?

Mr. HARTZOG. I am of that opinion; yes, sir.

(Subsequently the following correspondence was exchanged:)

HOUSE OF REPRESENTATIVES,
NATURAL RESOURCES AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., June 26, 1968.

Mr. GEORGE B. HARTZOG, Jr.,
Director, National Park Service,
Department of the Interior,
Washington, D.C.

DEAR MR. HARTZOG: You testified before this subcommittee on June 24 concerning the permit issued by the Corps of Engineers on May 29 to Howard P. Hoffman Associates, Inc., to bulkhead and fill in a part of Hunting Creek, Va. You stated that one of your objections to the permit would be "taken care of" if the combined sewer and storm drain which empties into Hunting Creek from South Royal Street "is ultimately extended through this fill, whether it is made as the fill is made or whether it is made subsequent to the fill . . ." (transcript, p. 69). The subcommittee counsel asked you several questions endeavoring to ascertain whether the permit of May 29 adequately assures that the sewer would be extended through the fill area without cost to the United States. The questions and your answers are set forth on the attached sheet.

We would appreciate it if you and your legal advisers would review those questions and answers and advise us whether you believe that the terms of the permit fully protect the Government's interests in having the sewer outfall extended beyond the fill, including assurance that (a) the extension will be con-

structed so as to prevent pollution along the shores of Jones Point, and (b) that the costs for constructing that extension will not be borne by the Federal Government.

Sincerely,

ROBERT E. JONES,
Chairman, Natural Resources and Power Subcommittee.

U.S. DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Washington, D.C., July 26, 1968.

HON. ROBERT E. JONES,
Chairman, Subcommittee on Natural Resources and Power, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. JONES: Thank you for your recent inquiry requesting our views with respect to the adequacy of subparagraph (k) of the permit issued by the Corps of Engineers on May 29, 1968, to Howard P. Hoffman Associates, Inc., to protect the Government's interests at Jones Point with respect to possible pollution by reason of the fill authorized by the permit.

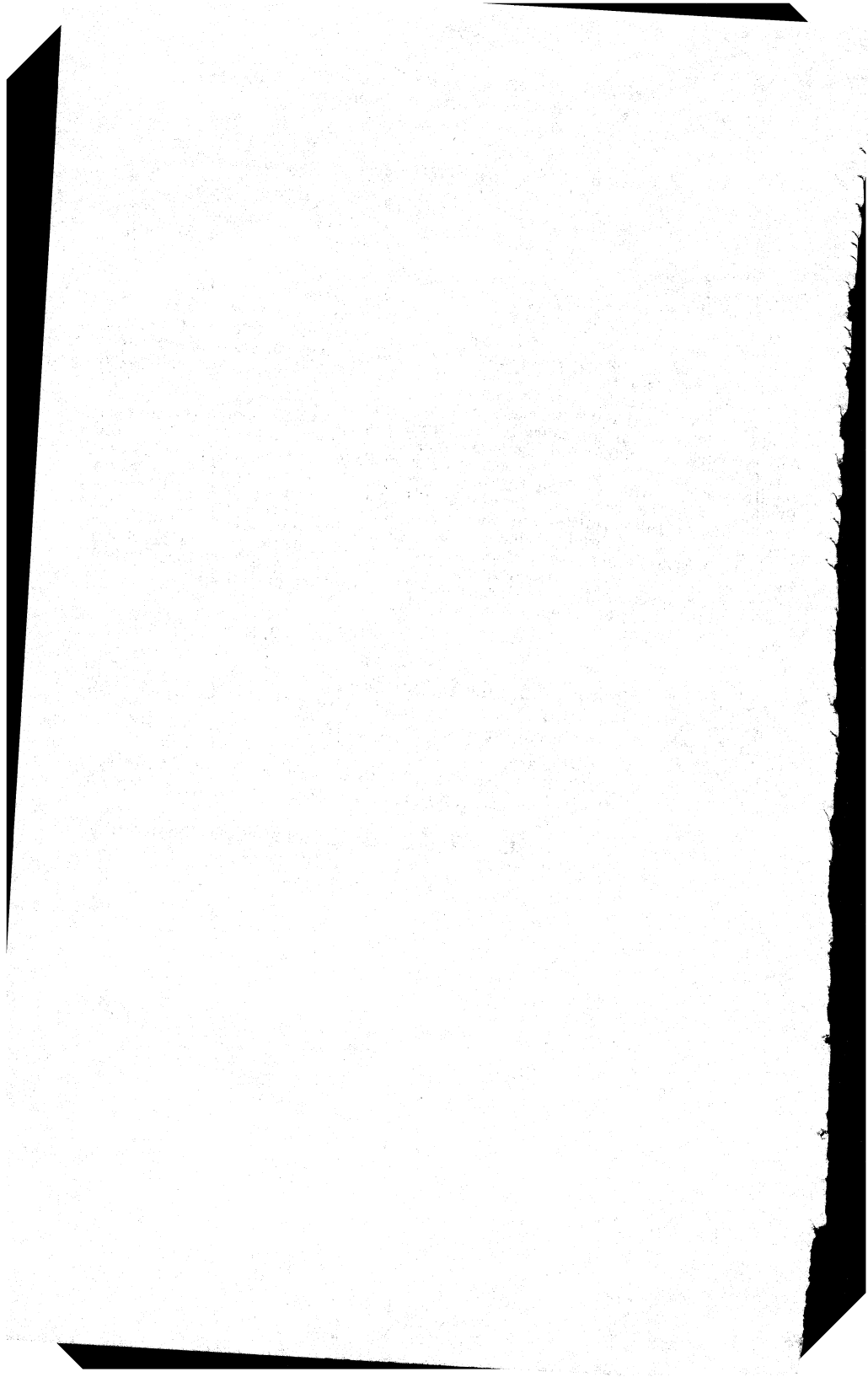
It is the National Park Service's view in which our lawyers concur, that the provision is sufficient to assure the installation of such sewer facilities as may be necessary to protect downstream lands from pollution resulting from the fill. The provision makes the permittee responsible for complying with the requirements of the State and Federal agencies exercising responsibilities in the field of water pollution. As we read this provision of the permit, it places the burden on the permittee and in no way places any burden on the National Park Service or any other Federal agency to provide any necessary sewer extension at Federal expense. After this further consideration of the provision in question, we are as satisfied now, as we were when the Director testified before your subcommittee, that the previous objection of the National Park Service in this regard has been met adequately.

Sincerely yours,

(SGD) J. E. N. JENSEN,
Associate Director.

MR. JONES. We have a number of witnesses. It was hoped we could close the hearings in 1 day, but it is going to be utterly impossible. Dr. Cain is returning to the country on the eighth. It so happens that the legislative work on the other committees is going to occupy certainly most of my time, and in order to give ample notice, the subcommittee will stand adjourned and continue these hearings on Monday, July 8, at 10 o'clock.

(Whereupon, at 12:45 p.m., the committee adjourned, to reconvene at 10 a.m., Monday, July 8, 1968.)



PERMIT FOR LANDFILL IN HUNTING CREEK, VA.

MONDAY, JULY 8, 1968

HOUSE OF REPRESENTATIVES,
NATURAL RESOURCES AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:03 a.m., in room 2203, Rayburn House Office Building, Hon. Robert E. Jones (chairman of the subcommittee) presiding.

Subcommittee members present: Representatives Jones, Moss, Vander Jagt, and Gude.

Subcommittee staff present: Phineas Indritz, chief counsel; and Laurence Davis, assistant counsel.

Other members of the Committee on Government Operations present: Representative Henry S. Reuss.

Mr. JONES. The committee will come to order.

The Natural Resources and Power Subcommittee today resumes its hearings, which began on June 24, concerning the circumstances in which the Corps of Engineers, on May 29, 1968, issued a permit to Howard P. Hoffman Associates, Inc., to fill in a portion of Hunting Creek, just south of Alexandria, Va.

We have received approximately 30 letters and statements for the record from various groups and individuals, all except one of which have expressed opposition to the permit. Without objection, all letters and statements which are received by the subcommittee and which are relevant to the subject of this hearing will be made a part of the record.

(The communications are in part II of the appendix.)

Mr. JONES. We have received requests from several private groups and persons for permission to testify orally before the subcommittee. Because of the very tight legislative schedule facing the Congress and the subcommittee at this time, the subcommittee will probably be unable to hear all persons who have expressed interest in the Hunting Creek area. If there is time, after completion of the testimony by those who officially participated in the consideration and issuance of the permit, we shall endeavor to hear others who desire to testify. However, if we are unable to hear their oral testimony, their views can be expressed to the subcommittee by filing written statements for the record which the subcommittee will consider.

We invited the permittee, Howard P. Hoffman Associates, Inc., and its representatives, by letters of June 12 and June 27, 1968, to present their views to the subcommittee concerning the issuance of the permit, either in writing or by oral testimony.

We have received a letter from their attorney advising us that they have no views to add beyond those expressed at the district engineers hearing of last February. Without objection, copies of the subcommittee's letters to the permittee, and their attorney's response, will be included in the record.

(The information follows:)

HOUSE OF REPRESENTATIVES,
NATURAL RESOURCES AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., June 12, 1968.

HOWARD P. HOFFMAN ASSOCIATES, INC.,
New York, N.Y.

GENTLEMEN: This subcommittee will hold hearings beginning June 24, at 10 a.m. in room 2203, in the Rayburn House Office Building, in Washington, D.C., concerning a permit issued to you on May 29, 1968, by the Army Corps of Engineers. The permit authorized you to construct bulkheads and fill in a part of the Hunting Creek estuary near Alexandria, Va. Enclosed is a copy of a press release about that hearing.

The subcommittee will hear witnesses concerning the effect of the proposed construction on wildlife and recreation values at Hunting Creek. You may desire to present your views to the subcommittee, either by submitting a statement for the record, or by having your representative testify personally. If the latter, we would appreciate your letting us know the name, address, and telephone number of the person whom you desire to testify for you at the hearing, so that we can schedule the time of his appearance.

Sincerely,

ROBERT E. JONES,
Chairman, Natural Resources and Power Subcommittee.

[Copies also sent to Stanley I. Bregman, Esq., 1225 19th St. NW., Washington, D.C. 20036; and Edward S. Holland, Holland Engineering Co., 110 North Royal St., Alexandria, Va. 22300.]

NEWS RELEASE OF THE COMMITTEE ON GOVERNMENT OPERATIONS, HOUSE OF REPRESENTATIVES

The Natural Resources and Power Subcommittee of the House Government Operations Committee will hold hearings concerning the issuance of a permit to bulkhead and fill part of the Potomac estuary near Alexandria, Va., Chairman Robert E. Jones (Democrat of Alabama) announced today.

The permit was issued by the Army Corps of Engineers on May 29, 1968, to Howard P. Hoffman Associates, Inc., over the protests of numerous conservation organizations. It authorizes the filling of an area of approximately 9 acres in the shape of a truncated wedge jutting out into an arm of the Potomac, known as Hunting Creek, just west of the Jones Point recreation area. The landfill will be on the river side of the Mount Vernon Memorial Parkway downstream from Woodrow Wilson Bridge.

Hunting Creek is a wintering ground for diving ducks and other waterfowl. According to the Fish and Wildlife Service as many as 10,000 scaup and ruddy ducks have been observed in the general area, together with other species of wild ducks, geese, and swans. The proposed fill was originally opposed by the National Park Service and the Bureau of Sport Fisheries and Wildlife of the Department of the Interior. The objections of the National Park Service, based on possible conflict of property rights, were met by the applicant, and the objections of the Bureau of Sport Fisheries and Wildlife were overruled by an Assistant Secretary of the Interior.

In issuing the permit the Corps of Engineers relied on the Interior Department's withdrawal of its objections concerning the permit's effect on wildlife. The subcommittee hearing will begin at 10 a.m. in room 2203 of the Rayburn House Office Building on Monday, June 24, 1968.

Other members of the Jones subcommittee are Congressmen John S. Monagan, Democrat, of Connecticut; J. Edward Roush, Democrat, of Indiana; John E. Moss, Democrat, of California; Guy Vander Jagt, Republican, of Michigan; Gilbert Gude, Republican, of Maryland; and Paul N. McCloskey, Jr., Republican, of California.

Hon. William L. Dawson, Democrat, of Illinois, is chairman of the full Committee on Government Operations.

HOUSE OF REPRESENTATIVES,
NATURAL RESOURCES AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., June 27, 1968.

HOWARD P. HOFFMAN ASSOCIATES, INC.,
New York, N.Y.

GENTLEMEN: This subcommittee is continuing its investigation into the circumstances surrounding the permit issued to you on May 29, 1968, by the Army Corps of Engineers to fill in a portion of Hunting Creek at Alexandria, Va. The hearing will resume on Monday and Tuesday, July 8 and 9, 1968, in room 2203, Rayburn House Office Building, at 10 a.m.

In our letter to you of June 12, we indicated that if you desire to present your views to the subcommittee, either by submitting a statement for the record or by having your representative testify personally, we would appreciate your advising us. We have not received a response to date. If you do desire to have your representative testify on either July 8 or 9, please let us know the name, address, and telephone number of your representative so that we can schedule the time of his appearance.

Sincerely,

ROBERT E. JONES,
Chairman, Natural Resources and Power Subcommittee.

McCORMACK & BREGMAN,
Washington, D.C., July 5, 1968.

Congressman ROBERT E. JONES,
Chairman, Natural Resources and Power Subcommittee, Committee on Government Operations, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: As attorney for Howard P. Hoffman Associates, Inc., I would like to thank you for your letters of June 12 and June 27 inviting Howard P. Hoffman Associates, Inc., to present their views on the issuance of the permit to them by the Army Corps of Engineers to fill a portion of Hunting Creek.

We assume the purpose of the hearing concerns the possibility of future legislation in the general area of the issuance of permits by the Army Corps of Engineers. We do not believe that Howard P. Hoffman Associates, Inc., is particularly qualified to give its views on the need for such legislation and that the Army Corps of Engineers and the Interior Department are the people who can best speak to this matter.

The views of Howard P. Hoffman Associates, Inc., on the issuance of the particular permit concerning Hunting Creek were expressed at the hearing of the Army Corps of Engineers on February 21, 1968, in Alexandria, Va. Those views, which were supported by facts that if application were granted it would help in flood control, decrease the silt and pollution in the area, not be detrimental to wildlife, and not be a hindrance to navigation, are recorded in the transcript of that hearing, and we do not believe anything could be added to that position at this time.

If there are any specific questions that you believe that our client can supply the answers to, we will certainly attempt to do so.

Thanking you again for your courtesy in this matter.

Yours very truly,

STANLEY I. BREGMAN.

Mr. JONES. Our first witness today is Dr. John Gottschalk, Director of the Bureau of Sport Fisheries and Wildlife of the Department of the Interior, a distinguished ecologist and biologist.

STATEMENT OF DR. JOHN GOTTSCHALK, DIRECTOR, BUREAU OF SPORT FISHERIES AND WILDLIFE, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY WILLIAM WHITE, CHIEF, DIVISION OF RIVER BASIN STUDIES, BUREAU OF SPORT FISHERIES AND WILDLIFE

Dr. GOTTSCHALK. Thank you.

I have with me Mr. William White, who is the Chief of our Division of River Basin Studies, who handles our work that is related to permit applications of the Corps of Engineers. With your permission, I would like to have him join me at the witness table.

Mr. JONES. We will be pleased to have Mr. White join you.

Dr. GOTTSCHALK. Mr. Chairman, I have no prepared statement. I was an observer at the previous hearing and feel that the general situation has been thoroughly covered. I would only like to address my preliminary remarks to two points which I think would be of interest to the committee. Then later, of course, I would be glad to answer any questions I can with respect to our part in this whole matter of the Hunting Creek fill.

There has been some comment or reference made to what was called upgrading of our initial report on this project by the Washington office.

I would like to clarify this particular point by speaking very briefly of the procedure we follow in handling our reviews of Corps of Engineer permit applications.

These applications range from rather simple matters, perhaps involving the installation of a pier or a few pilings in a channel, to rather large-scale dredging projects. We simply do not have enough staff to make a field examination of every proposed project for which approval is sought by private interests from the Corps of Engineers.

Consequently, it is our practice at the field level to screen all of these permit applications. Those which appear on the surface to have little or no effect on fish and wildlife are eliminated from our schedule.

When this particular application was brought to the attention of our field personnel situated at our regional office in Atlanta, the Atlanta office looked over their whole program and decided that they would not be in a position, because of the other requirements being made of their staff, to make a study of this project.

When our Washington office learned of this decision at the regional office level, the region was directed to make a study of this project.

The reason that this was done was because at this time, back in 1963 and 1964, there was an awakening of interest in trying to do something to improve the character and condition of the Potomac River. We were not certain that our Atlanta staff was fully appreciative of this increased interest, and therefore we felt that we should make certain that they did understand what was happening, and that we did have an obligation to make a report, and should go ahead and make a study and report.

Consequently, as I stated, the regional office was directed to make this report.

Once the report was made, there was never any changing of the values or the conclusions reached by the regional office by our Washington office. That is to say, we up here did not attempt to edit or

change the report. It was not upgraded in that sense. It was upgraded in the sense that it was placed in a higher category of importance than the regional office had originally thought that it might be.

The second point I would like to speak about very briefly is that which relates to the testimony of Dr. Francis Uhler. I would like to preface my remarks on this point by saying that Dr. Uhler is one of our most valued and knowledgeable wildlife biologists. He has been an employee of the Bureau and its predecessor agency for more than 30 years, if my memory serves me correctly.

In that time he has established a reputation that is international, because of his knowledge primarily of the habitat requirements of waterfowl. When it came time to develop this report, it was only natural that we turn to Dr. Uhler, because he is our acknowledged expert in this field.

The substance of our report is based on the knowledge which Dr. Uhler himself contributed to the preparation of that report. After the Assistant Secretary wrote to the Corps of Engineers, advising that the Department was withdrawing its objection to the application, and hearings were rescheduled by the colonel of the Corps of Engineers for Alexandria, the question came up as to whether or not Dr. Uhler should present testimony at that hearing.

This matter was discussed with Assistant Secretary Cain by me and other members of my staff, and we concluded that it would not be appropriate, in view of Dr. Uhler's strong feelings about this project, for him to go there as a representative of the Department, since the Department had changed its position to one of no opposition to the project.

We made it quite clear—and Dr. Cain really acceded to this point—that should Dr. Uhler's testimony, as a technical expert, be desired, he should be free to give it. Consequently, he was instructed not to attend the hearing as a representative of the Department of the Interior, but he could attend on his own behalf and was free to answer questions with respect to the status of the resource or anything else that might be asked of him that related to his professional capacity.

Dr. Uhler did attend the hearing. He was present there. He was not called upon to answer questions, but he did prepare a statement for the record which was submitted to the Corps of Engineers at that time.

I personally called his superior at the Patuxent Wildlife Research Center, Dr. Eugene Dustman, and told Dr. Dustman of the conversation with Dr. Cain and asked Dr. Dustman to reassure Dr. Uhler that he was to contribute any knowledge that he had available on this project that related to its significance as a waterfowl area. This he did.

Those are the two points I wanted to dwell on, in a preliminary way, because I think there may have been some question about their arising from the previous testimony. If there are further questions, I would be glad to answer them.

Mr. JONES. Mr. Moss.

Mr. MOSS. Yes, I have some questions, Dr. Gottschalk. I am pleased to have the clarification of the process of upgrading in Washington. You state it does not go to a change in values or conclusions.

Dr. GOTTSCHALK. Yes.

Mr. Moss. But it merely placed it in a higher category. Would you explain the nature of that higher category?

Dr. GOTTSCHALK. I will put it this way. Many of the Corps of Engineers projects will have very little effect on fish and wildlife and are of no real significance from the standpoint of conservation. But in this case, we felt that the project was of sufficient importance that it should be scheduled for study. Therefore, it was taken from a category in which it would not have been studied and was put in a higher category, in which category it would be given a field study and a report.

Mr. Moss. In other words, the upgrading previously referred to occurred at the time the original study was ordered.

Dr. GOTTSCHALK. That is correct.

Mr. Moss. After that original study was made, nothing else happened insofar as your office, the Bureau of Sport Fisheries and Wildlife is concerned.

Dr. GOTTSCHALK. With respect to the report and the conclusions of the report, that is quite correct.

Mr. Moss. The findings remained valid, the values were proper, and no change of any character was made.

Dr. GOTTSCHALK. That is correct.

Mr. Moss. So the upgrading was prior to the actual filing of the report?

Dr. GOTTSCHALK. That is correct.

Mr. Moss. I am very much interested in the failure of the Department to appear at the public hearing in Alexandria, Va.

You have explained that a discussion was held, and that the conclusion was reached that because of a change in the departmental position, it would not be necessary or desirable—which of those words would you use to characterize?

Dr. GOTTSCHALK. I would use both of them in this case with respect to Dr. Uhler's testimony.

Mr. Moss. It would be neither necessary nor desirable for the Department to make an official appearance and participate in the hearing.

Dr. GOTTSCHALK. Only with respect to Dr. Uhler. I want to make that clear. I want to make it clear that those terms apply only to the appearance of Dr. Uhler.

Mr. Moss. The departmental position finally became one of non-participation, nonappearance, nonattendance, however it might be characterized; is that correct?

Dr. GOTTSCHALK. That is correct.

Mr. Moss. Here we have an issue where among many conservation groups strong feelings were engendered as a result of this threatened fill, and your own biologist felt that it would be a major error to approve, and yet with the Department changing its position, but not its position paper—not its underlying work—it was not felt necessary to inform the public or the community of Alexandria as to the reasons for that change of position; is that correct? It was not felt either necessary or desirable?

Dr. GOTTSCHALK. I would not apply either of those terms to that particular decision. I am not fully capable of responding to it because the decision was made at the secretarial level and not within the Bureau.

Mr. Moss. Was it concurred in by you?

Dr. GOTTSCHALK. I participated in the discussion which led to the conclusion that it would not be appropriate for the Department to have a representative.

Mr. Moss. Did you concur in the decision that it would not be appropriate?

Dr. GOTTSCHALK. Yes.

Mr. Moss. Or was your concurrence asked?

Dr. GOTTSCHALK. I do not know that my concurrence was asked, but let me say that the Secretary—the Assistant Secretary—having made a determination, I concurred in his conclusion that it would not be appropriate to be represented. One reason for this lies in the fact that the Corps of Engineers conducts these hearings in order to get all the information it can about a particular project.

As far as I was concerned, at my level of responsibility in the Department, we had done all that we could do to inform the Corps of Engineers about the significance of the project. We had submitted our report to them.

It was a matter of record. I felt there was nothing further that we could do to aid the corps in coming to a decision as to whether it should or should not grant the permit applied for.

Mr. Moss. There is no use in belaboring the point. It is quite clear that the Department decided not to appear, and while the record of the Department's study is excellent, and it fully acquainted the Corps of Engineers with the reasons for its conclusion that the permit should not be granted, when it reversed its position, it did not give them equal information as to why it had changed its position, did it?

Dr. GOTTSCHALK. I do not have—let me put it this way: I do not have specific information on that subject.

Mr. Moss. To your knowledge there was no filing of any kind of an amended finding upon which the Department's reversal would be based?

Dr. GOTTSCHALK. Not at the time of the hearing. Or course, subsequently Secretary Black did write to the Corps of Engineers on this subject. But that was substantially later.

Mr. Moss. We had a reversal of the original position and then a reversal of the reversed position; is that correct?

Dr. GOTTSCHALK. Yes, sir.

Mr. Moss. We had two reversals. I wonder if you could just give us a brief outline of your own background as an ecologist.

Dr. GOTTSCHALK. I went to work for the Indiana Department of Conservation in 1930 in the Dune State Park. I have an A.B. degree in biology. I have a master's degree in zoology from Indiana University. From 1934 until 1941 I was employed by the Indiana Department of Conservation full time as a biologist, finally became superintendent of fisheries in the department.

During the war, I served as a biologist and chief of the analytical laboratory for Schenley Laboratories in the manufacture of penicillin. Subsequently I joined the Fish and Wildlife Service in 1945 and have been with that agency ever since. I do not claim to be an ecologist as such, although my academic work was in the field of ecology. I am, as you can tell, an administrator, but I am interested in and concerned about the preservation of our out of doors. Much of my work is oriented around this central concern.

Mr. Moss. Apart from your official activities in connection with this, have you ever had the opportunity of observing the area discussed and included in the permit?

Dr. GOTTSCHALK. Many times, as a matter of fact.

In my previous tour of duty in Washington, from 1951 to 1959, I followed my hobby of birdwatching and in the wintertime frequently visited this area, and the Dyke Marsh area below it, because of the concentration of waterfowl that would be seen there in the winter.

On my return to this position in 1964, I immediately was apprised of the controversy about Hunting Creek and so I made it a point every winter to visit the area and to look at it two or three times just to see what I could see, from personal interest as well as putting myself in a position to discuss it and try to understand it better.

So I am quite familiar with the area. The most recent time I was out there was with Under Secretary Black who asked me to accompany him on a field visit to the site prior to the time he made his final decision on this project.

Mr. Moss. Having observed it, when would the diving duck population there be at its maximum?

Dr. GOTTSCHALK. I would say in the period between roughly December 15, to about February 1.

Mr. Moss. On what date did you visit the area with Under Secretary Black?

Dr. GOTTSCHALK. I do not have the precise date in my mind, but it was shortly before he wrote to the Corps of Engineers, which would have been approximately the 20th of April. I can get the exact date for the record.

Mr. Moss. That would not be a time when one would expect to see much evidence of diving ducks.

Dr. GOTTSCHALK. No; that is correct. He visited it at that time with full appreciation of this fact, however. I made it quite clear to him that we were seeing the area at the time of the least use by waterfowl and pointed out that we have a record of substantial use at other times of the year.

Mr. Moss. Thank you very much.

Mr. JONES. Mr. Reuss.

Mr. REUSS. I yield to Mr. Vander Jagt first, if I may.

Mr. VANDER JAGT. Could you tell me, for my information, does the Bureau have a position at this time as to whether the filling in of these acres would adversely affect conservation and recreation in this area?

Dr. GOTTSCHALK. The Bureau has never changed its position. We have not been asked to change our position by the Department. Our report still stands exactly as written. I think I would only say in addition that we respect the fact that the Secretary has many broader concerns than just the narrow ones of fish and wildlife, even though these are important.

So I support the decision that the Under Secretary made. I respect the fact that he must see things from a larger point of view than I do.

While we do not agree, I accept the decision and support it.

Mr. VANDER JAGT. While you can support the overall decision, if we get it narrowed down to just whether or not it would adversely affect wildlife and conservation and recreation, would it be your opin-

ion that it would have an adverse effect on that interest? Is that correct?

Dr. GOTTSCHALK. This is true. This is what I have concluded. Our report comes to this conclusion. I would, however, have to recognize that the 9 acres that will be withdrawn from the total wildlife habitat estate of this country is so small that it would never be measurable in terms of its effect on fish and wildlife.

The point I tried to make with the Secretary was that we are losing our habitat, not in large chunks, but in these small bites.

I cannot really attest to the use of those 9 acres by ducks. I cannot say I ever saw a duck right there. But the loss of those 9 acres plus the thousands of other 9 acres is what is destroying our wildlife heritage in the United States. Beyond that, of course, I tried to make the point—and I think the committee staff has this available in the record—that it would set a precedent at a time when all of us are concerned about the Potomac that would be difficult to withstand in terms of further filling in this same general area.

So that the loss of the 9 acres in itself may be somewhat immaterial. I explained my position in some detail to Mr. Black. I know that he considered it thoroughly before he came to his final conclusion. As I say, I respect his decision, even though we do not agree.

Mr. VANDER JAGT. So, for all of these reasons it would, in fact, have an adverse effect, if we can zero in on that one interest; but you say you can understand his decision because he has to take into consideration larger interests. What are those interests?

Dr. GOTTSCHALK. I would not be able to speak specifically to this, but I think that the Secretary is frequently in a position where he must make choices. Generally what he is confronted with is the choice of protecting a piece of habitat on the one hand, or standing in the way of some kind of development on the other hand.

We all recognize that our country is growing rapidly, and this growth means that there will have to be developments of one kind or another.

The Secretary's problem, as I see it, at least partly—and I would not want to suggest that I understand it thoroughly—is how to do the best job of preserving our natural heritage and still accommodate the growth expansion needs of our country.

Mr. VANDER JAGT. So you just realize that there are other interests that he has to take into consideration, but you do not propose to know for sure what those other interests are?

Dr. GOTTSCHALK. That is correct.

Mr. VANDER JAGT. You would not know, for example, if there were other places that these high-rise apartments could be built? It was not your job to explore those possibilities.

Dr. GOTTSCHALK. It was not. I can say as a generality that I think there are much better places to build high-rise apartments than in our rivers, estuaries, lakes, and ocean fronts.

Mr. VANDER JAGT. Thank you very much for clearing that up.

Mr. JONES. Mr. Reuss.

Mr. REUSS. Thank you, Mr. Chairman. Director Gottschalk, on the point that Congressman Vander Jagt was just exploring, you said that from the wildlife standpoint and from the interests of the Fish

and Wildlife Service, this permit—taking 9 acres of valuable waterfowl resting ground—should not have been granted. That is correct, is it not?

Dr. GOTTSCHALK. That is correct.

Mr. REUSS. You then went on to say that the Assistant Secretary and Under Secretary of the Department of Interior have broader interests and thus that you had no choice but to go along with their recommendation—despite your views—that the permit be granted. That has been your testimony; is that correct?

Dr. GOTTSCHALK. That is correct.

Mr. REUSS. Are you familiar with the April 8, 1968, memorandum of Assistant Secretary Cain in which he says, and I am quoting:

I withdrew Interior's opposition, a decision based first on political considerations and second on the feeling that the values were not great in the area to be filled.

Is the broader interest that you refer to the "political considerations" that were evidently in the Assistant Secretary's mind?

Dr. GOTTSCHALK. I would not want to say that this is correct. I do not know exactly what was in the Secretary's mind.

Mr. REUSS. If there were political considerations as the primary cause of the overruling of the Fish and Wildlife Service judgment, in your opinion, is that good government?

Dr. GOTTSCHALK. If we could put this on a hypothetical basis, I would be much more comfortable.

Mr. REUSS. I want you to be comfortable. Let us put it on a hypothetical basis.

Dr. GOTTSCHALK. I think there are undoubtedly situations which arise which require the Secretary to trade one kind of an achievement, shall we say, for another.

In the normal course of events in this country, and the way we run our country, there have to be sacrifices made in order to achieve larger gains. I don't know that kind of a situation prevailed in this case. To my personal knowledge it did not. But I do not have any specific knowledge on this point from Dr. Cain. I do know that one of the considerations here which actually is on the side of the preservation of the river is that which relates to the natural beauty of the area. There was quite a bit of discussion over the relationship of additional apartments in that particular spot versus the condition as it exists there now with the Hunting Creek Towers project already in existence. Much of our discussion is related to this aspect. I was not personally involved in these, except as a bystander, but Dr. Cain, I do know, had these concerns to take into consideration also.

I use them as examples of these other concerns beyond just the fish and wildlife.

Mr. REUSS. Still permitting you to be hypothetical, I will have to renew my question: If the decisions on the preservation of our wildlife resources are to be overruled, is it, in your judgment, wise and just that they be overruled for political considerations? Just give me a hypothetical yes or no.

Dr. GOTTSCHALK. I hesitate to equivocate. I think there could be situations where good government would demand that the specifics of a particular project should be overlooked.

In general, I would have to agree with you that it would not be good government; but I can imagine situations where it could be that it would work out in the best interests of the greatest number of people if a change were made in order to gain a greater good in some other area of concern or interest.

Mr. REUSS. Putting to one side hypothetical considerations, but just concentrating on the 9 acres which is the subject of this Corps of Engineers fill permit of May 29, 1968: Do you of your own knowledge know any reason why the decision of the Fish and Wildlife Service—that this was valuable waterfowl habitat and should not be filled—should have been overruled?

Dr. GOTTSCHALK. No; I do not. I can only speculate.

Mr. JONES. If the gentleman would yield, to that hypothetical question, I think you can recall one where the decision of the Wildlife Service, Department of Interior, prevailed in the location of an interstate highway in the vicinity of Decatur, Ala. The location of that interstate highway required the construction of a bridge across the Tennessee River. You will recall the discussions I had with you, Doctor, back some 5 years ago, which were kept in the mill about 3 years, and where the wildlife people in the Department insisted that the location of the bridge be 3 miles east of the points designated by the State highway department, Bureau of Public Roads. You would never relinquish your position. As a result we got a compromise as to where the bridge is to be constructed.

We had to redesign the bridge at a cost to the Federal Government of \$300,000. It will cost over \$400,000 in excess cost to the motorists to accommodate those ducks. That was a question of policy. That was a question of decision. For the life of me I cannot see that those ducks were discommoded, because the wildlife refuge was still there. I do not see those ducks, just like the ducks out here by the National Airport, with those planes coming in and out, fluttering around. But here the motorist is going to pay an exorbitant amount, year in and year out, because the bridge had to be constructed in an awkward fashion away from the travel route. Consequently, it was a decision made in keeping with the policy of the Department of Interior.

The ducks won.

Mr. Reuss is asking a practical question, and that is one in which the ducks won to the detriment of the people, and the ducks are still there.

Dr. GOTTSCHALK. Mr. Chairman, if I may comment on this, I made a point to go down and look at this project last winter. The alignment of the road was finally never changed. The original alignment that had been proposed by the State highway department was the one that was finally accepted. There was no rerouting it around, as we had urged, as you say correctly, for many years. I must say we are disappointed that it was not rerouted, because the road now goes through some of the prime waterfowl habitat in the whole refuge. However, the bridge was redesigned, as you indicate. The trestle was lowered. There was a compromise finally reached.

Mr. JONES. It was a compromise, all right.

Mr. MOSS. Would you yield a moment?

Mr. REUSS. I yield to Mr. Moss.

Mr. Moss. On March 15 of this year you received a memorandum from Dr. Cain, subject, "Hunting Creek Dredging Permit." In the third paragraph of that memorandum he states:

Today I had a chance to speak to Secretary Udall about the problem. He had earlier relegated the decision to me and had raised no objection to what I did. He merely wishes that we get a scientific-technical basis that can be stood on, whether we go "yes" or "no" on issuance of the permit. This being the case, and since I made my earlier decision without asking for a new study of the area, I think that one should be made now. Will you please have two or three of the bureau staff—types who ordinarily make such judgments in river basins—go over there and take a new look? Whatever the judgment of the Bureau turns out to be, I will go with it, as will the Secretary.

Was that objective of the "scientific-technical basis" ever achieved?

Dr. GOTTSCHALK. We did not make a complete restudy utilizing new people. Our confidence in Dr. Uhler is just as great now as it was before. He still, I think, would qualify as perhaps the Nation's top expert from the standpoint of fish and wildlife in this area.

Therefore, I arranged that Mr. Arthur Dicks of our Division of River Basin Studies and Dr. Uhler and a representative of the Park Service, make a field appraisal of conditions in the area, which they did. This study was completed and the conclusion reached was that there was no basis for changing any of the conclusions of our 1964 report.

Mr. Moss. Thank you.

Mr. REUSS. Mr. Chairman, I have a few more questions. Director Gottschalk, you have testified that you have seen the waterfowl resting area at the Hunting Creek estuary many times over recent years with your own eyes.

Dr. GOTTSCHALK. Yes.

Mr. REUSS. Have you seen, as I have, literally hundreds, and in some cases thousands, of diving ducks at rest in that area?

Dr. GOTTSCHALK. Not in the 9 acres that is under contention as part of this permit application.

Mr. REUSS. But in the general area of the Hunting Creek estuary? Dr. GOTTSCHALK. In the general area—and the general area I would say would be from a point approximately half a mile above Wilson Bridge to a point approximately a half mile below Wilson Bridge—I have seen numbers of waterfowl ranging into the tens of thousands. In fact, I would imagine at one time I saw more than 50,000 ruddy ducks in this area.

Mr. REUSS. I suppose it is not possible for you to pinpoint any particular 9 acres of the Hunting Creek estuary, which comprises several hundred acres, as being particularly used by these diving ducks; is that correct?

Dr. GOTTSCHALK. That is correct.

Mr. REUSS. So when you say you are unable to testify as to this particular 9 acres, in fact, you would be unable to testify with particularity as to any 9-acre tract within the whole Hunting Creek estuary, is that not so?

Dr. GOTTSCHALK. That is correct.

Mr. REUSS. I want to commend you for the good things you said about Dr. Uhler and the loyalty you expressed to him which, quite apart from the subject matter of the hearing here, is an attitude of support for loyal civil servants which I find very pleasant.

You say that the basic work on the various reports prepared by the Fish and Wildlife Service on the Hunting Creek estuary were the work of Dr. Uhler?

Dr. GOTTSCHALK. Primarily.

Mr. REUSS. In your judgment have those surveys and reports by Dr. Uhler been workmanlike and professionally competent?

Dr. GOTTSCHALK. Absolutely.

Mr. REUSS. You would not accuse him of flights of fancy, of imagining there were ducks there when there weren't?

Dr. GOTTSCHALK. Not at all.

Mr. REUSS. You would not accuse him of subjective judgments?

Dr. GOTTSCHALK. Not as to the questions of the numbers of water fowl, quality of the habitat, food animals and organisms available, and that sort of thing.

Mr. REUSS. You would not accuse him of having acted without any factual evidence?

Dr. GOTTSCHALK. No.

Mr. REUSS. In the light of that, let me call your attention to the letter written by Under Secretary of Interior David Black to General Woodbury of the Corps of Engineers on April 26, 1968.

That was the letter in which the Department of Interior reversed itself, I think for the fourth time, at the high level, and told the corps to go ahead with its fill. In that letter Under Secretary Black says this:

While there is no doubt of the opinions reached by those concerned with the conservation impact, their position is founded on subjective judgment considerations rather than any factual evidence which would support valid objection by this Department.

That statement is not true, is it?

Dr. GOTTSCHALK. It is a matter of opinion. That statement, however, refers not to Dr. Uhler or his testimony, but to my own opinions. I am the one who developed the concept of the "nibbling phenomenon." I am the one who said I feared if this permit were granted it would lead to additional permits to be granted.

I think that Mr. Black's comment at that particular point refers to my apprehensions rather than to the substantive information developed by Dr. Uhler which became the basis for our report.

Mr. REUSS. You are being very kind to Under Secretary Black but I think we will have to pursue this a bit.

Dr. Uhler is a man concerned with the conservation impact of the fill, is he not?

Dr. GOTTSCHALK. Yes.

Mr. REUSS. Isn't Secretary Black, in the letter I have read, if the English language has any meaning, stating that those concerned with the conservation impact reached their position by subjective judgment considerations rather than any factual evidence? The mere fact that he may accuse you—whether rightly or falsely I do not know—of having used subjective judgments and not used factual evidence, doesn't mean that Dr. Uhler used subjective judgment considerations, rather than factual evidence, does it?

Dr. GOTTSCHALK. I have my opinion about this particular point because of the fact that I did discuss these things with Under Secretary Black out on the ground. I do not think that he has any misconceptions or any erroneous ideas about the facts of the case as they relate to waterfowl use.

Mr. REUSS. Was he familiar with Dr. Uhler's findings and reports?

Dr. GOTTSCHALK. Yes; he was.

Mr. REUSS. In your judgment those findings and reports did, in fact, rely on factual evidence and did not use subjective judgment considerations, is that not so?

Dr. GOTTSCHALK. That is correct.

Mr. REUSS. Thank you.

Mr. REUSS. You spoke earlier of the alleged upgrading by the Washington office of the initial report and your testimony was, I believe, there was, in fact, no upgrading, that there was no Atlanta region report that had to be upgraded. Is that not so?

Dr. GOTTSCHALK. That is correct.

Mr. REUSS. In other words, no one in the Fish and Wildlife Service at any level ever did any upgrading of a lower level report because the reports from the lowest level that did report were all to the effect that this 9-acre fill was not in the public interest, was that not so?

Dr. GOTTSCHALK. That is correct.

Mr. REUSS. I now call your attention to the memorandum of April 8, 1968, by Assistant Secretary Cain, which is part of the record, in which Secretary Cain says:

I would like to clarify my role, which has not been an enviable one. I was told by BSWF—

Which is the Bureau of Sport Fisheries and Wildlife—

that the original field report on the area under discussion was in weak opposition to the permit and that the fish and wildlife values claimed for the area were "upgraded" here in Washington.

Did you tell Assistant Secretary Cain that the original field report was in weak opposition to the permit and that it had been upgraded in Washington?

Dr. GOTTSCHALK. No; I did not.

Mr. REUSS. That statement in Secretary Cain's memorandum is not in accord with the facts, is it?

Dr. GOTTSCHALK. No; it is not.

Mr. REUSS. And you don't know who told them that?

Dr. GOTTSCHALK. I do not know who told him that, but I think what Secretary Cain was actually told was that the area was of so little importance that the regional office had not intended originally to make a study until they were directed to do so by the Washington office and I think that is possibly the upgrading that Secretary Cain referred to. There was not any upgrading of values so far as I know, and I have made extensive inquiries among my staff on this point.

Mr. REUSS. In your memorandum of April 9, as Chief of the Bureau of Sport Fisheries and Wildlife, to Secretary Cain, you said this:

Although the present permit application of the Howard P. Hoffman Associates, Inc., would result in significantly less fill than the original 1964 application, the effects on waterfowl use of the area would not materially change. The diversity of the wetland habitat provided by Dyke Marsh and Hunting Creek would be altered by the project and its resultant development to the detriment of waterfowl and other aquatic birds.

Do you stand by that statement?

Dr. GOTTSCHALK. I stand by that statement. I think I should comment about Dyke Marsh. We had early apprehensions that the placement of the fill itself might result in increased sedimentation in the

Dyke Marsh area that might have adverse effects on Dyke Marsh which lies downstream from the Hunting Creek site.

I am not as convinced on this particular point at the present time as I might have been earlier. I think it would be possible to carry out this filling operation in such a way as to minimize any silt deposition of the area.

Mr. REUSS. On Dyke Marsh?

Dr. GOTTSCHALK. That is correct.

Mr. REUSS. But your position on the primary point—that it would materially affect waterfowl on Hunting Creek estuary itself—still stands?

Dr. GOTTSCHALK. It still stands.

Mr. REUSS. In addition to the point about direct damage, you made—very ably I thought—the “nibbling point,” which was, as I read it, that even if the proposed 9-acre fill had not directly damaged waterfowl, the permit still should not have been granted, and in that connection you said in your memorandum:

I think we must urge the corps not to grant this permit. We might say, as Webster did about Dartmouth College, that “It is a small thing, but there are those who love it.”

Was that your statement?

Dr. GOTTSCHALK. That is correct.

Mr. REUSS. And you stand by it?

Dr. GOTTSCHALK. That is right.

Mr. REUSS. Thank you, Mr. Chairman.

Mr. JONES. Mr. Indritz.

Mr. INDRITZ. Dr. Gottschalk, were you present at the time Dr. Cain signed his letter of October 10, 1967?

Dr. GOTTSCHALK. Is this the letter to the Corps of Engineers?

Mr. INDRITZ. Yes.

Dr. GOTTSCHALK. No; I was not.

Mr. INDRITZ. Had you conferred with Dr. Cain concerning the matter prior to his signing the October 10, 1967, letter.

Dr. GOTTSCHALK. No.

Mr. INDRITZ. Had you known, before the letter was signed, that it would be signed?

Dr. GOTTSCHALK. No.

Mr. INDRITZ. Had Dr. Cain sought your views about the matter before he signed the letter?

Dr. GOTTSCHALK. No.

Mr. INDRITZ. Did the signing of the letter take you by surprise?

Dr. GOTTSCHALK. Yes.

Mr. INDRITZ. Did you thereafter attempt to discuss the matter with Dr. Cain?

Dr. GOTTSCHALK. Yes, I did.

Mr. INDRITZ. Did you endeavor to bring to his attention that Secretary Udall, on May 27, 1964, had written a letter to the Secretary of the Army in which he concluded his letter with the words:

I strongly urge that your Department, and the Corps of Engineers particularly, deny the pending applications for construction permits.

Dr. GOTTSCHALK. I can't say that I mentioned that particular point. I did remind Dr. Cain that we had taken a strong position both in the Bureau and in the Department against the issuing of the permit.

Mr. INDRITZ. Did you bring to Secretary Cain's attention the fact that Secretary Udall on May 27, 1964, had written a letter to Congressman John D. Dingell in which he assured him that—

This Department has taken every step within its statutory powers to prevent the issuance of this permit.

Dr. GOTTSCHALK. Not specifically.

Mr. INDRITZ. Did you bring to Secretary Cain's attention the fact that the Acting Secretary of the Interior, John A. Carver, Jr., had written on July 15, 1964, to Governor Harrison of the State of Virginia a letter in which he concluded—

In view of the public interests involved in the area where Hunting Creek joins the Potomac River and the certain destruction of park property and important and unique scenic and wildlife values, we strongly urge you to not convey the submerged lands in Hunting Creek, regardless of the State's legal authority to do so.

Dr. GOTTSCHALK. Again not specifically, but I think a reference was made to the fact that we had urged the State not to transfer title.

Mr. INDRITZ. Did you bring to Secretary Cain's attention the fact that Acting Secretary of the Interior Carver on July 13, 1964, had written to Mr. Hugh Witt, president of the Old Town Civic Association, expressing the view that—

The Corps of Engineers will consider the views of this Department as well as objections which have been noted by others in the community sufficient to warrant a denial of the applications.

Dr. GOTTSCHALK. Not specifically.

Mr. INDRITZ. Were you aware that Dr. Uhler had been requested by Congressman Reuss to state his views concerning the wildlife values of the area early this year?

Dr. GOTTSCHALK. Yes.

Mr. INDRITZ. Did you see Dr. Uhler's letter to Congressman Reuss?

Dr. GOTTSCHALK. Yes, I did.

Mr. INDRITZ. Before it was sent out?

Dr. GOTTSCHALK. No, I don't think so. I don't recall specifically whether I saw it before or just received a copy after it was sent.

Mr. INDRITZ. Have you read the letter?

Dr. GOTTSCHALK. Yes.

Mr. INDRITZ. Do you agree with Dr. Uhler's letter?

Dr. GOTTSCHALK. In substance.

Mr. INDRITZ. Did Dr. Cain discuss with you the reasons for his reversal?

Dr. GOTTSCHALK. We discussed the action but we did not discuss the basic reasons why he decided to withdraw the Department objection.

Mr. JONES. Are there any further questions, Mr. Reuss?

Mr. REUSS. Director Gottschalk, during the consideration of the applications for the Hunting Creek fill, were you, yourself, in direct contact with the Corps of Engineers, or was that handled through the Assistant Secretary and Under Secretary?

Dr. GOTTSCHALK. At what point in the chronology, Mr. Reuss?

Mr. REUSS. The whole series of applications from 1964 on.

Dr. GOTTSCHALK. The original referral by the Corps of Engineers came prior to the time I took office as Director.

Mr. REUSS. When did you take office?

Dr. GOTTSCHALK. October 15, 1964. All of the things that happened prior to that time happened before I arrived on the scene.

Mr. REUSS. From October 15, 1964, was there any contact between you and the Corps of Engineers with respect to Hunting Creek fill applications, or was that contact by the Corps of Engineers with the Assistant Secretary and Under Secretary or at that level?

Dr. GOTTSCHALK. We continued to have staff contacts with the Corps of Engineers on these matters and have had, on this particular one. I had no substantive discussions with members of the Corps of Engineers on this problem. I think that most of the discussions were between the Assistant Secretary or others in the Department, and members of the staff of the Corps of Engineers.

Mr. REUSS. What members of the Fish and Wildlife Service had any contacts with the Corps of Engineers on these applications? You say you did not. Did any official or employee of the Fish and Wildlife Service?

Dr. GOTTSCHALK. There were undoubtedly a number of staff contacts. Our records show that a former member of Mr. White's organization, Mr. Lawson, had discussed aspects of this with members of the staff of the Chief of Engineers.

Mr. REUSS. When?

Dr. GOTTSCHALK. In late 1963 and the early 1964 period during the time the report was being developed.

Mr. REUSS. Following the late 1963 and early 1964 period, was there any contact or discussion between the Corps of Engineers and any officer, or employee, of the Fish and Wildlife Service?

Dr. GOTTSCHALK. The only one that I know of personally, without a greater review of the files than I have made at the present time, was between myself and General Woodbury and this involved a call that I made to him at the time I learned Dr. Cain had decided to change his mind and to again, in effect, reinstate the Department's position in opposition to this project.

Mr. REUSS. On what date did you telephone General Woodbury?

Dr. GOTTSCHALK. On or about April 10, 1968.

Mr. REUSS. You called him?

Dr. GOTTSCHALK. Yes.

Mr. REUSS. What did you say and what did he say?

Dr. GOTTSCHALK. All I did was to call General Woodbury because I knew from staff discussions that the corps was very close to granting this permit and, with the Department's opposition reinstated, I wanted to warn them of this fact and to ask them for a delay in making the decision. I did not have an opportunity to discuss this beyond the introduction of the subject because, as it turned out, Dr. Cain was present in my office at that time. In fact, he hand-carried his memorandum to me and then we discussed it and then I called General Woodbury and—

Mr. REUSS. Would you just tell us what you said: "Hello, General Woodbury, this is Director Gottschalk." I presume?

Dr. GOTTSCHALK. I said "I was trying to reach General Noble but I didn't expect to get you—" this was rather late in the evening. "And Dr. Cain had advised he is changing his position on this Hunting Creek project," and that was about the end of my personal discussion because Dr. Cain said, "Let me talk to the general."

Mr. REUSS. Before you got off the phone, had General Woodbury made any reply to what you had said?

Dr. GOTTSCHALK. I am sure he did. I can't remember exactly what his words were, but he acknowledged that this had happened.

Mr. REUSS. You mean that the Department of the Interior had reinstated its former position of opposition to the fill?

Dr. GOTTSCHALK. That is correct.

Mr. REUSS. Did he acknowledge it with pleasure, dismay, or equanimity?

Dr. GOTTSCHALK. I think the general will testify a little bit later and I would prefer to let him recount this. I suppose there was an inflection of surprise in his voice. I wouldn't want to suggest that I could discern any other particular emotion.

Mr. REUSS. Not angry?

Dr. GOTTSCHALK. Not at all.

Mr. REUSS. Hurt?

Dr. GOTTSCHALK. No.

Mr. REUSS. Then Assistant Secretary Cain got on the phone and what did he say?

Dr. GOTTSCHALK. He told the general what had happened, that he had asked for this technical review and after thinking the whole thing over had come to the conclusion that he had made an error in having withdrawn the Department's objection in the first instance and, therefore, was proposing to reinstate the objections of the Department.

Mr. REUSS. Did Dr. Cain have anything to say about his earlier position, as set forth in his letter of October 10, 1967?

Dr. GOTTSCHALK. I don't recall anything specific.

Mr. REUSS. Could you hear General Woodbury's reply?

Dr. GOTTSCHALK. No; I couldn't.

Mr. REUSS. Did Dr. Cain tell you what General Woodbury's reply was?

Dr. GOTTSCHALK. I am not sure that he did at that time.

Mr. REUSS. When did he?

Dr. GOTTSCHALK. Well, later I learned what the reply was.

Mr. REUSS. What was it?

Dr. GOTTSCHALK. It was in substance that this would be an excellent opportunity to follow the procedures outlined in the memorandum of understanding which had been developed earlier between the Department of the Interior and the Corps of Engineers on the handling of these permits, which involved the referral of the permit applications that were being contested or in controversy, to the Under Secretary.

Mr. REUSS. Did Dr. Cain say anything in his conversation with General Woodbury over the telephone to the effect that his—Dr. Cain's—position of October 10, 1967, withdrawing opposition to the fill permit, was "naked and indefensible?"

Dr. GOTTSCHALK. I don't recall that he used those specific words.

Mr. REUSS. What did he say in that general connection?

Dr. GOTTSCHALK. Well, he said, in effect, that he no longer felt his previous position was supportable.

Mr. REUSS. Thank you, Mr. Chairman.

Mr. VANDER JAGT. Mr. Chairman, may I ask one question?

Mr. JONES. Mr. Vander Jagt.

Mr. VANDER JAGT. You told Mr. Indritz when Dr. Cain withdrew the objection you were surprised and that you then had a conversation with him. Didn't you ask him, "Why did you withdraw these objections?"

Dr. GOTTSCHALK. Not necessarily in those terms, although I am sure that the reason for my visit in his office was apparent, but I felt it obligatory that I point out to him that we would be placed in a rather awkward position, and this I attempted to do.

Mr. VANDER JAGT. When all of the data pointed in the other direction, then suddenly he goes in an opposite direction; he must have given some explanation as to why. It would be very logical for you to ask him about it while you were there.

Dr. GOTTSCHALK. He did not choose to inform me about these things. I know that if he had felt it would have helped the situation any he would have confided in me. I think—and again this comes to speculation—that he felt that the future development of this project was going to result in oppressive political pressure on the Bureau and that he would step in and relieve us of the pressures by taking them on himself. My personal opinion is that Dr. Cain thought that he was helping our organization by making it unnecessary for those of us—myself and Dr. Uhler—who are more or less professionals in the field—to have to try to withstand this kind of pressure.

Mr. VANDER JAGT. Thank you very much and thank you for very helpful testimony.

Mr. JONES. Thank you very much, Dr. Gottschalk, and also Mr. White. You are always a great advocate and a fine witness.

Our next witness is Dr. Francis M. Uhler, biologist, Fish and Wildlife Service, Department of the Interior.

STATEMENT OF DR. FRANCIS M. UHLER, BIOLOGIST, DEPARTMENT OF THE INTERIOR

Dr. UHLER. I am Francis M. Uhler, as indicated, of the Fish and Wildlife Service.

Mr. JONES. If you are the man folks say you are, you are a Jim Dandy. I will tell you. There has been a lot of bragging on you, Dr. Uhler. It is a pleasure to have you, sir.

Dr. UHLER. Thank you, sir. I should blush but I have blushed for a considerable period and it is probably not apparent at the moment.

Mr. JONES. It is well for you to hear good things said about you. We are pleased too.

Dr. UHLER. Thank you. I have been employed by the Fish and Wildlife Service and its forerunner agency, the Biological Survey, since 1924. Much of that period has been connected with the conservation of waterfowl and the early establishment of our waterfowl refuges throughout many parts of the United States.

I have conducted research on the food habits of waterfowl with other aquatic biologists, in our old Biological Survey, and reported on such, and have conducted research on the methods of developing waterfowl breeding grounds and feeding grounds in many parts of the United States.

My contacts with the Potomac estuary and its embayments, including Hunting Creek, go back to the late 1920's and I have spent many

pleasurable hours on the Hunting Creek Cove and the adjacent part of the Potomac and the estuaries both upstream and downstream from Hunting Creek, obtaining information on waterfowl feeding grounds and on the conservation of these feeding grounds.

These visits have pointed up some very graphic changes that have occurred over that period of time. Many of them, I am sorry to say, to the detriment of the feeding grounds. Particularly the extensive filling and dredging of formerly shallow tidal areas, including both open water and marsh.

The Hunting Creek area is one, in my opinion, of the key areas for preserving a local opportunity to view diving duck activity in the Washington region. The area immediately below Hunting Creek, and including Hunting Creek, has been recognized as an important area in connection with the establishment of the George Washington Memorial National Parkway.

The Dyke area still supplies a moderate amount of good tidal marsh. But that is at this moment rapidly being whittled away by dredging operations, and actually there is just a token remnant of the original marsh today.

The Hunting Creek Cove, which lies at the head of the Dyke Marshes, is an integral part of the very complex and useful feeding grounds. It supplies the shallow open-water zone that is particularly of great importance to the diving species, whereas the marsh along the Dyke Overlook has attracted more of the shoal-water species of ducks; species like the black duck, the mallard, the pintail, and at times in the early season, the bluewing teal, the wood duck, and others.

Without the companion shallow marshy zones and the shallow, open waters—I refer to waters less than 5 feet in depth—in which light penetration is sufficient for the diving ducks to see their feed—the area would be of limited value. Most of Hunting Creek Cove is less than 5 feet in depth, and much of it less than 3 feet in depth.

This supplies a situation where light penetration permits the diving ducks to utilize pollution-tolerant invertebrates such as the midge larvae and several species of mollusks that have been able to withstand the existing pollution.

It is apparent, with the construction of a fill extending some several hundred feet out into the Hunting Creek Marsh, in addition to possible minor elimination of acreage, we are interposing a human disturbance factor, if a high-rise apartment is constructed jutting out into what is now truly important resting and feeding areas. I am as much concerned about the disturbance factor as I am about the elimination of these feeding grounds directly.

That is all I have to offer at the moment.

Mr. Moss. I would first like to express my appreciation to you, Dr. Uhler, for responding to the request of Mr. Reuss and myself.

I think your response of January 31 was an evidence of great personal integrity for which I am most appreciative. I think your statement here has been excellent and answered most of the questions I would have.

I would like to have you deal just a little more fully with this disturbance factor.

Dr. UHLER. During my attendance of the Engineer Corps hearing, which Dr. Gottschalk indicated I had attended in a personal interest

manner and presented a personal statement to the Engineer Corps regarding my views on the subject, I felt that the proposed construction of a marina—and I didn't learn of it until that hearing—in conjunction with this high-rise apartment, plus the construction of a deep channel through the existing so-called thread of Hunting Creek upstream some distance, would create an increase in human disturbance through motorboat activity particularly, that would be inimical to waterfowl use. And also the physical appearance of a 150-foot high-rise apartment on the edge of water now a resting ground and feeding ground would certainly not improve the usability of that area.

Mr. MOSS. That would go much beyond the 9 acres.

Dr. UHLER. That is right.

Mr. VANDER JAGT. I would like to thank you, Dr. Uhler, for a very helpful and knowledgeable statement. I have only one question, to which I am sure the other members of the committee know the answer, but since we are spending so much time on diving ducks, I wonder if you could just tell us what is a diving duck?

Dr. UHLER. There are two major groups of ducks. One that we call the river duck, or shoal-water duck, or some folks call them puddle ducks, that feed primarily by tipping up and thereby getting their feed from the bottom, or between the bottom and the surface of the water. This is in contrast to the activities of the so-called diving ducks which feed primarily by diving in deeper sites and feeding on bottom organisms as well as on organisms of intermediate origin.

The canvasback, the ruddy duck, and bufflehead duck, greater and lesser scaup, the various species of mergansers, the golden eye—those are a few examples of diving ducks that require essentially open feeding grounds for their welfare.

Mr. VANDER JAGT. Thank you very much.

Mr. REUSS. Dr. Uhler, I want to try to list the various elements in your objection to this 9-acre fill. These are not necessarily in order of importance.

Objection No. 1 is the disturbance factor you mentioned to Congressman Moss—that if you erect a high-rise apartment jutting out into the estuary it will prevent ducks from using it. Is that correct?

Dr. UHLER. That is correct.

Mr. REUSS. A second objection is that this particular 9 acres is as valuable as any other 9-acre stretch of the valuable waterfowl feeding ground in the Hunting Creek estuary and there will be 9 acres less of valuable wetland if it is filled; is that correct?

Dr. UHLER. I would not be in a position to say that the food organisms on that actual 9 acres are identical with the food organisms on the rest of the Hunting Creek estuary. They may or they might not be. The area, the 9 acres, is closer to the existing high-rise apartment houses and has an existing disturbance factor that I believe tends to limit the waterfowl use to some extent and if we extend that high-rise complex on out into the river, we are pushing that same disturbance factor that much farther out.

Mr. REUSS. You and I have several times, by canoe on one occasion at least, been out on the actual waters of Hunting Creek estuary and specifically on the waters where this fill is supposed to take place, is that correct?

Dr. UHLER. That is correct.

Mr. REUSS. We have seen ducks in the area where the fill is to take place, have we not?

Dr. UHLER. That is correct.

Mr. REUSS. A third objection, as I understand it, is that the dredging that would be required by the fill would alter existing depths and make it a less satisfactory waterfowl habitat?

Dr. UHLER. That is correct.

Mr. REUSS. A fourth objection, as I understand it, is that filling a thumb jutting out into Hunting Creek estuary would be likely to cause undue siltation in the upstream area of Hunting Creek estuary and further possible destruction, is that correct?

Dr. UHLER. That is correct.

Mr. REUSS. In addition to those four reasons, which we have now analyzed, are there any other points to your objection?

Dr. UHLER. In the process of developing a fill in this area, you are obviously going to have a turbidity increase comparable to that which we have adjacent to all dredging operations on the Potomac and that turbidity is not going to benefit waterfowl.

Mr. REUSS. We call that objection No. 5, would it be?

Dr. UHLER. Well—

Mr. REUSS. We will correct the record if my numbering is wrong. Then there is a sixth objection voiced by Director Gottschalk and I wonder if you agree with that—if these other four or five objections did not exist, the nibbling point would be relevant. Namely, if a permit is granted for 9 acres, pretty soon applicants will be around for another 9, 18, or 27 acres, on the theory that Hunting Creek has now been filled somewhat and a little more fill won't hurt. Would you subscribe to that sixth point too?

Dr. UHLER. Yes, and I would point out that the so-called nibbling process is in an advanced stage right now. I have seen what has occurred a few years back on the Anacostia River where the marshes have been essentially nibbled to death. I have seen where the nibbling process of the Four Mile Run has completely eliminated the marsh. I have seen where the nibbling process on Oxon Creek across the river from Alexandria has eliminated a former fine marsh, and I have seen what has occurred on the south side of the lower part of Hunting Creek between Mount Vernon Parkway on Memorial Highway and on the U.S. No. 1 Highway, where in the last 3 years we have lost probably the finest remaining wild rice beds in the Alexandria area, first by filling it with debris and then superimposing landfill on top of it.

Mr. REUSS. These original applications in 1963 covered 38 acres, did they not?

Dr. UHLER. I believe that is correct.

Mr. REUSS. And in 1964, after opposition had been heard, the request was reduced to 18, is that correct?

Dr. UHLER. I am not in a position to know the precise acreages that were involved.

Mr. REUSS. And more recently, within the last year, the application that has been pursued has been for only 9 acres, is that correct?

Dr. UHLER. That is what I have been told.

Mr. RUESS. And you don't know what the plans of the applicants are, whether they intend to pursue the other applications which are still pending after this has been granted, or what they intend to do?

Dr. UHLER. I do not.

Mr. RUESS. Thank you, Mr. Chairman.

Mr. MOSS. Mr. Chairman, I ask unanimous consent to include at this point in the record the letter from Dr. Uhler, addressed to my colleague, Congressman Reuss, and myself, under date of January 31, 1968.

Mr. JONES. Without objection, the letter will be received and printed in the record at this point.

(The document referred to follows:)

BOWIE, Md., January 31, 1968.

Hon. HENRY S. RUESS,

Hon. JOHN E. MOSS,

House of Representatives, Washington, D. C.

DEAR MESSRS. RUESS AND MOSS: Your recent request for additional information regarding the ecology of the waterfowl feeding grounds in the shallow tidal waters at the mouth of Big Hunting Creek along the Mount Vernon Memorial Parkway has been received. Most of the essential facts regarding waterfowl habitats in that area were presented in my report on observations made during the autumn of 1963, and quoted in your recent letter. The comments made at that time are even more significant today because of the continued destruction of the remaining tidal marshes in that locality.

I have been watching waterfowl in that vicinity for more than 40 years, and it has been an outstanding area for observing the important part played by the combination of shallow open waters, fresh tidal marshes, and semiaquatic woodlands in creating a haven for a great variety of aquatic wildlife. In spite of the severely polluted condition of the adjacent Potomac, and drastic changes in waterfowl feeding grounds of the broad, shallow cove that forms the mouth of Big Hunting Creek, this area still is the most important feeding grounds for diving ducks along the fresh tidal waters of the Potomac. It also attracts a great variety of other waterfowl, and the adjacent Belle Haven picnic grounds have become a mecca for bird students and interested visitors. The convenient accessibility of this section of the Mount Vernon Parkway for persons to enjoy aquatic natural history is unequaled in the Washington region.

With the continued destruction by sand and gravel dredging in the adjacent Dyke Marshes, and the recent elimination of the colorful natural aquatic gardens through trash dumping and filling the nearby Big Hunting Creek tidal marsh adjacent to the west side of Memorial Parkway, the preservation of the remnants of these unique wildlife habitats has become increasingly important.

The proposed construction of a 19-acre real estate development in the shallow waters of the mouth of Big Hunting Creek is certain to be detrimental, not only to waterfowl that now feed or rest in this shallow bay, but in the adjacent section where dredging will greatly alter existing depths. Unavoidable increases in turbidity, as well as disturbance by man, are likely to occur in neighboring waters.

Most important foods for waterfowl are produced in shallow waters, or those that are clear enough to permit sunlight to penetrate to the bottom. Under the polluted conditions that now exist in the tidal Potomac for more than 30 miles downstream from our Nation's Capital, shallow depths (less than 5 feet) have become doubly important in the maintenance of waterfowl feeding grounds. Adequate light penetration facilitates feeding as well as being essential for plant growth. Submerged food plants have been destroyed in all but the shallowest zones. Fortunately certain types of pollution-tolerant invertebrates such as midge larvae (Chironomidae), isopod crustaceans, and a few kinds of mollusks still furnish foods for diving ducks. These foods, together with the protection supplied by the shallow, sheltered waters at the mouth of the cove, continue to attract many kinds of waterfowl. For example, last week I had the pleasure of watching several hundred lesser scaups (blue-bills) and ruddy ducks, as well as smaller numbers of black ducks, mallards, common goldeneyes, buffleheads, oldsquaws, black-backed gulls, herring gulls, ring-billed gulls, and a whistling swan in this area although some sections were coated with ice.

If these public waters are thrown open to private real estate development where can a line be drawn to protect our aquatic wildlife resources for coming generations of Americans?

The above does not reflect the policy of any bureau or department.
Sincerely yours,

FRANCIS M. UHLER.

Mr. JONES. Dr. Uhler, we again thank you. You have been most helpful. We appreciate your attendance.
Our next witness is is Gen. Harry G. Woodbury, former Director of Civil Works, Corps of Engineers.

**STATEMENT OF GEN. HARRY G. WOODBURY, CONSOLIDATED-
EDISON CO., NEW YORK CITY; FORMERLY DIRECTOR OF CIVIL
WORKS, CORPS OF ENGINEERS**

General WOODBURY. Thank you, Mr. Chairman. I am Harry G. Woodbury, presently employed with Con-Edison in New York City. I am happy to be here at your invitation. I did not come with any prepared statement but rather I understood that the committee had some questions.

In reviewing the testimony that has preceded my presence here, I note that there is reported to have been a telephone conversation between myself and Dr. Cain on the 10th of April, in which there is a quotation of my conversation with him. I cannot subscribe to the accuracy of the quotation. No tape recording of the telephone conversation was made as far as I know, but I can testify to the situation which existed at that time in an effort to clarify this earlier testimony.

I have been aware for some time of considerable interest in this permit application for the Hunting Creek fill. I have had several conversations with Dr. Cain in connection with it. I had attended a meeting at Congressman Moss' invitation in his office in December. I was aware of the fact that Secretary Cain, in writing to the district engineer, had informed the Corps of Engineers of a reversal of the opinions that had been earlier expressed concerning the fish and wildlife and landownership issues that were existent. I was aware too that he, after further consideration, was in the process of making up his mind to again reverse his position. At this time the paperwork for the permit, the permit assembly, had reached the office of the Chief of Engineers. It bore with it, as it came to my office, a letter to the district engineer from Dr. Cain, I believe, of October, in which he announced the withdrawal of earlier objections.

The question then was raised, and it came up in this telephone conversation, on how to manage the change in the position within the Department of the Interior. I pointed out to Dr. Cain that on the 13th of July the Department of the Army and the Department of the Interior had agreed on a procedure by which, knowing of an objection by the Department of the Interior, all permits would be referred to the Secretary. I told him that now that I was informed of his change of view that I would be pleased to send this permit application over to the Secretary of the Interior for comment and I did so.

I think that is all that I have to say and I say that by way of clarification. If there are other questions, I would be more than happy to try to answer them.

Mr. JONES. Mr. MOSS.

Mr. Moss. General, the memorandum of understanding of July 13, 1967, sets forth the policies in two paragraphs, and then has a section entitled "Procedures for Carrying Out These Policies," in which item 5 reads as follows:

The Chief of Engineers shall refer to the Under Secretary of the Interior all those cases referred to him containing unresolved substantive differences of views and he shall include his analysis thereof, for the purpose of obtaining the Department of Interior's comments prior to final determination of the issues.

Then, of course, it provides that in the event the matter is unresolved at that level it shall be then a matter of consultation between the Secretary of the Army and the Secretary of the Interior.

One of the items, of course, is the regional and district views of the Federal Water Pollution Control Administration, the U.S. Fish and Wildlife Service, and the National Park Service.

What was the unresolved substantive difference of view that was referred to Secretary Black?

General WOODBURY. When the application came from the field with the record of the earlier hearings and the letters that had been written, and with the subsequent letter from Dr. Cain of October 1967, there appeared to be no substantive differences of view among the Federal agencies concerning the appropriate action by the Federal Government in connection with the permit. There were objections certainly. There are objections to most everything that everybody does, by one party or another. So all the objections were not resolved; but to the best of my knowledge, at that time I thought they were as resolved as they could be. However, when Dr. Cain telephoned General Noble about the 5th or 6th of April he asked General Noble to withhold action on the permit because he thought that he was going to change his mind; that is, change the substance of his letter of October. So General Noble did withhold action on the permit and it was the following week, Tuesday or Wednesday of the following week, when I was called, first by Dr. Gottschalk and then by Secretary Cain, to confirm the fact that they were in fact changing their views and it was on the basis of that that I then sent the permit action over to the Secretary of the Interior.

Mr. Moss. But, General, the language is very precise:

The Chief of Engineers shall refer to the Under Secretary of the Interior all those cases referred to him containing unresolved substantive differences of view and he shall include his analysis thereof.

I think quite clearly that contemplates a difference of view between the Chief of Engineers and the Department of the Interior, or one of its constituent bureaus.

General WOODBURY. A difference at a level below the Chief of Engineers; yes, sir.

Mr. Moss. What was the substantive difference of view held by the Engineers and by the Department of the Interior? I can recognize that Dr. Cain seemed to be having a substantive difference of views with himself and that that had been continuing for a number of months, but I fail to detect the substantive difference of views between you and the Department of the Interior.

General WOODBURY. There were none, sir.

Mr. Moss. Well then, was it a matter to be referred, under the agreement, to the Under Secretary?

General WOODBURY. There appeared to be in the assembly a substantive difference of views between the desires of the permittee to fill and the Department of the Interior's Fish and Wildlife Service which Secretary Cain had confirmed by telephone on April 10.

Mr. Moss. But that is not referred to in the memorandum of understanding between Secretary Udall and Secretary Resor of July 13, 1967. It doesn't mention permittees. It deals only with differences of opinion between the Department of the Interior and the Department of the Army and it provides a procedure for referring those so that they could be resolved.

You just stated there was no substantive difference of views between the Secretary of the Interior and the Chief of Engineers on this occasion.

General WOODBURY. All language has its weaknesses, sir, and I submit that perhaps this agreement has its. The agreement was negotiated and the language developed personally by myself and by the Under Secretary of Interior. It expressed as best we could what our intentions were. Our intentions were that if there was a strenuous objection to a permit action, that could not be resolved in the field by the District Engineer, the objector, and the permittee, that the matter would be referred to the Chief of Engineers and he in turn, in resolving this difference, would consult with the Secretary of the Interior and obtain his views concerning it, and his recommendations. That is what we did in this case.

Mr. Moss. What was the substantive issue where there was a difference of opinion between the District Engineer and the Chief of the Bureau of Sport Fisheries?

General WOODBURY. The difference, sir, was a difference between the applicant and the Fish and Wildlife Service that the District Engineer was not able to resolve.

Mr. Moss. I don't see in this agreement a single word about the applicant. I see something about the District Engineer and about the officials of the bureaus and the Department itself; but nowhere do I see anything about the applicant.

General WOODBURY. I don't have a copy of it with me, sir, but I think if you will look earlier in the procedure there is an indication that the District Engineer, upon receiving objections, will attempt to resolve the objections and then, failing to resolve them, he reports to the Chief of Engineers.

Mr. Moss. General, after all, it would be rather unusual for the Department of the Army and the Department of the Interior to sit down and draft an agreement dealing with the objections of an applicant for a permit to the Department of the Army. This would only deal with the matters of difference between the Department of the Army and the Department of the Interior.

General WOODBURY. Sir, that is not the purpose for which that was drafted.

Mr. Moss. The memorandum of understanding says:

* * * including the appropriate Regional Directors of the Federal Water Pollution Control Administration, the United States Fish and Wildlife Service, and the National Park Service of the Department of the Interior, and the appropriate State conservation, resources, and water pollution agencies.

Such Regional Directors of the Secretary of the Interior shall immediately make such studies and investigations as they deem necessary or desirable, consult with the appropriate State agencies, and advise the District Engineers

whether the work proposed by the permit applicant, including the deposit of any material in or near the navigable waters of the United States, will reduce the quality of such waters in violation of applicable water quality standards or unreasonably impair natural resources or the related environment.

Again I submit, this goes to the matter of the relationship between the Department of the Interior and the Department of the Army, the Corps of Engineers, and not to the relationship between the applicant for permit and the Corps of Engineers. That is to be governed by different policies which you would apply to your applicants and it would be without regard to the Secretary. This memorandum of understanding is to settle the differences in the views held by the two Departments and it is summed up quite precisely.

Section 5 says:

The Chief of Engineers shall refer to the Under Secretary all those cases referred to him containing unresolved substantive differences of view.

And then he must—

* * * include his analysis thereof, for the purpose of obtaining the Department of the Interior's comments prior to final determination of the issues.

Now, did you submit a memorandum upon this occasion, containing the substantive differences of views, to the Under Secretary of the Interior?

General WOODBURY. Mr. Moss, you have interpreted this memorandum in a way that was not intended and in a way that is not applicable in this case. Paragraph 4 of the agreement speaks of the efforts of a district engineer operating under public law having to do with permits, attempting to reconcile the contrary points of view in issuing a permit, and if he fails in that regard, he refers the action to the Washington level and we attempt at that level then to resolve the differences. In the process, we consult with whatever Federal agencies are concerned with the differences. In this case it is the Department of the Interior.

This agreement was reached because most of the differences in permit actions are between the Fish and Wildlife Service or the National Park Service, and the permittees.

Mr. Moss. Of course, General, I will let the record speak for itself, but the English language is still subject to reasonably precise interpretation and taking up your paragraph 4:

The District Engineer, in deciding whether a permit should be issued, shall weigh all relevant factors in reaching his decision. In any case where Directors of the Secretary of the Interior advise the District Engineers that proposed work will impair the water quality in violation of applicable water quality standards or unreasonably impair the natural resources or the related environment, he shall, within the limits of his responsibility, encourage the applicant to take steps that will resolve the objections to the work. Failing in this respect, the District Engineer shall forward the case for the consideration of the Chief of Engineers and the appropriate Regional Director of the Secretary of the Interior shall submit his views and recommendations to his agency's Washington Headquarters.

Again, I submit this goes to the disagreement between the Department of the Army and the Department of the Interior. Then failing in this respect the District Engineer shall forward—this has already reached your level—you were being phoned and General Noble was being phoned. He was being phoned by a Bureau Chief and Assistant

Secretary, to inform you of a change reverting to their previous position.

General WOODBURY. That is correct, sir.

Mr. Moss. That meant, then, that the unresolved difference of views had to lie with the Department of the Army.

General WOODBURY. That is not correct, sir.

Mr. Moss. Then this memorandum of understanding should be recast in language that is more precise, because it does say exactly what I have just said.

General WOODBURY. There has not been a difference between the Department of the Army and the Department of Interior on this permit, and there is not today as far as I know.

Mr. Moss. Good.

I want that to stand in the record. I won't bother that a bit more. Now, let us go to this matter of the chronology of these applications. When did you get the first one?

General WOODBURY. I first became aware of this, sir, in about October 1967, when I was informed by the district engineer informally that the permit on Hunting Towers had new interest in it.

The applicant had indicated a desire that the permit be processed, and that the Department of Interior had withdrawn their objections.

Mr. Moss. There was an original permit application, was there not, for the entire tip here of 38 acres?

General WOODBURY. About 5 years ago; yes, sir.

Mr. Moss. Subsequently, in July 1964, it was revised, so that it would encompass only the area in orange and the area between the orange and the gray line in this lower triangular-shaped piece; is that correct?

General WOODBURY. Yes. There were two permits, you understand.

Mr. Moss. Yes; there was one for Hunting Towers, the upper triangular piece; and one by Hoffman Associates, the lower triangular piece.

General WOODBURY. That is correct.

Mr. Moss. It is Hoffman's, I believe, we are now discussing.

General WOODBURY. Yes, sir.

Mr. Moss. The area between the gray line and then back through the orange was the Hoffman permit application as revised in July of 1964.

General WOODBURY. That is my understanding; yes, sir.

Mr. Moss. That was the application which was filed, or pressed again, in December 1967; is that correct?

General WOODBURY. To the gray line; yes, sir. That was the lower half only.

Mr. Moss. What was your understanding on the upper half of that 38 acres, or approximately half—it is a little more—had they abandoned the application for permit there?

General WOODBURY. The applicant, as I understand it, has never withdrawn its application; but when the applicant for the southern part renewed its interest in getting its application acted upon—the individual representing the applicant also, I understand, represents the applicant for the upper permit—it is my understanding from the district engineer that he advised the district engineer that they only desired to pursue the lower application at this time.

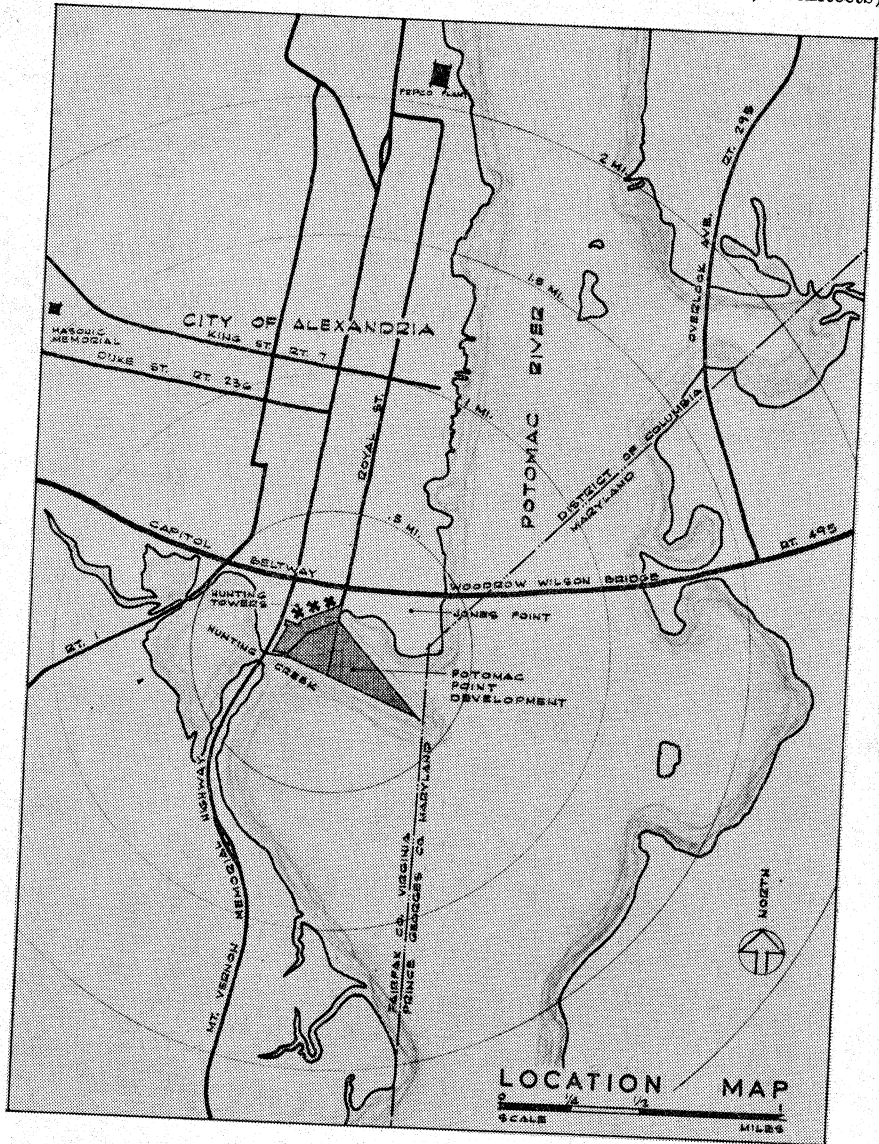
Mr. Moss. "At this time." I think that is very important, Mr. Chairman, because I have here a prospectus, entitled "Proposed Potomac Point Development, Alexandria, Va., Holland Consulting Engineers," dated January 19, 1966. Remember, this is after we have the modification, and after an indication that they were going to abandon part of the application. Yet they refer to the matter as being one to be taken in three bites. The one I have just referred to, and then a second, and then the third for, I guess, Hunting Towers. They refer to the matters as "pending." They also, in this 1966 publication, make it quite clear from a rather elaborate detailed drawing that the ultimate plan in this three-step plan is the nibbling away, which was referred to by Dr. Uhler and by Mr. Hartzog and others, because there the entire plan unfolds. The date is 1966. It covers all of the area outlined in green.

I would like to submit this for the record, as an exhibit, to show that the applicants are continuing their interest.

Mr. JONES. Without objection, the exhibit will be inserted in the record at this point.

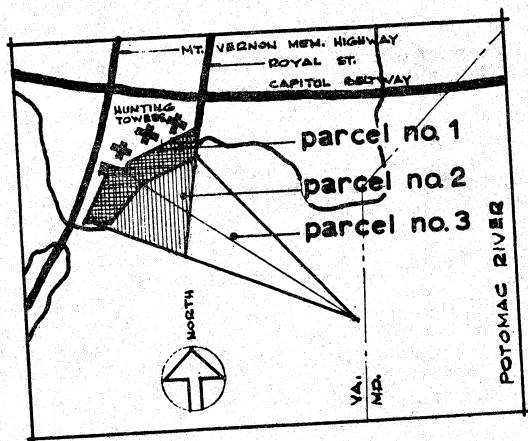
(The exhibit follows:)

PROPOSED POTOMAC POINT DEVELOPMENT, ALEXANDRIA, VA.
 (Holland Engineering, Consulting Engineers—Saunders & Pearson, Architects)



DESCRIPTION OF THE LAND OF HOWARD P. HOFFMAN ASSOCIATES, INC., AND HUNTING TOWERS OPERATING CO., INC.

This entire site development, as shown in the following plan and aerial perspective, consists of three combined parcels of land, each presently having their own construction and zoning regulations. These parcels and regulations may be generally described as follows:



Parcel No. 1.—Two tracts of existing, bulkheaded land: A north tract of approximately 5.23 acres, owned by Hunting Towers Operating Co., Inc., lying east of Hunting Towers Apartments and zoned R-C Residential; a south tract of approximately 4.8 acres, owned by Howard P. Hoffman Associates, Inc., lying south of Hunting Towers Apartments and east of Mount Vernon Memorial Highway, approximately 3.8 acres of which is zoned R-C residential, and the remaining approximately 2 acres zoned C-2 commercial.

Parcel No. 2.—Two tracts of submerged land, a north tract and a south tract, of approximately 10 acres each, extending eastward from the existing bulkhead line of parcel No. 1 to a centerline of Royal Street, extended.

Parcel No. 3.—Two tracts of submerged land, a north tract and a south tract, of approximately 8.5 acres each extending eastward from the eastern boundary of parcel No. 2 (the centerline of Royal Street, extended) to a point approximately 2,075 feet from this line.

ARCHITECTURAL PLANNING FOR THE PROPOSED POTOMAC POINT DEVELOPMENT

The site for this project is located on the western shore of the Potomac River, approximately $6\frac{1}{2}$ miles south of downtown Washington, D.C., via the Mount Vernon Memorial Highway, in the southern part of the city of Alexandria.

In its waterfront setting, the natural potentials and beauty of the site and its immediately adjacent areas present the challenge of retaining these features and of enhancing them with any contemplated project. The site presents a unique opportunity for the sympathetic planning of waterfront apartment-type dwellings, with their related features and activities making for a leisurely waterfront way of life.

The design approach, in order to be successful, must include as one of its aspects the total project design and development of the buildings and of all landscaping, access points, roads, recreation areas, etc. To accomplish these desires, the open spaces between buildings are considered as integral parts of the plan for each building and for the site as a whole. The study of this relationship between buildings, site size and shape, and the open areas thus created and defined, produced the balance of building mass and density to the site size and shape shown on the drawings. Viewing the project from the broader land base adjacent to the Mount Vernon Memorial Highway toward its southeast waterfront tip, the buildings vary in size and character from higher, more dense structures to lower, less dense buildings, merging them with the site

into one homogeneous concept, and blending them with the waterfront environment on one side and the city of Alexandria on the other.

Vehicular access to the site will be from Mount Vernon Memorial Highway on the west and from Royal Street on the north. While providing ample circulation for the residents of the project, the connection of these access points is designed in such a way as to discourage all unrelated through traffic in the development.

Vehicular parking for the project is provided for in out-of-sight areas beneath buildings and landscaped plazas. The open land areas normally used for this parking purpose thereby become available in this design for pedestrian-recreation uses.

The southeastern point of land is planned as an open-air community activity center, the whole being designed and shaped as a large landscaped piece of sculpture. Molded shells serve as backdrops for small civic activities and aquatic participation.

The inherent design principle applied here is to develop the entire site for human usage and pleasant indoor-outdoor living purposes. It is planned that the open areas and spaces between buildings be developed for pedestrian usage and enjoyment, using all parcels, with the exception of the actual land needed for the buildings themselves and limited access roads, for these purposes.

Concurrent with and as a part of the total project design, landscaping is planned in the form of trees, wooded areas, integral balcony railing planters, shrubbery, walkways, paths, boardwalks, benches, fountains, and recreation areas. These features, handled in a sensitive, sympathetic manner blend the buildings with the waterfront environment. Every effort is made to achieve a union of site, buildings, and landscaping features in which each part is compatible with and enriches every other part.

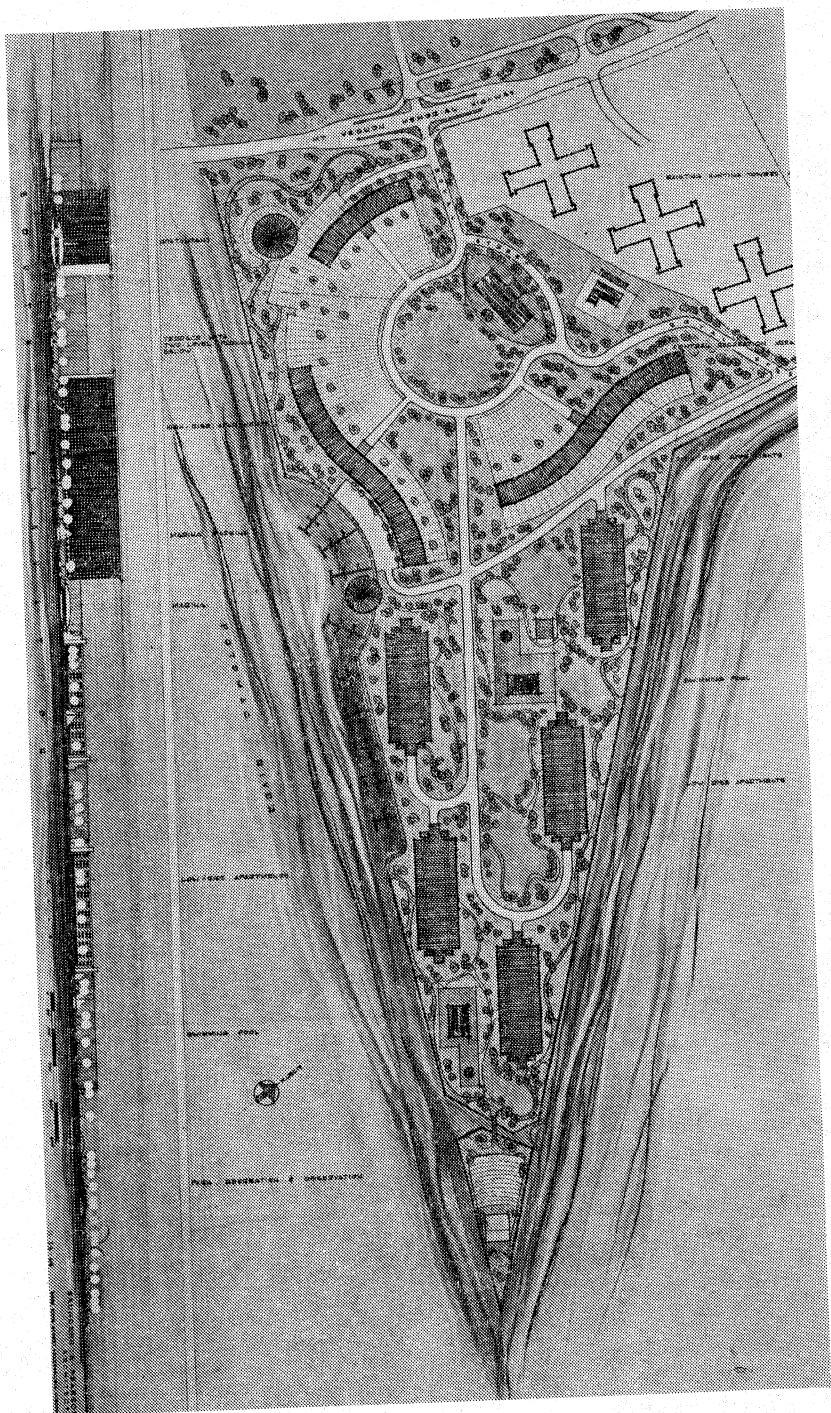
Extensive improvement and use of the river and its related possibilities is envisioned. From marine facilities to continuous wandering boardwalk pathways with observation areas in parklike settings, the development of this waterfront property should achieve its full potential by providing a pleasant blending of those esthetic features and qualities of natural and manmade substance to enrich the human users' and viewers' physical and mental experience.

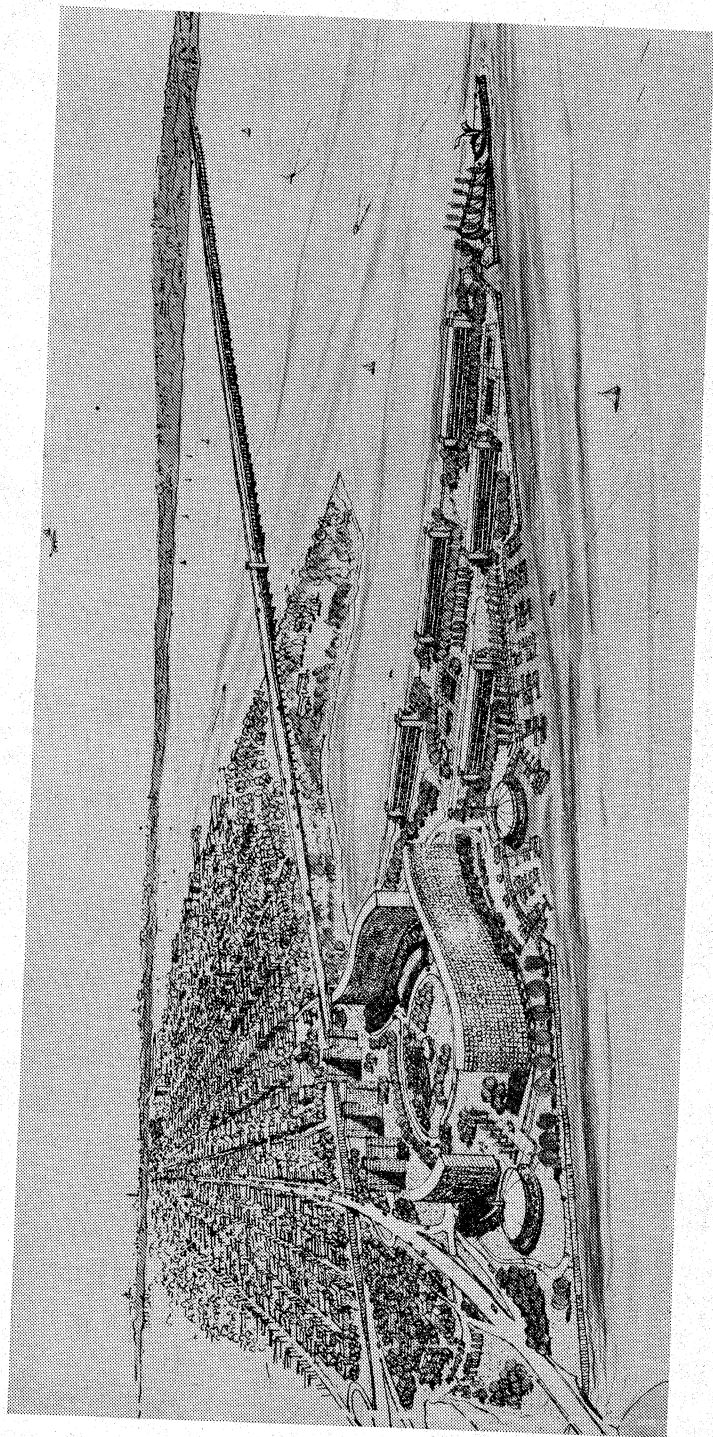
Parcels Nos. 2 and 3, combined, form a tract of land which the Virginia State Legislature has authorized the Governor of Virginia to sell to Francis T. Murtha, trustee, predecessor in title, to Howard P. Hoffman Associates, Inc.

Applications have been made and are pending before the district office of the Corps of Engineers for the bulkheading and filling of parcel No. 2.

The zoning ordinance for the city of Alexandria, governing parcel Nos. 1 and 2, limits the height of any building to 150 feet, states that there shall be 800 square feet of site land for each dwelling unit, and requires property line setback of one-half the building height.

Parcel No. 3 is governed by the provisions of the Alexandria Code pertaining to the old and historic district, the most significant requirement being the fact that no building can be erected having a height of more than 50 feet.





Mr. Moss. General Woodbury, getting back to this matter of what the English language means, did you ever at any time in a discussion with Dr. Cain suggest that it might be advisable to go to the Under Secretary in order to get him off the hook on this matter which was proving to be rather troublesome to him?

General WOODBURY. It was to that point that I addressed myself when I first started to speak, sir.

Secretary Cain found himself in the administrative position of having written to the district engineer, having then advised the district engineer of the withdrawal of objections, having the permit application then processed to Washington, and then having second thoughts about his withdrawal. I pointed out to him that there was a mechanism by which this matter could be straightened out, the mechanism being the July 13 agreement by which I would refer the permit application to the Secretary of the Interior.

His telephone call was all that was necessary for me to take that action.

In my letter to the Secretary of the Interior in late April—mid-April, I guess it was—I pointed out that while the record so far showed there was no objection—that is, the objection had been withdrawn—I understood informally that there were some second thoughts being given to this and, therefore, I was sending it over for the Secretary's action in accordance with this agreement.

Mr. Moss. Isn't a phone call from the chief of the Bureau and a phone call from an Assistant Secretary an official action of which notice should be taken by you?

General WOODBURY. Yes, sir; and I took notice.

Mr. Moss. You said it had been informal.

General WOODBURY. Well, a telephone call, I considered informal, but it did not matter. The action was taken whether it had been a letter or phone call or whatever it had been.

Mr. Moss. At no time did you have any doubts as to the position of the Bureau of Sport Fisheries on the substantive nature of their continuing disagreement over the issuance of this permit.

General WOODBURY. Yes, sir; I did.

Mr. Moss. Would you outline those for us?

General WOODBURY. My conversations concerning this permit were essentially all with Dr. Cain. I do not recall any substantive discussions that I had, after receiving the permit application from the field, with any member of the Bureau of Sport Fisheries and Wildlife, or any of the other Bureau chiefs in the Department of the Interior.

Mr. Moss. There were then in the record the previous correspondence of the Secretary of the Interior, or the Acting Secretary of the Interior, and the formal transmittal of the objections in 1964 as part of the file of this application for a permit. Weren't you aware of those?

General WOODBURY. Yes, sir; I was.

Mr. Moss. You were also aware of the December reversal by Dr. Cain?

General WOODBURY. October, I believe, sir.

Mr. Moss. October reversal.

General WOODBURY. Yes, sir.

Mr. Moss. You were aware of his intention, conveyed to you by phone in order to prevent the issuance of the permit without under-

standing fully that all those previously voiced objections had been reinstated?

General WOODBURY. I did not know what the nature of his concern was in any detail as a result of that phone conversation. He had called the preceding Friday and talked to General Noble and asked that we withhold action on the permit until he could consider the matter further.

He called Tuesday or Wednesday to say he had considered the matter further, that they were reversing their position, and I responded by saying, "In that case I will send the permit over to the Secretary in accordance with this July 13 agreement."

You will note in this agreement we start off by saying that it is our intention to coordinate and cooperate fully and to seek the advice and counsel of the Secretary of Interior in difficult cases. This is the leadoff in this agreement and we were following that, sir.

This is on pages 1 and 2.

Mr. Moss. The views of Fish and Wildlife are also required by the coordination.

General WOODBURY. That is correct, sir.

Mr. Moss. Which is a statutory expression.

General WOODBURY. I am sorry.

Mr. Moss. I say, which is a statutory expression. It is the intent of Congress that the corps coordinate and seek views.

General WOODBURY. In the 1958 act; yes, sir.

Mr. Moss. I have no further questions, Mr. Chairman.

Mr. JONES. Mr. Vander Jagt.

Mr. VANDER JAGT. When did you first learn of Dr. Cain's withdrawal of the objections?

General WOODBURY. I suspect it was in late October.

Mr. VANDER JAGT. How did you learn of it in late October?

General WOODBURY. My recollection is that the Assistant Director of Civil Works for the North Atlantic region informed me that he had been advised of this by the district engineer. This was again an informal communication, I think, a phone call by the district engineer to the Assistant Director.

Mr. VANDER JAGT. Who makes the final decision as to whether you are going to issue a permit to fill or not?

General WOODBURY. The Secretary of the Army, sir. He does this in consultation with other members of the Government that have a concern.

Mr. VANDER JAGT. But he makes the final determination?

General WOODBURY. Yes, sir.

Mr. VANDER JAGT. In the letter of April 15—and I would like to give you an opportunity to clarify this—you make the statement that the Bureaus of the Department of the Interior concerned with parks, conservation, recreation, and pollution have withdrawn any objections and have indicated that the project will not adversely affect the area from these standpoints.

On the basis of your telephone conversation prior to the writing of this with Dr. Cain and with Dr. Gottschalk, that is not an accurate statement, is it?

General WOODBURY. It should not be lifted out of context.

Mr. VANDER JAGT. It is your letter of April 15 to Under Secretary Black?

General WOODBURY. Yes. The permit record at that point—the formal record at that point—had in it as the last action of record by the agencies you enunciated, a letter from Secretary Cain speaking, I thought, for these agencies that you have enumerated, in which he stated we withdraw our objections. But you will note in my letter in the next to the last paragraph, I said notwithstanding what we have received officially through the mails and the hearings I understand you now have an objection. So I sent it over to him to consider that in the light of this new evidence that he might have had.

Mr. VANDER JAGT. Then what you were doing here or, what you were intending to do, was merely to convey what the record said at that point?

General WOODBURY. Yes. I sent over all the record, the hearings, all the permit action. This goes over for their review. I was summarizing the record in the early part of that letter, and then indicating that in spite of that I understand there are some later developments, and I call those to his attention.

Mr. VANDER JAGT. That is what I would like to be clear on. You did not intend to say in this letter that the Department of the Interior was taking the position that it would not adversely affect conservation and recreational values?

General WOODBURY. No. If in fact I had thought that, I would not have sent the letter in the first place because there would not have been any objection over there.

Mr. VANDER JAGT. That is what I wanted cleared up. In this period of time, there did appear to be a certain sense of urgency, did there not?

General WOODBURY. Urgency? Conflict of views, perhaps.

Mr. VANDER JAGT. Was there any sense of a necessity of hurrying the process up?

General WOODBURY. Not that I am aware of; no, sir.

Mr. VANDER JAGT. You were not aware of any haste in dealing with this matter?

General WOODBURY. I was aware of considerable interest. I do not think that is haste. I think it would be wrong to call it haste.

Mr. VANDER JAGT. Where was that interest coming from?

General WOODBURY. As far as I was concerned, the interest was expressed by Mr. Moss and Mr. Reuss, in the meeting in their office some time in early December.

I understand in my informal conversations with Dr. Cain that he was experiencing considerable interest. But at no time did the Governor call me, for example—I know he had an interest—or the permittee or any of his people.

Mr. VANDER JAGT. So you were not aware of any interest of those who wanted the permit to be granted. The ones you have just told us were the ones who were opposed to the issuing of the permit. That would not have necessitated any haste, would it?

General WOODBURY. No, nor do I think there was any haste in this permit. There had been interest expressed by Senator Bayh's office in connection with the permit, again not as a matter of haste, but rather to find out what the status was, when I expected it would take the next step.

Mr. MOSS. Would you yield to me for a moment?

Mr. VANDER JAGT. Gladly.

Mr. Moss. General, I find it very difficult to reconcile your response with the concluding paragraph of that letter of transmittal to Secretary Black. That letter of April 15 concludes with these words:

I would appreciate your comments at the earliest practicable date since the applicant has indicated the urgency of a prompt decision.

General WOODBURY. Yes, sir; not to me. My testimony is that I am not aware—I do not recall any case—that the applicant at any time approached me on this. He approached the district engineer.

Mr. Moss. It seems to me that is rather ambivalent.

I thank the gentleman for yielding.

Mr. VANDER JAGT. General, I understood your testimony just a few moments ago to be that you did not think there was any need for urgency in this matter.

General WOODBURY. I understood you to say haste, sir. I do not think we acted in haste. It took a long time.

Mr. VANDER JAGT. I do not mean to quibble with words but it is your testimony that you were aware of the fact that there was a sense of urgency in this matter.

General WOODBURY. Yes, sir.

Mr. VANDER JAGT. Thank you very much.

Mr. JONES. Mr. Reuss?

Mr. REUSS. General Woodbury, when did you first have any communication with Under Secretary of Interior Black on the subject of the Hunting Creek fill permits?

General WOODBURY. I suspect it was about the time that I wrote this letter to him, sir.

Mr. REUSS. By "this letter," you mean the letter of April 15, 1968?

General WOODBURY. Yes, sir. I do not recall any earlier conversations with him about it.

Mr. REUSS. You do not recall?

General WOODBURY. No, that is correct. I mean about the 15th of April.

Mr. REUSS. You wrote the letter on April 15, did you not?

General WOODBURY. Yes, sir.

Mr. REUSS. Did you have any contacts with Under Secretary Black, directly or indirectly, prior to the time you wrote that letter on April 15?

General WOODBURY. Yes. I say I think I did about the time this letter was sent over. I believe I told him that I was going to send it over.

Mr. REUSS. Did you tell him this over the telephone, or in person, or how?

General WOODBURY. My recollection is a little fuzzy, but it would be routine for me to say that we have a permit over here that there seems to be some disagreement about, and I am going to send it over under our agreement. We do this so that he is aware it is coming and takes a personal note of it.

Mr. REUSS. Was this conversation in person or over the telephone?

General WOODBURY. My recollection is that it would have been on the phone, sir.

Mr. REUSS. Did you call him or did he call you?

General WOODBURY. No, I suspect I called him.

Mr. REUSS. What did Under Secretary Black say?

General WOODBURY. I do not recall. The conversation was one having to do with the administrative passing of an application between two Departments, and I felt that this ought to come to his attention. It was not just a routine matter.

Mr. REUSS. Did he indicate that the sooner he got that application from you, so that he could act on it, the better?

General WOODBURY. I do not know that he did not say that. I do not have any clear recollection of it, sir.

Mr. REUSS. He might have said it.

General WOODBURY. Yes, he might have.

Mr. REUSS. You testified earlier, General Woodbury, that the reason you referred the matter in April 1968, to Under Secretary Black was that there appeared to be a substantive difference between the applicant for the permit and the Fish and Wildlife Service; is that correct?

General WOODBURY. That is correct.

Mr. JONES. Let us suspend in order that we can make that quorum call and see if we cannot recess until 10 minutes of 1 and come back immediately, because the General will be returning to New York and we will finish with his testimony.

General WOODBURY. Thank you, Mr. Chairman.

(At 12:20 p.m. the subcommittee recessed, and reconvened at 12:50 p.m.)

Mr. JONES. The subcommittee will come to order.

Mr. REUSS. General Woodbury, in your earlier testimony with regard to the July 13, 1967, memorandum of understanding between the Secretary of the Interior and the Secretary of the Army, you referred to paragraph 5 of that memorandum and said, I think on several occasions, that pursuant to that paragraph matters were referred by the Corps of Engineers to the Secretary of the Interior. In fact, you meant the Under Secretary of the Interior, did you not?

General WOODBURY. That is correct, sir.

Mr. REUSS. I may have misunderstood you, but paragraph 5 does refer to the Under Secretary and it was in fact the Under Secretary rather than the Secretary to whom these matters were referred; is that correct?

General WOODBURY. That is correct.

May I also correct what may be a misunderstanding in connection with this procedure: The District Engineer was authorized to issue permits when all differences concerning their issuance was resolved by the District Engineer. He refers permits to Washington only when there are unresolved differences. In this particular case, when the Assistant Secretary of the Interior withdrew the objections of the Department of Interior agencies, the District Engineer then, in pursuit of his responsibility, attempted to resolve the remaining differences, the remaining differences being those of individuals. Congressman Reuss was one, the Audubon Society was another, the Izaak Walton League was another. There were others. I understand he, then, contacted each of these other objectors to see if, in the light of this new information they too wanted to remove their objection. Some did remove their objection. Others did not. It was because there continued to be remaining objections that he forwarded the application to the Chief's office for further consideration at the Washington level, because he does not have authority to act where there continue to be objections of this nature.

Mr. REUSS. Now, it is a fact, is it not, that the Fish and Wildlife Service of the Department of the Interior, as opposed to the Assistant Secretary, Under Secretary, and other officials, has consistently, since 1964, opposed these Hunting Creek fill applications?

General WOODBURY. I understand that this morning. I did not always understand that. I thought when the Assistant Secretary of Interior withdrew the objections in October he was speaking for those Bureaus of the Department of the Interior that had earlier objected.

Mr. REUSS. You made no effort to find out in October 1967 what the attitude of the U.S. Fish and Wildlife Service was?

General WOODBURY. The action at that time, sir, was with the District Engineer. It was not in the Chief's Office.

Mr. REUSS. Did anyone in the Corps of Engineers make an effort to find out what the attitude of the U.S. Fish and Wildlife Service was in October 1967?

General WOODBURY. Not that I am aware of. I don't know that they didn't either.

Mr. REUSS. I am distressed to hear you admit this because you thus confess that the Corps of Engineers was violating its clear statutory duty. I call your attention—though I wouldn't have thought it necessary—to the Wildlife Coordination Act of 1958, 16 United States Code, sections 661 and 662, in which it is set forth quite clearly that whenever the Corps of Engineers is asked to issue a permit to modify, or fill any body of water, you shall "first consult with the U.S. Fish and Wildlife Service, Department of the Interior."

You now tell me that the corps was getting all set to issue its permit as of October 1967, without any knowledge as to whether the Fish and Wildlife Service approved or disapproved.

General WOODBURY. It was our understanding, sir, that the Fish and Wildlife Service had withdrawn their objection. The basis of that understanding is our letter from Secretary Cain in October in which he said that the Department had reconsidered their views and that "We have withdrawn our objection."

Mr. REUSS. You were in fact misinformed, were you not? The Fish and Wildlife Service had not withdrawn its objection, had it?

General WOODBURY. I had no way of knowing whether they had.

Mr. REUSS. Were you here in the hearing room this morning?

General WOODBURY. Yes, sir, I was.

Mr. REUSS. You heard Director Gottschalk describe the consistent and unvarying position of the Fish and Wildlife Service in opposition to the permit?

General WOODBURY. I did, sir.

Mr. REUSS. In the light of that, if you got the impression from Secretary Cain's letter of October 10, 1967, that the Fish and Wildlife Service had in fact withdrawn its objection, that impression was erroneous, was it not?

General WOODBURY. I suspect that it is, from what I heard this morning. I have no first-hand knowledge of that, sir, so I really can't testify to it, but it is a fact that when the objections were not fully resolved, the Secretary of the Army, acting through the district engineer, did schedule a public hearing, and did send notice of this hearing to all of the agencies, including the Fish and Wildlife Service, to give them further opportunity to make comments.

Mr. REUSS. On that subject, are you familiar with the letter dated January 30, 1968, written by Assistant Secretary Cain to Corps of Engineers' District Engineer, Col. Frank W. Rhea, in which Secretary Cain said:

I have talked with the people in the Bureau of Sport Fisheries and Wildlife and we believe that we do not need to present testimony at the hearing—your notice of January 17th, 1968—on the application for bulkhead and filling permit in Hunting Creek at Alexandria, Va.

Did you get the idea that the Fish and Wildlife Service was in accord or opposed to the permit?

General WOODBURY. I cannot say, sir. I was not aware of that letter at the time.

Mr. REUSS. Paragraph 5 of the agreement of July 13, 1967, between the Department of the Interior and the Corps of Engineers says that the Chief of Engineers shall refer to the Under Secretary of the Interior all those cases referred to him containing unresolved substantive differences of views, and he shall include his analysis thereof for the purpose of obtaining the Department of Interior's comments prior to final determination of the issues.

Did you, in October 1967, submit to the Under Secretary of the Interior the Hunting Creek case so that you could get his decision on it pursuant to this July 13, 1967, agreement?

General WOODBURY. There was no occasion to submit it to him in October, sir. The process by which these differences were to be resolved was not started until October, after receipt of the letter from Secretary Cain.

Mr. REUSS. There were unresolved differences, however, in October 1967.

General WOODBURY. The unresolved differences in October 1967 basically were from objectors other than the Secretary of the Interior so far as we knew.

Mr. REUSS. No. In fact, the Park Service still objected, the Fish and Wildlife Service still objected. Secretary Udall still objected, as indicated by the letter that Staff Counsel Indritz read into the record this morning.

I just wonder why you didn't refer the matter to the Under Secretary of the Interior pursuant to this formal memorandum of July 13, 1967, back in October 1967?

General WOODBURY. You are suggesting that I should have gone behind the letter signed by Secretary Cain, to inquire into its validity. This I did not do.

Mr. REUSS. I will tell you what I don't like about this whole matter. It looks to me as if the only time you bothered to follow this memorandum was when you wanted to get a new person to authorize the fill. Under Secretary Black could OK the fill in April 1968. Back in October 1967 when you had Assistant Secretary Cain OK'ing the fill, even though he is not in the chain of command at all on this memorandum of understanding, you were quite ready to settle for that.

Now, if you think my suspicion ungenerous, I wish you would tell me why you think it is.

General WOODBURY. I think it is ungenerous sir, and I think, after I have explained the situation, you will think so, too. I hope you will.

When we received Secretary Cain's letter in October, when the district engineer received it, at this point in time the action was not in the Office of the Chief of Engineers. Secretary Cain's letter did not come to the Chief of Engineers. It went to the district engineer. A copy of it did not come to the Chief of Engineers as far as I know and if it did I did not become aware of it.

When his letter arrived in the district engineer's office, the district engineer then accepted the letter and attempted to resolve what he understood to be the remaining objection and it was in that effort that he contacted you, sir, along with others —

Mr. REUSS. Incidentally, at this point in the record I wish you would give any evidence you have that the district engineer ever contacted me. As far as my records show, I had to find out about it from other sources.

General WOODBURY. I think he will be here to testify later and I think he should testify to that, sir.

Mr. REUSS. Right.

General WOODBURY. He did report to me that he was attempting to resolve these differences. I learned this, as I testified earlier, through the Assistant Director for Civil Works, not by a direct communication with the district engineer; and it was in the course of trying to resolve these remaining differences that it became apparent that there did need to be a public hearing and the process took from October until April to complete the action and to refer it to the Secretary. There was no decision made in October that it would not be referred. The matter just hadn't been decided whether there remained objections or not until the resolution of the objections had failed.

Mr. REUSS. Paragraph 5 of the July 13, 1967, memorandum refers to unresolved substantive differences of views and suggests reference should be made to the Under Secretary of the Interior; not to the Assistant Secretary, but to the Under Secretary.

General WOODBURY. That is correct, sir.

Mr. REUSS. I can't understand any reason for your not doing it then except that you had already won the case for the permit by getting the Assistant Secretary's —

General WOODBURY. We had not won the case for the permit, sir, because there remained objections.

The preceding paragraph is a stage in which we were in October. The district engineer was attempting to decide whether, within his authority, he could issue the permit and the action remained generally under the procedures outlined in paragraph 4, from October until April or thereabouts, when we received the permit application in Washington.

Mr. REUSS. Well then, why was it that on April 10, 1968, when Assistant Secretary Cain threw in the sponge and said he was going to reverse himself and was going to reinstate the Department's opposition—and you received a copy of that—why didn't that conclude the matter as far as the Corps of Engineers and the Department of Interior were concerned?

Here you had a high level man, the Assistant Secretary for Fish and Wildlife and Parks, informing you, both by memorandum and by telephone call, that he had changed his mind and was reinstating the Department's opposition. If his word was good enough for you

as a green light to go ahead with the permit in October, why wasn't it enough for you as a red light to stop the permit in April 1968?

General WOODBURY. I need to correct the record, sir. It was not a green light for us to go ahead in October. We did not go ahead in October. We attempted to resolve the outstanding differences from October until May.

Mr. REUSS. You didn't resolve any of them, did you?

General WOODBURY. We resolved some of them. Congressman Dingell withdrew his objection, I understood.

Mr. REUSS. No; that letter from Congressman Dingell was back in July 1967.

My question was, What outstanding differences that prevailed in October 1967, did you thereafter resolve? You didn't resolve that of the Fish and Wildlife Service; you didn't resolve that of the National Park Service; you didn't resolve that of Congressmen Saylor, Moss, and Reuss. You didn't resolve that of the National Audubon Society, the Sierra Club, the Izaak Walton League and a dozen other organizations. What did you resolve after October 10, 1967?

General WOODBURY. There remained substantial differences and that is why in April of 1967 the matter was referred to the Under Secretary.

Mr. REUSS. April of 1967?

General WOODBURY. 1968.

I would like to go back to your earlier questions, sir, which I didn't have an opportunity to answer. You indicated why didn't I accept the telephone call from—and the subsequent communication from—Secretary Cain, as being a final action by the Secretary of the Interior—

Mr. REUSS. So the record may be clear as to what communication we are talking about, I referred to, and I gather you do too, the memorandum of Assistant Secretary Cain dated April 10, 1968, of which you received a copy, saying "I am now reversing the position I took earlier"—referring to the October 1967 position?

General WOODBURY. Yes, sir. You see, there are other Bureaus in the Department of the Interior having an interest in this case, other than those under Assistant Secretary Cain.

Mr. REUSS. I know; but here you had Assistant Secretary Cain who had supervision over Fish and Wildlife, and Parks, the two affected agencies. What do you care if the Bureau of Mines says "Hooray, let's grant a permit" or any other irrelevant bureau?

General WOODBURY. We don't consider the Federal Water Pollution Control Administration irrelevant, sir, and they are not under Secretary Cain.

Mr. REUSS. But you had Assistant Secretary Cain saying—

General WOODBURY. He didn't speak for the FWPCA.

Mr. REUSS. That is right but your logic escapes me. Since you had Assistant Secretary Cain, who does control Fish and Wildlife, and Parks, saying "No, don't do it," why did you therefore fool around with Under Secretary Black? You did have Assistant Secretary Cain, the man who controlled the two relevant Bureaus saying, "No, don't do it." Why were you so zealous in trying to find someone who would overrule Assistant Secretary Cain?

General WOODBURY. I wasn't trying to find somebody who would overrule Assistant Secretary Cain, sir, and I think it is unfair of you to

suggest that. The agreement we had between the Secretary of the Interior and the Secretary of the Army calls for us to send things over to the Under Secretary. I was following that procedure. The procedure is to cover many cases and not just this particular one. It was felt this was the best procedure to follow in the case of permits.

Mr. REUSS. I still can't understand why you pursued it in April, when you had an apparent Department of the Interior position opposing the fill confronting you, and yet did not use the procedure in October when you had an apparent Department of Interior position allowing the fill.

But let me turn to another subject, the Wildlife Coordination Act of 1958, which I referred to before. I want to read to you from the opening clause of that statute. That is the one that requires you to consult with the U.S. Fish and Wildlife Service on matters of fills that could affect wildlife. Here is the quotation: "For the purpose of recognizing the vital contribution of our wildlife resources to the Nation, the increasing public interest and significance thereof due to expansion of our national economy and other factors, and to provide that wildlife conservation shall receive equal consideration and be coordinated with other features of water resource development programs." I call your attention to that and ask you whether I read the statute right and if that is what the statute says. Your answer is "Yes"? So far as you know, that is an accurate reading of the statute?

General WOODBURY. I take no objection to it; no, sir.

Mr. REUSS. You are familiar with that statute?

General WOODBURY. Yes, sir.

Mr. REUSS. When the applications for this fill were first put in, the Corps of Engineers, on March 24, 1964, published notice of the application for the fill permit and that notice stated:

Although the decision as to whether or not approval will be forthcoming on the plans as submitted must rest primarily upon the effect of the work on navigation, information concerning other effects of the work will be accepted.

Does that sound like an agency of the Government which is following the injunction of the Coordination Act, that wildlife conservation shall receive equal consideration?

General WOODBURY. I can only say that the action on this permit was taken under policy guidance that has been changed since 1964 and reflects the increasing concern of the American people for fish and wildlife values. It also reflects a decision by the Supreme Court in 1960 which held that the Chief of Engineers could act under the 1899 act in the public interest.¹ The permit procedures have since been rewritten to reflect that, and this agreement with the Department of the Interior is an outgrowth of that change in policy.

Mr. REUSS. The statute, however, that I read you was passed by the Congress in 1958. That is the statute which says—and again I quote:

Wildlife conservation shall receive equal consideration and be coordinated with other features of water resource development programs.

You aren't trying to tell us that that 1958 statute wasn't in effect when the 1964 publication by the Corps of Engineers was made of its proposed hearing on the application?

¹ SUBCOMMITTEE NOTE.—The decision referred to is *United States v. Republic Steel Corp.*, 362 U.S. 482 (1960).

General WOODBURY. No, sir; I am not.

Mr. REUSS. Then I renew my question: Does that 1964 publication by the Corps of Engineers, which says that primarily you will be concerned with navigation and that you will permit a little evidence of other matters to be brought in, does that seem to you to be in accordance with the mandate of Congress in the Coordination Act of 1958 which I just read you?

General WOODBURY. No, sir; it does not and that is why we changed it.

Mr. REUSS. Wouldn't it have been a good idea to have obeyed the law in the first place?

General WOODBURY. How the other one was administered, sir, I don't know. I wasn't in Washington at the time. I don't know of any case where the Fish and Wildlife Act was not observed in the interval between 1958 and 1966, when the procedures were changed.

Mr. REUSS. But it is your testimony, is it, that it is a violation of the Coordination Act to conduct a hearing and a proceeding on a fill application in which the decision rests primarily on the effect of the work on navigation, and does not give equal consideration to the wildlife conservation aspect?

General WOODBURY. That is my interpretation, sir, and that is why we revised the procedures in the public notices that the district engineers now put out.

Mr. REUSS. In the light of the fact that the Corps of Engineers, by your own admission, was apparently proceeding illegally under this application, don't you think it would be a good idea for the corps to withdraw its permit and start over again and obey the Coordination Act?

General WOODBURY. I don't know that it was proceeding illegally, sir. That is—

Mr. REUSS. You just testified that the notice of application violates the congressional mandate of the 1958 Coordination Act in that it explicitly says that primary attention will be given to navigation, which obviously means that equal consideration can't be given to wildlife conservation.

General WOODBURY. In this case, sir, the testimony that was presented in 1964 was given full consideration under the present procedures and under the present policies, and further there were additional hearings in 1968 in which the public interest is considered and not just navigation interests.

Mr. REUSS. A judge of a court who advertised in advance that he was not going to give equal consideration to both sides of a litigation would be subject to impeachment, would he not?

General WOODBURY. You can better answer that question than I. I don't know, sir. That is beyond my competence.

Mr. REUSS. I would have no further questions.

General WOODBURY. I would comment on one thing, sir, and that is that the public notice issued prior to the February 1968 hearing I am sure did not have that language in it.

Mr. JONES. Mr. Gude.

Mr. GUDE. The Coordination Act provides that the department or agency first consult with the U.S. Fish and Wildlife Service, the Department of the Interior, and with the head of the agency exercising

administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facilities are being constructed, with a view to the conservation of wildlife resources, and so on. What sort of consultation did the Corps of Engineers have with the Virginia State wildlife people and its appropriate agencies?

General WOODBURY. I have no firsthand knowledge of that. Colonel Rhea is the district engineer who will testify later and can answer that question much more completely than I.

To my knowledge the Governor of Virginia did indicate that if the Corps of Engineers was going to issue a permit the State would sell the underlying land to the permittee.

Mr. GUDE. I understand that the interpretation of "consult" in this statute is one where, as Mr. Reuss has put it, it is a sort of a "green light-red light" type of action. There is not actually a sitting down and a discussion in reference to matters of this type?

General WOODBURY. It depends on the individual cases, how much discussion there is. When a district engineer receives an application for permit, he issues a public notice and that public notice goes to the State fish and wildlife people and I am certain that the State of Virginia was consulted in this case starting in 1964. But I don't have firsthand knowledge of that. Colonel Rhea does have and I believe could testify to it.

Mr. GUDE. I was thinking in reference to the State of Virginia, but also with regard to the Interior Department, that it wasn't a matter of weighing the testimony of the Department of the Interior; it was merely a matter of "yes or no." They say "All right, go ahead," or "No, don't." Is this the type of action the Corps of Engineers was searching for in regard to this problem?

General WOODBURY. If the Department of the Interior, in advising the Chief of Engineers, advises against the permit, there is then consultation to determine to what extent some modification of the permit might be acceptable or what limitations the Secretary of the Interior might want to place on the permit, the nature of the fill to be put in, the kind of a bulkhead to be put, whether or not there is to be dredging—these things are discussed. In this case, the Under Secretary of the Interior indicated that they had no objection to the permit proceeding.

Mr. JONES. Mr. Vander Jagt?

Mr. VANDER JAGT. In this case, had there been a strong objection from the Department of the Interior, would you have recommended that the permit be granted anyway?

General WOODBURY. This is a speculative question.

Mr. VANDER JAGT. Looking at the situation in April or in May when the permit was granted, had there been a strong recommendation from the Department of the Interior that conservation and recreational values would be adversely affected, would you have nevertheless recommended that the permit be granted?

General WOODBURY. I think I can best answer that question by saying that we had dealt with this permit from 1963 on. The fundamental objections came from the Fish and Wildlife Service. We were aware of those objections and we did not at any time issue this permit or press the action to get a permit issued. I am sure that if the Department of the Interior, if Secretary Black, came back to me and said

that he strongly objected to this and stated his reasons, that I would have recommended to the Secretary of the Army that the permit be denied.

Mr. VANDER JAGT. At the time you made your recommendation, you were under the impression—based on Secretary Black's letter—that the Department had no serious objection to the granting of the permit; is that correct?

General WOODBURY. I'd left the office before we acted on Secretary Black's letter. Had I been there and had I received Secretary Black's letter and had I been the one to act, the answer to your question would have been yes.

Mr. VANDER JAGT. And you were under the impression in April, after this matter reached Secretary Black, that there was not a serious objection to the granting of the permit; is that correct?

General WOODBURY. Oh, no; that is not correct. I knew that there continued to be objection within the Department of the Interior, some of the agencies in the Department of the Interior, to the issuance of this permit.

Mr. VANDER JAGT. You have testified earlier that you have to deal with—when it reaches this extent—the Under Secretary of the Interior, Under Secretary Black?

General WOODBURY. That is right.

Mr. VANDER JAGT. In the channels you were obliged to follow, was it your opinion that the objections of the Department of the Interior had been officially withdrawn?

General WOODBURY. That is right.

Mr. GUDE. In a matter like this then would it be a fair statement that the Corps of Engineers would be governed as to the extent to which it would consult with the Department of the Interior, to the extent that they showed a vigorous interest, or a very light interest in a particular matter?

General WOODBURY. That is right. That is what is called for in our July agreement, sir, and on the basis of these kinds of conversations we have denied permits.

Mr. GUDE. Thank you, Mr. Chairman.

Mr. INDRITZ. General Woodbury, is it not true that the corps recommends to the Secretary of the Army the action to be taken on an application for permit?

General WOODBURY. We do, sir.

Mr. INDRITZ. In presenting the material to the Secretary of the Army for his decision, do you forward a summary of the record that is before you to the Secretary of the Army?

General WOODBURY. I think the answer to your question is "Yes." I am not sure what is behind it, but—yes, sir. We summarize the case and send it over with a recommendation.

Mr. INDRITZ. Do you know why the material that went forward to the Secretary of the Army in a report entitled "Subject: Report on Applications for Department of the Army Permits for Work in Navigable Waters of the United States," dated September 16, 1964, plus some eight endorsements, contains no reference to the fact that the Secretary of the Interior, Mr. Udall, had in 1964 written to the Secretary of the Army objecting to the permit?

General WOODBURY. No, sir. The action was taken subsequent to my departure from the office, sir, so I am really not in a position to answer your question. You asked me if I knew. I don't know.

Mr. INDRITZ. Let me put the question a little differently. Before this was forwarded to the Secretary of the Army, had you read the reports and the endorsements up to the date of your departure?

General WOODBURY. Yes, sir. Prior to sending it over to Secretary Black, I had reviewed the record.

Mr. INDRITZ. Do you recall, anywhere in the endorsements, any reference to the fact that the Secretary of the Interior, Stewart Udall, had written to the Department of the Army objecting to the issuance of the permit?

General WOODBURY. I don't have any specific recollection of that; no, sir.

Mr. INDRITZ. Were you familiar with the fact that the fill level proposed in the area covered by the permit would be only 2.8 feet above the mean high water mark?

General WOODBURY. No; not specifically.

Mr. INDRITZ. Were you familiar with the fact that a fill level of that height would be flooded very frequently?

General WOODBURY. I have no recollection, sir, of the height of the fill, or the implications concerning it. This was not a question at this point.

Mr. INDRITZ. In approving a permit for a fill which would be flooded frequently, would the corps take into consideration the fact that there might be very substantial pressures placed upon the corps to spend money for flood control structures to protect a fill area of such a low level?

General WOODBURY. Yes; as a matter of normal practice, if a permit comes in and it appears that the permittee is doing something unwise in the way of a fill that isn't high enough, or a fill that is too high, we give him the benefit of our advice concerning it, but we do not design his fill.

Mr. INDRITZ. My question was, if you are aware, in the case of an application for a permit, that the fill would be at a low level such that it would be frequently flooded, does the corps, in determining whether to issue the permit, take into consideration the fact that there may be substantial pressures placed upon the corps later to spend money for flood control structures to protect the fill area?

Mr. JONES. What he is asking, General, in a planned area it would not be constructed, when later on the Corps of Engineers would have to consider the revetments or structures to keep the area from flooding. The answer is "Yes."

General WOODBURY. The answer is "Yes."

Mr. INDRITZ. You would take that fact into consideration?

General WOODBURY. Yes, sir.

Mr. INDRITZ. Was that fact taken into consideration in connection with this permit?

General WOODBURY. I do not know without reviewing the case again, sir.

I do not recall at this time. I suspect that it was. I know of no reason why it would not have been.

Mr. INDRITZ. Is there any part of the record that you recall where reference was made to that particular issue as a matter for consideration by the corps in connection with this permit?

General WOODBURY. No, sir.

Mr. INDRITZ. Did I understand you, General, to say that the corps does take into consideration matters other than navigation?

General WOODBURY. You did.

Mr. INDRITZ. Are you familiar with the case of *United States v. Dern*, 289 U.S. 352, in which the Supreme Court upheld the corps' denial of a permit for construction of a wharf in the Potomac River because the wharf would impede construction of the George Washington Memorial Parkway?

General WOODBURY. Not specifically; no, sir. This was in 1932, wasn't it?

Mr. INDRITZ. 1933.

General WOODBURY. No.

Mr. JONES. Are there further questions?

Mr. INDRITZ. Not of the general.

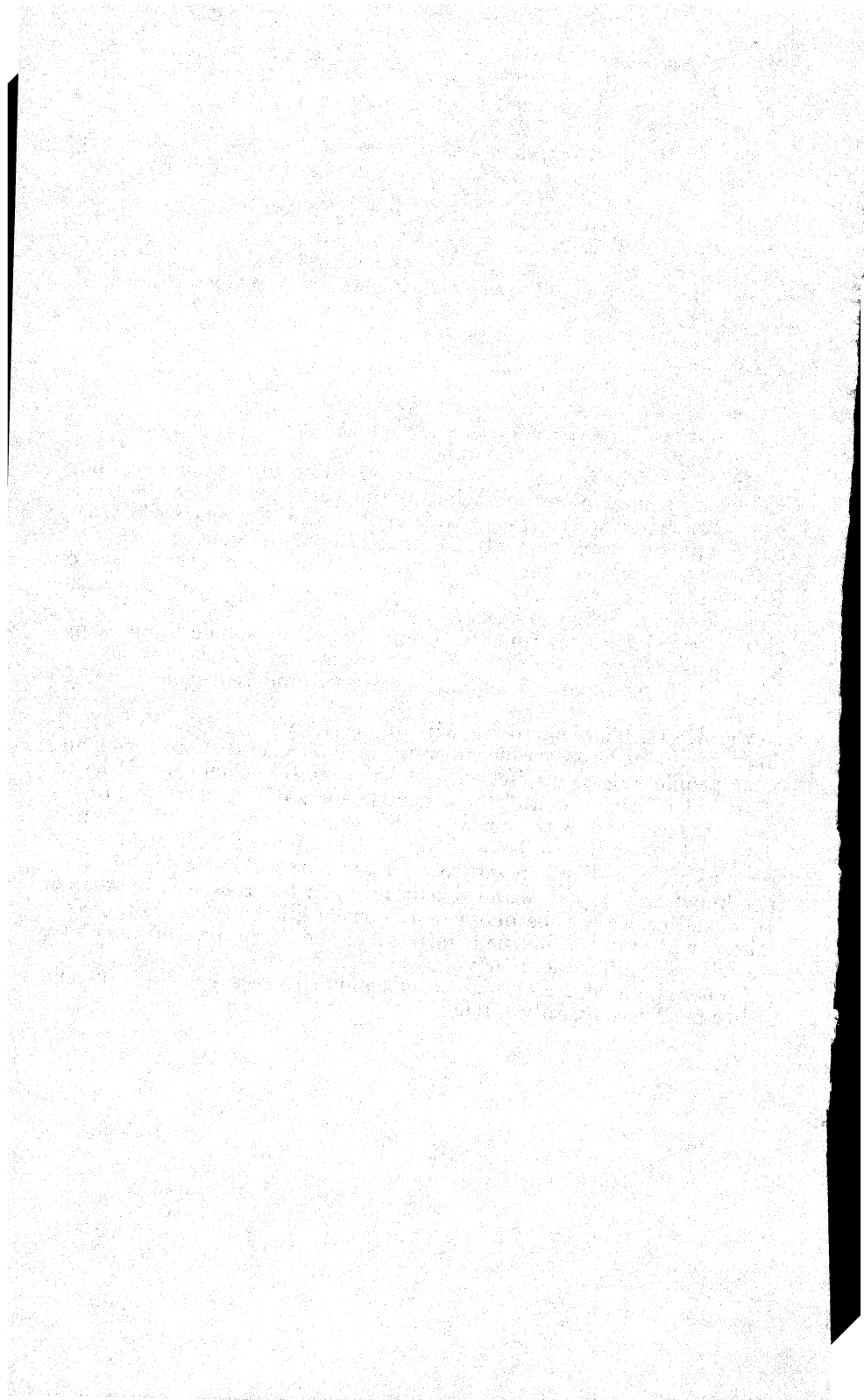
Mr. JONES. The committee will stand in recess until 2:15 p.m. I hope we can conclude the examination of the witnesses before the day is over. Tomorrow we are going to hear Assistant Secretary Cain, Under Secretary Black, and Mr. Mangan, Deputy Under Secretary.

General Noble has got to be at meetings of the Subcommittee on Rivers and Harbors, and in the afternoon he has to be before the Flood Control Subcommittee, so he has a full day for which he has been engaged for some time. So I hope we will conclude the hearings as soon as we come back and restrict our questions to relevant matters.

(At 1:30 p.m., the subcommittee recessed and reconvened at 2:20 p.m.)

Mr. JONES. The committee will of necessity have to stand in adjournment until tomorrow morning at 10. General Noble, you and your people will be advised as to what time the hearings will be reconvened to hear you and the other members of the corps out of the district office. I know tomorrow you are engaged throughout the entire day, and we will just have to set a date. We will try to do it as soon as we possibly can get to it. I am sorry about this, but I do not know any way to make schedules when the House is in session. It looks like we will be plagued with them all the time. So the committee will stand adjourned until 10 in the morning, and as I say, we will communicate with you.

(Whereupon, at 2:25 p.m., the subcommittee recessed, to reconvene at 10 a.m., Tuesday, July 9, 1968.)



PERMIT FOR LANDFILL IN HUNTING CREEK, VA.

TUESDAY, JULY 9, 1968

HOUSE OF REPRESENTATIVES,
NATURAL RESOURCES AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee convened at 10 a.m., in room 2203, Rayburn House Office Building, Hon. Robert E. Jones presiding.

Subcommittee members present: Representatives Robert E. Jones, John E. Moss, Guy Vander Jagt, Gilbert Gude, and Paul N. McCloskey, Jr.

Other members of the Committee on Government Operations present: Representative Henry S. Reuss.

Mr. JONES. The subcommittee will come to order for the purpose of continuing our hearing on the application to bulkhead and fill in part of Hunting Creek, Va.

Our first witness is Dr. Stanley A. Cain, Assistant Secretary of the Interior.

It is a pleasure to have you, Dr. Cain. I hope your trip to Japan was a pleasant one.

Dr. CAIN. Thank you, Mr. Chairman. It was both a profitable and a very pleasant trip.

STATEMENT OF DR. STANLEY A. CAIN, ASSISTANT SECRETARY OF THE INTERIOR

Dr. CAIN. I would like to offer the committee my apologies for not being available the first time you called this hearing. I hope it has not been inconvenient to the committee.

Mr. JONES. No, sir. We have had other witnesses that needed to be heard from. And so we have continued in our regular order.

Dr. CAIN. I do not have a prepared statement. I would be very pleased to do the best I can to answer the questions that the committee has for me. I am aware that questions have been raised—

Mr. JONES. Are you familiar with the statement that our colleague, ex officio member of the subcommittee, Mr. Reuss, offered to the committee setting forth the chronological correspondence and developments between the Bureau of Sport Fisheries and Wildlife of the Department of the Interior and the Corps of Engineers?

Dr. CAIN. I read the formal statement which was read into the record, prepared and presented for Mr. Saylor and Mr. Reuss. And I

have seen the transcript of the first hearing on the 24th of June. I have read these two documents.

Mr. JONES. Then you are familiar with the pertinent questions that were presented to the committee.

Dr. CAIN. I am, sir.

Mr. JONES. Would you like to accommodate the committee by going to the allegations and giving us your involvement and participation and discussions?

Dr. CAIN. If this is the way you would like me to proceed, I would be happy to do that, sir.

Mr. JONES. I will let you proceed in your own manner.

Dr. CAIN. May I first take up one matter which concerns me very deeply? I first encountered this question in reading an article in the Evening Star of the 25th of June with the byline of Brian Kelly in which I find a quotation from Mr. Saylor which was made with respect to the difference in price between the dry land that was purchased and the price paid the State for the acreage which would be acquired in case of fill. And this news article says, "very frankly, somebody is getting paid. It's just evident," Saylor also charged."

Now, I find on reading the transcript, page 47, June 24, that this is actually elaborated. And if I may, I would like to read a few sentences here. I will pick up in the middle of one sentence where it says:

There is no doubt about it that Assistant Secretary Cain, stupidly or not, told the truth when he said there must be some "political considerations."

Let us figure out what the political consideration has to be. It has to be somebody who is out to make a fast buck and who must have some connection with members of the Democratic Party.

And this goes on to say something about the dollar values of land. And then a subsequent sentence says, "and very frankly, somebody is getting paid. It is just that evident."

Now, in connection with this "fast buck" statement, I would like to say to this committee that no one with any connection with, no representative of, the Hoffman Associates or any other interests in the granting of this permit has ever, at any time, made any contact with me. And I find in this remark, whether intended or not, a reflection on my character. This is a statement I would like to make for the record.

In this connection I do feel that it would be useful for me to explain my use of the word "political" in one of the memorandums that I wrote. And I might say that when Mr. Indritz and another staff man visited me I volunteered copies to them of all the memorandums which were in my file, that is to say, the file in my office as Assistant Secretary. And I told them also that this was not a complete file, that a complete file existed in the Bureau. And I talked very freely to them.

Now, with respect to what I meant by using the word "political," I certainly did not mean political in the sense of political parties. There are many meanings to the word "political."

Mr. JONES. Yes, unfortunately there are.

Dr. CAIN. I do not think that I need to quote the dictionary to you gentlemen. But I did look it up last night, and I found at least eight meanings, only one of which referred to parties. So that is what I had in mind when in my memorandum I used the word, "political." As Mr. Saylor used the word "political" in the quote I just gave you, it has a different kind of meaning.

For example, this means the science of politics, and that in turn means such things as exercising or seeking power in political affairs. It pertains to the state of government, or matters which affect or involve government, or actions engaged in connected with civil administration, or having a policy or system, or pertaining to citizen rights.

So that what I would like the committee to understand is that when I used the word "political" in this memorandum—and as I remember, I made two points in the October 10 statement, which I explained later in the memorandum in response to Director Hartzog of the Park Service—I did say, my first consideration was political, and then I said that the second was my judgment with respect to the values that were involved, meaning fish and wildlife, esthetic and other values.

So in this sense I did not mean partisan politics as was interpreted in this connection. I agree thoroughly with the statement that Mr. Saylor made later—that conservation is generally not a political matter in the party sense—but it is a very political matter in the sense of citizens' judgment with respect to aspects of decisionmaking processes as to whether one does or does not do something in a particular case. And this is often very complicated.

So that with respect to my meaning, I am pleased to clarify this intention on my part in using such an expression.

Another term that I used in connection with one or another memorandum—and this was specifically the April 10 memorandum which I sent to General Woodbury, who was at that time the Chief of Civil Works of the Corps of Engineers—I used in one paragraph the expression "we"—"we" had decided. Now, I see quite clearly that "we" is ambiguous. It is, however, something more than an editorial "we." I certainly did not have in mind, in "we," the Bureau of Sport Fisheries and Wildlife and the National Park Service, because they had not changed their position. In fact, I meant "I." But in the preparation of this memorandum, or rather in my citing of this memorandum, I had had consultation, and this was the "we" that I intended. So let me admit candidly that this is a little bit sloppy writing at the time I said "we," because it is ambiguous.

So perhaps the next step for me to take is to explain the circumstances of this memorandum, which represents in effect a new position taken by the Department of the Interior as a result of an action which I took.

On the 10th of October there was brought to me a letter for my signature which is in fact the letter which I did sign. But when it was brought to me I said, I will not sign it until I have looked into the matter; that is, specifically until I have taken the matter up with the Office of the Secretary. I meant the Office of the Secretary in the usual sense, I meant Secretary Udall's office.

I looked up the record yesterday, and the record of his office shows that I did seek and obtain an appointment on the 10th of October, late in that day, something like 6:30 in the evening. And after that time Secretary Udall said to me with respect to the Hunting Creek problem: "This lies in your program area. You handle it." Which I proceeded to do.

In this connection also I talked to staff people in Secretary Udall's office who had received communications with respect to the problem from Congress both by people who were for this permit and by people who were against it.

And so this was the background on the 9th or 10th—actually on the 10th—of the circumstances under which I signed that letter which reversed the Department's position, which up to that time had been a position which had been expressed to the Corps of Engineers simply and wholly in the routine manner in which we normally performed, and that is, comment by the Bureau of Sport Fisheries and Wildlife on a permit application at the request of the Corps of Engineers. And also, as is customary here, the Bureau of Sport Fisheries and Wildlife consulted with the National Park Service, and they made their comments.

Now, I have the dates on these, if you are interested. On April 3, 1964, the National Park Service communicated with the Corps. And on April 14, 1964, the Bureau of Sport Fisheries and Wildlife communicated. And both of these Bureaus objected to the issuance of the permit. And this is in effect what I based my unilateral action on, on the 10th of October of last year, 1967.

Mr. JONES. There is a great deal of discussion about the Department of the Interior restraining the people in Wildlife and other agencies in the Department of the Interior from appearing at the hearing held by the district office of the Corps of Engineers in Alexandria. Would you like to give some comment as to their absence?

Dr. CAIN. Yes, sir; I would like to.

I read last night the record of the hearings of the first session before this committee. In that record a statement was made by Director Hartzog with respect to policy in the National Park Service. Over and beyond that, I would like to explain that the reason that representatives of these two bureaus, or of the Secretary's office, did not appear at the recent hearings in Alexandria was that the position was already clear, by means of, or as a consequence of, my letter in the most recent instance to the Corps of Engineers, and the earlier 1964 communications from the two Bureaus. And their positions have not changed.

Now, this was not an order by me in any sense for no one to appear; because I talked to the Bureau people, and it was a decision that was made that there really was no point in our going over there, because our position was already clear before the Corps of Engineers.

Mr. MOSS. Mr. Chairman.

Mr. JONES. Mr. Moss.

Mr. MOSS. Doctor, I find it very difficult to reconcile your statement. The position is very clear before the Corps of Engineers. The position taken in April 1964 by both the National Park Service and the Bureau of Sport Fisheries was in opposition to the application.

Dr. CAIN. That is correct.

Mr. MOSS. The position taken by you in your letter of October 10, 1967, was in support of the application.

Dr. CAIN. That is correct.

Mr. MOSS. What clarity is there in that kind of position? The two agencies which are cited in the Coordination Act of 1958 are on record in opposition—a rather detailed record in opposition. And you as the Assistant Secretary are on record in support. Is that clear statement of position in the record?

Dr. CAIN. I assume so, for the following reason. And that is that the Bureau positions were on record, and the decision I had made was on record. Now, the question is, What would the Corps of Engineers

understand to be the Department's position? And my supposition is that my secretarial position—and my program area involves three bureaus—supersedes theirs. Therefore, the Department position at that moment of history was in favor of granting the permit. If this is not true, the position of an Assistant Secretary in the policy decisionmaking has no meaning.

Mr. MOSS. I think that it normally is quite true. But the Congress went to the point of explicitly setting forth in the statute the agencies which were to be consulted. I assume—I voted for it—that it was in an effort to gain the expert opinion. Now, with all due deference to the office you hold, recognizing that in your case you do have the expertise in one of these fields, nevertheless that is not always the case of the Assistant Secretary occupying your position, which is an administrative position. Do you think that the Congress intended that your advice be sought or that the advice of these two constituent agencies be sought?

Dr. CAIN. Well, as I have stated, the Corps of Engineers did have the advice of the two bureaus. They had it in April 1964.

Mr. MOSS. And it was reversed by you.

Dr. CAIN. Quite a bit later.

Mr. MOSS. And without any further studies.

Dr. CAIN. This is also correct, as I stated, in the letter to you.

Mr. MOSS. And you felt that there would be no need to have the clarification of the fact that there was still in existence, in the section of the Department of the Interior which you have the responsibility for, a difference of opinion between the technical experts and the administration?

Dr. CAIN. I believe the best way for me to comment on that is to describe the general policy—shall I say, the *modus operandi*—with respect to the secretarial personnel of the Department of the Interior.

Mr. MOSS. Doctor, I am quite familiar with it.

Dr. CAIN. May I just go on?

Mr. MOSS. Certainly.

Dr. CAIN. Very briefly, when I first came into the Department in March of 1965, a little over 3 years ago, it was made quite clear to me by Secretary Udall that he expected the people in the rather large number of bureaus and services and offices in the Department to give him technical advice and to give it as strongly as they could in support of their positions. And he wanted within the family any arguments that existed, any differences of opinion, to be brought out thoroughly. But when a policy decision was made, he expected that to be a Department position—in other words, he expected the agencies to close ranks, as it were.

Now, the second part of this, Mr. MOSS, is that from the bureaus which have scientific and technical competence—and I raise no question about the competence of these people—when they were putting forward their scientific and technical competence, this is it, and it should be respected. But the policy decisions at the secretarial level involve many ingredients besides scientific or technological ones. And this is the role of secretarial people—to try to reach some kind of balanced position with respect to a variety of considerations which impinge upon the decisionmaking process. And this is exactly what I did.

Mr. Moss. Which is of course a moot question, because the action is taken. But nevertheless, 16 U.S.C. 662(a) states that:

Except as hereafter stated in subsection (h) of this section, whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior. * * *

I assume, Doctor, that the intended policy, which appears to be the one followed in the Department, is that we would substitute the Assistant Secretary of the Interior rather than name the agency. It has been, I think, the history of the Congress that, where we go to the trouble of specifically delineating an agency by name, it is because we have a reason. It is not an idle action. It is not one where we intend merely to embellish with words, but we have a purpose. In my opinion the purpose here was quite clear—to refer to the experts, to the professionals in the Department, for advice.

In my opinion the action taken at the time of the hearing denied that advice to the public and to the engineers that were doing this, and they were confused.

Dr. CAIN. May I add a comment, Mr. Chairman, to this?

The Department of the Interior has had a decade of experience at the coordination level. And in recent years at least there have been on the order of 5,000 or 6,000 applications to the Corps of Engineers for permits for dredging and bulkheading and filling. These are all referred to the Bureau of Sport Fisheries and Wildlife, the River Basins Division.

Now, on the surface a large number of these do not require investigation, because patently there are no important fish and wildlife matters involved. Some of them, however—and I do not know the number, but a considerable number of them—receive what may be called an office or desk evaluation. And in the case of this permit that we are dealing with now in its original form, for the larger acreage—I guess there were two permits involved, there were 36 acres—this was dealt with by the Atlanta office, which is appropriate, since this area comes within the region; and it was dealt with in a desk or office inquiry in which they referred the question to the professional people of the State of Virginia, who commented back. And so this was the first and standard reaction.

I might say that we do not have the personnel, or the time, and most circumstances do not warrant a field investigation. But later, nevertheless, a field examination was made, and a more elaborate statement issued from the regional office in June—a considerably elaborated statement over that which was initially issued from that office in April of 1964. This was partly because of the interposition of the Washington level in the problem, because of the many contacts which had been made with the Bureau in Washington with respect to this problem.

So that is normal procedure, as I have just described. Some are not commented on, some are commented on with an office or desk study, and some are given a field study. And this again is a matter of judgment as to how far you go, or sometimes a matter of the degree of interest which has been evidenced by sectors of the public with respect to a

given permit. But the situation got so complicated, Mr. Moss, that I am sure you know that in July of 1967, after a considerable negotiation, an agreement was reached between Secretary Resor of the Department of the Army and Secretary Udall with respect to the mechanism, which says, in the first level of discussion of a permit granting—which does include, as I have just said, and quite properly, the Bureau of Sport Fisheries and Wildlife, and other bureaus which have collateral interest—if a resolution is not performed there, the second formal step is between the Chief of Civil Functions of the Corps of Engineers and the Under Secretary of the Interior. And if they cannot agree, there is a third step, and that is the two Cabinet officers. And the document does not refer to what happens if the two Cabinet officers cannot agree, but it is quite apparent that the law says that the corps has the authority to issue a permit. So I guess that the ball game is over at that time.

So what I am trying to explain is, it is normal according to that agreement for the secretarial office to get involved in an issue like this. And this is a second step beyond what you have just described. And there are circumstances in which it seems to me that this becomes not only proper but necessary.

Mr. Moss. Mr. Chairman, this opens up general questions which I would like to pursue further with Dr. Cain.

Mr. JONES. You may proceed.

Mr. Moss. Doctor, you acted in October to address a letter to the Corps of Engineers withdrawing the opposition expressed by the Bureau of Sport Fisheries and the National Park Service. What was the triggering action that motivated that?

Dr. CAIN. I can explain that. Let me start by saying that until that time I knew practically nothing about this particular problem. I had heard that there was a question about a permit at Hunting Creek. I had also heard that Congressman Dingell, who had originally, I believe in 1964, opposed this, had in the summer of 1967 removed his objections. And if I may interpolate, I worked very closely in another committee with Congressman John Dingell. We come from the same State, I know him very well, and I respect him very highly as a conservationist. So let me say that I was influenced by Mr. Dingell's actions.

I also did not know this area in any sense that I had gone there particularly to look at it. But I certainly was familiar with the region, because I had been up and down there many times. So I had a general feeling—let us call it that, rather than an expert opinion—a general feeling that this particular permit dealt with an area which was not greatly significant with respect to fish and wildlife values—and this is my personal opinion. If the Bureau, in this case the River Basins Division of the Bureau of Sport Fisheries and Wildlife, went into great detail with respect to every case in the Nation that is equivalent to this in importance, they could not get their job done.

So I had two sorts of impacts upon me, which I described in one connection as being first political, and second, my judgment of the values that were involved in deciding to sign this letter on October 10.

Now, I also knew in a general way certainly that there was congressional interest in this, both for the granting of the permit and opposed to the granting of the permit. But this was all in a sort of

ambience, in the atmosphere in and around, let us say, this date in October. And I do not profess any expert knowledge myself about this particular area, but I think I have described the circumstances.

Mr. Moss. You state that on approximately October 10 a letter was brought to you for signature, which would indicate that it was drafted elsewhere.

Dr. CAIN. It was. This letter was drafted——

Mr. Moss. Was the letter drafted on your initiative?

Dr. CAIN. It was not.

Mr. Moss. It was not. On whose initiative was it drafted?

Dr. CAIN. It was drafted in the Office of the Solicitor at the request of somebody else in this office.

Mr. Moss. And you do not know who?

Dr. CAIN. I do not personally know. But I do know what the man who drafted the letter told me.

Mr. Moss. Was it discussed with you before it was drafted?

Dr. CAIN. No, sir. The first contact was when this letter came to my desk asking, would I be willing to sign it.

Mr. Moss. You have just told us that it reflected your views.

Dr. CAIN. It did.

Mr. Moss. That is a remarkable individual that drafts letters reflecting your views without discussing them with you.

Dr. CAIN. I have endeavored to explain that I had a very loose general sort of information such as one gets about problems that are somewhere else. I described that I knew that there were differences of opinion in Congress. And I have described that in my own judgment I did not think that this was a great issue to stand and fight on. That is all I meant. I had nothing to do with the drafting of this letter, sir.

Mr. Moss. I know, you had nothing to do with the drafting of the letter, and yet you say that it reflected your thinking.

Dr. CAIN. If I had not thought myself, by taking into consideration all aspects of this, that the permit should be granted, I would not have signed the letter.

Mr. Moss. Did you talk to Dr. Gottschalk or Dr. Uhler before signing it?

Dr. CAIN. No, sir. I went up first to the Secretary's Office to talk about it.

Mr. Moss. You mean you reversed the——

Dr. CAIN. That is correct. This all happened very quickly.

Mr. Moss. It all happened very quickly?

Dr. CAIN. Right.

Mr. Moss. We were told yesterday that there was no urgency, and yet in General Woodbury's letter the term "urgency" was used. I want to be precise on that. He stated:

I would appreciate your comments at the earliest practicable date since the applicant has indicated the urgency of a prompt decision.

So this was also brought to you as urgent?

Dr. CAIN. That is quite right.

Mr. Moss. How was the sense of urgency conveyed to you?

Dr. CAIN. When this letter was brought to me I got the definite impression that there was urgency about getting a signature on it. And when I went to the Secretary's office and talked with one of the

staff people, I again got the feeling that there was some urgency. Now, I do not know what the urgency was. It is undoubtedly connected—

Mr. MOSS. Did you review the statement which was made in 1964 by Fish and Wildlife—

Dr. CAIN. No, sir.

Mr. MOSS. You did not review that?

Dr. CAIN. No, sir. I did not at that time have the files before me.

Mr. MOSS. Doctor, you amaze me. I would not reverse my own position on an issue without going back and studying what the position had been and rethinking the position. Sometimes I am called upon to consider that, and I always do it with a great deal of care and deliberateness, so that I can fully justify it, because I am frequently queried, as you are being queried, as to why. And yet there seems to be no reason. Someone brought you a letter, and you do not know who it was.

Dr. CAIN. I know who it was that made the letter; yes, sir.

Mr. MOSS. Who was it?

Dr. CAIN. It was a member of the Solicitor's office.

Mr. MOSS. Who in the Solicitor's office?

Dr. CAIN. Mr. Bernie Meyer.

Mr. MOSS. Mr. Meyer brought you a letter. And he stated that there was an urgent need for you to sign it?

Dr. CAIN. Right. And I read the letter very carefully. And my general reaction, as I have just described it, was that the letter was acceptable, and I was willing to sign it, but before I signed it I wanted to talk to the Secretary's office to see what the position was there.

Mr. MOSS. Were you aware that the Secretary had personally sent a letter—

Dr. CAIN. Sir?

Mr. MOSS. Were you aware that the Secretary had personally sent a letter expressing strong opposition to this permit?

Dr. CAIN. No, sir.

Mr. MOSS. But you were aware of the overall administration position of attempting to clean up and to improve the Potomac. I recall when the Secretary made quite a battle to prevent high-rise construction on the Potomac, and acquired property interests, by condemnation in several instances. And yet here in this one instance there is a sort of walking away from this policy. I fail utterly to comprehend the decisional process in this instance.

I have no further questions.

Mr. JONES. Mr. Vander Jagt?

Mr. VANDER JAGT. Thank you, Mr. Chairman. Dr. Cain, just so that the record is clear, I understand that your opinion, as of now, is that there has been considerable study and thought given to the matter.

Dr. CAIN. I have discovered a tremendous file on this problem since; yes, sir.

Mr. VANDER JAGT. But as of now it is your opinion that the fill would eventually affect conservational and recreational values?

Dr. CAIN. That is a very good question, Mr. Vander Jagt, because I have the very unenviable record of making a decision on the 10th of October and reversing myself on the 10th of April of this year. Let me say immediately that my personal feeling about this—that is, my

judgment of all aspects in balance—is today compatible with my October decision, and compatible with Under Secretary Black's position taken very recently.

Mr. VANDER JAGT. Well, the one position is that it would adversely affect conservational and recreational barriers, and the other position is that it would not adversely affect conservational and recreational values, and you say that you agree with both positions?

Dr. CAIN. I say that I today agree with the first position I took on October 10, which is a position I am now supporting. I would like to explain why I flip-flopped.

Mr. VANDER JAGT. Let me ask you this question, and then you can explain it. You are now reversing your reversal of the reversal?

Dr. CAIN. No, you have gone one step too many. There are only two steps in it.

On October 10 I made a decision and transmitted it to the Corps of Engineers, which was the opposite of the position previously taken in 1964 by the Park Service and the Bureau of Sport Fisheries and Wildlife.

Mr. VANDER JAGT. That is reversal 1.

Dr. CAIN. The subsequent action was when I decided and communicated a change of position.

Mr. VANDER JAGT. I think you used the word "reversal."

Dr. CAIN. I also explained that by saying that a good deal of impact had come on me in the interim from one source or another. And I called together my personal staff. And there is a Deputy Assistant Secretary who is also Commissioner of the Fish and Wildlife Service, and five or six staff people. And the Park Service was not represented, but the Bureau of Sport Fisheries and Wildlife was represented. And my flip-flop—and there is only one—is that I was advised by them unanimously to change my position, because if I did not I would have trouble.

Mr. VANDER JAGT. And did you?

Dr. CAIN. Well, I changed it.

Mr. VANDER JAGT. You changed it?

Dr. CAIN. Yes, I changed it. Because I had the unanimous advice of my staff to do so.

Mr. VANDER JAGT. And now you are changing that position?

Dr. CAIN. But I have also told you that my personal opinion, taking everything into consideration, today is the same as it was on October 10.

Mr. VANDER JAGT. So your reversal of your reversal you do not agree with any more. In your personal opinion, you just did that because your staff told you to do it?

Dr. CAIN. That is right, that is what I have said. I followed my staff—

Mr. VANDER JAGT. Was it your personal opinion when you did reverse the reversal?

Dr. CAIN. I followed my staff's advice, which was unanimous.

Mr. VANDER JAGT. But it was not your personal opinion?

Dr. CAIN. That is what I have just said.

Mr. VANDER JAGT. So when you reversed the reversal you did not agree with that action that you took; is that correct?

Dr. CAIN. I think I agreed with advice that this was probably in a tactical sense to my advantage. I do not today believe that it was.

Mr. VANDER JAGT. Your first reversal was based upon what you said and have explained were political considerations?

Dr. CAIN. Together with my personal judgment of the advice.

Mr. VANDER JAGT. And then your reversal of that reversal was because it was to your tactical advantage?

Dr. CAIN. The staff, as I have just said, thought that I was in an untenable position, being in opposition to the position which the two bureaus not only took in 1964, but maintained. And this is perfectly sound advice to your superior. I followed it.

Mr. VANDER JAGT. They still have that opinion today, do they not?

Dr. CAIN. I do not know. We have not had another such meeting since.

Mr. VANDER JAGT. But they had it then, did they not?

Dr. CAIN. They had it then, yes.

Mr. VANDER JAGT. As far as you know, they never deviated from their opinion that it would adversely affect the conservational and recreational values?

Dr. CAIN. In this case, "they" means the Bureau?

Mr. VANDER JAGT. Yes; the Bureau of Sport Fisheries and Wildlife, and the National Park Service.

Dr. CAIN. That is right. I think both of them have testified before you the last few days. They are still in the same position that they were.

Mr. VANDER JAGT. Now, the first reversal you said was based on political considerations, and we heard some definitions of what "political" means. And it does mean many things.

Dr. CAIN. I merely meant that I did not mean political parties.

Mr. VANDER JAGT. I wonder if you would tell us, one, two, three, as far as it goes, what were those political considerations on which you based your reversal that obliterated the recreational and conservation considerations.

Dr. CAIN. I would like to object to the word "obliteration."

Mr. VANDER JAGT. Well, "overcame."

Dr. CAIN. Because what I have described as "political" is one aspect of what was in my decision.

Mr. VANDER JAGT. Let me rephrase my question to make it simpler. What were the political considerations on which you based your reversal?

Dr. CAIN. There is only one which I can testify to. And that is the position taken by Congressman Dingell, in which he first historically opposed the permit, and then in a letter to the Corps of Engineers removed his objections. And I said that I have known John Dingell for many years, and I admired him highly, and I think he is a great conservationist, and particularly in the field of wildlife. So I depended very largely on John Dingell's action.

I also, as I said, had a general knowledge—without any specific knowledge whatsoever, because I do not think that anybody else's position at that time was in writing as far as I know—I had general information that the congressional interest was divided in this case. This was all I meant by that.

I knew also—and this comes in the sphere of political impact—that there were citizen conservation groups which were very much interested in the preservation of this. And I have got a pretty good record of supporting and going with and belonging to these groups.

But in this case I opposed them, for reasons that I have already mentioned. And in my personal judgment I did not think this was a very important case in terms of the values for wildlife that were related to these acres.

Mr. VANDER JAGT. I know, Dr. Cain, of your lifelong interest in conservation. I know that of my personal knowledge, and it is an outstanding one. And I do not mean to try to quarrel with you here. I just want the record absolutely clear. That is what I am interested in. You are telling this committee that you reversed the position of the Department because John Dingell changed his mind, and you made that reversal without reviewing any of the studies or the documents or records that your bureaus had made. Is that what you are telling us?

Dr. CAIN. That is not quite it.

Mr. VANDER JAGT. Is it almost?

Dr. CAIN. I had merely emphasized the importance in my mind of John Dingell's change of position. And I also said—which I have no documentation or proof for—that I had heard that there was a divided opinion in Congress on this matter.

Mr. Moss. Would the gentleman yield?

Mr. VANDER JAGT. Yes; I would.

Mr. Moss. There should have been documentation, I believe, from Congressman Saylor. Congressman Reuss and myself vigorously expressed ourselves in 1964 as opposed to this. And I believe it is quite possible that there may have been other Members of Congress also—I would have to check my record—who voiced their strong opposition to this permit application.

Dr. CAIN. Mr. Moss, I have already stated that my action on October 10 was made without any reference to the history of the case in terms of who stood where or who had communicated what. I have already admitted that I did not even at that time know that my own Secretary had taken a position against this.

Mr. Moss. Thank you for yielding.

Mr. VANDER JAGT. You are welcome.

Dr. CAIN. But the other aspect of this is my judgment about the natural history and other values of these few acres. So you cannot really separate the two. They are the two major aspects of the decision.

Mr. VANDER JAGT. But the political considerations, just so that the record is clear were: one, that John Dingell had changed his mind; and two, that Congress was divided on this matter.

Dr. CAIN. Right.

Mr. VANDER JAGT. Now, you said when this letter was brought in to you for this reversal on October 10 that it was written for you and brought in to you to sign; is that correct?

Dr. CAIN. It was not written for me. It was written upon request, and I was sought out to sign it.

Mr. VANDER JAGT. And you were sought out to sign it. And you said that at that time there was a sense of urgency about the signing of it?

Dr. CAIN. I got the impression that there was a sense of urgency.

Mr. VANDER JAGT. What conveyed that impression to you?

Dr. CAIN. Well, Mr. Bernard Meyer of the Solicitor's Office, who had composed the letter on request—which is, incidentally, a common

procedure—I cannot now remember exactly what in his manner or words gave me this feeling of a sense of urgency. Also when I went that same day to the Secretary's Office, and he left this decision to me, I also talked to—he had a secretarial staff up there very close to him, and I again got a sense of urgency from them. Now, I do not know why this was. But I assumed it had something to do with the interest of the applicants. I have no knowledge of this.

Mr. VANDER JAGT. But that is what you thought at the time?

Dr. CAIN. I got a clear impression that it was—

Mr. VANDER JAGT. That it was of interest to the applicant?

Dr. CAIN. Yes, sir. And the urgency. And my only interest in signing the letter was to go up and consult with the Secretary's Office about it before I signed it. And this was in a matter of a few hours.

Mr. VANDER JAGT. So Mr. Bernie Meyer brought in the letter, and you felt that there was a sense of urgency because of interest to the applicant, and you went upstairs to the Secretary's Office. Did you then talk to the Secretary?

Dr. CAIN. Yes; I talked to Secretary Udall.

Mr. VANDER JAGT. Would you report to this committee the substance of that conversation, please?

Dr. CAIN. It was extremely brief. It was quite late in the day. And he in effect simply said, "This is in your program area, I would like for you to take care of it."

Mr. VANDER JAGT. Did you get any feeling of urgency from him?

Dr. CAIN. No, sir.

Mr. VANDER JAGT. Who requested Mr. Bernie Meyer to write this letter?

Dr. CAIN. I was told that it was Mr. Pozen, who was one of Secretary Udall's staff men.

Mr. VANDER JAGT. Mr. Pozen?

Dr. CAIN. Mr. Pozen.

Mr. VANDER JAGT. P-o-s-e-n?

Dr. CAIN. P-o-z-e-n, commonly known as "Bill." I think his name is something else—Walter, I believe.

Mr. VANDER JAGT. Now, in one of your—

Dr. CAIN. I may as well explain, since you have emphasized this question of urgency, I did get likewise from Mr. Pozen the sense that there was somebody that wanted this decision as fast as they could get it. Now, Mr. Pozen—who is no longer in this office, incidentally—Mr. Pozen typically got numerous calls, handled numerous calls from all kinds of people on numerous matters. And he had been receiving calls on the Hunting Creek property.

Mr. VANDER JAGT. Had you been receiving calls?

Dr. CAIN. No, sir.

Mr. VANDER JAGT. Do you know who Mr. Pozen was receiving calls from?

Dr. CAIN. No, sir, he did not tell me; I do not know.

Mr. VANDER JAGT. In one of your answers you said that you hoped the issue would get resolved because Mr. Pozen was getting a number of telephone calls. Who was he getting the telephone calls from?

Dr. CAIN. Well, I think that you had better ask his office. I do not know.

Mr. VANDER JAGT. I am asking you.

Dr. CAIN. I do not know.

Mr. VANDER JAGT. I am asking you.

Dr. CAIN. I do not know.

Mr. VANDER JAGT. He just told you, "I am getting lots of telephone calls," and he did not say who?

Dr. CAIN. His staff people told me they were getting telephone calls also; yes, sir.

Mr. VANDER JAGT. And they did not mention at all the direction that those calls were coming from?

Dr. CAIN. I do not know who the calls came from.

Mr. JONES. Mr. Black is here and will testify.

Dr. CAIN. As far as I know, they could have been either pro or con the permit. This is a thing that I did not inquire into.

Mr. VANDER JAGT. Do you believe that the directors of the bureaus who have testified and who took the positions in 1964 and in October and in April and in May, and take it now—that filling in this area would adversely affect the conservation and recreational values—do you believe that they based their judgment on the facts that they gathered in their examinations of the area?

Dr. CAIN. I have reason to believe that the Bureau of Sport Fisheries and Wildlife people had also been having some pressure put on them one way or another with respect to this. I think it is quite clear, as it has been said in laudatory comment about Director Gottschalk and Director Hartzog also, that they stood by their guns, or whatever the expression was.

I think I should say that in my personal opinion the basis for the Bureau of Sport Fisheries and Wildlife opinions about the value of these few acres could scarcely be described as being scientific. They are general conclusions, based upon general information. It is not scientific, as I understand it.

Mr. VANDER JAGT. May I ask you this, Dr. Cain: Would it be closer to a scientific opinion than your opinion which you have described to us as a general feeling?

Dr. CAIN. Some, but not too much.

Mr. VANDER JAGT. Some?

Dr. CAIN. Some, but not too much; yes, sir. Because they deal with this kind of thing much more often than I do.

Mr. VANDER JAGT. Yesterday General Woodbury told us that he relied on Black's letter when he made the decision to grant the permit, and had he known that there remained strong objections to the filling in of this area, as far as the Department of Interior was concerned, he would not have recommended the granting of the permit. Do you think it was accurate to convey to General Woodbury the impression that the Department of Interior had really no objections to the filling in of this area? Can that reflect the opinion of the Department?

Dr. CAIN. I believe I have already stated that it was careless of me—and this in a memorandum I wrote—to use, "we," because it was ambiguous. There was nothing in the record anywhere to show that the two bureaus had changed. And I can see now that General Woodbury would assume from my memorandum that "we" included a shift of position of the bureaus, whereas it included a shift of position taken by me. I have already admitted that this was an ambiguous use of the expression "we."

Mr. VANDER JAGT. One final question.

Dr. CAIN. But I might say that I admire General Woodbury very highly. And I might add gratuitously, because the Corps of Engineers is discussed one way or the other quite a bit, that in the something over 3 years that I have worked with General Woodbury, and now with General Noble in several connections, I have the personal strong belief that he and his immediate people are very desirous of accommodating the conservation interests—very desirous. So, I regret that I embarrassed General Woodbury.

Mr. VANDER JAGT. I think that is correct, Dr. Cain. And it is difficult for him to accommodate the conservation interests when he is misled into believing that there are no strong conservation objections on a decision that he has to make, when in fact, there are.

I have one final question. Experts have made their inspection and given a decision as to whether this would adversely affect those conservation interests. Do you believe that their opinion is based on factual evidence which would in any way support a valid objection?

Dr. CAIN. There are possibly two aspects to an answer to that. One is that I think that any wetlands that are usable by wildfowl, particularly in or near large cities, should be preserved if it is reasonable to do so. I state that as a general proposition. And I think that there are sufficient values in the region so that a person who is considering only these values could feel very strongly about the possible loss even of nine and a half acres. I understand this thoroughly.

The other aspect of an answer to your question, if I understand it, is that the actual supporting data with respect to this particular part of that region, or that area, are really pretty thin. And if you look at the statistical data there are presented on the basis of 5 years, I guess, of Audubon Christmas counts, or something like that, that there is no doubt that this general area is used in the winter sometimes by large numbers of ducks. But these statistics also have a tremendous range of variation, and if one were to handle them in a statistical way, the meaning would not be as great as that which is ascribed to it.

Furthermore, there is nothing in these data that pinpoint or make clear the damage which the filling of these few acres would have with respect to the region as a whole that we are talking about.

So one has two problems. One has first a statistical problem with respect to birds—and I have freely granted that lots of ducks, particularly diving ducks, do find this general area useful in the winter, there is no denial of this—but there is not any evidence that I understand as to how the reduction of, say, nine and a half acres, or 30, or this given number, whichever way we are talking about in a general way, would have on the Dyke Marsh, there is no evidence of it. There is an assumption, and it is a reasonable one, that there could be an adverse effect.

So we have got both the statistical problem of how observations are presented when they are based on extremely variable data, and there is a question of area to which they apply.

And so, as I have said before, my feeling is that this is not a very significant area.

Mr. VANDER JAGT. I can appreciate that there are many considerations that must be made. And again, just so that the record is clear, I gather from what you have told us that you must take into considera-

tion many factors, but there is nevertheless factual data on which your experts could base a valid objection; is that correct?

Dr. CAIN. Yes, sir.

Mr. VANDER JAGT. And that it would in fact adversely affect the overall environment, the long-range scenic qualities of the principal shoreline and the outlook from the Federal parklands; is that correct?

Dr. CAIN. When I said "Yes," it is to the effect that any reduction of wetland acreage by filling represents a potential, and in this case I am sure, an actual, loss.

Mr. VANDER JAGT. An actual loss, an adverse effect on the overall environment, the long-range scenic qualities of the river shoreline, and the outlook from the Federal parklands.

Dr. CAIN. I think that if there had not already been high-rise apartments in this location, I probably would have taken a different position.

Mr. VANDER JAGT. The fact that there were high-rise apartments made it a little easier to grant the next high-rise apartment?

Dr. CAIN. I kind of stepped into that one; did I not?

Mr. VANDER JAGT. You sure did, Dr. Cain.

Dr. CAIN. But it is a fact; this is true. The view, as you describe it, is already not a natural view, and not a natural view by a long sight.

Mr. VANDER JAGT. Just to make doubly sure that the record is clear, I understood you to say that it could adversely affect—and that there is factual data on which you can base valid objections that it would adversely affect—these items that I just read to you.

Dr. CAIN. I have also qualified this by saying that I do not think the degree of effect is great. And I do not personally think it is an extremely important case. So I agreed yesterday, but I agreed with this qualification.

Mr. VANDER JAGT. The fact that it could adversely affect these items is reflected in your letter; is it not?

Dr. CAIN. Yes.

Mr. VANDER JAGT. Thank you, Dr. Cain.

Dr. CAIN. Thank you.

Mr. JONES. Mr. Reuss.

Mr. REUSS. When were you appointed Assistant Secretary for Wildlife and Parks?

Dr. CAIN. I believe that the Presidential appointment was about mid-January 1965. It may seem a little strange, but I do not remember the exact date.

Mr. REUSS. The duty of the Assistant Secretary for Wildlife and Parks is to prevent waterfowl areas from being filled in and to prevent parks from being desecrated by apartments; is it not?

Dr. CAIN. There are a great many duties in that office.

Mr. REUSS. Is that not a fairly accurate job description?

Dr. CAIN. No; it is a very minor, partial description of my job.

Mr. REUSS. Describe your job.

Dr. CAIN. My program area consists of three areas: the Bureau of Commercial Fisheries, the Bureau of Sport Fisheries and Wildlife, and the National Park Service. My predecessor, the former Senator Frank Briggs, when he was Assistant Secretary, had only the Fish and Wildlife Service. When I came on, Secretary Udall asked me to accept the National Park Service also, because I had had some 6 years of contact with the National Park Supervisory Board.

Mr. REUSS. You have rejected my description of your duties. I said it was to protect wildlife and to protect parks. Leaving aside the commercial fisheries, which is an added duty, would you restate your job description?

Dr. CAIN. Let me add that since Congress passed the Marine Resources and Engineering Development Act in 1966—it will be 2 years in August—I have been, in addition the Administrator of the Department of Interior's marine program, which involves nine bureaus; and since about 16 months ago I have also been Chairman of a National Marine Council Committee on the Multiple Uses of the Coastal Zone, appointed to the Chairmanship by Vice President Humphrey. And these duties which I have just described, which do not appear anywhere in the manual description, take at least half of my time. So let me say that probably in my working week, which seems to me to be a fairly long one, the National Park Service, and the Bureau of Sport Fisheries and Wildlife I would estimate take between a quarter and a third of my time. And they are much more diversified than what you have just described.

Mr. REUSS. All right. Thank you very much.

Let us get back to October 10, 1967. Was that the first time that you heard of the Hunting Creek controversy?

Dr. CAIN. No. I said that previous to that I had very peripheral information in the sense that—and I really cannot describe it—I knew nothing about it in a real sense, but I knew a problem existed.

Mr. REUSS. When you signed that letter on October 10, 1967, you did so with the knowledge that both the National Park Service and the Fish and Wildlife Service were opposed to the fill; did you not?

Dr. CAIN. Yes, sir.

Mr. REUSS. Yet, you nevertheless, in your letter to the Corps of Engineers, used the word "we" rather than saying that you as Assistant Secretary now favored the fill, but that the Bureau of Sport Fisheries and Wildlife and the National Park Service were still opposed to it; is that correct?

Dr. CAIN. That is correct. I testified to that.

Mr. REUSS. Now, after you went into the Secretary's office and were there informed that you were supposed to handle it, what steps did you take before reversing the historic position of the Fish and Wildlife Service and the National Park Service? You said you did not speak to anybody from either the Fish and Wildlife Service and the National Park Service; is that correct?

Dr. CAIN. That is correct.

Mr. REUSS. Did you speak to anyone other than this Mr. Bernie Meyer?

Dr. CAIN. Yes; Mr. Meyer brought me the letter, and Mr. Pozen in the Secretary's office.

Mr. REUSS. Anybody else?

Dr. CAIN. No, sir.

Mr. REUSS. Just those two?

Dr. CAIN. Not as I remember.

Mr. REUSS. Did you go down and make an inspection of the area?

Dr. CAIN. No, sir. I have stated that I have been up and down and through and around there, and I had general information. I did subsequently go out. As a matter of fact, I went back again last Sunday to take another look. I had to get the feel of things.

Mr. REUSS. Have you ever been out there during the period of December to February when the ducks were there?

Dr. CAIN. I have been by there; I have been in this region when ducks were there; yes, sir.

Mr. REUSS. But you have never been out on the water?

Dr. CAIN. No, sir.

Mr. REUSS. Before signing this letter on October 10, 1967, did you review the findings of the Fish and Wildlife Service and the National Park Service?

Dr. CAIN. No, sir, I did not go back into this long record.

Mr. REUSS. Did you read the report of Dr. Francis Uhler, the Fish and Wildlife biologist?

Dr. CAIN. No, sir—I read it later, but at that time I did not know it existed.

I may add, if it is of any interest to you—and this is in line with what Chairman Jones suggested at the beginning—subsequently I invited Dr. Uhler to be my guest at the Cosmos Club. He came in from Patuxent. Director Gottschalk and one of my staff assistants, Jim McBroom, were also there.

Mr. REUSS. When was that?

Dr. CAIN. I have got the date here somewhere, sir. But it was subsequent to October 10. I can find the date if you wish.

Mr. REUSS. I wish.

Dr. CAIN. Should I look for it now?

Mr. REUSS. Yes.

Dr. CAIN. That was on February 9, 1968. I invited Dr. Uhler and Dr. Gottschalk and Mr. McBroom to have lunch with me at the Cosmos Club.

Mr. REUSS. That was a few days before the Alexandria hearing on February 21, 1968, was it?

Dr. CAIN. I do not remember the date of that hearing. It was, I presume.

Mr. REUSS. On that occasion did Dr. Uhler in any way depart from what I think has been his consistent position that this fill permit should not be granted?

Dr. CAIN. He was a very, very stout defender of the importance of this area for wildlife.

Mr. REUSS. Now, 10 days before that meeting with Dr. Uhler at the Cosmos Club, you had written to the Corps of Engineers a letter dated January 30, 1968, saying, "I have talked with the people in the Bureau of Sport Fisheries and Wildlife and we believe that we do not need to present testimony at the hearing—your notice of January 17, 1968—on the application of Howard P. Hoffman Associates, Inc., for a bulkhead and filling permit in Hunting Creek at Alexandria, Virginia."

After your conversation with Dr. Uhler on February 10, did it not occur to you that it might be in the public interest to have Dr. Uhler present at the Alexandria hearing so that the public, the press, and the hearing officer of the Corps of Engineers might be informed of the judgment of the Fish and Wildlife Service?

Dr. CAIN. As a matter of fact, no; it did not.

Mr. REUSS. On December 12, 1967, Congressman Moss and myself, having just heard of your letter of October 10, 1967, by which the posi-

tion of the Department of the Interior was changed with respect to this fill, called a meeting in Congressman Moss' office. And we asked you and the members of the Corps of Engineers to attend. You were not able to be there, but you sent Mr. Travis Roberts of your office.

At that meeting Congressman Moss and I made a request to you through Mr. Travis Roberts to furnish us promptly with a complete list of all conversations, communications, and other contacts you or any other Department of the Interior official had had with representatives of the applicant for the fill. We have never gotten such a list. Why is that?

Dr. CAIN. Insofar as I remember, Mr. Reuss, the first time that I knew such a list had been requested was when I read it in connection with this hearing. What I am saying is that as far as I recollect, Mr. Travis Roberts did not communicate with me that such a list had been requested. I could be wrong, but I have no record and I have no recollection.

Mr. REUSS. And when did you see this in the hearing record?

Dr. CAIN. Well, I don't now remember whether it is in this document or whether it is in the hearing record of the 24th.

Mr. REUSS. It is in the document that you referred to, which is the testimony of Congressman Saylor and myself; is it not?

Dr. CAIN. Right, sir. I read it in that document on Sunday. I read the hearing record yesterday—last night.

Mr. REUSS. Since you then read the request which Congressman Moss and I had made of you on December 12, 1967, on Sunday, that is, 2 days ago, will you now give the committee the complete list of all conversations, communications, and other contacts you or other Department of the Interior officials had with the applicant with respect to the fill?

Dr. CAIN. You see me shuffling pieces of paper. In this connection, in connection with this question, I wrote this note to myself last night. There is no list, because there were no communications or other contacts with me by representatives of the advocates for the fill permit—none whatsoever.

Mr. REUSS. Other Department of the Interior officials, then?

Dr. CAIN. I don't know, sir. I don't know what contacts might have been made with other Department officials.

Mr. REUSS. Congressman Moss and I asked you for that last December 12. You said that you aren't sure whether that request was conveyed to you. However, last Sunday you did get the message. That was 2 days ago.

Dr. CAIN. Right.

Mr. REUSS. Would you now give us a list of all conversations, communications, and other contacts by other Interior officials with the applicants?

Dr. CAIN. This will have to be explained, because I read this on Sunday night. On Monday my time was scheduled from 9 a.m. until a meeting broke up about 1:30. I was involved in a meeting of the Committee on Multiple Uses of the Coastal Zone which I mentioned a while ago. I was completely involved with that from the time I hit the office about 8 in the morning until I finished lunch about 2:30. In the afternoon I did not make any inquiries of other officials of the Department as to whether they had any such contacts. So I have not

responded, since I knew about this request Sunday night, I have not responded to it. I don't have such a list.

Mr. REUSS. Will you prepare such a list and append it to your testimony?

Dr. CAIN. I can. It would help me if you would give me some guidance. I can ask the Secretary or the Under Secretary or other Assistant Secretaries or Bureau Directors.

Mr. REUSS. And all those under your supervision.

Dr. CAIN. If they received any—

Mr. REUSS. If the answer is "No"—that nobody in the Department of the Interior ever had any contact, communications, or conversations with the applicant or his representatives—then that is very easy to state.

Dr. CAIN. I will simply have to find out. I have tried to describe that there really hasn't been time to do so.

Mr. REUSS. We did ask on December 12, 1967. Is there any reason why you can't get that information to the committee by tomorrow?

Dr. CAIN. I can certainly make some telephone calls this afternoon; yes, sir.

(The information requested follows:)

DEPARTMENT OF THE INTERIOR,
Washington, July 10, 1968.

Hon. ROBERT E. JONES, Jr.,
*Chairman, Subcommittee on Natural Resources and Power,
Committee on Government Operations,
Washington, D.C.*

DEAR MR. CHAIRMAN: As I testified at your hearing on July 9, the earlier request for a list of contacts made by representatives of the Hunting Creek bulkhead and fill permit applicants with personnel of the Department of the Interior had not been made known to me. My first knowledge of it came from my reading of testimony that had been given the committee on June 24 at the first hearing on the Hunting Creek permit. Because I had been out of the city on official business, I did not have the opportunity of reading this testimony until July 7. When this matter was raised yesterday I made a promise to furnish the material today, as requested.

Not having a transcript of the hearing yesterday, and remembering that this request had been referred to during the hearing on June 24, I have endeavored to reply on a basis of the language used by Mr. Reuss on the 24th, to wit:

"Congressman Moss and myself formally requested Assistant Secretary Cain through Mr. Roberts to furnish us a complete list of all conversations, communications and other contacts he or other Interior Department officials had with representatives of the applicants for the fill permits." (Page 18.)

I have made the assumption that the reference to "officials" was meant to include persons at the secretarial level who have any connection with such matters and the administering officials of the Bureaus that are directly concerned; namely the Bureau of Sport Fisheries and Wildlife and the National Park Service.

I list below the responses made to me by the pertinent offices to the specific question on contacts with the permit applicants and their representatives they were asked following Mr. Reuss' request to me of yesterday.

OFFICE—DATES AND PERSONS INVOLVED

Under Secretary: No contacts.

Assistant Secretary for Fish and Wildlife and Parks: No contacts.

Solicitor: Over a period of 3-4 years, Bernard R. Meyer, associate solicitor, met with Mr. Edward S. Holland, Mr. Stanley Bregman, and a consulting attorney for Hoffman Associates from time to time. In attendance at various times were Messrs. Robert Horne and Henry Weeden, National Park Service, and Mr. Walter Pozen, then in the Office of the Secretary. Mr. Meyer states that he does not keep a diary or notes of such meetings and that the

above information is based solely on his recollection, which is somewhat vague.

Bureau of Sport Fisheries and Wildlife: January 12, 1967, occurred the only discussion, according to Bureau records, among members of the Bureau and representatives of the applicants. On that date a meeting occurred in the office of Assistant Director James T. McBroom with Arthur W. Dickson and William M. White of the Bureau and Stanley I. Bregman and Edward S. Holland, representing the Hoffman Associates. Report made by Mr. White. National Park Service: The following report was made for the Service by Raymond L. Freeman, on this day Acting Director of the Service.

DATE AND OFFICIALS IN ATTENDANCE

April 16, 1964:

Robert C. Horne, National Capital Region.
Henry G. Weeden, National Capital Region.
Mary McColligan, Solicitor's Office.
Edward Holland, Holland Engineering Co.
Bernard Fagelson, attorney for Francis T. Murtha and Howard P. Hoffman Associates.
William P. Clark, vice president, Hunting Towers Operating Co.
Howard P. Hoffman.

July-August 1965 (?):

Stewart L. Udall, Secretary of the Interior.
Howard P. Hoffman.
Henry G. Weeden, National Capital Region.
Walter Pozen, Assistant to the Secretary.

October 14, 1965:

Edward Holland, Holland Engineering Co.
J. H. Saunders, representative of Howard P. Hoffman Associates.
Robert Landau, Solicitor's Office.
Floyd B. Taylor, National Capital Region.
Robert C. Horne, National Capital Region.
Henry G. Weeden, National Capital Region.
David Levy, National Capital Region.

November 30, 1965:

Telephone conversation between:
Henry G. Weeden, National Capital Region.
Edward Holland, Holland Engineering Co.

December 10, 1965:

Howard P. Hoffman.
Stephen Wollman, Howard P. Hoffman Associates.
Edward Holland, Holland Engineering Co.
Charles A. Pearson, Saunders and Pearson.
James B. Phelps, Saunders and Pearson.
Robert Landau, Solicitor's Office.
Floyd B. Taylor, National Capital Region.
Robert C. Horne, National Capital Region.
David Levy, National Capital Region.

August 18, 1966:

Stanley Bregman, attorney for Hunting Towers Developers.
Bernard Meyer, Solicitor's Office.
Edward Holland, Holland Engineering Co.
Robert Landau, Solicitor's Office.
Robert C. Horne, National Capital region.
Henry G. Weeden, National Capital region.

April 30, 1968:

Edward Holland, Holland Engineering Co.
Robert C. Horne, National Park Service.

You will appreciate the possibility of error or oversight in our rapid poll of officials in attempting to meet the subcommittee's 24-hour deadline. Some staff person who may have had a contact may not appear on this list, because we have been unable to discover that he had such a contact.

Sincerely yours,

STANLEY A. CAIN,

Assistant Secretary for Fish and Wildlife and Parks.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., August 5, 1968.

Mr. PHINEAS INDRITZ,
Chief Counsel, Subcommittee on Natural Resources and Power, Committee on
Government Operations, House of Representatives, Washington, D.C.

DEAR MR. INDRITZ: Enclosed is a copy of the National Park Service's August 2 memorandum to me on the subject "NPS contact with Hoffman Associates concerning Hunting Creek." It includes copies of three items of correspondence. This is the material referred to in my July 17 letter to you. In your telephone call July 18 you requested that we provide copies.

Sincerely yours,

STANLEY A. CAIN,
Assistant Secretary for Fish and Wildlife and Parks.

U.S. DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Washington, D.C., August 2, 1968.

Memorandum:

To: Assistant Secretary for Fish and Wildlife and Parks.

From: Associate Director, National Park Service.

Subject: NPS contact with Hoffman Associates concerning Hunting Creek.

In accordance with your request, we have made a search of the files and find the following correspondence:

1. October 24, 1967—Acting Regional Director Horne to Edward S. Holland.
2. March 30, 1966—Assistant to the Secretary Walter Pozen to Howard P. Hoffman.
3. February 21, 1966—Howard P. Hoffman to Assistant to the Secretary Pozen.

Copies of each of these are attached.

J. E. N. JENSEN.

OCTOBER 24, 1967.

Mr. EDWARD S. HOLLAND,
110 North Royal Street, Alexandria, Va.

DEAR MR. HOLLAND: Mr. Bernard Meyer, Associate Solicitor for Parks and Recreation, has requested that we furnish you with the following plans:

NCR 117.5-680 and 117.5-681, revised applications for proposed bulkheads and fill in Hunting Creek by Howard P. Hoffman Associates, Inc., and Hunting Towers Operating Co., Inc., respectively.

NCR 117.5-708, National Park Service boundary, Hunting Creek, Jones Point Park, George Washington Memorial Parkway, U.S. Reservation 404V.

The two plans which are copies of the revised applications have been marked with a red line indicating the limit of U.S. interests in this area. The boundary map of that section of Jones Point Park was prepared by this office and has been marked in green to show the extent of Federal ownership to the low water line in Hunting Creek and the limit of U.S. interests.

Sincerely yours,

(Signed) ROBERT C. HORNE,
Acting Regional Director.

MARCH 30, 1966.

Mr. HOWARD P. HOFFMAN,
51 East 42d Street, New York, N.Y.

DEAR MR. HOFFMAN: We regret the delay in reviewing the brochures for the project at Hunting Creek transmitted with your letter of February 21. We appreciate your concern for cooperation with our programs. We have explained our position previously in regard to our responsibility for protecting the property rights required to carry out programs under our administration.

In reviewing your brochures, it is apparent that this section is one of the more strategic areas along the river which has a direct bearing on lands and programs under the jurisdiction of the Department. It is, in addition, a key site which controls to a large degree the environment of the southern entrance to the city of Alexandria. The work now underway by the Interdepartmental Task Force on the Potomac River Basin has recognized such areas of special

concern in the urban center of the metropolitan region. The plans being prepared by this group will hopefully contain guidelines for handling the planning and development of these sensitive areas.

We recognize that any development of the submerged lands in Hunting Creek will produce an impact on areas which have been dedicated to the public interest. Therefore, we hesitate to encourage continued discussions when such proposed developments infringe on these interests.

Thank you for your thoughtfulness in submitting the brochure and for your consideration of our position in this matter.

Sincerely yours,

W. POZEN.

Assistant to the Secretary.

HOWARD P. HOFFMAN ASSOCIATES, INC.,
New York, N.Y., February 21, 1966.

Mr. WALTER POZEN,
Assistant to the Secretary, Department of the Interior, 18th and E Streets NW., Washington, D.C.

DEAR WALTER: You are aware that we had a meeting, before the Christmas holidays, with the Department of Parks and representatives of your Office. It was agreed that we would prepare all the architectural plans and designs, together with pertinent data, and that Mr. Holland, our engineer and the highway engineer for the Department of Parks would collaborate on a feasibility plan to be submitted to your Office.

Enclosed herein I am taking the liberty of forwarding the presentation of the proposed project which our architects have completed. It is interesting to note the changes which have occurred in the 1½ years that we have been meeting; that is, the change of layouts in order to conform with the wishes of the Department of Parks as well as the Department of Interior. We are proud of this presentation and hope that you will feel as we do—that it can only add to the beautification of the Potomac River.

I have been following the controversies of the other two waterfront property-owners who were recently turned down by the city council in Alexandria. I believe, however, that we have worked closely with your Department and the Department of Parks to solve all the problems that were raised at these zoning hearings; such as, traffic congestion, layouts, height restrictions, conformed uses, and most important of all, the beautification of the Potomac waterfront. Furthermore, we are sacrificing approximately 380 units in order to conform with the wishes of the Department of the Interior and to justify your decision that this project will be an asset to the city of Alexandria and that this asset will be developed with private funds.

I am available at any time, and at a moment's notice, to visit with you and the Secretary, if you feel that this would be a necessary step after you have received the remainder of the report which is currently being prepared.

There is no doubt that the Corps of Engineers would welcome this project, as would the city of Alexandria and the State of Virginia.

We have tried to the best of our ability to conform to your wishes and we urgently request that you lift your objections at this time in order that we may proceed with construction.

I want to thank you again for all your courtesies and attention to this very pressing problem.

Kind personal regards.

Sincerely yours,

HOWARD P. HOFFMAN.

Mr. REUSS. Now, on April 8, 1968, you wrote a memorandum to the Director of the National Park Service. And in that memorandum you said that you wanted to clarify your role in the Hunting Creek controversy. Then I quote you:

I was told by the Bureau of Sport Fisheries and Wildlife that the original field report on the area under discussion was in weak opposition to the permit and that the fish and wildlife values claimed for the area were "upgraded" here in Washington.

Who told you that?

Dr. CAIN. I can't be positive of my memory.

Mr. REUSS. Do the best you can.

Dr. CAIN. I believe it was one of my staff assistants who is present here today.

Mr. REUSS. Who is that?

Dr. CAIN. Mr. James McBroom. May I describe him just very briefly for orientation. He served longer as the Assistant Director in the Bureau, in charge of river basins which does this work, than any other man has served. And he has been described by a former Secretary of the Interior as the "father" of the Coordination Act—I put quotation marks around that.

Mr. REUSS. You aren't sure, however, that it was Mr. McBroom that told you that?

Dr. CAIN. I am not positive. My memory isn't that good.

Mr. REUSS. You are familiar with the testimony of Dr. Gottschalk, of the Bureau of Sport Fisheries and Wildlife, yesterday?

Dr. CAIN. No, sir; I am not, because I haven't seen a transcript. I was engaged elsewhere, so I don't know what Mr. Gottschalk said.

Mr. REUSS. Mr. McBroom was not in the Bureau of Sport Fisheries and Wildlife as of last year, was he?

Dr. CAIN. Yes, he was, until—when I became chairman of this marine committee that I mentioned, I needed help. And I asked Director Gottschalk and he has lent me the services of Mr. McBroom for a period of about 9 or 10 months, now. And so he is on my staff as of now, lent from the Bureau, where he was an Assistant Director.

Mr. REUSS. Since you tell me you are not familiar with this testimony, Director Gottschalk testified that it is untrue that the original field report on Hunting Creek was in weak opposition to the permit, or that the values were upgraded here in Washington. In the light of his testimony on that, the information you apparently received was not correct, was it?

Dr. CAIN. May I suggest, this is a question of interpretation. And one of the things I did last night also was to look in part of this record book which I have before me, which purports to contain the various memorandums related to this case. And I find that—the first thing that I find with respect to this in terms of the date is April 6, 1964, a teletype from the Washington office to the regional office of the Bureau of Sport Fisheries and Wildlife.

Mr. REUSS. At Atlanta?

Dr. CAIN. At Atlanta. And if I may, I will read this teletype. It is short:

We understand Corps has issued a notice of application for permit to fill about 60 acres in mouth of Hunting Creek immediately south of Arlington, Virginia bordering the Potomac River. This area much used as waterfowl winter feeding grounds and is of great interest to Audubon Society of Washington, D.C.

Now, this was responded to the same day, April 6, by a return teletype from Atlanta:

Re Mr. White's teletype, application for Department of Army permit, Hunting Creek. We are advised by personnel, Virginia Commission of Game and Inland Fisheries, that waterfowl values of specific area are small; it is open water; and has little known fishery value. Bureau wetlands surveys maps also indicate insignificant waterfowl value in 1953. Mr. Treschman, Corps of Engineers, informs us that Virginia Legislature has ceded bay bottoms in question to develop-

ers, and that National Park Service has objected to issuance of permit because it infringes on their riparian rights to their Jones Point holdings. On the basis of our knowledge, we have not commented, and propose to take no further action on permit.

Now, that is April 6.

Mr. REUSS. From whom?

Dr. CAIN. Signed by a Mr. Towns, whom I do not know, from the regional office in Atlanta, Ga. Towns, I believe, was not the director, but one of the staff.

I believe that the first record that the committee has used is a communication from the regional office in Atlanta to the district engineers dated June 17.

Mr. REUSS. What year?

Dr. CAIN. 1964.

Mr. REUSS. And that was a strong opposition to the fill, was it not?

Dr. CAIN. This is a three-page letter signed by the regional director, Mr. Gresh.

Mr. REUSS. And it was strong opposition to the fill?

Dr. CAIN. Yes, indeed. And it ended up recommending against the granting of the permit.

Mr. Moss. Will you yield?

Mr. REUSS. I would be glad to yield.

Mr. Moss. I think in order to have the statement of Director Gottschalk in context with this discussion it would be well to refer to his statement of yesterday. He says:

When this particular application was brought to the attention of our field personnel situated at our regional office at Atlanta, the Atlanta office looked over their whole program and decided that they would not be in a position, because of the other requirements being made of their staff, to make a study of this project.

When our Washington office learned of this decision at the regional office level, the region was directed to make a study of this project.

The reason that this was done was because at this time, back in 1963 and 1964, there was an awakening of interest in trying to do something to improve the character and condition of the Potomac River. We were not certain that our Atlanta staff was fully appreciative of this increased interest, and therefore we felt that we should make certain that they did understand what was happening, and that we did have an obligation to make a report, and should go ahead and make a study and report.

Mr. REUSS. May I now call your attention to some subsequent language in your April 8, 1968, memorandum to the National Park Service:

When the matter—

And by this you meant the Hunting Creek matter—

was brought to my attention some months ago by the B[ureau of] S[port] F[isheries and] W[ildlife], I was informed that some of the Congressional objections had been withdrawn. John Dingell had done so in writing to the District Engineer of the Corps. It was implied that others were no longer opposed. It was at that point that I withdrew Interior's opposition, a decision based first on political considerations and second on the feeling that the values were not great in the area to be filled.

Now, you just testified a moment ago that this matter was brought to your attention by Mr. Pozen in Secretary Udall's office through the intermediation of a Mr. Bernie Meyer of the Solicitor's Office, who had a letter all prepared for you to sign, which you ultimately did sign, that being the October 10, 1967, letter. How do you square that

letter with your statement that the Bureau of Sport Fisheries and Wildlife had brought this matter to your attention?

Dr. CAIN. Well, certainly following October 10 there were several occasions in which there were discussions about the Hunting Creek matter. This doesn't say that that is the first time the matter was brought to my attention. I have testified—

Mr. REUSS. Just a minute. It does say. Your memorandum of April 8, 1968, says, "When the matter was brought to my attention some months ago by the BSWF"—then it goes on for a sentence or two, and then it says, "It was at that point that I withdrew Interior's opposition * * *."

Now, would you get out of that one?

Dr. CAIN. I don't think I can.

Mr. REUSS. Who were the congressional objectors whom you say withdrew their objection, other than Mr. Dingell?

Dr. CAIN. I do not know.

Mr. REUSS. You keep using the passive mood in your memorandum. "I was informed," you said. Who informed you?

Dr. CAIN. Let me try to explain that. And it may sound a little like I am beating around the bush; but when I first came on this job my very excellent secretary asked me if I wanted her to monitor telephone calls and keep records of all meetings I had. And I said no, absolutely not. And so in a circumstance like this, Mr. Reuss, I have no record of a very large number of meetings upon a great variety of subjects, as to who was present, or even exactly when they took place.

Mr. REUSS. Can you tell us the names of any Congressmen other than Mr. Dingell who withdrew their objections?

Dr. CAIN. I have no recollection that when such statements were made any Congressman was named. As I have already said, apparently the only one of which there is any record is Mr. Dingell.

Mr. REUSS. Mr. Dingell in withdrawing his objection did not swing to the other extreme and say that the permit should now be granted, did he?

Dr. CAIN. I don't remember the language of his communication with the Corps of Engineers, so I can't answer that. But I would think the implication was that if he withdrew his objection he wouldn't mind the permit being granted.

Mr. REUSS. Did you discuss this with Mr. Dingell?

Dr. CAIN. No, sir.

Mr. REUSS. You never have?

Dr. CAIN. No, sir.

Mr. REUSS. Now, a general word about your concept of your duties. In determining whether a given fill permit would hurt conservation, wildlife, and park values, do you go by a head count of Congressmen, or do you make a professional judgment, using the professional services of the Fish and Wildlife Service and the Park Service? Either way, it would seem to me, incidentally, you should not have written the letter of October 10, since a head count of Congressmen would have shown an overwhelming majority opposed to this, and continuing in their opposition. And the clear voices of the National Park Service and the Fish and Wildlife Service were opposed to it. But anyway, my question is: What is your philosophical methodology?

Dr. CAIN. Well, the first point is that the problem of permits very seldom comes to me. There was one case in Nassau County, Long Island, where the problem was elevated to my desk. And I made arrangements to go up to the site and meet with the people who were involved and look at it and examine the problem. And this involved a considerable estuary fill.

There is another case which was not a corps permit, but which had to do with a Federal Power Commission permit in South Carolina by the Duke Power Co., which I thought probably was sufficiently important so that I arranged for a contract to have an independent engineering study of the potentialities of the thermal effect of this plant before the permit was to be granted. These were cases in which they came to me, and I participated in them fully. But I can only think of these three cases in which I have been directly involved in permits. Excuse me. There was one with respect to a papermill in Georgia.

Mr. REUSS. Anyway, your philosophical method in dealing with these cases is not merely to take a head count of Congressmen; is that correct?

Dr. CAIN. Not at all. It didn't occur to me to do so. I wouldn't know how to go about it, incidentally.

Mr. REUSS. Congressman Saylor continued in his objection to the fill; that is correct; is it not?

Dr. CAIN. I don't know.

Mr. REUSS. You read his testimony Sunday night, and you have so testified.

Dr. CAIN. As of now, this is quite true.

Mr. REUSS. Are you suggesting that Congressman Saylor has flip-flopped and that at any time he was in favor of this fill?

Dr. CAIN. No, sir.

Mr. REUSS. Would you say that Congressman Saylor was a good conservationist?

Dr. CAIN. I think he is a magnificent conservationist. I have been many times before the committee he sits on, and I admire him very much.

Mr. REUSS. Now, in your April 8 memo you mention, as the first and decisive factor which caused your October 10 flip-flop, "political considerations." What were those?

Dr. CAIN. I have already described as well as I can—

Mr. REUSS. Just in a sentence, list the political considerations—put to one side the fact that John Dingell, along with 425 other Congressmen, was not protesting. The fact is that Congressmen Saylor, Moss, Reuss, and others were; and about 15 conservationist organizations were. The Fish and Wildlife Service was. The National Park Service was. What were the countervailing political considerations? This committee has a right to know. And you should tell us.

Mr. JONES. Mr. Reuss, he has been over that three times now. Let's go over it one more time.

Mr. REUSS. Once more.

Dr. CAIN. I can't amplify what I have said, Mr. Reuss; because this was a general use of the term. I have already explained, it certainly never entered my mind that this would be interpreted as it has been interpreted, as meaning Democrat versus Republican. For God's sake, this never crossed my mind.

Mr. REUSS. I realize that that was not on your mind. But are you able to tell us what these political considerations were which outweighed the factors I have described?

Dr. CAIN. Which were added to the other factors, a part of the general basis.

Mr. REUSS. The factors I have described are the opposition of Saylor, Moss, and Reuss; the opposition of the Fish and Wildlife Service and the National Park Service; and the opposition of a considerable number of conservation organizations. What were the political considerations which you said caused you to disregard these factors and overrule the previous position of the Department of the Interior and tell the fill to go ahead?

Dr. CAIN. I don't know how to clarify myself in this regard beyond what I have already said. I am sorry.

Mr. REUSS. Now, after your moment of truth on April 10, 1968, when you said, "I am now reversing the position that I took earlier," the matter was then shifted to Under Secretary Black, and your reversal of your reversal of your reversal was again reversed, and the Department said to go ahead; is that accurate?

Dr. CAIN. I think you have got at least one too many reversals in there. But nevertheless the—

Mr. REUSS. It ended up with the Department saying go ahead?

Dr. CAIN. It ended up with Mr. Black's letter; that is correct.

Mr. REUSS. And you were familiar with what was going on, were you, at that time that Mr. Black was writing his letter?

Dr. CAIN. Yes; I knew that it had been referred to him, of course.

Mr. REUSS. This meant, in effect, that Under Secretary Black was reversing the position that you had taken on April 10th when you said the Fish and Wildlife Service and the National Park Service are right and the fill shall not go on; is that correct?

Dr. CAIN. Yes, sir.

Mr. REUSS. Did you then go to Secretary Udall and say, "Mr. Secretary, I, supporting my constituent Bureaus, the Fish and Wildlife Service and the National Park Service, on April 10, 1968, determined that this fill should not proceed, and I have now been overruled by Under Secretary Black and I would like, Mr. Secretary, briefly to present my point of view and that of my constituent Bureaus, so that you, Mr. Secretary, may make the decision"?

Dr. CAIN. No, sir.

Mr. REUSS. In light of the fact that the first impetus for you to sign the October 10, 1967, letter came from the Secretary's office, and in light of the further fact that on October 10, 1967, the Secretary told you that he wanted your judgment to prevail in the matter, don't you think it would have been a good idea to have gone back to the Secretary following April 10, 1968, and said, "Look, Mr. Secretary, I have tried to exercise my judgment in my decision of April 10, 1968, but I have been overruled by the Under Secretary, and therefore, with all due respect to the Under Secretary, I would like to present you, Mr. Secretary, my reasons for believing I was carrying out the mandate which you, Mr. Secretary, gave me when I made my April 10, 1968, decision?" Why didn't you do that?

Dr. CAIN. I did not go back to the Secretary under those circumstances and perform as you have described. What I called the machin-

ery of agreement between Secretary Resor and Secretary Udall had been put in this operation. I had perfect confidence in Under Secretary Black. I know that he is in constant communication with the Secretary. The Secretary had, as you said, in effect, at an earlier period of time, left the problem to me. But that had been superseded by the action he concurred in, the formal action between these Secretaries. He is a very busy man, and I don't go to him if I don't feel there is a need. And in this case I didn't feel any need to explain this.

Mr. REUSS. All right, then, let me get to the final subject I have to raise with you. I was quite impressed yesterday when Director Gottschalk vigorously backed up the lifelong career biologist, Dr. Uhler, on the quality of the expertness which Dr. Uhler had brought to bear on the Hunting Creek problem. You are familiar with the reports of Dr. Uhler over the years, particularly in 1964, and this February—you must be familiar with them because you have already testified that Sunday night you read the Saylor-Reuss testimony, and Dr. Uhler's reports are included in that testimony. So you have seen that, have you not?

Dr. CAIN. That is right; one such document I have seen.

Mr. REUSS. Well, if you read the Saylor-Reuss testimony you saw two such documents—one in 1964 and one in 1968.

Dr. CAIN. Well, perhaps I did.

Mr. REUSS. Now, you have dismissed the expert report of the Fish and Wildlife Service on two grounds, I think—that it is not scientific, that there is no real evidence of diving ducks in the Hunting Creek estuary, and also that the observations with respect to Dyke Marsh are just conjecture. That is what you have testified to earlier this morning, is it not?

Dr. CAIN. I can't at the moment lay my hands on the—

Mr. REUSS. I have made a note of it, and if you find that I have incorrectly recapitulated what you have said, you can make that known to the committee.

Now, Dr. Uhler has been down many, many times over a period of more than 30 years to Hunting Creek, and specifically on numerous occasions from 1964 to the present time, during the season—basically December–February—when the diving ducks are there, and he has constantly counted, found, observed, photographed, and otherwise statistically summarized the numerous diving ducks there. I find it, very frankly, a little uncharitable of you, who have seen fit to overrule Dr. Uhler and the Fish and Wildlife Service on the basis of your own "general feeling," without ever having been out in the Hunting Creek estuary—I find it a little uncharitable of you to dismiss Dr. Uhler's statistical methods. And I ask you what the poor man should have done in the last 40 years to have been a better expert on Hunting Creek than he is.

Dr. CAIN. I am sorry, I can't lay my hands on the document. I could explain it a little easier.

But the only quantitative data with respect to ducks is that table of 5 years, I believe, Audubon Christmas counts, is that correct?

Mr. REUSS. On many other occasions and in many other reports Dr. Uhler made estimates, as I did. I have been down there, and Dr. Gottschalk has. I can tell the difference between 10 buffleheads and one bufflehead on the water if I am out on the water among them.

What is it you demand of your people? It seems to me Dr. Uhler is a good and conscientious servant, and that his work ought to be praised rather than disregarded.

Dr. CAIN. I would like to explain the attempt I was making with respect to the validity of the scientific data. And I can speak only of that one table which had 5 years of, I presume, December observations. So in this sense they are comparable.

The total in those 5 years had a range of variation of less than a thousand total in 1 year to over 10,000 total in another year. And the variability with respect to species is greater. The point I tried to make there is that if you attempt to take such a small sample with such great variability, and try to get a mean figure as to the average use, you have got such a wide variation that the probable error is extremely great. This is a technical point.

Mr. REUSS. Let me interrupt you. You came to this conclusion last October, did you?

Dr. CAIN. No, sir; I had not seen the report last October.

Mr. REUSS. When did you come to it?

Dr. CAIN. Well, the first time I saw Dr. Uhler's—this particular document of Dr. Uhler—and I looked at that table.

Mr. REUSS. When did you see it?

Dr. CAIN. Frankly, I don't remember the date, but I saw it before it appeared in this testimony you are talking about.

Mr. REUSS. Did you not see it prior to the February 21 hearing in Alexandria, at least at the time of your lunch on February 10 at the Cosmos Club with Dr. Uhler and the other people?

Dr. CAIN. He had a whole briefcase full of data with him, and I am not sure now whether or not this particular table was before us. We didn't discuss this particular table.

Mr. REUSS. If you were going to have all these methodological doubts, would not it have been a good idea to have told Dr. Uhler wherein you disapproved of his scientific judgment and enabled him, this winter before the ducks disappeared and the permit was granted, to go out and do it your way?

Dr. CAIN. I think the purpose of this luncheon that has been mentioned, when these gentlemen were my guests, was for me to get acquainted with Dr. Uhler. I believe I had met him in passing once before. We had a very pleasant time, as a matter of fact, talking about these problems in general. But it was in no sense a decisionmaking situation. It was a social one, if you will. And may I add also—

Mr. REUSS. Your answer is not responsive to my question, and I shall repeat it. Would it not have been a good idea, if you disapproved of Dr. Uhler's methodology, to have him restudy the area for the umpteenth time this winter, while the ducks were there, before action was taken to grant the permit?

Dr. CAIN. I don't think that to have added one more census observation would have improved the data significantly. I don't want to be misunderstood—there is a validity to observational data of this sort. I was trying to make a different point. Observational data of this type, when there is great variability, requires a long series before they get what is called a statistical validity. I have a second objection to them, that there is nothing in these observations that defines anything but the area as a whole, including Dyke Marsh and the water of the Potomac in this Hunting Creek Bay area.

So you see it isn't limited either geographically precisely or interpretable statistically precisely. And yet they are valuable observational data, I am not denying that.

Mr. REUSS. In view of your low opinion of the Uhler report, why was it that on April 10, 1968, after you had made a full and comprehensive review of the matter, you determined that the public interest could only be protected by the denial of the permit?

Dr. CAIN. I explained that this was my one flip-flop, incidentally. I haven't done two, yet. I explained that that reversal, if you please, was made on the unanimous advice of my staff for nonscientific, non-technical reasons.

Mr. REUSS. Thank you, Mr. Chairman.

Mr. JONES. Mr. Gude.

Mr. GUDE. Thank you, Mr. Chairman. Dr. Cain, when you visited the Hunting Creek area—I believe you said you were out there within the last several weeks—did you go out on to Jones Point, out to the old lighthouse?

Dr. CAIN. Previous to the arising of this problem I had not stopped specifically in this area to look around. Sometime in the early part of this year, I did actually go out there and park the car. I walked around the existing fill in front of the Hunting Towers, went on out what is left of that old marina, and went on around the shore. And then this last Sunday, just to get the feeling of the area, I drove out once more, did the same thing, and in addition went every place you can go by pushing a car on Jones Point, and I did walk to the shore in several places; yes, sir.

Mr. GUDE. And you got out to where the old lighthouse was?

Dr. CAIN. Yes. This was Sunday, late Sunday. I was not looking for ducks, because I knew they wouldn't be there. Actually I was looking for the aquatic vegetation which I couldn't see last winter, because it wasn't up.

Mr. GUDE. I was thinking more from the practical standpoint, and the view from the area, because I was very impressed. And looking at the map out there—I was out at the lighthouse—I thought that if the fill area, which is in orange on the chart there, went into high rise it would make quite an impact on the future park. It is true that there are three high rises there now—the Hunting Towers—but they are away back inland there, they are inshore.

Dr. CAIN. It is certainly true on the south part, around one southeast corner. Any place on the shoreline you would certainly see any construction in that fill. There is no question about that.

Mr. GUDE. In your decision on the fill area that is in orange—and that was the area that was involved in your October 1967 decision—did you take into account that there was this question, which you alluded to before, of a creeping movement of highrise across the land, so that if you granted this, then that is ample reason to grant the next segment, and so on?

Dr. CAIN. I think I would subscribe to the general proposition that one action of a general kind tends to make it easier to form a similar action of that kind. However, I think in this particular case we need to look around the shoreline all the way to Mount Vernon where, with very minor exceptions, it is Federal property now. So this area, if the permit stands, would be developed; that is true. But when you go on

down, I think there is only one piece of private property, not counting that old subdivision development, between there and Mount Vernon. So you can't get that lower shoreline so that it looks like Rosslyn or something. This is not possible.

Mr. GUDE. Then your feeling would be that in the granting of this particular segment you would have no objection to granting the entire area—I think it was under the original request—the entire triangle?

Dr. CAIN. I don't know about the initial request, because by the time it got to me it had been cut down considerably.

Mr. MOSS. Would the gentleman yield?

Mr. GUDE. Yes.

Mr. MOSS. I submitted evidence for the record yesterday that would indicate that as of January 1966, there were plans to develop all the area in the submerged land in front of Hunting Towers; and that there is still a pending application. And that is in the record as an exhibit.

Mr. GUDE. But this permit application had not come to your desk until October of 1967; is that correct?

Dr. CAIN. That is correct.

Mr. GUDE. That is the first time you were aware of this request?

Dr. CAIN. Yes, sir.

Mr. GUDE. Then your rationale for personally agreeing to the granting of the permit for the orange area would extend to the entire area?

Dr. CAIN. May I refer to the other map? Do you mind?

I believe this corresponds. There is a question—and this is the one that initially concerned the National Park Service—as to where the Federal riparian ownership really stops or commences. And this goes, I think, to the question of where the 0-0 line is. That is the mean low water line. I am not able to testify expertly on this, but I again have been told, and believe—and there is that line here—and if this is recent data, this is an area that has been subject to fill and sedimentation. Then certainly this tract, part of which is federally owned, couldn't be handled like that one.

Furthermore, I understand that in this long triangle they dropped back to this gray line. So I believe we are talking about these two parallel polygons here, one of which is impinged upon by Federal ownership.

So I am unable to forecast what might happen in the future. But I think your point is, if this fill is granted according to the orange patch, it would be much easier, I would suspect, to get a permit for additional fill to the north of that.

Mr. GUDE. To the north of that. But the two polygons to the east of it are actually very similar to the orange polygon, except for the very small portion in the upper lefthand corner of the orange polygon. That would be tidal water, shallow—

Dr. CAIN. I understand that the two applicants have dropped interest in the eastern part. But now I understand from Mr. Moss that this isn't necessarily so. I am not an expert. I can't testify on this.

Mr. GUDE. Well, for the time being they have evidently prudently dropped their interest in those two to the east. But my point was not so much as to what the applicants were thinking, but as to your feeling as an expert—a professional—in this field, that the rationale for granting the orange area would apply also to all the other three segments, if it came to your desk.

Dr. CAIN. No. There is certainly a difference as to the degree of the intrusion on the Potomac between the long pie-shaped total area and the shore. There is some difference there. I have already described a difference with respect to the block just north of the orange-colored area.

Mr. GUDE. In regard to the wide fluctuation of the number of waterfowl that utilize this and the area down through Hunting Creek during the winter, wouldn't it be true that when the population gets to the very upper limits—for example, in December of 1961 there was a count of better than 11,000 waterfowl. Would this mean that the fluctuation is controlled to a certain extent by the feeding area available for the waterfowl?

Dr. CAIN. I am sure that there are many factors that influence the annual differences in numbers of birds in this area. I have no information as to the importance of subtracting, in this case, 9½ acres from the total acreage that is involved between here and the south end of Dyke Marsh, including all of this Hunting Creek Bay. This is a very small percentage of that total acreage. And I imagine 11,000 ducks would still be able to feed if they wanted to stay there, with that 9 acres gone. I don't know how to measure the impact of this particular fill on the total area and the total number of ducks.

Mr. GUDE. I think Dr. Uhler's testimony was to the effect that the area involved did provide food for waterfowl. And I think when you went through this with Mr. Reuss—

Mr. MOSS. Mr. Reuss was accompanied by Dr. Gottschalk, I believe. Dr. Gottschalk testified that he had witnessed as many as 50 ducks on some occasions.

Dr. CAIN. In the region.

Mr. MOSS. In the general region.

Mr. GUDE. I guess it is a question of how much you chip away at some of these natural resources. This is what disturbs me.

Mr. MOSS. Would you yield briefly?

Mr. GUDE. Yes.

Mr. MOSS. Again, Dr. Cain, I put a question to General Woodbury yesterday regarding the upper portion. And I asked: "What was your understanding on the upper half of that 38 acres, or approximately half—it is a little more—had they abandoned the application for permit then?" The general replied:

The applicant, as I understand it, has never withdrawn his application, but when the applicant for the southern part renewed his interest in getting his application acted upon, the individual representing the applicant also, as I understand, represents the applicant for the upper permit area, and it is my understanding from the district engineer that he advised the district engineer that they only desired to pursue the lower application at this time.

I then submitted for the record the 1966 plans which show the development of the entire area outlined in green, in fact a little more than the entire area, because I think the area outlined in green is 493 feet from the Virginia-Maryland boundary, whereas the 1966 plan shows development to within 93 feet from the Virginia-Maryland boundary.

I thank the gentleman for yielding.

Mr. GUDE. I think your point is well taken—that following this 9 acres it could have ended up in taking 36 acres, and then there is no doubt that a considerable part of that area would have been dis-

turbed; not only the 36 acres involved in the construction of the bulkhead, but also the area between the north line of the entire fill tract and the shoreline of Jones Point would be subject to more filling in and loss to wildlife. And so really we are talking about a very extensive area, if you follow this thing to its logical conclusion. I thank you, Mr. Chairman.

Mr. JONES. Mr. McCloskey.

Mr. McCLOSKEY. Thank you, Mr. Chairman. Dr. Cain, I would like to go to the questions of law that are involved here in the Fish and Wildlife Coordination Act. Prior to that act, in 1958, the Corps of Engineers had some provision to permit the filling in of navigable waters, did it not. You can answer it yes or no.

Dr. CAIN. The simplest answer is yes.

Mr. McCLOSKEY. And in 1958 in effect the Bureau of Sport Fisheries and Wildlife was interposed; so that when fill permits were requested, the Department of the Interior would make a study, and with a view to the conservation of wildlife resources, make reports as to what the effect of that fill would be on wildlife resources. Is that not correct?

Dr. CAIN. Right.

Mr. McCLOSKEY. Then that is your responsibility, I take it, as Assistant Secretary, to make these reports at this time; is that correct or not?

Dr. CAIN. About two steps removed. May I explain? Within the purview of Sport Fisheries and Wildlife these reports are prepared by the personnel in the river basin division, and they are under an assistant director to the director. Now, in a more general sense at the secretarial level, this Bureau falls within my program area. So I have the responsibility, if a problem is put on my desk because it cannot be solved down below.

Mr. McCLOSKEY. Are you familiar with section 662, title 16, United States Code, of the act?

Dr. CAIN. I have read it, but I do not remember now what it says.

Mr. McCLOSKEY. It states, in effect, that whenever the waters of any stream are proposed to be impounded by any public or private agency under Federal permit or license, such a department or agency shall first consult with the U.S. Fish and Wildlife Service. And that today is the Bureau of Sport Fisheries and Wildlife, is it not?

Dr. CAIN. The Bureau of Sport Fisheries and Wildlife is one of the two Bureaus in the Fish and Wildlife Service. The other Bureau is the Bureau of Commercial Fisheries. And they often have mutual problems.

Mr. McCLOSKEY. Now, section 662(b) of title 16, United States Code, states:

In furtherance of such purposes, the reports and recommendations of the Secretary of the Interior on the wildlife aspects of such projects . . . based on surveys and investigations conducted by the United States Fish and Wildlife Service * * *

And then it goes on to say that the report and recommendations of the Secretary, based on those surveys and investigations, will be made to the Corps of Engineers; is that not correct?

Dr. CAIN. Yes.

Mr. McCLOSKEY. Now, in your letter of October 10, 1967, Dr. Cain, did you base any part of that letter on surveys and investigations conducted by the U.S. Fish and Wildlife Service?

Dr. CAIN. No.

Mr. McCLOSKEY. You did not comply with the law in that report of October 10, then, did you, sir?

Dr. CAIN. The law—

Mr. McCLOSKEY. Did you or did you not?

Dr. CAIN. I did not.

Mr. McCLOSKEY. You did not?

Dr. CAIN. It had been complied with by the earlier action of the Bureaus long before I was Assistant Secretary.

Mr. McCLOSKEY. This was a new report, though; was it not, sir? In 1964, when the Department had made its report to the Corps of Engineers, it had included a report based on the surveys and investigations, and it had been opposed to the fill; had it not?

Dr. CAIN. Right.

Mr. McCLOSKEY. Now, when you reversed that decision with a new report of October 10, 1967, was that report based on surveys and investigations?

Dr. CAIN. It was not.

Mr. McCLOSKEY. Now, going on to February, when the proposed hearing was held before the Corps of Engineers: it was your action, individually and personally, which caused no such investigations and reports to be presented at that meeting; was it not?

Dr. CAIN. If you mean, did I order personnel of the two Bureaus not to testify, that is not true. I stated that we had discussed it and decided that there was no need to appear at this hearing.

Mr. McCLOSKEY. Now, when you made that decision, and when you wrote your letter of January 30 to the Corps of Engineers stating, "we do not need to present testimony," were you familiar at that time with the burden of the law upon you to base your report on investigations and surveys conducted by the Fish and Wildlife Service?

Dr. CAIN. I was familiar with the Coordination Act, but I did not interpret it in the way you are now interpreting it.

Mr. McCLOSKEY. When did you first interpret your duty, sir, as based on the report of surveys and investigations?

Dr. CAIN. Well, after the October 10 decision, when there had followed many discussions of this problem, I did ask the Director of the Bureau of Sport Fisheries and Wildlife to have two or three of his river basin type personnel go take a new look at it. I did do that. And they went out there. They made no new studies, but they looked around and made an observational report, which in effect was identical in spirit and meaning with the 1964 report.

Mr. McCLOSKEY. Then let me go to April 8, 1968. On April 8, you renewed your interest. And I quote from your letter of April 8:

I will be happy to reverse myself if B[ureau of] S[port] F[isheries and] W[ildlife] makes a strong case and if N[ational] P[ark] S[ervice] can give me evidence of the important values * * *.

Now, I take it, sir—

Dr. CAIN. This was my slip up; yes.

Mr. McCLOSKEY. You had not flip-flopped yet. This was on April 8 when you said you would change if a strong case could be presented to you. And I assume that that case would be based on investigations and surveys as required by the law. Now, sir, between April 8 and April 10, did the Bureau of Sport Fisheries and Wildlife make a strong case to you for that change?

Dr. CAIN. Dr. Gottschalk reported back the results of the persons who went out there first. And that is a memorandum report.

Mr. McCLOSKEY. In your opinion, was it a strong case or not, Doctor?

Dr. CAIN. In my opinion, it was a reiteration of the 1964 case.

Mr. McCLOSKEY. Will you answer the question? Was it a strong case or not?

Dr. CAIN. Yes; it was strong in terms of their language; that is correct.

Mr. McCLOSKEY. It was a strong case with a view to the conservation of wildlife resources; was it not?

Dr. CAIN. Yes.

Mr. McCLOSKEY. And you would not have flip-flopped had not a strong case been made to you; would you, sir?

Dr. CAIN. No. I described my change on April 10, not as having been based on the reiteration by the Bureau of Sport Fisheries and Wildlife of their older position, which I am not questioning, but on the unanimous advice of my staff that I would do so. And this again was not on the basis of field study whatsoever. It was on another basis.

Mr. McCLOSKEY. Dr. Cain, in your memorandum of the 10th, you stated that you were changing your position "on a basis of such statements from the Bureau, based on the recent report by personnel from the Bureau and the National Park Service, such as the diversity of the wetland habitat provided by Dyke Marsh and Hunting Creek would be altered by the project and its resultant development to the detriment of waterfowl and other aquatic birds * * *. We are concerned with the effects the proposal will have on the overall environment, the long-range scenic qualities of the river shoreline, and the outlook from the Federal parklands."

Now, all of these comments were based on surveys and investigations made by personnel under your direction in compliance with the law; were they not?

Dr. CAIN. Yes.

Mr. McCLOSKEY. On April 10, then, Dr. Cain, when you prepared this memorandum based on studies and investigations, you apparently called the Corps of Engineers to advise them of your change of position. And on April 16, 6 days later, you sent to the Corps of Engineers a report based on surveys and investigations; is that correct?

Dr. CAIN. Well, based on my changed information, yes, of which this was part.

Mr. McCLOSKEY. Then I want to refer you to the next action of your Department, which was the letter of Under Secretary Black, which is dated, I believe, April 26, 1968. And in that letter—have you read that letter, Dr. Cain?

Dr. CAIN. Yes, sir.

Mr. McCLOSKEY. Does that letter comply with the law by including a report based on surveys and investigations?

Dr. CAIN. Certainly there were no new surveys or investigations made to my knowledge.

Mr. McCLOSKEY. That letter does not refer at all to the surveys and investigations made under your direction in the preceding month, does it?

Dr. CAIN. I do not remember.

Mr. McCLOSKEY. Can you refer to it in front of you, sir? I want to quote to you the second to the last paragraph on the second page:

As to the damage to conservation values, I have received and considered the views of people in and out of this Department who entertain concern on this point. I have also made a visual inspection of the affected area in the company of technical experts on the subject. While there is no doubt of the opinions reached by those concerned with the conservation impact, their position is founded on subjective judgment considerations rather than any factual evidence which would support valid objection by this Department.

Now, I want to ask you, Dr. Cain, did Mr. Black have in front of him when he prepared that letter the factual investigations and surveys which were made under your direction?

Dr. CAIN. I do not know what he had in front of him, but I would assume that he had this record book from the Bureau of Sport Fisheries and Wildlife. I would suggest that a question like this be asked Mr. Black.

Mr. McCLOSKEY. To your knowledge, did the Department of the Interior ever comply with section 662(b) in making its report based on investigations and surveys?

Dr. CAIN. I think the Department complied in the original studies and reports that were done by the Bureau of Sport Fisheries and Wildlife sometime before, yes.

Mr. McCLOSKEY. That was in 1964. But no report was made in 1968 based on surveys and investigations, was there, sir?

Dr. CAIN. No.

Mr. McCLOSKEY. No further questions.

Mr. JONES. Mr. Secretary, the memorandum of understanding between the Secretary of Interior and the Secretary of the Army failed to limit the time within which to make comments or withdraw the objections that had been previously made by the Department. Do you not think it would be wise to change that memorandum so that the interested people can petition the Department of Interior and the Department of the Army and make known their opposition? Because, in this instance, they had no opportunity. The Department had taken a position, a position similar to that of your predecessor, the Secretary, and all the people who were involved in it took that at face value as being a continued position. And now we come to a change, and nobody representing the public interest had an opportunity to express dissent or objection to it to your Department.

Do you not think it is necessary to put some finality on it? There has got to be some *res adjudicata* somewhere along the line. And it seems to me that there ought to be some understanding that once a decision is made it will be continued, unless there are extraordinary intervening circumstances that would require a change.

Dr. CAIN. The concerned Bureaus usually do appear and testify at Corps of Engineers hearings.

Mr. JONES. I understand.

Dr. CAIN. And I understand this is an exceptional case in which, having discussed the matter, we decided there was no need to appear in this particular case.

Mr. JONES. The understanding was that you had reversed yourself. I would think if I were to call you up, Mr. Secretary, and you told me that you had made a decision, I would assume that that decision would

have prevailed for some duration. It would not be as impulsive as to be "yes" today and "no" tomorrow. And that is what this case has amounted to.

Dr. CAIN. Well, I know a good deal has been made of this. But I have also explained that my initial decision expressed in the 10th of October memorandum is the decision that I now have—that is compatible with the position of Under Secretary Black. And I have endeavored to explain my flip-flop.

Mr. JONES. As I say, in making that decision some time should have elapsed so that the parties concerned with public interest could have an opportunity to discuss the matter in the proper forum, because you might change your mind again. The idea is that once a decision is made—and that decision has lasted from 1954 until the latter part of 1967—it would be an ample warning, it would seem to me, that the Department would not make a change in the decision that they so steadfastly held to.

It seems to me—and I will suggest to the Corps of Engineers—that we should try to do something to get better machinery to protect the public interest in the decision arrived at through the understanding of the memorandum of July 13, 1967.

The committee will stand in recess until 1:30.

(Whereupon, at 12:25 p.m., a recess was taken until 1:30 p.m., of the same day.)

AFTERNOON SESSION

Mr. Moss (presiding). The committee will be in order. Will you return for just a few minutes, Dr. Cain?

I would like to ask you, looking now at the memorandum of July 13, 1967, at No. 5, of the section entitled "Procedures for Carrying Out These Policies"—the policies having been stated in the two preceding paragraphs—will you tell me what the "unresolved substantive differences of views" between you and the Corps of Engineers were at the time that you referred this matter to Under Secretary Black?

Perhaps if I lay a predicate for this it would be clearer. I can understand that at this time you were engaged in an interesting controversy with yourself.

STATEMENT OF DR. STANLEY A. CAIN—Resumed

Dr. CAIN. Yes, sir.

Mr. Moss. But I cannot find anywhere in the record of the testimony any evidence of a controversy with the Corps of Engineers.

Dr. CAIN. I think I can explain. The memorandum of understanding between the two Secretaries that you have referred to was designed to operate as follows: These questions as to permits are first considered at the field level—that is, the region or district which the application concerns. And there you have Corps of Engineers representatives on the one hand, and you have Interior representatives on the other. Now, the districts and regions do not necessarily coincide completely geographically, but they do coincide with respect to this spot. This mechanism is designed with, first, an effort to reach an understanding or an agreement with respect to a permit at the field

level. And the second step, if this is not accomplished, is to move it to the Chief of the Corps of Engineers and the Under Secretary.

So the situation we have got here is an anomaly, and that is that the matter was referred to me. It is really an anomaly with respect to this mechanism, if the mechanism is working as it does routinely in most of the cases.

Mr. Moss. Really it was not handled in accordance with the July 13, 1967, agreement.

Dr. CAIN. That is correct. That is what I meant by anomaly. It was outside of the ordinary procedure here.

Mr. Moss. Was it perhaps, as reported, I think, by you to members of this subcommittee staff, an act of consideration on the part of General Woodbury to see if he could get you off the hook on this?

Dr. CAIN. Well, sir, I have an explanation of that particular language. And I think I can make it without referring to these notes of mine.

After this date of October 10 in the late evening I dropped by the Bureau of Sport Fisheries and Wildlife. And John Gottschalk was still there. And I informed him that I had signed this letter after talking in the Secretary's office.

And then he suggested, let us call the corps. And we put a call through for General Noble. And General Woodbury answered. And I talked to General Woodbury and explained the situation. And he said in effect, what you have said—according to the mechanism this unresolved problem should be between the Chief of the Corps of Engineers and the Under Secretary. I will send the permit to Under Secretary Black. Now, in talking to Mr. Indritz and the gentleman who accompanied him, I used the language that "this got me off the hook."

Mr. Moss. Mr. Secretary, what was the unresolved problem? You had just informed the general that you had resolved the problem.

Dr. CAIN. All right. This again I believe is a semantic difficulty. And that is, the Bureaus were still in their opposition—

Mr. Moss. And so were you. And you had taken that position.

Dr. CAIN. I had earlier taken it. And then I had gone to the position of recommending that the permit not be given.

Mr. Moss. At the point of phoning General Woodbury and Dr. Gottschalk, you and the Bureau of Sport Fisheries and Wildlife and the Park Service were all in agreement that the permits should not be issued. And so at that point you called the general to inform him of this fact—not of a disagreement, but of an agreement.

Dr. CAIN. This is the April 10 situation.

Mr. Moss. And then what did the general indicate—that he wanted a different result and, therefore, perhaps he should seek to go to the Under Secretary?

Dr. CAIN. No; he did not indicate any such thing to me. Because of my record of having been in one position and then taking a second position, he said that this permit problem, following the Resor-Udall understanding, should be passed up to the next level.

Now, this was interpreted as General Woodbury seeking to find somebody in Interior who would support the granting of the permit. This is not the impression I got from the conversation.

Mr. Moss. It is the only possible conclusion that I can form from the testimony which has been given to this committee, because this

was not an "unresolved substantive difference of views" between the corps or the Department of the Army and the Department of the Interior, or the constituent agencies of the Department of the Interior. The matter had been resolved, and you had just informed the general that it had been resolved, there was unanimity now. And you concurred—

Dr. CAIN. I had gone back to the Bureau's decision; yes, sir.

Mr. Moss. Correct. And so to prove it then from that position, which was at that point very clear and unequivocal, the general said, "let us take it to Under Secretary Black." But take what?

Dr. CAIN. I cannot explain to you what may or may not have been in General Woodbury's mind. But I do not think we can neglect to recollect the history of this, which is confusing. I confused it.

Mr. Moss. Sir, I could not agree more.

Dr. CAIN. And, sir, I think he had every reason to want to move it up to the next step in order to be sure of what Interior's position is. I am saying this in defense of General Woodbury at detriment to myself. You do understand this, do you not?

Mr. Moss. After 20 years as a legislator when I get agreement I move in close. I do not go seeking another way of creating further confusion.

Dr. CAIN. I am sorry, I cannot explain General Woodbury's position for you.

Mr. Moss. It also required your concurrence with the Under Secretary, did it not? He did not insist on taking it to the Under Secretary?

Dr. CAIN. General Woodbury said he would.

Mr. Moss. He asked you if you would like him to, did he not?

Dr. CAIN. I do not know.

Mr. Moss. That is certainly the connotation I would place upon your statement to Mr. Indritz.

Dr. CAIN. He very well could have. I think my statement that this kept me "off the hook," which was not true, probably implies that I would like to see it moved up to the next level. But as to the exact words, I cannot tell you.

Mr. Moss. I have no further questions. Mr. Vander Jagt, any questions?

Mr. VANDER JAGT. No questions.

Mr. Moss. Mr. Indritz?

Mr. INDRITZ. Dr. Cain, as the Assistant Secretary within whose program area the National Park Service comes in, were you familiar with the 10-year development program for the Park System of the District of Columbia?

Dr. CAIN. Not in any detail. I had never at that time seen tentative plans for Jones Point, for example. I did see them later. I believe Mr. Horne brought them over to me. I saw them later.

Mr. INDRITZ. At the time you wrote your letter of October 10, 1967, had you been aware that the Regional Director of the National Capital Region of the National Park Service had publicly stated that—I and I will quote from a letter dated January 11, 1966, signed by the then Regional Director, T. Sutton Jett, addressed to Mr. A. Z. Shows, of Alexandria, Va., in which Mr. Jett stated:

* * * it appears that our only course of action, if we are to control the filling operations in Hunting Creek, is to seek specific authority and appropriations of

funds in order to acquire interest in the property affected. This eventuality is being considered in the preparation of our 10-year development program for the Park System of the District of Columbia.

Were you aware that the Park Service was preparing to recommend the appropriation of funds to purchase the fill area in Hunting Creek, if it were necessary, in order to have it as a part of its 10-year development program?

Dr. CAIN. I was not. As a matter of fact, this instant is the first I have ever heard of that.

Mr. Moss. I suggest that that letter be included in the record at this point. Is there objection? Hearing none, it will be included.
(The letter referred to follows:)

DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
NATIONAL CAPITAL REGION,
Washington, D.C., January 11, 1966.

Mr. A. Z. SHOWS,
Alexandria, Va.

DEAR MR. SHOWS: The Secretary of the Interior has requested that we express his appreciation for furnishing us copies of a letter from Mr. Harald J. Sundstrom and a newspaper clipping concerning Hunting Creek in Alexandria, Va.

As we have stated before, we regret that our lack of authority limits any action which we can take to prevent the filling operation that has been underway for some time at Hunting Creek, west of the parkway. In the case of the proposed filling of the area of the river in front of Hunting Towers Apartments, our position has been, and still is, that such an operation would encroach on the riparian rights of the United States, and we opposed to this filling, as are other Federal agencies concerned with conservation programs.

We appreciate the support of citizens, such as yourself, who share our objectives for preserving natural values in the metropolitan area. At all times we solicit advice and suggestions from anyone who has contributions to make. At the present time it appears that our only course of action, if we are to control the filling operations in Hunting Creek, is to seek specific authority and appropriations of funds in order to acquire interest in the property affected. This eventuality is being considered in the preparation of our 10-year development program for the Park System of the District of Columbia.

Sincerely yours,

T. SUTTON JETT,
Regional Director.

Mr. INDRITZ. Dr. Cain, have you discussed with the Department's lawyers the details as to the questions of riparian rights affecting the Government's interest in the Hunting Creek area?

Dr. CAIN. No, sir. There was in my office, when Mr. Horne and others came in with maps, a discussion as to where this so-called zero-zero line is, which I believe is the mean low tide line which would define the outer boundary of Federal ownership. There was discussion of that. There was speculation as to whether it had changed since the last map which showed such a line. And there was some talk about reexploration of it. But this was with National Capital Parks people, not with legal people. I do not believe Mr. Horne is a lawyer.

Mr. INDRITZ. Had the Office of the Solicitor prepared a legal opinion on the question of riparian rights of the Government in relation to Hunting Creek?

Dr. CAIN. Not to my knowledge.

Mr. INDRITZ. Could you ascertain from the Solicitor's Office if there was such a memorandum prepared, and if there was, supply it to the committee?

Dr. CAIN. I would be glad to do so.

Mr. INDRITZ And if there was not such a memorandum previously prepared, please have the Solicitor's Office prepare such a memorandum in order to determine the outermost limits of the Government's possible riparian rights under the laws of the State of Virginia with respect to the Government's interest in Hunting Creek.

Mr. MOSS. The record will be held open at this point to receive that information. It is of the utmost importance that it be expedited.

Dr. CAIN. I will request this of the Solicitor.

(Subsequently, Assistant Secretary Cain supplied copies of the following three memorandums by the Solicitor's Office, Interior Department, dated May 18, 1964, June 25, 1964, and April 8, 1965:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., May 18, 1964.

MEMORANDUM

To: Associate Regional Director, National Capital Region.
From: Assistant Solicitor, National Parks.

Subject: George Washington Memorial Parkway—Jones Point Park—riparian rights in Hunting Creek.

We have considered your memorandum of April 20 which submitted certain papers relating to plans for the construction of bulkheads and the placement of fill in Hunting Creek. We note it is your belief that the area proposed to be filled is within the area subject to the riparian rights of the United States.

The correspondence attached to your memorandum indicates that two private companies; namely, Howard P. Hoffman Associates, and Hunting Towers Operating Co., Inc., have made application to the Corps of Engineers for permission to construct a bulkhead and place fill in Hunting Creek at Alexandria.

As the owner of land fronting on Hunting Creek, the National Capital Region has notified the Corps of Engineers that it is opposed to the granting of these permits which would allow fill to extend across the frontage of the park property and interfere with its riparian rights.

It also develops that an act of the Virginia Assembly, chapter 546, approved March 31, 1964, authorizes the Governor and Attorney General to convey to Francis T. Murtha, trustee, title to the bed of the river in the area proposed to be filled by the above-mentioned applicants. Your correspondence shows that you have requested the Governor of Virginia to delay executing such deed until the rights of the United States in this area may be determined, and that Governor Harrison has advised that he will comply with this request.

Your memorandum sets forth certain questions on the above subject which will be answered in the order asked. Also, I am attaching for your information, a summary of legal principles applicable to this matter.

1. What are the rights of the United States in the bed of Hunting Creek?
A. The beds of rivers and creeks within the jurisdiction of Virginia, and not conveyed by special grant or compact according to law, are the property of the Commonwealth of Virginia. (Virginia Code, sec. 62-1.)

The limits or bounds of tracts of land lying on such rivers and creeks, and the rights and privileges of owners of such lands, extend to the low water mark, but no farther, unless the river or creek, or some part thereof, is comprised within the limits of a lawful survey. (Virginia Code, sec. 62-2.)

The owner of land fronting on a navigable stream is entitled to certain rights and privileges as a riparian owner. (See attached legal summary.)

2. What is the geographical extent of the rights of the United States?
A. The ownership of the property administered by the National Capital region extends to the low water mark in Hunting Creek.

3. What further action should be taken?

A. Aside from taking further administrative efforts to persuade the Corps of Engineers to deny granting the permit, in the event the permit should be granted and the State conveys a deed to the riverbed area so that filling and construction could be undertaken, consideration might be given to seeking an injunction.

However, such legal action would have to be founded upon substantial evidence that irreparable harm would occur, in fact, to our property by siltation which is directly associated with the filling and construction.

BERNARD R. MEYER,
Assistant Solicitor, National Parks.

Enclosure.

LEGAL PRINCIPLES APPLICABLE TO EFFECT ON NATIONAL PARK SERVICE LAND
RESULTING FROM PROPOSED FILL AND CONSTRUCTION AT HUNTING CREEK

I. Although there are no Virginia cases exactly in point, the rights of the United States are derived from a principle of law common to all the jurisdictions in the United States:

"* * * [T]he owner of land through which a natural watercourse passes is entitled to the flow of the water of the stream as it is wont to flow by nature without diminution or alteration, that he may insist that the stream shall flow to his land in the usual quantity in its natural place, and at its natural height. * * *

"The right of the owner of land through which a natural watercourse passes to have the water of the stream pass his land in its natural flow is a property right and exists as part of the land. . . . *McCausland v. Jarrel*, 136 W. Va. 569, 68 S.E. 2d 729, 737 (1951); *Accord*, 93 C.J.S. Waters, sec. 15; *Van Etten v. City of New York*, 226 N.E. 483, 124 N.E. 201 (1919)."

II. A corollary of this principle protects against the infringement of this right by other riparian owners. The universal rule is:

"... [O]ne riparian owner has no right, in the improvement or protection of his own premises, no matter how careful he may be, to interfere with or obstruct the flow of water in such manner as to occasion injury to the land of another riparian proprietor. *McGehee v. Tidewater Ry. Co.* 108 Va. 508, 62 S.E. 356, 357 (1908)."

Any unreasonable obstruction or diversion is an infringement of a property right, which imports damage. *McCausland v. Jarrel*, 136 W. Va. 569, 68 S.E. 2d at 729, 737.

An unreasonable use would be one which destroyed or rendered useless, or materially diminished the application of the water by another riparian proprietor. *Roberts v. Martin*, 72 W. Va. 92, 77 S.E. 535, (1913).

An injured riparian owner has a "right of action, whether the result is to destroy or impair his own beneficial use and enjoyment of the stream, or to injure his premises by causing an unnatural enlargement of the stream or the backing up of the waters. . . . 93 CJS Waters sec. 15 at 618."

Thus the New York Court of Appeals held that the construction of a dam upstream by New York City which cut off the flow of water past plaintiff's land was an invasion of plaintiff's right as a riparian owner to the normal flow of water. *Van Etten v. City of New York*, 226 N.Y. 483, 124 N.E. 201 (1919).

In addition, it is a violation of riparian rights even if the erection of the obstruction itself does not interfere with the flow of water, but rather promotes the deposit of materials which causes the channel to fill up. 2 Farnham, *Waters and Water Rights* sec. 479a, at 1620 (1904).

Thus a court held defendant liable where his erection of a boom across a river caused sand and soil to deposit on the bed of the stream and materially diminish the flow of water to a mill. *Pickens v. Coal River Boom & Timber Co.*, 51 W. Va. 445, 41 S.E. 400 (1902).

If the obstruction damages the property of another, it is immaterial that it may have been constructed without negligence and with the sanction of the State legislature. *McDaniel v. Greenville Carolina Power Co.*, 95 S. Car. 268, 78 S.E. 980 (1913). Therefore, when a riparian owner's land was injured not by the negligent construction of the dam but by the overflow due to the dam's collecting sand and mud in the channel, the court held that the plaintiff had a cause of action.

Ibid.

III. In deciding upon a remedy, it should be pointed out that there are no cases involving these specific facts, but it appears that the usual principle would apply; namely, that an unreasonable obstruction of a stream which interferes with the property of another is a nuisance which, if the interference is severe enough, may entitle the aggrieved party to an injunction. *Allen v. Stowell*, 145 Cal. 666, 79 Pac. 371 (1905); *Noe v. Benguey*, 276 Ky. 807, 125 S.W. 2d 721 (1939); *Hogue v.*

Glover, 302 S.W. 2d 757 (Tex. Civ. App. 1957); *Masonic Temple Ass'n v. Banks*, 94 Va. 695, 27 S.E. 490 (1895). *Roberts v. Martin*, *supra*. In the *Masonic Temple* case, *supra*, the Virginia court enjoined the defendant from maintaining a dam which obstructed a stream flowing by plaintiff's building, causing the stream to overflow and flood plaintiff's cellar, on the ground that the flooding constituted irreparable harm.

In the *Roberts* case, *supra*, the court enjoined an upstream proprietor from diverting a perceptible portion of the flow of the watercourse from a downstream mill.

It may not always be necessary to wait until the injury occurs before an injunction will issue. *Noe v. Bengay*, *supra*. In the *Noe* case the court held that equity had jurisdiction to enjoin the building of a wall which would narrow the width of a stream to two-thirds its normal width. The proposed construction would have increased the velocity of the stream which would have washed away the loamy soil of the owner of land on the opposite shore.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., June 25, 1964.

MEMORANDUM

To: Associate Regional Director, National Capital Region, National Park Service.

From: Assistant Solicitor, National Parks.

Subject: Supplementary Memorandum: Legal principles applicable to effect on National Park Service land resulting from proposed fill and construction at Hunting Creek.

1. A riparian owner has a right of access to the navigable part of the stream from the front of his lot. *Yates v. Milwaukee*, 77 U.S. (10 Wall) 497 (1870); *Gucher v. Town of Huntington*, 268 N.Y. 43, 196 N.E. 737 (1935); *Taylor v. Commonwealth*, 102 Va. 759, 47 S.E. 875 (1904). He also has the right to make a landing, wharf, or pier in the watercourse opposite his land to the line of navigability. Va. Code Ann. 62-139; *Yates v. Milwaukee*, *supra*; *Gucher v. Town of Huntington*, *supra*; *Taylor v. Commonwealth*, *supra*. No person, not even the owner of the bed of the stream can interfere with this right. *Yates v. Milwaukee*, *supra*. Furthermore, the owner of the bed of the stream cannot justify an obstruction of these rights on the ground that the injured riparian owner can reach navigable water by going around the obstruction. *Gucher v. Town of Huntington*, *supra*.
2. The owner of land fronting on a watercourse in Virginia has a right to dredge for sand and gravel out to the bed of the stream. Va. Code Ann. 62-178-181; *United States v. Smoot Sand and Gravel Corp.*, 248 F. 2d 822 (4th Cir. 1957). It has been held that this right is a valuable property right which cannot be taken away from a private citizen without just compensation by the United States in the exercise of eminent domain. *United States v. Smoot Sand & Gravel Corp.*, *supra*. However, the right of a riparian owner vis-a-vis the Commonwealth's right to interfere with the bed of that stream is less clear. While a Virginia appellate court has never decided this issue, the trial court in the *Smoot* case and the attorney general of Virginia both opined that the statute conferred "upon riparian owners a right in the nature of a license or profit a prendre, revocable by the Virginia Legislature. . . ." *Id.* at 823 n. 4. The Court of Appeals for the Fourth Circuit indicated it agreed with this position. *Id.* at 827, 828. The court appeared to be influenced by an earlier decision of the Maryland Court of Appeals, which in considering a Maryland statute similar to that of Virginia, held that the legislature could revoke the right to dredge sand and gravel at any time. *Smoot Sand and Gravel Corp. v. Columbia Granite and Dredging Corp.*, 146 Md. 384, 126 Atl. 91 (1924). Accordingly, we believe that the extinguishing of the rights of the United States to dredge sand and gravel by the Commonwealth's sale of the bed of the creek would not give rise to a cause of action.

BERNARD R. MEYER,
Assistant Solicitor, National Parks.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C. April 8, 1965.

MEMORANDUM

To: Regional Director, National Capital Region.
From: Assistant Solicitor, Branch of National Parks.
Subject: U.S. property at Jones Point.

This is in response to your memorandum of December 1, 1964, concerning your research to determine the property line of the Federal land adjoining Hunting Creek.

It is understood that because of the efforts of Hunting Towers Operating Co., Inc., and H. P. Hoffman Associates to obtain permission from the Corps of Engineers to construct bulkheads and place fill in Hunting Creek you had aerial photographs taken and a survey made showing the low water line in Hunting Creek as indicated on a marked print NCR No. 117.5-696. The plotting of the series of elevations taken on the bottom of the creek to determine the low water mark line as shown on the marked print would appear to indicate that the area outlined in the application of Hunting Towers Operating Co. overlaps the low water line in the vicinity of Royal Street extended, which you mention would mean that a portion of U.S. land is included within the area over which they are requesting permission to construct the bulkhead and place the fill.

You ask to be advised if the line shown on marked print NCR No. 117.5-696 is the correct property line of the Federal land at Jones Point and if National Capital Region is free to fill to this line without permission from the Corps of Engineers or the Commonwealth of Virginia.

The term "low water mark" under section 62-2 of the Code of Virginia, 1950, has been determined to mean the ordinary low water, not spring tide or neap tide, but normal, natural, usual, customary, or ordinary low water, uninfluenced by special seasons, winds, or other circumstances.

If the low water mark which you have indicated on the map was established by a competent survey, and you are satisfied with the quality of the survey, then, under the existing law, and if change in the low water line is the result of the natural condition of the stream, it would appear that under the Virginia law the Government property has been extended in fee simple to the new low water mark, and that the property to this line is U.S. property which may be utilized by the United States either for structures, fill, or otherwise without permission from either the Corps of Engineers or the State of Virginia.

BERNARD R. MEYER,
Assistant Solicitor, Branch of National Parks.

Mr. Moss. Doctor, we thank you for your appearance. And you are now excused.

Dr. CAIN. Thank you.

Mr. Moss. Our next witness is Under Secretary David S. Black. Mr. Secretary, I believe you have a statement.

**STATEMENT OF HON. DAVID S. BLACK, UNDER SECRETARY OF THE
INTERIOR; ACCOMPANIED BY ROBERT M. MANGAN, DEPUTY
UNDER SECRETARY**

Mr. BLACK. Mr. Chairman and members of the committee, it might be helpful to the committee if my deputy, Mr. Robert Mangan, could join me at the table.

Mr. Moss. Most certainly he may.

Mr. BLACK. He has a pretty good grasp of the chronology and can lay his hand on some of these documents more quickly than I can if they become an issue.

I have filed a rather extensive statement with the committee, Mr. Chairman.

Mr. Moss. Would you like to have that included in the record at this point, and then summarize it?

Mr. BLACK. I would like to so request, and if I could, make some observations with regard to what has transpired in testimony.

Mr. Moss. If there is no objection, the request of the Secretary will be granted, and the statement is received and included in the record at this point.

(The statement referred to follows:)

PREPARED STATEMENT OF DAVID S. BLACK, UNDER SECRETARY OF THE INTERIOR

Mr. Chairman, members of the subcommittee, I am grateful for the opportunity to appear at this special hearing looking into the process by which the Interior Department arrived at a decision to interpose no objection to the issuance of the subject Corps of Engineers permit. Since I was the Interior Department official who made that final decision for the Department, I am most anxious to clarify our role and explain procedure we followed and considerations taken into account which led to this decision.

My first knowledge of or contact with the particular subject matter of this hearing occurred during the second week of April, this year. At that time, the Director of Civil Works, Corps of Engineers, discussed the matter with me by telephone, in the context of interagency agreement establishing procedures for coordination on the issuance of dredging permits which affect interests of the Interior Department.

General Woodbury expressed concern over the status of the application for permit with which you are concerned today that had been pending for a number of years. The corps had understood that the concerns and reservations of the Interior Department had been removed, since we had withdrawn our basic objections in October of 1967 and had not participated in public hearings of last February. Just prior to our telephone conversation, however, General Woodbury had received indications that the Interior position might be changed again. His main purpose was to inform me that he was referring the matter for a definitive statement of departmental position, under the terms of our agreement, so that he might proceed to a decision on the permit. This he did by a letter dated April 15.

I made immediate inquiries within the Department and discovered that there had, indeed, been discussions and communications raising anew some of the issues that had been advanced at earlier dates, but later withdrawn. I also became aware that various Members of Congress had been critical of the Department's action of last October and that an influential conservation columnist and lecturer was campaigning vigorously for its reversal. In fact, on April 11, while the matter was under discussion and prior to my receipt of General Woodbury's request for clarification of our position, Mr. Mike Frome wrote to Secretary Udall giving notice of his intent to publicize the matter, especially if our conclusion was contrary to his.

Thus, while I was stepping into a case that predated my incumbency as Under Secretary by nearly 4 years, I did not underestimate the extent or degree of interest it had attracted. I want to state for the record, however, that at no time have I been contacted on this matter by the applicant or anyone personally representing the applicant. I did receive inquiries from Members of Congress and committee staff members which could only be interpreted as evidence of support for a decision favorable to the application.

Since the issue has been raised in other discussions and is very likely to be inserted here, it will be well to document the basis for the Department of the Interior's involvement in these dredge permit matters. The responsibility for passing on such applications is, of course, vested in the Secretary of the Army under his authority to prevent interference with navigation. In response to a growing volume of evidence that water structures, diversions, and other developments have been injurious to the Nation's fish and wildlife resources, the Congress in 1958 amended the Fish and Wildlife Coordination Act of 1934 to require that any Federal agency proposing such a project or empowered to issue a permit or license therefor "consult with the U.S. Fish and Wildlife Service, Department of the Interior * * * with a view to the conservation of wildlife resources." This requirement is given force and effect by a further provision

that the reports and recommendations of the Secretary of the Interior with respect to wildlife matters be made an integral part of any report prepared or submitted in connection with such water development projects.

Thus, by statute, coordination with one element of the Department of the Interior is required and the recommendations of the Secretary with respect to wildlife conservation and enhancement must be made a part of the project report. This falls substantially short of a veto power over the corps authority to issue permits, and it is limited to the wildlife aspect of the situation. Increasingly, however, it has become clear that navigational and other stream development projects may have serious consequences for other resource values for which the Department of the Interior is responsible: scenic and recreational resources, water quality, historic site preservation, scientific and natural landmark protection, and the numerous other factors that influence our natural environment.

To be certain that all of these elements are fully considered and since several Bureaus of our Department are often involved, especially where dredge and fill operations are contemplated, a formal memorandum of understanding was signed last year by Secretaries Udall and Resor. Its essential purpose is to provide a systematic procedure for timely consideration of conservation factors. If differences are not resolved at the field level of coordination, this agreement provides that the Chief of Engineers may refer the case to the Department for final review. Our internal implementation assigns that responsibility to the Under Secretary.

Of course, the Hunting Creek, application had predated this procedure by several years and, in fact, had been the subject of departmental comment on several occasions. However, having agreed on this procedure, it seemed wholly appropriate to use it for resolution of this longstanding question.

Upon receipt of General Woodbury's letter in April, I immediately reviewed the record of the case. The original application to bulkhead and fill the area in question was filed with the corps on October 9, 1963. In that form, the fill area would have extended over 2,400 feet from the present bulkhead line and covered approximately 36 acres. Notices of the application were sent to interested Federal agencies on March 24, 1964, including regional offices of the Bureau of Sport Fisheries and Wildlife and the National Park Service.

The National Park Service notified the corps on April 3, 1964, that the proposed fill was considered to infringe upon the proprietary interests of the United States as owner of the Jones Point property to the north which is to be developed as a part of the National Capital park system. On April 14 of that year, the Bureau of Sport Fisheries and Wildlife also recommended against the project on the ground that it would adversely affect waterfowl habitat in the general area.

As you know, title to submerged lands on the bed of navigable streams is vested in the adjoining States. The Virginia General Assembly had enacted legislation authorizing executive officials to convey the area involved in this application to the owners of the adjacent property. In April and July of 1964, the Department requested the Governor of Virginia to defer any conveyance until the proprietary interests of the United States could be determined more precisely.

On July 17, 1964, the applicants filed revised plans which, in effect, truncated the original wedge-shaped fill area by reducing its length about 60 percent—from 2,420 feet on its longest side to 920 feet. The Department's position was not altered by this amendment, however, and on December 11, 1964, the corps formally suspended action on the application until the question of Federal property rights could be resolved.

Nearly 3 years then elapsed. On October 10, 1967, the Department's Assistant Secretary for Fish, Wildlife, and Parks matters advised the corps that the Department was withdrawing its objections subject to adherence to a property line described in the letter. As to other values, Secretary Cain's letter stated that "the granting of the applications would not significantly affect recreation or conservation values." Subsequently, in February of this year, the corps held a public hearing, and in view of the advice given in October there was no occasion to submit testimony from the Interior Department.

This was the state of the record when I first became aware of the case. In essence, the issue was whether sufficient evidence existed to warrant or require a second reversal of departmental position, after public hearings had been held and at a point when the corps was ready to proceed with its decision.

In addition to reviewing the past record and internal memorandums that had been produced in early April, I discussed the matter in detail with Assistant Secretary Cain and key personnel of the two Bureaus involved. The property

boundary question was also reviewed again by our legal staff and we found that the application as it was then drawn did not conform exactly to our claim of riparian interest.

I also visited the site itself in company with Director Gottschalk and a well-informed member of the Park Service staff. We viewed the area from the immediately adjoining property, from the George Washington Memorial Parkway land on the south side of the creek, and from various vantage points on the Jones Point property to the north. We inspected the Dyke Marsh area from the marina site to see its relationship to the proposed development.

My discussions with Director Gottschalk and others concentrated on actual wildlife use of the area. From this I concluded that the data submitted on this point did not refer specifically, or even very importantly, to the actual creek mouth. Rather, these waterfowl use data had primary reference to Dyke Marsh and the several thousand acres of water and marsh in the general vicinity, with very little if any of that use being in the north half of the creek mouth. The critical issue was therefore posed as to whether the displacement of 9 acres of open water would work such a dislocation of wildlife use as to warrant a prohibition on the use of property which was not in Federal ownership. My observation of the water area immediately affected showed it to be shallow, turbid, and apparently heavily polluted. No birds were present, although a few were visible in the area to the south. I was unable to get any professional opinion that the fill operation would have any adverse effect through siltation of downstream waterfowl habitat.

Similarly, the impact of the project on adjacent park areas was not clearly evident. Structures on the proposed fill would be largely on line with existing high-rise buildings which have already modified the scenic vista. The fill area is not visible from the principal points of interest on the Jones Point property, and the development plans of the Park Service already call for a screen of trees which will minimize, if not avoid, any visual intrusion on other parts of the planned park.

On balance, therefore, I reached the conclusion that those who continued to express concern over this project, both in and out of our Department, were motivated more by consideration of its precedent for future intrusions than by any specific and present threat to existing values. I share this concern because we are deeply committed to the improvement of the Potomac Valley. But I also feel that the domino or precedent theory is not applicable here. What we have is an area that has already been extensively filled—the present bulkhead line extends far beyond the natural shore. High-rise apartments already provide the background against which new structures will be placed. Moreover, from Hunting Creek south to Mount Vernon most of the undeveloped shoreline is in Federal ownership as parkland and, therefore, adequately protected.

In responding to the corps request for a definitive statement of departmental views, I concluded that there was no reasonable basis for disturbing our position as it had stood for the preceding 6 months—but with two important caveats. My letter of April 26 makes it abundantly clear that our conclusions about conservation values applied to this specific area only and solely because of the alterations already made by intensive development, highway and bridge construction, accumulated pollution, and prior landfills. It was clearly stated that similar intrusions on the undeveloped portions of the Potomac shoreline would be strenuously opposed. Of more immediate consequence, our position with regard to the proprietary interests appurtenant to Jones Point ownership was clarified and expanded. We stated precisely that the incidents of riparian ownership, including access to the main channel of the stream and the right to future accretions as fast land, extended to the east boundary of South Royal Street as projected to the thread of Hunting Creek. Under this concept, which we are confident in maintaining, a corner of the projected fill area would have been in violation of that line. You will note that the permit as it was approved by the Corps of Engineers has been modified to delete that corner, so that the permitted fill now approximates 9 acres, as compared to the 36 acres contemplated in 1963.

Mr. Chairman, I have the deepest respect for the scientific and technical capability of the Department's staff. I seek and value their advice. I yield to it on technical matters and am influenced by it on policy issues. In my view, however, the views expressed by some of those staff members in this instance represented subjective value judgments or preferences not based on clearly demonstrable evidence. I share those preferences; I look forward to a comprehensive program that will preserve the Potomac and prevent the destruction of its shoreline.

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

taken and changed, abandoned or altered, and reviewed the record on it as carefully as I could. I reviewed the Uhler report. I reviewed the report of the Regional Director. And I determined to consult with Secretary Cain, with Director Gottschalk, and in Director Hartzog's absence, with the most knowledgeable member of the Park Service staff in this area, Mr. Robert Horne. I had never visited this area before. I am not a local resident of long duration.

I determined that I should make a visit to the area. I took Mr. Horne from the Park Service with me and Mr. Gottschalk, Director of Fish and Wildlife, and Mr. Mangan accompanied me also. I inspected the area, the whole area, I think, that is immediately affected.

We visited the bulkheaded area. We visited the Jones Point Park site, the Bellehaven picnic ground area adjacent to the George Washington Parkway, and the northern edge of Dyke Marsh. And we spent a good deal of time in observing and discussing the area, and what possible impact this application might have.

This generally was the method and the extent of my review. But I would like, if I could, to just observe briefly, to highlight the factors that I consider to be relevant to the determination that was made.

First, we might take a look at the recreation values. Much has been said here, at least at the June 24 hearing, about the position taken by the Park Service on the question of park land or recreation values in the area. I think it might be gathered from the questioning and the discussion that a consistent and longstanding objection to the permit had been raised by the Park Service on that ground. I would like to urge that this is simply not the case; that until Director Hartzog's memorandum of April 4, which was substantially contemporaneous with my very earliest awareness of the case, my first awareness, the record so far as I can ascertain shows that the National Park Service concern was restricted to one issue, and that was infringement on the riparian property interest of the United States in the Jones Point Park site. No recreational values were claimed or asserted, as nearly as I can ascertain, as being affected by the project.

And Director Hartzog's testimony on June 24 indicates that his concerns on these grounds were satisfied. As to the property rights issue, we have not retreated at all, Mr. Chairman. In fact, my response to the corps delineated that issue in even sharper focus than I thought it had previously been expressed.

Director Hartzog has stated that that objection has been overcome by eliminating a further portion of the fill area, which is the little pie-shaped tip at the edge. And so, in effect, I would suggest that our view on Park Service values, so far as they are related certainly to riparian rights, have clearly prevailed.

When I visited Jones Point we had available the site development plans for that park.

Mr. Moss. Mr. Secretary, when you say that your views on the riparian rights have prevailed, have they in fact—have you an agreement recognizing your rights to the area that was cut out and to the other area which would be under the line generally agreed to by your Department?

Mr. BLACK. Well, the permit at issue—the permit involved now is restricted to an area which limits—

Mr. Moss. I know, but there are two other permits pending.

Mr. BLACK. They are not before us now, Mr. Chairman.

Mr. MOSS. That is very interesting. They are before the Corps of Engineers?

Mr. BLACK. Yes, sir.

Mr. MOSS. And so the matter is not really resolved. The one permit was modified, but was there any stipulation that the claim on the part of the applicants was being abandoned?

Mr. BLACK. So far as requests for a further permit might be concerned, I do not know that there was any such agreement. But the Solicitor's office has assured us that we have a strong case, and it appears extremely unlikely that any applicant is going to buy that kind of a lawsuit in the thicket of riparian ownership law that would be involved here. In fact, the dispatch with which the applicant in the case that is under investigation now agreed to the deletion of this further area certainly indicates to me that they do not want to go in and buy a lawsuit. And we have indicated clearly, and I so indicate now, that we would resist any further encroachment into the area that we are now claiming lies within the riparian rights and ownership of the Federal Government.

Mr. MOSS. Of course, these people have shown remarkable patience. From 1964 to 1967 the thing was quiet. There was no action taken at all. And suddenly it emerges as a very active matter, what is to prevent it from emerging 2 or 3 years from now, and letting them buy the lawsuit to seek the value that land will have?

Mr. BLACK. I can only speculate, Mr. Chairman. But this is essentially a legal matter in a difficult area. I know of no more complex area of the law. And I don't know that I can contribute to the dialog by speculating on what the applicants might do.

Mr. MOSS. I just wanted it clear that there was no agreement, nothing stipulated by the applicant that they would not make a further speculation at a future date for the very section that was knocked out of the permit application which was acted on.

Mr. BLACK. I know of no such stipulation.

Mr. MOSS. Nor is any such connotation to be contained in this record?

Mr. BLACK. No. But we have indicated our firm resistance to any further such efforts. And the matter that is under investigation now is the fact that we apparently did not resist strongly.

Mr. MOSS. Mr. Secretary, I recall rather vividly in 1964 that the Department stated very vigorously its opposition to the area for which a permit has now been granted. And I have been around here long enough to recognize that the departmental position is changed. So I have become somewhat cynical as to the permanence of these arrangements. You may continue.

Mr. BLACK. When I visited Jones Point on this trip that I indicated, Mr. Chairman, we had the site development plans for that park. And those plans called for leaving the eastern portion of the Hunting Creek shoreline in its natural state. There are large trees there, rather heavy vegetation in that area. And it was my feeling that that would act as an effective screen against intrusion by adjacent private land development. But I think, that fact notwithstanding, the most significant intrusion is already there, which is in the form of the existing apartment buildings. And they are several hundred yards closer to the Fed-

eral shoreline than the fill area would be. So from the greater part of the Jones Point Park and the most significant item of interest, which is the historic lighthouse, that portion of the fill area to be developed by structures would not be visible.

Mr. Moss. Were you familiar with this Holland engineering brochure of 1966, which is approximately 2 years after the 1964 cutback in the application?

Mr. BLACK. I don't believe so.

Mr. Moss. This is their projected development for the entire 36 acres.

Mr. BLACK. I haven't seen that picture.

Mr. Moss. And it goes on to describe the fact that it is going to be chewed off in three separate applications. There is parcel No. 1, parcel No. 2, and parcel No. 3. And if you would like to look at it, I would be very happy to present it to you.

Mr. BLACK. I am not sure of what is in that particular document. But the Park Service representative who accompanied us on this visit a very short time ago, subsequent to the preparation of that document, indicated that the current plans would provide for substantial maintenance of the vegetation and leafy growth at that area.

Mr. Moss. Was there any reversal of the—

Mr. BLACK. These are the plans of the apartment developers—the fill plans. I thought you were referring to the Department's Jones Point plans. The developers' plan goes out 36 acres, Mr. Chairman. You may have been misled by looking at it. We are talking about a 9-acre piece here.

Mr. Moss. Mr. Secretary, I am not misled at all. My point is that this is but the first bite. And the precedent, Hunting Towers' existence, has been cited now on about three occasions as justification for this second site. And if we get development on the second site, then I think it will be justification for a third and fourth high-rise development in the area.

Mr. BLACK. I can only disagree with you, Mr. Chairman, on legal grounds. And again, I can't contribute much by arguing the question of riparian rights at this point. I am trying to explain the basis upon which I exercised the decision. We talked originally in terms of 36 acres. We are now talking about 9. And our lawyers assured us that we have an entirely defensible position against acquisition of the remainder.

Mr. Moss. Mr. Secretary, I am not questioning that. My question was, were you familiar with the plans of the joint developers which were produced in January 1966 following their modified application of 1964, which I believe occurred in June or July of 1964?

Mr. BLACK. I don't know that I was specifically familiar with the chronology or the development. I knew that originally we had been talking about a 36-acre wedge that extended far out into the river.

Mr. Moss. That still is not responsive to my question. You had two things before you. You had the modified application of 1964, which was the one upon which action was being urgently pursued. But in arriving at a decision on that I asked the further question as to whether or not you were familiar with these plans.

Mr. BLACK. No, sir, I was not familiar with these plans.

Mr. Moss. That is all I asked.

MR. BLACK. But I don't believe it would have changed my reaction to the legal aspects of this one whit.

MR. MOSS. I haven't asked you for a legal opinion, Mr. Secretary.

MR. BLACK. I appreciate that, sir.

MR. MOSS. I believe that we asked Assistant Secretary Cain to send us the Solicitor's opinion on the matter of the riparian question. And so I don't think it adds anything to the hearing for us to get into needless and unproductive fields of discussion. And I haven't tried to steer us to that.

MR. BLACK. May I continue, sir?

MR. MOSS. Please continue.

MR. BLACK. Probably I shouldn't characterize it as the most important, but certainly it has been the item that has received the greatest attention here. And it has played a large part in my consideration. And that is the matter of wildlife values.

A great deal of the questioning from members of the committee, and the testimony presented at the opening session, alleges and implies that the views of our professional staff were ignored. I want to make it clear that when this came to me I was very much concerned with the views of our professional staff. I did indeed consider the Bureau of Sport Fisheries and Wildlife 1964 report to the Corps of Engineers. And I had available to me and I studied Dr. Uhler's very excellent report on his inspection of the area, which dated back to the late fall of 1963, which again, I think, was made in the context of a much larger fill than the present permit contemplates.

I would like to comment on the Uhler report, because it provides much of the substance for the subsequent Bureau report.

In the first place, Dr. Uhler's paper deals very largely with his observation of conditions in Dyke Marsh. He makes minor reference, I think, in the context of his total study, to the Hunting Creek area. I want to say very clearly at this point that no one doubts or questions the importance of this general area as a wildlife habitat or as an important natural area which deserves protection. And I think my response to the Corps of Engineers makes that clear.

But Dyke Marsh, Mr. Chairman, is a true marshland area. It is entirely different from the area that we have under consideration here today, which has been extensively altered and very seriously disrupted in my view. The northern tip of the marsh is more than a mile downstream from the closest edge of the fill area. And I couldn't get any indication that the marsh would be in any way adversely affected. Dr. Uhler's paper in its reference to Hunting Creek notes, it is true, and notes very specifically, that the open waters at the mouth of the creek provided a feeding ground for the diving ducks. And this is due largely to the very fertile effluent from neighboring sewage plants. I think that a fair reading of his observations would indicate that his concern—at least this is what I reacted to in arriving at the decision that I did—that his concern was largely in the waters bordering the Memorial Parkway which are to the south of the main inlet. He makes reference to this in a couple of places. That area is adjacent to Federal land, and it is not threatened by fill operations. So this was one further consideration with respect to Dr. Uhler's paper.

I think of more significance is the fact that the Bureau report did not purport to be talking about the Hunting Creek site specifically,

but the whole region which covers several thousand acres, I would guess—maybe not that much—of water or marine area. And during our examination of the site, Mr. Chairman, I think that this again was a pivotal consideration in the decision I arrived at for the Department to interpose no final objection.

I inquired very specifically and repeatedly of Dr. Gottschalk, the Director of the Bureau of Sport Fisheries and Wildlife, about the distribution of waterfowl use, and whether the usurpation of some 9 acres immediately adjacent to an existing high-rise, high-density development, would displace any significant number of birds. And Director Gottschalk, who had participated in the annual census activity, and who is Dr. Uhler's superior, who had been involved in this case expressed the opinion that the impact, if any, would be minimal or immeasurable. I want to make it clear that he indicated that there would be sufficient area preserved to take care of the wildlife, and that there was not significant danger to it.

So I would like to summarize with respect to the factual evidence as I observed it, that I didn't feel that it made for a persuasive case, Mr. Chairman. Measured against the standard which I considered appropriate—and that is basically whether there was such a preponderance of evidence of tangible damages as to warrant reversal of the last position of record which the Department had taken and which the corps had been prepared to act upon. I concluded that our position was a weak one, and that renewed objection was not realistic and could not be sustained.

Now, I certainly want to speak with all deference and respect to those who feel strongly that this project will have a detrimental effect on intrinsic values, on wildlife values, and on conservation values. But my review of the matter and discussions with interested parties indicate that really the basic concern—and it is one that you have mentioned yourself, Mr. Chairman, which has been brought up repeatedly in these hearings—is whether the precedent effect of this, rather than the immediate effect per se of this 9-acre fill in front of the existing Hunting Towers Apartments, is the major issue.

Mr. Moss. Mr. Secretary, I would like the record to reflect that that is a most imprecise interpretation. It is a concern, but it is not a primary concern.

Mr. BLACK. The precedent effect was of concern, and perhaps of primary concern, and certainly of major concern to me, because of the Department's longstanding view that the Potomac should be protected and enhanced. And as a responsible official in the Department of the Interior I do not want to take a position for the Department which would erode that policy. So precedent was a major concern with me.

And on this I do take quite a different view from that which has been expressed by other witnesses and by individuals in the Fish and Wildlife Service.

And the question has been raised by Park Service people. I don't think, Mr. Chairman, that this is a signal for wholesale attack on the undeveloped Potomac shoreline, for the very simple reason that it is the last point that represents extension of existing development. Beyond this point we can take our stand on legitimate grounds and support them on the basis of real conservation values, not make weight arguments and statistical manipulations. In this instance—

Mr. Moss. Mr. Secretary, are you charging that Dr. Uhler has engaged in statistical manipulations?

Mr. BLACK. Dr. Uhler didn't make any statistical remarks. The Bureau office—

Mr. Moss. Are you charging that your Bureau of Sport Fisheries engaged in statistical manipulations?

Mr. BLACK. I think that statistics can be very misleading. And I think it can be demonstrated at this point that they are.

Mr. Moss. That isn't what you said. You said statistical manipulations. I regard that as a charge that your subordinate agencies have engaged in that practice. Is that what you want this record to reflect?

Mr. BLACK. Our subordinate agencies are very vigorous in protecting the interests that they deem within their particular parameter.

Mr. Moss. Is it your allegation that they have engaged in statistical manipulation?

Mr. BLACK. That was my testimony.

Mr. Moss. All right. I just wanted it to be clear.

Mr. BLACK. I extend the remarks a little further, because the principal reliance of the Bureau to the corps in 1964 is on estimates of waterfowl use, and it concludes that an average of some 5,000 birds use the general area each year.

Now, I think that average statistics can be very dangerous and very misleading. I think that they are in this case. The average figure over a 5-year period includes one estimate of over 11,000. And it is followed by one of 900-and-some in the immediately succeeding year. So you take the 5-year picture with the exception of the abnormally high and low year, and it is one of consistent decline based on these figures. We can do a lot with these figures. But the average for the last 3 years of that period, for example, if average means anything—and this is what was put forward—was closer to 2,000 than the 5,000 presented as an overall population estimate. I don't think that the differences in these numbers are all that significant. And I don't mean to make a great point of whether or not 2,000 ducks are any less worth saving than 5,000, or vice versa. I am only pointing out that these annual census figures and Christmas counts are a very, very hit-and-miss proposition.

So I don't want the record—

Mr. Moss. Of course, we have got Dr. Gottschalk's statement of yesterday that on one occasion he observed over 50,000 ducks in the half-mile above Wilson Bridge and the half-mile below Wilson Bridge.

Mr. BLACK. If we ground those figures into the average, it would certainly give us a spectacular result too, which I don't think—I am only questioning the use of average figures.

Mr. Moss. Mr. Secretary, would you for the purpose of the record state your qualifications in the field of ecology or wildlife?

Mr. BLACK. I have no special training or qualifications in the field of ecology or wildlife. And I did not pretend to in this case. This is why I wanted to make it abundantly clear that I did read and study and was influenced by the work of the responsible technical Bureaus. The only point that I want to make is that it is a large step from the technical operation, from the technical study and work that they do as naturalists and wildlife experts, to conclusions that are essentially policy. conclusions, dealing with precedents, with "nibbling," and the rest of it. And I don't question Dr. Uhler's report to the extent of reflecting on

his technical expertise one iota. I think it would certainly be presumptuous of me to do so. I question simply the conclusion that is drawn from this report covering a large area, particularly the Dyke Marsh area, which is valuable to waterfowl. The conclusion is drawn from that, therefore, there should not be a fill at the Hunting Creek site, even a small fill.

Mr. Moss. From the testimony of Dr. Uhler of yesterday :

The Hunting Creek area is one, in my opinion, of the key areas for preserving a local opportunity to view diving duck activity in the Washington region. The area immediately below Hunting Creek, and including Hunting Creek, has been recognized as an important area in connection with the establishment of the George Washington Memorial National Parkway.

The Dyke area still supplies a moderate amount of good tidal marsh. But that is at this moment rapidly being whittled away by dredging operations, and actually there is just a token remnant of the original marsh today.

The Hunting Creek Cove, which lies at the head of the Dyke Marshes, is an integral part of the very complex and useful feeding grounds. It supplies the shallow open-water zone that is particularly of great importance to the diving species, whereas the marsh along the Dyke Overlook has attracted more of the shoal-water species of ducks; species like the black duck, the mallard, the pintail, and at times in the early season, the bluewing teal, the wood duck, and others.

Without the companion shallow marshy zones and the shallow, open waters (I refer to waters less than 5 feet in depth) in which light penetration is sufficient for diving ducks to see their feed—the area would be of limited value. Most of Hunting Creek Cove is less than 5 feet in depth, and much of it is less than 3 feet in depth.

He seemed in his testimony yesterday to place great emphasis on the importance of the Hunting Creek Cove, the Hunting Creek area.

Mr. BLACK. I didn't hear his testimony.

Mr. Moss. Did you consult with him?

Mr. BLACK. No, sir; I have consulted with him, yes, but I haven't consulted with him since these hearings commenced.

Mr. Moss. Did you consult with him before reversing the departmental position?

Mr. BLACK. I read his report and discussed it with his superior.

Mr. Moss. But not with him?

Mr. BLACK. No, sir.

Mr. Moss. Did his superior, Dr. Gottschalk, at any time agree that the judgments of Dr. Uhler and his Bureau of Sport Fisheries were founded on subjective judgment considerations rather than any factual evidence which would support valid objection by this Department?

Mr. BLACK. I don't know if we specifically argued about Dr. Uhler's report. I discussed the subject matter of Dr. Uhler's report with him. And he indicated in so many words that his concern was largely subjective.

Mr. Moss. In his testimony yesterday he denied that it was subjective, and he denied that Dr. Uhler's was subjective. In fact, he expressed quite emphatically and specifically, in response to questions from Congressman Reuss, and I believe Congressman Vander Jagt and myself, a contrary conviction; namely, that the studies were not subjective.

Mr. BLACK. Not the studies.

Mr. Moss. The judgments were not subjective.

Mr. BLACK. This may become a matter of argument on semantics, Mr. Chairman.

Mr. Moss. It is very important.

Mr. BLACK. I think that it is.

Let me tell you what I think subjective is. I think that when a Bureau head, an acknowledged expert in a technical field, says that it is our responsibility because of precedental effect and because of our general concern for the shoreline of the Potomac to deny this permit, I think that that is largely a subjective or policy decision. I don't think it follows, necessarily or logically from a decision or from a finding that this area—and I don't argue with it—that this whole broad area is of value for waterfowl. I think that when we are talking about, in my view, considering this whole area a very limited piece of ground in a very buildup area, that you have to look at all of the values.

Mr. MOSS. Did you discuss the disturbance factor that Dr. Uhler mentioned yesterday?

Mr. BLACK. There was some discussion about the possibility of siltation. Is this what you mean?

Mr. MOSS. The siltation, the emergence of a series of new high rises, the environmental disturbance, the fact that the engineers for Hoffman stated that they would dredge a marina by the east bulkhead and deepen the channel along the south bulkhead; and thus the dredging would cover additional acreage beyond the amount in the fill application, and would, therefore, affect larger areas of waterfowl habitat.

Was this type of impact considered?

Mr. BLACK. There was a discussion of specific possibilities, the marina and so forth, there was discussion of the possibility of siltation, maybe even the likelihood of siltation resulting from these kinds of construction activities. I suppose they are inevitable.

Again, it is a matter of degree and Dr. Gottschalk indicated they could not point to any proof that this would occur or have a detrimental effect. That methodology wasn't really available to do so.

Mr. MOSS. Well, you would almost have to set up a model of the river to make that determination.

Mr. BLACK. I would think so.

Mr. MOSS. But you certainly would be on sound ground in assuming that putting a marina out into the water is going to cause siltation.

Mr. BLACK. Certainly.

Mr. MOSS. It would certainly interfere—

Mr. BLACK. I am not suggesting that there will necessarily be no disruption of wildlife habitat.

Mr. MOSS. I hope, Mr. Secretary, that there will be none, because I hope this committee will come up with a report that strikes at the heart of this in such a manner that the permit is permanently withdrawn, not just suspended as of the moment. Because I think the judgments made for issuing the permit have not reflected appropriate concern with the public interest as envisioned in the Coordination Act.

It was the very type of judgment that you have alluded to as being somewhat parochial in your Fish and Wildlife Service and in your National Park Service that was sought under title 16, United States Code, section 662(a), in the 1958 Coordination Act when it said:

* * * such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior.

Mr. BLACK. Well, much has been made of the effect of the Fish and Wildlife Coordination Act. Again, this is a matter of interpretation. It is a matter that my office has discussed with the Solicitor's office—

Mr. Moss. Well, I voted for it, so I know what I had in mind.

Mr. BLACK. I know. But the interpretation of laws enacted by the Congress isn't always that easy, Mr. Chairman.

Mr. Moss. I realize that. But I also realize there is a very broad area where there can be differences of opinion. I can tell you what I had in mind, and I believe I can tell you what Congressman Reuss had in mind, and I believe I know what the committee which reported the bill had in mind, when the Congress enacted the 1958 Coordination Act.

Mr. BLACK. Let me suggest that the language of the law—it strikes me as one of the cardinal rules of legal interpretation, of legislative interpretation, is to read the whole law—and subsection (b) of that section refers very pointedly to the Secretary.

Now, if the Secretary of the Interior's role under the Fish and Wildlife Coordination Act is simply one of rubberstamping the views of the Fish and Wildlife Service, then, of course, your interpretation is right and we had no business in it.

I don't view my role as being a conduit—

Mr. Moss. You are cutting my interpretation down here to a much narrower dimension than I intended. I said it was that type of advice that we were seeking when we said, "They shall consult with." I am not trying to read anything out of context here.

We go on down to subsection 662(b), which states:

In furtherance of such purposes, the reports and recommendations of the Secretary of the Interior on the wildlife aspects * * * based on surveys and investigations conducted by the United States Fish and Wildlife Service. * * *

In other words, he is to base his actions on those surveys and investigations, at least.

Mr. BLACK. I agree.

Mr. Moss. Did you base your report on that?

Mr. BLACK. Yes, sir, I certainly did, depending on what your interpretation of "based" is. If "based" means I have to accept their conclusions as they come forth, then I did not base it on them. I considered them and I consider that the words "based upon" mean that we will give the fullest consideration to their views, and I can assure you we did, they were viewed in that light.

Mr. Moss. Subsection 662(b) goes on to express a purpose statement:

* * * for the purpose of determining means and measures that should be adopted to prevent the loss of or damage to such wildlife resources.

Here we have a finding by your experts stating that there would be an impairment of wildlife resources. And the purpose of the consultation is then to have a report forwarded. And the report should have as its purpose the determination of—

means and measures that should be adopted to prevent the loss of or damage to such wildlife resources.

What was there in your final report to the corps which proposed any safeguard?

Mr. BLACK. There is a provision that we sought, and I believe is included in the permit, the last final subsection of the permit, in rather sweeping language, that would permit the Interior Department to prevent damage and to have a continuing input, I believe, in this.

Mr. MOSS. Can they do the channel dredging for the marina?

Mr. BLACK. Can who do the dredging?

Mr. MOSS. Hoffman Associates, the applicants for this permit.

Mr. BLACK. I don't understand your question.

Mr. MOSS. Well, it is proposed—

Mr. BLACK. If the permit is granted, I assume they will do what is necessary.

Mr. MOSS. And if it results in the filling in of a larger part of the estuary that is perfectly all right. There is no effort made to lessen the impact of this fill?

Mr. BLACK. I don't know that there were specific provisions or conditions that we sought other than the water pollution provision which I think by its terms is a very broad one.

Mr. MOSS. Of course the wildlife is also a very broad one.

Mr. BLACK. Well, the pollution, of course, would affect the wildlife.

Mr. MOSS. Yes, in part.

Mr. BLACK. There is nothing in the permit, Mr. Mangan advises me, about dredging as such. The permit provides only for bulkhead and fill.

Mr. MANGAN. The application was for bulkhead and fill, and the permit was issued in those terms. It is a permit for bulkhead and fill.

Mr. MOSS. Well, it is my understanding, and I think the transcript of the February 21 hearings will show that the engineers for Hoffman, Mr. Hoffman, said they would dredge the marina by the east bulkhead and deepen the channel along the south bulkhead; and, of course, that would inevitably require a disposal of spoil, and about the only place you can dispose of it would be in the estuary.

Mr. MANGAN. Presumably spoil would be put behind the bulkhead, if you were going to dredge because it is the most immediately available place. But—

Mr. MOSS. Are they going to be permitted to fill all the land from dredging in the estuary channel?

Mr. MANGAN. Mr. Chairman, my only answer is that until this reference was made to what was said at the February 21 hearing, there had been no indication of any dredging operation, and a check of the application—

Mr. MOSS. You will find this reference on page 31 of the Corps of Engineers transcript of the hearings—

Mr. MANGAN. Yes, sir.

Mr. MOSS. Of February 21, which were held in Alexandria, Va.

Mr. MANGAN. Yes, but a check as recently as yesterday showed that neither the application, nor the permit that issued in response to the application, made any reference to dredge operations.

Mr. MOSS. Well, was it so restrictively worded as to prevent it, or was it so generally worded as to permit it?

Mr. MANGAN. The permit was issued for bulkhead and fill of a prescribed area.

Mr. Moss. Well, I imagine then that the hearing would be somewhat like legislative history.

Mr. MANGAN. It could be.

(Subsequently, the following correspondence concerning the matter here discussed was exchanged:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 17, 1968.

Hon. JOHN E. MOSS,
House of Representatives,
Washington, D.C.

DEAR MR. MOSS: In the course of my testimony before the Subcommittee on Natural Resources and Power last Tuesday, you expressed concern about the possibility of dredging being conducted as a part of the Hunting Creek fill project. It was our view that neither the application nor the permit made any reference to dredging and, for that reason, such activity had not been authorized.

We have since examined the material to which you had reference (transcript of the public hearing conducted on Feb. 21, 1968, in Alexandria, at p. 31), and our view of this matter seems clearly to be sustained. Mr. Holland, appearing on behalf of the applicant, stated quite specifically that " * * * they further plan to apply to the Corps of Engineers when the exact extent of their operations is known, for permission to dredge a new marina at the east end of the bulkhead." etc. Thus, the applicant recognizes that a further permit would be required for this additional work and that it is not covered by the present permit.

Quite obviously, an application to dredge would raise entirely new and different issues and we would be required to examine very carefully into its impact on water quality, downstream siltation and related factors. We cannot, of course, exercise control over the filing of a new application, but neither do we regard the issuance of the existing permit as prejudicing a hard and critical look at any future proposal that involves extensive disruption of the stream bed.

Sincerely yours,

DAVID S. BLACK,
Under Secretary.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 26, 1968.

Hon. DAVID S. BLACK,
Under Secretary, Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: Thank you for your letter of July 17 concerning the plans of Howard P. Hoffman Associates, Inc., to conduct dredging operations as a part of the Hunting Creek fill project.

You are correct that the permit which was issued on May 29, 1968 to Howard P. Hoffman Associates, Inc., applies to the bulkheading and fill of a specified area, and does not itself authorize dredging a marina and channel beyond the bulkhead lines specified in the map attached to the permit.

But your statement that you do not regard the issuance of that permit "as prejudicing a hard and critical look at any future proposal that involved extensive disruption of the stream bed" wholly fails to recognize that the permit of May 29, 1968 was issued with full knowledge of the Hoffman plans to conduct dredging operations outside the bulkhead lines and to obtain another permit for such purpose. The corps gave no indication to the developers that such an additional permit would not be forthcoming.

I recognize that the corps is not legally bound to grant, or legally estopped from denying, such an additional permit. Nevertheless, the grant of the May 29 permit, in the light of the corps knowledge of, and virtual acquiescence in, the permittee's plans certainly gives the developers a substantial basis for generating a kind of "fairness" argument which may be most persuasive to the corps that it is virtually committed to grant an additional permit to dredge the proposed

marina and channel outside the bulkhead lines of the May 29 permit. If the Department had adequately concerned itself about the hazards which such dredging, fully planned and disclosed by the applicant, would impose on the adjacent streambed, why didn't the Department (and the corps) clearly express that concern, either by requiring protective conditions in the permit or by giving plain warning, placed in the records of the two agencies and communicated to the applicant, that an application for such additional dredging operations would be closely scrutinized and probably denied?

Sincerely,

JOHN E. MOSS,

Member, Natural Resources and Power Subcommittee.

Mr. MOSS. Certainly it would seem to me that it would have been a proper area of concern for the Department under the Coordination Act to determine whether or not adequate safeguards were being developed for the purpose of determining means and measures that should be adopted to prevent the loss of or damage to such wildlife resources, as well as to provide concurrently for the development and improvement of such resources, to quote further from the act. Was there any inquiry as to whether there should be conditions of that type imposed?

Mr. BLACK. I made no specific inquiry with respect to conditions to be imposed. The issue seemed to be drawn quite clearly at that point as to whether a permit would be issued or be denied. We did take into account the fact again that this was a much smaller area than had been originally contemplated, and the best advice I could get at the time and on the spot was that wildlife values would not be significantly injured.

Mr. MOSS. Who gave you that advice?

Mr. BLACK. Dr. Gottschalk.

Mr. MOSS. Dr. Gottschalk?

Mr. BLACK. Yes, sir.

Mr. MOSS. He gave us different advice yesterday.

Mr. BLACK. Well, I didn't prepare Dr. Gottschalk's testimony for him. I am only trying to make clear to this committee the considerations that I acted on. Reasonable men can certainly differ as to the conclusions reached, and my conclusion may have been wrong.

Mr. MOSS. I don't question that reasonable men can disagree, and the reason for the hearing is to develop what reasonable men did. The record we have before us as to the attitudes and views of those participating is, I think you will agree, somewhat confused.

Mr. BLACK. It is very confused, sir. If it had been—if a decision had been arrived at simply and quickly with respect to this matter, I probably never would have heard of it. But I didn't have control over the prior history of this rather long and tortuous path we have traveled.

Mr. MOSS. When it reached you under the agreement of July 13, 1967, what was the unresolved difference between the Department of the Interior and the Department of the Army which would bring it to your level?

Mr. BLACK. The Department of the Army brought it to my attention because they didn't know what the position of the Interior Department was. I don't know whether they knew there were unresolved issues or not. This is what they wanted to ascertain—why General Woodbury, in a sense of some frustration, called me and said, "What is the Department of Interior doing, where do we stand on this?"

Mr. Moss. There we get into another very interesting matter; namely, the situation on April 10 when Dr. Cain discussed the matter in his office with Dr. Gottschalk, and in view of Dr. Cain's earlier memorandum saying he would accept the professional judgment of his staff and if that judgment was to reverse he would reverse, agreed that he would reverse his previous position. And they phoned General Woodbury, and I think Dr. Cain stated to the staff here, that his letter of October 10 left him naked and indefensible, in view of the Park Service's, and the Fish and Wildlife Service's, opposition.

Then, General Woodbury replied, and the exact words we don't know, but the reaction of Dr. Cain was that in effect General Woodbury offered to get him "off the hook" and refer it to you.

Now, you say he phoned you. But let's go on a little further. On the 16th of April, Assistant Secretary Cain again sent a memorandum to General Woodbury, in which he said:

You will remember that I talked to you on the phone late last Wednesday, April 10, 1968. After a meeting with representatives of the Bureau of Sport Fisheries and Wildlife and with my deputy and staff assistants that afternoon at which time they recommended unanimously to me that I reverse the position that I had taken earlier, I prepared the attached memorandum to Director Gottschalk.

I understood from the phone conversation that you would send the permit request over to Interior, following the procedure that was in the agreement between Secretary Resor and Secretary Udall. This would go to Under Secretary Black, according to the machinery of the agreement, but I understand from his office that it has not yet been received. * * *

Under Secretary Black is anxious to get this issue resolved, because he is getting numerous telephone calls on the matter.

Then, on the 15th, the memorandum apparently crossing in the mails, General Woodbury sent a letter to you.

When did he phone you?

Mr. BLACK. Well, he phoned me, as best I can reconstruct it, about the 11th or 12th, and I had gathered from my conversation with him that I would hear from him in writing very promptly.

Now, I indicated sometime after this, several days after this, I believe—to Secretary Cain or to Mr. Mangan who may have indicated it to Secretary Cain, I don't recall—that I had not gotten it and what had happened. The chronology, apparently, results from the rather bureaucratic operations that go on between departments in the executive branch and it took time to get there and it went through the correspondence control centers of both departments or some such thing. The Woodbury letter apparently went out on the 15th before the Cain memo was even sent over there.

So the communication by Secretary Cain to General Woodbury was subsequent to the general's determination that there were unresolved issues—or at least that there might be—and he wanted somebody in a position of authority who had the responsibility to sign off on something like this to get it together and advise the Corps of Engineers. He didn't indicate to me which way he wanted it to go.

I didn't consider General Woodbury an advocate for the applicant. The applicant and people from outside the Departments, either Department, were inquiring about this. There was interest expressed, and he wanted to get it resolved.

This is the sense of urgency that we have referred to.

Mr. Moss. The Chief of Engineers in his letter to you stated that it was his intention to recommend the issuance of a permit.

Mr. BLACK. That is correct.

Mr. Moss. He did in fact indicate he was in favor of it.

Mr. BLACK. He wasn't an advocate in the sense of the term that he was fighting the battles for the applicant.

Mr. Moss. General Woodbury's letter of April 15 says:

I concur in the views of the District and Division Engineers and had proposed to recommend to the Secretary of the Army that I be authorized to approve the application under the provisions of Section 10 of the River and Harbor Act of 3 March 1899 and authorize the District Engineer to issue the permit subject to the conditions of ENG Form 1721 (CIVIL) and the following additional condition:

He is quite explicit in his letter to you that he favored the issuance of the permit.

Mr. BLACK. I agree. They have certain responsibilities to protect navigation and they consider us——

Mr. Moss. They have much more than just navigation. Navigation is to receive "equal consideration" with wildlife and all of the other values.

Mr. BLACK. This is exactly why they were so concerned, and over a long period of time, as long as there was evidence of opposition to this, they did hold that up. Then the changes of position occurred and they didn't know where they were. I certainly would have done the same thing in the general's position. They knew it was a controversial matter. They knew of the extreme interest of Members of Congress on both sides of the question, and I think that it was eminently fair and reasonable that the general wrote to me and gave us a further opportunity to look at this, because the last position of record before the corps was the October 10 position, that would have permitted the corps to go ahead and act.

Mr. Moss. But you would have been most ill-advised because when a group of us here on the Hill found out about it, we served notice that we wanted a public hearing on this matter.

Mr. BLACK. This indicates the care with which the Corps of Engineers regarded its responsibilities.

Mr. Moss. Well, of course, the care with which they regard their responsibilities is a matter of opinion. Mr. Vander Jagt?

Mr. VANDER JAGT. Thank you, Mr. Chairman.

Just a moment ago, Mr. Secretary, when you were talking about the care of the Corps of Engineers, you said they protect the navigation and then you said, "and they consider us——" but you didn't finish that sentence.

Mr. BLACK. That we have a responsibility under the Fish and Wildlife Coordination Act, under our memorandum of understanding, to communicate our interests and our expertise to them.

Mr. VANDER JAGT. And your interests are what?

Mr. BLACK. Our interests are essentially conservation interests, certainly.

Mr. VANDER JAGT. So, in other words, would it be accurate to say that, in this decision of whether to grant a permit or not, you have the primary responsibility to protect the conservation interests?

Mr. BLACK. Oh, absolutely.

Mr. VANDER JAGT. Now, as you have said, and as I agree, this is a rather confusing matter. You said there were some checkered spots in it and while I agree that it is confusing and there are some things that are checkered, I thought there was one thing that I understood with crystal clarity. Now I am confused again, and I can't really believe that I don't understand it.

Because I have sounded like a broken record through these hearings, by repeatedly asking the witnesses: "In your opinion, would this adversely affect the conservation and recreational values of the area?" I understood from all the expert witnesses who have testified to say that it was their opinion that it would adversely affect the conservation and recreational values—that such was their opinion in 1964, and that it remained their opinion in October when Secretary Cain reversed the position of the Department. It remained their position in April when Secretary Cain reversed his reversal, and it remained their position at the moment they sat testifying before us.

Now, have I misunderstood what they told us?

Mr. BLACK. No, I don't believe you have, Mr. Congressman. I think that I would have two responses. First, that it is a matter of degree. I indicated earlier, or I thought I did, that there will be some disruption. I would expect that any change in any natural area is going to find conservation interests that will be affected, perhaps adversely, in some cases seriously, and in those cases we have to act with very strong—in a very strong fashion.

It is a question here, however, first, of degree and, secondly, the logical progression from the technical findings, which are within the expertise of the bureaus and other experts, to the conclusions that they draw. I felt that there was a breakdown in real logic, and again I was strongly influenced—I didn't hear Dr. Gottschalk's testimony yesterday but I was strongly influenced—by his expression to me that his principal concern had been one of precedent, and that insofar as fish and wildlife values were concerned, he felt that the disruption of them was not measurable.

If I misunderstood Dr. Gottschalk, I am surprised, because I was very explicit on this on a number of occasions with him.

Mr. VANDER JAGT. Let me read to you where I asked Dr. Gottschalk the question, at page 115 of the transcript from yesterday:

Could you tell me, for my information, does the Bureau have a position at this time as to whether the filling in of these acres would adversely affect conservation and recreation in this area?

Dr. GOTTSCHALK. The Bureau has never changed its position.

Then he goes on to explain much of what you have just explained, and that he understands you have to take other matters into consideration. But what we are interested in is his opinion, and after that explanation, I said:

While you can support the overall decision, if we get it narrowed down to just whether or not it would adversely affect wildlife and conservation and recreation, would it be your opinion that it would have an adverse effect on that interest? Is that correct?

And Dr. Gottschalk replied: "This is true."

Now—

Mr. BLACK. I don't argue with that, sir. "Adverse" of course, is not an absolute term, and in my best judgment it is that the adverse

impact was so minimal that for us to slavishly stand in the way of any such development was not to the credit of the Interior Department. That we have to consider significant values. At the secretarial and undersecretarial and assistant secretarial level, it seems to me we do have a responsibility which goes beyond the consideration of damage no matter how small. We have to consider the whole area involved, and all of the values.

Mr. Moss. Will you yield to me at that point?

Mr. VANDER JAGT. Just one more question, Mr. Chairman, because the Secretary has brought up the issue of the degree and you say how much would it adversely affect it. As I understood your opening statement, you said much of Mr. Hartzog's objections were taken care of by that little point.

Now, I would like to read you Mr. Hartzog's testimony. I asked him:

Now, in 1964 you had felt that the fill would adversely affect the recreational and conservational value of this area; is that correct?

Mr. Hartzog replied: "That is correct."

I then asked:

Did the Cain memorandum of October 10, 1967, given at the hearings then, represent your views?

And then I read Dr. Cain's statement in the letter which said:

We have concluded that the granting of the applications would not significantly affect recreation or conservation values in the Hunting Creek area.

I draw your attention, Mr. Black, to the words "significantly affect." Mr. Hartzog then replied: "Sir, I think the memorandum speaks for itself."

He is trying to cooperate with the Department, but I followed up with this question:

I am asking you about February, before this little three-fourths acre, pie-shaped area was taken out, whether this Cain statement represented your views in February when the Corps' hearing was held.

I read Mr. Cain's statement again:

We have concluded that the granting of the applications would not significantly affect recreation or conservation values in the Hunting Creek area

Then I asked Mr. Hartzog:

Did that represent your best professional judgment as of February?

Mr. Hartzog replied: "It did not."

Now, do you think that he thought that it was just a minimal effect on the area?

Mr. BLACK. Well, I don't know what he thought at that point.

Mr. VANDER JAGT. We do know what he said.

Mr. BLACK. I know what he said in his testimony, but I think he is mistaken if that was to indicate that he had communicated that to anybody prior to about April 4. There is no evidence in the record anywhere of any interest by the Park Service so far as recreational values are concerned, other than the riparian ownership issue, up until April 4; and then the interest that he expressed was again in terms which I think were policy considerations and not expert considerations and he so testified himself.

Mr. VANDER JAGT. Did I understand you to say that really all he was concerned about was that riparian issue, and that once the pie-shaped three-fourths acre was out, it was his opinion in February

that you took care of that issue—namely, by the elimination of the pie-shape?

Mr. BLACK. This is essentially correct.

Mr. VANDER JAGT. Could I read you some more, Mr. Secretary, and then I will be glad to yield, Mr. Chairman.

This was my question to Mr. Hartzog—

I believe in your memorandum you pointed out the great national concern to protect estuarine areas. In light of that you suggested that they restudy this decision where they had said go ahead and fill it in; is that correct?

Mr. Hartzog replied: "That is correct."

Then he was asked:

And a very valid inference from that would be that you objected to the filling in of that area, wouldn't it be?

And Mr. Hartzog replied: "I think that can be logically inferred; yes, sir."

Then he is asked:

All right. Now when did you change your mind and decide that it wouldn't adversely affect the recreational area there if they went ahead and filled it in?

Then he discusses a couple of dates, and this is at page 40 when Mr. Hartzog testified.

And then I said:

What you are telling us is that it was the deletion of that tiny pie-shaped white area in there that changed your objection?

Mr. Hartzog replied:

Well, it didn't change our objection at all. * * *

I would like to repeat that last question and answer.

Mr. VANDER JAGT. What you are telling us is that it was the deletion of that tiny pie-shaped white area in there that changed your objection.

Mr. HARTZOG. Well, it didn't change our objection at all. * * *

Mr. BLACK. Well, again the recreational and conservation values, so far as Mr. Hartzog is concerned, do not appear in the record any place and I was not made aware of them until his April 4 memorandum. It may be that he did have some long continuing objection.

Mr. VANDER JAGT. I understand, Mr. Secretary, what you are telling us in terms of the decisionmaking process within your mind and that you might quarrel with conclusions and findings. But I thought what I had clearly understood—and I want to know if you are challenging that—was the opinion of the experts under your supervision who testified here that the filling in of this area would adversely affect conservation and recreational values. Are you challenging the fact that each and every one of them told us that it would adversely affect those conservation and recreational values?

Mr. BLACK. No, I don't believe I challenge that.

Mr. VANDER JAGT. Are you challenging the fact that they told us that was their opinion as of 1964, as of October 10, 1967, as of April 1968, and as of today?

Mr. BLACK. I have no reason to challenge that. I think that in their fields that they feel very strongly about any disruption of any natural area and that they drew from that some inference which I don't draw.

Mr. VANDER JAGT. I want to proceed on this line but I will be glad to yield to you, Mr. Moss.

Mr. Moss. Just along the same line, as a matter of fact in response to a question of yours, Dr. Gottschalk carried beyond the point you read and I think it is rather important.

He said:

The point I tried to make with the Secretary—

And he was discussing you, Mr. Secretary—

was that we are losing our habitat, not in large chunks, but in these small bites.

And then he goes on and says:

I explained my position in some detail to Mr. Black. I know that he considered it thoroughly before he came to his final conclusion. As I say, I respect his decision, even though we do not agree.

Mr. BLACK. Well, of course, this gets back again, Mr. Chairman, to the so-called precedent effect of small chunks and this was of concern to me. This is why I, in examining this area, felt that it uniquely did not apply here because of the Federal ownership interests and our clearly expressed intention to guard against any incursion in the Dyke Marsh area. I am told, and again, I am not an expert on every foot of the shoreline of this area at all, but I am told that there is almost no further opportunity for private development. This was extremely persuasive to me. So this is why I say that when the experts, who are expert parkmen or expert fish and wildlife men or expert diving duck men, tell me that this will have a nibbling, precedential effect that will obliterate the shoreline in the Potomac, I say I am just as expert to decide that question as they are, and perhaps more so.

Mr. Moss. Let's see if you are. You are from the coast. So am I.

Mr. BLACK. I beg your pardon?

Mr. Moss. And I can think of the nibbling effect that has been going around the San Francisco Bay to the point where we are really quite concerned now, aren't we—

Mr. BLACK. I am not from California.

Mr. Moss (continuing). About whether or not the bay is even going to continue as a live body of water, because of the nibbling effect? Mr. McCloskey is quite familiar with it. It is a matter of grave concern in the San Francisco Bay area. Each bit of it started around in a nibbling pattern and people kept saying it could never reach the point of serious proportions.

Mr. BLACK. Is this in Federal ownership?

Mr. Moss. Some of it is; some of it isn't. A lot of it is in municipal ownership. But the gradual intrusion of fill and development into the bay is killing it, and as Dr. Uhler testified it certainly happened on the Anacostia. He cited a number of other instances. If the record was not so very comprehensive of the precedent, the disastrous precedent of these nibbling instances, I think your view might be more valid.

I thank you for yielding.

Mr. VANDER JAGT. Thank you very much, Mr. Chairman, for your addition.

Now, Mr. Secretary, in your statement, first, could I ask you if that upper map is a fair replica of that area?

Mr. BLACK. I assume that it is.

Mr. VANDER JAGT. In your prepared statement beginning at the bottom of page 4 and continuing over to the top of page 5, you say:

Structures on the proposed fill would be largely on line with the existing high-rise buildings which have already modified the scenic vista.

I wonder, if you can show us on that map how the high-rise apartments on the proposed fill would be in line with the existing high-rise buildings. Those three cross-shaped buildings there on the map, I imagine, are the high-rise buildings that you are referring to.

Mr. BLACK. Well, that is not a very exact statement I made. My reference, as I recall, was drawn from the view that I took from the Belle Haven Park area, and since this, the little red area, is now what we are talking about, almost anywhere in the proposed fill area would be in line with the existing Hunting Towers apartments, the way I viewed it.

Mr. VANDER JAGT. If you were to view it from the shore of Jones Point to the north there—which is part of the National Park Service—would that fill be on a direct line with the high-rise apartments that are already existing there?

Mr. BLACK. No; clearly it is not a direct line from that point. But the Jones Point Park development, as I understand it, calls for retention of the heavy natural growth on this side of Jones Point so that it would take a pretty hardy soul to get in there.

Mr. VANDER JAGT. In fact, they are going to make a nature walk there, aren't they?

Mr. BLACK. But retaining the natural growth on the shoreline as I understand it. To the extent that you can see across this water, clearly you will see these buildings. I suspect from most of this area you could see these buildings. Whether these buildings would be any less appealing than the existing ones, I don't know.

Mr. VANDER JAGT. There would be a whale of a lot more obstruction to the view on that nature walk to have a high rise where the fill is going than those other three, wouldn't there?

Mr. BLACK. Assuming that this is visible from there; yes, sir.

Mr. VANDER JAGT. And they are not in fact on a direct line from that vantage point; are they?

Mr. BLACK. No; not from that point. It was Belle Haven Park that I was referring to.

Mr. VANDER JAGT. All right. Now, we have established from your testimony that it is the duty of your Department—a duty which you feel very keenly—to protect the conservational and recreational values. We have also established that it is the opinion of the experts from the Department who testified that these interests would be adversely affected. Now I realize that you have something to say about that. But this protection of these interests was summed up, was it not, in your letter of April 26, 1968, to General Woodbury?

Mr. BLACK. Yes.

Mr. VANDER JAGT. And that represented the final definitive position of the Department of Interior on this matter?

Mr. BLACK. It was intended to; yes, sir.

Mr. VANDER JAGT. All right. Now, your letter goes a little bit into the history and in the first paragraph it tells that the application has been pending since October of 1963, and then you say—

When it was originally circulated for agency comment, two Bureaus of this Department expressed objection to the project on the following grounds:

Later on in that paragraph you say:

After a lapse of nearly three years, Assistant Secretary Cain advised by letter of October 10, 1967, that the Department's objections were withdrawn. * * *

You point out that the Department was not represented by witnesses at the corps' public hearing conducted on February 21, 1968.

After you point out that the objections of the experts, as they had been funneled into Secretary Cain, had been withdrawn, would you show me in your letter any reference to the fact that Secretary Cain—after listening to the experts, and their opinions as to how conservation and recreation would be adversely affected—in fact in April reversed his position and said that it was the position of these experts that the conservation and recreational values would be adversely affected?

Mr. BLACK. Well, there is no reference to that.

Mr. VANDER JAGT. Anywhere in your letter?

Mr. BLACK. In the first place, it was an internal intradepartmental communication. It was not communicated to me. It was communicated only by happenstance, I would say, to General Woodbury in terms of sending him a copy of it because Dr. Cain wanted to know where the permit was that was going to come over to my attention. But there was certainly no effort to conceal that from the Corps of Engineers and General Woodbury was well aware of it. He did, in fact, have a copy of the Cain memorandum. The fact that I did not outline it in here didn't occur to me.

In the second place, under our memorandum of understanding with the corps, I don't believe it was material. I may be incorrect, but I think that the machinery that we were operating under would not have required the official and formal recognition of the fact that Secretary Cain had sought—again sought—the judgment of the Fish and Wildlife Service and was acceding to their judgment.

Mr. VANDER JAGT. It is your position, Mr. Secretary, that Secretary Cain's reversal of his reversal was not material?

Mr. BLACK. I don't think that it was material.

Mr. VANDER JAGT. Then why was it material when Secretary Cain, totally out of the blue, reversed the policy of the Department of Interior that had been in effect for a number of years?

Mr. BLACK. Are you referring now to the October 10, 1967, reversal?

Mr. VANDER JAGT. Right. That reversal was material and totally reversed the long-standing policy of the Department of Interior. But then, when he reversed his reversal and went back to the original position that had been carefully arrived at through the experts, you say that isn't a material consideration?

Mr. BLACK. I think the first one was material because of the circumstances and the keen interest involved in this—

Mr. VANDER JAGT. What were the circumstances that made it material?

Mr. BLACK. The very keen interest of Members of Congress, for one thing.

Mr. VANDER JAGT. Had Members of Congress lost their interest when he reversed his reversal?

Mr. BLACK. No; I suspect that had something to do with the reversal of the reversal.

Mr. VANDER JAGT. Why is it material when he decides it is all right to go ahead and let the filling go on, and not material when he decides it shouldn't go on?

Mr. BLACK. Well, when I used the word "material" I was using it in the context of the discussions, my discussions, with General

Woodbury, the fact that he knew about the unsettled condition within the Department's Bureaus on this issue, and the fact that he wanted to invoke, if that is not too strong a word, the machinery of our memorandum of understanding. I meant it is not material in the sense that it is outside of that.

The original October 10 reversal was, I think, before there was such machinery, and was in a different context.

So I don't mean, on the merits, one position was any less material than the other. I mean, on the track that it had gotten, it was not, I think, significant. It was a one-page memorandum in which Secretary Cain said, "I have asked for your judgment. You have given it to me and I am compelled to accept it." In a word, I don't think that is material.

Mr. VANDER JAGT. All right. I think you can also appreciate my concern as a Member of Congress because we have established that the Army Engineers concerns itself pretty much with navigation and they depend upon you to protect the conservation and recreational values.

We have also established that it was this letter that presents the position to the Department of the Army, and that they are depending on you for the protection of these values.

We have established that the Bureau of Sport Fisheries and Wildlife and the National Park Service were not themselves permitted to testify at the public hearings, or they did not testify. They were not there, which is exceptional. Usually they are. So, we have established that this letter was the way in which the Department of the Army was informed of conservational and recreational values.

As I read your letter to General Woodbury of April 26, it tells them that the Department of Interior, in October 1963, objected because there would be an adverse effect on conservation and recreational values; but that on October 10, 1967, the Department of Interior, through Secretary Cain, withdrew its objections. Is there anything in this letter, then, that would indicate to the Department of the Army that that position had been reversed, which in fact it had?

Mr. BLACK. I think that there is, at least given all the history of this there is, and I think over on page 2, the last full paragraph, I said to General Woodbury:

As to the damage to conservation values, I have received and considered the views of people in and out of this Department who entertain concern on this point * * *. While there is no doubt of the opinions reached by those concerned with the conservation impact, their position is founded on subjective judgment considerations rather than any factual evidence which would support valid objection by this Department.

This Department would, of course, prefer that there be no additional intrusions upon the existing Potomac environment. Our deferral in this instance is dictated solely by the circumstances that the proposed fill project * * *.

And so on.

So, to answer your question, this certainly does not present to General Woodbury, was not intended to, the impression that there was monolithic support for my view.

I think it indicates very well there wasn't, and I think it is reflected in this.

Mr. VANDER JAGT. As a matter of fact, there was within the Bureau monolithic opposition to your view, wasn't there?

Mr. BLACK. In one degree or another, I suppose you could characterize it that way.

Mr. VANDER JAGT. I am glad you read the paragraphs you did because I wanted to get to those. Directing your attention to the last sentence in the next to the last paragraph of the very section which you just read to us, you said: "While there is no doubt of the opinions reached by those concerned with the conservation impact, their position is founded on subjective judgment considerations rather than any factual evidence which would support valid objections by this Department."

Now, on what factual evidence did you base your valid objection, on what investigations, on what scientific data, on what field reports, did you base your decisions to overrule the monolithic opposition of every agency under your jurisdiction?

Mr. BLACK. Well, I can see that term is going to come back to haunt me because monolithic implies a lot more than I intended.

Mr. VANDER JAGT. Let's change it to "unanimous opposition."

Mr. BLACK. Again that is your adjective, sir.

Mr. VANDER JAGT. Would you agree, sir, that the opposition within the Bureau of Sport Fisheries and Wildlife was unanimous, or that it was the unanimous opinion within that Bureau that this bill would adversely affect conservation and recreational values? Do you dispute that?

Mr. BLACK. I think I would dispute it. If I am to take a poll of all the people who have had any connection with this case, I am sure I would find a good number of them who feel that this is a tempest in a teapot and that there will be virtually no adverse impact. I didn't talk to them all. But Dr. Gottschalk—

Mr. VANDER JAGT. Before we leave that point, Mr. Secretary, would you disagree with the statement that there was overwhelming opposition within the Bureau of Sport Fisheries and Wildlife, or that an overwhelming majority of the people who had investigated this felt that it would, in fact, adversely affect conservation?

Mr. BLACK. If there hadn't been opposition it wouldn't have come to me, I don't suppose.

Mr. VANDER JAGT. Was that opposition overwhelming in the Bureau of Sport Fisheries and Wildlife?

Mr. BLACK. It didn't overwhelm me.

Mr. MOSS. Would you yield to me? It seems to me very important for the record, because we seem to have some semantic hangups, that we now define this a little more precisely. Will you recite for the record the names of any persons in the Bureau with whom you discussed this who support the position you took?

Mr. BLACK. Names of any people who supported the decision that I took?

Mr. MOSS. Within the Bureau.

Mr. BLACK. Within the Bureau of Sport Fisheries and Wildlife?

Mr. MOSS. Right.

Mr. BLACK. I didn't discuss it with anyone who affirmatively supported it. I discussed it with people who expressed mild opposition, based on considerations that I don't feel were within their field of expertise.

Mr. MOSS. That isn't what I asked. I merely wanted to know if you could name any individual with whom you discussed this because you

said it wasn't monolithic and it wasn't unanimous and that you made a poll.

Mr. BLACK. I said I would have to make a poll in order to answer it.

Mr. MOSS. But you didn't make a poll?

Mr. BLACK. No, sir.

Mr. MOSS. And, therefore, to the extent of your knowledge at the time you acted—and that is the only thing you can rely upon—the knowledge you had, at the time of your action, was that at least those who had advised with you were unanimous in expressing disapproval in varying degrees, whether mild or vigorous; is that correct?

Mr. BLACK. I would say that that is probably a fair characterization of it; yes, sir.

Mr. MOSS. Well—

Mr. BLACK. This is why I, as a policy executive in the Department of the Interior, am brought in. If any decisions are to be based upon polling individuals who are in subordinate positions to me—

Mr. MOSS. Mr. Secretary, let's make it very clear, I am not suggesting that you should poll. But the question asked you went to the nature of the advice you received—whether it was unanimous or whether it was fragmented. Quite clearly, your statements indicate that the advice to you was unanimously in opposition to the position you took from within the Bureau of Sport Fisheries and Wildlife.

Mr. BLACK. I think that is substantially correct.

Mr. MOSS. Is it also true in the Park Service?

Mr. BLACK. No; I think not.

Mr. MOSS. What exemption could you cite there?

Mr. BLACK. I don't believe that Director Hartzog expressed opposition to this. I had quite a conversation with him. I don't believe that Mr. Horne expressed opposition to it.

Mr. MOSS. Let me say that, as to Mr. Hartzog, the record here is abundant, it is clear, it is precise. I think it is as unequivocal as anything can be. It will speak for itself.

Mr. BLACK. All right.

Mr. MOSS. I thank you for yielding.

Mr. VANDER JAGT. And I thank you for the addition, Mr. Chairman.

Well, let us get back then to what is not monolithic and what is not unanimous, because there was only mild opposition on the part of some. Let us get back to the question that you overruled the judgment of many in the Bureau of Sport Fisheries and in the National Park Service because their judgments were based on "subjective judgment considerations rather than any factual evidence which would support valid objection." What was the factual evidence which you used to overrule their conclusions?

Mr. BLACK. The evidence that I used to overrule their conclusions were my visual inspection of the area, my examination of the substance of their reports as distinguished from the conclusions, and my belief that eventually an executive decision has to be made. This had been under discussion and under study for a long period of time; and the time had come, it seemed to me, when we had an abundant record and, based on a reading of Dr. Uhler's report—which is objective, save his conclusions—and my discussions with Dr. Gottschalk, and my visual inspection of the area—which I think is objective—I determined that the Department of the Interior did not have a good case to oppose development of this small area.

Mr. VANDER JAGT. So you decided their judgments and conclusions were wrong as to the conservation and recreational values involved?

Mr. BLACK. I decided that some of their ultimate—that their ultimate judgments and conclusions were as much in my province as theirs and probably more so.

Mr. VANDER JAGT. And that theirs was subjective and yours was objective—is that what you are telling us?

Mr. BLACK. I think it is more my responsibility to make subjective judgments and admittedly mine are judgments. If you could decide with mathematical certainty, there wouldn't be room for executive decision, and this is an area where I felt that was not their responsibility. It was mine, and that was the reason that this Corps of Engineers machinery was set up. If there isn't room for me to make a subjective decision, then there are many areas that I would not be involved in, nor would the Secretary.

Mr. VANDER JAGT. All right.

I am wondering if you made a positive, concrete, specific decision, because this letter is what we have to go on, and you say in the concluding paragraph:

This Department would, of course, prefer that there be no additional intrusions upon the existing Potomac environment. Our deferral in this instance is dictated solely by the circumstances.

It seems to me you are just kind of deferring, which is abdicating, and can you just defer and abdicate in the protection of conservation and recreational values?

Mr. BLACK. I think, as a matter of law, that we eventually must defer to the Corps of Engineers as a matter of final responsibility. We don't issue the permit, was all I was trying to say, and that we were not going to interpose an objection. We were going to defer to General Woodbury's expressed intention to issue the permit, I think is all I meant by it. I didn't mean deferral in the sense of postponement. I intended this as a final expression of our decision not to assert objection to the permit's issuance.

Mr. VANDER JAGT. When did you write this letter?

Mr. BLACK. About the day it was sent or the day before.

Mr. VANDER JAGT. Where did you write it?

Mr. BLACK. In my own office.

Mr. VANDER JAGT. Did you write it by hand, or did you dictate it?

Mr. BLACK. No; Mr. Mangan presented me with the first draft. I think it went through a couple of drafts. I marked it up; we discussed it. It was very much my product.

Mr. VANDER JAGT. And written on the same day that it was sent?

Mr. BLACK. I don't know. The letter may show. It only shows that it was—this version of it was dictated on the 25th of April, and I think I—I think a day or two preceding we had a copy of it and spent some time with it, in draft form.

Mr. VANDER JAGT. Now, the impact, at least as I see it, of this letter is to say that the Department once had an objection, and then that was withdrawn by Secretary Cain, on October 10, 1967. There is no mention of the fact that that reversal was later reversed, and that basically you are deferring the conservation and recreational objections.

Are you aware of the fact that General Woodbury testified yesterday that had he known there were strong conservation and recreational objections, he would not have gone ahead and issued the permit?

Mr. BLACK. Well, again, what he testified to yesterday and what was in his mind at the time that I acted, I can only speculate; but in his incoming letter to me he says in the next to the last paragraph, "However, I have been informally advised the position of the Department of the Interior has been changed and therefore in accordance with the policies set forth in the Memorandum of Understanding between our departments dated July 13, 1967, I refer the application to you for your consideration."

Again, I don't know what was in General Woodbury's mind yesterday, or when he wrote that letter, but there is no doubt at all but that General Woodbury knew what had transpired at the Department of the Interior. I certainly don't want to—

Mr. VANDER JAGT. Would anybody reading this letter be fair if he concluded that the objections within the Department of Interior as to conservation and recreational values had been resolved?

Mr. BLACK. Would that be a fair conclusion from my letter that they had been resolved?

Mr. VANDER JAGT. Yes.

Mr. BLACK. Oh, no. I don't think so. They had not been resolved within the Department of Interior, and I so indicated.

Mr. VANDER JAGT. So far as the Department of Interior's official position is concerned the objections had been resolved.

Mr. BLACK. Yes, sir; that was my intention to convey that—resolved in the sense that the decision was made by me.

Mr. VANDER JAGT. So that when General Woodbury testified that the reason the permit was granted was because the objections had been resolved, he was in fact on solid ground then.

Mr. BLACK. It had been resolved so far as an official and final departmental position, Department of Interior position, was concerned. I think that is accurate.

Mr. VANDER JAGT. In April when all of this was going on—there has been testimony here and mention made, in fact I think you made mention, I don't know if you used the word "urgency"—somebody said there was a sense of urgency about this because Secretary Black is getting all kinds of telephone calls on it. From whom were those calls?

Mr. BLACK. Well, in the first place Dr. Cain's memorandum to General Woodbury said that Under Secretary Black is getting numerous telephone calls. Again that was his adjective, not mine. I had received probably three telephone calls. I received a telephone call from a Jerry Verkler who was a staff member of the Senate Interior Committee, expressing no concern on his own behalf but communicating to me that Senator Birch Bayh was interested in this, and he was more or less inquiring what the status of it was and who would be handling it. I told him that I would be handling it.

Senator Jackson, who is chairman of the Interior Committee, telephoned me in an entirely neutral fashion on behalf of Senator Bayh, emphasizing to me that he had no interest in the outcome of this whatever. He only wanted to be sure that it would receive a fair and impartial evaluation by me. And I had advised him that I was the individual who would see to it. This was made very clear.

I had a telephone call from Senator Bayh himself, in which he expressed his interest in this development, in seeing that the permit was

issued. He didn't—it was not in strong terms. He was hopeful that we would not continue to interpose objection to it, and I told him that it would receive fair evaluation.

Of course, I had gotten the initial call from General Woodbury and, I think, there may have been a couple of calls back and forth when we were trying to track down this permit before I called Stan Cain in, and I told Stan that I was getting some telephone calls and I may have said I am getting a lot of telephone calls. But now as best I can recall I got three or four.

Mr. VANDER JAGT. Do calls from three Congressmen inquiring about the status of something ordinarily touch off a sense of urgency? I would be glad to know that they do. [Laughter.]

Mr. BLACK. Well, we try to avoid that kind of urgency as best we can. There was no direct communication to me from Congressman Moss, or Congressman Reuss, or Congressman Saylor. I was aware in reading through the file that they had expressed themselves very ably and very vigorously in opposition to this. There was interest on the other side, other congressional interest, and we could sit back and let pressures and counterpressures build up until the decisional process becomes impossible. I knew very well what the views of Mr. Moss and Mr. Reuss were. They had presented them very strongly and very well, and they were considered by me, and I wanted to move sufficiently quickly so that this didn't—so that the Interior Department didn't get caught in the middle of pressures.

Now, there is a further point that I would like to make here, and I want to make it as strongly as I can. The suggestion has been made often, or indeed it was probably kind of asked for by the language that Secretary Cain used in a memorandum, about a "political decision"; but I want to make it abundantly clear there were no real political pressures so far as I knew—certainly none on me. This may in part explain a sense of some urgency because, you see, pressures might build up on both sides of the picture. I felt, candidly, this was an executive department decision, and I felt that to subject it to arbitration between different Members of Congress and the Senate was not conducive to making it in an impartial atmosphere.

Now, the suggestion has been made, and it was really more than a suggestion, it was quite a charge, in testimony here on June 24, that some kind of payoff was involved. That, to me, means bribery. This is a charge of criminal impropriety and, to me, this is appalling. I made the Department's decision. I was not influenced by political considerations. So far as I know, there is not a scintilla of evidence that anybody involved in the decisional process in this case acted with any impropriety whatever, and I would hope that this committee, which has received the testimony without comment, would make it clear that the honor and honesty and integrity of officials of the Department of Interior is not at issue.

Mr. Moss. I would say, Mr. Secretary, that that is beyond the reach of this committee. That observation was made by a Member of the Congress who exercises the prerogative of any Member of the Congress, making his own judgments, and he is answerable to his constituency for those judgments. I don't want to mislead you. This commit-

tee cannot deal with the charge that Congressman Saylor made. He voiced a personal opinion. I imagine that from time to time you certainly have the opportunity before the Interior Committee for conversation with him.

Mr. BLACK. This is an examination, Mr. Chairman, by the House Government Operations Committee, presumably of the decisional process that was followed in arriving at an executive department decision; and I would hope that this committee would be somewhat concerned with the charge made that the decisional process was influenced improperly.

Mr. MOSS. This committee will be concerned with any evidence of improper influence in the decisional process. But I wanted to make it clear that there are limits upon what this committee can do in dealing with Members of the House who want to voice their personal opinions.

Mr. VANDER JAGT. That is all the information I need, Mr. Chairman. Thank you, Mr. Secretary.

Mr. MOSS. Mr. Gude?

Mr. GUDE. Mr. Secretary, you stated, I believe, that in talking with Dr. Gottschalk he raised more concern over the precedent of granting this license than the actual area involved, that his concern was that this would establish a precedent, and I would gather that you did not share this concern, and that you did not feel there would be a "nibbling away" process—that if that entire area in the upper map, which is in both red and black, were eventually filled up, that this would still not be a problem as far as both recreation and wildlife are concerned?

Mr. BLACK. I think that that would—that the entire wedge, which was the subject of the two original applicants, if that were filled in that would certainly concern us. The nibbling effect I had in mind and I believe that Dr. Gottschalk was referring to—at least what I took him to be referring to—had to do with other areas south of that point, and my conclusion on that was based on the fact that it is substantially all in Federal ownership. There is one piece which is still in private ownership and could be the subject of a fill application down, I guess it is, near the Dyke Marsh area. Or it is just above—just below Dyke Marsh which would cause us concern. We indicated in our communication to the Corps of Engineers that we would bend every effort to protect this. But so far as the area of Federal ownership is concerned, that strikes me as protected.

Mr. MOSS. Would you yield for just one moment? Mr. Secretary, I would like very much to have you prepare for the committee, or have prepared for the committee, a map of the area from Alexandria to Mount Vernon showing the areas on the Virginia side of the river, showing the areas in private and in public ownership, Federal or otherwise.

Mr. BLACK. I would be happy to do that, Mr. Chairman.

Mr. MOSS. It might be well to put the Maryland side in at the same time.

Mr. BLACK. The Maryland side?

Mr. MOSS. Yes. I think we just acquired more over on the Maryland side recently, didn't we, or we started to acquire.

Mr. GUDE. Yes.

Mr. Moss. Thank you for yielding.
 (Subsequently the subcommittee received the following data from the Interior Department:)

U.S. DEPARTMENT OF THE INTERIOR,
 OFFICE OF THE SECRETARY,
 Washington, D.C., July 19, 1968.

HON. ROBERT E. JONES, Jr.,
Chairman, Subcommittee on Natural Resources and Power of the Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On page 308, lines 22 through 25, and continuing on page 369, of the transcript of the July 9 hearing on the Hunting Creek matter, Under Secretary Black was requested to have prepared for the committee a map showing areas in Federal and private ownership along the shore of the Potomac River.

The original map prepared in response to this request is transmitted herewith. A copy has been filed by the National Capital Region of the National Park Service at map file No. 117.5-800-3. To more adequately show the public interest we have expanded the land status to show:

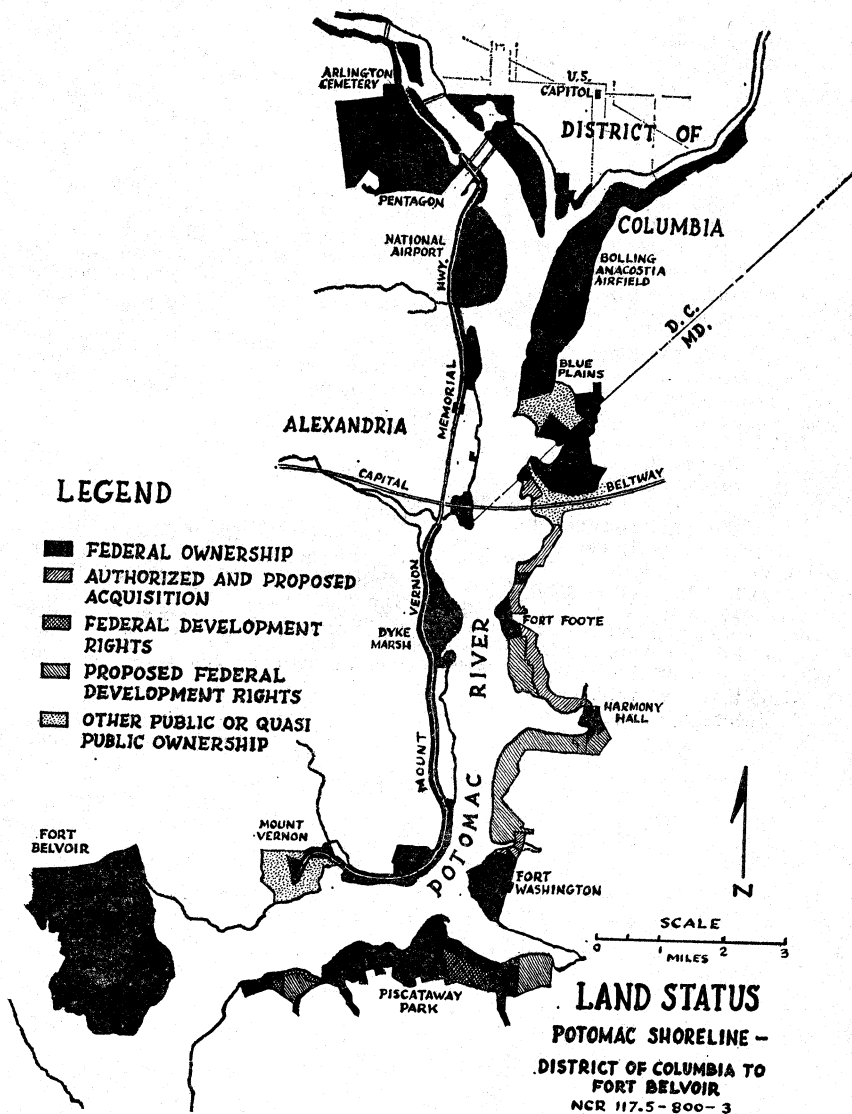
1. Federal ownership.
2. Authorized and proposed acquisition.
3. Federal development rights (frequently called "scenic easements").
4. Proposed Federal development rights.
5. Other public or quasi-public ownership.

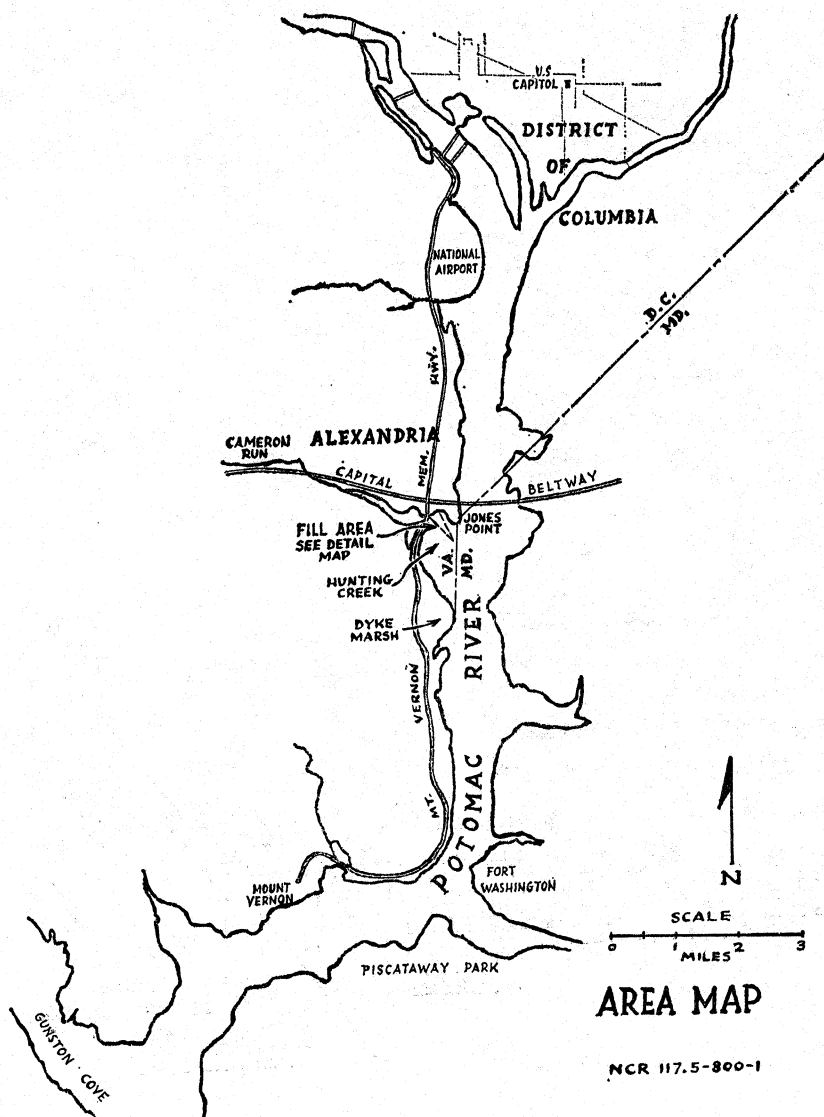
The private property on the Virginia shore between the city of Alexandria and Mount Vernon, is largely built up with single-family residences in the communities of Wellington and Arcturus. Two undeveloped tracts remain, the Fairchild tract to the north and the Collingwood Inn tract to the south.

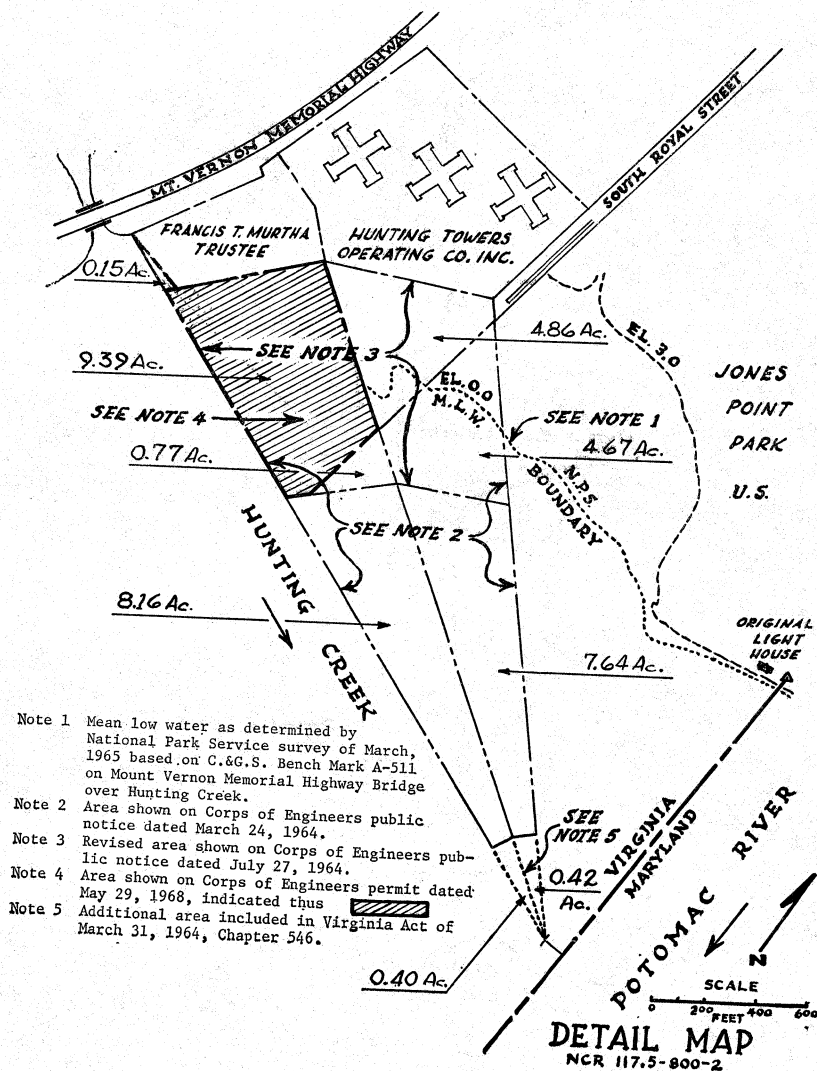
There is also transmitted herewith, revised as requested by your staff, an area map and a detail map. A copy of each of these has been filed by the National Capital Region of the National Park Service at map file No. 117.5-800-1 and 117.5-800-2, respectively.

Sincerely yours,

ROBERT M. MANGAN,
Deputy Under Secretary.







- Note 1 Mean low water as determined by National Park Service survey of March, 1965 based on C.&G.S. Bench Mark A-511 on Mount Vernon Memorial Highway Bridge over Hunting Creek.
- Note 2 Area shown on Corps of Engineers public notice dated March 24, 1964.
- Note 3 Revised area shown on Corps of Engineers public notice dated July 27, 1964.
- Note 4 Area shown on Corps of Engineers permit dated May 29, 1968, indicated thus 
- Note 5 Additional area included in Virginia Act of March 31, 1964, Chapter 546.

Mr. GUDE. When you visited the site did you go out on the point to the old lighthouse?

Mr. BLACK. Yes, sir.

Mr. GUDE. Did you look back so you could see Hunting Creek?

Mr. BLACK. I don't think that from the lighthouse you can see Hunting Creek. That is over around—you might be able to.

Mr. GUDE. Did you walk over to the edge of the water there and look back and see the area and look at Hunting Towers?

Mr. BLACK. I don't recall—it is my impression now, if you could it was very difficult. That wasn't naturally where you would look from there. I don't recall precisely.

Mr. GUDE. Well, there is quite a panorama there, and, of course, any intrusion along that shoreline—actually, the Hunting Towers apartment buildings, although they are high rise, do not intrude into the shoreline there. But the fill in this red area would intrude into the shoreline view. Anything built beyond Hunting Towers there would do so. That is all, Mr. Chairman.

Mr. Moss. Thank you very much. Mr. McCloskey?

Mr. McCLOSKEY. Mr. Black, I would like to ask you several questions about the sense of urgency which apparently existed only twice in the long history of this controversy. Once on October 10, 1967, Dr. Cain testified to a "sense of urgency"—so much so that within a few hours on 1 day, with a complete lack of knowledge of this subject, he reversed a policy of 3 years. The second "sense of urgency" occurred between April 10—when apparently Dr. Cain reviewed the situation completely, insisted on a strong case being made if he was to reverse his previous judgment, and according to his testimony a strong case was made and he reversed that judgment on April 10—and within 16 days thereafter you had reversed him, in effect, in that case which was presented to him.

I want to say that I have complete respect for your honesty. But on the face of this whole situation, it is difficult to understand, in view of the leadership that Secretary Udall has given in the preservation of natural habitat, and particularly in view of Director Hartzog's memorandum to Dr. Cain, which is in the record and in which he referred to this changing policy of the U.S. Government to preserve wetlands and natural environment. I want to ask you precisely about this "sense of urgency" in April of 1968. During that period of time, was not the Secretary of Interior pressing this Congress for a new law to preserve the very areas which this fill permit would involve destroying?

Mr. BLACK. You are talking about the National Potomac Waterway concept.

Mr. McCLOSKEY. That is correct.

Mr. BLACK. That activity was about contemporaneous. It may have preceded it.

Mr. McCLOSKEY. In effect, would you not say, Mr. Secretary, it is possible, if the policy of the Secretary of Interior on this estuarine Potomac bill is enacted into law, that this will be the last permit granted for the filling of the Potomac River in the area of Washington, D.C.?

Mr. BLACK. Well, I would think so. I would hope so, and I have no feeling there could be another permit granted in this area with the possible exception of a small portion north of—I am referring to the permit that is somewhere in abeyance now.

Mr. McCLOSKEY. I want to ask you this: In the conversations with any of the people who contacted your Department was it discussed that if a permit was to be granted it should be granted soon before the Potomac River legislation could take effect?

Mr. BLACK. Oh, no, I certainly—that has never occurred to me until this moment.

Mr. McCLOSKEY. Why the sense of urgency? What urgency possibly could exist with the Federal Government as to having to push this thing through with this speed?

Mr. BLACK. Urgency only in the sense that this had been at issue for a long period of time and that pressures were building up. That there was strong opposition which had been expressed and some support had been expressed. I just simply didn't want to get caught in the middle, Mr. McCloskey, that is all. There was no feeling that on the merits of it, in my mind, the developers had to have this permit now.

Mr. McCLOSKEY. But they are the only ones really that would feel any "sense of urgency," wouldn't they?

Mr. BLACK. I don't think so.

Mr. McCLOSKEY. Well, let's enumerate those who, aside from the developers, would feel a "sense of urgency" to have this matter determined.

Mr. BLACK. The Corps of Engineers had had this pending. They were subjected to calls and pressures. I think that these are matters of degree. Urgency—I don't know that I would characterize it as "urgency." I wanted to get it resolved and it seemed to me with the time that we had spent on it, with the record that had been made, the opportunity for opponents to express their views to the Department, that it didn't do us credit to handle this in a bureaucratic fashion of delay and delay and create more and more argument. I didn't have any deadline that I set in my own mind to reach this, but I wanted to get it resolved. That was all.

Mr. McCLOSKEY. Well now, you have named, and I think you testified this afternoon and Dr. Cain testified this morning, that there were Congressmen on both sides, and as I understand it there were at least three who had made their displeasure known to the Secretary of the Department of the Interior.

Can you enumerate those Congressmen and Senators who had indicated that they favored the granting of this permit?

Mr. BLACK. The only Member of Congress who indicated that he was in favor of it was Senator Birch Bayh. Congressman Dingell, while he didn't favor it, had quite explicitly withdrawn his objections so he was, so far as that is concerned, withdrawn from the consideration.

Mr. McCLOSKEY. While the interest of Congressmen does not, and should not, affect your executive decision, I believe you testified you do keep a careful record of congressional inquiry and interest in matters of this kind; do you not?

Mr. BLACK. Let me say, if I said that the wishes of Congress do not influence our decisions, I want to beat a hasty retreat, because obviously they do. But this was an individual case. It did not involve legislation, and we had had the opportunity, as I say, to examine and,

I think, in considerable detail, and give much thought to, the wishes, notably of Mr. Moss and Mr. Reuss, and we do keep a record of these communications. It was in the file that I reviewed.

Mr. McCLOSKEY. Are you absolutely certain that the names you have given us today are the only names of Congressmen or Senators who had expressed an interest, or made an inquiry, on this subject?

Mr. BLACK. It may be that Congressman Saylor—there were communications from him in the file. I was aware generally of his opposition.

Mr. McCLOSKEY. Do you understand my question?

Mr. BLACK. Well, maybe you had better repeat it.

Mr. McCLOSKEY. Could you repeat the question, Mr. Reporter?

(Whereupon, the preceding question was read by the reporter.)

Mr. BLACK. I think I am certain that the only ones that I mentioned, at least, were the ones that called me. Ordinarily, a call from a Senator or Congressman does not slip my mind.

Mr. McCLOSKEY. Do you recall, since you assumed your present position, sir, any other applications for fill permits anywhere in the United States that have come to your personal desk for decision?

Mr. BLACK. Yes.

Mr. McCLOSKEY. Can you state where those are located?

Mr. BLACK. There are a couple of them, and I might have to get some help here. This is under the memorandum of understanding arrangement.

Mr. MANGAN. Largely dredging permits involving Lake Erie. The general area of Detroit harbor, and the Ashtabula harbor area are two cases that have been at issue with the corps. They have applications for permits under circumstances which threaten to bring the wheels of commerce to a halt if they cannot dredge some of these harbors. They want to dump the spoil in the lake, and we have consistently objected to this practice.

Mr. BLACK. There was one—

Mr. MANGAN. We have one fairly longstanding debate on dredging in one of the gulf coast harbors which involves oystershell dredging and the disturbance of the marine environment there.

Mr. McCLOSKEY. I take it in both these cases you have denied approval to the permit?

Mr. BLACK. To this point.

Mr. MANGAN. Yes. On the Great Lakes dredging situation, in general, we have a cooperative agreement with the corps to carry on studies to really establish what the influence of dumping dredge spoil in the lakes is from a pollution standpoint.

Mr. McCLOSKEY. Do you understand my question? My question is solely on any of these previous applications: Have you granted a permit or approved issuance of the permit by the Corps of Engineers?

Mr. MANGAN. We have; yes. And I have a note here from one of the staff that indicates at least two cases on the Connecticut coast where there were marina dredging permit applications. On final analysis it was determined that the value to the community and the value to the entire area was greater than the minimal damage that would be done to wildlife values, and the Department did not object to the permit.

Mr. McCLOSKEY. Now, Mr. Black, can you enumerate for this committee the beneficiaries, and the identity of the beneficiaries, of this permit application being granted?

Mr. BLACK. The applicant is Hoffman Associates, Inc. Beyond that I do not know who the beneficiaries would be.

Mr. McCLOSKEY. We have some understanding that there is a Teamsters' pension fund involved; is that correct?

Mr. BLACK. I have no knowledge of that.

Mr. McCLOSKEY. Was there any discussion amongst your office, or members of your office, as to who the applicants really were in this case?

Mr. BLACK. I do not recall any such discussion. I was not concerned with who the applicants were.

Mr. McCLOSKEY. Do you have any knowledge as to who were the people that were bringing pressure on Mr. Meyer and Mr. Pozen during this proceeding in April?

Mr. BLACK. Not the slightest.

Mr. McCLOSKEY. Is there a record of the people who called Mr. Pozen and Mr. Meyer?

Mr. BLACK. He may have kept a telephone log. I do not keep one. I do not know whether he did or not.

Mr. McCLOSKEY. Dr. Cain has his hand raised.

Dr. CAIN. I think I can help because yesterday evening I went to Secretary Udall's office to Mrs. Life, to ask specifically, first, to verify my own appointment with Secretary Udall on that day, and then to ask if there was any record left behind about Mr. Pozen's contacts, and the answer was there were none. So there is no way that I know of finding out who he may have talked with or who may have called him. That is what I wished to volunteer.

Mr. BLACK. I never communicated, if I might interject, Congressman McCloskey, with Mr. Pozen at all on any aspect of this, and I have gone back and I asked my secretary—sometimes she makes notes of phone calls—to go back to her shorthand notes during these first 2 weeks in April, and see if there were any other contacts. If there were, I have no recollection of them, and there is no record of them.

Mr. McCLOSKEY. Dr. Cain testified this morning that perhaps some 5,000 to 6,000 applications for this kind of fill permit had been referred to the Department under this 1958 act. Do you have any record as to the overall action of the Department of Interior with respect to those referrals—whether you granted some, denied some?

Mr. BLACK. I am sure we can supply that very easily. I would not think there would be any problem.

Mr. McCLOSKEY. This is 5,000 or 6,000 a year?

Dr. CAIN. 5,000 or 6,000 a year.

(Subsequently, Assistant Secretary Cain furnished the following information:)

BUREAU OF SPORT FISHERIES AND WILDLIFE INVOLVEMENT IN DEPARTMENT OF THE ARMY PERMIT PROGRAM

Year	Total number of applications for permits	Applications given desk review		Applications given field investigations		Applications not commented on	
		Number	Percent	Number	Percent	Number	Percent
1965.....	5,733	3,400	59				
1966.....	5,907	3,170	54	380	7	5,592	98
1967.....	16,000	3,700	62	330	6	5,771	98
1968 (½ year).....	13,000	2,330	78	380	6	5,794	96
				250	8	2,721	91

¹ Estimated.

(In addition, the Department of the Interior forwarded the following figures and comments, furnished by the Federal Water Pollution Control Administration:)

FWPCA REVIEWS OF APPLICATIONS TO CORPS OF ENGINEERS FOR DREDGING PERMITS

	Fiscal year 1968 ¹	Fiscal year 1967	Fiscal year 1966 ²	Fiscal year 1965 ²	Fiscal year 1964 ²
1. Number of applications reviewed per year over the past 5 years.....	2,456	919	569	543	505
(a) Reviewed at field level.....	2,452	919	569	543	505
(b) Referred to headquarters.....	4				
2. Number of applications not commented upon.....	1,407	857	571	517	480
3. Number of applications receiving only desk or office review.....	2,417	909	564	538	500
4. Number of applications receiving field investigation.....	39	10	5	5	5

¹ Applications reviewed after Army-Interior memorandum understanding, July 13, 1967

² Records not complete prior to January 1967 in most regions.

As indicated by footnote 2 of the table, our records prior to January 1967 are generally incomplete or nonexistent. The July 13, 1967, Army-Interior memorandum of understanding did strengthen our position in the review of dredging permits. Our review and program procedures were also changed and strengthened by Corps of Engineers Circular 1145-2-2 of April 17, 1967, which requires compliance with conditions for instructions issued by FWPCA in connection with dredging permits. Corps of Engineers Regulation 1145-2-303 of March 18, 1968, also emphasizes the importance of complying with Executive Order 11288.

(Subcommittee note:—Eng. Circ. 1145-2-2 of Apr. 17, 1967, stated that its expiration date was Feb. 15, 1968. Its subject matter appears to be covered in Eng. Reg. 1145-2-303 of Mar. 18, 1968.)

Mr. BLACK. We have not yet operated under the memorandum of understanding for a full year.

Dr. CAIN. Almost.

Mr. BLACK. Almost a year.

Mr. McCLOSKEY. Let me ask one final question: Did you review Director Hartzog's letter before you reached your decision? The letter I am referring to is the one he wrote to Dr. Cain.

Mr. BLACK. Which one?

Mr. McCLOSKEY. April 4.

Mr. BLACK. April 4? Yes, I read his letter.

Mr. McCLOSKEY. Now, he points out, and he testified here quite persuasively, that the granting of this permit in April of 1968 was inconsistent with the goals of the Department of Interior with respect to the estuarine legislation in the Potomac River. Do you concur with that, Mr. Black?

Mr. BLACK. Did you assert that it was—

Mr. McCLOSKEY. Let me read to you from that letter.

Mr. BLACK. Or did he raise the question?

Mr. McCLOSKEY. An important principle, that is the preservation of our fast disappearing natural environment, which you have creatively defended with great honor and high distinction would appear to me to be involved here.

The bills before Congress to preserve estuarine areas, and the Potomac River study as well, highlight the need to preserve the natural environment along the Potomac estuary. Moreover, further studies of the area are being recommended.

Did you consider that in making your decision?

Mr. BLACK. I considered that, but I did not agree that the conclusion followed that this permit would adversely affect this program or this concept.

Mr. McCloskey. Mr. Hartzog went on to say:

The alterations of wetland areas and the consequent loss of natural values and environmental quality in an area where they are at a premium by virtue of riparian ownership could set a precedent which might have disastrous consequences along the Potomac estuary and elsewhere.

Did you consider that in reaching your decision?

Mr. BLACK. I considered all these things.

Mr. McCloskey. But you overruled Director Hartzog on this point, did you not?

Mr. BLACK. No; I did not overrule him, because he was not making a decision, a National Park Service decision. He was communicating to the Secretary. As he explained it to me—I do not recall whether he explained it in testimony or not—I asked him what he meant by this letter, and he said that he just felt as an official in the Interior Department, it is his responsibility to note these items; that he was not purporting to act in an official capacity so far as his jurisdiction was concerned, and he just raised the question. I do not know how strongly he personally feels about it, but certainly we had to consider it.

The major consideration that I had in mind was, what is the impact on this whole area going to be? What is it going to do to our development of the Potomac? What is it going to do to our stature as a department of conservation if we do not resist this?

Mr. McCloskey. But, Mr. Black, did you not earlier testify that the granting of this permit was inconsistent with the policy behind these two bills which the Department of the Interior had undertaken early this year to present to this Congress?

Mr. BLACK. I did not intend to—that it was inconsistent with the policy?

Mr. McCloskey. You desired to preserve the Potomac from further intrusion.

Mr. BLACK. Yes, sir.

Mr. McCloskey. That has been a policy of the Department of the Interior since the first of the year, has it not?

Mr. BLACK. Yes, sir.

Mr. McCloskey. And yet you approved the granting of a permit to make a fill in the Potomac, and that granting is inconsistent with that policy, is it not?

Mr. BLACK. I do not think it is inconsistent with that policy because I do not think people can just say "the Potomac." I do not think that the Secretary's program contemplates an absolute prohibition of any further development in areas that are already built up. I do not consider it inconsistent with the type of conservation approach which we are making.

Mr. McCloskey. Is it not a fact, Mr. Secretary—I want to refer you to a letter dated January 11, 1966, from the Regional Director for the National Capital Region of the National Park Service, Mr. T. Sutton Jett, a letter written to Mr. A. Z. Shows, 2108 Huntington Avenue,

Alexandria, in which he states this with respect to the Department of Interior:

At the present time it appears that our only course of action, if we are to control the filling operations in Hunting Creek, is to seek specific authority and appropriations of funds in order to acquire interest in the property affected. This eventuality is being considered in the preparation of our 10-year development program for the park system of the District of Columbia.

Now, is that 10-year development program still being prepared?

Mr. BLACK. I do not know that I can answer that—what particular program he had in mind. Maybe we can get some assistance in this room.

Mr. Moss. Is anyone here from the National Park Service?

Mr. Horne, could you answer that question?

Mr. HORNE. No, sir; I do not know whether this item is in the program or not. I think it could be verified.

Mr. Moss. Would you verify it, and we will hold the record at this point to receive the information?

(Subsequently, Mr. Horne furnished the following information:)

Former Regional Director Jett's letter to Mr. A. Z. Shows of January 11, 1966, closes with "This eventuality 'to seek specific authority and appropriation of funds' is being considered in the preparation of our 10-year development program for the park system of the District of Columbia." The 10-year development program referred to in Mr. Jett's letter was a special study then being prepared by a task force to supplement the brochure "National Capital Landscape," released in April 1965. We find that the preparation of this special program was never completed. We also find that our legislative program has not included a request to Congress for the "specific authority" which is required before submission of budget requests for "appropriation of funds" for National Park Service programs.

Mr. McCloskey. The question really goes to this point: Since 1966, the Department of the Interior has been trying to preserve the Potomac River, particularly along this area which is involved here, has it not?

Mr. BLACK. I think that is probably true. The area certainly south of there.

Mr. McCloskey. When you say, "south," would you say down toward Mount Vernon from Hunting Creek?

Mr. BLACK. Yes; I would say that is of considerable significance.

Mr. McCloskey. With respect to that policy, Mr. Black—

Mr. BLACK. And Jones Point, of course.

Mr. McCloskey. Jones Point to the north and east.

In your professional judgment, is it consistent with that policy to grant 9 acres of fill for the construction of high-rise apartments on these 9 acres protruding out into the Potomac?

Mr. BLACK. I think, in the context of the particular area, that it is not inconsistent with that view.

Mr. Moss. Would you yield?

Mr. McCloskey. I certainly would.

Mr. Moss. I believe there has been an expression by Secretary Udall—and I will refresh my memory and correct the record if I am in error—supporting the proposal to develop the area now covered by the Federal Records Center and other shoreline areas in private ownership in the city of Alexandria; but as to high-rise developments, rather vigorous protest has been made by the Secretary and on behalf of the Department of the Interior. I am correct on that.

Mr. BLACK. This is not a matter of my particular familiarity.

Mr. Moss. Mr. Horne.

Mr. HORNE. I saw that in the newspaper, Mr. Chairman.

Mr. Moss. I saw it in the newspaper, and I know that as a result, in one section, at least, the City Council of Alexandria has approved the building of townhouses down on the waterfront.

Mr. HORNE. I believe that is the article I saw, sir.

Mr. Moss. But not high rises. Now, this is another one of those interesting inconsistencies which attach to this approval.

Mr. BLACK. It could conceivably be an inconsistency, but again I think you would have to look at the specific area, you have to see the specific outlook, you have to note the condition of the water, what uses of it that are made.

Mr. Moss. Mr. Secretary, I am extremely familiar with it.

Mr. BLACK. Well, I am not, so I cannot express a view of whether it is or is not inconsistent.

Mr. Moss. I have great affection for it. I do not propose to retire to it or to live there. I maintain my home in California. But I have a great deal of affection for the whole Potomac shore and have established firm friendships with the people at Mount Vernon, including its director, Mr. Cecil Wall. At the present time, I am engaged in a little battle with the Federal Aviation Administration to have flying over Mount Vernon prohibited, which it is not at the present time. So I am concerned with the way the development goes there in preserving that area of authentic Americana, and I am concerned with this eating away which is going to destroy it. I thank you for yielding.

Mr. McCLOSKEY. I share the chairman's feeling of Californians that we will generally return there to retire. I think that probably includes your own wishes, does it not, Mr. Black?

Mr. BLACK. I am from the Pacific Northwest, and an earlier witness suggested that I would have to hang my head in shame if I were to go back home again, so I do not know where I am at the moment.

Mr. Moss. I would like to ask, Mr. Horne, that you supply for the record the statement of the Secretary and of the Department with reference to the Alexandria waterfront development high-rise intrusion on the development from the Vepco powerplant south to Jones Point. That is the second, the farthest north Vepco powerplant.

Mr. HORNE. Yes, sir. I think, Mr. Chairman, if I might suggest, the chairman might have misunderstood me. I did not intend to give the impression that I had seen any such document cross my desk.

Mr. Moss. You recall the same newspaper account that I did.

Mr. HORNE. I recall reading the same newspaper account.

Mr. Moss. I also recall a more recent one for the Alexandria City Council, which had authorized the construction of townhouses rather than high rises in one of the areas.

Mr. HORNE. If there were two articles, Mr. Chairman, I believe it was this latter one that caught my attention.

Mr. Moss. I would appreciate it if you would check the Department and let us know about the policy, because I recall there was a recommendation on behalf of the Secretary, and I want the record to be accurate on that point.

Mr. HORNE. I will do my best.
(Subsequently, Mr. Horne furnished the following material:)

EXTRACT FROM SUMMARY OF ACTIONS BY BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VA., ON JULY 15, 1964, ON MULTIPLE-FAMILY HOUSING STUDY

"POLICY

* * * * *

"5. The board also established the policy that no multifamily applications will be considered within one-half mile of the right-of-way of the George Washington Memorial Parkway from the Cabin John Bridge to and including the Mount Vernon estate."

CITY OF ALEXANDRIA, VA.,
January 7, 1966.

HON. STEWART L. UDALL,
Secretary of the Interior,
Washington, D.C.

MY DEAR MR. SECRETARY: The Alexandria City Council recently received a waterfront study prepared by the Alexandria Department of Planning and Urban Renewal. This study envisions development of the three-mile long Potomac River waterfront in Alexandria into aesthetically pleasing and functional commercial, residential, and public areas which will enhance both the historic colonial character of Old Town Alexandria and complement the more modern sections of Alexandria and the Metropolitan Area.

The Federal Records Center in Alexandria is located in an area designated in the waterfront study to be an important public use park area on the improved waterfront.

It is my understanding that the General Services Administration will have to declare the Federal Records Center to be surplus government property in order for the City to negotiate with the General Services Administration for the purchase of this property.

I, therefore, earnestly request that you address a letter to Lawson B. Knott, Jr., Administrator of the General Services Administration, expressing an interest by the Department of the Interior in the disposition of the Federal Records Center property to the City of Alexandria for waterfront park purposes.

FRANK E. MANN, *Mayor.*

THE SECRETARY OF THE INTERIOR,
Washington, D.C., January 28, 1966.

HON. FRANK E. MANN,
Mayor of Alexandria,
Alexandria, Va.

DEAR MAYOR MANN: Thank you for your letter of January 7 regarding the Federal Records Center in Alexandria. We understand City Manager Hair has also written to Director Hartzog of the National Park Service on this same subject.

As we have indicated on previous occasions, we have been favorably impressed by your waterfront study and would like to support Alexandria in achieving its goals in any appropriate way we can.

We will be glad to follow up on your request and we will contact Mr. Knott, the Administrator of General Services Administration, concerning our interests in the possibility of Alexandria acquiring the Records Center for public purposes.

We look forward to further cooperation in achieving our objectives for this vital part of the Capital area.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

Mr. LAWSON B. KNOTT, Jr.,
Administrator, General Services Administration,
 Washington, D.C.

THE SECRETARY OF THE INTERIOR,
 Washington, D.C., January 28, 1966.

DEAR MR. KNOTT: As a part of President Johnson's program to beautify the Potomac River and enliven its shores, the Department of the Interior has been encouraging the State and local governments of the Potomac Basin to move rapidly to preserve these areas of the river shoreline that are still unspoiled and to take those steps necessary to beautify and clean up those parts that are not. The City of Alexandria has recently completed a study of its waterfront section and has proposed an imaginative plan for the area. I understand that the city government is now prepared to proceed toward the implementation of that plan and that Mayor Mann has inquired of your office concerning plans for terminating the present warehouse activities operated by General Services Administration along the Alexandria waterfront.

Mayor Mann has informed me that the Federal Records Center is located in an area designated in the waterfront plan to be an important riverside park. We have given our support to the waterfront plan in general, and would like to assist the city in any appropriate way we can.

We are therefore writing you at Mayor Mann's request to explain our interest in achieving for Alexandria a waterfront development adequate for both the city's needs and the objectives of the Administration for the Potomac River. We would like to offer our cooperation in any planning effort or studies prompted by Mayor Mann's inquiry. At your convenience, we will be glad to meet and discuss these objectives with representatives of the General Services Administration.

Thank you for your consideration of this matter.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

[From the Washington Post, July 4, 1969]

ALEXANDRIA REZONES WATERFRONT FOR HOUSES

The Alexandria City Council yesterday approved an emergency rezoning request to permit construction of 86 town houses in a move to help restore the City's rundown Potomac waterfront.

The Council agreed to grant the rezoning of most of a two-block waterfront area bounded by North Union, Lee, Oronoco and Queen Streets to allow construction of the \$4 million town house complex. The proposed 3-story colonial style town houses will cost from \$50,000 to \$60,000 each. The property is owned by the Steuart Petroleum Co.

The area had been zoned for heavy industry and has in it an abandoned fertilizer plant that will be demolished.

City officials praised the rezoning proposal, submitted by Lawrence N. Brandt, because it would help implement the City's long range plan for the waterfront.

Brandt sought the rezoning on an emergency basis in order to begin construction at once. The City's waterfront plan, approved last year, calls for rezoning to transform gradually industrial areas on the waterfront into residential and dock facilities.

The town house proposal was endorsed by the Old Town Civic Association, which previously had opposed proposals to construct high rise apartment buildings on the property.

City Manager Albert M. Hair, Jr., said he believed the rezoning will aid the City in its effort to buy the Federal Records Center building near the rezoned area from Federal authorities, and demolish it.

The Federal Government is moving out of the Records Center, once a World War I torpedo plant. Hair said he felt the rezoning action would show Federal authorities Alexandria is serious in its proposal to improve the waterfront.

[From the Washington Evening Star, July 4, 1968]

ALEXANDRIA OKS ZONING FOR TOWNHOUSE PROJECT

(By Joy Aschenbach, Star staff writer)

Alexandria City Council last night approved rezoning for a \$4.5 million townhouse complex to be built along the waterfront.

The rezoning of 3.8 acres of industrial land, west of North Union Street, between Queen and Oronoco Streets, will permit the construction of 86 three-story townhouses.

The rezoning was requested as an emergency measure so that financing and construction of the complex would not be delayed by the City Council's summer recess, William G. Thomas, attorney for the developer said. Construction is expected to begin in September.

City Manager Albert M. Hair, Jr., said the townhouse complex will be "the first major implementation of the city's waterfront design," which calls for expansion of residential units in the area and some commercial development.

Creation of a new waterfront zoning classification, which would execute the city's plans for the area on a large scale, is still being studied by the city planning commission.

The proposed 86-unit complex will include two- and three-bedroom townhouses, to sell for an estimated \$50,000 to \$60,000.

Fifty-six of the 86 houses will be located within the block bounded by Queen, Princess, North Lee and North Union Streets. The remainder will be built on an L-shaped parcel fronting on Princess, North Lee and North Union Streets. North Union Street runs directly along the waterfront.

The developer, Lawrence N. Brandt, has built similar houses in the Georgetown, Foggy Bottom, and Capitol Hill sections of Washington.

In other action, the council agreed to delete a portion of South Union Street, between King and Franklin Streets, from its Major Thoroughfare Plan.

Old Town residents opposed the plan, which would have meant widening South Union from the present 50 feet to 80 feet, because they believed it would become an expressway. The council voted to widen the street to 66 feet, the normal width of Old Town streets.

Mr. McCLOSKEY. Mr. Black, one final area of questioning here. This 1958 act was set up to vest in the Department of Interior the clear duty of protecting conservation interests in filling of waterways of the United States. I would like to ask you a few questions about that, whether in your opinion that law is presently strong enough to protect the conservation interests.

Mr. BLACK. Which law is this?

Mr. McCLOSKEY. I am referring to the—

Mr. BLACK. Fish and Wildlife Coordination?

Mr. McCLOSKEY. Fish and Wildlife Coordination Act of 1958, and precisely to 16 United States Code, sections 662 (a) and (b). First of all, those sections do apply to this permit application, do they not?

Mr. BLACK. Yes, sir; I would expect that they would, so far as fish and wildlife considerations are concerned.

Mr. McCLOSKEY. Mr. Black, as an eminent lawyer in your own right, reading section 662(a), you would concede, would you not, that that section specifically requires that the procedure outlined in the section be carried on with a view to the conservation of wildlife resources, preventing loss of and damage to such resources, would you not?

Mr. BLACK. Yes, sir.

Mr. McCLOSKEY. And, further, that if there is to be an intrusion on those resources it will be on a recommendation from the Secretary of the Interior, based on surveys and investigations conducted by the U.S. Fish and Wildlife Service, will it not?

Mr. BLACK. Yes, sir.

Mr. McCLOSKEY. Now, in this case, the surveys and investigations conducted by the U.S. Fish and Wildlife Service resulted in a strong case being made to Mr. Cain—a case which caused him to reverse himself—that there was intrusion on conservation resources, was there not?

Mr. BLACK. I would not characterize it as a strong case. If it were a strong case, I would have recommended that the Department of the Interior resist issuance of the permit.

Mr. McCLOSKEY. Under the law, your report had to be based on surveys and investigations, did it not?

Mr. BLACK. Yes, sir.

Mr. McCLOSKEY. And you have testified here today that your report and recommendations overruled those studies and investigations made by the U.S. Fish and Wildlife Service, have you not?

Mr. BLACK. I testified that I overruled the conclusions that the authors of these studies arrived at, because I did not agree that they warranted the conclusions that were reached.

My recommendation was based on them, in the sense that they received my most careful consideration, but I did not read the Fish and Wildlife Coordination Act as requiring that we accept the conclusions—that the Secretary accept the conclusions—of the Fish and Wildlife Service if he does not feel that those conclusions are within their expertise, or flow from the studies that they have made.

In other words, I feel that the Secretary must be in a position here to exercise a broader policy—to act in a broader policy role, to exercise some discretion as the principal executive officer of the Department.

Mr. McCLOSKEY. Well, no part of your recommendation is based on those studies and surveys, is it?

Mr. BLACK. I do not know what you mean by “based on.” In the sense that my decision adopts the conclusions that flowed from these studies, the answer would be no, it does not adopt the conclusions.

Mr. McCLOSKEY. I do not think we are just arguing semantics here. A study and an investigation result in a conclusion, and in this case you overruled that conclusion and substituted your own judgment for the conclusion of those who had made the investigations and surveys; did you not?

Mr. BLACK. That is correct.

Mr. McCLOSKEY. And you did it in a sense of urgency while the Department was pursuing a contrary policy for the preservation of the Potomac.

Mr. BLACK. I did not, as I have testified before, do it with a sense that there was any deadline involved or sense of urgency in the ordinarily accepted sense of the term. The bureaucracy is too often criticized for never arriving at a decision, and I wanted to do my part to help move at least one decision along.

But again, with respect to my substituting my judgment for theirs, I feel that the Fish and Wildlife Coordination Act does repose a measure of discretion in the Department's officials, and that I am not bound by the conclusions that the Fish and Wildlife Service may reach or there would be no—I would have no function, or the Secretary would have no function, under that act.

Mr. McCLOSKEY. Then, it is your interpretation, I take it, Mr. Black, that under the present law, while it says that your recommendation will be based on these reports and investigations, you are left the

discretion to overrule the conclusions of those surveys and investigations if you so desire.

Mr. BLACK. I do not know that the survey studies and investigations necessarily are intended to come to conclusions as such. I think that the Secretary is the one who draws the conclusions from the studies that are made, and if the Fish and Wildlife Service makes a gratuitous conclusion—

Mr. McCLOSKEY. Let us, as lawyers, look at this. If the Congress had intended that, it would have been simply stated that the Secretary of Interior was to make surveys and investigations and base his report on those. But the statute specifically states that in furtherance of such purposes the reports and recommendations of the Secretary of Interior on the wildlife aspects of such projects, and any report that the head of the State agency exercising administration of the wildlife resources of the State, based on surveys and investigations conducted by the U.S. Fish and Wildlife Service—

Mr. BLACK. If I might argue with you just a little on this, I think the stronger argument can be made for the converse—that if the Congress had intended that the conclusions of the Fish and Wildlife Service were going to be controlling, they would not have mentioned the Secretary of Interior. Why mention an official who, under your interpretation of this law, would be a mere rubberstamp?

Mr. McCLOSKEY. Well, the top man in the Bureau here, the U.S. Fish and Wildlife Service, recommended against granting this permit, did he not?

Mr. BLACK. But that was not the study or survey. That was a recommendation.

Mr. McCLOSKEY. Based upon the surveys and investigations conducted by his agency in accord with the law.

Mr. BLACK. I am sure that he considers his recommendation flows from his study. I think that it does not.

Mr. McCLOSKEY. Well now, if Congress intended the contrary, Mr. Black—and, incidentally, may I ask you if the head of the U.S. Fish and Wildlife Service—is that a civil service position?

Mr. BLACK. I am not sure it is a civil service graded position.

Mr. McCLOSKEY. It is not a political appointment?

Mr. BLACK. Apparently not.

(Subsequently, the Interior Department advised the subcommittee as follows:)

As a matter of fact, the head of the U.S. Fish and Wildlife Service, who is the Commissioner of Fish and Wildlife, is a Presidential appointee, not a civil service appointee. The Commissioner of Fish and Wildlife has not figured in this hearing. It appears upon reading the transcript that Mr. McCloskey was referring to the Director of the Bureau of Sport Fisheries and Wildlife, John Gottschalk, who testified the day before, and who is indeed a career civil service appointee, not a political appointee. Mr. Gottschalk's Bureau is one of two comprising the Fish and Wildlife Service, the other being the Bureau of Commercial Fisheries, but Mr. Gottschalk's Bureau is often referred to as the Fish and Wildlife Service, rather than by its official title.

Mr. McCLOSKEY. So if the Congress intended that it come from the professional in the business, the language, in your judgment, is not clear enough to so state; is that correct?

Mr. BLACK. If that is the intention of Congress, I think your conclusion is correct. That certainly is not what it means to me.

Mr. Moss. Would you yield a moment?

Mr. McCLOSKEY. I certainly would.

Mr. Moss. Because again reading the entire section, it goes beyond that. I would agree that the Secretary is not bound to accept the conclusions. But I think that he is bound to act to prevent the damage which the experts advise him might follow if the permit is granted, and I think a reading of the language of the statute makes that clear. It says:

* * * for the purpose of determining means and measures that should be adopted to prevent the loss of or damage to such wildlife resources, as well as to provide concurrently for the development and improvement of such resources, shall be made an integral part of any report prepared or submitted by any agency of the Federal Government responsible for engineering surveys and construction of such projects when such reports are presented to the Congress or to any agency of person having the authority or the power, by administrative action or otherwise (1) to authorize the construction of water-resource development projects or (2) to approve a report on the modification or supplementation of plans for previously authorized projects * * * Recommendations of the Secretary of the Interior shall be as specific as is practicable with respect to features recommended for wildlife conservation and development. * * *

The purpose of the Secretary's utilizing the reports of the Bureau of Sport Fisheries is for the purpose of determining the nature of the damage that might ensue. If he wants to disregard the conclusions he should still act to prevent any damage, and I am critical not only of your overruling him, but I am also critical, in the overruling process, of the failure to impose any conditions which would minimize the damage.

There has been a confession that the nature of dredging for the marina was not a matter of knowledge to you or to your assistant. These matters were not considered. The action was generally more rapid than I get out of most departments and agencies of Government.

I thank you again.

Mr. McCLOSKEY. I have just one final question.

I understood your testimony to be that you consider this decision under the policy considerations of the Department. Is there any policy in the Department of Interior which would favor the granting of fill permits for any purposes?

Mr. BLACK. I think that the Interior Department has to balance interests, and to favor the granting of a fill permit that, in the judgment of the policymakers, will not harm conservation values, is such a balancing of interests. I see nothing inconsistent in that posture. There is no affirmative policy in the Department of the Interior to dredge or fill or bulkhead, if that is a specific answer to your question.

Mr. McCLOSKEY. I have no further questions. Thank you.

Mr. Moss. Mr. Indritz.

Mr. INDRTIZ. Mr. Secretary, the letter that you received from General Woodbury, dated April 15, stated that the Corps of Engineers proposed to add a condition (k) to the permit that would be issued to the applicant, and the language of condition (k) was set forth on the third page of General Woodbury's letter.

Did you, in arriving at your April 26 letter, consider whether that condition (k) would adequately protect the Federal Government's interest in preventing diversion of polluted material from the outfall of the sewer at the foot of South Royal Street onto the waters and shores of the Jones Point Park?

Mr. BLACK. I did not focus in any fine detail on that question, Mr. Indritz. I think it was the feeling in the Federal Water Pollution Control Administration that this would adequately protect their interests. But, in answer to your question, I did not devote a great deal of specific attention in regard to that provision in arriving at any decision.

Mr. INDRTIZ. You were aware though, were you not, that the construction of the fill in the area west of the eastern boundary of South Royal Street extended would result in diverting the sewer flow along the shores of Jones Point Park?

Mr. BLACK. I do not think I would necessarily subscribe to that. If there is additional fill in this area, I can foresee some problems if the outfall is not taken out to the edge. I am not a hydrologist, but I spoke with Director Hartzog about this particular feature at some length, and with Mr. Horne, and it was our feeling that so far as the instant application is concerned, that really does not present a problem at Jones Point.

The Park Service people seemed to be satisfied that should this other piece be filled in there, arrangements should be made in advance to get the sewer outfall out further into the water. I have discussed that point with the Park Service. I do not have the impression that they are concerned about that at this point. It would be something we would want to watch.

Mr. INDRTIZ. Your letter referred to applications for bulkhead and fill permit affecting 19 acres of land.

Mr. BLACK. Are you referring to my testimony?

Mr. INDRTIZ. No, your letter of April 26 refers to 19 acres.

Mr. BLACK. Well, if I could at this point, to the extent that you are going to copy my statement into the record, state there are typographical errors in two places, and this is just the result of our office arithmetic. It should be 9 acres, and we copied that out of the letter, I think, to General Woodbury.

On page 4, 19 appears in the bottom full paragraph and it should be 9. I am referring to my prepared statement now. And the same is true over on page 5—9 should appear at the bottom of the last full paragraph instead of 18.

Mr. INDRTIZ. I was referring to the first paragraph of your letter of April 26.

Mr. BLACK. This is also an error.

Mr. INDRTIZ. I see.

Mr. BLACK. That was just perpetuated in my statement. We just copied that again.

Mr. INDRTIZ. Mr. Horne testified the other day that even if only the fill area applied for by Hoffman Associates were filled, there would be backflow and eddying which would result in sufficient hydrological change so that the flow from the sewer outlet would be along Jones Point.

My question, therefore, is, with that kind of concern on the part of the Park Service, ought not the Department, in apprising the Corps of Engineers, indicate a greater concern with respect to the adequacy of condition (k) in protecting that interest of the Government?

Mr. BLACK. It may be that we should have. It was my feeling that the Park Service concern was taken care of, so far as this construction

is involved, and that subsection (k) protected the water pollution features of it. That is all I can add to it, and I did specifically discuss this with them. I do not mean to be disputing Mr. Horne's testimony here. I did not understand it that way.

Mr. INDRITZ. Would you regard condition (k) as enabling the Department to require the city of Alexandria to extend the sewer beyond the fill area?

Mr. BLACK. Well, the language is very broad. I think it is directed to the applicant rather than to the city of Alexandria, that they would have to make adequate provisions to convey the sewage on out into the stream. But this may be subject to other interpretation.

Mr. INDRITZ. Well, all condition (k) says is that the permittee shall comply promptly with any regulations, conditions, or instructions "affecting the work hereby authorized," and the "work hereby authorized" is the work of filling.

Now, if it is only the permittee's work which is involved, is there anything in the condition which would enable the Federal Government to call upon the city of Alexandria to extend the sewer so that the discharge of combined sewage and storm waters would not flow along the parklands?

Mr. BLACK. I cannot answer that. I think our Solicitor's Office would have to look at that language. I have a feeling that it is probably not a real problem and I can only suggest that there would not arise that kind of controversy between the city and the Federal Government. But whether this has sufficient teeth in it, if there were a lawsuit or something to make this particular sewer extension, I cannot tell you. I have not felt that was a significant problem. Perhaps it is.

Mr. INDRITZ. Is it at least possible that in order to attain that protection the Federal Government might have to bear the cost of extending that sewer?

Mr. BLACK. I suppose it is conceivable.

Mr. Moss. If there are no further questions, Mr. Secretary, I would thank you for your appearance, and you are now excused. I would like very much to be able to accommodate the several persons who have requested opportunity to testify here. But at this hour—it is now 4:30—we have an important housing bill in the voting stage on the floor of the House, and it is necessary that the committee adjourn. We will be willing to receive statements which will be included in the record at this point. If you will contact Mr. Indritz at room B-349-B, here in this Rayburn Building, or by telephoning him at 225-6427—that is a direct dial—he will receive them and see that they are included in the record. The committee will now stand adjourned, subject to the call of the Chair.

(SUBCOMMITTEE NOTE.—Because of increasing burdens of congressional business, the subcommittee did not schedule a further hearing to receive the testimony of Brig. Gen. Charles C. Noble, Director of Civil Works, Corps of Engineers. His prepared statement, as submitted to the subcommittee on the first day of the hearings, follows:)

PREPARED STATEMENT OF BRIG. GEN. CHARLES C. NOBLE, DIRECTOR OF CIVIL WORKS,
OFFICE OF THE CHIEF OF ENGINEERS

Mr. Chairman and members of the committee, I am Brig. Gen. Charles C. Noble, Director of Civil Works, Office, Chief of Engineers, Department of the Army. I appear before the Natural Resources and Power Subcommittee to discuss the actions of the Department of the Army regarding the issuance of a