

IN RE LAKE WHITE.

Columbus, Ohio, April 10, 1941.

Honorable William M. McCulloch,
Speaker and Members of the House of Representatives,
Columbus, Ohio.

Gentlemen:

On the 26th day of May, 1939, the House of Representatives of the 93rd General Assembly, passed Sub. H. R. No. 43, which reads as follows:

"RESOLUTION

To provide for an investigation of Lake White, Pike county, Ohio, for the purpose of determining the equity and responsibility of the state of Ohio therein, the rights and privileges of the public therein and a report by the attorney general of the expenditure of state funds in the promotion and maintenance of said Lake White.

Whereas, The state of Ohio has contributed funds in excess of three hundred thousand dollars for the creation, improvement and maintenance of Lake White, located in Pike county; and

Whereas, Ten suits to recover twenty-four thousand two hundred and thirty-six dollars and fifty-nine cents and foreclosure of mortgages have been filed in the Pike county court of common pleas by the original owners of lands underlying and bordering on said lake; and

Whereas, The rights and privileges of the public to visit and enjoy this lake and the parks surrounding same appear to be restricted to those who have purchased cards of admission; therefore be it

Resolved by the House of Representatives of the General Assembly of the state of Ohio, That the attorney general for the state of Ohio be, and he is hereby authorized, to study the original papers creating said Lake White, the appropriations heretofore made by the general assembly and the state funds expended by the state highway department, the department of public works, the department of conservation, or any other expenditures or liabilities incurred or assumed by the state of Ohio in the creation and maintenance of said Lake White and to determine the legality of the same; and be it further

Resolved, That the attorney general be, and he is hereby authorized to investigate and determine what title, rights and privileges, if any, the state of Ohio and the public has and may enjoy on and to the said Lake White and the lands and parks surrounding the same, and what right to admission without the payment of a visitor's fee for such right or privileges; and be it further

Resolved, That the attorney general shall report the result of his investigation together with such recommendations as he may deem appropriate or necessary, to the Ninety-fourth General Assembly for its guidance in the consideration of future appropriation measures."

Pursuant to the directions contained in the above resolution, I have made a study of the original papers and documents creating and authorizing the creation of Lake White, the appropriations heretofore made by the General Assembly and concerning the state funds expended by the State Highway Department, the Department of Public Works, Department of Conservation and Natural Resources, and other expenditures made or liabilities incurred by the State of Ohio in the creation and maintenance of Lake White.

As directed in said resolution, I have made further investigation to determine what title, rights and privileges, if any, the State of Ohio and the public have and may enjoy on and to Lake White and the lands and parks surrounding the same; also as to what rights they have or may enjoy without the payment of a visitor's fee, and herein report the results of such investigation.

On July 1, 1933, the 90th General Assembly enacted Amended Substitute Senate Bill No. 169 as an emergency measure (115 O. L., 383), which act appears in the General Code as Sections 412-16 and 412-22, both inclusive, which sections are hereto annexed, marked "Appendix A."

During the year 1934 a group of citizens of Pike County, for whom the general spokesman or chairman appeared to be the then Common Pleas Judge of Pike County, George D. Nye, had numerous conferences and discussions seeking the construction of a dam by the State of Ohio across the channel of Pee Pee Creek in order to form what is now called Lake White. On September 27, 1934, the then Superintendent of Public Works, T. S. Brindle, addressed a letter to the Director of Highways, O. W. Merrell, requesting his consent for the construction of such dam.

On October 3, 1934, the then Director of Highways approved such request and gave his consent by endorsement on a copy thereof. Thereafter, the Superintendent of Public Works, in cooperation with the State Highway Department, made surveys, prepared plans, specifications and estimates for the construction of such dam. On November 2, 1934, the Department of Highways awarded a contract for the construction of a 6200-foot dam and spillway to W. L. Johnson Company, Hicksville, Ohio. The original contract price for the construction of the reenforcement slab, bridge and spillway was \$47,615.00 and for the making of the 40-foot fill for the dam was \$120,277.80. However, by reason of subsequent alterations in the plans and corrections in the estimates, the cost of such construction was increased to \$183,785.59.

At the time the Director of Highways, as authorized and required by Section 412-17 of the General Code, approved the undertaking of the project, the stated purpose of the dam when constructed was to reroute the highway known as U. S.-Ohio Route No. 23 along and over the dam so to be constructed in order to procure a roadway from Waverly to the south which would not be subjected to overflow by the waters of the Scioto River during spring freshets. Upon the completion of the dam, it was decided by the Highway Department that the rerouting of Route No. 23 along the top of the dam, as contemplated by the plans and specifications theretofore approved, would add considerable mileage to the existing Route No. 23 and would require additional and extensive road building in order to connect the road along the top of the dam with the then existing Route No. 23. Such consideration caused the Director of Highways to abandon the rerouting of Route No. 23 over the dam, even though it had apparently been the inducement for him to undertake the expenditures necessitated by his cooperation in the construction of the dam. In order then to eliminate flooding during spring freshets, the Director of Highways determined that it was necessary to construct an additional portion of such Route No. 23 some distance easterly from the dam at a cost of \$313,810.51, exclusive of the cost of acquiring the rights of way. Such improvement has been completed and moneys paid as shown by the files of the Highway Department.

In October of 1934 a corporation for profit was formed with a capital structure consisting of 500 non-par shares under the name of Lake White Improvement Association, Inc., which name was subsequently changed to

Lake White Company; the purpose clause of which, as disclosed by its articles of incorporation, was as follows:

“To carry on the business of buying, selling, leasing and holding and otherwise dealing in real and personal property and doing all things incident including financing, constructing, developing and the right to contract generally with any person, firm or corporation.

To do any and all things herein set forth, and in addition such other acts and things as are necessary or convenient to the attainment of the purposes of this corporation, or any of them, to the same extent as natural persons lawfully might or could do in any part of the world, insofar as such acts are permitted to be done by a corporation organized under the general corporation laws of the state of Ohio.”

This purpose clause is substantially the same as that contained in the articles of incorporation of the ordinary real estate corporations formed for the purpose of engaging in the sale of lots for the purpose of erection of residences and commercial buildings. The president of such corporation when formed was H. W. Nelson, and the secretary, George D. Nye.

Prior to the incorporation of this company, a syndicate had been formed which, according to Pike County real estate records, acquired title to some of the lands under and around what is now Lake White. (See Agreement Book, Vol. 2, pages 155, 156 and 157, Pike County Records). The members of such syndicate were:

CLARENCE VALLERY	CHARLES VALLERY
L. P. VALLERY	M. V. WATTS
J. W. GREGG	WELLS S. JONES JR.
GEORGE C. JONES	G. W. RITTENOUR
J. V. VANMETER	PHILIP SCHWARDT
J. W. ROBINSON	CLARENCE CRUMBY
WILL H. ACORD	A. M. GREGG
J. C. LEE	ROBERT T. LEEVER
M. E. DAYTON	W. C. GEHRES
ALLIE L. STIFFLER	HENRY LITTEREST
KENNETH LITTEREST	JONH R. TEICHERT
JACOB E. DAVIS	

After acquiring such lands the syndicate, on November 27, 1934, conveyed a floodage easement to the Lake White Improvement Associa-

tion, Inc., wherein it granted to the said Lake White Improvement Association the right to submerge all parts of the lands owned by the syndicate lying below 572.5 feet above sea level. (See Agreement Book, Vol. 2, page 159, Pike County Records.) After its incorporation the Lake White Improvement Association, Inc., by means of various deeds, acquired the title to some of the remaining parcels of land under and around Lake White and as to those parcels to which it did not acquire title, it acquired floodage easements conveying the right to flood all lands to a point of 572.5 feet above sea level. In acquiring such title the company gave to the grantors purchase money mortgages, subject to the floodage easements, in order to secure the payment of the balance of the purchase price. Many of such mortgages are now in default and some have been foreclosed.

In a deed dated January 23, 1935, and recorded in Vol. 23, page 427 of Pike County Records, the Lake White Improvement Association, Inc., conveyed to the State of Ohio the floodage easement which it had acquired from the syndicate and also that which it had acquired from George D. Nye by separate deed, and in addition thereto conveyed a similar easement over all the lands to which it held the fee simple title. In the granting clause of the same deed was contained the following language:

“Also a lease or easement for a certain tract of land containing not less than ten (10) acres for Public Park purposes, situated in the South Central part of Pee Pee Township, Pike County, Ohio, and the right to occupy and use same for said purposes and for purposes of administration, and the supervision, care and control of said reservoir, which property shall be not less than ten acres in area adjacent to or near the public highway around said lake, and to be located at a place to be agreed upon by the parties to this agreement, and a full and complete description of which tract shall be later given by said Grantor by separate lease or easement not later than thirty (30) days following the date of such agreement as to location.”

It is to be noted that this instrument did not convey and did not purport to convey an easement or lease of the ten acres mentioned therein, but rather was an agreement to make such conveyance at some future time. I have been unable to find any record of any subsequent agreement as to the location of such ten-acre parcel, nor do I find any record of any subsequent conveyance of lease or easement concerning such parcel, either of record in Pike County or in the office of the Auditor of State.

However, by a deed under date of August 21, 1936, filed in the office of the Auditor of State, the Lake White Improvement Association, Inc., conveyed in fee to the State of Ohio a parcel of land located at the most southwesterly extremity of Lake White and abutting on the highway (S. R. No. 112) at that point, having irregular boundary lines and described as containing 23.88 acres more or less. Upon this property the State of Ohio, acting through the Department of Public Works, has constructed certain small buildings which apparently are used for the purposes of administration, care and control of the reservoir, dam, and a park which is located upon such parcel.

By a deed dated November 10, 1934, recorded in Vol. 1, page 282, Pike County Records of Rights of Way, the Lake White Improvement Association, Inc., for a consideration of \$2,000.00, conveyed to the State of Ohio an easement for highway purposes through the lands then owned by such corporation, a 60-foot right of way upon which State Route No. 112 is now located.

By virtue of another deed dated April 23, 1935, recorded in Vol. 1, page 292, Pike County Records of Rights of Way, the Lake White Improvement Association, Inc., purported to convey to the State of Ohio an easement or right of way for highway purposes over lands "not in excess of sixty feet in width" along and around but not adjacent to the shores of Lake White, and being 15,200 feet or 2.9 miles in length. Upon this right of way the State of Ohio has constructed two highways of "mud-bound macadam" which highways have been named "Davey Drive" and "White Boulevard." No stated consideration is given in this deed and I have found no record of any payment of a purchase price therefor.

My examination of the vouchers and county records in various departments indicates that the original construction cost, paid by the Highway Department, of that portion of the highway just described which is known as Davey Drive was approximately \$13,000.00, and of that portion known as White Boulevard was approximately \$10,000.00. The construction on the latter drive consisted in the widening of an already existing roadway through the properties of the corporation. These highways were constructed at various times through the years 1936, 1937, 1938 and 1939. During the last five years there has been expended in maintaining that part of State Route No. 112 from a point just south of the Waverly corporation line, across the dam to State Route No. 124, the sum of

\$58,984.00 which sum does not include work done on the underpass under the D. T. & I. Railroad or the resurfacing of State Route No. 112 over the distance now used by U. S. Route No. 23. It should be observed that although the maintenance of such Route No. 112 benefits the property now or formerly owned by the Lake White Improvement Association, Inc., the entire benefit is not received by such corporation or by the lake improvement, but by other travellers and land owners as well.

Since the construction of the dam and the creation of Lake White and the improvements undertaken at that time, the state has expended in maintenance of the park constructed on the twenty-three acre parcel above mentioned approximately \$41,000.00 in addition to the moneys there expended by the Federal Government on Works Progress Administration and National Youth Administration projects. Such sum has been expended by the Public Works' Department. In addition to such moneys the Highway Department has expended \$4,724.00 for the construction of rocking control gates in connection with the maintenance of the dam (Contract No. 6746 — George A. Stein Construction Company — February 18, 1938).

Several additional claims for compensation have been made against the State of Ohio by reason of the construction and maintenance of such improvement. These claims purport to have arisen by reason of the alleged fact that in the construction of the dam a portion of the soil and subsoil was removed from what is now subaqueous land of Lake White and was used in the construction of the dam. It is contended that such alleged removal of earth caused the waters of the lake to seep through the gravel subsoil then forming the bottom surface of the lake, pass under the dam and percolate from the surface soil in the fields below the dam, causing such fields, which otherwise would have been tillable, to have become and remain swampy and unfit for cultivation. However, at this time, by reason of the inundation of the lands whereupon the alleged defective workmanship is claimed to have taken place, as well as by reason of the completion of the project and the changes which have occurred by natural causes and otherwise, it is impossible for me to ascertain from a present examination of the project whether faulty engineering or workmanship did or did not cause the alleged injury of such lands, if, in fact, any injury was then suffered. On such claims, by authority of the General Assembly, there has been paid to the alleged sufferers of injury the sum of \$8,200.00. For your information a summary or outline of such claims and the history

of their treatment is hereto annexed and marked "Appendix B."

An examination of the recorded deeds from the Lake White Improvement Association, Inc., to the State of Ohio granting the right of floodage of lands now under Lake White discloses that the only property rights therein granted to the State of Ohio were:

Easements or rights "of flowage for reservoir purposes" including "the rights of ingress and egress to the waters of said reservoir for the purposes of the supervision, care and control of such reservoir, and for the regulation of the flow and conservation of the water of Pee Pee Creek westward and above its intersection with the above named State Highway, in Pee Pee Township, Pike County, Ohio, and for such other purposes or purpose as the State Department of Public Works may deem necessary, over so much of the hereinafter described lands as will be submerged, and as affected by wave action or otherwise, by the erection of a slack water dam or dams across the Pee Pee Creek Valley, about two and one-half miles North of the Village of Piketon in said county, the elevation of the spillway of said dam not to exceed 572.5 feet above mean sea level."

From an examination of the recorded deed conveying lands or interests therein for highway purposes, it would appear that there has been granted to the State of Ohio an easement for highway purposes only over some of those lands now occupied by Davey Drive and White Boulevard, 60 feet in width, which easement is subject to defects as shown in the following paragraph.

From an examination of the abstracts of title covering the lands under consideration, it appears that the grantor, The Lake White Improvement Association, Inc., at the time of the execution of the deed just above mentioned, did not have sufficient title to convey the right of way for highway purposes, as therein purported to be conveyed, as to those portions of the highway which appear shaded on the plat hereto attached as Appendix "C." Title to those portions of Davey Drive and White Boulevard designated on such appendix as "AB" and "CD," respectively, was vested in G. W. Rittenour, J. W. Gregg and M. K. Watts as trustees and not in the Lake White Improvement Association, Inc. Likewise, the title to the shaded portion of Davey Drive, designated on such exhibit as "EF," was at such time (and I am informed still is) vested in George D. Nye. I must report, therefore, that as to such shaded portions the State of Ohio has no recorded easement for right of way.

In the deed by which the State of Ohio acquired the 23.88 acre parcel above mentioned there is no recital conveying to the State any right of access to the Lake. This parcel, shown in the lower left corner of Appendix "C," is bounded on the northerly and easterly side by a line which coincides with the south-westerly edge of the waters only when maintained at the highest point permitted by the floodage easement. At no other point around the Lake does the State of Ohio or the public have actual physical access to the Lake. While physical access may obviously be had along the shore line of the 23.88 acre parcel, I must conclude that neither the State nor the public has at the present time a legal right of access thereto other than that granted in the floodage easement deed, quoted above.

In the deeds under which The Lake White Improvement Association, Inc., acquired floodage easements, the fee simple title to the land permitted to be submerged was retained by the grantors. It is, of course, elementary that a grantor cannot convey a title greater than that which he has, and consequently the State of Ohio, when it received a deed from said corporation, acquired only a floodage easement. Therefore, when the State of Ohio received a floodage easement deed from the corporation, it acquired only the right to submerge the lands described therein to the height specified in the easement. If any additional servitude is to be placed upon such submerged lands, such as fishing or boating or other amusements, it would appear that additional easements must be obtained.

See 6 Thompson on Real Property, Section 3446. In 17 Am. Jr., page 996, the author concisely states the rule that

"the use of an easement must be confined strictly to the purposes for which it was granted or reserved. A principle which underlies the use of all easements is that the owner of an easement cannot materially increase the burden of it upon the servient estate or impose thereon a new and additional burden."

Having pointed out above that the easement given to the State of Ohio grants only the right to flood the lands in question to a point of 572.5 feet above sea level, it would follow, and it is consequently my opinion, that neither the State of Ohio nor the public has the legal right to use such waters for fishing, boating or any recreational purpose.

In order to secure the right to use the Lake for such purposes, ease-

ments therefor would have to be obtained from the owners of such lands. If easements covering only the submerged lands are obtained, the public would have the right to enter upon such waters only over and through the 23.88 acre tract now owned by the State of Ohio which is adjacent to and abutting on the Lake. In order that the public might fish from the shores of the Lake at any point, it would be necessary for the State of Ohio to also obtain easements for such purpose in and to the strip of land lying immediately above 572.5 feet above sea level and surrounding the entire Lake. If such easements are acquired by the State, said strip of land should of course be sufficient in width to allow and permit the public to fish therefrom and to freely pass over the same.

Although I have made no examination relative thereto, I have been informed that the Division of Conservation and Natural Resources did, at one time, stock these waters with fish. I have not ascertained the cost thereof or whether they have continued to maintain such stock of fish.

I have endeavored herein to report the procedural steps and expenditures made in connection with this project, as requested in your Resolution, and my opinions and recommendations as to the rights of the State in the respective parcels have already been stated above. I have not herein attempted to express any opinion as to the necessity or the expediency of this project but rather to confine myself to the specific propositions set forth in your Resolution.

In addition to the plat shown as Appendix "C," attached hereto I have caused to be made two enlarged aerial photographs, one of the entire area and one of the 23.88 acre parcel, which are furnished for the convenience of your body in considering this report.

Respectfully submitted,

THOMAS J. HERBERT,

Attorney General.

APPENDIX A

Section 412-16, G.C.

“The director of highways in constructing highways, bridges and culverts under authority of sections 1178 to 1230 inclusive, of the General Code; the county commissioners in constructing highways, bridges and culverts under authority of sections 2421, 2432 and sections 6860 to 7574, inclusive, of the General Code; the trustees of any township in constructing highways, bridges and culverts under authority of sections 3295 and 3298-1 to 3298-53a, inclusive, of the General Code; and any municipality of the state, constructing or improving viaducts, bridges and culverts under authority of section 3939 of the General Code, are authorized, either severally or jointly, upon request of the superintendent of public works, as director thereof, and with the approval of the director of highways, to construct and maintain slack water dams in connection with said highway, highway bridge or culvert so as to create reservoirs, ponds, water parks, basins, lakes or other incidental works to conserve the water supply of the state.”

Section 412-17, G.C.

“The superintendent of public works may request the public authority having charge of the construction of state, county or township highways, highway bridges and culverts or municipal streets, for the construction of slack water dams in connection with the construction of any such highway, street, highway bridge or culvert whenever, in his opinion, the construction of such dam is desirable and feasible for the economical creation and construction of reservoirs, ponds, water parks, basins, lakes or other incidental works for the conservation of the water supply of the state.

The public authority having charge of such construction may approve such request when, in its opinion, the construction of such dam or dams will not unnecessarily delay or hinder the construction of the highway, street, highway bridge or culvert, or will not interfere with the value or use of the same for highway purposes.

If such request is approved the superintendent of public works, in cooperation with the department of highways and the public authority participating in the project, shall make a survey and prepare plans, specifications and estimates for the construction of such dam or dams and

the reservoir, pond, water park, basin, lake or other incidental works in connection therewith.

Upon approval of the plans and specifications, and determination to proceed with the project, the superintendent of public works shall enter into an agreement with the public authority on the distribution of the cost and expenses of the construction of such dam or dams and incidental works in connection therewith. The portion of the cost to be paid by the Department of Public Works shall be paid from any funds appropriated for or paid into the department and available for such purpose; provided however, no public authority shall proceed with the construction of such a project unless the certificate as provided by section 2288-2 of the General Code has been filed with the agreement.

Such dams shall be constructed under and subject to any laws governing the construction of state, county or township highways, bridges or culverts. Any public authority undertaking construction under this act (G.C. Secs. 412-16 to 412-23), shall proceed in the same manner as provided for the construction of highway or street improvements."

Section 412-18, G.C.

"Any department or division of the state government, or any county, township, municipality, park board or district, organization, club, corporation or private person may petition the superintendent of public works for the construction of dams and reservoir projects in connection with the construction of any highway, highway bridge or culvert.

Upon receipt of such a petition and the approval of same by the superintendent of public works, he shall proceed as authorized by section 2 (G.C. Sec. 412-17) of this act. If the public authority having charge of the construction of such highway, street, highway bridge or culvert approves the request, then the superintendent of public works shall enter into an agreement with the public authority, organization or person petitioning the construction of such dam or reservoir, on the apportionment of the cost and expense of construction. The cost and expense of such dam project shall include the cost of clearing and grubbing, and the cost of property and damages incidental thereto. Such agreement shall also contain provisions for the proper maintenance, upkeep and repair of such projects after completion."

Section 412-19, G.C.

“In all cases in which a public authority, private organization or person petitions the construction of a dam and reservoir project as authorized by this act (G.C. Secs. 412-16 to 412-23), the superintendent of public works shall, as a condition precedent to the construction of such project, require such authority, organization or person to pay their share of the cost and expense of such project into the hands of the treasurer of state, to be kept in a separate account for each such project and to be disbursed upon the order of the superintendent.

Upon receipt of funds in an amount equal to the estimated cost of such project the superintendent of public works shall furnish to the public authority in charge of the construction of such highway, highway bridge or culvert, the certificate provided for by section 2288-2 of the General Code, whereupon such authority may proceed with the construction of such dam and reservoir project.

In the event the estimated cost paid into the state treasury is found to be insufficient, the deficiency shall be made up by the parties bearing the cost before any further work is done. If the deficiency is not made up within sixty (60) days after same is known, the cost paid in, less the amount of expense incurred by the superintendent of public works and the cooperating public authorities, shall be refunded to the donor. After completion of the work, any amount remaining in the state treasury to the credit of the project, shall likewise be refunded.”

Section 412-20, G.C.

“In the construction of dams, reservoirs, and other incidental works under the provisions of this act (G.C. Secs. 412-16 to 412-23), the superintendent of public works shall proceed as provided in sections 404 to 441, inclusive, of the General Code, and shall enter into contracts therefor as provided in sections 2314 to 2341, inclusive, of the General Code. The director of highways, the commissioner of conservation, any county, township, municipality and public park board or district, are authorized to proceed with the letting of contracts for the construction of such dams or reservoir projects, approved by the superintendent of public works, under provisions of any laws regulating the letting of contracts applicable to their respective department, division, district or political subdivisions, and the authority and terms of this act.”

Section 412-21, G.C.

“The superintendent of public works shall have the supervision, care and control of all such dams, reservoirs, ponds, water parks, basins, lakes or other incidental works constructed under this act, and shall maintain and keep them in repair, the cost of which maintenance and repair shall be paid from any funds appropriated to the department for that purpose or paid into the state treasury as agreed upon with the public or contracting authorities cooperating in the construction of such projects.

Such projects may also be maintained by any department or division of state governments or other public authorities leasing or operating the project, through agreements made with the said superintendent of public works. All rentals derived from the lessees of such projects shall be used by the said superintendent in the maintenance, upkeep or repair of all such projects constructed under this act (G.C. Secs. 412-16 to 412-23). The costs and expenses of the reconstruction of any such projects shall be distributed, unless otherwise agreed, on the same basis and pro-rata share of the costs and expenses, as was paid by the contracting authorities contributing to the cost of the original project.”

Section 412-22, G.C.

“The superintendent of public works is authorized to acquire by gift, lease or purchase, suitable lands, waters and riparian rights upon streams, for the purpose of establishing thereon dams, reservoirs, ponds, water parks, basins, lakes, or other incidental works, to conserve the water supply of the state. When the superintendent of public works and the owner or owners of said lands, waters or riparian rights, are unable to agree upon the terms, purchase price and sale thereof, the superintendent of public works may acquire said lands by appropriation proceedings in the manner provided by sections 442 to 468, inclusive, of the General Code; or the same may be acquired by any proper authority in the manner now provided for the acquisition of lands required for the construction of highways, bridges and culverts.

The title or lease to any and all such lands, waters or riparian rights, shall be taken by the superintendent of public works, subject to the approval of the governor and attorney general, in the name of the State of Ohio. The lease rentals or purchase price of any and all such lands,

waters or riparian rights, as well as all costs and expenses of constructing any such reservoirs, ponds, water parks, basins, lakes, or other incidental works, on such lands, may be paid for from any funds appropriated for the use of or paid into the department of public works and available for such purpose. Said superintendent of public works is hereby authorized to accept contributions to such funds from individuals, associations, clubs, organizations and corporations.”

APPENDIX B

HISTORY OF CLAIMS FILED AND DISPOSITION THEREOF

Claims filed by Joseph B. Grimes, Waverly, Ohio.

1. Claim No. 4017, filed with the Sundry Claims Board, December 30, 1936, by Joseph B. Grimes, alleging damages of \$35,405.00 for losses to crops and land during the years 1935 and 1936. The Department of Public Works recommended disallowance of the claim, amended a petition of original claim filed, claiming damages of \$23,680.00, itemized as follows:

Crop damage, 1935.....	\$1,680.00
Crop damage, 1936.....	5,400.00
Damages to land flooded.....	8,600.00
Damage to contiguous land.....	8,000.00
	\$23,680.00

The Sundry Claims Board, after investigation, recommended the allowance for the claim to the following extent: \$1,680.00 for 1935 crop damages and \$3,520.00 for 1936 crop damages. Such claims were paid by authority of House Bill No. 715, known as Sundry Claims Bill, in June, 1937.

2. On December 28, 1938, he filed claim No. 4805 with the Sundry Claims Board, claiming losses and damages during the years 1937 and 1938 in the amount of \$3,876.67. On May 3, 1939, the Sundry Claims Board recommended and included in the Sundry Claims Bill the sum of \$2,000.00 to cover crop damages during both of such years. Such Sundry Claims Bill bore House Bill No. 677 and, after having been passed in the House, such item was deleted from the Bill by the Senate Finance Committee.

3. On December 30, 1940, claim No. 5588 was filed with the Sundry Claims Board asking compensation for damages to the land flooded during the years 1935 and 1936 in the amounts of \$8,600.00 and \$8,000.00, respectively, and for allowance of the \$2,000.00 crop damage during the years 1937 and 1938, and further claiming damage by reason of con-

tinuous seepage and percolating waters through and under the dam during the years 1939 and 1940 claiming a total loss of 55.1 acres of corn amounting to \$2,818.36 and claiming crop losses for the year 1938 to the extent of \$1,865.76. This claim, after report by the Department of Public Works, has not been approved.

Claims of George C. Jones, Waverly, Ohio.

1. On January 2, 1937, claim No. 4050 was filed with the Sundry Claims Board asking damages of \$22,058.50 for crop losses in 1935 and 1936 and damages to land and costs in constructing and maintaining a drainage ditch. This claim was approved by the Sundry Claims Board to the following extent:

1935 crop losses.....	\$1,920.00
1936 crop losses.....	840.00
Cost of ditch.....	240.00
	\$3,000.00

This claim was paid by authority of House Bill No. 715, being Sundry Claims Bill, in June, 1937, by the issuance of a check or voucher in the sum of \$3,000.00.

2. On December 28, 1938, claim No. 4804, asking damages of \$1,907.00 for crop losses during 1937 and 1938 was filed. The Sundry Claims Board recommended and included in House Bill No. 677 an approved item of \$1,100.00, which item was deleted by the Senate Finance Committee, May 31, 1939.

3. On December 31, 1940, supplemental application claim No. 4050 was filed, asking allowance of the \$1,100.00 mentioned in the preceding paragraph and claiming a loss of twenty acres of corn having a value of \$924.00 for 1939, and during 1940 of fifteen acres of corn having a value of \$495.00. This claim, after report by the Department of Public Works, has not been approved.

Appendix C omitted.