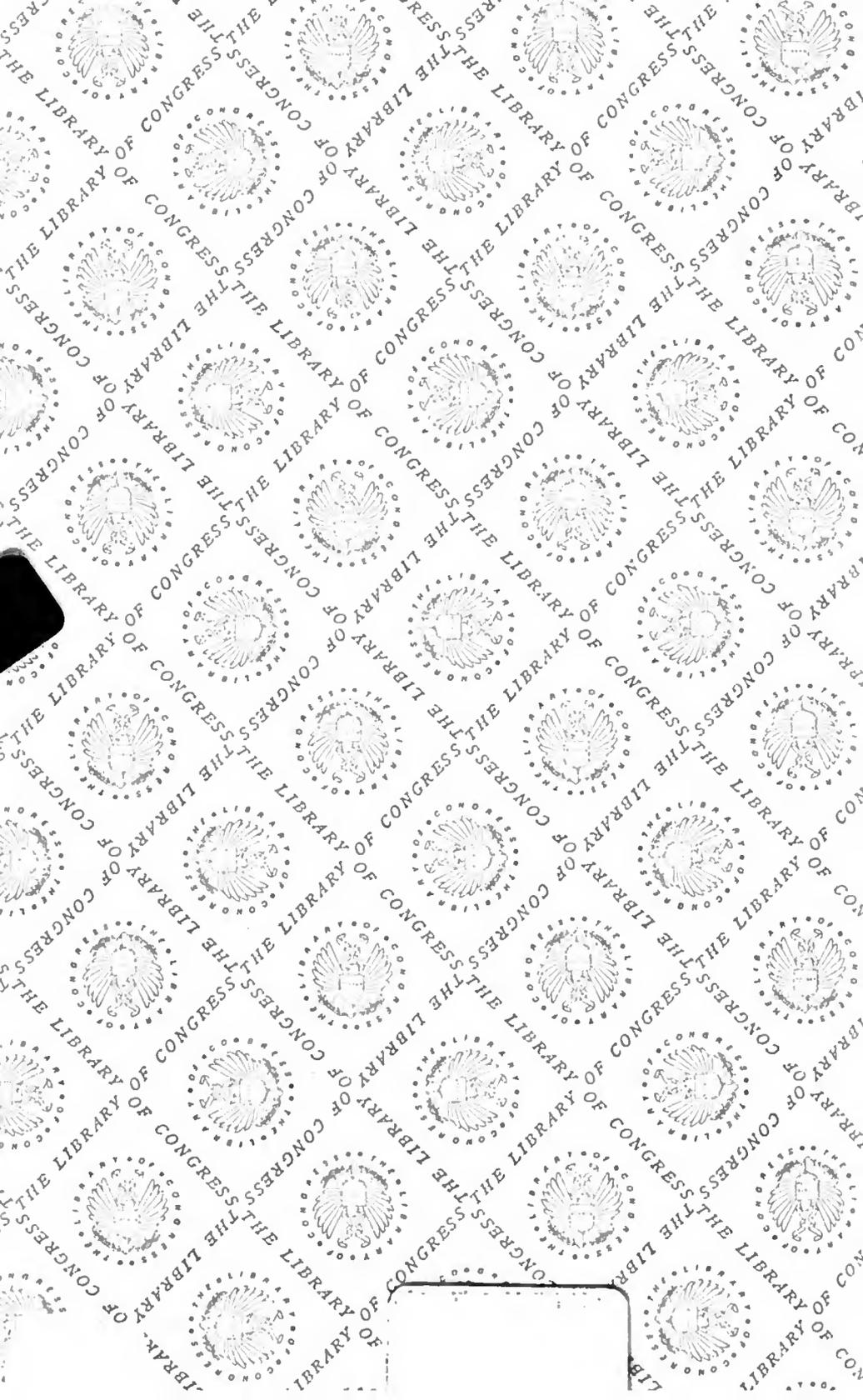
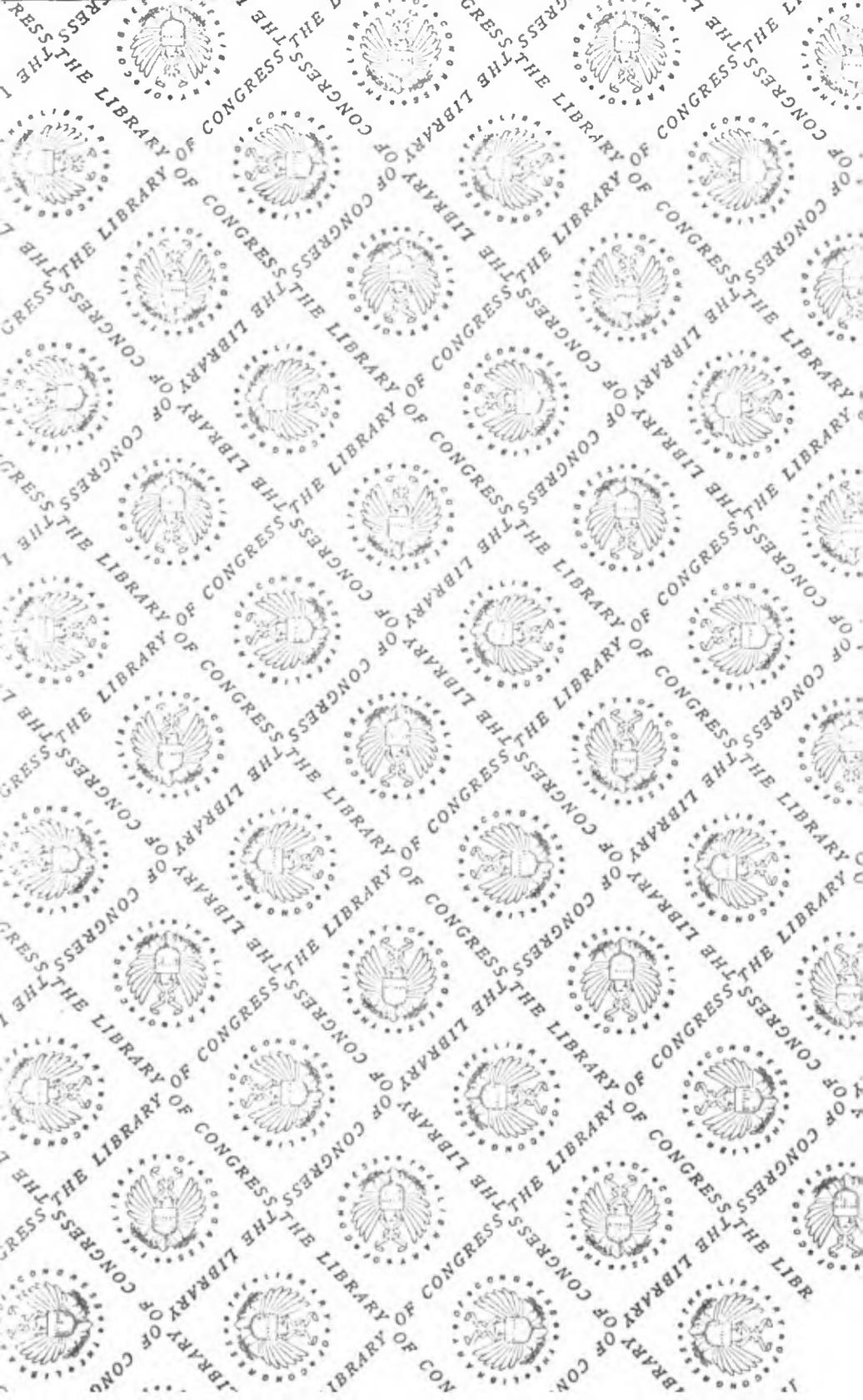


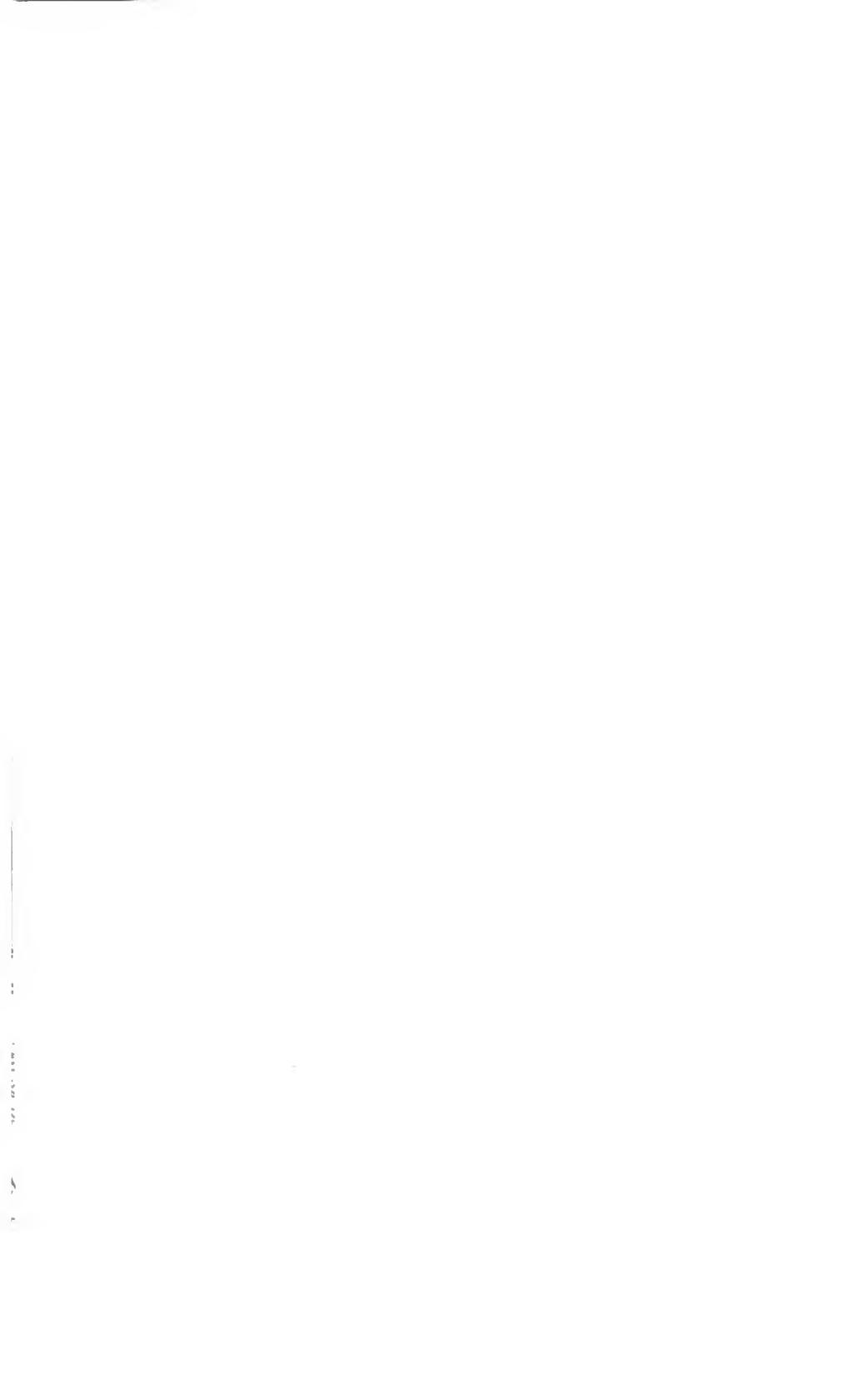
KF 27

.I5587

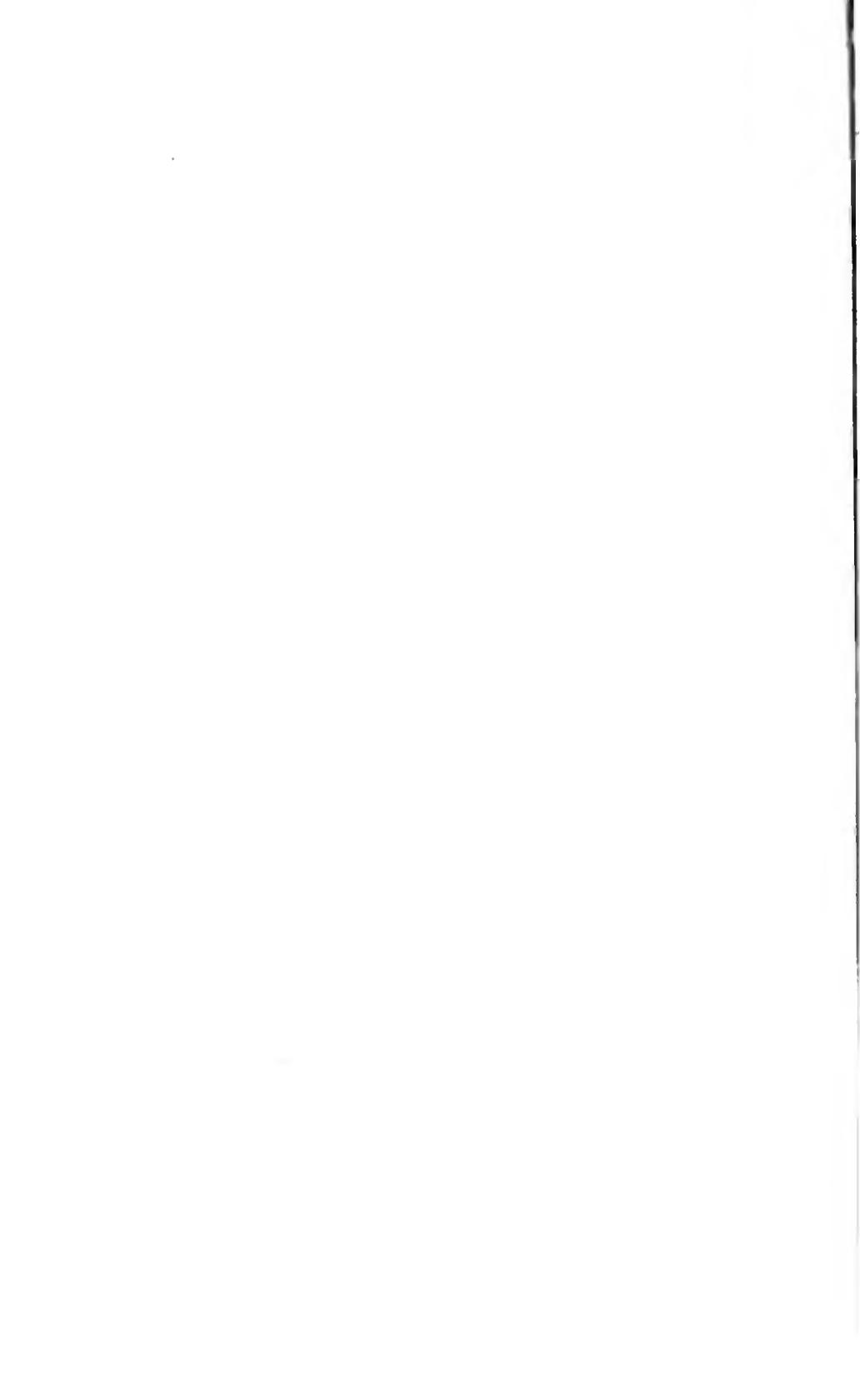
1970n











# OLETA RIVER IN DADE COUNTY, FLORIDA

U.S. Congress. House.  
Committee on Inter-  
state and Foreign Com-  
merce. □

4 - FEB 17  
COPY ..... 1971

## HEARING

BEFORE THE

### SUBCOMMITTEE ON

### TRANSPORTATION AND AERONAUTICS.

OF THE

### COMMITTEE ON

### INTERSTATE AND FOREIGN COMMERCE

### HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

ON

## H.R. 19892

A BILL TO DECLARE A PORTION OF THE OLETA RIVER  
IN DADE COUNTY, FLORIDA, NONNAVIGABLE

DECEMBER 9, 1970

Serial No. 91-90

Printed for the use of the Committee on Interstate and Foreign Commerce

79-610225



## COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

SAMUEL N. FRIEDEL, Maryland	WILLIAM L. SPRINGER, Illinois
TORBERT H. MACDONALD, Massachusetts	SAMUEL L. DEVINE, Ohio
JOHN JARMAN, Oklahoma	ANCHER NELSEN, Minnesota
JOHN E. MOSS, California	HASTINGS KEITH, Massachusetts
JOHN D. DINGELL, Michigan	GLENN CUNNINGHAM, Nebraska
PAUL G. ROGERS, Florida	JAMES T. BROYHILL, North Carolina
LIONEL VAN DEERLIN, California	JAMES HARVEY, Michigan
J. J. PICKLE, Texas	ALBERT W. WATSON, South Carolina
FRED B. ROONEY, Pennsylvania	TIM LEE CARTER, Kentucky
JOHN M. MURPHY, New York	DONALD G. BROTZMAN, Colorado
DAVID E. SATTERFIELD III, Virginia	CLARENCE J. BROWN, Ohio
BROCK ADAMS, Washington	DAN KUYKENDALL, Tennessee
RAY BLANTON, Tennessee	JOE SKUBITZ, Kansas
W. S. (BILL) STUCKEY, Jr., Georgia	FLETCHER THOMPSON, Georgia
PETER N. KYROS, Maine	JAMES F. HASTINGS, New York
BOB ECKHARDT, Texas	JOHN G. SCHMITZ, California
ROBERT O. TIERNAN, Rhode Island	
RICHARDSON PREYER, North Carolina	
BERTRAM L. PODELL, New York	

W. E. WILLIAMSON, *Clerk*

KENNETH J. PAINTER, *Assistant Clerk*

### *Professional Staff*

JAMES M. MENOER, Jr.  
WILLIAM J. DIXON

ROBERT F. GUTHRIE  
KURT BORCHARDT

## SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

SAMUEL N. FRIEDEL, Maryland, *Chairman*

JOHN D. DINGELL, Michigan	SAMUEL L. DEVINE, Ohio
J. J. PICKLE, Texas	GLENN CUNNINGHAM, Nebraska
BROCK ADAMS, Washington	ALBERT W. WATSON, South Carolina
	DAN KUYKENDALL, Tennessee

(II)

SL 27 Feb 71

KF27  
.I5587  
1970n

## CONTENTS

	Page
Text of H. R. 19892.....	1
Statement of—	
Gurnee, Mark S., chief, Operations Division, Civil Works, Office of the Chief of Engineers, Department of the Army.....	2
Manders, Logan J., Enterprise Properties, Ltd.....	7
Ruttenberg, Charles B., counsel, Enterprise Properties, Ltd.....	7
Additional material submitted for the record by—	
Army Department, Office of the Chief of Engineers, geological survey map of a portion of North Miami Beach showing the location of the area in question.....	4
Enterprise Properties, Ltd.:	
Letter dated May 11, 1970, from Corps of Engineers to Logan Manders re application for an after-the-fact permit for the con- struction of a marina on Oleta River.....	7
Letter dated August 11, 1970, from Corps of Engineers to Logan Manders re fill which was placed across the original thread of the Oleta River.....	8
Minutes of the meeting of the Board of Trustees of the Internal Improvement Trust Fund held on January 27, 1970, with pertinent additional material.....	11



# OLETA RIVER IN DADE COUNTY, FLA.

WEDNESDAY, DECEMBER 9, 1970

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Washington, D.C.

The subcommittee met at 11 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman) presiding.

Mr. FRIEDEL. The subcommittee will please be in order.

This morning we will hear testimony on H.R. 19892 which declares a portion of the Oleta River in Dade County, Fla., nonnavigable.

This bill was introduced on December 1, 1970, by Representative Claude Pepper.

(The text of H.R. 19892 follows.)

[H.R. 19892, 91st Cong., second sess., introduced by Mr. Pepper on December 1, 1970]

A BILL To declare a portion of the Oleta River in Dade County, Florida, nonnavigable

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the portion of the south 800 feet, as measured along the west line, of tract A of Maule Federal Highway Industrial Sites, according to the plat thereof recorded in Plat Book 46 at page 55, lying between the meanders of Big Snake Creek (Oleta River) lying and being below the line of ordinary high-water line, comprising 3.5 acres, more or less, as described below, is declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States:

That portion of the northeast quarter of the southeast quarter of section 9, township 52 south, range 42 east of Dade County, Florida, more particularly described as follows:

Commencing at the northeast corner of the southeast 1 quarter of said section 9, thence westerly along the north line of the southeast quarter a distance of 308.02 feet to the point of beginning, said line also being the north line of said tract A. From said point of beginning southeasterly on a line that is 40 degrees 36 minutes 19 seconds with the aforementioned north line of the southeast 1 quarter of said section 9, to the easterly meander line of Big Snake Creek (Oleta River), thence south 1 degree east, along said easterly meander line to the south line of the northeast 1 quarter of the southeast 1 quarter of said section 9, said line also being the south line of said tract A, thence westerly 334 feet, more or less, to the westerly meander line of said Big Snake Creek (Oleta River), thence run north 1,335 feet, more or less, along the westerly meander line, thence north 60 degrees west for 65 feet, more or less, along said meander line to the westerly right-of-way line of State Road Numbered 5 (United States Highway Numbered 1), thence north 14 degrees 28 minutes 30 seconds east for 45 feet, more or less, along said right-of-way line to a point of intersection with the north line of the southeast quarter of section 9, thence easterly to the point of beginning.

Mr. FRIEDEL. Our first witness this morning will be Mr. Mark S. Gurnee, Chief, Operations Division, Civil Works, Office of the Chief of Army Engineers.

You may proceed, Mr. Gurnee.

**STATEMENT OF MARK S. GURNEE, CHIEF, OPERATIONS DIVISION,  
CIVIL WORKS, OFFICE OF THE CHIEF OF ENGINEERS, DEPARTMENT OF THE ARMY**

Mr. GURNEE. Mr. Chairman and members of the committee:

I am Mark S. Gurnee, Chief, Operations Division, Civil Works Office, Chief of Army Engineers.

The proposed legislation, H.R. 19892, if passed, would have the effect of removing the defined property from the permit control responsibility of the Department of the Army under the River and Harbor Act of 1899, 33 U.S.C 403, by declaring a portion of the Oleta River in Dade County, Fla., nonnavigable.

As there has not been opportunity to coordinate this question with the Secretary of the Army or the Office of Management and Budget, I shall limit my comments to a recitation of facts pertinent to the issuance of a permit for the area.

In September 1969, Logan J. Manders, of Enterprise Properties, Ltd., owner of the marina occupying the area in question, asked the Jacksonville Army District Engineer if a permit for the marina area, required under 33 U.S.C. 403, had previously been issued and, if not, what action should be taken to formalize his company's position. On September 30, 1969, he was advised that a required permit had not been issued and that it should be sought after the fact.

Enterprise Properties, Ltd., became the owner of record of the property in 1966, some time after the marina was constructed.

In March 1970, an application for a permit under 33 U.S.C. 403 was duly submitted and processing in the normal manner was initiated by the district engineer.

The only objections to the issuance of the permit were from the Florida State Game and Fresh Water Fish Commission and the U.S. Department of Interior. Both of these objections were procedural ones on the basis that the work was already completed and could not substantively be influenced. The State further asked that the issuance of a permit be withheld. This request has been honored to date. It is believed that the State's request is premised on a question of title to the submerged lands, understood to be in dispute between the owner and the State.

On August 11, 1970, the owner was advised by the district engineer that the marina was not objectionable from the navigation standpoint. In the absence of other substantive objection and with withdrawal of the State's objection, issuance of the permit would normally proceed.

This concludes my prepared statement, Mr. Chairman. I am at your disposal for any question within my capability.

Mr. FRIEDEL. Mr. Gurnee, is the Army Engineers opposed to the legislation?

Mr. GURNEE. Because we have not cleared our position with the Office of Management and Budget, I should not state this positively, but there have been several such bills or portions of bills introduced in

the past for the purpose of clearing up the financial responsibilities of an owner and we have not objected to this as a matter of principle. I suspect we would not object in this case.

Mr. FRIEDEL. You say they built the marina without the permit, is that correct?

Mr. GURNEE. That is correct, sir.

Mr. FRIEDEL. Can you give us a little description of the area? How big is it?

Mr. GURNEE. I think it is defined in the bill as being somewhat in excess of three acres and I believe a subsequent witness, the owner, has charts which he can show you as to where the property is located in North Miami Beach.

Would you like to see the charts now, sir?

Mr. FRIEDEL. Yes.

Mr. GURNEE. May I approach the bench?

Mr. FRIEDEL. Surely.

Mr. GURNEE. This is a geological survey map of a portion of North Miami Beach, Fla., and the area in question is located right here (indicating). The inland waterway goes down through this area. This is a photograph of the immediate area right here (indicating). The Oleta River comes down in this back bay area and it originally went through the location of the marina but since that, navigation has had access to the Oleta River area as a result of dredging in the outer bay area.

(A copy of the map referred to follows:)



Mr. FRIEDEL. In other words, that would not obstruct any boats going up in the Oleta River?

Mr. GURNEE. That is correct, sir. As I said in my testimony, the permit request is not objectionable as far as navigation is concerned.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Mr. Gurnee, I am not sure that I understand the problem that is before us. You are asking for a measure that would move this property from the control of the district area engineers, that is, make it nonnavigable and thus make it removable from the Army Engineers.

Mr. GURNEE. No, sir. The Army is not sponsoring this legislation. It is in effect being sponsored by the owner and the Congressman, sir.

Mr. PICKLE. Yes, I understand that, but the Army, the Corps of Engineers, is involved in that, by making it nonnavigable, it would remove it from their jurisdiction.

Mr. GURNEE. Yes, sir.

Mr. PICKLE. How did Enterprise Properties, Ltd., actually become the owner? Have they become the owner of the property?

Mr. GURNEE. They became owner of the property after the marina was built; yes sir.

Mr. PICKLE. How could they become the owner? Who owned the land before that?

Mr. GURNEE. The prior owner, according to my records, was Raymond G. Williams.

Mr. PICKLE. There was no Government ownership prior to this? The property has been owned by individuals and this is the last owner?

Mr. GURNEE. There has never been any Federal Government ownership.

Mr. PICKLE. All right. Now, you say that the Florida State Game and Fresh Water Fish Commission and the U.S. Department of the Interior at one time had objected to the issuance of this permit and then you said you believed that it was procedural and you believed that their request was based on a question of title.

You further state that as of August 1970, the district engineer advised the parties involved that the marina was not objectionable from a navigation standpoint.

Does that mean that the State of Florida and all parties concerned actually removed their objections? Is that official from the State of Florida or from the Department of Interior?

Mr. GURNEE. No, sir, the objections of the State of Florida have not been withdrawn, and the Department of Interior's objection was not substantive, but procedural.

Mr. PICKLE. You want us then to declare this nonnavigable even though this question has not been resolved?

Mr. GURNEE. As I said earlier, sir, the Corps is not sponsoring this legislation, but notwithstanding, I would not expect after proper clearance that the Secretary of the Army would object to the legislation.

You see, the marina is already in being and there doesn't seem to be any substantive reason for requiring under any circumstances the removal of the marina, which would be the only action which we might take.

Mr. PICKLE. In effect, this legislation is only asking that the present owner actually be given a valid permit to operate the business that he has going there?

Mr. GURNEE. It has a more far-reaching effect than that, sir. Permits that we issue are subject to revocation by the Secretary of the Army, whereas if you remove this from our jurisdiction, the owner is not subject to that possible risk.

Mr. FRIEDEL. Would the gentleman yield?

Mr. PICKLE. Yes.

Mr. FRIEDEL. Would the permit request, if granted, do anything more than clear the title of the property?

Mr. GURNEE. If the permit request were granted, it does not clear title to the property. It merely makes the structure legal in the sense of the 1899 act.

Mr. FRIEDEL. In other words, if the permit is not granted, they would not be able to expand or the owners would not be able to expand the right to build or develop in any way?

Mr. GURNEE. Not without a valid permit covering such work.

Mr. PICKLE. In effect, if it was granted, it simply means that the Government, the Corps of Engineers, could not come in and cancel the permit that had been issued and that it makes permanent the permit that has been issued, if the legislation is passed.

Mr. GURNEE. Perhaps the committee would like to ask this question of the owner or his representatives. I understand that their concern is that a permit is not necessarily a permanent thing. Anything that is built within navigable waters of the United States, even though it is under permit, may subsequently be required to be removed.

Mr. PICKLE. Who could alter the permit later?

Mr. GURNEE. The Secretary of the Army could, but he would do so only after a public hearing and only with very substantive reasons. He would not do so willfully, of course.

Mr. PICKLE. Mr. Gurnee, if we were to pass this particular bill, H.R. 19892, then the Secretary could not come in and do anything about it later?

Mr. GURNEE. That is correct. It would be out of our jurisdiction completely.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. Thank you, Mr. Chairman.

Mr. Gurnee, what is the emergency nature of the legislation? I am a little appalled that someone comes in at this late date in December, with a lameduck Congress in session, with something that we have never heard of before.

You say in your statement that there has been no opportunity to coordinate the question with the Army. What is the emergency? Why does this bill have to be rammed through here during the last session of the Congress?

Mr. GURNEE. I don't feel that I am qualified to answer that question, not representing the sponsor of the legislation.

Mr. DEVINE. You are here as a witness and we have plenty of business to conduct without your coming in with something like this at the last minute.

I have nothing further.

Mr. FRIEDEL. Our next witness will be Mr. Logan J. Manders of Enterprise Properties, Ltd.

Mr. Manders.

**STATEMENT OF LOGAN J. MANDERS, ENTERPRISE PROPERTIES, LTD., ACCOMPANIED BY CHARLES B. RUTTENBERG, COUNSEL**

Mr. MANDERS. Mr. Chairman and members of the subcommittee, my name is Logan J. Manders. I am the general partner of Enterprise Properties, Ltd., which is directly concerned with the legislation now before the subcommittee, H.R. 19892, which would declare a portion of the Oleta River in Dade County, Fla., nonnavigable. With me is Charles B. Ruttenberg, of the firm of Arent, Fox, Kintner, Plotkin & Kahn. I appreciate the opportunity to appear before you and to present the background involved in this legislation.

Enterprise Properties, in April 1966, by general warranty deed, acquired what it thought was clear title to the south 800 feet of Maule Industrial Tract A, a plot of land located in Dade County, Fla., which encompasses the land described in H.R. 19892. After the property in question was acquired by Enterprise Properties, it came to the attention of Enterprise Properties that submerged lands belonging to the State of Florida underlay the property and that these lands had never been purchased from the State. It also came to the attention of Enterprise Properties that, in connection with the development of the property, a portion of the Oleta River, a navigable stream, had been filled in about the year 1960 without the issuance of a permit by the Corps of Engineers or by any other State or Federal agency, thus casting a serious cloud on the title to the property.

In attempting to rectify the situation, Enterprise Properties entered into negotiations with the State of Florida for the purchase of the submerged lands, it being a prerequisite of the United States that title to the submerged lands first be acquired before an application for a permit would be considered by the Corps of Engineers. Subsequently, a contract was entered into between Enterprise Properties and the State of Florida to acquire the submerged land. Enterprise Properties thereupon applied for an after-the-fact permit from the Corps of Engineers which would have recognized the filling in of that portion of the Oleta River in question and the placing of connecting structures thereupon by Enterprise Properties' predecessors in title. As a result of this application, the Corps of Engineers issued a letter of intent, dated May 11, 1970, which I am happy to submit for the record, indicating the corps' willingness to issue an after-the-fact permit for said filling and structures.

Mr. FRIEDEL. That letter will be made a part of the record at this point.

(The letter referred to follows:)

DEPARTMENT OF THE ARMY,  
JACKSONVILLE DISTRICT, CORPS OF ENGINEERS,  
*Jacksonville, Fla., May 11, 1970.*

Mr. LOGAN MANDERS,  
*Enterprise Properties, Ltd.,  
North Miami Beach, Fla.*

DEAR MR. MANDERS: Reference is made to your application for an after-the-fact Department of the Army permit for the construction of a marina on Oleta River in Dade County, Florida.

Information is furnished that the subject structure is unobjectionable to the Corps of Engineers and a Department of the Army permit would be issued were the consent of the state authority (Trustees of the Internal Improvement Trust Fund) also forthcoming.

Sincerely yours,

A. L. McKNIGHT,  
Chief, Operations Division.

Mr. MANDERS. A subsequent letter to me of August 11, 1970, confirmed the fact that no navigational problems exist as a result of the filling of the Oleta River.

Mr. FRIEDEL. That letter will be made a part of the record at this point.

(The letter referred to follows:)

DEPARTMENT OF THE ARMY,  
JACKSONVILLE DISTRICT, CORPS OF ENGINEERS,  
Jacksonville, Fla., August 11, 1970.

Mr. LOGAN MANDERS,  
On-the-Beach Realty Co.,  
Ocean City, Md.

DEAR MR. MANDERS: Reference is made to the fill which was placed across the original thread of the Oleta River some years ago and which is now the subject of an application for an after-the-fact Department of the Army permit which was placed on public notice by this office on April 8, 1970.

Although the fill was illegally placed obstructing navigation in the Oleta River, the dredging of Maule Lake has since provided for the general needs of navigation in the area and no indication has been made to this office of any necessity for the removal of the fill because of that fact. Since navigation through the original thread of the Oleta River has not been possible for some time, this office would not take exception to any proposed action purporting to substantiate this fact.

Sincerely yours,

A. L. McKNIGHT,  
Chief, Operations Division.

Mr. MANDERS. Thereafter, Enterprise Properties, having been furnished a copy of the proposed permit form to be issued by the U.S. Army Corps of Engineers at Jacksonville, Fla., learned that, under any such permit, the United States has a perpetual right to revoke or cancel said permit without compensation to the applicant. This condition, according to the title company concerned, precluded the possibility that development or clear ownership of the land could exist with the question of the navigable rights of the United States being outstanding.

We have been assured by the title company, however, that if the legislation now before the subcommittee is enacted, the title company will issue a policy insuring title to the property in question.

For these reasons, we respectfully urge favorable consideration of H.R. 19892.

Thank you very much for giving me this opportunity to appear before you today and to present my views on the legislation.

I will be happy to answer any questions you may have.

Mr. FRIEDEL. As I see it, passing H.R. 19892 would clear the title and give you full ownership.

Mr. MANDERS. That is correct, sir.

Mr. FRIEDEL. And there is no objection from the U.S. Army Engineers that you know of?

Mr. MANDERS. No, sir.

Mr. FRIEDEL. Now, what is the dire need for it to be passed in the closing hours of this session? Could it not hold over to the next session?

Mr. MANDERS. Mr. Chairman, the dire need is frequented by the pressing financial crisis that this title condition has thrust upon myself and my company.

We proceeded for 4 years working on this matter and we felt, at least through last year, that this was an insurable matter and it could be handled with title insurance, but in recent days and years, the title insurers of this country have become increasingly alarmed by these outstanding rights, and insofar as a structure and fill was placed across a stream without the consent at least of the Corps of Engineers and built on land that ownership was still vested in the State of Florida, it made the title to this property unmarketable so that we have been fighting the mortgage foreclosure for 4 years on this property because we cannot deliver title to a new or subsequent mortgagee.

The mortgages came due as a matter in due course of business, but we have been unable to refinance, sell, or do anything with this property and not even properly operate it due to this title question.

The urgency is frequented by these questions.

Mr. FRIEDEL. What I am trying to bring out is that we have to face facts.

Mr. MANDERS. Yes, sir.

Mr. FRIEDEL. Before the committee could act we would have to have another meeting and it may be hard to get a quorum present.

Mr. MANDERS. I see.

Mr. FRIEDEL. If we can't get a quorum, we can't act on it and, if we do pass it, we still must go before the Rules Committee to obtain a rule. I doubt that it could come up under unanimous consent to permit a floor action.

I am facing the fact that it looks as if it will be almost impossible to get it out before we adjourn, which should be next Friday or Saturday.

Right now we are faced with the railroad strike. We are subject to call any second. We held hearings this morning. I just don't know when we can have an executive session to get this bill out.

I am trying to let you know what we are faced with ourselves.

Mr. MANDERS. Mr. Chairman, I would like to call the committee's attention to one other pertinent fact. As I pointed out in my previous testimony, we made reference to a contract with the State of Florida. This contract, which we will be happy to furnish a copy for the record, terminates on January 27 and in the State of Florida in recent legislation, which was enacted in November, the idea of ever acquiring this submerged land from the State of Florida is precluded by that legislation.

To approach the trustees committee in Tallahassee to seek a new contract in the face of this legislation would be impossible, so that I think we are at the crossroads with this property and this again points out the emergency nature of this legislation.

Mr. FRIEDEL. Would there be any possibility of asking them to extend it for 6 months or a year?

Mr. MANDERS. We had a meeting with them and they indicated that if we had a favorable committee report, that if the committee acted upon this favorably, that we would have indeed license to ask for an extension, but our mortgage holder, who is actually the developer of

this property in fact, wants to continue to pursue us and would not give us any additional time without some type of court relief or injunction.

Mr. FRIEDEL. I am in sympathy with you and I would like to act favorably, and that will be in the record. I think you have good grounds for this legislation, and knowing that the Army Engineers are not opposed to it in any way, it would seem to be the right thing for us to do. But whether we can get it done in time is another thing. We will have this record printed and then you can show it to the State and ask them to extend it.

Mr. MANDERS. Yes, sir.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Mr. Gurnee, you have stated a second ago that the Corps of Engineers had no objection to this. Can you, Mr. Manders, or you Mr. Gurnee, give to this committee a written statement from the Secretary of the Army that they either favor or have no objection to this legislation?

Mr. GURNEE. It has been our practice to withhold the issuance of the permit until such time as the State has cleared this. Notwithstanding that, I believe it would be possible for us to provide you with a formal report on the bill from the Secretary of the Army saying that we have no objection.

(The report referred to from the Secretary of the Army was not available to the committee at the time of printing.)

Mr. PICKLE. I insist that be furnished to the committee. In addition, I would like to have the State of Florida give us a written statement.

All we have in the testimony presented by Mr. Gurnee is that the district engineer had indicated that everything was in order.

I want a written statement from the State of Florida that this is agreed to by them, that they have no interest in this bill.

Can you furnish the committee with that kind of statement?

Mr. MANDERS. I would be happy to submit for the record a certified copy of the minutes of the meeting held the 27th day of January in executive session in the cabinet of the State of Florida which sets this forth, along with pertinent papers.

Mr. FRIEDEL. 1970?

Mr. MANDERS. Yes.

Mr. PICKLE. If the chairman is willing, you could make that a part of the record.

Mr. FRIEDEL. Yes; the minutes of the meeting will be included in the record.

(The documents referred to follow:)

File No. 2262-13-253  
 Legal File No. 67-4988  
 Application of ENTERPRISE PROPERTIES, LTD.  
 (Mr. Logan Manders)

January 15, 1970

MEMORANDUM OF UNDERSTANDING

On this date, Logan Manders, Melvyn Kessler and Matthew Gold, representatives of Enterprise Properties, Ltd., met in the Elliot Building, Tallahassee, Florida, with Fred Vidzes, Richard Boutin, Philip S. Bennett and Leslie McLeod, Jr., of the staff of the Board of Trustees of the Internal Improvement Trust Fund to discuss the purchase price of sovereignty lands lying within properties owned by the said Enterprise Properties, Ltd. It was agreed that \$45,000 was a fair consideration for and value of the subject property.

Delivery of the instrument of conveyance was discussed and it was agreed that the instrument could be held in abeyance for one year from the date the Board of Trustees approved the transaction. It was further agreed that interest in the amount of 8% per annum, or otherwise pro-rated, would be paid to said Board of Trustees for any period after 90 days from said approval.

It was understood that the above conclusions were predicated upon the basis of a quit-claim deed being the instrument of conveyance to the real party in interest at the time of closing.

ACKNOWLEDGED:

MELVYN KESSLER

FRED VIDZES

## EXHIBIT 1-C

Tallahassee, Florida  
January 27, 1970

The State of Florida Board of Trustees of the Internal Improvement Trust Fund met on this date in the Capitol in Senate Hearing Room 31, with the following members present:

Claude R. Kirk, Jr.  
Tom Adams  
Earl Faircloth  
Broward Williams  
Floyd T. Christian  
Doyle Conner

Governor (Present part time)  
Secretary of State  
Attorney General  
Treasurer  
Commissioner of Education  
Commissioner of Agriculture

James W. Aphthorp

Executive Director

\*\*\*\*\*

DADA COUNTY - File No. 2262-13-253.03. Agreement.

On January 14, 1969, the Trustees had authorized the Attorney General to intervene in that cause styled National Industries, Inc. vs Enterprise Properties, Ltd., for the purpose of protecting the Trustees' interest in certain land in Dada County. It was determined that the Trustees had an interest in that part of the South 800 ft. of Tract "A" Mauls Federal Highway Industrial Sites, Plat Book 46, Page 55, lying between the meanders of Big Snake Creek (Oleta River) in Fractional Section 9, Township 52 South, Range 42 East, Dada County.

As a result of the intervention the representative for the defendant Enterprise Properties, Ltd., Mr. Logan Manders, appeared before the Trustees on October 7, 1969, asking that lands in which the Trustees had an interest be sold to the applicant. The Trustees deferred action, staff having advised that appraisal should be secured. An appraisal by John E. Milloway, M.A.I., valued the Trustees' interest in the property at \$35,000, which the Director said was below the offer made by the applicant. The staff had arrived at an understanding with the applicant, not to be considered as binding the Board, that \$45,000 would be appropriate compensation for the Trustees' interest in the property.

On motion by Mr. Conner, seconded by Mr. Williams and adopted without objection, the Trustees agreed to divest their interest in the subject property in accordance with the terms of the Memorandum of Understanding executed on January 15, 1970, by attorney for the applicant, Melvyn Kessler, and Trustees' staff member Fred Vidres, subject, however, to all official concurrence in pending litigation and bankruptcy proceedings and official order thereon.

\*\*\*\*\*

Claude R. Kirk, Jr.  
Governor - Chairman

Attest: James W. Aphthorp  
Executive Director

# State of Florida

Secretary of State



I, **Tom Adams**, Secretary of State of the State of Florida,  
Do hereby Certify that the following is a true and correct copy of  
a portion of transcript of Cabinet Meeting for the 27th day of  
January, A. D., 1970, Item 6, Agenda of the Trustees of the  
Internal Improvement Trust Fund, as shown by the records of  
this office.

Given under my hand and the Great Seal of the  
State of Florida at Tallahassee, the Capital,  
this the 4th day of February,  
A.D. 19 70.



Secretary of State

*Cheltore*  
IN EVIDENCE  
EXHIBIT No. 1  
2-5-70 J.L.H. v.v.

January 27, 1970

the Board that I plan to meet with those that we have received objections from on Wednesday of this week. And we have, we're today finalising the policy as we think it should be, and we'll have something to talk to you about tomorrow, so that they'll understand what action we're proposing before it comes to the Board.

MR. ADAMS: Item 4.

MR. APTHORP: Item 4 is an application for sale in Lake Worth, Palm Beach County. We do recommend that this sale be denied. The biological report was not adverse, and it is within the approved bulkhead line. However, the neighbor of this applicant has objected and so have a number of private groups to this . . .

MR. FAIRCLOTH: I move approval of the recommendation.

MR. WILLIAMS: I second the. . .

MR. ADAMS: Without objection, the sale is denied.

MR. APTHORP: Item 5 is an application for sale in St. Johns County. The biological report is not adverse here. This appraisal has been checked by our staff appraiser and, and the bulkhead line situation in St. Johns County is good. And we recommend confirmation of this sale.

MR. CONNER: Motion.

MR. CHRISTIAN: Second.

MR. ADAMS: Approved.

MR. APTHORP: Item 6 is the authority, we request the authority of the Board to proceed to accept an offer made by National Industries of \$45,000 for the Trustees' interest in some property which is currently in litigation in Dade County. It's complicated litigation which we have, are party to in order to protect the State's interest in the property. Our interest has been appraised at \$35,000, and these people made an offer of forty-five, and we would like authority to accept the offer.

MR. WILLIAMS: I move approval.

MR. APTHORP: . . . provided the Court will allow us to make this conveyance in this posture with the litigation.

MR. ADAMS: Jim, could I ask: excuse me, go ahead.

January 27, 1970

**MR. CONNER:** I was going to move subject to authority.

**MR. APTHEORP:** Yes, Sir, it would have to be subject to the Court's . . .

**MR. WILLIAMS:** I'll second the Court's.

**MR. ADAMS:** Motion has been made and seconded. I'm sure there's no objection. Just a point of information, however, I recall at an earlier meeting a gentleman came and was explaining some difficulty about ownership and the development of a marina in an area. . .

**MR. APTHEORP:** Yes, Sir.

**MR. ADAMS:** . . . and so forth. Is this the same problem?

**MR. APTHEORP:** Yes, Sir. This is in the Oleta River in Dade County.

Mr. Sloppens, when he was with the Attorney General, represented the Trustees in the matter. And they made that offer at that time, \$45,000. But our reply was that we'd have to have an appraisal before we'd make a recommendation. The appraisal came in below that figure and now we'd like authority to petition the Court to get, to sell the State's interest at this figure.

**MR. ADAMS:** Item is approved.

**MR. APTHEORP:** Item 7 is a dredge permit to improve navigation in Escambia County. There's no. . .

**MR. FAIRCLOTH:** Motion.

: (No second recorded.)

**MR. APTHEORP:** . . . excuse me, recommend approval.

**MR. ADAMS:** Approved.

**MR. APTHEORP:** Lee County is a dredge permit for the, the authority to rescind a dredge permit to Gulf American. We became concerned about some work they were doing and they agreed to . . .

**MR. WILLIAMS:** Move. . .

**MR. APTHEORP:** . . . to rescind the permit.

**MR. WILLIAMS:** Move the recommendation be approved.

**MR. CHRISTIAN:** Second.

**MR. ADAMS:** Approved.



STATE OF FLORIDA  
BOARD OF TRUSTEES OF THE  
INTERNAL IMPROVEMENT TRUST FUND

ELLIOT BUILDING  
TALLAHASSEE, FLORIDA 32304

CLARENCE E. HARR, JR.  
GOVERNOR  
THE PALMACHO  
GOVERNOR OF FLORIDA  
EARL FARMER, JR.  
COMMISSIONER  
FRANK G. BUCHHEITEL, JR.  
COMMISSIONER  
EDWARD WILLIAMS,  
COMMISSIONER  
FLOYD V. CHRISTIAN,  
COMMISSIONER OF REVENUE  
ROYLE GIBSON,  
COMMISSIONER OF AGRICULTURE

February 3, 1970

Mr. Melvyn Kessler  
Attorney at Law  
1001 Northeast 128th Street  
North Miami, Florida 33161

Dear Mr. Kessler:

Application of Logan Manders  
Trustees I.I.T.F. File #2262-13-253.03

In meeting January 27, 1970, the Trustees of the Internal Improvement Trust Fund agreed to divest their interest in that part of the South 800 feet of Tract "A" Maule Federal Highway Industrial Sites, Plat Book 46, Page 55, lying between the meanders of Big Snake Creek (Oleta River) in Fractional Section 9, Township 52 South, Range 42 East, Dade County, in accordance with the terms of the Memorandum of Understanding executed on January 15, 1970, by you as attorney for the applicant and Fred Vidnes, Trustees' staff member, subject, however, to all official concurrence in pending litigation and bankruptcy proceedings and official order thereon.

An unofficial copy of the Trustees' minutes is enclosed for your reference.

Sincerely,

*Fred Vidnes*

Fred Vidnes, Director  
Land Management Division

FV/t

Enc.

cc: Legal Counsel

FILED IN EVIDENCE  
*John* Exhibit No. 18  
JAMES H. VAGOS, REFEREE  
*John*



JAMES W. APTHORP  
EXECUTIVE DIRECTOR  
PHONE 222-8121

STATE OF FLORIDA  
BOARD OF TRUSTEES OF THE  
INTERNAL IMPROVEMENT TRUST FUND

ELLIOT BUILDING  
TALLAHASSEE, FLORIDA 32304

CLAUDE R. KIRK, JR.,  
GOVERNOR

TOM ADAMS,  
SECRETARY OF STATE

EARL FAIRCLOTH,  
ATTORNEY GENERAL

FRED D. DICKINSON, JR.,  
COMPTROLLER

BROWARD WILLIAMS,  
TREASURER

FLOYD T. CHRISTIAN,  
COMMISSIONER OF EDUCATION

BOYLE CONNER,  
COMMISSIONER OF AGRICULTURE

March 26, 1970

Mr. Logan Manders  
Enterprise Properties, Ltd.  
17201 Biscayne Boulevard  
North Miami Beach, Florida

Dear Mr. Manders:

Trustees I.I.T.F. File #2262-13-253.12

For your information there is enclosed an excerpt from the Trustees' meeting of March 17, 1970, which corrects the minutes of a former meeting held on March 10, 1970.

Sincerely,

*Fred Vidoss*

Fred Vidoss, Director  
Land Management Division

FV/mp

Enclosure

Tallahassee, Florida  
March 17, 1970

The State of Florida Board of Trustees of the Internal Improvement Trust Fund met on this date in the Capitol in Senate Hearing Room 31, with the following members present:

Earl Faircloth	Attorney General, Acting Chairman
Fred O. Dickinson, Jr.	Comptroller
Broward Williams	Treasurer
Floyd T. Christian	Commissioner of Education
Doyle Conner	Commissioner of Agriculture

---

James W. Aphorpe	Executive Director
------------------	--------------------

---

Minutes of the meeting held on March 10 were approved. The Trustees authorized correction of the records of the meeting held on January 27, 1970, on which date the Director inadvertently referred to "National Industries" when it should have been "Enterprise Properties, Ltd."

---

Mr. PICKLE. The question was, could you give us a written statement officially from the State of Florida that they have no interest in this bill and that this is agreeable to them.

Mr. MANDERS. Yes, sir; I would say that we could deliver such a document.

(The statement requested was not available to the committee at the time of printing.)

Mr. PICKLE. Does the Coast Guard have any interest in this legislation?

Mr. MANDERS. I would not know whether they would or not. I don't think they have any jurisdiction here.

Mr. FRIEDEL. Well, gentlemen, we will try to get an executive session and see if we can bring it out and I will leave the record open until we get those documents, and the quicker the better.

Mr. MANDERS. Thank you, sir.

Mr. FRIEDEL. The meeting now stands adjourned.

(Whereupon, at 11:30 a.m. the hearing adjourned.)

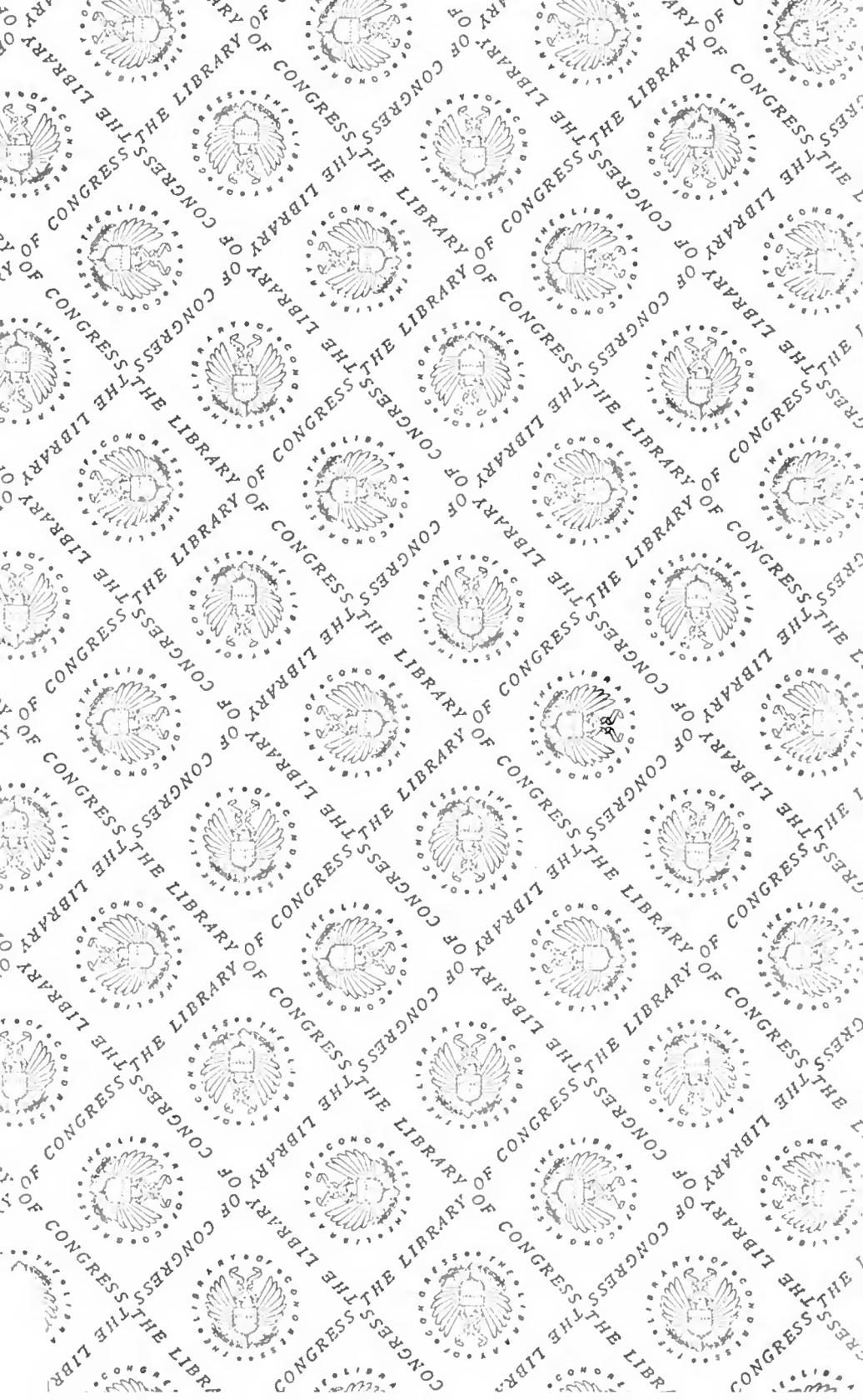


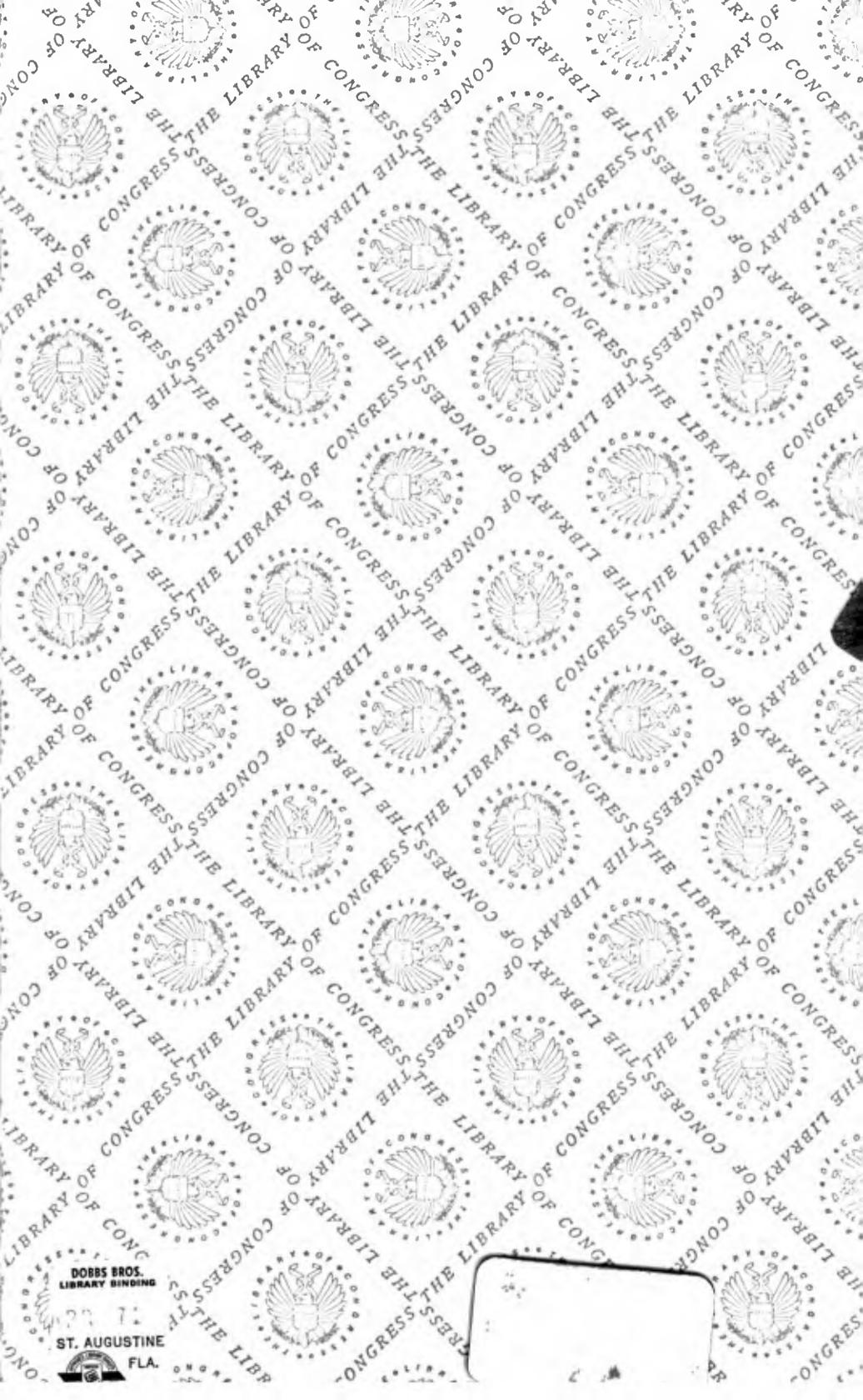
**PD 2.6. 3.**











DOBBS BROS.  
LIBRARY BINDING

ST. AUGUSTINE

FLA.



LIBRARY OF CONGRESS



0 018 387 234 5