

UNITED STATES GOVERNMENT

# Memorandum

TO : Mr. Arthur Reich, (A) AD/DP

DATE: February 28, 1973

FROM : Richard B. Scott, DP

SUBJECT: Catch-22 in the Shamalan: Land Titles and Payment for Construction Damages

This memo is to emphasize the lack of systematic thinking on the part of HAVA/HACU with reference to the problems of clearing land titles as it relates to payment for right-of-way and damages resulting from the Shamalan lateral construction. The question of motivation on the part of HAVA/HACU officials is again raised. The need for continuous pressure from USAID to see that these payments are made is again stressed.

A very limited number of persons have been paid for crop damage, houses, and trees along the right-of-way of the new Shamalan lateral; to my knowledge perhaps 4 persons. So far there have been no payments made for the right-of-way itself. We are told that this situation is the result of the complexities of the local land tenure system which I have outlined in previous memos. There are some apparent contradictions in the system of obtaining agreement on right-of-way and later payment. The job of Mr. Niyamatti is to move ahead of the construction obtaining farmer agreement on right-of-way and recording trees, vines, houses, etc. that lie along the line of construction. Although there have been some clear situations where agreement was obviously not obtained, we must note that Mr. Niyamatti is frequently out in the field attempting to do the job assigned, apparently receiving very limited support from his supervisors.

But there is a gap in the procedures. Although agreement may be obtained from the farmers to be affected, and promises are made that payment for the damages will follow, the final official step of payment is blocked by the fact that many of the farmers do not have clear titles to their land. The Land Committee and special Land Claims Court are faced with the responsibility of clearing titles and payment for damages. Although something like 17 kilometers of canal have been dug across farmers' land, probably affecting several hundred farmers, no one has, apparently, clear title since no right-of-way payments have been made. A most unlikely situation. The question is that if no one has clear title to his land, are the agreements to allow the canal passage in any way valid? I would suggest not.

On the other hand, we have at least one example, Muhammadin of Plot No. 202 at the North end of the project area frequently noted in past memos, where we know by his own statements that the land title is not clear but 20,000 afs. were paid in September 1971 for crop (corn) damage (in advance) when the construction activity



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was begun on the new lateral. Since that time, however, he has been unable to receive payment for right-of-way of about 6 jeribs of land (by his estimate) because of the problems of land title. The canal cuts directly across his land and probably has taken more from him than from any other farmer along the line.

This outlines the inconsistencies of the procedures being followed in payments for damages resulting from the lateral construction. And these inconsistencies are not lost on the farmers who, when given the opportunity, have frequently requested of me that USAID attempt to remedy the situation.

The proposed meeting of HAVA/HACU, Land Committee, HAVR/BuRec, PAS and Kabul Cadastral Survey officials is a step in the right direction. It would at least reduce the margin for excuses if a system for clearing titles were found. Until proven wrong, I tend to accept the views of the farmers who state their doubts that there is any intention on the part of government to make these payments.

We are continually receiving official and unofficial statements from HAVA/HACU officials that there is progress in solving this problem of payments. But more than one and a half years have passed since construction began. We should continuously, but with increasing emphasis, stress the USAID interest in these payments. The non-adversary approach is crucial in a cooperative effort but we must also keep in mind that the farmers are, in theory, also a part of this effort.

DP:RBScott:eea:2/28/73

cc:(A)D:ABoehme, HAVR:DLevintow