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FORT POINT CHANNEL, BOSTON, MASS.

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KANSAS STATE UNIVERSITY 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. 17750

A BILL TO DECLARE THE TIDEWATERS IN THE WATER-
WAY OF THE FORT POINT CHANNEL LYING BETWEEN THE
NORTHEASTERLY SIDE OF THE SUMMER STREET HIGH-
WAY BRIDGE AND THE EASTERLY SIDE OF THE DOR-
CHESTER AVENUE HIGHWAY BRIDGE IN THE CITY OF
BOSTON NONNAVIGABLE TIDEWATERS

OCTOBER 6 AND 9, 1970

Serial No. 91-78

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



U.S. GOVERNMENT PRINTING OFFICE
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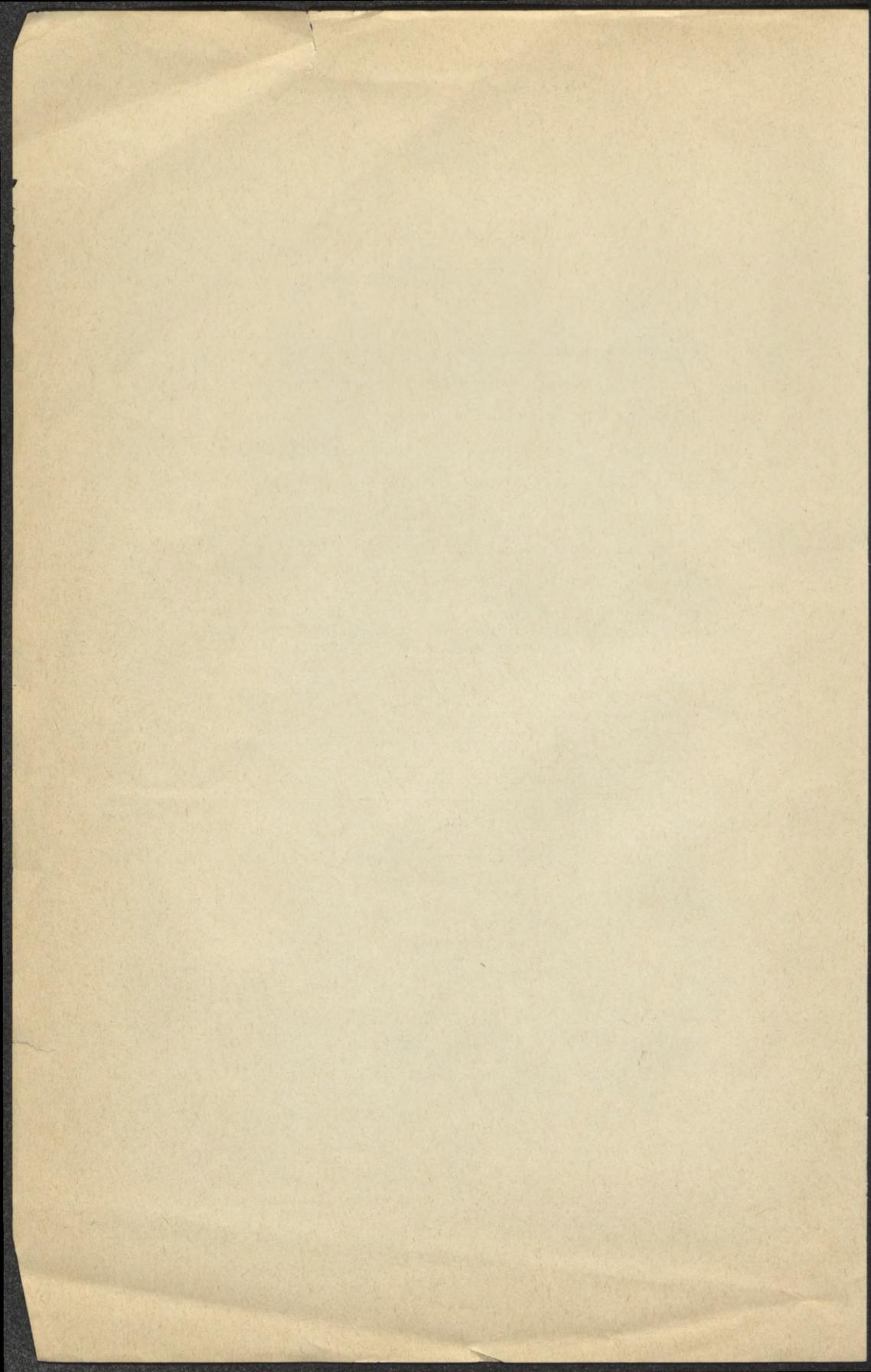
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FORT POINT CHANNEL, BOSTON, MASS.

TUESDAY, OCTOBER 6, 1970

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman) presiding.

Mr. FRIEDEL. The subcommittee will be in order.

This morning we will hold a hearing on H.R. 17750 which was introduced by Speaker McCormack. The bill would declare the tidewaters in the waterway of the Fort Point Channel lying between the northeasterly side of the Summer Street Highway Bridge and the easterly side of the Dorchester Avenue Highway Bridge in the city of Boston nonnavigable tidewaters.

(The text of H.R. 17750 and departmental report thereon follow :)

[H.R. 17750, 91st Cong., 2d sess., introduced by Mr. McCormack on May 21, 1970]

A BILL To declare the tidewaters in the waterway of the Fort Point Channel lying between the northeasterly side of the Summer Street highway bridge and the easterly side of the Dorchester Avenue highway bridge in the city of Boston nonnavigable tidewaters

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the portion of the tidewaters in the waterway of Fort Point Channel in the city of Boston, Massachusetts, lying between the northeasterly side of the Summer Street highway bridge and the easterly side of the Dorchester Avenue highway bridge is hereby declared to be a nonnavigable water of the United States within the meaning of the Constitution and laws of the United States.

SEC. 2. Any project heretofore authorized by an Act of Congress, insofar as such project relates to the above-described portion of Fort Point Channel is hereby abandoned.

SEC. 3. Any part of the Corps of Engineers' Harbor Line System located in the hereinbefore described Fort Point Channel is hereby abandoned.

SEC. 4. The right to alter, amend, or repeal this Act is hereby expressly reserved.

DEPARTMENT OF TRANSPORTATION,
U.S. COAST GUARD,
Washington, D.C., October 12, 1970.

MEMORANDUM FOR HOUSE INTERSTATE AND FOREIGN COMMERCE COMMITTEE

From : Commandant, U.S. Coast Guard.

Subject : Proposed Boston Summer Street Bridge Application.

Reference : (a) Telephone conversation Mr. Ed Williamson and Cdr Paul Yost, 9 October 1970.

1. As requested by reference (a) the following information is furnished concerning the proposed application to build a fixed span bridge over Fort Point Channel at Summer Street in Boston, Massachusetts. Application for a permit should be submitted to Commander, First Coast Guard District, Boston, Mass.,

as described in 33 CFR 115. The applicant will be requested to submit an environmental statement. Upon receipt of the application an investigation will be conducted covering both navigational and environmental aspects of the span. Upon completion of the investigation an Environmental Statement will be prepared and routed to all interested Federal Agencies for comment in accordance with the Environmental Policy Act of 1969. The final decision on whether or not to grant the permit will rest on the adequacy of the span for present and future navigation and on its effect on the environment.

2. The below proposed consent of Congress regarding the Summer Street bridge is satisfactory with the Coast Guard:

"That the consent of Congress is hereby given to _____ to construct, maintain, and operate a causeway and a fixed span bridge in and over the water of the Fort Point Channel, Boston, Mass., lying between the northeasterly side of the Summer Street Highway bridge and the easterly side of the Dorchester Avenue Highway bridge.

Work shall not be commenced on such bridge and causeway until the location and plans therefore are approved by the Secretary of Transportation.

Any project heretofore authorized by an Act of Congress insofar as such project relates to the above described portions of Fort Point Channel, is hereby abandoned.

In approving the location and plans of the bridge, the Secretary of Transportation may impose any specific conditions relating to the maintenance and operation of the structure which may be deemed necessary in the interest of public navigation.

T. R. SARGENT, *Assistant Commandant.*

Mr. FRIEDEL. Our first witness this morning will be Col. James B. Newman, Executive Director of Civil Works, Office of the Chief of Engineers.

Colonel, you may proceed.

STATEMENT OF COL. JAMES B. NEWMAN, EXECUTIVE DIRECTOR OF CIVIL WORKS, OFFICE OF THE CHIEF OF ENGINEERS, DEPARTMENT OF THE ARMY; ACCOMPANIED BY ERROL L. TYLER, LEGISLATIVE COUNSEL

Colonel NEWMAN. Mr. Chairman, and members of the committee, I am Col. James B. Newman, Executive Director of Civil Works, Office of the Chief of Engineers, Department of the Army. I am accompanied by Mr. Errol L. Tyler, legislative counsel of that office. I appreciate this opportunity to testify on H.R. 17550, concerning Fort Point Channel in Boston Harbor.

This bill would declare the portion of Fort Point Channel lying between the northeasterly side of the Summer Street Bridge and the easterly side of the Dorchester Avenue Bridge a nonnavigable waterway of the United States within the meaning of the Constitution and laws of the United States. It would also abandon any navigation project heretofore authorized insofar as that project relates to this portion of the channel.

We understand that the purpose of the bill is to enable the city of Boston to construct a new fixed-span bridge or causeway in the area to replace the existing Summer Street Highway Bridge, a swing-type drawbridge in a deteriorated condition.

Federal improvement of Fort Point Channel for navigation was authorized by the act of August 5, 1886. This improvement extends a little less than 1 mile upstream from the entrance of the channel and provides for a channel depth of 23 feet and a width of 175 feet. There

is now no commercial use of this section of the waterway. The draw of the Summer Street Bridge was last opened in 1961.

We have no objection to the abandonment of the navigation project in the Fort Point Channel.

Insofar as the construction of a new bridge is concerned, we would defer for comment to the Department of Transportation which administers the laws governing construction and replacement of bridges over navigable waterways.

We do, however, object to the bill on other grounds. As drafted, it would make inapplicable, in the area described, all Federal laws relating to navigable waterways of the United States, not merely those relating to construction of bridges. For example, under the act of March 3, 1899, no filling or erection of structures may be performed in a navigable water of the United States unless recommended by the Chief of Engineers and authorized by the Secretary of the Army. When a permit is granted to conduct such activities, we consider all matters affecting the public interest, including the effect of the proposed work on navigation, fish and wildlife, water quality, the ecology of the area, esthetics, and other matters relating to the total environment. Passage of H.R. 17750 would permit unregulated filling and construction activities in the Fort Point Channel.

We feel that this would be contrary to the general public interest. If the legislation is considered favorably, it should be amended so as to apply only to construction of a bridge or causeway, with approval of plans by the United States.

Mr. Chairman, that concludes my statement. We will be pleased to answer any questions you may have.

Mr. FRIEDEL. Colonel, you said the bridge was last used in 1961.

Colonel NEWMAN. Yes, sir.

Mr. FRIEDEL. You said that the drawbridge is in bad condition and they would have to spend a lot of money to fix the drawbridge.

Colonel NEWMAN. I couldn't answer as to the costs, sir, but it is in deteriorated condition.

Mr. FRIEDEL. Then, what is your objection if it has not been used since 1961 and the bridge is in bad condition?

Colonel NEWMAN. As we understand the plans for construction in the waterway, we have no objection to them. However, the bill is written so broadly that it would permit any type of activity in the waterway and is not limited to the construction of a bridge or causeway.

Mr. FRIEDEL. We have had similar bills to this that we have passed for nonnavigable waters. I don't see any difference in the language of this bill and the last one we passed which was in 1967.

Colonel NEWMAN. Sir, I can't speak for all such legislation, but that of which I am aware does require Federal approval of the plans for the structures which are to be placed in the nonnavigable waterway.

Mr. FRIEDEL. I am talking about the bridge that they are going to build. I will read the bill that we passed: "Declaring a portion of Bayou Lafourche, La., a nonnavigable waterway of the United States."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Bayou Lafourche, in the State of Louisiana, between Canal Boulevard, city of Thibodaux, Parish of Lafourche, State

of Louisiana, and the head of the bayou at its junction with the Mississippi River levee at the city of Donaldsonville, Parish of Ascension, State of Louisiana, is hereby declared to be a nonnavigable waterway of the United States within the meaning of the laws of the United States.

The existing project for Bayou Lafourche, La., was authorized by the act.

Section 2 says, "The right to alter, amend, or repeal this act is hereby expressly reserved."

You have the same language in this bill.

On page 1, line 7 of the present bill says, the "... bridge is hereby declared to be a nonnavigable water of the United States within the meaning of the Constitution and laws of the United States."

Mr. ADAMS. Mr. Chairman, would you yield?

Mr. FRIEDEL. I yield to Mr. Adams.

Mr. ADAMS. Colonel, do you and your counsel have a proposed amendment that would clarify the situation to which you refer? We seem to be stuck on the necessity for the use of the words "declared to be a nonnavigable waterway." Have you handled this in a different fashion some place else in the United States?

Colonel NEWMAN. Yes, it has been handled differently in respect to New York Harbor, Baltimore Harbor, and San Francisco Harbor.

Mr. ADAMS. As I understand it, what is desired is that the city of Boston, the Department of Transportation, and everyone try to get together to replace this bridge. I am sure that they probably would go along if there is some other system to be used.

Colonel NEWMAN. I do not have alternate language to propose, sir. I would like to consult with the sponsors of this legislation and also with the Department of Transportation before we furnish alternate language.

Mr. FRIEDEL. Time is of the essence because we are about to adjourn. That is why we are having the hearing. It seems to me the last bill that we passed, the Army Engineers had some reservations, too.

Colonel NEWMAN. Yes, sir.

Mr. FRIEDEL. Have you any other questions?

Mr. ADAMS. I have no other questions of this witness.

Mr. FRIEDEL. In your statement, you said, "... It should be amended so as to apply only to the construction of a bridge or causeway, with approval of plans by the United States."

Colonel NEWMAN. Yes, sir. This would be the general thrust. However, I am not prepared to give the detailed wording for the amendment. But I would be glad to consult with the other people concerned and provide the committee with alternate language.

Mr. FRIEDEL. How soon could you get that?

Colonel NEWMAN. I believe we could furnish it to the committee this week, sir.

Mr. FRIEDEL. This week?

Colonel NEWMAN. Yes, sir.

Mr. FRIEDEL. As soon as you get it please notify us and we will arrange a hearing here Thursday.

Thank you.

Our next witness will be Mr. Robert M. O'Brien, on behalf of the Speaker, John McCormack.

STATEMENT OF ROBERT M. O'BRIEN, IN BEHALF OF HON. JOHN W. McCORMACK, SPEAKER OF THE HOUSE OF REPRESENTATIVES

Mr. O'BRIEN. Mr. Chairman, Congressman Adams, my name is Robert M. O'Brien. I am here testifying on behalf of this bill for Speaker John W. McCormack, the sponsor.

This bill, which the Speaker had the pleasure of introducing on May 21 of this year, will declare nonnavigable certain parts of the Fort Point Channel which is a body of water in the city of Boston. The purpose in so doing will be severalfold.

First of all, it would permit the Post Office Department to proceed with its present plans for expansion which will include the purchase of what is now Dorchester Avenue.

Second, it will permit the city of Boston to construct a highway in what is now the channel as a replacement to Dorchester Avenue.

Third, it will replace the existing Summer Street Bridge, which is a nonoperable drawbridge, with a fixed span improved bridge.

It is the Speaker's understanding this improvement is urgently sought not only by the city of Boston but by the U.S. Post Office Department. This will in no way hinder water transportation since oceangoing vessels no longer use the channel.

The new South Station Annex of the Post Office Department requires the use of what is now Dorchester Avenue. Because this area will then be built upon, a new highway in the channel will have to be constructed. Due to the time element, the Speaker urges the subcommittee to act upon this legislation expeditiously.

Mr. Chairman, Mr. Adams, that concludes my statement on behalf of the Speaker. I will be pleased to answer any questions which you may have.

Mr. FRIEDEL. Will this bridge that you want to build there be lower than the present level of the drawbridge?

Mr. O'BRIEN. Mr. Chairman, I really don't know. I don't know the details of the drawbridge. All I know is that the new bridge will be a fixed bridge with improvement as opposed to the present bridge. It will certainly aid traffic in the area.

Mr. FRIEDEL. Are there any questions, Mr. Adams?

Mr. ADAMS. Have you discussed at all, Mr. O'Brien, with the Corps of Engineers or the others their particular objection to this or whether an amendment is needed? In other words, is something going to be done in the channel other than building the bridge over it?

Mr. O'BRIEN. No, Congressman; I haven't. I didn't realize until today that there was an objection, but I would certainly be more than willing to.

Mr. ADAMS. I may have to ask this of one of the other witnesses. Are you familiar with the bridge at all?

Mr. O'BRIEN. I am familiar with the present bridge; yes, sir.

Mr. ADAMS. It refers here to rails and drawn carriages. Is it a street-car bridge?

Mr. O'BRIEN. No, sir, it is a vehicle traffic bridge as exists now but it is an old drawbridge which used to be used, I assume, for vessels.

Mr. ADAMS. The bridge, in other words, will replace the present bridge. You are not going to build out over the channel; is that right?

Mr. O'BRIEN. Mr. Adams, I really don't know the details.

Mr. ADAMS. I will ask other witnesses. Thank you.

Mr. FRIEDEL. Thank you, Mr. O'Brien.

Our next witness will be the Honorable Joseph S. Casazza, commissioner of the Public Works Department, city of Boston.

Mr. Casazza, you may introduce those with you for the record.

STATEMENT OF HON. JOSEPH F. CASAZZA, COMMISSIONER OF PUBLIC WORKS, CITY OF BOSTON, MASS.; ACCOMPANIED BY MACK K. GREENBERG, ASSISTANT CORPORATION COUNSEL; AND SAMUEL V. MERRICK, SPECIAL COUNSEL TO THE MAYOR

Mr. MERRICK. I am Samuel V. Merrick, and I am counsel to Mayor White. I am really here to make the statement that Commissioner Casazza represents the mayor for this purpose and speaks for him.

Mr. GREENBERG. I am Mack K. Greenberg, assistant corporation counsel for the city of Boston.

Mr. CASAZZA. Mr. Chairman, Congressman Adams, with your permission, I would like to give just a Reader's Digest version of the entire situation and submit for the record the three statements that you have before you, one from the city of Boston, myself, and one from my traffic and parking commissioner, and one from the Gillette Co.

Hopefully to clear up some of the previous testimony, awhile back we had the Boston Redevelopment Authority and its master plan for development of the waterfront area in Boston at the same time that the U.S. Post Office Department was planning a reconstruction in the vicinity of Dorchester Avenue. It was at that time that Post Office Department officials in the city of Boston got together to see if there was a possibility of the actual sale of the existing Dorchester Avenue to the Post Office Department to facilitate their vehicular movement and mail-handling capabilities and, at the same time, put into effect the new location of Dorchester Avenue which would line up with other roads, namely our Atlantic Avenue in Boston, which would greatly improve, as stated in Commissioner McGrath's statement, the general traffic pattern in Boston.

As to a clarification on the actual construction, Congressmen, in the area, it is twofold, if I understood the question of the gentleman from Speaker McCormack's office. No. 1 is to relocate Dorchester Avenue. Dorchester Avenue presently runs parallel to the channel and adjacent to the new postal facility. Summer Street Bridge runs perpendicular to the channel joining the west and east sides. The contemplated construction is to build a new Dorchester Avenue along the bed of the channel out in the channel on piles. The Summer Street Bridge where the rails come into it, Congressman, is not the usual drawspan. It is the old type of drawspan whereas opposed to going up or sliding one way or another, the bridge actually moves back on a set of rails. Those are the rails which are referred to as being deteriorated.

The facts of the Postal Department's needs and the master plan of the city of Boston obviously set us to work and at that time the State department of public works, the city of Boston, and all interested parties got together to see if we could facilitate this sale—transfer of

title—and at that time it became apparent as to the cost of building a drawspan as opposed to the cost of building a fixed span, and these costs are a little bit old but they still give us the relationship between the two, and are as follows: Initially the cost of building a drawspan is some \$600,000 more than a fixed span and, of course, you have the years and years of additional maintenance and maintaining draw-tender personnel and the like. This cost, I would assume, parallels other skyrocketing construction prices and is probably closer to \$700,000 now, but the long haul would even minimize it. The years of draw-tending would minimize that cost so that I don't believe there is any disagreement, if I understand the previous testimony, that the bridge has no public use as a drawspan and should in all logic be rebuilt as a fixed span.

To clear up a few statements made earlier by the corps, I believe they made reference to filling. Engineering reports have documented that along and under this channel there is an existing MBTA tunnel, our rail transit system in Boston, and the engineers have completely ruled out any possibility of filling because of this facility not being able to withstand or not having been designed for this purpose, so that there will be no filling. The entire roadway will be on piles.

Secondly, I find it a little difficult to understand inasmuch as when I first started as commissioner in the city of Boston less than two and a half years ago we were filling in the Fort Point Channel under legislative act by this very procedure from the vicinity of our Albany Street and South Bay in the South Bay area. There had been legislation, copies of which we have here, and we are merely following exactly the same procedure with the same organization in continuing something which has already started.

Thirdly, I am apologizing because I don't have an exact copy of the bill before me, but there is a clause, as I recall, in the draft that would in fact give the corps or any other agency a saving clause type of statement. In effect, if we were going to do anything over and above building this fixed span now, we have to get their approval. I read that a few minutes ago. Please bear with me for a second.

As I have it written here, we have expressly included in the bill a section 4, as we drafted it with the aid of others, the statement that, "the right to alter, amend, or repeal this act is hereby expressly reserved," which is a direct relationship back to the Corps of Engineers.

Well, as Attorney Greenberg reminds me, the bill was drafted certainly in cooperation with the local Corps of Engineers in the Boston area and we worked with them by submitting engineering descriptions. We made an engineering description of the area and worked with their people drafting the bill and, for the record, we submit this information to you.

I could go into more detailed analysis of traffic counts and what have you, but, with your permission, they are in the statement.

Mr. FRIEDEL. The statement for William R. McGrath, Traffic and Parking Commissioner, and the letter from Charles F. Woodward, vice president and general counsel, Gillette Co., along with your prepared statement, Mr. Casazza, will be placed in the record at this point.

(The statements and letter follow:)

STATEMENT OF JOSEPH F. CASAZZA, COMMISSIONER OF PUBLIC WORKS, CITY OF BOSTON, MASSACHUSETTS

The City of Boston is vitally interested in having that portion of the Fort-Point Channel described in House Bill No. 17750, declared non-navigable. As a practical matter this portion of the Channel has not been used for many years. The Summer Street Bridge—a draw bridge spanning the Channel—has been inoperable for many years because the draw carriages and rails have disappeared.

In 1966 officials of the Post Office Department of the United States approached officials of the City of Boston for the purpose of acquiring the exclusive use of the part of Dorchester Avenue adjacent to the new South Station Postal Annex proposed for that location.

In March, 1966 the Boston City Council authorized the Mayor to enter into an "agreement of sale" between the City of Boston and the United States, whereby the City would convey approximately 167,350 square feet of Dorchester Avenue land to the United States for \$916,180. An agreement for sale was duly executed in June 1966.

A Feasibility and Engineering Report for the relocation of Dorchester Avenue between Broadway and Congress Street completed in 1968, concluded that Dorchester Avenue could be relocated in Fort-Point Channel on a pile-supported viaduct structure. The piles for the roadway are to be placed in the bed of the Channel on land owned by the Commonwealth of Massachusetts.

Subsequent to the submission of the Feasibility and Engineering Report, the Public Works Departments of the City and the State Department of Public Works began negotiations for implementing the report. These negotiations have culminated in an understanding whereby the State Department of Public Works will construct the relocated Dorchester Avenue, with the City applying the proceeds from the sale to the United States to the cost of the construction. Additionally, the City of Boston will undertake to rebuild the Summer Street Bridge as a fixed span. In 1962 the Massachusetts Legislature enacted Chapter 703, authorizing the City of Boston to do all that is necessary to have the tidewaters declared to be non-navigable within the meaning of the Constitution and the Laws of the United States. After said tidewaters have been so declared, the City of Boston may maintain without a draw its bridges over said tidewaters.

The proposed construction of the new highway in the Fort-Point Channel is a reasonable restriction of the right to navigation because of necessity and convenience to Land Commerce. Should the United States (Post Office Department) take the existing Dorchester Avenue by eminent domain (as had been indicated) the public will be deprived of an important means of access into and out of this highly industrialized area.

The proposed construction of the roadway and the bridge will not deprive riparian owners of the right to use the water or other riparian rights except that of unlimited access to the sea. Since the proposed bridge will permit the passage of smaller type vessels, navigation will be restricted rather than obstructed. Access to the sea however, is a public right and not a private right. Public convenience requires the interruption of the public right of navigation—a right which has not been exercised over the past several years.

On the basis of all of the foregoing the enactment of H.R. 17750 is essential to the forward progress of the City of Boston.

STATEMENT OF WILLIAM R. McGRATH, TRAFFIC AND PARKING COMMISSIONER, CITY OF BOSTON, MASSACHUSETTS

RELOCATED DORCHESTER AVENUE

The relocation of Dorchester Avenue along the westerly edge of the Fort Point Channel is one of the most essential traffic improvements proposed for the City of Boston. This arterial route services the easterly portion of the Central Business District and the large industrial complex in South Boston in addition to large traffic volumes from Quincy and areas south of Boston. At the present time 12,000 vehicles per day are using this arterial system and are forced to filter through residential streets due to the bottleneck on Dorchester Avenue from Broadway to Congress Street.

Not only is this portion of Dorchester Avenue substandard with respect to width and pavement but the use of the existing pavement for loading purposes

by commercial vehicles further complicates traffic flow. The design and use of the United States Postal Annex buildings preclude the use of the existing street for the efficient movement of traffic.

In 1966, the City and the Federal Government entered into an agreement which recognized the existing access problems at the South Postal Annex and the lack of capacity of Dorchester Avenue. This agreement provided that the City would convey the land area of existing Dorchester Avenue to the Post Office Department for their use as soon as an adequate alternate facility was constructed.

All of the planning for this area of the City is based upon a safer and much improved Dorchester Avenue. All of our studies have consistently shown that the recommended plan for relocating Dorchester Avenue along the westerly edge of the Fort Point Channel is the most logical solution. I respectfully recommend this proposal for your consideration.

THE GILLETTE CO.,
Boston, Mass., October 5, 1970.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, House Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Gillette Company is submitting this letter in relation to H.R. 17750 which, we understand, proposes to have the Fort Point Channel in the City of Boston declared non-navigable between the Summer Street Bridge and Dorchester Avenue. Our interest in the proposal is as an abutter on the Fort Point Channel having riparian rights in its waters.

We understand the ultimate objectives of the City of Boston and the Commonwealth of Massachusetts in supporting this bill are to eliminate the expense of maintaining the Summer Street Bridge as a drawbridge and to relocate Dorchester Avenue by constructing a roadway in or over the Channel. This relocation will permit the United States Postal Department to obtain exclusive use of the existing roadway as a shipping and loading dock and to expand its existing facilities in that area.

This subject has been under discussion for over five years between representatives of The Gillette Company and those of the City of Boston, the Commonwealth of Massachusetts and the United States Postal Department. At all times during these discussions, Gillette has indicated that it would have no objection to the Channel's being declared non-navigable provided Gillette can be assured of the continuance of its water supply from the Channel for the operation of the cooling system in its manufacturing plant. The Company's Safety Razor Division which abuts the Channel must consume 28,500,000 gallons of sea water each day to maintain its plant's cooling system. This water is taken from and returned, after straining, to the Fort Point Channel which is the only feasible source of supply.

During the course of our discussions, it has been our understanding from both City and State authorities that Gillette's rights would be respected and that the quality and quantity of water now available to it would remain uninterrupted. We further understand that favorable action on H.R. 17750 by your Subcommittee will not jeopardize these important rights of Gillette. With this understanding and without waiving its rights to continue negotiations to assure an adequate water supply from the Fort Point Channel, The Gillette Company concurs in H.R. 17750.

Respectfully submitted.

CHARLES. F. WOODARD,
Vice President-General Counsel.

Mr. CASAZZA. I believe I have no further statement to make. However, I will be willing to answer any questions you may have.

Mr. FRIEDEL. Mr. Casazza, do you know whether the bridge will be the same level as it is now, lower or higher?

Mr. CASAZZA. The bridge itself will be approximately the same level because it has to meet the existing Dorchester Avenue and roadways. As far as the bridge channel height is concerned, it will not change. At high tide there will still be a 10-foot clearance from the bottom of the

bridge, and I believe this goes to 19 feet at low water so that the channel could still be used for small vessels. As I pointed out before, we are merely trying to avoid the illogical reconstruction of a drawspan when in anybody's interest it is not necessary. The new Dorchester Avenue will start at this new bridge and go down by the Gillette property, one of the abutters and mesh to the ground at that level. We have the plan in profile with us but there is not going to be a tremendous difference in elevation. It is just a relocation laterally from where the post office is built out into the channel to give the post office the existing Dorchester Avenue for a terminal.

Mr. FRIEDEL. Mr. Adams?

Mr. ADAMS. I am just trying to get in mind what you have up there. As I understand it, this is a channel that starts with really a tidewater at the water's edge or an ocean connection, and then runs in with navigable water for about a mile, is that right? That was its original Engineer Corps project and you have been filling it in from the back end forward, is that it? In other words, you say South Bay is at the end of it. You kind of started at that and moved toward the water by building in the channel?

Mr. CASAZZA. South Bay is on the extremity of the mile you make reference to, and the legislation originally allowed South Bay to be filled in because this was another BRA project which called for the development of South Bay and they have filled it in and have since constructed industrial and municipal facilities on this area. Now, there is a gap and we are into this area here.

Mr. ADAMS. I see. What was this channel originally used for? Did you have plants that used the water along the edge?

Mr. CASAZZA. I believe approximately 10 years ago the last sizable industry that used it would have been the Revere Sugar Refinery, and I believe that the record would show that approximately 10 years ago the last vessel used this from the refinery.

Mr. ADAMS. The Revere Sugar Refinery is not there?

Mr. CASAZZA. They moved out and when they moved out all use of that channel disappeared. I find out that Gillette owns that property now. There are only two abutters that we are dealing with.

Mr. ADAMS. That is what I wanted to know.

Do you have any upstream abutters beyond this bridge?

Mr. CASAZZA. No.

Mr. ADAMS. It is filled up to this bridge, in effect, is that it?

Mr. CASAZZA. The old story says one picture is worth a thousand words. May I show you this picture?

Mr. ADAMS. I want to know if we are going to have any abutting landowners, who will come in once the bill is passed and file a lawsuit.

May we go off the record for a minute while I look at it?

(Discussion off the record.)

Mr. ADAMS. Let the record reflect that we have examined the profile map of the project as presented by Mr. Casazza.

Mr. PICKLE. Mr. Chairman, as I understand it, the Corps is going to give us their idea of suggested language for the correction of the bill as far as their objection is concerned.

Mr. FRIEDEL. They are going to meet together today and prepare that.

Mr. PICKLE. We won't take action on it?

Mr. FRIEDEL. Not today, no.

Mr. ADAMS. I have another question.

Is the Department of Transportation involved in this? Do they have to determine bridge construction or something like that? I assume that they have approved your project; is that right?

Mr. GREENBERG. They know what we are doing and have raised no objection. Actually, we have before them a request to extend the time of keeping Summer Street Bridge as a temporary fixed span for another 3 years.

Mr. ADAMS. I see.

Mr. GREENBERG. They are aware of the project.

Mr. ADAMS. You have an agreement with them?

Mr. GREENBERG. I assume you are referring to the Coast Guard.

Mr. ADAMS. Whoever is supposed to give these approvals for the Department of Transportation on the construction.

Mr. CASAZZA. That is the Coast Guard.

Mr. ADAMS. I believe counsel informed me while we were off the record that you have either reached agreement with or have consulted with any riparian owners that are along there. That, of course, is a legal problem which you as representatives of the city and those others involved would have to solve.

Mr. FRIEDEL. We would like not only a letter from the Department of Transportation but also from the Post Office Department.¹

Mr. MERRICK. My statement off the record was that we had notified the riparian owners of this hearing.

Mr. ADAMS. That are in this area.

All right. I have no further questions, Mr. Chairman.

Mr. FRIEDEL. Mr. Dixon?

Mr. DIXON. Mr. Chairman, I understand that procedurally Colonel Newman and the other witnesses will confer to see if they can agree on language satisfactory to the several interests which appeared here this morning and that, further, this will be cleared through the appropriate office in the Department of Transportation (Coast Guard). Also some mention was made of the Post Office interest in this and their support for the legislation. Can we be assured that this will also be cleared with the Post Office Department in writing? I think it was Mr. O'Brien who mentioned the interest of the Post Office Department.

Mr. Chairman, I believe Colonel Newman said he would have it by the end of this week.

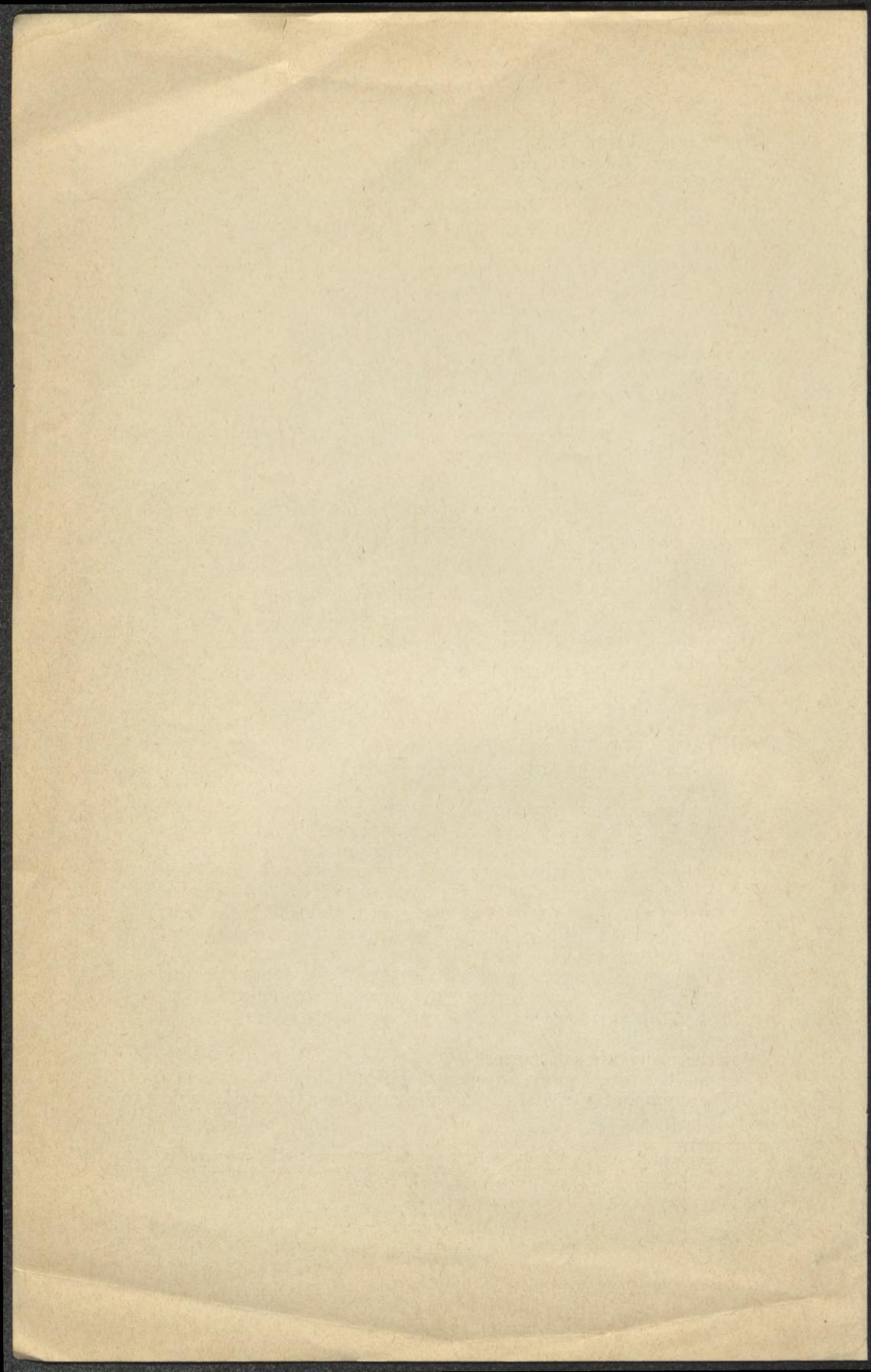
Mr. FRIEDEL. We are so crowded for time the sooner we can get it the better. We will have to have an executive meeting of the subcommittee to consider these proposed amendments and have these things for the file.

Are there any other witnesses?

The meeting now stands adjourned subject to the call of the Chair.

(Whereupon, at 10:55 a.m., the subcommittee adjourned, subject to call of the Chair.)

¹ See memorandum dated Oct. 12, 1970, from the Department of Transportation, U.S. Coast Guard, on p. 1, this hearing. The report from the Post Office Department was not available to the committee at the time of printing.



FORT POINT CHANNEL, BOSTON, MASS.

FRIDAY, OCTOBER 9, 1970

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman) presiding.

Mr. FRIEDEL. The subcommittee will be in order.

We have two matters before us for further hearing today. The first is H.R. 17750 to declare certain tidewaters in the waterway of the Fort Point Channel in the city of Boston, nonnavigable. This is a continuation of the hearing which commenced on October 6. The witnesses at that time agreed to furnish more specific information on this bill and we will be pleased to hear from them at this time.

Colonel Newman and Mr. Tyler.

STATEMENT OF COL. JAMES B. NEWMAN, EXECUTIVE DIRECTOR OF CIVIL WORKS, OFFICE OF THE CHIEF OF ENGINEERS, DEPARTMENT OF THE ARMY; ACCOMPANIED BY ERROL L. TYLER, LEGISLATIVE COUNSEL—Resumed

Mr. FRIEDEL. You may proceed.

Colonel NEWMAN. Mr. Chairman, members of the committee, we have furnished alternate wording for H.R. 17750 to the clerk of the committee.

Mr. FRIEDEL. I will make this part of the record and this seems to meet all the opposition that we had to the bill in prior hearings.

(The information referred to follows:)

DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS,
October 8, 1970.

Mr. WILLIAM J. DIXON,
*Committee on Interstate and Foreign Commerce,
House of Representatives.*

DEAR MR. DIXON: In accordance with the request of Chairman Friedel, I am inclosing a draft of legislation which incorporates the comments we made on H.R. 17750 at hearings October 6. The draft has been coordinated with the Coast Guard, and that department advises that it has no objection to submission of the legislation to the Committee. It notes, however, that it would apply the same procedures to the granting of approval of the plans and location of structures under the bill as it would to an application for such approval under existing law (the General Bridge Act).

Sincerely,

J. B. NEWMAN,
*Colonel, Corps of Engineers,
Executive Director of Civil Works.*

A BILL To grant to consent of Congress to the city of Boston to construct, maintain, and operate a causeway and fixed-span bridge in Fort Point Channel, Boston, Massachusetts

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the city of Boston to construct, maintain, and operate a causeway and a fixed-span bridge in and over the water of the Fort Point Channel, Boston, Massachusetts, lying between the northeasterly side of the Summer Street highway bridge and the easterly side of the Dorchester Avenue highway bridge.

SEC. 2. Work shall not be commenced on such bridge and causeway until the location and plans therefor are submitted to and approved by the Secretary of Transportation.

SEC. 3. Any project heretofore authorized by an Act of Congress, insofar as such project relates to the above-described portions of Fort Point Channel, is hereby abandoned.

SEC. 4. In approving the location and plans of any bridge, the Secretary of Transportation may impose any specific conditions relating to the maintenance and operation of the structure which may be deemed necessary in the interest of public navigation.

Colonel NEWMAN. We have discussed this with the U.S. Coast Guard and also with Mr. Casazza and Mr. Merrick of the city of Boston and it is my understanding that all of them are in agreement with this wording.

Mr. FRIEDEL. Thank you. Any questions?

Mr. DINGELL. Yes, sir, Mr. Chairman.

I am curious to know, have the provisions of section 102(c) of the Environmental Policy Act been complied with in full by your agency in connection with the legislation before us, H.R. 17750? That is the requirement that the agency affected in connection with every administrative or legislative action submit a statement of the impact on the environment?

Colonel NEWMAN. The legislation as it is being enacted does not, in my opinion, require such a statement. It is my understanding that prior to the approval of the plans for the bridge which the city of Boston intends to build, the Coast Guard will require the preparation of a statement in compliance with the National Environmental Policy Act.

Mr. DINGELL. Well, I have to respectfully disagree with you. I am chairman of the subcommittee that originated that legislation. I am also the author of the legislation. If you will read the statute that I am referring to you will find it says with great clarity, every administrative action, every legislative action, that has an impact on the environment shall be accompanied before it is cleared through the Congress and before it is considered with the appropriate environmental impact statement. Now, it is not my purpose to stop this legislation this morning but since we have this matter before the committee and since I do happen to have a very personal interest in this legislation, that it be properly enforced and carried out, I am going to ask you, sir, to see to it that the environmental impact statement is put together and is submitted to this subcommittee in full compliance with the law.

Colonel NEWMAN. Sir, may I respectfully point out that this is not legislation which is being proposed by the Corps of Engineers.

Mr. DINGELL. Who is proposing it?

Mr. FRIEDEL. The Speaker.

Mr. DINGELL. I understand the Speaker is proposing it but I understand also that the Corps of Engineers is here to comment on it and it is not the Speaker's duty to provide us with an environmental policy statement. It is the duty of the Corps of Engineers.

Now, I do not want to stop the Speaker's legislation but I do not propose to have the Corps of Engineers disregard its responsibilities under the law on this or any other legislation.

Colonel NEWMAN. Sir, we were simply asked to comment on this bill.

Mr. DINGELL. That is right.

Colonel NEWMAN. And—

Mr. DINGELL. And submit the environmental policy statement in accordance with the law.

Colonel NEWMAN. The guidelines which we have received from the Council on Environmental Quality do bring out that on any matter which touches the Federal Government, the agency which has primary responsibility within the Federal Government will prepare an environmental statement. In this case, since the matter under consideration is a bridge over a navigable waterway, the agency which is primarily interested is the Coast Guard and the Department of Transportation and not the Corps of Engineers.

Mr. DINGELL. The Coast Guard is primarily responsible here and not the Corps?

Colonel NEWMAN. I believe it is, sir, since we are talking about the construction of a bridge and it is the responsibility of the Coast Guard to issue such permits and not the Corps of Engineers.

Mr. DINGELL. Has the Coast Guard issued such an environmental policy statement, do you know?

Colonel NEWMAN. I am certain that they have not, sir.

Mr. DINGELL. They have not? Is the Coast Guard here this morning, Mr. Chairman?

Mr. FRIEDEL. No.

Colonel NEWMAN. I believe that the reason for the wording of Section 4, though, is to permit the carrying out of the provisions.

Mr. DINGELL. Well—

Colonel NEWMAN. Section 2 and section 4 both apply.

Mr. DINGELL. Well, I want to make it clear I am not out to stop the legislation. I just want to see that the laws are properly carried out.

Now, Mr. Dixon, on page 20 of the earlier transcript, said:

Mr. Chairman, I understand that procedurally Colonel Newman and the other witnesses will confer to see if they can agree on the language satisfactory to the several interests which appeared here this morning and that, further, this will be cleared through the appropriate office in the Department of Transportation (Coast Guard). Also some mention was made of the Post Office interest in this and their support for the legislation. Can we be assured that this will also be cleared with the Post Office in writing? I think it was Mr. O'Brien who mentioned the interest of the Post Office Department.

Now, again, I want to help. Have you done the—has the Corps of Engineers attended to the matters that are referred to by Mr. Dixon in his commentary on page 20 of the transcript in connection with this legislation on October 6?

Colonel NEWMAN. It is my understanding that we were to contact the Coast Guard and Department of Transportation. We have done that.

Mr. DINGELL. Well, have you arranged any coordination with regard to the Environmental Policy Act?

Colonel NEWMAN. This matter was discussed and it was pointed out

that under their procedures, before taking final action, they would require a five-point statement.

May I point out that one of our objections to the language of the original proposal was that we felt it was in violation of the National Environmental Policy Act in that it did not require at any stage in the proceedings that there be an environmental statement prepared. We feel that under the provisions of the language we have furnished the environmental considerations are protected and that before construction can commence, that all of the environmental considerations would have to be taken into account.

Mr. DINGELL. Well, I am glad to see—Mr. Chairman, I would like to have permission of the Chair to secure the assistance of the staff in seeing to it that the requirements of section 102(c) of the act are complied with and the environmental policy statement be submitted from the Coast Guard.¹

Colonel, I was under the impression this was your primary jurisdiction. We will lean on the Coast Guard about this matter.

Thank you.

Mr. FRIEDEL. Mr. Adams?

Mr. ADAMS. It is my understanding, Mr. Chairman, that a bill has been prepared that meets the problems that we had before in terms of the various agencies not being in agreement. Is that correct?

Mr. FRIEDEL. That is correct.

Mr. ADAMS. I have no further questions.

Mr. FRIEDEL. I want to thank you, Colonel Newman.

Mr. DIXON. Colonel Newman, with whom are you in contact in the Coast Guard?

Colonel NEWMAN. He is Commander Paul A. Yost; Chief, Bridge Branch; Aids to Navigation Division; U.S. Coast Guard; Washington, D.C.

Mr. DIXON. Thank you.

Mr. FRIEDEL. Thank you.

This is the end of hearings on H.R. 17750.

(The following telegram was received for the record:)

BOSTON, MASS., October 5, 1970.

Re House bill 17750.

U.S. HOUSE OF REPRESENTATIVES,
Committee Hearing Room, Rayburn Building,
Washington, D.C.

Boston Wharf Company of 259 Summer St., Boston, Mass., whose property is one of the two properties abutting Fort Point Channel from the Summer St. Bridge inland voices no objection to a declaration that the Fort Point channel from the Summer St. Bridge inland be declared non-navigable. Such declaration changes the nature of the property fronting the channel from an area presently suitable for development for marine or related purposes. Boston Wharf Company desires however to co-operate with the city of Boston and the commonwealth of Massachusetts to the fullest extent possible and shall re-orient its development policies in line with the changed nature of the upstream portion of Fort Point Channel once declared non-navigable.

BOSTON WHARF Co.,

(By their attorneys, Michael H. Goshko, Singer, Stoneman, and Kurland).

(Whereupon, at 10:30 a.m., the hearing was adjourned.)

¹ See memorandum dated Oct. 12, 1970, from the Department of Transportation, U.S. Coast Guard, p. 1, this hearing.