

to \$4,750, with no indication as to how this sum was arrived at.

From the foregoing, it seems to me, that the record in this case is inconclusive both with respect to the merits of the beneficiary's claim and as to the damages which he may have sustained. These uncertainties compel me to withhold my approval from this bill.

I would, however, be willing to approve legislation which would permit adjudication of the case by the appropriate district court. Such legislation should authorize the payment to the beneficiary of such damages as the court might determine to be reasonably attributable to his reliance upon the alleged representations made to him by the Navy representative. I believe that only by such means can the rather obscure elements of this case be considered and resolved in a manner fair to both the Government and the beneficiary.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, September 1, 1954.

#### ELEPHANT BUTTE DAM

S. 417. I have withheld my approval from S. 417, a bill conferring jurisdiction upon the United States District Court for the District of New Mexico, to hear, determine, and render judgment upon certain claims arising as a result of the construction by the United States of Elephant Butte Dam on the Rio Grande.

Under S. 417, jurisdiction would be vested, notwithstanding any statute of limitations or lapse of time, in the United States District Court for the District of New Mexico, "to hear, determine, and render judgment upon any claim against the United States for compensation for the taking of or for damage to real or personal property as a result of the construction by the United States of Elephant Butte Dam on the Rio Grande."

The bill does not identify the persons to whom it would open the doors of the district court. It does not identify the date or dates on which the alleged taking of property or damage occurred. It does not identify the events which might be alleged to have caused the damage or the taking. Its only requirement is that suit be filed within 2 years from the date of enactment of the bill.

Construction of Elephant Butte Dam was commenced by the Interior Department in 1912. Approval of the bill would thus be an open invitation to anyone who believes that he has, at any time over the last 42 years, been injured in his property by the construction of this dam to bring the United States into court, no matter how stale his claim may be.

It appears that the cases around which the hearings on the bill principally turned are those of a number of persons who believe that the existence of the dam, taken in conjunction with the severe floods that descended the Rio Grande Valley in 1929, resulted in the permanent seeping or swamping, from and after that year, of their lands in the neighborhood of the now abandoned town of San Marcial. I am aware of no showing, however, that these landown-

ers did not have an adequate opportunity to pursue their legal remedies within the period prescribed by general law or that there were sound reasons for their failure to do so. Still less am I aware of any reasons for including within the coverage of the bill not only these landowners, but also all others who, regardless of time, attribute a damaging or destruction of their property to the construction of Elephant Butte Dam.

The very purpose of a statute of limitations—whether it relates to suits between private citizens or to suits brought against the Government—is to avoid stale claims and to procure a reasonably prompt initiation of judicial action before records are lost or scattered, memories grow dim, and witnesses die or become unavailable. To say this is not to say that compliance with the statute must be insisted upon in cases where its waiver would avoid a clear inequity. The instant bill, however, is not in this exceptional category. On the contrary, the controversies with which it deals necessarily involve the resolution of questions of fact, of which some, at least, would require oral testimony from persons familiar with conditions as they were at the time when the claims originally arose. Thus, the nature of the claims here involved emphasizes the justice and wisdom of the general rule. Against this background, nothing in the terms or history of S. 417 of which I am informed offers any sound ground for the departure from existing law which the bill would sanction.

Beyond these considerations there is, in my judgment, no more merit to waiving the statute of limitations in order to permit the trying of cases which may range over all the forty-odd years of Elephant Butte history than there would be in the case of any other Federal river-control structure. In other words, I am seriously concerned that an exception as broad as that which S. 417 proposes to make in the case of Elephant Butte would be a precedent for attempts to secure similarly overgenerous legislation in the case of every other Federal river-control structure that anyone believes has caused him harm, regardless of how long ago the harm occurred.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, September 1, 1954.

#### CUBAN-AMERICAN SUGAR CO.

S. 3304. I am withholding my approval from S. 3304, which would confer jurisdiction upon the Court of Claims of the United States to consider and render judgment on the claim of the Cuban-American Sugar Co. against the United States.

The problem at the root of the lawsuit and the private relief bills involves the company's World War I excess-profits taxes for the year 1917. The specific facts in this 34-year-old controversy are set forth fully in the report of the Senate Judiciary Committee (S. Rept. 1963, 83d Cong., 2d sess.). Basically, the taxpayer, for the year 1917, computed its excess-profits tax liability on the invested capital method. Some years thereafter, it felt that its tax liability was excessive

and requested the Commissioner to compute the tax under the relief provisions of the law. When this was done, additional taxes were found to be due, and were paid. Several years later, in 1927, a claim for refund was filed on the ground that the tax computation by the relief method was erroneous. This claim was rejected on March 15, 1933, although later that year the taxpayer attempted to amend it, claiming that the invested capital method should be used. This method had been used in a settlement of the years 1918, 1919, and 1920, controversy with respect to which had been going on concurrently. The claim for refund filed in 1933 was rejected on the grounds it was not filed within the statutory period.

The overall effect of the legislation would be to direct the Court of Claims to determine the 1917 liability of the taxpayer by applying the invested capital method used in settling the years 1918, 1919, and 1920, before the Board of Tax Appeals (even though sec. 3 of the enrolled enactment states that nothing in the act is to be construed as an inference of liability on the part of the United States) since, as the committee report indicates, there is no question but that the taxpayer's taxes were overpaid.

Since the bill grants relief from the operation of the statute of limitation, special equitable circumstances should appear which require that this taxpayer be singled out for special relief. It is difficult to find such circumstances in this case. Basically, the Senate report urges that the taxpayer was denied a proper hearing by the Commissioner with respect to this claim. Yet, as the Senate committee report itself indicates, both prior to 1921, and after 1927, the taxpayer and the Commissioner's representatives had numerous conferences with respect to the taxpayer's 1917 liability. It would have served no purpose to hold further conferences in 1933 on a refund claim which was filed after the statute had run and based on another method of computation.

It is also suggested that the Bureau of Internal Revenue and the taxpayer "agreed" to postpone any action on the 1927 claim for refund until the 1918, 1919, and 1920 cases were determined.

No valid evidence appears that there was such an agreement. Indeed, the only information regarding any such discussion is, as the Court of Claims stated in a decision rendered in 1939 on this matter and involving this taxpayer that a representative of the taxpayer had written a letter to the Bureau "purporting to confirm a conversation" with a representative of the Bureau that further conferences on the year 1917 were to be indefinitely postponed for the reason that nothing further could be done regarding the special assessment question until such question had been settled by the Bureau or the Board of Tax Appeals. This unilateral statement not only does not seem adequate evidence of such an agreement but illustrates the desirability of a statute of limitations which disposes of stale claims and the necessity for retaining or securing evidence with respect thereto.