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B-126975 February 12, 1958

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Honorable J.T. Rutherford House of Representatives

Dear Mr. Rutherford:

This refers to your letter of January 14, 1958, acknowledged January 15, concerning the construction of a uncontrolled outlet for the Abiquin Dam in New Mexico.

You mention the prior sections of the Congress which provide for construction of the Abiquin Dam with the inclusion of an uncontrolled outlet, and point out that while the Budget for 1959, at page 536, includes a request of funds for the project, it comtemplates that no money will be spent for the outlet and recommends the elimination of this feature of the project. Hence, you request our opinion as to whether the Bureau of the Budget may violate the section heretofore taken by the Congress in the matter to the extent of recommeding against construction o fthe uncontrolled outlet.

We are aware of not statute which precludes the Bureau of the Budget or the President, in discharging their responsibilities under the terms of 31 U.S.C. Supp. IV, 11 and 16, in the matter of preparing and transmitting the Budget to the Congress, from making recommendations therein against the appropriation of funds for objects of expenditure theretofore approved by the Congress which, in their judgment, are not considered to be necessary or desirable to their successful accomplishment. The appropriation estimates and recommedations contained in the annual budgets represent the views of the persons submitting them and, standing alone, do not render the prior determinations of the Congress inoperative. See 2 Comp. Gen. 517, 519.

It is of course, the constitutional authority and responsibility of the Congress to determine the various purposes for which public moneys shall be expended. And when, as here, it has approved the construction of the Abiquin Dam with an uncontrolled outlet and has authorized the use of funds therefor, it would appear to us that there is nothing left to the Executive Branch but to effectively carry out that intent.

It is apparent, however, form the recommended use to be made of the propsed appropriation for the Abiquin Dam that further action by the Congress is necessary, in the way of positive direction in the appropriation language, if construction of the uncontrolled outlet is to be performed by the Corps of Engineers.

Sincerely yours,

JOSEPH COMPBELL Comptroller General of the United States