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B-212177, May 10, 1984

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DIGEST: FUNDS RECEIVED BY LOCAL GOVERNMENTS IN IDAHO UNDER THE TETON DAM DISASTER ASSISTANCE ACT WERE NOT AVAILABLE FOR USE AS MATCHING SHARES FOR FEDERAL GRANTS UNDER THE LAND AND WATER CONSERVATION FUND ACT OF 1965. FISCAL YEAR 1984 INTERIOR DEPARTMENT APPROPRIATION ACT, HOWEVER, IN EFFECT SANCTIONED THIS USE, AND A SENATE REPORT ACCOMPANYING THE APPROPRIATION EXPLAINED CONGRESSIONAL INTENT THAT INTERIOR NOT RECOVER TETON ACT FUNDS SPENT IN THE PAST FOR THIS PURPOSE. DEPARTMENT OF INTERIOR SHOULD MAKE NO FURTHER ATTEMPTS AT RECOVERY.

USE OF TETON DAM DISASTER ASSISTANCE ACT FUNDS TO MEET LOCAL MATCHING SHARE REQUIREMENT OF A FEDERAL GRANT PROGRAM:

THE DEPARTMENT OF THE INTERIOR REQUESTS OUR OPINION ON WHETHER CERTAIN FUNDS RECEIVED BY LOCAL GOVERNMENTS UNDER THE TETON DAM DISASTER ASSISTANCE ACT, AS AMENDED, WERE PROPERLY USED AS THE LOCAL MATCHING SHARES FOR GRANTS UNDER THE LAND AND WATER CONSERVATION FUND ACT OF 1965. WE CONCLUDE THAT WHILE SUCH MATCHING WAS NOT PERMISSIBLE WHEN THE TETON DAM ACT FUNDS WERE USED FOR THIS PURPOSE, UNDER SECTION 114 OF THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATION ACT, 1984, PUBLIC LAW 98-146, 97 STAT. 938 (1983), THE CONGRESS, IN EFFECT PROHIBITED INTERIOR FROM RECOUPING TETON ACT FUNDS SPENT BY TWO LOCAL GOVERNMENT UNITS TO MATCH CONSERVATION ACT GRANTS.

BACKGROUND

IN 1976, THE TETON DAM COLLAPSED, RESULTING IN TREMENDOUS DAMAGE TO PRIVATE AND PUBLIC PROPERTY. TO AID IN THE RECOVERY OF THE AREA, PUBLIC OFFICIALS FROM VARIOUS TOWNS AND MUNICIPALITIES FORMED THE TETON DISASTER RELIEF ORGANIZATION. THE ORGANIZATION PREPARED A REPORT SETTING OUT NUMEROUS PROJECTS OF PUBLIC IMPROVEMENT FOR THE RESTORATION OR REDEVELOPMENT OF THE AREA.

THE ORGANIZATION NEXT SOUGHT FEDERAL FUNDS TO PAY FOR PART OF THE COSTS OF THE PROJECTS. AMONG THE FEDERAL SOURCES FROM WHICH THE ORGANIZATION SOUGHT FUNDING WAS THE ASSISTANCE PROGRAM SET UP BY THE TETON DAM DISASTER ASSISTANCE ACT (TETON ACT), PUBLIC LAW 94-400, 90 STAT. 1211 (1976), ADMINISTERED BY THE DEPARTMENT OF THE INTERIOR. THE TETON ACT WAS AMENDED IN 1978 TO BROADEN THE SCOPE OF PERMISSIBLE ASSISTANCE. PUBLIC LAW 95-629, 92 STAT. 3639 (1978).

TWO LOCALES IN IDAHO, SUGAR CITY AND JEFFERSON COUNTY, THAT RECEIVED TETON ACT FUNDS FOR THEIR PUBLIC IMPROVEMENT PROJECTS ALSO WERE THE RECIPIENTS OF GRANTS UNDER THE LAND AND WATER CONSERVATION ACT OF 1965 (CONSERVATION ACT), PUBLIC LAW 88-578, 78 STAT. 897 (1964), CODIFIED AT 16 U.S.C. SECS. 4601-4 THROUGH 4601-11.

AS RECIPIENTS OF CONSERVATION ACT GRANTS, SUGAR CITY AND JEFFERSON COUNTY HAD AGREED TO PROVIDE MATCHING SHARES OF AT LEAST 50 PERCENT OF THE COST OF THE PROJECTS FOR WHICH THEIR GRANTS HAD BEEN AWARDED. SEE 16 U.S.C. SEC. 4601-8(C). SUGAR CITY AND JEFFERSON COUNTY ASKED INTERIOR IF THEY COULD USE TETON ACTS FUNDS AS THEIR MATCHING SHARE.

BASED ON AN OPINION BY INTERIOR'S REGIONAL SOLICITOR, PORTLAND, OREGON, THAT THE TETON ACT FUNDS COULD BE USED AS THE MATCHING SHARE, SUGAR CITY AND JEFFERSON COUNTY SUBSTITUTED TETON ACT FUNDS FOR LOCAL FUNDS AS THE REQUIRED MATCHING SHARE FOR THEIR CONSERVATION ACT GRANTS.

AFTER THE COMPLETION OF THE SUGAR CITY AND JEFFERSON COUNTY PROJECTS, INTERIOR'S ASSOCIATE SOLICITOR FOR CONSERVATION AND WILDLIFE REVIEWED THE OPINION OF THE REGIONAL SOLICITOR. HE REACHED A CONTRARY CONCLUSION, RELYING ON A PROVISION IN THE CONSERVATION ACT SPECIFYING THAT MATCHING SHARES ARE NOT TO COME OUT OF FEDERAL FUNDS RECEIVED FROM ANOTHER FEDERAL PROGRAM OR ACTIVITY. SEE 16 U.S.C. SEC. 4601-8(F)(1). THE INSPECTOR GENERAL OF INTERIOR CONCURRED IN THIS OPINION IN A 1982 AUDIT REPORT. DETERMINED THAT SUGAR CITY AND JEFFERSON COUNTY WERE REQUIRED TO REPAY PORTIONS OF THE CONSERVATION ACT GRANT BECAUSE TETON ACT FUNDS WERE USED AS A MATCHING SHARE.

IN RESPONSE TO THESE ACTIONS BY INTERIOR, THE CONGRESS ENACTED SECTION 114 OF THE INTERIOR AND RELATED AGENCIES APPROPRIATION ACT, 1984, PUBLIC LAW 98-146, 97 STAT. 938, WHICH PROVIDES:

"NOTWITHSTANDING THE MATCHING GRANT REQUIREMENTS OF THE PROVISIONS OF SECTION 6(F) OF THE LAND AND WATER CONSERVATION FUND ACT, 16 U.S.C. 4601-8(F), FUNDS APPROPRIATED TO OR EXPENDED BY THE TETON DISASTER RELIEF ORGANIZATION, ARE AVAILABLE FOR PROJECTS FUNDED AND AUTHORIZED UNDER THE LAND AND WATER CONSERVATION FUND GRANT PROGRAM."

DISCUSSION

WE HAVE LONG HELD THAT FEDERAL GRANT-IN-AID FUNDS FROM ONE PROGRAM MAY NOT BE USED TO SATISFY THE LOCAL MATCHING REQUIREMENTS OF ANOTHER FEDERAL GRANT-IN-AID PROGRAM IN THE ABSENCE OF SPECIFIC STATUTORY AUTHORITY. E.G. 56 COMP.GEN. 645, 648 (1977). WE AGREE WITH THE ASSOCIATE SOLICITOR THAT AT THE TIME THE TWO MUNICIPALITIES RECEIVED THEIR CONSERVATION ACT GRANTS, THERE WAS NOT SUCH EXPLICIT MATCHING AUTHORITY. IN FACT, AS MENTIONED ABOVE, THE CONSERVATION ACT SPECIFICALLY PROHIBITED THE USE OF FEDERAL FUNDS TO MATCH GRANTS UNDER THE ACT. THE QUESTION REMAINS, HOWEVER, WHETHER THE SUBSEQUENT ENACTMENT OF SECTION 114 OF THE FISCAL YEAR 1984 INTERIOR APPROPRIATION ACT, QUOTED ABOVE, SHOULD ALTER THE CONCLUSION BY THE INSPECTOR GENERAL THAT SUGAR CITY AND JEFFERSON COUNTY MUST REPAY THE AMOUNT OF TETON ACT FUNDS THEY USED AS MATCHING SHARES UNDER THEIR CONSERVATION ACT GRANTS.

THE LANGUAGE USED BY THE CONGRESS IN SECTION 114 PRESENTS US WITH GREAT DIFFICULTY IN INTERPRETING AND APPLYING THE STATUTE. SECTION 114 SAYS THAT TETON ACT FUNDS "ARE AVAILABLE" AS MATCHING FUNDS FOR CONSERVATION ACT GRANTS. THIS USE OF THE WORD "ARE" CLEARLY CONTEMPLATES A PRESENT OR FUTURE APPLICATION. THE TETON ACT FUNDS, HOWEVER, WERE APPROPRIATED AND EXPENDED SEVERAL YEARS AGO AND THEREFORE CANNOT STILL BE AVAILABLE FOR MATCHING SHARES. GIVEN THIS AWKWARD WORDING, WE MUST LOOK TO THE LEGISLATIVE HISTORY OF THE PROVISION FOR A CLUE AS TO ITS MEANING.

SECTION 114 WAS ADDED TO THE 1984 INTERIOR APPROPRIATION ACT IN THE SENATE AFTER THE BILL HAD ALREADY PASSED THE HOUSE. THE SENATE COMMITTEE ON APPROPRIATIONS IN REPORTING THIS PROVISION EXPLAINED ITS PURPOSE AND INTENDED EFFECT AS FOLLOWS:

"THE COMMITTEE HAS ALSO INCLUDED BILL LANGUAGE WHICH PROHIBITS THE DEPARTMENT FROM RECOVERING CERTAIN GRANT MONEYS PAID TO MUNICIPALITIES FOLLOWING FAILURE OF THE TETON DAM IN 1976. FOLLOWING THE FAILURE OF THE DAM, LEGISLATION WAS ENACTED TO PROVIDE MONEY TO MUNICIPALITIES IN IDAHO AS COMPENSATION FOR DAMAGES OR LOSSES RESULTING FROM THAT DISASTER. BASED ON THE OPINION FROM THE DEPARTMENT OF THE INTERIOR THAT THESE FUNDS, AWARDED AS COMPENSATION, BELONGED SOLELY TO THE MUNICIPALITIES AND COULD, THEREFORE, BE MATCHED AGAINST FEDERAL FUNDS, CERTAIN CITIES AND COUNTIES COMMENCED WORK ON PROJECTS MATCHING FEDERAL GRANTS WITH THEIR TETON DISASTER AWARD MONEYS. AFTER THESE PROJECTS HAD BEEN COMPLETED AND THE FUNDS EXPENDED, THE DEPARTMENT DETERMINED THAT THE EARLIER OPINION WAS INCORRECT, AND THAT FEDERAL GRANT MONEY COULD NOT BE MATCHED WITH THE TETON AWARDS. THE DEPARTMENT HAS, THEREFORE, ATTEMPTED TO RECOVER EXPENDED GRANT MONEYS. THE COMMITTEE BELIEVES THAT THE FUNDS AWARDED AS COMPENSATION FOR LOSS OR DAMAGES FROM THE TETON DAM DISASTER BELONGED SOLELY TO THE AWARDEES AND COULD, THEREFORE, BE USED BY THEM FOR WHATEVER PURPOSE THEY CHOSE, INCLUDING MATCHING THEM AGAINST FEDERAL GRANTS FOR NEEDED PROJECTS. THE COMMITTEE FURTHER BELIEVES THAT IT IS UNCONSCIONABLE FOR THE DEPARTMENT TO CHANGE ITS MIND LONG AFTER THE FACT, AND HAS THUS INCLUDED BILL LANGUAGE INTENDED TO PROHIBIT THE GOVERNMENT FROM ATTEMPTING TO RECOVER THIS GRANT MONEY."

S.REP. NO. 184, 98TH CONG., 1ST. SESS. 61-62 (1983). THE COMMITTEE OF CONFERENCE ON THE BILL RECOMMENDED THE ADOPTION OF SECTION 114, WITH THE FOLLOWING EXPLANATION: "THE SENATE LANGUAGE PROHIBITS THE DEPARTMENT FROM RECOVERING CERTAIN GRANT MONEYS PAID TO MUNICIPALITIES FOLLOWING FAILURE OF THE TETON DAM IN 1976." H.R.REP. NO. 399, 98TH CONG., 1ST SESS. 35 (1983).

AS INDICATED IN BOTH THE FIRST AND LAST SENTENCE OF THE SENATE COMMITTEE STATEMENT, AND IN THE CONFERENCE COMMITTEE REPORT, SECTION 114 WAS DESIGNED TO PREVENT THE DEPARTMENT OF THE INTERIOR FROM RECOVERING THE AMOUNT OF THE TETON ACT FUNDS FROM THE IDAHO GRANTEES. THE SENATE COMMITTEE RECOGNIZED THAT SUGAR CITY AND JEFFERSON COUNTY HAD USED THESE FUNDS AS THEIR MATCHING SHARES IN RELIANCE ON AN OPINION FROM INTERIOR, AND EXPRESSED ITS VIEW THAT IT WAS "UNCONSCIONABLE" FOR INTERIOR TO CHANGE ITS MIND AND SEEK TO RECOVER THESE FUNDS "LONG AFTER THE FACT."

IN OUR OPINION, SECTION 114 IS NOT AN ATTEMPT BY THE CONGRESS TO RETROACTIVELY AMEND THE CONSERVATION ACT TO PROVIDE AN EXCEPTION TO THE MATCHING SHARE REQUIREMENTS FOR THE IDAHO GRANTEES. RATHER, SECTION 114, IN EFFECT, PROVIDES A WAIVER OR FORGIVENESS OF ANY DEBT TO THE GOVERNMENT SUGAR CITY AND JEFFERSON COUNTY MAY HAVE INCURRED BECAUSE OF INTERIOR'S CHANGE OF LEGAL POSITION. THE STATUTE PROVIDES THAT, DESPITE THE MATCHING SHARE REQUIREMENTS OF THE CONSERVATION ACT, THE TETON ACT FUNDS SHOULD NOW BE TREATED AS IF THEY HAD BEEN PROPERLY AVAILABLE TO SUGAR CITY AND JEFFERSON COUNTY TO MATCH THEIR CONSERVATION ACT GRANTS. IT FOLLOWS THAT THE DEPARTMENT OF THE INTERIOR SHOULD MAKE NO FURTHER ATTEMPTS TO RECOVER THE AMOUNT OF THESE FUNDS FROM SUGAR CITY OR JEFFERSON COUNTY, IDAHO.