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B-223725, Jun 9, 1987

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B-223725, JUN 9, 1987

APPROPRIATIONS/FINANCIAL MANAGEMENT - APPROPRIATION AVAILABILITY - PURPOSE AVAILABILITY - SPECIFIC PURPOSE RESTRICTIONS - WATERSHED PROJECTS - RECLAMATION

DIGEST: IN DECISION B-223725, FEBRUARY 20, 1987, WE FOUND THAT PLAN 6, ALTHOUGH APPROVED BY THE SECRETARY OF THE INTERIOR, IS NOT A SUITABLE ALTERNATIVE TO THE CONSTRUCTION OF ORME DAM AND RESERVOIR, CENTRAL ARIZONA PROJECT, WHICH WAS AUTHORIZED IN SECTION 301(A) OF THE COLORADO RIVER BASIN PROJECT ACT, PUB.L. NO. 90-537. HOWEVER, WE FOUND NO LEGAL BASIS FOR OBJECTING TO THE IMPLEMENTATION OF PLAN 6 SINCE THE CONGRESS HAD KNOWN ABOUT PLAN 6 AND PASSED APPROPRIATIONS WHICH INCLUDED THE CENTRAL ARIZONA PROJECT. UPON FURTHER REVIEW, WE DO NOT THINK THAT PLAN 6 WAS AUTHORIZED AS A RESULT OF THE APPROPRIATIONS PROCESS. THEREFORE, CONGRESSIONAL AUTHORIZATION FOR PLAN 6 SHOULD BE OBTAINED PRIOR TO THE COMMENCEMENT OF CONSTRUCTION. ACCORDINGLY, B-223725, FEBRUARY 20, 1987, IS MODIFIED.

THE HONORABLE HOWARD M. METZENBAUM:

THIS IS IN RESPONSE TO YOUR REQUEST OF MARCH 18, 1987, THAT WE RECONSIDER OUR OPINION THAT THE PLAN 6 ALTERNATIVE TO ORME DAM DOES NOT REQUIRE REAUTHORIZATION. ON FEBRUARY 20, 1987, WE RESPONDED TO YOUR REQUEST FOR OUR OPINION ABOUT THE PLAN 6 ALTERNATIVE TO ORME DAM, CENTRAL ARIZONA PROJECT (CAP). OUR ANSWER DEALT WITH THE NEED FOR REAUTHORIZATION FOR PLAN 6 AS WELL AS SEVERAL QUESTIONS CONCERNING PLAN 6 AND THE CAP COST CEILING. IN RESPONSE TO YOUR FIRST QUESTION, WE SAID THAT WHILE UNDER THE COLORADO RIVER BASIN PROJECT ACT, PLAN 6 IS NOT A "SUITABLE ALTERNATIVE" TO ORME DAM, THE CONGRESS HAD FOR 3 YEARS KNOWN OF PLAN 6 AND IN EACH OF THOSE YEARS HAD APPROPRIATED ADDITIONAL FUNDING FOR THE CAP. IN VIEW OF THE CIRCUMSTANCES, WE SAW NO LEGAL BASIS FOR OBJECTING TO THE DEPARTMENT OF THE INTERIOR'S IMPLEMENTATION OF PLAN 6.

IN YOUR MARCH 18 LETTER, YOU TAKE ISSUE WITH THIS CONCLUSION AND REQUEST THAT WE RECONSIDER OUR ANSWER. IN SUPPORT OF THIS POSITION, YOU PROVIDE FURTHER DETAILS OF YOUR VIEWS AND REFER TO A NUMBER OF COURT DECISIONS WHERE CONGRESSIONAL APPROPRIATIONS WERE HELD NOT TO REPLACE THE AUTHORIZATION PROCESS. UPON FURTHER REVIEW, WE DO NOT THINK THAT PLAN 6 WAS AUTHORIZED AS A RESULT OF THE APPROPRIATIONS PROCESS. THEREFORE, WE THINK THAT THE DEPARTMENT OF THE INTERIOR SHOULD OBTAIN CONGRESSIONAL AUTHORIZATION FOR PLAN 6 PRIOR TO COMMENCEMENT OF CONSTRUCTION.

BACKGROUND

SECTION 301(A) OF THE COLORADO RIVER BASIN PROJECT ACT AUTHORIZED THE CONSTRUCTION OF THE CAP, INCLUDING ORME DAM AND RESERVOIR AND POWER PUMPING

PLANT "OR SUITABLE ALTERNATIVE." PUB.L. NO. 90-537, 82 STAT. 885, 887-88, SEPTEMBER 30, 1968 (43 U.S.C. SEC. 1521(A)). THE REASON FOR THE PROVISION FOR A "SUITABLE ALTERNATIVE" WAS CONCERN OVER THE EFFECT THE FACILITY MIGHT HAVE ON INDIAN LANDS. IN JULY 1978, UNDER THE CENTRAL ARIZONA WATER CONTROL STUDY, A SEARCH WAS BEGUN FOR A SUITABLE ALTERNATIVE TO ORME DAM. IN APRIL 1984, THE SECRETARY OF THE INTERIOR SELECTED PLAN 6 WHICH INCLUDES THE CONSTRUCTION OF CLIFF DAM AND NEW WADDELL DAM, AND THE MODIFICATION OF ROOSEVELT DAM AND STEWART MOUNTAIN DAM. A COST SHARING AGREEMENT FOR PLAN 6 WAS SIGNED ON APRIL 15, 1986, WITH THE STATE OF ARIZONA AND SEVERAL LOCAL NON-FEDERAL ENTITIES.

THE LEGISLATIVE RECORD

THE FOLLOWING IS A REVIEW OF THE LAST 3 YEARS' CONGRESSIONAL APPROPRIATION ACTIVITIES AS THEY RELATE TO PLAN 6. FOR FISCAL YEAR 1985, THE CONGRESS MADE A LUMP-SUM APPROPRIATION FOR BUREAU OF RECLAMATION CONSTRUCTION ACTIVITIES COVERING THE CAP, BUT MADE NO REFERENCE TO PLAN 6. PUB.L. NO. 98-360, 98 STAT. 403, JULY 16, 1984. BOTH HOUSE AND SENATE APPROPRIATIONS SUBCOMMITTEE REPORTS CONTAIN AN ACKNOWLEDGEMENT OF THE EFFORTS OF THE SECRETARY OF THE INTERIOR IN BRINGING FORWARD PLAN 6, AND DIRECT HIM TO PROCEED WITH PRECONSTRUCTION PLANNING FOR THE IMPLEMENTATION OF PLAN 6. H.R. REP. NO. 755, 98TH CONG., 2D SESS. 64 (1984) AND S. REP. NO. 502, 98TH CONG., 2D SESS. 78 (1984).

IN RESPONSE TO QUESTIONS SUBMITTED BY SENATOR DECONCINI INCIDENT TO A SENATE HEARING ON FISCAL YEAR 1985 INTERIOR WATER DEVELOPMENT APPROPRIATIONS (HEARINGS BEFORE THE ENERGY AND WATER DEVELOPMENT SUBCOMMITTEE OF THE SENATE COMMITTEE ON APPROPRIATIONS, PART I, 98TH CONG., 2D SESS. 328 (1984)), IT WAS STATED THAT UNDER THE CENTRAL ARIZONA WATER CONTROL STUDY, PLAN 6 HAD BEEN SELECTED AS THE BEST ALTERNATIVE. PLAN 6 WAS BRIEFLY DESCRIBED-- THE TOTAL COST TO BE APPROXIMATELY $1 BILLION. THE PHYSICAL CHARACTERISTICS OF CLIFF DAM WERE NOT INDICATED. THE RESPONSE ALSO NOTED THAT A TOTAL OF $7,208,000 HAD BEEN INCLUDED IN THE BUDGET REQUEST FOR PRECONSTRUCTION ACTIVITIES.

THE FISCAL YEAR 1986 ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT WAS ALSO SILENT AS TO PLAN 6. PUB.L. NO. 99-141, 99 STAT. 564, NOVEMBER 1, 1985. HOWEVER, THE CONFERENCE REPORT ON THIS APPROPRIATION ACT RECOGNIZED THE EFFORTS OF THE STATE OF ARIZONA TO DEVELOP AN UP FRONT COST-SHARING PROPOSAL FOR PLAN 6. H.R. REP. NO. 307, 99TH CONG., 1ST SESS. 36 (1985). IN APPROPRIATIONS HEARINGS IN THE HOUSE OF REPRESENTATIVES, THE SECRETARY WAS QUESTIONED AS TO THE COMPLETION DATES FOR THE CAP, INCLUDING PLAN 6. SEE HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS, PART I, 99TH CONG., 1ST SESS. 390, 391 (1985).

AN EARLY 1985 PROJECT DATA SHEET FOR THE CAP WAS SUBMITTED BY INTERIOR TO THE APPROPRIATIONS COMMITTEES AS PART OF THE DEPARTMENT'S BUDGET SUBMISSIONS FOR THAT YEAR ALSO. THIS DOCUMENT BRIEFLY DESCRIBED PLAN 6, APPROVED BY THE SECRETARY IN APRIL 1984, AS INCLUDING NEW WADDELL DAM, CLIFF DAM AND MODIFIED ROOSEVELT DAM. THERE WAS NO DESCRIPTION OF CLIFF DAM. (HOUSE HEARINGS, P. 1005). THE SHEET INDICATED THAT PRECONSTRUCTION ACTIVITIES WOULD CONTINUE ON NEW WADDELL, MODIFIED ROOSEVELT, AND CLIFF DAMS. (P. 1020). AT A SENATE APPROPRIATIONS SUBCOMMITTEE HEARING, IN RESPONSE TO QUESTIONS PRESENTED BY SENATOR DECONCINI, INTERIOR STATED THAT IN FISCAL YEAR 1986, AMOUNTS TOTALING $8,425,000 WERE TO BE SPENT ON PLAN 6 PRECONSTRUCTION ACTIVITIES, BUT THAT THERE WOULD BE NO SIGNIFICANT PRECONSTRUCTION ACTIVITIES FOR CLIFF DAM. HEARINGS BEFORE THE ENERGY AND WATER DEVELOPMENT SUBCOMMITTEE OF THE SENATE COMMITTEE ON APPROPRIATIONS, PART I, 99TH CONG., 1ST SESS. 271 (1985).

THE FISCAL YEAR 1987 APPROPRIATION ALSO CONTAINS NO PROVISION FOR PLAN 6 CONSTRUCTION. TITLE II OF PUB.L. NO. 99-591, 100 STAT. 3341, OCTOBER 30, 1986, WHICH MADE CONTINUING APPROPRIATIONS FOR FISCAL YEAR 1987. THE SENATE APPROPRIATIONS COMMITTEE'S REPORT ON THE ENERGY AND WATER APPROPRIATION BILL, 1987, INDICATES AWARENESS OF THE COST-SHARING AGREEMENT ON PLAN 6 BETWEEN ARIZONA INTERESTS AND THE SECRETARY OF THE INTERIOR. S. REP. NO. 441, 99TH CONG., 2D SESS. 89 (1986). IT EXPRESSED THE HOPE THAT THE PROJECT COULD BE COMPLETED IN A TIMELY MANNER.

IN TESTIMONY BEFORE THE COMMITTEE, THE COMMISSIONER OF RECLAMATION STATED THAT THE BUREAU HAD BUDGETED $204 MILLION FOR CAP CONSTRUCTION AND THAT NEGOTIATIONS WERE PROCEEDING FOR UP-FRONT FINANCING FOR SEVERAL MAJOR PROJECT FEATURES. HEARINGS ON H.R. 2959 BEFORE THE ENERGY AND WATER DEVELOPMENT SUBCOMMITTEE OF THE SENATE COMMITTEE ON APPROPRIATIONS, PART I, 99TH CONG., 2D SESS. 190 (1986). THE PROJECT DATA SHEET FOR THE CAP CONTAINED A DESCRIPTION OF PLAN 6 AND PRECONSTRUCTION ACTIVITIES THAT WAS SIMILAR TO THAT SUBMITTED FOR THE PRIOR FISCAL YEAR.

ANALYSIS

IN THE LEADING CASE OF TENNESSEE VALLEY AUTHORITY V. HILL, 437 U.S. 153, 190 (1978), THE U.S. SUPREME COURT HELD THAT FAILURE TO SATISFY THE REQUIREMENTS OF THE ENDANGERED SPECIES ACT OF 1973 MEANT THAT COMPLETION OF TELLICO DAM WAS UNAUTHORIZED. THE COURT DECLINED TO FIND THAT CONTINUING APPROPRIATIONS FOR THE DAM CONSTITUTED AN IMPLIED REPEAL OF THE ACT. IN DOING SO, IT CONSIDERED THE ROLES OF AUTHORIZING AND APPROPRIATIONS LEGISLATION. ACCORDING TO THE COURT,

"*** BOTH SUBSTANTIVE ENACTMENTS AND APPROPRIATIONS MEASURES ARE 'ACTS OF CONGRESS,' BUT THE LATTER HAVE THE LIMITED AND SPECIFIC PURPOSE OF PROVIDING FUNDS FOR AUTHORIZED PROGRAMS. WHEN VOTING ON APPROPRIATIONS MEASURES, LEGISLATORS ARE ENTITLED TO OPERATE UNDER THE ASSUMPTION THAT THE FUNDS WILL BE DEVOTED TO PURPOSES WHICH ARE LAWFUL. ***"

IN RESPONSE TO TVA'S ARGUMENT THAT COMPLETION OF THE DAM WAS AUTHORIZED BECAUSE THE APPROPRIATIONS COMMITTEES HAD EXPRESSLY STATED THEIR UNDERSTANDING THAT THE EARLIER LEGISLATION WOULD NOT PROHIBIT EXPENDITURES FOR TELLICO DAM, THE COURT STATED THAT:

"EXPRESSIONS OF COMMITTEES DEALING WITH REQUESTS FOR APPROPRIATIONS CANNOT BE EQUATED WITH STATUTES ENACTED BY CONGRESS ***. WE VENTURE TO SUGGEST THAT THE AUTHORIZING COMMITTEES *** WOULD BE SOMEWHAT SURPRISED TO LEARN THAT THEIR CAREFUL WORK ON THE SUBSTANTIVE LEGISLATION HAD BEEN UNDONE BY THE SIMPLE-- AND BRIEF-- INSERTION OF SOME INCONSISTENT LANGUAGE IN APPROPRIATIONS COMMITTEES' REPORTS. *** THERE IS NO INDICATION THAT CONGRESS AS A WHOLE WAS AWARE OF TVA'S POSITION, ALTHOUGH THE APPROPRIATIONS COMMITTEE APPARENTLY AGREED WITH PETITIONER'S VIEWS. ***"

THE APPROACH OF THE SUPREME COURT WAS CONSISTENT WITH THAT TAKEN BY OTHER COURTS FACED WITH RECONCILING AUTHORIZATION AND APPROPRIATION LEGISLATION. SOME OF THESE CASES REPRESENT DISPUTES OVER RIVER AND DAM PROJECTS THAT ARE SIMILAR TO THE ONE BEFORE US IN THIS MATTER. ATCHISON, TOPEKA AND SANTA FE RAILWAY CO. V. CALLAWAY, 382 F.SUPP. 610 (D.D.C. 1974), THE COURT ENJOINED THE REBUILDING BY THE CORPS OF ENGINEERS OF LOCKS AND DAM 26, ONE OF A SERIES OF LOCKS AND DAMS EXTENDING FROM ALTON, ILLINOIS TO ST. PAUL, MINNESOTA. TO MEET EXPECTED FUTURE INCREASES IN TRAFFIC, THE FACILITY'S CAPACITY WAS TO BE INCREASED FROM 46.2

MILLION TONS TO 190 MILLION TONS, WHICH THE COURT FOUND NOT TO BE WITHIN THE SCOPE OF STATUTORY AUTHORITY TO ENTIRELY RECONSTRUCT DAMS AND LOCKS WHICH BECAME INEFFECTIVE OR DAMAGED. THE COURT HELD THAT THE CONGRESS HAD NOT CONSENTED TO REBUILDING THE PROJECT, HOLDING THAT THE MERE APPROPRIATION OF FUNDS DID NOT MEET THE REQUIREMENT FOR CONGRESSIONAL CONSENT EVEN THOUGH NO POINT OF ORDER WAS RAISED TO THE APPROPRIATION. THE COURT POINTED OUT THAT THE CORPS OF ENGINEERS, IN HEARINGS BEFORE THE CONGRESS, AND IN ALL PUBLIC DOCUMENTS, HAD STATED THAT THE PROJECT WAS ONE THAT DID NOT REQUIRE SPECIFIC CONGRESSIONAL AUTHORIZATION.

NATIONAL WILDLIFE FEDERATION V. ANDRUS, 440 F.SUPP. 1245, 1250 (D.D.C. 1977), CONCERNED THE CONSTRUCTION OF A 23-MEGAWATT POWER PLANT AT THE NAVAJO DAM ON THE SAN JUAN RIVER IN NEW MEXICO UNDER STATUTES RELATING TO THE NAVAJO INDIAN IRRIGATION PROJECT (NIIP) AND THE COLORADO RIVER STORAGE PROJECT ACT. IN ENJOINING THE FURTHER CONSTRUCTION OF THE POWER PLANT, THE DISTRICT COURT CONSIDERED THE QUESTION OF AUTHORIZATION THROUGH THE APPROPRIATION PROCESS. IT SAID:

"HERE DEFENDANTS ATTEMPT TO EXCEPT THEMSELVES FROM THE USUAL ROLE AGAINST LEGISLATION BY APPROPRIATION BY SHOWING THAT CONGRESS DID IN FACT HAVE SPECIFIC KNOWLEDGE OF THE POWER PLANT AT NAVAJO DAM. THE ONLY INDICATIONS IN THE RECORD THAT CONGRESS SPECIFICALLY KNEW OF THE POWER PLANT ARE INSTANCES IN WHICH IT IS INCLUDED IN PROPOSALS FOR WORK PURSUANT TO NIIP. THERE APPEAR TO BE NO REFERENCES TO THE POWER PLANT IN DISCUSSIONS AT HEARINGS, AND THERE IS NO SPECIFIC MENTION OF THE POWER PLANT IN THE APPROPRIATIONS BILLS THEMSELVES. IN ADDITION, REFERENCES TO THE POWER PLANT, BURIED AS THEY ARE AMID MANY OTHER PROPOSALS RELATED TO NIIP, HARDLY SEEM SUFFICIENT TO ALERT CONGRESS TO THE POSSIBILITY THAT IT IS BEING ASKED TO APPROPRIATE FUNDS FOR AN UNAUTHORIZED PROJECT. THE MERE FACT THAT THE POWER PLANT WAS MENTIONED IN CERTAIN PROPOSALS DOES NOT BY ITSELF INDICATE CONGRESSIONAL AWARENESS ***."

THE UNITED STATES COURT OF APPEALS, NINTH CIRCUIT, IN LIBBY ROD AND GUN CLUB V. POTEAT, 594 F.2D 742, 746 (1979) FOUND THAT CONGRESSIONAL AUTHORIZATION FOR A REREGULATING DAM DOWNSTREAM FROM LIBBY DAM, AUTHORIZED TO BE BUILT BY THE CORPS OF ENGINEERS UNDER THE FLOOD CONTROL ACT OF 1950, WAS NOT CONFERRED BY THE APPROPRIATION OF FUNDS. THE COURT WOULD NOT "INTERPRET ISOLATED REMARKS IN COMMITTEE HEARINGS OR REPORTS AS EXPRESSIONS OF THE INTENT OR KNOWLEDGE OF CONGRESS."

IN ONE RECENT CASE, E.E.O.C. V. MARTIN INDUSTRIES, INC., 581 F.SUPP. 1029, 1034 (N.D. ALA. 1984), THE DISTRICT COURT FOUND A DICHOTOMY IN CASES DEALING WITH THE QUESTION OF THE USE OF APPROPRIATIONS FOR AUTHORIZATION PURPOSES. IT CITED TVA V HILL, SUPRA, AND ATCHISON, TOPEKA AND SANTA FE RAILWAY CO. V. CALLAWAY, SUPRA, AS INDICATIVE OF THE PROPOSITION THAT THE CONGRESS CANNOT USE APPROPRIATION LEGISLATION IN THIS WAY. ON THE OTHER HAND, ACCORDING TO THE COURT, OTHER CASES STAND FOR THE PROPOSITION THAT THE PROCESS OF AUTHORIZATION BY APPROPRIATION CAN BE ACCEPTED WHEN IT IS DEMONSTRATED THAT THE CONGRESS SPECIFICALLY INTENDS TO AUTHORIZE THE ACT IN DISPUTE.

IN THE INSTANT CASE, THE ISSUE IS WHETHER PLAN 6 CONSTITUTES A SUITABLE ALTERNATIVE TO ORME DAM AND RESERVOIR AND PUMPING PLANT OF THE CENTRAL ARIZONA PROJECT. MATCHING PLAN 6 AGAINST THE PROJECT AUTHORIZATION WE CONCLUDED THAT IT DID NOT ON ITS FACE CONSTITUTE A SUITABLE ALTERNATIVE. IT IS CLEAR, HOWEVER, THAT THE APPROPRIATIONS COMMITTEES OF THE HOUSE AND SENATE AND THE CONFERENCE COMMITTEE OF BOTH HOUSE GAVE MORE THAN PASSING CONSIDERATION TO PLAN 6 AS AN ALTERNATIVE. AND IT WAS FUNDAMENTALLY ON THE BASIS OF DEFERRING TO ACCEPTANCE BY

THE COMMITTEES OF THE PLAN 6 ALTERNATIVE, AS REFLECTED IN THEIR REPORTS TO THE FULL CONGRESS IN CONNECTION WITH APPROPRIATIONS TO BE VOTED, THAT WE CONCLUDED THERE WAS NO LEGAL OBJECTION TO PROCEEDING WITH THE PLAN.

UPON RECONSIDERATION AND CLOSER ANALYSIS, HOWEVER, WE MUST CONCLUDE THAT THE ISSUE IS NOT SO CLEAR-CUT. THERE WAS NO PLAN 6 AUTHORIZING LANGUAGE IN ANY OF THE APPROPRIATION ENACTMENTS NOR DID THEY MAKE ANY REFERENCE TO PLAN 7. BOTH THE SENATE AND HOUSE APPROPRIATION COMMITTEE REPORTS FOR THE FISCAL YEAR 1985 APPROPRIATION ACKNOWLEDGED THE SECRETARY'S SELECTION OF PLAN 6 AND "DIRECTED" HIM TO PROCEED WITH PRECONSTRUCTION PLANNING. HOWEVER, NOWHERE IN THE REPORTS WAS THERE A DETAILED REVIEW OR CONSIDERATION OF THE PLAN OR AN EXPLANATION OF THE MAGNITUDE OF THE CHANGE FROM ORME DAM. THE NEED FOR ADDITIONAL AUTHORIZATION WAS NOT RAISED. THE FISCAL YEAR 1986 APPROPRIATION BILL'S CONFERENCE REPORT, WHILE RECOGNIZING THE STATE OF ARIZONA'S EFFORTS IN DEVELOPING A COST-SHARING PROPOSAL FOR PLAN 6, DID NOT GO FURTHER IN INFORMING THE CONGRESS ABOUT PLAN 6. IN THE NEXT FISCAL YEAR THE SENATE APPROPRIATIONS COMMITTEE REPORT ON ENERGY AND WATER APPROPRIATIONS WAS LIMITED TO TAKING NOTE OF A COST-SHARING AGREEMENT BETWEEN THE STATE OF ARIZONA AND THE SECRETARY AS WELL AS EXPRESSING HOPE THAT THE PROJECT COULD BE COMPLETED IN A TIMELY MANNER. IN ONE HEARING BEFORE THE SENATE APPROPRIATIONS COMMITTEE, ONLY A GENERAL DESCRIPTION OF PLAN 6 WAS GIVEN TOGETHER WITH INFORMATION THAT THE PROJECT WOULD COST ABOUT $1 BILLION. IN THAT HEARING AND IN ANOTHER, THE COMMITTEE WAS INFORMED THAT PRECONSTRUCTION FUNDS HAD BEEN INCLUDED IN THE DEPARTMENT'S BUDGET REQUEST.

AS PART OF ITS BUDGET SUBMISSION, THE DEPARTMENT OF THE INTERIOR INCLUDES VOLUMINOUS PROJECT DATA SHEETS FOR THE BUREAU OF RECLAMATION. THESE SHEETS SUPPLY MANY DETAILS REGARDING THE PROJECTS. THE PROJECT DATA SHEETS AS REPRINTED WITH THE HOUSE APPROPRIATIONS HEARINGS ON THE BUREAU OF RECLAMATION FOR FISCAL YEAR 1986, CONSIST OF 670 PAGES OF DATA, INCLUDING CHARTS, DIAGRAMS AND MANY FOOTNOTES. IN THE SHEETS FOR THE CAP, ONE PARAGRAPH WAS DEVOTED TO THE "REGULATORY STORAGE DIVISION," WHICH INCLUDES ORME DAM. NEITHER HERE OR IN THE FOLLOWING YEAR'S DATA SHEETS WAS THERE A DETAILED DESCRIPTION OF PLAN 6 NOR A CLEAR INDICATION OF THE EXTENT OF THE CHANGE FROM ORME DAM.

CONCLUSION

OUR CURRENT REVIEW OF THE LEGISLATIVE HISTORY RELATING TO PLAN 6 DOES NOT DISCLOSE A CLEAR INTENTION BY THE CONGRESS AS A WHOLE TO PROVIDE THE REQUIRED ADDITIONAL AUTHORIZATION FOR PLAN 6. WHILE THE APPROPRIATIONS COMMITTEES OF BOTH HOUSES OF THE CONGRESS APPARENTLY SUPPORTED THE PLAN, IT IS NOT DEMONSTRATED THAT THE COMMITTEES CONSIDERED WHETHER PLAN 6 WAS A "SUITABLE ALTERNATIVE" TO ORME DAM. NOR WAS THE ISSUE COMMUNICATED TO THE CONGRESS AS A WHOLE SO THAT IF DEEMED DESIRABLE, THE CONGRESS MIGHT AFFORD THE ADDITIONAL AUTHORITY NECESSARY FOR CONSTRUCTION. THE USE OF APPROPRIATED FUNDS FOR PRECONSTRUCTION PLANNING AS INDICATED IN THE PROJECT DATA SHEETS AND IN HEARINGS, IN THE CONTEXT OF THE LACK OF INFORMATION SUPPLIED TO THE CONGRESS, DOES NOT ESTABLISH THAT THE CONGRESS CLEARLY INTENDED TO SUPPLY THE NEEDED AUTHORIZATION.

ACCORDINGLY, WHILE THE PLAN 6 ALTERNATIVE TO ORME DAM COULD HAVE BEEN AUTHORIZED AS PART OF THE APPROPRIATIONS PROCESS, OUR REVIEW, UPON RECONSIDERATION, DOES NOT CLEARLY SHOW THAT THIS WAS DONE. THEREFORE, WE THINK THAT THE DEPARTMENT OF THE INTERIOR SHOULD OBTAIN CONGRESSIONAL AUTHORIZATION FOR PLAN 6 PRIOR TO COMMENCEMENT OF CONSTRUCTION.

UNLESS YOU NOTIFY US OTHERWISE, THIS OPINION WILL BE AVAILABLE FOR DISTRIBUTION

AFTER 20 DAYS.