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B-226572, Jun 25, 1987

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APPROPRIATIONS/FINANCIAL MANAGEMENT - APPROPRIATION AVAILABILITY - AMOUNT AVAILABILITY - COST CONTROLS - STATUTORY RESTRICTIONS - WATERSHED PROJECTS.
DIGEST: 1. AUBURN DAM AND RESERVOIR WAS AUTHORIZED UNDER PUB.L. NO. 89-161, 79 STAT. 615, IN 1965 AS PART OF THE AUBURN-FOLSOM SOUTH UNIT OF THE CENTRAL VALLEY PROJECT, CALIFORNIA. THE BUREAU OF RECLAMATION OF THE DEPARTMENT OF THE INTERIOR IS NOW CONSIDERING ALTERNATIVES TO CONSTRUCTING AUBURN DAM AND RESERVOIR AS ORIGINALLY AUTHORIZED. A SUBSTANTIAL REDUCTION IN RESERVOIR CAPACITY WOULD REQUIRE NEW STATUTORY AUTHORITY. AN ACCOMPANYING CHANGE IN THE PRINCIPAL PURPOSE OF THE UNIT FROM IRRIGATION WATER SUPPLY TO FLOOD CONTROL SHOULD ALSO BE MADE AS PART OF THE NEW AUTHORITY. INSTITUTION OF A NEW 25 PERCENT COST SHARING REQUIREMENT FOR LOCAL NON- FEDERAL ENTITIES FOR CONSTRUCTION COSTS ATTRIBUTED TO FLOOD CONTROL WOULD REQUIRE NEW LEGISLATION. MISCELLANEOUS TOPICS - ENVIRONMENT/ENERGY/NATURAL RESOURCES - WATERSHED PROJECTS - COST CONTROLS - STATUTORY RESTRICTIONS APPROPRIATIONS/FINANCIAL MANAGEMENT - APPROPRIATION AVAILABILITY - AMOUNT AVAILABILITY - COST CONTROLS - STATUTORY RESTRICTIONS - WATERSHED PROJECTS 2. AUBURN DAM AND RESERVOIR WAS AUTHORIZED UNDER PUB.L. NO. 89-161, 79 STAT. 615, IN 1965 AS PART OF THE AUBURN-FOLSOM SOUTH UNIT OF THE CENTRAL VALLEY PROJECT, CALIFORNIA. THE BUREAU OF RECLAMATION OF THE DEPARTMENT OF THE INTERIOR IN APRIL 1986 ESTIMATED THE AUTHORIZED CONSTRUCTION CEILING, ADJUSTED FOR INFLATION, TO INCLUDE APPROXIMATELY $144 MILLION BECAUSE OF SUBSEQUENT LEGISLATIVE REQUIREMENTS. THIS AMOUNT SHOULD BE DEDUCTED FROM THE COST CEILING SINCE THE ONLY BASIS FOR INCREASING IT IS FOR INFLATIONARY COST INCREASES. THERE IS NO AUTHORITY TO DO SO BECAUSE OF ADDITIONAL REQUIREMENTS OF SUBSEQUENT LEGISLATION WHICH DOES NOT PROVIDE ADDITIONAL AUTHORIZATION OF APPROPRIATIONS. SEE B-223725, FEBRUARY 20, 1987.

THE HONORABLE VIC FAZIO:

THIS IS IN RESPONSE TO YOUR LETTER OF MARCH 11, 1987, REQUESTING THAT THIS OFFICE IDENTIFY THOSE ELEMENTS OF THE AUTHORIZING ACT WHICH WOULD TRIGGER THE NEED FOR REAUTHORIZATION OF THE AUBURN-FOLSOM SOUTH UNIT, IF AN ALTERNATIVE WERE CHOSEN THAT WOULD DEVIATE SIGNIFICANTLY FROM THE CRITERIA ESTABLISHED IN THE LAW. YOU INDICATE THAT THE BUREAU OF RECLAMATION OF THE DEPARTMENT OF THE INTERIOR IS STUDYING ALTERNATIVES TO THE "TRADITIONAL" AUBURN DAM WHICH WAS AUTHORIZED UNDER PUBLIC LAW NUMBER 89-161, IN 1965 AS PART OF THE AUBURN-FOLSOM SOUTH UNIT OF THE CENTRAL VALLEY PROJECT (CVP). THE BUREAU IS ALSO INVESTIGATING WHETHER ANY ALTERNATIVE TO THE ORIGINAL PROPOSAL IS AUTHORIZED UNDER THIS ACT.

AS THE RESULT OF A MEETING WITH YOUR STAFF, THE QUESTIONS ABOUT THE ELEMENTS WE WILL CONSIDER ARE:

(1) CAN THE BUREAU CONSTRUCT A SMALLER DAM AND RESERVOIR?

(2) CAN THE DAM BE PRIMARILY FOR FLOOD CONTROL PURPOSES EVEN WITH DIMINISHED WATER SUPPLY AND POWER CAPACITIES?

(3) CAN THE BUREAU REQUIRE A 25 PERCENT LOCAL COST SHARE FOR FLOOD CONTROL?

ADDITIONALLY, YOUR LETTER REFERS TO THE UNIT'S ORIGINAL AUTHORIZED COST CEILING OF $425 MILLION WHICH YOUR STAFF INDICATES IS NOW INDEXED TO ABOUT $1.5 BILLION. YOU ASK THAT WE ESTIMATE THE CURRENT INDEXED COST CEILING BY REVIEWING THE BUREAU'S FIGURES AND MAKING OUR OWN ESTIMATE OF IT.

AS EXPLAINED BELOW, WE ARE OF THE OPINION THAT A SUBSTANTIAL REDUCTION IN RESERVOIR CAPACITY IS NOT AUTHORIZED UNDER PUB.L. NO. 89 161. THEREFORE, TO CONSTRUCT A DAM WITH SUCH REDUCED CAPACITY, THE BUREAU WOULD NEED NEW STATUTORY AUTHORITY. A CHANGE IN THE PRINCIPAL PURPOSE OF THE UNIT FROM IRRIGATION WATER SUPPLY TO FLOOD CONTROL ALSO REQUIRES NEW AUTHORITY, ESPECIALLY WHEN IRRIGATION POTENTIAL IS SUBSTANTIALLY REDUCED BECAUSE OF SIGNIFICANTLY SMALLER RESERVOIR CAPACITY. INSTITUTION BY THE DEPARTMENT OF THE INTERIOR OF A 25 PERCENT COST SHARING REQUIREMENT FOR LOCAL NON- FEDERAL ENTITIES WOULD ALSO REQUIRE NEW LEGISLATION. WE REQUESTED THE VIEWS OF THE SECRETARY OF THE INTERIOR ON THESE ISSUES ON APRIL 3, 1987. WE RECEIVED A REPLY FROM THE DEPARTMENT'S SOLICITOR ON JUNE 22, 1987. COPY IS ENCLOSED.

AS TO YOUR LAST QUESTION, WE HAVE REVIEWED THE BUREAU'S INDEXED COST CEILING WHICH IS COMPUTED TO BE $1,402,492,000 AS OF APRIL 1986. WE FIND THAT THIS SUM INCLUDES APPROXIMATELY $144 MILLION FOR INCREASED COSTS ATTRIBUTED TO SUBSEQUENT LEGISLATION. WE DISAGREE WITH THE EXPANSION OF THE COST CEILING BY THIS AMOUNT SINCE WE FIND NO STATUTORY JUSTIFICATION FOR THIS ACTION.

THE AUTHORIZING STATUTE

PUBLIC LAW NO. 89-161, 79 STAT. 615, SEPTEMBER 2, 1965, AUTHORIZED THE SECRETARY OF THE INTERIOR TO CONSTRUCT THE AUBURN-FOLSOM SOUTH UNIT, AMERICAN RIVER DIVISION, OF THE CVP, CALIFORNIA, UNDER FEDERAL RECLAMATION LAWS. SECTION OF THE ACT STATES THAT ITS PRINCIPAL PURPOSE IS FOR "INCREASING THE SUPPLY OF WATER AVAILABLE FOR IRRIGATION AND OTHER BENEFICIAL USES" IN THE CVP. ACCORDING TO THE ACT, THE PRINCIPAL WORKS OF THE UNIT SHALL CONSIST OF--

"(1) THE AUBURN DAM AND RESERVOIR WITH MAXIMUM WATER SURFACE ELEVATION OF ONE THOUSAND ONE HUNDRED AND FORTY FEET ABOVE MEAN SEA LEVEL, AND CAPACITY OF APPROXIMATELY TWO AND ONE-HALF MILLION ACRE FEET."

OTHER PRINCIPAL WORKS WITHIN THE UNIT AS AUTHORIZED INCLUDE A HYDROELECTRIC POWER PLANT AT AUBURN DAM; THE SUGAR PINE DAM AND RESERVOIR; THE COUNTY LINE DAM AND RESERVOIR; NECESSARY DIVERSION WORKS FOR THE DELIVERY OF WATER SUPPLIES; AND THE FOLSOM SOUTH CANAL AND RELATED STRUCTURES.

SECTION 2 OF THE ACT PROVIDES THAT BOTH AUBURN AND COUNTY LINE DAMS SHALL BE OPERATED FOR FLOOD CONTROL IN ACCORDANCE WITH CRITERIA ESTABLISHED BY THE SECRETARY OF THE ARMY.

SECTION 6 PROVIDES THAT--

"THERE IS HEREBY AUTHORIZED TO BE APPROPRIATED FOR CONSTRUCTION OF THE

AUBURN-FOLSOM SOUTH UNIT, AMERICAN RIVER DIVISION, THE SUM OF $425,000,000 (1965 PRICES), PLUS OR MINUS SUCH AMOUNTS, IF ANY, AS MAY BE JUSTIFIED BY REASON OF ORDINARY FLUCTUATIONS IN CONSTRUCTION COSTS AS INDICATED BY ENGINEERING COST INDEXES APPLICABLE TO THE TYPES OF CONSTRUCTION INVOLVED HEREIN."

DISCUSSION

THE FIRST ELEMENT OF THE AUTHORIZING LEGISLATION WE CONSIDER IS THE SIZE AND CAPACITY OF AUBURN DAM AND RESERVOIR. AS TO THE HEIGHT OF THE RESERVOIR, THE STATUTE IS QUITE CLEAR IN ESTABLISHING A MAXIMUM WATER SURFACE ELEVATION OF 1,140 FEET ABOVE MEAN SEA LEVEL. THE ACT'S LEGISLATIVE HISTORY AFFORDS NO BASIS FOR ANY VIEW OTHER THAN WHAT THE ACT SAYS-- THE STATUTE ESTABLISHES 1,140 FEET AS THE GREATEST HEIGHT OF THE RESERVOIR, BUT PERMITS A LOWER ELEVATION.

THE LEGISLATION ALSO PROVIDES THAT THE AUBURN RESERVOIR CAPACITY WILL BE "APPROXIMATELY" 2 1/2 MILLION ACRE-FEET OF WATER. THE SECRETARY OF THE INTERIOR'S ORIGINAL REPORT ON THE AUBURN-FOLSOM SOUTH UNIT, DATED JANUARY 18, 1962, (H. DOC. NO. 305, 87TH CONG., 2D SESS. XX) CALLED FOR A MILLION ACRE-FOOT RESERVOIR. HOWEVER, THIS WAS INCREASED TO 2 1/2 MILLION ACRE- FEET IN A SUPPLEMENTAL REPORT ISSUED ON OCTOBER 22, 1963 (H. DOC. NO. 171, 88TH CONG., 1ST SESS. 14). IN THE CONGRESSIONAL CONSIDERATION OF THE UNIT'S AUTHORIZATION, THE RESERVOIR'S CAPACITY IS EITHER REFERRED TO AS CONTAINING 2 1/2 MILLION ACRE-FEET OR "ABOUT" THAT AMOUNT. FOR EXAMPLE, SEE S. REP. NO. 312, 89TH CONG., 1ST SESS. 8 (1965), AND H.R. REP. NO. 295, 89TH CONG., 1ST SESS. 6 (1965). THE PROVISION FOR "APPROXIMATELY" 2 1/2 MILLION ACRE FEET APPEARS THEN TO ALLOW SOME VARIATION IN THE STATED RESERVOIR WATER STORAGE CAPACITY, EITHER GREATER OR LESS THAN 2 1/2 MILLION ACRE-FEET. CLEARLY, A SUBSTANTIAL REDUCTION IN RESERVOIR WATER CAPACITY FOR EXAMPLE, TO 1 MILLION ACRE-FEET, WOULD NOT FALL WITHIN THE SCOPE OF THE AUTHORIZING LEGISLATION, AND WOULD REQUIRE NEW STATUTORY AUTHORITY.

THE INTERIOR SOLICITOR AGREES THAT WHILE THE LEGISLATION SPECIFIED A MAXIMUM HEIGHT IT GAVE AN APPROXIMATE CAPACITY FOR THE DAM AND RESERVOIR THUS AFFORDING THE SECRETARY SOME ADMINISTRATIVE FLEXIBILITY IN THIS REGARD.

WE NEXT CONSIDER THE PURPOSES OF THE AUBURN-FOLSOM SOUTH UNIT. THE STATED PRINCIPAL PURPOSE IN PUB.L. NO. 89-161 IS "INCREASING THE SUPPLY OF WATER AVAILABLE FOR IRRIGATION AND OTHER BENEFICIAL USES." THESE USES INCLUDE FLOOD CONTROL AND HYDROELECTRIC POWER PRODUCTION. UNDER SECTION 2 THERE IS SPECIFIC PROVISION FOR THE OPERATION OF AUBURN DAM FOR FLOOD CONTROL IN ACCORDANCE WITH CRITERIA ESTABLISHED BY THE SECRETARY OF THE ARMY. CONGRESSMAN JOHNSON, WHO REPRESENTED THE DISTRICT IN WHICH THE PROJECT IS SITUATED WHEN THE AUTHORIZATION STATUTE WAS DEBATED, IN EXPLAINING THE PROPOSED AUTHORIZING LEGISLATION ON THE FLOOR OF THE HOUSE OF REPRESENTATIVES, STATED THAT

"ONE OF THE MOST IMPORTANT FUNCTIONS IS THAT OF PROVIDING INCREASED FLOOD PROTECTION FOR THE HIGHLY DEVELOPED AMERICAN RIVER VALLEY WHICH INCLUDES THE CAPITAL CITY OF SACRAMENTO." (211 CONG.REC. 13817 (1965).)

HOWEVER, AS POINTED OUT BY THE COMMISSIONER OF THE BUREAU OF RECLAMATION IN TESTIMONY ON THE AUBURN-FOLSOM SOUTH UNIT BILL,

"THE MAJOR PURPOSE OF THE AUBURN-FOLSOM SOUTH UNIT IS TO PROVIDE IRRIGATION WATER FOR *** IRRIGATING LANDS IN SACRAMENTO AND SAN JOAQUIN COUNTIES." HEARINGS ON H.R. 2411 AND RELATED BILLS BEFORE A SUBCOMM. IRRIGATION AND RECLAMATION OF THE HOUSE COMM. ON INTERIOR AND INSULAR AFFAIRS, 88TH CONG., 2D SESS. 37 (1964).

WE UNDERSTAND THAT A NUMBER OF THE ALTERNATIVES NOW BEING STUDIED BY THE BUREAU MAKE FLOOD CONTROL THE PRIMARY PURPOSE OF THE UNIT AND REDUCE THE IMPORTANCE OF BOTH IRRIGATION AND HYDROELECTRIC POWER PRODUCTION. UNDER THESE ALTERNATIVES MAJOR PHYSICAL CHANGES WOULD BE MADE IN THE UNIT AS ORIGINALLY CONCEIVED. WE THINK THAT THE STATED PROJECT PURPOSES SHOULD BE CONSISTENT WITH SUCH CHANGES. ACCORDINGLY, IF THERE IS A SUBSTANTIAL REDUCTION OF THE CAPACITY OF AUBURN DAM AND THE MAJOR PURPOSE OF THE DAM IS TO BE FLOOD CONTROL AND NOT WATER SUPPLY PRIMARILY FOR IRRIGATION, THEN WE THINK THAT THE NEW AUTHORIZING LEGISLATION SHOULD INCORPORATE THIS MAJOR CHANGE.

THE DEPARTMENT'S VIEW IS THAT THE SECRETARY HAS THE FLEXIBILITY TO MAKE FLOOD CONTROL A PRIMARY PURPOSE OF AUBURN DAM, WITH DIMINISHED WATER SUPPLY AND POWER CAPACITIES BUT NOT TO ENTIRELY ELIMINATE THESE USES. THERE WERE A SIGNIFICANT INCREASE IN FLOOD CONTROL COSTS, THIS WOULD BE BROUGHT TO THE CONGRESS' ATTENTION DURING THE APPROPRIATIONS PROCESS. THE BUREAU COULD ALSO SEEK PROJECT REAUTHORIZATION.

THE THIRD QUESTION IS WHETHER THE BUREAU IS AUTHORIZED TO REQUIRE A 25 PERCENT CONTRIBUTION FOR COSTS ATTRIBUTED TO FLOOD CONTROL FROM THE AFFECTED LOCALITIES, WATER DISTRICTS, ETC., IN THE ABSENCE OF LEGISLATION AUTHORIZING COSTS SHARING. PUBLIC LAW NO. 89-161 IS SILENT REGARDING THIS ISSUE. BOTH OF THE REPORTS OF THE SECRETARY ON THE AUBURN-FOLSOM SOUTH UNIT (H. DOC. NO. 305, SUPRA, XVIII AND H. DOC. NO. 171, SUPRA, 32) CONTAIN A CHART SHOWING THAT COSTS ALLOCATED TO FLOOD CONTROL ARE NONREIMBURSABLE, THAT IS, THE FEDERAL GOVERNMENT WOULD NOT BE REPAID FOR THESE COSTS. A SIMILAR CHART APPEARS IN SEN. REP. NO. 312, SUPRA, AT 6. CONGRESSMAN JOHNSON SUMMARIZED THE RATIONALE FOR THIS POLICY IN HIS PREVIOUSLY CITED REMARKS TO THE HOUSE OF REPRESENTATIVES, STATING THAT FLOOD CONTROL IS A FUNCTION THAT IS CONSIDERED TO BE A NATIONAL RESPONSIBILITY AND THUS IS NONREIMBURSABLE.

THERE IS NO CURRENT STATUTORY REQUIREMENT FOR BUREAU OF RECLAMATION PROJECTS GENERALLY, OR IN THE AUTHORIZATION OF THE AUBURN-FOLSOM SOUTH UNIT, THAT THE U.S. GOVERNMENT BE REIMBURSED FOR THE CONSTRUCTION COSTS OF THIS UNIT THAT ARE ATTRIBUTED TO FLOOD CONTROL. THE LEGISLATIVE HISTORY OF PUBLIC LAW NO. 89-161 DEMONSTRATES THAT THE CONGRESS WAS WELL AWARE THAT THERE WOULD BE NO COST SHARING FOR THIS PURPOSE. CONSTRUCTION OF THE UNIT TO INCLUDE FLOOD CONTROL WAS NOT CONDITIONED UPON LOCAL CONTRIBUTIONS AS WAS THE CASE WITH THE SEPARABLE CAPITAL COSTS OF THE UNIT FOR RECREATION AND WILDLIFE ENHANCEMENT (SEC. 3(D)). IN THIS CIRCUMSTANCE, THE IMPOSITION OF A REGULATORY REQUIREMENT FOR FLOOD CONTROL COST SHARING WOULD APPEAR CONTRARY TO THE LEGISLATIVE SCHEME ENACTED BY THE CONGRESS. (UNDER SEC. 103 OF THE WATER RESOURCES DEVELOPMENT ACT OF 1986, PUB.L. NO. 99-663, 100 STAT. 4082, 4084, A NEW 25 PERCENT COST SHARING REQUIREMENT FOR FLOOD CONTROL FOR CORPS OF ENGINEERS' PROJECTS HAS BEEN IMPOSED UNDER CERTAIN CONDITIONS.)

THE SOLICITOR POINTS OUT THAT UNDER THE CONTRIBUTED FUNDS ACT OF MARCH 4, 1921, 43 U.S.C. SEC. 395, THE SECRETARY COULD ACCEPT 25 PERCENT OR MORE IN NON-FEDERAL FINANCING. HOWEVER, THE AUTHORITY CITED BY THE SOLICITOR DOES NOT EXTEND TO COMPULSORY COST SHARING.

WE NOTE THAT REPRESENTATIVE SHUMWAY ON MARCH 12, 1987, INTRODUCED THE PROPOSED "AUBURN DAM REVIVAL ACT OF 1987," H.R. 1605, 100TH CONG., 1ST SESS. THE BILL, IF ENACTED, WOULD AMEND PUB.L. NO. 89-161 IN SEVERAL WAYS. THE PRINCIPAL PURPOSE WOULD BE CHANGED TO PROVIDE FLOOD CONTROL PROTECTION TO THE CITY AND COUNTY OF SACRAMENTO AND TO PROTECT THE WILD AND SCENIC CHARACTERISTICS OF THE LOWER

AMERICAN RIVER (SEC. 2). ALSO, THE CAPACITY OF AUBURN DAM RESERVOIR WOULD BE CHANGED FROM "APPROXIMATELY" 2 1/2 MILLION ACRE-FEET TO "UP TO" 2 1/2 MILLION ACRE FEET (SEC. 2). ADDITIONALLY, SECTION 6 OF THE BILL AUTHORIZES THE SECRETARY OF THE INTERIOR TO ENTER INTO COST SHARING AGREEMENTS WITH NON-FEDERAL ENTITIES TO PROVIDE ASSISTANCE TOWARD FINANCING THE CONSTRUCTION, OPERATION AND MAINTENANCE OF THE AUBURN-FOLSOM SOUTH UNIT. UNDER THE AGREEMENTS, THE NON-FEDERAL SHARE OF THE COSTS ALLOCATED TO FLOOD CONTROL TO BE 25 PERCENT. WE THINK THAT THESE PROVISIONS WOULD SUBSTANTIALLY DEAL WITH THE ISSUES WHICH WE HAVE CONSIDERED.

REGARDING YOUR QUESTION AS TO OUR INTERPRETATION OF THE AUTHORIZED APPROPRIATION CEILING AS CURRENTLY INDEXED TO ADJUST FOR INFLATION FOR THE AUBURN-FOLSOM SOUTH UNIT, SECTION 6 OF PUB.L. NO. 89-161 ESTABLISHES THE MAXIMUM FUNDS WHICH ARE AUTHORIZED FOR A PROJECT WITHOUT ADDITIONAL AUTHORIZATION BY THE CONGRESS. COST INCREASES RESULTING FROM INFLATION ARE INCLUDED IN THE AUTHORIZATION WITHOUT THE NEED FOR RECONSIDERATION BY THE CONGRESS.

THE INITIAL AUTHORIZATION OF A BUREAU PROJECT IS BASED ON A FINDING BY THE CONGRESS THAT THE PROJECT IS WORTH THE EXPECTED EXPENSE. AUTHORIZING THE ADJUSTMENT OF THE AUTHORIZED COST CEILING INSURES THAT THE INITIAL CONGRESSIONAL DECISION TO AUTHORIZE A PROJECT WILL NOT BE DISTURBED IN THE FUTURE BY INFLATION. IF AT ANY TIME, HOWEVER, THE TOTAL FEDERAL COSTS, INCURRED AND TO BE INCURRED, TO COMPLETE A PROJECT EXCEED THE AUTHORIZED INDEXED COST CEILING, THEN ALTERNATIVES SHOULD BE CONSIDERED BY THE BUREAU. THE OPTIONS ARE EITHER TO RESTRUCTURE THE PROJECT TO REDUCE PROJECT COSTS WITHOUT CAUSING A SUBSTANTIAL CHANGE IN PROJECT BENEFITS, TO GO BACK TO THE CONGRESS TO SEEK NEW LEGISLATION PERMITTING A HIGHER AUTHORIZED COST CEILING, OR TO GET AUTHORIZATION FOR A SUBSTANTIALLY SMALLER PROJECT.

THE AMOUNT AUTHORIZED FOR EACH PROJECT IS BASED ON THE PROJECT COST ESTIMATE CONTAINED IN THE FEASIBILITY REPORT OF THE BUREAU WHICH WAS SUBMITTED TO SUPPORT THE LEGISLATION. THIS ESTIMATE INCLUDES DETAILS ON EACH OF THE PROJECT FEATURES TO CLASSIFY THE FIELD COSTS SUCH AS LAND AND RIGHTS, DAMS, CANALS, LATERALS, ETC. FURTHER, THE FEASIBILITY REPORT SETS OUT PREAUTHORIZATION COSTS AND NONCONTRACT COSTS (OVERHEAD) TO BE INCURRED. THE INDICES USED BY THE BUREAU FOR THE VARIOUS SEGMENTS OF A PROJECT ARE DEVELOPED BY ITS ENGINEERING AND RESEARCH CENTER AND PROVIDED SEMIANNUALLY BY IT IN CONSTRUCTION COST TRENDS. THE DEPARTMENT OF AGRICULTURE PROVIDES DATA ON VARIABLES THAT AFFECT THE COST OF LAND. THE INDICES FOR THE CONSTRUCTION SEGMENTS CAPTURE THE CHANGES IN THE VALUE OF WORK TO BE PERFORMED AS REPORTED BY AN INDUSTRY PUBLICATIONS AND VARIATIONS IN MATERIAL COST AS REFLECTED BY CHANGES IN WHOLESALE PRICES WHICH ARE REPORTED BY THE BUREAU OF LABOR STATISTICS. THESE INDICES ARE APPLIED TO THE AMOUNTS FOR EACH SEGMENT AFTER ADJUSTMENTS FOR ACTUAL COSTS. ACTUAL FISCAL YEAR COSTS FOR VARIOUS ELEMENTS OF THE PROJECT AND A PROPORTIONATE AMOUNT FOR NONCONTRACT COSTS ARE ELIMINATED ANNUALLY FROM THE INDEXING PROCESS SINCE THESE COSTS HAVE ALREADY BEEN INCURRED.

THE BUREAU'S COST CEILING COMPUTATIONS RESULT IN AMOUNTS WHICH FLUCTUATE DEPENDING ON INDICES AT THE PARTICULAR POINT IN TIME. FOR EXAMPLE, THREE PAST COST CEILING COMPUTATIONS BY THE BUREAU FOR THE AUBURN-FOLSOM SOUTH UNIT WERE AS FOLLOWS: (TABLE OMITTED)

WE HAVE NOT ATTEMPTED TO PRODUCE OUR OWN ESTIMATE OF THE COST CEILING FOR THIS UNIT BECAUSE OF THE LARGE NUMBER OF ASSUMPTIONS, DECISIONS, AND COMPUTATIONS THAT WOULD BE INVOLVED. RATHER WE REVIEWED THE METHODOLOGY USED BY THE BUREAU

AND SPOT CHECKED ITS COMPUTATIONS IN AN ATTEMPT TO IDENTIFY ANY SIGNIFICANT QUESTIONABLE ASPECTS OF THE INDEXING PROCESS USED. THE BUREAU'S METHODOLOGY APPEARS APPROPRIATE IN ALL SIGNIFICANT ASPECTS, EXCEPT THAT THE BUREAU INCREASES THE APPROPRIATION CEILING TO REFLECT COSTS TO ACCOMMODATE THE REQUIREMENTS OF LEGISLATION-- SUCH AS THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969- ENACTED SUBSEQUENT TO THE LEGISLATION AUTHORIZING THE PROJECT IN QUESTION. FOR EXAMPLE, THE COST CEILING COMPUTED IN APRIL 1986 FOR THE AUBURN-FOLSOM SOUTH UNIT INCLUDES $143,673,000 TO COVER THE BUREAU'S ESTIMATE OF THE COSTS OF MEETING THE REQUIREMENTS OF EIGHT LAWS ENACTED AFTER PUB.L. NO. 89-161. WHILE PUB.L. NO. 93-643, 88 STAT. 2281, 1287 8, JANUARY 4, 1975, AUTHORIZES AN APPROPRIATION OF $250,000 FOR CONSTRUCTION OF A SPECIFIC BRIDGE ASSOCIATED WITH THE AUBURN-FOLSOM SOUTH UNIT, AND IS AN APPROPRIATE ADDITION TO THE COST CEILING, THE OTHER LEGISLATION DOES NOT AUTHORIZE APPROPRIATIONS FOR THE UNIT.

IN OUR OPINION, COSTS INCURRED TO COMPLY WITH LEGISLATION PASSED SINCE THE AUBURN-FOLSOM SOUTH UNIT WAS AUTHORIZED IN 1965 DO NOT PROPERLY INCREASE THE UNIT'S COST CEILING ABSENT ADDITIONAL AUTHORIZATION. UNDER SECTION 6, THE $425 MILLION AUTHORIZATION OF APPROPRIATIONS MAY BE INCREASED BECAUSE OF INFLATIONARY COST INCREASES. THERE IS NO REFERENCE TO INCREASING THE COST CEILING BECAUSE OF ADDED COSTS RESULTING FROM SUBSEQUENT LEGISLATION SUCH AS THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969. PUB.L. NO. 91-190, 83 STAT. 852. WHILE PARAGRAPH 151.5.7 OF THE BUREAU OF RECLAMATION'S RECLAMATION INSTRUCTIONS AUTHORIZES THE BUREAU'S PRACTICE OF INCREASING THE ESTIMATED COST CEILING BECAUSE OF SUBSEQUENT GENERAL LEGISLATION, WE FIND NO STATUTORY BASIS FOR IT. B-223725, FEBRUARY 20, 1987.

THE ASSISTANT REGIONAL SOLICITOR, SACRAMENTO REGION, IN A MEMORANDUM TO THE REGIONAL DIRECTOR, DATED OCTOBER 16, 1979, RESPONDED TO THE QUESTION WHETHER THE APPROPRIATION CEILING FOR THE AUBURN-FOLSOM SOUTH UNIT COULD BE INCREASED BECAUSE OF TWO SUBSEQUENT LAWS SPECIFICALLY AFFECTING THE COST OF THE UNIT BUT WHICH DID NOT AUTHORIZE ADDITIONAL FUNDS. THE LAWS PROVIDED FOR BRIDGE AND ROAD CONSTRUCTION. THE ASSISTANT REGIONAL SOLICITOR CONCLUDED THAT THEIR CONSTRUCTION COSTS COULD BE INDEXED WITH OTHER PROJECT COSTS. HOWEVER, WHILE THE LATER LEGISLATION REQUIRED INCREASED CONSTRUCTION COSTS FOR NEW OR UPGRADED FACILITIES, THERE WAS NO PROVISION FOR INCREASED APPROPRIATIONS. IN OTHER WORDS, THE INCREASED COSTS WOULD BE MET FROM APPROPRIATIONS ALREADY AUTHORIZED UNDER PUB.L. NO. 89-161. WHEN THE CONGRESS INTENDED TO AUTHORIZE APPROPRIATIONS BECAUSE OF ADDITIONAL REQUIREMENTS, IT DID SO, AS IN PUB.L. NO. 93-643. ACCORDINGLY, SUBSEQUENT LEGISLATION WHICH DOES NOT EXPLICITLY AUTHORIZE INCREASED APPROPRIATIONS MAY NOT SERVE TO INCREASE THE $425 MILLION AUTHORIZATION LIMIT, BEFORE INFLATION, FOR THE AUBURN-FOLSOM SOUTH UNIT.

WE IDENTIFIED NO SIGNIFICANT PROBLEMS IN THE COMPUTATIONS CHECKED. HOWEVER, BUREAU REGIONAL PERSONNEL ADVISED US THAT BECAUSE OF THEIR CONCERNS ABOUT THE ACCURACY OF PAST ADJUSTMENTS MADE ANNUALLY TO ELIMINATE COSTS ALREADY INCURRED FROM THE INDEXING PROCESS, AN EFFORT IS UNDER WAY TO RECONCILE THE ACTUAL COSTS SHOWN IN THE BUREAU'S RECORDS WITH THE ADJUSTMENTS MADE. THEY PLAN TO COMPLETE THIS EFFORT IN TIME FOR THE RESULTS TO BE USED IN COMPUTING THE COST CEILING TO BE PRESENTED IN ITS FISCAL YEAR 1990 BUDGET JUSTIFICATION.

THE BUREAU'S FISCAL YEAR 1988 BUDGET JUSTIFICATION SHOWS THAT THE ESTIMATED FEDERAL COSTS FOR THE AUBURN-FOLSOM SOUTH UNIT ARE $2,109,613,000, OR $707,121,000 MORE THAN THE AUTHORIZED COST CEILING COMPUTED BY THE BUREAU, OR $850,794,000 MORE WHEN THE $143,673,000 IN COSTS TO COVER THE REQUIREMENTS FOR SUBSEQUENT LEGISLATION IS DEDUCTED FROM THE COST CEILING. ACCORDINGLY, THE

BUREAU MUST CONSIDER WHETHER TO RESTRUCTURE THE PROJECT SO AS TO REDUCE PROJECT COSTS WITHOUT CAUSING A SUBSTANTIAL CHANGE IN PROJECT BENEFITS, TO GO BACK TO THE CONGRESS TO SEEK NEW LEGISLATION PERMITTING A HIGHER AUTHORIZED COST CEILING, OR GETTING AUTHORIZATION FOR A SUBSTANTIALLY SMALLER PROJECT.

UNLESS YOU PUBLICLY ANNOUNCE ITS CONTENTS EARLIER, WE DO NOT PLAN TO DISTRIBUTE THIS OPINION FURTHER UNTIL 30 DAYS FROM ITS ISSUE DATE.