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COMPTROLLER GENERAL OF THE UNITED STATES

12-5-83)

WASHINGTON, D.C. 20548

IN REPLY  
REFER TO:

B-164105

December 5, 1977

The Honorable Olin E. Teague, Chairman  
Committee on Science and Technology  
House of Representatives

Dear Mr. Chairman:

This replies to your letter of November 23, 1977, requesting our opinion as to the purposes for which funds contained in H.R. 9375 for the Clinch River Breeder Reactor Project might be used should the bill be enacted into law. In essence, the question is whether the President may properly use such funds to terminate the project or carry it forward on a basis different from that prescribed in the initial authorizing legislation.

The bill, making supplemental appropriations for fiscal year 1978, provides simply that:

"[of the amount appropriated] \$80,000,000 shall be for the Clinch River Breeder Reactor Project."

There is no existing legislation authorizing the appropriation of any sum for the project. The project itself was authorized, however, by section 106 of P.L. 91-273, as amended by section 103(d) of P.L. 94-187. In conjunction with authorization of the project, section 106 authorized appropriations for its implementation, but only through September 30, 1976.

Section 106 specifies stringent conditions governing the manner in which funds appropriated for the Clinch River project must be used. We have previously considered the extent to which section 106 constrains the purposes for which funds appropriated to carry out the project may be used and have concluded that the provisions of the section are controlling. See our letter of June 23, 1977, to Senator Henry M. Jackson as Vice Chairman of the Joint Committee on Atomic Energy, copy enclosed, in which we conclude that by reason of the provisions of section 106, the President may not curtail or terminate the Clinch River project.

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The question you pose arises as a result of the lapse of authorization for appropriations to carry out the project and is somewhat complicated by reason of the President's veto of S. 1811, the "ERDA Authorization Act of 1978--Civilian Applications." The vetoed measure would have extended the authorization of appropriations for Clinch River through fiscal year 1978 and, further, would have emphasized in express terms the congressional mandate that any funds appropriated pursuant to authorization for the project be used only in conformity with the project authorization provisions and not for its cancellation or termination.

Had the President not vetoed S. 1811, there would be no question but that the \$80 million contained in H.R. 9375 would have to be construed as being in furtherance of the appropriation authorization provided and subject to the constraints set forth. Aside from extension of the authorization for appropriations, however, the vetoed measure did not in any way touch upon the operative effect of section 106, referred to above, providing the basic authority for carrying out the Clinch River project except to emphasize congressional concurrence in its legal effect as previously construed in our letter to Senator Jackson. In other words, we do not consider that the substantive provisions of S. 1811 materially affected the project authorization requirements of section 106 and, but for the appropriation authorization provisions it contained, its failure of enactment into law had no significant effect on the Clinch River project.

The issue that we come down to, then, is whether an appropriation of \$80 million for "the Clinch River Breeder Reactor Project" may somehow be construed as an appropriation for some other project than the one authorized by section 106 on the sole ground that the appropriation is not preceded by an authorization therefor.

In our view, there is not the slightest justification for considering the funds contained in H.R. 9375 for "the Clinch River Breeder Reactor Project" as being unrestrained by the provisions of section 106. There is only one project that conceivably can come under that name and there is no legislation which removes the project from the constraints of section 106 relating to it. Any doubt as to identification of the project for which the \$80 million is being provided is

utterly dissipated by reference to legislative history throughout which there was continuing concern over the legal effect of providing the funds without prior appropriation authorization. The fact, however, that an appropriation of funds to carry out the project will have been enacted without prior legislation authorizing the appropriation is of no consequence given the clear identification in the appropriation language of the purpose for which the funds are being provided.

Accordingly, we conclude that the Executive Branch must use the funds to be provided by H.R. 9375 pursuant to the requirements of section 106 as discussed in our letter to Senator Jackson. Failure to do so would constitute contravention of section 628 of title 31, United States Code, which provides that:

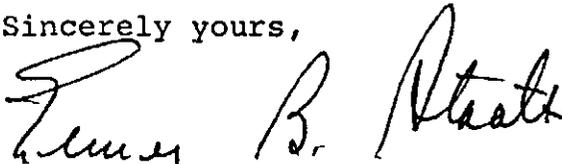
"Except as otherwise provided by law sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others." (Emphasis added.)

Should the Executive Branch, without further authority, use the funds provided in a way that does not accord with section 106 requirements we will have to consider whether the taking of formal exception to such expenditures would be appropriate.

Finally, we point out that the President's exercise of the authority granted to him by the Impoundment Control Act of 1974 is a matter wholly independent of the issues raised by using H.R. 9375 budget authority. Should rescission or deferral of all or part of the \$80 million be proposed to the Congress pursuant to the Impoundment Control Act of 1974, the Congress will, at such time, have an opportunity to take whatever action it might deem appropriate in response thereto.

We hope the foregoing will be of assistance to you.

Sincerely yours,



Comptroller General  
of the United States

Enclosure

STATE DEPARTMENT OF THE ARMY DEPARTMENT OF THE NAVY DEPARTMENT OF THE AIR FORCE DEPARTMENT OF AGRICULTURE DEPARTMENT OF COMMERCE DEPARTMENT OF DEFENSE DEPARTMENT OF EDUCATION DEPARTMENT OF HEALTH, EDUCATION AND WELFARE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT DEPARTMENT OF JUSTICE DEPARTMENT OF LABOR DEPARTMENT OF LAND AND NATURAL RESOURCES DEPARTMENT OF TRANSPORTATION DEPARTMENT OF THE INTERIOR DEPARTMENT OF THE ARMY DEPARTMENT OF THE NAVY DEPARTMENT OF THE AIR FORCE DEPARTMENT OF AGRICULTURE DEPARTMENT OF COMMERCE DEPARTMENT OF DEFENSE DEPARTMENT OF EDUCATION DEPARTMENT OF HEALTH, EDUCATION AND WELFARE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT DEPARTMENT OF JUSTICE DEPARTMENT OF LABOR DEPARTMENT OF LAND AND NATURAL RESOURCES DEPARTMENT OF TRANSPORTATION DEPARTMENT OF THE INTERIOR