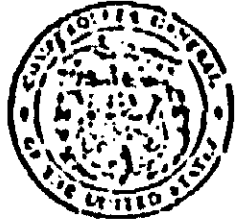


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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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B-169126

March 22, 1979

The Honorable George Miller  
House of Representatives

Dear Mr. Miller:

*Do not make available to public readings*

You recently asked our views on several questions pertaining to [cotton production by California farmers who receive irrigation water] pursuant to contracts with the Bureau of Reclamation, Department of the Interior. In particular, you ask about the statutory prohibition on the delivery of water to irrigators who produce surplus crops on reclamation projects.

Mr. John Lawrence, of your staff, has informed us that in order to expedite our reply, and in view of imminent congressional hearings and intense public interest in this matter, it would be acceptable to limit our response to the production of surplus cotton in the San Luis Unit, Central Valley Project, California. It was agreed that in view of the extremely limited time available to this Office, we would not obtain comments from the Department of the Interior, which is our usual policy.

The Act of June 3, 1960, Pub. L. No. 86-488, 74 Stat. 156, authorized the Secretary of the Interior to construct the San Luis Unit of the Central Valley Project, California. Section 1(b) thereof provides as follows:

"No water provided by the Federal San Luis unit shall be delivered in the Federal San Luis service area to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity as estimated by the Secretary of Agriculture for the marketing year in which the bulk of the crop would normally be marketed and which will be in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary calls for an increase in production of such commodity in the interest of national security."

"Basic agricultural commodities" are defined by section 408(c) of the Agricultural Act of 1949, ch. 792, Act of October 31, 1949, 63 Stat. 1051, 1056 (7 U.S.C. § 1423(c)), as corn, cotton, peanuts, rice, tobacco, and wheat.

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*Letter  
retracted*

Section 301(b)(10) of the Agricultural Adjustment Act of 1938, ch. 30, Act of February 16, 1938, 52 Stat. 31, 41, as amended by section 2(r)(2) of the Act of August 29, 1949, ch. 518, 63 Stat. 670, 676, provides that:

"(C) The 'normal supply' of cotton for any marketing year shall be the estimated domestic consumption of cotton for the marketing year for which such normal supply is being determined, plus the estimated exports of cotton for such marketing year, plus 30 per centum of the sum of such consumption and exports as an allowance for carry-over."

This provision now appears at 7 U. S. C. § 1301(b)(10)(C) (1976).

Thus, whenever the Secretary of Agriculture determines that there is an excess above the normal supply of cotton, as defined above, "newly irrigated" lands within the Federal San Luis Unit service area (lands not irrigated prior to receipt of reclamation project water) may not receive water supplied by the Bureau of Reclamation for cotton production. The Secretary of Agriculture may, in effect, waive this limitation if he calls for a production increase for national security purposes. No other exception is provided in section 1(b) of the San Luis Unit Authorization Act.

We understand that the Bureau of Reclamation has found that there are about 2,000 acres of "newly irrigated" land in the Westlands Water District, and 26,000 acres of such land in the San Luis District, totaling approximately 28,000 acres of these lands in the San Luis Unit. By letter of January 16, 1979, the Acting Administrator of the Agricultural Stabilization and Conservation Service (ASCS), Department of Agriculture, informed the Assistant Commissioner of the Bureau of Reclamation that --

"As computed by the formula provided in the Agricultural Adjustment Act of 1938, the 'total supply' is projected to exceed the 'normal supply' for the 1979 crops of wheat, corn, upland cotton, rice, peanuts and tobacco."

The letter makes no reference to a call by the Secretary of Agriculture for increased production.

We are informed that the Secretary of the Interior has "waived" compliance with section 1(b) to permit the furnishing of water to the 28,000 acres of cotton-producing lands. You question his authority to do so.

We also are unaware of any legal basis for the Secretary of the Interior's actions. We are aware, however, that the Acting Administrator of ASCS has indicated to the Interior Department that the formula

for determining a "normal supply" of cotton dictated by 7 U. S. C. § 1301 (b)(10)(C) and referred to in the San Luis Unit Authorization Act is not used to decide if there is an excess supply of cotton to trigger acreage set-asides under laws administered by the Department of Agriculture. Rather, without amending that section of permanent law, the Congress has specified other formulae for determining if there should be a set-aside of cotton. There is no set-aside program limiting production of the 1979 cotton crop.

We believe that the fact that the Department of Agriculture is called on to use a different standard for determining the amount of the normal cotton supply under the Agricultural Adjustment Act of 1938 as amended, than it uses for current cotton set-aside determinations does not provide the Secretary of the Interior with a tenable basis for holding that the former standard, the use of which is prescribed by section 1(b) of the San Luis Unit Authorization Act, is inoperative or that the latter standard should be used instead.

We understand that legislation will be proposed in the Congress to conform the criteria used in the San Luis Unit Authorization Act and other similar laws to determine if there is a surplus of cotton and other basic commodities, with set-aside program standards used in recent farm legislation.

However, under present law, based on the determination furnished by the Department of Agriculture, section 1(b) of the San Luis Unit Authorization Act precludes the Department of the Interior from supplying water for cotton production in the described circumstances. We are unaware of any other provision of law either in the San Luis Unit Authorization Act or elsewhere which accords the Secretary of the Interior the authority to permit the Bureau of Reclamation to supply water for cotton production under these circumstances. As we noted above, these views are tentative since we have not had the benefit of comments from the Department of the Interior on this question.

Sincerely yours,

(SIGNATURE) LLOYD E. STEATS

Comptroller General  
of the United States