

DECISION



118986
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

ARM
Feinstein
118986

FILE: B-198221

DATE: July 19, 1982

MATTER OF: Obligation Availability of Funds Authorized for
San Luis Unit, CVP, Distribution Systems and Drains

DIGEST: Fiscal year 1978 appropriation act, Public Law 95-96, contained lump-sum amount, available until expended, for authorized reclamation projects "as authorized by law." Latter phrase limited use of funds so that for any project, funds may only be obligated in accord with authorization for that project. Public Law 95-46 authorized appropriations, to be obligated only in fiscal year 1978, to continue San Luis Unit, Central Valley Project, California, distribution systems and drains construction pending congressional reconsideration of permanent authorization increases. In accord with authorization limitation, appropriation otherwise available until expended, was properly obligated only in fiscal year 1978 for distribution systems and drains construction.

We have received a congressional request for our opinion as to whether the legislative intent of Public Law 95-46 has been complied with in relation to the authorization of appropriations for the San Luis Unit, Central Valley Project, California, for fiscal year 1978. The request indicates that the act was intended to provide funds only during fiscal year 1978 to permit work to continue without interruption while the San Luis Task Force, which was created by the act, conducted its investigation. The request states as follows:

"It now appears that funds have been appropriated and expended long after fiscal year 1978 which, * * * is contrary to the letter and the clear legislative intent of P.L. 95-46. The interim funding has, by virtue of continuing appropriations, become a longterm authorization, circumventing the reauthorization process during which, it was anticipated in 1977, the recommendations of the Task Force would be considered."

In our opinion, for the reasons stated below, the fiscal year 1978 appropriation applicable to the construction of the distribution systems and drains in the San Luis Unit was available for obligation only in fiscal year 1978. Obligations incurred in subsequent fiscal years, inconsistent with Public Law 95-46, were unauthorized.

Background

The San Luis unit was authorized by the San Luis Act (Public Law 86-438, 74 Stat. 156 (. 460)). It authorized funding for (1) the major project features in the amount of \$290,430,000, plus an additional amount, if any, as might be required because of increased construction costs as required by engineering indexes and (2) the distribution systems and drains in the amount of \$192,650,000. The latter authorization was not made subject to indexing changes.

In November 1976, the Department of the Interior's regional solicitor in Sacramento issued a legal opinion which concluded that the San Luis drain had been incorrectly classified as part of the major project features component when it should have been classified as an element of the distribution systems and drains component. Reclassifying the San Luis drain based on this opinion and shifting the applicable allotments resulted in the Bureau of Reclamation exceeding the original authorization ceiling for the distribution systems and drains by \$12,476,311. The cognizant House and Senate committees were informed of this situation in February 1977. H.R. 4390, which was introduced in March 1977 to deal with this problem was enacted, as amended, as Public Law 95-46, on June 15, 1977. The applicable appropriation Act, Public Law 95-96, was enacted on August 7, 1977.

Analysis

Title III of the Public Works for Water and Power Development and Energy Research Appropriation Act, 1978, Public Law 95-96, 91 Stat. 797, 801 (1977), provided funding for the Bureau of Reclamation as follows:

"For construction and rehabilitation of authorized reclamation projects or parts thereof * * * and for other related activities, as authorized by law, to remain available until expended, \$362,035,000 * * *."
(Emphasis added.)

Under the terms of this appropriation the entire lump-sum amount is to remain available until expended. However, the phrase "as authorized by law" limits the use of these funds to that which is permitted by authorizing statutes. In other words, for each authorized project, funds can only be obligated in accord with the authorization act for that project. See 45 Comp. Gen. 236 (1965). Therefore, to determine whether there is a limitation on the use of the lump-sum appropriation for the San Luis Unit, we must look to the authorization for the program.

As we have already indicated, the original project ceiling for the San Luis distribution systems and drains had already been exceeded

prior to fiscal year 1978. Therefore, the only authority to obligate for the San Luis Unit any of the fiscal year 1978 lump-sum appropriation was contained in Public Law 95-46. Section 1 of that statute provided:

"* * * there is hereby authorized to be appropriated for fiscal year 1978, and to be committed for expenditure by the Secretary [of the Interior] notwithstanding any other provision of law or contract, the sum of \$31,050,000 for continuation of construction of distribution systems and drains on the San Luis Unit, Central Valley Project, California.* * *" 91 Stat. 225.

On its face, this provision does not specify any definite period of availability for the funds it authorizes to be appropriated. However, we note that it differs considerably from the usual authorization act for reclamation projects. Ordinarily, reclamation projects are authorized on a permanent basis subject to a funding ceiling. For example, the San Luis Act of 1960 which originally authorized the San Luis Unit construction provided an authorization ceiling without any fiscal year reference. However, Public Law 95-46 limits the authority to appropriate funds to a specific fiscal year. It is not clear from the language of the act ("authorized to be appropriated for fiscal year 1978") why the Congress treated this authorization differently from other reclamation project authorizations. Therefore, it is necessary to examine the pertinent legislative history.

As originally introduced in the House, H.R. 4390, which was to become Public Law 95-46, would have provided for inflation indexing of the \$192,650,000 authorized ceiling established by the San Luis Act in 1960 for the construction of distribution systems and drains. It would also have included the San Luis drain as a main project feature so that its cost would not be included in the distribution and drains ceiling. In lieu of this bill, the Secretary of the Interior proposed raising the ceiling to \$240,450,000, which would have provided an amount sufficient to cover appropriations already made for fiscal year 1977 and those requested in the President's budget for fiscal year 1978. Under either the original bill or the Secretary's proposal, there would have been no fiscal year limit on the increased authorization.

In lieu of either of these proposals, the House Committee on Interior and Insular Affairs reported a substitute bill proposed by Representative George Miller. The substitute authorized \$31,050,000 to be appropriated for fiscal year 1978, and also provided for the establishment of a task force to review the management, organization and operations of the San Luis Unit, and report to the Congress by January 1, 1978.

The amount authorized by the substitute was almost the same amount as requested in the President's fiscal year 1978 budget. The

apparent purpose of the separate \$31,050,000 authorization was to restrict appropriations to those necessary for continuation of the distribution systems and drains construction during the limited period in which the task force would investigate and report to the Congress. The Congress could then consider a further authorization measure. Our review of the legislative history of Public Law 95-46, which enacted the substitute, indicates that the substitute provision was understood to impose a fiscal year limit on the appropriation authorized by the amended bill.

For example, in discussing the proposed substitute Congressman Miller stated:

"* * * We intend to provide the authorization, the appropriations for 1 year as was recommended in the President's budget, to allow the continuation of the construction of the distribution and drainage systems in the project. One year and 1 year only. During that time or during the remainder of this calendar year I would ask that the Secretary establish a task force to look into the operations of the project * * *." (Hearings on H.R. 4390 before the Subcomm. on Water and Power Resources of the House Comm. on Interior and Insular Affairs, 95th Cong., 1st Sess. 20 (1977)). (Emphasis added.)

Further, in supporting passage of H.R. 4390 on the House Floor, Chairman Needa of the Subcommittee on Water and Power Resources said that "[t]he bill authorizes appropriations for 1 year only of \$31,050,000 so that we can proceed this year." 123 Cong. Rec. 13139 (1977).

The Senate report on the amended bill (S. Rep. No. 95-144, 95th Cong., 1st Sess. 2 (1977)) stated:

"Inasmuch as the authorization is limited to fiscal year 1978, the Congress will have a further authorization measure before it during the 2d Session of the 95th Congress. The study will provide information for consideration at that time."

In his letter to the Chairman of the Senate Committee on Energy and Natural Resources, dated May 6, 1977, the Assistant Secretary of the Interior supported enactment of H.R. 4390, as amended. He explained:

"The bill is intended to provide an interim, short-term solution to the problem. It would prevent disruption of the construction program on the distribution systems and drains, but would extend that construction

only to a limited extent, affording some reasonable period for the resolution of the several problems now outstanding in the structure and operation of the San Luis Unit and for the introduction of appropriate legislation to effect those resolutions." (S. Rep. No. 95-144, supra at 9.)

Finally, the President in signing H.R. 4390 stated:

"* * * This bill establishes the statutory framework for analyzing the problem and coming to a solution, while continuing construction on some of the project features during fiscal year 1978.* * *"

This legislative history makes it clear that the Congress intended the additional \$31,140,000 it was authorizing to be appropriated to be used only in fiscal year 1978. We conclude that by authorizing funds to be appropriated "for fiscal year 1978" Public Law 95-46 limits the availability of funds so appropriated to that fiscal year. As indicated above, the phrase "as authorized by law," which is included in the applicable lump-sum appropriation for authorized reclamation projects, requires that the funds be obligated only in accord with the applicable authorization act. It follows that, although the lump-sum reclamation appropriation for fiscal year 1978 is generally available until expended, that appropriation, up to a maximum of \$31,140,000, was available for continued construction of distribution systems and drains on the San Luis Unit only during fiscal year 1978.

As is our usual practice, we requested comments on this matter from the Secretary of the Interior. In reply, the current Commissioner of Reclamation stated as follows:

"Public Law 95-46 merely limited the amount of funds that may be appropriated in FY 1978 for the San Luis Unit. * * *

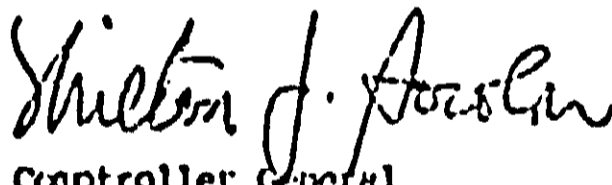
"Public Law 95-96 appropriated as 'no-year' money the \$31,050,000 authorized by Public Law 95-46 for work on the San Luis Unit as a part of the total construction appropriation. Accordingly, the \$31,050,000 did not have to be obligated in FY 1978 but was available for obligation as work on the San Luis Unit was programmed. * * * we have made obligations against the \$31,050,000 subsequent to FY 1978."

The Commissioner, in his comments, fails to give effect to the words "as authorized by law" in the appropriation act. As discussed above, the legal effect of the words is to incorporate the fiscal year limitation in the authorization act into the appropriation

itself. As indicated, our examination of the legislative history of the authorization act, Public Law 95-46, makes clear that all of the money was to be obligated in fiscal year 1978 to continue construction only during that year. If we were to interpret the authorization provision as does the Commissioner, as adding \$31,050,000 in no-year funds, we would in effect merely be increasing the previously exceeded \$192,650,000 no-year authorization ceiling for the project, an alternative considered but rejected by the Congress.

We are aware that there is some indication in later hearings on the San Luis project to the effect that funds were being obligated after fiscal year 1978. (Hearings Before a Subcomm. of the Senate Comm. on Appropriations; on H.R. 12928, 95th Cong., 2d Sess. 1146 (1978); on H.R. 4388, 96th Cong., 1st Sess. 1561 (1979); and on H.R. 7590, 96th Cong., 2d Sess. 327 (1980). Also, Hearings Before a Subcomm. of the House Comm. on Appropriations, 97th Cong., 1st Sess. 539 (1981).) We do not, however, consider the limited disclosure provided in the hearings to be sufficient to suggest that we may have misread the underlying legislative intention.

Our Community and Economic Development Division has determined that, of the \$31,050,000 authorized and appropriated for the San Luis Unit, the Bureau of Reclamation obligated \$11,029,642 in fiscal year 1978; \$9,730,955 in fiscal year 1979; \$1,522,405 in fiscal year 1980, and \$1,353,403 in fiscal year 1981. We understand that additional amounts have been obligated thus far in fiscal year 1982. Since these funds were available to be obligated for the San Luis Unit only in fiscal year 1978, subsequent fiscal year obligations were not properly incurred. Further, any future obligation of those funds is unauthorized.

for 
Comptroller General
of the United States