

September 6, 1978

**78-49 MEMORANDUM OPINION FOR THE GENERAL
COUNSEL, UNITED STATES WATER
RESOURCES COUNCIL**

**Water Resources Council (42 U.S.C. § 1962a)—
Authority to Expend Carried-Over Funds**

This responds to your request for our opinion regarding the existence and spending authority of the Water Resources Council after the end of fiscal year (FY) 1978.

The Council was created by § 101 of the Water Resources Planning Act of 1965 (the Act), as amended, 42 U.S.C. § 1962a. Its membership consists of the heads of eight Federal Agencies. Section 401 of the Act contains the authorization for the Council's appropriations. In 1977, § 401 was amended, and the provisions authorizing "annual" appropriations were replaced with authorizations limited to fiscal year 1978. *See* Pub. L. No. 95-41, 42 U.S.C. § 1962d.

The Senate passed S. 2701, legislation that would continue the Council's authorization for 1 year. The version passed by the House would have abolished the Council on September 30, 1978. A conference committee's report recommended the Council to continue for 1 year. *See* H. Rept. No. 95-1494, 95th Cong., 2d sess. (1978). The conference report has not yet received floor consideration.

For fiscal year 1978, a total of \$13,696,000 was appropriated for the Council. (*See* Title IV of the Public Works for Water and Power Development and Energy Research Appropriation Act for Fiscal Year 1978, Pub. L. No. 95-96.) The FY 1978 appropriation act (and its predecessors) expressly provides that the funds appropriated for the Council are "to remain available until expended." After September 30, 1978, the Council will have available funds carried over from prior fiscal years.

The conference report on the FY 1979 appropriation bill, H. Rept. No. 95-1490, 95th Cong., 2d sess. (1978), is now awaiting floor action. Under that report, no funds would be appropriated for the Council.

You assume that, as of October 1, 1978, no statute will have been enacted either authorizing or appropriating FY 1979 funds for the Council. You ask whether, in such circumstances, the Council would continue to exist and

whether it would have authority to spend funds carried over from previous fiscal years. Our opinion is that the Council would continue and that it could properly spend the carried-over funds.

The provision establishing the Council will still be in effect. Notwithstanding the absence of an FY 1979 authorization or appropriation, the Commission as an entity will continue. The primary issue is whether funds appropriated in FY 1978 or a prior year could be used in FY 1979, because the Commission's ability to carry out its functions depends upon the availability of funds.

Section 501 of the FY 1978 appropriation act states that: "No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein." *See also* 31 U.S.C. §§ 712a and 718. As noted above, the appropriation for the Council is subject to such an express exception; that is, the funds are "to remain available until expended." Thus the Council can use carried-over funds after October 1, 1978.¹

No contrary result is called for by the Supreme Court's decision in the Tellico Dam case, *TVA v. Hill*, 437 U.S. 153 (1978). There, relying in part on the rule that repeals by implication are not favored, the majority held that the requirements of the Endangered Species Act were not overridden by Congress' action in appropriating funds for TVA, some of which were intended to be used for the Tellico Dam. There is no comparable question of implied repeal here.

The present issue involves reconciling an authorization provision that is silent regarding FY 1979 and an appropriation statute that expressly provides for the possibility of the Council's spending FY 1978 funds after October 1, 1978. The purpose of the latter provision is to change the effect of authorization statutes that "[do] not specifically authorize such extended availability." H. Rept. No. 95-379, 95th Cong., 1st sess. 105 (1977) (the House committee report on the FY 1978 appropriation act). Accordingly, in order to give effect to Congress' intent, the authorization statute and the FY 1978 appropriation act must be read together. The Council may properly rely upon the appropriation act's provision permitting extended availability of the funds. *Cf.* 40 Comp. Gen. 694 (1961) (expenditure of "no-year appropriations" by the FAA).

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¹The FY 1978 appropriation act allocates the Council's appropriation among its various functions, *e.g.*, \$1,158,000 for administration. If carried-over funds are used, these allocations must be observed. *See* 31 U.S.C. § 628.