DECISION

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

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DATE: JUL 13 1976

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FILE: B-141610

MATTER OF: Corps of Engineers--Retention of reimbursement for court ordered flood control activities

DIGEST:

Since activities ordered by Court of Appeals would substantially deplete appropriations available to Army Corps of Engineers for emergency services contemplated by 33 U.S.C. § 701n (Supp. IV, 1974), funds awarded by court to the Corps from company which contaminated water source for provision of filtered drinking water may be applied to reimburse emergency flood control appropriations and need not be deposited in the Treasury as miscellaneous receipts. See Comp. Gen. cases cited. However, if Corps wishes to continue to use these funds, it must, in connection with its next appropriation request, seek and obtain specific statutory authority therefor.

The Department of the Army, through the Chief of Engineers, has requested our concurrence in the proposal to apply funds received from the Reserve Mining Company (Reserve) as a reimbursement to Civil Works flood control appropriations. Funds from these appropriations are being used to carry out a program of supplying filtered drinking water to communities in the vicinity of Duluth, Minnesota.

The Corps is authorized to supply drinking water in emergencies by 33 U.S.C. § 701n (Supp. IV, 1974), which provides in pertinent part:

> "* * * The Chief of Engineers, in the exercise of his discretion, is further authorized to provide emergency supplies of clean drinking water, on such terms as he determines to be advisable, to any locality which he finds is confronted with a source of contaminated drinking water causing or likely to cause a substantial threat to the public health and welfare of the inhabitants of the locality. * * *"

In our decision of August 21, 1975, B-183869, having concluded that this statutory authorization is not limited to flood situations, we advised that subject to the limitations otherwise contained in the provision, funds may properly be spent in providing emergency drinking

water to localities confronted with contaminated water, whether or not such contamination was caused by flooding. These limitations include the requirement that the Chief of Engineers find that the locality is faced with a substantial health and welfare threat because of the water contamination. Upon such a finding the Chief of Engineers, in his discretion, may provide emergency supplies of drinking water on terms he deems appropriate.

Although the statute fails to define what constitutes an emergency, the language of the Committee Reports to Pub. L. No. 93-251, H.R. Rep. No. 93-541, 93d Cong., 1st Sess. 122 (1973) and S. Rep. No. 93-615, 93d Cong., 1st Sess. 122 (1973) suggests that the Corps' service was intended to be of limited duration:

> "Recent experience in the Lake Superior region at Minnesota has revealed that the Department of the Army is the only Federal agency with an existing capability to provide emergency supplies of clean drinking water in a timely fashion to any locality which is confronted with a source of contaminated drinking water causing or likely to cause a substantial threat to the public health and welfare of the inhabitants of the locality. This section further amends Section 5 of the Flood Control Act approved August 14, 1941, to authorize the Chief of Engineers to perform this emergency service on a temporary basis when necessary." (Emphasis added.)

This statutory provision was enacted in response to the precise factual situation which gave rise to the Corps' involvement in the Duluth area; these facts were, therefore, within the contemplation of Congress at the time the legislation was promulgated.

The Chief of Engineers determined that the affected communities required emergency supplies of drinking water on April 5, 1974, and ordered the North Central Engineers to provide them. Reserve Mining Co. v. Environmental Protection Agency, 514 F.2d 492, 534 (8th Cir. 1975). His determination preceded a court order, issued April 19, 1974, to the same effect. Ibid.; United States v. Reserve Mining Company, 380 F. Supp. 11, 26 (D. Minn. 1974). The Corps appealed the district court's order in part because of the absence of any agreement from the affected cities as to the reimbursement of the Corps. In dismissing the Government's appeal from the district court's order to the Corps, the Appeals Court construed the order "as applying only to the existing allocation of federal funds for this purpose." Reserve Mining Co. v. Environmental Protection Agency, supra, at 534. The Court instructed on remand that the "district court should * * * insure * * * that filtered water remains available in affected communities to the same extent as is now provided by the Corps of Engineers, although not necessarily at the expense of the Corps." Ibid.

In subsequent proceedings the court's intention that the Corps be relieved, in the discretion of the district court, of financial responsibility is further evidenced by its statement that:

> "Reimbursement for any expenditures by the United States or the local communities in carrying out the filteration program rests within the jurisdiction of the district court. Upon proper motion and notice by the Corps or governmental units involved, and hearing, the district court shall determine what amounts Reserve must pay for the interim costs of abatement." Reserve Mining Co. v. Lord, 529 F.2d 181, 184 (8th Cir. 1976).

The district court subsequently ordered Reserve to reimburse the Corps, which is currently in possession of an initial payment of $20,582.56.

The issue raised by the Corps in its submission is whether it may use those funds (and any other funds Reserve may be required to pay) to reimburse its appropriations for expenditures made in carrying out the orders of the court. For the reasons and with the limitation discussed below, we will not object to the Corps' using these funds to reimburse its appropriations.

Money received by governmental agencies is generally subject to the requirement of 31 U.S.C. § 484 (1970) that it be deposited in the Treasury. In the absence of a statutory exception, this provision has been construed to require that moneys so received be covered into the Treasury as miscellaneous receipts. 27 Comp. Gen. 422, 425 (1948). We have, however, previously held that because the terms of this provision are general in scope, they should be reasonably construed in their application to any particular form of income or receipt. Cf. 39 Comp. Gen. 647, 649 (1960); 24 Comp. Gen. 847, 849 (1945).

The concern of the Corps is that unless it can use the money it has received from Reserve to reimburse the Civil Works flood control appropriations, these appropriations will have been depleted by the Duluth area program instead of having been directed to the Civil Works activities for which they were appropriated by Congress.

The language of the relevant committee reports describing these services as of a "temporary basis," the statutory authorization to provide "emergency" supplies of water as one of these services, and the appropriation provision enabling emergency work prior to an emergency fund appropriation indicate the importance accorded these exigent functions of the Corps of Engineers. The Corps of Engineers, having afforded emergency services in compliance with the provisions of 33 U.S.C. § 701n (Supp. IV, 1974), in providing drinking water to the affected communities in the Duluth vicinity, continues to service this area as required by the Court's order.

Diversion of the Corps' funds to the Duluth area in these circumstances does and will continue to result in substantial expenditures of emergency fund appropriations for many years, even after cessation of the discharges. Depletion of the funds required to perform these services by a single project of lengthy duration--continued on the basis of a court order--is inimical to the purposes of 33 U.S.C. § 701n (Supp. IV, 1974), which authorizes these services.

Moreover, the Corps was, at the inception of the obligations imposed upon it by the Court, financially unprepared to assume the burden of a long-term project. Under judicial constraint of January 6, 1976, to provide water supplies immediately, the Corps had no opportunity to seek congressional authorization.

Hence, requiring the Corps to deposit into miscellaneous receipts of the Treasury sums received, via the court, from Reserve as reimbursement for the Corps' expenses will result in the frustration of the purposes of the Corps' appropriations. In view thereof and the other unusual facts and circumstances here involved, and since the Corps did not, as a practical matter, have the opportunity to seek congressional approval for the reimbursement of its appropriations prior to the latest submission of its appropriation request, we will not object at this time to the Corps' using these funds for this purpose if it finds that the Civil Works flood control appropriations will in large measure be depleted by the cost of this program unless it may utilize these funds. Cf. 39 Comp. Gen. 647, 649, supra; and 24 id. 847, 849, supra.

We would, however, be required to object to the use of these funds for the duration of the court ordered project unless, in connection with its first request for appropriations submitted to the Congress after the date of this decision, the Corps seeks specific statutory authority to reimburse its appropriations for expenditures made pursuant to the subject court order from funds paid to it, through the court, by Reserve. If statutory authority is not granted in the appropriation legislation in connection with which the request was made, the Corps will be required to deposit in the Treasury pursuant to 31 U.S.C. § 484 funds received from Reserve.

R.F. KELLER

Deputy Comptroller General
of the United States