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February 18, 1975

SUBJECT: SUPREME COURT RULES WATER  
POLLUTION IMPOUNDMENT ILLEGAL

The Supreme Court declared unanimously today that former President Nixon exceeded his authority in withholding \$9 billion authorized by Congress for pollution control. It is the first time the Supreme Court has ruled on a Presidential impoundment of funds. Congress has since passed legislation giving itself power to control such impoundments.

Will the White House comply with the Supreme Court decision, and if so, how soon will the funds be released?

GUIDANCE: As you stated, the Supreme Court has ruled that the \$9 billion in impounded pollution funds must be released. I would point out that the Administration released \$4 billion of this \$9 billion on January 28. Russ Train had a press conference at EPA and announced the decision by the President to do this.

As you are well aware, we just received the Supreme Court decision, and it is being reviewed by Legal Counsel at this time to determine what we must do with the remaining \$5 billion. I am quite certain that we will obey the ruling of the Supreme Court.

FYI: It is assumed that a decision will be announced within 48 hours that the funds will be released. FYI

I might also point out that though the Federal Water Pollution Control Act of 1972 called for total allotments to the States of \$5 billion, \$6 billion, and \$7 billion in fiscal years 1973, 1974, and 1975, only \$2 billion, \$3 billion, and \$4 billion was allotted during these three years. Of this \$9 billion allotted, more than \$5 billion remains unobligated from prior allotments. This \$5 billion, coupled with the \$4 billion released on January 28, gives the States more than they can make use of immediately.

(More)

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What amount of matching funds is required by the States with these pollution grants?

GUIDANCE: For construction grants, the Federal-State matching requirements is 75%-25%. For planning grants, the Federal Government pays all 100% until June 30. At that time, the matching requirement becomes 75%-25%.

How does the decision on the impounded pollution funds affect the impounded highway funds?

GUIDANCE: A quick review appears to show that the Supreme Court decision does not include highway funds.

Yes, that may be true, but isn't the concept the same, and wouldn't you expect a similar decision soon on the release of highway funds?

GUIDANCE: It is my understanding that there are some technical differences between the withholding of the pollution funds and the withholding of the highway funds. The lawyers are reviewing the Supreme Court decision at this time, and so I really cannot comment any further.

FYI: The Supreme Court decision stated that the Administration did not have the authority to control funds at the allotment stage. In the case of water pollution impoundments, we never allotted the funds to the States. However, in the case of the highway funds, we apportioned the funds to the States, but then withheld their obligation. This is a technical difference and may be significant.  
END FYI

Were the water pollution impounded funds included in the deferrals and rescissions previously sent to Congress?

GUIDANCE: The funds were included in the previous deferrals and rescissions, but with an asterik stating that these funds would be subject to the final decision by the Supreme Court. Also, these funds were withheld prior to July 12, 1974, the date the President signed the Congressional Budget and Impoundment Control Act of 1974 (H.R.7130).

JGC

September 23, 1975

SUBJECT:                                    FOURTH MESSAGE UNDER THE  
  IMPOUNDMENT CONTROL ACT

Today the President is sending to Congress his Fourth Special Message for Fiscal Year 1976 under the Impoundment Control Act. Three new deferrals, amounting to \$106.4 million, are reported for the National Commission on Productivity and Work Quality and the Departments of Transportation and Health, Education, and Welfare.

Including these items, the President has sent to Congress in FY '76:

56 deferrals	Totaling \$3.4 billion
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8 rescissions	Totaling \$213.9 million
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The Congress has not concluded its consideration of any of the President's proposals.