

FORMAL OPINION

November 13, 1974

HONORABLE DAVID J. BARDIN  
*Commissioner*, Department of  
Environmental Protection  
Rm. 801 – Labor & Industry Bldg.  
John Fitch Plaza  
Trenton, New Jersey 08625

FORMAL OPINION NO. 17 – 1974

Dear Commissioner Bardin:

You have requested an opinion as to whether revenue from the Water Conservation Bond Act of 1969 (L. 1969, c. 127), hereinafter referred to as the Bond Act of 1969, can be used by the Department of Environmental Protection to construct water transmission facilities from the Round Valley-Spruce Run reservoir complex (hereinafter referred to as the RV-SR complex). In particular, you are interested in knowing whether the aforementioned revenue can be used to construct an outlet water transmission pipeline, approximately 3.7 miles in length, from the north dam of the Round Valley reservoir to a point on the south branch of the Rockaway Creek. The outlet water transmission pipeline would allow the RV-SR complex to make available for sale at Bound Brook the maximum water yield of these reservoirs.

In answering the question posed, it is necessary to briefly examine the background of the RV-SR complex. In 1958 the Legislature enacted the "New Jersey Water Supply Law, 1958", N.J.S.A. 58:22-1, *et seq.*, which mandated the Department of Conservation and Economic Development to construct, operate and maintain reservoirs at Round Valley and Spruce Run. Simultaneously with the enactment of the aforementioned statute, the Legislature also passed the "New Jersey Water Bond Act, 1958" (L. 1958, c. 35), hereinafter referred to as the Bond Act of 1958, which was approved by public referendum in November 1958. Revenue from the Bond Act of 1958 was used to construct the RV-SR complex.

The RV-SR complex was completed in 1965. However, even before its completion it became apparent that the funds allocated to the project were not sufficient to construct a fully operational outlet water transmission system permitting the release of the maximum available water from the reservoirs. In 1962, the Legislature sought to deal with this problem by enacting the "Water Transmission Facilities Act", N.J.S.A. 58:5-31, *et seq.*, which authorized the North Jersey District Water Supply Commission (hereinafter referred to as the NJDWSC), to construct and operate water transmission distribution facilities from the RV-SR complex to the northern part of the State. Efforts to solve the problem pursuant to this statute were unsuccessful and no water transmission distribution facilities were built. It appears that the NJDWSC was unable to implement the construction in question because it was unable to reach the necessary underlying agreements with various municipalities and companies with whom it contracts for the sale of water.

In 1969, the issue of outlet water transmission facilities at the RV-SR complex once again came before the Legislature when it was considering the Bond Act of 1969. The aforementioned legislation, when initially introduced into the Assembly, made specific reference to the immediate need to make Round Valley reservoir fully operational by constructing outlet water transmission facilities and further estimated the cost of same at \$4,000,000.00 (sections 2(b) and 2(i) respectively of Assembly Bill 940 as initially introduced<sup>1</sup>). However, when the Bond Act of 1969

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was passed, all direct reference to the RV-SR complex had been omitted. In response to this omission, a new Bill entitled the "Round Valley Water Release Bond" (Assembly Bill No. 1010, Assembly Session 1969) was introduced into the Assembly. Said Bill provided for the creation of a debt by the State of New Jersey, by the issuance of bonds in the amount of \$4,000,000.00 for the planning and constructing of outlet water transmission facilities at the Round Valley reservoir. This Bill was never passed by the Assembly. Since 1969 the Legislature has not dealt with the problem of outlet water transmission facilities at the RV-SR complex.

In light of this background of the construction of RV-SR complex and the need for outlet works, the issue posed by your inquiry is whether unappropriated monies<sup>2</sup> from the Bond Act of 1969 may be appropriated to construct an outlet water transmission pipeline at the RV-SR complex. It is clear that funds presently appropriated for other projects pursuant to the Act cannot be used to construct the pipeline in question.

The Bond Act of 1969 provides for the issuance of Bonds in the amount of \$271,000,000.00 to establish new and additional "water supply facilities" and "waste water treatment facilities". It is clear from the language of this statute that the construction of a water transmission pipeline is a proper use of bond revenue from said Act. The preamble to the Bond Act of 1969 states specifically that the revenue from the bonds created thereby can be used for transmission facilities in order to provide water resources for public purposes. In addition, "water supply facilities" are defined therein to include real property, plants, structures, machinery and equipment used for the transmitting of water. The outlet water transmission facility contemplated at the RV-SR complex would carry water from the north dam at the Round Valley reservoir to the south branch of the Rockaway Creek in Readington Township and thus fits within the aforementioned statutory definition of "water supply facilities".

This conclusion is further supported by sections 13, 14 and 4 of the Bond Act of 1969.

Section 13 reads as follows:

"The proceeds from the sale of the bonds shall be paid to the State Treasurer and be held by him in a separate fund, and be deposited in such depositories as may be selected by him to the credit of the fund, which fund shall be known as the 'Water Conservation Fund'."

Section 14 reads in part as follows:

*"The moneys in said 'Water Conservation Fund' are hereby specifically dedicated and shall be applied to the cost of the purpose set forth in section 4 of this act, and all such moneys are hereby appropriated for such purpose, ...."* (Emphasis added).

Section 4, referred to above, reads as follows:

"Bonds of the State of New Jersey are hereby authorized to be issued in the aggregate principal amount of \$271,000,000.00, for the purposes of . . . water supply facilities . . . for the preservation, sale or exchange of

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water for potable, industrial, commercial, irrigational, recreational and other public purposes and facilities appurtenant thereto."

The clear import of the aforementioned is that money from the "Water Conservation Fund" may be appropriated for any purpose enumerated in section 4, *supra*. Inasmuch as the contemplated pipeline comes within the statutory definition of "water supply facilities" and section 4, *supra*, states that the \$271,000,000.00 authorized to be issued can be spent for construction of "water supply facilities", the remaining unappropriated revenues from the Bond Act of 1969 may be used to construct the outlet water transmission facility in question.

This conclusion is valid despite language in the Bond Act of 1969 indicating that \$242,000,000.00 of the \$271,000,000.00 was to be spent for "waste water treatment facilities" and \$29,000,000.00 of said sum for the planning and acquisition of future sites for various "water supply facilities". Sections 2(h) and 2(i) of the Bond Act of 1969 read as follows:

Section 2(h):

"Current estimates of the total cost of sewerage treatment facilities (hereinafter referred to as waste water treatment facilities) now required to be constructed to conform with our statutes and the regulations and orders of the State Department of Health, eligible costs of such construction will be \$242,000,000.00 including projects already certified for Federal grants as well as additional State aid for State approved projects approved for 1968 and 1969 to increase the State's share for such approved projects to 25% of the eligible costs."

Section 2(i)

"Current estimates of the cost of planning and site acquisitions for the future establishment of water supply facilities at the following sites:

South River Tidal Dam, Middlesex county; Raritan River Confluence Reservoir, Somerset county; Manasquan River Upper and Lower Reservoirs, Monmouth county; Six Mile Run Reservoir, Somerset county; Two Bridges Reservoir, Essex and Morris counties; Hackettstown Reservoir, Morris, Sussex and Warren counties is \$29,000,000.00."

Section 2(h) and 2(i), *supra*, appear in the body of the Bond Act of 1969 under the caption of section 2 which is "The Legislature finds and determines that ". This is an indication that in 1969 the Legislature felt that the "current estimates" it had at its disposal indicated that \$242,000,000.00 was the State's contributory share of the funds required to build various "waste water treatment facilities" throughout the State,<sup>3</sup> and that \$29,000,000.00 was needed for the planning and acquisition of future sites for "water supply facilities". Neither section 2(h) nor 2(i), *supra*, of the Act contain language which requires that the bond revenues be spent in accordance with the legislative findings of "current estimates". Section 4, *supra*, of the Bond Act of 1969, which enumerates the purposes for which said revenue can be appropriated, makes no mention of how the \$271,000,000.00 is to be divided. In addition, the Bond Act of 1969, as approved by the voters in a general election, appropriated no money, but rather provided a fund from which the Legislature might make future appropria-

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tions. Sections 13 and 14, *supra*, of the Act, when discussing the purposes for which bond revenue can be appropriated, refer to section 4, *supra*, of the Act and make no mention of sections 2(h) and 2(i), *supra*. The clear import of the aforementioned is that the Legislature intended to leave to the future how and when the bond revenue was to be spent subject to the limitations contained in section 4, *supra*, of the Act. This being the case, the legislative findings enumerated in sections 2(h) and 2(i), *supra*, are not a mandatory commitment of the bond revenues and a succeeding Legislature could decide to use the remaining unappropriated revenue for a purpose(s) consistent with section 4, but other than for "waste water treatment facilities".

It should also be noted that use of the funds in question, for an outlet water transmission pipeline at the Round Valley reservoir, is not precluded by reason of the fact that reference to such an outlet pipe was deleted from the Bond Act of 1969 prior to its passage. Once again reference to the Round Valley reservoir appeared in section 2, *supra* (the legislative findings section of the Act). Deletion of said reference merely indicates that in 1969 the Legislature did not view the pipeline in question as one of the State's "most immediate needs". Section 2(b), *supra*, of the Bond Act of 1969 is merely a legislative expression of what was felt to be the State's "most immediate needs" in the area of "water supply facilities" and "waste water treatment facilities" in 1969. Such an expression could not be binding on subsequent Legislatures. If the Legislature now deems the Round Valley outlet water transmission pipeline to be an immediate need, it would not be barred from appropriating money from the "Water Conservation Fund" for such purpose by reason of the deletion in question.

In addition, it should be pointed out that restrictions contained in the Bonds issued pursuant to the Bond Act of 1958, *supra*, revenue from which was used to build the RV-SR complex, do not prohibit the use of revenue from the Bond Act of 1969 to construct the outlet water transmission pipeline at the Round Valley reservoir.

Section 21 of the Bond Act of 1958 designates the sources of revenue which are to be used to pay off the principal and interest of the debt created by the Act as it falls due and further states the order in which said revenue should be appropriated. First, "the net revenues, from the operation of any water supply facility, costs of which were financed by the proceeds of bonds issued under this act", are to be used. Second, tax revenues from the Alcoholic Beverage Tax Law, subtitle 8 of Title 54 of the Revised Statutes, are to be used as may be required. Finally, if the aforementioned are insufficient or unavailable to pay off the indebtedness as it becomes due, then an additional assessment on the real and personal property tax levied and collected by municipalities in the State is authorized and can be used for such purpose. "Net revenue", as used in section 19, is defined in section 3(h) to mean revenues received from the operation of a water supply facility in excess of "operating, maintaining, managing, repairing and reconstructing a water supply facility...." "Water supply facility" is defined in section 3(f) to mean real property, plans, machinery and equipment used to augment the State's natural water resources and for making available an increased supply of water for all uses and any and all appurtenances necessary "... for the collection, storage, control, sale or exchange of water . . . ."

This earlier act clearly requires that net revenues received from the "water supply facilities" financed by its bonds are to be applied to the payment of the existing bond debt. However, the term "water supply facilities" as defined in the Bond Act of 1958, *supra*, does not include water transmission facilities and thus net revenues from the transmission of water, in particular water transmission facilities financed with money from other sources, need not be committed to pay off the earlier Bond debt.

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This distinction is supported by the intervening legislative enactment of the "Water Transmission Facilities Act", *supra*, in 1962. When the Legislature empowered the NJDWSC to construct water distribution transmission facilities, it also delegated authority to it to issue and sell bonds, N.J.S.A. 58:5-44 and N.J.S.A. 58:5-45. In addition, the NJDWSC was authorized to apply revenue from the proposed transmission facilities to satisfy the bonds issued. N.J.S.A. 58:5-48(6). This clearly indicates that the Legislature felt that revenue from water transmission facilities at the RV-SR was not committed to payment of the 1958 Bond indebtedness.

It should be noted that the Bond Act of 1969 when initially introduced into the Assembly included \$4,000,000.00 for the construction of outlet water transmission facilities at the Round Valley reservoir. Since this Act also contains language similar to the language contained in the Bond Act of 1958, *supra*, with regard to payment of principal and interest on bonds issued pursuant thereto, namely, that said bonds be paid out of "[n]et revenues, if any, with respect to water supply facilities funded in whole or in part by the bonds", section 19(a), it is clear that the Legislature saw no conflict between it and the earlier Bond Act. There is nothing to indicate that the deletion of reference to Round Valley outlet works had anything to do with the prior Bond Act, and in fact, the Governor's Counsel's file of the Bond Act of 1969 indicates that the Attorney General's office approved the Bill in its initial form.

This being the case, it is reasonable to conclude that the restrictions contained in the aforementioned Bond Acts merely require that the net revenue from the sale of water from the RV-SR complex must be used to pay off the 1958 Bond indebtedness and net revenue from the transmission of water through the proposed pipeline, if any, must be used to pay off the 1969 indebtedness.<sup>4</sup> If this is done, revenue from the Bond Act of 1969 can be used to finance the proposed pipeline.

Finally, it should be noted that nothing in the "Water Transmission Facilities Act", *supra*, precludes the State, and in particular the Department of Environmental Protection, from constructing and operating the outlet water transmission pipeline from the Round Valley reservoir. This Act merely permitted the NJDSWC to construct and operate water transmission facilities in the northern part of the State. Said Act does not give the NJDWSC exclusive jurisdiction in this area. The legislative history of the Act indicates that its purpose was to have the NJDWSC build a water transmission distribution system from Round Valley to the northern part of the State, as opposed to an outlet water transmission facility, as proposed here. This being the case, there would be no jurisdictional conflict were the Department of Environmental Protection to build the outlet water transmission pipeline at the Round Valley reservoir.

In conclusion, it is apparent that the construction of an outlet water transmission facility at the Round Valley reservoir with revenue from the Bond Act of 1969 would be a proper use of said money. However, before this revenue can be used for such a project, the Bond Act of 1969 requires that a specific appropriation be made by the Legislature. An Act should first appropriate the money for the project to the Department of Environmental Protection and second, authorize it to undertake the construction in question.<sup>5</sup>

Very truly yours,

WILLIAM F. HYLAND  
*Attorney General*

By: RONALD P. HEKSCH  
*Deputy Attorney General*

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1. Sections 2(b) and 2(i) of the Bond Act of 1969 initially read as follows:

Section 2(b):

“The State’s growing population and expanding industrial development require the establishment of new and additional water supply facilities. The planning and, subject to specific authorization by law, the acquisition of sites for the future establishment of such water supply facilities, and the making of Round Valley reservoir fully operational by the construction of Round Valley Outlet Works, however, are the most immediate needs.”

Section 2(i):

“Current estimates of the cost of planning and site acquisitions for the future establishment of water supply facilities is \$27,000,000.00, and for the construction of the Round Valley Outlet Works, \$4,000,000.00.”

2. Of the \$271,000,000.00 indebtedness authorized by the Bond Act of 1969 approximately \$215,000,000.00 has been appropriated by the Legislature. Approximately \$185,000,000.00 has been appropriated for sewer projects; \$27,000,000.00 for land acquisition; and \$2,000,000.00 for planning. This leaves a balance of approximately \$55,000,000.00 unappropriated. The unappropriated money is from the \$242,000,000.00 referred to in section 2(h) of the Act. The \$29,000,000.00 referred to in section 2(i) was appropriated by the Legislature in 1970, N.J.S.A. 58:21 B-3.

3. It is important to note here that the waste water treatment plants contemplated by section 2 (h) of the Bond Act of 1969 were to be built with Federal, State and local funds. In 1969, under Federal Law, the State’s contributory share was to be 25%. Since 1969 the Federal statutes have been amended and the State’s contributory share is no longer prescribed by Federal Law. Most recently, the State has chosen to contribute 15%.

4. At present, the cost of water per million gallons sold from RV-SR complex is broken down into various units, i.e., principal and interest, operating and maintenance reserve, etc., and the Department of Environmental Protection has advised us that it would be feasible to tack on a separate charge for the transmission of water through the proposed pipeline.

5. The initial estimates for the cost of the pipeline in question were \$40,000,000.00 in 1969; however, at present, the estimated cost of the project is between 10-15 million dollars.