

HIGH COURT KILLS NIXON'S BLOCKING OF WATER FUNDS

NIXON

Justices Say Legislation Did
Not Grant Him Authority
to Impound \$9-Billion

DECISION IS UNANIMOUS

New York and Connecticut
Expect to Get Eventually
at Least \$690-Million

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WASHINGTON, Feb. 18—

The Supreme Court ruled unanimously today that President Nixon did not have the right to impound \$9-billion in water pollution funds approved by Congress because the legislation authorizing the program had not given him that authority.

The case, the first on impoundment to reach the high court, did not involve the more complicated question of whether a President has implied power under the Constitution to refuse to spend money that Congress has appropriated. That issue is still being debated in the lower courts.

Although they did not say so directly, the Justices appeared to order the immediate release of \$5-billion of the funds that Mr. Nixon impounded, and President Ford has since classed as "deferred," or indefinitely postponed.

Allocation Process Slow

As a practical matter, however, the decision may have little immediate impact. A spokesman for the Environmental Protection Agency said that the \$5-billion had been considered available for some time, and that the allocation process was so slow that it would not be tapped for many months.

In New York and Connecticut, environmental officials estimated that the two states would eventually receive at least \$690-million as a result of the Court's ruling. [Page 42.]

What the ruling might mean for the remaining \$8-billion or more that the Ford Administration is still withholding in construction, health and other environmental funds was anybody's guess.

White Writes Decision

In programs based on statutes like the Water Pollution Act of 1972, the money may now have to be released, following today's precedent. In other programs where a different sort of authority was invoked by the Administration, the money may remain impounded, awaiting the outcome of further legal action.

The decision was a victory for New York City, which had challenged Mr. Nixon's order to restrict Federal aid for sewers and sewage treatment works. The former President had impounded the \$9-billion immediately after Congress overrode his veto of the Water Pollution Act.

Writing for the Court, Associate Justice Byron R. White said that the legislation "was intended to provide a firm com-

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mitment of substantial sums within a relatively limited period of time in an effort to achieve an early solution of what was deemed an urgent problem."

"We cannot believe," he continued, "that Congress at the last minute scuttled the entire effort by providing the executive with the seemingly limitless power to withhold funds from allotment and obligation."

Associate Justice William O. Douglas concurred in the result of the decision, but did not offer any reason for not also endorsing the legal reasoning supporting it. The high court presumably decided the case shortly after it was argued in November, long before Mr. Douglas was hospitalized by a stroke on Jan. 1.

New York City, joined by several upstate cities and later Detroit, won its case in Federal District Court, and the United States Court of Appeals for the District of Columbia Circuit affirmed the ruling, holding "the act requires the administrator to allot the full sums."

When the Government asked the Supreme Court to review the case, the Justice Department argued in its petition that Congress could not impose this kind of restriction on the President under the doctrine of sovereign immunity. This argument was dropped, however, in the Government's subsequent briefs and oral argument.

Position Is Charged

In the lower courts, the Government maintained that the President had unlimited power to impound funds. In the Supreme Court, however, the Administration conceded that the full \$18-billion approved by Congress for water pollution projects would have to be spent eventually, but not necessarily on the Congressional schedule of \$5-billion in 1973, \$6-billion in 1974 and \$7-billion in 1975.

In his Budget Message this year, President Ford listed the \$9-billion at issue as "deferred," a classification set by the 1974 Congressional Budget Act for money that will be spent eventually but not during the coming fiscal year.

Mr. Ford said at that time that "release of all these funds would be highly inflationary, particularly in view of the rapid rise in non-Federal spending for pollution control."

Of a half-dozen similar lawsuits brought to win release of the water pollution funds, the Government lost all of them in the lower courts except for one in Federal District Court in California.