

Applegate  
Bedell  
Bellenson  
Boutor  
Brodbhead  
Cavanaugh  
Clay  
Collins, Tex.  
Coyle  
Deardark

Dellums  
Derrick  
Fenwick  
Gephardt  
Harkin  
Holtzman  
Jacobs  
Jeffords  
Kelly  
McDonald

Maguire  
Mikva  
Miller, Ohio  
Mitchell, Md.  
Moffett  
Obey  
Paul  
Weaver  
Wells

NOT VOTING—46

Anthony  
Beard, Tenn.  
Bolling  
Breunr  
Burton, John  
Carr  
Chappell  
Cheney  
Chisholm  
Conable  
Corcoran  
Crane, Daniel  
Crane, Philip  
Daschle  
de la Garza  
Dodd

Downey  
Eckhardt  
Edgar  
Flood  
Forsythe  
Giallmo  
Holland  
Huckaby  
Ichord  
Ireland  
Lavin  
Mollohan  
Nolan  
Pashayan  
Pepper  
Petri

Pritchard  
Rhodes  
Rodino  
Rosenthal  
Rosenlot  
Santini  
Sawyer  
Shuster  
Tanke  
Taylor  
Udall  
William, Ohio  
Wilson, Tex.

The Clerk announced the following pairs:

Mr. Santini with Mr. Beard of Tennessee.  
Mr. Rosenthal with Mr. Cheney.  
Mr. Chappell with Mr. Forsythe.  
Mr. Anthony with Mr. Williams of Ohio.  
Mrs. Chisholm with Mr. Pritchard.  
Mr. de la Garza with Mr. Lavin.  
Mr. Giallmo with Mr. Pashayan.  
Mr. Ireland with Mr. Daschle.  
Mr. Mollohan with Mr. Daniel B. Crane.  
Mr. Rodino with Mr. Petri.  
Mr. Pepper with Mr. Taylor.  
Mr. John L. Burton with Mr. Shuster.  
Mr. Dodd with Mr. Conable.  
Mr. Downey with Philip M. Crane.  
Mr. Breunr with Mr. Tanke.  
Mr. Nolan with Mr. Corcoran.  
Mr. Carr with Mr. Edgar.  
Mr. Eckhardt with Mr. Flood.  
Mr. Ichord with Mr. Huckaby.  
Mr. Holland with Mr. Schener.  
Mr. Udall with Mr. Rosenlot.  
Mr. Ullman with Mr. Charles Wilson of Texas.

Mr. Fascell changed his vote from "nay" to "yea."  
So the bill was passed.  
The result of the vote was announced as above recorded.  
A motion to reconsider was laid on the table.

**H. R. 4388**

IN THE SENATE OF THE UNITED STATES

June 20 (legislative day, May 21), 1979

Read twice and referred to the Committee on Appropriations

**AN ACT**

Making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes.

TENNESSEE VALLEY AUTHORITY

PAYMENT TO TENNESSEE VALLEY AUTHORITY FUND

For the purpose of carrying out the provisions of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C., ch. 12A), including purchase, hire, maintenance, and operation of aircraft, and purchase and hire of passenger motor vehicles, \$146,177,000, to remain available until expended: *Provided*, That notwithstanding the provisions of 16 U.S.C., chapter 35 or any other law, the Corporation is authorized and directed to complete construction, operate and maintain the Tellico Dam and Reservoir project for navigation, flood control, electric power generation and other purposes, including the maintenance of a normal summer reservoir pool of 813 feet above sea level.

[From the Congressional Record, July 17, 1979]

CONSIDERATION OF H.R. 4388, WITH AMENDMENTS, BEGUN

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1980

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to consideration of H.R. 4388, which the clerk will state. The assistant legislative clerk read as follows:

A bill (H.R. 4388) making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with amendments as follows:

On page 2, line 11, strike "\$2,050,623,000" and insert "\$2,053,823,000";

On page 2, line 17, strike "\$60,523,000" and insert "\$64,523,000";

On page 2, beginning with line 23, insert the following:

Anticipated revenues from Uranium Enrichment Activities earned during the fiscal year and authorized to be retained by this Act, shall be deemed to have been appropriated to the Department of Energy for purposes of 31 U.S.C. 665.

On page 3, line 7, strike "\$334,050,000" and insert "\$336,900,000";

On page 3, line 13, strike "\$2,350,547,000" and insert "\$2,388,147,000";

On page 3, line 21, strike "\$237,320,000" and insert "\$228,029,000, of which

\$6,165,000 shall be for the Office of Inspector General";

On page 4, line 16, strike "\$423,878,000" and insert "\$444,478,000";

On page 5, beginning with line 8, insert the following:

Anticipated revenues from Uranium Enrichment Activities earned during the fiscal year and authorized to be retained by this Act, shall be deemed to have been appropriated to the Department of Energy for purposes of 31 U.S.C. 665.

On page 6, line 9, strike "\$346,249,000" and insert "\$618,249,000";

On page 6, line 19, strike "\$31,015,000" and insert "\$40,515,000";

On page 8, line 19, strike "one fixed wing aircraft at a cost not to exceed \$850,000, and";

On page 8, line 21, strike "\$124,900,000" and insert "\$122,800,000";

On page 12, beginning with line 10, insert the following:

Sec. 104. Not to exceed 5 per centum of any appropriations made available for the current fiscal year for Energy Supply, Research and Development Activities; Uranium Supply and Enrichment Activities; General Science and Research Activities; Atomic Energy Defense Activities; and Departmental Administration Activities may be transferred between such appropriations, but no such appropriation, except as otherwise provided, shall be increased or decreased by more than 5 per centum by any such transfers, and any such proposed transfers shall be submitted promptly to the Committees on Appropriations and the appropriate authorizing committees of the House and Senate for approval.

On page 13, line 16, strike "\$142,296,000" and insert "\$140,795,000";

On page 13, line 21, after "Waterway" insert "or would result in adverse diminution of generation at hydroelectric facilities on the Niagara or St. Lawrence Rivers";

On page 14, line 11, strike "\$1,440,481,000" and insert "\$1,473,566,000";

On page 15, line 17, strike "\$850,314,000" and insert "\$848,500,000";

On page 17, line 23, strike "\$36,805,000" and insert "\$34,176,000";

On page 18, line 8, strike "\$215,453,000" and insert "\$205,353,000";

On page 19, line 8, after "Interior" insert a colon and the following:

*Provided further*, That currently unobligated funds from appropriations made under this heading for payment of Teton Dam dissaser claims shall be available to pay costs to irrigation spaceholder contracting entities for American Falls Dam pursuant to section 7, Reclamation Safety of Dams Act (Public Law 95-578), and shall be nonreimbursable in accordance with the terms of that Act.

On page 20, line 15, strike "\$38,194,000" and insert "\$32,348,000";

On page 26, beginning with line 22, insert the following:

Sec. 306. Notwithstanding the provisions of the Act of October 1, 1981 (76 Stat. 677), the Secretary of the Interior, in the development of the irrigation lands located in Block 26 of the Columbia Basin project, Washington, shall take such

action as may be necessary to assure that the per acre repayment obligation shall be the same as those set forth in repayment contract II R 1444, dated October 9, 1943, as amended between the United States of America and the South Columbia Basin Irrigation District, but in no case shall such per acre repayment obligation exceed \$131.60.

On page 27, line 23, strike "\$356,500,000" and insert "\$358,000,000";

On page 27, line 24, strike "\$224,000,000" and insert "\$358,500,000";

On page 28, line 9, strike "\$383,000" and insert "\$287,000";

On page 29, line 7, strike "\$358,340,000" and insert "\$363,340,000";

On page 30, line 12, strike "\$146,177,000" and insert "\$148,677,000";

On page 31, line 2, strike "\$37,556,000" and insert "\$24,002,000";

On page 31, line 3, strike "\$4,380,000" and insert "\$2,788,000";

On page 31, line 4, strike "\$3,112,000" and insert "\$2,815,000";

On page 3, line 1, strike "\$3,134,000" and insert "\$3,119,000";

On page 31, line 9, strike "\$21,000,000" and insert "\$10,700,000";

On page 31, line 10, strike "\$5,400,000,000" and insert "\$400,000,000";

[From the Congressional Record, July 17, 1979]

CONSIDERATION AND PASSAGE OF FLOOR AMENDMENT TO STRIKE TELlico DAM AND RESERVOIR PROVISION FROM THE BILL

MODIFICATION OF UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, there seems to be a disposition on the part of the manager, the ranking manager, the Senator from Iowa (Mr. Culver), and others, to limit the time on the Tellico Dam amendment to 30 minutes rather than 1 hour, to be equally divided. If we can get this agreement the disposition of that amendment would be the last rollcall vote today. I make that request.

Mr. BAKER. Will the majority leader yield to me?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. Mr. President, I anticipate that 30 minutes will be entirely adequate as far as I am concerned, and I hope there would not be an objection to that.

The PRESIDING OFFICER. Is there objection? Without objection, the request is agreed to.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays on the Tellico amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JOHNSTON. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 369

Mr. CULVER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Iowa (Mr. Culver), for himself and Mr. Chafee, proposes

an unprinted amendment numbered 369.

On page 30, line 13, strike beginning with "Provided" all through line 19.

Mr. CULVER. Mr. President, the Energy and Water Development Appropriations bill which we are presently debating would exempt the Tellico Dam in Tennessee from the provisions of the Endangered Species Act and any other law, and order its completion. It would do this in spite of the long hours devoted to this issue by the Environment and Public Works Committee which properly has jurisdiction over the Endangered Species Act, in spite of the rational and workable process which was established in the last Congress to address intractable endangered species conflicts, and in spite of the Senate's rejection of the Tellico exemption on June 13, just one month ago. My amendment would strike the Tellico exemption from this bill.

I regret that my colleagues are being asked to consider exemptions for specific conflicts between endangered species and development activities for the third time, I repeat, the third time in less than a year. As you may recall, the last Congress adopted an amendment which Senator Baker and I cosponsored to establish a process to equitably resolve intractable endangered species conflicts while at the same time avoiding their case-by-case consideration by the Congress.

Briefly, the Culver-Baker amendment established a seven-member Endangered Species Committee composed of the heads of six Federal agencies and a representative of the affected State or States. The committee arbitrates those conflicts which cannot be resolved through consultation between the action agency and the Fish and Wildlife Service only after all required processes are utilized. The committee is intended to provide a responsible and sound solution to these problems thereby avoiding ad-hoc technically uninformed congressional exemptions and the emasculation of the Endangered Species Act as a result of short-term pressures which overlook the importance of this law and the species it protects.

I believe the Endangered Species Committee process is working well. The committee has met to consider exemptions for two projects, the Grayrocks Dam in Wyoming and the Tellico Dam in Tennessee. After careful consideration the committee voted unanimously to exempt the Grayrocks project, provided certain measures are taken to protect the affected species, the whooping crane. The committee, after careful consideration, also voted unanimously not to exempt the Tellico Dam, finding that the benefits of completing the project do not clearly outweigh the benefits of alternatives which would protect the endangered snail darter. It is important to emphasize that the representative of the State of Tennessee, who was nominated by the Governor of that State, did not vote to exempt the project and allow its completion.

The Endangered Species Committee is providing just what it was intended to accomplish—a competent national mechanism for resolving conflicts between the protection of endangered species and other legitimate national goals and priorities. To exempt the Tellico Dam from the provisions of the Endangered Species Act would subvert this mechanism, undermine the Endangered Species Act, and place the consideration of each and every conflict back in the hands of Congress.

Before you vote to exempt the Tellico Dam, I believe each Member should ask himself if he is enjoying this debate, because I can assure you that this is just the beginning, just the first of many endangered

species conflicts this body will be asked to resolve without rational standards again and again in the months ahead if we ignore the provisions of last year's reauthorization of the Endangered Species Act and provide a specific, single exemption for Tellico.

The authorizing committee—the Environment and Public Works Committee—and the Senate itself have already rejected a similar exemption of Tellico. There is no new information to change matters.

This clearly raises serious jurisdictional questions where all the laws under any of the other authorizing committees could be circumvented merely by the Appropriations Committee taking this kind of ad hoc unilateral action.

I urge my colleagues to uphold our hard work of last year and strike the language to exempt Tellico from this appropriations bill.

Mr. NUNN. I would like to ask a question about the cost-benefit ratio. I never did get that straight in the last debate. As I understand the cost-benefit ratio on this project is not high in the case of being defensible, is that correct?

Mr. CULVER. That is certainly correct, even on the basis of 5 percent remaining to complete the project.

We may have to ask unanimous consent to get some extra time.

When the Endangered Species Committee took under advisement this project, Mr. Charles Schultze, the economic adviser to the President and a member of the committee, said that even on the basis of the remaining 5 percent there was not a favorable cost-benefit ratio on this project.

Mr. NUNN. That is the question I wanted to ask. Does the Senator mean that if we eliminated the cost that has already been spent, if we just consider the \$35 million to be spent to complete it, as I understand it, even with that consideration the cost-benefit ratio is not favorable?

Mr. CULVER. That is correct.

Mr. NUNN. There must be no benefits whatsoever.

Mr. CULVER. What the committee did find unanimously is that there are other alternatives to this project, such as river development, which will afford cost-benefit ratios that are more favorable when you take into consideration unmeasured benefits, such as cultural and historic sites, preservation of customary fish and wildlife values, ecological, esthetic, and scenic values associated with the preservation of the river. When those alternatives are considered, then the benefits of the project clearly do not outweigh the benefits of alternatives.

Mr. NUNN. I thank the Senator.

Mr. NEWSON. Mr. President, I would like to read some comments made at the time of the original debate. I will just read two paragraphs at this time.

The Federal Government has now condemned in this project from private landowners 38,000 acres of land, the majority of which is prime agricultural farmland.

TYA is the largest real estate firm in Tennessee. Tellico was never—

And I emphasize this was never—

formally authorized by Congress, TYA, operating under emergency authority dating back to the New Deal planned the project for completion before World War II. It got sidetracked for a while but the plans were never changed. It is interesting to note that TYA is also the only Federal water resources development agency that can condemn more land than it actually needs for a project,

speculate with the value of that land and then resell the land they have condemned to the public at a vast profit from the Government. This is not sound management, it is a "legalized" grand theft of the public.

Only—  
And I think this is an important point to remember about this project—

Only the estimated \$700,010 per year from the sale of 22,000 acres of land over the project's 50-year economic life keeps the Tellico program marginally afloat. A cost-benefit ratio has not been updated for over a decade. This again is unique to TVA because the Corps of Engineers, for example, updates their cost-benefit ratios annually.

The fact of the matter is that the land, the 38,000 acres already acquired by the Federal Government, and the value of the agricultural productivity of the farmland is worth more today than all of the estimated benefits of the Tellico project.

I thank the Senator from Iowa.

Mr. JOHNSTON. Mr. President, the Energy and Water Development Subcommittee and the full Appropriations Committee strongly approve this bill. Let me speak first, very briefly—I yield myself 2 minutes.

If the Senator from Georgia will listen, in the environmental impact statement made in 1972 on this matter, the cost-benefit ratio was 1.7 to 1. In 1977, the President rereviewed a great many water projects, this Tellico project included. The Presidential review demonstrated at that time that the remaining costs, excluding the sunk costs, to benefits ratio was 7 to 1. That was the Presidential review team. They have since gotten new figures, since this new endangered species review committee crowd got in there, but it was 7 to 1 in 1977.

The Attorney General, Griffin Bell, argued this matter before the Supreme Court, very forcibly pointing out that the dam was already complete. If Members can see this picture I hold in my hand, I do not know how the snail darter could get past that concrete dam in the first place.

Mr. President, the Government of the United States has done some "dam-fool" things—Mr. President, that is spelled d-a-m—and this has to be the most "dam-fool" thing they have ever done. In the midst of an energy crisis, when the water stored will produce enough electricity for 20,000 homes, not to complete a dam that is 98 percent complete, that will give electric power—not to complete that on behalf of some kind of snail darter, if that is the law, then the law ought to be changed. If this precipitates other arguments on behalf of other things, other endangered species, I cannot say.

Mr. TALKADZE. Is it a fact that they have transferred the snail darter to an adjacent stream and it is thriving and doing well?

Mr. JOHNSTON. It is in the Hiwassee River, that is correct. It is thriving and doing well. Even if we did not finish this dam, if we look at this picture of the work completed, it is a concrete dam. How is the snail darter going to get up through that dam?

Mr. TALKADZE. If the snail darter is doing well and thriving in an adjacent stream, it is not endangered any more, is it?

Mr. JOHNSTON. It is either not endangered in the Hiwassee River or if migrating upstream across this concrete dam is necessary to its life cycle, then it is already dead.

Mr. CURTNER. On just this one question? I should think the Senator would be interested in the facts.

The fact of the matter is that the Fish and Wildlife Service, in its most recent assessment of that transplant exercise, shows that the snail darter population is down.

The second thing is that the Fish and Wildlife Service cannot certify that that transplant has been there long enough for the Service to make any concrete conclusions, but the initial evidence is perhaps not encouraging as a result of that transplant.

Mr. President, I oppose this amendment to strike the Tellico language from the bill. The Tellico project has been funded by the Congress each year since 1967. The Congress of the United States is not in the habit of funding projects it does not want built. In each of those years, the Tellico project was the subject of hearings and scrutiny by succeeding administrations and the appropriate House and Senate committees. Each year funds were recommended for the construction of Tellico Dam. I think the intent of the Senate to date has been clear: Build Tellico Dam—over a period of 12 years.

Each year the opponents of this project were given the opportunity to present testimony before the appropriate committees. They failed to make their case every year. So they turned to a different approach—an approach designed clearly to thwart the will of the Congress. The mechanism the opponents used to thwart the will of this legislative body was another act of Congress—the Endangered Species Act.

Mr. President, the Endangered Species Act was not even passed by the Congress until 1973—a full 6 years after the Congress approved construction of the Tellico Dam. When the opponents of Tellico realized that the regular legislative process—the appropriations process—was going to continue supporting this project, they turned to a back door approach.

They found the back door in the Endangered Species Act—a perfect mechanism to thwart the will of the Congress and bypass the appropriations process. In other words, the opponents of the project changed the game in the middle of the stream—or dam, in this case.

Still it was not until 1975 that an endangered species, so-called, the famous snail darter, was found in the Little Tennessee River. Since then through a series of legal battles, the opponents succeeded in halting this project.

Now, I was not a Member of the Senate in 1972 when the Endangered Species Act was passed. But, I have talked with many Members who were here at that time. And, based on their comments, I do not believe the Congress intended that the Endangered Species Act was to be used to halt work on other projects which had been approved years before by the Congress. Former Congressman Joe L. Evans, who distinguished himself as chairman of the Public Works Appropriation Subcommittee in the House, for many years has reminded me repeatedly that since the Endangered Species Act was passed, the Congress continued to provide funds for the construction and completion of the Tellico Dam project, even though the snail darter lived there. So, for several years the Congress knew about the snail darter. And, in each of those years the Congress provided funds to complete the project. The intent of the Congress with regards to the Tellico Dam is crystal clear, in my opinion.

So, I say to my colleague that we are not dealing with an environmental question. We are dealing with a direct and serious challenge to the appropriations process. Unless the Senate makes it clear and approves the House-passed language, this project will probably be demolished. The \$111 million we have provided through the years will have been wasted. And, it will stand as a monument to an exercise in futility by the Congress in appropriating funds for this project.

I want to say something about the environmental side of the question. I have supported the Endangered Species Act.

Since I have been in the U.S. Senate I have voted to reaffirm the Endangered Species Act and I have voted against weakening that act, Mr. President. But I believe that legitimate endangered species should be protected by this act and maintained.

So, what are the facts surrounding the endangered snail darter? They say that the Little Tennessee River is the only critical habitat for this fish. But, we do not know that, because my information is that neither the Fish and Wildlife Service nor the Tennessee Valley Authority have adequately explored other rivers to find this particular fish.

Mr. President, the mayor of Sparta, Tenn., my friend, Herman Cowden, has advised that the snail darter may exist in a river near his home. A Kentucky biologist says that the snail darter lives in a river in Kentucky. The Fish and Wildlife Service seems reluctant to make a thorough survey of other bodies of water.

I can tell the Senate that the snail darter does live in another habitat. The Tennessee Valley Authority began transplanting snail darters to the Hiwassee River in Tennessee before the fish was listed as endangered. TVA biologists say that the darters have been successfully reproducing now for a number of years. But, the Fish and Wildlife Service says that is not enough. The Fish and Wildlife Service refuses to admit that the snail darter can live in a habitat other than the Little Tennessee River.

Mr. President, the opponents of this project are not interested in protecting the snail darter. They are interested simply in halting the Tellico project.

In closing, Mr. President, I say that the Tellico project is 99 percent complete. A total of \$111 million has been spent—more than \$1 million for each Member of this body.

I want to see, Mr. President, that today that money is not wasted.

Mr. Barker. Mr. President, I thank the Chair and I thank the distinguished majority manager of this bill.

Mr. President, I have been in the Senate now for 13-plus years. I cannot think of a single issue where I have found as much difficulty in understanding the opposition to this project, and to the disposition we have made of it in all of those years, as I do in this particular case.

The endangered species, so-called, was discovered after the act was passed. The dam was begun. It was authorized and mostly built before the act was passed. The fish has been transferred to another river, at least in one place, where it is still thriving, the Hiwassee River. There is grave doubt it is endangered or that its habitat is endangered.

We have spent over \$100 million building this project and it is 99 percent complete. We are not confronted now with whether or not we ought to build the dam—it is built.

This is the first chance we have had since the speech of the President of the United States, when he said that if we need a refinery, we will build it, or if we need a dam, we will build it.

This is the Senate's first chance to decide whether we mean that or not.

This dam will produce a total of 200 million kilowatts of electricity per year, enough electricity to heat, by electric heat, 20,000 homes.

Mr. President, in the face of those circumstances, if we are serious about trying to find energy sources for this country, if we are serious about being sensible, if we are serious about not suffering the stultification of national purpose by the misapplication of environmental law, this is our opportunity.

The House of Representatives has decided, in its wisdom, that this should be the course, that the dam should be built. We are not dealing with something that we put on the bill on the floor as an amendment. This came from the House. It was approved by the Senate committee. It is before us now on a motion to delete.

Mr. President, the dam should be built; the 1 percent should be built. We should get on with the dedication to the idea that we have to do what we have to do, and in this case there will not be an immediate impact on the environment nor upon the species.

Mr. President, I support legislation which would allow completion of the Tellico Dam project in my home State of Tennessee. By now, most of the issues and arguments concerning this project are familiar to my colleagues in the Senate. These facts are that the project is essentially complete; that the snail darter, which is the basis of the impasse now existing at Tellico, is doing well in a number of other localities besides the one within the area above the proposed dam; and that this being the case it is only reasonable that this project which can meet the electricity demands of 20,000 homes and provides needed economic impetus in an area badly needing such development should be finished.

Mr. President, I would like to further note for the Record that the President, in his recent address to the Nation, stressed the urgency of eliminating unnecessary conflicts between needed energy development and environmental statutes particularly those where such conflict can be resolved with a minimum of harm to the particular natural resource in question. I wholeheartedly agree with this proposal and add that this is exactly the type of situation which exists at the Tellico Dam. The dam and reservoir if completed will produce a significant amount of power and will in no way further endanger the snail darter. I believe that most if not all of my colleagues also agree with the President. This being the case, I urge that they oppose the amendment offered by Senator Culver. Such an action on our part will send a clear message to the Nation and to the recently created Endangered Species Committee that we are serious about our energy problems and that unrealistic conflicts and delays will no longer be tolerated.

As I have said before on a number of occasions, Mr. President, we in Congress who voted for the Endangered Species Act with the intention of protecting and managing our Nation's endangered wildlife resources have found that others with different notions are using this noble act for obstructive ends which are wholly in conflict with the congressional intent for this legislation.

I am seriously concerned that if present trends continue the Endangered Species Act will continue to be perverted from its original intent of providing realistic protection and management of endangered species and instead will become a convenient device to challenge any and all Federal projects.

That is precisely what has happened in the case of the snail darter against Tellico Dam, and if this perverted use of the legislation is allowed to continue, not only will it be a disservice to the wildlife we intended to protect, but indeed the act itself will soon stand in jeopardy.

We in Congress must not let this happen, Mr. President. It need not occur if we in the Congress direct that present rigidity and misuse of the legislation give way to reason and that authority given to the executive branch regarding this act's implementation be exercised with prudence and restraint.

These are my goals in supporting Senator Sasser and the Appropriations Committee's legislation today, and I very much hope my colleagues in the Senate—who surely must share these same concerns and goals—will act in accordance with this intent and oppose the amendment being offered by Senator Culver.

Mr. CURVER. Mr. President, the distinguished Senator from Tennessee reminds us that this is not an amendment that originates in the Senate. I think that is a very important point. This, in fact, is an amendment that originated in the dark of night in the House of Representatives, and I doubt if it is anything to take the occasion to brag about.

I recount for the recollection of the distinguished Senator from Tennessee that on June 13 the Senate, for the second time, ruled in support of the Endangered Species Act.

I thank the minority leader for yielding.

Mr. JOHNSON. Mr. President, not only did the House pass this measure, as well as the Senate subcommittee and the full Appropriations Committee, but also, what we did was virtually by invitation of the U.S. Supreme Court.

I listen to the words of Mr. Justice Powell, joined by Justice Blackmun, in dissenting, when deciding as follows:

I have little doubt that Congress will amend the Endangered Species Act to prevent the grave consequences made possible by today's decision. Few, if any, Members of that body will wish to defend an interpretation of the Act that requires the waste of at least \$53 million . . . and denies the people of the Tennessee valley area the benefits of the reservoir that Congress intended to confer. There will be little sentiment to leave this dam standing before an empty reservoir, serving no purpose other than a conversation piece for incredulous tourists.

Mr. President, the people of Tennessee in this area were polled on the matter. Thirteen thousand and forty-six responded to the poll. Eighty-two percent voted "Yes" in favor of the dam, 14 percent voted "No," and 4 percent remained undecided.

Mr. President, this is the clearest thing I believe I have ever seen in the Senate. The snail darter was not even discovered before 1973. The act was not passed until 1975. And do you know that the snail darter has no use at all? You cannot use it. You cannot use it as bait. It does not have any intrinsic beauty. It has no use. I do not know

what they do when they study it. At least they have them in the Hiwassee River and they have them downstream in the Little Tennessee.

The Endangered Species Act is supposed to protect the endangered species. So that means you cannot complete the dam. But the endangered species in this case, the snail darter, cannot get upstream of the dam anyway. Where is the picture of that dam?

Mr. President, I invite Senators' attention to the fact that this is a concrete dam. Why do you say you cannot complete the reservoir when the snail darter cannot get upstream of the dam anyway?

This special endangered species commission has agreed with that. They say the existence of the dam currently prevents this upstream migration.

So the only question we are left with, Mr. President, is whether you complete this dam by closing the gates and other minor work, which is 98 percent complete and get electric power for 20,000 homes when people are waiting in the gas lines now, when they are using oil in electric generators. That is the question. Ninety-eight percent complete.

I agree with Justice Powell of the Supreme Court when he says that few, if any, Members of Congress will want to confer this result.

Mr. President, I think we have debated the matter long enough. I am ready for the question.

Mr. SRENITS. Mr. President, we all appreciate the fine work of the Senator from Iowa. He is so sincere and has worked on it before and makes a contribution wherever he does put in his effort.

But we have spent the money here for this project. We spent the taxpayers' money. We have spent it and according to law every requirement has been met, and now we need the electricity. We need the energy. Can we refute that? I do not think we can.

We have had this bill before us many times. It is certainly not a casual thing.

As I say, we have made the investment. We need the product. We need the energy. We are cramped for energy and are going to be severely cramped. So I think there is no justification for delay. Just one word—action.

I hope that we can approve this project.

Mr. CURVER. Mr. President, I say to the distinguished Senator from Louisiana that what the Senate Environment and Public Works Committee did was accept the invitation of the Supreme Court to do something about the Endangered Species Act. The resulting something was the amendment by the distinguished Senator from Tennessee and myself to the act creating the Endangered Species Committee and that judgment, the wisdom of doing that, was supported by Congress and it resulted in a unanimous decision that the Tellico Dam project should not go forward.

Second, it is very easy to say what does this mean, what do these weeds mean, what do these animals mean? Why preserve this and why preserve that?

The fact of the matter is we do not know oftentimes what the significance of a species might be. However, we do know that in some of these cases the medical values obtained have proven to represent major breakthroughs. It may be far more important than fish bait.

For example, fruit flies, genetic research; sponges, viral research; the armadillo, leprosy knowledge; and with regard to the fox glove plant—just a weed? It has helped us enormously in this country and throughout the world in dealing with heart disease.

This is what it is all about.

It is easy to make know-nothing statements about what this means or what that means or what the loss is. We do not know.

Finally, let me say on electricity—if I could just have 15 seconds more.

I am quoting from the Interior Secretary with regard to the electricity that supposedly comes from this project, and I quote this:

Electricity is not available as peaking power and does not add to the capacity of the TVA system.

Finally, Secretary Andrus says that: If this action is supported here in the Senate—

I intend to urge the President to veto the energy and water appropriations bill if the language on the Tellico remains in the bill.

Mr. HEINZ. Mr. President, last month the Senate debated a similar provision to exempt the Tellico project in Tennessee from compliance with the Endangered Species Act. That amendment was brought up during discussion of the reauthorization of the endangered species program and was rejected by this body. I see no reason why this decision should be reversed just a few weeks later. Such an exemption in the face of the enormous factual record that has been amassed by the Federal courts, the Senate Environment and Public Works Committee, the House Merchant Marine Committee, the GAO, the Tennessee Valley Authority, and a special Cabinet-level committee authorized by Congress last year to study the economics of the project and its alternatives—all would be ignored by allowing this sweeping statutory exemption to remain in the appropriations bill. A very logical procedure was devised by the Environment and Public Works Committee and enacted by Congress last year to deal with exemptions such as this. Serious damage will be done to that process if we allow this provision to remain in the bill.

Unlike the simple exemption that we rejected a few weeks ago, however, this provision would be one of the most sweeping exemptions we have seen. Besides exempting the project from the endangered species law, it would also exempt the project from any other law that might in some way affect the project. It is estimated that some \$35 to \$40 million would be necessary to complete the project as a reservoir-based development project. That includes an additional \$14.5 million in construction funds necessary to make the dam capable of safely passing the maximum design flood.

The TVA admits that the project is not currently in compliance with several other environmental laws such as the Historic Preservation Act, the Rivers and Harbors Act, and the Water Pollution Control Act. The proposal included in the House bill would exempt the project from all of these laws, and potentially could exempt the project, with massive sums still to be spent, from laws related to hiring practices, labor protections, and other laws that affect the expenditure of Federal funds. Such a sweeping, unspecific statutory repeal for a Federal project such as this sets a dangerous precedent that will likely return to haunt us in

the future. The fact that this cuts across so many committee jurisdiction should not be lost on this body.

As to the Tellico project itself, the project was originally designed as an economic development project for several eastern Tennessee counties. Approximately 38,000 acres of land in the valley of the Little Tennessee River, near to or adjacent to the Great Smokey Mountains National Park and the Cherokee National Forest—has been purchased for the project. Much of it, over 15,000 acres, is prime farmland—some of the richest in the State—was largely purchased with condemnation powers. TVA now admits that more than twice as much land was acquired for the project than necessary for a lake, and that the agency had planned to sell these lands at a profit to improve the benefit figures.

The small power benefits—\$2.7 million/year—claimed for the project derive not from direct generation of power but from diversion of water through a navigation canal into the Fort Loudon Reservoir generators a few miles away. These benefits, 22.8 megawatts annually, have been termed "negligible" by the TVA in light of many large coal and nuclear-fired projects as well as energy conservation and alternative energy projects now underway by the TVA.

Flatwater recreation, the largest benefit category in the project's original justification, 38 percent, is made somewhat ludicrous when one realizes that there are 22 large recreation reservoirs within a 50-mile radius of the Tellico project area. What would be lost is one of the most prolific stretches of trout-fishing water in the entire Southeast, heavily used by trout fishermen throughout the country, not to mention important historic and archeological areas.

TVA has now said that nearly equivalent benefits can be gained without a reservoir, that most of the costs (lands, roads and bridges) are recoverable, and that more jobs (3,025 jobs without the reservoir versus 2,675 jobs with a reservoir by 1990) will be created through development of the land in intensive farming, development of housing, recreation, and industrial development than would be possible with a reservoir.

For these reasons, I oppose the exemption, support the amendment, and urge my fellow Senators to do likewise.

(From the Congressional Record, July 18, 1979)

#### SENATE PASSAGE OF H.R. 4388, WITH AMENDMENTS; APPOINTMENT OF CONFEREES

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee (Mr. Sasser), and the Senator from Illinois (Mr. Stevenson) are necessarily absent.

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. Domenici) is necessarily absent.

I also announce that the Senator from Tennessee (Mr. Baker) is absent to attend a funeral.

The PRESIDING OFFICER. Are there other Senators present desiring to vote?

Are there others present desiring to vote?  
The result was announced—yeas 90, nays 6, as follows:

[Rollcall Vote No. 185 Leg. 1

YEAS—90

Armstrong	Hart	Muskie
Bayh	Hatch	Nelson
Bellmon	Hatfield	Nunn
Beltson	Hayakawa	Packwood
Borah	Hellin	Pell
Boschwitz	Helms	Percy
Bradley	Hollings	Pressler
Bumpers	Huddleston	Pryor
Burdick	Humphrey	Randolph
Byrd, Robert C.	Inouye	Ribicoff
Cannon	Jackson	Riegle
Chiles	Javits	Sarbanes
Church	Jepsen	Schmitt
Coehran	Johnston	Schwelker
Cotten	Kassebaum	Simpson
Cranston	Kennedy	Stafford
Culver	Laskalt	Stennis
Danforth	Leahy	Stevens
DeConcini	Leverin	Stewart
Dole	Long	Stone
Durenberger	Lugar	Talmadge
Durkin	Magnuson	Thurmond
Earleton	Mathias	Tower
Exon	Matsunaga	Tsongas
Ford	McClure	Wallop
Garn	McGovern	Warner
Glen	Melcher	Weicker
Goldwater	Metzenbaum	Williams
Gravel	Morgan	Young
	Moylhan	Zorinski

NAYS—6

Biden	Chafee	Proxmire
Byrd, Harry F., Jr.	Helms	Roth

NOT VOTING—4

Baker	Sasser	Stevenson
Donnell		

So the bill (H.R. 4388) was passed.

Mr. JOHNSON. Mr. President, I move that the Senate insist on its amendments and request a conference with the House on the disagreeing votes thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed Messrs. Johnston, Stennis, Magnuson, Robert C. Byrd, Hollings, Huddleston, Burdick, Sasser, DeConcini, Hatfield, Young, Schweiker, Bellmon, McClure, Garn, and Schmitt conferees on the part of the Senate.

Mr. ROBERT C. BYRD. Mr. President, for the third time today, I compliment Mr. Johnston.

The Energy and Water Development appropriations bill, considered by the Senate today is a complex measure which contains vitally

important projects. The distinguished Senator from Louisiana (Mr. Johnston) has managed this bill admirably under trying circumstances. As chairman of the Energy and Water Subcommittee of the Appropriations Committee, he has overseen the formulation of this bill in great detail.

The distinguished Senator from Oregon (Mr. Hatfield) has contributed in equal measure to the consideration of this bill. His long experience as ranking member of the subcommittee provided additional expertise to the Senate in its deliberations on the Energy and Water Development bill.

Two key areas of national policy are affected by this measure—energy research and development and improvement of our water resources. In many cases, these two issues are inseparable. Hydroelectric projects are the prime examples of that fact. Transportation of energy resources is facilitated by the improvements to navigable waterways included in the bill.

Basic science research carried out by the Department of Energy is funded at a level which will provide the maximum amount of benefit for each dollar. More advanced research into solar power is provided for in order for the United States to have as many energy options available as possible.

In short, the Energy and Water Development appropriations bill coupled with the Interior appropriations bill, which we will consider at a later point, provide a sound structure on which to shape our energy policy and promote the efficient use of our natural resources. Once again, I commend the subcommittee for its fine work on this difficult matter.

Mr. JOHNSON. I thank the majority leader.

Mr. DOLE. Mr. President, I support the measure of the Senator from Iowa to strike this statutory override language from the energy and water resources appropriations bill.

I wish to call to my colleagues' attention to the Tellico proposal not just because it attempts to bypass the economic record we have compiled on Tellico, not just because it would create biological disruptions and dam safety problems, but because it would set an unfortunate precedent for blanket statutory exemptions attached to appropriations bills.

Despite 3 years of efforts in this Chamber to study the case in the respective committees, despite a GAO report, despite the elaborate procedures we set up last year to resolve the Tellico issues through a special executive Endangered Species Committee, the Tellico proposal continues to endanger the original mandates set forth through measures such as the Endangered Species Act.

#### TELLICO PROJECT

Mr. KENNEDY. Mr. President, the senior Senator from Iowa has wisely expressed some of the reasons why we in this Chamber should reject the language exempting the Tellico project from applicable law, and I strongly support his motion.

I want to add a few thoughts. While the environmental ramifications are well known here, other important aspects of this issue must also be kept in mind. A wealth of economic data shows that the dam is not worth the money. And it would seriously dislocate family farms; a rich agricultural valley would be inundated; and we would lose the last remaining stretch of free-flowing river in a 2,500-mile river system. This Chamber must deal with this case on these merits.

I wish to note one particular feature of this issue. This project would destroy one of the most important historical valleys in the Southeast. It would destroy the birthplace of Chief Sequoyia, under 20 feet of mud and water; it would destroy the Cherokees' sacred town of Chota and Tennessee, the city that named the river and the State. It would hurt a colonial fort and a series of unique archeological sites.

Mr. President, I call on my colleagues to support the motion of the senior Senator from Iowa.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment of the Senator from Iowa. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announced that the Senator from Massachusetts (Mr. Tsongas) is necessarily absent.

Mr. SEEVENS. I announce that the Senator from New Mexico (Mr. Domenici) is necessarily absent.

The PRESIDING OFFICER. Are there any Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 45, as follows:

[Rollcall Vote No. 180 Lev.]

YEAS—53

Baucus	Exon	Nunn
Bayh	Gravel	Prattwood
Bentsen	Hart	Pell
Biden	Hatfield	Percy
Boschwitz	Helms	Presaler
Bradley	Hollings	Proxmire
Cannon	Inouye	Randolph
Chafee	Kennedy	Ribicoff
Chiles	Leahy	Riegle
Church	Levin	Roth
Cranston	Mathias	Sarbanes
Culver	Matsumasa	Stardoff
Dartforth	McGovern	Stevenson
DeConcini	Melcher	Stone
Dole	Melzenbaum	Weicker
Durenberger	Moyrhan	Williams
Darkin	Muskie	Zoritsky
Eagleton	Nelson	

NAYS—45

Armstrong	Bumpers
Baker	Burdick
Bellmon	Byrd, Harry F., Jr.
Boyer	Byrd, Robert C.

Cochran
Cohen
Ford
Garn

NAYS—Continued

Glenn	Johnston	Schwelker
Goldwater	Kassebaum	Simpson
Hatch	Laxalt	Stennis
Hayakawa	Long	Stevens
Helms	Lugar	Stewart
Helm	Maunson	Talmadge
Huddleston	McClure	Thurmond
Humphrey	Morgan	Tower
Jackson	Pryor	Wallop
Javits	Sasser	Warner
Jepsen	Schmitt	Young

NOT VOTING—2

Domenici

Tsongas

So Mr. Culver's amendment (No. 369) was agreed to.

Mr. President, I thank again the distinguished ranking majority member, Senator Hatfield, and his excellent staff for the cooperation we have had throughout this bill. It really has been a team effort and a bipartisan effort.

I especially thank Proctor, Jones, Dave Gwaltney, and Mrs. Gloria Butland, of the committee staff, who have worked day and night, literally, sometimes through the night, for days on end, to put together a very difficult bill.

I think we have an excellent bill here, one that has been well thought out.

I thank all those responsible for their help in getting the bill passed.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. JOHNSON. I yield.

Mr. MAGNUSON. Mr. President, as chairman of the Appropriations Committee, I congratulate the Senator for the fine work that has been done on this bill. I know how difficult it is. It is not necessarily the most complex bill. I will not give way to the HEW bill. It is next to the HEW bill in complexity.

Proctor and the others have done a tremendous amount of work. I do not know how many witnesses the committee heard this year.

Mr. JOHNSON. More than 2,000 appeared this year. We have large groups and delegations—and about 700 or 800 witnesses presented testimony.

Mr. MAGNUSON. It is a tremendous job, and I congratulate the Senator from Louisiana as well as the Senator from Oregon for the way the bill was handled on the floor.

Mr. JOHNSON. I thank the distinguished chairman of the full committee, who has been a great help in getting this bill passed. He attended many of our committee meetings and has been a great help.

Also, the distinguished ranking minority member, Senator Young, I believe, attended every meeting of the committee. He is an expert on water resource matters as well as an expert on energy, and he has been a great help with the bill.

Mr. YOUNG. Mr. President, will the Senator yield?

Mr. JOHNSON. I yield.

Mr. Young, Mr. President, this bill has become much more complicated than it used to be. I would not want to be the ranking minority member on the subcommittee now.

The energy part of it is so vast and complicated now that I do not know how the committee can even deal with it. The excellent staff is most helpful.

I commend both the Senator from Louisiana (Mr. Johnston) and the Senator from Oregon (Mr. Hatfield) for the fine job they have done and for the patience and understanding they have exhibited. I also commend the able staff members on both sides, especially Proctor Jones, who I consider one of the most able staff members in the Senate. Mr. JOHNSON. I thank the Senator, and I share the Senator's opinion of Proctor Jones.

[From the Congressional Record, July 26, 1979]

HOUSE CONFERENCE REPORT 96-388 (To ACCOMPANY H.R. 4388)

CONFERENCE REPORT ON H.R. 4388

Mr. Bevil submitted the following conference report and statement on the bill (H.R. 4388) making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes.

CONFERENCE REPORT (H. REPT. NO. 96-388)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4388) making appropriations for energy and water development for the fiscal year ending September 30, 1980, and recommend and do recommend to their respective Houses as follows: That the Senate recede from its amendments numbered 2, 15, 25, 26, 33, 34, and 35.

That the House recede from its disagreement to the amendments of the Senate numbered 4, 12, 13, 18, 19, 27, 28, 29, 32, and 36, and agree to the same.

Amendment numbered 5: That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, \$147,000; and the Senate agree to the same with an amendment, \$2,371.

Amendment numbered 6: That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, \$228,279,000; and the Senate agree to the same.

Amendment numbered 10: That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment, \$19,000; and the Senate agree to the same.

Amendment numbered 11: That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment, \$15,000; and the Senate agree to the same.

Amendment numbered 16: That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment, \$36.

Amendment numbered 18: That the House recede from its disagreement to the amendment of the Senate numbered 18, and agree to the same with an amendment, \$142.

Amendment numbered 20: That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment, \$34.

Amendment numbered 21: That the House recede from its disagreement to the amendment of the Senate numbered 21, and agree to the same with an amendment, \$213.

Amendment numbered 23: That the House recede from its disagreement to the amendment of the Senate numbered 23, and agree to the same with an amendment, \$34.

Amendment numbered 28: That the House recede from its disagreement to the amendment of the Senate numbered 28, and agree to the same with an amendment, \$34.

Amendment numbered 31: That the House recede from its disagreement to the amendment of the Senate numbered 31, and agree to the same with an amendment, \$34.

The committee of conference report in disagreement amendments numbered 1, 3, 7, 8, 9, 14, 17, 22, 24, 30, and 37.

TOM BEVILL,  
EDWARD P. BOLAND,  
JOHN M. SLACK,  
LINDY (MR. HALE) BOGGS,  
BILL CHAPPELL,  
JOHN W. JENNETTE, Jr.,  
JULIAN C. DIXON,  
JAMES I. WHITTEN,  
JOHN T. BYRNE,  
CLAIR W. BURGESS,  
VIRGINIA SMITH,  
SILVIO O. CORTE  
(except as to amendments Nos. 18, 30, and 37).

Managers on the Part of the House.

J. BENNETT JOHNSON,  
JOHN C. STENNIS,  
WARREN G. MAGNUSON,  
ROBERT C. BYRD,  
EARNST F. HOLLINGS,  
WALTER D. HUDDESTON,  
QUENTIN N. BURDICK,  
JIM SASSER  
(except amendment No. 30).

DENNIS DECONCINI,  
MARK O. HATFIELD,  
MITTON R. YOUNG,  
ROHARD S. SCHWEIKER,  
HENRY BELMONT,  
JAMES A. MCCLEURE,  
JAKE GARR,  
HARRISON SCHMITT,  
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4388) making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes submit the following joint statement to the House and the Senate in explanation of the effects of the action agreed upon by the managers and recommended in the accompanying conference report.

Report language included by the House which is not changed by the report of the Senate, and Senate report language which is not changed by the conference while repeating some report language for emphasis, does not intend to negate the language referred to above unless expressly provided herein.