

# ISSUE BRIEF

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## The House Energy and Water Appropriations Bill Misses the Mark

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This week, the Energy and Water Development appropriations bill is likely to receive floor consideration. One of 12 appropriations bills providing discretionary funding for the federal government, this bill provides funding for projects under the direction of the U.S. Army Corps of Engineers (Corps); the Department of the Interior's Bureau of Reclamation; the Department of Energy (DOE); and the Nuclear Regulatory Commission (NRC).

The Energy and Water Development appropriations bill provides \$35.4 billion in budget authority, which is an increase of 3.5 percent, \$1.2 billion above the current level and \$633 million below President Obama's request. While the bill includes a number of policy riders, the increase in spending is excessive.

A number of programs with poor track records or missions well beyond the scope of the federal government continue to receive funding, and some even receive increased funding. In other cases, the bill reduces spending for programs that should be eliminated.

### Army Corps of Engineers

The Army Corps of Engineers is an agency within the Department of Defense that carries out both domestic and military projects, particularly with regard to water-related construction or facilities.

The bill provides the Corps \$5.6 billion for fiscal year (FY) 2016, which is \$142 million more than the FY 2015 level and \$865 million more than the President requested.

For over 200 years, the Corps has played a major role in managing the nation's water infrastructure. However, existing project developments as well as budget realities reflect a need for the Corps to scale back its mission to its original intent: managing critical water infrastructure. With the nation's waterways largely built, the Corps' focus needs to be on management and rehabilitation of its existing estate.

The bill prevents elimination of or reduced spending on projects currently authorized by the Corps. Unfortunately, the Corps has been facing years of planning problems, including an unsustainable backlog of authorized projects. According to the Congressional Research Service (CRS), the Corps currently has a construction backlog in amounts of \$20 billion to \$80 billion.<sup>1</sup> Each project should be assessed for termination.

**Recommendation.** Appropriations should not be provided for new projects or new priorities that will only stretch the Corps further. With billions of dollars in maintenance backlogs looming, Congress should focus the Corps' limited dollars on what counts: prioritization of existing water infrastructure projects, decommissioning underutilized projects, and divesting certain Corps responsibilities to the states and local communities.

### Department of the Interior

The Energy and Water Development bill provides partial funding for the Department of the Interior, with a majority of this funding directed to the

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TABLE 1

## House Energy and Water Development Appropriations

DISCRETIONARY BUDGET AUTHORITY,  
 IN MILLIONS OF DOLLARS

FY 2015 Enacted	President's FY 2016 Request	FY 2016 302(b)	FY 2016*
\$34,202	\$36,036	\$35,403	\$35,403

\* Excludes emergency funds.

**Note:** The congressional budget resolution passed by Congress is the mechanism for setting the overall spending caps, also known as the 302(a), as required by the Budget Control Act. The Appropriations Committee is responsible for subdividing the 302(a) allocations among the 12 appropriations subcommittees through what is known as the 302(b) suballocations. Each subcommittee is prevented from exceeding that respective 302(b) suballocation. The FY 2016 spending caps, consistent with the Budget Control Act, amounts to \$1.017 trillion.

**Source:** U.S. House of Representatives, Committee on Appropriations, <http://appropriations.house.gov/> (accessed April 29, 2015).

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Bureau of Reclamation. The Bureau of Reclamation is typically responsible for building and operating dams, canals, and hydroelectric plants in the western states. It is also the largest wholesaler of water in the nation.

The bill provides \$1.1 billion for FY 2016, \$35 million below FY 2015 funding and \$1.4 billion below the budget request. But as with the Army Corps of Engineers, the necessary dam infrastructure in the U.S. is mostly constructed. The Bureau continues to provide water to the western states at artificially low prices, while the agency's policies continue to create economic distortion and environmental damage.

**Recommendation.** With so many existing projects underfunded and the system in dire need of reform, the Bureau of Reclamation should not be receiving funds for new projects or additional subsidies. Instead, Congress should revamp the cost-sharing requirements to require more investment from water users and revisit federal policy around

water rights, water transfers, and water pricing in the West.

### Department of Energy

The DOE is provided \$29 billion in budget authority for FY 2016, more than \$1 billion above the FY 2015 level and nearly \$1 billion below the President's request. This amount includes \$12.3 billion, nearly \$1 billion above the current level, for the National Nuclear Security Administration, the agency responsible for the nation's nuclear weapons.

**Energy Efficiency and Renewable Energy, Fossil Energy, and Nuclear Energy.** The bill provides \$1.66 billion for Energy Efficiency and Renewable Energy (EERE), \$279 million below FY 2015. While the cuts move EERE's budget in the right direction, they do not go nearly far enough.

The DOE should not use taxpayer dollars to address cost reduction, risk reduction, or energy savings for any energy source or technology. These are activities the private sector can and will undertake if the investment is seen as worth the risk. Such wasteful spending is not unique to the EERE; Congress should eliminate similar spending activities for oil, nuclear, or conventional electricity sources such as coal and natural gas. Instead, the bill recommends increasing spending for many fossil fuel programs.

**Recommendation.** Congress should eliminate spending on specific technologies aimed at commercialization and cost reduction.

### Yucca Mountain

The bill provides \$200 million to complete the licensing process of the Yucca Mountain nuclear waste storage facility: \$150 million for the DOE and \$50 million for the NRC. Following the Obama Administration's example, the NRC did not request funds to finish what remains of the licensing process, and the DOE only requested funds to close Yucca Mountain and begin implementing a new plan.<sup>2</sup>

This bill calls for sound policy in clearly moving forward with funding to finish the Yucca Mountain licensing process and prohibits the use of funds for any alternative plan.

1. Mark Holt, "Energy and Water Development: FY2015 Appropriations," Congressional Research Service, January 30, 2015.  
 2. Katie Tubb, "FY 2015: Yucca Mountain Circus Continues," Daily Signal, May 9, 2014, <http://dailysignal.com/2014/05/09/fy-2015-yucca-mountain-circus-continues/>.

TABLE 2

## Energy and Water Development Appropriations: FY 2015 and FY 2016

DISCRETIONARY BUDGET AUTHORITY, IN MILLIONS OF DOLLARS	FY 2015 (Enacted)	FY 2016	Nominal Change	Percent Change
Title I, Department of Defense—Civil (Corps of Engineers)	\$5,455	\$5,597	\$142	2.6%
Title II, Department of Interior (Bureau of Reclamation)	\$1,140	\$1,104	-\$36	-3.2%
Title III, Department of Energy	\$27,917	\$28,985	\$1,068	3.8%
National Nuclear Security Administration (NNSA)	\$11,407	\$12,329	\$922	8.1%
Energy Research	\$10,233	\$10,297	\$64	0.6%
Energy Efficiency and Renewable Energy (EERE)	\$1,937	\$1,658	-\$279	-14.4%
Title IV, Independent Agencies	\$269	\$325	\$56	20.8%
Subtotal	\$34,781	\$36,011	\$1,230	3.5%
Offsetting adjustments	-\$578	-\$608		
<b>Total</b>	<b>\$34,203</b>	<b>\$35,403</b>	<b>\$1,200</b>	<b>3.5%</b>

Source: U.S. House of Representatives, Committee on Appropriations, <http://appropriations.house.gov/> (accessed April 29, 2015).

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### Policy Riders

The bill would influence policy in a number of important ways. Many sections of the bill would prohibit implementation of problematic federal regulations.

- Clean Water Act (CWA) and “fill material” regulation.** Section 104 of the bill would prohibit the Corps from redefining “fill material” or “discharge of fill material” under the CWA regulations. There is concern that the Corps and the Environmental Protection Agency (EPA) could redefine the terms in a manner that would require mining companies to secure Section 402 permits as opposed to Section 404 permits for various mining activities.<sup>3</sup> While there are certainly obstacles to securing Section 404 permits, Section 402 per-

mits are even more stringent, and industry groups have argued that it would effectively prohibit numerous mining activities.<sup>4</sup> Existing regulations provide more than enough environmental protection without imposing unnecessary restrictions that could harm the mining industry and the communities that benefit from mining operations.

- Waters of the United States rule.** Section 105 of the bill would prohibit the Corps from using funds to implement the proposed “waters of the United States” rule.<sup>5</sup> This controversial rule, published by both the Corps and the EPA, would greatly expand the types of waters that could be covered under the CWA from most ditches to waters that are actually dry land most of the time.<sup>6</sup> A final rule could be published at any time, possibly within

3. Laura Barron-Lopez, “COP Omnibus Rider Keeps Administration from Tightening Mining Rule,” *The Hill*, January 16, 2014, <http://thehill.com/policy/energy-environment/195621-gop-rider-in-omnibus-bill-would-tighten-rules-on-waste> (accessed April 28, 2015). See also Kate Sheppard, “Appropriations Bill Would Block New Mountain Removal Fill Rules,” *The Huffington Post*, [http://www.huffingtonpost.com/2014/01/14/omnibus-coal-mining\\_n\\_4598628.html](http://www.huffingtonpost.com/2014/01/14/omnibus-coal-mining_n_4598628.html) (accessed April 28, 2015).

4. Claudia Copeland, “Controversies over Redefining ‘Fill Material’ Under the Clean Water Act,” Congressional Research Service *Report for Congress*, August 21, 2013, <http://www.fas.org/sgp/crs/misc/RL31411.pdf> (accessed April 28, 2015).

5. *Federal Register*, Vol. 79, No. 76 (April 21, 2014), pp. 22188-22274, <http://www.gpo.gov/fdsys/pkg/FR-2014-04-21/pdf/2014-07142.pdf> (accessed April 27, 2015).

6. Daren Bakst, “What You Need to Know About the EPA/Corps Water Rule: It’s a Power Grab and an Attack on Property Rights,” Heritage Foundation *Backgrounder* No. 3012, April 29, 2015, <http://www.heritage.org/research/reports/2015/04/what-you-need-to-know-about-the-epacorps-water-rule-its-a-power-grab-and-an-attack-on-property-rights>.

the next few months. As a result, Congress needs to act soon.

- **Dredge-and-fill permits and the “recapture” provision.** Section 106 of the bill would prohibit the Corps from denying Section 404 dredge-and-fill permits for normal farming activities, construction of stock ponds, and other activities. Under the CWA, Section 404 permits are not required for such activities. However, there are exceptions, including under what is referred to as the “recapture” provision.<sup>7</sup> In recent testimony, the American Farm Bureau Federation explained this provision:

[W]here discharges of dredged or fill material are used to bring land into a *new use* (e.g. making wetlands amenable to farming) and *impair the reach* or *reduce the scope* of jurisdictional waters, those discharges are not exempt. The Agencies have broadly interpreted the “recapture” provision to apply even when the “new use” is simply a change from one crop to another crop.<sup>8</sup>

By limiting the application of the recapture provision, Congress can help to prevent the gutting of the exemptions that are critical for farmers and ranchers.

- **National Ocean Policy Initiative.** The bill prohibits the use of any funds to implement President Obama’s National Ocean Policy Initiative executive order. The executive order came shortly after British Petroleum’s oil spill in the Gulf of Mexico and is an incremental move toward greater, unnecessary authority over oil and gas permits for offshore drilling.

## Conclusion

The House Energy and Water Development appropriations bill should be applauded for including policies that limit the scope of government. However, this bill does not go far enough in reducing spending, ultimately increasing the size and scope of government. In addition, it continues to fund programs, such as Energy Efficiency and Renewable Energy and other energy research programs, that have produced questionable results and remain outside the scope of the federal government’s responsibility. The bill has flaws but is headed in the right direction in some areas. Members of the House should improve the bill with lower amended spending levels.

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7. Specifically: “Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced.” 33 U.S. Code § 1344 (f)(2), <https://www.law.cornell.edu/uscode/text/33/1344> (accessed April 30, 2015).

8. Ellen Steen, “Statement of the American Farm Bureau Federation Regarding: The Definition of ‘Waters of the United States’ Proposed Rule and Its Impact on Rural America,” testimony before the Subcommittee on Conservation, Energy, and Forestry, Committee on Agriculture, U.S. House of Representatives, March 3, 2015, <http://agriculture.house.gov/sites/republicans.agriculture.house.gov/files/images/Steen%20Testimony.pdf> (accessed April 29, 2015). Emphasis in original.