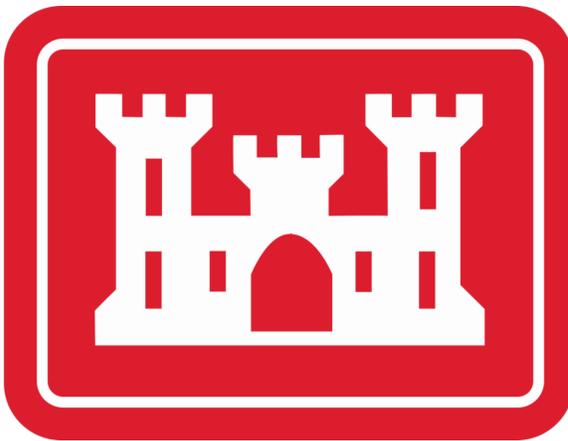




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Corps funding bill is on the move



On July 6, 2020, the House Committee on Appropriations released the draft FY2021 Energy and Water and Related Agencies Appropriations (E&W) bill for review. The E&W bill is one of twelve appropriations bills that fund federal government functions that Congress must address on an annual basis. The E&W Subcommittee markup will occur today, July 7th at 12:00pm Pacific. The full Appropriations Committee may then take up the bill later this week.

Included in the E&W bill are the proposed appropriations for the U.S. Army Corps of Engineers Civil Works program, the U.S. Department of Energy, the Bureau of Reclamation, and other related agencies. The Corps would receive \$7.63 billion under this proposal for FY2021. This figure is \$1.7 billion above the Administration's budget request. In order to help with COVID-19 recovery, \$17 billion in emergency funding is also proposed as part of the measure. The project-level tables for each state should be available shortly, at which time PNWA will have more information about Northwest navigation infrastructure funding.

- Investigations: Seven new study starts are allowed under investigations. The E&W proposal provides the same amount of funding as enacted in FY2020 which was \$151 million, which is \$48 million above the Administration's request. Emergency funding of \$110 million for feasibility studies is also proposed in the bill.
- Construction: Seven new construction starts are also allowed under the proposal and \$2.6 billion is allotted to construction. This is \$447 above the president's request. Additionally, under the COVID-19 related provisions, the

measure allots \$10 billion to expedite navigation, flood protection, and environmental restoration projects.

- Operations and Maintenance (O&M): The E&W measure allocates \$3.84 billion to O&M. This is \$48 million above FY2020 and \$1.8 billion above the Administration's budget request. Additionally, there would be \$5 billion in O&M for emergency funding.
- Harbor Maintenance Trust Fund (HMTF): HMTF is proposed at \$1.68 billion in the E&W measure. This represents a \$50 million increase over FY2020 and exceeds the Administration's budget request by \$665 million.
- Coastal Flood Control: The measure proposes \$35 million for coastal flood control and coastal emergencies.
- Regulatory Program: The proposed measure includes \$205 Million for the Corps' Regulatory Program. While this is a decrease of \$5 million from FY2020, it is still \$5 million above the static \$200 million the Corps Regulatory Program had previously received for several years.
- Cost Share Agreements: Project cost share agreements are expected to be signed by September 30, 2021. This can sometimes be tight turnaround timeframe.
- Southern Border Provision: The bill would prevent funding from the Corps Civil Works program from being diverted to border security infrastructure or a wall on the southern U.S. border.

We will continue to monitor the appropriations process and report on any progress as information becomes available.

Climate Smart Ports Act

As previously mentioned, Senator Jeff Merkley (D-OR) introduced the Climate Smart Ports Act of 2020 which is the Senate companion version of a bill previously introduced in the House of Representatives by Rep. Nanette Barragan (D-CA). Senator Merkley values the input and relationship with PNWA and asked for PNWA's endorsement of this legislation.



Some key points in the bill include:

- Creation of \$1 Billion per year program to assist ports in acquiring zero emissions cargo handling equipment, port harbor craft, drayage trucks, etc.
- Additional \$50 Million per year for the Diesel Emissions Reduction Act (DERA) to reduce port emissions.
- If the federal grant funds under this program are used, local prevailing wage for work performed is required and project labor agreements and local hiring are

encouraged. Also, fully automated zero emissions equipment cannot be purchased with the grant funds.

- Equipment manufactured in the United States will be given preference.
- 25% of the funding is set aside to target non-attainment areas for Clean Air Act pollutants.

PNWA staff polled our general membership for feedback and questions and then discussed the information with Senator Merkley's staff. They answered the questions promptly and will discuss some of the suggestions with committee staff and their counterparts in the House. Senator Merkley's staff was particularly interested in the suggestions related to adding flexibility for rural communities seeking the grant.

After seeking input from the general membership and the PNWA Board of Directors, PNWA is pleased to announce that the association endorses Senator Merkley's Climate Smart Ports Act.

Hydropower Clean Energy Future Act



As you will recall from the energy section of PNWA's Policies and Projects document, our membership recommends that "Federal agencies, Congress and the states should recognize hydropower as a 'qualifying' renewable energy, specifically as an eligible renewable resource that is used to integrate other renewable resources into the transmission system." Additionally, PNWA supports maintaining and enhancing "regional hydropower capabilities to reduce greenhouse gas emissions". Recently, two Members of the Pacific Northwest Congressional Delegation proposed legislation that addresses these priorities.

On July 2, 2020, Representative Cathy McMorris Rodgers (R-WA) introduced the Hydropower Clean Energy Future Act, co-sponsored by Representative Dan Newhouse (R-WA), to modernize the hydropower licensing process and to promote next generation hydropower projects. The bill makes a strong statement to protect existing hydropower resources so existing Federal hydropower dams should be protected as an asset and the bill also promotes next generation hydropower to address climate change.

The legislation would modify Section 203 of the Energy Policy Act of 2005 (42 U.S.C. 15852) to add hydropower as a renewable energy source for all federal programs and gives each department/agency 180 days to update all their regulations, policies, reports, etc. to reflect adding hydropower to the list of renewable energy resources. The Federal Energy Regulatory Commission (Commission) will be the lead agency to seek federal authorizations in compliance with NEPA, state and local environmental reviews. The final Commission licensing decision is required within 2 years after the date the Commission deemed the project application for license complete. It also proposes to amend Section 405 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2705) to exempt new hydropower projects of 10MW or less from requirements including licensing in Part I of the Federal Power Act. For existing licensed hydropower projects that are 15MW or less, those projects can apply for the

exemption too as long as the Commission determines the project will not cause jeopardy to an ESA listed species or destroy or adversely modify designated critical habitat. If an exemption is granted, the project shall be categorically exempt from review under the National Environmental Policy Act (NEPA) of 1969. The Commission has 90 days to make a determination on the exemption and that includes the public comment period.

The bill seeks to expedite licensing for next generation hydropower energy and requires issuance of a license within 3 years of applicant signaling their intent to apply for a license. It spells out a process to rely on existing information and data, eliminate unnecessary meetings and paperwork, and consider existing structures as part of the environmental baseline. The Commission has 90 days to consult with a task force (made up of Federal and State agencies, Indian tribes, and licensee), issue the rule, and seek public comments. The Commission has 60 days to determine if an applicant for a new project or existing project meets the definition of “next generation” hydropower.

The Commission, in consultation with the Secretary of Energy, is required to submit a report to the Senate Energy and Natural Resources Committee and House Energy and Commerce Committee within 270 days of enactment on the barriers to development and proper compensation of conventional, storage, conduit, and emerging hydropower technologies and recommendations to address these barriers. The Commission is required to convene a technical conference and seek public input as part of the report process.

Not later than 180 days after the date of enactment of this section, the Commission, in consultation with appropriate Federal and State agencies and after providing notice and opportunity for public comment, shall issue a final rule establishing a process for setting a schedule for the license application review. The Commission, agencies and applicant must stick to the schedule and if a Federal or State agency cannot meet the deadline, then 30 days before the deadline, they must apply for a one-time only 90 day extension and must update the project schedule to account for the extension. The applicant can apply for extensions as needed to address unforeseen issues and facilitate settlement of issues, etc.

If the Federal or State agency fails to complete its disposition of a Federal authorization in accordance with the schedule (including any extensions) then \$5k of unobligated funds of the Federal agency is rescinded. If it is a State agency, then \$5k of the Federal fish and wildlife or water resources program funds will be rescinded. The penalty is another \$5k for each additional week the Federal authorization is late up to a maximum of \$100k. Additionally, Federal and State agencies are forbidden from reprogramming funds to make up for the loss and cannot report the loss as an administrative cost either.

It also spells out a process for resolving conflicting or inconsistent terms and conditions. The Commission has 90 days to hold a technical conference to achieve resolution. If resolution is not achieved the matter is referred to OMB in consultation with the Chair of CEQ to mediate a resolution and will provide the license applicant and other interested parties with the opportunity to participate in the process or OMB and CEQ can refer the matter to the President.

As previously reported, the House Democrats passed a \$1.5 trillion infrastructure package called the Moving Forward Act. It covers a wide variety of infrastructure including transportation, transit, water and wastewater, housing, health care, broadband, schools, etc. It includes other bills, such as the surface transportation reauthorization known as the



“Investing in a New Vision for the Environment and Surface Transportation (INVEST) in America Act.” It also includes provisions for addressing climate change, resiliency, innovation, environmental restoration, workforce training, and investment in rural communities and tribes. The bill provided substantial funding for the U.S. Army Corps of Engineers as well.

The Moving Forward Act includes items of note for PNWA members:

- Full use of the Harbor Maintenance Trust Fund annually and additional authority to utilize the surplus in the fund – now estimated at approximately \$10 billion.
- Inland Waterways - \$10 billion to the Corps’ Construction account to address the backlog of authorized water resources development projects. At least \$3 billion of the \$10 billion must be spent on the Inland Waterways System, and \$500 million for water-related environmental infrastructure projects. It also provides an additional \$5 billion to address the Operations and Maintenance backlog at current Corps projects.
- Broadband – In addition to funding to states for digital equity programs, the bill authorizes \$80 billion for competitive bidding systems to build broadband infrastructure. 75% of the \$80 billion is for broadband deployment in unserved areas (below 25/25 Megabits per second) and areas with low-tier service (between 25/25 and 100/100 Mbps). 25% of the \$80 billion will be distributed among states, by population, for competitive bidding for broadband deployment in unserved areas, areas with low-tier service, and to unserved anchor institutions (speeds less than 1 Gigabit per 1,000 users).
- FAA Airport Improvement Program (AIP) – Authorizes \$4 billion from the Airport and Airway Trust Fund for the AIP for fiscal years 2021-2025.
- Supplemental Airport Funding – Authorizes supplemental funding for airports in the following amounts: \$3 billion for fiscal year 2021; \$3.25 billion for fiscal year 2022; \$3.5 billion for fiscal year 2023; \$3.75 billion for fiscal year 2024; and \$4 billion for 2025. Directs grant amounts to be distributed based on airport passenger enplanement levels, with 12% in total set-asides for cargo airports, general aviation, reliever, and nonprimary commercial service airports, and airport projects that increase climate resiliency, reduce greenhouse gas emissions, mitigate airplane noise, and other goals.
- Diesel Emissions Reduction Act (DERA) – Reauthorized at \$500 million annually through fiscal years 2021-2025.
- LNG Rail Transport - Requires DOT to rescind any authorization for the

transport of liquified natural gas by rail tank car issued before the date of enactment. Also prohibits DOT from issuing a regulation or special permit to authorize the transport of LNG by rail tank car until DOT conducts a further safety evaluation.

- Climate Smart Ports Act – Provides \$500 million annually in grants to ports for acquisition of zero emissions cargo handling equipment to improve air quality through fiscal year 2030.
- Puget Sound Coordinated Recovery – \$250 million is authorized for a new EPA Program Office for Puget Sound, Washington, for fiscal years 2021-2025.
- Columbia River Basin Restoration – Grant program to address toxics in the Basin would be reauthorized at \$30 million annually through fiscal year 2025.

Without substantial changes, it is highly unlikely the bill will pass in the Senate. As always, the big question is how to pay for it. With the Senate's focus on the National Defense Authorization Act, Surface Transportation Reauthorization, WRDA, appropriations, and a potential additional round of COVID-19 relief funding, the Senate may not be in a rush to take up such an expansive and expensive infrastructure bill.

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