



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 11, 2003
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 1424 – Energy and Water Development Appropriations Bill, FY 2004

(Sponsors: Stevens (R), Alaska; Byrd (D) West Virginia)

The Administration supports Senate passage of the FY 2004 Energy and Water Development Appropriations Bill, as reported by the Appropriations Committee.

While preliminary scoring indicates the bill exceeds the request by over \$700 million, the Administration applauds the Committee for reporting this bill in a timely manner and looks forward to working with the Congress to ensure that the FY 2004 appropriations bills ultimately fit within the top line funding level agreed to by both the Administration and the Congress. The President supports a discretionary spending total of \$784.7 billion, along with advance appropriations of \$23.2 billion for FY 2005 – in accordance with his Budget and the FY 2004 Congressional Budget Resolution. Only within such a fiscal environment can we encourage increased economic growth and a return to a balanced budget. The Administration looks forward to working with the Congress to ensure that its priorities are met within that overall total.

Additional Administration views regarding the Committee's version of the bill are:

Nuclear Waste Repository

The Administration strongly objects to the Committee's \$166 million reduction to the request for a nuclear waste repository at Yucca Mountain, Nevada. The reduction would exacerbate the adverse consequences of the FY 2003 funding shortfall of \$134 million and would cause up to a year's delay in the scheduled December 2004 submission of the repository construction license application. This reduction also would further defer critical national and Nevada transportation system development activities needed for repository operational readiness and would postpone initial operations beyond the current target of 2010. We urge the Senate to restore funding to the requested level for this critical program.

Hydrogen Fuel Initiative

The Administration applauds the Committee for fully funding the President's Hydrogen Fuel

Initiative, which seeks to make our air cleaner and our country less dependant on foreign sources of energy. However, we are concerned that the bill provides \$28 million, seven times the requested amount, for hydrogen production from nuclear energy, while reducing funding for other key hydrogen production, storage, and infrastructure technologies. The bill also directs funding to several unrequested research activities and projects. We urge the Senate to provide the Administration flexibility to allocate program funds as requested.

Army Corps of Engineers – Civil Works

The Administration commends the Committee for focusing on completing existing projects, consistent with the President's FY 2004 Budget and reducing the backlog by deauthorizing a number of inactive Corps construction projects, consistent with the Administration's principles for improving the Corps' program performance. We are concerned, however, that the bill includes excessive funding for studies and design of potential new projects, which would add to the backlog and could unrealistically raise sponsor expectations for near-term construction starts.

The FY 2004 Budget identified eight water projects as the highest priorities now under construction by the Corps, based on their very high net economic or environmental return to society relative to their cost. Unfortunately, the bill does not provide the requested level of funding for seven of these key projects, and the Administration urges the Senate to fully fund the request.

Recent legal action and analysis require a higher funding level for the Missouri River Fish and Wildlife mitigation project to increase habitat creation and perform other work to benefit for endangered and threatened species and maintain all congressionally authorized purposes of the river. The Administration will work with the Congress to address this important initiative.

Such high priority projects could be funded by redirecting the bill's funding for lower-priority projects that fall outside the main mission of the Corps. For example, the bill allocates about \$35 million to combined sewage overflow, drinking water, wastewater treatment, and other local environmental infrastructure projects, which fall outside the main mission of the Corps. In addition, it provides over \$150 million to other work that raises policy concerns, such as directing funds for construction of the Delaware River Main Channel, the Yazoo and Grand Prairie pumping plants, and the Dallas Floodway Extension.

The Administration is concerned that the bill provides only \$40 million of the requested \$70 million for the Flood Control and Coastal Emergency program. The request is necessary to ensure the Corps will have adequate funds available to respond to flooding emergencies without disrupting funding for its other programs. We urge the Senate to fully fund the ten-year average obligations for the program as requested.

The Senate is urged to provide \$7 million requested for an independent audit of Civil Works program financial statements, which would be preferable to the Committee's direction that the General Accounting Office conduct the audit.

The Administration objects to statutory language purporting to require that any recommendations for a national economic development plan for a beach nourishment project at Kihei Beach, Maui, Hawaii, be accepted regardless of its findings. To the extent this provision would restrict the ability of the Corps, the Department of the Army, or the Administration to determine whether to recommend a project for construction, it would raise constitutional concerns under the separation of powers principle.

Bureau of Reclamation

The Administration is concerned that the bill does not fund the \$34 million FY 2004 payment for the settlement of *Sumner Peck Ranch et al. v. Bureau of Reclamation*. If it is determined that the bill would cause payments to be made from the Judgment Fund, the cost will be scored to the bill.

The Administration urges the Senate to restore funding for the Department of the Interior's Western Water Initiative and allow the Department to implement the initiative according to its integrated, balanced plan rather than through the congressionally directed projects in the Committee bill. We are also concerned that the Committee did not fully fund the CALFED program. Certain CALFED activities can proceed under existing authorities in the absence of program authorization, and we urge the Senate to restore funding for this important project at the requested level of \$15 million.

The Administration is concerned about Section 205 of the bill that would overrule the recent Circuit Court decision in *Silvery Minnow v. Keyes*. The provision could create obstacles for the Secretary of the Interior in meeting Endangered Species Act requirements contained in the March 2003, Biological Opinion regarding operations of the Middle Rio Grande project.

Department of Energy

The Administration appreciates the Senate's support for the National Nuclear Security Administration's (NNSA) Weapons Activities and responsible stewardship of the Nation's nuclear stockpile. Full funding for these programs, especially for Advanced Concepts Research, the Robust Nuclear Earth Penetrator, Test Readiness Activities to accelerate the timeframe for conducting nuclear tests, and plutonium pit manufacturing and certification, will help lay the foundation for transforming the Nation's Cold War era nuclear stockpile into a modern deterrent suited for the 21st Century. The Administration, however, objects to unrequested additions and earmarks to its NNSA program because they disrupt a balanced, programmatically-based budget and deny resources for higher priorities in the President's NNSA Budget, such as the Inertial Confinement Fusion and Secure Transportation Asset programs.

The Administration appreciates Congress' support for the Environmental Management reform initiative. Consistent with the Department's accelerated cleanup plans, section 310 of the bill would significantly improve disposal operations at the Waste Isolation Pilot Plant in New Mexico and section 311 would allow cost-effective, commercial disposal of waste currently stored at the Fernald site in

Ohio. We are concerned, however, that the bill includes funding reductions and numerous earmarks that would effectively reduce resources for cleanup activities by over \$70 million. We urge the Senate to eliminate these directives and restore the requested funding in order to continue the crucial transformation of this program.

The Administration objects to the bill's lack of funding for the President's National Climate Change Technology Initiative competitive solicitation program. This program is a key component of the President's strategy to fund innovative technologies that can significantly reduce greenhouse gas emissions, and we urge the Senate to fully fund the initiative.

Funds for the high-priority activities noted above could be reallocated from the bill's congressionally-directed spending for activities that are not consistent with the budget request, such as "energy-water supply technologies" in the Office of Science, and \$17 million for an unrequested energy supply infrastructure program.

The Administration opposes the Committee's action placing energy assurance activities in the proposed Office of Electricity Reliability. The Office of Energy Assurance serves an important homeland security function as the departmental lead working with all energy infrastructure sectors, not just the electricity sector.

Constitutional Concerns

The Administration objects to section 303 of the bill and will interpret this provision to require only notification to Congress, since any other interpretation would contradict the Supreme Court ruling in *INS v. Chadha*.

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