

House Spending Bills Freeze FY21 Water Infrastructure Funding at FY20 Levels

By Jeff Davis



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The House Appropriations Committee has been releasing the text of draft appropriations bills for fiscal year 2021 every two hours this week, and the bills that fund the Army Corps of Engineers water resources program and the Environmental Protection Agency's water infrastructure grant programs were released yesterday. (7/9/2020 *addendum*: The draft bill was approved in subcommittee by voice vote later on July 7 and is scheduled to be considered by the full Appropriations Committee at 1 p.m. on Monday, July 13.)

Both bills largely freeze water infrastructure funding for 2021 in the regular budget at around the enacted fiscal year 2020 levels (while rejecting large cuts proposed by the Trump Administration). But they also include much more money in the back of each bill designated as an off-budget emergency, subject to a type of line-item-veto by the President.

This is largely a consequence of the two-year discretionary spending totals for the fiscal 2020-2021 biennium enacted in the Bipartisan Budget Act of 2019. Under that law, the ceiling on total non-defense discretionary appropriations (excluding the ever-growing list of cap work-arounds) rose by \$19.5 billion in 2020 (versus the FY 2019 cap), to \$666.5 billion, but the cap only increases by an additional \$5 billion in 2021, to \$671.5 billion. And it appears that the lucky programs that will get some of that \$5 billion non-defense increase will not include water infrastructure programs.

Corps of Engineers. The [draft Energy and Water Development appropriations bill](#) for 2021 provides a total of \$7.63 billion in appropriations for the Corps' "civil works" program in 2021, which is an ever-so-slight \$21.1 million decrease from the 2020 enacted level. This is, however, a \$1.66 billion increase over the Trump Administration's request, and it is that increase above the request that the [press release](#) brags about.

Funding for Investigations (the project studies that might, some day, grow up to be new construction projects) is frozen at last year's \$151 million, with the bill directing the Corps to use some of that money to start seven new project studies during 2021. The Construction account sees a \$61 million reduction from last year and the Operations and Maintenance account gets a \$48 million increase over last year.

The Administration proposed to shift the cost burden of cleaning up old Energy Department nuclear weapons reactors from the Corps budget to the Energy Department budget, but the House bill keeps it within the Corps and gives it a \$10 million increase over last year.

The committee says that the total amount of funding provided from the Harbor Maintenance Trust Fund under all of the projects to be funded by the bill will be \$1.68 billion.

U.S. Army Corps of Engineers (Civil Works) Appropriations

(Thousands of dollars. We have changed the presentation of the FY21 request to assign HMTF and IWTF funding to individual accounts (Construction, MRS, O&M) as was done in prior years.)

	FY 2017 <u>Enacted</u>	FY 2018 <u>Enacted</u>	FY 2019 <u>Enacted</u>	FY 2020 <u>Enacted</u>	FY 2021 <u>Request</u>	FY 2021 <u>House</u>	FY21 House Bill vs. <u>vs. FY20</u> <u>Request</u>	
Investigations	121,000	123,000	125,000	151,000	102,635	151,000	0	+48,365
Construction	1,876,000	2,085,000	2,183,000	2,681,000	2,220,289	2,619,855	-61,145	+399,566
Mississippi River System	362,000	425,000	368,000	375,000	214,996	365,000	-10,000	+150,004
Operation and Maintenance	3,149,000	3,630,000	3,739,500	3,790,000	2,959,266	3,838,000	48,000	+878,734
Regulatory Program	200,000	200,000	200,000	210,000	200,000	205,000	-5,000	+5,000
Former Nuclear Sites Cleanup*	112,000	139,000	150,000	200,000	0	210,000	+10,000	+210,000
Flood Control / Coastal Emergencies	32,000	35,000	35,000	35,000	77,000	35,000	0	-42,000
Expenses	181,000	185,000	193,000	203,000	187,000	200,000	-3,000	+13,000
Office of the Asst. Secretary	4,764	5,000	5,000	5,000	5,000	5,000	0	0
Total, USACE (Civil Works)	6,037,764	6,827,000	6,998,500	7,650,000	5,966,186	7,628,855	-21,145	+1,662,669
<i>Portion of Appropriation from HMTF</i>	<i>1,301,000</i>	<i>1,399,000</i>	<i>1,550,000</i>	<i>1,630,000</i>	<i>1,015,000</i>	<i>1,680,000</i>	<i>50,000</i>	<i>+665,000</i>

*The Budget proposes that the Energy Department take over funding for cleaning up former nuclear weapons production sites - the Corps would still conduct the work, but DOE would then reimburse the Corps for all expenses - so no appropriations for this account are being requested in the Corps budget.

As is the case with other House bills for FY21, the spending increases that are not possible under the budget caps are provided separately via off-budget emergency appropriations, which face a much more difficult path to enactment. The \$43.5 billion in emergency appropriations are in title VI of the bill while the regular annual bill is titles I-V. For the Corps, this is essentially a "shadow budget" that dwarfs the regular Corps budget:

	Regular (Subject to <u>BCA Caps</u>)	Emergency (Exempt <u>from Caps</u>)
Investigations	151	110
Construction	2,620	10,000
Mississippi River System	365	875
Operation and Maintenance	3,838	5,000



Regulatory Program	205	50
Former Nuclear Sites Cleanup	210	500
Flood Control / Coastal Emergencies	35	415
Expenses	200	50
Office of the Asst. Secretary	5	0
Total, Corps of Engineers (Civil)	7,629	17,000

However, if the draft bill was presented to the President tomorrow (unchanged), he could sign it and approve the \$49.6 billion in regular funding and at the same time he could effectively veto all \$43.5 billion of the emergency funding. You might ask, how could he do that since a line-item veto is [unconstitutional](#)?

The answer lies in the back of the bill:

Sec. 607. Each amount designated in this Act by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available (or rescinded or transferred, if applicable) only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

“Shall be available” is budget-speak for “can be obligated and spent” – so all the emergency money in the bill can only be obligated in spent if the President signs a piece of paper like [this one](#) and sends it to Congress after he signs the bill into law. (See George W. Bush’s refusal to approve \$5.1 billion in such “contingent emergencies” in a bill he signed in August 2002 – page 1387, [here](#).)

EPA water infrastructure programs. The [draft Interior and Environment appropriations bill](#) for 2021 freezes funding for grants to states to capitalize state revolving funds (SRFs) at the fiscal 2020 enacted levels. Those are \$1.639 billion for Clean Water Act SRFs and \$1.126 billion for Safe Drinking Water Act SRFs. These levels are, however, \$782 million above those requested by the Trump Administration for 2021, so it is the requested levels cited in the [press release](#), not the 2020 levels.

Funding for the cleanup of abandoned service stations gets \$92.5 million in the House bill out of the Leaking Underground Storage Tank (LUST) Trust Fund, about \$600 million above the 2020 level. With that funding level, the LUST Trust Fund should have at least \$800 million left at the end of 2021 (even if FY 2020 and 2021 gas and diesel tax receipts drop by a full 40 percent each year because of COVID-19). The LUST Trust Fund is a popular target for Congress when it wants to take money from elsewhere to plus up the Highway Trust Fund, and LUST won’t miss \$800 million.

The situation regarding the EPA’s WIFIA loan and loan guarantee program is odd. The [fiscal 2020 appropriations act](#) directed EPA, OMB and Treasury to “jointly develop criteria for project eligibility for direct loans and loan guarantees authorized by the [WIFIA statute] that limit Federal participation in a

project consistent with the requirements for the budgetary treatment provided for in section 504 of the Federal Credit Reform Act of 1990 and based on the recommendations contained in the 1967 Report of the President's Commission on Budget Concepts..." The agencies were directed to print those standards in the *Federal Register* within 120 days of the enactment of the law, so that deadline was April 18, 2020.

The agencies did not publish the [standards](#) in the *Register* until last week (June 30) - more than two months after the deadline.

The Administration requested \$25 million for the program in 2021 - \$5 million for administrative expenses, and \$20 million for the subsidy cost of low-interest loans. The House bill provides zero new funding - but the program had \$116 million in unobligated balances at the start of fiscal 2020, plus the \$60 million in new appropriations made for FY 2020 (\$55 million for subsidy money and \$5 million for admin). The House bill, on page 95, rescinds "All unobligated balances from amounts appropriated in fiscal years preceding fiscal year 2020...for the cost of direct and guaranteed loans."

Then, on page 88 of the bill, it appropriates "an amount equal to the amount rescinded" as new funding for fiscal 2021 - but it also provides that none of the fiscal 2021 appropriations (which are all the pre-FY20 appropriations) shall be available for any loan or loan guarantee unless EPA and OMB certify in advance that the loan or guarantee complies with the new eligibility criteria from the June 30 *Federal Register* notice.

Unusually, the bill also reveals some behind-the-scenes drama - the bill orders EPA to "promptly provide" information on WIFIA applications to the Congressional Budget Office, if requested. This has to mean that EPA was refusing to share information with CBO in a timely manner, which was, in turn, preventing CBO from being able to score the spending rate of the program accurately.

The bill only provides an appropriation of \$1 million for WIFIA administrative expenses, not the \$5 million per year it has been receiving and which was requested.

Put all that together and this certainly looks like a smackdown by the appropriators of whoever has been running the WIFIA program at EPA.

The FY 2021 Budget for Major Infrastructure-Related EPA Programs

	Thousands of dollars.						FY21 House vs.	
	FY 2017 <u>Enacted</u>	FY 2018 <u>Enacted</u>	FY 2019 <u>Enacted</u>	FY 2020 <u>Enacted</u>	FY 2021 <u>Request</u>	FY 2021 <u>House</u>	FY20	Request
State and Tribal Assistance Grants								
Clean Water Act SRFs	1,393,887	1,693,887	1,694,000	1,638,826	1,119,778	1,638,826	0	+519,048
Safe Drinking Water Act SRFs	863,233	1,163,233	1,164,000	1,126,088	863,235	1,126,088	0	+262,853
Subtotal: Water SRFs	2,257,120	2,857,120	2,858,000	2,764,914	1,983,013	2,764,914	0	+781,901
WIFIA subsidy funding	10,000	63,000	68,000	55,000	20,000	0	-55,000	-20,000
Leaking Underground Storage Tanks	91,941	91,941	91,941	91,941	48,218	92,543	602	+44,325

As with the Energy and Water bill, the Interior/Environment bill contains an extra title at the back with a bunch of emergency appropriations for infrastructure programs that, in this case, dwarfs the amount of money provided by the regular budget. However, the money only can come into existence if the



President signs that emergency designation piece of paper after he signs the bill. In millions of dollars:

	Regular (Subject to <u>BCA Caps</u>)	Emergency (Exempt <u>from Caps</u>)
Clean Water SRF Grants	1,639	6,355
Safe Drinking Water SRF Grants	1,126	3,855