

Energy and Water Bill, FY22
Full Committee Managers Package
August 4, 2021

Report Amendments

Senator Hyde-Smith – project account change

On page 31 of the report, in the “Corps of Engineers – Mississippi River and Tributaries; Operation and Maintenance” table, strike “Yazoo Basin, Delta Headwaters, MS” and associated amounts of “\$12,900,000” and insert that text and amounts on page 31 of the report under the heading “Mississippi River and Tributaries – Construction” table.

On page 32 of the report, in the “Corps of Engineers – Mississippi River and Tributaries; Operation and Maintenance” table, strike “Yazoo Basin, Upper Yazoo, MS” and associated amounts of “\$12,000,000” and insert that text and amounts on page 31 of the report under the heading “Mississippi River and Tributaries – Construction” table.

On page 31 of the report, in the “Corps of Engineers – Mississippi River and Tributaries – Construction”, insert at the appropriate place “Yazoo Basin, Yazoo Backwater Area, MS” and “20,750,000” under the heading “Committee Recommendation”.

On page 32 of the report, in the “Corps of Engineers – Mississippi River and Tributaries; Operation and Maintenance” table, under “Yazoo Basin, Yazoo Backwater Area, MS”, strike “\$21,477,000” and insert 727.

Senator Feinstein and Senator Kennedy – project account change

On page 36 of the report, in the “Corps of Engineers – Operation and Maintenance” table, strike “Chicago Sanitary and Ship Canal Dispersal Barriers, IL” and associated amounts of “12,948” and insert that text and amounts on page 20 of the report in the appropriate place under the heading “Illinois” in the “Corps of Engineers – Construction” table.

Senator Tester

On page 67 of the report, under “St. Mary’s Diversion Dam and Conveyance Works” strike “notes” through “non-reimbursable.” and insert “and urges Reclamation to continue working with local stakeholders to complete its ability to pay study for the rehabilitation of the St. Mary’s Diversion Dam. The Committee encourages Reclamation to find innovative methods to rehabilitate the Milk River Project without significant financial impacts for local stakeholders.”

Senator Feinstein and Senator Kennedy – Energy Storage crosscut

On page 75 of the report, last sentence, strike “\$119,000,000” and insert “80,000,000”

Senator Shaheen – Building Codes

On page 88 of the report, in the third full paragraph strike “\$10,000,000” and insert “\$20,000,000”

Senator Hoeven – Solid Oxide Fuel Cells

On page 103 of the report, at the end of the 6th full paragraph, insert:

“The Committee recognizes the importance of advancing solid oxide fuel cell systems, especially for distributed and central power generation electrolysis, combined heat and power, and storage applications.”

Senator Manchin and Senator Capito – Coal Communities Working Group

On page 103 of the report, at the end of the 5th full paragraph insert:

*“Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization.—*The Committee supports the Administration’s efforts to assist coal communities through their Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization which is led by the Department. The Committee directs the Department to include an itemization of funding for these activities in future budget submissions. Within available funds, the Committee also encourages the Department to allocate sufficient funds for the working group’s activities in fiscal year 2022.”

Senator Manchin – Ethane Study

On page 103 of the report, following the end of the 7th full paragraph, insert: *“Ethane Study.—*The Committee directs the Department to provide a status update and expected timeline for release on their congressionally requested report on ethane production and consumption trends no later than 30 days after the enactment of this bill.”

Senator Hoeven – Carbon Storage

On page 105 of the report, at the end of the third full paragraph, insert:

“Further, the Committee recognizes the successful work of the Regional Carbon Sequestration Partnerships (RCSPs) and the important role they play in supporting the research and development of carbon utilization and storage. The Committee recommends not less than \$20,000,000 for the work of RCSPs.”

Senator Manchin – Fossil loans

On page 120 of the report, following “elements,” insert the following -

“The Department is reminded that it does not have authority to redirect any appropriated loan authority for the Advanced Fossil Energy Projects solicitation.”

Senator Shaheen – Northern Border Regional Commission

On page 160 of the report, after “2018 Farm Bill.” insert:

“, provided that the funds support dedicated in-state resources focused on NBRC programs.

The Committee notes the importance of ensuring that infrastructure assets are designed, built and operated to account for the climate changes that may occur over their lifetime.

Therefore, the Committee directs the Commission to develop criteria for the prioritization of projects that demonstrate evidence of planning for climate resiliency, which will help reduce direct losses or indirect costs of disruption due to climate-related risks.

Senator Feinstein and Senator Kennedy – Section 506

On page 164 of the report, strike Section 506

Bill Amendments

Senator Feinstein and Senator Kennedy – project account change

On page 3 of the bill, line 17, strike “\$2,989,055,000” and insert “\$3,002,003,000” and make conforming report and table changes.

On page 5 of the bill, line 4, strike “\$4,695,745,000” and insert “\$4,682,797,000” and make conforming report and table changes.

Senators Feinstein and Senator Kennedy – Section 506

On page 73 of the bill, strike line 23 through page 74, line 7

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adopted by

Voice vote

Manager's Amendment – Agriculture

Bill and report language for Senator Heinrich regarding Agriculture B&F

Bill language for Chair Baldwin, Senator Shaheen, Senator Collins, and Senator Graham regarding horse slaughter

Bill language for Senator Heinrich regarding Southwest Border Regional Commission

Bill language for Senators Merkley, Heinrich, and Van Hollen regarding CDS

Report language for Senator Schatz regarding ARS

Report language for Senator Shaheen regarding AFRI

Report language for Senator Heinrich regarding APHIS

Report language for Senator Hyde-Smith regarding Risk Assessment

Report language for Senator Manchin regarding Water and Wastewater Pilot

Report language for Senator Manchin regarding Conflicts of Interest

Report language for Senator Durbin regarding Premium Cigars

Report language for Senators Merkley, Heinrich, and Van Hollen regarding CDS

Bill

On page 6 of the bill, line 17, strike “314,443,000” and insert “313,443,000.

On page 44 of the bill, line 25, strike “172,790,000” and replace with “172,690,000”

On page 45 of the bill, line 1, strike “83,790,000” and replace with “83,690,000”

On page 56 of the bill, line 10, strike “62,410,000” and replace with “62,510,000”

On page 56 of the bill, line 11, strike “2,410,000” and replace with “2,510,000”

On page 116 of the bill, strike line 1 starting with “If” through line 10 and replace with the following:

None of the funds made available by this Act may be used to pay the salaries or expenses of personnel—

(1) to inspect horses under section 3 of the Federal Meat Inspection Act (21 U.S.C. 603);

(2) to inspect horses under section 903 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note; Public Law 104-127); or

(3) to implement or enforce section 352.19 of title 9, Code of Federal Regulations (or a successor regulation).

On page 117 of the bill, between lines 4 and 5 insert the following:

SEC. 776. There is hereby appropriated \$1,000,000, to remain available until expended: *Provided*, That funds provided under this section shall be for grants to the Southwest Border Regional Commission (40 USC 15301 et seq.) for any Rural Community Advancement Program purpose as described in section 381E(d) of the Consolidated Farm and Rural Development Act, of which not more than 5 percent may be used for administrative expenses.

Report

On page 13 of the report, in two places strike “314,443,000” and insert “313,443,000”.

On page 27 of the report, insert the following paragraph before “Laboratory Staffing”

Invasive Pests.—The Committee continues to be concerned about the threats invasive pests pose to the Pacific region, notably to agriculture, the economy, environment, human health, and national security. The Committee directs ARS to continue its work with stakeholders in the Pacific region to assess options for combatting invasive pests. Options may include invasive pest biocontrol research and development facilities, including appropriate containment, rearing facilities, greenhouse quarantine, and additional agricultural research laboratory space and administrative space.

On page 37 of the report, after “Agriculture Technology” insert the following:

Agroacoustics.—The Committee recognizes the growing field of acoustics and the many positive impacts it may have in agriculture, particularly with respect to pest management. The Committee encourages AFRI to prioritize funding for agroacoustics in its basic and applied research program, as well as through the Food and Agricultural Science Enhancement grants.

On page 52 of the report, insert the following paragraph before “Huanglongbing Emergency Response”

Feral cattle in the Gila National Forest Wilderness Area.—The continued presence of feral cattle in the Gila National Forest Wilderness Area in New Mexico is negatively impacting both the ecosystem and recreational use of the area. The Committee directs the Animal and Plant Health Inspection Service – Wildlife Services and the United States Forest Service to address this issue as expeditiously as feasible.

On page 54 of the report, insert “, with a focus on reducing human-wildlife conflicts related to predators and beavers in the Western Region and Great Lakes States,” after “interested States” under the “Non-lethal Strategies” paragraph.

On page 55 of the report, before “Roseau Cane” insert the following:

Risk Assessment for Motile Aeromonad Septicemia (MAS).— The Committee is concerned about the risk of introduction of foreign animal diseases associated with the importation of farm-raised Siluriformes fish, such as catfish. Chronic infectious diseases such as MAS pose a significant economic risk to the long-term health of the domestic farm-raised fish industry, and the Committee notes that MAS outbreaks like those from virulent *Aeromonas hydrophila* in the U.S. have been linked back to farmed fish in China and Southeast Asia. The Committee also notes that, while FSIS regulates the processing of catfish under the Federal Meat Inspection Act, there are no USDA-Veterinary Services regulations for MAS, nor do FSIS regulations apply regarding MAS. The Committee is displeased with the length of time it has taken APHIS to complete its ongoing MAS risk assessment, and directs APHIS to complete it within 30 days of enactment of this Act.

On page 89 of the report, strike “172,790,000” in two places and replace with “172,690,000”

On page 89 of the report, in the table, strike “83,790” and replace with “83,690” and strike “172,790” and replace with “172,690”

On page 97 of the report, before “Technical Assistance” add the following:

Small-Scale Water and Wastewater Technologies Pilot Program.—The Committee recognizes that small and rural communities located within Central Appalachia can lack access to reliable water and sanitation because they do not have the capacity or population bases to support centralized water systems. Within the funds provided for the Rural Water and Wastewater Disposal program, the Committee encourages the Department to fund pilot projects intended to provide decentralized small-scale water and wastewater services to communities in distressed counties within Central Appalachia.

On page 98 of the report, in the table, strike “2,410” and replace with “2,510” and strike “102,182” and replace with “102,282”

On page 98 of the report, strike “102,182,000” and replace with “102,282,000”

On page 122 of the report, after “Complex Generics” insert the following:

Conflicts of Interest.—The Committee is concerned with reports on the FDA’s objectiveness in approving new drug applications and potential conflicts of interest. The FDA exists to be a trusted regulatory body to review the merits of drug applications, and as such, the Committee instructs the Inspector General to review conflicts of interest between agency employees and companies, including consulting firms, interested in receiving drug approvals and the FDA’s review of these drugs, and report back to the Committee on the results of this review.

On page 130 of the report, strike the paragraph “Premium Cigars” and insert the following:

Premium Cigars.—The Committee notes that the issuance of regulations under the Family Smoking Prevention & Tobacco Control Act may place burdens on the legal production of premium cigars that were in production before this rule was finalized. The Committee directs FDA to periodically report back to Congress on the status of premarket review with regard to premium cigars. The Committee encourages the FDA to re-evaluate these regulations. Further, the agency may want to develop recommendations that consider the concerns of premium cigar manufacturers while taking a risk based approach to public health. The Committee directs the FDA to provide a report to the Committee with its recommendation within 90 days, including a recommendation on whether or not to exempt premium cigars from this rule.

On page 137 of the report, strike “This section includes language regarding the report to accompany this Act.” and insert the following:

This section includes language regarding horse slaughter.

On page 137 of the report, after Section 775 insert the following:

Section 776. This section includes language regarding the Southwest Border Regional Commission.

On page 140 of the report, in the table under “New Mexico State Library” strike “790,000” and insert “890,000”

On page 141 of the report, in the table strike the first “Harrison Food Bank” line

On page 142 of the report, in the appropriate place insert the following:

Rural Community Facilities Program Oregon	Food Bank	50,000	Community Connection of Northeast Oregon Merkley, Wyden
Rural Community Facilities Program 100,000	Merkley, Wyden	Oregon Food Bank	Oregon Food Bank

On page 143 of the report, in the appropriate place insert the following:

Rural Community Facilities Program and technical assistance	138,000	The Good Stuff Van Hollen	Maryland	Job training
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approved by

Manager's Package

FY22 Military Construction, Veterans Affairs, and Related Agencies

Voice

vote

Bill Technical Correction

1. Technical correction concerning Committee reports.

Report Language

1. Report language for Senator Hoeven on the National Cemetery Administration Rural Initiative.
2. Report language for Senator Rubio on VA Access to Care.
3. Report language for Senator Van Hollen on Stormwater Best Management Practices.
4. Technical correction concerning Committee reports.
5. Report language for Senator Manchin on Negligence of Veterans Affairs Employees and Patient Safety

Technical Correction

On page 82 of the bill, beginning with line 8, Strike Section 411.

National Cemetery Administration Rural Initiative

At the appropriate place in the **report**, insert the following:

Rural Initiative.—The Committee supports NCA’s decision to add additional infrastructure – such as wind walls, restrooms, and storage sheds – to its Rural Initiative National Cemeteries so that veterans and their families are better served. As the Department finalizes the designs for these projects, the Committee recommends that the agency consider any necessary water, sewage, and electric utilities that would support these upcoming projects. The Committee also encourages VA to enter into public-private partnerships to help fund these improvements where appropriate. Further, the Committee encourages VA to consult and engage with local communities and stakeholders as it makes plans and undertakes construction of additional infrastructure at Rural Initiative National Cemeteries.

VA Access to Care

At the appropriate place in the **report**, insert the following:

Access to Care.—The Department is directed to provide to the Committees on Appropriations of both Houses of Congress no later than 180 days after the date of the enactment of this act a report on: (1) the number of veterans who live more than 100 miles from a VA facility that offers inpatient care; (2) a list of counties in the United States where there are more than 3,000 veterans who live more than 100 miles from a VA facility that offers inpatient care; and (3) a strategy for VA to provide better inpatient capacity for veterans who live in the counties listed under (2).

Stormwater Best Management Practices

At the appropriate place in the **report**, insert the following:

Stormwater Best Management Practices.—The Committee encourages the Department to continue to take steps to address water and flood resilience. Through updates to Unified Facilities Criteria, development of Installation Master Plans, and design and construction of projects funded through ERCIP, the Committee supports investment in implementing and maintaining stormwater Best Management Practices that enhance water resilience and quality on military installations. In addition to meeting force protection requirements and contributing to climate change adaptation, implementing and maintaining Best Management Practices will help military installations reduce pollution runoff and improve water quality. In undertaking this work, the Committee recommends that the Secretary consider and utilize natural infrastructure approaches, alone or in conjunction with grey infrastructure, to increase flood resilience. Natural infrastructure approaches (including restored wetlands, floodplains, living shorelines, and use of soil or plant systems and permeable surfaces for stormwater management) are proven techniques to provide significant and measurable risk reduction for inland and coastal flood hazards.

Technical Correction

On page 85 of the report, strike Section 411, referencing a provision related to the Committee report.

Negligence of Veterans Affairs Employees and Patient Safety

On pages 40-41 of the report, strike the language related to “Negligence of Veterans Affairs Employees and Patient Safety” and insert the following:

Negligence of Veterans Affairs Employees and Patient Safety.—The Committee remains concerned about the failure of patient safety standards at multiple VAMCs and CBOCs, many of which have resulted in death or serious injury and criminal sentences for the perpetrators. The Department must do more to address the culture that hampered employees from identifying and reporting behaviors that cost lives. In addition, the Department should pursue administrative discipline of any employee found negligent in either a criminal, civil, or inspector general filing, and take appropriate action related to accountable employees ability to retire or resign. The Department is directed to provide to the Committees on Appropriations and Veterans’ Affairs of both Houses of Congress within 90 days of enactment of this act a report on necessary criteria for inclusion in an acceptable safety standards policy, a plan for VHA to confirm all facilities have adequate safety standards in place, the process for verifying employees are following the safety standards, and the proposed schedule for periodically reviewing and updating the standards. This review should directly assess the role of third-party accreditation providers, such as The Joint Commission, and the potential failures to identify whether or not patient safety standards were verified in the accreditation process. Furthermore, the Committee encourages additional transparency with Congress related to third party accreditation, and directs the Department to provide a briefing to the Committees on Appropriations and Veterans’ Affairs of both Houses of Congress in support of the directed report.

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Overview of Merkley VA Medical Marijuana Amendment

August 4, 2021

- This amendment allows veterans to talk to their Veterans Health Administration (VA) doctors about the option of medical cannabis, lifting the gag rule that says doctors cannot recommend marijuana. This amendment helps ensure parity between VA and non-VA facilities in states that allow medical cannabis.
- It allows VA doctors to discuss and provide recommendations to their patients about medical marijuana *only in states where it is legal* without fear of repercussions from the VA. It will be up to doctors to decide if they want to do so. This amendment does not require the VA to provide cannabis nor allow cannabis to be consumed or possessed on VA property, both of which remain federal crimes.
- The Ninth Circuit Court of Appeals held that the federal government could not punish a doctor merely for recommending the use of medical cannabis, and discussing such treatments is protected as part of the doctor-patient relationship. *Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002), *cert. denied*, 540 U.S. 946 (2003).
- Millions of Americans now live in states that have legalized the use of medical cannabis. As of July 2021, 18 states plus the District of Columbia and Guam have legalized marijuana for recreational use, while 36 states have legalized for medical use.

Jeffrey A. Merkley

Purpose: To prohibit the use of funds appropriated or otherwise made available under this Act to interfere with the ability of veterans to participate in medicinal marijuana programs approved by States or deny services to such veterans.

Making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2022, and for other purposes.

AMENDMENT intended to be proposed by Mr. MERKLEY

Viz: At the appropriate place, insert the following:

SEC. ____ None of the funds appropriated or otherwise made available to the Department of Veterans Affairs in this Act may be used in a manner that would—

- (1) interfere with the ability of a veteran to participate in a medicinal marijuana program approved by a State;
- (2) deny any services from the Department to a veteran who is participating in such a program; or
- (3) limit or interfere with the ability of a health care provider of the Department to make appropriate recommendations, fill out forms, or take steps to comply with such a program.