

On December 21, Congress passed the Consolidated Appropriations Act (H.R. 133), an omnibus package that included appropriations for the remainder of FY21, authorization of several Indian water right settlements, the Water Resources Development Act (WRDA), COVID relief, and various other provisions, in a massive bill with 32 Divisions and nearly 5,600 pages. The House bifurcated its vote, and passed the appropriations in Divisions B, C, E, and F by a vote of 327-85, and the remaining Divisions by a vote of 359-53. The Senate passed H.R. 133 by a vote of 92-6. The President threatened to veto the bill, objecting primarily to the spending on foreign aid and the small amount of COVID relief to individual Americans.

Within Division A, U.S. Department of Agriculture, the Farm Service Agency received \$1.14B, including \$6.5M for the Grassroots Source Water Protection Program. The Natural Resources Conservation Service received a Conservation Operations budget of \$833M, of which \$3M is available for planning and implementation associated with land treatment measures that address flood damage reduction, bank stabilization and erosion control in the watersheds identified under section 13 of the Flood Control Act of 1944. The Watershed and Flood Prevention Operations received \$175M, with \$65M appropriated to "shovel ready" projects that address regional priorities for flood management, agricultural water management, inefficient irrigation systems, fish and wildlife habitat, or watershed protection. Additionally, \$10M each was appropriated for ongoing watershed projects that deliver water to rural communities and the Watershed Rehabilitation Program.

Under Rural Development Programs, the Rural Utilities Service - Rural Water and Waste Disposal Program received \$1.4B for direct loans and \$50M for guaranteed loans, with an additional \$622M to cover the costs of loan guarantees and grants. Of this, \$35M can be used for technical assistance grants for rural water and waste systems pursuant to section 306(a)(14) of the Consolidated Farm and Rural Development Act, and \$20M is to be used for the circuit rider program.

Within Division B, Title I - Commerce, the National Oceanic and Atmospheric Administration (NOAA) received \$4.1B for direct obligations related to Operations, Research and Facilities, and \$1.5B for Procurement, Acquisition and Construction. Under Title III - Science, the National Aeronautics and Space Administration (NASA) received \$7.3B for research and development, including \$2B specifically for Earth Science and \$79M for Biological and Physical Science. Space Operations, which includes support for communications activities and research and development, received \$3.9B.

Within Division D, Title I, the Army Corps of Engineers (Corps) received \$3.8B for operations and maintenance, \$2.7B for construction of flood control and ecosystem restoration projects, and \$153M for investigations and research. The Corps Water Infrastructure Finance and Innovation Program Account (WIFIA), identical to the Environmental Protection Agency WIFIA program, also received \$12M for the cost of direct and guaranteed loans. These funds are currently available for the maintenance and repair of dams identified in the National Inventory of Dams.

In Division D, Title II, Department of the Interior - Bureau of Reclamation received \$1.5B for the management, development and restoration of water and related natural resources; for the operation, maintenance, and rehabilitation of reclamation facilities; and for participation in fulfilling federal responsibilities to and cooperative agreements with states and tribes. Of this appropriation, \$59M is for the Upper Colorado River Basin Fund, of which \$5.5M is to be transferred to the Lower Colorado River Basin Development Fund; another \$26M is available for the Blackfoot Water Settlement Implementation Fund; \$21M was appropriated for the Central Utah Project; \$55.8M was appropriated for the Central Valley Project Restoration Fund and \$33M was appropriated for the California Bay-Delta Restoration.

The following projects, primarily in California, received appropriations to be financed through the Reclamation Fund or Bureau of Reclamation special fee account as available: in California, the Friant-Kern Canal Capacity Correction Resulting from Subsidence, the North-of-the-Delta Off Stream Storage (Sites Reservoir Project), the Los Vaqueros Reservoir Phase 2 Expansion Project, the Delta Mendota Canal Subsidence Correction, the Del Puerto Water District Project, the San Luis Low Point Improvement Project, the Sacramento Regional Water Bank, the Pure Water Monterey Groundwater Replenishment Project, the Pure Water Soquel Groundwater Replenishment and Seawater Intrusion Prevention Project, the Pure Water Oceanside Mission Basin Groundwater Purification Facility Project, the Groundwater Reliability Improvement Program Recycled Water Project, the Palmdale Regional Groundwater Recharge and Recovery Project, the

Doheny Ocean Desalination Project, and the North Pleasant Valley Desalter Facility. In other states, projects include: in Idaho, the Boise River Basin-Anderson Ranch Dam Raise; in Texas, the El Paso Aquifer Storage and Recovery Using Reclaimed Water Project, and the Energy-Efficient Brackish Groundwater Desalination Project; in Utah, the Magna Water District Water Reclamation and Reuse Project; and in Washington, the Cle Elum Pool Raise (Yakima).

Under Division D, Title III - Energy, the Western Area Power Authority (WAPA) received \$259M, with a final appropriation of \$89M to come from the Reclamation Fund; the remaining balance should be offset by the sale of power and related services.

Within Division G, Title I, the U.S. Geological Survey (USGS) received \$1.3B, of which \$84M is for satellite operations. It also specifies that no more than half the cost of topographic mapping or water resources data collections and investigations can be paid by the federal government when carried on in cooperation with states or municipalities. The Bureau of Indian Affairs received \$128M for the Navajo Indian Irrigation Project.

Within Division G, Title II, the Environmental Protection Agency (EPA) received \$2.7B for Environmental Programs and Management. Additionally, the State and Tribal Assistance Grants received \$4.3B, with \$1.6B appropriated to the Clean Water State Revolving Fund (SRF) and \$1.1B to the Drinking Water SRF. Within the Clean Water SRF, at least 10% of the funds are directed towards projects to address green infrastructure, water or energy efficiency improvements projects, or other environmentally innovative activities. The Drinking Water SRF funds are authorized for these purposes, as well. The WIFIA Program Account received \$59.5M to subsidize gross obligations for the principal amount of direct loans, including capitalized interest, and total loan principal, including capitalized interest, any part of which is to be guaranteed, up to \$12.5B.

Additionally, \$26M in grant funding was appropriated to assist small and disadvantaged communities with inadequate drinking water systems; \$26.5M for the Voluntary School and Child Care Program Lead Testing Grant Program; \$4M for the Drinking Water Infrastructure Resilience and Sustainability Program; \$18M for a grant program for nonprofits that provide technical assistance to rural, small or tribal municipalities for planning, developing, financing, training or education on water infrastructure projects; \$40M for sewer overflow and stormwater reuse municipal grants; and \$3M for the Innovative Water Infrastructure Workforce Development Program.

## **Corps of Engineers/WRDA**

Division AA contains Water Resource Development Act (WRDA) authorizations. Title I addresses: a variety of rural, small, multi-purpose, environmental, flood control, and pilot projects; feasibility studies and resiliency assessments; construction, studies, and contribution of funds by non-federal interests; emergency response and expediting repairs; project consultations; use of dredged materials; harmful algal bloom demonstration program in consultation with states; a review of contracting policies; and lease deviations.

Section 131 adds provisions on levee safety to 33 U.S.C. 3303, including identification of deficiencies for levees in the Corps' inventory, and consultation with non-federal interests.

Section 132 modifies definitions for the National Dam Safety Program (33 U.S.C. 467). It expands the definition of "eligible high hazard potential dam" to include dams that conform with state law and are pending approval by the relevant state dam safety agency. It shifts the determination that the dam poses an unacceptable risk to the public away from the state and over to the FEMA Administrator. The state still makes the determination that the dam fails to meet the state's minimum dam safety standards. The broad exclusion of licensed hydropower dams is modified to make eligible small hydropower dams with a capacity under 1.5 megawatts. The technical assistance grant program is narrowed from all non-federal sponsors to only states with dam safety programs, and then clarifies that states may award those grants to eligible subrecipients. It requires assurances that the "dam owner will carry out a plan for maintenance of the dam during the expected life of the dam" and that the community downstream of the dam "participates in, and complies with, all applicable Federal flood insurance programs, including demonstrating that such community is participating in the National Flood Insurance Program, and is not on probation, suspended, or withdrawn from such Program." It also adds requirements for hazard mitigation plans and floodplain management plans.

Section 138 authorizes enhanced inspections of aging infrastructure (75+ years) with LiDAR, ground penetrating radar, subsurface imaging, or subsurface geophysical techniques – on Corps facilities or contracting

with other federal agencies – to determine whether water projects are structurally sound and can operate as intended or are at risk of failure.

Section 156 addresses the priorities for the comprehensive water planning assistance to states contained in 42 U.S.C. 1962d-16, clarifying that all Corps mission areas have equal priority, including water supply and conservation.

Section 157 directs the Corps to report on additional opportunities to use forecast-informed reservoir operations (FIRO) across the U.S., but particularly at reservoirs in the Upper Missouri River Basin or the North Platte River Basin, with at least one viable FIRO to be carried out.

Section 158 directs the Corps to work with the National Academy of Sciences to study the ability of federal agencies to coordinate with each other, states, local agencies, tribes, and other organizations to share data on water allocation, supply, and demand.

Title II covers feasibility studies and reports. Section 221 direct the Corps to complete an analysis on the benefits and consequences of including water supply and water conservation as a primary mission at water resources development projects.

Section 226 directs the Corps to report on its use of data relating to antecedent hydrologic conditions in the Missouri River Basin, including soil moisture conditions, frost depths, snowpack, and streamflow conditions, for reservoir operations.

Title III contains deauthorizations and modifications of Corps projects, and Title IV contains new project authorizations. Title V primarily includes invasive species studies and pilot programs.

Section 511 directs the Corps to work with NOAA, NRCS, USGS and Reclamation to continue installation and updates of a network of soil moisture and snowpack monitoring stations in the Upper Missouri River Basin. It authorizes cooperative agreements with state mesonet programs, ownership transfer of stations to state mesonets for operation and maintenance, and the establishment of standards to ensure seamless integration of data into relevant networks.

## **Department of the Interior/Indian Water Rights**

Division DD contains the Montana Water Rights Protection Act, approving the water rights compact between the Confederated Salish and Kootenai Tribes (CSKT) and the State of Montana. The bill authorizes \$1B to be appropriated to the settlement trust fund to carry out the purposes of the compact. The bill prohibits the use of the Reclamation Water Settlements Fund (43 U.S.C. 407(a)) to carry out the purposes of the compact for a period of ten years, and then limits use of the RWSF to no more than half of the funds available. The compact includes an allocation of 90,000 acre-feet per year of storage water in Hungry Horse Reservoir. It also directs the Department of the Interior to update water infrastructure, including canals, dams, and reservation irrigation facilities.

Division FF, Title XI, Western Water and Indian Affairs, includes authorization of several more Indian water rights settlements; modifications to the Cooperative Watershed Management Program (16 U.S. Code § 1015a); agreements for aquatic system restoration projects; the Clean Water for Rural Communities Act to supply safe water to communities in Montana and North Dakota; and increased funding for water desalination investments.

Section 1101 establishes an aging infrastructure account for extraordinary operation and maintenance work under 43 U.S.C. 510b. Beginning in FY2022, eligible entities operating transferred works may apply for payment of reimbursable costs and extended repayment periods.

Section 1102 contains authorization for the Navajo-Utah Water Rights Settlement. It authorizes \$198.3M to be deposited into the Navajo Water Development Projects Account (NWDPA), for construction of domestic water supply infrastructure and agricultural conservation, plus \$11.1M for operation, maintenance and replacement (OM&R). Additionally, the State of Utah is contributing \$8M to the NWDPA. It confirms the Navajo Nation's right to 81,500 acre-feet annually from water sources located within Utah and adjacent to or within the boundaries of the reservation.

Section 1103 contains the Aamodt litigation settlement modifications, increasing the amount authorized for construction of Pueblo water facilities from \$106.4M to \$243.4M, and for the regional water system, adding another \$137M subject to the availability of appropriations. It extends the construction deadline to 2028.

Section 1104 contains authorization for a USDA study of the multipurpose dam described in the Upper Delaware and Tributaries Watershed Plan, to support the fair settlement of water rights claims by the Kickapoo Tribe.

Section 1105 contains the Aquifer Recharge Flexibility Act, authorizing Reclamation to allow the use of excess capacity in Reclamation facilities for conveyance of non-Reclamation project water for aquifer recharge purposes. The Act does not apply to California and does not create or impair existing water rights.

Section 1106 extends and expands WaterSMART, increasing the list of eligible applicants and purposes, increasing the federal cost share of certain infrastructure improvements, and prioritizing projects that enhance drought resilience by benefitting the water supply and ecosystem. It increases the appropriation authorization from \$530M to \$700M.

Section 1111 establishes a Snow Water Supply Forecasting Program within the Department of the Interior, to be developed in coordination with other federal agencies, to measure snowpack for determining water supply forecasts or allocations to water contractors. It directs DOI to incorporate synthetic aperture radar, laser altimetry, and other emerging technologies, and to share data with other federal agencies and states.