

Congress of the United States
Washington, DC 20510

August 12, 2021

Mr. Jaime A. Pinkham
Acting Assistant Secretary of the Army for Civil Works
U.S. Army Corps of Engineers
108 Army Pentagon
Washington, D.C., 20310-0108

Dear Acting Assistant Secretary Pinkham:

On May 28, 2021, President Biden released his Fiscal Year (FY) 2022 Budget Request, which included the request for the U.S. Army Corps of Engineers (Corps).¹ In the Corps' detailed budget appendix, the Biden Administration outlined the key objectives it considered when developing the Corps budget, including "not funding work that directly subsidizes fossil fuels including work that lowers the cost of production, lowers the cost of consumption, or raises the revenues retained by producers of fossil fuels."² This vague inclusion not only usurps Congressional authority but also raises serious concerns about the Administration's priorities for the Corps, which may once again disproportionately impact national security, critical energy infrastructure, and access to affordable and reliable energy.³

These "key objectives" in the budget request extend beyond establishing an agency priority; they purport to pick winners and losers by excluding an entire industry from congressional appropriations and federal resources. Since Congress specifically dedicates funds for ports that transport fossil fuel products, it undermines Congressional direction for the Executive Branch to unilaterally decide not to fund these items.⁴ Not only does the Administration's statement about fossil fuels overstep its authority, but it also shortsightedly ignores the need for fossil fuels to create plastics, personal protective equipment (PPE), and other items Americans depend on.⁵

¹ Office of Management and Budget, *Budget of the United States Fiscal Year 2022*, available at https://www.whitehouse.gov/wp-content/uploads/2021/05/budget_fy22.pdf

² Office of Management and Budget, *Appendix Budget of the United States Fiscal Year 2022, Corps of Engineers—Civil Works*, available at https://www.whitehouse.gov/wp-content/uploads/2021/05/coe_fy22.pdf.

³ U.S. Dept. of Energy, *The Economic Benefits of Oil & Gas* (accessed July 23, 2021), available at <https://energy.gov/sites/prod/files/2020/10/f80/Economic%20Impact%20of%20Oil%20and%20Gas.pdf>; highlighting the fact that this sector supports 12.3 million jobs and provides 80% of American energy.

⁴ See 33 U.S.C. 2238c(a)(4)-(5) (defining "energy commodity" to specifically include petroleum products and defining "energy transfer port").

⁵ AFPM, *Supplying Armor in the Battle Against COVID-19*, Apr. 30, 2020, available at <https://www.afpm.org/newsroom/blog/supplying-armor-battle-against-covid-19>; see also: EIA, Frequently Asked Questions (FAQs), Last updated May 4, 2021, available at <https://www.eia.gov/tools/faqs/faq.php?id=41&t=6>.

The Biden Administration has already obstructed efforts to improve our energy infrastructure and ensure its resilience. Most notably, President Biden issued an Executive Order 13990 on his first day in office to rescind the Presidential permit for the Keystone XL Pipeline, costing thousands of jobs and endangering our energy independence and ability to transport energy resources with our Canadian partners.⁶ Pipelines are one of the safest, most environmentally-friendly, and efficient ways to transport energy products, and it was disappointing to see this Administration hamper their development and the transportation of critical energy resources.⁷

Without the availability of additional capacity to transport energy products to markets, Americans will experience higher energy prices and a lack of energy access. We saw these impacts firsthand when the Colonial Pipeline shut down this May after it experienced a ransomware attack and could not deliver gasoline and other energy products to Southern and mid-Atlantic markets.⁸ In response, the Administration convened and coordinated a federal interagency response to mitigate the effects of the shutdown and assist in the pipeline's restart.⁹ These actions prove that the Administration understands the importance of critical energy infrastructure and the devastating effects that occur when taken offline. As such, it is contradictory that it would also direct a federal agency that is essential to critical transportation and energy infrastructure to exclude support for an energy resource and work against lowering the cost of its consumption,¹⁰ especially given the administration actively worked to prevent such outcomes only months ago during the Colonial Pipeline shutdown.

Congress must know how the Corps plans to implement programs under its purview considering this direction to not support fossil fuel energy or similar energy transportation infrastructure. Recently during a July 1, 2021, congressional staff briefing, representatives from the Corps indicated that the language included in the budget estimate may be implemented through re-directing Corps funding and prioritization of work away from ports and navigation projects that support energy products and commodities.¹¹ If accurate, these changes would devastate the regional ports and waterways and the economies that rely on them. Further, during the July 14, 2021, confirmation hearing for Mr. Michael Connor to be Assistant Secretary of the Army for Civil Works, when asked about the language relating to energy, Mr. Conner stated he did not believe it was a policy.¹² However, Mr. Conner admitted he had not yet seen the language in the budget document

⁶ Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis* (Jan. 20, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>; see also: Jonathan Swan, Top union leader: Biden's Keystone plan wrong, will cost U.S. jobs, AXIOS, Feb. 7, 2021, available at <https://www.axios.com/richard-trumka-keystone-pipeline-joe-biden-62703d74-64b8-4c01-bee3-44f55d007ca1.html>. See also: The Editorial Board, *Biden's Keystone Pipeline Kill*, WSJ, Jan. 20, 2021, available at <https://www.wsj.com/articles/bidens-keystone-pipeline-kill-11611184519>.

⁷ PHMSA, *General Pipeline FAQs*, available at <https://www.phmsa.dot.gov/faqs/general-pipeline-faqs>; see also: PHMSA, *Pipeline Safety Regulations*, available at <https://primis.phmsa.dot.gov/comm/SafetyStandards.htm>.

⁸ Pippa Stevens, *Colonial Pipeline restarts after hack, but supply chain won't return to normal for a few days*, CNBC, May 12, 2021, available at <https://www.cnbc.com/2021/05/12/colonial-pipeline-restarts-after-hack-but-supply-chain-wont-return-to-normal-for-a-few-days.html>.

⁹ *Id.*

¹⁰ *Supra*, note 2.

¹¹ Congressional Staff Briefing on the U.S. Army Corps of Engineers Fiscal Year 2022 Budget Request, July 1, 2021.

¹² *Nomination of Michael Connor to be Assistant Secretary of the Army for Civil Works at the Department of Defense: Hearing before the S. Comm. on Environment and Public Works*, (117th Cong.) (Jul. 14, 2021).

and he has not assumed responsibilities at the Corps.¹³ This raises stark concerns about how the Corps will be prioritizing its resources.

American ports and waterways do not exclusively handle energy products; the other commodities and industries that utilize this infrastructure will be affected. The U.S. maritime infrastructure system acts as a critical link in the American economy consisting of harbors, ports, channels, locks, dams, and waterways that deliver \$4.6 trillion worth of goods and supporting more than 23 million U.S. jobs.¹⁴ These actions could also drive up the cost of energy for consumers when prices are already at record high levels.¹⁵

It is crucial that the Corps and Biden Administration explain how they plan to allocate valuable federal resources for infrastructure that supports transportation of energy products and what authority they have to exclude an industry from eligibility for federal projects. Accordingly, we respectfully ask that the Corps provide responses to the following questions by August 26, 2021:

1. What was the basis for deciding which on-going projects, studies, and new construction starts would be supported in the President's budget request?
2. The President's budget request for the Corps describes three objectives utilized to develop the request, including "not funding work that directly subsidizes fossil fuels including work that lowers the cost of production, lowers the cost of consumption, or raises the revenues retained by producers of fossil fuels."¹⁶ Why is there a discrepancy between the three key objectives referenced in this budget appendix document and the Corps' budget documents and why was it omitted from the Corps' budget explanation?
3. What authority does the Corps have to determine which industries are eligible for funding that Congress has authorized?
4. If the Corps is not planning to use appropriated funds as they now conflict with the third objective, what projects will those funds go towards/how will those funds be used? For each project, has the Corps done any budgetary analysis on the impacts due to lost revenue (either direct or indirect)? If yes, please submit the budgetary analysis. How does the Corps intend to implement this objective while still complying with laws passed by Congress providing project direction, such as the various *Water Resource Development Act*?

¹³ *Id.*

¹⁴ United States Coast Guard, *Maritime Commerce Strategic Outlook*, October 2018, available at <https://media.defense.gov/2018/Oct/05/2002049100/-1/-1/1/USCG%20MARITIME%20COMMERCE%20STRATEGIC%20OUTLOOK-RELEASABLE.PDF>.

¹⁵ American Association of Automobiles, *Gasoline Demand Soars to Record High*, July 12, 2021, available at <https://gasprices.aaa.com/gasoline-demand-soars-to-record-high/>.

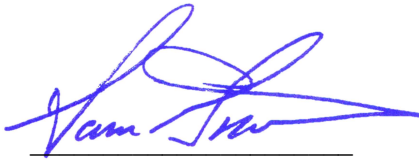
¹⁶ *Supra*, note 2, at 1115. The full description of the objectives in the budget appendix reads as follows: "In developing the Budget, consideration was given to advancing three key objectives including: 1) increasing infrastructure and ecosystem resilience to climate change and decreasing climate risk for communities based on the best available science; 2) promoting environmental justice in disadvantaged communities in line with Justice40 and creating good paying jobs that promote a chance to join a union; and 3) not funding work that directly subsidizes fossil fuels including work that lowers the cost of production, lowers the cost of consumption, or raises the revenues retained by producers of fossil fuel."

5. Please explain the third objective of “not funding work that directly subsidizes fossil fuels including work that lowers the cost of production, lowers the cost of consumption, or raises the revenues retained by producers of fossil fuels,”¹⁷ including how this objective will be determined and what criteria will be used.
 - a. Please define “fossil fuels.” Specifically, does the definition of fossil fuels include raw materials, refined products, or other manufactured goods?
 - b. How will the Corps determine if an activity “lowers cost of production, lowers the cost of consumption, or raises the revenues retained by fossil fuels”?
 - c. What types of work under the purview of the Corps would be considered to directly subsidize fossil fuels? Does this goal apply to vessels that transport fossil fuels and/or their products?
6. How will the Corps comply with Section 6009 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109-13) as it implements this direction from the budget appendix?
7. Will this type of work include on-going projects, studies, and new construction starts for port and navigation projects, including: the Upper Ohio Navigation Project, the McClellan-Kerr Arkansas River Navigation System, the Houma Navigation Canal, the Belle Pass Channel Deepening Project, the Morganza to the Gulf of Mexico Project, the New York Harbor Storm-Surge Barrier, and the Louisiana Coastal Area Ecosystem Restoration Program? If so, please list those which would not be prioritized under this direction.
8. Under this objective, how will the Corps determine how to not fund a multifunction port that may handle both fossil fuel and other commodities or non-fossil fuel energy?
9. Has the Corps notified state, local, and tribal officials involved in permitting or authorizing proposed infrastructure projects in accordance Sec 213(b) of Executive Order 14008?
10. What staffing expertise does the Corps currently have to determine these considerations?
11. Would work that “lowers the cost of consumption” include the cost for consumers who purchase fossil fuels for home and transportation-related energy? Would this include lowered costs of gasoline, diesel, home heating oil or natural gas purchased by consumers?

Thank you for your attention to this matter. We look forward to your prompt response. If you have questions, please contact Ryan Hambleton, Republican Staff Director, Subcommittee on Water Resources and Environment, at (202) 225-9446.

¹⁷ *Id.*

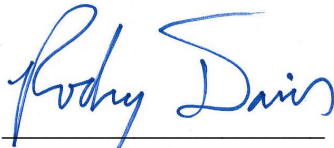
Sincerely,



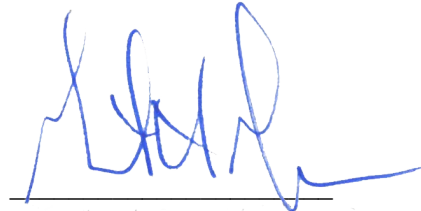
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Ranking Member
Committee on Transportation and Infrastructure



David Rouzer
Ranking Member
Subcommittee on Water Resources and
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Rodney Davis
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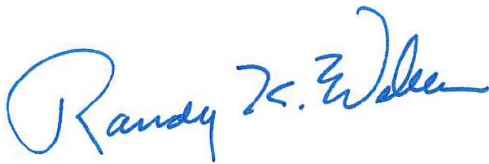
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Eric A. "Rick" Crawford
Ranking Member
Subcommittee on Railroads, Pipelines, and
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Bob Gibbs
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Subcommittee on Coast Guard and Maritime
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Clay Higgins
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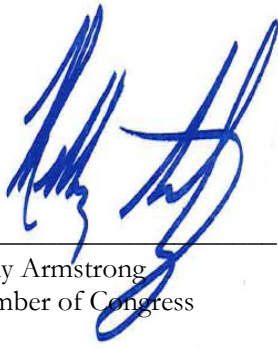
Michael Guest
Member of Congress



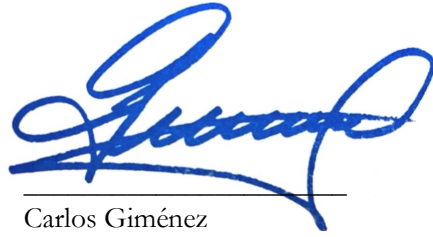
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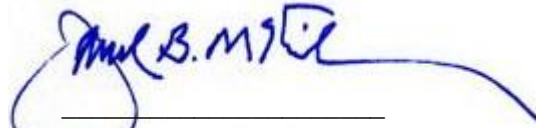
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Liz Cheney
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David McKinley
Member of Congress

Cc: The Honorable Peter A. DeFazio, Chair
Committee on Transportation and Infrastructure

The Honorable Grace Napolitano, Chair
Subcommittee on Water, Resources, and Environment
Committee on Transportation and Infrastructure

Ms. Shalanda Young, Acting Director
Office of Management and Budget