

resolution that will take us through December 16, which will give Congress the time it needs to complete important work—passing appropriations bills.

This week we will also confirm a number of judges who are crucial to help ease the backlog in our Nation's jam-packed courts. We have the supercommittee which is functioning. All 12 members are trying to come up with some reasonable way forward to do something about the debt.

So we have the supercommittee, we have the Defense authorization bill, we have the appropriations bill, we have a conference report, and we have the deadline that is facing us. We have to get all this work done by this weekend. If not, then we get it done before Thanksgiving, which is a week from Thursday. So as you can see, the Senate has a substantial amount of work to complete in the 10 days before Thanksgiving. I want to be clear that we are going to work up until the last moment before the holiday, if that is what it takes, to get these important tasks done. With cooperation, we can get it all done this week. But we have a lot to do, and I understand that, but I do hope we can work together to complete this country's necessary work.

Would the Chair announce the business of the day.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business until 3 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees.

Mr. REID. Mr. President, I failed to note that Senators FEINSTEIN and ALEXANDER, the managers of this appropriations bill we have, are going to be here on the floor this afternoon to give their opening statements. So if Senators have amendments, they should talk to the two managers of the bill. I think that works much better than firing up amendments and hoping some of them stick.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2012

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of H.R. 2354, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 2354) making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2012, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Appropriations, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

H.R. 2354

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for energy and water development and related agencies for the fiscal year ending September 30, 2012, and for other purposes, namely:

TITLE I

CORPS OF ENGINEERS—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

The following appropriations shall be expended under the direction of the Secretary of the Army and the supervision of the Chief of Engineers for authorized civil functions of the Department of the Army pertaining to rivers and harbors, flood and storm damage reduction, shore protection, aquatic ecosystem restoration, and related efforts.

GENERAL INVESTIGATIONS

For expenses necessary where authorized by law for the collection and study of basic information pertaining to river and harbor, flood and storm damage reduction, shore protection, aquatic ecosystem restoration, and related needs; for surveys and detailed studies, and plans and specifications of proposed river and harbor, flood and storm damage reduction, shore protection, and aquatic ecosystem restoration projects and related efforts prior to construction; for restudy of authorized projects; and for miscellaneous investigations and, when authorized by law, surveys and detailed studies, and plans and specifications of projects prior to construction, \$125,000,000, to remain available until expended.

CONSTRUCTION, GENERAL

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary for the construction of river and harbor, flood and storm damage reduction, shore protection, aquatic ecosystem restoration, and related projects authorized by law; for conducting detailed studies, and plans and specifications, of such projects (including those involving participation by States, local governments, or private groups) authorized or made eligible for selection by law (but such detailed studies, and plans and specifications, shall not constitute a commitment of the Government to construction); \$1,610,000,000, to remain available until expended; of which such sums as are necessary to cover the Federal share of construction costs for facilities under the Dredged Material

Disposal Facilities program shall be derived from the Harbor Maintenance Trust Fund as authorized by Public Law 104-303; and of which such sums as are necessary to cover one-half of the costs of construction, replacement, rehabilitation, and expansion of inland waterways projects (including only Lock and Dam 27, Mississippi River, Illinois; Lock and Dams 2, 3, and 4 Monongahela River, Pennsylvania; Olmsted Lock and Dam, Illinois and Kentucky; and Emsworth Locks and Dam, Ohio River, Pennsylvania) shall be derived from the Inland Waterways Trust Fund.

MISSISSIPPI RIVER AND TRIBUTARIES

For expenses necessary for flood damage reduction projects and related efforts in the Mississippi River alluvial valley below Cape Girardeau, Missouri, as authorized by law, \$250,000,000, to remain available until expended, of which such sums as are necessary to cover the Federal share of eligible operation and maintenance costs for inland harbors shall be derived from the Harbor Maintenance Trust Fund.

OPERATION AND MAINTENANCE

For expenses necessary for the operation, maintenance, and care of existing river and harbor, flood and storm damage reduction, aquatic ecosystem restoration, and related projects authorized by law; providing security for infrastructure owned or operated by the Corps, including administrative buildings and laboratories; maintaining harbor channels provided by a State, municipality, or other public agency that serve essential navigation needs of general commerce, where authorized by law; surveying and charting northern and northwestern lakes and connecting waters; clearing and straightening channels; and removing obstructions to navigation, \$2,360,000,000, to remain available until expended, of which such sums as are necessary to cover the Federal share of eligible operation and maintenance costs for coastal harbors and channels, and for inland harbors shall be derived from the Harbor Maintenance Trust Fund; of which such sums as become available from the special account for the Corps established by the Land and Water Conservation Act of 1965 (16 U.S.C. 4601-6a(i)) shall be derived from that account for resource protection, research, interpretation, and maintenance activities related to resource protection in areas managed by the Corps at which outdoor recreation is available; and of which such sums as become available from fees collected under section 217 of Public Law 104-303 shall be used to cover the cost of operation and maintenance of the dredged material disposal facilities for which such fees have been collected.

REGULATORY PROGRAM

For expenses necessary for administration of laws pertaining to regulation of navigable waters and wetlands, \$193,000,000, to remain available until September 30, 2013.

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

For expenses necessary to clean up contamination from sites in the United States resulting from work performed as part of the Nation's early atomic energy program, \$109,000,000, to remain available until expended.

FLOOD CONTROL AND COASTAL EMERGENCIES

For expenses necessary to prepare for flood, hurricane, and other natural disasters and support emergency operations, repairs, and other activities in response to such disasters as authorized by law, \$27,000,000, to remain available until expended.

GENERAL EXPENSES

For expenses necessary for the supervision and general administration of the civil works program in the headquarters of the United States Army Corps of Engineers and the offices of the Division Engineers; and for the management and operation of the Humphreys Engineer

Center Support Activity, the Institute for Water Resources, the United States Army Engineer Research and Development Center, and the United States Army Corps of Engineers Finance Center, \$185,000,000, to remain available until September 30, 2013, of which not to exceed \$5,000 may be used for official reception and representation purposes and only during the current fiscal year: Provided, That no part of any other appropriation provided in title I of this Act shall be available to fund the civil works activities of the Office of the Chief of Engineers or the civil works executive direction and management activities of the division offices: Provided further, That any Flood Control and Coastal Emergencies appropriation may be used to fund the supervision and general administration of emergency operations, repairs, and other activities in response to any flood, hurricane, or other natural disaster.

OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS

For the Office of the Assistant Secretary of the Army for Civil Works as authorized by 10 U.S.C. 3016(b)(3), \$5,000,000, to remain available until September 30, 2013.

ADMINISTRATIVE PROVISION

The Revolving Fund, Corps of Engineers, shall be available during the current fiscal year for purchase (not to exceed 100 for replacement only) and hire of passenger motor vehicles for the civil works program.

GENERAL PROVISIONS—CORPS OF ENGINEERS—CIVIL

SEC. 101. (a) None of the funds provided in title I of this Act, or provided by previous appropriations Acts to the agencies or entities funded in title I of this Act that remain available for obligation or expenditure in fiscal year 2010, shall be available for obligation or expenditure through a reprogramming of funds that:

- (1) creates or initiates a new program, project, or activity;
- (2) eliminates a program, project, or activity;
- (3) increases funds or personnel for any program, project, or activity for which funds have been denied or restricted by this Act, unless prior approval is received from the House and Senate Committees on Appropriations;
- (4) proposes to use funds directed for a specific activity for a different purpose, unless prior approval is received from the House and Senate Committees on Appropriations;
- (5) augments or reduces existing programs, projects or activities in excess of the amounts contained in subsections 6 through 10, unless prior approval is received from the House and Senate Committees on Appropriations;

(6) GENERAL INVESTIGATIONS.—For a base level over \$100,000, reprogramming of 25 percent of the base amount up to a limit of \$150,000 per project, study or activity is allowed: Provided, That for a base level less than \$100,000, the reprogramming limit is \$25,000: Provided further, That up to \$25,000 may be reprogrammed into any continuing study or activity that did not receive an appropriation for existing obligations and concomitant administrative expenses;

(7) CONSTRUCTION, GENERAL.—For a base level over \$2,000,000, reprogramming of 15 percent of the base amount up to a limit of \$3,000,000 per project, study or activity is allowed: Provided, That for a base level less than \$2,000,000, the reprogramming limit is \$300,000: Provided further, That up to \$3,000,000 may be reprogrammed for settled contractor claims, changed conditions, or real estate deficiency judgments: Provided further, That up to \$300,000 may be reprogrammed into any continuing study or activity that did not receive an appropriation for existing obligations and concomitant administrative expenses;

(8) OPERATION AND MAINTENANCE.—Unlimited reprogramming authority is granted in order for the Corps to be able to respond to emergencies: Provided, That the Chief of Engineers must notify the House and Senate Committees on Approp-

riations of these emergency actions as soon thereafter as practicable: Provided further, That for a base level over \$1,000,000, reprogramming of 15 percent of the base amount a limit of \$5,000,000 per project, study or activity is allowed: Provided further, That for a base level less than \$1,000,000, the reprogramming limit is \$150,000: Provided further, That \$150,000 may be reprogrammed into any continuing study or activity that did not receive an appropriation;

(9) MISSISSIPPI RIVER AND TRIBUTARIES.—The same reprogramming guidelines for the Investigations, Construction, and Operation and Maintenance portions of the Mississippi River and Tributaries Account as listed above; and

(10) FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM.—Reprogramming of up to 15 percent of the base of the receiving project is permitted.

(b) DE MINIMUS REPROGRAMMINGS.—In no case should a reprogramming for less than \$50,000 be submitted to the House and Senate Committees on Appropriations.

(c) CONTINUING AUTHORITIES PROGRAM.—Subsection (a)(1) shall not apply to any project or activity funded under the continuing authorities program.

(d) Not later than 60 days after the date of enactment of this Act, the Corps of Engineers shall submit a report to the House and Senate Committees on Appropriations to establish the baseline for application of reprogramming and transfer authorities for the current fiscal year: Provided, That the report shall include:

- (1) A table for each appropriation with a separate column to display the President's budget request, adjustments made by Congress, adjustments due to enacted rescissions, if appropriate, and the fiscal year enacted level;
- (2) A delineation in the table for each appropriation both by object class and program, project and activity as detailed in the budget appendix for the respective appropriations; and
- (3) An identification of items of special congressional interest.

SEC. 102. None of the funds in this Act, or previous Acts, making funds available to the Corps, shall be used to implement any pending or future competitive sourcing actions under OMB Circular A-76 or High Performing Organizations.

SEC. 103. None of the funds in this Act, or previous Acts, making funds available to the Corps, shall be used to award any continuing contract that commits additional funding from the Inland Waterways Trust Fund unless or until such time that a long-term mechanism to enhance revenues in this Fund sufficient to meet the cost-sharing authorized in the Water Resources Development Act of 1986 (Public Law 99-662), as amended, is enacted.

SEC. 104. Within 120 days of the date of the Chief of Engineers Report on a water resource matter, the Assistant Secretary of the Army (Civil Works) shall submit the report to the appropriate authorizing and appropriating committees of the Congress.

SEC. 105. During the fiscal year period covered by this Act, the Secretary of the Army is authorized to implement measures recommended in the efficacy study authorized under section 3061 of the Water Resources Development Act of 2007 (121 Stat. 1121) or in interim reports, with such modifications or emergency measures as the Secretary of the Army determines to be appropriate, to prevent aquatic nuisance species from dispersing into the Great Lakes by way of any hydrologic connection between the Great Lakes and the Mississippi River Basin.

SEC. 106. The Secretary is authorized to transfer to the "Construction" account up to \$100,000,000 of the funds provided for reinforcing or replacing flood walls under the "Flood Control and Coastal Emergencies" heading in Public Law 109-234 (120 Stat. 455) and Public Law 110-252 (122 Stat. 2350) and up to \$75,000,000 of the funds provided for projects and measures for the West Bank and Vicinity

and Lake Ponchartrain and Vicinity projects under the "Flood Control and Coastal Emergencies" heading in Public Law 110-28 (121 Stat. 153) to be used with funds provided for the West Bank and Vicinity project under the "Construction" heading in Public Law 110-252 (122 Stat. 2349) and Public Law 110-329 (122 Stat. 3589), consistent with 65 percent Federal and 35 percent non-Federal cost share and the financing of, and payment terms for, the non-Federal cash contribution associated with the West Bank and Vicinity project.

SEC. 107. The Secretary of the Army may authorize a member of the Armed Forces under the Secretary's jurisdiction and employees of the Department of the Army to serve without compensation as director, officer, or otherwise in the management of the organization established to support and maintain the participation of the United States in the permanent international commission of the congresses of navigation, or any successor entity.

SEC. 108. (a) ACQUISITION.—The Secretary is authorized to acquire any real property and associated real property interests in the vicinity of Hanover, New Hampshire as may be needed for the Engineer Research and Development Center laboratory facilities at the Cold Regions Research and Engineering Laboratory. This real property to be acquired consists of 18.5 acres more or less, identified as Tracts 101-1 and 101-2, together with all necessary easements located entirely within the Town of Hanover, New Hampshire. The real property is generally bounded to the east by state route 10-Lyme Road, to the north by the vacant property of the Trustees of the Dartmouth College, to the south by Fletcher Circle graduate student housing owned by the Trustees of Dartmouth College, and to the west by approximately 9 acres of real property acquired in fee through condemnation in 1981 by the Secretary of the Army.

(b) REVOLVING FUND.—The Secretary is authorized to use the Revolving Fund (33 U.S.C. 576) through the Plant Replacement and Improvement Program to acquire the real property and associated real property interests in subsection (a). The Secretary shall ensure that the Revolving Fund is appropriately reimbursed from the benefiting appropriations.

(c) RIGHT OF FIRST REFUSAL.—The Secretary may provide the Seller of any real property and associated property interests identified in subsection (a)—

(1) a right of first refusal to acquire such property, or any portion thereof, in the event the property, or any portion thereof, is no longer needed by the Department of the Army.

(2) a right of first refusal to acquire any real property or associated real property interests acquired by condemnation in Civil Action No. 81-360-L, in the event the property, or any portion thereof, is no longer needed by the Department of the Army.

(3) the purchase of any property by the Seller exercising either right of first refusal authorized in this section shall be for consideration acceptable to the Secretary and shall be for not less than fair market value at the time the property becomes available for purchase. The right of first refusal authorized in this section shall not inure to the benefit of the Sellers successors or assigns.

(d) DISPOSAL.—The Secretary of the Army is authorized to dispose of any property or associated real property interests that are subject to the exercise of the right of first refusal as set forth herein.

SEC. 109. The Secretary of the Army may transfer, and the Fish and Wildlife Service may accept and expend, up to \$3,800,000 of funds provided in this title under the heading "Operation and Maintenance", to mitigate for fisheries lost due to Corps of Engineers projects.

SEC. 110. The Secretary of the Army, acting through the Chief of Engineers, is directed to fully utilize the Federal dredging fleet in support of all Army Corps of Engineers missions

and no restrictions shall be placed on the use or maintenance of any dredge in the Federal Fleet.

SEC. 111. The Secretary of the Army, acting through the Chief of Engineers, is directed to maintain the Federal dredging fleet to technologically modern and efficient standards.

SEC. 112. The Secretary of the Army, acting through the Chief of Engineers is directed to utilize funds from the revolving fund to expeditiously undertake necessary health and safety improvements, including lead and asbestos abatement, to the dredge "McFarland": Provided, That the Secretary shall ensure that the Revolving Fund is appropriately reimbursed from appropriations of the Corps' benefiting programs by collection each year of amounts sufficient to repay the capitalized cost of such construction and improvements.

SEC. 113. With respect to the property covered by the deed described in Auditor's instrument No. 2006-014428 of Benton County, Washington, approximately 1.5 acres, the following deed restrictions are hereby extinguished and of no further force and effect:

(1) The reversionary interest and use restrictions related to port and industrial purposes;

(2) The right for the District Engineer to review all pre-construction plans and/or specifications pertaining to construction and/or maintenance of any structure intended for human habitation, other building structure, parking lots, or roads, if the elevation of the property is above the standard project flood elevation; and

(3) The right of the District Engineer to object to, and thereby prevent, in his/her discretion, such activity.

SEC. 114. That portion of the project for navigation, Block Island Harbor of Refuge, Rhode Island adopted by the Rivers and Harbors Act of July 11, 1870, consisting of the cut-stone breakwater lining the west side of the Inner Basin; beginning at a point with coordinates N32579.55, E312625.53, thence running northerly about 76.59 feet to a point with coordinates N32655.92, E312631.32, thence running northerly about 206.81 feet to a point with coordinates N32858.33, E312673.74, thence running easterly about 109.00 feet to a point with coordinates N32832.15, E312779.54, shall no longer be authorized after the date of enactment.

SEC. 115. The Secretary of the Army, acting through the Chief of Engineers, is authorized, using amounts available in the Revolving Fund established by section 101 of the Act of July 27, 1953, chap. 245 (33 U.S.C. 576), to construct a Consolidated Infrastructure Research Equipment Facility, an Environmental Processes and Risk Lab, a Hydraulic Research Facility, an Engineer Research and Development Center headquarters building, a Modular Hydraulic Flume building, and to purchase real estate, perform construction, and make facility, utility, street, road, and infrastructure improvements to the Engineer Research and Development Center's installations and facilities. The Secretary shall ensure that the Revolving Fund is appropriately reimbursed from the benefiting appropriations.

SEC. 116. Section 1148 of the Water Resources Development Act of 1986 (100 Stat. 4254; 110 Stat. 3718; 114 Stat. 2609) is amended by striking subsection (b) and inserting the following:

"(b) DISPOSITION OF ACQUIRED LAND.—The Secretary may transfer land acquired under this section to the non-Federal sponsor by quitclaim deed subject to such terms and conditions as the Secretary determines to be in the public interest."

SEC. 117. The New London Disposal Site and the Cornfield Shoals Disposal Site in Long Island Sound selected by the Department of the Army as alternative dredged material disposal sites under section 103(b) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, shall remain open until completion of a Supplemental Environmental Impact Statement to support final designation of an Ocean Dredged Material Disposal Site in eastern Long Island Sound under section 102(c) of the Marine

Protection, Research, and Sanctuaries Act of 1972.

SEC. 118. (a) That portion of the project for navigation, Newport Harbor, Rhode Island adopted by the Rivers and Harbors Act of March 2, 1907 (34 Stat. 1075); June 25, 1910 (36 Stat. 632); August 26, 1937 (50 Stat. 845); and, modified by the Consolidated Appropriations Act, 2000, Public Law 106-113, appendix E, title II, section 221 (113 Stat. 1501A-298); consisting of a 13-foot anchorage, an 18-foot anchorage, a 21-foot channel, and 18-foot channels described by the following shall no longer be authorized after the date of enactment of this Act: the 21-Foot Entrance Channel, beginning at a point (1) with coordinates 374986.03, 150611.01; thence running south 46 degrees 54 minutes 30.7 seconds east 900.01 feet to a point (2) with coordinates 375643.27, 149996.16; thence running south 8 degrees 4 minutes 58.3 east 2,376.87 feet to a point (3) with coordinates 375977.47, 147643.00; thence running south 4 degrees 28 minutes 20.4 seconds west 738.56 feet to a point (4) with coordinates 375919.88, 146906.60; thence running south 6 degrees 2 minutes 42.4 seconds east 1,144.00 feet to a point (5) with coordinates 376040.35, 145768.96; thence running south 34 degrees 5 minutes 51.7 seconds west 707.11 feet to a point (6) with coordinates 375643.94, 145183.41; thence running south 73 degrees 11 minutes 42.9 seconds west 1,300.00 feet to the end point (7) with coordinates 374399.46, 144807.57; Returning at a point with coordinates (8) with coordinates 374500.64, 144472.51; thence running north 73 degrees 11 minutes 42.9 seconds east 1,582.85 feet to a point (9) with coordinates 376015.90, 144930.13; thence running north 34 degrees 5 minutes 51.7 seconds east 615.54 feet to a point (10) with coordinates 376360.97, 145439.85; thence running north 2 degrees 10 minutes 43.3 seconds west 2,236.21 feet to a point (11) with coordinates 376275.96, 147674.45; thence running north 8 degrees 4 minutes 55.6 seconds west 2,652.83 feet to a point (12) with coordinates 375902.99, 150300.93; thence running north 46 degrees 54 minutes 30.7 seconds west 881.47 feet to an end point (13) with coordinates 375259.29, 150903.12; and the 18-Foot South Goat Island Channel beginning at a point (14) with coordinates 375509.09, 149444.83; thence running south 25 degrees 44 minutes 0.5 second east 430.71 feet to a point (15) with coordinates 375696.10, 149056.84; thence running south 10 degrees 13 minutes 27.4 seconds east 1,540.89 feet to a point (16) with coordinates 375969.61, 147540.41; thence running south 4 degrees 29 minutes 11.3 seconds west 1,662.92 feet to a point (17) with coordinates 375839.53, 145882.59; thence running south 34 degrees 5 minutes 51.7 seconds west 547.37 feet to a point (18) with coordinates 375532.67, 145429.32; thence running south 86 degrees 47 minutes 37.7 seconds west 600.01 feet to an end point (19) with coordinates 374933.60, 145395.76; and the 18-Foot Entrance Channel beginning at a point (20) with coordinates 374567.14, 144252.33; thence running north 73 degrees 11 minutes 42.9 seconds east 1,899.22 feet to a point (21) with coordinates 376385.26, 144801.42; thence running north 2 degrees 10 minutes 41.5 seconds west 638.89 feet to an end point (10) with coordinates 376360.97, 145439.85; and the 18-Foot South Anchorage beginning at a point (22) with coordinates 376286.81, 147389.37; thence running north 78 degrees 56 minutes 15.6 seconds east 404.86 feet to a point (23) with coordinates 376684.14, 147467.05; thence running north 78 degrees 56 minutes 15.6 seconds east 1,444.33 feet to a point (24) with coordinates 378101.63, 147744.18; thence running south 5 degrees 18 minutes 43.8 seconds west 1,228.20 feet to a point (25) with coordinates 377987.92, 146521.26; thence running south 3 degrees 50 minutes 3.4 seconds east 577.84 feet to a point (26) with coordinates 378026.56, 145944.71; thence running south 44 degrees 32 minutes 14.7 seconds west 2,314.09 feet to a point (27) with coordinates 376403.52, 144295.24 thence running south 60 degrees 5 minutes 58.2 seconds west 255.02 feet to an end point

(28) with coordinates 376182.45, 144168.12; and the 13-Foot Anchorage beginning at a point (29) with coordinates 376363.39, 143666.99; thence running north 63 degrees 34 minutes 19.3 seconds east 1,962.37 feet to a point (30) with coordinates 378120.68, 144540.38; thence running north 3 degrees 50 minutes 3.1 seconds west 1,407.47 feet to an end point (26) with coordinates 378026.56, 145944.71; and the 18-Foot East Channel beginning at a point (23) with coordinates 376684.14, 147467.05; thence running north 2 degrees 10 minutes 43.3 seconds west 262.95 feet to a point (31) with coordinates 376674.14, 147729.81; thence running north 9 degrees 42 minutes 20.3 seconds west 301.35 feet to a point (32) with coordinates 376623.34, 148026.85; thence running south 80 degrees 17 minutes 42.4 seconds west 313.6 feet to a point (33) with coordinates 376314.23, 147973.99; thence running north 7 degrees 47 minutes 21.9 seconds west 776.24 feet to an end point (34) with coordinates 376209.02, 148743.06; and the 18-Foot North Anchorage beginning at a point (35) with coordinates 376123.98, 148744.69; thence running south 88 degrees 54 minutes 16.2 seconds east 377.90 feet to a point (36) with coordinates 376501.82, 148737.47; thence running north 9 degrees 42 minutes 19.0 seconds west 500.01 feet to a point (37) with coordinates 376417.52, 149230.32; thence running north 6 degrees 9 minutes 53.2 seconds west 1,300.01 feet to an end point (38) with coordinates 376277.92, 150522.81.

(b) The area described by the following shall be redesignated as an eighteen-foot channel and turning basin: Beginning at a point (1) with coordinates N144759.41, E374413.16; thence running north 73 degrees 11 minutes 42.9 seconds east 1,252.88 feet to a point (2) with coordinates N145121.63, E375612.53; thence running north 26 degrees 29 minutes 48.1 seconds east 778.89 feet to a point (3) with coordinates N145818.71, E375960.04; thence running north 0 degrees 3 minutes 38.1 seconds west 1,200.24 feet to a point (4) with coordinates N147018.94, E375958.77; thence running north 2 degrees 22 minutes 45.2 seconds east 854.35 feet to a point (5) with coordinates N147872.56, E375994.23; thence running north 7 degrees 47 minutes 21.9 seconds west 753.83 feet to a point (6) with coordinates N148619.44, E375892.06; thence running north 88 degrees 46 minutes 16.7 seconds east 281.85 feet to a point (7) with coordinates N148625.48, E376173.85; thence running south 7 degrees 47 minutes 21.9 seconds east 716.4 feet to a point (8) with coordinates N147915.69, E376270.94; thence running north 80 degrees 17 minutes 42.3 seconds east 315.3 feet to a point (9) with coordinates N147968.85, E.76581.73; thence running south 9 degrees 42 minutes 20.3 seconds east 248.07 feet to a point (10) with coordinates N147724.33, E376623.55; thence running south 2 degrees 10 minutes 43.3 seconds east 318.09 feet to a point (11) with coordinates N147406.47, E376635.64; thence running north 78 degrees 56 minutes 15.6 seconds east 571.11 feet to a point (12) with coordinates N147516.06, E377196.15; thence running south 88 degrees 57 minutes 2.3 seconds east 755.09 feet to a point (13) with coordinates N147502.23, E377951.11; thence running south 1 degree 2 minutes 57.7 seconds west 100.00 feet to a point (14) with coordinates N147402.25, E377949.28; thence running north 88 degrees 57 minutes 2.3 seconds west 744.48 feet to a point (15) with coordinates N147415.88, E377204.92; thence running south 78 degrees 56 minutes 15.6 seconds west 931.17 feet to a point (16) with coordinates N147237.21, E376291.06; thence running south 39 degrees 26 minutes 18.7 seconds west 208.34 feet to a point (17) with coordinates N147076.31, E376158.71; thence running south 0 degrees 3 minutes 38.1 seconds east 1,528.26 feet to a point (18) with coordinates N145548.05, E376160.32; thence running south 26 degrees 29 minutes 48.1 seconds west 686.83 feet to a point (19) with coordinates N144933.37, E375853.90; thence running south 73 degrees 11 minutes 42.9 seconds west 1,429.51 feet to end at a point (20) with coordinates N144520.08, E374485.44.

TITLE II

DEPARTMENT OF THE INTERIOR

CENTRAL UTAH PROJECT

CENTRAL UTAH PROJECT COMPLETION ACCOUNT

For carrying out activities authorized by the Central Utah Project Completion Act, \$28,991,000, to remain available until expended, of which \$2,000,000 shall be deposited into the Utah Reclamation Mitigation and Conservation Account for use by the Utah Reclamation Mitigation and Conservation Commission, and of which \$1,550,000 for necessary expenses incurred in carrying out related responsibilities of the Secretary of the Interior. For fiscal year 2012, the Commission may use an amount not to exceed \$1,500,000 for administrative expenses.

WATER AND RELATED RESOURCES
(INCLUDING TRANSFERS OF FUNDS)

The following appropriations shall be expended to execute authorized functions of the Bureau of Reclamation:

For management, development, and restoration of water and related natural resources and for related activities, including the operation, maintenance, and rehabilitation of reclamation and other facilities, participation in fulfilling related Federal responsibilities to Native Americans, and related grants to, and cooperative and other agreements with, State and local governments, federally recognized Indian tribes, and others, \$885,670,000, to remain available until expended, of which \$10,698,000 shall be available for transfer to the Upper Colorado River Basin Fund and \$6,136,000 shall be available for transfer to the Lower Colorado River Basin Development Fund; of which such amounts as may be necessary may be advanced to the Colorado River Dam Fund: Provided, That such transfers may be increased or decreased within the overall appropriation under this heading: Provided further, That of the total appropriated, the amount for program activities that can be financed by the Reclamation Fund or the Bureau of Reclamation special fee account established by 16 U.S.C. 4601-6a(i) shall be derived from that Fund or account: Provided further, That funds contributed under 43 U.S.C. 395 are available until expended for the purposes for which contributed: Provided further, That funds advanced under 43 U.S.C. 397a shall be credited to this account and are available until expended for the same purposes as the sums appropriated under this heading: Provided further, That of the amounts provided herein, funds may be used for high priority projects which shall be carried out by the Youth Conservation Corps, as authorized by 16 U.S.C. 1706.

CENTRAL VALLEY PROJECT RESTORATION FUND

For carrying out the programs, projects, plans, habitat restoration, improvement, and acquisition provisions of the Central Valley Project Improvement Act, \$53,068,000, to be derived from such sums as may be collected in the Central Valley Project Restoration Fund pursuant to sections 3407(d), 3404(c)(3), and 3405(f) of Public Law 102-575, to remain available until expended: Provided, That the Bureau of Reclamation is directed to assess and collect the full amount of the additional mitigation and restoration payments authorized by section 3407(d) of Public Law 102-575: Provided further, That none of the funds made available under this heading may be used for the acquisition or leasing of water for in-stream purposes if the water is already committed to in-stream purposes by a court adopted decree or order.

CALIFORNIA BAY-DELTA RESTORATION
(INCLUDING TRANSFERS OF FUNDS)

For carrying out activities authorized by the Water Supply, Reliability, and Environmental Improvement Act, consistent with plans to be approved by the Secretary of the Interior, \$39,651,000, to remain available until expended, of which such amounts as may be necessary to carry out such activities may be transferred to

appropriate accounts of other participating Federal agencies to carry out authorized purposes: Provided, That funds appropriated herein may be used for the Federal share of the costs of CALFED Program management: Provided further, That the use of any funds provided to the California Bay-Delta Authority for program-wide management and oversight activities shall be subject to the approval of the Secretary of the Interior: Provided further, That CALFED implementation shall be carried out in a balanced manner with clear performance measures demonstrating concurrent progress in achieving the goals and objectives of the Program.

POLICY AND ADMINISTRATION

For necessary expenses of policy, administration, and related functions in the Office of the Commissioner, the Denver office, and offices in the five regions of the Bureau of Reclamation, to remain available until September 30, 2013, \$60,000,000, to be derived from the Reclamation Fund and be nonreimbursable as provided in 43 U.S.C. 377: Provided, That no part of any other appropriation in this Act shall be available for activities or functions budgeted as policy and administration expenses.

GENERAL PROVISIONS—DEPARTMENT OF
THE INTERIOR

SEC. 201. (a) None of the funds provided in title II of this Act for Water and Related Resources, or provided by previous appropriations Acts to the agencies or entities funded in title II of this Act for Water and Related Resources that remain available for obligation or expenditure in fiscal year 2010, shall be available for obligation or expenditure through a reprogramming of funds that—

- (1) initiates or creates a new program, project, or activity;
- (2) eliminates a program, project, or activity;
- (3) increases funds for any program, project, or activity for which funds have been denied or restricted by this Act, unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate;
- (4) restarts or resumes any program, project or activity for which funds are not provided in this Act, unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate;
- (5) transfers funds in excess of the following limits, unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate:

(A) 15 percent for any program, project or activity for which \$2,000,000 or more is available at the beginning of the fiscal year; or

(B) \$300,000 for any program, project or activity for which less than \$2,000,000 is available at the beginning of the fiscal year;

(6) transfers more than \$500,000 from either the Facilities Operation, Maintenance, and Rehabilitation category or the Resources Management and Development category to any program, project, or activity in the other category, unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate; or

(7) transfers, where necessary to discharge legal obligations of the Bureau of Reclamation, more than \$5,000,000 to provide adequate funds for settled contractor claims, increased contractor earnings due to accelerated rates of operations, and real estate deficiency judgments, unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate.

(b) Subsection (a)(5) shall not apply to any transfer of funds within the Facilities Operation, Maintenance, and Rehabilitation category.

(c) For purposes of this section, the term "transfer" means any movement of funds into or out of a program, project, or activity.

(d) The Bureau of Reclamation shall submit reports on a quarterly basis to the Committees on Appropriations of the House of Representa-

tives and the Senate detailing all the funds reprogrammed between programs, projects, activities, or categories of funding. The first quarterly report shall be submitted not later than 60 days after the date of enactment of this Act.

SEC. 202. (a) None of the funds appropriated or otherwise made available by this Act may be used to determine the final point of discharge for the interceptor drain for the San Luis Unit until development by the Secretary of the Interior and the State of California of a plan, which shall conform to the water quality standards of the State of California as approved by the Administrator of the Environmental Protection Agency, to minimize any detrimental effect of the San Luis drainage waters.

(b) The costs of the Kesterson Reservoir Cleanup Program and the costs of the San Joaquin Valley Drainage Program shall be classified by the Secretary of the Interior as reimbursable or nonreimbursable and collected until fully repaid pursuant to the "Cleanup Program-Alternative Repayment Plan" and the "SJVDP-Alternative Repayment Plan" described in the report entitled "Repayment Report, Kesterson Reservoir Cleanup Program and San Joaquin Valley Drainage Program, February 1995", prepared by the Department of the Interior, Bureau of Reclamation. Any future obligations of funds by the United States relating to, or providing for, drainage service or drainage studies for the San Luis Unit shall be fully reimbursable by San Luis Unit beneficiaries of such service or studies pursuant to Federal reclamation law.

SEC. 203. Section 529(b)(3) of Public Law 106-541, as amended by section 115 of Public Law 109-103, is further amended by striking "\$20,000,000" and inserting "\$30,000,000" in lieu thereof.

SEC. 204. Section 8 of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104-298) is amended—

(1) in subsection (a), in the first sentence, by striking "2011" and inserting "2016"; and

(2) in subsection (b), by striking "\$25,000,000 for fiscal years 1997 through 2011" and inserting "\$3,000,000 for each of fiscal years 2012 through 2016".

SEC. 205. (a) PERMITTED USES.—Section 2507(b) of the Farm Security and Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107-171) is amended—

(1) in the matter preceding paragraph (1), by striking "In any case in which there are willing sellers" and inserting "For the benefit of at-risk natural desert terminal lakes and associated riparian and watershed resources, in any case in which there are willing sellers or willing participants";

(2) in paragraph (2), by striking "in the Walker River" and all that follows through "119 Stat. 2268"; and

(3) in paragraph (3), by striking "in the Walker River Basin".

(b) WALKER BASIN RESTORATION PROGRAM.—Section 208(b) of the Energy and Water Development and Related Agencies Appropriations Act, 2010 (Public Law 111-85; 123 Stat. 2858) is amended—

(1) in paragraph (1)(B)(iv), by striking "exercise water rights" and inserting "manage land, water appurtenant to the land, and related interests"; and

(2) in paragraph (2)(A), by striking "The amount made available under subsection (a)(1) shall be provided to the National Fish and Wildlife Foundation" and inserting "Any amount made available to the National Fish and Wildlife Foundation under subsection (a) shall be provided".

SEC. 206. The Federal policy for addressing California's water supply and environmental issues related to the Bay-Delta shall be consistent with State law, including the co-equal goals of providing a more reliable water supply for the State of California and protecting, restoring, and enhancing the Delta ecosystem. The Secretary of the Interior, the Secretary of

Commerce, the Army Corps of Engineers and the Environmental Protection Agency Administrator shall jointly coordinate the efforts of the relevant agencies and work with the State of California and other stakeholders to complete and issue the Bay Delta Conservation Plan Final Environmental Impact Statement no later than February 15, 2013. Nothing herein modifies existing requirements of Federal law.

SEC. 207. The Secretary of the Interior may participate in non-Federal groundwater banking programs to increase the operational flexibility, reliability, and efficient use of water in the State of California, and this participation may include making payment for the storage of Central Valley Project water supplies, the purchase of stored water, the purchase of shares or an interest in ground banking facilities, or the use of Central Valley Project water as a medium of payment for groundwater banking services: Provided, That the Secretary of the Interior shall participate in groundwater banking programs only to the extent allowed under State law and consistent with water rights applicable to the Central Valley Project: Provided further, That any water user to which banked water is delivered shall pay for such water in the same manner provided by that water user's then-current Central Valley Project water service, repayment, or water rights settlement contract at the rate provided by the then-current Central Valley Project Irrigation or Municipal and Industrial Rate Setting Policies; and: Provided further, That in implementing this section, the Secretary of the Interior shall comply with applicable environmental laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) Nothing herein shall alter or limit the Secretary's existing authority to use groundwater banking to meet existing fish and wildlife obligations.

SEC. 208. (a) Subject to compliance with all applicable Federal and State laws, a transfer of irrigation water among Central Valley Project contractors from the Friant, San Felipe, West San Joaquin, and Delta divisions, and a transfer from a long-term Friant Division water service or repayment contractor to a temporary or prior temporary service contractors within the place of use in existence on the date of the transfer, as identified in the Bureau of Reclamation water rights permits for the Friant Division, shall be considered to meet the conditions described in subparagraphs (A) and (I) of section 3405(a)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575; 106 Stat. 4709).

(b) The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service and the Commissioner of the Bureau of Reclamation shall initiate and complete, on the most expedited basis practicable, programmatic environmental compliance so as to facilitate voluntary water transfers within the Central Valley Project, consistent with all applicable Federal and State law.

(c) Not later than 180 days after the date of enactment of this Act and each of the 4 years thereafter, the Commissioner of the Bureau of Reclamation shall submit to the committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate a report that describes the status of efforts to help facilitate and improve the water transfers within the Central Valley Project and water transfers between the Central Valley Project and other water projects in the State of California; evaluates potential effects of this Act on Federal programs, Indian tribes, Central Valley Project operations, the environment, groundwater aquifers, refuges, and communities; and provides recommendations on ways to facilitate and improve the process for these transfers.

SEC. 209. Section 10009(c)(2) of the San Joaquin River Restoration Settlement Act (Public Law 111-11; 123 Stat. 1356) is amended by striking "October 1, 2019, all funds in the Fund shall

be available for expenditure without further appropriation." and inserting "October 1, 2014, all funds in the Fund shall be available for expenditure on an annual basis in an amount not to exceed \$40,000,000 without further appropriation." in lieu thereof.

TITLE III

DEPARTMENT OF ENERGY ENERGY PROGRAMS

ENERGY EFFICIENCY AND RENEWABLE ENERGY

For Department of Energy expenses including the purchase, construction, and acquisition of plant and capital equipment, and other expenses necessary for energy efficiency and renewable energy activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, \$1,795,641,000, to remain available until expended: Provided, That \$165,000,000 shall be available until September 30, 2013 for program direction: Provided further, That of the amount appropriated, the Secretary may use not more than \$170,000,000 for activities of the Department of Energy pursuant to the Defense Production Act of 1950 (50 U.S.C. App. 2061, et seq.): Provided further, That within 12 months of the date of enactment, the Secretary shall initiate separate rulemakings to establish efficiency standards for televisions and set top television boxes.

ELECTRICITY DELIVERY AND ENERGY RELIABILITY

For Department of Energy expenses including the purchase, construction, and acquisition of plant and capital equipment, and other expenses necessary for electricity delivery and energy reliability activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, \$141,010,000, to remain available until expended: Provided, That \$27,010,000 shall be available until September 30, 2013 for program direction.

NUCLEAR ENERGY

For Department of Energy expenses including the purchase, construction, and acquisition of plant and capital equipment, and other expenses necessary for nuclear energy activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, and the purchase of not more than 10 buses, all for replacement only, \$583,834,000, to remain available until expended: Provided, That \$86,279,000 shall be available until September 30, 2013 for program direction: Provided further, That, notwithstanding any other provision of law, the Department shall develop a strategy within 3 months of the publication of the final report of the Blue Ribbon Commission on America's Nuclear Future to manage spent nuclear fuel and other nuclear waste at consolidated storage facilities and permanent repositories that can be implemented as expeditiously as possible.

FOSSIL ENERGY RESEARCH AND DEVELOPMENT (INCLUDING RESCISSION)

For necessary expenses in carrying out fossil energy research and development activities, under the authority of the Department of Energy Organization Act (Public Law 95-91), including the acquisition of interest, including de-feasible and equitable interests in any real property or any facility or for plant or facility acquisition or expansion, and for conducting inquiries, technological investigations and research concerning the extraction, processing, use, and disposal of mineral substances without objec-

tionable social and environmental costs (30 U.S.C. 3, 1602, and 1603), \$445,471,000, to remain available until expended: Provided, That \$151,729,000 shall be available until September 30, 2013 for program direction: Provided further, That for all programs funded under Fossil Energy appropriations in this Act or any other Act, the Secretary may vest fee title or other property interests acquired under projects in any entity, including the United States: Provided further, That of prior-year balances, \$187,000,000 are hereby rescinded: Provided further, That no rescission made by the previous proviso shall apply to any amount previously appropriated in Public Law 111-5 or designated by the Congress as an emergency requirement pursuant to a concurrent resolution on the budget or the Balanced Budget and Emergency Deficit Control Act of 1985.

NAVAL PETROLEUM AND OIL SHALE RESERVES

For expenses necessary to carry out naval petroleum and oil shale reserve activities, \$14,909,000, to remain available until expended: Provided, That, notwithstanding any other provision of law, unobligated funds remaining from prior years shall be available for all naval petroleum and oil shale reserve activities.

STRATEGIC PETROLEUM RESERVE

For necessary expenses for Strategic Petroleum Reserve facility development and operations and program management activities pursuant to the Energy Policy and Conservation Act of 1975, as amended (42 U.S.C. 6201 et seq.), \$192,704,000, to remain available until expended.

SPR PETROLEUM ACCOUNT

Notwithstanding sections 161 and 167 of the Energy Policy and Conservation Act (42 U.S.C. 6241, 6247), the Secretary of Energy shall sell \$500,000,000 in petroleum products from the Reserve not later than March 1, 2012, and shall deposit any proceeds from such sales in the General Fund of the Treasury: Provided, That paragraphs (a)(1) and (2) of section 160 of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6240(a)(1) and (2)) are hereby repealed: Provided further, That unobligated balances in this account shall be available to cover the costs of any sale under this Act.

NORTHEAST HOME HEATING OIL RESERVE

(INCLUDING RESCISSION)

For necessary expenses for Northeast Home Heating Oil Reserve storage, operation, and management activities pursuant to the Energy Policy and Conservation Act, \$10,119,000, to remain available until expended: Provided, That amounts net of the purchase of 1 million barrels of petroleum distillates in fiscal year 2011; costs related to transportation, delivery, and storage; and sales of petroleum distillate from the Reserve under section 182 of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6250a) are hereby rescinded.

ENERGY INFORMATION ADMINISTRATION

For necessary expenses in carrying out the activities of the Energy Information Administration, \$105,000,000, to remain available until expended.

NON-DEFENSE ENVIRONMENTAL CLEANUP

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses necessary for non-defense environmental cleanup activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, \$219,121,000, to remain available until expended.

URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND

For necessary expenses in carrying out uranium enrichment facility decontamination and decommissioning, remedial actions, and other

activities of title II of the Atomic Energy Act of 1954, and title X, subtitle A, of the Energy Policy Act of 1992, \$429,000,000, to be derived from the Uranium Enrichment Decontamination and Decommissioning Fund, to remain available until expended.

SCIENCE

For Department of Energy expenses including the purchase, construction, and acquisition of plant and capital equipment, and other expenses necessary for science activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or facility or for plant or facility acquisition, construction, or expansion, and purchase of not more than 49 passenger motor vehicles for replacement only, including one ambulance and one bus, \$4,842,665,000, to remain available until expended: Provided, That \$180,786,000 shall be available until September 30, 2013 for program direction.

ADVANCED RESEARCH PROJECTS AGENCY— ENERGY

For necessary expenses in carrying out the activities authorized by section 5012 of the America COMPETES Act (Public Law 110-69), as amended, \$250,000,000, to remain available until expended.

TITLE 17 INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

Subject to section 502 of the Congressional Budget Act of 1974, for the cost of loan guarantees for renewable energy or efficient end-use energy technologies under section 1703 of the Energy Policy Act of 2005, \$200,000,000 is appropriated to remain available until expended: Provided, That the amounts in this section are in addition to those provided in any other Act: Provided further, That, notwithstanding section 1703(a)(2) of the Energy Policy Act of 2005, funds appropriated for the cost of loan guarantees are also available for projects for which an application has been submitted to the Department of Energy prior to February 24, 2011, in whole or in part, for a loan guarantee under 1705 of the Energy Policy Act of 2005: Provided further, That an additional amount for necessary administrative expenses to carry out this Loan Guarantee program, \$38,000,000 is appropriated, to remain available until expended: Provided further, That \$38,000,000 of the fees collected pursuant to section 1702(h) of the Energy Policy Act of 2005 shall be credited as offsetting collections to this account to cover administrative expenses and shall remain available until expended, so as to result in a final fiscal year 2011 appropriations from the general fund estimated at not more than \$0: Provided further, That fees collected under section 1702(h) in excess of the amount appropriated for administrative expenses shall not be available until appropriated: Provided further, That for amounts collected pursuant to section 1702(b)(2) of the Energy Policy Act of 2005, the source of such payment received from borrowers is not a loan or other debt obligation that is guaranteed by the Federal Government: Provided further, That pursuant to section 1702(b)(2) of the Energy Policy Act of 2005, no appropriations are available to pay the subsidy cost of such guarantees for nuclear power or fossil energy facilities: Provided further, That none of the loan guarantee authority made available in this Act shall be available for commitments to guarantee loans for any projects where funds, personnel, or property (tangible or intangible) of any Federal agency, instrumentality, personnel or affiliated entity are expected to be used (directly or indirectly) through acquisitions, contracts, demonstrations, exchanges, grants, incentives, leases, procurements, sales, other transaction authority, or other arrangements, to support the project or to obtain goods or services from the project: Provided further, That the previous provision shall not be interpreted as precluding the

use of the loan guarantee authority in this Act for commitment to guarantee loans for projects as a result of such projects benefiting from (a) otherwise allowable Federal income tax benefits; (b) being located on Federal land pursuant to a lease or right-of-way agreement for which all consideration for all uses is (i) paid exclusively in cash, (ii) deposited in the Treasury as offsetting receipts, and (iii) equal to the fair market value as determined by the head of the relevant Federal agency; (c) Federal insurance programs, including Price-Anderson; or (d) for electric generation projects, use of transmission facilities owned or operated by a Federal Power Marketing Administration or the Tennessee Valley Authority that have been authorized, approved, and financed independent of the project receiving the guarantee: Provided further, That none of the loan guarantee authority made available in this Act shall be available for any project unless the Director of the Office of Management and Budget has certified in advance in writing that the loan guarantee and the project comply with the provisions under this title.

ADVANCED TECHNOLOGY VEHICLES MANUFACTURING LOAN PROGRAM

For administrative expenses in carrying out the Advanced Technology Vehicles Manufacturing Loan Program, \$6,000,000, to remain available until expended.

DEPARTMENTAL ADMINISTRATION

For salaries and expenses of the Department of Energy necessary for departmental administration in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the hire of passenger motor vehicles and official reception and representation expenses not to exceed \$30,000, \$237,623,000, to remain available until expended, plus such additional amounts as necessary to cover increases in the estimated amount of cost of work for others notwithstanding the provisions of the Anti-Deficiency Act (31 U.S.C. 1511 et seq.): Provided, That such increases in cost of work are offset by revenue increases of the same or greater amount, to remain available until expended: Provided further, That moneys received by the Department for miscellaneous revenues estimated to total \$111,883,000 in fiscal year 2012 may be retained and used for operating expenses within this account, and may remain available until expended, as authorized by section 201 of Public Law 95-238, notwithstanding the provisions of 31 U.S.C. 3302: Provided further, That the sum herein appropriated shall be reduced by the amount of miscellaneous revenues received during 2012, and any related appropriated receipt account balances remaining from prior years' miscellaneous revenues, so as to result in a final fiscal year 2012 appropriation from the general fund estimated at not more than \$125,740,000.

OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$41,774,000, to remain available until expended.

ATOMIC ENERGY DEFENSE ACTIVITIES

NATIONAL NUCLEAR SECURITY ADMINISTRATION

WEAPONS ACTIVITIES

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other incidental expenses necessary for atomic energy defense weapons activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, the purchase of not to exceed one ambulance and one aircraft; \$7,190,000,000, to remain available until expended.

DEFENSE NUCLEAR NONPROLIFERATION (INCLUDING RESCISSION)

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other incidental expenses necessary for defense nuclear nonproliferation activities, in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, and the purchase of not to exceed one passenger motor vehicle for replacement only, \$2,404,300,000, to remain available until expended: Provided, That of the unobligated balances available under this heading, \$21,000,000 are hereby rescinded.

NAVAL REACTORS

For Department of Energy expenses necessary for naval reactors activities to carry out the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition (by purchase, condemnation, construction, or otherwise) of real property, plant, and capital equipment, facilities, and facility expansion, \$1,100,000,000, to remain available until expended.

OFFICE OF THE ADMINISTRATOR

For necessary expenses of the Office of the Administrator in the National Nuclear Security Administration, including official reception and representation expenses not to exceed \$12,000,340,000,000, to remain available until September 30, 2013.

ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES

DEFENSE ENVIRONMENTAL CLEANUP

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses necessary for atomic energy defense environmental cleanup activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, and the purchase of not to exceed one ambulances and one fire truck for replacement only, \$5,002,308,000, to remain available until expended: Provided, That \$321,628,000 shall be available until September 30, 2013 for program direction.

OTHER DEFENSE ACTIVITIES

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses, necessary for atomic energy defense, other defense activities, and classified activities, in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, and the purchase of not to exceed 10 passenger motor vehicles for replacement only, \$819,000,000, to remain available until expended.

POWER MARKETING ADMINISTRATION

BONNEVILLE POWER ADMINISTRATION FUND

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for the Kootenai River Native Fish Conservation Aquaculture Program, Lolo Creek Permanent Weir Facility, and Improving Anadromous Fish production on the Warm Springs Reservation, and, in addition, for official reception and representation expenses in an amount not to exceed \$7,000. During fiscal year 2012, no new direct loan obligations may be made.

OPERATION AND MAINTENANCE, SOUTHEASTERN POWER ADMINISTRATION

For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy, including transmission wheeling and ancillary

services pursuant to section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the southeastern power area, \$8,428,000, to remain available until expended: Provided, That notwithstanding 31 U.S.C. 3302 and section 5 of the Flood Control Act of 1944, up to \$8,428,000 collected by the Southeastern Power Administration from the sale of power and related services shall be credited to this account as discretionary offsetting collections, to remain available until expended for the sole purpose of funding the annual expenses of the Southeastern Power Administration: Provided further, That the sum herein appropriated for annual expenses shall be reduced as collections are received during the fiscal year so as to result in a final fiscal year 2012 appropriation estimated at not more than \$0: Provided further, That, notwithstanding 31 U.S.C. 3302, up to \$100,162,000 collected by the Southeastern Power Administration pursuant to the Flood Control Act of 1944 to recover purchase power and wheeling expenses shall be credited to this account as offsetting collections, to remain available until expended for the sole purpose of making purchase power and wheeling expenditures: Provided further, That for purposes of this appropriation, annual expenses means expenditures that are generally recovered in the same year that they are incurred (excluding purchase power and wheeling expenses).

OPERATION AND MAINTENANCE, SOUTHWESTERN POWER ADMINISTRATION

For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy, for construction and acquisition of transmission lines, substations and appurtenant facilities, and for administrative expenses, including official reception and representation expenses in an amount not to exceed \$1,500 in carrying out section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the Southwestern Power Administration, \$45,010,000, to remain available until expended: Provided, That notwithstanding 31 U.S.C. 3302 and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), up to \$33,118,000 collected by the Southwestern Power Administration from the sale of power and related services shall be credited to this account as discretionary offsetting collections, to remain available until expended, for the sole purpose of funding the annual expenses of the Southwestern Power Administration: Provided further, That the sum herein appropriated for annual expenses shall be reduced as collections are received during the fiscal year so as to result in a final fiscal year 2012 appropriation estimated at not more than \$11,892,000: Provided further, That, notwithstanding 31 U.S.C. 3302, up to \$40,000,000 collected by the Southwestern Power Administration pursuant to the Flood Control Act of 1944 to recover purchase power and wheeling expenses shall be credited to this account as offsetting collections, to remain available until expended for the sole purpose of making purchase power and wheeling expenditures: Provided further, That for purposes of this appropriation, annual expenses means expenditures that are generally recovered in the same year that they are incurred (excluding purchase power and wheeling expenses).

CONSTRUCTION, REHABILITATION, OPERATION AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION

For carrying out the functions authorized by title III, section 302(a)(1)(E) of the Act of August 4, 1977 (42 U.S.C. 7152), and other related activities including conservation and renewable resources programs as authorized, including official reception and representation expenses in an amount not to exceed \$1,500; \$285,900,000, to remain available until expended, of which \$278,856,000 shall be derived from the Department of the Interior Reclamation Fund: Provided, That notwithstanding 31 U.S.C. 3302, section 5 of the Flood Control Act of 1944 (16 U.S.C.

825s), and section 1 of the Interior Department Appropriation Act, 1939 (43 U.S.C. 392a), up to \$189,932,000 collected by the Western Area Power Administration from the sale of power and related services shall be credited to this account as discretionary offsetting collections, to remain available until expended, for the sole purpose of funding the annual expenses of the Western Area Power Administration: Provided further, That the sum herein appropriated for annual expenses shall be reduced as collections are received during the fiscal year so as to result in a final fiscal year 2012 appropriation estimated at not more than \$95,968,000, of which \$88,924,000 is derived from the Reclamation Fund: Provided further, That of the amount herein appropriated, not more than \$3,375,000 is for deposit into the Utah Reclamation Mitigation and Conservation Account pursuant to title IV of the Reclamation Projects Authorization and Adjustment Act of 1992: Provided further, That notwithstanding 31 U.S.C. 3302, up to \$306,541,000 collected by the Western Area Power Administration pursuant to the Flood Control Act of 1944 and the Reclamation Project Act of 1939 to recover purchase power and wheeling expenses shall be credited to this account as offsetting collections, to remain available until expended for the sole purpose of making purchase power and wheeling expenditures: Provided further, That for purposes of this appropriation, annual expenses means expenditures that are generally recovered in the same year that they are incurred (excluding purchase power and wheeling expenses).

FALCON AND AMISTAD OPERATING AND MAINTENANCE FUND

For operation, maintenance, and emergency costs for the hydroelectric facilities at the Falcon and Amistad Dams, \$4,169,000, to remain available until expended, and to be derived from the Falcon and Amistad Operating and Maintenance Fund of the Western Area Power Administration, as provided in section 2 of the Act of June 18, 1954 (68 Stat. 255) as amended: Provided, That notwithstanding the provisions of that Act and of 31 U.S.C. 3302, up to \$3,949,000 collected by the Western Area Power Administration from the sale of power and related services from the Falcon and Amistad Dams shall be credited to this account as discretionary offsetting collections, to remain available until expended for the sole purpose of funding the annual expenses of the hydroelectric facilities of these Dams and associated Western Area Power Administration activities: Provided further, That the sum herein appropriated for annual expenses shall be reduced as collections are received during the fiscal year so as to result in a final fiscal year 2012 appropriation estimated at not more than \$220,000: Provided further, That for purposes of this appropriation, annual expenses means expenditures that are generally recovered in the same year that they are incurred.

FEDERAL ENERGY REGULATORY COMMISSION SALARIES AND EXPENSES

For necessary expenses of the Federal Energy Regulatory Commission to carry out the provisions of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including services as authorized by 5 U.S.C. 3109, the hire of passenger motor vehicles, and official reception and representation expenses not to exceed \$3,000, \$304,600,000, to remain available until expended: Provided, That notwithstanding any other provision of law, not to exceed \$304,600,000 of revenues from fees and annual charges, and other services and collections in fiscal year 2012 shall be retained and used for necessary expenses in this account, and shall remain available until expended: Provided further, That the sum herein appropriated from the general fund shall be reduced as revenues are received during fiscal year 2012 so as to result in a final fiscal year 2012 appropriation from the general fund

estimated at not more than \$0: Provided further, That not later than 180 days after the date of enactment of this Act, the Commission shall issue such regulations as are necessary to clarify that a State may establish rates for the wholesale sale of electric energy in interstate commerce pursuant to the Public Utility Regulatory Policies Act of 1978 such that those rates shall not unduly discriminate against the qualifying cogeneration facility or qualifying small power production facility selling the electric energy or exceed the costs to produce and deliver the electric energy, as determined for the specific technology at issue.

GENERAL PROVISIONS—DEPARTMENT OF ENERGY

SEC. 301. The unexpended balances of prior appropriations provided for activities in this Act may be available to the same appropriation accounts for such activities established pursuant to this title. Available balances may be merged with funds in the applicable established accounts and thereafter may be accounted for as one fund for the same time period as originally enacted.

SEC. 302. When the Department of Energy makes a user facility available to universities or other potential users, or seeks input from universities or other potential users regarding significant characteristics or equipment in a user facility or a proposed user facility, the Department shall ensure broad public notice of such availability or such need for input to universities and other potential users. When the Department of Energy considers the participation of a university or other potential user as a formal partner in the establishment or operation of a user facility, the Department shall employ full and open competition in selecting such a partner. For purposes of this section, the term "user facility" includes, but is not limited to:

(1) a user facility as described in section 2203(a)(2) of the Energy Policy Act of 1992 (42 U.S.C. 13503(a)(2));

(2) a National Nuclear Security Administration Defense Programs Technology Deployment Center/User Facility; and

(3) any other Departmental facility designated by the Department as a user facility.

SEC. 303. Funds appropriated by this or any other Act, or made available by the transfer of funds in this Act, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) during fiscal year 2012 until the enactment of the Intelligence Authorization Act for fiscal year 2012.

SEC. 304. (a) SUBMISSION TO CONGRESS.—The Secretary of Energy shall submit to Congress each year, at the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, United States Code, a future-years energy program reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years energy program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years. A future-years energy program shall be included in the fiscal year 2014 budget submission to Congress and every fiscal year thereafter.

(b) ELEMENTS.—Each future-years energy program shall contain the following:

(1) The estimated expenditures and proposed appropriations necessary to support programs, projects, and activities of the Secretary of Energy during the 5-fiscal year period covered by the program, expressed in a level of detail comparable to that contained in the budget submitted by the President to Congress under section 1105 of title 31, United States Code.

(2) The estimated expenditures and proposed appropriations shaped by high-level, prioritized program and budgetary guidance that is consistent with the administration's policies and out year budget projections and reviewed by DOE's senior leadership to ensure that the future-years energy program is consistent and

congruent with previously established program and budgetary guidance.

(3) A description of the anticipated workload requirements for each DOE national laboratory during the 5-fiscal year period.

(c) **CONSISTENCY IN BUDGETING.—**

(1) The Secretary of Energy shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Secretary of Energy in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31, United States Code, for any fiscal year, as shown in the future-years energy program submitted pursuant to subsection (a).

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the administration included pursuant to paragraph (5) of section 1105(a) of such title in the budget submitted to Congress under that section for any fiscal year.

SEC. 305. Section 1702 of the Energy Policy Act of 2005 (42 U.S.C. 16512) is amended—

(1) by striking subsection (b) and inserting the following:

“(b) **SPECIFIC APPROPRIATION OR CONTRIBUTION.—**

“(1) **IN GENERAL.—**No guarantee shall be made unless—

“(A) an appropriation for the cost of the guarantee has been made;

“(B) the Secretary has received from the borrower a payment in full for the cost of the guarantee and deposited the payment into the Treasury; or

“(C) a combination of one or more appropriations under subparagraph (A) and one or more payments from the borrower under subparagraph (B) has been made that is sufficient to cover the cost of the guarantee.”

SEC. 306. Plant or construction projects for which amounts are made available under this and subsequent appropriation Acts with a current estimated cost of less than \$10,000,000 are considered for purposes of section 4703 of Public Law 107-314 as a plant project for which the approved total estimated cost does not exceed the minor construction threshold and for purposes of section 4704 of Public Law 107-314 as a construction project with a current estimated cost of less than a minor construction threshold.

SEC. 307. In section 839b(h)(10)(B) of title 16, United States Code, strike “\$1,000,000” and insert “\$5,000,000.”

(RESCISSION)

SEC. 308. None of the funds in this Act or any other Act shall be used to deposit funds in excess of \$25,000,000 from any Federal royalties, rents, and bonuses derived from Federal onshore and off-shore oil and gas leases issued under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and the Mineral Leasing Act (30 U.S.C. 181 et seq.) into the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund.

(RESCISSION)

SEC. 309. Of the amounts appropriated in this title, \$73,700,000 are hereby rescinded, to reflect savings from the contractor pay freeze instituted by the Department. The Department shall allocate the rescission among the appropriations made in this title.

SEC. 310. Recipients of grants awarded by the Department in excess of \$1,000,000 shall certify that they will, by the end of the fiscal year, upgrade the efficiency of their facilities by replacing any lighting that does not meet or exceed the energy efficiency standard for incandescent light bulbs set forth in section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295).

SEC. 311. (a) Any determination (including a determination made prior to the date of enactment of this Act) by the Secretary pursuant to section 3112(d)(2)(B) of the USEC Privatization Act (110 Stat. 1321-335), as amended, that the sale or transfer of uranium will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry shall be valid for not more than 2 calendar years subsequent to such determination.

(b) Not less than 30 days prior to the transfer, sale, barter, distribution, or other provision of uranium in any form for the purpose of accelerating cleanup at a Federal site, the Secretary shall notify the House and Senate Committees on Appropriations of the following:

(1) the amount of uranium to be transferred, sold, bartered, distributed, or otherwise provided;

(2) an estimate by the Secretary of the gross market value of the uranium on the expected date of the transfer, sale, barter, distribution, or other provision of the uranium;

(3) the expected date of transfer, sale, barter, distribution, or other provision of the uranium;

(4) the recipient of the uranium; and

(5) the value of the services the Secretary expects to receive in exchange for the uranium, including any reductions to the gross value of the uranium by the recipient.

(c) Not later than June 30, 2012, the Secretary shall submit to the House and Senate Committees on Appropriations a revised excess uranium inventory management plan for fiscal years 2013 through 2018.

(d) Not later than December 31, 2011 the Secretary shall submit to the House and Senate Committees on Appropriations a report evaluating the economic feasibility of re-enriching depleted uranium located at Federal sites.

SEC. 312. (a) The Secretary of Energy may allow a third party, on a fee-for-service basis, to operate and maintain a metering station of the Strategic Petroleum Reserve that is underutilized (as defined in section 102-75.50 of title 41, Code of Federal Regulations (or successor regulations)) and related equipment.

(b) Funds collected under subsection (a) shall be deposited in the general fund of the Treasury.

TITLE IV

INDEPENDENT AGENCIES

APPALACHIAN REGIONAL COMMISSION

For expenses necessary to carry out the programs authorized by the Appalachian Regional Development Act of 1965, as amended, for necessary expenses for the Federal Co-Chairman and the Alternate on the Appalachian Regional Commission, for payment of the Federal share of the administrative expenses of the Commission, including services as authorized by 5 U.S.C. 3109, and hire of passenger motor vehicles, \$58,024,000, to remain available until expended.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

SALARIES AND EXPENSES

For necessary expenses of the Defense Nuclear Facilities Safety Board in carrying out activities authorized by the Atomic Energy Act of 1954, as amended by Public Law 100-456, section 1441, \$29,130,000, to remain available until September 30, 2013: Provided, That within 90 days of enactment of this Act the Defense Nuclear Facilities Safety Board shall enter into an agreement for fiscal year 2012 and hereafter with the Office of the Inspector General of either the Nuclear Regulatory Commission or the Department of Energy for inspector general services.

DELTA REGIONAL AUTHORITY

SALARIES AND EXPENSES

For necessary expenses of the Delta Regional Authority and to carry out its activities, as authorized by the Delta Regional Authority Act of 2000, as amended, notwithstanding sections 382C(b)(2), 382F(d), 382M, and 382N of said Act, \$9,925,000, to remain available until expended.

DENALI COMMISSION

For expenses of the Denali Commission including the purchase, construction, and acquisition of plant and capital equipment as necessary and other expenses, \$9,077,000, to remain available until expended, notwithstanding the limitations contained in section 306(g) of the Denali Commission Act of 1998: Provided, That funds shall be available for construction projects in an amount not to exceed 80 percent of total project cost for distressed communities, as defined by section 307 of the Denali Commission Act of 1998 (division C, title III, Public Law 105-277), as amended by section 701 of appendix D, title VII, Public Law 106-113 (113 Stat. 1501A-280), and an amount not to exceed 50 percent for non-distressed communities.

NUCLEAR REGULATORY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed \$25,000), \$1,027,240,000, to remain available until expended: Provided, That revenues from licensing fees, inspection services, and other services and collections estimated at \$899,726,000 in fiscal year 2012 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302, and shall remain available until expended: Provided further, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2012 so as to result in a final fiscal year 2012 appropriation estimated at not more than \$127,514,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, \$10,860,000, to remain available until expended: Provided, That revenues from licensing fees, inspection services, and other services and collections estimated at \$9,774,000 in fiscal year 2012 shall be retained and be available until expended, for necessary salaries and expenses in this account, notwithstanding section 3302 of title 31, United States Code: Provided further, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2012 so as to result in a final fiscal year 2012 appropriation estimated at not more than \$1,086,000.

NUCLEAR WASTE TECHNICAL REVIEW BOARD

SALARIES AND EXPENSES

For necessary expenses of the Nuclear Waste Technical Review Board, as authorized by Public Law 100-203, section 5051, \$3,400,000 to be derived from the Nuclear Waste Fund, and to remain available until expended.

OFFICE OF THE FEDERAL COORDINATOR FOR ALASKA NATURAL GAS TRANSPORTATION PROJECTS

For necessary expenses for the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects pursuant to the Alaska Natural Gas Pipeline Act of 2004, \$1,000,000.

NORTHERN BORDER REGIONAL COMMISSION

For necessary expenses of the Northern Border Regional Commission in carrying out activities authorized by subtitle V of title 40, United States Code, \$1,275,000, to remain available until expended: Provided, That such amounts shall be available for administrative expenses, notwithstanding section 15751(b) of title 40, United States Code.

SOUTHEAST CRESCENT REGIONAL COMMISSION

For necessary expenses of the Southeast Crescent Regional Commission in carrying out activities authorized by subtitle V of title 40, United States Code, \$213,000, to remain available until expended.

GENERAL PROVISIONS

SEC. 401. (a) **DEFINITIONS.—**In this section:

(1) CHAIRPERSON.—The term “Chairperson” means the Chairperson of the Commission.

(2) COMMISSION.—The term “Commission” means the Nuclear Regulatory Commission.

(3) SPENT FUEL POOL.—The term “spent fuel pool” means an underwater storage and cooling facility for spent (or depleted) fuel assemblies that have been removed from a reactor.

(b) As soon as practicable after the date of enactment of this Act, the Chairperson shall order licensees to, in accordance with the recommendations of the 90-day task force of the Commission, enhance spent fuel pools by:

(1) providing sufficient safety-related instrumentation that is able to withstand design-basis natural phenomena to monitor key spent fuel pool parameters (such as water level, temperature, and area radiation levels) from a control room;

(2) providing safety-related, alternating-current electrical power for the spent fuel pool makeup system;

(3) providing onsite emergency electrical power for spent fuel pools and instrumentation for cases in which there exists irradiated fuel in a spent fuel pool, regardless of the operational mode of the relevant reactor; and

(4) installing a seismically qualified means to spray water into spent fuel pools, including an easily accessible connection to supply the water (such as using a portable pump or pumper truck) at grade outside a relevant structure.

SEC. 402. Consistent with the findings of its 90 Day Task Force, the Nuclear Regulatory Commission shall order licensees to reevaluate the seismic, tsunami, flooding and other hazards at their sites as expeditiously as possible, and thereafter, at least once every 10 years, and the Commission shall require licensees to demonstrate to the Commission that the design basis of structures, systems, and components for each operating reactor meet current NRC requirements and guidance with regard to these threats. The Commission shall require licensees to update the design basis of structures, systems, and components for each operating reactor, if necessary.

TITLE V

GENERAL PROVISIONS

SEC. 501. None of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913.

SEC. 502. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in this Act or any other appropriation Act.

TITLE VI

ADDITIONAL FUNDING FOR DISASTER RELIEF

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

MISSISSIPPI RIVER AND TRIBUTARIES

For an additional amount for “Mississippi River and Tributaries” for expenses resulting from a major disaster designation pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)), \$890,177,300, to remain available until expended for repair of damages to Federal projects: Provided, That the Assistant Secretary of the Army for Civil Works shall provide a monthly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of these funds, beginning not later than 60 days after enactment of this Act: Provided further, That the amount in this paragraph is designated by Congress as being for disaster relief pursuant to sec-

tion 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), as amended.

OPERATION AND MAINTENANCE

For an additional amount for “Operation and Maintenance” for expenses resulting from a major disaster designation pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) to dredge navigation channels and repair damage to Corps projects nationwide, \$88,003,700, to remain available until expended: Provided, That the Assistant Secretary of the Army for Civil Works shall provide a monthly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of these funds, beginning not later than 60 days after enactment of this Act: Provided further, That the amount in this paragraph is designated by Congress as being for disaster relief pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), as amended.

FLOOD CONTROL AND COASTAL EMERGENCIES

For an additional amount for “Flood Control and Coastal Emergencies”, for expenses resulting from a major disaster designation pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) as authorized by section 5 of the Act of August 18, 1941 (33 U.S.C. 701n), for necessary expenses to prepare for flood, hurricane and other natural disasters and support emergency operations, repair and other activities in response to recent natural disasters as authorized by law, \$66,387,000, to remain available until expended: Provided, That the Assistant Secretary of the Army for Civil Works shall provide a monthly report to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of these funds, beginning not later than 60 days after enactment of this Act: Provided further, That the amount in this paragraph is designated by Congress as being for disaster relief pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), as amended.

This Act may be cited as the “Energy and Water Development and Related Agencies Appropriations Act, 2012”.

Mrs. FEINSTEIN. Mr. President, I am very pleased to rise in support of the fiscal year 2012 energy and water development appropriations bill with my ranking member, the distinguished Senator ALEXANDER, with whom I have had the great pleasure of working. I want to say this up front: It has been a pleasure to work with this particular ranking member. He is respected, he is credible, he is direct, and he is reasonable, which I have learned is an endangered species around here. So I very much appreciate that.

This Energy and Water bill has an allocation of \$31.625 billion, which is \$57 million or .1 percent below last year’s enacted levels and nearly \$3 billion or 9.4 percent below the President’s request. The \$31.625 billion is split between security and nonsecurity funding, consistent with the Budget Control Act of 2011. The Budget Control Act established caps on discretionary spending over 10 years, with separate caps for security and nonsecurity spending. Now, this becomes relevant, as I will explain.

The security allocation for energy and water is \$11.05 billion. The \$11.05 billion funds only four programs under

the National Nuclear Security Administration, called NNSA: nuclear weapons, nonproliferation, naval reactors, and the Office of the Administrator.

I would like to point out right up front that funding for the NNSA makes up a growing portion of this bill. Last year the NNSA made up 30 percent of the total allocation. This year it has increased to 35 percent. In addition, because of the Budget Control Act, a firewall is created between security and nonsecurity funding so we cannot transfer funding back and forth. No funding from the NNSA can be used to fund energy and water projects, and no funds from energy and water can be used to fund the National Nuclear Security Administration.

While funding increases for the National Nuclear Security Administration to help advance national security priorities, it comes at the expense of water and energy projects in the rest of our bill. Our nonsecurity allocation, which funds the Corps of Engineers, the Bureau of Reclamation under the Department of the Interior, and the Department of Energy, is \$20.575 billion. While our security allocation grew by \$528 million or 5 percent, the nonsecurity allocation is \$584 million or 2.8 percent less than for fiscal year 2011 and \$3.5 billion or 17 percent less than for fiscal year 2010. So we can see the crunch that is put on one part of the budget and the other part of our appropriations bill has actually expanded.

As I mentioned, the security allocation is \$11.05 billion, which is an increase of \$528 million or 5 percent over fiscal year 2011. This is an increase of \$1.163 billion or close to 12 percent for the security portion of this appropriations bill over fiscal year 2010.

To clarify, NNSA is responsible for three primary national security missions: first, maintaining the safety, security, and reliability of the Nation’s nuclear weapons stockpile; second, responsibility for reducing the threat of nuclear terrorism through nonproliferation programs; and third, it designs and builds nuclear reactors for safe and effective nuclear propulsion for aircraft carriers and submarines in the U.S. Navy.

Taking into account competing funding priorities for national security activities, I think this bill strikes as good a balance as it can between funding for nuclear weapons modernization and reducing the threat of nuclear proliferation. The Nuclear Weapons Program under the bill would see an increase of \$294 million or 4.2 percent above fiscal year 2011. With \$7.2 billion, the NNSA, which is the agency of concern, will be able to meet the highest priorities of the Nuclear Posture Review and modernization activities discussed during negotiations of the New START Treaty.

These are three primary activities:

First, funds will continue for life extension programs for the W76 submarine-launched warhead, the B61 bomb, and the W78 intercontinental ballistic missile warhead.

Second, funds allow for completing design work for two aging nuclear facilities that may need to be replaced to meet modern safety standards—one for handling plutonium at Los Alamos National Lab and the other for uranium at the Y-12 facility in Tennessee.

Third, funds will maintain the science, technology, and engineering base to continue assessing the safety, security, and reliability of the nuclear weapons stockpile.

The nonproliferation program would see an increase of \$109 million or 4.7 percent above fiscal year 2011. NNSA would stay on track to meet its goals to secure and remove the most vulnerable nuclear materials from around the world by the end of 2013. These are materials that could be used by terrorists to build nuclear devices. The United States has already removed 3,086 kilograms of highly enriched uranium—120 nuclear weapons' worth of material—from dozens of countries.

NNSA would also be able to continue deploying portal monitors at seaports and border crossings to detect nuclear smuggling and help countries increase security at nuclear facilities. The United States has installed radiation detection equipment at more than 399 sites across the world.

Finally, the security allocation will be used to fund the naval reactors program that provides propulsion for the country's submarines and aircraft carriers. An increase of \$141 million or 14.6 percent above fiscal year 2011 is directed to help design a nuclear reactor that will last 40 years for ballistic missile submarines, the most survivable leg of our nuclear deterrent.

Turning to nonsecurity funding, as I mentioned earlier, our allocation is \$20.575 billion—\$584 million or 2.8 percent less than fiscal year 2011. With this significant decrease in funding, the bill focuses its limited nonsecurity funding on the highest priorities: critical water infrastructure projects and accelerating energy technology.

Let me speak for a moment about water infrastructure. The Corps of Engineers would receive \$4.864 billion. That is an increase of \$7 million or one-tenth of 1 percent, above fiscal year 2011 and \$291 million or 5.9 percent above the President's request. Here is why. I strongly believe the Corps of Engineers is responsible for such a wide array of projects—building, maintaining, repairing locks, levees, dams, dredging for waterway navigation. Devastating floods and hurricanes in the last few months that have damaged many communities across the United States are a stark reminder of why Corps of Engineers infrastructure projects remain such a high congressional priority.

With a ban on congressionally directed projects—or, as they are not so fondly called, earmarks—Congress cannot direct needed funding to projects that may have been overlooked by the administration or to address emerging needs after the President's budget sub-

mission. The President's fiscal year 2012 budget request did not include more than 100 studies and projects for navigation, flood control, and environmental restoration that the administration included in the fiscal year 2011 work plan. Without funding in 2012, these studies and projects will likely be suspended.

I think that is important to keep in mind. While our bill does not fund any new projects, our bill provides \$291 million above the President's request to support these ongoing studies and projects for the Corps that were either unfunded or underfunded in the President's budget request.

The bill also provides the Department of the Interior \$1.067 billion, which is \$27 million or 2½ percent less than fiscal year 2011 but still \$16 million or 1.4 percent more than the President's request. Funding for the Department of Interior includes the Bureau of Reclamation, which is responsible for oversight and operation of water projects related to irrigation, water supply, and hydroelectric power generation in the 17 Western States.

Finally, the bill provides \$1.045 billion in disaster relief funding—and I wish to speak about that—this is on top of our base allocation—to repair damaged Corps of Engineers owned, operated, or fixed infrastructure from flooding on the Mississippi and Missouri Rivers and other natural disasters.

This level of funding covers damages the Corps identified when the committee reported this bill. As I mentioned during committee markup, we know this amount is insufficient based on the number and severity of natural disasters that have occurred this year. The Corps has updated their disaster needs. We will be working throughout the floor process to ensure that increased funding to address disaster recovery needs is provided. I think both the ranking member and I, our subcommittee, and the Appropriations Committee as a whole understand that responding to these disaster needs is of the highest priority.

Regarding clean energy, the bill provides stable funding to support science, technology, and engineering programs to advance clean energy technologies. It provides the Office of Science \$4.84 billion, the same as in 2011. The Office of Science conducts basic research in physics, chemistry, and biology to improve our understanding of energy and matter. New discoveries will advance energy technologies. Our bill focuses the limited resources of the Office of Science toward the highest priorities, which include material support, developing the next generation of biofuels, and maintaining the leadership of the United States in high-performance computing.

Our bill continues to fund three hubs, which are research centers made up of scientists and engineers from the national labs, universities, and private industry to address a specific energy

challenge. The three hubs focus on developing fuels that can be produced directly from sunlight, improving energy efficiency of existing buildings, and using modeling and simulation tools to improve the operation of nuclear reactors.

Our bill also funds a new hub, the fourth hub, to improve batteries for electric vehicles and for storage of wind, solar, and other intermittent power sources—something which the ranking member was very much interested in and which I was very pleased to agree to.

In addition to the Office of Science, the bill also provides \$250 million for ARPA-E, an increase of \$70 million, or 39 percent. ARPA-E funds new and innovative energy technologies that would significantly reduce our dependence on foreign oil and reduce carbon emissions.

ARPA-E's goal is to demonstrate the feasibility of new technology and then find a private company to commercialize the technology. As a sign of early success in attracting private investment, last year ARPA-E awarded a startup company \$750,000 to demonstrate its new innovative technology related to energy storage. An early demonstration of this startup's new technology has already attracted \$12 million in private investment to help commercialize it. I think that is good news.

While the government continues to invest in innovative energy technologies, nuclear energy continues to provide 20 percent of the Nation's electricity, but it is 70 percent of its carbon-free electricity. This, to me, is a stunning figure, that it is 20 percent of all power but 70 percent of carbon-free power.

Currently, nuclear energy will continue to be an important source of energy for us in the future. However, I deeply believe that before we expand nuclear power in the United States, we must address our spent fuel situation in order to limit the government's liability from its failure to take this waste.

Today, high-level nuclear spent fuels are stored at 74 locations most directly adjacent to an active reactor. The fuel remains in either spent fuel pools or dry casks meant to be temporary but, in reality, has been stored permanently. There is simply no place to put it.

Today, to date, the U.S. Government has paid out \$1 billion to the nuclear industry because of its failure to take custody of this fuel as required by law. Few people know this. This liability will grow to \$15.4 billion by 2020 and another \$500 million for each year of delay after 2020.

My distinguished ranking member, we simply have to get cracking and find either regional repositories or a central waste repository where nuclear waste can be stored essentially forever. The United States is responsible for 65,000 tons of spent fuel at these 74

sites. This is enough material to cover one football field 20-feet deep. And our liability continues to grow. According to the blue ribbon commission, if no nuclear reactors are built and the existing fleet of 104 reactors operate until the end of their licenses, the total inventory of spent fuel by 2050 would be 150,000 metric tons.

That is 2½ times as much as we have now. The current absence of a spent fuel policy and repository to store spent nuclear fuel is unacceptable and unsustainable. For these reasons, this bill takes the first step in requiring the Department of Energy to create a strategy for spent fuel storage, including options for consolidating and storing spent fuel at one or more regional sites.

With regard to funding for the nuclear energy program, the bill provides \$584 million, which is a reduction of \$142 million, or 24 percent, available funding that will focus more on safety and the back end of the nuclear fuel cycle. For example, the bill provides \$52 million—that is an increase of \$12 million from 2011—to accelerate development of new cladding materials for nuclear fuel that reduce the likelihood of meltdowns and hydrogen explosions, which were observed at Fukushima.

I believe as more becomes available about what actually happened at Fukushima and the aftereffects of Fukushima, cladding material is going to become much more significant.

In closing, I again thank my colleague and ranking member, Senator ALEXANDER, for working with me in a cooperative and constructive manner to draft this bill. I believe we have developed a well-balanced and responsible bill that addresses the water, infrastructure, energy, and national security needs of this Nation.

I hope every Senator can support the bill, and I hope we can conclude floor action in a timely manner.

I yield the floor to my distinguished ranking member.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee is recognized.

Mr. ALEXANDER. I thank the Senator from California. She is a delight to work with. Without disparaging any other Member of the Senate, it is nice to work with former mayors or county executives or even Governors because we are accustomed to making decisions and talking directly and coming to a result. That is what we are able to do. Even when we disagree—which we sometimes do—Senator FEINSTEIN and I are able to keep working on these issues and still try to come to a result. So it is a real privilege to work with Senator FEINSTEIN. I thank her for her courtesy and diligence.

Last week we spent an hour and a half on a very small part of this budget—actually, not even part of the budget but a related matter—making sure we understood all sides of the issues. I don't think in the whole hour and a half there was ever a Republican or

Democratic comment. We were trying to find out the right thing to do for our country, which I think is the goal of each of us.

There is no need to repeat what the chairman said and said very accurately. I will summarize and comment on a few of the points. I will highlight the areas of agreement, which are, for the most part, a couple of areas where we have different points of view which we are still working on. She emphasized—and I thought it was important to emphasize—that except for disaster spending, this Energy and Water bill is slightly below the spending levels of last year. When we add in disaster funding, which I will talk about in a minute, it is above that level.

There is no mandatory spending in the bill. Sometimes our bills get complicated by what we call automatic or mandatory spending. If it is included within an appropriations bill. Some of us wonder why, since we cannot do anything to change it in the appropriations process, but it is there. There is not any of that here. As the Senator emphasized, our bill is divided into two major parts—the security part or the defense part, and the nonsecurity part or the nondefense part. The security part is up; we are spending more. The reason for that is, in the first place, we asked the leaders of the committee to reallocate some money toward our subcommittee so we could try to, as much as we could, live up to our commitment to fund nuclear weapons modernization, an important issue that came up when the Senate ratified the new START treaty.

In other words, the new START treaty was about limiting the number of nuclear weapons here and in Russia, making sure we could inspect what the Russians are doing and, at the same time, we wanted to make sure what we have left works. This is about making sure what we have works. We made a commitment to try to go to certain levels. We are moving in that direction. We have not gotten there yet, but that is one reason, perhaps the main reason, we spend more on the security part.

On the nonsecurity part, as the Senator said, except for disaster spending, it is down. We are spending 3 percent less than we did before. I want to say a word about disaster funding. In the Budget Control Act, in August, a subject of great debate around here—one of the things done was to create a formula over the last 10 years that determines how much money we may be able to spend on disasters. The thought was that disaster spending, like other emergency spending, was getting out of control, and we need to think about it. Obviously, whenever there is a flood, hurricane, or other terrible disaster, we rush to help. But that is real money too, and it has to come from somewhere. This formula that was created says that during this fiscal year—the one about a month and a half old—that we may spend about \$11.3 billion based

on spending over the last 10 years. After that, we will have to reduce spending somewhere if we are going to spend more on disasters.

With respect to disaster relief, our bill is part of that. It is in the Corps of Engineers. We moved quickly in our subcommittee and in the Appropriations Committee to deal with the epic flooding the Senator described on the Mississippi and Missouri Rivers this past year, which, in some cases, exceeded the flood heights of the massive 1927 and 1933 floods.

To give an idea of how unusual these floods were, at our meeting of the Environment and Public Works Committee 3 weeks ago, 14 Senators in both parties came to the committee to say to the authorizing committee—the EPW Committee—we needed to do more to deal with the floods—14 Senators. I have never seen that many Senators testify before a committee before on behalf of any subject. That is how much we are concerned about it, and that is how much people in the areas affected are concerned about it.

In the Appropriations Committee, we had a discussion about how much of that disaster funding to fund. We recommended \$1.04 billion. There was an amendment by the Senator from Missouri that said it needs to be more because we know it will be more than that. We said, in a bipartisan way—I remember the chairman and ranking member said we don't have the estimates definite yet from the Corps of Engineers or from FEMA, so we are only going to fund those areas that are declared to be Presidential disasters, No. 1, and where we have definite estimates, No. 2. When we have more definite estimates of additional damage, we will recommend the funding.

We defeated the amendment offered by the Senator from Missouri with the promise that as real damage estimates come in, they will be met. Well, the Senator and I will be offering an amendment to address this increase. I want my colleagues to be aware of this because, particularly on our side of the aisle, we have had a good deal of discussion about funding for disasters.

In the amendment we will be offering, part of the money fits within the formula we agreed to in the Budget Control Act. About \$550 million will not, and we will have to find some other place in the budget to reduce spending in order to properly fund this disaster spending. I doubt if there is any Senator who would not want to fund that because this is spending to be prepared for the next disaster. This will be money for preparedness, sandbags. I can guarantee, if the Missouri and Mississippi Rivers flood next year, and sandbags are not available because we could not find the money somewhere else, there will be 28 Senators at the next meeting of the EPW Committee, not just 14.

So this is an urgent request. We are suggesting a way to reduce spending. So with the disaster funding, the only

thing that drives our total recommendations above last year's spending, we are, No. 1, staying within the cap created by the Budget Control Committee; and, No. 2, for the amount of money for the sandbags and other preparedness, we are going to recommend a way to reduce spending somewhere else in order to be prepared for the next flood.

With respect to the security allocation, Senator FEINSTEIN mentioned that one part of our budget has to do with national security and another has to do with nonsecurity. Most people, when they think of energy, don't think of the national security parts. It is among the most important national defense requirements we have. As she said, it includes modernizing all of our nuclear weapons to make sure they work. It includes trying to make sure they don't spread around the world. That stands up at the top—those two items—of our national defense posture.

There was a letter that came from Members of the House of Representatives that seemed to be critical of the Senate for using "defense money given to water-related projects." I want to clear that up. There must have been some confusion on the other side of the Capitol because under the rules of the Budget Control Committee, we cannot use defense money for water projects, period. That is against the rules. Not only did we not do it, we could not do it if we wanted to. In fact, we came up with \$100 million more for nuclear weapons modernization than the House did.

So perhaps the House letter was sent to the wrong address. It should have been sent on that side of the Capitol and not sent to the Senate. We understand very well we should not be using defense money for water projects or water project money for defense money. We have not done that. We are not allowed to do that. We cannot cut weapons to fund water projects.

Now, as I said earlier, as Senator FEINSTEIN and I and Senators COCHRAN and INOUE all said, we would support the President's request for appropriate funding for nuclear weapons modernization, which is why Senator FEINSTEIN and I asked our ranking member and chairman to allocate more money to the security side of our budget, and they did that.

As a result of that, security spending for weapons activities is up 5 percent—\$100 million more than the House was able to provide for Energy and Water appropriations.

It is the single largest percentage increase compared to all appropriations subcommittees with security spending in the budget. But it is still \$400 million less than the President's full request and \$400 million less than I would like to see spent on nuclear weapons modernization. I am concerned about that.

I am committed to continue to work with the full committee, the House, and the administration to come as

close as we possibly can to the President's number on nuclear weapons modernization. I want to make it clear that we have bent over backward to make it a top priority—or the top priority to begin with—and have had good cooperation from the senior members of our committee.

Senator FEINSTEIN has worked hard to put this bill together in a fair and accommodating manner. She mentioned the Office of Science and talked about clean energy. Recently, I was at one of our National Laboratories, Sandia in New Mexico. The Director of Science there reminded me that almost every major physical and biological invention of any importance in the United States since World War II has been funded by government-sponsored research—almost all through our 17 or 18 National Laboratories or our 50 or 60 top research universities. These are our real secret weapons for job growth. It was out of the laboratories and out of this kind of government research that came the Internet, the Human Genome Project, nuclear power itself—whether it is nuclear weapons or the 104 civilian reactors or the 104 reactors that run our Navy ships—and stealth technology came of this. It is hard to think of any major invention or discovery in physical or biological sciences that didn't have some government-sponsored research. So when we talk about spending the same amount of money this year that we did last year for the Office of Science, we are talking about a major effort of any jobs bill that the Senate could possibly pass.

If we are talking about jobs growth, this is a very big, important part of it. Low taxes is a part of it, fewer regulations, the right national labor relations policies are a part, but any progrowth plan for the United States has to include government-sponsored research. No other country in the world has anything like our 18 laboratories or our 50 or 60 top research universities. If we want a high standard of living—you know, we still produce about 25 percent of all the money in the world—we would do well to invest every spare dollar we have there, as long as it is wisely spent. So as long as we are cutting over here, I am all for that. I don't want to see a situation where we have runaway entitlement spending and as a result of that we squeeze the inventions that give us the job growth we need.

I made a speech at the Oak Ridge National Laboratory in 2008 where I suggested we have a new Manhattan project for clean energy independence, focusing on electric cars and trucks, carbon capture, solar power, nuclear waste, advanced biofuels, green building fusion. I am a big supporter of research as an appropriate role for the Federal Government, and we will talk more, as we have time over the next 2 days, I hope, about the wisdom of the proper priorities in spending. I would say yes to more for research and no to more for subsidies.

The New York Times had a big article on Saturday where it talked about rich subsidies powering solar and wind projects, and these are for companies that can pay us back. These are extravagant subsidies, which I think are completely unnecessary, particularly at a budget time such as this. If we have any extra dollars, let's put them into the secret weapons at the research universities and the national laboratories and tackle the big challenges, such as the 500-mile battery for cars or finding a solar panel that is so cheap it is \$1 per kilowatt installed.

I agree with Senator FEINSTEIN that Dr. Chu is on the right track with his energy remarks. I was suggesting in my remarks that we pick these grand challenges, such as used nuclear fuel, as one—what to do with it, where do we dispose of the waste. Dr. Chu is doing that, with batteries, with solar, with others, and I think it is a good way to concentrate the focus of the Federal Government and the Energy Department to solve the problems of rising gasoline prices, electricity prices, and do it in a way that helps clean the air.

During our debate, I hope we have a chance to talk about more for research and less for permanent subsidies in the energy area, and I hope we have a way to talk about restraining entitlement spending so we can have sufficient funds to fund our secret weapons that have produced almost every major biological and physical discovery since World War II. We have broad support for that here. We passed the America COMPETES Act in 2007 which set a path for funding for sciences. We had 35 Democrats and 35 Republicans as co-sponsors of that bill. It was introduced by the Democratic leader and the Republican leader, and when we changed parties after an election, it was introduced by the Republican leader and the Democratic leader. So we have bipartisan support for that. We need to make sure it is part of the debate.

The Corps of Engineers, the Senator talked about. Those are critical ideas. Those are the areas she and I agree on. I will spend a moment, if I may, on some areas where we have some more work to do before we have an agreement. One is in the area of nuclear power. Here is what I agree with her about nuclear power. One is that it is a remarkable statistic that 20 percent of our electricity is produced by one of our greatest inventions—nuclear power—and that it is 70 percent of our electricity without carbon but also without nitrogen or sulfur or mercury pollution.

We had a big debate here in the Senate last week about clean air. Well, if all of our power were nuclear power, as almost all of it is in France, we wouldn't have a clean air debate because our powerplants wouldn't be producing any mercury or producing any nitrogen or sulfur oxides as well as carbon. So nuclear is a remarkable advantage for the United States and one which we should continue to take advantage of.

I am disappointed we do not fund in this bill the first steps of a several-year program to jump-start the small nuclear reactor program. This is not just our idea. France, Russia, Brazil, and other countries around the world are working on this. There are 60 countries that want to introduce nuclear energy onto their grid for the first time. We have the phenomenon like South Korea building a nuclear powerplant for the United Arab Emirates. So if we don't do it, that doesn't mean no one will do it; it just means we will be at the back of the line with an invention we invented and that today produces 20 percent of our electricity and 70 percent of our clean electricity.

Now, the "it" we are talking about are these smaller reactors. We already produce a lot of small reactors for the more than 100 Navy vessels, but they are of a little different kind. But small reactors that might be 100 to 300 megawatts would be cheaper, they would be made in the United States, and they could be put together like LEGO blocks would. They could be hauled back and forth from wherever they were produced to different places. They might be especially useful on a military base or around a national laboratory, where you don't need 1,200 new megawatts of electricity. And they might be better for an investor-owned utility to buy, because they would only have to spend one-fourth or one-fifth or one-sixth as much money. The big reactors we now build are \$5 billion, \$6 billion, \$7 billion, \$8 billion or more. Quite a big number. So the President and Dr. Chu have recommended we move ahead with the small reactor program. The House of Representatives agrees, I agree, and we are trying to work a way out here where we can join that parade—in fact, lead the parade.

I think the way to do it is to take seriously Senator FEINSTEIN's concern about used nuclear fuel. She is exactly right, we have blindfolds on our eyes if we think it is responsible for us to move ahead producing so much nuclear power—even if it is just a football field 20 feet deep—without a permanent place to put the spent fuel. It is safe to keep it there, in my opinion. And not just mine. The Nuclear Regulatory Commission and Secretary Chu, the President's Nobel prize-winning Energy Secretary, say it is safe for 100 years. But what that says to me is that it is safe while we figure out the right way to dispose of it. I am convinced our scientists can figure out an even better way of disposing of it than France does, for example, which reprocesses nuclear fuel and then stores it there. I suspect we will be able, in the next 10 or 15 years, to figure out a way to recycle, reuse nuclear fuel, and reduce the waste by 95 percent. But we will still need a permanent place to store it.

What I am committed to do, working with Senator FEINSTEIN—and I am delighted she has this intense level of interest—and Senators BINGAMAN and MURKOWSKI, the ranking members of

the Energy Committee, is trying to create an inexorable process toward a result on finding a proper place to store used nuclear fuel. I hope we can do that within a year. That doesn't mean we will have all the decisions made, but it means we could have, I believe, a process established that will produce a result.

I am hoping at the same time we can move ahead with small nuclear reactors, because by 2020, the idea is we would only have two or three. And between now and then, the Nuclear Regulatory Commission would need this help in creating the proper license and approving the design and working through all the things one has to do. It is going to have to do that anyway, because someone will bring one over from Korea or France or Russia or Brazil and they will apply for a license in the United States and we will be using their reactors instead of ours.

Another area of disagreement is there are some provisions in the bill, which I won't go into at great length, but I don't think they belong in an appropriations bill, with all respect. They are based on several recommendations of the 90-day commission created by the Nuclear Regulatory Commission. Since our bill was reported, the NRC has taken several steps to prioritize their recommendations.

Of the five representations that are in language in our bill, the Commission only considered one to be of that urgent a priority. It is going to do the rest of them in the regular order of things. I think we should let our experts do their job. Perhaps this calls attention to the importance of it, but I would rather let the Nuclear Regulatory Commission do its job and us to concentrate our efforts on finding a place to put used nuclear fuel.

One other area I suspect within the next few days we will have a discussion about is the subsidy cost for renewable energy projects, but I think I will delay that until we have an opportunity to discuss it on the floor, and to have some discussions about the loan guarantee program, which hasn't worked as intended. The loan guarantee program was supposed to help put a priority on certain forms of energy and loan monies to companies that could pay it back, not to companies that couldn't pay it back. Apparently, that has been an issue.

There is also a provision in the bill about requiring grantees of the Department of Energy to change lightbulbs in their factories if they do not meet the standards for the new lightbulbs. This will be costly, it is inconsistent with current law, and I hope we can remove it as the bill moves forward.

In a bill this large and this important, I think Chairman FEINSTEIN and other members of the subcommittee and the full committee have come up with a good result, a result about which there is a consensus between us, with very few areas of disagreement, a result that is below last year's spend-

ing level, except for disaster spending, and a result that gives a special emphasis to nuclear weapons modernization that we are committed to and that the President asked for and that does better than the House number but still doesn't reach, I will acknowledge, where I had hoped we could go.

It has been a great privilege to work with Chairman FEINSTEIN. I like the idea that we have an appropriations bill on the floor. This is the basic work of government. We ought to do this before we do anything else. If we can't have an appropriations bill to fund the basic work of government, people might say, can you do anything at all? So we have done our part, we have the bill here, and I thank the majority leader for bringing it up. I hope our colleagues will give us the chance to move forward the bill this week, to bring their amendments to the floor, debate on them, have a final vote, and pass it into law and do something we can be proud of.

I thank the Chair, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise to thank the Senator. Once again, it has been a great pleasure to work with him. I do think we have a lot of this bill in common, but we do have some points of difference, and I want to say a little bit about my point of difference.

I very much want to leave a world for my grandchildren where there is not danger from nuclear weapons or nuclear fuels, and today I don't believe I can say we have achieved that. The ranking member was correct, the head of the NRC did testify in his view the hot rods were safe for 100 years in those spent fuel pools. Well, you know, there were problems with spent fuel pools at Fukushima. I think, as life goes on, we are going to see more of that.

We know cladding has to be improved. We know that, perhaps, the design basis of a new nuclear reactor has to meet events which are not necessarily predicted. Who would have thought a 47-foot tsunami would hit Fukushima? But it happened.

I am in California. We are in the ring of fire. Sure enough, there have been earthquakes in the southern tip of South America, in Asia, in Christchurch, New Zealand, going right around. These have been very large earthquakes, approaching 9, and the concern is, what happens next. So I think safety is a very real problem, and I think as we appropriate monies we should be concerned with safety.

Spent fuel pools were designed to harbor hot rods for a relatively short period of time. The rods can be moved 5 to 7 years out, and then they are generally moved into passive storage and the dry casks. The dry casks, it was thought, would be transported to repositories—either permanent repositories or repositories on a regional basis—under the supervision of the Federal Government.

I always felt that affecting that was an extraordinary challenge for us and particularly when I learned we were being fined an egregious amount of money because we can't do that every year. So my view is, we have to get cracking and move that on, and the five things we have in the bill I think all take us to a much safer place with respect to nuclear activities.

With respect to the small modular nuclear reactors, what they are is essentially less than 300 megawatts modular small actors. I understand there are still problems with the cladding. But what was asked for was \$192 million, not alone but a proposal to essentially subsidize up to 50 percent of the licensing costs of financial and technically viable corporations. These aren't small corporations; they are big corporations, and the Department would have to pick two winners for the subsidy. That would leave at least five American companies out. This is a restricted bid. It doesn't include everybody. It includes only one kind of reactor—light water reactor. Who knows. Maybe others of the five are as viable.

So firms not receiving assistance would be substantially disadvantaged. The likely winners include these companies: Babcock and Wilcox, I have nothing against them, 2010 revenues exceeding \$2.6 billion—can't they afford their own licensing certification fees?—and Westinghouse, owned by the Japanese conglomerate Toshiba, which has \$64 billion in assets and more than 200,000 employees.

In other sectors, we don't invest Federal dollars to help profitable private companies obtain safety licenses. We don't help Ford comply with crash test regulations, nor do we pay for Boeing to obtain FAA certification. So before we commit these moneys, we should seriously evaluate whether any company would change its decision about pursuing a license because of this.

So I am kind of at a different point in looking at subsidies. I think most subsidies by the Federal Government should just go, wherever they are—oil, gas, nuclear, ag, you name it—at a time when we should not be subsidizing private industry.

There is also a fundamental contradiction in the nuclear industry's argument for funding small modular reactor licensing. On one hand, the industry argues that the market will be enormous, and we can't afford to fall behind international competitors. On the other hand, these same industry experts argue they will not develop and license a product unless government pays them to apply for an NRC license. They argue that the United States must provide each firm with more than \$200 million to motivate them to pursue this business.

The bottom line, the small modular reactor cannot be both a massive economic opportunity, with the potential to change the way we power our economy, and an opportunity that industry will not pursue unless the government pays them to do that.

So I have real questions about funding this item. We will have more to say about it as this goes on. I know it is popular. If there were a spent fuel policy, if we knew we were going to go for regional repositories, that there was some limit to the storage of fuel at a site—74 sites now, and with advanced modular reactors this is more because many people think the only way this can be cost competitive is you have to group these two together. So in a given site, you would have five or six small reactors, but you would have the same spent fuel problem. It seems to me we need a place to put spent fuel. I am not opposed to nuclear if we can properly take care of its waste.

I wanted to respond when my distinguished ranking member raised this. We have had one meeting with the chairman of the Energy Committee, the ranking member of the Energy Committee, Senator ALEXANDER, and myself to discuss how to proceed toward a nuclear storage policy. I think we need to continue this. We are going to ask the Secretary in to talk with us in December, and Senator ALEXANDER has been great in doing this—put forward a little agenda of how to proceed toward this so I know he is, in fact, in good faith suggesting it, and I do. He has always been a straight shooter.

But it is just very hard for me to go ahead and say, OK, we are going to promote a whole new class of nuclear reactors when we don't have a place to dispose of hot spent fuels that will be hot and dangerous for literally hundreds of years. If we can move fast, I am all for it.

I know the Senator wants to respond, and I welcome the debate.

Mr. ALEXANDER. I thank the Senator. I am not going to respond at great length because I want to eventually find us in agreement about this, but I appreciate it. Your points are very important and very good points.

On safety and nuclear power, I think it is always important to start off by pointing out that a nuclear reactor is a big, complex operation and obviously there is some risk to it. But nuclear power has the best safety record of any form of energy production in the United States. There has never been a death in connection with any 1 of our 104 civilian reactors. There hasn't been one with the more than 100 Navy reactors where we have sailors actually living on top of reactors. We have all heard about Three Mile Island, which is the most important nuclear accident we have had in the United States, but no one was even hurt in Three Mile Island.

I see the Senator from Pennsylvania is presiding today. When I say that to people around the country, they say: What do you mean no one was hurt at Three Mile Island? No one was hurt. There have been tests on families who lived around there, and no one was even hurt either from any kind of explosion or from radioactivity at a later time.

So we always have to look for better ways to be safe, but we have that safe record. We do have the Chairman of the NRC saying this used fuel is stored safely for 100 years, and we have our scientists telling us in 10 or 15 years we can find a way to recycle. Within that time, we ought to find a place to put it. We have a place to put it if we could go ahead with Yucca Mountain, but that has been stopped for a variety of reasons, some of them political. Let us say they are all principled. But for whatever reason, it is stuck.

The other thing I would say is, there is a certain urgency about this. As the Senator said, 20 percent of our electricity is nuclear power, 70 percent of our clean energy. What if we didn't have that 20 percent? We don't have to look far to see. In Japan they have shut down temporarily enough of their reactors as a result of Fukushima to be without 20 percent of their electricity. What have they been doing? Their car manufacturers have been working on the weekends. That is 5 million workers in Japan. Temperatures are turned to 82 during the summer heat; 22,000 people have been brought into the hospitals from heat stroke. The Emperor and Empress are wandering around the Imperial Palace with candlesticks and flashlights.

We don't want the United States of America like that. This is an important part of our ability to create jobs and to have lots of low-cost electricity. We use 25 percent of all the energy in the world in the United States.

As far as subsidies go, after we get through finding a place to put used nuclear fuel, maybe this is the second area on which the Senator from California and I can work which would be to do something about energy subsidies. Estimates are the Federal Government probably spends about \$20 billion a year on energy subsidies of one kind or another.

The Energy Information Administration did a study 3 years ago on where that money goes, and this is where it goes: Subsidies for wind dwarf everything else. It is not Big Oil, it is big wind, \$18.82 per megawatt hour subsidy for wind turbines; \$3.67 for solar; \$1.36 for landfill gas; 67 cents per megawatt hour for hydroelectric; 18 cents for biomass; 12 cents for coal; and almost 0 for nuclear.

It is often cited the insurance program the nuclear powerplants have as a subsidy. It is a Federal law that never has cost the taxpayer a penny. It simply requires all the nuclear operators to put in, I believe, \$11 billion or \$12 billion per reactor in case there is an incident. They all share in the result, which might be a pretty good way to do with oil producers that are drilling in the gulf, make them all worry about each other's plant and not just their own. So I believe nuclear power is safe.

As far as subsidies go, I would like to move some of those subsidies into the energy research column and maybe into the reduce the debt column.

I ask unanimous consent to have printed in the RECORD a copy of the New York Times article.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Nov. 11, 2011]

A GOLD RUSH OF SUBSIDIES IN CLEAN ENERGY SEARCH

(By Eric Lipton and Clifford Krauss)

WASHINGTON.—Halfway between Los Angeles and San Francisco, on a former cattle ranch and gypsum mine, NRG Energy is building an engineering marvel: a compound of nearly a million solar panels that will produce enough electricity to power about 100,000 homes.

The project is also a marvel in another, less obvious way: Taxpayers and ratepayers are providing subsidies worth almost as much as the entire \$1.6 billion cost of the project. Similar subsidy packages have been given to 15 other solar- and wind-power electric plants since 2009.

The government support—which includes loan guarantees, cash grants and contracts that require electric customers to pay higher rates—largely eliminated the risk to the private investors and almost guaranteed them large profits for years to come. The beneficiaries include financial firms like Goldman Sachs and Morgan Stanley, conglomerates like General Electric, utilities like Exelon and NRG—even Google.

A great deal of attention has been focused on Solyndra, a start-up that received \$528 million in federal loans to develop cutting-edge solar technology before it went bankrupt, but nearly 90 percent of the \$16 billion in clean-energy loans guaranteed by the federal government since 2009 went to subsidize these lower-risk power plants, which in many cases were backed by big companies with vast resources.

When the Obama administration and Congress expanded the clean-energy incentives in 2009, a gold-rush mentality took over.

As NRG's chief executive, David W. Crane, put it to Wall Street analysts early this year, the government's largess was a once-in-a-generation opportunity, and "we intend to do as much of this business as we can get our hands on." NRG, along with partners, ultimately secured \$5.2 billion in federal loan guarantees plus hundreds of millions in other subsidies for four large solar projects.

"I have never seen anything that I have had to do in my 20 years in the power industry that involved less risk than these projects," he said in a recent interview. "It is just filling the desert with panels."

From 2007 to 2010, federal subsidies jumped to \$14.7 billion from \$5.1 billion, according to a recent study.

Most of the surge came from the economic stimulus bill, which was passed in 2009 and financed an Energy Department loan guarantee program and a separate Treasury Department grant program that were promoted as important in creating green jobs.

States like California sweetened the pot by offering their own tax breaks and by approving long-term power-purchase contracts that, while promoting clean energy, will also require ratepayers to pay billions of dollars more for electricity for as long as two decades. The federal loan guarantee program expired on Sept. 30. The Treasury grant program is scheduled to expire at the end of December, although the energy industry is lobbying Congress to extend it. But other subsidies will remain.

The windfall for the industry over the last three years raises questions of whether the Obama administration and state governments went too far in their support of solar

and wind power projects, some of which would have been built anyway, according to the companies involved.

Obama administration officials argue that the incentives, which began on a large scale late in the Bush administration but were expanded by the stimulus legislation, make economic and environmental sense. Beyond the short-term increase in construction hiring, they say, the cleaner air and lower carbon emissions will benefit the country for decades.

"Subsidies and government support have been part of many key industries in U.S. history—railroads, oil, gas and coal, aviation," said Damien LaVera, an Energy Department spokesman.

A CASE STUDY

NRG's California Valley Solar Ranch project is a case study in the banquet of government subsidies available to the owners of a renewable-energy plant.

The first subsidy is for construction. The plant is expected to cost \$1.6 billion to build, with key components made by SunPower at factories in California and Asia. In late September, the Energy Department agreed to guarantee a \$1.2 billion construction loan, with the Treasury Department lending the money at an exceptionally low interest rate of about 3.5 percent, compared with the 7 percent that executives said they would otherwise have had to pay.

That support alone is worth about \$205 million to NRG over the life of the loan, according to an analysis performed for The New York Times by Booz & Company, a strategic consulting firm that regularly performs such studies for private investors.

When construction is complete, NRG is eligible to receive a \$430 million check from the Treasury Department—part of a change made in 2009 that allows clean-energy projects to receive 30 percent of their cost as a cash grant upfront instead of taking other tax breaks gradually over several years.

Californians are also making a big contribution. Under a state law passed to encourage the construction of more solar projects, NRG will not have to pay property taxes to San Luis Obispo County on its solar panels, saving it an estimated \$14 million a year.

Assisted by another state law, which mandates that California utilities buy 33 percent of their power from clean-energy sources by 2020, the project's developers struck lucrative contracts with the local utility, Pacific Gas & Electric, to buy the plant's power for 25 years.

P.G.& E., and ultimately its electric customers, will pay NRG \$150 to \$180 a megawatt-hour, according to a person familiar with the project, who asked not to be identified because the price information was confidential. At the time the contract was awarded, that was about 50 percent more than the expected market cost of electricity in California from a newly built gas-powered plant, state officials said.

While neither state regulators nor the companies will divulge all the details, the extra cost to ratepayers amounts to a \$462 million subsidy, according to Booz, which calculated the present value of the higher rates over the life of the contracts.

Additional depreciation tax breaks for renewable energy plants could save the company an additional \$110 million, according to Christopher Dann, the Booz analyst who examined the project.

The total value of all those subsidies in today's dollars is about \$1.4 billion, leading to an expected rate of return of 25 percent for the project's equity investors, according to Booz.

Mr. Crane of NRG disputed the Booz estimate, saying that the company's return on equity was "in the midteens."

NRG, which initially is investing about \$400 million of its own money in the project, expects to get all of its equity back in two to five years, according to a statement it made in August to Wall Street analysts.

By 2015, NRG expects to be earning at least \$300 million a year in profits from all of its solar projects combined, making these investments some of the more lucrative pieces in its sprawling portfolio, which includes dozens of power plants fueled by coal, natural gas and oil.

NRG is not the only company gobbling up subsidies. At least 10 of the 16 solar or wind electricity generation projects that secured Energy Department loan guarantees intend to also take the Treasury Department grant, and all but two of the projects have long-term agreements to sell almost all of their power, according to a survey of the companies by The Times.

These projects, in almost all cases, benefit from legislation that has been passed in about 30 states that pushes local utility companies to buy a significant share of their power from renewable sources, like solar or wind power. These mandates often have resulted in contracts with above-market rates for the project developers, and a guarantee of a steady revenue stream.

"It is like building a hotel, where you know in advance you are going to have 100 percent room occupancy for 25 years," said Kevin Smith, chief executive of SolarReserve. His Nevada solar project has secured a 25-year power-purchase agreement with the state's largest utility and a \$737 million Energy Department loan guarantee and is on track to receive a \$200 million Treasury grant.

Because the purchase mandates can drive up electricity rates significantly, some states, including New Jersey and Colorado, are considering softening the requirements on utilities.

Brookfield Asset Management, a giant Canadian investment firm, will receive so many subsidies for a New Hampshire wind farm that they are worth 46 percent to 80 percent of the \$229 million price of the project, when measured in today's dollars, according to analyses for The Times performed by Booz and two other two industry financial experts. (The wide range reflects a disagreement between the experts on the future price of electricity in New Hampshire.)

Richard Legault, the chief executive of Brookfield Renewable Power, the division that oversees the Granite Reliable project in New Hampshire, declined to discuss his profit expectations in detail, but said the project might not have happened without government assistance.

"When everything has come together, it is a good investment for Brookfield, it is no doubt," Mr. Legault said. "We are quite happy with it." (Brookfield is also the owner of the small park in Manhattan that is home to the Occupy Wall Street protesters.)

Even companies whose business has little to do with energy or finance, like the Internet giant Google, benefit from the public subsidies. Google has invested in several renewable energy projects, including a giant solar plant in the California desert and a wind farm in Oregon, in part to get federal tax breaks that it can use to offset its profits from Web advertising.

Industry executives and other supporters of the subsidies say that the public money was vital to the projects, in part because financing for renewable energy projects dried up during the recession. They also note that more traditional energy sectors, like oil and natural gas, get heavy subsidies of their own. For example, in the 2010 fiscal year, the oil and gas producers got federal tax breaks of \$2.7 billion, according to an analysis by the Energy Information Administration.

"These programs just level the playing field for what oil and gas and nuclear industries have enjoyed for the last 50 years," said Rhone Resch, president of Solar Energy Industries Association. "Do you have to provide more policy support and funding initially? Absolutely. But the result is more energy security, clean energy and domestic jobs."

Michael E. Webber, associate director of the Center for International Energy and Environmental Policy at the University of Texas, Austin, said renewable energy subsidies were a worthy investment. "It is a form of corporate welfare that is consistent with other social goals like job creation, clean air and boosting a domestic source of energy," he said.

OVERFLOWING BREAKS

Obama administration officials said the subsidies were intended to help renewable-energy plants that were jumbo-sized or used innovative technology, both potential obstacles to getting private financing. But even proponents of the subsidies say the administration may have gone overboard.

Concerns that the government was being too generous reached all the way to President Obama. In an October 2010 memo prepared for the president, Lawrence H. Summers, then his top economic adviser; Carol M. Browner, then his adviser on energy matters; and Ronald A. Klain, then the vice president's chief of staff, expressed discomfort with the "double dipping" that was starting to take place. They said investors had little "skin in the game."

Officials involved in reviewing the loan applications said that Treasury Department officials pressed the Energy Department to respond to these concerns.

Officials at both agencies declined to discuss the anticipated financial returns of the clean-energy projects the federal government has agreed to guarantee, saying the information was confidential.

But Energy Department officials said they had carefully evaluated every project to try to calculate how much money the developers and investors stood to make. "They were rejected, if they looked too rich or too risky," Mr. LaVera, the Energy Department spokesman said.

In at least one instance—NRG's Agua Caliente solar project in Yuma County, Ariz.—the Energy Department demanded that the company agree not to apply for a Treasury grant it was legally entitled to receive. The government was concerned the extra subsidy would result in excessive profit, NRG executives confirmed.

In other cases, the agency required that companies use most of the Treasury grants that they would get when construction was complete to pay down part of the government-guaranteed construction loans instead of cashing out the equity investors.

"The private sector really has more skin in the game than the public realizes," said Andy Katell, a spokesman for GE Energy Financial Services, which like Goldman Sachs, Morgan Stanley and other financial firms has large investments in several of these projects.

But there is no doubt that the deals are lucrative for the companies involved.

G.E., for example, lobbied Congress in 2009 to help expand the subsidy programs, and it now profits from every aspect of the boom in renewable-power plant construction.

It is also an investor in one solar and one wind project that have secured about \$2 billion in federal loan guarantees and expects to collect nearly \$1 billion in Treasury grants. The company has also won hundreds of millions of dollars in contracts to sell its turbines to wind plants built with public subsidies.

Mr. Katell said G.E. and other companies were simply "playing ball" under the rules set by Congress and the Obama administration to promote the industry. "It is good for the country, and good for our company," he said.

Satya Kumar, an analyst at Credit Suisse who specializes in renewable energy companies, said there was no question the country would see real benefits from the surge in renewable energy projects.

"But the industry could have done a lot more solar for a lot less price, in terms of subsidy," he said.

Mr. ALEXANDER. I was reading in the New York Times on Saturday: Rich subsidies powering solar and wind projects; big rise in company aid; companies are virtually assured of profits. This is the New York Times. This isn't the conservative Washington, DC, Journal saying this. It is a very thorough article that talks about something I have been concerned about for a long time. It said:

Taxpayers and ratepayers are providing subsidies worth almost as much as the entire \$1.6 billion cost of a solar plant halfway between Los Angeles and San Francisco on a former cattle ranch.

It quotes the head of NRG, a very substantial company, saying:

I have never seen anything that I have had to do in my 20 years in the power industry that involved less risk than these projects. It is just filling the desert with panels.

From 2007 to 2010, Federal subsidies jumped to \$14.7 billion from \$5.1 billion, according to a recent study.

It goes on and on.

My own research shows, the Joint Tax Committee said that over the next 10 years taxpayer funding for wind—which our energy secretary testified is a mature technology—will cost the taxpayers \$26 billion over the next 10 years. Wouldn't that money be better spent on energy research for clean energy, for finding ways to deal with used nuclear fuel, for getting a 500-mile battery, for getting an installed dollar kilowatt or reducing the debt at a time when we are borrowing 40 cents of every \$1 we spend?

So I am absolutely committed to working with Senator FEINSTEIN on finding a way to deal with the problem of used nuclear fuel. We urgently need to do that. We are fortunate it is safe where it is while we do that, and I hope we can find a way to agree that over the next few years we can move ahead so we at least get started on small modular reactors.

I am also willing to work with the chairman or anyone else, any other Senator who is willing to take a good, hard look at energy substitutes of all kinds and say, OK, let's take look at our own positions on that, especially in light of the budget deficit, and let's take that money and put some of it into energy research so we can get up to where we need to be and use the rest of it to reduce the debt.

So this is a good discussion and one I look forward to continuing, and I am delighted to have a chance to continue it with someone I respect as much as the Senator from California.

Mrs. FEINSTEIN. If I may, I wish to thank the distinguished ranking member. I believe that completes the opening statements on the bill.

I notice the distinguished Senator is on the floor. So if it is agreeable with Senator ALEXANDER, we can yield at this time to him.

The PRESIDING OFFICER (Mr. CASEY). The Senator from Indiana.

Mr. COATS. Mr. President, I didn't come to interrupt opening statements. I guess they are completed. I do have a point that is directly related to this particular appropriations bill which I would like to discuss, and I am going to offer to put forward an amendment as a consequence of this.

I am glad the chairwoman and the ranking member are here so I can put this on the RECORD, and they are familiar with what I am going to do.

This is a matter that is important both to my State of Indiana and, I believe, the Federal Government's involvement in subsidizing or loan guarantees or other support for various energy development projects.

All of us, I think, are concerned over the situation with Solyndra, where a \$535 million loan guarantee from the Department of Energy to construct a solar panel manufacturing facility has now gone bust, and the taxpayer is on the hook for over \$½ billion of loan guarantee and money that is lost to the taxpayer. That money likely will never be repaid. However, my concern goes beyond Solyndra. I didn't come here to talk about Solyndra. But there is a similar situation that may be occurring and I want to raise this issue because it goes, again, to decisions that are being made by the Department's energy renewal offices relative to loans to private entities and loan guarantees to private entities.

This particular situation involves the Advanced Technology Vehicles Manufacturing, or ATVM, Loan Program. Some of those loans are going to what may turn out to be viable improvements in our ability to lighten vehicles, to increase mileage, to provide for alternative sources of fuel. I think that is still up in the air and still to be determined. But this particular program I want to talk about involves a program that I am not sure fits within the proper category. Earlier this year the Department issued a nearly three-quarters—\$730 million—conditional loan commitment to Severstal North America under the ATVM program. Let me read from the Department's press release.

The funding will support the modernization of [Severstal's] existing facilities in Dearborn, MI, in addition to the design, manufacture and construction of new facilities to produce the next generation of automotive advanced high-strength steel. The Severstal project has the potential to significantly increase the supply of this advanced high strength steel in North America as demand continues to grow for fuel efficient vehicles.

Continuing the release:

An increased supply for this breakthrough technology steel will help U.S. automotive

manufacturers meet the pending and future design, weight and safety requirements of advanced technology vehicles. Severstal estimates the project will generate over 2,500 construction jobs and over 260 permanent manufacturing jobs.

That is the end of the Department's press release.

The Department of Energy makes it sound as though this loan to Severstal will promote a completely new breakthrough technology. The problem is, this simply is not true. In fact, six companies already manufacture the advanced high-strength steel that Severstal is seeking to receive a loan to help produce. Three of those companies have production facilities in my home State of Indiana: Arcelor Mittal, Steel Dynamics, and U.S. Steel.

Evidence shows that the market for this type of steel is strong and robust in the United States, with multiple producers already manufacturing these high-technology products. In fact, I am told that this high-strength steel has been manufactured in the United States since the 1980s, and the current capacity for this steel actually surpasses current demand. All of this information should be available to the Energy Department for their consideration as to whether they should go forward with this loan, but the Department spokesperson is quoted as saying that advanced high-strength steel is "in short supply."

This begs the question as to whether the administration has seriously conducted any type of market analysis before deciding to award this loan. Did the Department research what advanced high-strength steel products are already in the marketplace and whether a taxpayer loan was even needed? Based on the Department's public comments it seems unlikely that the administration made any estimates of current and future capacity in the United States for the production of this steel or talked to any steel producers outside of Severstal.

I think a legitimate question is: What is the impact of this loan? Should it be finalized? Subsidizing Severstal to produce a product already being manufactured would undercut competitors because Severstal, of course, will have lower costs due to the nearly \$¾ billion loan guarantee.

There is also no job creation here that fits the description of what the Department indicated would be the case with new jobs. Given the state of supply and demand, any new jobs created at Severstal would come at a cost to other producers, creating, at best, a net zero job gain. That means job losses in Indiana and Pennsylvania where the high-strength steel already is manufactured.

Moreover, the Department claims that "over 2,500 construction jobs" would be created by the issuance of the loan. That claim is dubious at best, since most of the plant construction is already manufactured. Moreover, the Department claims that Severstal's

own documents claim that two of the three required lines will be finished by December 2011. Only an annealing line valued at one-third of the amount of the loan is awaiting final approval, and the Department's own Web site states, "Loans will not be available on a retroactive basis."

Here we have a situation where the Department's own release and justification of the loan states a number of construction jobs to be put in place when the construction is virtually finished. Second, when most of the completion includes, with one exception, what only amounts to one-third of the loan that is being asked for, it makes you wonder why the loan is two-thirds greater than that.

We have to ask the question, is it proper to give a company nearly \$¾ billion for facilities that have already been built and for production of a product that is already manufactured and in excess supply in the United States—particularly for two States that are impacted by this, the State of Indiana and the State of Pennsylvania? Here we are back in a situation where the Federal Government is picking winners and losers in a fully functioning and growing product market.

Based on these concerns, I sent a letter to the Department of Energy Secretary Chu in August, seeking answers to a number of these questions I have been raising. Unfortunately the Department sent back a very nonresponsive reply that did not address any of my concerns.

As a result, I believe it is necessary to call on the inspector general of the Department of Energy to investigate the Severstal loan and report back to Congress his findings. American taxpayers deserve to know what is happening with our tax dollars and the hardworking employees of other steel companies manufacturing the same steel deserve to know why the Department of Energy is attempting to undercut their job security by subsidizing a competitor.

Today I am introducing an amendment to the Energy and Water Appropriations bill that would direct the Energy Department's inspector general to submit a report to Congress on the conditional loan agreement currently in place to Severstal. Such a report by the inspector general can help clarify why or why not this conditional loan to Severstal should be granted. The Department needs to be more transparent and forthcoming with how it is using taxpayers' dollars. We need to learn lessons from the disaster that is Solyndra and the cost to the taxpayer. The last thing the Department of Energy, this administration, or this Congress needs to do is to authorize a nearly \$¾ billion loan for a product that is already being manufactured by domestic steel suppliers and is not needed. We need that determination. That is why I am offering this amendment.

Mr. President, if time permits, I wish also to step aside from the current

topic to briefly discuss another matter. I do not want to exceed the time limitation that might be in place. It appears I can go forward with that without a problem.

Mr. President, I also want to discuss the subject of a vote last week by UNESCO, the United Nations Education and Scientific Cultural Organization, to grant membership to the Palestinian Authority even though it is not a recognized country. UNESCO should not have the authority to do so, but through a vote in the United Nations it did just that. The United States has been an on-and-off supporter of UNESCO. There has been a lot of controversy with UNESCO over its lack of effectiveness and the cost to the taxpayer. It has resulted in questions as to whether we should continue funding that organization. We currently support that.

This action that has been taken to admit the Palestinian Authority as a member state is, I submit, completely misguided and deeply damaging. UNESCO's decision has further dimmed prospects for a negotiated peace in the Middle East. My fear is that this step—which the Palestinians mistakenly regard as a success—will encourage them to press for membership in other U.N. bodies as well. Doing so will harm Israel, harm the Palestinians' own interests, harm the U.N. agencies involved, and harm our own national interests. As a consequence of this, the United States is obligated under law to terminate all funding for UNESCO and any other U.N. body that admits the Palestinian Authority. Public law 101-246, which passed in 1990, states that: "no funds authorized to be appropriated by this Act or any other Act shall be available for the United Nations or any specialized agency thereof which accords the Palestinian Liberation Organization [the PLO] the same standing as member states."

That is the law. That is what has been enacted through votes in this body and signed by Presidents of the United States. In 1994, Congress passed Public Law 103-236, which prohibits "voluntary or assessed contribution to any affiliated organization of the United Nations which grants full membership as a state to any organization or group that does not have the internationally recognized attributes of statehood," which the PLO does not have. The Senate, on a vote codifying these laws—or reaffirming them, I should say—passed this legislation 92 to 8, indicating that this clearly should be a noncontroversial and nonpartisan issue, clearly, a 92-to-8 vote.

The reason I am speaking here today is despite our legal obligation to suspend funding as a result of UNESCO's latest action, there has been some speculation that it may be possible to find alternative ways to financially support U.N. agencies such as UNESCO that have taken this step of admitting the Palestinians as a member. That

would be a total mistake. I want to reiterate the fact that it would be a violation of the law.

Therefore, I come to the floor today to introduce a bill that serves as an emphatic restatement of that law, making its consequences more certain.

Furthermore, I am introducing this language as an amendment to the current appropriations bill, that will clarify that no taxpayer dollars can be used to fund UNESCO. We must slam the door on any speculation of any kind of backdoor financial support for the United Nations agencies that grant membership to Palestine. This bill is exactly that. There is no reason why this purposeful reinstatement of existing law should not have bipartisan support. The threat to prospects for negotiated, just, and lasting peace that is posed by this recent Palestinian tactic is more tangible now than in the past. Our determination to discourage such a dangerous tactic should be stronger than ever.

I ask that my colleagues join in support of this legislation that makes it clear to UNESCO, the United Nations, Israel, the Palestinian Authority, and clear to the rest of the world that the United States will not tolerate attempts to admit the Palestinian Authority and undercut negotiated peace efforts in the Middle East.

I am hoping we will have a vote on this to once again reaffirm our determined commitment to live by the laws we have passed and to not allow an agency of the United Nations or any part of the United Nations be used to grant statesmanship and nationhood to an entity that has not qualified for that. I hope this reaffirmation will also put to rest any speculation or any attempts to circumvent the laws that exist on the books.

I yield the floor.

Mrs. FEINSTEIN. I note the absence of a quorum.

The PRESIDING OFFICER (Mr. CASEY). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators allowed to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

BUSINESS-METHOD PATENTS

Mr. KYL. Mr. President, I ask unanimous consent to have printed in the RECORD a letter concerning section 18 of the America Invents Act, sent to me and others by the chairman of the House Judiciary Committee.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC September 8, 2011.

Hon. JON KYL

*U.S. Senate,
Washington, D.C.*

Hon. CHARLES E. SCHUMER,

*U.S. Senate,
Washington, D.C.*

Hon. PATRICK LEAHY,

*U.S. Senate,
Washington, D.C.*

Hon. CHUCK GRASSLEY,

*U.S. Senate,
Washington, D.C.*

DEAR SENATORS KYL, SCHUMER, LEAHY AND GRASSLEY: I am writing to discuss further the importance of the transitional program for business method patents as included in H.R. 1249, the Leahy-Smith America Invents Act. As you know, this provision enables the U.S. Patent and Trademark Office (‘USPTO’) to correct egregious errors that were made in the granting of a wide range of business method patents.

Business methods were generally not patentable in the United States before the late 1990s, and generally are not patentable elsewhere in the world. The Federal Circuit, however, created this new class of patents in its 1998 State Street decision. In its 2010 decision in *Bilski v. Kappos*, the U.S. Supreme Court clamped down on the patenting of business methods and other patents of poor quality. It is likely that many or most of the business method patents that were issued after State Street are now invalid under *Bilski*.

There really is no sense in allowing expensive litigation over patents that are no longer valid in light of the Supreme Court’s clarification of the law. The new transitional program included in the House bill creates an inexpensive and speedy alternative to litigation—allowing parties to resolve these disputes more efficiently rather than spending millions of dollars in litigation costs. In the process, the proceeding will also prevent nuisance litigation settlements.

Moreover, the new administrative proceeding allows business method patents to be reviewed by the experts at the USPTO under the correct (*Bilski*) standard. To use this proceeding, a challenger must make an upfront showing to the USPTO of evidence that the business method patent is more likely than not invalid. This is a high standard. Only the worst patents, which probably never should have been issued, will be eligible for review in this proceeding.

This program provides the Patent Office with a fast, precise vehicle to review low-quality business method patents, which the Supreme Court has acknowledged are often abstract and overly broad.

Specifically, the bill’s provision applies to patents that describe a series of steps used to conduct every-day business applications in the financial products and retail services sectors. These are patents that can be and have been asserted against all types of businesses—from community banks and credit unions to retailers and businesses of all sizes and from all industries.

The provision is, indeed, limited to patents that are non-technological in nature (i.e., business methods) and that involve a process or related apparatus used in the practice, administration, or management of a financial product or service. The program’s exception for “technological inventions” precludes review of patents for inventions based on application of the natural sciences or related engineering or inventions in computer operations. And by requiring that the covered patents be applicable to a financial product or service, the proceeding in the House bill ensures that the patents eligible for review

will generally include only those that have some business or commercial orientation.

Nothing in the bill, however, limits use of the proceeding to one industry; rather, it applies to non-technological patents that can apply to financial products or services. Any business that sells or purchases goods or services “practices” or “administers” a financial service by conducting such transactions. Most business-method patents are fairly plastic in nature and could apply to a whole host of business activities. See 157 Cong. Rec. 1363, 1365 (daily ed. March 8, 2011) (statement of Sen. Schumer) (“To meet this requirement, the patent need not recite a specific financial product or service. Rather the patent claims must only be broad enough to cover a financial product or service.”). To be sure, the fact that a patent has been asserted against a financial institution with respect to products or processes that are unique to such institutions will be a fairly clear indicator that the patent applies to a “financial product or service,” and should provide guidance to the USPTO in administering the program. See 157 Cong. Rec. 1368, 1379 (daily ed. March 8, 2011) (statement of Sen. Kyl).

The transitional program can be used to review patents for “a method or a corresponding apparatus.” The distinction between a “process” and a “machine” (two of the terms used in section 101 of the patent code to define what is patentable) is not a firm one, and many inventions can be characterized either way. A “corresponding apparatus” for a business method would include, for example, a computer that was programmed to carry out the business process. Wary of the stigma that attaches to business-method patents, many applicants try to obscure the nature of these patents by characterizing a computer that has been programmed to execute the process as the invention, and thus asserting that the process is really a “machine” or a “system.”

The program’s definition of “covered business-method patent” includes a “corresponding apparatus” in order to prevent such obvious evasions. Any other approach would elevate claim-drafting form over invention substance. Finally, any “apparatus” that is subject to review under the program would need to be used to implement or effect a business method. Legitimate inventions in technological fields will not be subject to review under this program.

The transitional program also extends to privies of parties charged with infringement. This was done specifically to prevent downstream customers or users from being dragged into frivolous litigation over suspect or improperly granted patents. H.R. 1249 also extends the time frame for the transitional program. This change is important to prevent patent trolls from waiting out the program. This issue of folks “lying in wait” may actually be a significant argument for extending or making permanent this program in the future. Similarly, the program’s definition was expanded in H.R. 1249 so that it is not limited to class 705 patents. This change is key to the program’s success, because many business method patents are assigned to classes other than 705, and it makes no sense to exclude them because of the quirks of USPTO’s classification regime.

This program is not tied to one industry or sector of the economy—it affects everyone. The provision as developed in the Senate and later perfected in the House will ensure that the vast majority of non-technological business method patents will be eligible for review under this program. As the USPTO had a presumption to grant many of these erroneous patents, they should now have a presumption to allow most non-technological