

# United States Senate

Washington, DC 20510

July 20, 2021

The Honorable Shalanda Young  
Acting Director  
The Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Dear Acting Director Young:

As Congress considers President Biden's \$6 trillion budget, we write to express concern with the Fiscal Year (FY) 2022 Budget for the U.S. Army Corps of Engineers (USACE) which effectively prohibits funding for Army Corps projects that facilitate the transportation of fossil fuel products.

The Appendix to the Army Corps budget establishing the requested spending levels for the construction, operation and maintenance, and investigations accounts clearly states that one of its three "key objectives" in developing the FY 2022 Budget is to not fund "work that directly subsidizes fossil fuels including work that lowers the cost of production, lowers the cost of consumption, or raises the revenues retained by producers of fossil fuels."

This policy goes far beyond establishing priorities through the budget process and is instead an attempt to unilaterally usurp the law making powers of the Legislative Branch. Congress has not given the Executive Branch the authority to categorically exclude an entire industry from eligibility for congressionally authorized federal projects. Instead, within the last decade, Congress repeatedly recognized the critical role of fossil fuels in our nation's commerce by dedicating federal funds specifically to ports that transport a significant amount of petroleum products, natural gas, or coal, referred to as "energy transfer ports."<sup>1</sup>

Congress also recently established that "water resources development projects are critical to maintaining the country's economic prosperity" in addition to its "national security and environmental protection."<sup>2</sup> Fossil fuels and its related products are a commodity commonly transported as waterborne commerce on federal waterways. For example, petroleum and petroleum products comprised 42 percent of all commodities transported as waterborne

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<sup>1</sup> 33 U.S.C. § 2238c(a)(4)-(5) ("The term 'energy commodity' includes- petroleum products; natural gas; coal. . . . The term 'energy transfer port' means a port . . . at which energy commodities comprised greater than 25 percent of all commercial activity by tonnage in [a] fiscal year."); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. AA, title I, §104(b), 134 Stat. 2621 (2021) (reauthorizing funding for the program through 2030).

<sup>2</sup> America's Water Infrastructure Act of 2018, Pub. L. No. 115-270, § 1101 (establishing a Sense of Congress regarding water resources development bills).

commerce in 2019.<sup>3</sup> It defies reason that Congress would permit categorically excluding a commodity that is so closely tied to the economic advancement of the United States, as well as its national security.

The fossil fuel industry is responsible for millions of American jobs, and the oil and gas industry alone supports nearly 8 percent or \$1.7 trillion of the U.S. GDP and helps lower the U.S. trade deficit by billions of dollars. Not only do fossil fuels help provide heat and electricity in our homes and fuel to power our vehicles, but they are also used to make the products we rely on daily, including everything from smartphones and clothing to PPE and medicines. The decision to exclude fossil fuels from commercial navigation projects, especially if applied to other modes of transportation, could have significant ramifications for the United States economy, including a detrimental rise in the price of everyday consumer goods. There are numerous commercial navigation projects underway that rely on federal funding for completion, and these projects should not be terminated early based on this decision.

In order to better understand your administration's reasoning and goals for including this prohibition language in the budget and to better assess its economic impact, we respectfully request you answer the following questions within thirty (30) days of receipt of this letter:

1. Please provide a full and complete list of every instance the FY-2022 Budget includes language that prohibits funding or subsidizing fossil fuels or any similar language.
2. Please further define "directly subsidizes fossil fuels" and explain whether or not federal projects that are indirectly connected to fossil fuels are included in the definition.
  - a. Specifically, does the definition of fossil fuels include the raw materials as well as refined products, including polymers and other component materials used in goods manufactured in America?
  - b. Does the definition extend to end-user goods or products that are manufactured using fossil fuels?
  - c. Does the definition extend to federal projects that serve multiple types of vessels, such as container cargo ships, break bulk ships, as well as tankers transporting liquid fossil fuels?
3. In addition to the construction of maritime projects, do you intend to apply this or a similar prohibition of funding for fossil fuels to other transportation systems including, highway projects, air transportation projects, and railway projects?
4. Please further explain how prohibiting funding for a federal project that "lowers the cost of consumption" of fossil fuel is beneficial for the United States economy and

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<sup>3</sup> INST. FOR WATER RESOURCES, WATERBORNE COMMERCE OF THE U.S., PART 5 NATIONAL SUMMARIES 2-1 (2021), available at <https://publibrary.planusace.us/#/series/Waterborne%20Commerce%20of%20the%20United%20States>

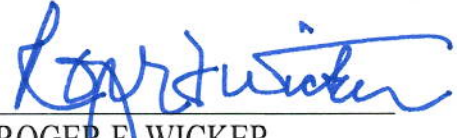
consumers? Is the intent of this policy to increase the cost of consumption of fossil fuel products?

Thank you for your attention to this matter.

Sincerely,



TED CRUZ  
United States Senator



ROGER F. WICKER  
United States Senator



JOHN CORNYN  
United States Senator



DAN SULLIVAN  
United States Senator



BILL CASSIDY, M.D.  
United States Senator



JOHN KENNEDY  
United States Senator