



## **HASC Prioritizes the Unneeded CMRR-Nuclear Facility Over Life Extension Programs and Veteran Benefits**

**Summary:** The Obama Administration has decided to defer the CMRR-Nuclear Facility at the Los Alamos Lab for at least five years, which the House and Senate Energy and Water Development Appropriations Subcommittees have agreed to. But the House Armed Services Committee (HASC) has authorized funding for it, which can possibly undermine what the Pentagon most wants and is paying for, which is the refurbishment of existing nuclear weapons through Life Extension Programs. HASC also seeks to make an end run around the Energy and Water Subcommittees by transferring design and construction of the CMRR-NF to the Defense Department in FY 2014, which could compete with other needed military construction and threaten veteran benefits. In addition, HASC seeks to keep the CMRR-Nuclear Facility alive in the short term by authorizing the use in FY 2013 of \$160 million in prior years funding, when it is not clear that any remaining prior years funding even exists. The Senate Armed Services Committee and the Energy and Water Subcommittees of both chambers should oppose these proposals and continue to provide no funding for the CMRR-Nuclear Facility.

### **Narrative**

Because of budget constraints and the lack of clear need the Obama Administration has decided to defer for at least five years a huge new facility called the Chemistry and Metallurgy Research Replacement Project (CMRR)-Nuclear Facility at the Los Alamos National Laboratory (LANL). Its main purpose is to directly support the expanded production of plutonium pits, which are the fissile cores of nuclear weapons. The House and Senate Energy and Water Development Appropriations Subcommittees have both agreed with this decision and provided no CMRR funding for FY 2013. However, the House Armed Services Committee (HASC) is authorizing funding for the CMRR-Nuclear Facility through its FY 2013 National Defense Authorization Act (NDAA).

Congress has repeatedly designated Life Extension Programs (LEPs) for existing nuclear weapons as the highest priority of the National Nuclear Security Administration's (NNSA's) nuclear weapons programs. For example, the Senate reported in its FY 2012 Energy and Water Appropriations Bill:

Since completing life extension programs to maintain the safety, security, and reliability of the stockpile is the highest priority and fiscal constraints will limit construction funding, the Committee directs NNSA to submit a contingency plan by February 1, 2012 that would identify the consequences to cost, scope, and schedule of delaying project implementation and the impact of sequencing

construction of these two major facilities [the CMRR-Nuclear Facility and the Uranium Processing Facility] on stockpile requirements.<sup>1</sup>

While the Senate recognized LEPs as the highest priority, the need for a report on facility sequencing became moot with the deferral of the CMRR-Nuclear Facility. However, the House Armed Services Committee has earmarked Department of Defense funds already designated to support NNSA nuclear weapons programs almost entirely toward the CMRR-NF and the UPF. This will in fact undermine the Life Extension Programs that the Pentagon so keenly wants, despite the fact that DoD money is suppose to be used for them as well. The military wants final product, i.e. refurbished nuclear weapons, and the facilities that refurbish them are of lesser concern. This is especially true when the CMRR and UPF are eating up the money and won't become operational until 2022 at the earliest, after currently proposed LEPs are either finished or already substantially underway.

The relevant provisions concerning the CMRR-Nuclear Facility in the HASC FY 2013 National Defense Authorization Act are Sections 2804 and 2805.

#### ***Section 2804—Treatment of Certain Defense Nuclear Facility Construction Projects as Military Construction Projects***

This section requires that the CMRR-Nuclear Facility, the Uranium Processing Facility (UPF) at the Y-12 Plant near Oak Ridge, TN, and any future nuclear weapons facilities costing more than \$1 billion be deemed military projects funded by DoD beginning in FY 2014. The bill cites a May 2010 Memorandum of Agreement (MOA) between the Defense and Energy Departments that provides DoD funding to NNSA nuclear weapons programs.<sup>2</sup> Out of that funding the House NDAA authorizes \$3.5 billion for the CMRR-NF and \$4.2 billion for the UPF.

An amendment by Rep. Mike Turner (HASC Strategic Forces Subcommittee chairman) that created NDAA Section 2804 noted that the “Secretary of Defense plans to transfer \$8,300,000,000 of the budgetary authority of the Department of Defense to the Administrator for Nuclear Security of the National Nuclear Security Administration between fiscal years 2011 and 2016 to fund activities of the Administration that the Secretary determines to be high priorities.” The House NDAA also stipulates that the amounts DoD spends on design and construction of the CMRR-Nuclear Facility and the UPF would be reduced from the budget authority that the Defense Secretary transfers to the NNSA Administrator. It is also important to note that the DoD funding is incorporated into the top line amounts of NNSA’s Congressional Budget Requests (CBRs), not added on top of them.

Nuclear Watch New Mexico has submitted a Freedom of Information Act request for the DoD/NNSA Memorandum of Agreement, but we do not know when we will get it. Therefore we

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<sup>1</sup> 112TH Congress Report, *1st Session* " Senate L 112–75 Energy And Water Development Appropriations Bill, 2012, September 7, 2011, p. 103, emphasis added.

<sup>2</sup> That MOA also has a requirement for a future production capability of 80 pits per year. See NNSA’s FY 2012 Stockpile Stewardship and Management Plan, p. 35, fn 4, <http://www.fas.org/programs/ssp/nukes/nuclearweapons/SSMP-FY2012.pdf> That future capability would drive the need for the CMRR-Nuclear Facility, but the need itself for 80 pits per year has not been justified. Congressional staff has told us that the MOU might also have a requirement for a future production capability of 80 secondaries per year.

do not know with precision which programs and projects DoD was specifically seeking to support. However, congressional staff has told us that DoD budget support was for the CMRR-Nuclear Facility, UPF and Life Extension Programs.

But should the House NDAA be enacted only a mere \$600 million would still be available in transferable funding from DoD to NNSA for Life Extension Programs after the authorized amounts for the CMRR-Nuclear Facility and the UPF are subtracted from the \$8.3 billion of DoD support. Moreover, the Congressional Budget Office (CBO) analysis of the HASC's FY 2013 NDAA states "Additional appropriations of \$1.7 billion would be required over the 2014-2017 period to complete the facility [CMRR-NF]." <sup>3</sup>

But even that is probably not realistic. The \$9.4 billion sum of the HASC authorization plus the CBO's additional estimate (\$3.5B + \$4.2B + \$1.7B = \$9.4B) doesn't even come close to NNSA's latest cost estimates for both the CMRR-NF and the UPF (\$5.86B<sup>4</sup> + \$6.5B<sup>5</sup> respectively = \$12.36B).

Further, NNSA's own cost estimates aren't even final. They are still literally "TBD" [To Be Determined] in their respective Congressional Budget Request Project Data Sheets, while the track record is that both projects have exploded near ten-fold in costs since their inception. In any event, the House NDAA authorized amount of \$7.7B of DoD support for the two facilities meets only ~two-thirds of NNSA's estimated need, leaving over \$4.5 billion yet to go.

It's possible that a new MOA could be agreed to which reverses the current situation and has NNSA transferring money to DoD while design and construction of the CMRR-NF and UPF are under Pentagon control. But since the House NDAA requires that the DoD money for the facilities be subtracted from NNSA's Congressional Budget Requests, this would reduce the agency's nuclear weapons budget by some \$860 million per year,<sup>6</sup> or more than 10%. This would put an inordinate budget strain on NNSA, perhaps further weakening the agency's ability to carry forth the Life Extension Programs that DoD so dearly wants. And the Energy and Water Development Appropriations Subcommittees would be unlikely to support that transfer anyway. Thus DoD would likely be stuck with the full \$12 billion (or more) bill to build the CMRR-Nuclear Facility and the UPF.

Additionally, there is no reason to believe that DoD would necessarily build nuclear facilities any better or more efficiently than NNSA. For example, in the mid 1980's the Army Corps of Engineers built a fortified vault for special nuclear materials at LANL, but so poorly that the Lab never could put plutonium in it. Instead, it stored papers in what was suppose to be a highly secure facility until it was finally demolished two years ago.

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<sup>3</sup> Congressional Cost Estimate, May 15, 2012, CBO, p. 16,  
<http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr4310.pdf>

<sup>4</sup> NNSA FY 2012 Congressional Budget Request, p. 237.

<sup>5</sup> NNSA FY 2013 Congressional Budget Request, p. 244.

<sup>6</sup> This is an estimate based on the amounts authorized by the House NDAA divided by the number of years between FY 2014 when the Pentagon is to take control of the projects until 2022 when the facilities are first required to become operational.

## **Section 2805—Execution of Chemistry and Metallurgy Research Building Replacement Nuclear Facility and Limitation on Alternative Plutonium Strategy**

The provisions of Section 2804 don't take effect until FY 2014, with the CMRR design team currently set to disband after FY 2012 (or October 1, 2012). Section 2805 calls for the use in FY 2013 of prior years funding of \$160M for the CMRR-Nuclear Facility, and prohibits any NNSA nuclear weapons complex-wide "plutonium strategy" that doesn't include the facility.

First, it is perhaps telling that the House Armed Services Committee didn't even try to authorize new funding for the CMRR-Nuclear Facility in FY 2013, perhaps bowing to the political realities that the Obama Administration didn't request it and both the House and Senate Energy and Water Development Appropriations Subcommittees did not fund it. But it is far from clear where prior years funding is going to come from.

At a recent legally required CMRR public meeting in Los Alamos NNSA and LANL officials stated that they plan to fully use the FY 2012 appropriation of \$200M in this fiscal year. Forty million dollars of that is for equipping the CMRR first phase Rad Lab, hence we arrive at the \$160M number that HASC cites. NNSA and LANL also said they plan to disband the CMRR-NF design team after FY12, which is clearly a very crucial benchmark. But where is the \$160M in prior years funding suppose to come from to keep the design team alive in FY 2013?

There doesn't seem to be any good answer to that question. Until there is, this section of the House NDAA designed to keep the CMRR-Nuclear Facility alive through FY 2013 seems like empty and poorly thought out political posturing. This would hopefully not be supported by the Senate Armed Services Committee, if for no other reason than the lack of a sound financial basis for using prior year's funding.

In the alternative, should any funding carried over from prior years indeed exist, it should be clearly disclosed. It should also be evaluated why there are excess unused funds to begin with, with an eye as to how future appropriations could be adjusted downwards so that taxpayers' money is saved and the national debt lowered.

### **Some Budget Matters** ***Would Veterans Benefits Be Threatened?***

First, the House Armed Services Committee's FY 2013 National Defense Authorization Act as a whole authorizes funding \$3.7 billion above President Obama's defense request and \$8 billion higher than the Budget Control Act spending caps, thus breaking last summer's bipartisan budget deal. If enacted, the HASC NDAA would inevitably force even deeper cuts to discretionary domestic programs such as education, environmental protection and law enforcement.

More narrowly, the HASC NDAA's provision to transfer CMRR-NF and UPF design and construction to the Pentagon would put them under the jurisdiction of the House and Senate Military Construction and Veterans Affairs Appropriations Subcommittees. First of all, this is a pretty transparent attempt to make an end run around the Energy and Water Development Appropriations Subcommittees of both chambers, when HASC knows that they won't provide funding for the CMRR-NF.

Rep. John Culberson (R.-TX), a self-described fiscal conservative and Tea Party caucus member, is the Chairman of the Military Construction and Veterans Affairs Subcommittee. He recently commented on the House FY 2013 Military Construction and Veterans Affairs Appropriations bill:

The first duty of government is to protect our nation. It is Congress' responsibility to ensure that the most urgent needs of our active duty military personnel and our nation's veterans are met. However, we are facing a financial crisis that cannot be ignored. We were able to increase funding for the Department of Veterans Affairs by \$2.3 billion more than fiscal year 2012, and Military Construction has been reduced by \$2.4 billion without increasing the overall spending level from last year. This bill recognizes the absolute urgency of cutting government spending without compromising the high quality services provided to our troops, their families, and our veterans.<sup>7</sup>

Obviously, the Chairman's statement explicitly recognizes the financial crisis that this nation is facing, and he is to be commended to holding the lid on federal spending (unlike HASC). But he is also strongly implying that a *quid pro quo* exists between reducing military construction costs and raising veterans' benefits.

The House Armed Services Committee's move to transfer CMRR-Nuclear Facility and UPF design and construction to the jurisdiction of Culberson's Military Construction and Veterans Affairs Subcommittee threatens that delicate balance. This is especially true when there is still a shortfall of over \$4.5 billion above what HASC has authorized of committed DoD money to complete both the CMRR-Nuclear Facility and the UPF. And it's "only" \$4.5 billion if there is no further cost escalation, when again the track record is that both facility's cost estimates have increased nearly ten-fold since their inception. So Culberson's Subcommittee could end up holding the budget bag for the nuclear weapons production facilities that HASC wants.

The House Armed Services Committee is zealous to build new, exorbitant nuclear weapons production facilities that are arguably not needed at great taxpayers' expense (and at a minimum the NNSA is explicit that the CMRR-Nuclear Facility is not needed for at least five years). The question needs to be asked: Is the House Armed Services Committee ready and willing to potentially sacrifice veterans' benefits in order to fulfill its agenda of unneeded expanded nuclear weapons production?

**Conclusion:** The Senate Armed Services Committee and the Energy and Water Development Appropriations Subcommittees of both chambers should oppose the House Armed Services Committee's proposals and continue to provide no funding for the CMRR-Nuclear Facility.

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<sup>7</sup> Press Release, "Appropriations Committee Approves Fiscal Year 2013 Military Construction and Veterans Affairs Legislation, Bill will fund essential programs and services for our nation's troops, veterans, and military families," May 16, 2012, <http://appropriations.house.gov/News/DocumentSingle.aspx?DocumentID=295642>