

# United States Senate

WASHINGTON, DC 20510

February 2, 2007

The Honorable Samuel Bodman  
Secretary  
Department of Energy  
1000 Independence Avenue, SW  
Washington, D.C. 20585

Dear Secretary Bodman:

H.J.Res.20, a bill to appropriate funding for the remainder of the 2007 fiscal year, contains legislative language that states that fiscal year 2006 report language earmarks "shall have no legal effect" with respect to funds appropriated by H.J.Res.20. As I am sure you are aware, the President demanded in the State of the Union address that earmarks be cut in half and placed in legislative language. In addition, the Ninth Circuit Court of Appeals ruled last month that committee report language does not carry the force of law (*Northwest Environmental Defense Center v. Bonneville Power Administration*, 9th Cir. 2007).


In light of the very clear language of H.J.Res.20, the President's demand to end the process of inserting earmarks into report language, and the recent decision of the Ninth Circuit Court of Appeals that report language does not carry the force of law, we write to inquire as to whether or not your agency will continue to fund report language earmarks for the remainder of the 2007 fiscal year. A February 2, 2007, article in *CongressDailyAM* stated that the "Energy Department has told appropriators it plans to continue to fund earmarks, despite CR language ensuring that agencies are not legally bound to honor prior projects."

Such a commitment troubles us greatly, as it contradicts both the law and the President's directive in the State of the Union address. According to a Congressional Research Service analysis of fiscal year 2006 earmarks, 99 percent of earmarks for energy and water projects were tucked away in non-binding committee report language. In total, 2,414 energy and water earmarks were hidden in non-binding report language according to the analysis.

Because H.J.Res.20 will likely be debated by the Senate in a matter of days, we would appreciate a response to this inquiry as soon as possible. We look forward to working with you and the President to ensure that taxpayer dollars are spent wisely and in accordance with the law.

Sincerely,

  
Sen. Tom Coburn, M.D.

  
Sen. John McCain