The Washington Report

August-September 2011

1130 Connecticut Ave., NW, Suite 300
Washington, D.C. 20036
202.331.8500 phone
202.331.1598 fax
www.fergusongroup.us

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Suite 300
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THE WASHINGTON REPORT
AUGUST - SEPTEMBER 2011

CONGRESSIONAL SCHEDULE

In early August, Congress completed the debt ceiling/deficit reduction package and went home for its annual district work period to face uproar from constituents and the lowest approval ratings for both Congress and the President in years. They returned to Washington after Labor Day to focus on the economy and job creation to prevent another recession. Addressing a Joint Session of Congress on September 8, President Obama urged Congress to work quickly to pass the American Jobs Act, his new legislative proposal to stimulate the economy. This legislation will include approximately $447 billion worth of new tax cuts and spending increases. The President tasked the Joint Deficit Reduction Committee (Super Committee), charged by the debt ceiling deal, to come up with at least $1.2 trillion in savings over the next 10 years, with finding additional savings to offset the cost of this new package. Rather than providing a broad outline, the White House pledged to submit legislative language for the American Jobs Act and the trade agreements that he hopes Congress will enact to stimulate job growth.

The President's proposal will call for approximately $30 billion to state and local governments to rehire teachers, $5 billion to hire emergency first responders, $25 billion of investment in public school infrastructure, $5 billion to modernize community colleges, $15 billion to rehabilitate vacant homes, and $50 billion for transportation infrastructure projects, including $10 billion to capitalize an infrastructure bank. Further details of the American Jobs Act and the response from lawmakers will be emerging over the next few days.

Beginning in September, the House of Representatives and the Senate are moving forward to complete the FY 2012 appropriations bills and the Super Committee is hiring staff and creating its process in order to prepare its deficit reduction recommendations by the end of November.

On September 9, President Obama submitted a new request to Congress to provide emergency supplemental appropriations for FY 2011 of $500 million and a budget amendment for FY 2012 of $4.6 billion for the Department of Homeland Security. The additional funding would fund disaster response needs in the Disaster Relief Fund, including approximately $1.5 billion for the federal share of costs to respond to Hurricane Irene. By requesting emergency supplemental funding, the White House is hoping that Congress will not find it necessary to cut funding from another source in order to find off-sets and will be able to enact this request very quickly.

For more information, please contact Debra Bryant at dbryant@tfgnet.com.

Deficit Reduction Super Committee

Under the compromise measure passed in early August to avoid defaulting on the nation's national debt, House of Representatives and Senate leadership have appointed the 12 members of the Joint Special Committee on Deficit Reduction (Super Committee) tasked with recommending ways to reduce the budget by least $1.2 trillion over 10 years. The Super Committee must provide recommendations by November 23 and then Congress has until December 23 to vote on those recommendations, or else $1.5 trillion in automatic spending cuts will go into effect. The President's proposed American Jobs Act package seeks another $447 billion in savings from the Super Committee.

The committee will be co-chaired by Senator Patty Murray (D-WA) and Representative Jeb Hensarling (R-TX). Senate members of the committee include Senator Jon Kyl (R-AZ), Senator John Kerry (D-MA), Senator Pat Toomey (R-PA), Senator Max Baucus (D-MT), and Senator Rob Portman (R-OH). House members include Representative Chris Van Hollen (D-MD), Representative Xavier Becerra (D-CA), Representative Dave Camp (R-MI), Representative James Clyburn (D-SC), and Representative Fred Upton (R-MI).

The issues that divided Democrats and Republicans during the debt ceiling debate continue to divide Congress and the Super Committee, with Democrats arguing for a combination of spending cuts and revenue increases while Republicans on the committee are focused on spending cuts.

Should across-the-board cuts be triggered either by the failure to enact the Super Committee's proposal or the inadequacy of the proposal's cuts, the required cuts to federal programs would take effect in January 2013. These automatic spending cuts will broadly impact federal spending, including cuts to defense spending and Medicare.

In the pursuit of a deal to reduce our deficit, the Super Committee has three primary mandates: (1) focus on economic growth and job creation that reduce the deficit; (2) make decisions regarding investments, cuts and revenues, and their timing to stimulate growth, while reducing the deficit by $1.2 to $2 trillion; and (3) increase demand by offering recommendations that ensure that wages grow with productivity and reduce American families' dependence on credit.

Local governments, concerned about Congress will focus on cuts to the non-military discretionary programs that make up only about 12 percent, or approximately $480 billion, of the $3.6 trillion annual federal budget, are contacting their lawmakers to discourage cuts that would endanger their ability to provide services to citizens and cause further growth in public sector unemployment rates.

For more information, please contact Amanda Wood at awood@tfgnet.com.

Status of FY 2012 Appropriations

When Congress adjourned for its annual August district work period, it had taken the following actions on FY 2012 appropriations bills.

- The House had passed six bills: Agriculture, Defense, Energy and Water Development, Homeland Security, Legislative Branch; and Military Construction/Veteran's Affairs.
- The House Appropriations Committee had completed work on three additional bills, clearing them for consideration by the full House: Commerce/Justice/Science, Financial Services, and Interior and Environment.
- The State Department/Foreign Operations bill had been marked up at the subcommittee level.
- The House Appropriations Committee had taken no action on the Labor/Health and Human Services/Education and Transportation/Housing and Urban Development bills.
- The Senate had passed the Military Construction/Veteran's Affairs bill.
- The Senate Appropriations Committee had taken no action on the remaining 11 bills.

Both the House and the Senate resumed work on appropriations bills when they returned following Labor Day. In the House, the Transportation/Housing and Urban Development Appropriations Subcommittee marked up its FY 2012 bill on September 8. In the Senate, the Energy and Water Development and Homeland Security Appropriations Subcommittees marked up their respective bills on September 6. Both bills, along with the Agriculture bill, were approved by the full Senate Appropriations Committee on September 7.

While it is certainly a possibility that Congress could complete work on one or more individual appropriations bills before the beginning of the fiscal year on October 1, it will not be able to complete all 12 bills and a Continuing Resolution will be required to keep the federal government operating until the bills are completed. The most likely outcome is that any individual bills not completed before the beginning of the fiscal year will be combined into a single omnibus measure. Based on reports from Capitol Hill, we believe there is a good chance such a bill would be enacted by Thanksgiving.

The legislation signed into law by the President on August 2 raising the debt ceiling and establishing the joint deficit reduction committee (P.L. 112-25) included a cap on discretionary spending for FY 2012. The existence of this cap should make it easier for the House and Senate to reach agreement on the annual appropriations bills. However, there is at least one procedural hurdle that must be overcome. The Senate formally adopted its subcommittee spending limits (302(b) allocations) for FY 2012 on September 7. They are based on the $1.043 trillion spending cap called for in P.L. 112-25, which is $7 billion below current spending. However, the House Appropriations Committee had already set its 302(b) allocations based on the Budget Resolution passed by the House on April 15, which included a FY 2012 discretionary spending target of $1.019 trillion, $24 billion below the Senate targets. The difference could require the House to pass a new budget resolution with the higher figure, a move that could be resisted by some House members. A more likely option would be for the House Rules Committee to grant waivers for floor consideration of any spending bills that would breach the House budget cap.

For more information, please contact Bob Schmidt at bschmidt@tfgnet.com.

Repeal 3% Withholding Requirement Efforts Underway

While the Internal Revenue Service (IRS) hosted an August briefing to provide an update on the implementation of required 3% withholding on payments by government entities, efforts are still underway to gain full repeal of this onerous requirement. This measure, which will require federal, state and local governments to withhold 3% from all payments for goods and services and is due to be implemented in January 2013, would be a paperwork burden for local governments and likely increase the cost of contracts. Studies also suggest that the estimated $215 million per year of increased revenue due to improved tax compliance will be less than the additional costs of implementing and administering the withholding requirement for governments and businesses. This requirement applies to all government entities with total budgets of at least $100 million.

The House of Representatives version of repeal legislation now has 226 cosponsors, with the majority of House members cosponsoring the bill. With the addition of Senator Patrick Toomey (R-PA), there are now 29 cosponsors in the Senate and momentum is growing. Additionally, in a memorandum to House Republican members during the congressional August recess, Majority Leader Eric Cantor (R-VA) laid out their agenda for the fall and included repeal of the 3% withholding tax, which he deems a "burdensome requirement." A broad coalition including such diverse members as local governments, Air Conditioning Contractors of America, the Federation of American Hospitals, the National Institute of Governmental Purchasing, and the United States Telecom Association, is working with TFG staff and clients to advance the repeal effort.

For more information, please contact Amanda Wood at awood@tfgnet.com.

Create and Save Public and Private Sector Jobs Legislation Introduced

Representative George Miller (D-CA) introduced legislation in August designed to help state and local governments retain and rehire workers. His proposal provides more than $37 billion for local governments, and an additional $24 billion for states to pay teachers, policemen and firefighters. The legislation would also underwrite approximately 50,000 additional private-sector on-the-job training positions to help businesses put people back to work. This legislation is similar to a bill introduced in 2010, which garnered the support of 300 organizations and 163 cosponsors when it was first introduced.

Supporters of the Miller bill would like to see investments in state and local jobs included in a package that advances as a result of President Obama's jobs strategy. Representative Miller believes that not only are local government workers vital for providing valuable community services, but keeping them employed will be essential if the country hopes to improve an unemployment rate that is currently above nine percent. Funding would go directly to eligible local communities and nonprofit community organizations to decide how best to use the funds and by supporting the services local communities deem most necessary, the bill will help local governments avoid having to choose between eliminating services and raising taxes.

The Local Jobs for America Act, H.R. 2828, will need the support of members of Congress throughout the country in order to gain momentum and it is important that you personally contact them to let them know the impact that this legislation could have on your community.

For more information, please contact Amanda Wood at awood@tfgnet.com.

Parks and Recreation

With the debt limit law in place, House and Senate appropriators will spend the greater part of September working on their FY 2012 spending bills.

The House spent a week in July working on its Interior Appropriations bill, H.R. 2584, but did not complete it. House leaders have not established a schedule for taking up the bill on the floor by itself or in an omnibus bill. The House has been tough on conservation programs, such as the Land and Water Conservation Fund (LWCF), heritage areas, state and wildlife conservation grants, and historic preservation grants. The Senate has been more in favor of conservation programs, but budget cuts will threaten programs that historically have been protected. Senate appropriators have yet to schedule their markup.

It is worth noting that an August 25 National Park Service report recommends that the LWCF - State Assistance Program, now allocated to states by formula and then to local governments through state competitive process, be awarded competitively by the Interior Department for projects of national significance. This would effectively kill funding for the only program that provides dollar-for-dollar matching grants to states and local governments specifically for the development of public outdoor recreation sites and facilities (i.e. playgrounds that are ADA compliant, fields for youth sports, pedestrian trails, parks, and wildlife habitats).

The House approved the FY 2012 Agriculture Appropriations bill, H.R. 2112, on June 16 with reductions of $1 billion in conservation spending, which is in addition to the $500 million reduction in FY 2011. On July 15, the House approved the FY 2012 Energy and Water Appropriations bill, H.R. 2354, that would, among other things, block a proposed new Obama Administration wetlands permit policy.

The FY 2012 Transportation-Housing and Urban Development Appropriations bill was marked up by the House Subcommittee on September 8. CDBG, a popular program for park projects, received an increase to $3.5 billion from the $3.3 billion level in FY 2011. It's not clear at this time what amount of the highway funding will be distributed to Transportation Enhancements (TE) and the Recreational Trails Program (RTP). In addition, these programs are in jeopardy during the next surface transportation reauthorization bill. House Transportation and Infrastructure Committee Chairman John Mica (R-FL) has proposed to eliminate the 10 percent set aside for TE and House Speaker John Boehner (R-OH) and Majority Leader Eric Cantor (R-VA) have called upon the President and Congress to remove TE from any SAFETEA-LU extension, as well as any future reauthorization. Under the House proposal, the Recreational Trails Program (RTP) would be consolidated under the same funding account as highways and bridges. Although RTP would remain eligible for funding, there would be no specific allocation designated for that purpose.

For more information, please contact Leslie Mozingo at lmozingo@tfgnet.com.

EPA Brownfields Grant Solicitations to be Released

The Environmental Protection Agency's (EPA) Brownfields program will begin accepting applications for its FY 2012 grant programs around mid-September. The EPA plans to release solicitations that will cover its Brownfields Assessment, Brownfields Cleanup and Brownfields Revolving Loan Fund grant programs simultaneously, and to provide approximately 60 days for communities to submit applications. The Brownfields grant programs provide localities with funding to not only assess and remediate contaminated sites, but also to enhance community outreach efforts and produce economic studies and analyses.

For more information, please contact Jon Wisbey at jwisbey@tfgnet.com.

EDUCATION

The Role of Higher Education in Job Growth

On August 16 during congressional recess, the House Education and Workforce Committee held a field hearing, "Reviving our Economy: The Role of Higher Education in Job Growth and Development," in Greenville, South Carolina. The purpose was to discuss the various successful partnerships that exist between businesses and postsecondary institutions throughout the country. The hearing featured two panel discussions, the first examining the local economy and job opportunities and the second panel focused on the ability of higher education institutions to successfully prepare graduates to join the workforce. The event featured Clemson University's International Center for Automotive Research (CU-ICAR) and Project Green, a joint economic development initiative between CU-ICAR and the South Carolina Technology and Aviation Centers for creating unique testing and research and development capabilities for public and private employers in sustainable mobility and connected transportation. Without talent, technology, investment, and infrastructure, Mayor Knox White testified that we as a community cannot succeed. Clemson University, along with the private sector, has proven that collaboration between universities and the private sector can drive innovation and create new jobs. A quality higher education system and a strong workforce are vital to America's success in an increasingly competitive global economy. Both areas require flexibility and adaptability; they rely on constant innovation to keep pace with rapid changes and this hearing was successful in highlighting higher education and job growth initiatives.

For more information, please contact Debra Bryant at dbryant@tfgnet.com.

HEALTH CARE

Health Care Reform

While the Republican candidates for President and many members of Congress call for the entire health care reform bill to be repealed, President Obama conceded in his address to Congress on September 8 that his signature health care reform law did not fix Medicare and called on his Democratic colleagues to help make modest adjustments to the program to ensure it lasts for future Americans. The President urged Congress to gradually reform the system while protecting current beneficiaries, so that it be there when future retirees need it. Such an opening gives the

Super Committee, established in the debt ceiling bill, the opportunity to reopen the health care reform package and make additional cuts to services and providers. In an effort to oppose any additional cuts, advocates are gathering data that shows that millions could lose their health insurance; fewer physicians would participate in the Medicare program because of reduction in physician service fees; and up to 1.3 million health care workers could lose their jobs.

One of the most controversial requirements in the existing health care reform bill, the mandate for individuals to have insurance, survived another court test when a federal appellate court in Virginia dismissed two of the highest-profile suits against the law, ensuring that no one can successfully challenge the 2010 legislation until it actually takes effect in 2014,

The 4th Circuit Court of Appeals in Richmond unanimously dismissed challenges brought by the Commonwealth of Virginia and Lynchburg, Virginia based Liberty University. It is the first Appeals Court to uphold an argument that the insurance-coverage requirement amounts to a federal tax, and cannot be challenged until it actually impacts people in 2014. Under the health care law, people opting out of health insurance coverage after 2014 must pay a fine. Appellate courts in Atlanta and Cincinnati earlier this year rejected the "anti-injunctive" tax argument, meaning the Virginia ruling adds another legal twist that the Supreme Court will likely have to consider. Most of the cases against the law challenge its requirement that just about everyone have health insurance, referred to as the "individual mandate." All of the constitutional issues surrounding the individual mandate have now been exhaustively ruled upon by three federal appellate courts in four separate cases. The next step is the U.S. Supreme Court.

For more information, please contact Debra Bryant at dbryant@tfgnet.com.

PUBLIC SAFETY and HOMELAND SECURITY

Homeland Security Appropriations Bill Clears Senate Committee

On September 8, the Senate Appropriations Committee approved its FY 2012 Homeland Security Appropriations bill which included major funding cuts to state and local programs. The cuts were far less severe than those proposed in the House of Representatives' FY 2012 bill. In total, the bill would provide $41 billion in agency-wide funding, which is $2.6 billion below the President's request, and $408 million above the FY 2012 House-passed bill. The proposed funding level is $666 million below the enacted total for FY 2011. For state and local programs, the bill would provide $2.58 billion, which is $557 more than the House's bill.

The Senate bill provides the following funds for other programs supporting state and local First Responders.

- $380 million for the State Homeland Security Grant Program
- $50 million for Operation Stonegarden
- $400 million for the Urban Area Security Initiative
- $15 million for the Emergency Operations Centers Program
- $200 million for the Transit Security Grant Program
- $350 million for the Emergency Management Performance Grant Program (an increase of $5 million over the FY 2010 enacted level)

- \$305 million for the Assistance to Fire Fighters Grant Program (\$55 million more than the FY 2010 enacted level)
- \$750 million combined for SAFER (hiring grants) and Assistance to Firefighters (AFG) Grant Programs
- \$200 million for Port Security Grants

There is no specific funding available for Citizens Corps, Driver's License Security, the Buffer Zone Protection Program, the Metropolitan Medical Response System, and Interoperable Emergency Communications grants.

The bill provides \$6 billion for the Disaster Relief Fund, \$3.35 billion above FY 2011. Federal Emergency Management Agency (FEMA) Administrator Craig Fugate testified before House and Senate oversight committees this summer that the system is overburdened by the number of natural disasters.

For more information, please contact Kareem Murphy at kmurphy@tfgnet.com.

TRANSPORTATION

Transportation and FAA Reauthorization Update

Late September 9, House of Representatives Republican and Senate Democratic leaders announced an agreement to consider a "clean" (meaning free of changes in current policy or funding levels) four-month Federal Airport Administration (FAA) reauthorization coupled with a clean six-month surface transportation extension. The current FAA authorization expires September 16 and the surface transportation bill expires September 30.

Earlier in the week, the Senate Environment and Public Works (EPW) Committee passed a four-month clean extension unanimously and the President delivered a speech calling for a jobs package to include additional investments in infrastructure. If the surface transportation authorization is not extended, it will interrupt disbursements to states and could stall thousands of transportation projects across the nation. Senate EPW Chairman Barbara Boxer (D-CA) and the Ranking Republican Senator James Inhofe (R-OK) have also proposed separate legislation to reauthorize highway programs at current spending levels for two years. That bill could be marked up as early as the week of September 12, although there is still no final agreement with the Finance Committee on how to find the estimated \$12 billion in extra revenues needed for the Highway Trust Fund to remain solvent before the end of the two-year bill on September 30, 2013. Although the financing agreement is not necessary for Chairman Boxer to mark up the bill, the legislation cannot move to the Senate floor before the Finance Committee approves the revenue title. House Transportation and Infrastructure Chairman John Mica (R-FL) has said he will accept one more extension (likely the six-month version) but then will insist that Congress complete work on a full authorization. Chairman Mica's proposal is to reauthorize surface programs for six years.

For more information, please contact Leslie Mozingo at lmozingo@tfgnet.com.

Transportation Appropriations Update

The House Transportation-HUD Appropriations Subcommittee approved its bill on September 8 and it provides a net total of $55.15 billion in new discretionary appropriations for FY 2012, essentially a cut of about $3.35 billion from the FY 2011 level. Given that the final FY 2011 law zeroed out funding for high-speed rail and did not provide any funding for a proposed National Infrastructure Bank, it is not surprising that the FY 2012 House bill doesn't fund them either. The House bill also eliminates the popular Transportation Investment Generating Economic Recovery (TIGER) discretionary grants program for FY 2012.

Because highway and transit spending levels are now significantly more than the Highway Trust Fund's tax receipts, and since those programs are rapidly burning through the existing surpluses provided by $35 billion in past bailouts from the Treasury's General Fund, the House Transportation Appropriations Subcommittee reduced Trust Fund funding levels for highways and mass transit to the maximum amount that the Congressional Budget Office says can be sustained at current tax rates without more bailouts. This results in a 34 percent cut in the federal-aid highways obligation limitation, from $41.11 billion in FY 2011 to an even $27 billion in FY 2012, and a 38 percent cut in mass transit formula and bus grants, from $8.34 billion in FY 2011 to $5.2 billion in FY 2012. These numbers are consistent with the House-passed budget plan sponsored by House Budget Chairman Paul Ryan (R-WI) and Chairman Mica's reauthorization bill. The House bill maintains existing program and account structure and therefore cannot easily be compared to President Obama's FY 2012 budget request, which proposed drastic restructuring of the Trust Fund and consolidation of most surface transportation accounts.

Senate Appropriations Committee, by a near-unanimous vote, approved an overall spending plan that assigns their Transportation-HUD Subcommittee $55.25 billion in FY 2012 discretionary budget authority, which is almost identical to the House bill's $55.15 billion. Senate Transportation-HUD Chairman Patty Murray (D-WA) is expected to release her bill as early as the week of September 12. Chairman Murray is faced with the impossible challenge of restoring funding to high-speed rail, TIGER grants, Amtrak subsidies, and transit new starts, presumably without the extra $100 million difference in the two versions. Restoring those funds would require that money come out of other accounts, either at the Department of Transportation (DOT) or the Department of Housing and Urban Development (HUD). Amtrak operating subsidies are hugely popular in the Senate, the New Starts program is already overcommitted, and Chairman Murray created and has sustained the TIGER program through two subsequent appropriations cycles. Therefore, the Senate Transportation-HUD bill won't likely provide a significant amount of money for high-speed rail in FY 2012. (Note to California readers: the state's high-speed rail plan is contingent on getting between $1-2 billion per year in federal funding every year for the next 10+ years.)

Congress does not want another showdown over funding that could shut down the government, so discussions are already beginning for a Continuing Resolution (CR) before September 30. An omnibus appropriations bill that combines all remaining bills not yet passed, which would probably include Transportation, also seems extremely likely.

The President called for $50 billion in "immediate" transportation infrastructure spending during the Joint Session of Congress highlighting investments in infrastructure. The plan would also

expand the Transportation Infrastructure Finance and Innovation Act (TIFIA), which provides loans, loan guarantees and lines of credit for large transportation projects, and would fund TIGER grants. In addition, the American Jobs Act would provide $10 billion in seed money for a National Infrastructure Bank, an idea the President has promoted since his 2008 campaign, to be modeled after the bipartisan infrastructure bank proposal by Senator Kay Bailey Hutchison (R-TX) and Senator John Kerry (D-MA). The Kerry-Hutchison bill, S. 652, known as The Building and Upgrading Infrastructure for Long-Term Development (BUILD) Act, would establish an American Infrastructure Financing Authority (AIFA) - a kind of infrastructure bank for large projects – to leverage private-public partnerships and maximize private funding to address our water, transportation and energy infrastructure needs.

The president of the American Road and Transportation Builders Association (ARTBA) told a recent transportation conference that the problem with another stimulus bill for infrastructure is that it relieves pressure to pass a multi-year reauthorization bill, which he deems a higher priority. House Minority Leader Eric Cantor (R-VA) rejected a National Infrastructure Bank and recommended instead to empower the states, 33 of which already have state infrastructure banks.

For more information, please contact Leslie Mozingo at lmozingo@tfgnet.com.

TIGER III Discretionary Grants

Pre-applications for TIGER III Discretionary Grants are due October 3 and completed grant applications must be submitted by October 31. TFG's Transportation Policy Team is available to help with these applications and has prepared a toolkit to assist applicants. Contact your client manager for the password-protected document. Non-TFG clients can order a copy through http://www.efficientgov.com/.

For more information, please contact Bill Hanka at bhanka@tfgnet.com.

WATER AND NATURAL RESOURCES

Senate FY 2012 Energy and Water Development Appropriations Bill

On September 7, the Senate Appropriations Committee approved its version of the FY 2012 Energy and Water Development Appropriations Bill, which funds the U.S. Army Corps of Engineers, the Department of the Interior's Bureau of Reclamation, the Department of Energy, and several independent agencies.

In total, the bill provides $31.63 billion, $57 million below the FY 2011 enacted level. The allocation for the Energy and Water bill is divided into security and non-security accounts. The security accounts are made up of funding for the National Nuclear Security Administration, which received a $528 million increase over FY 2011. The non-security accounts are funded at $584 million below FY 2011. The bill also provides $1.05 billion in disaster relief funding to repair damaged infrastructure from flooding on the Mississippi and Missouri Rivers and from Hurricane Irene and Tropical Storm Lee.

The legislation provides $4.86 billion for the Army Corps of Engineers. This level is $291 million above the President's budget request and $101 million more than the House of

Representatives-passed bill. For the Corps of Engineers, the bill provides the following programs.

- $125 million for General Investigation, $2 million below FY 2011
- $1.61 billion for Construction, $180 million below FY 2011
- $250 million for Mississippi River and Tributaries, $8 million above FY 2011
- $2.36 billion for Operation and Maintenance, $6 million below FY 2011
- $193 million for the Corps' Regulatory Program, $3 million more than FY 2011
- $109 million for the Formerly Utilized Sited Remedial Action Program, the same as the budget request
- $5 million for the Office of the Assistant Secretary of the Army for Civil Works, the same as FY 2011
- $185 million for General Expenses, the same as the budget request

The bill provides $1.07 billion for the Department of the Interior. This level is $16 million above the President's budget request and $133 million above the House-passed bill. For Department of Interior programs within the jurisdiction of the Energy and Water Development Subcommittee the bill provides the following programs.

- $29 million for the Central Utah Project Completion Account, $3 million more than FY 2011
- $886 million for the Bureau of Reclamation's Water and Related Resources account, which is $26 million below FY 2011
- $53 million the Bureau of Reclamation's Central Valley Project Restoration Fund, $3 million above FY 2011
- $40 million for the Bureau of Reclamation's California Bay-Delta Restoration account, which is equal to the budget request
- $60 million for the Bureau of Reclamation's Policy and Administration account, which is $1 million below FY 2011

For the Department of Energy, the bill provides a total of $25.55 billion for the following programs.

- The Advanced Research Projects Agency-Energy (ARPA-E) would receive $250 million, $70 million more than FY 2011, to develop high-risk, but promising future energy technologies
- The Office of Science would receive $4.84 billion, the same as FY 2011, to focus on breakthroughs in energy applications and develop the next-generation high performance computing systems
- Energy and Efficiency and Renewable Energy programs would receive $1.8 billion, the same as FY 2011, to advance solar, biomass and vehicle technologies
- Electricity and Energy Reliability would receive $141 million, the same as FY 2011, to support renewable energy integration into the electric transmission grid
- Nuclear Energy would receive $584 million, which is $142 million below FY 2011, to focus on safety and ways to manage spent fuel
- Fossil Energy would receive $259 million, which is $186 million below FY 2011

- Defense Environmental Cleanup would receive $5 billion, which is $11 million above FY 2011
- Non-Defense Environmental Cleanup would receive $219 million, which is $4 million below FY 2011 and the same as the President's budget request
- Weapons Activities would receive $7.19 billion, which is $294 million above FY 2011
- Nuclear Nonproliferation would receive $2.38 billion, which is $110 million above FY 2011
- Naval Reactors would receive $1.1 billion, which is $141 million above FY 2011
- The Naval Petroleum and Oil Shale Reserves would receive $15 million, which is equal to the President's budget request
- The Strategic Petroleum Reserve would receive $193 million, an increase of $70 million above FY 2011
- The Energy Information Administration would receive $105 million, which is $10 million above FY 2011

For more information, please contact Bob Schmidt at bschmidt@tfgnet.com.

National Infrastructure Bank Update

The Obama Administration is including a national infrastructure bank in the American Jobs Act. Most recently, the Chamber of Commerce, more conservative in their positions, noted that a national infrastructure bank is a good way to finance major infrastructure projects in the long run, but it wouldn't immediately create jobs and pushed for congressional action on the transportation and water authorization bills that contain direct funding and policy and program reforms.

Meanwhile, White House Budget Director Jack Lew sent a memo to all federal agency heads telling them to shrink their FY 2013 discretionary budget requests, which will be submitted to Congress in February 2012, by at least five percent below the FY 2011 level and to prepare options for shrinking those budgets by ten percent. Since the FY 2011 level contained no money for a national infrastructure bank, a vigorous Infrastructure Bank program will be difficult to fund in 2013 out of the discretionary budget at a total funding level that is five percent below FY 2011.

For more information, please contact Mark Limbaugh at mlimbaugh@tfgnet.com.

New Competitive EPA Program for Water, Wastewater and Stormwater Infrastructure Introduced

Representative Lois Capps (D-CA) introduced H.R. 2738, The Water System Resiliency and Sustainability Act of 2011, along with Representatives Earl Blumenauer (D-OR), Diana DeGette (D-CO), Donna Edwards (D-MD), Russ Carnahan (D-MO), Shelley Berkley (D-NV), Allyson Schwartz (D-PA), Mazie Hirono (D-HI), George Miller (D-CA), Lynn Woolsey (D-CA), and Barbara Lee (D-CA). The bill would authorize a new Environmental Protection Agency (EPA) competitive 50-50 cost-shared grant program at $50 million per year for FY 2012 through FY 2016 to help drinking water, wastewater, and stormwater utilities adapt and prepare for the impacts of changing hydrological conditions, including climate-related risks, on their operations.

If enacted and funded through future appropriations, utilities could use these grant awards on projects that would conserve or enhance water use efficiency; modify, relocate or replace existing water system infrastructure; construct new systems; preserve or improve water quality; and to investigate, design, or construct groundwater remediation, recycled water, or desalination facilities or systems. The funds could be used to enhance watershed management and energy efficiency; support the adoption and use of advanced water treatment, water supply management (such as reservoir reoperation and water banking); reduce flood damage; and conduct and complete studies or assessments on how changing hydrologic conditions may impact the future operations and sustainability of water systems.

A companion bill is expected to be introduced by Senator Ben Cardin (D-MD).

For more information, please contact Mark Limbaugh at mlimbaugh@tfgnet.com.

Judge Throws Out Interior "Cat Ex" Reforms for Oil and Gas Leases

A federal judge has thrown out Obama Administration efforts to increase environmental oversight of oil and gas development on federal lands.

At issue is Section 390 of the 2005 Energy Policy Act, which contains a provision that generally encourages the government to use "categorical exclusions," which exempt certain actions from full environmental oversight in certain onshore oil and gas developments in an effort to speed up the permitting process.

The Obama Administration sought to reform the law by issuing a new interpretation of how to implement categorical exclusions. Among other things, the reforms introduced a screening process that could lead to further environmental oversight if certain criteria were met. The Bureau of Land Management (BLM) adopted the new procedure in a May 2010 memorandum, and the Forest Service largely followed suit in a June 2010 letter.

U.S. District Judge Nancy Freudenthal of the District of Wyoming ruled that the Bureau of Land Management and Forest Service had failed to follow the correct procedures in issuing a new interpretation of federal law that limited the use of categorical exclusions.

For more information, please contact Mark Limbaugh at mlimbaugh@tfgnet.com.

Municipal Governments Liable For Channeling Polluted Water

On July 13, the Ninth Circuit Court of Appeals filed an opinion holding municipal governments liable for discharging polluted water in violation of the Clean Water Act (CWA). In the opinion the Court (NRDC v. County of Los Angeles, No. 10-56017) found municipal governments liable for merely channeling polluted water and in spite of the fact the municipal government did not generate the pollutants or add pollutants to the water being channeled.

The defendant water district argued that merely channeling pollution created by other parties should not create liability. The Court dismissed this argument and wrote, "(the CWA) does not distinguish between those who add and those who convey what is added by others – the Act is indifferent to the originator of the water pollution." The Court added, "(CWA) bans 'the

discharge of any pollutant by any person' regardless of whether that 'person' was the root cause or merely the current superintendent of the discharge."

Municipal governments, flood control districts and other entities with responsibility for or ownership of stormwater infrastructure should review this case carefully. The Court's opinion can be found at http://www.ca9.uscourts.gov/datastore/opinions/2011/03/10/10-56017.pdf.

For more information, please contact Mike Miller at mmiller@tfgnet.com.