



The Washington Report

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



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CONGRESSIONAL SCHEDULE

All of the FY 2012 appropriations bills were enacted in December so the federal agencies are anxious to announce the availability of funding, evaluate the applications and award the competitive grants in 2012. Formula funding levels also are being announced by program officers as soon as their spending plans are approved by the Office of Management and Budget (OMB). In addition, the deficit reduction package approved in August 2011 contained spending targets for FY 2013, so once the House and Senate Budget Resolutions are approved, the House and Senate Appropriations Committees Chairmen have promised a return to regular order for the completion of the FY 2013 bills.

Returning to Washington in January, House and Senate leadership began negotiations to resolve their differences on how to pay for a full-year extension of the payroll tax credit and unemployment benefits, and provide funds to prevent the Medicare reimbursement rate scheduled cuts for providers. The short-term agreement expires the end of February. Once again, Democrats and Republicans disagreed on whether to cut entitlements and other discretionary spending or raise taxes on the wealthy.

2012 Calendar

The House of Representatives reconvened on January 17, while the Senate returned on January 23. The President's State of the Union address was held on January 24, and the President's FY 2013 budget recommendations will be released February 13. The next recess for a congressional district work period is the week of February 20.

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

BUDGET, APPROPRIATIONS & FISCAL POLICY

Another One-Year Earmark Ban

On February 2 during Senate consideration of a bill banning insider trading by lawmakers and executive branch officials, lawmakers rejected an amendment by a vote of 40 – 59 to impose a ban on earmarks. In an effort to defeat the amendment, Senate Appropriations Chairman Daniel K. Inouye (D-HI) announced in advance of the vote that his committee would continue their moratorium on earmarks for all FY 2013 spending bills, although he supports the constitutional right of members of Congress to direct investments to their states and districts under the fiscally responsible and transparent earmarking process that the Senate established and argued that lawmakers are best equipped to understand the needs of their home states, while the moratorium

leaves them all at the whim of the Administration bureaucrats. Based on legislation, S. 1930, proposed last year by Senators Patrick Toomey (R-PA) and Claire McCaskill (D-MO) the amendment would have created an official definition of the term and also would have created a point of order against legislation containing any of them. The House already has an earmark ban in place for the 112th Congress.

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

Budget Process Reforms

The House of Representatives approved two bills the week of January 30 designed to reform the budget process. The proposals are designed to bring greater accountability and transparency to the existing budget process. However, there are currently no plans for the Senate to consider similar legislation. In addition to these bills, the House may also consider legislation to require biennial rather than annual budget resolutions, biennial appropriations bills and biennial government strategic and performance plans.

This bill, H.R. 3582, would require that for “major legislation,” the Congressional Budget Office (CBO) prepare an analysis of the effect that the legislation would have on the U.S. economy. This macroeconomic impact analysis would be supplemental information in addition to the official congressional cost estimate of the legislation. Specifically, the bill would require committee reports to include a CBO analysis that must include an estimate of the legislation’s impact on gross domestic product (GDP), business investment, the economy’s capital stock, employment, and labor supply. This analysis must also include an estimate of the legislation’s potential fiscal impact, including any changes in tax revenues resulting from changes in GDP. The bill would require CBO to submit a statement identifying critical assumptions and sources of data underlying the estimate and define major legislation as any legislation (other than those reported from the Committee on Appropriations) estimated by CBO to have a budgetary effect of at least 0.25 percent of annual GDP (approximately \$39 billion in FY 2012) in any year within the ten-year budget window. The bill would require these analyses to cover the 10-year budget window and the subsequent thirty-year period.

The House of Representatives also approved H.R. 3578 which would reform the way the baseline for discretionary spending accounts is computed by removing the assumption that discretionary spending will increase by inflation each year. The bill would revise the formula for calculating the baseline for discretionary spending for the budget year and each out year to eliminate adjustments for: (1) expiring multiyear subsidized housing contracts; (2) administrative expenses of the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the Railroad Retirement account; (3) offsets to federal employees’ annual pay; and (4) certain other inflators used to adjust budgetary resources. The bill would also require that CBO prepare an alternative projection of the baseline assuming the extension of current tax policies. This will provide the Budget Committees an official estimate of the fiscal situation assuming the extension of current tax policy. The bill would codify the current practice of CBO providing a long-term budget outlook no later than July 1 of each year. The bill does not change the way mandatory program or revenue baselines are calculated.

The House plans to consider the Budget and Accounting Transparency Act of 2012, H.R. 3581, which increases transparency in federal budgeting by reforming the way certain costs are calculated and requiring that certain costs incurred by the federal government are included in the budget. The bill would require fair value accounting for federal credit programs. The executive branch and Congress would be required to use “fair value” accounting in calculating the costs of federal credit programs that consider not only the borrowing costs of the federal government, but also the costs of the market risk the federal government is incurring by issuing a loan or loan guarantee. This reform would bring federal budgeting in line with private sector cost-estimating practices. The bill would require CBO and the Office of Management and Budget (OMB) to conduct a study on extending this fair value methodology to federal insurance programs, which are currently accounted for on a cash-flow basis. The proposal would bring Fannie Mae and Freddie Mac on-budget to recognize the budgetary impact of these housing-related government-sponsored enterprises. Since the financial crisis these enterprises have become the explicit financial responsibility of the federal government and these reforms would ensure that the budgetary implications of that fact are reflected in the federal budget. The bill would require CBO and OMB to conduct a study on the use of budgetary terms related to money collected by the federal government, which has become inconsistent, and require that agencies make public the budgetary justification materials prepared in support of their request for use of taxpayer dollars.

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

FY 2013 Budget to be Released on February 13

President Obama has announced that he will release his FY 2013 Budget Request on February 13, one week later than required. The Budget Control Act of 2011 (PL 112-25) enacted last August established a discretionary spending cap for FY 2013 that is \$4 billion more than the cap established for the current fiscal year. However, the President is expected to include in his budget proposal recommendations for reducing the deficit by \$4 trillion over a decade. Congressional Budget Office Director Douglas Elmendorf and Federal Reserve Chairman Ben S. Bernanke presented testimony the week of January 30.

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

ECONOMIC DEVELOPMENT

Parks and Recreation

During the week of January 30, the House Committee on Transportation and Infrastructure considered the American Energy and Infrastructure Jobs Act to reauthorize surface transportation programs for five years. The bill eliminates the Transportation Enhancements (TE) set aside and moves the program under a new account called the Alternative Transportation Account. However, the bill would eliminate the Safe Routes to Schools (SRTS) grant program entirely, but preserves the Recreational Trails Program by providing \$85 million for FY 2013-2016. An amendment was defeated to restore both TE and SRTS. Advocates are now revising strategy for consideration of the bill by the full House of Representatives.

Another potential threat to park and recreation resources is the proposal by the House Transportation and Infrastructure Committee and Speaker John Boehner (R-OH) to expand oil and gas drilling in federal waters and on public lands, then using those royalties to help fund the gap between infrastructure needs and the depleted Highway Trust Fund. Currently Outer Continental Shelf revenues fund the Land and Water Conservation Fund (LWCF) and its State Assistance Program. State and local park and recreation advocates oppose any idea that would reduce funding for the LWCF.

During a regularly posted “On the Go” video message by Department of Transportation Secretary Ray LaHood, he said the agency believes people around America want the opportunity for biking and walking. He also said the agency has put a lot of emphasis on these programs, have funded them through their TIGER program and that they really enhance communities and give people options. He added his strong support for continued funding.

For more information, please contact Leslie Mazingo at lmazingo@tfgnet.com.

EDUCATION

Workforce Training

After calling on Congress to approve a new initiative to train and place two million Americans in good jobs through partnerships between businesses and community colleges, President Obama also urged the expansion of such programs that are tailored to industry needs. While the President did not explicitly address the Workforce Investment Act (WIA) in his State of the Union speech, he did indicate that the current system needs to be streamlined to be more effective and the White House may be open to some level of WIA consolidation of workforce training programs for unemployed and displaced workers.

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

Tuition Costs

In the State of the Union speech, the President called for a permanent extension of the American Opportunity Tax Credit which provides up to \$10,000 for up to four years of education and called on Congress to prevent interest rates on Stafford loans from increasing on July 1. He also proposed doubling the number of work-study jobs over the next five years. The President called on Congress to enact the Development, Relief and Education of Alien Minors Act (DREAM Act) to help those individuals who enlist in the military or are undocumented immigrant students going to college, to also have a path to citizenship which they otherwise would not have without this legislation. Supporters of the DREAM Act believe it is vital not only to the people who would benefit from it, but also the United States as a whole.

In an effort to draw attention to rising tuition costs and the burden of student loans, the President’s budget will propose a shift of funding away from institutions that do not keep tuition costs down. It is unclear until we see the exact language, how the Administration would determine whether a college is holding the line on tuition fees. One proposal would boost the federal investment in the Perkins loan program from \$1 billion to \$8 billion and revamp the formula for distributing the federal aid to campuses through the Federal Supplemental Education

Opportunity Grants (SEOC), Perkins loans and Federal Work Study. Under the plan, colleges would be rewarded based on their success in offering relatively lower tuition prices, providing value and serving low-income students. The Administration also is proposing a new Race to the Top – College Affordability and Completion to provide \$1 billion in aid to states that curb higher education costs and align exit and entrance standards between K-12 and post-secondary education. The White House proposes to create a competition that provides \$55 million in a First in the World fund for higher education institutions to pursue innovation to boost productivity and reward efficiency. Pell grants constitute the largest federal aid program with the assistance going straight to students, so conditioning that aid does not create direct incentives for universities. On February 2, the Senate Health, Education, Labor and Pensions Committee held the first hearing on the proposals to make higher education more affordable. Congress must approve these changes and more detail of the proposals are expected in the President's FY 2013 budget to be submitted February 13. Skeptics see the plan as an election year ploy for the youth vote.

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

HEALTH CARE

HHS Rejects Florida's Affordable Care Act Waiver

The U.S. Department of Health and Human Services (HHS) denied the appeal of a waiver request from Florida to largely ignore the medical loss ratio requirements under its own state-based insurance regulations, as directed under the Affordable Care Act. That provision requires that large insurance plans must spend an 80% minimum of their premium-based revenues on actual medical claims or on improvements to the delivery and financing of medical care. The rate is 80% for small or individual plans. Insurance plans not in compliance by August 2012 will be required to issue refunds to consumers. HHS ruled that Florida failed to present evidence justifying its need-based claim. Some states have been granted waivers based on concerns that rapid implementation would destabilize the market and result in unacceptable numbers of folks unable to obtain health insurance. In the ruling, HHS explained that such concerns were unwarranted based on the evidence the State presented. An HHS spokesperson said that the State failed to demonstrate that the six insurers who withdrew from Florida's insurance market did so because of this provision in the Affordable Care Act. This fight is one that may expect to continue until the Supreme Court issues a ruling on the constitutionality of the overall Act which is expected in June 2012.

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

States Make Major Progress Toward Implementing Health Care Reform

The White House issued a report on January 18 showing the levels of progress all states have made in implementing various provisions of the Affordable Care Act. The "Progress Report: States Are Implementing Health Reform" report noted that 28 states and the District of Columbia are on their way toward establishing health insurance exchange markets. Under the Affordable Care Act, all states must implement health care exchanges which are essentially marketplaces where consumers and businesses can purchase health insurance policies that offer an expanded level of coverage than currently required by state or federal law by 2014. Those that fail may have one established and run by the federal government. More than half the states have filed

lawsuits challenging the constitutionality of the Affordable Care Act. Therefore, the White House report is notable in describing the ways that states that have filed lawsuits are still moving forward with implementation. A January report from the Commonwealth Fund noted that 11 states enacted laws last year designed to establish health insurance exchanges, with four more enacting legislation that created a regulatory pre-cursors for exchanges. The White House also noted that 49 states had received grants that will be used to set up the exchanges.

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

PUBLIC SAFETY and HOMELAND SECURITY
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SAFER Grant Program Announced

FEMA finally opened competition for the FY 2011 round of awards under the Staffing for Adequate Fire and Emergency Rescue (SAFER) program. The program provides grants to fire service agencies to recruit, hire and retain fire fighters and fire safety personnel, with the goal of ensuring adequate capability to meet national standards for response and intervention. The program had been expected to open competition last fall. Repeated program delays coupled with the lateness of the FY 2011 appropriations bill explains the timing. There is \$380 million available for awards. Grantees will have support for two years and no requirement to maintain the positions after that. FEMA also eliminated the limit on salaries for funded positions.

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

Homeland Security Needs Better Oversight

On January 25, House Homeland Security Chairman Peter King (R-NY) and Ranking Member Bennie Thompson (D-MS) called on House Speaker John Boehner (R-OH) to streamline the authority and jurisdiction of the House Homeland Security Committee to ensure better oversight of the Department of Homeland Security (DHS). They are calling on the Speaker to transfer authority from the Transportation and Infrastructure Committee and the Energy and Commerce Committee to their Committee. Representatives King and Thompson said that the Department currently reports to over 100 congressional committees and panels, far more than any other federal agency. DHS Secretary Janet Napolitano told Congress that in 2010 her agency spent nearly \$10 million in duplicative reports and testimony to Congress. This was not the first time such high profile critics called for jurisdictional oversight changes. The 9-11 Commission, the Joint Deficit Reduction Committee and both political parties (when they were each in the minority) make the same recommendations. Representatives King and Thompson's proposed reforms face an uphill battle.

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

Cyber Security Bill Moving

Senate Majority Leader Harry Reid (D-NV) has instructed several committees to finalize a draft comprehensive cyber security bill for consideration before the full Senate by the spring. At a January briefing before the Congressional Internet Caucus Advisory Committee, an aide said that while the strategy around floor consideration in both chambers is murky, leaders are clear that

they expect a bill by March or April. House and Senate leaders have reportedly met to identify and focus on all issues they have in common. In the House, leaders have directed the various committees with jurisdiction over cyber security to have their pieces finished by March, with a final bill either being merged by the Rules Committee or going to the floor separately and combined at that point.

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

TRANSPORTATION

Federal Aviation Administration

On Tuesday, January 31, House and Senate leaders reached an agreement on the FAA Reauthorization bill and the House of Representatives will consider the conference report on February 3. The agreement funds FAA operations and aviation programs for four years (FY 2012-2015). Of note, the bill includes \$3.35 billion annually for the Airport Improvement Program. Unfortunately, it reduces the cost share from 95/5 to 90/10 (federal/non-federal). The bill also provides protections for existing agreements between airports and adjacent landowners, known as “through-the-fence,” an important source of funds for many general aviation airports, in particular. The bill includes funding for the long-awaited NextGen air traffic control modernization program.

The TFG-managed General Aviation Airport Coalition (GAAC) has been advocating for this bill since the organization was formed in 2011. GAAC is pleased that many of the issues for which it advocated are included in the final conference report.

For more information, please contact Jennifer Imo at jimo@tfgnet.com.

Transportation Reauthorization Moving

With Congress facing the expiration of the ninth extension of the current transportation law, SAFETEA-LU, on March 31, 2012, House Transportation & Infrastructure (T&I) Committee Chairman John Mica (R-FL) introduced a long awaited transportation reauthorization bill the week of January 30. The House bill, H.R. 7, The American Infrastructure & Energy Act, would authorize \$260 billion in transportation spending over five years and was approved by the Committee on February 3 by a vote of 20-17.

Chairman Mica’s bill represents a significant departure from Senate Environment & Public Works (EPW) Chairman Barbara Boxer’s (D-CA) two-year \$85 billion MAP-21 transportation reauthorization bill. Senator Boxer’s bill has not yet reached the Senate floor and, like Chairman Mica’s bill, has several additional components which must be passed by other committees prior to moving to the floor.

According to the House T&I Committee, H.R. 7 will provide long-term stability for states to undertake major infrastructure projects; contain no earmarks; and consolidate or eliminate nearly 70 federal programs. The bill would also eliminate mandates that states spend highway funding on non-highway activities; allow states to set their own transportation priorities; condense

deadlines for federal agency project approvals; and encourage states to partner with the private sector to finance and build projects.

Perhaps the largest obstacle facing passage of major transportation legislation is an inability on the part of Congress to match revenues to needs. In spite of the Congressional Budget Office estimate released January 31 that the Highway Trust Fund is on track to remain solvent through September 2012, the federal budget generally and transportation funding in particular are under significant pressure as motor fuel tax revenues are inadequate to match funding demands. Neither the House nor the Senate has made significant progress in identifying or rallying support for significant new revenue sources or increasing revenues from existing sources. The November election is likely to have a chilling effect on significant efforts and initiatives this year regarding increasing transportation revenues.

The Senate Banking Committee considered the mass transit portions of the Senate bill on February 2. Other markups may also occur early February. The TFG updated “side-by-side” comparison of the House and Senate legislation will be available to our clients.

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

TIGER IV \$500 Million Grant Round

On January 31, Department of Transportation Secretary Ray LaHood announced a fourth round of competition for the TIGER Grant Program, which is being funded with \$500 million for FY 2012. Funding includes \$120 million set-aside for rural projects and a \$100 million set-aside for high speed and intercity passenger rail projects. The successful projects will have to obligate their awarded funds by no later than September 30, 2013.

Awards from the TIGER IV Round are expected to be announced in the first half of 2012. The Ferguson Group has updated its *TIGER Toolkit for Local Communities* with updated information for the TIGER IV Round.

In the TIGER III Round, DOT received 848 applications totaling \$14.29 billion and awarded 46 projects using \$511 million in available funding on December 15, 2011. The most recent awards ranged from \$1 million to \$20 million with an average award size of \$11.1 million. TIGER III awarded 20 rural projects for a total of \$149.8 million, with an average size of \$7.5 million. There were 26 urban projects for a total of \$360.9 million, with an average size of \$13.8 million. Awards from the TIGER IV Round are expected to be announced in the first half of 2012. The Ferguson Group has updated its *TIGER Toolkit for Local Communities* with updated information for the TIGER IV Round.

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

WATER AND NATURAL RESOURCES

National Flood Insurance Program Reauthorization

Congress recessed in 2011 without taking action on a comprehensive reauthorization of the National Flood Insurance Program. However, the FY 2012 Consolidated Appropriations Act

signed into law on December 23, 2011, includes an extension of the existing program until May 31, 2012. The House of Representatives passed a comprehensive reauthorization of the program in July 2011, H.R. 1309. The Senate Banking has reported its version of the reauthorization bill, S. 1940, but the bill has not yet been considered by the full Senate.

One item of the Senate reported bill that has generated controversy is a provision (Section 107) that would require homeowners and businesses to purchase federal flood insurance despite being protected by certified flood control infrastructure. In a bipartisan effort, thirteen Senators signed a letter originated by Senators Thad Cochran (R-MS) and Mark Pryor (D-AR) to the Senate Banking Committee raising concerns about Section 107 of the bill, which would designate as “areas of special flood hazard” land currently protected by properly constructed and maintained flood control structures. Such a designation would then trigger flood insurance purchase requirements and land use restrictions. In addition to Senators Cochran and Pryor, the correspondence was signed by Senators Roy Blunt (R-MO), John Boozman (R-AR), Kent Conrad (D-ND), John Cornyn (R-TX), Mike Enzi (R-WY), Al Franken (D-MN), Kay Bailey Hutchison (R-TX), Amy Klobuchar (D-MN), Claire McCaskill (D-MO), Pat Roberts (R-KS), and Ron Wyden (D-OR).

In another item of note, Representative John Garamendi (D-CA) has announced that he plans to introduce legislation that will address what he believes are shortcomings in the National Flood Insurance Program as they relate to agricultural areas. In his letter to stakeholders on the issue, Representative Garamendi has determined that an exemption to the National Flood Insurance Program (NFIP) for agricultural structures in specific flood zones is the best and least expensive way to address the problem. His draft legislation is designed to allow farmers to continue to farm and build necessary agricultural structures. The legislation would also allow farmers to obtain subsidized flood insurance on existing and new agricultural structures in these zones.

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

Protecting End-User Use of Swaps from Regulation

The House Agriculture Committee has approved six bills amending the Dodd-Frank financial reform law that would exclude from regulation public utility companies, rural electric cooperatives, community banks, and manufacturers that use “swaps” as a means of hedging prices of raw materials or other financial instruments used in their day-to-day business. All of the bills passed the panel unanimously by voice vote, and must now move to the House floor for consideration.

Swaps are agreements based on expected future prices of commodities, credit and other items and have historically been made without going through an exchange, as called for in the Dodd-Frank law. The bills seek to exempt commercial end-users like utilities and rural electric cooperatives who use swaps to legitimately hedge their risks in volatile markets. The Commodities Futures Trade Commission (CFTC) is currently in the process of writing rules to implement Dodd-Frank, including potentially classifying such entities as exempt from the regulation of swaps.

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

Interior Nomination Withdrawn

President Obama has withdrawn the nomination of Rebecca Wodder for the position of Assistant Secretary for Fish, Wildlife and Parks after many months of deadlock in the Senate. Ms. Wodder, the former CEO of American Rivers, was nominated last June to replace Tom Strickland. She now works as a senior advisor to Interior Department Secretary Ken Salazar on conservation issues and the Great Outdoors Initiative.

Rachel Jacobson continues to serve in an acting capacity until a new nominee is confirmed by the Senate. The position oversees the National Park Service and the U.S. Fish and Wildlife Service within the Department.

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

Water Resources Development Act

Republican and Democratic leaders of the House and Senate public works committees want to move the Water Resources Development Act (WRDA) bill this year, but they are not sure that they will be able to draft the legislation authorizing Corps of Engineers projects, studies and policies without running afoul of the ban on earmarks imposed by the House of Representatives. The committees also are uncertain whether legislation authorizing billions of dollars worth of water projects will draw enough votes during an election year dominated by arguments over the deficit and federal spending.

Demonstrating broad bipartisan support for infrastructure development, the Senate Environment and Public Works Committee last month unanimously approved a highway project authorization bill, and Committee Chair Barbara Boxer (D-CA) and Senior Republican James Inhofe (R-OK) are now focused on putting together a WRDA bill for action sometime this year. The Senate committee began work on assembling a WRDA bill early last year, requesting that Members submit requests for authorizations of new projects, proposed adjustments to existing project authorities and suggestions for Corps policy changes. But the Senate committee has twice postponed the deadline for WRDA requests because many Senators remain reluctant to submit project-specific proposals that will be tagged as “earmarks” under the stringent House policy.

Senate committee staff are considering various options for authorizing new projects and increasing statutory funding limits for projects already under construction, including non-specific blanket authorizations and adjustments for projects that meet certain criteria. However, staff report a solution has not yet been found. For now, staff-level discussions are focused on developing Corps policy provisions for WRDA legislation. Because policy changes are not project-specific, they are not subject to the earmark ban. According to Senate staff, a decision on whether to pursue a WRDA bill in 2012 will be made over the next several weeks.

The House Transportation and Infrastructure Committee’s transportation bill is likely to go to the House floor in February. House committee staff say the public works panel will turn to WRDA after approval of the highway bill. But the House leadership’s anti-earmark policy is a major obstacle and House committee staff are uncertain whether a WRDA bill can be developed at all under those restrictions. The House committee has not yet issued a call for member WRDA

requests, and will decide by March whether a WRDA bill can be drafted and if there is sufficient support among members of both parties to make work on a WRDA bill worthwhile.

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

FY 2012 Spending Plans for Bureau of Reclamation/Corps of Engineers

Both the Bureau of Reclamation and the Corps of Engineers received additional discretionary funds in the final FY 2012 Energy and Water Development Appropriations bill and were directed by Congress to prepare work plans detailing how the additional funds are to be spent.

The Bureau of Reclamation received an additional \$50 million including \$30 million for rural water projects, \$5 million for fish screen and fish passage projects; \$6 million for water conservation and delivery studies, projects and activities; and \$5 million for facilities operation, maintenance and rehabilitation. Reclamation's spending plan was due 30 days after the date enactment of the appropriations bill, December 23, 2011. Even though the 30 day deadline has passed, Reclamation has not yet submitted its spending plan to Congress.

The Corps of Engineers received an additional \$35 million for Investigations; \$253 million for Construction, and \$173 million for Operation and Maintenance. The Corps is to report to the Congress within 45 days of enactment of the bill on how these funds are to be spent. The Corps' plan is expected to be released on February 6.

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

New Stormwater Rule Delayed Over Cost Analysis

The Environmental Protection Agency (EPA) has delayed its release of a first-time proposal for regulating stormwater runoff at residential and other developments after they have been constructed. The agency has had trouble estimating the costs and benefits of its proposed rule and, due to the court-ordered schedule, the delay is forcing EPA to negotiate a deal with environmentalists on a new schedule for the rulemaking.

EPA's post-construction rule will set a new stormwater runoff performance standard and provide regulated entities with several suggested compliance options, including innovative green infrastructure techniques, such as swales, rain gardens and other measures intended to limit runoff into waterbodies and sewers.

EPA is required to develop the rule under the terms of a 2010 settlement with environmentalists in *Fowler et al v. EPA et al*, the lawsuit which also forced the agency to craft a pollution control plan for the Chesapeake Bay. Under the terms of the settlement agreement, EPA was required to propose the new rule by September 30, which was later extended until December 15.

Acting EPA Assistant Administrator of the Office of Water Nancy Stoner told a House Transportation and Infrastructure Committee hearing December 14 that the proposed post-construction rule is "not done yet." Stoner said the agency is also struggling to complete the proposal because it is seeking to build more flexible compliance mechanisms into the regulation to address municipalities' concerns.

Meanwhile, the Office of Management and Budget (OMB) in December completed its review of EPA's revised effluent limitation guidelines (ELG), a technology-based standard, for construction and development sites that originally included a first-time numeric turbidity limit.

OMB's approval clears the way for the agency to publish the ELG in the *Federal Register* in time for release by February 15, 2012, under a court deadline. However, in a January 3 *Federal Register* notice, EPA says it is soliciting additional data associated with the revisions to the turbidity limits. In particular, the EPA is looking for data on the effectiveness of technologies in controlling turbidity in discharges from construction sites, leading many to assume the ELG rule may be delayed as well.

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

NEPA Improvements Available for Public Comment

On December 7, as part of the Obama Administration's effort to improve regulatory procedures, the Council on Environmental Quality (CEQ) released draft Guidance to improve efficiency under the National Environmental Policy Act (NEPA). The draft Guidance was open for public comment until January 27, 2012.

The draft Guidance outlines the following basic principles for agencies to follow when performing NEPA environmental reviews:

- NEPA encourages simple, straightforward, and concise reviews and documentation;
- NEPA should be integrated into project planning rather than be conducted after planning is complete;
- NEPA reviews should coordinate and take appropriate advantage of existing documents and studies;
- NEPA reviews should use early and well-defined scoping to target environmental reviews to appropriate issues and avoid unnecessary work;
- Agencies should develop meaningful and expeditious timelines for environmental reviews; and
- Agencies should target their responses to comments to appropriate issues raised.

The draft Guidance clarifies that the above tools designed to ensure the timely and efficient conduct of environmental reviews are to be applied not only to Environmental Impact Statements (EIS) the most intensive type of NEPA environmental document, but to all types of environmental reviews, including Environmental Assessments. The draft Guidance also notes that Categorical Exclusions (CE) may be used to streamline the NEPA process.

While this draft Guidance is part of CEQ's Plan for Retrospective Review of Existing Regulations to implement Executive Order 13563, Improving Regulation and Regulatory Review, January 21, 2011, the draft Guidance is very general, leaving vast discretion to individual agencies.

Using the above tools, the draft Guidance states that agencies should create concise NEPA documents; integrate NEPA early in the planning process; utilize the scoping process to plan collaboration with other governments, assign responsibilities, and develop the planning and

decision-making schedule; ensure intergovernmental coordination; coordinate reviews and documents under other applicable laws; consider adopting another agency's Environmental Assessment (EA) when the EA or a portion thereof addresses the proposed action; incorporate materials by reference, where appropriate; provide a reasonable and proportionate response to comments received on a draft EIS; and establish clear timelines for NEPA reviews.

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

NOAA May Move to Interior

On Friday, January 13, President Obama asked Congress to reinstate broad executive branch authority for the Executive Branch to reorganize the federal government, starting with the consolidation of six departments and agencies with trade and export authority.

The President is asking for the reinstatement of the same authority that former presidents had for more than 50 years, from the Hoover through the Reagan Administrations, and is seeking to submit to Congress specific proposals for a fast-track, up-or-down vote.

The changes envisioned by the White House also would substantially dismantle the Department of Commerce, including moving the National Oceanic and Atmospheric Administration (NOAA) to the Department of the Interior.

Through its National Marine Fisheries Service, NOAA conducts oversight of marine mammals, some endangered species and offshore oil and gas drilling as well as other coastal developments. NOAA also houses the National Weather Service. While NOAA has no organic legislation, it is not immediately clear whether the President would need congressional approval for the move.

Previous administrations have had discussions about moving NOAA to Interior to create one resource agency. But NOAA officials in the past have quietly opposed the idea. NOAA has some autonomy within the Commerce Department, and the agency's leaders could have less control when under a new department, such as Interior.

Other functions at Commerce, such as the Census Bureau and the Bureau of Economic Analysis, would be combined with the Department of Labor's Bureau of Labor Statistics, resulting in a new statistics agency that will be part of a new trade department.

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