



The Washington Report

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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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TFG WASHINGTON REPORT

CONGRESSIONAL SCHEDULE

This TFG Washington Report summarizes federal legislative and public policy issue updates which occurred during April. While the House of Representatives and Senate met only two weeks in April, the pace was swift as it is the beginning of the appropriations process and the development of must-pass bills by the congressional leadership.

Congress returns to Washington on May 7 for two weeks and then the House will take another congressional district work period the week of May 21.

BUDGET, APPROPRIATIONS & FISCAL POLICY

Appropriations Committees Begin Work on FY 2013 Spending Bills

The House and Senate Appropriations Committees have begun work on the twelve individual appropriations bills for FY 2013, which begins on October 1. While it is encouraging to see Congress get an early start on the appropriations process, the overall spending limits under which House and Senate are operating will likely prevent the bills from being completed by the beginning of the fiscal year.

The House Appropriations Committee will markup its versions of the appropriations bills based on an FY 2013 discretionary spending limit of \$1.028 trillion, which was the amount included in the FY 2013 Budget Resolution adopted by the House of Representatives on March 29. However, The Senate Appropriations Committee will conduct its appropriations work based on the FY 2013 spending ceiling contained in the Budget Control Act signed into law last August. That figure is \$1.047 trillion. That \$19 billion difference must be resolved before work on all of the bills can be completed. Further, the President has indicated that he will veto appropriations bills that do not reflect the \$1.047 trillion figure.

The difference in the total amount of discretionary spending expresses itself in the funding allocations which each of the appropriations subcommittees receive and may not exceed. The following table shows the allocations for each of the twelve appropriations subcommittees:

Subcommittee	House Allocation	Senate Allocation	Senate vs House
Agriculture, Rural Development, FDA	\$19,405,000,000	\$20,785,000,000	\$1,380,000,000
Commerce, Justice, Science	\$51,131,000,000	\$51,860,000,000	\$731,000,000
Defense	\$519,220,000,000	\$511,196,000,000	-\$8,059,000,000
Energy and Water Development	\$32,098,000,000	\$33,361,000,000	\$1,263,000,000
Financial Services	\$21,150,000,000	\$22,991,000,000	\$1,841,000,000
Homeland Security	\$39,117,000,000	\$39,514,000,000	\$397,000,000
Interior, Environment	\$28,000,000,000	\$29,662,000,000	\$1,662,000,000
Labor, HHS, Education	\$150,002,000,000	\$157,722,000,000	\$7,720,000,000
Legislative Branch	\$4,289,000,000	\$4,420,000,000	\$131,000,000
Military Construction, Veteran's Affairs	\$71,747,000,000	\$72,241,000,000	\$494,000,000
State, Foreign Operations	\$40,132,000,000	\$49,843,000,000	\$9,711,000,000
Transportation, Housing and Urban Development	\$51,606,000,000	\$53,438,000,000	\$1,832,000,000
Total	\$1,027,897,000,000	\$1,047,000,000,000	\$19,103,000,000

To date, the following actions have been taken on FY 2013 appropriations bills:

Agriculture, Rural Development and Food and Drug Administration.—The Senate Appropriations Committee approved its version of the bill on April 26.

Commerce, Justice, Science.—The Senate Appropriations Committee approved the bill on April 19, while the House Appropriations Committee approved its version of the bill on April 26. The bill is scheduled to be considered by the full House of Representatives the week of May 7th.

Energy and Water Development. — The House Appropriations Committee approved the bill on April 25. The Senate Appropriations Committee approved its version of the bill on April 26.

Transportation, Housing and Urban Development.—The Senate Appropriations Committee approved the bill on April 19.

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

ECONOMIC DEVELOPMENT

TFG-Managed National Association of Towns and Townships Hosts Fly-In

During the last week of March, town and township officials from across the country met in Washington to meet with congressional leaders to promote NATaT's federal priorities. The group had over 70 meetings on Capitol Hill requesting support for two measures that provide financial incentives to volunteer first responders; sufficient rural development and conservation title funding in the next Farm Bill; and preservation of the off-system bridge program in the transportation reauthorization bill.

NATaT members requested support for the Volunteer Responder Incentive Protection Reauthorization Act, H.R. 2353/S. 933, which exempts from federal income and FICA taxes property tax benefits and up to \$600 in cash/cash-equivalent benefits for volunteer first responders. The group also requested support for the Volunteer Emergency Services Recruitment and Retention Act, H.R. 376/S. 1911. This measure simplifies the taxation of pension-like benefits known as Length of Service Award Programs (LOSAPs).

NATaT also communicated support for full funding for the rural development and conservation titles in the next Farm Bill. Each of these titles provides funding for programs that are vital to the economic vitality of towns and townships. NATaT supported the Broadband Connections for Rural Opportunities Program (B-CROP) Act of 2012, S. 2275, which would create a grant program to ensure widespread broadband access. The intent is to include this measure in the final Farm Bill, and such a program is included in the Senate's arm Bill draft that was released on April 20.

Finally, NATaT advocated preserving the current off-system bridge program, which funds local bridges that are not on the Federal-aid highway system. The Senate transportation reauthorization bill preserves the program, while the House bill puts certain limits on the program. NATaT supports the Senate version of the bill.

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

Biotech Goals Announced by the White House

In late April, the Obama Administration released its federal "blueprint" designed to expand the nation's biotech industry. The national plan captures many of the same themes that business leaders, universities and communities have focused: creating public-private partnerships, commercializing research and aligning workforce training needs with industry. The plan includes five key points: support R&D investments that will provide the foundation for the future bioeconomy; facilitate the transition of bioinventions from research lab to market, including an increased focus on translational and regulatory sciences; develop and reform regulations to reduce barriers, increase the speed and predictability of regulatory processes, and reduce costs while protecting human and environmental health; update training programs and align academic institution incentives with student training for national workforce needs; and identify and support opportunities for the development of public-private partnerships and precompetitive

collaborations—where competitors pool resources, knowledge and expertise to learn from successes and failures.

Many communities have focused on biotech to diversify its workforce. According to the Biotechnology Industry Organization (BIO), the biotech sector directly employs 1.42 million workers and supports an additional 6.6 million jobs nationwide. Securing the Administration's support to reduce red tape, paperwork and unnecessary delays, the biotech sector can expand its role as an economic engine for growth – creating high-wage, high-skilled jobs that offer the most promise to cure disease, feed the hungry, create a healthier environment, and develop cleaner fuels that lessen our reliance on foreign oil.

And check out the full blueprint [here](#).

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

Senate Committee Supports Sustainable Communities Initiative

On April 19, the Senate Appropriations Committee voted to approve \$50 million in FY 2013 funding for the Department of Housing and Urban Development's (HUD) Sustainable Communities Initiative. This initiative, the cornerstone of the federal interagency Partnership for Sustainable Communities, includes both the Community Challenge grants that support local planning efforts, and the Regional Integrated Planning grants that support the development of regional plans. Both grant programs were funded in FY 2010 and FY 2011, but failed to receive any funding in FY 2012. The Senate did support funding for the initiative in FY 2012, but the House did not fund the program and the final compromise appropriations bill failed to allocate any funding. The House Appropriations Committee has not yet marked up the bill that funds this program and it is uncertain if they will support funding for the Sustainable Communities Initiative in FY 2013. This will likely come down to a decision made by the House - Senate conference committee.

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

Housing and Urban Development

The President's FY 2013 Budget included \$4.65 billion for "Project Rebuild," a new program first proposed in the American Jobs Act that would build upon the popular Neighborhood Stabilization Program (NSP) by providing funding to rehabilitate and refurbish vacant and foreclosed businesses, as well as homes.

As a follow-up, Senator Jack Reed (D-RI) introduced S. 2162, The Project Rebuild Act, cosponsored by Senator Al Franken and 9 others on March 6. The bill is designed to provide funding to rehabilitate houses and businesses that have been abandoned in the wake of the burst of the housing bubble. The Project Rebuild Act would provide \$15 billion in targeted assistance to renovate vacant residential and commercial properties. Under the bill, about \$10 billion would be directed to states, cities and non-profit organizations through a formula modeled after the

successful Neighborhood Stabilization Program (NSP) and \$5 billion would be distributed through new competitive grants. Each state will receive a minimum of \$20 million of the \$10 billion in formula funds. On April 23, Department of Housing and Urban Development Secretary Shaun Donovan appeared in Kansas City to tout President Obama's Project Rebuild program. Donovan said HUD's goal is to help neighborhoods hit hard by foreclosures, which will ultimately stabilize and improve the housing market and thereby stabilize and improve the overall economy.

For more information, please contact Val Gelnovatch at vgelnovatch@tfgnet.com.

Parks and Recreation

The Land and Water Conservation Fund (LWCF) would be reauthorized until 2022 and receive \$700 million for the next two years (FY2013 and FY2014 for \$1.4 billion total) under a provision included in the Senate-passed surface transportation bill (MAP-21). The LWCF is budget neutral because current law authorizes the program with a dedicated funding source of oil and gas leasing revenues. Although over \$6 billion a year is provided through these leases, the LWCF is normally funded annually around only \$350 million, with a mere \$45 million going to the State Assistance grants that fund state and local public recreation opportunities.

The LWCF provision was included in MAP-21 as part of an amendment sponsored by Senator Bill Nelson (D-FL) that would send 80 percent of the Clean Water Act penalty fines from the BP Deep Horizon oil spill to the five affected Gulf Coast states – Texas, Louisiana, Alabama, Mississippi, and Florida. The language is modeled after the Resources and Ecosystems Sustainability, Tourism Opportunities and Revived Economy of the Gulf Coast Act of 2011 (RESTORE Act). The RESTORE Act sets penalty spill fines collected from the BP disaster aside primarily for use by the Gulf States most affected. Under current law, the money flows into the Treasury where it can be used to pay for future oil spill cleanups and to offset deficit spending elsewhere. RESTORE Act language was included in the House transportation bill, but the House language does not include spending. Instead, the measure instructs 80 percent of the fines to be placed into a Gulf Coast Restoration Trust Fund. The money can only be withdrawn through an act of Congress to fund economic or environmental restoration in the five affected states. The LWCF has been described by House Republicans as a “federal land grab” and therefore the Senate-passed language was not included in the House-passed version. These differences between the two versions will be an issue for the conference committee.

The National Recreation and Park Association's CEO, Barbara Tulipane, refers to the “common misconception that LWCF is merely a federal land acquisition program,” in her written testimony to the Senate Interior Appropriations Committee. Instead, she makes the case that the LWCF State Assistance Program provides dollar-for-dollar matching grants to states and local communities for the construction of outdoor recreation projects; the land purchased with LWCF State Assistance funding remains the property of the state or local government; and facilities purchased with these funds must remain publicly accessible in perpetuity.

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

2012 Farm Bill Sees Activity on Capitol Hill

Official consideration of legislation to reauthorize the 2008 Farm Bill occurred in both the House and Senate during April. On April 26, the Senate Agriculture, Nutrition, and Forestry Committee marked up the Senate version of the 2012 Farm Bill, the Agriculture Reform, Food and Jobs Act of 2012. The five-year reauthorization bill, which reforms farm policy, consolidates and streamlines agriculture and rural development programs, and provides for a \$23 billion reduction in the deficit, was approved in committee by a bipartisan vote of 16-5.

Unfortunately for local governments, the bill did not include mandatory funding for programs under the Rural Development Title. In comparison, the 2008 Farm Bill included \$150 million in mandatory spending for rural development programs that help strengthen local communities through grant and loan programs for telecommunications, infrastructure and community facilities. Senator Sherrod Brown (D-OH) introduced an amendment that would have added \$260 million in mandatory spending for rural development programs, but the amendment was ultimately withdrawn before committee consideration.

The original bill also did not include mandatory spending for the Energy Title but a bipartisan effort led by Senators Kent Conrad (D-ND) and Richard Lugar (R-IN) helped restore \$800 million in mandatory spending for programs such as the Rural Energy for America Program. While some titles did see an increase in funding, program reductions in the bill included \$19.5 billion from the Commodity Title, \$6.44 billion from the Conservation Title, and \$4 billion from nutrition programs. Most of these reductions were achieved through the consolidation of current programs and by tightening requirements for program eligibility.

The House Agriculture Committee continued to hold hearings throughout April as it prepared to introduce its version of the 2012 Farm Bill. No official bill has been introduced in the House yet, but one is expected to be released in the coming month.

For more information, please contact Kristi More at kmore@tfgnet.com.

Broadband Grant Program Included in Senate Farm Bill

The draft Farm Bill released by the Senate Agriculture Committee includes a grant program to provide access to broadband telecommunications service in rural areas. Private sector providers and public entities are eligible to apply, although only 50 percent of the total project cost can be paid for with grant funds. Additionally, the project must benefit a rural community that has a population of 50,000 or less and is not contiguous or adjacent to a community with 50,000 or more. However, the community that is contiguous or adjacent to an urbanized area may apply to the U.S. Department of Agriculture (USDA) for a “rural in character” designation. That designation will be made by the USDA in consultation with the State’s Governor and USDA Director of Rural Development. This limitation is to ensure that USDA Rural Development funds are not directed to suburban areas and urban sprawl.

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

FEMA Pitches Flood Insurance Reauthorization

Current authorization for the National Flood Insurance Program expires on May 31 and the Federal Emergency Management Agency (FEMA) issued a press release calling on Congress to adopt a long-term reauthorization for the program prior to the expiration. In the release, Associate Administrator David Miller wrote, “Without reauthorization, the NFIP will be unable to issue new policies, renew existing policies or modify policies to increase coverage on the existing policy.” Experts from the field and several insurance industry groups predicted that despite this plea, Congress will allow the program to expire and then adopt yet another short-term reauthorization measure. Lapses in authorization cause significant time delays and cost increases for people purchasing properties in covered areas.

While the House passed its reauthorization bill, H.R. 1309, back in July, the Senate only passed its bill, S. 1940, out of the Banking Committee and it has not received any floor consideration. Senate Majority Leader Harry Reid (D-NV) has not indicated when that might take place. The House bill’s sponsor, Representative Judy Biggert (R-IL), said that part of the delay is the disagreement between the chambers over how to address the long-term \$18 billion deficit the program has had since Hurricane Katrina.

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

EDUCATION

Veterans Education

On April 27, President Obama issued an Executive Order aimed at increasing transparency and oversight for higher educational programs and institutions that serve veterans. The order directs the Departments of Defense, Veterans Affairs and Education to collect and disseminate data regarding the cost and outcomes of academic programs; develop a uniform system to receive reports of abuse or fraud; enhance current support services; and limit recruiting practices of students eligible for veterans’ educational benefits. While the Executive Order is aimed at bad actors in the education sector, it has the potential to impact all institutions of higher education serving veterans.

The Executive Order sets forth a series of guiding principles for educational institutions by which the agencies shall aim their reforms, including prior to enrollment, provide prospective students with a personalized form that helps them understand the total cost of the educational program, including tuition and fees; the amount of that cost that will be covered by federal educational benefits; the type and amount of financial aid they may qualify for; their estimated student loan debt upon graduation; information about student outcomes; and other information to facilitate comparison of aid packages offered by different educational institutions. The institution shall inform students who are eligible to receive federal military and veterans educational benefits of the availability of federal financial aid; end fraudulent and unduly aggressive recruiting techniques on and off military installations; obtain the approval of the institution's accrediting agency for new

course or program offerings before enrolling students in such courses or programs; and allow service members and reservists to be readmitted to a program if they are temporarily unable to attend class or have to suspend their studies due to service requirements.

Institutions should also agree to an institutional refund policy that is aligned with the refund of unearned student aid; provide educational plans for all individuals using federal military and veterans educational benefits that detail how they will fulfill all the requirements necessary to graduate and the expected timeline of completion; and designate a point of contact for academic and financial advising, including access to disability counseling, to assist service member and veteran students and their families with the successful completion of their studies and with their job searches.

These principles shall be reflected in new agreements with educational institutions with regard to participation in the Yellow Ribbon Program or the Tuition Assistance Program for active duty service members. While the principles are not applied to the Post-9/11 GI Bill program, participating institutions are encouraged to comply and will be recognized for doing so. The Executive Order instructs the relevant agencies to develop a comprehensive strategy for measuring student outcomes for veterans and service members, and collecting data on the amount of funding received pursuant to the Post-9/11 GI Bill and the Tuition Assistance Program.

The Executive Order also instructs the Secretary of Veterans Affairs to provide to prospective military and veteran students an online tool to compare educational institutions using measures of affordability and value. Within 90 days of the date of the Executive Order, relevant agencies must submit to the President a plan to strengthen enforcement and compliance mechanisms, including the creation of a centralized student complaint system; restrictions on institutions seeking to recruit on military bases; and trademarking the term “GI Bill” and restricting use of other terms that have been used in recruiting tactics.

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

Student Loan Interest Rates

Both the House and Senate have offered their versions of legislation to prevent interest rates on subsidized Stafford loans from doubling on July 1. The current interest rate is 3.4 percent. While political leadership and the White House agree that the interest rate should remain the same, they differ on how to offset the cost estimate of \$6 billion. The Senate bill, S. 2343, would change current tax code by requiring S Corporations with three or fewer shareholders who declare income of at least \$250,000 a year to pay employment taxes. House Republicans approved H.R. 4628 which offsets the cost by cutting mandatory funding for the Prevention and Public Health Fund which helps prevent chronic diseases as a part of the Affordable Care Act. At this time, both proposed offsets have received significant opposition, but both House and Senate leadership are looking to resolve this issue and pass legislation before July 1.

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

Workforce Investments

The House Education and Workforce Committee has completed hearings to examine bill proposals surrounding the reauthorization of the Workforce Investment Act (WIA), but postponed a May markup likely to be rescheduled for June. There are two major competing reauthorization proposals, the Republicans' H.R. 4297, the Workforce Investment Improvement Act of 2012 and the Democrats' H.R. 4227, the Workforce Investment Act of 2012.

The Senate Subcommittee on Competitiveness, Innovation and Export Promotion held a hearing entitled American Competitiveness: Filling Jobs Today and Training Workers for Tomorrow. Witnesses in this hearing included Martha Kanter, the Under Secretary for the US Department of Education, and Jane Oates, the Assistant Secretary of Employment and Training Administration. The hearing focused on the current skills gap that exists nationally and the need to train millions of workers in high-demand industries.

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

HEALTH CARE AND HUMAN SERVICES

Violence Against Women Act

Late April, the Senate approved bipartisan legislation, S. 1925 introduced by Senators Patrick Leahy (D-VT) and Mike Crapo (R-ID), that would reauthorize the Violence Against Women Act (VAWA). First authored by then-Senator Joe Biden in 1994, VAWA provides funding to states and local communities to improve the criminal justice response to domestic violence, dating violence, sexual assault and stalking. VAWA programs support services and prevention, as well as provide funding and training for specialized law enforcement units to investigate these crimes and prosecute dangerous offenders. Since the passage of the Act, annual incidents of domestic violence have dropped by more than 60 percent, but more resources must be devoted to sexual assault. The hidden crime of stalking affects one in six women and sexual assault remains the most underreported violent crime in the country. One in five women and one in seven men have been sexually assaulted at some time in their lives. The Leahy-Crapo bill was approved 68-31.

The House Judiciary Committee will markup its bill, H.R. 4970 introduced by House Majority Leader Eric Cantor (R-VA) and Representative Sandy Adams (R-FL), on May 8 and House floor action is expected the week of May 14.

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

Cyber Security Bills Moving

The recently publicized threats by the Iranian government to launch a cyber attack against the United States prompted congressional leaders to hasten consideration of several competing cyber security bills. Until April, there appeared to be little consensus within each chamber on a way forward, despite strong support for specific bills from each chamber's leader. During an April 25 House Cyber Security Subcommittee hearing, Frank J. Ciluffo, director of George Washington University's Homeland Security Policy Institute, said that Iran has acquired relationships whereby they could purchase such capabilities. House leaders immediately responded by announcing they had sufficient votes to pass H.R. 3523, the Cyber Intelligence Sharing and Protection Act. The bill passed 248-168 on April 26. However, President Obama has threatened to veto the bill, citing the need for freedom to evolve and change protocols for sharing information and requiring responses from the private sector.

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

DHS Grant Consolidation Proposal Debated

On April 26, the House Homeland Security Subcommittee on Emergency Preparedness held a hearing entitled, "Ensuring the Efficiency, Effectiveness, and Transparency of Homeland Security Grants (Part II): Stakeholder Perspectives" to secure input from First Responders on how the proposed grant program consolidation would affect their capabilities. State and local emergency management officials and first responder groups testified largely uniformly that while they support the effort to reduce program duplication, they are concerned that the capabilities that the programs are designed to support will be diminished if funds are cut now or in the future. Those representing local governments complained about problems in working with state governments for funding decisions. There was little support expressed for the consolidation proposal. Emergency managers praised the continued separation of the Emergency Management Performance Grants program. Subcommittee Chairman Gus Bilrakis (R-FL) and Ranking Member Laura Richardson (D-CA) were united in their opposition to the proposal, citing a lack of detailed information and goals from FEMA.

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

TRANSPORTATION

Transportation Bill Negotiations Begin

After having extended, on March 29, the Highway Trust Fund and surface transportation programs through June 30, the House and Senate reconvened in mid-April and promptly returned to work on moving the reauthorization legislation forward. On April 18, the House approved a 90-day surface transportation extension, H.R. 4348, through September 30, 2012, that was designed to facilitate a House-Senate conference committee with the comprehensive Senate-passed transportation reauthorization bill, S. 1813. House and Senate conferees have now been appointed and negotiations will begin in May on putting together the final version of the transportation reauthorization bill. Two large items in dispute include where to obtain the \$12 billion in revenue offsets needed to fully fund the bill and whether to include language passed by the House approving the Keystone XL pipeline.

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

Fiscal Year 2013 Transportation Budget

On April 19, the Senate Appropriations Committee approved a \$106.4 billion spending bill funding the Department of Transportation (DOT) and the Department of Housing and Urban Development for FY 2013, S. 2322. The bill appropriates \$18.24 billion in discretionary funding for the DOT, which is an increase of \$299 million over the FY 2012 enacted level. The bill includes \$39.144 billion for highways (the same as FY 2012); \$500 million for the popular TIGER Grant program; \$8.361 billion for the Federal Transit Administration's (FTA) formula grants; \$10.7 billion for mass transit; \$100 million for high speed rail; and \$2 billion for the FTA New Starts program.

The bill also includes \$15.96 billion for the Federal Aviation Administration (FAA). The Airport Improvement Program (AIP), which funds capital improvements at airports, is funded at \$3.35 billion. The TFG-managed General Aviation Airport Coalition supported the \$3.35 billion funding level, as well as a provision to return the federal share to 95 percent for certain AIP projects at smaller airports through FY 2013. The FAA Reauthorization bill was signed into law on February 14, 2012, and it changed the federal/non-federal cost share for AIP from 95/5 to 90/10. The Appropriations Committee expressed concern that the cost share change would severely impact small airports that have started, but not yet completed, multiyear projects. As a result, the Committee approved language that would allow small airports to contribute 5 percent of the total cost for unfinished phased projects that were underway before the FAA Reauthorization bill was signed into law.

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

WATER AND NATURAL RESOURCES

EPA Clean Water Act Regulatory Guidance

Senator John Barrasso (R-WY) and 30 Republican Members have introduced a bill that would block the Environmental Protection Agency (EPA) from finalizing regulatory guidance that many say would appreciably expand the agency's regulatory reach over streams and wetlands under the Clean Water Act. The draft guidance, which is currently at the Office of Management and Budget (OMB) for interagency review, is the Administration's attempt to "clarify" federal regulatory reach over "waters of the U.S." that have been defined by the U.S. Supreme Court rulings *Rapanos* and *SWANCC*. The Senators believe that the guidance, if adopted, would "...pre-empt state and local governments, farmers and ranchers, small business owners and homeowners from making local land and water use decisions."

At issue in the guidance is how EPA and the Corps would identify a "significant nexus" between isolated or marginally connected water bodies to navigable waters under the Clean Water Act, a concept that the Supreme Court established, in part, in their rulings. In the draft guidance, which EPA and the Corps released last April, the agencies say that establishing a significant nexus for marginal and jurisdictional waters is challenging and direct field staff to make case-by-case determinations, but generally indicate that those waters should not be aggregated for determining whether they are jurisdictional. Environmental groups have argued that aggregation should be allowed as many times isolated or marginally connected water bodies that do not flow year round make up the headwaters of navigable rivers, especially in the West, and should be jurisdictional under the Clean Water Act. This issue has become more complex during the interagency review, and could delay the release of the final guidance.

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

NEPA Streamlining Bill Headed for House Hearing

A House Judiciary subcommittee held a hearing on H.R. 4377, the Responsibly and Professionally Invigorating Development (RAPID) Act. The bill sets hard deadlines to complete an entire National Environmental Policy Act (NEPA) process on a particular project, with maximum timelines for environmental assessments (18-months) and for environmental impact statements (36-months). The bill is sponsored by Representative Dennis Ross (R-FL), and is co-sponsored by Representatives Lamar Smith (R-TX), Howard Coble (R-NC) and Colin Peterson (D-MN). Proponents of the legislation argue that the open-ended nature of current NEPA processes lead to uncertainty for developers as such processes tend to drag on for long periods of time. Opponents say the bill, if enacted, would allow project proponents to stall the process and wait out the deadline.

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

EPA Delays Final Integrated Permitting and Planning Policy (IP3) Framework

The Environmental Protection Agency (EPA) has delayed its release of the final Integrated Permitting and Planning Policy (IP3) framework until mid-May. The policy framework was initially planned to be released during April. Last October, EPA announced that it would develop the IP3 framework in order to streamline wastewater and stormwater requirements. The IP3 framework was supposed to offer a voluntary process for those seeking permits to negotiate their permitting obligations and develop the necessary infrastructure to address those obligations sequentially, rather than having to develop them all at once at great expense. EPA held a series of workshops on the draft IP3 framework in the Regions during January and February this year.

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

EPA Office of Water Plans Renewed Focus on Watershed Restoration in FY 2013

The Environmental Protection Agency (EPA) Office of Water will ramp up efforts to encourage state and regional regulators to address pollution on a watershed basis, rather than focussing on individual waterbodies. According to a recent draft of the National Program Manager Guidance fresh off a recent public comment period and issued by the agency to set goals for program managers in FY 2013, EPA believes that addressing complex water quality problems demands a watershed systems approach to protection that considers both habitats and the critical watershed processes that drive the condition of aquatic ecosystems.

In a March 16, 2011 memo to EPA's regional offices, acting EPA Assistant Administrator for the Office of Water, Nancy Stoner, called on the regions to encourage states to focus their efforts on watersheds. Since that time, EPA seems to have been moving toward watershed-based approaches to protecting water quality in rivers, lakes, and streams. But some critics have said that EPA's approach has focused more on attaining water quality for certain designated uses, such as recreation or fishing, than other uses, like source water protection.

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



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