

FLOOD & STORMWATER MANAGEMENT UPDATE



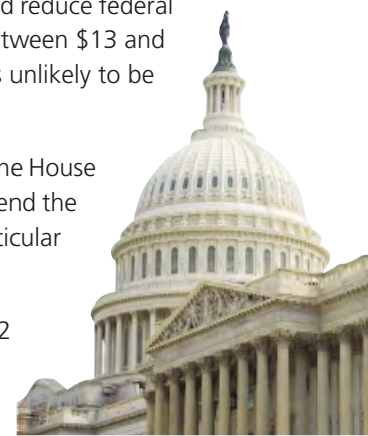
Congress Sets FY2011 Appropriations for Federal Government

On April 14, Congress passed H.R.1473, a bill making federal agency appropriations for the remainder of the 2011 federal fiscal year, which ends September 30, 2011. The House approved this final continuing resolution (CR) by 260 - 167, and the Senate voted 81 - 19. The measure was presented to the President and signed into law on April 15.

The bill reflects the agreement reached by the White House and leaders in the House and Senate hours before the last CR was to expire on April 8. The final agreement includes approximately \$38.5 billion in cuts in FY2011 when compared to FY2010 spending levels. According to the Congressional Budget Office, however, the budget compromise would reduce federal spending by only \$352 million this fiscal year. The analysts found that between \$13 and \$18 billion of the cuts involve money that existed only on paper and was unlikely to be tapped into until the next decade.

Federal agencies will now have 30 days to submit detailed work plans to the House and Senate Appropriations Committees, reflecting how they intend to spend the monies that have been broadly outlined in the bill, including plans on particular project funding.

With just over five months until the beginning of FY2012, no FY2012 appropriations bills have yet to be introduced.



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Funding Showdown Continues on Capitol Hill

The "Energy & Water" section of the final agreement on the FY2011 omnibus appropriations bill, which funds the Department of Energy, Bureau of Reclamation, and U.S. Army Corps of Engineers, received \$31.68 billion. That is a \$1.78B reduction from FY2010 enacted levels, or a 5.3% cut.

The bill funds the Army Corps of Engineers at the President's FY2011 requested level of \$4.9 billion.

- Operations & Maintenance (O&M) will receive \$2.37B, a \$30 million decrease from FY2010 spending levels, but a \$10 million increase from the President's FY2011 budget proposal.
- Construction (CG) will receive \$1.617B, which includes a \$100M rescission from the Continuing Authorities Program as well as rescission of \$76M in unspent FY2008 funds. This represents a \$414M reduction from FY2010, and \$73M lower than the President's FY2011 budget.
- General Investigations (GI) will receive \$127M, a \$33M reduction from FY2010, but a \$23M increase from the President's FY2011 budget.

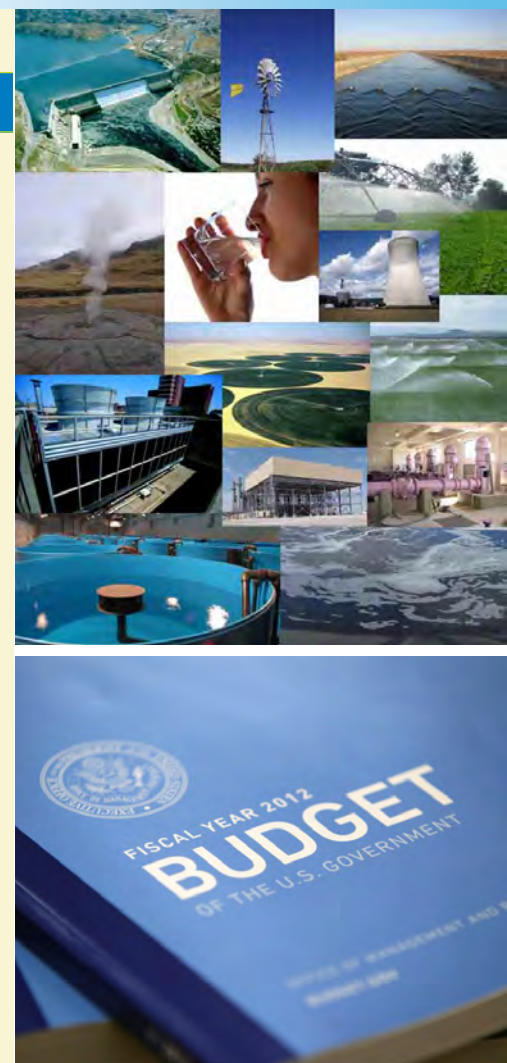
Despite the reductions in spending when compared to FY2010 spending levels, the Corps fared better than many agencies when compared to FY2011 budget levels. In addition, these numbers are higher than the levels proposed in the President's FY2012 budget, released in February. The preservation of much of the agency's funding as compared to other agencies shows that lawmakers believe the agency can't accept deeper cuts than what the president has proposed.

On the other hand, historically, the Administration proposes a budget number for the Corps, and Congress follows up by adding another roughly \$800 million in individually requested projects that many consider earmarks in today's political environment. Congress, having been publicly chastised for its earmark spending, will likely abstain from approach this year.

170 Members of Congress Write to Administration on Expected CWA Jurisdiction Guidance

In an April 14 letter, 170 members of Congress wrote to the Environmental Protection Agency Administrator Lisa Jackson and Assistant Secretary of the Army (Civil Works) Jo-Ellen Darcy raising serious concerns over the scope of the guidance, and that this guidance amounts to a defacto rule instead of mere advisory guidelines. The letter states, "Additionally we fear that this "Guidance" is an attempt to short-circuit the process for changing agency policy and the scope of Clean Water Act jurisdiction without following the proper, transparent rulemaking process that is dictated by the Administrative Procedure Act."

Signing onto the letter circulated by House Water and Environment Subcommittee Chair Bob Gibbs (R-OH) and Transportation and Infrastructure Chairman John Mica (R-FL) was Ranking Transportation and Infrastructure Member Nick Rahall (D-WV) and 22 additional Democratic Representatives. A copy of the final letter with signatures is provided with the edition of the Flood and Stormwater Management Update.



Legislators On Two-Week Recess

Wrapping up the debates over current fiscal year spending, the Congress is on a two-week recess, until May 2.



Earth Day
April 22, 2011

EPA Spared Policy Riders, but FY2011 Budget Cut by 16%

As details emerge about the final appropriations bill passed last week, Environmental Protection Agency (EPA) programs which provide grants to states and regional programs took a significant hit. Overall, the agency's budget was cut by \$1.6 billion from 2010 funding levels.

EPA's budget was reduced by 16 percent to \$8.7 billion. Three-quarters of the cuts, totaling \$1.19 billion, would come from State and Tribal Assistance Grants (STAG), which mainly fund water infrastructure upgrades and state plans to comply with new federal rules. That includes a \$997 million cut to the wastewater and drinking water state revolving funds infrastructure programs. Though the President proposed a similar cut to the revolving funds in his fiscal 2012 budget request, the agreement would now pull funding for the water infrastructure projects a year early.

The budget deal also includes a \$191 million cut to regional water quality programs, including the President's Great Lakes Restoration Initiative. These regional programs will now get almost exactly as much as President Obama requested in his FY2012 Budget for regional projects in the Great Lakes, Chesapeake Bay and Puget Sound.

The EPA had been operating under the FY 2010 enacted funding level of \$10.3 billion minus \$238 million that was cut from its budget by the earlier three-week continuing resolution that expired April 8. EPA's \$8.7 billion budget under the final agreement is \$300 million more than the agency requested from Congress for fiscal year 2012.

Double-Permitting Bill Introduced in the Senate

The top Republican on the Senate Agriculture, Nutrition and Forestry Committee, Sen. Pat Roberts (R-KS), has introduced legislation that would exempt pesticide users who spray over water from obtaining a second permit under the Clean Water Act.

Roberts' bill, S. 718, seeks to undo a 2009 federal appeals court ruling in *National Cotton Council v. U.S. EPA* that found the agency's current pesticide permitting process under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) is insufficient for pesticide users who spray over water. The decision required EPA to issue additional permits under the Clean Water Act.

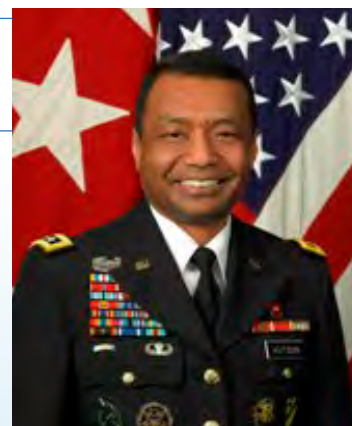
Around the same time S. 718 was introduced, a similar bill, H.R. 872, the Reducing Regulatory Burdens Act of 2011 was agreed to in the House on March 31, 2011 with a vote of 292-130. It was then referred to the Senate Agriculture Committee on April 4. Much like the House measure, Roberts' bill would ensure that Clean Water Act permits are not needed to spray pesticides and would amend FIFRA to say that no permit should be required to use a pesticide that has already been registered under that law.

On April 13, Senator Roberts sent a letter signed by all Republican members of the Committee to Committee Chairwoman Deborah Stabenow (D-MI) calling on her to bring up and have the Committee approve the House-passed bipartisan pesticide regulation bill, H.R. 872, as soon as possible.

President nominates next Chief of Engineers: Lieutenant General Thomas P. Bostick

On Tuesday, April 5th, 2011 Secretary of Defense Robert M. Gates announced the President's nomination of Lieutenant General Thomas P. Bostick as the next Chief of Engineers. The post is currently held by Lieutenant General Robert L. Van Antwerp, who has announced that he will retire from this position after leading the Corps since 2007.

Since February 2010, LTG Bostick has served as Deputy Chief of Staff, G-1, United States Army. He has previously served in numerous leadership capacities and is the recipient of multiple decorations and badges. LTG Bostick is a graduate of the United States Military Academy and received a Master's degree in civil and mechanical engineering at Stanford University.



EPA Releases Draft Stormwater Permit from Construction Sites

EPA announced on April 15 that it has released its new draft stormwater permit addressing stormwater discharges from construction sites and posted related information on its website at <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>. The proposed Construction General Permit (CGP) includes a number of additional provisions to protect impaired and sensitive waters. Some of the significant proposed permit modifications include new requirements for:

- Eligibility for emergency-related construction
- Required use of the electronic notice of intent process
- Sediment and erosion controls
- Natural buffers or alternative controls
- Soil stabilization
- Pollution prevention
- Site inspections
- Stormwater Pollution Prevention Plans
- Permit termination

The proposed new CGP includes a number of modifications to the 2008 CGP, many of which are necessary to implement the new Effluent Limitations Guidelines and New Source Performance Standards for Construction and Development point sources, known

as the "C&D rule" that became effective on February 1, 2010. The C&D rule requirements require construction site operators to meet non-numeric limits on erosion and sediment control, pollution prevention, and stabilization. The C&D rule also included a numeric turbidity limit for certain larger construction sites, but effective January 4, 2011, EPA has stayed the numeric limitation of 280 NTU that was published in the December 1, 2009 rule. EPA will propose a revised limit in a future rulemaking.

The permit will be effective in areas where EPA is the permitting authority, including four states (Idaho, Massachusetts, New Hampshire and New Mexico); Washington, D.C.; most territories; and most Indian country lands. The public will have 60 days to comment on the draft permit. EPA anticipates that it will issue the final construction general permit by January 31, 2012.

EPA is in the process of publishing two notices in the Federal Register affecting the Agency's CGP. These Federal Register notices will request public comment on EPA's proposed new CGP; and the extension of the 2008 CGP to January 31, 2012.

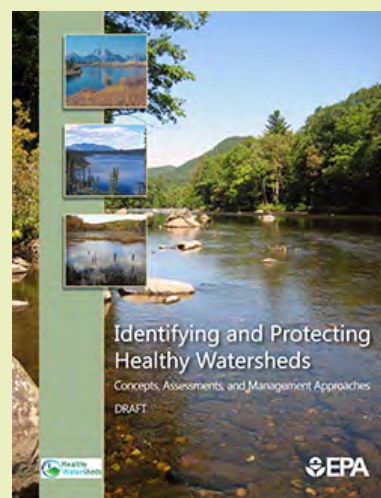
Again, for more information, including the two Federal Register notices once they are published, please see: <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>.



EPA Seeks Comments on Watersheds Draft

The U.S. Environmental Protection Agency (EPA) is seeking comments on a recently released draft technical document titled "Identifying and Protecting Healthy Watersheds: Concepts, Assessments, and Management Approaches." This draft technical document provides the basis for implementing the Agency's Healthy Watersheds Initiative, which, in partnership with states, tribes, local governments, nongovernmental organizations and others, is intended to protect the nation's remaining healthy watersheds, prevent them from becoming impaired, and accelerate restoration successes. The Healthy Watersheds approach, as part of the initiative, is based on a holistic, integrated, systems view of aquatic ecosystems that acknowledges their dynamics and interconnectivity in the landscape.

The draft technical document includes an overview of the key concepts behind the Healthy Watersheds approach, examples of assessments of healthy watershed components, an integrated assessment framework for identifying healthy watersheds, examples of management approaches, sources of national data and key assessment tools. It contains numerous examples and case studies from across the country. The intended audience and potential beneficiaries of this document include aquatic resource scientists and managers at the state, tribal, regional and local levels, non-governmental organizations and federal agencies. Local government land use managers and planners may also benefit as they develop protection priorities.



EPA is seeking comments on this draft document until June 3, 2011. For more information and the draft document please visit: www.epa.gov/healthywatersheds.

USBR Releases Draft Directive and Standards

The U.S. Bureau of Reclamation has released a draft Directive and Standards document in order to strengthen its procedures for authorizing discharge of stormwater, treated wastewater, and other non-agricultural waters into facilities that are under the agency's jurisdiction.

The purpose of this Directive and Standard is to help ensure that the quality of non-agricultural waters discharged into Reclamation facilities does not jeopardized the exemption from National Pollutant Discharge Elimination System (NPDES) permitting requirements, currently enjoyed by most Reclamation water conveyances. The hope is for the procedures to help protect the quality of water delivered to Reclamation's customers and help ensure the uninterrupted operation of Reclamation projects.

Comments on the Directive and Standards are requested by April 19. A copy of the document, including a "question and answer information sheet" is posted at: <http://www.usbr.gov/recman/drafts/env06-01webdraft.pdf>



Free Webinar: The State of Flood Risk Reduction in the United States

On Wednesday, May 4th at 2:15 EDT, the Horinko Group's Water Division will be hosting a free webinar regarding flood risk reduction in the US. During the webinar, a panel will discuss the status of Flood Risk Management in the United States and the prognosis for moving the effort in a sustainable direction that reduces risk and gradually restores the ecological services performed by our nation's floodplains.

Highlights of the webinar include:

- State of the Nation's vulnerability to flood disasters
- Overview of local, state and Federal roles in floodplain management
- Key Federal policy initiatives underway to reduce that vulnerability;
- Overall benefits of sound floodplain management; and,
- Perspectives of leading practitioners, program managers, and floodplain management advocates on current efforts to address challenges to more effectively protect natural resource functions of floodplains while reducing the hazards to people and communities.

NAFSMA President James Fiedler will participate in the panel, which also includes Dr. Sandra Knight, Deputy Assistant Administrator of Mitigation, Federal Emergency Management Agency; Alex Dornstauder, Deputy Director for Homeland Security at U.S. Army Corps of Engineers; Larry Larson, Executive Director, Association of State Floodplain Managers; and Andrew Fahlund, Senior Vice President for Conservation, American Rivers.

For more information and to register for this webinar, please see: <http://www.thehorinkogroup.org/webinars/may2011.html>

Upcoming Dates

April 19

Deadline for Comments: USBR Directive and Standards
<http://www.usbr.gov/recman/drafts/env06-01webdraft.pdf>

April 29

Deadline for comments: National Ocean Council Strategic Action Plans
<http://www.whitehouse.gov/administration/eop/oceans/comment>

May 4

"The State of Flood Risk Reduction in the United States" Webinar
<http://www.thehorinkogroup.org/webinars/may2011.html>

May 16

Deadline for Comments: EPA Memorandum "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs'"
http://www.epa.gov/npdes/pubs/sw_tmdlwla_comments.pdf

June 3

Deadline for Comments: EPA's "Identifying and Protecting Healthy Watersheds: Concepts, Assessments, and Management Approaches"
www.epa.gov/healthywatersheds

June 15

Deadline for Submission: CEQ NEPA Pilot Projects
<http://www.whitehouse.gov/webform/submit-nepa-pilot-project-nomination>

Oct 31 - Nov 3

NAFSMA Annual Meeting, St. Petersburg, FL
<http://www.loewshotels.com/en/Don-CeSar-Beach-Resort>



Online Registration and Preliminary Agenda Coming Soon

Make your reservations now at the Don Cesar Hotel in St. Petersburg, Florida by calling (727) 360-1881.

Please be sure to mention NAFSMA to receive our special meeting rate.