

# FLOOD & STORMWATER MANAGEMENT UPDATE



## House Passes CR Extension

The House passed a continuing resolution (CR) funding operations of the federal government through the end of the current fiscal year (FY11), with a vote of 235-189. Just three Republicans opposed the bill, while all 186 Democrats present voted against it. The Republican opponents were Representatives John Campbell (CA) and Jeff Flake (AZ), both of whom had advocated for even bigger reductions, and Representative Walter B. Jones (NC).

However, the House's continuing resolution (CR) could stall on the other side of the Capitol as Senate Democrats assemble a plan of their own to fund the government beyond March 4, when the existing funding measure expires. The Democratic-controlled Senate has signaled that it will not consider the scale of cuts approved by the House, setting up a standoff that each side has warned could lead to a shutdown of the federal government early next month.

Hundreds of amendments to the initial funding bill were debated and voted on over the course of a week. At the end of the process, more than \$60 billion had been cut from FY10 spending levels, with significant reductions touching nearly every segment of the federal budget.

The CR cuts US Army Corps of Engineers funding by \$537 million from the \$5.445 billion FY 2010 appropriated level, overall, by 9.8 percent. The bill eliminates specifically earmarked provisions for some projects, such as the Dallas Floodway Extension (TX). It lowers funding levels for general investigation studies from \$160M to \$104M (a 35% reduction), Construction from \$2.031B to \$1,690B (16.8% reduction) and the Mississippi River and Tributaries account from \$340M

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## House Passes CR Extension

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to \$239.6M (29.7% reduction). It would also cut an additional \$100 million from “unobligated balances” from previous years’ funds, and an additional \$21 million of previously appropriated funds for the Yazoo Backwater Pumping Plant, MS. It is unclear exactly how these account level cuts may affect individual projects, including key ecosystem restoration projects.

More than \$3 billion was cut from EPA’s current funding levels across a wide variety of programs, a 29% cut from FY10 levels. Also included in the CR is language that would prohibit EPA from using any funds to “implement, administer, or enforce a change to a rule or guidance document pertaining to the definition of waters under the jurisdiction of the Federal Water Pollution Control Act” (12 SEC 1747). *(See next story.)*

Both the House and Senate are in recess until Monday, February 28, leaving only a few short days before the current CR expires on March 4. House Speaker Boehner (R-OH) has said he would not agree to a short-term extension without cutting spending below where it is now, generally at 2010 levels.

## Senate Adds 30-Day CR to the Mix

Senate Majority Leader Harry Reid (D-NV) plans to bring a 30-day extension of current government funding levels to the floor of the Senate after it returns from the Presidents Day week off. Reid’s move follows the introduction of a short-term continuing resolution (CR) by House Minority Leader Nancy Pelosi (D-CA), which was quickly defeated by Republicans.

## CR Halts EPA Action to Clarify “Waters” Definition



The continuing resolution passed by the House to fund the government through the end of the fiscal year includes language that would effectively halt the Administration effort to restore Clean Water Act protections rolled back during the George W. Bush administration.

On December 20, the White House announced it was reviewing the guidance prepared by the EPA interpreting what the Supreme Court and the George W. Bush administration have said about what constitutes “navigable waters” under the 1972 Clean Water Act with respect to authority to regulate discharges into wetlands.

The new guidance would replace one prepared by the Bush administration in 2007 and perhaps allow time for the writing of a new rule on wetland regulations, although the administration has not stated whether or not a rulemaking process will follow the release of the new guidance.

The House-approved continuing resolution would block EPA from spending any money “to implement, administer, or enforce a change” to any regulations or interpretations that define what waters, wetlands, lakes, ponds or streams are covered under the Clean Water Act. This action would effectively stop the administration’s effort by withholding the money needed to enforce the new policy.

## President Introduces FY12 Budget

Against the backdrop of continuing debate about funding levels for the current fiscal year, President Obama presented his FY2012 budget to Congress, outlining the Administration's fiscal priorities for the fiscal year beginning October 1.

Lawmakers have until September to pass appropriations bills for FY12, something they failed to do last year.

While the Administration has pledged a 5-year freeze on discretionary spending, there are some programs and agencies in the budget that will see increases in line with the Administration's policy priorities.

It is up to the House of Representatives to introduce appropriations bills. With Republicans controlling the chamber, the introduced bills may be quite different from the Administration's budget proposal.



## FY12 Proposal for the Corps of Engineers

The President's Budget for fiscal year 2012 (FY12) includes \$4.631 billion in gross discretionary funding for the Civil Works program of the U.S. Army Corps of Engineers (USACE), offset in part by a proposal to cancel \$57 million of prior year funding, of which \$35 million was provided through an emergency supplemental appropriation. The FY12 budget cuts USACE funding by about 17 percent over 2010 levels, with the deepest cuts hitting construction projects and programs for the Mississippi River and its tributaries. The proposal is 6 percent smaller than the Corps' spending in FY11.

The FY12 funding will be distributed among the appropriation accounts as follows:

- \$2.314 billion for Operation and Maintenance
- \$1.48 billion for Construction
- \$210 million for Mississippi River and Tributaries
- \$196 million for the Regulatory Program
- \$185 million for Expenses
- \$109 million for the Formerly Utilized Sites Remedial Action Program
- \$104 million for Investigations
- \$27 million for Flood Control and Coastal Emergencies
- \$6 million for the Office of the Assistant Secretary of the Army for Civil Works

The FY12 O&M budget emphasizes performance of existing projects by focusing on the maintenance of key commercial navigation, flood and storm damage reduction, and other facilities.

The FY12 construction program funds 92 construction projects, consisting of 10 dam safety assurance, seepage control, and static instability correction projects (includes one project completion); 20 projects ranked on the basis of life-saving benefits; two additional project completions; two new starts; and 58 other continuing projects.

By program area, the 92 funded construction projects consist of 55 Flood and Storm Damage Reduction projects (three budgeted for completion), 16 Commercial Navigation projects (including five continuing mitigation items and four dredged material placement areas), 19 Aquatic Ecosystem Restoration projects (including three projects to meet Biological Opinions), and mitigation associated with two Hydropower projects.

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## FY12 Proposal for the Corps of Engineers

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The FY12 Budget provides \$50 million (\$46 million in O&M account and \$4 million in Flood Control and Coastal Emergencies (FCCE)) for a comprehensive levee safety initiative to help ensure that federal levees are safe and to assist non-federal parties to address safety issues with their levees. The initiative includes funding for ongoing work on the National Levee Inventory Program as well as for the Silver Jackets interagency teams.

The FY12 Investigations account is funded at \$104 million. The Budget includes four new studies: Englebright and Daguerre Point Dams (Yuba River) Fish Passage, CA; Cano Martin Pena, PR; the Chesapeake Bay Comprehensive Plan; and the Louisiana Coastal Area Comprehensive Study. Funding is also included for the Water Resources Priorities Study, a high-priority evaluation of the nation's vulnerability to inland and coastal flooding and of the effectiveness, efficiency, and accountability of existing programs and strategies.

Emergency Management is funded at \$34 million in FY12, with \$27 million in the FCCE account for preparedness and training to respond to floods, hurricanes, and other natural disasters, and \$7 million in the O&M account. The FCCE funding includes Corps participation in an expansion of Silver Jackets interagency teams to every state to provide unified federal assistance in implementing flood risk management solutions.

The FY12 Army Civil Works budget press book, including a state- by-state breakdown, is available at [http://www.usace.army.mil/CECW/PID/Pages/cecwm\\_progdev.aspx](http://www.usace.army.mil/CECW/PID/Pages/cecwm_progdev.aspx)



## Infrastructure Bank Featured in Obama's Budget Request

Obama's budget includes \$30 billion to create a national infrastructure bank, which would provide loans and grants to support public works projects, primarily transportation infrastructure. The bank would offer funding with an eye toward leveraging federal funds with state, local and private investors.

The \$30 billion would be financed through the Transportation Trust Fund and would be part of the administration's six-year transportation bill reauthorization proposal.

Obama proposed such a bank in his two previous budgets, but appropriators would not give him the funding without separate congressional action creating the bank.

## Corps Postpones Release of Final Levee Vegetation Variance Policy Guidance Letter

In a February 17, 2011, letter to NAFSMA, the Corps relayed to the association its recent decision postpone the release of the final policy guidance letter addressing Variance from Vegetation Standards for Levees and Floodwalls to “enable the Corps to conduct a thorough review and consider the public comments received on the draft policy.” The Corps also announced its decision last week to members of Congress and appropriate committees.

The letter to NAFSMA (attached) noted that this process would include review of comments from NAFSMA and its member agencies. The revised

draft policy guidance letter will be published in the Federal Register for a 30-day comment period before the final version goes into effect this summer. The letter clearly states that no changes are being proposed to the Engineering Technical Letter (ETL No. 1110-2-571, April 10, 2009) or its implementation.

NAFSMA will continue its dialogue with the agency on this issue and will keep the membership updated on developments in this area.

## Senate Environment & Public Works Subcommittees Named

Several Senate Republicans swapped ranking member spots as the Environment and Public Works Committee picked new subcommittee leaders. Sen. David Vitter (R-LA) was chosen as ranking member of the Transportation and Infrastructure Subcommittee, filling the slot left after the retirement of former Sen. George Voinovich (R-OH). The Subcommittee will continue to be chaired by Sen. Max Baucus (D-MT).

The Transportation & Infrastructure Subcommittee has under its jurisdiction: US Army Corps of Engineers / Water Resources Development Act (WRDA); National Dam Safety Program; Stafford Act and federal disaster relief programs; Mississippi River Commission; as well as Transportation; Federal Highway Administration; Public Buildings; Economic Development Administration; Historic Preservation; and Green Buildings.

Much of the Subcommittee’s focus this session is expected to be on the six-year, \$556 billion reauthorization for the surface transportation bill that has been running on temporary extensions since it expired in September 2009.

Reflecting the close division in the full Senate, Democrats hold seven seats on the subcommittee and Republicans hold six. Democrats Sheldon Whitehouse and Tom Udall joined the subcommittee replacing Amy Klobuchar who left the Transportation & Infrastructure Committee this session. Several Republicans were added to the roster, including Jeff Sessions; Mike Crapo; Mike Johanns; and John Boozman.

### ★ DEMOCRATS ★

Max Baucus (MT) (Chairman)  
Thomas R. Carper (DE)  
Frank R. Lautenberg (NJ)  
Benjamin L. Cardin (MD)  
Bernard Sanders (VT)  
Sheldon Whitehouse (RI)  
Tom Udall (NM)

### ★ REPUBLICANS ★

David Vitter (LA) (Ranking Member)  
John Barrasso (WY)  
Jeff Sessions (AL)  
Mike Crapo (ID)  
Mike Johanns (NE)  
John Boozman (AR)



## Water Resources Planning Report Released

The U.S. Army Corps of Engineers and Bureau of Reclamation have published a report, "Addressing Climate Change in Long-Term Water Resources Planning and Management: User Needs for Improving Tools and Information," that identifies the needs of local, state, and federal water management agencies for climate change information and tools to support long-term planning.

The report seeks to focus research and technology efforts to address information and tools needed for longer-term water resources planning and management. It found there were gaps in the information and tools to help water managers in how to use climate change information to make decisions, how to assess the responses of natural systems to climate change, and how to communicate the results and uncertainties of climate change assessments to decision-makers.

The report can be found online at: <http://www.usbr.gov/climate/userneeds/>

## Upcoming Dates

### March 22

Deadline for EPA's CARE Grant Applications  
<http://www.epa.gov/care>

### April 29

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

### Oct 31 - Nov 3

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



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