



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION UPDATE/ENVIRONMENT **NOAA/Extreme Weather**

On December 13, National Oceanic and Atmospheric Administration (NOAA) Administrator Dr. Jane Lubchenco discussed her agency's Weather-Ready Nation Initiative as part of a severe weather symposium at the National Weather Center in Norman, Oklahoma. "This is a national mindset," she said of the initiative, which is intended to improve the Nation's preparedness for and resiliency against extreme events. "From our scientists across multiple disciplines to the emergency management community, to our public leaders, businesses and communities, all the way down to individuals - all of us must work together...."

Lubchenco also said NOAA is working to respond to the needs of its partners and the public, noting, "The successes of NOAA's mission should not just be measured by the accuracy of its information, but by the effectiveness of its application. Improving effective response to forecasts and warnings will require emergency managers, businesses, and citizens understanding the value of services provided and using that information to make informed decisions. It will also require social science research to discover how best to deliver timely, useable, and credible information." See: <http://www.noaa.gov/newsarchive.html>. (WSW #1945)

CONGRESSIONAL UPDATE **FY 2012 Appropriations**

On December 23, President Obama signed the Consolidated Appropriations Act of 2012 (H.R. 2055), which contains the Energy and Water, Interior and Environment, and various other remaining appropriations bills for FY 2012. The House passed the measure on December 16 by a vote of 296-121, and the Senate followed on December 17 with a vote of 67-32.

Within Interior, the bill appropriates about \$1B for the Bureau of Reclamation, a \$14.9M decrease from FY 2011 enacted levels but a \$29.3M increase over the President's FY 2012 budget request. Among other things, the bill zeroes out Reclamation's request for \$51.5M to establish an Indian Water Rights Settlements account to help implement the four settlements approved by the Claims Resolution Act of 2010 and the

Navajo-Gallup Water Supply Project. However, it does grant a Bureau of Indian Affairs request for \$32.9M to fund other authorized Indian land and water settlements.

U.S. Geological Survey (USGS) funding will fall \$14M from 2011 to around \$1.1B, about \$48M below the President's request. Within this amount, funding for the National Streamflow Information Program (NSIP) and the Cooperative Water Program (CWP) will be set at \$29.4M and \$64M, representing respective increases of \$2.3M and \$617,000 over 2011 levels. NSIP and CWP funding would also exceed the President's request by \$2.5M and \$1.8M, respectively. The WSWC supports fully funding NSIP and restoring the CWP to a 50/50 match.

The bill also appropriates \$85.3M for USGS' Land Use Change efforts, which includes an \$11.5M increase over 2011 levels to complete funding for Landsat 8 ground operations development. The conference report for the bill also notes: "The conferees have not agreed to transfer budgetary authority for the launch of Landsat satellites 9 and 10 from the National Aeronautics and Space Administration [NASA] to [USGS]. Of the requested \$48M increase for its implementation, the conferees have provided [\$2M] for program development only. The conferees note that future requests for the project are estimated...to escalate to over [\$400M] by fiscal year 2014. There is little doubt that resources will not be available within the Interior Appropriations bill to support these very large increases without decimating all other [USGS] programs. [T]he launch of Landsat 9 is not scheduled until 2018. This allows time...to re-examine how to proceed with future Landsat missions." The WSWC has long supported the Landsat program.

As for other Interior agencies, the Bureau of Land Management will receive \$1.1B, which is about \$1.4M less than last year but \$500,000 above the President's request. Central Utah Project funding will be set at \$28.7M, which is about \$3.2M less than last year's levels and \$4.3M below the request. Lastly, the Fish and Wildlife Service will receive \$1.47B or about \$25.3M below 2011 levels and \$217M less than the request.

Outside of Interior, the U.S. Forest Service will receive \$4.6B, a cut of \$83.4M from 2011 and \$331.6M below the request. The Department of Energy (DOE) will receive \$25.7B, which is \$156.9M over 2011 levels but

\$4.9B less than the request. Of this amount, \$8.8B will go to DOE's energy programs, a \$342M cut from last year and \$3.7B under the request. The U.S. Army Corps of Engineers will receive \$5B, or \$145M more than 2011 and \$429M above the request.

Environmental Protection Agency (EPA) funding will fall to \$8.4B, a cut of \$219M from 2011 that is \$510M less than the request. Of this amount, \$1.5B and \$919M will go to the Clean Water State Revolving Fund (SRF) and Drinking Water SRF. Despite prior House proposals to cut the SRFs by \$1B, the bill only reduces funding for the Clean Water SRF by \$53M and the Drinking Water SRF by \$43.7M from 2011 levels, or about \$81.2M and \$70.6M below the request. However, the bill requires that states use at least 10% of federal Clean Water SRF funds for "...green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities." It also modifies a provision in the Stimulus that required states to use at least 30% of federally-issued funds for both SRFs for principal forgiveness so that states must now use at least 20% but no more than 30% of these funds for principal forgiveness, negative interest loans, grants, or a combination thereof. The WSWC supports adequate SRF funding and removing the 30% requirement to give states greater SRF management flexibility.

In addition to appropriating funding, the bill includes riders that: (1) re-authorize the Water Desalination Act of 1996 and authorize \$3M per year for FY2012-2013 for the program; and (2) prevent EPA from requiring National Pollutant Discharge Elimination System (NPDES) permits for stormwater runoff from roads associated with silvicultural activities until September 30, 2012. The latter provision responds to the Ninth Circuit's decision in *NEDC v. Brown* (now *Decker v. NEDC*), which ruled against Oregon by holding that logging road runoff managed by a system of ditches and culverts and deposited into rivers and streams requires NPDES permits. Oregon has asked the U.S. Supreme Court to review the decision.

Many of the other riders that House Republicans had proposed in earlier appropriations bills were omitted from H.R. 2055, including provisions that would have: (1) prevented EPA and the Corps from revising guidance or implementing regulations regarding Clean Water Act (CWA) jurisdiction; (2) clarified that pesticide applications complying with the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) do not require NPDES permits; (3) blocked Endangered Species Act listings and critical habitat designations; (4) prevented EPA from developing or finalizing rules for cooling water intake structures at factories and powerplants; (5) stopped EPA from expanding CWA stormwater discharge requirements; and (6) blocked EPA from implementing or enforcing numeric nutrient standards in

Florida. The WSWC has expressed concerns about draft guidance EPA has issued regarding CWA jurisdiction and believes that FIFRA-compliant pesticide applications should not require NPDES permits.

The bill's passage follows the November enactment of another bill (H.R. 2112) containing the Agriculture and Commerce-Justice-Science appropriations for FY 2012. Under this bill, NOAA will receive \$4.9B, which is about \$305.6M over last year's levels but \$592M less than the President's request. Of this amount, the National Weather Service will receive \$903M. The bill did not include funding to establish a National Climate Service within NOAA as requested by the Administration.

H.R. 2112 also appropriated \$17.8B to NASA, a \$648M cut from last year's level that is \$924M less than the President's request. Included within this amount is \$1.7B for NASA's Earth Science program.

Lastly, the bill appropriated \$843M for the Natural Resources Conservation Service (NRCS), \$45.3M less than 2011 and \$55.5M below the request. Within this amount, \$9.3M will go towards NRCS's Snow and Water Supply Forecasting Program, which is a \$1.6M reduction from 2011. The WSWC has long supported this program. (WSW #1953, #1947, and #1939)

WATER RESOURCES

Washington/Exempt Wells

On December 22, the Washington Supreme Court ruled in *Five Corners Family Farmers v. Washington* that the state's exempt well statute does not limit the amount of groundwater that can be withdrawn for stockwatering purposes without a water rights permit. The case focused on whether a ranch needed a permit to pump a portion of the 450,000 to 600,000 gpd it needed to water 30,000 cattle. Although the statute specifies limits for the types of exempt uses, including 5,000 gpd limits for domestic and industrial uses, it does not include an explicit limit for stockwatering use. Neighbors and environmental groups concerned about impacts to aquifer levels sued the state, arguing that the exemption limited stockwatering withdrawals to 5,000 gpd.

The court disagreed, reasoning in part: "Each category [of the statute] is limited only by the qualifying phrase following it. The stock-watering exemption contains no qualifying phrase. Accordingly, under a plain reading...groundwater withdrawn without a permit for stock-watering purposes is not limited to 5,000 [gpd]." Following the decision, Attorney General Rob McKenna also said, "The Legislature exercised its policy prerogative to provide this particular permit exemption, without further...limitation, and only the Legislature can adjust this policy by amending the statute." See: <http://www.atg.wa.gov/pressrelease.aspx?id=29258>.