



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION

Bureau of Indian Affairs

On May 14, the Senate Indian Affairs Committee endorsed Larry EchoHawk to head the Bureau of Indian Affairs. At his confirmation hearing on May 7, EchoHawk, a Pawnee and former Idaho Attorney General, said, "When Indians decide to develop their mineral and energy resources on trust lands, the federal government must act responsibly as trustee, but it must avoid unnecessary delay in giving required authorization." The endorsement came on a voice vote, and Senator Tom Colburn (R-OK) cast the only "no" vote. Senator John McCain (R-AZ) criticized EchoHawk at the confirmation hearing for his answers regarding Indian gaming, but issued a statement saying he would support EchoHawk in Committee but still had concerns about his nomination. EchoHawk's nomination now goes to the full Senate for consideration, and a vote there is expected soon. (WSW # 1822).

Army Corps of Engineers/EPA

On May 12, the Senate Committee on Environment and Public Works held a confirmation hearing on the nominations of Jo-Ellen Darcy as Assistant Secretary of the Army for Civil Works and Peter Silva as the Assistant Administrator for the Environmental Protection Agency's (EPA) Office of Water. All of the Senators present praised the nominees and expressed their support for their confirmations. (WSW # 1820, 1822).

Darcy, a former senior policy advisor and deputy staff director for the Committee, would oversee the U.S. Army Corps of Engineers if confirmed. Chairwoman Barbara Boxer (D-CA) praised Darcy in her opening remarks and said that "strong leadership" is needed to implement the Water Resources Development Act (WRDA) of 2007, which "authorized many important new projects and brought about reforms in the way the Corps does business." Senator Max Baucus (D-MT) also said Darcy has an "unprecedented" knowledge of the Corps and praised her work on past legislation involving the Safe Drinking Water Act, Clean Water Act (CWA), and Endangered Species Act.

In her testimony, Darcy said that she is "confident" the Corps can address new challenges. "Balancing the competing water resources needs throughout the

country will take a national vision while recognizing regional differences." She also said that she would quickly implement provisions of WRDA 2007, including an independent peer review of Corps' projects and an update of Corps' planning guidelines. In response to questions from Senator James Inhofe's (R-OK), Darcy said it would be a "good idea" to look into the pricing of municipal water supplies stored in reservoirs.

With respect to Silva, Boxer said that the Supreme Court's decisions in *SWANCC* and *Rapanos* have "undermined the historic scope of the Clean Water Act (CWA)" and that she looks forward to "moving ahead with a legislative solution to this serious problem as quickly as possible." Boxer said that Silva's expertise will be "essential" in implementing "innovative" clean water and drinking water programs that the Committee will be voting on in the near future; that it is "critical that safe drinking water standards for contaminants like perchlorate are finally adopted....;" and that she looks forward to re-authorizing the Clean Water and Drinking Water State Revolving Funds (SRFs). She also stated that she and Senators Inhofe, Mike Crapo (R-ID), and Benjamin Cardin (D-MD) had reached an agreement on a bipartisan bill reauthorizing the SRFs.

In his testimony, Silva said, "We will need new models of collaboration, especially since some of the major challenges impact multiple states, tribes, and jurisdictions. Additionally, we must analyze when and how regulatory frameworks can be used to accomplish the most effective results.... We need to carefully consider how to ensure that our water, wastewater, and stormwater infrastructure can be financed and managed sustainably.... We also have a unique opportunity to work with stakeholders at all levels of government as well as non-governmental organizations in crafting new solutions for this new generation of issues."

In response to questions from Senator Boxer, Silva agreed to: (1) ensure that there is "adequate" investment in the nation's wastewater and drinking water infrastructure; (2) update the Committee on Stimulus funding; (3) issue a report within the first three months of his tenure as to whether EPA has sufficient data to regulate perchlorate in drinking water; (4) make public EPA's records regarding its participation in an interagency group examining the presence of pharmaceuticals in drinking water, while also increasing

EPA monitoring efforts; and (5) update the Committee within 30 days of confirmation regarding EPA's enforcement efforts for concentrated animal feeding operations (CAFOs). Silva also answered Senator Inhofe as to whether CWA jurisdiction should extend beyond navigable waters, saying EPA needs a "better" definition of navigable waters. He also said "...states have a very critical role in [setting water quality standards] in terms of some of their own state regulations where federal regulations just don't apply but also just in terms of providing input to the federal government on how to set those standards."

ENVIRONMENT

Endangered Species Act

On May 8, Department of the Interior Secretary Ken Salazar announced the retention of the controversial "polar bear rule" under Section 4(d) of the Endangered Species Act (ESA), which limits the use of the ESA to curb emissions of greenhouse gases. The Bush Administration issued the rule in December, six months after declaring the polar bear a threatened species due to the decline of Arctic sea ice as caused by global warming. "We must do all we can to help the polar bear recover," said Salazar in a press release. "However, the [ESA] is not the proper mechanism for controlling our nation's carbon emissions. Instead, we need a comprehensive energy and climate strategy that curbs climate change and its impacts - including the loss of sea ice." The decision was hailed by business groups concerned that the listing would allow the ESA to regulate greenhouse gasses thousands of miles from where the polar bear lives. However, environmental groups who have sued to overturn the rule criticized the decision and said they would continue their lawsuits. (Interior Press Release, 5-8, WSW # 1805).

WATER QUALITY

Environmental Protection Agency

On May 12, the Senate Committee on Environment and Public Works held a hearing on President Obama's proposed Environmental Protection Agency (EPA) budget for FY2010. The \$10.5B proposal is the largest budget request in EPA's history, and is a 37% increase from FY2009. Support for the budget appeared to fall along party lines, Senator Boxer and fellow Democrats generally praised the budget for addressing climate change and other environmental issues, while also creating "green" jobs. Republican Senators David Vitter (LA) and John Barrasso (WY) expressed concern that the budget would irresponsibly increase spending and create new regulations that would limit economic growth and hurt the economy.

The budget proposes \$2.4B and \$1.5B respectively for the Clean Water and Drinking Water State Revolving Funds (SRFs), which provide low-interest loans to finance wastewater treatment projects, new drinking

water systems and system improvement. Senator Boxer praised the funding, saying: "This money is more than a down payment on protecting public health; it will also put people to work in their communities rebuilding the crucial infrastructure that keeps our families healthy." Senator Vitter also said the SRF funding is a "good expenditure."

EPA Administrator Lisa Jackson highlighted the spending as the "most significant investments in the FY 2010 budget." She also said that the SRFs will "...finance 1,000 clean water and 700 drinking water projects across America" and that "...EPA will continue to work with state and local partners to develop sustainability policies, including management and pricing, conservation, planning adequate long-term funding for future capital needs, and providing equitable consideration of small system customers."

Next, Administrator Jackson described the budget's other water-related funding, which includes: (1) \$229M for Water Pollution Control grants that "assist state and tribal efforts to restore and maintain the Nation's water quality;" (2) \$201M for Nonpoint Source Program grants aimed at helping states, territories, and tribes implement programs that reduce the annual runoff of phosphorus, nitrogen, and sediment; (3) \$105.7M for Public Water System Supervision grants that "provide assistance to implement and enforce National Primary Drinking Water Regulations to ensure the safety of the Nation's drinking water resources and to protect public health;" and (4) \$9M to fund five Water Security Initiative pilot cooperative agreements that will "include continued design and demonstration of a system to test, and evaluate the appropriate response to drinking water contamination threats."

A number of Senators also questioned Jackson regarding the proposed Clean Water Restoration Act (S. 787), which intends to clarify the uncertainty regarding Clean Water Act (CWA) jurisdiction that resulted from the Supreme Court's divided *Rapanos* decision. Senator Vitter asked whether CWA jurisdiction should extend beyond "navigable waters." Jackson said she has "no final position" but noted that the "best and easiest thing to do would be to have Congress clarify that jurisdiction.... We find ourselves spending the majority of our resources looking to determine whether we have jurisdiction over a water body or a wetland rather than in the permitting and enforcement of those water bodies and wetlands." Senator Tom Udall (D-NM) also asked Jackson to explain her strategy for how the CWA should be applied to farm ponds used for livestock. She responded by saying that the "goal" of using legislation to clarify CWA jurisdiction is not to "ensnare farms with a whole new set of regulations." Of note, Senator Boxer, who is co-sponsoring S. 787 with Senator Russ Feingold (D-WI), indicated that there are members on both sides of the Committee that would like to make changes to the bill and that she hoped to have a bill ready for mark-up in the "next several weeks."