



Weekly Washington Update April 11, 2008

Fiscal Year 2009 Budget Process Slowly Emerges

Action by both the House and Senate to approve their respective chamber's fiscal year 2009 budget resolution may represent the only concrete advancement of the budget for the next several weeks. According to recent congressional statements, prospects for reconciling and passing a final budget resolution may prove elusive given the ongoing debate between Congress and the Administration on domestic spending priorities and Iraq war needs. As a result, Congress may opt to delay any formal agreement on a budget resolution until after the November elections. Assuming this scenario unfolds, it now appears increasingly likely that the appropriations process will involve developing House and Senate versions of the twelve spending bills during the months prior to the fall elections. If this transpires, the government would be forced to operate on a continuing resolution beginning October 1. The duration of a continuing resolution remains an open question. According to recent news reports, the House Majority Leader suggested that Congress may recess at the end of September and not return to work for several weeks. Adding to the uncertainty, the Majority Leader stated that the potential for a Lame Duck Session is not an attractive option. If this view prevails, it could mean that Congress would be unable to finalize FY09 spending decisions until January or February of 2009. These views have not been echoed in the Senate where the appropriations "end game" has not been openly discussed and remains the subject of much speculation.

Economic Stimulus Package Part Two and Iraq War Supplemental May Spell Infrastructure Assistance

As the federal government begins mailing taxpayers economic stimulus checks, economic indicators increasingly signal a worsening economy. This has reignited congressional calls for a second round of legislation to address job losses and attempt to jump start the overall economy. House Speaker Nancy Pelosi (D-CA) has noted that rebuilding the nation's infrastructure (roads, water and wastewater facilities) is a sound way to respond to jobs losses and improve the country's public facilities. While no specific infrastructure legislation has been offered in either the Senate or House, legislators are facing another Administration request to pass a supplemental spending bill to continue Iraq war activities. The request which will be transmitted to Congress is expected to seek \$108 billion in additional war spending.

The issue of infrastructure assistance as part of any stimulus package is looming large. Speculation suggests that Congress may use the war supplemental to move increased funding for infrastructure. Under this approach, it seems unlikely that actual project earmarks would be included in any package, instead mirroring the war budget by providing program spending. It would then be left to individual federal agencies to decide how to distribute spending to authorized projects. This approach, if employed, has the attractiveness of

avoiding contentious debate over the earmark issue. However, it sets up an interesting debate for Congress should the president decide to veto the supplemental because of the domestic spending. With the congressional elections just months away, the prospect of Members being asked to override a presidential veto would be an interesting situation. As noted, no infrastructure bill has been drafted, but if decisions are made to go forward, a package could move through Congress by Memorial Day.

Senate Approves Legislation Incorporating First Series of Stalled Water Bills and New Program to Address Produced Waters

After months of delays owing to the ongoing controversy surrounding earmarks, the Senate approved S. 2739 legislation late Thursday that addressed numerous programs needs related to energy and water. As part of this bill, the Senate approved a number of project authorizations, including the Bay Area Regional Water Recycling Act, Alaska water resources study, American River Pump Station Project transfer, New Mexico water planning assistance, Conjunctive use of surface and groundwater in Juab County, Utah, Oregon water resources, Eastern Municipal Water District water project, and More Water, More Energy, and Less Waste program.

The last provision, More Water More Energy and Less Waste, represents the passage of important legislation to support the development of innovative approaches to minimize the production of “produced waters” or waters recovered during energy recovery activities, and to use such waters in a productive manner for irrigation and other purposes rather than recharging the waters. The bill would provide limited grants to support the development of facilities, technologies, and processes to demonstrate the feasibility, effectiveness and safety of using produced waters for use by irrigators, municipalities or industry. For more information on the provision, visit the following link: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h902rs.txt.pdf

S. 2739 must now be considered by the House and then sent to the President for enactment.

Senate Holds Hearing on Clean Water Act Jurisdiction

The Senate Committee on the Environment and Public Works held a hearing on April 9 to take testimony on legislation addressing the scope of the Clean Water Act (CWA) jurisdiction. The Clean Water Restoration Act (S. 1870) aims to clarify CWA jurisdiction following two closely divided Supreme Court decisions that narrowed the reach of federal regulation of certain bodies of water and wetlands. Former EPA Administrator Carol Browner testified that that Supreme Court’s rulings had limited the scope of the CWA, and created regulatory uncertainty about the scope of the CWA jurisdiction.

Browner was followed by a second panel consisting of two representatives of state environmental agencies, a cattle rancher and sanitary engineer. The witnesses were divided on their support of the bill. Alexander Grannis of the New York State Department of Environmental Conservation and Joan Card of the Arizona Department of Environmental Quality indicated S. 1870 was critical to protect wetlands and water quality. Ranking committee Republican James Inhofe (R-OK), Sens. David Vitter (R-LA), and John Barrasso (R-WY) all opposed the bill as an unprecedented expansion of the CWA, which they felt would likely lead to greater confusion. David Brand on behalf of the National Association of Counties

and cattle rancher Randall Smith testified against the bill. A House companion bill is scheduled for a hearing on April 16.

Highway Technical Correction Bill on Senate Floor

On April 14, the Senate is expected to consider a motion to proceed to H.R.1195, the Highway Technical Corrections bill. The bill makes technical corrections to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) bill, enacted in 2005. This bipartisan bill is intended to correct drafting errors, make technical fixes, and clarify Congressional intent on several provisions of SAFETEA-LU.

The largest part of the bill is section 105, which makes changes to over 200 high priority projects in Sec. 1702 of SAFETEA-LU. These changes address surface transportation projects, clarifying recipients and increasing certain project funding levels and decreasing others to achieve budget neutrality.

Another important correction included in the bill is strengthening the Federal Highway research program by ensuring the continuation of the legacy research programs carried out by the Department of Transportation. Errors were made in the research program funding calculations that resulted in lower than intended funding levels in several research programs. These technical fixes will recapture critical research funds for many essential programs, including:

- The Future Strategic Highway Research Program, a concentrated, results-oriented research program focused on solving the top problems of highway safety, reliability, capacity, and renewal; and
- The University Transportation Center Program which advances U.S. technology and expertise in the many disciplines comprising transportation through the mechanisms of education, research, and technology.

BEACH Act Reauthorization Floor Consideration Pushed to Next Week

On April 10, the House postponed a scheduled vote H.R. 2537, on a non-controversial beaches bill. The bill would reauthorize the Beaches Environmental Assessment and Coastal Health Act (PL 106-284), which sets uniform criteria for testing beach waters for bacteria and other pollutants and notifying the public if waters are unsafe. The bill would authorize \$40 million a year in grants to state for monitoring and notification programs. GOP delayed the bill's passage by offering several contentious amendments to the bill, utilizing the modified open rule to raise issues regarding energy production and the price of gasoline. Democrats plan to block any non-germane amendments, and intend to pass the bill early next week.

Rep. Jay Inslee (D-WA) has introduced an amendment to require the EPA to study the effects of climate change on coastal waters. Rep. Carolyn McCarthy (D-NY) has introduced an amendment to require the EPA to study the presence of pharmaceuticals and personal-care products in coastal recreational waters. Senators Frank Lautenberg (D-NJ) and George Voinovich (R-OH) submitted a companion measure in the Senate this week that would increase authorized funding to \$60 million per year.

Bureau of Reclamation Hosts Stakeholder Meeting

The U.S. Bureau of Reclamation hosted a briefing on April 11 to update stakeholders on developments at the agency. Bureau Commissioner Bob Johnson presented information on the Bureau's aging infrastructure, pending legislation, public affairs, budget, and upcoming meetings. Staff updated attendees on the following items:

- The Bureau estimates the cost of repairing its aging infrastructure is roughly \$3 billion over 20 years
- Title XVI authorization backlogs are approximately \$400 million, while rural water projects have an authorized backlog of approximately \$2 billion
- The infrastructure hearing scheduled for next week before the Senate Committee on Energy and Natural Resources is likely to address, in part, a bill introduced by Senate Majority Leader Harry Reid (D-NV), S. 2842, which requires the Department of Interior to carry-out annual inspections of canals, levees, tunnels, dams, dikes, pumping plants, and reservoirs under its jurisdiction
- The Bureau has been working with the Senate on Senator Jeff Bingaman's (D-NM) SECURE Water Act (S. 2156), which implements many of the initiatives the Bureau proposed in their Water for America program
- The executive order signed by the President requiring not to enforce earmarks that are in report language and not enacted through bill language will have no immediate effect on FY09 earmarks
- Bureau suspects a water section covering Title XVI and rural water projects will be apart of a stimulus package attached to the emergency war supplemental; however, the White House has threatened to veto an measure not relevant to the war effort.

Farm Bill Negotiations Under the Gun, Extension Expiration Nears

House and Senate conferees convened for the first time on April 10 in an effort to reach an agreement before the latest short-term extension of the farm bill expires on April 18. The latest hurdle farm bill lawmakers have struggled to clear is an effort to increase farm bill spending over the current baseline of \$280 billion. The House Committee on Ways and Means and Senate Committee on Finance have yet to settle on the source and amount of extra funding for the farm bill. The House plan proposes to increase funding by \$6 billion through revenue garnered through requiring credit card issuers to report to the IRS payments they make to merchants. The House voted this week, 400-11, to instruct its conferees to oppose any new spending that would require tax increases.

The Senate appears to be holding out for \$10 billion in new spending above the baseline, with some extra money directed to a disaster relief fund that is a priority of Finance Committee leaders. The extra spending in the Senate bill could be offset with customs and user fees; however, House Committee on Ways and Means Chairman Charles Rangel (D-NY) wants to use customs and user fees to offset an expansion of a workers benefit package. As of press time, the Senate was expected to submit a counter offer to the House's \$6 billion offset proposal.

Senate to Hold Hearing on Pharmaceuticals in Drinking Water Supply

On April 15, the Senate Committee on Environment and Public Works, Subcommittee on Transportation Safety, Infrastructure Security, and Water Quality will hold a hearing entitled, "Pharmaceuticals in the Nation's Water, Assessing Potential Risks and Actions to Address the Issue." *It has not been announced if this hearing (3 p.m. est/12 noon pst) will be webcast, ENS will send out an alert once broadcast information becomes available.*

Scheduled to testify at the hearing are Benjamin Grumbles, Assistant Administrator for Water, U.S. Environmental Protection Agency; Robert Hirsch Ph.D., Associate Director for Water, U.S. Geological Survey; Jennifer Sass Ph.D., Senior Scientist, Natural Resources Defense Council; Alan Goldhammer PhD, Deputy Vice President, Regulatory Affairs, Pharmaceutical Research and Manufacturers of America; Shane Snyder Ph.D. R&D Project Manager, Applied Research and Development Center, Southern Nevada Water Authority; and David Pringle, Campaign Director, New Jersey Environmental Federation.

Environmental, agriculture and public health interest groups have called on Senator Boxer, Chairwoman of the Senate Committee on Environment and Public Works, to hold hearings on the impact of pharmaceuticals in drinking water and upon natural resources. The Associate press has run a recent article on this issue which can be viewed at: <http://www.capitalpress.info/main.asp?SectionID=94&SubSectionID=801&ArticleID=39933&TM=34036.27>

Bureau Testifies Against Title XVI Authorization Bills

On April 8, the Senate Committee on Energy and Natural Resources, Subcommittee on Water and Power held a hearing on several bills authorizing water supply projects under Title XVI of the Reclamation Wastewater and Groundwater Study and Facilities Act. The committee received oral testimony from Kris Polly, Deputy Commissioner of External and Intergovernmental Affairs for the Bureau of Reclamation. Polly emphasized the Bureau's support for efforts to increase local water supplies and increase recycled water; however, the Bureau's support did not extend to the projects under consideration before the committee.

Polly testified that in light of the \$400 million backlog of authorized Title XVI projects, the Bureau opposed all nine bills. Polly also highlighted the Bureau's opposition to assigning a cap higher than \$20 million, the cap for Title XVI projects enacted after 1996. Polly did however acknowledge the cap was probably closer to \$30 million in 2008 dollars. Subcommittee Chair Tim Johnson (D-SD) inquired why the White House budget proposed only \$7 million for construction of Title XVI projects, down from previously enacted \$24 million. Polly indicated that Title XVI was an important program, but that limited resources did not allow further budgetary funding.

EPA Releases Draft Strategy on Impacts of Climate Change On Water

Last week, the Environmental Protection Agency (EPA) released a draft strategy that describes the potential impacts of climate change on clean water, drinking water, and ocean protection programs. EPA is seeking public comment on the draft strategy, a copy of which can be found [here](#). The comment period closes on May 28. The strategy also outlines EPA actions to respond to these effects, including strengthening links between climate research and water

programs, and to improve education for water program professionals on potential climate change impacts. The strategy also identifies contributions that water programs can make to mitigate greenhouse gases.

FUTURE CONGRESSIONAL HEARINGS

Senate

Date: April 15, Time: 10:00 a.m.

Committee on Appropriations

Hearing: **Fiscal 2009 Appropriations: Interior and Environment, Department of Interior**

Date: April 15, Time: 10:00 a.m.

Committee on Energy and Natural Resources

Hearing: **Fees for Access to Federal Lands**

Date: April 15, Time: 3:00 p.m.

Committee on Environment & Public Works

Hearing: **Pharmaceuticals in the Water Supply**

Date: April 16, Time: 2:00 p.m.

Committee on Appropriations

Hearing: **Fiscal 2009 Appropriations: Energy and Water Development, Department of Energy**

Date: April 17, Time: 2:00 p.m.

Committee on Energy and Natural Resources

Hearing: **Aging Water Resource Infrastructure**

Date: April 17, Time: 10:30 a.m.

Committee on Indian Affairs

Hearing: **National Indian Gaming Commission**

House

Date: TBA, Time: TBA

Committee on Appropriations

Hearing: **Fiscal 2009 Appropriations: Interior and Environment, Bureau of Indian Affairs**

Date: April 15, Time: 2:00 p.m.

Committee on Oversight & Government Reform

Hearing: **D.C. Water and Sewer**

Date: April 15, Time: 10:00 a.m.

Committee on Science & Technology

Hearing: **Futuregen Program**

Date: April 16, Time: 2:00 p.m.

Committee on Natural Resources

Hearing: **Indian Water Rights Settlements**

Date: April 16, Time: 11:00 a.m.

Committee on Transportation and Infrastructure

Hearing: **Clean Water Restoration Act**

Date: April 18, Time: 9:00 a.m.

Committee on Transportation and Infrastructure

Field Hearing: **Great Lakes Water Levels**

Date: April 30, Time: 10:00 a.m.

Committee on Transportation and Infrastructure

Hearing: **Water Resources Development**