



**U.S. House of Representatives
Committee on Transportation and Infrastructure**

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Washington, DC 20515

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March 23, 2012

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MEMORANDUM

TO: Members of the Subcommittee on Water Resources and Environment

FR: Bob Gibbs
Subcommittee Chairman

RE: A Review of the President's Fiscal Year 2013 Budget Request for the United States Army Corps of Engineers and United States Environmental Protection Agency.

PURPOSE OF HEARING

The Water Resources and Environment Subcommittee is scheduled to meet on Tuesday, March 27, 2012 and Wednesday, March 28, 2012 at 10:00 a.m. in 2167 Rayburn House Office Building, to receive testimony from the Army Corps of Engineers (Tuesday) on their proposed budget and program priorities for FY 2013 and from the Environmental Protection Agency (EPA) (Wednesday) on their proposed budget and program priorities for FY 2013.

Similar to other budget hearings held by the Subcommittee, this hearing is intended to provide Members with an opportunity to review the agencies' FY 2013 budget requests, as well as Administration priorities for consideration in the Subcommittee's legislative and oversight agenda for the Second Session of the 112th Congress.

BACKGROUND

ARMY CORPS OF ENGINEERS

General – The Corps of Engineers provides water resources development projects for the nation, usually through cost-sharing partnerships with nonfederal sponsors. Activities include navigation, flood damage reduction, shoreline protection, hydropower, dam safety, water supply,

recreation, environmental restoration and protection, and disaster response and recovery. The appropriation request in the Administration's FY 2013 budget submittal for the Corps of Engineers is **\$4.731** billion, 5.4% below the FY 2012 appropriations of **\$5.002** billion.

There is a proposed reduction in most of the major accounts that fund Corps projects and activities. Major accounts and initiatives are described below.

Investigations – The President's budget requests **\$102** million for the Investigations account. This is \$23 million less than the FY 2012 appropriations of **\$125** million. These funds are used for the study of potential projects related to river and harbor navigation, flood damage reduction, shore protection, environmental restoration, and related purposes. They also cover restudy of authorized projects, miscellaneous investigations, and plans and specifications of projects prior to construction. Under this proposed budget, while 6 new studies are funded, the focus is on completing existing studies.

Construction – The President's budget requests **\$1.471** billion for the Construction account. This is **\$223** million less than the FY 2012 appropriations of **\$1.694** billion. These funds are used for the construction of river and harbor, flood damage reduction, shore protection, environmental restoration, and related projects specifically authorized or made available for selection by law. The budget proposes 3 new construction starts, and funds for 8 construction completions. Generally, the reduced construction budget gives priority to completing on-going projects with a remaining benefit-cost ratio greater than 1.0. Continuing on-going projects with a benefit-cost ratio between 2.5 and 1.0 receive some level of funding.

Operation and Maintenance – The President requests **\$2.398** billion for expenses necessary for the preservation, operation, maintenance, and care of existing river and harbor, flood control, and related projects. This is **\$14** million less than the FY 2012 appropriations of **\$2.412** billion.

The constrained budget for operation and maintenance in the past few fiscal years is already beginning to affect the navigability of certain waterways. Needed maintenance dredging continues to be delayed. For example, parts of the Lower Mississippi River have been closed to commercial navigation due to lack of maintenance dredging. The President's budget request for operation and maintenance in FY 2013, will continue to exacerbate this situation. Underfunding the Operations and Maintenance account and seeking subsequent supplemental appropriations when outages occur complicates effective planning and creates inefficiencies.

Regulatory Program – The President's budget requests **\$205** million for the regulatory program. This is **\$12** million more than the FY 2012 appropriations of **\$193** million. The requested funding provides for costs incurred to administer laws pertaining to regulation of activities affecting U.S. waters, including wetlands, in accordance with the Rivers and Harbors Act of 1899, the Clean Water Act, and the Marine Protection, Research and Sanctuaries Act of 1972.

Formerly Utilized Sites Remedial Action Program (FUSRAP) - The President's budget requests **\$104** million for FUSRAP for FY 2013. This is **\$5** million less than the enacted

level of **\$109** million for FY 2012. FUSRAP provides for the cleanup of certain low-level radioactive materials and mixed wastes, which are located mostly at sites contaminated as a result of the nation's early atomic weapons development program. This program was transferred from the Department of Energy to the Corps in the FY 1998 Energy and Water Development Appropriations Act.

Mississippi River and Tributaries - The President's budget requests **\$234** million for FY 2013 for planning, construction, and operation and maintenance activities associated with Mississippi River and Tributaries water resources projects located in the lower Mississippi River Valley from Cape Girardeau, Missouri to the Gulf of Mexico. This is **\$18** million less than the FY 2012 appropriations of **\$252** million.

Water Trust Funds – The Harbor Maintenance Trust Fund is supported by an ad valorem tax paid by the shippers (not including exporters) of cargo loaded or unloaded at a U.S. port. The funds are used to do maintenance dredging of harbors and to provide for disposal facilities for dredged material. The budget would use only **\$778.8** million from the fund resulting in an increase in the estimated balance to **\$7.11** billion at the end of FY 2013. Only one-third of the nation's federal navigation projects are currently at their authorized depths and widths, and 8 out of the nation's 10 largest ports are not at their authorized depths and widths.

According to the American Association of Port Authorities (AAPA), seaports themselves provide for \$200 billion in federal, state, and local tax revenue each year. Thirty million jobs are directly related to international trade, with the U.S. maritime industry alone providing 13 million jobs throughout the country. According to the United States Department of Agriculture (USDA), U.S. agricultural exports, which in FY 2009 reached \$96.6 billion, generate an additional \$135 billion in supporting business activity in the transportation, distribution, food processing and manufacturing sectors. The Economic Research Service of the USDA notes that for every dollar of goods exported, this creates another \$1.36 in supporting activities. Overall, the AAPA research finds that maritime trade creates \$2 trillion of commerce annually in the United States.

The Inland Waterways Trust Fund is supported by a tax on commercial fuel used on specified inland waterways. The fund is used to pay for half of the federal cost of constructing navigation improvements on those waterways; the remaining half is paid from general revenues. The budget calls for using **\$94.78** million from the fund in FY 2013.

Aging infrastructure along the Inland Waterway Transportation System presents a growing challenge. More than 57% of these facilities have been in service for longer than 50 years and almost 40% are more than 70 years old. Reliability of transportation networks is critical to the nation's economy. While this infrastructure has served the nation well, operation and maintenance expenditures will only slightly prolong the life of a depreciating asset that will continue to diminish in performance. And, as the asset gets older, its operation and maintenance requirements will grow.

The Administration has proposed legislation to reform the laws governing the Inland Waterways Trust Fund, including increasing the revenue paid by commercial navigation users to meet their share of the costs of activities financed from the Inland Waterways Trust Fund. To

date, no legislative proposal has been shared with the House of Representatives. The Inland Waterways Trust Fund balance by the end of fiscal year 2013 is estimated to be **\$146** million if Congress authorizes the Administration-proposed user tax and **\$66** million if Congress does not.

Flood Control and Coastal Emergencies – The Administration’s budget request proposes **\$30** million for the Corps of Engineers’ Flood Control and Coastal Emergencies (FCCE) account. The Corps has authority under P.L. 84-99 for emergency management activities, including disaster preparedness, emergency operations (flood response and post flood response), rehabilitation of flood control works threatened or destroyed by flood, protection or repair of federally authorized shore protective works threatened or damaged by coastal storms, and the provision of emergency water due to drought or contaminated sources. This includes \$2.5 million in support of the Silver Jackets, an interagency group that creates federal support teams for communities experiencing local flood emergencies and prevents emergencies through flood risk management solutions. Funds for the Corps’ FCCE account are typically provided on an emergency basis through supplemental appropriations acts.

ENVIRONMENTAL PROTECTION AGENCY

The President’s budget request for the Environmental Protection Agency is \$8.3445 billion, \$104.9 million less than the FY 2012 enacted level of \$8.4493 billion.

Clean Water Act

The Federal Water Pollution Control Act (commonly known as the Clean Water Act), as amended in 1972 by P.L. 92-500, in 1977 by P.L. 95-217, in 1981 by P.L. 97-117, and in 1987 by P.L. 100-4, provides for a major federal/state program to protect, restore, and maintain the quality of the nation’s waters. The EPA has the primary responsibility for carrying out the Act but significant parts of the program may be administered by the states if approved by EPA.

Clean Water State Revolving Loan Funds – The Clean Water State Revolving Loan Fund (SRF) program is a highly successful program administered by states to provide capital, including low interest loans, to local communities around the country to make wastewater infrastructure improvements and to address other water quality needs. To date, Congress has provided \$32 billion in grants to help capitalize 51 Clean Water SRFs. With the 20 percent state match and the fact these funds earn interest, receive loan repayments, and are used to secure state bonds, the return on this Federal investment has been greater than 2 to 1. These federal capitalization grants have resulted in SRFs funding over \$89.5 billion in loans to date for wastewater infrastructure projects.

For FY 2013, the President’s budget is requesting \$1.175 billion to further capitalize these funds. This is \$291 million less than the FY 2012 enacted level of \$1.466 billion.

During the current Congress and preceding Congresses, the Subcommittee has held numerous hearings on financing water infrastructure projects. The hearings examined how our nation can bridge the large funding gap that now exists between water infrastructure needs and

current levels of spending, how we should fund water infrastructure projects in the future, and who should pay for it. The Subcommittee looked at various mechanisms for funding wastewater infrastructure projects, including creating a national clean water trust fund, continued support of SRFs and advancing other innovative debt financing techniques, establishing a state clean water fund and an associated fee system, and private financing through private activity bonds and other means. In addition, the Subcommittee heard about reducing infrastructure needs and costs through the use of decentralized and nonstructural approaches for managing wastewater.

Special Purpose Infrastructure Grants –Special purpose infrastructure grants are funds made available to address unique clean water regional needs. This total includes \$10 million for US/Mexico Border wastewater infrastructure projects, which is \$5 million more than the FY 2012 enacted level. The total additionally includes \$10 million for Alaska Rural and Native Villages, slightly more than the FY 2012 enacted level of \$9.9 million.

Nonpoint Source Funding –The Administration’s budget request proposes \$164.8 million for the Clean Water Act’s non-point source grants program (section 319), which is \$300,000 more than the FY2012 enacted level for this program. Section 319 of the Clean Water Act is the primary source of EPA grant funding to states for the control of non-point sources of pollution – which is now the single largest source of impairment to the nation’s rivers, lakes, and near-coastal waters.

Regional Programs – The President’s Budget requests \$300 million for the Great Lakes Restoration Initiative, which is \$480,000 more than the FY 2012 enacted level of \$299.52 million.

The Chesapeake Bay Program request is \$72.6 million, \$15.3 million more than the enacted level of \$57.3 million.

The Long Island Sound program request is \$2.96, \$1 million less than the FY 2012 enacted level of \$3.96 million.

The Lake Champlain request is \$1.4 million, \$1 million less than the FY 2012 enacted level of \$2.4 million.

The San Francisco Bay request is \$4.86 million, \$980,000 less than the FY2012 enacted level of \$5.84 million.

The Puget Sound request is \$19.3 million, \$10.65 million less than the FY2012 enacted level of \$29.95 million.

The South Florida request is \$1.7 million, \$360,000 less than the FY2012 enacted level of \$2.06 million.

The Gulf of Mexico request is \$4.44 million, \$1.06 million less than the FY2012 enacted level of \$5.5 million.

The Lake Pontchartrain request is \$955,000, \$995,000 less than the FY2012 enacted level of \$1.95 million.

Requested funding for the National Estuary Program is \$27.3 million, \$300,000 more than the FY 2012 enacted level of \$27 million.

State Management Programs – The Administration’s budget request proposes \$265.3 million for State and tribal pollution control programs under section 106 of the Clean Water Act. The section 106 program generally supports State and tribal water quality improvement and monitoring programs. The enacted level for this program in FY 2012 is \$238.4 million.

The budget requests \$15.2 million for state wetlands program development, a slight increase over the FY 2012 enacted level of \$15.14 million.

The budget requests no funding for beaches protection monitoring grants, \$9.9 million less than the FY 2012 enacted level.

Community Challenges – Communities face numerous regulatory requirements related to the Clean Water Act. Although there are a number of federal programs to assist communities in meeting their clean water responsibilities, many struggle to afford the Clean Water Act’s numerous requirements being imposed on them by EPA. While schedules for compliance can sometimes be negotiated with the EPA, these are sometimes undone by other enforcement actions or judicial actions initiated by citizen suits. The result is that often communities are faced with a variety of overlapping clean water requirements and have difficulty affording the competing regulatory requirements and controlling the schedule of when work can be carried out to meet these requirements. Communities would like to have more flexibility to move forward in a cost-effective manner.

Superfund

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly referred to as "Superfund," was enacted to develop a comprehensive program to clean up the nation's worst abandoned or uncontrolled hazardous waste sites. The EPA has the major responsibility for carrying out this Act. The law makes designated responsible parties pay for hazardous waste cleanups wherever possible and provides for a hazardous substances trust fund, the Superfund, to pay for remedial cleanups in cases where responsible parties cannot be found or otherwise be held accountable. Superfund is also available for responding to emergency situations involving releases of hazardous substances. In addition, the law was intended to advance scientific and technological capabilities in all aspects of hazardous waste remediation.

The total Superfund request is \$1.176 billion. This is \$38 million less than the FY 2012 enacted level of \$1.214 billion. Under the President’s budget request, all of this funding will be derived from a payment from general revenues into the Superfund Trust Fund. Though Superfund is a cost recovery statute, as it did last year, the Administrations’ budget requests the reinstatement of the taxes that historically funded the Superfund Trust Fund, including taxes on

oil, gas, and chemical feedstocks, and the corporate environmental tax which funded the Superfund program between 1980 through 1995.

Superfund Response Actions – The President’s budget requests the following amounts for Superfund response actions: \$531.77 million for Superfund remedial actions, \$33.23 million less than the FY 2012 enacted level of \$565 million; and \$188.5 million for Superfund emergency response and removal actions, \$1.1 million less than the FY 2012 enacted level of \$189.6 million.

Superfund Enforcement – The President’s budget requests \$184.41 million for Superfund enforcement activities. This is \$2.33 million less than the FY 2012 enacted level of \$186.74 million. The budget also includes \$8.6 million for Superfund enforcement activities at federal facilities, \$1.7 million less than the FY 2012 enacted level.

Brownfields

Brownfields are former industrial sites that contain contaminated soil that must be cleaned before land can be returned to productive use. The Administration’s budget request proposes \$166.58 million for the brownfields program, including \$93.29 million, \$1.6 million less than FY 2012 enacted levels, for grants to localities to assess and/or cleanup brownfields, and \$47.6 million, \$1.75 million less than FY 2012 enacted levels for States and Tribes to establish or enhance their response programs. In addition, \$25.685 million (\$2.043 million increase) is requested out of the Environmental Program and Management Account to fund contracts and requisite full-time equivalent Agency employees (FTEs).

Oil Spill Response

The Oil Spill Response program funds EPA’s Clean Water/Oil Pollution responsibilities. The President’s budget requests \$19.3 million, \$4.6 million more than the FY 2012 enacted level of \$14.7 million. This revenue is derived from the Oil Spill Response Trust Fund.

Witnesses:

(March 27th, 2012)

United States Army, Assistant Secretary of the Army (Civil Works) Jo Ellen Darcy

**United States Army Corps of Engineers,
Acting Chief of Engineers, Major General Merdith “Bo” Temple**

(March 28th, 2012)

**Ms. Nancy Stoner
Acting Assistant Administrator, Office of Water
United States Environmental Protection Agency**

Mr. Mathy Stanislaus
Assistant Administrator, Office of Solid Waste and Emergency Response
United States Environmental Protection Agency