

*OMB Review of Water
Guidance
New Legislation
Page 1*

*House GOP
Transportation Bill
Page 2*

*Water Infrastructure Financing
Hearings
Page 2-4*

*New Reports and Studies
Page 4*

*Senate Hearings
House Hearings
Page 5*



LINKING YOU TO WASHINGTON

Thomas - Legislative
Resource Center

White House

U.S. House of
Representatives

U.S. Senate

U.S. Environmental
Protection Agency

OMB to Review Waters of the U.S. Guidance

On February 21, the U.S. Environmental Protection Agency (EPA) transmitted final [guidance](#) to clarify protection of waters under the Clean Water Act to the Office of Management and Budget's Office of Information and Regulatory Affairs for review and approval. The action means that, for the moment, the EPA has decided to pursue guidance instead of formal rulemaking to govern the definition of which waters are to be subject to regulation. This decision is somewhat of a surprise because recent comments from senior USEPA officials seemed to suggest a preference for the certainty and clarity provided by a formal rulemaking. While the guidance will likely impact the interpretation of what kinds of wetlands are subject to section 404 permitting requirements, the question remains what if any additional waters may be captured by the guidance. OMB is under no legal deadline to review and approve the guidance; therefore, the timing of any final decision on the guidance is unknown.

New Legislation

Senator Paul (R-KY) introduced the [Defense of Environment and Property Act of 2012](#) (S. 2122) to clarify the definition of navigable waters. Senator Paul issued a [news release](#) explaining the bill.

ENS RESOURCES, INC.

1101 14th Street, NW

Suite 350

Washington, D.C. 20005

202.466.3755

WWW.ENSRESOURCES.COM



House GOP Transportation Bill Take Wrong Turn, Blames Passengers

“Given Senate Democrats’ unwillingness to pursue a longer-term infrastructure and energy plan, House Republican leaders are considering a revamped approach that would retain the Speaker’s vision of linking infrastructure to expanded American energy production, and allow Republicans to stay on offense on energy and jobs,” Boehner spokesman Michael Steel



This recess week, House Republican’s returning to their district’s ran into a hornets’ nest of local officials and transportation community activists upset with mass transit provisions in their energy-transportation bill ([HR 7](#)). In addition, national transportation and business organizations launched a substantial media campaign targeting republican districts, highlighting the impact of transit provisions in the bill.

As a result, it was reported on Thursday that House Republicans leadership is considering significantly downsizing the proposed bill. Some of the changes being discussed include reducing the length of the bill to something less than its current 4-5 years, cutting annual transportation spending below current levels (-30%) and postponing a controversial proposal to change the way mass transit programs are funded. The revised bill is expected to retain provisions that include project expediting and environmental streamlining and linking infrastructure funding to the expansion of energy production. Next week, this purported change of direction needs to be discussed and agreed to by House Republican leadership and GOP members.

House Hearing(s) Set on Water Infrastructure Financing

On February 28, the House Committee on Transportation & Infrastructure, Subcommittee on Water Resources and Environment is holding the first in a series of hearings to [Review of Innovative Financing Approaches for Community Water Infrastructure Projects](#). In advance of the hearing, committee staff released a discussion draft to serve as the basis for discussion for the hearings.

ENS RESOURCES, INC.

1101 14th Street, NW

Suite 350

Washington, D.C. 20005

202.466.3755

WWW.ENSRESOURCES.COM



This draft bill is expected to have a difficult climb to make it through the legislative process this cycle, but it is notable because it is very similar to the President's fiscal year 2103 budget request for a National Infrastructure Bank. The key message point on this is that it looks like the priority to find a water infrastructure funding solution for the future is now evolving in both Congress and the Executive Branch. The overall tenor of the proposal is one that tries to emulate the transportation loan program known as TIFIA that is already on the books as part of the expired transportation law. Finally, water recycling and energy efficiency are specifically identified as eligible funding areas for loans and credit enhancements.

In addition to the below provisions, the proposal would limit assistance to projects that exceed \$20 million. Combining projects would be permitted to achieve the threshold. Because the bill would incur costs to the federal budget, actual authorizations for the loan and credit enhancement program are not provided to avoid scoring concerns required by the rules of the House.

Key provisions of the proposal include:

- Vesting USEPA with the authority to provide for direct loans and loan guarantees for water and wastewater needs;
- Making municipal and regional separate storm sewer systems, community water systems, or state infrastructure financing authorities eligible to apply for assistance;
- Allowing for a public-private partnership to be eligible for assistance provided the assistance is directed to the public entity or the investor owned utility entity (not to the developer of a project);
- Defining projects eligible for assistance:
 - capital projects for construction, replacement, or rehabilitation;
 - security upgrades;
 - energy efficiency including renewable energy technologies;
 - water efficiency to reduce water demand or need for wastewater treatment capacity;
 - stormwater controls;
 - water reuse ; and
 - consolidation of two or more systems.
- Defining project activities eligible to receive actual support (as opposed to the overall project):

ENS RESOURCES, INC.

1101 14th Street, NW

Suite 350

Washington, D.C. 20005

202.466.3755

WWW.ENSRESOURCES.COM



- development phase activities including permitting;
- construction;
- property acquisition;
- financing costs associated with construction phases (reserve funds, issuance expenses);
- Requiring USEPA to use criteria to select projects for assistance including significance of the project meeting infrastructure needs, project creditworthiness, need for project assistance, degree of other public and private assistance provided, cost impacts to federal government, and whether the project is nationally or regionally significant.
- Requiring USEPA to develop a credit evaluation process prior extending project assistance;
- Requiring that interest rates set at U.S. Treasury rates based on maturity date (higher rates allowed if project risks dictate);
- Requiring a specific loan repayment schedule and providing that repayments must begin within 5 years of substantial completion date or using an undefined date after the loan is committed;
- Authorizing that lenders of assistance must be a "non-federal qualified institutional buyer which includes pension funds; and
- Allowing for appropriate administrative fees for such project assistance being extended.

New Reports and Studies

[GAO Report](#) - The Department of Energy's Office of Science Uses a Multilayered Process for Prioritizing Research. GAO-12-410R, February 24.

[Facts You Should Know: 2012 Fact Sheet – State and Municipal Bankruptcy, Municipal Bonds, and State and Local Pensions](#) (PDF)

ENS RESOURCES, INC.

1101 14th Street, NW

Suite 350

Washington, D.C. 20005

202.466.3755

WWW.ENSRESOURCES.COM



Hearings

Senate

Date: February 28, Time: 10:00 am

Committee: Agriculture, Nutrition and Forestry

Hearing: Strengthening Conservation Through the 2012 Farm Bill

Date: February 28, Time: 10:00 am

Committee: Energy and Natural Resources

Hearing: Fiscal 2013 Budget: Interior

House

Date: February 27, Time: 10:00 am

Committee: Natural Resources

Hearing: Natural Gas - America's New Energy Opportunity: Creating Jobs, Energy and Community Grow

Date: February 28, Time: 1:00 pm

Committee: Appropriations

Hearing: Fiscal 2013 Appropriations: Bureau of Indian Affairs

Date: February 28, Time: 10:00 am

Committee: Energy and Natural Resources

Hearing: The FY2013 EPA Budget

Date: February 29, Time: 1:00 pm

Committee: Appropriations

Hearing: Fiscal 2013 Appropriations: Environmental Protection Agency

ENS RESOURCES, INC.

1101 14th Street, NW

Suite 350

Washington, D.C. 20005

202.466.3755

WWW.ENSRESOURCES.COM