

FLOOD & STORMWATER MANAGEMENT UPDATE



Federal Government Is Up and Running, At Least for Now



With the 35-day partial government shutdown over, at least until the next deadline for federal funding action of Friday, February 15th, Congress and the federal agencies spent the last two weeks getting back to business.

Infrastructure and climate change were key issues for Congress during the week of February 4th, with President Trump mentioning infra-

structure as a key focus for the Administration this year as part of the February 5th State of the Union message, the House Transportation and Infrastructure Committee holding its first hearing of the 116th Congress on infrastructure needs and two climate change initiatives launched in Congress.

Under the chairmanship of Rep. Peter A. DeFazio (D-OR), the full House Transportation and Infrastructure Committee held a hearing on Thursday, February 7th focusing on the nation's infrastructure needs. Chairman DeFazio opened the hearing titled "The Cost of Doing Nothing: Why Investing in our Nation's Infrastructure Cannot Wait" by citing the investment gap reported by the American Society of Civil Engineers (ASCE) of \$2 trillion over ten years to fix what we have. While the surface transportation gap alone is over \$1 trillion, he noted that the gap for water, port and related infrastructure needs is \$249 billion. He stressed that "Inaction has serious consequences and the cost of delay is high."

The ranking member of the Transportation Committee, Rep. Sam Graves (R-MO) following the President's State of the Union message, was quick to note that "Tonight the President was crystal clear to the American people that he wants to cut the congestion that we all face in our daily lives, fix our roads and bridges, and modernize our waterways, ports, railways and airports."

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This support expressed by President Trump as well as majority and minority leaders in the House is raising hopes that we may see action to address our nation's infrastructure needs in this Congress.

Testifying on water infrastructure needs was Ms. Angela Lee, Director of Charlotte Water, for the Water Environment Federation and the National Association of Clean Water Agencies, and addressing ports and waterway needs was Kristin Meira, Executive Director of the Pacific Northwest Waterways Associa-

tion. A broad spectrum of witnesses from the transportation sectors also testified as well as the Governor of Minnesota, Hon. Tim Walz (on behalf of the National Governors Association) and the Mayor of Los Angeles, Hon. Eric Garcetti (on behalf of the United States Conference of Mayors).

To watch the February 7th House infrastructure hearing or to download copies of witness testimony, go to <https://transportation.house.gov/committee-activity/hearings/the-cost-of-doing-nothing-why-investing-in-our-nations-infrastructure-cannot-wait>.

House Renews Attention on Climate Change

In other action in the House of Representatives last week two committees held hearings on climate change, Speaker of the House Nancy Pelosi announced Democratic members who will serve on a new Select Committee on Climate Crisis, and the Green New Deal resolution was released as well.

On February 6th, hearings on the impacts of climate change were held in both the House Natural Resources Committee and the Energy and Commerce Subcommittee on Environment and Climate Change. Testifying before the Natural Resources Committee chaired by Rep. Raul M. Grijalva (D-AZ) were the Governors of North Carolina, Hon. Ray Cooper (D), and Massachusetts, Hon. Charlie Baker (R) as well as others.

Subcommittees of the Natural Resources Committee will each be holding hearings on climate change impacts throughout

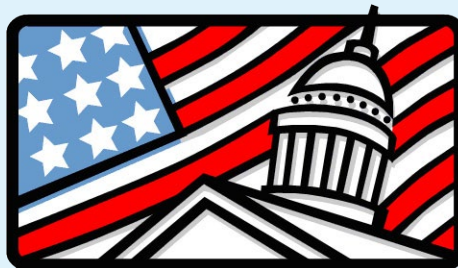
the month of February. For more on the Natural Resources Committee hearings go to <https://naturalresources.house.gov/media/press-releases/video-highlights-house-natural-resources-committee-holds-historic-hearing-on-climate-change-impacts>,

A second House hearing was also held on February 6th by the House Energy and Commerce Committee's Subcommittee on the Environment and Climate Change. Rep. Paul Tonko (D-NY) chairs the Commerce Committee's Climate Change panel. The costs associated with inaction were highlighted in both hearings.

Details on the Climate Change Subcommittee hearing, including a video of the hearing and copies of testimony are provided at <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-time-for-action-addressing-the-environmental-and-economic>.

Democratic Members Named to Select Committee on the Climate Crisis

Speaker Nancy Pelosi on February 7th announced Democratic members who will serve on the new Select Committee on the Climate Crisis. Chairing the new select committee will be Rep. Kathy Castor (D-FL). Other Democrats named to the new House committee include: Assistant Speaker Ben Ray Lujan (NM), and Reps. Suzanne Bonamici (OR), Julia Brownley (CA), Sean Casten (IL), Jared Huffman (CA), Mike Levin (CA), A. Donald McEachin (VA), and Joe Neguse (CO).



Republican members of the new select committee have yet to be announced.

Additional attention was drawn last week to the subject of climate change with the release of the Green New Deal Resolution by freshman Rep. Alexandria Ocasio-Cortez (D-NY) and Sen. Ed Markey (D-MA). The non-binding 14-page resolution has garnered attention from both supporters and opponents.

Comments on WRDA Implementation Guidance Due on February 12, 2019

In a membership working call on Wednesday, February 6th, NAFSMA leaders discussed draft comments prepared in response to a December 14 2018, press announcement requesting input to the U.S. Army Corps of Engineers as it begins its initial work

to develop guidance to implement provisions of the Water Resources Development Act of 2018 (which was enacted as part of America's Water Infrastructure Act) as well as some provisions of past WRDA's as well.

The Corps on February 1st, announced that it would be holding a stakeholder engagement session at the USACE headquarters on the

morning of Monday, February 11, 2019. NAFSMA will be participating in that session. A call-in number was also provided for the session and NAFSMA members are urged to call in and share their comments as well. To participate by phone, dial (800) 288-8960.

Information about how to submit comments can be found at www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/wrda_2018/.

The list of provisions that the USACE is developing implementation guidance on can be found at www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/.

NAFSMA will be submitting comments on behalf of the membership and appreciates the assistance from the membership on developing these important comments.



Public Hearings and February 14th WOTUS Webinar Announced

NAFSMA members were alerted on February 8th that EPA and the Army will hold public hearings on the proposed new "Waters of the United States" definition in Kansas City with sessions on February 27 and 28, 2019. All persons wanting to speak are encouraged to register in advance. EPA and the Army will also hold an informational webcast on February 14, 2019.

Public Hearing Logistics: The Wednesday session of the public hearing will convene at 4:00 pm (local time) and will conclude no later than 8:00 pm. The Thursday session will convene at 9:00 am and will conclude no later than 12:00 pm.

The public hearing will be held in the Wyandotte Ballroom of the Reardon Convention Center, 520 Minnesota Avenue, Kansas City, Kansas 66101. Those interested in speaking at the hearing can register for a three-minute speaking slot. The last day to pre-register to speak at the hearing is February 21, 2019. On February 26, 2019, the agencies will post a general agenda for the hearing on the EPA website at www.epa.gov/wotus-rule/proposed-revised-definition-wotus-public-hearing. It will list pre-registered speakers in approximate order.

Registration for the public hearing is available through the EPA website. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, pending availability, and a sign language interpreter will be available for the hearing.



Webinar Logistics: EPA and the Army will also hold a public webcast to explain the key elements of the proposed "Revised Definition of Waters of the United States" on February 14, 2019, at 3:30 pm EST. A copy of the entire webcast will be made available afterwards. Webinar registration is limited to 2,000 attendees so interested parties are encouraged to view with colleagues. Registration is available at <https://attendee.gotowebinar.com/register/1548544876509260301>.

NAFSMA Members Could See Faster Turnarounds for State 401 Water Quality Certifications

In a memorandum issued by Assistant Secretary of the Army (Civil Works) R. D. James on December 13, 2018, USACE District Engineers were notified that the appropriate time period for a state's review of Section 401 certification is 60 days and as further clarification, "the memo states that under Section 401, the time period for a state's review begins upon request by the applicant." A state's 401 certification is critical to the approval of a Section 404 wetland permit. If a state fails or refuses to act on such a request for certification within a reasonable period of time (not to exceed one year), after receipt of such request, the certification requirements of Section 401 shall be waived.

This clarification of a 60-day timeline should help move the permit process along faster in states where Corps Districts have allowed up to a year for such state-issued certifications and where the timeframe for issuance of these necessary state actions may not have begun until it was decided that an application was complete. The 60-day clock on state certification would now start once an application has been submitted.

According to the new memo, it will be up to the District Engineer to determine if a request for an extension by the state will be granted and the memo directs that such extensions are not to be provided "based on workload or resource issues or that [states] do not have enough information to proceed."

The ASA states in the December 13th memo that "I understand that it has been standard practice in some USACE districts to give states an entire year to act on a Section 401 request. Such

an approach is inconsistent with our existing Army regulations. The one-year period set forth in the CWA sets forth the outer bounds of a tie period on a decision by the state and should not be used as a default timeframe for a state's decision."

The Secretary's memo directs the Corps to write new guidance to implement this directives memo which in addition to 401 certification timeframes addresses the duration of permits and jurisdictional determinations and application of 404(b)1 guidelines for regulating disposal sites associated with discharges of dredged or fill material into jurisdictional waters.

This new approach has received pushback from state regulators such as the Association of Clean Water Administrators. ACWA predicts that "this new approach will inevitably result in a vast increase of state denials of 401 certification requests."

A copy of the December 13, 2018 Policy Directives Memo on Section 401 Certification is available under latest news at www.nafsma.org.



Senate Committee Approves EPA Administrator Nomination



The Senate Environment and Public Works Committee on a partisan vote of 11-10 voted on February 5, 2019, to move the nomination of Andrew Wheeler to serve as Administrator of the U.S. Environmental Protection Agency (EPA). The next step for the nomination will be a Senate floor vote.

Proposed New Waters of the US Rule Expected to Be Published This Week

The proposed new rule on the Waters of the United States definition released by the U.S. Environmental Protection Agency and the U.S. Army Corps in December is expected to be published in the Federal Register the week of February 11th. Once that formal publication occurs, the 60-day time clock for submitting comments on the new rulemaking will begin.

NAFSMA is requesting members to help with development of the association's comments the WOTUS rule. Please send an email to Executive Director Susan Gilson at sgilson@nafsma.org if you can be involved in this critical effort.

EPA Releases 2018 Year in Review Accomplishments Report

Soon after its return from the partial government shutdown, EPA released its [Year in Review Accomplishments Report for 2018](#).

Included among the agency's list of accomplishments was the issuance of seven WIFIA (Water Infrastructure Finance and Innovation Act) loans totaling nearly \$2 billion to help finance over \$4 billion for water infrastructure projects and create up to 6,000 jobs.

Other accomplishments listed include 13 deregulatory actions that were finalized in 2018 and enforcement actions that required the treatment, disposal, or elimination of 809 million pounds of pollutants and waste – almost twice as much as in Fiscal Year 2017.



Mark Your Calendars

August 19–22, 2019

NAFSMA 2019 Annual Flood and Stormwater Management Conference
Los Angeles (Rancho Palos Verde), CA
Look for registration and hotel information at www.nafsma.org soon.

May 15, 2019

2019 NAFSMA Excellence in Communications and Stormwater Management Green Infrastructure
Online Awards Submissions Due Date – Wednesday, May 15th
Online applications to be available on www.nafsma.org soon.