



TO: STEVE SMITH
TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION

FROM: MIKE McINTYRE

SUBJECT: MAY MONTHLY LEGISLATIVE UPDATE

DATE: MAY 21, 2018

MONTHLY LEGISLATIVE UPDATE

FY 2019 Budget and Appropriations

Action on FY 2019 appropriations has picked up over the past few weeks. The House Appropriations Committee (HAC) has already approved five appropriations bills at the full committee level: Military Construction-Veterans Affairs; Legislative Branch; Commerce, Justice, Science; Agriculture-Food and Drug Administration; and Energy and Water Development. HAC is expected to markup and approve two more bills in the next week. In the Senate, the Senate Appropriations Committee (SAC) has not passed any bills at the committee or subcommittee levels yet. However, SAC is planning to markup two or more bills the week of May 21.

Despite this progress, it is likely that Congress will need to approve a short-term continuing resolution to keep the government funded past the September 30 deadline, given how much time it takes to reconcile differences between the House and Senate.

The Energy and Water Development appropriations bills in the House and Senate are the two bills we are most closely tracking for TISPC because these bills contain language on Corps of Engineers (Corps) new starts. Our priority is, and has been, to ensure that the Corps is provided the proper authority to fund coastal storm damage reduction projects. As you know, Congress included language in the FY 2018 omnibus appropriations law recommending that one of the five new construction starts for FY 2018 be for a coastal storm damage reduction project—language we advocated for directly with Senate Appropriations subcommittee staff. As you may recall, this language was originally not included in the House's Energy and Water Development appropriations bill, only in the Senate's bill, so we had to work with Senate Appropriations subcommittee staff to include the language in the final bill. In FY 2019 this may be the case again, as the House Appropriations Committee did not include a new start for coastal storm damage reduction in its FY 2019 Energy and Water Development appropriations bill. We have yet to see the Senate bill because it has not yet been released.

If the Surf City and North Topsail Beach WRRDA project is not provided a new start in the Corps' 2018 Work Plan, which will be released sometime this month, we will again work with the House and Senate Appropriations Committees to include a new start for a coastal storm damage reduction project in FY 2019 so the project has another chance at securing a new start authorization.

In addition, the House's Energy and Water Development appropriations bill includes \$3,555,000 in the Operations and Maintenance account for the New River Inlet.

Trump Administration's Rescissions Package

On May 8, the Trump Administration sent to Congress a request to cancel \$15.4 billion in unspent federal funds to help offset the deficit-increasing 2017 tax cuts law and FY 2018 omnibus. This "[rescissions package](#)" proposes 38 rescissions of budget authority from programs under the Departments of Agriculture, Commerce, Energy, Health and Human Services, Housing and Urban Development, Justice, Labor, State, Transportation, and the Treasury, as well as programs under the Corporation for National and Community Service, Environmental Protection Agency, Railroad Retirement Board, the Millennium Challenge Corporation, and the United States Agency for International Development. The package is estimated to reduce federal outlays by \$3 billion.

Prior to 2001, presidential rescissions requests were a regular part of the budget process. President George W. Bush and Barack Obama sent no formal rescissions requests to Congress. However, both Presidents supported some form of additional presidential rescission authority.

This request "is the first of several upcoming rescissions packages aimed at cutting federal spending," according to a statement released by the White House. The package may have a chance of passing the House; however, it will have a more difficult time in the Senate given the 51 vote threshold. At the moment, there is not much interest in either chamber to consider the package. It is currently unclear how or if some of the proposed rescissions will affect the funding levels for these programs in FY 2019, especially the programs that have substantial unobligated balances.

Some major programs in the rescissions package include:

USDA

- Environmental Quality Incentives Program
 - o Would rescind \$144 million in unobligated balances from FY 2014 through FY 2017.
- Watershed and Flood Prevention Operations Program
 - o Would rescind \$50 million in unobligated prior year balances.
- Emergency Watershed Protection Program
 - o Would rescind \$107 million in unobligated balances appropriated in FY 2013.
- Community Facilities Program
 - o Would rescind \$2 million in carryover balances.
- Rural Water and Waste Disposal Program
 - o Would rescind \$37 million in carryover balances.

EDA

- Economic Development Assistance Programs
 - o Would rescind \$30 million in unobligated prior year balances.

DOT

- Miscellaneous Highway Trust Funds

- Would rescind \$48 million in prior year balances.

Please refer to the rescissions package (link provided above) for a comprehensive list of proposed rescissions.

Water Resources Development Act

On May 8, the Senate Environment and Public Works Committee (EPW) introduced its version of legislation to reauthorize the Water Resources Development Act (WRDA), titled the *America's Water Infrastructure Act of 2018* ([S. 2800](#)). On May 18, the House Transportation and Infrastructure Committee (T&I) introduced its WRDA bill, titled the *Water Resources Development Act of 2018* ([H.R. 8](#)). Both committees will markup their respective bills the week of May 21.

Historically, WRDA bills authorize water resources studies and projects and set policies for navigation, flood control, hydropower, recreation, water supply and emergency management for the Army Corps. The legislation is often passed on a biennial basis and addresses interests related to ports, inland waterways, levees, dams, wetlands, watersheds and coastal restoration. S. 2800 also includes numerous provisions related to the *Safe Drinking Water Act* (SDWA) and *Clean Water Act* (CWA) that aim to help communities upgrade their aging drinking water and wastewater systems. H.R. 8 does not include similar SDWA and CWA provisions.

Specific sections of H.R. 8 and S. 2800 that may be of interest to TISPC are outlined below:

H.R. 8

- **Section 108. Emergency Response to Natural Disasters.**
This section clarifies that hurricane and storm damage risk reduction projects damaged or destroyed by natural disasters, shall be rebuilt to either pre-storm levels or its design level of protection, whichever is greater.
- **Section 115. Comprehensive Backlog Report.**
This section directs the Corps to furnish a report to Congress on a complete list of projects, and separable elements of projects, that are authorized for construction but not completed. Additionally, the Corps shall submit a report to Congress on all deferred operation and maintenance needs at projects and properties under their control.
- **Section 118. Study of the Future of the United States Army Corps of Engineers.**
This section directs the Corps to contract with the National Academy of Sciences in order to evaluate and provide recommendations to Congress on the efficacy of the current organizational structure of the civil works functions of the Corps and identify impediments to efficient project delivery.
- **Section 120. Non-Federal Implementation Pilot Program.**
This section reauthorizes a pilot program that allows the Corps to provide a non-federal interest full project management control over a water resources development project.

- Section 122. Construction of Water Resources Development Projects by Non-Federal Interests.**

This section accelerates project delivery by allowing credit or reimbursement for certain segments of water resources development projects (navigational improvements in harbors or inland harbors). Additionally, this section allows a non-federal sponsor to advance projects more expeditiously through the use of a streamlined agreement with the Corps.
- Section 123. Advanced Funds for Water Resources Development Studies and Projects.**

This section helps move projects into construction by expanding the Corps' authority to accept advanced funds from non-federal interests for any water resources development project.
- Section 125. Study on Economic and Budgetary Analyses.**

This section directs the Corps to contract the National Academy of Sciences to review and make recommendations on improving the Corps' economic principles and analytical methodologies when evaluating the budgeting for water resources development projects.
- Section 302. Backlog Prevention.**

This section extends the 7-year deauthorization sunset of projects and studies authorized under WRRDA 2014 to 10 years, something for which we have advocated. (Therefore, both WRRDA-authorized projects on Topsail Island will now have until 2024 to receive new start funding without risk of being deauthorized.)

S. 2800

- Sec. 1001. Corps budgeting.**

This section requires Corps headquarters *and districts* to provide to Congress a work plan and four year projected budget on an annual basis, which the public will be allowed to provide comment. This section will provide an additional opportunity for projects or initiatives of regional, tribal or local significance to receive appropriations through "COM" accounts, which are the Civil Works Program Construction (C) and Operations and Maintenance (OM) accounts, through district offices.
- Sec. 1002. National Academy studies.**

This section requires the National Academy of Sciences to conduct studies to examine how the Corps can increase transparency in cooperating with Congress, state and local units of government, and local stakeholders, as well as other cost-share partners, government agencies, and stakeholders. This section also calls for studies to be conducted to determine whether the Congress should use a system-wide authorization process for water resources development projects (as opposed to a project-based process), and whether the present structure and organization of the Corps is the most effective for its continued operation or whether the Corps structure and organization should be modified.
- Sec. 1003. GAO study on benefit-cost analysis reforms.**

This section requires that the Comptroller General of the United States (the Comptroller General) conduct and submit to Congress a study on the benefit-cost procedures of the Secretary (the Secretary of the Army) and the Director of the White House Office of Management and Budget (OMB) within 1 year after enactment of *America's Water*

Infrastructure Act of 2018. The study will include: (1) an examination of the benefits that the Secretary and Director do and do not include in the benefit-cost calculation; and (2) an evaluation of navigation benefits included and not included in the calculation for non-commercial harbors for military training purposes.

- **Sec. 1004. Transparency and accountability in cost-sharing for water resources projects.**

This section amends the current Corps cost-sharing requirements for feasibility studies and project construction to require that whenever a local cost-share is required for a water resources development project, each Corps district is required to maintain a balance sheet of the funding for the project. The Corps must provide the balance sheet to the non-Federal sponsor upon request. This section also requires that if a project comes in under-budget, the relevant share of the funds must be credited back to the non-federal sponsor in the appropriate cost-share ratio. Further, the non-federal interest may use the excess funds as its cost-share for other Corps projects or its cost share for operation and maintenance of a project for which a non-federal cost-share is required.

- **Sec. 1005. Non-federal sponsor reimbursements.**

This section mandates that in the case of a project executed by the Secretary under an existing agreement resulting in the non-federal sponsor having unreimbursed funds, on the request of the non-federal sponsor, the Secretary has two options: to either (1) credit the unreimbursed funds to the non-federal cost-share requirement of that non-Federal sponsor for another project to be carried out by the Secretary or (2) reimburse the funds to the non-federal sponsor.

- **Sec. 1009. Project partnership agreements.**

This section directs the Secretary to better define and describe operation and maintenance, repair, replacement, and rehabilitation (OMRR&R) costs in future project partnership agreements so that a non-federal sponsor understands its obligations.

- **Sec. 1011. Feasibility studies for mitigation of storm damage.**

This section amends section 105(a)(1) of WRDA 1986 in the case of a feasibility study for a project for the mitigation of damage to an area affected by weather or other events. If (1) the Secretary provided emergency response under section 5 of the *Flood Control Act* of 1941, or the area received disaster assistance under the *Stafford Act* during the 8-year period preceding the enactment of *America's Water Infrastructure Act of 2018*, and (2) there is a significant risk for future similar events, then the federal cost-share of the feasibility study will be between 50 and 100 percent.

- **Sec.1013. Advanced funds for water resources development studies and projects.**

This section expands the authority of the Secretary to accept funds from a state to carry out water resources projects so that it is applicable to all project purposes beyond flood risk management and navigation (e.g., aquatic ecosystem restoration, coastal storm damage reduction, etc.).

- **Sec. 1023. Natural Infrastructure.**

This section requires that in each feasibility study carried out by the Secretary for a flood risk management or hurricane and storm damage risk reduction project, the Secretary must consider the use of both traditional and natural infrastructure alternatives, alone or

in conjuncture with each other, if those alternatives are practicable. (Note that the term “natural infrastructure” is not provided a definition in the bill.)

- **Sec. 1025. Reauthorization of non-Federal implementation pilot program.**

This section extends the authorization of the non-federal implementation pilot programs at \$50 million for each of fiscal years 2020 through 2021. These pilot programs evaluate the cost-effectiveness and project delivery efficiency of non-federal interests carrying out feasibility studies and the construction of projects for flood risk management, hurricane and storm damage reduction, ecosystem restoration, and coastal harbor and channel and inland harbor navigation.

- **Sec. 1034. Sense of Congress relating to project partnership agreements.**

This section states the sense of Congress that the Secretary should simplify and expedite the process for including in-kind work in project partnership agreements to allow for more flexibility for potential changes to in-kind work, and to delegate approval for project partnership agreements to the District Engineer where practicable.

- **Sec. 1035. Sense of Congress relating to encouraging resilient techniques and habitat connectivity in ecosystem restoration.**

This section states the sense of Congress that the Secretary should ensure that Corps infrastructure can endure extreme weather, mitigate flooding and other negative impacts on communities, and provide a significant return on investment by encouraging the use of resilient structural or nonstructural construction techniques; and clarifying that nonstructural approaches, techniques, and alternatives including natural and nature-based solutions.

- **Sec. 2109. Project deauthorization and study extensions.**

This section extends the 7-year deauthorization sunset of projects and studies authorized under WRRDA 2014 to 10 years, something for which we have advocated. (Therefore, both WRRDA-authorized projects on Topsail Island will now have until 2024 to receive new start funding without risk of being deauthorized.)

- **Sec. 3111. Authorization of appropriations for purchase of hopper dredge.**

This section authorizes \$150 million in appropriations for the Secretary’s purchase of a new hopper dredge for beach nourishment and shoreline protection. This hopper dredge is to be used primarily in areas that have been consistently damaged by extreme weather events.

- **Sec. 3603. Sense of Congress on emergency management assistance.**

This section states the sense of Congress that the Secretary may provide technical assistance and other support to state emergency management agencies to assist in the development of handbooks for floodplain managers. These handbooks should include policies to help manage the risks of coastal and river flooding. In addition, these handbooks should consider coastal protection solutions that promote resilience, such as living shorelines, as well as regional sediment management.

Trump Administration’s Spring Unified Regulatory Agenda

On May 9, OMB’s Office of Information and Regulatory Affairs (OIRA) released the Trump Administration's updated Spring 2018 [Unified Agenda of Federal Regulatory and Deregulatory Actions](#)

(Unified Agenda), a comprehensive list of all regulations that federal agencies will pursue or cut over the next 12 months. Central to President Trump's regulatory agenda is implementation of [Executive Order \(E.O.\) 13771](#), which requires agencies to eliminate two rules for every new one they issue and to offset the cost of new rules. The Unified Agenda shows that the Trump Administration is working on 499 deregulatory actions and 133 regulatory actions subject to E.O. 13771.

According to EPA's section of the Unified Agenda, EPA plans to propose a replacement CWA jurisdiction rule over "waters of the U.S." (WOTUS) in August 2018 instead of its previous estimate of May 2018.

Trump Administration May Update NEPA Guidelines

The White House Council on Environmental Quality (CEQ) has submitted a [draft advanced notice of proposed rulemaking](#) to OMB, indicating that it will update "the regulations for implementing the procedural provisions" of the *National Environmental Policy Act* (NEPA). The draft will be published in the *Federal Register* as an advanced notice of proposed rulemaking in the coming weeks after an interagency review. That will trigger a public comment period before CEQ submits a more detailed proposal of what exactly it wants to change.

While all agencies have their own guidelines for NEPA (some of which have already been modified by the Administration), CEQ sets the minimum standard across the federal government in implementing environmental reviews required by the law. While details of the update are unclear, the rewrite could aim to expand categorical exclusions or set shorter time limits on permitting litigation, both of which were outlined in the Administration's infrastructure plan.

UPDATE ON 2018 TISPC FEDERAL ADVOCACY PRIORITIES

The current status of priority agenda items are outlined below. Please note that Congressman McIntyre of Poyner Spruill and Stephanie Missert and Roger Gwinn of The Ferguson Group plan to meet with staff from relevant House and Senate committees as well as TISPC's congressional delegation in early June to further discuss TISPC's advocacy priorities.

1. North Topsail Beach – Continue to facilitate changes to the CBRA maps

As you know, we were contacted by Representative Jones's office the week of May 7 to discuss the forthcoming introduction of legislation that would approve numerous non-controversial CBRA maps. Representative Jones wanted to know whether or not TISPC and North Topsail Beach would like the non-controversial updated FWS map for CBRS Unit L06 included in the package even though the map does not include our desired amendments to take out portions of North Topsail Beach from CBRA that were served by a full complement of infrastructure in 1982. TISPC, North Topsail Beach and Poyner Spruill/The Ferguson Group agreed that the updated FWS map for Unit L06 should be included in the package because it positively removes from CBRA approximately 78 structures.

This legislative package was officially introduced on May 15th by Rep. Neal Dunn (R-FL-2) as H.R. 5787, To amend the Coastal Barrier Resources Act to give effect to more accurate maps of units of the John H. Chafee Coastal Barrier Resources System that were produced by digital mapping of such units, and for other purposes. A copy of the legislation is provided as an attachment to this memo. The language regarding Topsail Unit L06 can be found in Section 2(b) paragraphs 5 and 6.

Unfortunately, the House Natural Resources (NR) Committee, which has jurisdiction over CBRA issues, is not open to including amendments to the CBRA maps included in H.R. 5758 at this time. However, there may yet be opportunities to seek an amendment to include our language during full committee or on the floor of the House when the package goes before the House for a vote, which could occur in the next two to three months (at the earliest). Congressman Jones will still have the opportunity separately to push for passage of H.R. 4692 before the Water, Power and Oceans Subcommittee in an effort to get our bill before the full House NR Committee and to the floor of the House before the end of this year's session.

In the Senate, we are continuing to work with staff to advance S. 1745, the companion bill to H.R. 4692. The Senate offices are still working to achieve support for S. 1745 from the Administration and Secretary Zinke. If they are successful, S. 1745 could easily be included in a package of CBRA mapping bills that the Senate EPW Committee plans to compile (like the House bill). If support is unable to be secured from the Administration, it may be more difficult to move S. 1745 through the committee process for ultimate Senate floor consideration.

We plan to further discuss our strategy to move the legislation in the House and Senate when we meet with committee and delegation staff in early June.

2. Topsail Beach – Support legislation that would allow the use of sand from inlet CRBA areas for beach nourishment

As we discussed above, the Senate EPW Committee has introduced its 2018 WRDA bill. Although the bill has several provisions that may be of interest to TISPC, language to resolve the sand borrowing issue was not included at this time. However, we plan to meet with relevant staff over the next few weeks to further discuss the issue and to seek inclusion of our language in the bill either during the committee markup process or during Senate floor consideration.

In the House, House T&I Committee staff and House NR Committee staff are continuing to draft their own language to resolve the issue, and they are waiting to receive information from the Corps and FWS to do so. As you may recall, House committee staff said they are supportive of our efforts to include our sand borrowing language in the Senate WRDA bill. However, they said that this language will not be included in the House WRDA bill because House leadership wants to approve a “clean” WRDA bill, which means that any provisions that are outside the jurisdiction of the House T&I Committee—like CBRA issues—will not be included. However, House committee staff and Congressman Rouzer's office said they are willing to including a sand borrowing fix in other legislation, such as an infrastructure package (which the House T&I committee is actively working on) or any CBRA-related legislation, or using the inclusion of the language in the Senate WRDA bill as a potential opportunity to conference their language.

We plan to meet with both committees in early June, and possibly before, to further discuss legislative options.

3. Island-wide – Obtain federal funding for approved federal beach nourishment projects (Surf City/North Topsail Beach & Topsail Beach)/remove the 7-year sunset clause

As you know, the Corps reached out to Surf City/North Topsail Beach and Topsail Beach in mid-April to confirm that the WRRDA-authorized projects were ready to proceed to the Project Partnership Agreement (PPA) phase of the project if funding became available to do so. Surf City and North Topsail notified the Corps that they are ready to proceed with the PPA. Topsail Beach, after consultation with Town officials and Poyner Spruill and The Ferguson Group, decided to inform the Corps that it is not ready to proceed with the PPA at this time and will instead proceed with a private project to renourish Topsail Beach, citing concerns regarding overall cost, among other things. Poyner Spruill and The Ferguson Group drafted a letter for use by TISPC to notify its congressional delegation of Topsail Beach's decision and forwarded this letter to TISPC's congressional delegation. Poyner Spruill and The Ferguson Group will now focus its efforts on securing a new start for only the Surf City and North Topsail Beach project at this time.

Regarding the new start, Congress finally approved FY 2018 appropriations on March 23 with the legislative language for which we had advocated regarding a new construction start for a coastal storm damage reduction project. The Corps is expected to release its FY 2018 Work Plan sometime this month. We will know if funding for the Surf City/North Topsail Beach WRRDA project is included in the FY 2018 Work Plan when it is officially released. If the Surf City and North Topsail Beach WRRDA project is not provided a new start in the Corps' 2018 Work Plan, we will again work with the House and Senate Appropriations Committees to include a new start for a coastal storm damage reduction project in FY 2019, so that the project has another chance at securing a new start authorization.

Regarding the 7-year sunset clause, as discussed in the above WRDA section of this report, both the House and the Senate WRDA bills include an extension of the 7-year sunset clause in WRRDA 2014 to 10 years, language for which we had advocated. Therefore, both WRRDA-authorized projects on Topsail Island will now have until 2024 to receive new start funding before being deauthorized.