



WASHINGTON UPDATE

October 3, 2005

**FROM: Joe Raeder, The Ferguson Group
Washington Representative for the Family Farm Alliance**

ESA reform leads busy autumn session in Congress

The House this week approved the first comprehensive revisions to the Endangered Species Act (ESA) in 30 years, sending the legislation to the Senate where it faces an uncertain future.

The ESA measure (H.R. 3824), sponsored by Rep. Richard Pombo (R-CA), Chairman of the House Resources Committee, passed the House Sept. 29 on a vote of 229-193 after a competing ESA measure by Rep. George Miller (D-CA) and several moderate Republicans was narrowly defeated.

Pombo's bill now moves to the Senate, where opponents of the measure expect to have a stronger hand than in the House.

ESA reform is one of several issues crowding a Congressional agenda complicated by the effects of hurricanes Katrina and Rita. Appropriations are at the top of the list. With the federal fiscal year set to begin on Oct. 1, Congress has passed only two of the 12 appropriations bills necessary to fund the government. House and Senate leaders also remain committed to legislating cuts in federal programs through the budget "reconciliation" process later this Fall.

Western water and natural resources legislation is moving forward on a number of fronts. After months of concentrating on energy policy and ESA reform, Senate and House committees are taking up bills affecting Bureau of Reclamation projects and policies, including a rural water supply measure with a provision authorizing federal loan guarantees to cover extraordinary operations and maintenance costs paid by the users of Bureau projects. In addition, House and Senate committees are considering legislation to exempt the application of aquatic herbicides and pesticides from Clean Water Act permits.

ESA: The Pombo ESA bill passed by the House would make a number of improvements to the Act, including the elimination of the requirement for the establishment of critical habitat. Democratic and Republican Administrations have complained the critical habitat designations are costly, ineffective and prone to litigation.

The measure also would: require the establishment of standards for the science used in listing decisions; increase the roles of local and state authorities in ESA decision-making; establish voluntary conservation incentives for landowners; codify the “no-surprises” policy for Habitat Conservation Plans and exempt them from some consultation requirements; and provide for the compensation of landowners who lose the use of their property because of ESA restrictions.

The bill passed by the House is a revised version of the Pombo bill approved by the House Resources Committee. The committee bill included a somewhat stricter definition of “jeopardy,” that many western water users believed would cause more problems than the current law. The disputed jeopardy definition was dropped from the revised version approved by the House.

The alternative ESA measure offered by Rep. Miller and Rep. Sherwood Boehlert (R-NY), Chairman of the House Science Committee, addressed many of the same issues as the Pombo bill, including the elimination of critical habitat. However, debate over the proposal focused on whether the recovery plans of the Pombo bill were strong enough, and on the Pombo provision allowing compensation to property owners. Miller and Boehlert argued that the compensation section of the Pombo bill is ripe for abuse, and they noted that the Bush Administration, which supports the Pombo bill overall, also has concerns about the costs of the compensation provisions.

The Miller-Sherwood alternative drew support from most Democrats and moderate Republicans, and the closeness of the vote (216-206) defeating it has given opponents of the Pombo bill reason to be optimistic that the bill will be changed or killed in the Senate.

Anticipating that the House would act on ESA reform this year, the Senate Environment and Public Works Committee has held a series of hearings on implementation of the Act. The hearings have been led by Sen. Lincoln Chafee (R-RI), the chairman of the wildlife subcommittee, a moderate Republican who has expressed skepticism about the need for major changes to the ESA. Another subcommittee member active on the issue, Sen. Hilary Clinton (D-N.Y.), has been openly critical of the Pombo bill.

Chafee and Clinton have said that they want to focus on landowner incentives, but they have pledged to work with Western state Senators such as Sen. Mike Crapo (R-ID), the former chairman of the wildlife subcommittee who has been drafting ESA amendments that address science standards and other issues covered by the Pombo bill.

Appropriations: The House has passed all the appropriations bills necessary to fund the federal government in FY 06, but the Senate is lagging behind. And in instances where the Senate also has passed its version of an appropriations measure, differences between the House and Senate bills are proving difficult to overcome.

This is the case with the Energy and Water Development Appropriations bill, which funds the Bureau of Reclamation and the Army Corps of Engineers. Each chamber passed its version of the bill months ago, but the Senate bill is \$1.4 billion richer than the House measure. In addition, House provisions mandating changes in the Corps contracting methods are opposed by many in the Senate.

Also complicating the picture is the question of funding for the Corps of Engineers rebuilding efforts on the Gulf Coast. Congress has sent billions in recovery aid to the region through special appropriations bills, but Congressional leaders have indicated that some of the Corps' Gulf Coast funding will be drawn from the regular FY 06 appropriations bill, perhaps at the expense of Corps and Bureau projects elsewhere.

Staff-level discussions to resolve the differences in the Energy and Water bill only got underway recently, and it's possible that the bill may not be finalized for weeks to come.

In the meantime, the Bureau, Corps and most other federal agencies are operating under a temporary funding measure called a "continuing resolution" that Congress approved on Sept. 30. The "CR" runs through Nov. 18, which is when Congressional leaders hope to adjourn for the year. However, many on the Hill expect the session to last until December.

Reconciliation: Republican Congressional leaders have for several months been working on plans to reduce federal spending through the "budget reconciliation" process, in which laws governing entitlement programs, tax rates and other federal expenditures are amended to require reduced levels of spending or increased revenues. Each Congressional committee is given a savings target that it is supposed to reach by amending laws and programs within its jurisdiction. The changes are packaged together into a special bill that can be fast-tracked through the House and Senate.

The Gulf Coast disaster disrupted plans to complete reconciliation early this fall, and work on it has now been postponed until mid October, at the earliest. Some Members have suggested scrapping the idea in the face of the huge federal outlays required by Katrina, but the Congressional leadership still plans to push ahead, perhaps wrapping reconciliation into a year-end omnibus appropriations bill.

The reconciliation process is significant because changes in federal programs and laws, such as the Reclamation program, that would otherwise take years to enact can be made in a matter of weeks.

Clean Water Act permit legislation: On Sept. 29, the House Water Resources and Environment Subcommittee took testimony on a bill (H.R. 1749) that would amend the Clean Water Act (CWA) to allow the Environmental Protection Agency to waive CWA permits for the application of pesticides and herbicides to water sources when they are applied in accordance with federally approved label instructions.

In the past, EPA has not required Clean Water Act permits (NPDES permits) for the application of chemicals and biological agents already regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

But recent court decisions in litigation brought by environmentalists have determined that NPDES permits are required for FIFRA regulated chemicals applied to irrigation canals and other water bodies.

As a result of once such case involving the Talent Irrigation District in Oregon, the EPA earlier this year proposed a rule exempting from CWA regulation FIFRA-regulated chemicals applied to or over water.

However, many in Congress believe the EPA rule is not tight enough. Rep. Butch Otter (R-ID) and Sen. James Inhofe (R-OK) introduced legislation (H.R. 1749, S 1269) that would clarify and codify the exemption. The Senate Environment and Public Works Committee held a hearing on the Inhofe bill in June.

The Family Farm Alliance has joined the National Water Resources Association, American Farm Bureau Federation and American Mosquito Control Association in strongly supporting the Otter and Inhofe bills. Some of those organization testified at the Sept. 29 hearing.

Environmentalists oppose the legislation. They contend that applying pesticides to water bodies is an action that clearly comes under the jurisdiction of the CWA.

The Subcommittee has not yet scheduled further action on the bill.

Rural water supply: On Sept. 28, the Senate Energy and Natural Resources Committee approved a handful of Reclamation bills, including a measure (S. 895) by Chairman Pete Domenici (R-NM) that would create a rural water supply program within the Bureau.

Before approving the bill, the Committee added an amendment called the “21st Century Water Works Act,” that would provide federal loan guarantees for up to 90 percent of the costs of “extraordinary” operation and maintenance or rehabilitation projects at Reclamation facilities. The costs of such projects are generally the responsibility of districts with Reclamation repayment or water service contracts.

Earlier this year, the Family Farm Alliance testified before the Senate Energy Committee and the House Resources Committee about the need to improve the existing

Reclamation infrastructure and to assist irrigation and water districts in meeting their financial responsibilities for O&M. Loan guarantees was one of the methods recommended by the Alliance in its testimony.

The Committee hopes to bring the bill to the floor this year. The outlook in the House is not clear because no similar legislation has been introduced there.

Reclamation legislation

In the Senate: In addition to the rural water supply bill, the Senate Energy Committee approved the following measures on Sept. 30.

S. 166 - To amend the Oregon Resource Conservation Act of 1996 to reauthorize the participation of the Bureau of Reclamation in the Deschutes River Conservancy.

S. 251 - To authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to conduct a water resource feasibility study for the Little Butte/Bear Creek Sub-basins in Oregon with an amendment adding a 50 percent cost-share component.

S. 592 - To extend the contract for the Glendo Unit of the Missouri River Basin Project in the State of Wyoming with an amendment to the title.

S. 819 - To authorize the Secretary of the Interior to reallocate costs of the Pactola Dam and Reservoir, South Dakota, to reflect increased demands for municipal, industrial, and fish and wildlife purposes.

S. 891 - To extend the water service contract for the Ainsworth Unit, Sandhills Division, Pick-Sloan Missouri Basin Program, Nebraska.

The Senate Water and Power Subcommittee has scheduled an Oct. 6 hearing on the following bills.

S. 1025 - To amend the act providing for the construction of the Cheney division, Wichita federal reclamation project, Kansas.

S. 1498 - To direct the Secretary of the Interior to convey certain water distribution facilities to the Northern Colorado Water Conservancy District.

S. 1578 - To reauthorize the Upper Colorado and San Juan River Basin endangered fish recovery implementation programs;

S. 1760 - To authorize early repayment of obligations to the Bureau of Reclamation within the Rogue River Valley Irrigation District or within the Medford Irrigation District.

In the House: On Sept. 27, the House Water and Power Subcommittee held a hearing on the following bills:

H.R. 2925 – To extend Title I of the Reclamation States Emergency Drought Relief Act of 1991 from September 2005 to September 2010. The act allows the Bureau to buy and sell water, use water banks, divert water for environmental purposes and assist towns dealing with drought. Extending the act would not authorize any new projects or raise the authorized \$90 million cap.

H.R. 1564 – To authorize the Secretary of the Interior to transfer nine acres of Bureau of Reclamation land to the Yakima-Tieton Irrigation District.

H.R. 2873 – To direct the Secretary of Interior to transfer two tracts of land in New Mexico associated with the Rio Grande water supply project.

H.R. 3443 – To authorize the Secretary of the Interior to transfer three water distribution facilities to the Northern Colorado Water Conservancy District.

The Subcommittee also took testimony on a proposal by Chairman George Radanovich (R-CA) to divert excess water from California's San Joaquin River into a 250,000-acre-foot underground reservoir in Madera.

The House Water and Power Subcommittee has scheduled an Oct. 6 hearing on the following bills:

H.R. 122 - To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Eastern Municipal Water District Recycled Water System Pressurization and Expansion Project.

H.R. 2341 - To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of a project to reclaim and reuse wastewater within and outside of the service area of the City of Austin Water and Wastewater Utility, Texas.

H.R. 3418 -To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Central Texas Water Recycling and Reuse Project, and for other purposes.

H.R. 3929 - To amend the Water Desalination Act of 1996 to authorize the Secretary of the Interior to assist in research and development, environmental and feasibility studies, and preliminary engineering for the Municipal Water District of Orange County, California, Dana Point Desalination Project located at Dana Point, California.