



## Legislative News

July 1992

### **EPA Testifies At House Hearing on FERC Hydropower Licensing/Relicensing**

On May 15, 1991, Martha Prothro, Deputy Assistant Administrator for Water, testified before the Environment, Energy, and Natural Resources Subcommittee of the House Government Operations Committee. The hearing was to examine FERC's administration of licensing and relicensing for hydropower projects, and the role of several agencies in the licensing process. The hearing was held because of concerns about the significant increase in license renewals that FERC expects for hydropower projects in the next few years. Many existing projects were initially licensed decades ago, and many are now coming up for renewal.

Specifically, Prothro discussed EPA's role in State certification of Federal permits and licenses under Section 401 of the Clean Water Act (CWA). This section requires States to issue, condition, deny, or waive certification of federal projects, including federal hydropower projects, that may affect the physical, chemical, or biological integrity of water resources. In a few cases, EPA has assumed this responsibility. Section 401 also gives EPA the authority to notify other affected States and make independent recommendations to the Federal permitting or licensing agency in cases where a discharge may affect waters in a state other than where the discharge occurs. FERC has questioned the extent of a State's authority under Section 401. In a letter to LaJuana Wilcher in 1990, FERC argued that conditions on Section 401 certificates that would protect existing uses, such as fisheries, were

### **WRDA Reauthorization Amending MPRSA Would Impact Ocean Dumping Program**

The Water Resources Development Act (WRDA) of 1992, S.2764, includes provisions that would amend the Marine Protection, Research, and Sanctuaries Act (MPRSA) and impact the management of contaminated sediments and the ocean dumping program. The amendments would establish a goal to end the ocean dumping of any material which violates sediment or water quality criteria and standards, and requires that no permit be issued for any material exceeding such criteria or standards. The bill also provides that EPA become the permitting authority for dredged material failing the criteria; EPA would issue "special permits" in place of waivers. Currently, COE is the permitting authority for all dredged material, and if material fails ocean dumping criteria, COE cannot issue a permit unless EPA gives a waiver.

The bill would also extend ocean dumping regulations to estuarine waters, significantly increasing the number of sites to be designated and monitored. It is unclear how this extension would affect the existing CWA Section 404 permitting program which already applies to these waters. In addition, States would gain the authority to regulate ocean disposal in their waters as long as the State-imposed criteria or standards exceeded federal criteria or standards.

The bill contains new site designation and monitoring requirements. It would restrict the COE's current ability to select non-EPA selected sites, even where the use of approved sites is not feasible.

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unrelated to water quality. EPA responded to FERC by stating that the CWA mandate to restore and protect the "chemical, physical, and biological integrity of the nation's waters" involves more than just addressing the chemistry of the water column. Given that Section 401 is one of the most important tools States have to maintain water quality and protect drinking water and aquatic habitats, maintaining the existing level of authority will continue to be an area of concern as debate over streamlining the FERC process continues.

EPA also has responsibilities in hydropower licensing through its authorities in Section 404 of the CWA. While the Corps issues Section 404 permits, EPA has review authority and may veto projects that have unacceptable adverse environmental impacts.

Prothro expressed EPA's support for more efficient licensing of hydropower projects. To effect this change, she suggested that EPA and FERC enter into an agreement that would clearly indicate how EPA's environmental review role could be linked with the FERC process to ensure that relicensing occurred expeditiously and in an environmentally sound manner. (Contact: Benjy Ficks, Wetlands Division, 260-2364).

## **House Hearings on Wetlands and Takings**

On May 21, 1992, the House Merchant Marine and Fisheries Committee held a hearing on wetlands and taking. Views were presented by Congressional members sponsoring wetlands legislation as well as representatives from the States, environmental groups, and public interest organizations. EPA was not invited to testify. Congressman Hayes testified on H.R. 1330, the Comprehensive Wetlands Conservation and Management Act. The bill, which was discussed at length, includes provisions providing for monetary and non-monetary compensation. Other major issues of discussion included: How do we reconcile individual property rights vs.

the public welfare?, Who should define a "taking"?, How is compensation determined?, How will we pay for compensation?, and Would H.R.1330 set a precedent for other government programs?

The committee will continue to consider options for addressing wetlands regulation in the upcoming CWA reauthorization. Acknowledging that the takings issue is difficult and divisive, Congressman Studts, committee chair, concluded the hearing by requesting that each representative testifying provide the committee with their concept of the "middle ground" on the issue, along with a description of how their position differs. (Contact: Nathaniel Stevens, 260-5048).

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## *WRDA - Continued from Page 1*

Numerous meetings have been held between Senate staff and EPA and COE staff to provide comments on the bill. Resulting redrafts are expected to modify the original provisions to provide for greater compatibility with existing programs. (Contact: Craig Vogt, 260-1952).

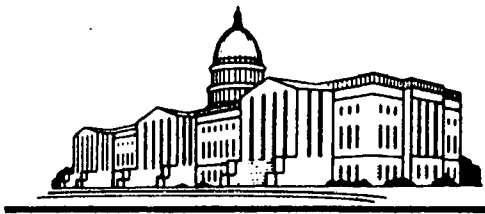
## **NAS Study of Wetlands Delineation Manual Linked with EPA Appropriation**

The House HUD and Independent Agencies subcommittee is expected to provide \$500,000 in its appropriations bill for a National Academy of Sciences study on ways to improve the 1987 Corps wetlands delineation manual. This requirement is likely to trigger a larger debate over whether EPA should be required to use the 1987 manual in its delineations. House rules preclude attaching such a requirement to the appropriations bill; however, it could be attached to the Senate bill. Last year, the Senate Energy and Water appropriations bill included language

requiring that the Corps use the 1987 manual. The full House Appropriations Committee is expected to take up the subcommittee's proposal in late July. (Contact: Mike Fritz, 260-6103).

### **Interagency Work Group Examining Watershed Approaches for CWA Reauthorization**

An interagency work group has been established to examine ways in which a watershed approach can be encouraged in the Clean Water Act reauthorization. Specifically, the work group will be developing options on how to incorporate watershed approaches to decision-making into the Act and target resources to high priority geographic areas. While the primary focus is on reauthorization, the meetings also offer an opportunity to exchange information on existing watershed approaches to gain a better understanding of the various programs within each Agency. Improving this understanding is a first step towards increasing cooperative efforts and leveraging resources for maximum economic and environmental results in those areas where common goals and responsibilities exist. In addition to EPA, other participating agencies include: the Department of Agriculture (Soil Conservation Service, Forest Service, Economic Research Service), the Department of Interior (Bureau of Reclamation, Geological Survey), Army Corps of Engineers, National Oceanic and Atmospheric Administration, Council on Environmental Quality, and Office of Management and Budget. (Contact: Sandy Germann, 260-6418).



### **National Energy Bills Address Hydropower Development, Outer Continental Shelf Leasing**

The House and Senate are moving towards a conference on a comprehensive national energy bill. The House passed its version, H.R. 766, on May 27, 1992, by a vote of 381-37. The Senate version, S.2166, which is supported by the Administration, passed in February by a vote of 94-4. The Senate bill calls for streamlining the FERC process for hydropower development, directs DOE to study the feasibility of increasing the availability of hydropower production, and provides for fish and wildlife mitigation through water conservation. It would also remove FERC jurisdiction over hydropower projects in Hawaii and at three sites in Alaska.

In contrast, the House bill includes provisions that would increase State authority to protect their waters from hydropower development. It would restrict hydropower development in and around federal lands, and prohibit federal agencies from licensing projects on any river segment protected by a state program. The bill would also clarify the definition of "fishways". The States have been opposed to FERC's more narrow interpretation that fishways only apply to upstream passage. EPA has interpreted the definition to allow for both upstream and downstream passage.

Both the House and Senate bills contain provisions establishing coastal resources enhancement funds using revenues from outer continental shelf (OCS) leases. The House bill would set aside 4% of the revenues from existing leases to provide block grants to the States for projects that would protect, conserve, or enhance air quality, water quality, fish and wildlife habitats, or wetlands in or near state coastal zones; ameliorate adverse environmental impacts associated with leasing activity in the coastal zone; or assessing proposed projects within a coastal zone. The Senate bill would set aside 4% of revenues from new leases, with an annual cap of \$100 million to fund similar activities. In addition, the Senate bill would provide for the establishment

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of a coastal communities impact assistance fund with annual deposits not to exceed \$300 million. Availability of funding in both bills would be subject to yearly Congressional appropriations.

The bills also address moratoria on OCS leasing activities. The Senate bill would require a moratorium in the North Atlantic, Washington, and Oregon planning areas; and areas off California, New Jersey, and Florida until 2000. In addition to these areas, the House bill would expand the moratorium to include the mid-Atlantic, Gulf areas, and the Aleutian Basin in Alaska through 2002. The House bill also requires the cancellation and buyback of leases off North Carolina, Florida, and the Aleutians; the Senate bill would cancel and buyback leases in Florida subject to the availability of funds. (Contact: Sandy German, 260-6418).

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- o information from Congressional documents,
- o a summary of pending legislation, and
- o a history of all actions related to a particular bill.

Legi-Slate, an on-line database of legislative information, is being used to ensure that the most up-to-date information is available when needed. If you have a question or need assistance, give the library a call. (Contact: Joan Platten or Pamela Abraham, (FTS) 260-5425).

## Other Items to Note...

Funding for National Estuary Program. The Water Pollution Control and Estuary Restoration Financing Act, S.2831, has been introduced by Dodd (D-CT) and Lieberman (D-CT) to provide special funding to states for implementing National Estuary Program comprehensive conservation and management plans.

National River Database. Congressman Kostmeyer (D-PA) has introduced H.R.5001 providing for a national database listing the recreational and other values of rivers across the country. The database, intended to provide a national assessment of river resources, would be developed by Interior in cooperation with the States.

Water Reclamation. Provisions to reduce water allocations to agriculture to provide more water for fish and wildlife habitat in the Central Valley will be part of the debate over a major water bill, the Reclamation Projects Authorization and Adjustment Act (H.R. 429). The provisions, originally proposed as part of the Central Valley Project Improvement Act (H.R. 5099), were excluded from the House passed bill. However, as the reclamation bill goes to conference, Interior Committee Chair Miller (D-CA) is expected to propose the bill as an amendment for further consideration.

"Legislative News" is a regular newsletter of the Office of Wetlands, Oceans, and Watersheds (OWOW). Its purpose is to provide an overview of those legislative issues and actions that are particularly relevant to OWOW programs. Any comments regarding its content should be directed to Sandy Germann of OWOW at 260-7166.