

# Warwick Group CONSULTANTS



Water Resources Policy, Public Finance & Advocacy

## Topsail Island Shoreline Protection Commission, NC

Monthly Update · July 20, 2015

### Shore Protection Projects

As we mentioned last month, the Senate Appropriations Committee has approved a funding bill for the Corps, however, the Senate has yet to consider the legislation. Senate Democrats are attempting to block any appropriations bills from being considered over their opposition to “sequestration” funding levels that are maintained in the various funding bills. Sequestration describes the automatic cuts to the United States Federal government spending that were put in place in 2013 through the Budget Control Act of 2011. The cuts to spending came to about \$85.4 billion during FY 2013 and are set to stay at the level until 2021. Congress quickly carved out an agreement to put them on hold for two years, but that agreement expires on September 30<sup>th</sup> of this year.

The Senate version of the Energy and Water Development Appropriations Bill provides no additional funding for shore protection projects above the level requested by the President, despite the House’s addition of \$45 million. That being said, the Senate version does provide for 10 new study starts and six new construction starts for FY 2016. As we discussed last month during the monthly meeting, of these six new construction starts, four are allocated to projects identified by the Administration, leaving only two potential opportunities. In all likelihood, these two projects will not go to shore protection.

We have advised the Commission to request construction funding for both the West Onslow Beach and New River Inlet project and the Surf City and North Topsail Beach project in the FY 2017 budget. Now is the time of year during which Districts send their budget requests up the chain. We will provide the Commission with a draft letter to District and the Assistant Secretary of the Army for Civil Works requesting funds for FY 2017.

### Coastal Barrier Resources Act

Warwick Group Consultants continues to actively advocate for the Town of North Topsail Beach’s removal from the Coastal Barrier Resources System Unit L06. This month, Warwick Group

organized meetings with Senator Tillis and Congressman Jones' offices for Mayor Tuman, who will travel to Washington, DC on July 21<sup>st</sup>.

Warwick Group is also reexamining language in the CBRA of 2000. The language is a potential opportunity to have U.S. Fish and Wildlife Service (FWS) reconsider its decision regarding North Topsail Beach's CBRA designation and limitations. That being said, Warwick Group has attempted to use this language in the past with FWS and was not successful. Nevertheless, we will work with our contacts in FWS to determine whether or not the provision could be helpful.

## Waters of the United States

On June 29<sup>th</sup>, 18 states sued the Obama administration Monday to stop a new regulation asserting federal authority over minor waterways like streams and wetlands.

The rule from the Environmental Protection Agency (EPA) is one of the most controversial regulations from the Obama administration, redefining how the EPA enforces the water pollution protections of the Clean Water Act. The states got together in three separate groups to file lawsuits in different federal courts, based in Bismarck, N.D.; Columbus, Ohio; and Houston. On June 30<sup>th</sup>, an additional 9 nine states sued the Obama administration bringing the total number of states challenging the regulation to 27. Since the states are challenging the same regulation, the federal court system is likely to combine all four lawsuits into one.

The states suing the Obama administration are Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Wyoming, Ohio, Michigan, Texas, Mississippi, Louisiana, South Carolina, West Virginia, Alabama, Florida, Georgia, Kansas, Kentucky, Utah and Wisconsin.

On July 13<sup>th</sup>, The U.S. Chamber of Commerce, National Federation of Independent Businesses (NFIB) and other groups also announced a lawsuit against the Environmental Protection Agency's (EPA) "Waters of the United States" rule. The legal proceedings will further complicate the Waters of the U.S. ruling in the future.

Additionally, various appropriations bills on both the House and Senate side contain language blocking the EPA and Corps' ability to implement and enforce the controversial rule. These policy riders can be found in both the Senate and House version of the Energy and Water Development Appropriations bills, which prompted the White House to issue a veto threat for the legislation. Additionally, the Senate Committee on the Environment and Public Works advanced a bill that would overturn the new rules on June 10<sup>th</sup>.

## Surface Transportation

On July 15<sup>th</sup>, the House voted to approve an \$8 billion bill to extend federal transportation funding until December. The bill passed in a 312-119 vote. The bill now goes to the Senate, which is considering a funding bill that could also include an extension of the Export-Import Bank's charter. That would introduce a new complication to the fight over highway funding; conservatives in the House want to keep Ex-Im from being revived.

The federal government typically spends about \$50 billion per year on transportation projects, but the gas tax only brings in approximately \$34 billion annually. The nonpartisan Congressional Budget Office has estimated it will take about \$100 billion, in addition to the gas tax revenue, to pay for a six-year transportation funding bill.

After the vote Sen. James Inhofe (R-Oka.) predicted senators would be able to quickly pass a long-term highway bill, as soon as it wraps up its work on its No Child Left Behind overhaul. However Senate Republicans made it clear that they won't just accept the short-term highway patch the House passed, and are still interested in a multi-year bill. Senate Finance Committee

## Federal Flood Risk Management Standard Update

The comment period for [Executive Order 13960](#) regarding the Federal Flood Risk Management Standard (FFRMS) ended on May 6<sup>th</sup>. The controversial order received over [300 comments](#) during the public comment period, which was extended by one month due to interest in the issue. There is significant support and opposition for the order and its update of the FFRMS from national organizations, state agencies, and members of Congress.

On January 30<sup>th</sup>, President Obama issued Executive Order 13960, updating the FFRMS “to improve the Nation’s resilience to current and future flood risk.” The order applies to all federal action in or affecting floodplains, and established a new flood level to which new and rebuilt federally funded structures or facilities must be resilient. Agencies, at their own discretion, can choose one of three enumerated approaches:

1. Use the best available, actionable data and methods that use current and future changes in flooding based on climate science
2. Build to two or three feet above the 100-year or 1% annual chance flood line
3. Build to the 500-year or 0.2% annual chance flood line

Importantly, the directive calls on agencies to use natural systems, ecosystem processes, and nature-based approaches when developing alternatives for consideration, whenever possible. Finally, the E.O. applies the new FFRMS to areas outside the flood plain where the freeboard approach is used. The freeboard approach applies to flood risk management strategies to areas above the flood level. Most floodplain managers already use this approach whether or not an area is within the mapped floodplain boundary.

Some organizations expressed general support for the order in their comments, including the Insurance Institute for Business Home Safety, the American Society of Engineers, the National Association of Home Builders, the National Conservancy, the Kentucky Division of Water, Chad Berginnis of the Association of State Floodplain Managers, and David Conrad of Water Resources Policy. However, the majority of positive comments came with requests for clarification of the order and some of the terms it uses, including whether or not the standards apply to roads, bridges, and highways, or the abstract nature of the term “climate science.”

On the other side of the debate, opposition from several sources ridiculed the executive order for its lack of transparency and public participation. The California Central Valley Flood Control Association along with Senator James Inhofe, Chair of the Senate Committee on Environment and Public Works, expressed apprehension over the process used to issue the executive order,

and the lack of collaboration with state and local governments. Additionally, the Louisiana Congressional Delegation is seriously concerned over the effects the order will have on its unique coastal communities in the Gulf of Mexico.

An amendment from Representative Ralph Abraham (R-LA) was added to the House version of the [Energy and Water Development Appropriations bill](#) that would prevent any funding from being used to implement, administer, carry out, modify, revise, or enforce the new FFRMS.