



U.S. House of Representatives
Committee on Transportation and Infrastructure

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SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Water Resources and Environment

FROM: Subcommittee on Water Resources and Environment Staff

SUBJECT: Hearing on the President's Fiscal Year 2009 budget request for Army Corps of Engineers and Environmental Protection Agency

PURPOSE OF THE HEARING

The Subcommittee on Water Resources and Environment will hold a hearing on the President's budget request for fiscal year 2009 on Thursday, February 7, 2008, at 2:00 p.m., in 2167 Rayburn House Office Building. Testimony will be received from the U.S. Army Corps of Engineers ("Corps") and the Environmental Protection Agency ("EPA") on their proposed budgets for FY 2009.

ENVIRONMENTAL PROTECTION AGENCY

The administration's FY 2009 budget request for the Environmental Protection Agency totals \$7.1 billion, including \$2.6 billion for State and Tribal Assistance Grants, \$2.3 billion for Environmental Programs and Management, and \$1.3 billion for the Hazardous Substance Superfund program.

The FY 2009 budget request cuts EPA funding by more than \$300 million from the FY 2008 appropriations of \$7.5 billion. Funding levels between the FY 2009 request and FY 2008 are similar for Environmental Programs and Management (\$2.3 billion for both years) and Superfund (\$1.3 billion for both years). The FY 2009 request for State and Tribal Assistance Grants is approximately \$300 million less than the FY 2008 appropriations.

Clean Water

EPA's water programs are designed to provide improvements in the quality of surface waters and drinking water. The Committee on Transportation and Infrastructure has jurisdiction over programs aimed at protecting the nation's water quality. EPA, through its own programs and in combination with states and tribes, seeks to improve water quality in rivers, lakes, and coastal waters through investment in wastewater infrastructure, water quality standards, permitting programs, water quality monitoring, and research, among other activities. EPA's Office of Water operates EPA's water quality protection programs.

Overall FY 2009 requested funding for EPA water programs is \$2.5 billion. The FY 2009 budget request is \$323 million less than the FY 2008 appropriations.

EPA's states FY 2009 water program priorities are:

- Develop sustainable solutions for water infrastructure;
- Restore and protect America's wetlands and watersheds;
- Improve monitoring and measuring for clean, safe, and secure water; and
- Advance regional and coastal collaborations.

Clean Water State Revolving Fund: The FY 2009 budget request provides \$555 million for the Clean Water State Revolving Fund ("CWSRF"). This request is a reduction of \$134 million, compared to the FY 2008 appropriations. The CWSRF is the primary federal vehicle for funding wastewater infrastructure programs throughout the nation. CWSRF funds are used for capitalization grants for State Clean Water programs and infrastructure.

Other Wastewater Infrastructure Funding: The FY 2008 appropriations contained funding for 250 targeted wastewater infrastructure projects. The administration cuts funding for \$146 million for these projects in the FY 2009 budget request because they were included in the FY 2008 appropriations report language. The administration justifies eliminating those projects because the projects are contained in the report language and "circumvent normal allocation and priority setting processes."

The administration is requesting \$10 million for water infrastructure along the U.S.-Mexico border in its FY 2009 request. This request is a \$10 million reduction from the FY 2008 appropriations. The administration justifies this reduction because of "the program's slow rate of project development over the last 10 years." Water infrastructure assistance for Alaska Native Villages is also reduced in the FY 2009 budget request.

Nonpoint Source Water Pollution: The FY 2009 budget request provides \$185 million for Clean Water Act Section 319 Nonpoint Source Grants. This request is a reduction of \$16 million from the FY 2008 appropriations.

Regional Programs: Regional programs are highlighted by the administration as opportunities to target regionally specific environmental problems and to work closely with state and local partners. In its FY 2009 budget request the administration has increased funding over the FY 2008 appropriations for the Great Lakes Program and the cleanup of contaminated sediment

through the Great Lakes Legacy Act. Funding was reduced for the Chesapeake Bay and Gulf of Mexico, compared to the FY 2008 appropriations. Funding for the San Francisco Bay program¹ contained in the FY 2008 appropriations was terminated. Funding for the Puget Sound program was reduced by \$19 million, to \$1 million, in the FY 2009 budget request.

The administration is requesting \$17.2 million for the National Estuaries Program in its FY 2009 budget request. This is a \$10 million reduction from FY 2008 appropriations. The National Estuary Program consists of 28 individual estuary programs located across the country.

Other Water Programs: EPA's Clean Water Act Section 106 Water Pollution Control grant program increases by \$4 million, the Tribal General Assistance Program ("GAP") grants increase by \$2 million, and Wetlands Program Development grants and Beaches Protection program grants marginally increase over the FY 2008 appropriations.

In its FY 2009 budget request, the administration terminates its Targeted Watersheds Grants Program. This program was funded at \$9.8 million in the FY 2008 appropriations. The Targeted Watersheds Grant Program is intended to promote "community-based approaches and management techniques to protect and restore the nation's waters...by providing assistance to watershed groups and service provider organizations working to protect and restore watersheds..."

Superfund and Brownfields

Superfund Program: The Comprehensive Environmental Response, Compensation, and Liability Act established the Superfund program in 1980. Superfund is the Federal government's program to cleanup the Nation's uncontrolled and/or abandoned hazardous waste sites. EPA addresses the highest priority sites by listing them on the Superfund National Priorities List ("NPL"). EPA's Office of Solid Waste and Emergency Response ("OSWER") runs the Superfund program.

The administration's stated FY 2009 priorities for the Superfund program include:

- Continued remediation at the most highly contaminated hazardous waste sites;
- Funding projects that are ready to begin construction;
- Continue to fund large and complex ongoing construction projects;
- Devote more resources toward post-construction activities, including long-term remedial actions, reuse, and five-year reviews;
- Complete remedy construction at 35 Superfund sites;
- Make 30 Superfund sites ready for anticipated use site-wide; and
- Undertake 195 Superfund-lead removals and oversee the completion of 125 voluntary removal actions.

The administration's FY 2009 budget request for Superfund totals \$1.3 billion. This amount is consistent with the FY 2008 appropriations. Of this amount, \$193.9 million is for Superfund

¹ The San Francisco Bay program and the Puget Sound program are not free-standing program offices with the Environmental Protection Agency, but are part of the larger National Estuaries Program (Section 320 of the Clean Water Act).

removal actions, \$586.1 million is for Superfund remedial actions, and \$163.7 million is for Superfund enforcement activities.

Brownfields Program: Brownfields consist of property for which the expansion, redevelopment or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. These sites can consist, for example, of former industrial properties, gas stations, or dry cleaners, amongst others. Estimates of the number of brownfields sites, nationally, range from 450,000 to one million. EPA established the Brownfields Initiative in 1995 to better enable the Federal government, states, and communities to work together to address, cleanup, and reuse brownfields sites. The Small Business Liability Relief and Brownfields Revitalization Act authorized increased funding for EPA to award brownfields assessment, cleanup, and revolving loan fund grants. EPA's Office of Solid Waste and Emergency Response (OSWER) runs the Brownfields program.

The administration's brownfields program priorities for FY 2009 include:

- Providing funding for assessment, cleanup, Revolving Loan Fund, and job training grants;
- Assessing brownfields properties;
- Cleanups of brownfields properties; and
- Funding for assessment and cleanup of abandoned underground storage tanks and other petroleum contamination found on brownfields properties.

The administration's FY 2009 budget request for Brownfields totals \$165.8 million. This is an increase over both the administration's FY 2008 budget request of \$162.2 million, and FY 2008 level of \$164.3 million. Of this number, the administration's budget requests \$93.6 million for brownfields site assessment and cleanup grants, \$49.5 million for State voluntary cleanup programs, and \$22.7 million for EPA's administration of the brownfields program.

ARMY CORPS OF ENGINEERS

The Army Corps of Engineers ("Corps") provides water resources development projects for the nation, usually through cost-shared partnerships with nonfederal sponsors. Activities include navigation, flood control, shoreline protection, hydropower, dam safety, water supply, recreation, environmental restoration and protection, and disaster response and recovery.

The water infrastructure and programs of the Corps support vital economic and environmental needs of this nation. These projects provide for continued economic growth, job creation, and economic stability while protecting human lives, ensuring reliable waterborne transport of goods, and important environmental restoration of valuable natural resources. The administration is requesting significant cuts in the Corps budget totaling \$845 million (-16 percent from FY 2008 appropriations). These cuts will significantly affect the ability of the agency to provide and maintain necessary water infrastructure, and to protect human health and the environment.

The construction projects are 27 percent less than FY 2008 appropriations, and the investigations account is 46 percent below FY 2008 appropriations. In addition, these low funding

levels continue to exacerbate problems by failing to fund the construction backlog, and preventing the study and development of solutions to current water resources challenges. Not only is the administration's budget below the FY 2008 appropriations, but it is also far below the capability levels of the Corps to invest in navigation, flood damage reduction, and environmental restoration projects.

Investigations: The administration's FY 2009 budget request proposes to cut the investigations account to \$91 million, a decline of \$76 million (-46 percent) from FY 2008 appropriations. The administration proposes this low budget request to limit development of new projects because, in the administration's view, the current construction backlog precludes the need for new feasibility studies.

The investigations account is used to fund the study of potential projects related to river and harbor navigation, flood control, shore protection, environmental restoration, and related purposes. This account also funds the restudy of authorized projects, miscellaneous investigations, and plans and specifications of projects prior to construction. The administration's FY 2009 budget proposes only one new project study, funded under the Mississippi River and Tributaries account (Atchafalaya Basin Floodway Land Study).

In the investigations account, no new project studies are included; instead, the focus is on completing ongoing studies. In addition, little funding is provided for projects that have completed the feasibility study phase and are ready for preconstruction, engineering, and design. This would halt the seamless funding of projects that has been the standard practice of the Corps. If enacted at the levels proposed, the FY 2009 general investigations budget would have a significant effect on staffing levels of Corps district offices because the salaries of Corps employees are paid from project funds, and in part from funds for project studies. In addition, the need for new projects is increasing and it is critical to maintain and enhance the capability of the Corps planning mission.

Construction: The construction account continues to decline under the administration's FY 2009 budget request of \$1.4 billion, a reduction of \$887 million (-27 percent) from the appropriation for FY 2008. These funds are used for the construction of river and harbor, flood control, shore protection, environmental restoration, and related projects specifically authorized or made available for selection by law.

The administration has assembled its budget under "construction budgeting principles" which directs funding to the highest performing projects while addressing human safety concerns. Typically, more than 240 projects are in some state of construction in any given fiscal year. The FY 2009 budget request contains funding for only 80 construction projects. While this funding level does not address the backlog of uncompleted projects, it does focus the Corps on completing a number of ongoing projects. Under the administration's budget proposal, 12 projects should be completed in FY 2009. The administration's principles require a benefit cost-ratio better than 1.5 for a project to be considered, and over 3.0 to receive full funding. Environmental restoration projects are reviewed based on cost-effectiveness and national significance. There is a consideration for flood damage reduction projects to address projects that pose a significant risk of human safety.

The administration budget again provides no funding for beach renourishment. This continues the administration's policy of funding initial beach replenishment only and for ongoing mitigation of Federal navigation of effects.

The administration's FY 2009 budget request for the construction account includes only two projects authorized in the Water Resources Development Act of 2007. These two projects are Picayune Strand, Florida, and modifications to the Folsom Dam elements of the American River project, California.

Operations and Maintenance: The administration's fiscal year 2009 budget decreases funding in the Operations and Maintenance ("O&M") from FY 2008 appropriations by \$44 million (-2 percent).² These funds are necessary for the preservation, operation, maintenance, and care of existing river and harbor, flood damage reduction, environmental restoration, and related projects. The request level continues to neglect operations and maintenance needs and fails to ensure the reliable and efficient operations of our nation's vast water infrastructure. Maintenance will continue to be deferred on many projects.

The administration again proposes to shift several former Construction General responsibilities to the O&M account. The new projects/programs include: infrastructure rehabilitation for work that is not large enough to be considered a replacement; Endangered Species Act compliance where the Corps is implementing an alternative set forth in a biological opinion; the construction of facilities, projects or features (including islands and wetlands) using materials dredged during Federal navigation operation and maintenance activities; and the mitigation of shoreline impacts resulting from Federal navigation operation and maintenance activities.

Recreation: The Corps is the largest Federal provider of outdoor recreation services. It manages 4,300 recreation areas at 456 Corps' sites in 43 states. Many of the Corps' facilities were built 30-40 years ago, and were designed to meet the recreation needs of the public at that time. Today, Corps facilities serve millions of people per year. The administration is proposing to spend \$270 million on recreation activities in FY 2009.

Water Trust Funds: The Harbor Maintenance Trust Fund is supported by an *ad valorem* tax paid by the shippers (not including exporters) of cargo loaded or unloaded at a U.S. port. The funds are used to do maintenance dredging of harbors and to provide for disposal facilities for dredged material. The budget would use only \$729 million from the Harbor Maintenance Trust Fund resulting in an increase in the balance of the trust fund to \$5.41 billion at the end of FY 2009. The balance in the Harbor Maintenance Trust Fund has been growing significantly in recent years.

The Inland Waterways Trust Fund is supported by a 20-cent per gallon tax on commercial fuel used on specified inland waterways. The fund is used to pay for half of the federal cost of constructing navigation improvements on those waterways; the remaining half is paid from general revenues. In recent years the Corps has been steadily spending down the Inland Waterways Trust Fund. The administration's budget request assumes enactment of an undefined administration proposal for the creation of new fees to replace the existing fuel tax for funding the Inland Waterways Trust Fund. Should this proposal be forthcoming, and be enacted, the budget proposes

² The administration's budget request proposes \$2.475 billion for the Operation and Maintenance account; however, this level includes a programmatic shift of \$275 million for activities that Congress has traditionally funded out of the Construction account. For purposes of comparison with the FY2008 appropriations level (\$2.244 billion), this \$275 million must be removed from the O&M request – resulting in a \$44 million decrease in the FY 2009 O&M request level compared to the FY2008 appropriations.

to transfer \$167 million from the Inland Waterways Trust Fund to the Construction/O&M accounts, resulting in a \$40 million balance in the Trust Fund at the end of FY 2009. If this proposal were not enacted, there would be insufficient funds in the Inland Waterways Trust Fund to meet the funding needs for the projects contained in the administration's request for the Construction/O&M accounts.

Regulatory Program: The administration's budget request for the Corps' Regulatory Program is \$180 million. This is the same as last year's request and amount appropriated for FY 2008. This program administers the laws pertaining to the regulation of activities affecting the waters of the United States, including wetlands, in accordance with the Rivers and Harbors Appropriation Act of 1899, the Clean Water Act, and the Marine Protection, Research and Sanctuaries Act of 1972. Again, this amount does not provide enough funding to cover additional work as a result of the *Rapanos* and *Carabell* Supreme Court decisions from last year.

Formerly Utilized Sites Remedial Action Program ("FUSRAP"): The administration's budget requests \$130 million, down \$10 million (-8.6 percent) from FY 2008. This program funds the cleanup of certain low-level radioactive materials and mixed wastes, located mostly at sites contaminated as a result of the nation's early efforts to develop atomic weapons.

Mississippi River and Tributaries ("MR&T"): The administration's request of \$240 million is a significant cut of \$147 million (-38 percent) from FY 2008 appropriations. The MR&T account provides for the planning, construction, and operation and maintenance activities associated with Mississippi River and Tributaries water resources projects located in the lower Mississippi River Valley from Cape Girardeau, Missouri to the Gulf of Mexico.

Administration Proposals: The administration budget request for FY 2009 contains five legislative proposals.

- 1) Reprogramming Rules: Proposal reaffirms the reprogramming rules contained in the FY 2008 Energy and Water Appropriations bill. This provision limits reprogramming to \$3 million for programs, projects or activities; and limits studies to 25 percent of base amount.
- 2) Convert Continuing Contracts to Multi-year contracts: Proposal amends the Rivers and Harbors Appropriation Act of 1922 to convert the Corps use of continuing contracts to multi-year contracts. The authorization is required for contracts over \$100 million with a notification and waiting period for any contingent liability over \$20 million.
- 3) Authorization for Louisiana Hurricane and Storm Damage Reduction project: Proposed section will authorize the Corps to complete the Louisiana protection system to a 100 year level of protection. The post-Hurricane Katrina emergency funds authorized the Corps to repair/replace the preexisting levels of protections which in many cases was less than 100 year protection. The budget also includes a proposed \$5.7 billion for implementation of the federal share of the project.
- 4) Inland Waterways Trust Fund: The budget raises the prospect of eliminating the current fuel tax which funds the Inland Waterways Trust Fund and replacing the revenue with a lockage fee or some other use based fee. The budget, however, does not contain a final legislative proposal.

- 5) Recreation Fees: The administration's budget calls for the Corps to resubmit its FY 2008 request for the Corps to collect new fees at recreation sites. This proposal permits the Corps to retain entrance fees collections in excess of \$37 million and is modeled on fee collection programs currently used by National Park Service and the Forest Service. Beginning in FY 2009, the Corps would be authorized to finance a portion of the cost of maintaining and upgrading recreational facilities through the collection of additional user fees, and from new planning, management, and financing arrangements with state and local government park authorities, and private sector concessionaires.