

NACo Legislative Bulletin

**ACTION
NEEDED!**

Executive Director: Larry E. Naake, Legislative Director: Edwin Rosado

July 8, 2011

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Opportunity to Comment on Administration's Rural Development Priorities – Action Needed!

USDA Rural Development is accepting written comments from stakeholders about rural development priorities for President Obama's 2013 budget and 2012 Farm Bill principles. USDA Rural Development implements federal programs that are critical to rural counties such as rural water/wastewater infrastructure, community facilities, broadband expansion, housing, renewable energy and business development initiatives. This is an important opportunity to share insights about how USDA Rural Development can enhance its program administration and delivery to rural counties. It is also an opportunity to bring forward NACo's rural development priorities.

Those interested in submitting written comments are asked to email them to rdregreform@osec.usda.gov. Please also copy Erik Johnston, NACo Associate Legislative Director, at ejohnston@naco.org so that he may keep track of county priorities that are submitted. There is no deadline for comments, but you are urged to comment by the end of July in order for them to be timely.

For questions, contact USDA Senior Advisor Sylvia Bolivar at rdregreform@osec.usda.gov or 202-260-8038.

More details about this opportunity, including USDA's suggested framework for comments and questions and links to NACo's fact sheets on the issue are available by [clicking here](#).

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House Interior Appropriations Subcommittee approves FY2012 Spending Bill

On July 7, the Interior, Environment, and Related Agencies Subcommittee under the House Appropriations Committee moved its appropriations bill via a party-line vote of 8-5. This bill significantly cuts funding for the Interior Department, the U.S. Environmental Protection Agency (EPA), USDA Forest Service and other federal agencies. Additionally, the bill contains a number of environmental policy riders. The legislation reflects the House's commitment to cutting spending and reducing the deficit by including cuts of \$2.1 billion below FY2010 levels and \$3.8 billion below the President's budget request.

Interior/Forest Service

The committee directed the use of \$189 million in emergency suppression carry-over dollars to fully fund the 10-year wildland fire cost average (Department of the Interior) at \$763 million, with an additional \$92 million – \$31 million above



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last year – for the FLAME fire suppression fund.

Additionally, \$200 million in emergency suppression carry-over funds were used to fully fund Forest Service Wildland Fire Management at \$1.8 billion, and includes an additional \$290 million for the FLAME fire suppression fund (in addition to the DOI fire management funding).

One of the largest cuts by the Interior Subcommittee was to the Land and Water Conservation fund – used primarily to fund additional Federal land acquisitions – which was cut by nearly 80 percent.

The bill included a number of policy riders – including a provision which would restrict ESA funding related to implementation of certain listing and critical habitat designation activities. This would establish a moratorium on the use of FY2012 funds for most listing and critical habitat determinations under Section 4 of the Act. Additionally, language has been included that would remove from judicial review de-listing decisions regarding gray wolves.

Also included in the bill was language which would overturn Secretary Ken Salazar's recent decision to extend a ban on uranium mining near the Grand Canyon and withdraw 1 million acres from mining activities.

NACo is largely supportive of providing appropriate levels of funding to USDA and DOI land management agencies. These agencies have experienced increased costs in delivering programs that are important to local communities adjacent to these public lands. As a result, there are backlogs in critical management and maintenance programs.

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EPA

The EPA is another loser in the budget battle, slated to receive \$7.1 billion, taking an 18 percent funding cut under current funding levels. The Clean Water and Drinking Water State Revolving Fund programs were cut by approximately \$1 billion over the previous funding.

The bill contained a number of policy riders. One of the most controversial riders prohibits funds from being spent for one year on Clean Air Act (CAA) rules dealing with carbon dioxide. Another rider prevents common law lawsuits based on climate change to move forward. Common law is based on precedent of previous court case decisions.

Additionally, the bill prevents the EPA from using any money “to carry out, implement, administer, or enforce” any effort to change Clean Water Act jurisdiction. This is in reference to the draft “waters of the U.S.” guidance released by the EPA in May. Another rider blocks the EPA's upcoming stormwater rules expected to be released this fall.

The bill did not contain riders on EPA's Boiler MACT rule. Committee members stated that other committees will be dealing with legislation to delay this rule.

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House Commerce, Justice, State Appropriations Bill Slashes Funding Important to Improving Local Criminal Justice and Juvenile Justice Systems

On June 6, the House Appropriations Committee unveiled the FY2012 Commerce, Justice, and State (CJS) Appropriations bill. The bill proposes a total of \$50.2 billion in funding for the Department of Commerce, Department of Justice (DOJ), and other related agencies; and is a reduction of \$3.1 billion compared to FY11 or \$7.4 billion below the President's FY12 budget request. Most alarming, the legislation proposes huge reductions in DOJ's State and Local Law Enforcement account and recommends the elimination of popular programs like the State Criminal Alien Assistance Program (SCAAP), Juvenile Justice Title V Incentive Grants for Local Delinquency Prevention Programs, the Juvenile Accountability Block Grant (JABG) program and all Community Oriented Policing Services (COPS) programs.

The bill proposes only \$1.75 billion for DOJ's State and Local Law Enforcement account, and is a \$1.05 billion reduction compared to FY2011 or \$1.3 billion below the President's FY12 budget request.

Funding in this account is used to support a wide variety of programs and technical assistance important to local courts, corrections, law enforcement, juvenile justice, and other assorted agencies that work to safely lower jail populations, fight recidivism, reduce criminal justice spending, and decrease

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crime and improve public safety through alternatives to incarceration, prevention and treatment. Byrne Memorial Justice Assistance/JAG grants are proposed to be funded at \$357 million (\$431 million provided in FY11), Second Chance Act Reentry Programs are funded at \$70 million (\$83 million provided in FY11) and DOJ's Drug Court Discretionary Grant Program is funded at \$40 million (\$37 million provided for Drug, Mental Health and Problem Solving Courts in FY11). Additionally, the legislation proposes \$13 million for the Prison Rape Prevention and Prosecution funding, \$10 million for Mentally Ill Offender Treatment and Crime Reduction Act (MIOTCRA) program funding, and \$15 million for Byrne Competitive Grants.

On June 7, the House Appropriations Subcommittee on Commerce, Justice, and State approved the legislation with no Committee Democrats supporting the legislation. The House Appropriations Committee will likely approve the legislation within the next 1-2 weeks, and the bill will head to the full House floor thereafter. NACo members should be advised that numerous amendments to restore funding to programs in the State and Local Law Enforcement account and to not eliminate SCAACP, Juvenile Justice and COPS programs will likely be introduced by Members of Congress as the bill makes its way thru the legislative process. Many of these efforts may or will not be successful in the House of Representatives.

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House Judiciary Committee Approves BATSA

On July 7, the House Judiciary Committee approved H.R. 1439, the Business Activity Tax Simplification Act of 2011 by voice vote. The legislation expands the federal prohibition against state taxation of interstate commerce to include taxation of out-of-state transactions involving intangible personal property and services, and would also prohibit state taxation of an out-of-state entity that does not have a physical presence in the taxing state.

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30 Day Extension of Comments on "Waters of the U.S." Guidance

On June 27, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers extended the public comment period by 30 days for the draft guidance on "Waters of the U.S." According to the notice, the comment period is extended to July 31 due to state and local governments and other non-governmental requests.

On June 8, NACo, the National League of Cities, the U.S. Conference of Mayors, and the National Conference of State Legislatures sent a letter to EPA Administrator Jackson requesting an extension of comments for 60 days. To see the letter, [click here](#).

As drafted, changes to the "waters of the U.S." definition will impact ALL Clean Water Act programs. The guidance states, "the term "waters of the U.S." must be interpreted consistently for all CWA provisions that use the term." This includes section 402 National Pollution Discharge Elimination System (NPDES) permits, section 311 oil spill program, section 404 Dredge and Fill permit program, water quality standards and total maximum daily load programs, and State water quality certification processes. It may especially impact counties that own/maintain ditches.

It is especially important that counties weigh in on potential effects of this guidance document. For some of the thoughts to consider/questions to ask when drafting comments, [click here](#). NACo is currently drafting comments.

If writing a letter, the letter should be addressed to: Water Docket, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460
Attention: Docket ID No. EPA-HQ-OW-2011-0409

Comments for the official record can be submitted via:

- 1) Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments; or,
- 2) Via E-mail: ow-docket@epa.gov - Include EPA-HQ-OW-2011-0409 in the subject line of the message.

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More Information on the Surface Transportation Reauthorization

Both Chair Barbara Boxer (D-Calif.) of the Senate Environment and Public Works Committee and Chair John Mica (R-Fla.) of the House Transportation and Infrastructure Committee provided updates on where they are heading on the reauthorization of the surface transportation program.

Boxer confirmed that she is working on a two year reauthorization that would total about \$109 billion over two years for both highway and transit. Under this scenario, an additional \$12 billion in new revenue would have to be found to supplement what the Highway Trust Fund can support. It is unclear whether Boxer has the full support of the Republican committee leadership.

Mica announced at a two hour briefing the outlines of his \$230 billion six-year reauthorization bill. In explaining the relatively modest size of his proposal, which would mean a 30 percent cut from current spending for highways and transit, Mica cited House rules limiting new Highway Trust Fund spending to the projected amount of revenue coming into the Trust Fund. While no bill language was presented, he did explain the need to stabilize the Trust Fund, his desire to include provisions that would leverage federal spending (TIFIA and state infrastructure banks), his interest in streamlining project delivery and the permitting process, program consolidation and a focus on the National Highway System and Highway Safety.

Democratic members of the Transportation and Infrastructure Committee followed with their own briefing which stated disappointment with the Mica proposal due to its underfunding of transportation infrastructure and its failure to create new jobs.

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DOT Announces New Round of TIGER Grant Program

U.S. Transportation Secretary Ray LaHood this week announced that \$527 million will be available for a third round of the TIGER (Transportation Investment Generating Economic Recovery) competitive grant program, which funds innovative transportation projects that will create jobs and have a significant impact on the nation, a region or a metropolitan area. States, cities, local governments, and other partnerships and groups will have until this fall to prepare their applications for the TIGER program, which has funded high-impact projects including roads, bridges, freight rail, transit buses and streetcars, ports, and bicycle and pedestrian paths. Projects will be selected based on their ability to contribute to the long-term economic competitiveness of the nation, improve the condition of existing transportation facilities and systems, improve energy efficiency and reducing greenhouse gas emissions, improve the safety of U.S. transportation facilities and improve the quality of living and working environments of communities through increased transportation choices and connections. The Department will also focus on projects that are expected to quickly create and preserve jobs and spur rapid increases in economic activity. The Department will require all applicants to submit a "pre-application" prior to submitting a final application. The pre-application system will open on August 22, 2011. All pre-applications should be submitted by October 3, 2011 at 5 PM EST. Final applications will be due on or before October 31, 2011. For more information, please visit by [clicking here](#).

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House Subcommittee Schedules Carcieri-Fix Hearing

On July 12, the Indian and Alaska Native Affairs Subcommittee will hold a hearing on H.R. 1291, sponsored by Rep. Tom Cole (R- Okla.) and H.R. 1234, sponsored by Rep. Dale Kildee (D-Mich). Both bills seek to reverse the U.S. Supreme Court's 2009 decision in *Carcieri v. Salazar*, which held that the Interior Secretary does not have the authority to take land into federal trust for Indian tribes that were not "under federal jurisdiction" in 1934 when the Indian Reorganization Act was passed. Accordingly, both bills aim to reaffirm the authority of the Interior Secretary to take land into trust for any federally recognized Indian tribes.

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MSRB Expresses Concern over Municipal Advisor Registration

On July 5, the Municipal Securities Rulemaking Board (MSRB) issued a press release to express their concern that some municipal advisor firms engaging in municipal advisory activities may not be registered with both the MSRB and the Securities and Exchange Commission (SEC). The Dodd-Frank Wall Street Reform and Consumer Protection Act expanded the MSRB's regulatory authority over municipal advisors which resulted in the requirement to register as a municipal advisor with both regulators. State and local governments that retain the services of financial advisors are encouraged to confirm the registration status of their advisors. [Click here](#) to view the press release.

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Rural Development Accepting Applications for Multiple Funding

Opportunities

USDA Rural Development announced several funding opportunities over the last several weeks. These Notices of Funding Availability (NOFAs) include both grant and loan opportunities to support regional economic development strategies, value added agriculture, broadband deployment, farm labor housing and multi-family housing. A list of all current USDA Rural Development NOFAs is available [here](#).

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About NACo

National Association of Counties (NACo) is the only national organization that represents county governments in the U. S. NACo provides essential services to the nation's 3,068 counties. NACo advances issues with a unified voice before the federal government, improves the public's understanding of county government, assists counties in finding and sharing innovative solutions through education and research and provides value-added services to save counties and taxpayers money.

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