

June 2002

INTERGOVERNMENTAL

New Advocacy Task Force

PRESIDENT RIDINGS INVITES ALL MEMBERS TO BE A VOICE FOR INFRASTRUCTURE

APWA President Richard Ridings is inviting all APWA members to join a new Legislative Advocacy Task Force created to strengthen APWA's advocacy voice at the local, state, provincial and national level. To join, simply have your member ID handy, then go to the APWA website, www.apwa.net and click on the icon "Join the APWA Legislative Advocacy Task Force."

In an open letter of invitation which appears in the June 2002 issue of the *APWA Reporter*, Ridings noted that "crucial public works issues are on the horizon including the reauthorization of the Transportation Equity Act for the 21st Century (TEA-21) and funding for water infrastructure. There is a continued need to raise awareness of the importance of investment in our infrastructure."

Members of the APWA Legislative Advocacy Task Force will become part of a growing network of public works advocates interested in working together to communicate with policymakers when important public works issues are being considered.

The InfoNOW Government Affairs Community, a source for legislative and regulatory information sent directly to subscribers via email, is the primary communication tool for members of the Task Force. Through InfoNOW, Task Force members will receive updates and specific action alerts to send messages to representatives in Congress. Messages to Congress can be sent easily and instantly using APWA's Legislative Action Center on APWA's website.

For Canadian members, APWA is launching a new Canadian Public Works InfoNOW Community that will link all Canadian Public Works Association members for advocacy and information purposes. This special InfoNOW Community will include information, alerts and updates unique to public works in Canada.

The APWA Legislative Advocacy Task Force will work to ensure that the public works viewpoint is represented as issues affecting public works programs and services are considered.

'Cable Modem' Rule

APWA JOINS COALITION TO CHALLENGE THREAT TO LOCAL AUTHORITY

APWA has joined a new coalition, the Alliance of Local Organizations Against Preemption (ALOAP), which was formed to respond to a federal ruling that threatens to preempt local authority to collect cable modem service franchise fees and to manage the public rights of way.

The Federal Communications Commission (FCC) issued a ruling in March that cable modem service is an

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interstate information service and not a “cable service.” In that ruling the commission tentatively concluded that there was not a basis for a local franchising authority to impose an additional franchise for the provision of cable modem service and that cable modem service should not affect the rights of cable operators to access the public rights-of-way.

In response, the newly formed ALOAP filed a petition in the U.S. District Court of Appeals in Washington, D.C. asking for a review of the FCC ruling. Members of ALOAP include the National League of Cities, the National Association of Counties, U.S. Conference of Mayors, National Association of Telecommunications Officers and Advisors and International Municipal Lawyers Association.

Cable modem service is a service that uses cable system facilities to provide residential subscribers with high-speed Internet access, as well as many applications or functions that can be used with high-speed Internet access.

For more information contact Jim Fahey in APWA’s Washington Office at 202-408-9541 or jfahey@apwa.net.

TRANSPORTATION

Transportation Funding

BOTH CHAMBERS AGREE TO MAKE UP FOR LOSS FROM DECLINING REVENUES

On June 4, 2002, the Senate Environment and Public Works (EPW) Committee approved by voice vote legislation to authorize \$5.7 billion in restoration funding for the federal aid highway program for fiscal year (FY) 2003. If enacted, the bill (S. 1917) would set funding for the federal aid highway program at \$28.9 billion in 2003.

The full House of Representatives passed its version of highway funding restoration (H.R. 3694) prior to the Memorial Day congressional recess. H.R. 3694 calls for \$4.4 billion in funding restoration to the federal aid highway program and would set funding at \$27.7 billion in FY 2003.

The reason for the funding restoration is connected to the Revenue Aligned Budget Authority (RABA) that was created by the Transportation Equity Act for the 21st Century (TEA-21). RABA allows for an increase or decrease in funding obligation levels based upon changes in yearly gas tax receipts and other factors. Recent decreases in these receipts led to the proposed decrease in funding for the federal aid highway program in President Bush’s FY 2003 budget. The President has indicated that he will support a restoration in funding of \$4.4 billion. It is unclear if he would support the Senate Environment and Public Works Committee proposal to increase funding restoration to \$5.7 billion.

Both the House and the Senate bills include language that would set the RABA funding mechanism at zero for FY 2003 only, allowing for a solution to the extreme swings in RABA to be found through reauthorization of TEA-21 which is set to expire in September 2003. The House bill (H.R. 3694) also includes language to set behind budgetary firewalls all the funding restoration money so as to ensure that the money is solely spent on transportation. During the Senate Environment and Public Works Committee mark-up of its bill (S. 1917) an amendment was offered by Senators Max Baucus (D-MT) and John Warner (R-VA) to place the entire \$28.9 billion behind the budgetary firewalls. This amendment was adopted.

For more information, contact Andrea Fisher in APWA’s Washington Office at 202-408-9541 or afisher@apwa.net.

MUTCD Revisions

FHWA SEEKS COMMENTS ON PROPOSED AMENDMENTS

The Federal Highway Administration (FHWA) is requesting comments to proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD). Comments must be received on or before August 19, 2002.

The MUTCD is recognized as the national standard for traffic control devices used on all public roads. The purpose of the proposed amendments is to revise standards, guidance, options, and supporting information relating to the traffic control devices in all parts of the MUTCD. The proposed changes are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

For more information, contact Ernest Huckaby, Office of Transportation Operations, Room 3408, (202) 366-9064, or Raymond Cuprill, Office of the Chief Counsel, Room 4230, (202) 366-0791, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

Barge Damage to Bridge

REPAIR FUNDS SOUGHT BY OKLAHOMA DELEGATION

Oklahoma's Congressional delegation will seek at least \$15 to \$20 million in emergency appropriations to repair and rebuild the I-40 bridge that collapsed after being hit by a barge near Webbers Falls in the second congressional district.

Senator James M. Inhofe (R-OK), the ranking member of the Subcommittee on Transportation, Infrastructure and Nuclear Safety will explore "...regular emergency highway funding as well as possible supplemental appropriations." Sen. Inhofe will likely introduce an amendment to the fiscal 2002 supplemental appropriations bill (S. 2551) on the Senate floor.

The Oklahoma Department of Transportation (ODOT) put an early estimate at \$15 million and will take about 6 months to repair. The dollar figure is likely to increase after the recovery efforts cease and a more thorough investigation can be performed. The \$15 million would cover debris removal, demolition, and then rebuilding.

ENVIRONMENT

Effluent Guidelines for Construction

US EPA SIGNS PROPOSED RULE WITH THREE OPTIONS

US Environmental Protection Agency (US EPA) Administrator Christine Todd Whitman on May 15, 2002, signed the agency's proposed Effluent Limitation Guidelines for the Construction and Development Category. The proposed rule, which is expected to be published in the *Federal Register* within a few weeks of its signing, will include a 120-day public comment period.

US EPA is proposing a range of options to address stormwater discharges from construction sites. They are:

- As one option, EPA is proposing technology-based effluent limitation guidelines and standards (ELGs) for stormwater discharges from construction sites required to obtain National Pollutant Discharge Elimination System permits.
- As another option, EPA is proposing not to establish ELGs for stormwater discharges from those sites, but to allow technology-based permit requirements to continue to be established based upon the best professional judgment of the permit authority.

- A third option would establish inspection and certification requirements that would be incorporated into the stormwater permits issued by EPA and states, with other permit requirements based on the best professional judgment of the permit authority.

EPA is expected to conduct public meetings on the proposed rule in July. A pre-publication version of the proposed rule is on EPA's website, www.epa.gov/waterscience/guide/construction.

Water Quality

WATER QUALITY TRADING POLICY PROPOSED BY US EPA

On May 15, EPA proposed a Water Quality Trading Policy to increase the pace and success of cleaning up impaired rivers, streams and lakes throughout the country. The policy encourages incentives to maintain high water quality where it exists as well as restoring impaired waters.

The trading policy seeks to support and encourage states and tribes in developing and implementing water quality trading programs that implement the requirements of the Clean Water Act and federal regulations in more flexible ways and reduce the cost of improving and maintaining the quality of the nation's waters. For more information and a copy of the proposed policy, visit <http://www.epa.gov/owow/watershed/trading.htm>.

Bioterrorism Act

CONGRESS PASSES LEGISLATION REQUIRING VULNERABILITY ASSESSMENTS

The House of Representatives passed HR 3448, the Bioterrorism Act, May 22, 2002, requiring drinking water facilities to conduct vulnerability assessments. The Senate quickly passed the legislation May 24, 2002. The President is expected to sign the bill promptly.

The Act, HR 3448, authorizes \$160 million for drinking water facilities to conduct vulnerability assessments and develop emergency response plans in light of recent threats. The bill amends the Safe Drinking Water Act to require systems serving a population of more than 3,300 to conduct vulnerability assessments and submit them to EPA. After the vulnerability assessment is complete, these systems must file emergency response plans within 6 months.

Committee staff did consider requiring the same of wastewater treatment facilities during negotiations but the final bill does not include an authorization.

Among other details in the bill is language prohibiting public access to vulnerability assessments conducted by the systems. The Senate's bill originally required drinking water systems to submit their assessment to EPA for review, but utilities opposed the measure and argued that the assessments would become subject to public requests if EPA had them in their possession and the assessments could fall into the wrong hands.

Meanwhile, legislation also was marked up in the Senate to provide an additional \$100 million to EPA in the form of grants for vulnerability assessments of drinking and wastewater facilities. The Senate will have to conference with the House version of the supplemental appropriation which does not include any water security funding.

Arsenic Standards

\$5 BILLION ADDED TO WATER INVESTMENT ACT TO HELP MEET NEW REQUIREMENTS

Senate Environment and Public Works Committee members Senators Pete Domenici (R-NM) and Harry Reid (D-NV) added language and dollars to S. 1961, the Water Investment Act, providing an additional five-year \$5 billion grant program to help communities in New Mexico and other states meet stricter arsenic standards for drinking water.

The Bush Administration last year lowered the arsenic standard from 50 parts per billion to 10 parts per billion. It will cost states like New Mexico alone an estimated \$370 million to \$400 million to come into compliance by 2006.

The grant program will go to small public water systems serving 15,000 or fewer people. Grants also are available to any public water system that would incur a significant cost in complying with the standard and is either a disadvantaged community or would become a disadvantaged community because of compliance. The inclusion increases the bill's total to \$41.25 billion-- \$6.25 billion was added to the original \$35 billion authorization. This total includes the new \$5 billion grant program to small communities to help them comply with the arsenic standard and \$1.25 for wet weather projects.

The bill was passed by committee May 17, 2002. Next step is the Senate floor.

For more information, contact Heather McTavish in APWA's Washington Office at 202-408-9541 or hmctavish@apwa.net.

Drought Preparedness

NATIONAL ACT TO PREPARE, MITIGATE AND RESPOND INTRODUCED IN BOTH HOUSES

The National Drought Preparedness Act of 2002 was introduced in the Senate and the House May 16, 2002. Companion bills S. 2528 and H.R. 4754 authored by Senator Pete Domenici (R-NM) and Representative Alcee Hastings (D-FL), would establish a National Drought Council within the Federal Emergency Management Agency (FEMA) to improve national drought preparedness, mitigation, and response efforts.

The Council would be responsible for developing a comprehensive National Drought Policy Action plan that delineates and integrates responsibilities for activities relating to droughts, ensuring that those activities are coordinated with the activities of the States, local governments and neighboring countries. The bill requires the Council to submit an annual report to Congress on the activities carried out by the Council.

The Council would evaluate federal drought-related programs in existence on the date of enactment of this Act and make recommendations to Congress and the President. The Council also would be responsible for reviewing drought preparedness plans, and developing and making available to the public drought planning models to reduce water resource conflicts relating to water conservation and droughts.

The bill creates a Drought Assistance Fund within the Federal Emergency Management Agency. These funds would provide technical and financial assistance (grants) to States, local governments and service providers for the implementation of drought preparedness plans. Additionally, the legislation provides funds (not specific) for pre-positioning wildfire suppression resources.

The bills stand in the Senate Environment and Public Works Committee and the House Resources committee, respectively.

Water Infrastructure Study

CBO RELEASES ESTIMATE OF REPAIR AND REBUILD COSTS OF WATER SERVICES

After a request from congressional representatives, the Congressional Budget Office (CBO) released their water funding estimate, titled *Future Investment in Drinking Water and Wastewater Infrastructure* on May 24, 2002. The report details the estimation of the cost to repair and rebuild the nation's crippled network of water infrastructure. While sizable, the sum is still significantly less than other water industry sources have put the figure. CBO estimates the rebuild and repair figure to be between \$60 and \$390 billion needed over the next 20 years.

CBO's report does not outline recommendations on providing a funding resource to address the problem. It does suggest that the federal government should not be shouldering the full cost, and that water systems should explore more efficient asset management practices, an option favored by US EPA. CBO states that because user rates and local taxes pay for the majority of water services, "higher future costs could be funded from many sources and are not necessarily a federal responsibility." CBO warns Congress in the report that by providing dollars to systems, the risk that these systems will begin to rely on these funds is inevitable.

The total infrastructure cost according to CBO will depend on the funding source, high interest loans, government grants or increased user rates. CBO claims to have arrived at a lower estimate than the Water Infrastructure Network's (WIN) report, *Clean and Safe Water for the 21st Century* which found a funding gap of \$23 billion each year for water and wastewater infrastructure funding. The CBO report assumes a longer borrowing term- which reduces annual payments over the next two decades.

APWA POLICY

APWA Principles and Priorities

BOARD OF DIRECTORS APPROVES ADVOCACY OBJECTIVES

APWA's Board of Directors met in Washington, DC for their annual spring meeting May 31-June 1, 2002 and approved new priorities for 2002. These priorities will serve as APWA's primary advocacy objectives for the year. The Government Affairs Committee had previously recommended the addition of security for facilities to the list of priorities after September 11.

Serving as the umbrella to the specific policy priorities are three core principles guiding APWA's legislative involvement. They are:

- Support for adequate investment in infrastructure;
- Respect for local authority;
- Reasonable regulations and protection from unfunded mandates.

The following are the priorities identified by the GAC and approved by the Board of Directors:

Full-Funding for Transportation Programs

Objective: Increase federal investment in transportation infrastructure and programs; protect the integrity of transportation trust funds and the framework of TEA-21.

Implementation and Reauthorization of TEA-21

Objective: Support the full and timely implementation of TEA-21 and its reauthorization.

Clean Water and Drinking Water Infrastructure Funding

Objective: Increase the federal investment in clean water and drinking water infrastructure.

Comprehensive Stormwater Management and Funding

Objectives: Support solutions that promote a comprehensive approach to stormwater management that recognizes the quality of life benefits associated with such actions. Support funding for the research pilot projects that support the development of best management practices.

Federal Emergency Relief Funding

Objective: Achieve increased funding for local agencies, more rapid disbursement of funding and quicker response in pre- and post disaster events.

Air Quality Standards

Objective: Support solutions that protect air quality and promote the efficient and cost-effective delivery of public works services.

Local Control of Public Rights-of-Way

Objective: Oppose preemption of local control over public rights-of-way.

Security of Public Works Facilities and Systems

Objective: Support implementation of security measures necessary to protect the public with required funding.

Contributors to this month's Washington Report were: Beth Denniston, Jim Fahey, Andrea Fisher and Heather McTavish

The Washington Report is edited by Beth Denniston