



July, 2011

www.waterways.org

Registration Underway For This Year's Annual Meeting

The Tarrant Regional Water District hosts this year's Annual Meeting in Fort Worth, Texas – the City of Cowboys and Culture. This year's meeting will be held September 19-21 at the Hilton Fort Worth, a historic hotel located in the heart of Sundance Square. Discover the City's rich Western heritage and world-class artistic masterpieces and enjoy the friendly service that's the hallmark of true Texas hospitality.

This year's meeting — "Get Ready to Ride the Wave of Change" — will delve into the far-reaching changes in federal water resources policy and regulations and the long-term implications for the development, management and use of our nation's water resources.

Our highly-anticipated evening gala will be held at the Modern Art Museum of Fort Worth, with entertainment provided by the incomparable Kinky Friedman, musician, author and the Governor of the Heart of Texas.

This year's spouse event will include a tour of the Fort Worth Stockyards, a visit to the Fort Worth Botanical Gardens, and a stop at the Kimbell Art Museum.

Don't Miss It!!



Registration information is available at www.waterways.org

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Time By Fred Caver

Time flies when you are having fun. Time also seems to pass more quickly as one gets older. Trite expressions perhaps, but certainly true. As I approach the end of two years as chairman of the National Waterways Conference, both seem particularly relevant to me these days. I find it hard to believe it's

been nearly two years already; the experience has been one of the most rewarding in my professional life – and a lot of fun to boot.

As an organization, we've come a long way in a short period, and I've had the privilege to watch from a close distance. Under Amy's leadership we've:

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- Turned the goal of becoming a broad-based, national water resources organization into a reality. And with able leadership from our vice-chairman, Sykes Sturdivant, we restructured our by-laws to support this reality.
- Become the most respected such organization in Washington. Our opinion and input are regularly sought by policy makers, members of Congress and their staffers and the media on every important issue related to water.
- Expanded our membership base to include representatives from just about every water resources interest in the U.S. and, in doing so, have put NWC on the road to financial stability for the first time in many years. This stability allows us breathing room and the ability to further broaden our reach and influence. In fact, we are the only organization in Washington that is effectively educating people and

influencing broad national policies and legislation related to water.

- Provided the Corps of Engineers a comprehensive, effective partner in support of its program and contributions to economic security and quality of life in the U.S.

In case you've forgotten, the vision adopted by the Board to guide NWC's future was as follows:

"Transform the NWC into a much broader umbrella group that provides a forum for airing water resources issues, seeks consensus on issues where possible, serves as a spokesman for broad water resources interests, becomes the preferred "go to" group for the Congress and Executive Branch as they seek stakeholder input, plays an active role in development of policy and legislation and advocates on behalf of consensus positions on major issues. It would not seek to replace or supplant the activities of its member organizations, which would continue to act in their respective self-interests and advocate for matters not part of the common effort."



Fred Caver

The recognition of the need for such an organization came from the challenges presented by then-current and pending policy and law related to water. Unfortunately, I'd say that the need is even greater today than when that goal was adopted. The good news is that we are well on the way to realizing the vision.

If there was a single event that allowed this success to happen, it came a little more than three years ago when we hired Amy as our President. I could try to convince you that this master stroke was due entirely to the insight and wisdom of the selection committee (Bob Portiss, Chris Brescia, Bill Satterfield, Jim Haussener, Don Waldon, Glen Cheatham and myself), but it was more likely due to simple dumb luck. I suspect that I am in a position to appreciate her abilities and accomplishments to a greater degree than the

WCI Selects New Leader

The Waterways Council, Inc. announced that it has selected Mike Toohey to become its new President and CEO. Toohey, who most recently served as a consultant with The Livingston Group's Transportation, Shipbuilding, Shipping and Ports practice area, has more than 30 years of federal government expertise in the public and private sectors.

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rest of you, but please take my word for it: our success is almost exclusively her doing. She has listened attentively while I've made my silly suggestions, and then she diplomatically ignores them and does the right thing in each instance. Beyond the huge salary we pay her, I still am not sure why she hangs around with us but as long as she does, our success is assured.

I am also very comfortable that our present and prospective volunteer leaders – the officers, executive committee members and board members – will provide active support. Each of these individuals has made a personal commitment of their time and talents to the "new" NWC. With a clear direction, a growing and vibrant membership and exceptional leadership, I'm more optimistic about NWC's future than at any point in the past. This year's annual meeting in Fort Worth will be a testament to this "new" organization and purpose. We will directly address the most relevant issues facing water interests today, including:

- The growing regulatory and oversight roles being asserted by the federal government and the resulting implications for all of us
- The recent Mississippi River flooding and the systems and comprehensive concept of flood control

- The coming Panama Canal expansion and its potential impact on the U.S. economy
- The dire financial straits of the Inland Waterway Trust Fund and possible approaches to fixing it
- Authorizations and appropriations in an era of no earmarks

And just as important, we Texans are fully committed to proving that we know how to host a party that will put the Beantowners to shame. Come see for yourself.

Fred Caver is the Chairman of the National Waterways Conference.

Welcome New Members!

Arkansas Farm Bureau

Little Rock, AR
Travis Justice

Burlington River Terminal

Burlington, IA
Roger Lindner

Caddo Levee District

Shreveport, LA
Craig Windham

CGB Enterprises, Inc.

Covington, LA
Greg Beck

Delta Council

Stoneville, MS
Chip Morgan

Foresight Energy, LLC

Hillsboro, IL
Roger Dennison

Half Associates, Inc

Austin, TX
Wes Birdwell, P.E.

Ivy Marine

Spanish Fort, AL
Steve Wilson

Paducah McCracken County Port Authority

Paducah, KY
Ken Canter

Pine Bluff-Jefferson County Port Authority

Pine Bluff, AR
Lou Ann Nisbett

Port of Milwaukee

Milwaukee, WI
Betty Nowak

Water Services Department

Kansas City, MO
Terry Leeds

Virginia Maritime Association

Norfolk, VA
Arthur W. Moyer, Jr.

YMD Water Management District

Stoneville, MS
Dean Pennington



House Approves FY12 Energy and Water Appropriations Bill

The House of Representatives has approved a \$30.6 billion energy and water spending bill for fiscal year 2012. The bill, which provides \$4.8 billion for the Army Corps of Engineers Civil Works program and \$934 million for the Bureau of Reclamation, passed largely on a party-line vote of 219-196.

Funding for the Corps would be as follows:

- Investigations: \$104 million
- Construction: \$1.6 billion, including a \$50 million rescission from unobligated balances from prior year appropriations. With respect to the inland waterways trust fund, the bill would provide only for Olmsted Lock and Dam, Ohio River, Illinois and Kentucky; Emsworth Locks and Dam, Ohio River, Pennsylvania; Lock and Dams 2, 3, and 4, Monongahela River, Pennsylvania; and Lock and Dam 27, Mississippi River, Illinois.
- Mississippi River and Tributaries: \$210 million
- Operation and Maintenance: \$2.36 billion
- Regulatory program: \$196 million
- Flood control and coastal emergencies: \$27 million

As approved at the Committee level, the bill would:

- Direct \$1 billion in disaster relief funding to the Corps for use in areas affected by storms, tornadoes and flooding along the Mississippi and Missouri rivers in 2011. This amount, intended as emergency funding in 2011, would be offset by unobligated stimulus funds for high-speed rail projects.
- Permit the Corps to receive and use funds from state and local governments to continue or complete authorized federal studies.
- Prohibit the awarding of any continuing contract that commits additional funding from the Inland Waterways Trust Fund until the enactment of a long-term mechanism to enhance revenues in the fund sufficient to meet the required cost-sharing provisions.

- Prohibit the use of funds for any proceeding to interpret or modify the definition of “waters of the United States” under the Clean Water Act, targeting the proceeding currently underway to issue guidance on the jurisdictional scope of the Act.

Relevant amendments adopted on the House floor would:

- Prohibit the use of funds to develop or submit a proposal to expand the authorized uses of the Harbor Maintenance Trust Fund
- Prohibit the use of funds to be used to continue the study authorized by section 5018(a)(1) of WRDA 2007 (MRERP)
- Prohibit the use of funds for the Missouri River Authorized Purposes Study
- Prohibit the use of funds to be used for the removal or associated mitigation at Condit Dam

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Updates

The release of the final Principles and Requirements and draft Interagency Guidelines is now expected sometime in August.

The Senate Environment and Public Works Committee has again extended the date for submission of projects for a WRDA bill, this time until September 20th.



"FY12 Appropriations"; continued from page 4

- Prohibit the use of funds to be used to implement or enforce recommendations or guidance proposed in the final draft of the McNary Shoreline Management Plan, Lake Wallula, Wash.
- Reduce construction by \$1.75 million and increase O&M by \$1 million (purportedly for levees along the Missouri River System)
- Reduce expenses by \$6.3 million and increase O&M by

\$6.3 million for efficient cargo transportation by improving dredging and navigation of waterways

- Reduce O&M by \$4.9 million applicable to climate change projects
- Reduce expenses by \$1 million and increase construction by that amount for the purpose of coastal restoration

The House bill would require the Corps to submit quarterly reports

on the allocation of funds, with the first one due 60 days after enactment. It is unclear how the "suggested" allocation of funds in the various amendments will be addressed, given the earmark moratorium. The bill now moves to the Senate, and an uncertain fate. Mark-up in the Senate will not occur prior to September, and even then will depend on the outcome of the current debate over the debt ceiling.

EPA and Corps Propose Guidance on Clean Water Act Jurisdiction By Steven Burns

When is a water a water, and how significant is significant?

The U.S. Environmental Protection Agency and the Corps of Engineers tangle with those questions and more in "Draft Guidance on Identifying Waters Protected by the Clean Water Act," which the agencies published this past May. The Draft Guidance is intended to clarify how the agencies "will identify waters to be protected under the Act consistent with the statute, regulations, Supreme Court caselaw, relevant science related to aquatic ecosystems, and the agencies' field experience."

It's hard to argue against greater clarity. Since the Supreme Court's

split decision in the *Rapanos* case, the scope of CWA jurisdiction has been anything but clear. However, the Draft Guidance presents a number of problems. NWC addresses those concerns in comments to the agencies.

Here are some of our concerns:

The use of a "guidance" format is unlawful and unfair.

The Draft Guidance essentially functions like new regulations. It seeks to change the application of the CWA on a uniform, national basis. However, instead of pursuing a rulemaking, the agencies called it "guidance" and declared that it lacks the force of law.

Industry and citizen groups may wish to challenge the guidance

in court. When that happens, the agencies are poised to argue that the case is not ripe for review, since the document purportedly has no legal effect. In other words, the agencies would have their cake and eat it too: expand regulatory control, but without legal accountability.

As a result, a permit applicant would have to exhaust the permitting process on an actual project before getting a fair judicial hearing on the legal issues raised by the Draft Guidance. That puts a permit applicant in a difficult position. The process of developing the project and seeking a permit costs time and money. In any given case, the rational decision may be to accept conditions, however unreasonable

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“Clean Water Act”, continued from page 5

they may be, as the price of staying on schedule. If additional conditions are unlawful, it amounts to regulatory blackmail. That is an unfair and unnecessary outcome.

The Draft Guidance is contrary to the *Rapanos* case.

CWA section 404(a) requires a Corps permit for the “discharge of dredged or fill material into the navigable waters.” The question in *Rapanos* was whether the permitting requirement applied to a fill in a wetland that was not adjacent to a traditionally navigable water. No opinion in *Rapanos* won a majority of the justices of the Supreme Court. Only four of the nine justices associated themselves with the opinion of the Court, written by Justice Scalia. Meanwhile, Justice Kennedy wrote an opinion that concurred in the result, but for different reasons. A dissenting opinion of four justices would have upheld the agencies’ jurisdiction.

The Scalia and Kennedy opinions presented different tests to determine CWA jurisdiction. That division has led to debate on how to interpret the case. However, both the Scalia and Kennedy opinions limited CWA jurisdiction. Based on the case and the facts presented to Court, there is no reasonable way to interpret either opinion or the two together as expanding regulatory authority – yet the Draft Guidance tries to do just that.

NWC’s comments also explain that the Draft Guidance relies on

unreasonable interpretations of both the Kennedy and Scalia tests for jurisdiction. Justice Kennedy’s concurring opinion applied a “significant nexus” text. Jurisdiction attaches only “if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as navigable.” The impact to water quality had to be more than “speculative or insubstantial.”

Under the agencies’ interpretation, virtually any nexus beyond “speculative” or “insubstantial” would result in a finding of jurisdiction under the agencies’ guidance. Any discernible downstream effect – such as the retention of any amount of upstream drainage, or the addition of any substance deemed to be a nutrient, sediment, or pollutant – is sufficient to confer jurisdictional status. That is not a plausible interpretation of Justice Kennedy’s opinion.

The Scalia plurality opinion found that “navigable waters” must be “relatively permanent, standing or continuously flowing bodies of water,” which does not include intermittent streams and tributaries that empty into navigable waters. In addition, wetlands must have a “continuous surface connection” to jurisdictional waters. However, the Draft Guidance asserts that jurisdictional tributaries may include intermittent and ephemeral

stream reaches “as dynamic zones within stream networks,” and that these waters may satisfy the Scalia test depending on “the length and timing of seasonal flows in the ecoregion in question.” It reads more like an implementation of the dissenting opinion than that of Justice Scalia.

The Draft Guidance is contrary to the *Solid Waste Agency of Northern Cook County* case.

In *SWANCC*, the Supreme Court reviewed the agencies’ assertion of CWA jurisdiction over a nonnavigable, isolated, intrastate pond based on its use as a habitat for migratory birds. The Court reasoned that jurisdiction does not extend to ponds that are completely isolated from traditionally navigable waters. The Draft Guidance violates that principle by asserting jurisdiction in certain cases, such as a water that crosses state boundaries, without any demonstration of the necessary connection to traditionally navigable waters.

The Draft Guidance impermissibly suggests CWA jurisdiction based on groundwater.

The Draft Guidance provides that a “sub-surface hydrologic connection” may establish a significant nexus between wetlands and jurisdictional waters. That language blurs the distinction between groundwater and surface water. Groundwater is subject to state and local



"Clean Water Act", continued from page 6

regulation, not the CWA. NWC's comments urge the agencies to clarify that groundwater cannot provide a "significant nexus" or otherwise establish jurisdiction for purposes of the CWA.

The impacts of the Draft Guidance extend beyond the wetlands program.

To the extent the Draft Guidance impermissibly expands CWA jurisdiction, the implications extend far beyond CWA Section 404. The same jurisdictional principles would apply to all CWA programs, including state water quality certifications under Section 401; National Pollutant Discharge Elimination System permits under Section 402; total maximum daily loads and "impaired water" designations under Section 303; oil spill provisions under Section 311; and environmental reviews and documentation under the National Environmental Policy Act. That makes it all the more important for the agencies to undergo an orderly rulemaking process.

NWC's comments conclude by urging the agencies to withdraw the Draft Guidance and, instead, issue proposed regulations, with corrections to implement NWC's recommendations.

Steven Burns is an attorney with Balch & Bingham LLC in Birmingham, Alabama, and Chairman of the NWC Legislative Policy Committee.

Industry Events

August 10-12, 2011

Gulf Intracoastal Canal Assn.

New Orleans, LA
www.gicaonline.com

August 30–September 2, 2011

**Tennessee-Tombigbee
Waterways Development Council**

Point Clear, AL
www.tenntom.org

September 7-9, 2011

Mississippi Water Resources Assn.

Natchez, LA
www.mswater.org

September 11-15, 2011

American Assn. of Port Authorities

Seattle, WA
www.aapa-ports.org

September 13-16, 2011

Smart Rivers

New Orleans, LA
www.pianc.us

October 3-5, 2011

**Arkansas Regional Waterways
Conference**

Little Rock, AR
www.waterway.dina.org

October 5-7, 2011

American Waterways Operators

New York, NY
www.americanwaterways.com

October 17-18, 2011

Tennessee River Valley Assn.

Gatlinburg, TN
www.trva-tcwc.org

October 19-21, 2011

Waterways Council, Inc.

Pittsburgh, PA
www.waterwayscouncil.org

October 25, 2011

The Horinko Group

2011 Water Resources Summit
College Park, MD
www.thehorinkogroup.org

October 31-November 3, 2011

**National Assn. of Flood and
Stormwater Management
Agencies**

St. Petersburg, FL
www.nafsma.org

December 8-10, 2011

**Mississippi Valley Flood Control
Association**

New Orleans, LA
901-861-9918

Upcoming NWC Events

September 19- 21, 2011

Annual Meeting

Hilton Fort Worth
Fort Worth, TX

March 12-14, 2012

Legislative Summit

The Madison
Washington, DC

September 19-21, 2012

(Tentative)

Annual Meeting

Tunica, MS



Congressional Waterways Caucus Briefing

The Congressional Waterways Caucus held a briefing on how our nation's waterways and ports are maintained and the impact that commercial and recreational users have on our local, regional, and national economies.

In standing up the Caucus, co-chair Rep. Mike McIntyre (D-NC) commented, "I welcome the support of my colleague Mr. Scalise in co-chairing the Congressional Waterways Caucus. America's waterways support hundreds of thousands of jobs and billions of dollars in commerce through recreational and

commercial access. Preserving and maintaining these waterways is vital to commerce, recreation and public safety. Many parts of our great nation have been defined by their access to our waterways – from the mighty Mississippi to the

shores of the Carolinas. America's waterways are both an economic engine and a public treasure and deserve our unwavering support."

Rep. Steve Scalise (R-LA) echoed those sentiments, noting, "Our



Rep. Mike McIntyre (D-NC)



Rep. Steve Scalise (R-LA)

Personnel Changes

Three new members have joined the Office of the Assistant Secretary of the Army (Civil Works)

- Ms. Amy Sharp, from the Corps' Great Lakes & Ohio River Division to work in the Management & Budget section; Mr. Greg Steele from the Norfolk District to work in the Project Planning & Review section; and Ms. Robyn Colosimo, from HQ and recently on detail to the Council on Environmental Quality, to work on Policy & Legislation.

Changes at Corps' Headquarters:

- Major General Michael J. Walsh, Commanding General, Mississippi Valley Division, will join the HQ staff as Deputy Commanding General for Civil and Emergency Operations; MG William Grisoli will be moving to another position in the Pentagon, expected in October or November; MG John Peabody will become the next commander of the Mississippi Valley Division; Col. Margaret Burcham will become commander of the Great Lakes

and Ohio River Division. Her promotion to brigadier general is pending.

- MG Bo Temple continues to serve as Acting Chief of Engineers and Acting Commanding General of the US Army Corps of Engineers, pending confirmation of LTG Thomas Bostick. At this point, LTG Bostick has had a hearing before the Senate Environment and Public Works Committee, but has not yet been scheduled to appear before the Senate Armed Services Committee.



"Caucus Briefing", continued from page 8

waterways are critical to maintaining our country's export capacity and helping states compete in international markets. Across the country, more than six million tons of cargo are shipped and received each day by way of U.S. waterways and ports, and the importance of our waterways and maritime industry cannot be overstated. As a Co-Chair of the Congressional Waterways Caucus, I look forward to continuing to emphasize the importance of our waterways during the 112th Congress."

The standing room only crowd at the June 29th briefing, moderated by NWC President Amy Larson, was treated to a "Corps 101" discussion led by Let Mon Lee, Deputy Assistant Secretary of the Army (Civil Works) for Policy and Legislation. The informative and very entertaining presentation explained the process for securing project authorization and funding. Key industry issues, including the need for adequate funding and the economic benefits our waterways provide, were provided by Chris Coakley, Vice President, Legislative Affairs, American Waterways Operators, and Maureen Healey, Executive Director, Atlantic Intracoastal Waterways Association.

Planning is underway for another briefing this fall.

RiverWorks Discovery®

A Journey of Exploration and Imagination on America's Waterways.

RiverWorks Discovery (RWD) will be exhibiting at the upcoming annual meeting for the National Waterways Conference in Fort Worth, Texas. Participants at the conference are encouraged to stop and visit with Errin Howard who will be available to answer questions about this rapidly growing national river education program. RiverWorks Discovery teaches about the commerce, culture and conservation of America's rivers and is proud to be the only national river education outreach program that includes the important story of navigation on the inland waterways as a part of its content.

The RWD sponsorship model brings together the river industry with community leaders, museums, nature centers, and environmental educators to engage the public to learn more about the importance of rivers.

Since its creation in 2004 by AEP River Operations, RiverWorks Discovery has reached over 350,000 children and families, teaching them the importance of commerce, culture and conservation of America's rivers. In 2010, AEP River Ops generously gifted RWD to the National Rivers Hall of Fame and National Mississippi River

Museum & Aquarium. These national river education centers, located in Dubuque, Iowa, manage the program with lead staff member Errin Howard. RWD is supported nationally by 58 co-sponsors, 23 annual supporters, 24 non-profit partners, and featured in 16 states and growing.

RWD co-sponsors support public programming in their service areas, at festivals, conferences, seminars, school presentations, summer camps, scout groups and hands-on workshops. RWD makes co-sponsorship easy. We will help the co-sponsor identify events for RWD participation, and coordinate all event details including registration, logistics, materials and presentation. RWD will hire, train and manage contract workers or train co-sponsor staff. RWD will also supply the co-sponsor with print ready files for festival display banners, activity sheets and hands-on activities.

Contact Errin Howard at 513-403-9312 or errin@riverworksdiscovery.org to learn how to bring RiverWorks Discovery to your event and location.



NFIP Reform Legislation: Short Shrift Given to the Needs of Communities Protected by Levees

By Dan Delich

For the second time in as many years, the House of Representatives has passed legislation (HR 1309) to reform and reauthorize the National Flood Insurance Program (NFIP). Since 2006, when the NFIP was forced to begin borrowing from the US Treasury to cover claims from previous year storm losses, the agency has been the recipient of considerable scrutiny and listed by the US Government Accountability Office (GAO) as “high-risk.” The NFIP debt to the US Treasury is \$17.8 billion as of June 2011, according to GAO.

The lopsided July 12 vote in favor of HR 1309 leaves little doubt about bipartisan will in the House

to address well-publicized issues related to NFIP financial stability, federal taxpayer exposure, flood map accuracy, and flood insurance availability. An additional, overarching motivation is to finalize a five-year reauthorization, not done since 2004, so that homebuyers, builders and other real estate sector interests in Special Flood Hazard Areas (SFHAs) have greater certainty about the availability of NFIP insurance for mortgage closings. (SFHAs are areas designated on a Flood Insurance Rate Map as having at least a 1 percent chance of being flooded in any year. The SFHA is the area where the NFIP’s floodplain management regulations must be enforced and

the area where the mandatory purchase of flood insurance applies.) The current program extension expires on September 30, 2011.

HR 1309, introduced by Rep. Judy Biggert (R-IL), reauthorizes the NFIP through September 30, 2016. The measure also:

- phases in full-risk, actuarial rates for property owners in newly designated Special Flood Hazard Areas (SFHAs);
- requires owners of severe repetitive loss properties who refuse mitigation or purchase offers to pay full actuarial flood insurance rates;

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- prohibits FEMA from updating flood insurance maps that omit or disregard levee, floodwall or pump protection levels, regardless of accreditation status;
- establishes a 21-member Technical Mapping Advisory Council (to develop and recommend updated, improved mapping standards);
- directs the National Academy of Sciences to conduct a study on graduated risk behind levees;
- encourages greater private sector participation in providing flood insurance coverage; and, notably,
- provides FEMA with authority to delay for up to five years the timeline by which residential and commercial property owners located in newly designated SFHAs would otherwise be mandated to purchase flood hazard insurance.

Non-federal levee sponsors and communities are grateful that the House bill does not (a) change the SFHA from a 100-year standard to a higher level (i.e. 500-year standard as described in previous bills) or (b) require expansion of SFHAs to include any area located behind levees, dams, and other flood control structures (regardless of certification or accreditation status). Still, many are disappointed that HR 1309 does not go further to accommodate



and incentivize local progress toward improvement of critical flood protection infrastructure.

Section 3 of the bill would allow FEMA to temporarily suspend the mandatory flood insurance purchase requirement on a case-by-case basis for newly designated SFHAs. SFHAs with flood protection systems under improvement, one of the three candidate areas under the provision, may be eligible to receive a maximum 5-year deferral term, reviewed annually, if certain criteria are met. However, in cases where a SFHA-located property loan is originated, increased, extended, or renewed – or if a property is sold – the relief terms are invalidated. If the commercial or residential property in a new SFHA is substantially improved — again — there is no relief in this bill from the insurance purchase requirement. This outcome is troubling because of the very real and powerful fairness issues it raises – especially during this period of rapidly shifting federal

levee safety standards and barren federal, state and local coffers.

In parts of the seven states that comprise the Mississippi River & Tributaries System — and in places like Fort Worth, Kansas City, Sacramento, Irving, Dallas and the Texas coastal counties of Brazoria, Jefferson, Fort Bend and Matagorda — there existed the opportunity for communities, in partnership with the US Government, to design, build, and maintain flood protection structures to reduce risk and allow for the agricultural, manufacturing, transportation, and energy production needs of a nation. In the space of a few short post-Katrina years, however, the rules have changed dramatically for local flood protection sponsors. Structural integrity reviews by FEMA and O&M-related inspection criteria by the Corps of Engineers have toughened, resulting in a flood of “Unacceptable,” decertified, and, ultimately, deaccredited levee systems.

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"NFIP Reform", continued from page 11

A more rigorous set of scientifically-supported safety standards for flood control infrastructure, in and of itself, is acceptable to the overwhelming majority of local project sponsors and their communities. It is, after all, their homes, schools, workplaces, hospitals and well-being at risk.

The problem, the fairness issue, in part, is borne from the perception that federal accreditation reviews and project inspections, instead of being utilized to craft solutions to better manage local risk, are instead being used as the launch point for a series of actions that suggest a distancing from and disinvestment in essential flood protection infrastructure by the federal government.

On one side of this debate, it is said that federal taxpayers have paid time and again to rebuild levees that have failed (or will fail) because of poor local maintenance, and that the federal government should blow the whistle and quickly divest itself of any further legal, financial, and political liability. "This is a local problem," they believe. Proponents of this argument, and their numbers are many, refer to the whistle blowing as "risk communication."

The alternate perspective is that the truly complicated, time-consuming and, therefore, costly project repairs – the critical deficiencies related to a structure's height, slope, stability, material makeup, and geotechnical foundation – were originally decided upon by the federal

government when it designed, built and permitted the project. And, indeed, the federal government has perhaps also, on innumerable occasions, reviewed, approved and permitted subsequent project modifications, encroachments, vegetative retention and growth — that is, until the mad bureaucratic scramble in the months and years subsequent to the 2005 Hurricane Katrina-related losses along the Gulf Coast.

Either way, there surely is consensus agreement that leveed communities – large and small – now find themselves in a difficult and unexpected spot given the decades of favorable pre-Katrina federal project inspections. In addition to the SFHA flood insurance purchase requirement, there is perhaps an even graver economic challenge posed by new floodplain management requirements (building elevation/flood-proofing and area development and construction prohibitions) that threatens to stifle the ability of communities to achieve current and future growth needs. Residential and commercial property value losses, employer recruitment and retention reductions, and local tax base diminution are all very real and powerful downers that will result from unchecked maneuvers to increase NFIP participation on the road to NFIP financial stability.

The Senate, which also has passed comprehensive NFIP legislation in



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"NFIP Reform", continued from page 12

recent years, is a few procedural steps behind the House at the time of this writing, having just recently conducted two reauthorization hearings in the Banking Committee. Committee-level consideration of specific legislative reforms is expected to occur, however, in late July or early August.

An undated Committee discussion draft, circulated on or around July 20, unfortunately would require expansion of SFHAs to include any area located behind levees, dams, and other flood control structures (regardless of certification or accreditation status). This sweeping change to significantly increase NFIP participation, at great cost to homeowners and

businesses, would also, necessarily, add to the size and cost of government. Additional SFHA areas will result in an increased number of map amendments and revisions, as well as expanded FEMA notification and public outreach duties.

As the House and Senate race to complete action on a comprehensive NFIP measure before the September 30, 2011, program sunset, the *Levee Issues Alliance*, a group of local levee sponsors and affected communities from around the U.S., will work to support federal efforts to improve and increase flood risk characterization, communication, avoidance, and, indeed, flood insurance coverage

availability and affordability. With specific regard to the long-term economic well-being of large and small communities across the U.S. that are served by structural flood control systems, our organization advocates the enactment of federal policy to *incentivize rapid levee rehabilitation by providing limited, additional compliance time for verifiable and unstopped levee rehabilitation work*, particularly in the absence of federal funding for Corps-designed and built infrastructure.

For more information on how to join or support the National Levee Issues Alliance, please contact Dan Delich at 214-707- 8772 or dan.delich@sbcglobal.net.

Tri-City Port District Unveils New Logo, Mission and Brand Port Positions Itself at the Center of America's Transportation System

The Tri City Regional Port District has unveiled a new logo and brand for the District which is located in southwestern Madison County, Illinois. The new logo, "America's Central Port," reflects the Port as the region's only public multi-modal facility in Mid America.

The Port's activities include rail and truck bulk transfer facilities for agricultural products,

steel, fertilizer and asphalt; foreign trade zone operations; commercial warehousing; industrial property development; office space leasing; recreational facilities and military-family housing, among other activities. More than 2,000 barges with

three million tons of product are moved through the Port annually.

St. Louis is the central, primary point of the national transportation system; the new America's Central Port logo and

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AMERICA'S CENTRAL PORT



"Tri-City Port", continued from page 13

brand reflects the Port's place as the heart of this system. America's Central Port is essentially the hub of a hub and the only full-service intermodal public port in the region. At the unveiling of the new logo and brand, Madison County Board Chairman Alan Dunstan commended the Port on this new identity, stating, "America's Central Port is at the transportation center of the United States. It is a two-day drive from nearly 70% of the population and 62% of US business. As the region's only full-service public port, it provides access to not only inland waterways, but also road, rail and air transportation to move goods across the country and throughout the world. America's Central Port represents Madison County to the world and we invite the world to bring new business here."

Illinois Representative Tom Holbrook echoed those sentiments, "We have the region's largest contiguous port



at over one mile long, plus more warehousing, material handling facilities, distribution assets and multi-use land than any other port in the region. America's Central Port is where a business needs to be when they are ready to expand their market." U.S. Congressman Jerry F. Costello, who was instrumental in transferring the former Charles Melvin Price Support Center Army Base to the Port District in 2000, said

"Since 1959, the Port District has partnered with community and business leaders to strengthen our local economy. Together, they have not only built up the region's strongest port, but also new confidence in the future of southwestern Illinois."

The Port District has just approved a development plan taking America's Central Port towards 2030. A key feature of the plan is the completion of the new south harbor which will handle commodities from key Port tenants such as Abengoa Bioenergy. The plan also provides for upgrades and improvements to the Port's north harbor and adds key infrastructure investments to port facilities and warehouses.

Dennis Wilmsmeyer is the Executive Director of the Tri City Port District and serves on NWC's Board of Directors.



www.americascentralport.com



Flood Control Measures Spared the Valley

In the aftermath of this year's flooding, we must make smart decisions to protect the communities and economies linked to the river.

By George Grugett

During the late spring flooding this year, the federally sponsored project known as the Mississippi River & Tributaries project prevented an estimated \$62 billion in damages throughout the Mississippi River Valley.

Commissioned and constructed in the years after the Great Flood of 1927 by the Mississippi River Commission and the Corps of Engineers, the MR&T is a system of levees, floodways and backwater areas along with other flood control features that stretch from Cape Girardeau, MO, to the Gulf of Mexico. It stands as one of the most successful civil works projects our nation has ever produced, and over the years has saved lives, communities and billions of dollars in property damage.

Allowing people to live and work throughout a 35,000-square-mile

area in seven states, the MR&T protects more than \$200 billion worth of assets.

And beyond its flood protection, the MR&T provides other benefits crucial to the Mid-South, including stable drinking water supplies, food production, power generation, navigation and commerce, economic development and recreation.

The flood of 2011 was a historical flood that exceeded most records for gauge readings and volumes of water — surpassing the 1927 and 1937 floods. Because of the wisdom and foresight of Congress, the president and local people who have constructed and maintained flood-control systems through the MR&T project, the massive 2011 flood was carried in the Mississippi Valley without the



loss of human life. There was not a single unintended overtopping or crevassing of the main-line levee and not one acre was flooded that was designed not to be flooded. Floodways, spillways and backwater areas all helped distribute the water in the center of the country.

All this was possible because the MR&T project performed as designed. And even though it is only 89 percent completed, it protected the lives of more than 4 million citizens who live and work in some of the most productive agricultural land in our country.

In the aftermath of this year's flooding, we must continue to make smart decisions to protect the communities and economies

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linked to the river. Returning the river to a completely natural state is not a viable option for our nation.

Those who agitate for alternatives to the MR&T want us to abandon much of the Mississippi River Delta region. They see our recent crisis as a way to advance their agenda of preventing the repair of our levees and enhancing flood protection so they can accomplish their dream of reverting much of the region back into the vast swampland it was in the early 1800s. They forget that agriculture in the Mid-South is an economic engine responsible for thousands of jobs and billions of dollars in corn, soybean, rice and cotton production, which feeds and clothes our country and the world. Taking the world's most productive farmland out of

production is simply not a wise option.

Industries and navigation on the river support thousands of additional jobs and economic development that provides much of the products we use every day and the means of transporting them efficiently, thereby keeping the prices we pay affordable.

This system has never failed and it didn't fail this time. The foundation of flood control in the Lower Mississippi River Valley is sound. However, it is critical that the flood protection measures get the maintenance and improvements they need. Since the MR&T is not yet complete, federal investment is necessary to provide the Delta region better protection. We may sometimes go years without thinking about

it, but when the water rises again — which it will — those levees will be there, as long as we maintain them.

As the waters of the 2011 flood continue to recede, the resulting devastation is painfully apparent. The Mississippi River watershed drains everything from the Appalachians to the Rockies, from New York to Montana, and it all funnels right past our doorstep and down to the Gulf of Mexico. Thousands were displaced from their homes, most, if not all, in unprotected areas. Millions of acres of farmland were inundated and many communities will take months, if not years, to resume normal life. We should continue to pray for and help our neighbors in need.

Meanwhile, we must repair the damages quickly. Otherwise, we may incur a disaster with the next high-water season that could cost federal taxpayers hundreds of billions of dollars in disaster relief and recovery.

If you're interested in learning more, please visit www.savethedelta.org. Donations to this effort can also be sent to Save the Delta, c/o Mississippi Valley Flood Control Association, 1196 Poplar View Lane South, Suite Three, Collierville, Tennessee 38017.

George Grugett is executive vice president of the Mississippi Valley Flood Control Association.





House Hearing and Proposed Markup of H.R. 104, The RAMP Act

By Barry Holliday

On Friday, July 8, 2011, the House Subcommittee on Water Resources and Environment heard testimony on H.R. 104, the RAMP Act. Chairman Bob Gibbs (R-OH), in his opening statement said "Unless the issue of channel maintenance is addressed, the reliability and responsiveness of the entire intermodal system will slow economic growth and threaten national security." Congressman Charles Boustany, MD (R-LA), who introduced H.R. 104, addressed the Subcommittee and pointed out that currently tax revenues collected into the Harbor Maintenance Trust Fund (HMTF) exceed the amount being made available for maintenance dredging. He stated that the projected surplus would be \$6.1 billion at the beginning of next year. Dr. Boustany clarified that his bill did not seek the surplus, but wanted annual revenues to be used for their intended purpose, operation and maintenance of Federal ports and harbors. He said that enactment of the RAMP Act "could significantly change maritime shipping in the United States and worldwide." He pointed out that fully using the HMTF revenues would "solve many of the Nation's commercial navigation maintenance needs that are vital to our competitiveness in

international trade and to the country's economic recovery."

Gary LaGrange, the President and CEO of the Port of New Orleans, focused his testimony on the lack of O&M funding for the lower Mississippi River. He pointed out that the historic flooding in the



Mississippi River was causing substantial shoaling issues in the lower river, and without sufficient funding for dredging the pilots have imposed vessel draft restrictions to 43 feet and anticipate reductions to 38 feet. He pointed out the risk to our ability to facilitate international trade in New Orleans and other ports throughout the U.S.

Jim Weakley, President of the Lake Carriers Association, asked the Committee to pass H.R. 104 without amendment. Mr. Weakley emphatically stated, "We are on the verge of a national navigation heart attack! We need to revive our dying infrastructure with the angioplasty of dredging and sustain it with a healthy maintenance diet."

Bonnie Brady, Executive Director of the Long Island Fisherman's Association, related how the lack of maintenance dredging in harbors such as Montauk and Shinnecock, New York have significantly impacted the major commercial fishing ports of New York, and put their fishermen at great risk.

Numerous Subcommittee members asked questions and offered support to passage of the RAMP Act. A subcommittee markup that was originally scheduled to immediately follow the hearing had to be postponed due to a lack of a quorum of members. At this time, it is not certain that another Subcommittee markup will be scheduled, but it is expected that the RAMP Act will be included in the full Committee markup of the Transportation Bill.

Currently, H.R. 104 has 106 cosponsors and the Senate version, S. 412, has 24 cosponsors. The Harbor Maintenance Trust Fund Fairness Coalition continues to seek additional cosponsors, and is especially focused on gaining members of the Water Resources and Environment Subcommittee. During the August break, we encourage you to seek the support to H.R. 104 and S. 412.

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The impacts to vessel operations in the lower Mississippi River have gotten the attention of many Congressional members in the Midwestern states. The Big River Coalition continues to do an outstanding job of getting the message out and reaching out

to the coal, grain and agriculture associations. Our California coalition partners, CMANC and Bay Planning Coalition, have been reaching out to California exporters and gained the support in the RAMP coalition of the San Francisco Bay Conservation and Development Commission (BCDC).

Barry Holliday is the Executive Director of the Dredging Contractors of America and Chairman of the Harbor Maintenance Trust Fund Fairness Coalition.

Mississippi River Commission Announces Low-Water Public Meetings

The Mississippi River Commission will hold public hearings on board the Motor Vessel MISSISSIPPI as follows: August 15 in New Madrid, MO; August 16 in Memphis, TN; August 17 in Lake Providence, LA, and August 19 in Morgan City, LA.

All meetings will be open to the public and will include a report



from the President of the MRC, a report from the District Engineers on projects in their respective areas, and presentations from local organizations and the public.

For additional information, call 601-634-5768 or email cemvd-ex@usace.army.mil.

Record Runoff on the Missouri River

Runoff into the Missouri River Basin above Sioux City, Iowa during the month of June was the highest single runoff month since the Army Corps of Engineers began keeping detailed records in 1898, according to a news release issued by the Corps. The previous record monthly runoff was 13.2 million acre feet in April of 1952. June 2011

runoff was 13.8 maf, enough water to fill the Memorial Stadium in Lincoln, Nebraska more than 9,700 times, or once every five minutes during the entire month.

According to Chief of the Water Management Division Jody Farhat, "We have not seen a basin-wide flood event of this proportion since the mainstem system

was put into place. If it weren't for the dams, the historic and unprecedented flooding we've experienced this year would have been much worse."

For more information, visit the Northwestern Division's website at: www.nwd.usace.army.mil/home.asp



PIANC “Values of Inland Waterways” Working Group Holds Technical Meeting in Portland

The PIANC Working Group 139 “Values of Inland Waterways” and the Coasts, Oceans, Ports and Rivers Institute of American Society of Civil Engineers (ASCE/COPRI) Waterways Committee held meetings and a technical tour June 27-29, in Portland, Oregon. The groups’ joint meeting allowed for enhanced networking and technical exchange opportunities.

The meeting included a tour to the Bonneville Lock and Dam and the John Day Lock and Dam,

hosted by the U.S. Army Corps of Engineers’ Portland District. The participants particularly enjoyed seeing the fish ladders and hatchery, as well as the new gate at the John Day. It was a great opportunity to visit impressive examples of Corps’ inland navigation facilities and to view first-hand the extensive protective measures that enhance fish migration and survival on the Columbia River.

PIANC Working Group 139 includes members representing Germany, United Kingdom, The Netherlands, Belgium, France, Argentina, Egypt and the U.S. David Grier from the Institute of Water Resources is the U.S. representative. The working group continues to draft the report on the Value of Inland Waterways, and their next meeting is tentatively planned for October. You can keep up-to-date on working group activities at the PIANC USA website (www.pianc.us). The point of contact for PIANC Working Group 139 is David Grier, david.v.grier@usace.army.mil.

The ASCE/COPRI Waterways Committee is co-chaired by IWR’s Robert Pietrowsky, Director, and Kelly Barnes. It consists of members from the U.S. Army Corps of Engineers, industry (Moffatt-Nichol, MWH), and academia (Mississippi State



University, Stevens Institute, University of Maryland). The committee promotes navigation engineering by writing peer-reviewed technical manuals and organizing conferences and workshops.

The point of contact for the ASCE/COPRI Waterways Committee is Kelly Barnes, Kelly.J.Barnes@usace.army.mil.





Senate EPW Hearing Highlights Sharp Contrast in Nominees

The Senate Environment and Public Works Committee held a hearing on two of President Obama's picks for top water posts.

Ken Kopocis, a long-time staff member of the House Transportation and Infrastructure Committee nominated to head EPA's Office of Water, sailed through the hearing with bipartisan support. While acknowledging philosophical differences, the Committee's Ranking Member Senator Jim Inhofe praised Kopocis for working across the aisle to pass WRDA 2007.

In sharp contrast, the President's pick to serve as the Assistant Secretary for fish, wildlife and parks at the Department of the Interior, Rebecca Wodder, faced tough questioning for the controversial positions she has taken as CEO of American Rivers. She was specifically questioned on prior statements viewed as anti-growth, in opposition to hydraulic fracturing, and in opposition to building levees as effective flood control measures.

In addition to the concerns raised during the hearing, several members of the House of Representatives have voiced their

opposition to the nomination. House Natural Resources Committee Chairman Doc Hastings (WA-04) and 38 House Republicans sent a letter to the Chairmen and Ranking Members of the Senate Committees on Environment & Public Works and Energy & Natural Resources questioning Wodder's nomination, noting that her "record and previous employment raises serious red flags" over her ability to perform the job. While her nomination may clear through committee, confirmation by the full Senate is not certain.

Milestone Reached and a Job Well Done

The Corps' Mississippi Valley Division held a Relinquishment of Command Ceremony for Col. Robert Sinkler, Commander of the Hurricane Protection Office.

The mission given to the Hurricane Protection Office was to ensure the area most impacted by Hurricanes Katrina and Rita had a functioning perimeter system in place that was capable of defending the City of New Orleans from a 100-year hurricane storm surge by the 2011 hurricane season. As Col. Sinkler reported

in his final update, that milestone has been achieved. He further cautions that, due to the dynamic and ever-changing environment of Coastal Louisiana, work by government agencies at every level to reduce flood risks in the Greater New Orleans Area will never ever quite be completed. The need to pursue multiple avenues to reduce flood risk, and the importance of well-maintained systems for years to come cannot be overemphasized.

www.mvn.usace.army.mil/hps2/



Col. Robert Sinkler