

ECOS Water Committee Meeting
Alexandria, VA
March 23, 2009

Two candidates sought the position of Vice Chair of the Water Committee: Lucy Edmondson, Deputy Commissioner for Policy and Planning, Massachusetts DEP, and Leo Drozdoff, P.E., Administrator, Nevada Division of Environmental Protection (as nominated by Tom Porta, P.E., Deputy Administrator, Nevada DEP). The committee elected Lucy Edmondson as the vice chair.

Speaker: Mike Shapiro, EPA Acting AA for Water

- The American Recovery and Reinvestment law has been a daunting challenge for U.S. EPA personnel.
- Opportunity to showcase the success and efficiencies of the SRFs and for states to show how they can make a real difference with the additional funding.
- States should give close scrutiny to adhering to all of the requirements associated with the 20 percent set-aside for green infrastructure, water efficiency and energy efficiency projects in both the clean water and drinking water SRFs.
- The administration's budget for FY 2010 included significant increases for both the clean water and drinking water SRFs.

Policy Issues: Shapiro

- Waters of the U.S.: The administration is looking at the ramifications of the *SWANCC* and *Rapanos* court rulings and EPA's ability to exercise its authority on aquatic issues in the wake of those decisions.
- Administration is working on a variety of approaches and no decisions have been made in support of any particular policy pathway; possible guidance changes and/or regulatory changes are being reviewed; impacts on drinking water sources also are being looked at in this context.
- The strategy for dealing with climate change impacts on water was published last year. Six estuaries have been selected to run pilot projects in a 'climate-ready' estuaries program.
- Carbon capture and sequestration proposed rule: EPA is reviewing the large number of comments received and deciding how to move forward
- Nutrient management: Gulf of Mexico hypoxia, loss of vegetation and species in the Chesapeake Bay; struggling to keep up with the nutrient challenge. EPA has formed a workgroup with ASIWPCA and ASDWA to find a fresh approach to nutrient management. Later this year, hope to receive recommendations from the workgroup
- Partnership: Partnership Council of the Office of Water and States (PCOWS) was formed; budget and planning issues; permit streamlining through process improvements techniques and events.
- The State-EPA Innovations Conference planned for next year will have, for the first time, a dedicated water track
- Mountaintop Mining: the regulatory framework that runs across Interior, Corps and EPA is being reviewed.

- NPDES Pesticide decision: immediate challenge on aquatic pesticides rule, which the court struck down. If the court ruling stands, states will be faced with a huge number of permits for sprayers over a large variety of areas.
- Pesticide sprayer permit court decision: Connecticut expressed the importance of receiving a decision from the agency by the April 9 due date....states are preparing for mosquito control spraying. EPA responded that the agency has no intention of disrupting community spraying or spraying for agricultural production.
- Construction and development rule: will regulate pollution from residential and commercial construction sites; EPA is under court order to finalize by Dec. 2009.
- Ocean-going vessel discharge permitting rule and CAFO rule: both are challenging to implement and make work; new administration examining them to see if work done to date can be enhanced.

Speaker: Ryan Seiger, Staff Director, House Subcommittee on Water Resources and Environment

- The House Transportation and Infrastructure (T & I) Committee worked with the House Appropriations Committee to ensure the inclusion of the drinking water and clean water SRFs into the American Recovery and Reinvestment law. The T & I Committee wanted more money than the bill included.
- The chairman of the T & I Committee has again sent a letter to states, large metropolitan planning organizations, and major transit agencies advising them to provide the Committee with certain certifications and information regarding Recovery Act expenditures by April 4.
- Seiger told states that the committee's heavy information request—benefits, direct jobs, tertiary/secondary jobs—is not a paperwork exercise because the information collected could be used in the future to make the case that infrastructure investment creates jobs in the U.S.
- Among the concerns states raised in the session were the clarity of the transparency and accountability guidance document and the requirements associated with reporting the expenditure of the drinking water and clean water state revolving fund monies to multiple entities.
- Seiger acknowledged that federal agencies and Congress had not discussed coordinating their reporting requirements.
- The House T & I Committee will hold the first in a series of oversight hearings on the implementation of the Recovery Act next month.
- The T & I Committee and the House have passed the Water Quality Investment Act, which reauthorizes and funds the clean water SRF for 5 years for a total of \$13.8 billion. The first year's authorized level of funding (from the \$13.8b) is \$2.46 billion, which matches exactly the President's fiscal year 2010 request for the CWSRF in the EPA budget
- Seiger thanked ECOS for putting forth their proposal last year, saying it was very logical and helped "immensely" to move forward the debate. Chairman Oberstar is working with EPA

Administrator Lisa Jackson and Acting AA for Water Mike Shapiro on new legislation, which they expect to introduce a little later than originally anticipated this year.

- The Committee expects to move in the near future to reauthorize the BEACH Act, along with the Long Island Sound and Chesapeake Bay Programs. Representatives will have to decide if they have the political will to take the necessary actions to save these waterbodies
- The surface transportation bill will deal with runoff from impervious surfaces. 15–30 percent of water bodies are impaired by runoff and two-thirds of that is from highways/roads/bridges, according to GAO.
- The T & I committee would like to discuss with states the concept of “no net gain in surface flows,” wherein, when a highway is created, the cost of dealing with runoff would be factored into the total project cost.
- The Committee would welcome *any* suggestions or ideas from states on how to deal with runoff in the upcoming legislation.

Speaker: Rebeckah Adcock, Counsel, Minority, Senate Environment and Public Works Committee

- The EPW Committee works more slowly than the House Water Resources Subcommittee because it has more issues, fewer members, and more cross-committee issues.
- The drinking water and clean water SRFS will be reauthorized in a single bill; the proposed legislation is not written but the Committee is in the middle of discussions on the issues, including small systems and small communities.
- The bill will be addressed in the Water and Wildlife Subcommittee first....this is a departure from recent years.
- The new funding formula is the biggest issue that Senate staff must address. The DWSRF formula is set but the CWSRF formula is very outdated.
- The authorization funding levels likely will not vary from the level the Administration is proposing in the FY2010 budget for EPA.
- Minority Ranking Member James Inhofe (R-OK) does not share Rep. Oberstar’s views in the House bill on how to address “waters of the U.S.”. Sen. Inhofe views the bill not as a restoration of the Clean Water Act to pre-Rapanos/SWANCC but rather as an expansion of waters covered by CWA Sec. 404.
- Minority senators are concerned with ephemeral streams; headwater streams are easier to define than farm ponds.
- Big part of minority agenda will be oversight of EPA rulings and permitting issues; have had good meetings with Office of Water on pesticide spraying issue
- Nutrient loading likely will be addressed now that Sen. Ben Cardin (D-MD) is chair of the new Water and Wildlife Subcommittee.

- Talks between the majority and minority on reauthorization of the highway bill have not yet begun.

Q&A: Legislative Panel

- Oklahoma: by-product of ARRA is that big cities will dominate the SRF funds. Small towns don't have the wherewithal to move fast enough to qualify for the funds. OK wants to give grants to small communities for engineering. In some states, RUS takes way too long to get projects up and running.
- Delaware concerned about reporting. How to account for jobs; will there be models; how do you account for both direct and indirect jobs created; will Rep. Oberstar's guidance/form make it clear?
- Seiger: Two tiers of jobs to report on are direct jobs and secondary/tertiary jobs.
- Vermont is concerned with the reporting burden. The state understands the need to track the funds and can spend the money but with such a small staff, it will be difficult to report to US EPA, Rep. Oberstar, and on www.recovery.gov.
- Seiger: reporting has not been coordinated between the legislative and executive branches; probably need to coordinate with the federal agencies.

Speaker: Cynthia Dougherty, Director, Office of Ground Water and Drinking Water

- ARRA grant conditions are now available to states
- As of 3/23, 16 grant packages had been sent to EPA regional offices and several dozen more expected by the end of March
- Conditional grants for conditional IUPs; final grants only for final IUPs that include 20 percent set-aside for green infrastructure and energy or water efficiency projects or parts of projects.
- June 2009 will be the latest month a state will receive a cap grant...one state has a legislative problem that cannot be fixed until then
- EPA reporting (weekly) is a matter of updating existing project information in the respective databases
- Office of Management and Budget is still working on the jobs reporting piece and hopes to get it out before the end of the month.
- Buy American provision: OMB contacted EPA that morning and is still working toward a solution on how to implement
- Buy American: expect some national waivers; others would be regional waivers approved by OW
- Job estimates will vary geographically; will be reflected in guidance
- Council of Economic Advisors is working on how to estimate the jobs saved and created; EPA hopes to hear by March 27.

- Penalties will be imposed for Buy American violations; biggest issue that OMB has stressed to federal agencies

Discussion: Charter—Partnership Council of the Office of Water and the States (PCOWS)

- Several states expressed surprise at the form it took. Very bureaucratic, even down to the listing of participants. Don't want to have to multiply this if we want to partner with other EPA offices
- SC: Should be able to form partnership and meet without a Charter; too much to ask the officers to meet on a quarterly basis; vice-chair of the Water Committee should get information
- NE: The charter was devised to help with the logistics to organize the group; officers will not meet quarterly.
- DE: How does the ECOS Water Committee and other states interact with this group?
- Chair: PCOWS is an experiment; we'll learn as we go.
- Chair: ECOS wanted to create the relationship with the EPA Administrator but the Office of Water stepped up to the plate to test the concept
- NV: EPA talking about being a lot more transparent so may not need this degree of formality; maybe ECOS should test the new transparency/communication commitment before agreeing to such a formal charter.
- EPA-Shapiro: Charter focuses the partnering on high priority issues in the water area.
- CT: Motion made to approve the formation of the Partnership Council and give the Water Committee the ability to improve the charter. Motion received 2nd
- Motion approved and ECOS will move forward with the pilot with the Office of Water.

Other Issues: Approval of ECOS Draft Resolution: “Modernization of the Clean Water Act Permit Compliance System”

- OK: The ECOS resolution on the permit compliance system was going to be sunsetted; it was rewritten for consideration by the ECOS Compliance Committee
- OK and MI needed more time to make some changes so the resolution is being considered in the Water Committee
- The requirements of collecting the data is the issue – resource implications....and times are now even tougher than when the original resolution was crafted
- The Motion to approve, as revised, received a second and was unanimously approved.