Legislative Alert

This alert is part of our continuing series on the "Big Three" issues which will be discussed in depth at the upcoming WESTCAS annual conference, June 22-24 in San Diego.

One of these is the Guidance issued by USEPA that seeks to expand the definition of what constitutes a "waters of the US" and to do this through Executive Action rather than Congressional legislation.   Public comments on this guidance are due on July 1.

Today, the House Energy and Water Appropriations FY12 bill was made public by the Subcommittee. The formal markup of this bill will be tomorrow. We have attached it for your review. If you go to the top of page 14, first paragraph, you will note that there is language which prohibits the Corps from using any of its FY12 funding to implement changes in the definition of "waters of the US."   The language reads:

"*Section 109. None of the funds made available by this Act or any subsequent Acts making appropriations for Energy and Water Development may be used by the Corps of Engineers to develop, adopt, implement, administer, or enforce a change or supplement to the rule dated November 13, 1986, or guidance documents dated January 15, 2003, and December 2, 2003, pertaining to the definition of waters under the jurisdiction of the Federal Water Pollution Control Act 33 U.S.C. 1251, et seq.*"

The Appropriations Subcommittee on Interior and Environment may have a similar provision in its bill since it controls funding for the USEPA which has the actual lead on the Clean Water Act Guidance issue.   170 House Members signed a letter asking EPA/the Corps not to release the guidance, which they did anyway. The bill language is likely a response to that action on the part of EPA.

The Senate and the White House will try to strip this provision from the bill. Whether you, as a WESTCAS member, should support this language is something that will be discussed in detail at the Legislative Workshop during the annual conference.

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