

Mid-West Electric Consumers Association

July 2010 Board Update

Well, Congress has fled the heat in Washington for the August recess. The House has already escaped and won't be returning until September 14. The Senate, as the world's most deliberative body, will not adjourn until this Friday (August 6); they'll be returning on the 13th of September. No one expects much in the way of votes after the recess, and everyone expects a lame duck session. Probably no budget but Continuing Resolution (CR) to take them through the election. Then, perhaps a CR to take them into the new year, or perhaps a CR for the entire fiscal year. Some things don't change.

The Senate did mark up energy and water appropriations legislation. The House has yet to act. The Senate bill ([S.3635](#)) includes our modification of [section 311](#) (this year it's section 308), relating to congressional notification of contracts over \$1 million. You may remember that in December WAPA got tripped up in a purchase power and wheeling contract over \$1 million, which ended up costing \$3 million more after jumping through all the bureaucratic hoops, which delayed contract execution. Waiting periods for purchases in the spot market don't make any sense, and the Senate agreed, adopting the modification:

Provided further, That purchases of power or transmission services made by federal Power Marketing Administrations shall not be subject to the notification requirements of this section.

We do not know what the status of our effort is in the House. We had met with House Appropriations subcommittee staff but have not received any word on final disposition. The Energy and Water Development subcommittee did mark up the bill on July 15, but has not released any information, and probably won't do so until after full committee action, which has not yet been scheduled.

In addition to our initial success on section 311 – now section 308 – Western received its entire budget request for FY 2011. That doesn't mean clear sailing yet since the House has yet to act. Also, in the event of a Continuing Resolution (CR), Congress will often rescind a percentage from all agencies budgets. Nevertheless, it's a good first step.

The Senate bill has a number of other items that might be of interest to you:

- \$20 million for construction-related activities for flood risk management in the Fargo/Moorhead metro area, if the projects are found to be technically sound, environmentally sustainable, and economically viable;
- At Devils Lake, the Corps of Engineers will assume long term maintenance and repair where such repair needed for the “continued functioning of the flood control damage reduction . . .” The City of Devils Lake will be responsible for the rest;
- Funds appropriated for St. Mary Storage Unit Facilities (part of the Milk River Project) to be non-reimbursable;
- \$4 million for the Missouri River Ecosystem Restoration Program (MRERP);
- \$5 million for the Missouri River Authorized Purposes Study (MRAPS);
- \$74 million for Fish and Wildlife Missouri River recovery activities (down from a request of \$78.4); and
- \$12 million for modifications to Intake in Montana for ye olde pallid sturgeon; this money comes out of the \$74 million.

The Committee Report ([S. Rept. 111-228](#)) offers some insights into the Senate’s views. The Committee is mindful of the lack of funding for infrastructure:

The Committee is disappointed that the administration has proposed to invest less in our Nation’s water infrastructure in fiscal year 2011 than they did in fiscal year 2010. The Committee is very concerned about the continued large gap between the administration’s budget proposal and the annual appropriations provided by this Committee. The Committee would like to find a constructive way to work with the administration to narrow this gap.

The Committee is concerned that the administration is not placing the proper economic value on the Corps’ Civil Works program when budgetary resources are parceled out. At a time when this existing infrastructure, the foundation of our economic security and quality of life, is depreciating much faster than it is being recapitalized, when our increasing population is placing much greater stress on the Nation’s vital water resources, when shifts in population centers mean new and different problems, and when a growing environmental awareness requires new solutions to persistent problems, this underfunding is unacceptable and threatens our continued well-being. Infrastructure budgets have to be increased. If not, the Nation will continue to face unscheduled outages, damaged and incomplete infrastructure, and other emergency situations that must be dealt with through ever-increasing emergency appropriations. The situations in New Orleans and south Louisiana in the aftermath of Hurricane Katrina should have been a wake-up call to the Nation as to how we should be making investment decisions. A few billion dollars more of investment in advance of Hurricane Katrina would have reduced the outlay of the tens of billions of dollars that the Nation has had to invest since the hurricane.

Nor was the Committee unmindful of the employment benefits that infrastructure funding can offer:

The Corps Civil Works program means jobs for our citizens in the form of design and construction of the projects, materials and supplies for construction and maintenance not to mention the ancillary services that are provided for all aspects of the Civil Works programs. Just as important to the Nation as the jobs created and retained by these investments are the taxes paid to local, State, and Federal coffers as a result of these investments.

To say that the Committee is concerned is an understatement:

Unfortunately, this budget proposal, like many previous budget proposals, is woefully inadequate in funding national infrastructure needs. It ignores studies and projects that are ongoing and funded in the fiscal year 2010 Energy and Water Appropriations Act, that was agreed to by the Congress and signed into law by the President, in favor of a select group of studies and projects that comport to budgetary criteria devised by the administration. While this is the prerogative of the administration, it should be noted that the criteria utilized is not based in law. It is simply the administration's choice and as such has changed from year to year and from administration to administration.

Of particular concern to the committee (and to us) is the change in the benefit-cost ratio (b/c) required for a project to move forward. For 2011, the administration has used a threshold b/c of 2.5 to 1. The committee demurs:

The Committee differs with the administration concerning benefit-to-cost ratios being utilized to establish priority for funding. The Flood Control Act of 1936 established that project benefits should exceed project costs. This has been the Corps' longstanding water resource policy and legislative attempts to change this requirement have been unsuccessful. However, the administration has arbitrarily decided that benefits simply exceeding the costs is not a sufficient measure of a project's worth.

The Committee report took the administration to task for similar concerns about funding for the U.S. Bureau of Reclamation:

As with the Corps of Engineers budget, the Committee does not believe that the administration properly values the economic input of the Bureau of Reclamation's programs to the national economic. . . .

The Committee urges the administration to assess the value of Reclamation's programs to the national economy and derive a level of investment from that impact that is commensurate with the outputs of this critical infrastructure.

The report goes on to lament inadequate funding for western water infrastructure projects, singling out rural water projects for special mention:

The Committee is particularly disappointed to see that rural water projects are greatly underfunded in this budget. In many cases the budget proposals for these projects are less than the inflation rate for the project. In other words, at this level of investment, these projects will never be completed because the project costs are increasing faster than the amount recommended by the administration.

The Committee increased funding for some Bureau projects in our region, focusing on rural water. In Montana, the Milk River Project got an addition \$1 million dollars. Funding for the Rocky Boy/North Central Montana Rural Water System got a \$4 million increase over the administration's budget request.

Two rural water projects in South Dakota also got a bump. Lewis and Clark funding was increased from \$2 million to \$10 million. Mni Wiconi's appropriation was increased by \$3 million.

North Dakota saw an increase of \$13.4 million for Garrison Diversion, with the Committee looking for \$2 million for the Northwest Area Water Supply, \$7 million for the South Central Regional Water District, \$7 million for the Southwest Pipeline, and \$3.1 million for the Standing Rock Sioux Tribe Irrigation Project.

Pick-Sloan Operations and Maintenance (for water and power facilities) was funded at the Budget Request of \$37.3 million.

The Committee also recommended appropriations for the Western Area Power Administration at the administration's Budget Request level.

There are a number of other bills that will warrant our attention.

[H.R. 5023](#)

“Requirements, Expectations, and Standard Procedures for Executive Consultation with Tribes”

Boy, sometimes you really have to work to get a good acronym. This legislation is intended

(1) to establish and support a process of regular, meaningful consultation and collaboration with Indian tribes in the development of Federal politics and the initiation of Federal activities that impact tribal lands and interests . . . (3) to establish minimum standard procedures to ensure the above goals are achieved; and (4) recognize tribal regulatory authority and jurisdiction generally, and specifically through the waiver process.

So, what's covered by this bill?

(3) ACTIVITY.—The term “activity” means a project, program, policy or other action including, infrastructure projects, regulations, program comments by Federal entities, and agency-drafted proposed legislation, that is funded in whole or in part under the direct or indirect jurisdiction of an agency, including those carried out by or on behalf of an agency; those carried out with Federal financial assistance; or those requiring a Federal permit, license, or approval.

And how should the federal government consult with the tribes?

Consultation entails a process of open, ongoing communication, interaction and coordination that may include written correspondence, meetings, telephone conferences, site visits, e-mails, on-line information sharing, consensual mechanisms for developing regulations including negotiated rulemaking, and more. Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding proposed activities and other matters. Mutual understanding and respect is the basis of effective, meaningful consultation. Effective, meaningful consultation requires a two-way exchange of information, a willingness to listen, an attempt to understand and genuinely consider each other's opinions, beliefs, and desired outcomes, and a seeking of agreement on how to proceed concerning the issues at hand. Effective, meaningful consultation does not guarantee such agreement, but at a minimum contributes to the building of relationships based on mutual respect and understanding. Consultation can be considered effective and meaningful when each party demonstrates a genuine commitment to learn, acknowledge and respect the positions, perspectives, and concerns of the other parties. Ultimately, effective, meaningful consultation means collaboration.

All righty. Federal agencies must develop processes for tribal consultation. The legislation appears to cover almost anything a federal agency might do. The only saving grace is that "Consultation . . . shall be completed prior to the expenditure of any Federal funds on the activity . . ." That should be an incentive to "get on with it."

[S.3648](#)

Pick-Sloan Tribal Commission Act of 2010

Senator Dorgan (ND) – joined by senators Thune (SD), Conrad (ND), and Johnson (SD) – has introduced legislation to establish a commission to resolve and finally settle claims of affected Indian tribes. In the finding section of the bill (section 2), the legislation does acknowledge numerous determinations of compensation, etc. but justifies the need for the legislation by noting that "past compensation (A) was provided at different levels and based on different compensation methods, depending on the historical time period during which compensation was provided. The findings section also states that "(6)(A) although those Indian tribes reside on the Missouri River, the economic benefits of the Pick-Sloan Program have not been passed on to the affected Indian tribes."

The Commission is to be comprised of seven members:

- one chairperson;
- one with expertise in Indian law and policy;
- one with expertise in the operation and history of Federal water projects;
- one with expertise in the area of environmental justice; and
- one who is an authority in cultural preservation.

Three members of the Commission must be members of a federally recognized Indian tribe.

Commission members are to be selected by the Chairperson and Vice Chairperson of the Senate Committee on Indian Affairs, and the Chairperson and Ranking Member of the House Committee on Natural Resources. Members are to serve for the life of the Commission.

Members of the Commission will be paid and receive compensation for travel as well. The Commission may hire staff, also to be paid at a rate not exceed \$120,000-165,000, the same as Commission members.

The Commission is to conduct a study of

the impacts on affected tribes, directly or indirectly, caused by the Pick-Sloan Program; and measures implemented by the Federal Government to attempt to address those impacts;

(B) other measures that have been proposed to address the impacts on the affected Indian tribes caused by the Pick-Sloan Program;

(C) the results of any other studies regarding those impacts and potential solutions to the impacts, including any studies conducted by the Joint Tribal Advisory Committee relating to the Pick-Sloan Program; and

(D) comparisons involving other situations in which Federal hydroelectric projects have resulted in the taking or occupation of Indian land and the compensation, or other measures, Indian tribes have been or are being provided in those situations.

The Commission must convene at least three hearings, which will be open to the public.

The outcome of all of this is to be “a proposal to comprehensively resolve the impacts to the affected Indian tribes resulting from the Pick-Sloan Program.” The proposal must be comprehensive and provide “full and final compensation,” as well as a description of earlier measures that “have not been implemented, could be implemented or should be implemented in a more effective manner.” The proposal should also identify relevant measures that could be accomplished administratively, and those that would require legislation, as well as “any other measures necessary to comprehensively resolve the impacts of the Pick-Sloan Program on the affected Indian tribes.”

Wow! Another lollapalooza of responsibilities and recommendations. Congress is patient, though. All of this is to be done not later than 18 months after the first meeting of the Commission; but with proper notice, could be extended for another 180 days.

The bill also requires the Commission to maintain a web site and archives. I’ve never seen that in legislation before. I guess we really have entered the digital age.

[H.R.5780](#)

Reduce and End our Deficits Using Commonsense Eliminations in the Energy Program Act of 2010

Just when you thought it was safe to go back into the water, sale of the PMA's has reared its ugly head once again. To mangle the metaphor, this one doesn't have any legs. Representative Gary Peters (D-MI) and Peter Welch (D-VT) introduced legislation to halt a variety of Department of Energy programs, including sale of the Southeastern Power Administration (SEPA) and associated generation assets, and the Tennessee Valley Authority's power facilities. SEPA is an odd choice, since it owns no transmission. I wouldn't lose much sleep over this one.

[H.R. 5892](#)

Water Resources Development Act of 2010

The House Committee on Transportation and Infrastructure marked up the 2010 Water Resources Development Act (WRDA), but hasn't published the results of the mark up. As introduced, there wasn't a whole lot for Pick-Sloan. One curious section (§4114) calls for the Secretary of the Army "to conduct a study to determine the feasibility of carrying out a project for flood damage reduction for the Missouri River and tributaries, South and Central North Dakota, North Dakota." Not sure what this is all about.

There's also a provision for adding ecosystem restoration and watershed improvements as project purposes on James River channel restoration and improvements authorized by WRDA 1986.

Other Congressional Fun

The House Committee on Natural Resources subcommittee on Water and Power convened a hearing on development of low impact hydropower, which includes the hydrokinetic turbines in Bureau of Reclamation canals that we discussed at our June Board meeting.

We were asked to testify and, while supporting additional hydropower development, outlined our concerns about fairness in developing these new opportunities. A copy of the [Mid-West testimony](#) is attached.

In following up from our Board meeting, I had met with Bureau staff in Washington, D.C. before we knew about the hearing. The Bureau was sympathetic, but not inclined to do much since they did not perceive any benefit for the Bureau. Staff were also concerned about additional work load should all the permitting at Bureau facilities be turned over to the Bureau. We continue to talk with the Bureau about potential opportunities here.

Western Area Power Administration

Western convened a meeting on August 5 to discuss a pending Federal Energy Regulatory Commission (FERC) [Notice of Proposed Rulemaking](#) on regional transmission planning and cost allocation methodologies. FERC doesn't think that its Order 890 has resulted in enough new transmission being built and so is looking for comments about regional organizations conducted planning studies and cost allocations for new transmission lines. After a regional body has wrangled its way through that morass, it's supposed to conduct a similar exercise with adjacent regional organizations.

The NOPR is vague, even by FERC standards. Attendees questioned FERC's assumption about lack of transmission construction, saying that wasn't true in the West. And, for all of FERC's concern about coordinated transmission development, merchant transmission owners are exempted from the process.

Western provided an overview of the NOPR and a snap shot of [WAPA's concerns](#), but noted that any comments must make their way through the sausage factory at the Department of Energy. We understand that Western is also keeping our national associations up to speed on its concerns. Comments are due by August 30.

Funding Summit

We continue talks with Western to try to move forward on solving some of Western's funding problems. Western's biggest concern is its construction program, which has been woefully underfunded by the Office of Management and Budget (OMB) for years. We also want to better understand how all the tools in the budget tool kit interrelate.

MRRIC

The Missouri River Recovery Implementation Committee convened in Sheridan, Wyoming this time to continue deliberations on birds and fish. The committee continued to grapple with the scope of recovery activities, particularly as they relate to the piping plover and interior least tern.

The BiOp – that's the U.S. Fish and Wildlife Service (USFWS) finding that tells the Corps what it needs to do to avoid an Endangered Species Act jeopardy finding – specifies recovery in the river channel. What that means is that anything not in the channel doesn't count. So, if there were 500 million birds two miles away, it wouldn't count to satisfying the requirements of the BiOp. Huh?

This has been a source of frustration to those of us who thought the effort was to recover the birds. Brian Barels from Nebraska Public Power District reported that they have been working on bird recovery in the Platte, which is also under going recovery activities. The birds have been nesting on sand bars; but the birds have also been nesting in NPPD sand pits, which the utility keeps clear of brush, etc. Turns out the fledge rate in the sand pits is 6 to 7 times higher than on the sand bars. Hmmmmmmm.

Long story short, it may be that USFWS may be willing to broaden bird recovery activities to the “flood plain.” That would provide more opportunities for bird recovery without having to build sand bars. Now, you have to know that it took us some time to distinguish between channel and flood plain, but we got there. This is a good step forward to saving the birds.

As for ye olde pallid sturgeon, ground breaking for the fish passage at Intake outside of Sidney, Montana is scheduled for August 13.

MRRIC will meet again in Iowa in October.

Missouri River Authorized Purposes Study

The Missouri River Authorized Purposes Study continues to move forward. We have been harping on the need to include Minnesota in the study effort. The Corps had not done so initially. We’ve been pointing out that Minnesota gets more Pick-Sloan power than any other state (except Nebraska, which can give them a run for the money) and will also be a beneficiary of the Lewis and Clark rural water system. You may remember Don Habicht telling us of the water needs of processing plants in Worthington.

It appears that the Corps is trying to sandwich in at least one MRAPS meeting in Minnesota. We spoke with Witt Anderson, chief of the Programs Directorate of the Northwestern Division of the Corps. He said he would look into it; and he apparently has. Thanks, Witt! We were contacted about a suitable site for a meeting in Minnesota in late August or early September. After checking with our Minnesotans, we suggested Marshall or Worthington. We await the final decision.

The timing was pretty good for a change. Right after MRRIC, I went to Wadena, Minnesota to meet with the Todd-Wadena Electric Cooperative Board and near by members and municipalities. I had been invited to talk about Pick-Sloan. We spent a couple of hours discussing the issues, starting out with the need to get involved in MRAPS. Wadena had been hit by a tornado about two months ago. West side of town took a pretty big hit. Awesome to see steel I beams twisted like pasta. Recovery is gonna take a while.

ENOUGH!!