

The Environmental Counselor

May 2011

EPA, Interior, Commerce Programs Among Those Cut in Budget Compromise [\[FNaa1\]](#)
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Federal and state environmental and resource management programs took a hit this week under legislation approved by the House and Senate to implement the budget deal reached by lawmakers for FY2011. The Department of Defense and Full-Year Continuing Appropriations Act of 2011 reduces EPA's funding by \$1.6 billion [\[FN1\]](#) (16%) for the remainder of the current fiscal year and sets up an even larger budget battle for FY2012, which begins in October 2011. EPA programs hit the hardest are:

- Grants to states and tribes;
- Climate change programs; and
- The Great Lakes Restoration Initiative.

At Interior, the U.S. Fish and Wildlife Service (USFWS) suffered significant cuts. At Commerce, cuts include elimination of the agency's planned Climate Service, and the likely curtailment of its efforts to establish a market-based "catch share" program in certain fisheries.

More specifics will come in 30 days, when the affected agencies submit their operating plans under their new budgets to the House and Senate Appropriations Committees. [\[FN2\]](#)

1. Cuts Made Under Continuing Resolutions

Even before last week's budget deal was announced, Congress had cut \$12 billion in spending from the federal budget, including significant cuts to federal environmental programs under the continuing resolutions (CRs) it adopted as stop-gap funding measures. The CRs had cut EPA's science and technology programs by \$6 million, environmental programs and management by \$30 million, and state grant funds by \$10 million. Those cuts were incorporated into the legislation approved by Congress today.

2. EPA's FY2011 Budget

The vast majority of cuts to EPA's FY2011 budget came at the expense of grants and loans to States, local gov-

ernments, and federally recognized Indian Tribes for such things as wastewater and drinking water projects. [FN3] Those programs received \$4.94 billion in 2010. [FN4] Under the FY2011 Appropriations Act, that amount was reduced by \$1.19 billion, or 23%. [FN5] This includes a plan to rescind \$140 million in unobligated funds from the program. [FN6]

The Act includes cuts of \$575 million from the Clean Water State Revolving Fund [FN7] and \$422 million from the Drinking Water Revolving Fund. [FN8] Additional cuts totaling \$216 million were made to programs for constructing drinking water and stormwater infrastructure (\$156 million), water infrastructure programs in Alaska (\$3 million) and along the U.S.-Mexico border (\$7 million). There were also reductions made to grant funding under the Energy Policy Act, and for air pollution studies and state and local greenhouse gas programs. The Act also cuts \$175 million from the Great Lakes Initiative. [FN9]

Programs relating to climate change have been cut by \$49 million, or 13%. While funding was cut, those programs will be allowed to continue at reduced funding levels as the House-approved riders to stop greenhouse gas regulations and reporting rules were not included in the final bill. [FN10]

The legislation left funding for the Superfund program essentially intact. The program was funded at \$1.28 billion, roughly in line with the President's proposed FY2012 program budget of \$1.24 billion. [FN11]

Because most of the reduction in EPA's budget came through cuts to various grant programs, much of the impact will be felt on the states, tribes, and other grant recipients. State officials have been expressing concern about the ripple effects of cuts to EPA's funding for some time. At a meeting of the Environmental Council of States (ECOS) on March 28, ECOS President Richard Opper, director of the Montana Department of Environmental Quality, observed: "We get a lot of our funding from the federal government, and if the federal government shuts down, what happens to our grants? What happens to the funds we use to pay our staff to do programs that have been delegated to the states?" [FN12] Because so much of EPA's budget is based on pass-through grants, Mr. Opper noted that the impact of cuts to EPA's budget is frequently visited on the States: "They may think they're cutting the federal government, but they're not. They are cutting the states." [FN13]

3. Budgets Cut from Resource Agencies

a. Interior

Compared to FY2010 levels, BLM's budget is being cut by \$18 million, the USFWS by \$141 million, and the Land and Water Conservation Fund by \$149 million.

The FY2011 Appropriations Act also contains a rider that will end, for the short-term at least, a decades-long debate over gray wolf protection in certain western states. Section 1713 of the Act provides:

Before the end of the 60-day period beginning on the date of enactment of this Act, the Secretary of the Interior shall reissue the final rule published on April 2, 2009 (74 Fed. Reg. 15123 et seq.) without regard to any other provision of statute or regulation that applies to issuance of such rule. Such reissuance (including this section) shall not be subject to judicial review and shall not abrogate or otherwise have any effect on the order and judgment issued by the United States District Court for the District of Wyoming in Case Numbers 09-CV-118J and 09-CV-138J on November 18, 2010.

The final rule published by the USFWS at 74 Fed. Reg. 15123, which will be reissued in two months and made effective on a date determined by USFWS (likely 30 days later), identified, and delisted the distinct population segment (DPS) of the gray wolf in the Northern Rocky Mountains (NRM) of the United States, except in Wyoming. The NRM gray wolf DPS encompasses the eastern one-third of Washington and Oregon, a small part of north-central Utah, and all of Montana, Idaho, and Wyoming. That final rule was vacated after its original issuance in 2009 when a federal judge determined it was arbitrary and capricious; the DPS remained on

the ESA list while environmental groups and the federal government litigated its status. The Wyoming district court decision referenced in § 1713 of the FY2011 Appropriations Act involved a protracted debate over the efficacy of existing state protections for the gray wolf in Wyoming. The USFWS had found those protections insufficient, and so did not delist the wolf in Wyoming. The reviewing court found certain elements of USFWS' decision arbitrary and capricious and remanded the matter to the agency to permit it to determine whether Wyoming's wolf management framework is sufficient under the ESA. Under the FY2011 Appropriations Act, the Wyoming wolves will still be protected by the ESA, pending resolution of the issues remanded to the agency in November 2010.

By requiring the USFWS to delist the wolf DPS and precluding judicial review of that directive, this provision directly conflicts with the ESA, the Administrative Procedure Act, and basic tenets of administrative law. This is the first time that Congress has interposed itself in the ESA listing process, which is specifically reserved to the secretaries of Interior and Commerce, as delegated to the USFWS and NOAA Fisheries. [FN14] These ESA provisions require the responsible Service to, among other things, base its listing and delisting decisions on the “best scientific and commercial data available [.]” [FN15] With this rider, Congress has arguably set that requirement aside and made a decision reserved for an expert agency.

b. Commerce

The Department of Commerce also suffered program cuts, including the elimination of any funding to “implement, establish, or create a NOAA Climate Service as described in the ‘[Draft NOAA Climate Service Strategic Vision and Framework](#)’ published at 75 Federal Register 57739 (September 22, 2010) and updated on December 20, 2010.” [FN16]

Cuts to Commerce's budget will impact NOAA Administrator Dr. Jane Lubchenco's efforts to overhaul the nation's fisheries management system through development and implementation of “catch share” programs by Fishery Management Councils under the Magnuson-Stevens Act. [FN17]

In the FY2011 Appropriations Act, Congress has precluded the use of any funds appropriated to NOAA toward approval of any new limited access privilege programs (a type of catch share) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils in FY2011. However, the Act does not prohibit the use of funds toward “development activities related to limited access privilege programs.” The manner in which NOAA Fisheries interprets the term “development activities” will determine the extent to which the cuts undermine nascent and recently implemented programs.

4. Conclusion

Congress' adoption of the FY2011 budget will have significant impacts on both state and federal environmental programs. Many of the specific impacts will be clearer in 30 days, when the affected agencies submit their spending, expenditure, or operating plans for the remainder of FY2011 to the Appropriations Committees. But many programs focused on renewable energy, climate change, wildlife conservation, and fisheries management will almost certainly be curtailed or eliminated. Major reductions in EPA's grant programs mean that state and local agencies and Tribes will have less money from the federal government to pay for their own programs. Hunting season on a species previously considered endangered will likely open in Montana and Idaho in two or three months. Finally, federal climate change monitoring and policy initiatives, as well as changes to fisheries management in certain Atlantic and Gulf Coast fisheries, will be back-burnered or abandoned.

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[FN1]. Budget reductions cited in this article are taken from the U.S. House Committee on Appropriations summaries,

and a comparison of the sources of FY2010 budgets with line items in the FY2011 Appropriations Act--i.e., [Public Laws 111-85](#), 111-83, 111-88, 111-68, and 111-117. *See also* J. Steinhauer & R. Pear, Democrats Allow Trims to Favored Programs *New York Times* (April 11, 2011).

[\[FN2\]](#). FY2011 Appropriations Act, § 1768.

[\[FN3\]](#). For more on these grant programs, see EPA's Multimedia State and Tribal Assistance Grants FY2010 Fact Sheet.

[\[FN4\]](#). Obama's 2011 Budget Proposal: How It's Spent, *New York Times* (February 1, 2010).

[\[FN5\]](#). The cuts to the program are detailed in §§ 1738-1740 of the FY2011 Appropriations Act.

[\[FN6\]](#). FY2011 Appropriations Act, § 1740.

[\[FN7\]](#). The Clean Water State Revolving Fund programs provide more than \$5 billion annually to fund water quality protection projects for wastewater treatment, nonpoint source pollution control, and watershed and estuary management. More on this fund can be found at http://water.epa.gov/grants_funding/cwf/cwsrf_index.cfm.

[\[FN8\]](#). FY2011 Appropriations Act, § 1738. Under the 2009 stimulus bill, the Clean Water State Revolving Fund, which had been in place since 1987, received \$4 billion, including funds for Water Quality Management Planning Grants. The Drinking Water State Revolving Fund program, in place since 1997, received \$2 billion. More on the Drinking Water State Revolving Fund can be found at <http://water.epa.gov/aboutow/eparecovery/index.cfm>.

[\[FN9\]](#). More on the Great Lakes Initiative can be found at <http://water.epa.gov/lawsregs/lawsguidance/cwa/criteria/gli/index.cfm>.

[\[FN10\]](#). G. Nelson, Budget deal slams state, regional programs, *Greenwire* (April 12, 2011) (subscription required).

[\[FN11\]](#). J. Jacobs, Obama proposes slight cuts for cleanups, *Greenwire* (February 14, 2011) (subscription required).

[\[FN12\]](#). Mr. Opper's comments were quoted in a story on the ECOS meetings: J. McArdle, State enviro agencies fear ripple effect of federal budget cuts, appearing in *E&E PM News* (March 28, 2011) (subscription required).

[\[FN13\]](#). J. McArdle, State enviro agencies fear ripple effect of federal budget cuts, appearing in *E&E PM News* (March 28, 2011) (subscription required).

[\[FN14\]](#). *See* [16 U.S.C.A. §§ 1532\(15\) & 1533](#).

[\[FN15\]](#). [16 U.S.C.A. § 1533\(b\)](#).

[\[FN16\]](#). FY2011 Appropriations Act, § 1348.

[\[FN17\]](#). "Catch share" is a general term for several fishery management strategies that allocate a specific portion of the total allowable fishery catch to individuals, cooperatives, communities, or other entities. Each recipient of a catch share is directly accountable to stop fishing when its specific quota is reached. The term includes more specific programs defined in statute such as limited access privilege and individual fishing quota programs, and has been likened to a cap-and-trade policy. While forms of catch shares have been used in fisheries management in the United States since 1990, NOAA's issuance of a policy on the matter last year signaled a full-scale transition. *See* Linda Larson and

Meline MacCurdy, *Sea Change? NOAA Seeks Public Comment on New Policy for Allocating Fishery Resources*, Marten Law *Environmental News* (January 26, 2010).

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