

February 20, 2024



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GOVERNMENT SHUTDOWN MARCH 1ST STILL A POSSIBILITY

In four decades, we haven't seen this much congressional disarray. The first of two funding deadlines for the current fiscal year comes in two weeks on March 1st. Both the House and Senate are not in session this week. When the Senate returns on February 26th, it is required by the Constitution to take up the impeachment of Homeland Security Department Secretary Mayorkas, which the House managed to approve on its second try.

The House and Senate also have 12 funding bills to pass, and their funding levels are far apart. That's hurdle number 1. Hurdle number 2 is that most of the House bills contain poison pill amendments on abortion, immigration, and other issues that the Senate will never accept. These issues have not been resolved and some hardline House members are saying the only way to get them resolved is to shut down the government on March 1st.

House Speaker Johnson has not been able to get agreement among the factions of his party on funding and immigration, so we have no prediction other than that the March 1st deadline will be eventually kicked to the end of the month. After that, the government may have to be funded by a yearlong Continuing Resolution which is required to come with a 1% spending cut across the board for all agencies and a heck of a lot more grief on top of that for agencies like the Corps that have new work that has to be earmarked by Congress.

USACE REVISES NATURAL DISASTER PROCEDURES (PL 84-99)

The US Army Corps of Engineers is moving fast on its proposed rule which, in effect, places an undue burden on local communities. The proposal would require localities to provide the Corps with continued plans and updates outlining mitigation steps they have taken to reduce risks to life, safety, and property to be eligible to receive PL84-99 (also called FCCE) assistance. The problem is these steps are not contractual obligations. Warwick Group filed [comments](#) on this issue previously.

The proposed rule now sits in limbo pending an **Office of Information and Regulatory Affairs (OIRA)** review. But the point is simple, nowhere in the statutes cited by the proposed rule **exists** such a requirement. If the Corps wishes to institute such a mandate, they ought to consider utilizing the proper channels of policy and lawmaking — Afterall, the **Chevron Doctrine** may soon come [crumbling to the ground](#).

CORPS ISSUES PROPOSED RULE AFFECTING ITS ANALYSIS OF PROJECT BENEFITS

The Corps has issued its long-awaited [proposed rule](#) implementing the Principles, Requirements, and Guidelines for Federal Investments in Water Resources. That is jargon for how the Corps evaluates investments it is going to make (i.e. its guidelines for Benefit Cost Analysis).

According to the Office of the Assistant Secretary of the Army for Civil Works, these “Agency Specific Procedures (ASP) provide a framework to govern how the Corps would evaluate certain proposed water resource investments.” One of the biggest changes to Corps planning procedures under the ASP is the way economic benefits from nature-based solutions and nonstructural features are incorporated into Corps projects. The Corps is issuing this rule at the behest of authorizing language that Congress had outlined in section 110 of the ***Water Resources Development Act of 2020***. Again, for clarity, this is how the Corps determines National Economic Development (NED) benefits. *Note: All Corps projects are legally required to have a 1:1 BCR but they are at least currently designed to maximize their NED benefits and not their BCR...*

As more information and analyses become available, we’ll continue to update you in future issues of the *WaterLog*. In the meantime, we ask any readers who submit comments to also send us a copy at Dan@WaterLog.Net. The **deadline** for public comments is **Apr 15, 2024**.

“I DIDN’T HEAR NO BELL” - DESPITE SETBACKS, NEW JERSEY CONTINUES OFFSHORE WIND PUSH

Despite significant project setbacks, cost increases, cancellations, and supply chain woes, New Jersey Governor Phil Murphy continues to press on with his offshore wind agenda. It’s like a scene from Rocky Balboa.

On January 24th, the New Jersey Board of Public Utilities awarded over 3,700 MW to Inverenergy and EnergyRE’s Leading Light Wind Project and Attentive Energy LLC’s Attentive Energy project, both in an area known as the New York Bight. While Murphy championed the solicitation as “undeniable proof that the future of offshore wind in New Jersey is as strong as ever,” nothing could be further from the truth.

The offshore wind industry was upended in 2023. Inflation and supply chain issues handed the industry two black eyes, and contract cancellations have been a slew of gut punches for the industry into 2024, casting political leaders’ climate goals further as fantasy. Danish energy company, Orsted, cancelled its flagship Ocean Wind 1 and 2 projects last Halloween, and it’s looking more and more like Atlantic Shores is also underwater without further federal and or state subsidies. Orsted’s cancellation of Ocean Wind 1 was the first domino to fall, and since then offshore wind project cancellations have occurred across the Northeast. All were cancelled for similar reasons – they cost too much or couldn’t find the parts or equipment on time. Plus, adamant pushback and lawsuits from local communities and fishermen.

No matter which side you’re on, one thing is clear, wind energy is a hot topic in New Jersey. Since the inception of offshore wind projects on the East Coast, opponents have raised credible concerns about the impacts to the marine environment, commercial fishing, costs to ratepayers, and impacts to tourism and viewshed from offshore wind farms.

Proponents claim that offshore wind will be the solution to climate change and will produce a significant amount of jobs. At the behest of the coastal communities that will be impacted by the

projects, Murphy is pressing forward with industrializing the ocean offshore of the State he oversees. With so much disagreement on the issue, only time will tell which camps' predictions are correct.

With two years remaining on his shot-clock, amidst a bleak financial outlook for the offshore wind industry, Governor Murphy remains steadfast in achieving his 100% clean energy initiative. Murphy is all-in on his offshore wind agenda. There is no Plan B. And it appears that he is willing to go down with that ship.

FEMA IS REVAMPING IT'S CONVOLUTED WAY OF ADMINISTERING RELIEF

The Biden Administration has made the decision to reform the application process for those who are affected by natural disasters. The new application process is an overall simplification that will benefit millions of Americans — Provisions that once inhibited assistance, like the SBA requirement, will now be stripped. The SBA provision required that ALL applicants first apply for a disaster loan through the Small Business Administration (SBA), whether the applicant owned a small business or not. This created confusion and headache for many seeking assistance, and public comment echoed that sentiment.

While the revisions rescind long-standing policies like the SBA requirement, FEMA's target goal remains providing relief, **when, where** and to **who** is in need.

Other Changes Include:

- **Establishing Serious Needs Assistance** —this will substitute the Critical Needs Assistance program with a cash relief program called **Serious Needs Assistance**. This program will remove the case-by-case evaluation and instead open the stream of funding to all individuals affected by disaster.
- **Insurance Related Pitfalls:** Individuals will be eligible to receive funding from FEMA that will ultimately cover the difference in costs that their insurance will otherwise not pay for.
- **Late Application Forgiveness:** Late applications will no longer be subject to a penalty. Previously, addendums were required outlining **why** an application was late (applying amidst a natural disaster seems a pretty sufficient reason for tardiness) — this is no longer the case come March.
- **Fast(er) Relief for Entrepreneurs:** Self-employed individuals who were once subject to the SBA loan application, will now be able to receive aid from FEMA directly.

All in all, the simultaneous expansion of FEMA services and streamlining of procedures to receive FEMA assistance are a step in the right direction. Now, With FEMA's disaster relief account consistently underwater, it remains to be seen if these changes are poking another hole in an already sinking ship.

WE'VE GOT BILLS FOR YOU

The first week of every month we post a list of the status of every bill in Congress that affects coastal communities. It's a *WaterLog* exclusive. You can find the February list [here](#). *A note to congressional staffers: If we've missed one of your boss' bills, please let us know!*

CORPS TOLD TO INCORPORATE RESILIENCE INTO PROJECT PLANNING AND MANAGEMENT

Over the past decade, the Corps has received about \$19 billion for its flood risk management activities, including updates or new construction for 14,7700 miles of levees, 715 dams, and about 150 major coastal storm risk management (beach nourishment) projects. That doesn't include over \$46 billion in post-disaster and infrastructure appropriations for repairs to these projects as a result of hurricanes and floods. Since this significant investment in flood risk management infrastructure is at risk from rising seas and climate change, the General Accountability Office (GAO), the investigative arm of Congress, has laid out 14 options for the Corps to infuse resilience into its operations, planning, and management of flood risk management projects. The 150-page report can be found [here](#). We'll be talking more about this report in future issues of WaterLog.

That's all for this issue. Thanks for being a WaterLog subscriber!

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