



Dated: 11/11/11

H-2B UPDATE FROM PLANET - ACTION NEEDED IMMEDIATELY ***(Vote Maybe Monday)***

Legislation has been proposed that would provide temporary protection for a few job categories from the H2B wage rule, but will ultimately allow it to go into effect and will serve as a tool to potentially undermine legal challenges to the rule.

The H-2B Workforce Coalition is sending the following letter to the Hill. Please use this letter to contact the conferees below and any congressional offices with which you have a relationship.

Congress is in the process of completing a conference agreement on a “minibus” appropriations bill that would include funding for the Departments of Agriculture, Transportation, Commerce, and Justice. The conference includes a discussion about possible language to address the H-2B wage rule. Conferees hope to reach an agreement on the appropriations package early next week.

Based on a Coalition call yesterday, the Coalition agreed to oppose the draft H-2B compromise language being floated by Senator Mikulski. While we greatly appreciate her leadership and support of the H-2B program for many years, we do have some concerns about the proposed compromise language. **Please reach out to your Hill contacts, especially those on the Appropriations Committees and encourage them to address the H-2B wage rule in a meaningful way that will protect all H-2B employers from the disastrous impact the rule will have when it goes into effect on November 30. On average, employers will be forced to an approximate 40 - 60% increase in labor costs. You can reach them through the U.S. Capitol switchboard at (202) 225-3121. Ask to speak to the staff person who handles immigration issues.(MONDAY MORNING)**

The proposed language is concerning because:

1. It only pushes back the implementation date by 6 months rather than prohibiting DOL from implementing the rule altogether.
2. A 6-month delay could result in the judges in Louisiana and Florida from delaying their decisions about a possible preliminary injunction without providing long term relief.
3. The proposal addresses some specific categories of H-2B users but leaves out others such as forestry tree planters and restaurant workers.

Obviously, we would love to see a legislative fix included in the minibus bill, but we need a real fix. The ideal language is the language that Reps. Rehberg and Alexander included in the draft DOL Approps bill:

SEC. 118. None of the funds made available by this Act may be used to—

- (1) continue the development of or to promulgate, administer, enforce, or otherwise implement the Wage Methodology for the Temporary Non-agricultural Employment H-2B Program regulation (Regulatory Identification Number 1205-AB61) published by the Employment and Training Administration of the Department of Labor on January 19, 2011 (76 Fed. Reg. 3452 et seq.); or
- (2) continue the development of or to promulgate, administer, enforce, amend, issue a final rule, or otherwise implement the Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers) regulation (Regulatory Identification Number 1205-AB58) published by the Employment and Training Administration and the Wage and Hour Division of the Department of Labor on March 18, 2011 (76 Fed. Reg. 15130 et seq.).

A second option is the language that Senators Mikulski and others included in the Labor-HHS bill passed by the Senate Appropriations Committee:

SEC. II2 . None of the amounts made available under this Act may be used to enforce the rule entitled “Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program” (76 Fed. Reg. 3452 (January 19, 2011)).

We would prefer to see the word “implement” used instead of “enforce” since enforce could still leave H-2B employers vulnerable to lawsuits. However, the intent is at least clear – to kill the H-2B wage rule for the year.

The following Senators and Members of Congress are conferees to the “minibus” appropriations bill:

House Conferees:

Republicans:

Rep. Hal Rogers	Rep. Tom Latham	Rep. Jo Bonner
Rep. C.W. Bill Young	Rep. Robert B. Aderholt	Rep. Steven C. LaTourette
Rep. Jerry Lewis	Rep. Jo Ann Emerson	
Rep. Frank R. Wolf	Rep. John Culberson	
Rep. Jack Kingston	Rep. John R. Carter	

Democrats:

Rep. Norm Dicks	Rep. Ed Pastor	Rep. Chaka Fattah
Rep. Rosa DeLauro	Rep. David Price	Rep. Adam Schiff
Rep. John Olver	Rep. Sam Farr	

Senate Conferees:

Democrats:

Sen. Herb Kohl	Se. Tim Johnson	Sen. Sherrod Brown
Sen. Tom Harkin	Sen. Ben Nelson	Sen. Daniel Inouye
Sen. Diane Feinstein	Sen. Mark Pryor	Sen. Barbara Mikulski

Republicans:

Sen. Roy Blunt	Sen. Jerry Moran	Sen. Richard Shelby
Sen. Thad Cochran	Sen. John Hoeven	
Sen. Susan Collins	Sen. Kay Bailey Hutchison	

Questions? Contact Tom Delaney, PLANET Director of Government Affairs, Phone: 770-925-7113
E-Mail: tomdelaney@landcarenetwork.org.

Vote On Clean Water Act Amendment To Stop EPA Corps Regs Any Day, American Lands Right Association Asking You To Call Now!

The Senate could vote this week on an amendment sponsored by Senators John Barrasso (R-WY) and Dean Heller (R-NV) to the Energy and Water Development Appropriations bill for fiscal year (FY) 2012 that would defund the U.S. Army Corps of Engineers' (Corps) attempt to expand its jurisdiction under the Clean Water Act (CWA) through guidance documents and/or regulation.

-----This is a full Senate vote.

Action Items:

-----1. CALL YOUR SENATORS and urge them to vote YES on the BARRASSO/HELLER CWA (Clean Water Act Amendment) (EPA Corps Wetlands jurisdiction). Call any Senator at (202) 224-3121. Ask for the staff person who handles Clean Water Act issues. Tell them the vote will be scored by the League of Private Property Voters.

-----2. Forward this message quickly as widely as possible.

Background:

In May of this year, the Environmental Protection Agency (EPA) and the Corps proposed a "guidance" document that attempts to expand their jurisdiction under the Clean Water Act (CWA) to include almost all waters across the country.

The guidance has not been finalized yet, but the agencies are quickly moving forward to a rulemaking redefining the term "waters of the United States." It is likely the agencies may send the proposed rule to the Office of Management and Budget (OMB) within the next two weeks, which is the last stop before a regulation is officially proposed or finalized.

The agencies intend to have a final rule by January 2012. American Land Rights expects the proposed rule to contain much of the language from the CWA guidance and would therefore expand the types and number of waters subject to regulation under the CWA.

More waters falling under "waters of the U.S." would expand the permitting universe under the entire CWA, including Sec. 402 NPDES permits, Sec. 404 Dredge and Fill permits (wetlands), and Sec. 311 Spill Prevention, Control and Countermeasure plans.

The Amendment would do two things: (1) prohibit the Corps from finalizing the guidance and (2) prohibit the Corps from promulgating a rulemaking redefining "waters of the U.S."

Below are talking points for your phone calls:

* The guidance uses broad language to define things such as "tributaries" that could lead to almost any roadside, agricultural ditch or intermittent stream being subject to EPA and the Corps' jurisdiction.

* The guidance defines "traditional navigable waters" as any water that supports one-time recreational use (one trip in a canoe down a stream would qualify a water as a "traditional navigable water"). In the history of the Clean Water Act, the term "traditional navigable water" has only been used to describe major rivers that can float commercial vehicles like barges.

* Under this guidance, waters do not have to have a surface connection to a larger body of water that actually moves goods in interstate commerce to be subject to EPA/Corps' jurisdiction. The water body does not even have to have actual water in it for much of the year to be jurisdictional.

* It allows the agencies to "aggregate" similar types of waters (small streams, adjacent wetlands, ditches or isolated waters) within a watershed. This means the agencies only have to make a "jurisdictional determination" on one water body to then get jurisdiction over numerous others without considering them individually.

* The guidance goes beyond both the Supreme Court decisions in SWANCC and Rapanos because it takes the court's narrow opinion on wetlands and applies it to all types of waters.

* The amendment would prevent the Corps from finalizing this guidance, and would also stop the Corps from initiating a rulemaking that would more broadly define "waters of the United States."

Thank you in advance for your support.

Chuck Cushman, Executive Director
American Land Rights Association
(360) 687-3087, ccushman@pacifier.com

Questions on any of the topics addressed in this "WALP Watch"? Contact the Washington Association of Landscape Professionals Office at info@walp.org or (425) 967-0729.

Shawn McBurney, Co-Chair
American Hotel &
Lodging Association

November 11, 2011

Laurie Flanagan, Co-Chair
American Nursery &
Landscape Association

United States Senate
United States House of Representatives
Washington, DC

Professional Landcare
Network

Dear Senators and Representatives:

Executive Committee:

American Horse Council

As representatives of tens of thousands of seasonal employers throughout the country, the H-2B Workforce Coalition urges you **to oppose proposed appropriations language that could fatally undermine efforts to protect and support the H-2B temporary worker program.**

American Moving & Storage
Association

American Rental Association

American Trucking
Associations

Instead, Congress should pass language that was approved by the Senate Subcommittee on Labor, Health and Human Services, and Education on HHS appropriations bill on September 21, 2011 which blocked the wage rule in its entirety or H.R.3162, which would block the wage rule and the other rule which would make the H-2B program virtually unusable.

Asian American Hotel Owners
Association

Associated Builders and
Contractors

The H-2B program is essential to employers who cannot find local temporary workers to fill jobs during their peak seasons. It should also be emphasized that the program is critical in providing the opportunity for those employers to operate at a greater capacity, and in some cases to operate at all, and retain their full-time workers.

Associated General
Contractors of America

Essential Worker
Immigration Coalition

Federation of Employers and
Workers of America

Unfortunately, the U.S. Department of Labor (DOL) has targeted the H-2B program, and by extension those law-abiding employers that are forced to utilize it, for virtual elimination with punitive rules. One of the rules seeks to artificially increase the wages rates for H-2B workers well above rational economic levels. It is clear that the intent of this rule is to ensure that the H-2B program is made unusable, threatening America's seasonal businesses and their full-time American employees.

Forest Resources Association

Golf Course Superintendents
Association of America

ImmigrationWorks USA

Interlocking Concrete Pavement
Institute

The rule poses such a threat to small businesses throughout the country that it has generated two lawsuits that seek to block its implementation. Plaintiffs in those lawsuits represent the gamut of seasonal small business throughout the country: landscaping, seafood, lodging, forestry, carnivals, and more.

International Association of
Amusement Parks and Attractions

International Association of Fairs
and Expositions

Those lawsuits are based not only on the process of the rule's implementation and the capricious and harmful effect it will have on small businesses throughout the country, but also on the fundamental legitimacy of the rule.

International Franchise
Association

National Association of Realtors

DOL apparently recognized that the lawsuits highlighted its illegitimate actions and the resulting damage the rule would do to the economy and delayed the rule's implementation for 60 days in an effort to salvage the rule and defend it from legal challenges.

National Club Association

National Council of Agricultural
Employers

Language has been proposed in appropriations legislation that, intentionally or not, will in effect aim at undermining those lawsuits. The proposed language would allow the wage rule to go into effect as DOL wants, but temporarily (only six months) suspend its application to a few select job categories in industries.

National Fisheries Institute

National Hispanic Landscape
Alliance

National Restaurant Association

The draft language would serve to potentially undermine the legal challenges and could serve as a tool to nullify legal arguments currently being made in court while the cases are being heard. The proposed language would then allow the H-2B rule to go into effect into full effect for all industries and job categories in mid-2012, with an exception for the seafood industry.

National Roofing Contractors
Association

National Ski Areas Association

National Thoroughbred Racing
Association

Outdoor Amusement Business
Association

We urge you in the strongest possible terms to oppose this language which may deny small seasonal businesses justice in court and promote the damaging rule rather than block it.

Society of American Florists

Tree Care Industry
Association

U.S. Apple Association

U.S. Chamber of Commerce

Utility Sprayer Alliance

While we support legislative efforts to address this issue, a true legislative remedy must include a long term solution and provide relief for all H-2B employers. Please prevent DOL from implementing these job-killing H-2B regulations, rather than enable them.

H-2B Workforce Coalition