



National Utility Contractors Association of New Mexico

June 2, 2008

Dear Member,

The National Utility Contractors Association (NUCA) Washington Summit was held on May 21-23, 2008. The Summit consists of national committee meetings, the annual awards banquet, and Capitol Hill visits. This year, members of the NUCA of NM Board, members, and staff traveled to Washington DC to attend the NUCA meetings and meet with the NM Congressional Delegation. Following is a report of the issues that we discussed with our Congressman and Senators and their responses. (Note - NUCA of NM could not get an appointment with Heather Wilson's office during the summit; however, we did drop off the NUCA book which included a synopsis of our issues, and NUCA of NM staff will follow-up with a letter about the issues that we would have discussed; we met with Jeanette Lyman, Legislative Assistant to Congressman Tom Udall; Tim Charters, Legislative Director, Congressman Pearce, and with Pearce briefly; Daniel J. Alpert, Ph.D. Senior Policy Advisor to Senator Bingaman, and Senator Bingaman; Kellie A. Donnelly, Republican Council, Senator Domenici, and Senator Domenici.)

Infrastructure Investment

- Current estimates show that more than \$1.5 trillion will be needed over a five-year period to significantly improve America's deteriorating infrastructure. New Mexico's needs alone are over \$160 Million.
- EPA estimates that America's existing and documented wastewater infrastructure needs exceed \$202.5 billion. When looking at drinking water as well as wastewater infrastructure, EPA indicates that there will be more than a half trillion dollar gap between current spending and projected needs for water and wastewater infrastructure in 2019.
- Short term and long-term solutions are needed, and there are many proposals currently being considered. NUCA strongly encourages Congress to pass the following short-term legislative solutions:
 - o Restore federal appropriations to the EPA's Clean Water SRF Program to at least \$1.35 billion in FY 2009;

Pass Clean Water SRF reauthorization legislation that will provide *immediate* resources for our wastewater infrastructure while long-term solutions are hammered out. Last year, the House passed the Water Quality Financing Act (HR 720), which would authorize \$14 billion for the SRF over four years. This particular bill gives New Mexico \$47.5 million **total additional funding** for infrastructure projects through 2011. Congressman Tom Udall and Congresswoman Heather Wilson voted for the passage of HR 720, Congressman Pearce voted against the bill because of the inclusion of the Davis Bacon provision. NUCA of NM's stance on the Davis Bacon issue is that NM has its own Davis Bacon on Public Works jobs and therefore the issue does not affect how contracts are written in NM. Although Pearce supports us on many, if not all of the issues that are important to NUCA, we will never have his vote on any infrastructure legislation that has any Davis Bacon provision, despite our best efforts to convince him otherwise.

- In the long term, NUCA supports all of the following proposals:
 - Establish a dedicated source of revenue through a water infrastructure trust fund. NUCA supports any viable funding source, such as a national “flush tax”
 - Provide more opportunities for private industry investment in the water and wastewater infrastructure markets.
 - Pass the National Infrastructure Bank Act, which would establish a new and independent entity charged with evaluating America’s deteriorating critical infrastructure and financing projects to help repair it. (NOTE: The Senate has passed this bill)

We asked that Senator Bingaman contact Senator Boxer (Chairman of the Senate Appropriations Committee) and ask for legislation to raise funding and re-authorize the SRF program. Senator Bingaman supports funding for clean water and wastewater infrastructure projects, and would more than likely support the passage of a bill that would re-authorize SRF Funding and raise it’s levels of funding if there were a bill introduced in the Senate. Senator Bingaman signed on to the letter which requests \$1.35 billion for the Clean Water State Revolving Fund and \$850 million for the Drinking Water State Revolving Fund in the fiscal year 2009 Interior, Environment and Related Agencies Appropriations bill. Also, the Farm Bill passed just before our meeting with Senator Bingaman and the bill includes immediate funds of \$120 million for NM projects that have been on the waiting list in communities with less than 10,000 population. Bingaman is also working on the Navajo Gallup Water Project, and settling water disputes for San Juan, Amant water case in Santa Fe, and Abeyta Case in Taos.

Also, Congressman Udall’s bill passed which gives New Mexico \$327 million for the Eastern New Mexico Water Authority Pipeline Project.

Clean Water Act (CWA) Permits

- The Clean Water Restoration Act of 2007 (HR 2421) would create the greatest expansion of the Clean Water Act since it was signed into law in 1972. NUCA opposes HR 2421 to expand Clean Water Act permit requirements for construction work that may impact *any* wet areas within the United States.
- The bill would require an enormous increase in federal resources devoted to the permitting process without providing additional resources to address the added workload. Will increase the time and cost required to complete every construction project requiring a Section 404 permit. May require contractors to protect themselves through additional contract clauses and insurance.
- NUCA’s primary concern with this legislation is instead of providing greater clarity, it will lead to an even greater backlog in the request for federal wetlands permits (Section 404 permit) and delay the construction and repair of the nation’s vital water infrastructure.
 - Current backlog of pending requests for permits is between 15,000 and 20,000.
 - Currently, permits take 2-3 years to obtain.
 - Needed water and wastewater projects could be delayed by increased permitting requirements, even if they had no link to rivers, streams or other “navigable” water bodies.
- Legislation would remove the term “navigable” from the Clean Water Act and allow the Army Corps or Engineers and the EPA to regulate all “waters of the United States.” Regulate everywhere that rain-water happens to flow, including roadside ditches, gutters and construction jobsites. Virtually anything “wet” could be considered a water of the United States, and therefore subject to regulation.
- Congress should preserve the role that states and localities have traditionally played. States and local

authorities should lead the regulation of land and water use, not the federal government.

- NUCA continues its tradition of working with Congress to find ways to protect waters and wetlands and, at the same time, not hinder the utility construction industry from providing the essential infrastructure that helps sustain our quality of life.

Congressman Pearce was opposed to this legislation, and Congressman Udall's office stated that it sounded like a bad bill that could delay many dire water projects. Senator Bingaman felt that this House Bill would not pass, but he would watch it and be aware of any Senate bill in the future.

Immigration Reform:

- NUCA supports "comprehensive" immigration reform that provides a broad approach to fixing America's broken immigration policy. Unfortunately, the comprehensive approach is off the table, and the focus now is exclusively on securing the border and increasing verification requirements on American employers.
- NUCA believes that any policy proposal dealing with employer verification requirements must:
 - be fair, efficient and workable for *all* U.S. employers to use – both large and small employers;
 - focus on violators who knowingly hire illegal immigrants. The verification system should focus on those who knowingly abuse the law;
 - clearly indicate that employers are held liable for the legal status of their own, direct employees. Contractors should not be responsible for verifying the status of subcontract personnel;
 - provide "safe harbor" provisions for employers who use the system in good faith to comply with the law. Safe Harbor provisions must address liability by either worksite investigators or employees (i.e., discrimination lawsuits).
 - Ensure that any debarment provisions do not circumvent due process.
- NUCA is opposed to the Secure America through Verification and Enforcement (SAVE) Act (H.R. 4088) in its current form.
- The bill would focus on border security and set timeframes for *all* American employers to become compliant with the E-Verify program, which is intended to allow employers to verify the work authorization status of their employees against an electronic government database of U.S. workers. While the intent of E-Verify is sound, it has been sharply criticized for its error rates due to the government's inability to keep its database updated.
- NUCA believes that E-Verify must be improved before its use is made mandatory by the nation's millions of employers, versus the 40,000 who use it now occasionally, or that a better system be developed that includes these needed protections.
- American employers already play an important role in employment verification. Unfortunately, Congress has been unable to pass legislation that will comprehensively address the nation's broken immigration system. Singling out America's employers as part of an "easy fix" to address illegal immigration is shortsighted policy.

Congressman Udall did not sign onto this letter for a motion to discharge, and he was not a co-signer of the bill. Congressman Pearce did sign onto the letter for a motion to discharge but explained that the reason for that was to start a debate over the immigration issue which has not been debated since 2007. Congresswoman Wilson also signed onto the letter for a motion to discharge. Senator Bingaman stated that he is well

aware of the importance to protect employers from unfair immigration legislation, and will not support legislation without the provisions as mentioned above.

OSHA's Confined Spaces Standard

Although there is no current legislation on the confined space standard, we wanted our NM Delegation to be aware of the proposed changes and why we feel it important not to change the standard. If NUCA's efforts fail and the standards are changed, there may be legislation in the future pertaining to the changes.

- Last November, OSHA issued its Proposed Rule on Confined Spaces in Construction. The intent was to protect employees from hazards relating to exposure to confined spaces in the construction industry. The proposal introduces new classifications of confined space:
 - Isolated-Hazard Confined Space;
 - Controlled-Atmosphere Confined Space;
 - Permit-Required Confined Space, and
 - Continuous System-Permit-Required Confined Space
- The categories spell out what actions are needed to be taken for different types of confined spaces. The bottom line is that this rule is unnecessary and would only add confusion if a final rule is issued as currently written.
- Underground utility contractors already effectively address confined space entry hazards by following the General Industry Standard since it was issued in 1993, and they customize their confined space programs and training to comply with that standard. This has resulted in great success in reducing deaths and injuries resulting from unsafe entry into confined spaces.
- Therefore, issuing a new, separate standard for construction will not only create untold confusion, but also an unnecessary burden—with no improvement in safety—on all contractors who have been successfully using the General Industry Standard as a guideline to safe entry into confined spaces.
- OSHA's proposed rule is not expected to be finalized anytime in the near future. In fact, OSHA recently announced hearings on the subject this July, and NUCA will fully participate in these hearings.

Again, there is no current legislative action on this issue, but if OSHA refuses to consider the comments and concerns of the construction industry, legislative action may become necessary. NUCA strongly encourages lawmakers to familiarize themselves with this issue and be prepared to weigh in the debate if and when that becomes necessary. The NM Delegation requested further information on this issue.

If you have questions or other concerns that were not included here, please contact the Association office. Also, keep up-to-date with what NUCA of NM is covering here at the State level by reading your E-Newsletter which is emailed the first week of the month. If you are not receiving this newsletter, you can download them from the NUCA of NM web page at www.nucanm.org and click on the link "Pipeline."

Sincerely,

Jane Jernigan
Executive Director