

for appearances and the strength their roots may add to the levees.

Two California lawmakers praised the allowances for flexibility in vegetation management. One of them also noted that a big levee project included in the bill is important to Sacramento.

The Natomas Levee Improvement Project, an ongoing project to protect Sacramento from river flooding, protects over 100,000 people, Rep. Doris Matsui (D-Calif.) said. "Sacramento is the most at-risk American city for major flooding," she said.

The legislation would allow more work to be done by the corps to limit the spread of Asian carp, an invasive species perceived as a great threat to Great Lakes fisheries and ecosystems.

**Carp Controls Called Bright Spot.** Adam Kolton of the National Wildlife Federation singled out provisions for controlling the carp and restoring parts of coastal Louisiana and the Everglades as bright spots in the legislation. But environmental activists don't like the environmental streamlining, and they often oppose harbor and river channel projects as harmful to the environment.

"The bill approves billions of dollars of damaging projects," Kolton said in a May 20 statement released by his group.

By ALAN KOVSKI

To contact the reporters on this story: Alan Kovski in Washington at [akovski@bna.com](mailto:akovski@bna.com) and Anthony Adragna in Washington at [aadragna@bna.com](mailto:aadragna@bna.com)

To contact the editor responsible for this story: Larry Pearl at [lpearl@bna.com](mailto:lpearl@bna.com)

*The full House-Senate conference report on H.R. 3080, highlights and section-by-section summaries are available at <http://transportation.house.gov/wrrda/conference.htm>.*

## Drilling

### **Fish and Wildlife to Delay Regulations For Oil, Gas Development in National Refuges**

**T**he U.S. Fish and Wildlife Service is delaying proposed regulations for the private development of oil and natural gas within the National Wildlife Refuge System, rules opposed by House Republicans and the oil and gas industry.

Steve Guertin, assistant director of the Fish and Wildlife Service, told a House Natural Resources subcommittee May 20 that the agency is reopening a 30-day comment period on the proposed rules "based on the volume of comments" it has received.

The White House Office of Management and Budget in late January signed off on a plan from the service to update regulations for oil and gas drilling and production, but the advance notice of proposed rulemaking was never formally issued (23 DEN A-1, 2/4/14).

Specifics of the proposal have yet to be released, but in testimony before the Fisheries, Wildlife, Oceans and Insular Affairs Subcommittee, Guertin said it would include best practices for access and development within the 150 million-acre wildlife refuge system, which includes more than 5,000 oil and gas wells. The Fish and Wildlife Service, part of the Interior Department, oversees national wildlife refuges.

Industrial activities such as oil and gas development typically are considered inappropriate in wildlife refuges. However, in some places the Fish and Wildlife Service doesn't control subsurface mineral rights, and in other cases there is private property within the outer boundary of a refuge.

The proposal has drawn fire from groups such as the Independent Petroleum Association of America (IPAA), which has called the regulation premature and questioned the Interior Department's authority to regulate access to minerals under a wildlife refuge, when many times the agency doesn't own the mineral rights to those resources.

"Unfortunately, this rule is similar to many other rules that we have seen come from the Obama Administration; it's a solution in search of a problem," Dan Naatz, the IPAA's vice president of federal resources and regulatory affairs, said in his written statement.

**Regulation Often Left to States.** The federal government often leaves oil and gas regulation to state agencies, which oversee drilling and production within their boundaries, but Noah Matson, a vice president with the environmental group Defenders of Wildlife, said existing federal and state regulations are inadequate.

"The existing single paragraph of Fish and Wildlife Service regulations pertaining to private mineral rights on national wildlife refuges is so full of qualifiers and discretion that it is completely inadequate for the Service to be able to reasonably manage surface activities connected with oil and gas exploration and development," Matson said in his written testimony.

By ARI NATTER

To contact the reporter on this story: Ari Natter in Washington at [anatter@bna.com](mailto:anatter@bna.com)

To contact the editor responsible for this story: Larry Pearl at [lpearl@bna.com](mailto:lpearl@bna.com)

## Climate Change

### **Bill to Require Utility Climate Adaptation Proposed by New York Attorney General**

**N**ew York Attorney General Eric T. Schneiderman (D) has proposed legislation to require that New York's electricity and gas utilities assess their vulnerability to the impacts of climate change and prepare a plan for adapting to severe weather.

Schneiderman May 19 said the proposed legislation would build on a February decision by the state Public Service Commission (PSC), which approved a plan by Consolidated Edison to spend \$1 billion over the next four years for storm hardening and resiliency projects.

A spokeswoman for the attorney general told Bloomberg BNA that he is working with members of the Legislature to have the bill formally introduced.

The PSC decision also required that all New York utilities integrate the potential impacts of climate change into their system planning and construction forecasts and budgets (38 DEN A-2, 2/26/14).

In a statement, Michael B. Gerrard, director of the Center for Climate Change Law at Columbia Law School, said the proposed bill "would become a model for the entire country."

Gerrard, who played a significant role in the PSC decision, said the proposed bill would take "an additional

leap forward by writing the requirement into the statute books and broadening its applicability.”

Gerrard told Bloomberg BNA that New York is the first state in the country to require climate adaptation plans from utilities.

**Requirements Imposed.** Schneiderman said his proposed bill would require gas and electric utilities to assess the probable impacts of climate change on their infrastructure, operations and service delivery operations. They would be required to submit a climate change impact statement to the PSC.

In addition, the companies would have to create a plan for addressing the risks through changes in their operations, planning, infrastructure design and emergency preparations.

“New Yorkers learned the hard way after Sandy and Irene that many of our utility providers are unprepared for a future of more extreme weather,” the attorney general said in a statement, referring to recent hurricanes. “By requiring gas and electric utilities to assess their vulnerability to climate change and then explain in public their plans to protect their energy systems, we can ensure that utility providers are investing ratepayer dollars wisely. Most of all, we will be ensuring that New Yorkers continue to receive safe and reliable service in a time of increasingly extreme weather.”

Patrick Stella, a spokesman for National Grid, said the company has been investing heavily in storm hardening and resiliency over the past several years.

“Between 2007 and 2016, we have—or will have—spent more than \$5 billion on network infrastructure (electric and gas), well beyond historic rates,” he told Bloomberg BNA in an e-mail.

“We work very closely with our regulators on investment and reliability, and we are eager to take part in the discussion on being prepared going forward.”

By GERALD B. SILVERMAN

To contact the reporter on this story: Gerald B. Silverman in Albany, N.Y., at [gsilverman@bna.com](mailto:gsilverman@bna.com)

To contact the editor responsible for this story: Larry Pearl at [lpearl@bna.com](mailto:lpearl@bna.com)

*Further information on the proposal is available at <http://ag.ny.gov/press-release/ag-schneiderman-announces-proposal-ensure-critical-public-utility-services-are>.*

## Energy

### **FERC Nominee Defends Enforcement Record, Faces Partisan Battle for Confirmation**

**N**orman C. Bay, President Barack Obama’s nominee to chair the Federal Energy Regulatory Commission, was grilled at a Senate confirmation hearing May 20 over his aggressive market enforcement decisions, signaling a protracted battle over who will lead the commission that oversees electric grid reliability and electricity and natural gas markets.

Bay started out by noting that since he was appointed to the commission in 2009 as director of FERC’s Office of Enforcement, every settlement reached on his watch has been approved by the full commission.

Bay told the Senate Energy and Natural Resources Committee that the commission has issued 49 market

settlement orders during his tenure, with 48 being approved by bipartisan, unanimous votes.

“Every market manipulation settlement has been issued by unanimous vote,” Bay said. “These settlements have helped protect customers, ensure the integrity of the markets, and provide a level playing field for all market participants.”

**Bay’s Qualifications Questioned.** Republican senators were skeptical of Obama’s nomination of Bay, a former federal prosecutor, for a seat on the commission and especially of the president’s intention to designate Bay as chairman once the nominee is confirmed by the Senate.

They cited Bay’s lack of experience in utility regulation and the mounting opposition from energy trading companies that have been the subject of commission market enforcement investigations.

“Why should we demote [Acting] Chairman [Cheryl] LaFleur to make room for you?” Sen. John Barrasso (R-Wyo.) asked Bay.

Sen. Lisa Murkowski (R-Alaska), the committee’s ranking member, heaped praise on LaFleur as an experienced, knowledgeable regulator with a proven track record. Murkowski said she would prefer LaFleur be made permanent chairman.

“That would be the easy thing,” Murkowski later told reporters.

Regarding Bay, Murkowski told reporters, “If it was just a spot on the commission, I would look at it a little more leniently, but this is the chairman.”

Senate Energy Chairwoman Mary Landrieu (D-La.), who later expressed her support for Bay, said the committee will not vote on the nominations of Bay and LaFleur until senators have time to review responses to written questions that will be submitted to the nominees.

**Domenici Backs Fellow New Mexican.** Bay was introduced at the outset of the hearing by retired Senate Energy Chairman Pete Domenici of New Mexico, who called on his fellow Republicans to support Bay’s nomination. Bay was a former U.S. attorney and criminal law professor in New Mexico.

LaFleur was accompanied by Sen. Jeanne Shaheen (D-N.H.), who noted the nominee has 20 years in the electric and gas industry with Northeast utilities such as National Grid.

LaFleur, whose term on the commission ends June 30, has been renominated to a second term.

Bay would fill the remaining four years, to June 2018, left in the term of former FERC Chairman Jon Wellinghoff, who resigned in November. LaFleur was designated acting chairman by Obama until a permanent chairman is named.

Murkowski praised LaFleur’s “steady leadership” and her “experience, temperament and judgment.”

Murkowski said she was troubled that Bay will face “a steep learning curve” on utility regulation if he becomes chairman and that he will have to recuse himself from many of the market enforcement cases that could come before the commission in the future.

**Republicans Probe Enforcement Record.** Bay said as many as 43 cases could require recusal, although it could be smaller, depending on the standard recommended by the commission’s ethics officer.

Murkowski and other Republicans questioned whether Bay’s office is coercing market participants