Weekly Legislative Update

Week of November 3, 2014

Congressional Outlook

Week of November 3rd

Midterm elections are tomorrow, and Congress returns next Wednesday, November 12th.

Week in Review

Funding Request for Ebola Response May Become an Issue for Lame-Duck

The Obama Administration has been weighing a request for additional funding to respond to the Ebola threat here in the U.S. The Senate Appropriations Committee will hold a hearing on the government's response to the Ebola crisis on November 12, the day Congress returns. Congress last month included an additional $88 million in the current continuing resolution (CR) for on-the-ground response efforts in West Africa and to help further the development and manufacturing of Ebola drugs and vaccines. The four congressional defense committees also allowed $750 million in FY 2014 war funding to be reprogrammed earlier last month to help the Department of Defense address the West African Ebola crisis. Read more...

SAB Calls on EPA to Better Quantify Connectivity in WOTUS Rule
The Environmental Protection Agency's (EPA's) Science Advisory Board (SAB) on October 17 recommended that the agency develop a methodology to better quantify the connections between upstream waters and traditionally navigable waters regulated under the Clean Water Act (CWA). The October 17 letter provided final input on the agency's draft "connectivity" report to be used as the underlying science to support the EPA proposed rule defining which waters are considered "waters of the U.S." (WOTUS) and subject to CWA jurisdiction and regulation. Public comment on the proposed WOTUS rule closes on November 14, 2014. Read more...

**Senate Republican Letters Critical of WOTUS/Interpretive Rules**

Senate Republicans sent two letters to the EPA last month that were highly critical of the controversial "waters of the U.S." proposed rule and an interpretive rule for agriculture released at the same time. In a letter to EPA Administrator Gina McCarthy and Army Secretary John McHugh, a group of 24 GOP Senators wrote on five areas where the federal agencies have either not listened to concerns over the rule or have misrepresented the rule, in their opinion. They contend that the EPA and the Army Corps of Engineers have no intention of acting fair and impartial in collecting and reviewing public comments in finalizing the rule.

In a separate letter to EPA, the Army, and Secretary of Agriculture Vilsack, Senate Republican Agriculture Committee Members call the "interpretive" rule exempting certain agricultural conservation practices from CWA regulation misleading and contend the rule has caused much confusion about what agriculture practices are actually exempt or not from regulation under the CWA. They also state that the interpretive rule now places the USDA Natural Resources Conservation Service (NRCS) in a new regulatory role under the CWA, putting undue pressure on the time-honored relationship between the agency and farmers as a non-regulating federal partner in conservation. Finally, the letter criticizes the agencies for not reaching out for input from farmers and ranchers on the rule, and calls for a more transparent and public process so that the concerns of American agriculture can be heard.

**EPA Determines SRF Funds Could Be Used to Match WIFIA Loans**

EPA officials have recently stated that "recycled" Clean Water Act state revolving fund (SRF) money (i.e. dollars repaid on previous SRF loans) could be used to match Water Infrastructure Finance and Innovation Act (WIFIA) loans. The WIFIA program, a pilot loan and loan guarantee program authorized by the Water Resources Reform and Development Act (WRRDA), can only finance up to 49% of the cost of large water infrastructure (over $20M) and cannot be matched with tax-exempt municipal bonds.

As a result of questions asked at the recent EPA WIFIA listening sessions, the agency has determined that even though SRF funds are derived from federal congressional appropriations, once those funds are initially loaned out and are repaid they lose their federal linkage and could (if an SRF is amenable) be used to match a WIFIA loan. Several groups critical of WIFIA have come out against using SRF money to match WIFIA loans, arguing that SRF funds should not be siphoned to large WIFIA-backed projects and away from more traditional SRF-financed infrastructure.

**EPA - 37 Other Federal Agencies Unveil Climate Adaptation Plans**

Last week, the Environmental Protection Agency (EPA) and other federal agencies released their
final climate change adaptation plans as part of the Obama Administration's Climate Action Plan. The adaptation plans from the 38 agencies detail how climate change will affect agencies' missions and operations. The EPA plan is very similar to what the agency proposed last year, but that some environmental groups criticized as too weak. Even though these groups were calling for expanded firmer climate commitments in agency rulemaking and other regulatory actions to help offset expected global warming impacts, the EPA has not called for such actions in their final plan.

Examples of firm commitments environmental groups have suggested but that were rejected by EPA in their final plan include: integrating water conservation measures into water infrastructure financing programs; instituting nationwide numeric nutrient criteria in water quality standards; proposing expanded post-construction stormwater regulations; and consideration of climate change impacts on all future guidance and rulemakings.

FTA Publishes List of Certifications and Assurances Required in FY 2015

On Friday, the FTA published a notice announcing the availability of the Federal Transportation Administration’s (FTA) FY 2015 Annual List of Certifications and Assurances (CAs) for FTA Grants and Cooperative Agreements. The notice includes a condensed list of the various pre-award CAs that may apply to an applicant for FTA funding and describes both FTA’s and the applicant’s responsibilities. Also, the notice provides instructions on how and when to submit CAs for FY 2015; each applicant for FTA funding must submit the CAs that apply to it and the project for which funding is sought.

Highlights of the differences between the current and prior requirements include:

- Clarification the CAs apply to an applicant for a loan, loan guarantee, and line of credit as well as to an applicant for a grant or cooperative agreement; and
- A request to each member of a team, consortium, joint venture, or partnership to identify itself and its role in the project as a recipient, subrecipient, or third party contractor.

The Federal Register Notice is located here.

Just Announced - New IMCP Grant Solicitation Coming Soon

On Friday, Commerce Deputy Secretary Bruce Andrews announced a new round of the Investing in Manufacturing Communities Partnership (IMCP) Program, which will be published in November in the Federal Register. He did not announce a specific date when the competition would be announced or when project proposals would be due.

Congressional Schedule

No hearings scheduled as Congress is currently in recess.