Congressional Outlook

Week of October 6th

The House and Senate are in recess until November 12, 2014, yet there is plenty of ongoing action at the federal agency level. Today, the Environmental Protection Agency and U.S. Army Corps of Engineers announced they are extending the deadline for comments on the "Waters of the U.S." definition until November 14. This is the second extension. The agencies stated in a release, "[t]he Scientific Advisory Board (SAB) will soon complete its peer review of the report on the connectivity of streams and wetlands. To provide the public with the opportunity to comment on the SAB review - and in response to requests for additional time to comment on the proposal Waters of the U.S. rule - the agencies are extending the public comment period to Friday, November 14, 2014."

Week in Review

DOT Call for Projects Open Until November 17; Webinar Today

On October 2nd, the Federal Highways Administration (FHWA) opened again its survey of Projects of National and Regional Significance (PNRS) required under MAP-21. The original survey closed on June 30th, but inadequate participation led FHWA to re-open the survey
through November 17th. Projects submitted during the first survey period need not be resubmitted, but FHWA recommends reviewing those submittals to ensure they are consistent with the criteria set forth in the current Notice, which is located here. Read more...

**Oklahoma Judge Rules Against Subsidies in Federal Healthcare Exchanges**

A district court in Oklahoma has ruled that the IRS does not have the power to deliver health insurance subsidies to citizens that are enrolled in the federal health insurance exchange. The lawsuit, brought by Oklahoma Attorney General Scott Pruitt, challenges a Treasury regulation that gives the IRS the power to deliver subsidies to taxpayers that are enrolled in either federal or state health insurance marketplaces. The crux of the case is that the Affordable Care Act defines exchanges as health insurance marketplaces established by the states, and therefore only citizens enrolled in state exchanges are eligible for subsidies. The ruling, if upheld, would affect residents of the 32 states that currently do not have an established state exchange, although 7 of those states have plans to create one or to participate in a partnership exchange with another state.

The subsidy issue has been heard twice this year in circuit courts. The 4th Circuit Court in Richmond, VA upheld the Treasury regulation, and the D.C. Court of Appeals ruled against it, but has since vacated that decision and will rehear the case with the full court and not just a three-judge panel. The Supreme Court is unlikely to hear this case unless there is a split decision in the circuit courts, and this district court ruling, which will likely be appealed to the 10th Circuit Court, increases the odds of that occurring. Read more...

**White House Moves on Child Migrant Issue**

Last Tuesday, the White House announced its intention to establish refugee processing in Honduras, El Salvador and Guatemala in an attempt to deter unaccompanied children from crossing the U.S.-Mexico border on their own. The move aims to provide a safe, orderly alternative for children to join undocumented relatives in the U.S. Supporters emphasize that refugee application programs are important to containing the border crisis. Critics say that making it easier to apply for refugee status will create a large influx of refugees entering the U.S. The White House, however, stated that the total number of visas granted will not increase as a result of this plan.

**FHWA & FTA Adopt New Categorical Exclusions**

On October 6 the Federal Highways Administration (FHWA) and the Federal Transit Administration (FTA) jointly published a final rule adding new categorical exclusions from environmental review (CEs) and allowing state DOTs to independently process certain exclusions. The final rule implements MAP-21. Both agencies previously identified certain actions not normally having the potential for significant environmental impacts and therefore do not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). MAP-21 required the Secretary of Transportation to go through a process culminating in the publication of new CEs; this new rule carries out the MAP-21 requirement. Read more...
There are no hearings as Congress is currently in recess.