Congress to Be In Full Swing through Mid-December

The work of the Congress is proceeding at a dizzying pace, but a bumpy, erratic pace. In addition to the major national and international issues we are all aware of, there are many other issues being given attention, nominations to official positions being confirmed and appropriations matters being dealt with in one fashion or another.

The session is an unusually long one. The original target adjournment date was October 30th, but is now December 18th. By that time, it had been hoped there would be a completed energy and climate bill, but that appears very unlikely now even given considerable progress. It had also been hoped that the Congress would be able to pass all of the 12 regular appropriations bills individually, but it now appears that there will still have to be an omnibus appropriations bill to wrap up whatever appropriations business cannot be completed by December 18th. The Congress has just passed a new Continuing Resolution which will continue funding until December 18th for those portions of the federal government not already covered by enacted appropriations bills for FY 2010.

There are also important policy development activities going on in the executive branch. Many of these will involve some degree of interplay with Congressional activity. The Council on Environmental Quality (CEQ) is leading the Administration’s work to develop new Principles and Guidelines for the U.S. Army Corps of Engineers which will, apparently, expand its application to other federal programs. CEQ is also engaged in drafting a new Executive Order on Floodplain Management to reinvigorate and supersede EO 11988 issued in 1977. Further, the President recently issued an Executive Order on government sustainability and CEQ has the lead on many aspects of that effort. Listening sessions are already underway. Along with other state agency groups, tribal representatives and major water utilities representatives, ASFPM was invited to participate in one session that dealt largely with water resources planning. The Federal Emergency Management Agency (FEMA) held a listening session during the first week of November to generate thoughts, ideas and recommendations for the future of the National Flood Insurance Program (NFIP).

Appropriations

The Congress has completed action on, and the President has signed, 5 of the 12 regular appropriations bills for FY 2010. Those include Agriculture, Energy and Water, Homeland Security, Interior and Environment and Legislative Branch. The most recent Continuing Resolution was attached to the
Conference Report on the Interior and Environment bill. Energy and Water (P.L. 111-85) and Homeland Security (P.L. 111-83) were both signed on October 28th.

**Energy and Water**
This bill includes funding for the Army Corps of Engineers.

The Conference Report (H. Rept. 111-278) provides $8,059,000 for Flood Plain Management Services (FPMS). The Administration’s budget request was $8 million; the House had provided $6.007 million; the Senate had provided $13.2 million although the program was largely earmarked. Language accompanying the Conference Report says that priority should be given listed projects if cost-sharing funds are available.

For Planning Assistance to States (PAS), $7.2 million is provided; the House had provided $4.8 million and the Senate had provided $8 million. Again, a list of projects is recommended, but not required.

For coordination with FEMA and map update work, $2 million is provided which is the same as the budget request and the House and Senate bills. For the National Shoreline Study, the Conference agreement provides $471,000 which is more than the budget request of $375,000.

**Homeland Security**
Funds for FEMA are included in this bill. The Conference Report is H. Rept. 111-298.

It provides $220 million in appropriated funds for FEMA’s ongoing mapping program, to be supplemented by fee-generated income. This number is the same as the Administration’s budget request. Language accompanying the report in a Joint Explanatory Statement indicates that 20% of the funds should go to Cooperating Technical Partners and also indicates that FEMA is encouraged “to prioritize as criteria the number of stream and coastal miles within the State, the Mississippi River Delta region, and the participation of the State in leveraging non-federal contributions.” It further says that “FEMA is directed to develop a National Digital Elevation Acquisition and Utilization plan for the purposes of supporting floodplain map upgrades. FEMA shall collaborate with the U.S. Geological Survey, NOAA, NASA and States that have experience in acquiring and incorporating high resolution elevation data in the flood plain map updates. FEMA shall submit this plan to the Committees within six months after the date of enactment of this Act.”

For Pre-Disaster Mitigation (PDM), $100 million is provided. The Administration’s budget request was $150 million; the House bill provided $100 million; the Senate bill provided $120 million. The Administration’s budget request had proposed a change in distribution methodology for awarding PDM grants to a risk-based formulation. The Conference Report specifically rejects that proposal and includes the 58 “earmarked” projects that were in the House bill.

Under the National Flood Insurance Fund, a total of $120 million is provided for repetitive loss and flood mitigation, the same amount as provided in both the House and Senate bills. The Severe Repetitive Loss program is funded at $70 million; the “direct” program for repetitive insurance claims is funded at $10 million and the Flood Mitigation Assistance Program is funded at $40 million.

**Interior and Environment**
The Conference Report just became available (H. Rept. 111-316) so a full review has not yet been made.

Overall funding for the U.S. Geological Survey ($1.112 billion) will exceed the amounts requested by the Administration ($1.098 billion) and provided by the House ($1.106 billion) and Senate ($1.104 billion). The National Streamflow Information System (NSIP) at USGS, the network of fully federally funded
stream gages, is funded at the budget request of $27.7 million which is about $5 million more than in FY 2009.

**NFIP Reform**

While it is appearing less and less likely that there will be substantive consideration of NFIP reform on Capitol Hill during this Congressional session, it does seem likely that the House Financial Services Committee will begin consideration of the subject early in the second session, which begins in January. The picture for the Senate Banking Committee is less clear. At present, the House Financial Services Committee and the Senate Banking Committee have been immersed in various pieces of legislation reforming the nation’s financial regulatory system and protecting consumers. The House Committee has been engaged in many days of mark-ups and is scheduled to continue mark-ups in November. The attention given to the NFIP this fall has focused on making certain that its authorization continues so that the program does not expire, which would cause significant dislocation in mortgage financing and real estate settlements.

The House did pass H.R. 3139 in July reauthorizing the NFIP through March 31, 2010. The Senate Banking Committee did not take up the legislation, so it became necessary to reauthorize the program via appropriations measures – in this case the two Continuing Resolutions (CRs).

It is possible that ideas generated at the FEMA Listening Session on the NFIP (November 5th and 6th) will lead to reform recommendations from the Administration.

**Climate Adaptation**

Energy and Climate Change legislation was acted on in the House in June (H.R. 2454) and separate legislation is actively being developed and put together in the Senate, with many committees and players involved.

The lead legislation will come from the Committee on Environment and Public Works (EPW) chaired by Senator Barbara Boxer (D-CA). The Chairman has indicated she will move ahead with a mark-up on November 3rd, even though it is likely the Republican members of the committee will not participate.

The climate adaptation components of the bill will primarily be provided by the Energy and Natural Resources, Finance and Commerce Committees. At the end of October, Chairman Jeff Bingaman (D-NM) of the Energy and Natural Resources Committee, Chairman Max Baucus (D-MT) of the Finance Committee and Senator Sheldon Whitehouse (D-RI) introduced a climate adaptation bill, S. 1933. The Chairman of the Senate Commerce Committee, John D. Rockefeller IV (D-WVA) has indicated that his committee will also introduce a climate adaptation bill, but probably not until early in the next session.

The term “climate adaptation” includes “mitigation” as the term is used by floodplain managers. ASFPM has engaged in discussions about hazard mitigation considerations that could be incorporated into the climate adaptation aspects of major energy and climate change legislation.

While there will certainly be more development of such legislation during November and December, including more hearings on various aspects of it, it seems increasingly likely that final action will not occur until the second session of this Congress.