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CONGRESS KICKS THE CAN (DOWN A LADDER)

The current temporary funding measure has most agencies running on Fiscal Year 23 levels. The House has passed most of its appropriations bills and the Senate just a few, but the real problem is that the levels of funding between the House and Senate bills are far apart. The latest temporary extension (called a Continuing Resolution or CR) uses what has been termed a “laddered” approach. Funding for several agencies, including the Corps of Engineers, Transportation, Veterans, and a few others will run out on January 19th. Other agencies including Commerce (NOAA), Interior (FWS, BOEM), and EPA will run out on February 2nd. House Speaker Johnson has said that if agreement on all funding bills in either or both of these deadlines isn't reached, he will push for a year-long CR. Based on our reading of the tea leaves plus Capitol Hill sources, we believe that agreement on all 12 bills will be reached by the January and February dates.

...Plus, if you've been following our coverage of **earmarks**, there are billions of dollars at stake for the majority of Members of Congress that they promised their constituents. It would not be good, look good, or feel good to have that money stripped from communities who have been investing money in preparing for the award of federal funds.

IS IT REALLY MEANT TO BE? PROJECT PARTNERSHIP AGREEMENTS MAY DECIDE

All non-federal sponsors of US Army Corps of Engineers (USACE) projects know about Project Partnership Agreements (PPA). They are the contracts between the two parties that say what each party commits itself to doing. We've likened this to the non-federal sponsor getting on a bus with the Corps acting as driver and telling them where they're going and how they will get there. The Corps planning process is a maze of Musts and Must Nots honed over a century with more layers of Do's and Don'ts. Late last month, the Senate Environment and Public Works Committee held a [public hearing](#) to get the perspectives of some non-federal partners on PPAs. The three witnesses at the event were a state agency, an interstate water agency, and an environmental group that is a big USACE partner (no local government witness), had some pointed comments. Take these comments from Mr. Hague, for example:

“Most Corps projects cost tens of millions to hundreds of millions of dollars. At a 35% [share of the] construction cost...non-federal sponsors must take on significant fiscal responsibilities for a project even though the Corps retains ultimate control over many project design and implementation decisions...On top of that, [under] some of the requirements of the cost-sharing agreements the [non-federal] sponsors must sign with the Corps create open-ended obligations for the non-federal sponsor....Even if projects go over budget for any reason, including reasons beyond the non-federal sponsor’s control, sponsors must share any and all project cost overruns....[Also,] the requirements [of] the agreement to hold and save the federal government free from harm creates unbounded and unquantifiable legal risks for [non]-federal project sponsors and can discourage them from agreeing to participate.”

Amen!

If you agree that Project Partnership Agreements are too unbalanced, please send us your thoughts or just reply and let us know!

RESILIENCE: FACTS (WITH A GENEROUS HELPING OF OPINION ADDED)

Three bills have been introduced in Congress recently that deserve the spotlight.

The first is **S.3338**, sponsored by Senator Brian Schatz of Hawaii (Democrat) and Senator Bill Cassidy of Louisiana (Republican), would create a National Disaster Safety Board to investigate major natural disasters to study their underlying causes of fatalities and property damage and make recommendations to all levels of government on how to make communities more resilient to the impacts of disasters. It’s been referred to the Homeland Security and Government Affairs Committee. There’s an identical bill on the House side, **(H.R.6450)** sponsored by California Rep. Katie Porter (Democrat) and North Carolina Rep. Nancy Mace (Republican)

The second and third bills are identical to each other and also deal with the pressing issue of creating a national resilience strategy. Senators Chris Coons of Delaware (Democrat) and Lisa Murkowski of Alaska (Republican) as well as **(H.R.6311)** introduced by Representatives Scott Peters of California (Democrat) and Maria Salazar of Florida (Republican). The Senate Bill **(S.3261)** has been referred to the Committee on Homeland Security and Government Affairs, while the House version is before the Energy and Commerce Committee. In the words of Senator Coons, “A coordinated government strategy for resilience is critical to help vulnerable communities that face increasing risk from hurricanes, floods, winter storms, and other weather events.” The proposal would put a Chief Resilience Officer in the White House advised by non-federal partners to develop a “unified National Adaptation and Resilience Strategy.” We’re not so sure about a single strategy for a nation as diverse as ours, but we are extremely confident that a coordinated effort with an office in the White House (If not with Cabinet status) would go a long way to creating initiatives (not studies) that will help local communities become more resilient to the dangers Senator Coons as sited.

We are equally confident that the federal government has two major tools to help local governments make and implement resilience decisions: Money and Technical Expertise, And to add one more statement that should be obvious: Don’t give us another federal grant program! These favor larger communities and

require a cost-share that is often prohibitive for disadvantaged communities. Low-interest loans that do not have to be repaid if projects are successfully implemented will give not only government experts but the thousands of engineers and planners in the private sector the incentive to achieve results and *may* bolster local and state elected officials with the backbone they need to lead disparate elements in their own communities to find resilience solutions. ***We would like to know what you think (on the record or anonymously).***

HOUSE SUBCOMMITTEE GETS BALL ROLLING ON WRDA 2024

On December 5th, the Assistant Secretary of the Army for Civil Works, the Chief of Engineers, and subcommittee members joined together to talk about their favorite projects in their home districts and call for next year's Water Resources and Development Act to stick to the basics and not add new policies. In short, it was the usual, but it was also the House kickoff of its drive to make sure there is a new WRDA every two years—a commitment it has been able to keep for over a decade.

Subcommittee Chairman Rouzer of North Carolina made it clear that “Meeting the water resources needs of communities across the country is vital to our security, safety, and economic stability.” Addressing the threats of serious storms, he got a plug in for the importance of coastal restoration projects “to address erosion and minimize the impacts of storm damage on seaside communities, which is particularly important for my constituents....”

Ranking Member Grace Napolitano of California stressed ports, the environment, community resilience, and also water supply and conservation. Claims are often made in Congress and elsewhere that dealing with water supply and stormwater are not Corps missions. Although they are misnamed as “Environmental Infrastructure,” they are as much a congressionally mandated mission as navigation, flood control, and the other traditional Corps missions. However, they have been under budgeted by Congress.

HOUSE COMMITTEE ADVANCES CBRA BILL

It's not a snake, but the Coastal Barrier Resources Act, and the House Natural Resources Committee has approved the BEACH Act, (**H.R. 5490**) sponsored by Rep. Jen Kiggans of Virginia. Her bill is formally known as the “Bolstering Ecosystems Against Coastal Harm Act.” Its main purpose is to set into law the revised CBRA Unit maps approved by the US Fish & Wildlife Service for several states stretching from New England to Georgia. However, her bill requires owners selling or leasing property in a CBRA zone to disclose that fact to the buyer or lessee. It also reauthorizes CBRA appropriations of \$2 million each year through fiscal year 2031.

IS FWS INFRASTRUCTURE MONEY CHEATING THE COAST?

According to Senator Whitehouse of Rhode Island, the US Fish & Wildlife Service is awarding more of its infrastructure bill funded grants to noncoastal states. He questioned FWS Director Martha Williams at a

[December 6th hearing](#) of the Senate Committee on Environment and Public Works and asked her to watch out for a coastal versus inland imbalance.

WE'VE GOT BILLS!

Our list of the status of 170 bills in Congress is available [here](#)... Let's turn the spotlight on **H.R. 676** by Maine Rep. Chellie Pingree, the Coastal Communities Ocean Acidification Act, which passed the House and is pending before the Senate, and the Beach Act, **H.R. 5490**, described above under House Committee Advances CBRA Bill... As we write this update, we expect **H.R. 5473**, sponsored by Rep. Chuck Edwards of North Carolina together with Rep. Donald Norcross of Georgia, to be passed by the House this week. It sets up a FEMA-funded program to promote resilient buildings.

AWAITING A NEW FLOODPLAIN MANAGEMENT PROPOSED RULE

December 1st marked the final date for submitting comments to FEMA's Notice of Proposed Rulemaking to establish new floodplain management regulations. Nationwide, flooding has increased. On the coast, the cause is sea level rise, increased precipitation, and hardening of surfaces caused by development. The proposed Federal Flood Risk Management Standard would apply to any federally funded project and would require increased resiliency for new construction or whenever buildings have substantial improvements or repairs. According to FEMA, the rule will also apply to hazard mitigation projects involving structure elevation, dry floodproofing and mitigation construction.

Several organizations commented, but the one whose interests have in the past been the closest to those of Coastal America is the **National Waterways Conference** representing inland waterways interests. Their detailed comments can best be summed up by this excerpt from their comments: "The proposal's policy statement seems one-sided, primarily focusing on limiting how people can use and live in flood-prone areas. It lacks any clear goal to support economic growth or sensible development within reasonable limits." Many groups came out in support of the proposed rule including the **American Society of Civil Engineers** and the **American Property Casualty Insurance Association**. Among other provisions, the proposal would require buildings damaged in a disaster and rebuilt in part with federal money to be elevated.

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Contact Information:

Howard Marlowe | President

Warwick Group Consultants, LLC

Howard.Marlowe@WarwickConsultants.Net

1717 K Street, NW, Suite 900

Washington, DC 20002

(202) 787-5770

Dan Ginolfi | Senior Public Policy Advisor

Warwick Group Consultants, LLC

Dan.Ginolfi@WarwickConsultants.Net

1717 K Street, NW, Suite 900

Washington, DC 20002

(202) 787-5770