

Federal Updates

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FY17 Appropriations Continuing Resolution Ends on April 28

Fiscal Year 2017 began on October 1 of last year. Instead of closing the government, Congress passed a Continuing Resolution [CR] before October 1 and a second CR in December 2016. With the election of President Trump on November 8 and the preservation of Republican majorities in the House and Senate, the decision was made to postpone until the New Year completion of work on the FY17 spending bills. This was accomplished by extending the CR until April 28. But a date that seemed far off in December now looms just 30 days away. Failure to address the FY17 appropriations cycle risks a government shutdown. An added complication is that the House and Senate will be adjourned from April 7 to April 25. This means that the Congress will be in session for less than a week before final decisions on FY17 spending must be made. Many believe that the Continuing Resolution will be extended for the remainder of FY17. This would keep most non-defense discretionary spending at the FY16 level and pave the way for a more careful consideration of the FY18 proposed budget.

In providing for a year-long FY17 CR Congress may choose to continue its practice of instructing agencies like the Army Corps of Engineers and the Bureau of Reclamation to submit "Work Plans" detailing how the FY17 funding they received will be allocated. The time frame for submitting these Work Plans can be up to 60 days after Congress finalizes the FY17 appropriations cycle. If that proves to be the case this year it could be late June before the Corps of Engineers and the Bureau of Reclamation submit their Work Plans giving these agencies just over 90 days to obligate all of their remaining funding by the end of FY17 on September 30. Local agencies and sponsors who wish to compete for these funds by having their project listed in a Work Plan will need to demonstrate the ability to spend any federal funding awarded in a timely fashion. This used to be called "shovel ready" although that term is no longer in vogue.

President Trump Provides A Blueprint For His FY18 Budget Proposals to the Congress

On March 16, the White House Released "America First: A Budget Blueprint to make America Great Again." This document provides an overview of Trump Administration budget priorities for FY18 that begins on October 1. Defense and homeland security proposed spending increases while water agencies associated with water infrastructure are targeted for major cuts including a 31% decrease in USEPA spending; 16.9% cut for the Army Corps of Engineers, and 11.7% cut for the Department of Interior. The power of the purse resides with the legislative branch

of our government specifically with the House and Senate Appropriations Committees who will now review these proposals and make adjustments in the Trump budget. Additional line item details on the proposed spending should be available in the near future.

Potential for Major Legislation in the 115th Congress

The United States Congress meets in two-year cycles. The 115th Congress convened the first week of January and will be in session until late December 2018. During each two-year session of Congress more than 10,000 bills are introduced but only approximately 3% ever become law. Most languish in a legislative process that is complex and fraught with delays while some become sections or titles of larger more expansive legislation. With a historic 97% fail-rate for introduced legislation, the use of larger catch all bills to address a wide range of issues has become an increasingly popular alternative. The Water Infrastructure Improvements for the Nation” [WIIN] Act that became Public Law 114-322 in December 2016 is an example of such a vehicle. In the past, WIIN bills addressed primarily Corps of Engineers projects and issues. But the 2016 WIIN legislation was expanded to include provisions for Clean Water, Safe Drinking Water, and the Bureau of Reclamation. House and Senate authorizers have expressed a determination to pass a new WIIN bill by 2018. Given the precedent set by Public Law 114-322, a WIIN-2018 reauthorization has the potential to address multiple regional water needs in Southern California. Congresswoman Grace Napolitano serves as the Ranking Democrat on the Subcommittee of the House Transportation and Infrastructure Committee that has jurisdiction over this legislation.

President Trump Issues Executive Orders Addressing Major Environmental Rules

One of the most important of President Trump’s Executive Orders was issued on February 28 ordering the USEPA and the Army Corps of Engineers to review the 2015 Waters of the US [WOTUS] Rule. This Rule was in the final stages of implementation by the Obama Administration when it left office. The EO directs that “agencies will consider interpreting the term ‘navigable waters’ as defined in the Clean Water Act in a manner consistent with the opinion of Justice Scalia in *Rapanos*.” The USEPA and the Corps followed this EO a week later on March 6 with a Federal Register Notice. Waters of the US as interpreted by the Obama Administration expanded the definition of “connectivity” with water bodies, which in turn expanded what was considered a “water of the US.” The March 6 Federal Register notice promises: “In accordance with the President’s directive the USEPA and the Department of the Army announce their intention to review, rescind and revise the Clean Water Rule.” Most observers believe that the US Supreme Court will ultimately settle this issue. Virtually every entity in the San Gabriel Valley, including local governments and water suppliers has a stake in this outcome.