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SUBJECT: Washington Update

Congress has been in pro forma session, recessing for the November elections. Prior to recessing, another effort to pass COVID-19 relief legislation occurred when the House passed a scaled back HEROES Act, paring back proposed spending from \$3 trillion to \$2.2 trillion. The White House, acting through Secretary of Treasury Mnuchin offered a \$1.8 trillion alternative, but the absence of extending increased unemployment benefits by \$600 per week and limited state and local governmental assistance doomed progress. At the same time, the Senate appears fractured over any package of assistance with a core group of Republican Senators opposing any assistance package beyond airline assistance and small business support. As a result, final passage of a compromise looks increasingly unlikely before the November election. Despite the recess, a handful of policy matters continued to progress and are summarized below.

MODERNIZING AMERICA'S WATER RESOURCE MANAGEMENT AND WATER INFRASTRUCTURE PRESIDENTIAL EXECUTIVE ORDER

On October 13, President Trump signed an [Executive Order \(EO\) on Modernizing America's Water Resource Management and Water Infrastructure](#). Despite the lofty provisions of the EO, it is essentially a campaign tool as its focus is on existing programs that primarily address geographic water programs. Where the EO addresses generic issues related to water infrastructure, it is simply a restatement of prior efforts that are ongoing. The one element of this EO that could remain in play regardless of the congressional elections and the race for President is the Water Subcabinet. This subcabinet could form the core approach to a more unified federal approach to address the multitude of water quality and water supply issues as part of any national infrastructure initiative.

The EO formalizes federal policy to improve coordination of water resources and infrastructure policy, reduce program duplication, promote water infrastructure resilience, and support water-related workforce training. The EO also formally establishes a "Water Subcabinet" that has operated over the past few years as an informal group. The subcabinet will facilitate management of water supplies and systems and promote increased coordination among departments and agencies.

The EO essentially brings together the numerous existing programs such as water quality pollution trading, water recycling, flood control, reservoir forecasting, and seeks to memorialize many of the actions carried out by the Trump Administration to address water infrastructure and water resource management. There is no additional commitment of resources. However, the EO lays out a priority to report on how to integrate the various infrastructure programs at the federal level to support modernization of the nation's water infrastructure.

The EO addresses the following water resources matters:

- Establishes a Water Subcabinet to be co-chaired by Interior Secretary Bernhardt and U.S. Environmental Protection Agency Administrator Andrew Wheeler. The Water Subcabinet would consist of senior officials from the U.S. Department of Agriculture, the Department of Commerce, the Department of Energy, and the Department of the Army Corps of Engineers. The Water Subcabinet would coordinate with the White House Council on Environmental Quality, the Office of Management and Budget, and the Office of Science and Technology Policy, and other federal agencies.
- Within 90 days of the date of this order, the Water Subcabinet shall identify all existing federal entities currently addressing water-related issues and make recommendations to consolidate and coordinate these entities to the Chairman of the Council on Environmental Quality, the Director of the Office of Management and Budget, and the Director of the Office of Science and Technology Policy.
- Within 120 days of the date of this order, the Water Subcabinet shall submit a report that recommends actions to address water resources management. The report will identify a lead agency, other relevant agencies, and agency milestones for fiscal years 2021 through 2025.
- The EO identifies the following actions to increase water storage, water supply reliability, and drought resiliency and coordinate multiagency permitting and regulatory actions:
 - Coordinate with State, local, tribal partners and rural stakeholders to implement the following regional initiatives/projects: Colorado River Operations, Mississippi River/Gulf of Mexico Watershed Nutrient Task Force; Great Lakes Restoration Initiative Action Plan III; and, Comprehensive Everglades Restoration Plan.
 - Implement the “Priority Actions Supporting Long-Term Drought Resilience” document issued on July 31, 2019, by the National Drought Resilience Partnership.
 - Finalize and implement the following drinking water, desalination, water reuse, wastewater, and flood control initiatives/policies: National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions; National Water Reuse Action Plan; and, Department of Energy’s Water Security Grand Challenge.

- Support efforts to improve water data management, research, modeling, and forecasting including actions identified in the Federal Action Plan for Improving Water Prediction for Western U.S.
- Within 150 days of the date of this order, the Water Subcabinet shall identify and recommend actions and priorities to the Director of OMB, the Chairman of CEQ, and the Assistant to the President for Economic Policy to support integrated planning and coordination.
- Within 150 days of the date of this order, the Water Subcabinet, shall identify actions and develop recommendations to enhance the recruitment, training, and retention of water professionals within drinking water, desalination, water reuse, wastewater, flood control, hydropower, and delivery and storage sectors.

WRDA Reauthorization Discussions Continue with Goal of Final Passage by December

The House and Senate Water Resources Development Act (WRDA) committee staff continued to hold limited discussions on a compromise bill that could include funding of core clean water and safe drinking water programs including the State Revolving Fund (SRF). Central to the effort is whether a bill would address more than funding the SRF. Proposals to address permitting mandates, extension of the CSO/stormwater grants program, and addressing resiliency needs of the wastewater industry, including planning for sea level rise remain points of discussion. Whether any of these issues will be adopted as part of any final agreement could rest on whether the elections result in a flipping of the Senate’s control. Such a switch might lead to a decision to approve a simple U.S. Army Corps of Engineers flood and navigation reauthorization bill and address the broader water infrastructure policy and funding matters in the next Congress.

Fiscal Year 2021 Appropriations

Unsurprisingly, Congress and the White House agreed to avoid a shutdown of the government and approved a “clean” continuing resolution. The enactment of the measure simply funds existing federal programs through December 12, 2020. When Congress returns to work on or around November 16, its top priority will involve finalizing spending for the remaining months of Fiscal Year 2021. How this unfolds will depend on the election outcome, based on the experiences of past election years.

If a switch does not occur in control of the Senate and White House, it is highly conceivable that a final spending agreement will be acted on and enacted by December 12. Additionally, the potential exists that a COVID-19 relief package would be included in the measure. Subsequent to this, Congress and the White House will then prepare for budget actions related to the Fiscal Year 2022 budget process that would kick-off in February.

Transition Issues Likely Dominate Lame Duck Session

Regardless of the outcome of the elections, transition issues will dominate the Lame Duck Session. First, a number of House Members are retiring. This includes a number of House Republicans that are term limited in their roles as Ranking Committee members. This means that committee assignments will see new Members appointed, as well as a realignment of membership ratios of the two parties on each committee to reflect any new majority/minority numbers. Perhaps even more dramatic changes could be in the Senate. If Senate control flips to the Democrats, then wholesale changes would occur as chairmanships of committee and subcommittees would switch. For California, Senator Feinstein would be expected to return to her senior role on the Committee on Appropriations. If she decided to retain her position on the key Subcommittees on Energy and Water and Interior and Environment that fund water quality and water supply programs, support for clean water and water recycling programs that address OCS D interests would be expected to secure additional funding.

One of the most intriguing transition matters involves whom Governor Newsom would appoint to be Senator should the Biden ticket win election. The decision could be consequential to OCS D since the appointment could result in any appointee seeking appointment to the crucial Committee on Environment and Public Works that develops clean water policy.

Last, it now seems all but certain that the next Congress will restore the ability to legislate earmarks, directing spending to specific public purpose projects or programs. The House will decide in December on the rules governing the next Congress and recent hearings into the development of such rules illustrated strong, bipartisan support to allow for earmarks as part of any rules package. In the Senate, the key issue that will likely dominate debate is a strong push by a number of Senators to eliminate the filibuster. The elimination or modification of the filibuster is not a given as some of the chamber's most senior Senators, including Senator Feinstein, have suggested that the filibuster is a necessary evil to ensure that the Senate can consider policy in a deliberative manner.