



TO: Monterey County Board of Supervisors
FROM: Brent R. Heberlee
DATE: November 20, 2017
RE: 2017 Federal Legislative Report

This memo will review significant federal legislative and administrative matters with which I was involved in 2017 as part of the County team responsible for executing the 2017-18 Legislative Program. It will also provide a brief look at some of the key issues heading into the 2nd Session of the 115th Congress.

FEDERAL ADVOCACY

As the County's federal lobbyist in Washington, D.C., my principal function is to provide advocacy services and strategic advice to the Legislative Committee and County staff on federal issues affecting the County. With the ascendance of the Trump Administration, the County has had the misfortune of finding itself on the opposing side of many new policy decisions, and our advocacy work this past year has in large part been a reflection of this new reality. That said, opportunities exist to work constructively with the Administration and Congress on key County priorities. Following is a discussion of the County's advocacy efforts on key federal legislative, budgetary, and regulatory issues as outlined in the 2017-18 Legislative Program.

Coordination with State Advocacy and Strategic Grant Services Program

The Legislative Committee has recognized the importance of coordinating the County's federal, state, and grant advocacy efforts. I work closely with my Sacramento colleagues, Jennifer Capitolo and Ashley Walker, to identify federal funding opportunities for the County. The County receives significant funding from a wide variety of federal programs, many of which are funded through the annual appropriations process. Many of these programs direct funds to the State of California through formula grants and the County is then required to apply to the relevant State agency to access the funds. Other programs offer competitive grants that the County may choose to apply for directly with the relevant federal agency. In either case, our federal advocacy efforts involve working with our congressional representatives to support federal programs in the annual appropriations process that benefit the County's grant applications.

The County also benefits from closely coordinated federal and state legislative advocacy programs. This past year saw significant policy developments at the federal and state level on many of the County's key legislative priorities, especially immigration and cannabis policy.

California's move to declare itself a "sanctuary state" and to legalize the recreational use of cannabis products (and the County's development of a regulatory structure for the industry) runs contrary to DOJ policy established by the Trump Administration, and therefore presents potential risk for the County. My ability to analyze this risk for the County is greatly enhanced by the constant sharing of information on legislative developments between Nossaman's D.C. and Sacramento offices.

Washington, D.C. Meetings with Congressional Delegation

Nick Chiulos visited Washington, D.C., in late February to attend the National Association of Counties (NACo) Legislative Conference and to join me in meetings with policy makers to discuss the County's federal legislative priorities. Nick and I met with the offices of Congressman Jimmy Panetta, Senator Dianne Feinstein, and Senator Kamala Harris to discuss the effort to repeal the Affordable Care Act (ACA), President Trump's executive orders on immigration, disaster assistance related to winter storm and wildfire damage, and banking services for the cannabis industry. We were joined by Carol Adams and Julie Edgcomb with Natividad Medical Center and Agricultural Commissioner Eric Lauritzen in our meeting with Rep. Panetta.

Washington, D.C. Meeting with U.S. Forest Service (USFS)

Supervisor Adams, a staff member from Rep. Panetta's office, and I met with several officials from the USFS in Washington, D.C. on June 20th to discuss the transportation challenges facing Big Sur and the need to invest resources to maintain/repair USFS roads in the Los Padres National Forest. We were introduced to the National Director of Engineering and the Regional Engineer in Vallejo who are directly responsible for the USFS Road Construction program in California. USFS officials and Rep. Panetta's staff pledged to work closely with the County to address the situation in Big Sur.

Washington, D.C. Meetings on Pajaro River Flood Control Project

In early October, Supervisor Phillips, Dave Chardavoyne of the Water Resources Agency, and I attended several days of meetings in Washington, D.C. with Santa Cruz County and City of Watsonville officials to discuss the Pajaro River Flood Control Project. We met with officials from the White House Office of Management and Budget, U.S. Army Corps of Engineers ("Corps"), Congressman Jimmy Panetta, and staff from the offices of Senators Feinstein and Harris, the House and Senate Appropriations Committees, and the House Transportation and Infrastructure Committee. The purpose of the meetings was to provide an update on the status of the project and to explore how to improve the competitiveness of the project in the annual budget process. Our group received valuable feedback from each of the officials with whom we met, and they encouraged both counties to keep them apprised of the project going forward.

2017 Legislative and Regulatory Issues

Economic Development

Immigration Reform – the Legislative Committee has been very engaged with our congressional delegation over the past year on immigration issues affecting the County. Shortly after President Trump was sworn into office, I reported to the Legislative Committee on several executive orders issued by the President, including directives to begin construction of a southern border wall, enhance public safety by prohibiting federal grants to sanctuary jurisdictions, and ban travel to the U.S. for nationals from seven predominantly Muslim countries. I provided written statements from the congressional delegation commenting on the executive orders and additional research material to County staff to inform the Board’s consideration of resolutions relating to the travel and refugee ban and the sanctuary jurisdiction order. I also drafted letters for the Board to send to the congressional delegation opposing six bills in the House and Senate that seek to deny federal funds to local jurisdictions that refuse to cooperate with federal immigration officials.

The County has a long history of supporting efforts to improve the agricultural guest worker program, known as the H-2A program, for the benefit of both farmers and farmworkers. Senator Feinstein and Rep. Panetta have sponsored nearly identical legislation in the Senate and House to establish a new agricultural worker program that provides an opportunity for experienced agricultural workers to apply for legal status if they show consistent employment in U.S. agriculture over the past two years, pay a fine, and aren’t ineligible due to criminal history. At the request of the Legislative Committee, I drafted letters for the Board in support of both bills.

More recently, the Trump administration announced on September 5th that it would begin phasing out the Deferred Action for Childhood Arrivals (DACA) program on March 5, 2018. After March 5th, DACA recipients will begin to lose protection and will no longer be eligible for lawful employment and will be deportable. I worked with County staff on a Board resolution developed by Supervisor Alejo that urges Congress to codify the DACA program, and I’ve kept the Legislative Committee apprised of ongoing negotiations between the White House and House and Senate leaders on legislative efforts to protect Dreamers.

Cannabis Policy – in spite of Attorney General Jeff Session’s well known antipathy toward marijuana use and state legalization efforts, federal policy related to state-sanctioned cultivation, possession, and distribution of cannabis remains muddled in the absence of clarity from the Department of Justice (DOJ) on its enforcement policy. To add further uncertainty, Congress has yet to resolve whether to extend a budget rider in the FY2018 appropriations process that would prevent DOJ from using appropriated funds to prevent certain states from “implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”

Over a dozen legislative proposals related to marijuana use and cultivation have been introduced in the 115th Congress, largely in support of state legalization efforts. Our advocacy efforts have been focused on legislative and regulatory proposals that would legalize banking services for the marijuana industry. I have been following closely with my Sacramento colleagues the efforts of

the California State Treasurer's Cannabis Banking Working Group to develop recommendations and strategies for the cannabis banking conundrum, which could inform Congressional action on this issue.

Workforce Investment Opportunity Act (WIOA) – the Legislative Committee was contacted in June by the Workforce Development Board (WDB) about its concerns over the delay in receiving its final allocation of WIOA funds for program year 2017-18. The WDB indicated that a delay could have an impact on services to adult and youth clients in the One-Stop Career Centers and the service providers that provide these services, such as the Office of Employment and Training, Turning Point and the WDB staff. I contacted the U.S. Department of Labor to express the County's concerns over the delay and the funding was released to the State and County shortly thereafter.

Community Development Block Grant (CDBG) Program – at the County's request, Rep. Panetta signed a letter to the House Appropriations Committee in support of the CDBG program and requesting a minimum of \$3.3 billion for the program in FY2018. CDBG funds are provided to counties to support projects that meet their local priorities in addressing community and economic development, housing, water and infrastructure and human service needs.

Fort Ord National Monument -- President Trump issued an executive order on April 26th that directed the Secretary of the Interior to review certain National Monuments designated or expanded under the Antiquities Act of 1906. The expectation is that President Trump will use the findings of this review to reduce the size of and change the permitted uses in certain national monuments. Although the Fort Ord National Monument was not reviewed under the executive order, I drafted a formal comment letter that the Board submitted to the Secretary of the Interior that provides evidence of the broad support that exists for the Fort Ord National Monument, including the public outreach and stakeholder engagement that occurred prior to its designation.

Monterey Bay National Marine Sanctuary -- President Trump issued an executive order titled "Implementing an America-First Offshore Energy Strategy" that directs the Secretary of Commerce to review National Marine Sanctuaries designated or expanded since April 28, 2007, and to submit a report on the results of the review by October 25, 2017. The review includes the Monterey Bay National Marine Sanctuary (MBNMS), which was expanded on November 20, 2008. The review is to include an analysis of the cost of managing the sanctuary, the adequacy of the consultation that occurred prior to the expansion, and the opportunity costs associated with potential energy and mineral exploration and production from the Outer Continental Shelf.

I drafted a public comment letter for the Board to send to the Secretary of Commerce in support of the MBNMS and in opposition to any proposal to alter the size and scope of MBNMS to facilitate oil and gas development in the region.

Administration

Tax Reform – as of the date of this memo, Congress is currently considering comprehensive tax reform legislation that could significantly impact county finances, projects and services, including efforts to promote clean energy options for residents and businesses. The County's

advocacy efforts have focused primarily on preserving the deductions for state and local taxes (SALT), municipal bond interest, and private activity bond (PAB) interest. I have worked closely throughout the year with the National Association of Counties on tax issues, and I recently drafted a letter for the Board to send to Rep. Panetta expressing our opposition to the House tax bill, which would largely eliminate the deduction for SALT and completely eliminate PABs.

Renewable Energy Policy/Monterey Bay Community Power – at the request of the CAO, I prepared a memo early in the year analyzing the likely impacts of the Trump Administration’s energy policy on renewable energy development. The purpose of the memo was to inform the County’s investigation into whether it should join the Monterey Bay Community Power joint powers authority.

Payments in Lieu of Taxes (PILT) – The County receives payments each year under the Department of the Interior’s PILT program, which are intended to offset losses in tax revenues due to the presence of federal land in its jurisdiction. The County receives approximately \$914,000 from the PILT program in FY2017. I drafted letters for the Board to send to the congressional delegation in support of full-funding for the program in FY2017.

Health and Human Services

Affordable Care Act – after one unsuccessful try, House Republicans passed legislation in May to partially repeal and replace the ACA. Senate Republicans attempted to pass their version of repeal/replace in July but could not muster a simple majority to approve the legislation. As discussed earlier, I joined several County officials in late February in meetings with our congressional delegation to express the County’s opposition to the repeal/replace effort and to highlight the impact it would have on the healthcare delivery system in Monterey County. There is currently an effort afoot to repeal the individual mandate to purchase health insurance as Congress considers tax reform legislation, which if successful will further erode the number of people with private health insurance and increase the burdens on public healthcare providers.

Children’s Health Insurance Program (CHIP) -- funding for CHIP ran out on September 30th, and California and several other states will exhaust their CHIP funds by December. CHIP extends coverage for kids whose families fall in the gap between meeting eligibility for Medicaid and being able to afford other types of private insurance. CHIP/Medicaid provides coverage to over 12 million children in California, including nearly 50% of the children in Monterey County.

The House recently passed a five year CHIP reauthorization bill, albeit on a partisan vote, but the Senate has yet to consider its bill. I am drafting a letter for the Board to send to Senators Feinstein and Harris that urges them to support efforts to extend CHIP, community health centers, scheduled cuts to Disproportionate Share Hospital payments (that benefit Natividad) and other health safety net programs, but strongly opposes efforts to cut federal funding for the Prevention and Public Health Fund, which is included in the House-passed bill.

Infrastructure

Disaster Assistance – as discussed previously, I worked closely with County officials early in the year to request support from the congressional delegation for an increase in the United States Forest Service budget for road repair costs resulting from the Soberanes Fire and the County’s application for FEMA federal disaster assistance for the 2016-17 Winter Storms. I also kept the County informed of FEMA disaster declarations for winter storm damage, and I worked closely with Rep. Panetta’s office to ensure that FEMA reimbursements to the County were being processed in a timely manner.

Pajaro River Flood Control Project – due largely to the persistence and focus of Rep. Panetta and his staff, the Corps has re-engaged on the project, and it recently released a draft feasibility study that outlines the preferred design for the project and its environmental impacts. The local sponsors, Monterey and Santa Cruz Counties, have been working together to review the study and formulate comments on the tentative plan recommended by the Corps. The Counties remain concerned that the tentative plan/design may not be competitive for funding under current Corps budget constraints. I have been working with Supervisor Phillips, Dave Chardavoyne and Santa Cruz County officials to develop an advocacy plan to improve the project’s likelihood of receiving funding in future Corps budgets.

Public Safety

State Criminal Alien Assistance Program (SCAAP) – The County has long supported SCAAP, a U.S. Department of Justice program that reimburses counties for costs associated with the incarceration of undocumented immigrants. The FY2017 Consolidated Appropriations Act contained level funding for SCAAP, which should translate into the County receiving approximately \$375,000 from the program this year. I have worked closely with the County’s congressional delegation to encourage their support for SCAAP funding in the annual appropriations process.

Second Chance Act – At the County’s request, Rep. Panetta signed a letter to the House Appropriations Committee to support funding for grant programs authorized under the Second Chance Act, which are designed to assist states, counties, and nonprofit organizations in developing and implementing programs to help formerly incarcerated individuals successfully reintegrate into the community after their release from correctional facilities.

A LOOK AHEAD TO 2018

The mid-term elections in November 2018 have already begun to overshadow the Congressional agenda. So with the caveat that we are a Tweet or two away from completely upending my predictions, the following are some of the key issues likely to be considered next year in Congress:

Infrastructure – President Trump’s highly touted \$1 trillion infrastructure proposal was expected to be considered this fall, but it has taken a back seat to the drawn out effort to repeal the ACA and complete tax reform legislation before the end of the year. There is serious work

going on in various federal agencies to develop policy proposals related to infrastructure development that will eventually be included in the President's proposal. The proposal is likely to address transportation and water infrastructure needs and possibly other areas as well. The biggest challenge for Congress will be identifying how to pay for a dramatic increase in spending, especially when the current tax reform legislation pending in Congress sets aside \$0 for infrastructure.

Immigration – Democrats are hoping to enact the Dream Act or similar legislation to reinstate the DACA program before the end of 2017, but Republicans have stated that their preference is to consider DACA and border security legislation early in 2018. The disagreement could have ramifications for completing the FY2018 appropriations bills in December, which could lead to a government shutdown if a compromise is not reached.

Base Realignment and Closure (BRAC) – I have closely monitored the requests by the Department of Defense (DOD) over the last five years for Congress to authorize a reduction in DOD's infrastructure through a new BRAC round, which would allow DOD to close facilities it believes are underutilized or otherwise unneeded. Although Congress has repeatedly rejected these requests, it is becoming more likely that a new BRAC round will be authorized in the near future. Secretary of Defense James Mattis has indicated he will push hard in 2018 for Congress to authorize a 2021 BRAC round.

Given this eventuality, the County is supporting legislation cosponsored by Rep. Panetta that reforms the existing BRAC process by giving local communities a stronger voice in the review process and establishing criteria that value professional military education as importantly as more traditional military training. Incorporating this type of criteria into the review process will prove extremely beneficial for each of the military education facilities located in the County. As a member of the Armed Services Committee, Rep. Panetta will be in a good position keep the County informed of the likelihood of a new BRAC round, and I will work closely with his office to ensure the County's concerns are heard.

Water Resources Development Act (WRDA) – Congress is expected to consider a WRDA bill next year to authorize funding for Army Corps flood control projects across the country. The Pajaro River Flood Control Project may be a candidate for inclusion in the WRDA bill provided the Corps' schedule does not slip and a Director's Report for the project is received by next summer.

Farm Bill – Congress is expected to consider a comprehensive farm bill in 2018 that could make significant changes to an array of agricultural and food programs. The largest of these programs, the Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp Program), accounts for the overwhelming majority of total farm bill spending. SNAP and other food assistance programs have been identified by the County as legislative priorities. Rep. Panetta, who serves on the House Agriculture Committee, will play a significant role in the development of the 2018 Farm Bill.