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To: County of San Luis Obispo
From: Mike Miller
Re: 2012 Update & 2013 Work Plan

This memorandum provides an overview of action in the Second Session of the 112th Congress (2012), an update on the County's federal agenda, and our work plan moving forward into the 2013 cycle. Following the update we have included a matrix outlining projects and issues on the County's federal agenda and brief notes regarding the status of each.

Overview

Through December 31, 2012, The Ferguson Group (TFG) assisted San Luis Obispo County in all matters of interest pertaining to the federal government, including federal funding as well as legislative, regulatory, and other administrative matters not directly related to federal funding.

We focused much of our attention in several areas, including ensuring funding and regulatory approvals for the Los Osos project continue to move forward in a timely manner. In addition to monitoring relevant legislative action in Congress and keeping regular communications in place with the County's congressional delegation, TFG assisted the County at several critical points during the year to ensure the process did not stall. For example, earlier this year TFG facilitated direct communications with key NOAA staff responsible for certain necessary regulatory approvals to ensure there were no delays in the process. Also, TFG provided congressional briefings at key points during the approval process to ensure the congressional delegation had the opportunity to express support to relevant regulatory agencies for the project and efficient evaluation and disposition of regulatory duties. TFG briefed relevant congressional offices on Los Osos as questions arose during the review process to ensure the County's delegation had accurate information regarding the project when questions were posed by key Members of Congress related to the project.

TFG also focused on transportation authorization legislation with particular attention paid to highway funding opportunities and potential negative impacts of proposed policy changes related to metropolitan planning organizations. As previously reported, TFG provided significant assistance to the San Luis Obispo Council of Governments (SLOCOG) earlier this year at the request of both the County and SLOCOG. TFG continued to regularly provide updates to SLOCOG staff on legislative developments related to MAP-21 (the two year transportation authorization bill passed in the summer). In addition, TFG arranged joint County/SLOCOG meetings with key elected officials and staff during our February 2012 trip and also provided follow up services.

112th Congress and Public Laws – Historically Low Number of Bills Enacted

Prior to December’s lame duck session the 112th Congress had passed and the President had signed 196 bills – an historically low figure. The final count of Public Laws enacted under the 112th Congress, including legislation passed during the December lame duck session of Congress, remained historically low at 240. The merits of high rates of enacted legislation are debatable, but the difference between this Congress and the nineteen prior is striking. The list below shows the most recent ten Congresses with the number of public laws enacted during each.

<u>Congress</u>	<u>Public Laws (enacted legislation)</u>
<i>112th Congress (2011-12):</i>	240
111th Congress (2009-10):	383
110th Congress (2007-08):	460
109th Congress (2005-06):	482
108th Congress (2003-04):	498
107th Congress (2001-02):	377
106th Congress (1999-00):	580
105th Congress (1997-98):	394
104th Congress (1995-96):	333
103rd Congress (1993-94):	465

It should also be noted that over 110 of the 240 bills enacted were focused on naming public buildings, facilitating land transfers, striking commemorative coins, and similar types of legislation. There were several bills of note passed, including MAP-21, but even many of those bills were tempered or short term bills. Congress did not enact a new five year farm bill, MAP-21 was a two-year bill which did not address the central question of raising revenue for transportation infrastructure and programs, and Congress was unable to pass any of the 12 appropriations bills for FY 2013. In fact, at this writing the federal government is still operating under a continuing resolution which expires on March 30.

2012 Election

The November 2012 election results and decisions to leave key House and Senate leadership unchanged do not point to a sea change in the approach of either party to doing business in the 113th Congress. The following outlines the changes in seats between the 112th and 113th in the House and the Senate:

<u>Senate</u>	<u>112th</u>	<u>113th</u>	<u>House</u>	<u>112th</u>	<u>113th¹</u>
Democrats	51	53	Republicans	240	233
Republicans	47	45	Democrats	191	100
Independents	2	2			

¹ There are two vacant seats in the House of Representatives at the outset of the 113th Congress.

Earmark Moratorium

In light of the ongoing congressional moratorium on project earmark, TFG continued working with the County to identify grant opportunities – competitive and discretionary – and assisted County staff throughout the year by evaluating grant opportunities and providing important information about relevant grants to aid in decision making. Grant funding will continue to be critically important in 2013 as House Republicans (the majority party in the House) voted in caucus to maintain the earmark moratorium in 2013 and Senate leadership has indicated it will follow the House position.

Transportation Policy – MAP-21

Surprising many, Congress passed and the President signed MAP-21, legislation authorizing transportation programs and projects through October 1, 2014. The two year bill purports to make significant changes to program priorities; whether significant change does occur will not be clear until DOT agencies actually begin administering the new law. The Ferguson Group provided a detailed side-by-side analysis of MAP-21 immediately after passage and, since then, has hosted several webinars focusing on key aspects of MAP-21, including most recently a webinar focused on transportation alternatives funding.

The short horizon of MAP-21 – two years – leads many to assume Congress will begin working on the next authorization bill early in the 113th Congress. It is clear the biggest obstacle to passing long term, meaningful transportation legislation is finding a way to raise sufficient revenue to fund a robust bill. As noted above, the MAP-21 process failed to establish meaningful and reliable revenue sources; in fact, the process even failed to establish a useful baseline or course of action for dealing with the revenue requirements of our transportation system in the coming years. Hopefully the 113th Congress will find a way to work toward a transportation revenue solution.

Water Resources Development Act

Support for a new Water Resources Development Act (WRDA) are mounting after a Senate Environment and Public Works Committee Chairman Barbara Boxer and incoming House Transportation & Infrastructure Chairman Bill Shuster have stated strong support for moving WRDA early in the 113th Congress. WRDA bills authorize Corps construction projects and studies, as well as provide the statutory authority for Corps policies and programs. WRDA is the legislation in which Congress authorized funding for the Los Osos project; it should be noted that Congress has yet to appropriate funds for Los Osos under the WRDA authorization.

Traditionally Congress has tried to enact a WRDA bill every two years, but that hasn't happened often in the past decade. The last WRDA bill was enacted in late 2007. Disputes over Corps policy have been the most frequent hurdle to WRDA passage, despite general bipartisan support for the water projects bill. In addition, the moratorium on earmarks has been a seemingly insurmountable obstacle to enactment of a WRDA by the 112th Congress. The earmark moratorium, coupled with deficit-conscious reluctance to authorize new Corps projects while hundreds of existing projects remain unfunded, make WRDA passage uncertain this year

Stormwater Conveyance Update - Supreme Court Reverses Ninth Circuit on Polluted Water Liability

Early this week the Supreme Court of the United States reversed the Ninth Circuit Court of Appeals opinion holding municipal governments liable for discharging polluted water in violation of the Clean Water Act (CWA). Notwithstanding the reversal it is likely there will be continued developments in this case in light of the sole and narrow question considered by the Court.

By way of background, the Ninth Circuit found LA County Flood Control District (District) liable for merely channeling polluted water and in spite of the fact the municipal government did not generate the pollutants or add pollutants to the water being channeled (*NRDC v. County of Los Angeles*, No. 10-56017). The District argued that merely channeling pollution created by other parties should not create liability. The Ninth Circuit dismissed this argument and wrote, “(the CWA) does not distinguish between those who add and those who convey what is added by others – the Act is indifferent to the originator of the water pollution.” The Court added, “(CWA) bans ‘the discharge of any pollutant by any person’ regardless of whether that ‘person’ was the root cause or merely *the current superintendent of the discharge.*”

The Supreme Court granted review in the case but limited its review to a single question: whether the flow of water out of a concrete channel within a river rank as a “discharge of a pollutant” under the Clean Water Act?” Justice Ginsburg, delivering the opinion of the Court, held it does not and reversed the Ninth Court’s judgment and remanded the case.

Justice Ginsburg cited the Court’s holding in *Miccosukee* case wherein the Court accepted that pumping polluted water from one part of a water body into another part of the same body is not a discharge of pollutants under the CWA. Justice Ginsburg found the Ninth Circuit’s decision was inconsistent with *Miccosukee* and, therefore, reversed the lower court’s judgment.

In the final paragraph of the opinion the Court outlines the NRDC’s alternative argument for liability: the monitoring system showed numerous instances in which water quality standards were exceeded and this fact alone is sufficient to establish the District’s liability under CWA. Justice Ginsburg noted this argument was not embraced by the narrow question on which the Court granted certiorari and, therefore, the Court’s decision neither addresses nor indicates an opinion on this argument.

TFG will continue tracking developments in this case and will keep the County informed.

2013 Work Plan

Looking forward toward the 2013 cycle, The Ferguson Group will work with San Luis Obispo County to ensure that project development and advocacy continues to be efficient, effective, and result in putting projects in the best possible position to receive federal funding. In addition to our regular and ongoing communications with County staff, we will also provide quarterly updates to the Board and staff regarding all matters of interest to the County at the federal level.

The following points outline our anticipated work plan. It is important to point out that several factors will come into play this winter and spring and are likely to upset the normal Congressional process. Matters requiring resolution between now and March 30 include:

- FY 2013 appropriations – whether Congress will pass appropriations bills or a continuing resolution providing steady state funding for federal agencies;
- Fiscal cliff – whether Congress and the Administration will agree on a tax and spend plan averting significant automatic tax increases and funding cuts;
- Debt ceiling – whether Congress or the Administration will avert defaulting on federal debt obligations; and
- Presentation of the President’s FY 2014 budget request – the White House has already indicated the President’s budget will not be available until March at the earliest, well past the normal delivery window in early February.

These issues are likely to occupy significant attention in Washington and are likely to interfere with other matters moving forward prior to resolution. They are also likely to present challenges to moving forward on many of the items on the County’s federal agenda. Notwithstanding these challenges, The Ferguson Group will work with the County to develop a meaningful federal agenda with action items and measurable results for 2013.

1. Research and Identify Federal Funding Opportunities. On an ongoing basis, TFG reviews and identifies federal funding opportunities – both actual and potential. This research allows us to efficiently assess the likelihood of funding for projects in the early phases of specific project development. TFG maintains communications with key Members of Congress, congressional staff, and Administration officials and staff regarding funding opportunities and trends.

- Timeframe: Ongoing.
- Work product: Research and develop funding opportunity information for meetings with County officials and staff, communications with congressional and Administration contacts regarding funding opportunities and trends.

2. Develop Federal Agenda. While TFG researches and identifies federal funding opportunities, we concurrently work with the County to develop a project agenda. TFG will meet this fall once again with the County’s elected officials and staff to identify project priorities. TFG briefs the County on other funding opportunities and policy consideration to stimulate thought regarding other County projects not previously discussed.

- Timeframe: Winter 2013.
- Work product: Preliminary project agenda with project assessment focusing on likelihood of funding based on funding criteria, precedent, and other considerations.

3. Congressional Delegation and Federal Agencies - Input. TFG discusses the agenda on an informal basis with key congressional representatives and relevant federal agency officials and staff to secure initial support or identify challenges. To ensure early feedback from the County's congressional delegation, we will work with congressional staff and seek initial review of the County's preliminary federal agenda concurrently with our federal funding research and preliminary federal agenda development.

- Timeframe: Winter 2013 (after County's initial CY 2014 federal agenda is developed)
- Work product: Briefings with congressional offices, agencies, and County staff.

4. Finalize Project Agenda. TFG briefs the County on congressional and agency comments on the agenda. TFG proposes a final project agenda based upon identified County priorities, funding opportunities, and congressional comments. While it is important to identify an agenda and remain focused on the agenda, TFG understands that County priorities can change during the appropriations cycle; TFG remains flexible throughout the year to address possible changes in priorities.

- Timeframe: Winter 2014.
- Work product: Communications with County staff and officials, final project agenda.

5. Formal Requests. TFG works with the County, federal agencies, and the congressional delegation to finalize and submit requests for funding, policy changes, and regulatory relief. TFG drafts correspondence to congressional offices requesting support for projects. TFG coordinates communications with congressional offices and federal agencies and confirms receipt of project requests in advance of deadlines. TFG assists congressional offices as appropriate with work related to requests. TFG completes all required Member, committee, and subcommittee forms and other documents as appropriate. TFG communicates regularly with delegation offices and provides project background memoranda and other support to congressional staff as appropriate.

While there remains a slim chance of a change, it is important to note that Congress has once again adopted a moratorium on congressional earmarks for the next appropriations cycle. In light of this fact, TFG will continue to assist the County in exploring alternative funding opportunities and will work with the congressional delegation and the Administration to find funding opportunities outside the appropriations process (e.g., competitive and discretionary grants, policy changes enabling County participation in programs).

- Timeframe: Ongoing.
- Work product: Meetings with County staff and officials, project descriptions, required forms, supporting materials, congressional correspondence and other communications with congressional offices, project advocacy, grants research and applications.

6. County Advocacy. TFG strongly believes the most effective advocates for San Luis Obispo County are the County's elected officials and staff. We will continue to maximize the benefits of your expertise by ensuring that the right message is delivered to the right people at the right time. TFG provides full support to the County, including but not limited to meeting scheduling, briefing materials and talking points for meetings, meeting attendance and participation, and

travel assistance. TFG staff attends meetings in Washington and California and follows up on all action items resulting from meetings. TFG also advises County officials and staff regarding additional communications at key points throughout the appropriations process, and provides draft correspondence, contact information, and talking points to the County as needed. TFG advises the County regarding building and maintaining a strong working relationship with congressional offices, and as appropriate, with Administration officials and staff.

Given the uncertainty of action in Washington this winter, TFG will work with the County in the coming weeks to determine when meetings with congressional offices and agencies would be most appropriate and effective.

- Timeframe: Possibly winter or spring 2013 and ongoing as necessary.
- Work product: Secure meetings with congressional delegation and relevant Administration officials and staff; meeting schedules, briefing materials, talking points, draft correspondence, communications with County officials and staff, congressional testimony.

7. Outcomes and Project Assessment. Upon final determinations by Congress or agencies, TFG reports results to the County immediately upon receiving accurate and reliable information. TFG provides copies of relevant legislation, congressional reports, and other documents. TFG debriefs congressional offices regarding project results and reports findings to the County. TFG provides outcomes assessments, assisting TFG and the County in formulating the San Luis Obispo's federal agenda for the next cycle.

- Timeframe: Ongoing
- Work product: Communications regarding results and assessment of federal agenda, debriefing congressional offices regarding outcomes.

8. TFG Advocacy. Throughout the year, TFG regularly communicates with Members of Congress, their staff, and key committee staffers in support of the County's requests. TFG full support to congressional offices, including support letters to appropriations committees, talking points for Member and staff meetings, memoranda regarding project and budget status, draft congressional testimony, and other communications as requested by congressional offices. TFG tracks legislation of interest to the County, including appropriations and other legislation, and will report key developments in the legislative process to the County. TFG also provides regular reports to the County outlining major policy areas, initiatives, and legislation. TFG staff attends relevant committee hearings and markups and provides updates to the County. In addition, TFG works with federal agencies to secure positive outcomes for the County's federal agenda.

- Timeframe: Ongoing.
- Work product: Communications with congressional representatives and federal agency officials and staff, draft correspondence, support materials, memoranda for congressional offices regarding project status, and other support as requested and needed by congressional offices, attend congressional hearings.

9. Grants. TFG will work closely with County officials and staff throughout the year to identify meaningful grant opportunities related to County priorities and needs. TFG will provide ongoing analysis of grant opportunities and will assist the County in application development

and submittal. TFG will also provide outcomes analysis regarding grant applications and will follow up post-award to ensure funding is secured efficiently.

10. Client Communications. TFG is fully accessible to County officials and staff. We provide regular reports regarding project status, and we regularly meet in person with officials and staff in San Luis Obispo. By way of example, TFG continues to hold biweekly conference calls with County staff regarding the Los Osos Wastewater Project. We are available via telephone and email to answer questions and respond to other inquiries and requests from the County. TFG staff is available to County officials and staff to check and track the status of any legislation or regulatory activity at the federal level, as well as to advise the County regarding any potential impact of the matter on San Luis Obispo.

- Timeframe: Ongoing.
- Work product: Meetings in San Luis Obispo, written and oral status reports, other communications as necessary, meetings with other relevant entities, respond to information requests from County officials and staff.

2013 Federal Agenda

In light of the delays in congressional action during the second half of 2012 our normal agenda building process with the County has been delayed. The matrix below includes project on the County’s agenda in 2012 and includes updated information. In the coming weeks we should have a better sense of the priorities of the 113th Congress. In addition, agencies may release additional notices of funding availability under grant programs. We will work with the County to continue to develop and fine tune the federal agenda over the coming weeks.

	PROJECT/ISSUE	NOTES
1	Transportation authorization bill (MAP-21)	Two-year bill passed in July 2012 and effective October 1. Tracking funding and policy implementation plans. Work to begin this spring on MAP-21 follow on legislation.
2	101 / 46 interchange	DOT grant funding and tracking funding implementation under MAP-21. USDOT will work with Caltrans to administer funding under MAP-21. Possible candidate for TIGER V grant funding.

	PROJECT/ISSUE	NOTES
3	Willow Road	<p>DOT grant funding and tracking funding implementation under MAP-21. USDOT will work with Caltrans to administer funding under MAP-21.</p> <p>Possible candidate for TIGER V grant funding.</p>
4	Oceano Highway 1 flooding	<p>DOT and FEMA grant funding. Ongoing research regarding funding opportunities.</p>
5	Southland interchange	<p>DOT and EDA grant funding</p> <p>Will evaluate funding opportunities as MAP-21 administration is implemented.</p>
6	Los Osos Wastewater	<p>Ongoing work with USDA, Corps of Engineers, Reclamation, EPA, FWS, NOAA, NMFS, and DOI regarding funding opportunities and regulatory issues.</p> <p>Worked closely with congressional staff to ensure regulatory agencies remained on schedule with necessary review and approval process.</p> <p>Continuing to work toward securing meetings with regional Corps officials and staff regarding Corps project work plan and prioritizing Los Osos.</p>
7	Habitat Conservation Planning	<p>Los Osos, Arroyo Creek, and regional HCP efforts. FWS, DOI, NOAA, NMFS, COE, and other agencies.</p>
8	Water recycling	<p>Bureau programs including WaterSMART.</p>
9	NPDES – MSR4s Phase II	<p>Permitting requirements. Continue advising County regarding key actions by EPA and other regulatory agencies.</p>

	PROJECT/ISSUE	NOTES
10	Stormwater conveyance & liability	Supreme Court overturned 9th Circuit decision (Jan 2013). Continuing to track and keep congressional delegation informed.
11	Invasive species (aquatic)	Quaaga mussels – inspection and other assistance. Bureau of Reclamation Mussel Program. Met with Bureau representatives and continue investigating funding opportunities.
12	Arroyo Grande Creek – levees and HCP	Potential small flood control or aquatic ecosystems project. Corps of Engineers, NOAA, NMFS, FWS. Working with County staff to ensure timely regulatory consideration.
13	Property Assessed Clean Energy Program (PACE)	Actively engage legislators and Administration. Ongoing communications with congressional delegation regarding support for PACE program.
14	Climate Change	Alternative transportation funding opportunities, urban forestry, climate change planning, greenhouse gas reduction opportunities

15	Energy efficiency for public buildings	DOE – EERE program. Ongoing review of grant opportunities and communications with County staff.
16	Federal nuclear energy and waste policy	Diablo Canyon licensing; nuclear waste disposal and transportation. Tracking.
17	Anti-Gang Funding	Funding via USDOJ grant programs. Communicating support for program funding to delegation. Awaiting FY 2013 appropriations finalization.
18	DNA Cold Hit funding	Funding via USDOJ grant programs. Communicating support for program funding to delegation. Awaiting FY 2013 appropriations finalization.
19	CDBG and Energy Efficiency and Community Block Grant (EECBG)	Track and advocate for maximum funding and flexibility. Awaiting FY 2013 appropriations finalization.
20	Cambria Library Expansion	Expansion. Continuing to explore USDA and other grant opportunities. Also provided to County information on potential competitive grant opportunities.
21	Homeless services and facilities funding	Awaiting FY13 appropriations finalization to assess opportunities.
22	Farm Bill	Relevant provisions including broadband service, land preservation, wildfire prevention, habitat resource conservation districts, erosion control. 112th Congress passed a one year extension of existing law.

23	Medicare reimbursement	Inadequate reimbursement due to high cost but rural designation
24	Veterans assistance	Transportation to clinic and other assistance Awaiting FY13 appropriations finalization to assess opportunities.
25	NEA funding for public art	Awaiting FY13 appropriations finalization to assess opportunities. 2013 grant opportunity information provided to County staff.
27	Feinstein/Boxer Earthquake Insurance bill	Bill likely to be reintroduced in the 113th Congress.