

# Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 |  
T 202.955.3000 | F 202.955.5564 Holland & Knight LLP | www.hklaw.com

## ORANGE COUNTY WATER DISTRICT MONTHLY REPORT

*January 2020*

This report has been prepared for the Orange County Water District by Holland & Knight LLP to provide an overview of federal and congressional activities for January 2020.

### **The Week Ahead**

- The House is also expected to consider a right-to-organize labor union bill, supplemental appropriations for aid to Puerto Rico, and legislation to block the administration's policy on state Medicaid funding levels.
- The Senate has wrapped up their work on impeachment and will follow the trial with a bipartisan election-year agenda that includes energy, transportation, and healthcare legislation.

### **Congress**

#### House Democrats Plan Earmarks Decision This Week

- House Democrats are expected to decide by Friday whether they will pursue a revamped system of earmarked spending for fiscal year 2021 appropriations bills. The caucus is reportedly considering a pared-down version of earmarks that would fund a limited number of local projects from finite pots of federal cash.
- However, some Democrats, with tough reelection cycles, are hesitant, voicing concerns that the change would provide easy election-year fodder for Republican opponents to accuse them of wasteful spending.
- The Republican-controlled Senate remains a hurdle for potential legislation, even if a bill makes it out of the House endorsing the idea, as the upper chamber instituted a permanent ban on earmarked spending to their conference rules earlier this Congress, in early 2019. Majority Leader Mitch McConnell has also been clear about his disinterest in bringing back the practice.

#### Cable Franchise Legislation Introduced in Congress

- For more than 30 years, cable franchises have required cable operators to pay rent for use of public property in the form of a franchise fee of up to 5% of the cable operator's gross revenues from providing cable services.

- Additionally, local governments have had the ability to require that cable companies meet community needs by providing in-kind contributions benefitting schools; public safety buildings; and public, educational, and government (PEG) channels (community television stations).
- In August 2019, the Federal Communications Commission (FCC) voted to overturn this precedent, forcing localities to either eliminate franchise requirements or allow the operator to deduct the "fair market value" of the requirements from the franchise fee owed. The FCC also defined franchise fees to be limited to cash payments.
- In response, Sen. Ed Markey (D-MA) and Rep. Anna Eshoo (D-CA) introduced (S. 3218/H.R. 5659) [Protecting Community Television Act](#) on January 21 to protect the benefits that were obtained consistent with the Cable Act and franchising principles in place since 1984, as well as to clarify that the franchise fees that cable companies provide local governments only include monetary assessments, not in-kind contributions.
- The Senate bill has 18 co-sponsors, and the House bill has 25 co-sponsors. No Republicans have co-sponsored either bill at this time.

## **Administration**

### President's Budget to Be Released Feb 10

- The Administration is expected to release its budget request on February 10. This officially begins the budget and appropriations process for fiscal year 2021.

### Federal Deficit to Top \$1 Trillion

- The federal deficit will top \$1 trillion this year, the Congressional Budget Office (CBO) announced in its [annual fiscal outlook](#) last week.
- The gap between the amount of money the federal government spends and how much revenue it brings in is expected to continue to widen, averaging \$1.3 trillion every year for the next decade. While the current economy is strong, CBO said the nation will suffer unless Congress makes "significant changes to tax and spending policies."
- Highlights of the report:
  - CBO projected that economic output will grow 2.2% this year, "driving continued job creation and a historically low unemployment rate." But some factors expected to grow that output "would taper off in later years," slowing to an average annual rate of 1.7%.
  - Federal revenue will increase, but so will spending: In a growing economy, revenues are on track to increase from 16.4 % of GDP this year to 18% of GDP in a decade. CBO said growth partly reflects a scheduled increase in individual income taxes at the end of 2025.

- Federal spending is also projected to rise, driven by increased spending for mandatory programs like Social Security and Medicare, in addition to interest on the national debt. An aging population and ballooning health care costs will continue to drive federal spending well beyond 2030.
- The annual report follows recent Treasury Department data that found the year-end deficit exceeded \$1 trillion in 2019, marking the first calendar year during which the budget gap is past the trillion-dollar mark since 2012.

## **Transportation/Aviation**

### House Democrats Unveil Infrastructure Framework

- On January 29, House Democrats rolled out their infrastructure framework, which House Speaker Nancy Pelosi (D-CA) said will create jobs, rebuild America, address the climate crisis, reduce carbon pollution, improve safety and spur economic activity. This framework also provides the priorities for the FAST Act reauthorization bill, Water Resources Development Act (WRDA) and reauthorization of the Clean Water Act and Safe Drinking Water Act.
- The plan is expected to cost \$760 billion over a five-year period, although Democrats have not identified funding for their ambitious infrastructure goals.
- The climate plan, according to House Transportation and Infrastructure (T&I) Chairman Peter DeFazio (D-OR), will include provisions such as requiring federal buildings to be carbon-neutral and transitioning to renewable fuels for aviation. He also said to expect the plan to include proposals to improve rail and transit options "as a more efficient way to move passengers than short-haul airlines and automobiles."
- During a news conference on the framework roll out, Speaker Pelosi emphasized that every committee will have a contribution to the infrastructure bill.
- Highlights from the proposal include:
  - \$329 billion for modernizing highways and highway safety investments, including funding for [47,000 structurally deficient bridges](#)
  - \$105 billion in transit investment, including increased investment in zero-emission buses and modernization of the Capital Investment Grant Program
  - \$55 billion in rail investments
  - \$30 billion in airport investments
  - \$50.5 billion for clean water and wastewater infrastructure
  - \$10 billion in water infrastructure improvements, including enhanced funding for resiliency projects
  - \$19.7 billion for harbor infrastructure
  - \$2.7 billion for Brownfield restoration
  - \$25.4 billion for drinking water programs, including funding for communities dealing with per- and polyfluoroalkyl substances (PFAS) contamination

- \$34.3 billion for clean energy programs, with an emphasis on renewable energy and zero emissions
- \$86 billion for broadband and communications, with an emphasis on expanding broadband to underserved communities
- \$12 billion in public safety communications programs, including the implementation of a Next Generation 9-1-1 system to help first responders better assess the nature of an emergency

### FTA Funding for Buses and Bus Facilities

- DOT has announced funding availability for the Federal Transit Administration (FTA) Buses and Bus Facilities Program. Holland & Knight has shared the grant opportunity with the City's transit department.
- This program makes federal resources available to states and direct recipients to replace, rehabilitate and purchase buses and related equipment and to construct bus-related facilities, including technological changes or innovations to modify low or no emission vehicles or facilities. Funding is provided through formula allocations and competitive grants.
- Applications are due by March 30, 2020, and more information is available on [Grants.gov](https://www.grants.gov).

### Members of Congress Send Letter to IRS on Commuter Benefits

- A change to the Commuter Tax Benefit championed by transportation advocates was signed into law in H.R. 1865, the Further Consolidated Appropriations Act 2020. In that law, Congress repealed a special unrelated business income tax (UBIT) that was established in 2017 for tax-exempt entities that offer transportation benefits. The [repeal](#) is retroactive to the date the tax was enacted.
- In a January 8<sup>th</sup> [letter](#), House Ways and Means Committee Chairman Richard Neal (D-MA) and Subcommittee Chairman John Lewis (D-GA) urged the Internal Revenue Service (IRS) to expedite the refund process for tax-exempt entities that have previously paid taxes under this now-repealed provision of the 2017 law.

## **Immigration**

### Supreme Court Allows Trump Administration to Enforce Public Charge Rule

- On January 27, the Supreme Court voted 5-4 to allow the government to refuse green cards or visas for legal immigrants determined to be a "public charge," or dependent on public assistance.
- This ruling allows the federal government to deny visas to immigrants who receive or would otherwise qualify for public benefits, such as Medicaid, food stamps or housing vouchers for more than 12 months within a three-year period.
- Immigrant rights groups have said that they believe the new [public charge policy](#) will

discourage low-income immigrants from seeking necessary services for themselves and their children. Additionally, an analysis from Kaiser Family Foundation found nearly 42% of legal immigrants could see their green card applications adversely affected, and 94% foresee experiencing extra scrutiny after using at least one public program.

- Federal judges in California, Maryland, and New York had previously blocked implementation, but appeals courts later lifted all but the New York injunction. The Supreme Court's ruling allows the policy to take effect nationally with the exception of Illinois, where a statewide injunction has been upheld by a federal appeals court.
- Lower courts are expected to hear lawsuits on the public charge rules in coming months, and it is likely that the Supreme Court will have to review the issue again.

## **Energy/Environment**

### House Democrats Release Text of Climate Legislation

- Last week, House Energy and Commerce Committee Democrats released the [text](#) of their draft proposal to push the building, industrial, transportation, and electricity sectors to reach net-zero greenhouse gas emissions by 2050.
- The committee had released a detailed memorandum on the 622-page legislation earlier this month. The sweeping proposal would set a national clean electricity standard, require states to develop individualized plans to reach net-zero emissions, create a national climate bank, and require projects receiving federal funding to use cleaner materials.
- The legislation does not include provisions on carbon pricing, nor would it block the development of new natural gas infrastructure, as progressives have demanded.
- In a joint statement House Energy and Commerce Committee Chairman Frank Pallone (D-NJ), Environment Subcommittee Chairman Paul Tonko (D-NY), and Energy Subcommittee Chairman Bobby Rush (D-IL), said, ‘This draft legislation presents a set of comprehensive, specific steps for achieving net-zero greenhouse gas pollution. We look forward to continuing to work with all impacted stakeholders on this proposal in the coming months’.

### House Energy & Commerce Committee Hearing on Wildfire Impacts on Environment

- The House Energy & Commerce Subcommittee on Environment and Climate Change held a hearing last week entitled, “Out of Control: The Impact of Wildfires on our Power Sector and the Environment.”
- Witnesses included:
  - William Johnson, CEO and President - PG&E Corporation ([Testimony](#))
  - John MacWilliams, Senior Fellow - Center on Global Energy Policy, Columbia University ([Testimony](#))
  - Dr. Anthony S. Davis, Interim Dean of the College of Forestry, Oregon State University ([Testimony](#))

- Dr. Brandon M. Collins, Research Scientist - The Center for Fire Research and Outreach, Berkeley Forests, University of California, Berkeley (Testimony)
- David Markham, President and CEO - Central Electric Cooperative, Inc. (Testimony)
- Members of the committee and witnesses discussed means to prevent and mitigate the effects of increasingly intense wildfires. In 2019, almost 50,000 wildfires burned nearly 4.6 million acres in the United States.
- Democrats emphasized how climate change fuels the frequency, size, and severity of wildfires by increasing the duration of droughts, causing long stretches of low humidity and high temperatures, and initiating early springtime melting which leads to dryer land in the summer months.
- Republicans stressed that increasingly intense fires seasons are driven by decades of poor management. Republicans also voiced support for improving the National Environmental Policy Act (NEPA).
- There was a bipartisan consensus in support of increasing the pace and scale of forest management activities.