



## 2016 Federal Legislative Agenda

Local governments play a critical role in the American federal system of government. As the level of government closest to the people, they are responsible for the delivery of the majority of government services. Whether it is public safety, transportation, community planning, environmental stewardship, affordable housing, mental health and substance abuse treatment, child and family assistance programs, watershed management, or countless other services, individuals look to local governments to provide it. Broad policy and funding decisions made at the federal level directly affect the manner in which local governments function. It is therefore important for the Maricopa County Board of Supervisors to articulate positions and concerns to Washington on those issues affecting local government and the residents Maricopa County serves.

### **Relationship Building**

A key to articulating positions and concerns is the County's relationships with Arizona's congressional delegation and the Executive Branch, so it is imperative that County officials work to maintain and enhance these relationships. The National Association of Counties (NACo) legislative conference each spring is a great opportunity for Board members and staff to personally interact with the delegation and Executive Branch.

### **Guiding Principles**

Although Government Relations will brief the Board of Supervisors on activities as they occur during the 114<sup>th</sup> Congress and seek guidance regarding important bills and amendments and activities within government agencies, Government Relations asks that the Board consider supporting the following guiding principles to help the Government Relations team focus its efforts on issues of greatest concern:

#### **Fiscal Strength and Responsibility**

Maricopa County urges the federal government to recognize the unsustainable nature of the rising national debt and its potential impact on the economic vitality of the nation. Maricopa County urges the federal government to use a balanced approach to reduce the national debt that does not burden counties by shifting costs of programs to counties.

#### **Local Authority**

Maricopa County urges the federal government to allow for flexibility that empowers local communities, recognizing that locally elected officials best understand the needs of constituents.

#### **Growth & Economic Development**

Maricopa County urges the federal government to seriously consider the negative economic impact of rules and regulations before implementation while continuing to support programs that have a proven track record of supporting economic development, such as transportation funding.

## **2016 Federal Legislative Priorities**

As the guiding principles provide general direction, Government Relations asks that the Board consider addressing through federal advocacy several specific issues important to the County and its residents:

### **1. Clean Air Act – Ground Level Ozone**

Currently, the Clean Air Act (CAA) requires that EPA review each national ambient air quality standard (NAAQS) once every five years. EPA finalized a lowered 8-hour ozone national ambient air quality standard of 70 parts per billion that with an effective date of December 28, 2015. As the standard is ratcheted down, transport of ozone pollution from other areas becomes an issue in the Valley and for other areas in the West. For example, under certain meteorological conditions, ozone generated in California and across the border in Mexico drifts into Maricopa County and contributes to high ozone episodes here. On many days as much as 50% of our ozone problem comes from outside the County. In turn, Nevada and Colorado both point to the Phoenix ozone plume as a contributor to their high ozone episodes. The State of Arizona has filed suit against EPA challenging the new standard.

These circumstances will require more regional cooperation. In addition, EPA leadership and action on federally controlled sources such as fuels, vehicles, and lands are absolutely essential—as these sources are outside state and local control. If the County is unable to meet the proposed new standards, a number of negative consequences ensue. The structure of the Clean Air Act (CAA) imposes lower permit thresholds each time the County fails to meet its attainment date and these lower permit thresholds impose complex permitting requirements on even smaller sources. This makes the County less attractive to new business. Under the CAA, if the County fails to meet these requirements or fails to meet attainment dates, sanctions are imposed such as withholding federal highway funds, increasing major source (new permit) offset ratios and higher emission fees for larger sources.

***Recommended Action: Support state litigation and legislative efforts to delay implementation of the 2015 standard until the 2008 ozone standard is met. Continue to work closely with local partner agencies (state and federal), the local business community, and the Arizona congressional delegation to send a consistent message to EPA that any implementation rules on ozone must recognize Western issues as unique so that the County will not face continual, reoccurring nonattainment and federal penalties associated with nonattainment.***

## **2. Clean Air Act – Exceptional Events Rule for PM-10**

The County is significantly affected by the manner in which EPA interprets and implements Clean Air Act provisions for addressing high levels of particulate matter (PM-10) air pollutants due to high winds. The EPA's Exceptional Events Rule implements those CAA provisions and the rule is seriously flawed. While EPA has released proposed rule revisions that will streamline the demonstration process, local partner agencies will provide additional recommendations for further improvements to the rule.

***Recommended Action: Work closely with local partner agencies (state and federal), the local business community, and the Arizona congressional delegation to send a consistent message to EPA to revise its rule to provide more clarity and flexibility to states in working with exceptional event demonstrations, ensure better cooperation between EPA and the County, and assure reasonable and consistent implementation of the rule by EPA, so that the County will not face continual, reoccurring nonattainment due to exceptional events beyond its control.***

## **3. Invasive Species Growth Impacting Flood Zone Designation**

The Gila River through Maricopa County has significant salt cedar growth. Salt cedar uses great amounts of water, limits recreational use of the river due to its dense growth pattern, poses a fire hazard to adjacent property, and impedes flood flows. Recently, salt cedar growth has increased the size of the 100-year floodplain in the Goodyear/Buckeye area -- approximately seven square miles, including 200 homes, are now in the floodplain. Nearly 40% of the land in the floodplain between the confluence of the Aqua Fria and Gillespie Dam is under public ownership. Most of the public land is -owned or managed by the Bureau of Land Management (BLM). There would be an extensive permitting process for salt cedar clearing projects because the area is critical habitat for several threatened and endangered species. Clearing can cost in excess of \$50,000 per acre and would require long-term maintenance. Maricopa County has completed an analysis that reviewed several proposed solutions, including building a levee, clearing the salt cedar, re-introducing native vegetation, and combinations of each of these options. The option preferred by the communities is a combination of levees and replacement of salt cedar with native trees and shrubs. The Flood Control District will start the process to obtain a 404 permit from the US Army Corps of Engineers for the salt cedar clearing in 2016. The permitting process could take two years or longer.

***Recommended Action: Work closely with federal agencies, local jurisdictions, the local business community, and the Arizona congressional delegation to collectively develop and permit strategies to address flood plain changes and water use impacts created by invasive species growth. Request federal agencies dedicate staff to expedite the permitting process. Request that the Bureau of Land Management (BLM) coordinate and enter into discussions with local jurisdictions regarding clearing salt cedar on federal (BLM) land.***

#### **4. Third Party Recreational Concessionaire on Bureau of Land Management (BLM) Land**

The BLM office in Arizona has determined that it does not have the authority to allow third-party recreational concessionaires to build and/or operate recreational facilities such as campgrounds, horseback riding facilities, zip lines, and/or golf courses within established County park boundaries if the land is BLM land. County officials and the members of the Arizona congressional delegation have directly intervened both at the BLM in Arizona and headquarters in Washington to amend this decision, without success to date. Maricopa County has established such concessionaire agreements with the Bureau of Reclamation and other counties in Arizona have established such agreements with the U.S. Forest Service and the National Park Service. If Maricopa County could develop third-party concessionaire agreements with BLM, residents would have greatly expanded access to recreational opportunities.

*Recommended Action: Work with the Arizona congressional delegation to support federal legislation to create a mechanism by which BLM may grant the County authority to enter third party recreational concessionaire agreements.*

#### **5. Payment in Lieu of Taxes (PILT)**

PILT provides payments to counties and other local governments to offset losses in tax revenues due to the presence of substantial acreage of federal land in their jurisdictions. Since 2012, Congress has included PILT appropriations into last minute, must-pass legislation, rather than standalone legislation. This makes budget planning difficult for Maricopa County because we often do not know the level of funding until well into our fiscal year.

*Recommended Action: Urge Congress to find a solution to provide a consistent and stable source of funding for counties with federal lands in their jurisdictions.*

#### **6. Implementation of the Fixing America's Surface Transportation (FAST) Act**

On December 4, 2015, President Obama signed into law H.R. 22, the FAST Act. This Act provides a five-year authorization for surface transportation programs. The bill provides \$305 billion through FY 2020, increasing 2015 funding levels by 5% in the first year and 15% overall by FY 2020. The legislation sets overall obligation limits from the Highway Trust Fund for federal highway programs, rising from \$42 billion in FY 2016 to \$46 billion for FY 2020.

Among the significant highway-related provisions in the FAST Act (and related laws) that are of particular interest to Maricopa County and the state of Arizona are the following:

- Conversion of the Surface Transportation Program (STP) into a block grant program, and an increase in the STP sub-allocation to large urbanized areas from 50% to 55%.
- A competitive grant program for nationally significant freight and highway projects, with local governments listed as eligible applicants.
- Provisions related to the environmental process, providing authority and flexibility for states, use of best practices and programmatic approaches to project delivery, and funding of positions at federal, state or local agencies to expedite reviews.

- A tribal transportation self-governance program under which Indian tribes would receive and administer transportation funds.
- Set-aside funding for off-system bridges, providing over \$776 million annually for bridges primarily owned by counties and local governments.
- Provisions related to Intelligent Transportation Systems (ITS), including substantial funding for ITS, including vehicle-to-infrastructure communication equipment.
- Allocation of \$67.5 million per year for a Technology and Innovation Deployment Program to accelerate deployment of new technology and innovations and analyze cost savings, project delivery time savings, reduced fatalities, and congestion impacts.
- Continuation of the TIGER Program (Transportation Investments Generating Economic Recovery).

***Recommended Action: Work with appropriate agencies to: 1) gain working knowledge of FAST Act provisions and positively influence the development of regulations associated with the Act; and 2) identify keys to developing a TIGER application with a chance for approval, to benefit the County and/or the region.***

## **7. Federal Flood Risk Standard Change**

An Executive Order (EO) issued on January 30, 2015 attempts to reduce growing flood-related losses nationwide by establishing a new flood risk-reduction standard (FFRMS) for federally funded projects. The Administration states that the EO and new FFRMS should not increase flood insurance rates or impact local floodplain management ordinances. However, details and actual impacts of this standard are unknown, pending future agency rulemaking actions. Draft guidelines on how federal agencies will implement the EO will be open for public comment.

***Recommendation: Work with impacted County departments, including Human Services and Transportation, in submitting comments to ensure that implementation guidelines don't adversely impact local programs.***

## **8. Streamlining Army Corps of Engineers Permitting and Approval Processes**

Several Maricopa County flood control projects, as well as projects initiated by cities and private developers in Maricopa County, have recently been held up for months. These delays have occurred because Congress hasn't provided an adequate level of funding for the required reviews to be conducted under two different laws. First, Section 404 of the Clean Water Act (CWA) requires the United States Army Corps of Engineer's (USACE) approval of filling, grading, mechanized land clearing, and other activities in Waters of the U.S. Second, Section 408 of the Rivers and Harbors Appropriation Act of 1899 requires the USACE approval of proposed modifications to federally-constructed flood control facilities.

USACE staff told Maricopa County that lack of adequate federal resources contributes to the lengthy review timeframes for Section 404 permits and Section 408 approvals. Delays in the 408 approvals are also caused by the USACE's increasingly complicated review process. Recent guidance issued by the USACE on the 408 approval process has created uncertainty among non-Federal partners as to what is required to review and approve proposed changes

to USACE-constructed projects. The USACE should consider streamlining the Section 408 approval process. Potential modifications might include:

- Maximize the number of projects classified as Minor 408 versus Major 408. Minor 408 approvals are processed at the USACE District level. Major 408 approvals are sent to headquarters for review and approval. Processing at the District-level usually results in a quicker permit turnaround.
- Allow county flood control districts to issue 408 approvals on USACE-built projects that are maintained by local government agencies.
- Automatically issue the Section 408 approval if the USACE does not provide either initial comments or final approval within a certain period of time from submittal.

***Recommended Action: Urge Congress to appropriate sufficient funds and direct that the Army Corps of Engineers maintain adequate staffing levels to review and approve permits in a timely fashion. Work with USACE staff to establish streamlined guidance related to Section 408 approvals that will result in quicker permit turnaround times.***

## **9. SCAAP**

State Criminal Alien Assistance Program (SCAAP) is an authorized program that reimburses states and local governments for some of the costs of incarcerating undocumented immigrants convicted of crimes. Immigration enforcement is the federal government's responsibility by law, and this includes incarcerating undocumented criminal offenders. Appropriated SCAAP funding has decreased dramatically in recent years, from \$565 million in FY2002 to \$210 million in FY2016, and as low as \$180 million in FY2014, which is far below its authorized level of \$950 million.

***Recommendation: Support the Arizona delegation in seeking reauthorization of the program and in seeking an appropriate share of federal funds.***

## **10. 340B Drug Pricing Program**

The 340B Drug Pricing Program was created in 1992 and provides access to reduced price prescription drugs to eligible health care entities at significantly reduced prices. The intent of the program is to allow covered entities to stretch scarce federal resources as far as possible, reaching more eligible patients and providing more comprehensive services. Maricopa County Correctional Health partnered with Maricopa County Public Health to utilize this program, saving Maricopa County \$800,000 in FY2016. However, proposed guidance from the Human Resources and Services Administration (HRSA) could exclude justice-involved individuals from the program. In October of 2015, the National Association of Counties (NACo) submitted comments expressing counties' concerns about losing cost savings like those found Maricopa County. HRSA will review submitted comments and could release a final rule in 2016.

***Recommended Action: Support NACo's efforts to send a consistent message to HRSA that counties' use of the 340B program is responsible and an important tool that stretches scarce federal resources.***

## **11. Appropriate Share of Federal Funds**

Congress has not passed regular appropriations bills in years. The last minute and sometimes short-term or temporary appropriations have made budgeting and project planning difficult for local governments across the nation. 2016 is a presidential election year, so lawmakers may find it difficult again this year to keep to regular order with a budget resolutions approved by April 15, 2016 and passage all 12 FY2017 appropriations bills by September 30, 2016.

***Recommended Action: Work with the Arizona congressional delegation to seek an appropriate share of federal funds and, when appropriate, request oversight language regarding federal operations is included in appropriations bills.***

### ***a) National Dam Rehabilitation Program***

The Natural Resources Conservation Service (NRCS) National Dam Rehabilitation Program (The Watershed Rehabilitation Program), authorized by Congress in 2000, applies to the Flood Control District's 16 NRCS sponsored dams.

To date, NRCS has funded or obligated approximately \$120 million in federal funding for the overall rehabilitation/repair of five NRCS dams managed by the Flood Control District (one completed, four in progress) under project cost share agreements. However, an additional \$35 million in federal funding is needed in order to complete the four ongoing dam rehabilitation projects by the required date of September 30, 2018. Maricopa County has found that these dams prioritize very highly in funding allocations from the national budget for this program. The priority ranking is primarily due to the significant number of people protected by the dams (thousands vs. a much smaller number for most NRCS Dams). With the exception of the Farm Bill in 2014, the Funding of this national program over a number of years has been significantly lower than the national, and Maricopa County, need. Therefore, if underfunding of the national program continues, it will adversely affect the ability of the County to complete the ongoing dam rehabilitation projects by the date required in the 2014 Farm Bill of September 30, 2018.

### ***b) Public Health Prevention Programs***

Public health is not always synonymous with health care services. Some think public health is "safety net" health care services, and that these should no longer be necessary in the wake of health care reform. While some public health departments provide some of these types of services, many public health activities affect everyone by working to prevent diseases. For instance, public health departments plan for and execute infectious disease responses and wellness campaigns.

Public health funding at the Federal level largely works its way down to local communities and services and forms the bedrock of the ability for local governments to protect and promote the health of their citizens. For instance, due to state budget constraints, 70% of Maricopa County's public health budget is federally funded. Therefore, federal funding programs under the Centers for Disease Control and Prevention and other health agencies are important to Maricopa County because they

provide timely and important support for the disease prevention services that benefit all residents. Some core public health services are funded through Federal agencies that one might not expect. For instance, much of Maricopa County's federal funding comes through the USDA, including Child Nutrition programs. Loss of this funding would threaten core public health programs upon which communities everywhere depend.

c) ***LIHEAP***

According to Low Income Home Energy Assistance Program (LIHEAP) authorized funding, a revised formula for the distribution of funds automatically enacts to compensate fast growing jurisdictions and to provide additional funding for cooling assistance after \$1.97B is obligated in base funding. This revised formula favors Arizona. However, for the last several years Congress has passed a formula override for LIHEAP as part of the appropriations process, diverting funding from Arizona and other similarity situated states to, primarily, northern cold weather states. A diverse and broad coalition of governmental and affected utilities are urging Congress to uphold current law and not override the revised formula, so warm weather states, such as Arizona, would receive the funds intended in LIHEAP legislation.

## **Issues of Interest to be Monitored**

During the 114<sup>th</sup> Congress, Government Relations will watch the following matters closely and brief Board members if viable solutions begin to gain traction.

### **1. Waters of the United States**

On August 28, 2015, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) “Waters of the U.S.” rule was scheduled to go into effect, but a federal court has issued an injunction. The rule attempted to clarify which U.S. bodies of water are protected under the Clean Water Act (CWA). Then, on October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the pending rule nationwide. EPA and the USACE resumed nationwide use of the agencies’ prior regulations. Maricopa County is concerned that the pending rule would allow EPA and the USACE to increase oversight under sections 401 and 404 of the CWA, which require permitting for dredging, filling, and discharging into federal waters. The pending rule has also faced challenges in Congress.

### **2. Clean Air Act – Clean Power Plan**

The new rule released by EPA on August 3, 2015, requires states to develop plans to reduce carbon dioxide (CO<sub>2</sub>) from existing fossil fuel fired power plants by 32% from 2005 levels by 2030. Under EPA’s final rule, Arizona’s goal is a 34% reduction. EPA finalized a phased-in glide path to achieve the reductions by 2030. However, the agency’s assumption used to develop that goal may still require a substantial shift from coal fired to natural gas fired generation. Maricopa County is home to eight of the 12 affected natural gas power plants included in EPA’s calculated re-dispatch of Arizona coal fired generation. A significant shift in power generation would produce significant impacts to nonattainment air quality plans that may generate reliability and affordability concerns. The Arizona Department of Environmental Quality (ADEQ), industry, and local stakeholders are planning to submit comments regarding EPA’s proposed federal implementation plan to ensure that the proposed emission trading program will work for Arizona if the state decides to take advantage of that option. ADEQ will preserve the State’s ability to continue the challenge to the final rule.

### **3. Clean Air Act – Regional Haze**

In September 2014, EPA promulgated a federal implementation plan (FIP) to address the remaining portions of the Arizona Regional Haze state implementation plan (SIP). The FIP included more stringent emission limitations for six additional facilities (2012 and 2014 EPA actions previously addressed four power plants) and reworked four other elements of the state’s plan to reflect the more stringent limitations. These required modifications will impact the State’s efforts to address the Clean Power Plan requirements. In addition, some utilities that depend on affected power plants may have to increase the production within Maricopa County, which could have an impact on air quality. These regulations could also lead to increased water costs to Maricopa County residents through an increase in energy costs for the Central Arizona Project that depends greatly on the impacted power plants for its energy. The Arizona Department of Environmental Quality has ongoing litigation on various issues related to Regional Haze.

#### **4. National Flood Insurance Program Reform**

The National Flood Insurance Program (NFIP) is a federal program, managed by the Federal Emergency Management Administration (FEMA).

On July 6, 2012, President Obama signed into law the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12), which reauthorized the NFIP through September 30, 2017, and made a number of reforms aimed at making the program more financially and structurally sound. The purpose of the legislation was to change the way the NFIP operates and to raise rates to reflect true flood risk, as well as make the program more financially stable. As implementation moved forward, constituent concerns over flood insurance premium increases prompted legislative efforts to modify some of the BW-12 reforms. After all, federally backed mortgages on homes in floodplains require owners to purchase flood insurance, so flood insurance costs directly impact homeowners.

On March 21, 2014, President Obama signed the Homeowner Flood Insurance Affordability Act of 2014 into law, which repeals and modifies certain BW-12 provisions and makes additional program changes to other aspects of the NFIP. The law lowered the rate increases on some policies, prevented some future rate increases, and implemented a surcharge on all policyholders. However, the law does allow rates to increase up to 15% a year. The rate increases and new surcharges are unfortunately reducing the number of homeowners purchasing flood insurance, exposing them to a financial risk from flooding and potentially increasing the need for federal assistance after flooding events.

The 2012 law created a lot of confusion and public concern regarding the direction of the NFIP. The 2014 law addresses the majority of these concerns and brings some clarity to the administration of the NFIP. The NFIP will come up for reauthorization in 2017 and at that time Congress needs to revamp the program to ensure that homeowners can afford to purchase flood insurance allowing them to reduce their financial exposure to the consequences of flooding.

#### **5. Water Resources Development Act**

Water Resources Development Act (WRDA) authorizes the projects and programs of the U.S. Army Corps of Engineers (USACE) and provides an opportunity for Congress to articulate program priorities. Typically a WRDA is passed every two years, and the last one was in 2014. Besides authorizing specific projects and studies WRDAs typically address USACE programs that involve Dam and Levee Safety programs. This can include grant assistance for repairs and removal as well as revise the program standards. Maricopa County needs to be kept informed about any possible changes to 404 or 408 permits and any USACE programs, specifically the Dam and Levee Safety programs.

#### **6. Federal Lands During Government Shutdowns**

On October 1, 2013, the federal government shut down. Therefore, Tonto National Forest officials shut down several locations that Maricopa County residents regularly use for recreational activities. National Parks officials also closed the Grand Canyon. The economic impact on tourism was significant and the State of Arizona has had difficulty getting the

federal government to reimburse it when it covered the expenses related to re-opening the Park.

Maricopa County supports and will track legislation introduced in the House and the Senate that would, during a federal government shutdown, allow local governments to enter into agreements under which the federal government may accept funds to reopen a local National Park, National Wildlife Refuge, or National Forest, and require the federal government to reimburse local governments for related expenses upon reopening of the federal government.

## **7. Correctional Healthcare Costs**

According to the National Commission on Correctional Health Care, a substantial number of people that are booked into county jails have serious behavioral and/or medical needs. Federal regulation allows individuals who are incarcerated, but pending disposition of charges, to remain on health insurance provided through healthcare exchanges until convicted. However, under Medicaid, the rules are different. Medicaid will not pay for services when an individual is incarcerated, even if the individual is awaiting trial and has insufficient funds to make bail. As a result, the County must shoulder the incarcerated individual's health care costs. Maricopa County will continue to track proposals to change the Medicaid rule so that covered individuals remain eligible for Medicaid coverage until convicted and incarcerated.

## **8. Local Control of Human Services Administered Programs**

Maricopa County residents are best served when the following program decisions are made at the local level. National organizations will take the lead advocating for local control, so Maricopa County will monitor rules and regulations regarding the following issues:

- a. Workforce Innovation and Opportunity Act (WIOA)
- b. Housing Trust Fund
- c. Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments (FR-5474)
- d. Multifamily Housing Reform and Affordability Act: Projects Eligible for a Restructuring Plan When Eligibility Is Determined (FR-5304)

## **9. Program Reauthorization**

Several programs that fund Maricopa County programs are due for reauthorization. National organizations will take the lead advocating for reauthorization, so Maricopa County will simply monitor the following program reauthorizations:

- a. Head Start/Early Head Start
- b. Older Americans Act
- c. Weatherization
- d. Community Services Block Grant (CSBG)
- e. Child Nutrition
- f. Women Infants and Children
- g. Maternal, Infant, and Early Childhood Home Visitation