AGENDA ITEM NO.
M-1

COUNTY OF HUMBOLDT

For the meeting of: October 21, 2014

Date: October 16, 2014

To: Board of Supervisors

From: Phillip Smith-Hanes, County Administrative Officer PSH

Subject: County Administrative Officer Report: Federal Legislative Update and Various Other Topics

RECOMMENDATION(S):

That the Board of Supervisors receive an oral report from the County Administrative Officer regarding progress on federal legislative issues of interest to Humboldt County, and various other topics, and take action as may be required.

SOURCE OF FUNDING: N/A

DISCUSSION:

The County Administrative Officer will provide a brief oral report to the Board on various topics. Anticipated topic for October 21 is:

1. **Federal Legislative Update**
   The County's federal legislative advocates from Waterman & Associates have provided a report on federal legislative activity in the third quarter of the year. The County Administrative Officer will review this report with the Board.

Prepared by Phillip Smith-Hanes CAO Approval Amy Nilsen

REVIEW:
Auditor ____ County Counsel ____ Human Resources ____ Other ____

TYPE OF ITEM:
____ Consent
X Departmental
____ Public Hearing
____ Other ____

PREVIOUS ACTION/REFERRAL:

Board Order No. ____

Meeting of: ____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor Seconded by Supervisor

Ayes
Nays
Abstain
Absent

Per Order of the Chair

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: Oct. 21, 2014
By: Ana Hartwell
Kathy Hayes, Clerk of the Board

FINANCIAL IMPACT:

There is no financial impact to hearing the oral report. Some topics discussed may have positive or negative financial impact on the County.

OTHER AGENCY INVOLVEMENT: None.

ALTERNATIVES TO STAFF RECOMMENDATIONS: Board's discretion.

ATTACHMENTS: Third Quarter Report from Waterman & Associates

Waterman & Associates GOVERNMENT RELATIONS

HUMBOLDT COUNTY
WASHINGTON BRIEFS **THIRD QUARTER 2014**

With election-year politics in full swing, the third quarter of 2014 was largely dominated by partisan posturing as Republicans and Democrats alike worked to reinforce their parties' contrasting agendas. The heightened sense of acrimony on Capitol Hill - combined with the fact that there were relatively few legislative days on the calendar - resulted in little substantive progress in recent weeks.

Despite the anticipated gridlock, lawmakers did manage to reach agreement on several "must-pass" items, including a government-wide Continuing Resolution (CR). The CR (PL 113-164), which became necessary in the absence of a fiscal year 2015 budget deal, provides level funding for federal agencies, programs, and operations through December 11.

Although the CR is largely void of "anomalies," the measure does include several extraneous spending and policy provisions. For example, the legislation reauthorizes the Export-Import (Ex-Im) Bank through June 30, 2015. The Ex-Im Bank has come under fire in recent months from conservative lawmakers who view it as a form of corporate welfare; in contrast, supporters of the Bank argue that it helps boost the country's competitiveness in otherwise difficult-to-access foreign markets.

The CR also provides $88 million in new funding to combat the Ebola outbreak in West Africa, as well as increased funds for disability-claims processing at the Department of Veterans Affairs. Of particular interest to counties, the resolution temporarily extends (through December 11) a law that prevents local governments from taxing broadband internet access. The current moratorium was set to expire on November 1, 2014.

The relatively short-term duration of the CR means that lawmakers will be returning to Washington, D.C. for a post-election lame duck session of Congress. At that time, congressional leaders will need to decide whether to extend the CR or attempt to cobble together a catch-all fiscal year 2015 omnibus spending package. If Republicans take control of the Senate, it appears likely that GOP leaders will want to defer any major budgetary or policy-related decisions until the New Year.

While avoiding a government shutdown was at the top of Congress' agenda this past quarter, lawmakers did consider several other items. For starters, Congress cleared and President Obama signed into law in early August a short-term bailout of the Highway Trust Fund. The law (PL 113-159) provides $10.9 billion to fund transportation infrastructure projects through May 2015 and extends programs authorized under MAP-21 through that same date.

Congress also finalized a long-awaited reauthorization of the nation's workforce development law. The measure, entitled the *Workforce Investment and Opportunity Act* (WIOA, PL 113-128), preserves local and regional governance and provides additional flexibility in managing funding streams. The law also consolidates several programs from the *Workforce Investment Act* while retaining the adult and youth employment and training programs, as well as the dislocated worker program.

In addition, the House and Senate approved the *Preventing Sex Trafficking and Strengthening Families Act* (PL 113-183), which includes a number of adoption assistance, child welfare, and youth sex trafficking provisions. Signed by the president on September 29, the Act amends the adoption assistance program to include, for the first time ever, incentive awards of $4,000 for subsidized guardianship placements.

Water Resources

This past quarter, Humboldt County Supervisors Ryan Sundberg and Mark Lovelace were in Washington, D.C. to meet with members of Congress and Obama administration officials regarding the *Klamath Basin Water Recovery and Economic Restoration Act* (S 2379; S 2727). The legislation, which has been formally endorsed by the Board of Supervisors, would provide the necessary congressional authority to implement the Klamath Basin Restoration Agreement (KBRA), the Klamath Hydroelectric Settlement Agreement (KHSA), and the Comprehensive Upper Basin Agreement. Waterman & Associates, which spearheaded the planning and preparation of the County's agenda and itinerary, participated in the meetings.

It should be noted that the Senate Energy and Natural Resources (ENR) Committee was prepared to consider S 2379 in mid-September, but the committee's meeting was ultimately postponed for reasons unrelated to the Klamath bill. The mere possibility of a markup, however, helped restart serious conversations with staff to ENR Committee Ranking Member Lisa Murkowski (R-AK).

In fact, with a few proposed changes, there appears to be bipartisan support in the committee to advance the legislation. For the Republican staff, the biggest concern has been the role of the federal government in the decision to remove the four dams on the Klamath River. Minority staff fears that the bill could set a precedent for future dam removal decisions, notably several federally-owned dams on the Snake River in Idaho. Therefore, one of the proposed revisions would require a joint determination by the Department of the Interior (DOI) and the governors of California and Oregon for dam removal to proceed. Republican staff also has requested that the legislation include additional reporting requirements in order to help provide added transparency and accountability.

While the aforementioned issues appear to have been addressed, concerns remain about whether the level of funding included in the bill is sufficient to accomplish the goals of the Agreements. There also is uncertainty as to which party to the Agreements would be held liable for significant cost overruns. While these issues can be worked out, there are still those in Congress who are opposed to any form of dam removal, regardless of the circumstances.

Looking ahead, ENR Committee Chairwoman Mary Landrieu (D-LA) has tentatively scheduled a business meeting for November 13. Whether or not the markup proceeds as planned, however, will largely depend on the mood in Congress after the elections. If such a meeting does occur, the Klamath legislation is expected to be among the bills considered. If no markup is scheduled during the lame duck, Senator Murkowski could be open to bypassing the committee process altogether. While it is unlikely to move as a standalone measure, there are several options remaining this year to advance the legislation, including a potential year-end omnibus spending bill, tax extenders legislation, and an omnibus public lands measure.

While in Washington, D.C., Supervisors Lovelace and Sundberg met with top officials from the Bureau of Reclamation (BoR) regarding the County's request for KBRA-related technical assistance. While BoR leadership commended the County for its funding proposal and acknowledged the benefits of a such a position, Reclamation apparently lacks the necessary authority at this time to fund the request. Administration officials instead offered to discuss the request with other federal agencies, including the U.S. Fish and Wildlife Service (FWS), to determine whether there is another avenue to fulfill the need. Waterman and Associates has been working with DOI and FWS in an effort to further this discussion.

In addition to the Klamath Basin legislation and request for technical assistance, Supervisors Sundberg and Lovelace met with key lawmakers and agency officials regarding Humboldt County's contract with BoR for at least 50,000 acre-feet of water from the Trinity Reservoir. Although the County has repeatedly requested that the water be made available for the beneficial uses of fisheries on the lower Klamath and Trinity Rivers, Reclamation has not made a determination regarding the administration of the contract. Incidentally, Humboldt County has never received a water allocation under the contract.

County officials repeated their request for Reclamation to consult with the County prior to finalizing its position on the contract. In addition, Humboldt County would like to be kept apprised of all developments that could potentially impact the County's interests relative to the Klamath-Trinity River system, particularly as the Bureau continues to develop its long-term plan for the lower Klamath River.

Reclamation officials reaffirmed the Bureau's commitment to consulting with the County before finalizing any decision on the County's water contract. In written correspondence to the County, BoR Acting Commissioner Lowell Pimley stated that Reclamation's draft long-term plan for protecting adult Chinook salmon returning to the lower Klamath River would also be made available to Humboldt County for review and comment prior to the Bureau issuing a final version.

For his part, Representative Jared Huffman (D-CA) this past quarter questioned DOI Solicitor Hilary Tompkins before an oversight hearing of the House Natural Resources Committee about the status of Humboldt County's water contract. Tompkins did not give a definitive response, but the issue is now clearly on the radar of the Department of Interior's Solicitor's office and the Bureau of Reclamation.

Finally, in other developments, the House approved on September 9 legislation (HR 5078) that would block the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) from developing, finalizing, or adopting regulations expanding the scope of federal jurisdiction under the *Clean Water Act* (CWA). The bill is an attempt to prevent the Obama administration from implementing its controversial "Waters of the U.S." rule, which was issued on April 21, 2014. 35 Democrats joined nearly every House Republican in voting for the legislation.

In addition to prohibiting the agencies from finalizing the proposed rule, HR 5078 would require EPA/Corps to consult with relevant state and local officials to develop recommendations for a regulatory proposal that would identify the scope of waters covered - and not covered - under the CWA. The bill also would require the agencies to provide for public review and comment of a draft report, but only if consensus has been reached with regard to a recommendation among the Army Corps, EPA, and state and local officials.

According to EPA, the pending rule would not protect bodies of water that have not historically been covered under the CWA and merely clarifies which waterways and wetlands are under federal jurisdiction. Critics of the proposal, however, including many state and local governments and agricultural interests, contend that the rule would vastly expand federal regulatory oversight and permitting requirements, resulting in unnecessary delays to both public works projects and private development.

With the Senate unlikely to consider HR 5078, congressional critics of the proposed rule are eying the post-election lame duck session of Congress in which to further their attempts to block the rule. House Republicans, for example, are hoping to attach a policy rider to a potential fiscal year 2015 omnibus spending package that would prohibit the Corps and EPA from spending any funds to implement the rule. Incidentally, two House spending bills - fiscal year 2015 Interior Appropriations bill (HR 5171) and the fiscal year 2015 Energy & Water spending legislation (HR 4923) - include such a funding prohibition.

Amidst the ongoing controversy with the CWA rule, the EPA and Corps recently extended the comment period for the proposed rule - from October 20 to November 14. The agencies are extending the deadline in order to allow stakeholders additional time to comment not only on the proposed rule but on a finalized version of the document that provides the scientific basis for the rule (known, in short, as the Connectivity Report). At this point, it is unclear when the final CR will be made available.

Reauthorization of the Secure Rural Schools Act

Earlier this year, the U.S. Forest Service released a total of $329 million to more than 700 counties as part of the Secure Rural Schools (SRS) program, with Humboldt County receiving approximately $935,963, down from $1,038,912 in the previous fiscal year. Unless Congress reauthorizes or extends SRS, the fiscal year 2014 allocation will represent the final payments made under the program.

If SRS is not renewed by Congress, county payments will return to a revenue-based system. Consequently, Humboldt County could be left with significantly less funding than in recent years. Looking ahead, lawmakers have been considering options for reauthorizing or modifying SRS for fiscal year 2015 and beyond, though it has been difficult for key policymakers to reach a bipartisan consensus on how best to move forward.

For its part, the House approved legislation in 2013 - the *Restoring Healthy Forests for Healthy Communities Act* (HR 1526) - that would address the pending expiration of SRS. The chamber also recently approved identical SRS language as part of a catch-all jobs package, the *Jobs for America Act* (HR 4). Notably, both measures include a number of forest management reforms that would be accomplished primarily by rolling back environmental laws and other legal protections. As such, the measures have little chance of passage in the Democratic-controlled Senate.

Across Capitol Hill, Senate Finance Committee Chairman Ron Wyden (D-OR) unveiled a draft proposal this past quarter that would permanently authorize and fully fund SRS, as well as the Payments-in-Lieu-of-Taxes (PILT) program and the Land and Water Conservation Fund (LWCF). Under the draft bill, SRS would be permanently funded at 150 percent of its fiscal year 2011 authorization; PILT at 150 percent of its current authorization; and, LWCF at $900 million per year. The draft also would permanently authorize and fully fund two new programs for counties with onshore and offshore energy development. Senator Wyden is likely to formally introduce the legislation later this year.

Humboldt County has continued to advocate for a multi-year renewal of SRS. However, in the absence of a long-term agreement, the County supports a short-term extension of funding. In correspondence to its congressional delegation, the Board of Supervisors urged Senators Dianne Feinstein (D-CA), Barbara Boxer (D-CA) and Representative Huffman to secure a one-year extension of SRS and PILT.

On a related matter and consistent with the County's request, Representatives Jaime Herrera Beutler (R-WA) and Joe Garcia (D-FL) have been circulating a Dear Colleague letter urging House leaders to provide funding for SRS and PILT in fiscal year 2015. As of this writing, 39 members have agreed to sign on, including Congressman Huffman.

MAP-21 Reauthorization

As reported above, Congress recently approved a short-term bailout of the Highway Trust Fund (HTF). The legislative rescue was necessary in light of the fact that revenues flowing into the trust fund have steadily declined due to inflation and higher vehicle fuel economy. Absent the infusion of funding, the HTF would have fallen below a critical level and resulted in delayed transportation reimbursement payments to states starting August 1.

All told, the short-term extension provides $10.9 billion to fund highway projects through May of 2015. The legislation also extends the nation's highway and transit law (MAP-21) though the same date.

Although some congressional authorizers and transportation advocates are calling on Congress to act on a long-term highway renewal in the upcoming lame-duck session, such action appears unlikely. With a short-term extension already in place, the more likely scenario is that congressional authorizers will work to finalize a new bill in mid-to-late 2015.

It should be noted that any pending legislation - including the Senate Environment and Public Works (EPW) Committee-passed highway reauthorization bill (S 2322) - will not carry over into the 114th Congress. Accordingly, new legislation will need to be introduced when Congress convenes early next year. If Senate Democrats maintain control of the upper chamber, the chair of the EPW Committee - Senator Boxer - is expected to reintroduce a bill that closely mirrors S 2322.

Senator Boxer's legislation would provide $265 billion for highway programs over six years (or level funding, plus inflation) while continuing the core program structure put into place by MAP-21. This includes the National Highway Performance Program (NHPP), the Surface Transportation Program (STP), the Highway Safety Improvement Program (HSIP), and the Congestion Mitigation and Air Quality Improvement Program (CMAQ). In addition, the measure would create a new National Freight Program.

The bill would expand eligibility under the NHPP to include funding for locally-owned "on-system" bridges. Although the measure, as introduced, would have capped NHPP funding for such bridges at 10 percent, an amendment that was accepted during committee consideration increased the cap to 15 percent.

In addition, S 2322 would maintain current law's dedicated federal funding stream for off-system bridges. Specifically, the measure would continue to require a State to obligate for local bridge projects not less than 15 percent of the funds that were apportioned to the State under the Highway Bridge Program in fiscal year 2009. Should State and local officials determine that the State has inadequate needs to justify the expenditure, the Transportation Secretary could rescind this requirement.

Senator Boxer's legislation also would modify the provisions of current law that trigger mandatory spending on high-risk rural roads. Under MAP-21, construction and operational improvements on rural roads is one of a number of allowable project areas within HSIP, with mandatory spending triggered if the fatality rate on rural roads in a State increased over the most recent two-year period. Pursuant to S 2322, mandatory spending would be triggered if rural road fatality rates in a state do not decrease over the most recent two-year reporting period and the state's fatality rate exceeds the national rate. In addition, the bill would reduce the amount of funding states would be required to spend on projects that meet the aforementioned criteria (dropping the threshold from 200 percent of 2009 spending to 150 percent).

The measure also includes provisions that would allow states to use innovative financing mechanisms to fund transportation projects. As first introduced, the bill would have maintained the current funding level of $1 billion per year for the Transportation Infrastructure Finance and Innovation Act (TIFIA) program. However, the program's funding was reduced to $750 million via an amendment during committee consideration. TIFIA provides direct loans, loan guarantees, and lines of credit to surface transportation projects at favorable terms to leverage private and other non-federal investment in transportation improvements.

The measure also would provide states with the ability to use federal highway funding to capitalize State Infrastructure Banks (SIB) and would allow the DOT Secretary to make TIFIA loans to SIBs. The bill also would expand program eligibility to public infrastructure projects in transit-oriented developments.

In the House, Transportation & Infrastructure Committee Chairman Bill Shuster (R-PA) has yet to unveil a highway and transit reauthorization package. The chairman will likely introduce his MAP-21 renewal bill in the new 114th Congress.

Remote Sales Tax

This past quarter, the House approved a bill – the *Permanent Internet Tax Freedom Act* (HR 3086; PITFA) – that would make permanent an expiring ban on state and local taxation of Internet access. Prior to its passage, supporters of remote sales tax legislation expressed their desire to pair PITFA with the *Marketplace Fairness Act* (MFA; S 743), which the Senate approved in 2013. The MFA, which is supported by Humboldt County, would give states the ability to collect sales taxes from out-of-state Internet retailers.

For his part, Senate Majority Leader Harry Reid (D-NV) has indicated that the two measures will be linked going forward. In fact, Senators Mike Enzi (R-WY) and Dick Durbin (D-IL) recently introduced bipartisan legislation that would combine the bills. Specifically, their legislation – the *Marketplace and Internet Tax Fairness Act* (MITFA; S 2609) – would combine the MFA with a 10-year extension of the Internet access tax moratorium.

It should be noted that the current access tax moratorium was set to expire on November 1, 2014, but was extended through December 11 as part of the CR. An extension of the moratorium is considered by many observers to be "must pass" legislation. As such, House and Senate leaders will have to decide how to proceed on the measure following the November elections.

While this presents the best opportunity yet to advance stalled remote sales tax legislation, several key members of Congress continue to have reservations about the MFA, particularly House Judiciary Committee Chairman Bob Goodlatte (R-VA) and Senate Finance Committee Chairman Wyden. Saying that, Goodlatte and Wyden are expected to block any attempt to pair the two measures. If the remote sales tax component is ultimately stripped from the final bill, the MFA is expected to be reintroduced when the new Congress convenes in 2015.

Property Assessed Clean Energy Program

In the third quarter of 2014, Congress was unable to advance legislation that would help expand residential Property Assessed Clean Energy (PACE) programs nationwide. The bipartisan bill (HR 4285), which has been endorsed by Humboldt County, is sponsored by Representatives Mike Thompson (D-CA), Peter King (R-NY), and Sean Patrick Maloney (D-NY). In all, the measure is cosponsored by 28 members of Congress, including Congressman Huffman.

The impetus for the legislation is a 2011 Federal Housing Finance Agency (FHFA) directive, which objects to local governments holding the first lien on residential PACE homes. In FHFA's view, such a practice represents a significant risk to Fannie Mae and Freddie Mac. To address the agency's concerns, HR 4285 would establish important national program standards to limit any and all financial risk to the lenders. The bill also would direct FHFA to rescind its 2011 policy guidance.

It should be noted that the bill is modeled after California's successful Loan Loss Reserve Fund. The state-backed fund helps to ensure that PACE assessments are paid off in the event of a mortgage default, which effectively eliminates any financial risk to Fannie Mae, Freddie Mac, or any other mortgage lender. Similar to language included in HR 4285, PACE programs enrolling in the Reserve Fund must meet basic structural criteria, comply with certain underwriting standards, and pay an annual premium based on the size of their portfolio.

However, despite these assurances, FHFA continues to have concerns with California's first-lien PACE program, claiming that it fails to offer full loss protection to Fannie Mae and Freddie Mac in the event of a foreclosure. In addition, FHFA Director Mel Watt has questioned the Reserve Fund's ability to be sustainable over time. As such, the Agency is not prepared to change its position and will continue to prohibit housing lenders from purchasing or refinancing mortgages with a PACE lien.

Health and Human Services

On September 29, President Obama signed into law the *Preventing Sex Trafficking and Strengthening Families Act* (HR 4980; PL 113-183). The bipartisan, bicameral legislation was previously adopted by voice vote in both the House and Senate.

Policy changes affecting child welfare agencies include provisions requiring states to include a "reasonable and prudent parent standard" - similar to what already exists in California - to enable foster youth to participate more readily in extracurricular, cultural, and social activities with their peers. The law also eliminates Another Planned Permanent Living Arrangement (APPLA) as a permanency goal for children under the age of 16 in order to continue to push agencies to find a permanent placement for youth with a family. Additionally, the Act enables youth ages 14 and older to enlist the assistance of two other individuals to be part of their case planning team.

Effective one year after enactment, the new law requires child welfare agencies to provide youth exiting care who were not adopted or returning to live with family with a birth certificate, a Social Security card, health insurance information, medical records, and a driver's license or state-issued ID.

Furthermore, the law amends the adoption assistance program to include, for the first time, incentive awards of $4,000 for subsidized guardianship placements. The Act also includes a safeguard ensuring that a child placed with a guardian could continue to be cared for by a successor guardian if a relative guardian dies or is incapacitated, instead of going back to court.

With respect to sex trafficking, the law requires state plans for foster care and adoption assistance to include policies and procedures for identifying, screening, and determining appropriate services for children who are believed to be victims of sex trafficking, or are at risk of being victims. Sex trafficking data would be included in the federal adoption and foster care analysis and reporting system (AFCARS).

Finally, the Act includes child support provisions that will make it easier to obtain and enforce orders across international boundaries and requires the federal Office of Child Support Enforcement to engage stakeholders in identifying best practices and other efficiencies in the program.

In other developments, federal fiscal year 2015 funding for Labor, Health and Human Services programs was extended to December 11 in the short-term spending bill enacted into law. The measure also included an extension of the Temporary Assistance for Needy Families (TANF) program while it awaits reauthorization.

We hope this information is useful to Humboldt County officials. Please do not hesitate to contact our office if you have any questions or need additional information.