



2015 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 114th 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.

2015 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 proposed a revision to the ozone standard on December 17, 2014 that makes the standard much stricter. 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.

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 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: 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 final rule on ozone must be attainable and 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.

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. Listing of Sonoran Desert Tortoise under Endangered Species Act

As a result of a settlement with environmental groups, the U.S. Fish and Wildlife Service (Service) must decide whether the Sonoran Desert Tortoise should be listed as a threatened species under the Endangered Species Act (ESA) and, if so, publish a proposed rule for comment. This decision must be made in fiscal year 2015, which began October 1, 2014 and ends September 30, 2015. A final rule must be issued within one year from the decision date. At that time, the protections of the ESA would apply.

Listing under the ESA triggers two different, but important, requirements. First, members of the species cannot be “taken” (killed or injured) without obtaining a permit from the Service. A violation of this requirement can result in civil fines and penalties, and, in extreme cases, criminal prosecution. Second, federal agencies are prohibited from jeopardizing the continued existence of the species and adversely modifying areas designated as critical habitat. While this requirement applies to federal actions, it often affects the ability of agencies to issue federal permits and approvals needed for land use, such as permits under Section 404 of the Clean Water Act and rights-of-way over federal land.

An option for landowners to reduce the potential impact from the Tortoise’s listing is to enter into a Candidate Conservation Agreement with Assurances (CCAA) with the U.S. Fish and Wildlife Service. Under a CCAA, a landowner voluntarily commits to implement specific conservation measures for species covered by the agreement. In exchange, the land owner receives a permit which provides assurances that additional land use restrictions will not be imposed if the species becomes listed in the future. If enough landowners enter into CCAs, listing may be avoided.

Recommended Action: Work closely with local and state partner agencies, the local business community, and the Arizona congressional delegation to proactively pursue a Candidate Conservation Agreement with Assurances with the U.S. Fish and Wildlife Service to protect land development in Maricopa County from shutdown by the Endangered Species Act in the event the Sonoran Desert Tortoise is listed as threatened.

4. 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 preliminary 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 federally-owned or managed. 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 began a cost/benefit analysis that will review several proposed solutions,

including building a levee, clearing the salt cedar, re-introducing native vegetation, and combinations of each of these options.

Recommended Action: Work closely with federal agencies, local jurisdictions, the local business community, and the Arizona congressional delegation to collectively develop strategies to address flood plain changes and water use impacts created by invasive species growth.

5. 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 seek federal legislation to create a mechanism by which BLM may grant the County authority to enter third party recreational concessionaire agreements.

6. 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.

7. Transportation Reauthorization

With MAP-21 expiring in May of 2015, Congress has several issues it needs to address in the next surface transportation reauthorization bill. The new authorization must be adequate to address transportation needs and make the Highway Trust Fund solvent.

Transportation reauthorization acts since 1991 have focused largely on metropolitan areas and urban needs. Therefore, rural communities' needs have steadily increased over time, including rural areas adjoining metropolitan areas such as unincorporated Maricopa County. There are also substantial needs in rural areas adjoining metropolitan areas, where

development pressure creates infrastructure demands that greatly exceed available local government revenues.

Recommended Action: Urge Congress to pass a multi-year surface transportation bill this year that provides states and local governments a funding roadmap by which they can better budget and schedule long-term projects.

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 of 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. 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. Draft guidelines, however, on how federal agencies will implement the EO are open for public comment.

Recommendation: Work with the National Association of Flood & Stormwater Management Agencies in submitting comments to ensure that implementation guidelines don't impact local floodplain management and flood insurance programs.

10. Appropriate Share of Federal Funds

Congress has not passed a budget and has instead relied on continuing resolutions to fund the government for several years. These short-term and temporary appropriations have made budgeting and project planning difficult for local governments across the nation. Leadership of the new Congress intends to return to regular order with a budget resolution approved by April 15, 2015 and passage all 12 FY2016 appropriations bills by September 30, 2015.

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 be 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. 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). However, the funding of this national program over the last several years has been significantly lower than the national need. Therefore, if underfunding of the national program continues, it is expected that significant federal underfunding for Maricopa County's dam rehabilitation projects would occur.

b. Local Government Transportation Projects

Despite continuing discussion and proposal of streamlining of environmental and other processes, delays in approving federal-aid highway projects are still significant. Due to ongoing state budget issues, more resources are needed to decrease the time needed to process local government federal-aid project reviews and approvals in an expeditious manner.

One potential solution would be to provide federal revenues that are set aside and dedicated solely to fund state DOT reviews and approvals of local federal-aid projects. This funding would be provided specifically for general reviews to ensure local governments are meeting federal requirements, including environmental, design, right-of-way, construction or other necessary reviews. The funds could be used to hire sufficient staff and/or to procure private consultant assistance to complete reviews, which, ultimately, allows construction, and the related jobs, to begin to fuel the economy.

c. *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. 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.

d. *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. By law, the federal government is ultimately responsible for immigration enforcement, including the incarceration of undocumented criminal offenders. When this is not possible, or the federal government deems it inconvenient, the law requires the federal government to compensate the state and local governments for their incarceration costs.

Appropriated SCAAP funding has decreased dramatically in recent years, from \$565 million in FY2002 to \$180 million in FY2014, far below its authorized level of \$950 million.

e. *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 114th 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

In April 2014, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) released a proposed rule attempting to clarify which U.S. bodies of water are protected under the Clean Water Act (CWA). The proposed rule received over a half million comments, many of them critical. Maricopa County's comments focused on concerns that the EPA and the USACE would have increased discretion under sections 401 and 404 of the CWA, which require permitting for dredging, filling, and discharging into federal waters. The forthcoming rule has already faced challenges in Congress. Additional court challenges are expected upon the release of the final rule.

2. Clean Air Act – Clean Power Plan

EPA announced on June 2, 2014, new proposed rules that require states to develop plans to reduce carbon dioxide (CO₂) from existing fossil fuel fired power plants by 30% from 2005 levels by 2030. Under EPA's proposal, Arizona has the second highest goal in the nation at 52% reduction. EPA would require the state to achieve 77% of the 2030 reductions by 2020 and the agency's assumption used to develop that goal would 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. Such a significant shift in power generation would produce significant impacts to nonattainment air quality plans as well generate reliability and affordability concerns. The proposal's adverse impact on the County's other air quality efforts is in conflict with EPA's stated intent to provide flexibility and reasonable standards rather than maximum possible implementation levels. The Arizona Department of Environmental Quality, industry, and local stakeholders submitted comments documenting specific impacts, suggesting appropriate modifications, and preserving their ability to challenge the final rule if necessary.

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. 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. In addition, these regulations that could increase 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 filed a petition for review of the September 2014 action with Ninth Circuit Court of Appeals.

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. According to the Federal Emergency Management Agency (FEMA), the law lowers the rate increases on some policies, prevents some future rate increases, and implements a surcharge on all policyholders. It also repeals certain rate increases that have already gone into effect and provides for refunds to those policyholders.

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. After several years of uncertainty, it is important Congress stay the course with the NFIP and avoid continual tweaking and legislative changes to the program.

5. NPDES Permit Requirements

The Clean Water Act authorizes the Environmental Protection Agency (EPA) and states, which are delegated the authority by the EPA, to regulate point sources that discharge pollutants into waters of the United States through the National Pollutant Discharge Elimination System (NPDES) permit program. The Arizona Department of Environmental Quality (ADEQ) administers the NPDES program for all non-Indian Community lands in Arizona.

On November 26, 2014, the EPA issued a memorandum on “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs.” The memorandum is not regulation but guidance that the EPA is giving the states regarding stormwater permits. Maricopa County believes the guidance pushes ADEQ to regulate beyond its authority. ADEQ and national stormwater groups are organizing stakeholder groups that include regulated entities, like Maricopa County, to discuss these issues and options for responding to the EPA guidance.

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. Program Reauthorization

Several programs that fund Maricopa County programs are due for reauthorization this year. 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. Social Services Block Grant (SSBG)
- d. Weatherization
- e. Community Services Block Grant (CSBG)