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## Memorandum

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From: Rick Spees, Jane Sargent and Jose Villalobos  
To: Board of County Commissioners  
CC: Phillip Drujak  
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Subject: October 2022 Monthly Report

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### **Appropriations Update:**

It is safe to say that Congress made no progress on the Fiscal Year 2023 budget in October because it was out of session all month. So at least the members had a reasonable excuse rather than saying the decisions were too hard to get done. It will reconvene on November 14<sup>th</sup> to complete work on all the bills that are awaiting final action. The list of unfinished bills is very long but the most important one that needs to be completed is a final comprehensive appropriations bill for FY 2023.

As reported previously FY 2023 started on October 1<sup>st</sup>. Before that date, Congress is supposed to pass twelve appropriations bills that together make up the entire federal budget. This year Congress was unable to pass any of the bills. There was a fundamental disagreement between the parties on the overall budget picture. The Democrats in Congress, along with the President, want significant increases for domestic programs with a smaller increase for defense programs. The Republicans want to spend less overall, but more for defense. Obviously the Republican plan will cut back the increase for domestic programs substantially. The parties were unable to make any real progress addressing the issue. Instead the House Democrats passed their versions of most of the appropriations bills following their framework. The Senate Democrats released their versions of the appropriations bills but did not try to mark them up in the Appropriations Committee. The Republicans did support the bills in either chamber. Since the Congress was unable to reach any agreement on the bills before the end of FY 2022, they passed legislation

that allows the agencies to continue to operate at a minimal level. That legislation is called a Continuing Resolution (CR). It runs until December 16<sup>th</sup>. The hope is that between November 14<sup>th</sup> and December 16<sup>th</sup> the two parties will be able to reach agreement on the budget bills and will pass a comprehensive appropriations measure. If they do not succeed, they will pass another CR that will run probably until February 2023.

Here are the arguments that the Congress will, in fact, get the budget bill done. First, it is better for the agencies to get the budget done. The Republicans are worried that the Defense Department will face major problems unless they get the extra money they need. The Democrats want the additional money going to domestic agencies. Second both the Democratic Chair of the Senate Appropriations Committee, Senator Leahy, and the Ranking Republican, Senator Shelby, are retiring at the end of the year and they are very motivated to get the bills done before they leave. Finally there is always pressure to get the budget done by the end of a calendar year so they can start fresh the following year. It is chaos to be working on two fiscal year budgets at the same time.

Here are the arguments that Congress will not get the bills done this year. First, remember our fundamental rule of Congress—no one ever lost money betting that Congress will miss a deadline. More importantly, it is highly likely that the House will turn Republican in the election. In that case the Republicans will argue that the final disposition of the bills should wait until next year so they get more input on the numbers. In the words of one House Republican, “why should we let the Democrats, who just got fired by the election, have a major say in the budget bills.” Also remember that once the election is over, House members, who were defeated or are retiring, lose their offices very quickly. They also are looking towards their future and are not focusing on pending legislation.

Where do we come down? We think the odds are good that the budget bill will not get done by December 16<sup>th</sup>. The only way it happens is if both sides can reach agreements on the key issues quickly so that the bill becomes non-controversial. That Democrats agree to major funding increases for defense and agree to spending less for domestic programs, while the Republicans agree for more domestic spending than they want. But remember that we are asking them to come together after a brutal election cycle—and one that may not be over until December if the Georgia Senate race goes into a runoff. And it may be several days before all the other races are called.

Obviously we hope we are wrong and the bill gets done. We will keep closely tracking the process.

### **Community Project Funding:**

As you are aware, the House and Senate FY 2023 appropriations bills currently contain Community Project Funding, also known as earmarks. The County has several pending requests in the House versions of the bills. During the lame duck session, Congress will be working to

finalize the FY 2023 bills, which will be rolled into one large omnibus bill. At this point, we expect Community Project Funding requests to be included in the final bill. However, as discussed above, there is a possibility that Congress will not be able to finalize the bills in December and will have to pass another CR into next year. Depending on the outcome of the elections, Republicans could control one or both chambers when the new session of Congress begins in January. The majority of Republicans in both chambers continue to support a ban on earmarks so there could be a push to remove Community Project Funding from the bill when it is finalized. At this point, we remain optimistic that will not happen for the FY 2023 bills. However funding for any earmarks, including the County's, will not be finalized until the bills are complete.

Whether Community Project Funding requests will be allowed in the FY 2024 bills has yet to be determined. We will be closely tracking these discussions and expect those decisions to be made in February or March of next year before the FY 2024 appropriations process begins.

### **Other Pending Legislation:**

Beyond the appropriations/budget bill, Congress faces a long list of bills they should address before leaving for the year. Some of them must be dealt with. For example, the national flood insurance program is up for renewal. If it is not renewed, claims will not be paid for storm and flooding damage. Other bills are nearing completion and just need a final push. Examples of this are the Defense Authorization bill and a water resources development bill.

What usually happens at this time of year is that Congress starts working on a bill that needs to get done, like the appropriations bill, and they start adding other legislation to it. The process is called a Christmas tree—the basic bill is the tree and the other unrelated bills are called ornaments. There is always a Christmas tree bill passed at the end of each session of Congress.

As of today, the designated Christmas tree bill is the National Defense Authorization Act (NDAA). The House passed its version of the bill months ago. In the Senate, the Senate Majority Leader, Senator Schumer, brought up the NDAA just before Congress adjourned for the election, so it is the pending business when the Senate returns on November 14<sup>th</sup>. The Senate will debate the sections of the NDAA and will add the other bills as amendments. It will be an expedited process, so only bills that have been worked out will be added. We have seen the list of proposed amendments and it is impressive. Having said that the process could fall apart if the Senate also flips to Republican control and deals that were agreed to come apart. But some bills will eventually get passed.

If the NDAA falls apart, Congress will attempt to add the ornaments to the final budget bill, whether it is a comprehensive appropriations bill or a CR. In that case we would see a short budget bill followed by hundreds of pages of unrelated bills.

The point is that we have been following a number of bills that are almost done. We think some of them will get pulled over the finish line, even if the process is convoluted.

### **Waters of the U.S. (WOTUS):**

During the Obama Administration, a controversial rule was proposed redefining the "waters of the U.S." that fell under the jurisdiction of the Clean Water Act (CWA), which protects wetlands and waterways. The Obama-era WOTUS rule was opposed by states, local governments and other stakeholders. Several states, including Florida, filed multiple lawsuits against the Environmental Protection Agency (EPA) and Army Corps of Engineers (USACE) challenging the rule, arguing that it overstepped the states' constitutional rights to regulate their own waterways.

The Trump Administration rescinded and replaced the WOTUS rule with a new rule, the Navigable Waters Protection Rule (NWPR), which was narrower in scope and reduced the number of waterways that are covered by the CWA. The Trump-era rule took effect in June 2020. However, like the Obama-era rule, it faced significant legal challenges by States and other interest groups.

One of the first actions of the Biden Administration was to announce it would repeal the Trump-era WOTUS regulation. Late last year, the EPA and USACE released a proposed rule revoking the NWPR and re-instating a revised version of the pre-2015 CWA rules. The proposed Biden rule more closely follows Bush Administration guidance and Supreme Court decisions. The rule is now under interagency review. Under the new proposed rule, the WOTUS definition would rely on a "significant nexus" test. In other words, if a wetland or waterway has a significant connection to a navigable water protected under the CWA it could be subject to regulation. The Biden Administration is expected to finalize the new WOTUS rule by the end of the year. Stakeholders are weighing in with the Biden Administration on the proposed rule, including environmental groups, farmers, ranchers, developers, business interests, state and local governments and others impacted by the proposed rule.

In the meantime, the U.S. Supreme Court heard oral arguments in October on a Clean Water Act case and specifically the test for determining which wetlands and other waterways are protected under the CWA. Opponents of the proposed Biden rule have suggested that the Administration should wait to finalize the rule until after the Supreme Court issues its decision. However, they are still expected to finalize the rule by the end of the year. We will continue to follow the developments.

### **Activities for October:**

The House and Senate are out of session for the elections and will reconvene on November 14<sup>th</sup>. They will break again for the Thanksgiving recess on November 18<sup>th</sup>. The outcome of the elections will likely determine how productive the lame duck session will be. Any change in

control will likely lead to Congress putting off much of its legislative work until next year when the new session of Congress begins. The Continuing Resolution (CR) runs until December 16<sup>th</sup>. They will need to finalize the FY 2023 appropriations bills before then or pass another CR until they can finish the bills. As discussed above, Congress will also be trying to pass other legislation during the lame duck, including the annual national defense authorization bill which is considered a must-pass bill each year. Control of House in the next session will likely be known shortly after the elections on November 8<sup>th</sup>. However, control of the Senate, which is currently split 50-50, may not be known for weeks if any races end up in a runoff as is likely in Georgia. If it appears that Democrats are going to lose control of the Senate, the Majority Leader will likely try to move as many Presidential nominations as possible during the lame duck. We will be tracking the election developments closely, including the Senate and House races in Florida and their potential impact on the County's legislative agenda. As always, we will continue to monitor and report on legislative and executive branch developments of interest to the County.