

THE TRUMP EFFECT: TRUMP'S IMPACT ON EPA RULES, REGULATIONS AND OVERSIGHT



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TOO MUCH TO COVER IN 60 MINUTES — TODAY'S FOCUS

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- The background of the slide is a photograph of the White House in Washington, D.C. The building is white with a prominent portico supported by columns. An American flag flies on a tall pole in front of the building. The foreground shows a green lawn with some colorful flowers and a fountain. The sky is blue with some clouds.
- **The “Trump EPA”**
 - **EPA Budget and Staff Cuts**
 - **Attempting to Impose the “2 For 1”**
 - **The Fate of Obama’s Climate Action Plan & Other Energy Policy Changes**
 - **Changes to WOTUS, Stormwater, CSO Notification and More**
 - **Infrastructure and Municipal Financing**
 - **Crystal Ball Forecasts**

THE “TRUMP” EPA



WHERE WE WERE

- The five strategic goals in EPA's Four Year (2014–2018) Plan include
 - Addressing climate change and improving air quality,
 - Protecting America's waters,
 - Cleaning up communities and advancing sustainable development,
 - Ensuring the safety of chemicals and preventing pollution, and
 - Protecting human health and the environment by enforcing laws and assuring compliance
- To achieve the outcomes articulated in the FY 2014–2018 Plan, the agency outlined four cross-agency strategies
 - Working toward a sustainable future;
 - Working to make a visible difference in communities;
 - Launching a new era of state, tribal, local and international partnerships;
 - Embracing EPA as a high-performing organization



SCOTT PRUITT — EPA ADMINISTRATOR

- Former attorney general of Oklahoma
- Described himself as “a leading advocate against the EPA’s activist agenda”
- Agencies such as EPA should not be trying to “pinch hit” for Congress

“The American people are tired of seeing billions of dollars drained from our economy due to unnecessary EPA regulations, and I intend to run this agency in a way that fosters both responsible environmental protection and freedom for American businesses.”



EPA'S "BACK TO BASICS" AGENDA



**EPA'S
BACK-TO-BASICS
AGENDA**

- ✓ Protecting the **environment**
- ✓ **Engaging** with partners
- ✓ Sensible regulations for **economic growth**



“EPA is returning to its core statutory mission, and focusing on greater value and results. EPA will partner with the states and tribes to ensure a thoughtful approach is used to maximize resources to protect our air, land, and water. And, we will work with EPA staff to effectively use every taxpayer dollar we are entrusted.”

EPA Administrator Scott Pruitt Statement
4/13/2017

EPA BUDGET AND STAFF CUTS



REMAINDER OF FY-2017

- Set by consolidated spending bill passed in late April
- EPA budget \$8.06 Billion, down from the \$8.2 B requested
 - 1% drop from FY16
- Held EPA staff at ~ 1500, lowest in 40 years, reduced from Obama proposal
- A prohibition on the EPA from making changes to certain agricultural exemptions under the Clean Water Act
- A directive to EPA, USDA and DOE to establish clear policies that reflect the carbon neutrality of biomass
- A prohibition on the regulation of the lead content of ammunition and fishing tackle



EPA'S PROPOSED 2018 BUDGET — THE HAMMER FALLS

- Budget cut by 31%, to \$5.6B, smallest in 40 years
- Focused just on meeting EPA's "core legal requirements"
- 84% reduction to SAB budget ("fewer peer reviews")
- 40% cut in federal enforcement
- 45% cut in grants for state enforcement
- Outside of EPA, NOAA and NASA climate change research budgets slashed
- Drinking water standards budget cut by 50%
 - Mission statement changed from "science based" to "economically achievable"
- **Eliminated Programs**
 - Green House Gas Reporting
 - Alternate Dispute Resolution
 - RCRA Waste Management, Enforcement & Remedial
 - Environmental Justice
 - Critical Infrastructure Protection
 - LUST Prevention



FY 2018 PROPOSED EPA STAFF CUTS

- 2017 Budget has early retirement incentives
- 20% staff reduction
- Over 3,800 jobs (one report)
 - 2,522 from Environmental Programs & Management
 - 908 from Science & Technology
 - 573 from Hazardous Substance & Superfund

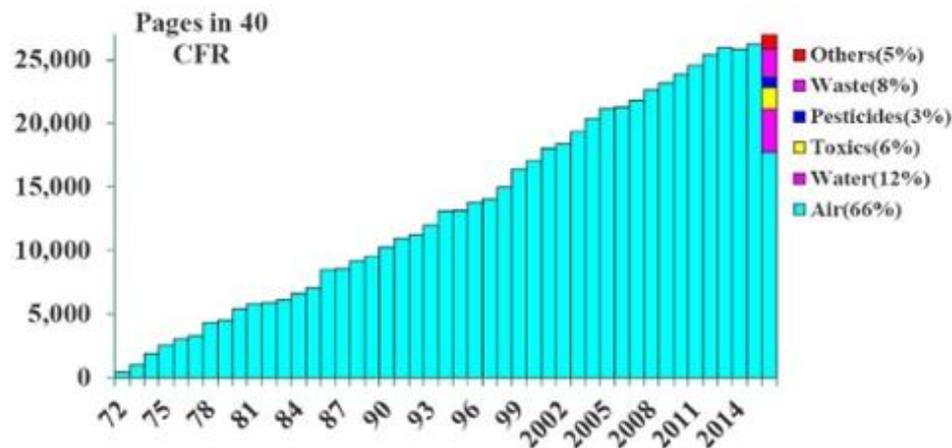


EXECUTIVE ORDERS GET THE BALL ROLLING

- **Executive Order 13771** — *Reducing Regulation and Controlling Regulatory Costs*
- **Executive Order 13777** on *Enforcing the Regulatory Reform Agenda* directs federal agencies to establish a Regulatory Reform Task Force

Growth of U.S. EPA Regulations

Over 27,000 Pages in 2016!!



Source: U.S. Code of Federal Regulations

EFFORTS TO ELIMINATE RULES

- On April 13, 2017, EPA published a *Federal Register* Notice under Executive Order 13777, seeking input on regulations that may be appropriate for repeal, replacement or modification. 30-day comment period (May 15, 2017).
- EPA also held telephone-based listening sessions
- Reportedly most public comments were against major regulation rollback
- Recently it appears that momentum is shifting toward eliminating policy, guidance and minor regulations.

THE TRUMP ADMINISTRATION:

WHITHER ENERGY AND ENVIRONMENT?



MAJOR ENERGY INITIATIVES

There are three major initiatives underway

- Gutting of Obama climate change programs
- Resurrection of the coal industry
- Support for oil and gas development



OBAMA CLIMATE CHANGE PROGRAM

Four big targets

- Greenhouse gas endangerment finding
- Clean Power Plan
- Paris Climate Change Accord
- Oil and gas methane regulation



OBAMA CLIMATE CHANGE PROGRAM (CONT'D)

Greenhouse gas endangerment finding

- Essential underpinning of all else
- Time consuming to revoke



OBAMA CLIMATE CHANGE PROGRAM (CONT'D)

Clean Power Plan (Oct. 23, 2015)

— Three options

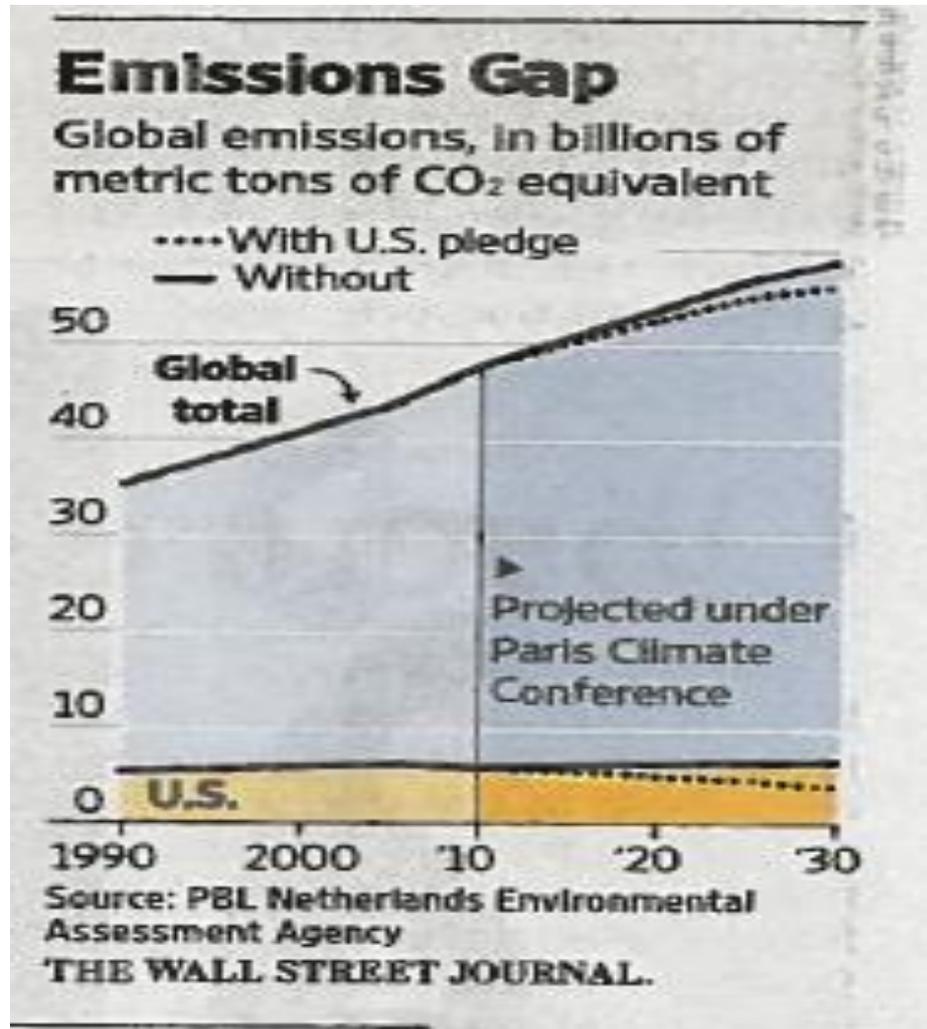
- Judicial
 - Pause in D.C. Circuit review
- Administrative
 - Executive Order 138783 for EPA to review CPP
- Legislative
 - Not feasible

OBAMA CLIMATE CHANGE PROGRAM (CONT'D)

Paris Climate Change Accord (12/2015, eff. 11/2016)

- Ratified by 94 countries
- U.S. ratification by Executive Order
- U.S. target – reduce CO₂ emissions by 26–28%
- Despite multiple political pressures, president decided on withdrawal (6/1/17)
- Withdrawal could take until 11/2020

OBAMA CLIMATE CHANGE PROGRAM (CONT'D)



OBAMA CLIMATE CHANGE PROGRAM (CONT'D)

Oil and gas production methane regulation

- Methane – more potent GHG than CO₂
- Final Interior rule affecting federal lands
- EPA's nascent effort to promulgate national rule



RESURRECTION OF THE COAL INDUSTRY

Coal states critical to Trump's election

— Pennsylvania and Ohio especially

— Exception — Illinois

Multiple regulatory targets

RESURRECTION OF THE COAL INDUSTRY (CONT'D)

Regulatory targets

- Clean Power Plan
- Regional haze rule
- New power plant GHG NSPS (10/23/15)
 - Review required by Executive Order 13783
- Coal combustion residuals



RESURRECTION OF THE COAL INDUSTRY (CONT'D)

Other targets

- Surface mining restoration proposal
- Stream protection

RESURRECTION OF THE COAL INDUSTRY (CONT'D)

But president cannot insulate coal from market forces

- Shale gas revolution
- Renewable energy, especially solar
- Mercury and Air Toxics rule

SUPPORT FOR OIL AND GAS DEVELOPMENT

Obama restrictions will be targeted

- Offshore Arctic and Atlantic drilling
- Hydraulic fracturing restrictions on federal lands
- Oil and gas methane regulation
- Pipelines and LNG facilities



WHAT TO EXPECT?

- Increased state efforts to address climate change
- No near term resurrection of the coal industry
- Not much new oil and gas development until market conditions improve
- A long wait before the administration efforts materialize



THE FATE OF OBAMA-ERA RULES



WOTUS — FOR ALL INTENTS AND PURPOSES IT'S GONE

- Executive Order **Restoring The Rule Of Law, Federalism and Economic Growth By Reviewing The "Waters Of The United States Rule"**
- March 6, 2017 *Federal Register* Notice of Intention – but no proposed rule
- Could go back to pre-“Rapanos” rules
- Executive order urges EPA to go with just “Traditional Navigable Waters” (“Scalia Test”)
 - This would ignore the “Significant Nexus” part of the Rapanos Supreme Court Decision.
- Final Rule by “early” 2018???

“EPA’s so called “Waters of the United States” rule is one of the worst examples of federal regulation, and it has truly run amok, and is one of the rules most strongly opposed by farmers, ranchers and agricultural workers all across our land. It’s prohibiting them from being allowed to do what they’re supposed to be doing. It’s been a disaster.”

President Trump, 2/28/2017

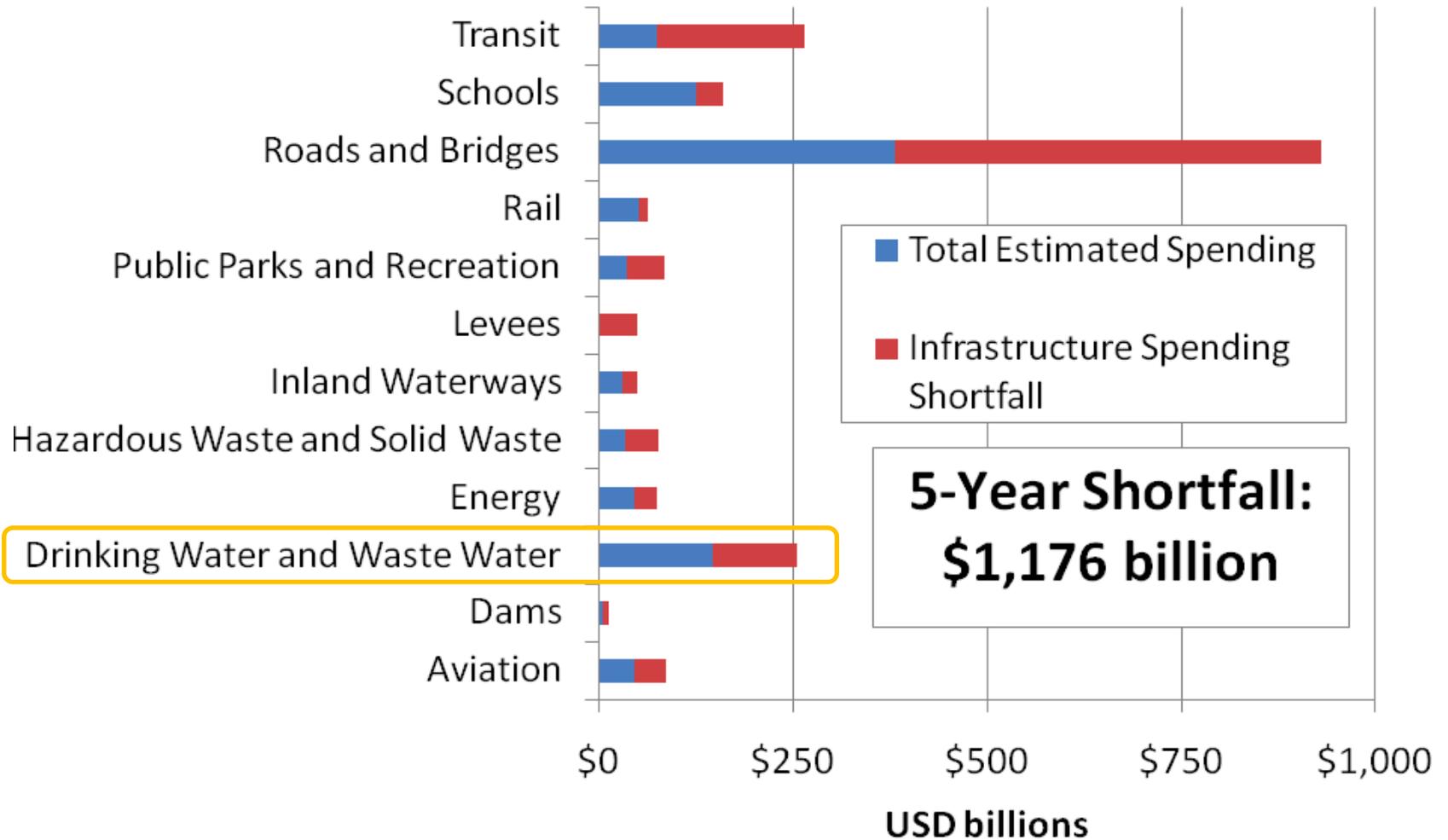
OTHER OBAMA-ERA RECENT RULES AFFECTED

Steam Electric Effluent Guidelines	Rule litigated—litigation suspended. Proposed suspension—May 25, 2017
ELG: Dental Amalgam	Withdrawn for review
ELG: Shale Gas – Final June 28, 2016	Certain compliance dates extended
Mercury & Air Toxics Rule	Rule being litigated; litigation on hold
Prevention of leaks from oil & gas operations	Rule suspended; suit filed challenging the suspension
Ozone (smog) rule	Litigation in abeyance; implementation delayed, while it is “reviewed;” administrative delay being litigated
Fuel efficiency standards for cars & trucks	Reopened review
Risk Management Plan	Rules litigated; effective date delayed until June 19, 2017 — proposed new compliance date 2/19/2019.

INFRASTRUCTURE & MUNICIPAL FINANCING



5-Year Shortfall in Infrastructure Spending



Source: American Society of Civil Engineers

REPORT ON BENEFITS OF FUNDING WATER LOANS (SRF)

Federal Tax Revenues:

- Every dollar of SRF spending results in \$0.93 in federal tax revenue

Job Creation:

- 16.5 jobs are generated for each million dollars in SRF spending—average salary of \$60k/yr

Economic Benefits:

- Every million dollars of SRF spending results in \$2.95 million dollars in output for the U.S. economy

Source: *The Economic, Job Creation, and Federal Tax Revenue Benefits of Increased Funding for the State Revolving Fund Programs*, WEF and the WaterReuse Association April 2016.



WATER INFRASTRUCTURE FINANCE & INNOVATION ACT (WIFIA) — KEY PROVISIONS

THE LAW

- U.S. Army Corps of Engineers/U.S. EPA to provide loans and loan guarantees for water infrastructure projects.
- Funding for both programs:
 - \$35 million in FY 2017
 - \$45 million in FY 2018
 - \$50 million in FY 2019
- Total: \$175 million/5 years
- WIFIA can finance up to 49% of total project, federally-backed financing cannot exceed 80% of total project cost

CURRENTLY

- The one new infrastructure funding program that is moving forward now!
- \$30 million committed through FY17
- Minimum total project cost of \$20 million; or \$5 million for communities of 25,000 or less
- 43 expressions of interests/preliminary applications
- Those that get selected to go to next stage should receive funding



INFRASTRUCTURE BILLS — TRUMP’S WORDS

“We will build new roads, and highways, and bridges, and airports, and tunnels, and railways all across our wonderful nation.”

“We will get our people off of welfare and back to work – rebuilding our country with American hands and American labor.”

“We will follow two simple rules: Buy American and Hire American.”

**Trump’s Estimations:
\$500 billion – \$1 trillion**

Inaugural Address, 2017

Most of the money will come from private sources.

**FY 2018
proposed budget
first step.**

**Privatization of Air
Traffic Control —
Model?**

TRUMP'S INFRASTRUCTURE KEY PRINCIPLES

- **Make Targeted Federal Investments.** Focusing federal dollars on the most transformative projects and processes stretches the use and benefit of taxpayer funds
- **Encourage Self-Help.** Localities are better equipped to understand the right level—and type—of infrastructure investments needed for their communities, and the federal government should support more communities moving toward a model of independence
- **Align Infrastructure Investment with Entities Best Suited to Provide Sustained and Efficient Investment.** The federal government provides services that non-federal entities, including the private sector, could deliver more efficiently
- **Leverage the Private Sector.** The private sector can provide valuable benefits for the delivery of infrastructure, through better procurement methods, market discipline and a long-term focus on maintaining assets



THERE LIKELY WILL BE NEW SOURCES OF FUNDING

- The onus will continue to be on municipalities, perhaps in conjunction with their states to “find” most of the money they need for their projects
- Tax Code Changes
- Tax Credit Possibilities
- P3s—Public-Private and Public-Public Partnerships

“The federal government will make only a fractional down payment on rebuilding the nation’s aging infrastructure. Mr. Trump will rely on a combination of private industry, state and city tax money[]and borrowed cash to finance the rest. It will be a stark departure from ambitious infrastructure programs of the past, in which the government played a major role and devoted substantial resources to paying the cost of large-scale projects.”

Paraphrased from *NY Times* 6/3/2017
https://www.nytimes.com/2017/06/03/us/politics/trump-plans-to-shift-infrastructure-funding-to-cities-states-and-business.html?ref=politics&_r=0



ALTERED MUNICIPAL BOND FINANCING?

- In order to “simplify” the tax code—some discussion of limiting or reducing the federal income tax exemption on muni-bonds.
- \$2.46B of muni-bonds issued in NY in 2016 for W/WW infrastructure
 - \$1.05B additional debt service in NY if interest fully taxable
 - 71.2% of muni-debt held by individual/households/mutual funds/money market
 - Fully taxing muni bonds would cost NY five times the value of the entire 2016 SRFs
- Trump administration has not yet announced its Tax Code changes.



CRYSTAL BALL FORECASTS



LITTLE IS DEFINITIVE — BUT SOME HEALTHY GUESSES



- EPA is being transformed—but its most radical changes will not be quick. Most will need regulatory changes, which will end up in court. And nothing will move forward until EPA’s senior management positions are filled.
- Public input being invited but doesn’t seem to be driving EPA proposals and actions
- Once 2018 budget goes into effect, EPA will likely only focus on its “black and white requirements” under law
- Federal enforcement will be significantly reduced, but there will also be fewer enforcement people with whom one can discuss altering existing compliance orders

CRYSTAL BALL — STATES AND CITIES FIGHTING BACK



Jerry Brown quotes: “California is not turning back. Not now, not ever...California does not need healing; [it] needs[s] to fight...Taking significant amounts of carbon out of our economy without harming its vibrancy is exactly the sort of challenge at which California excels. This is exciting, it is bold and it is absolutely necessary if we are to have any chance of stopping potentially catastrophic changes to our climate system.”

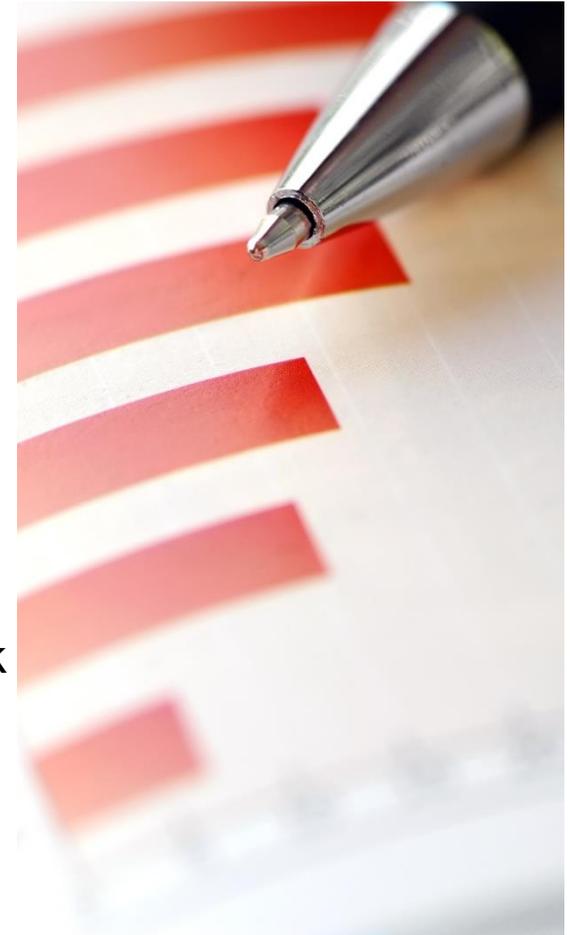
- Protecting Environmental Legacy
- Pivot from Offense to “Vigorous Defense”
- Rising Legal Champions in State AGs and State Legislatures
- Infrastructure: Common Ground



CRYSTAL BALL — BUDGET, STAFFING & REGULATIONS



- A long wait before most administration efforts materialize
- Trump's proposed 2018 budget cuts not likely to happen; but significant budget cuts will occur
- EPA staff numbers, especially senior, experienced staff, will be likely be significantly reduced
- Between budget cuts, reduced experienced staff and a focus on repealing/streamlining existing regulations, little new regulation likely
- EPA policy and guidance may be targeted for quick elimination
- As federal programs get eliminated or defunded, states will try to pick up the slack—lack of consistency likely to be an issue



CRYSTAL BALL — INFRASTRUCTURE



2018 PROPOSED BUDGET

- \$200 Billion in “outlays”
- Sell the Power Marketing Admin. Transmission assets
- Expand TIFIA, liberalize tolling policy & allow private investment in rest areas
- Lift cap on private activity bonds and expand eligibility
- Establish federal capital revolving fund
- Establish partnership grants for federal assets
- Enhance environmental reviews of infrastructure proposals

ENVIRONMENTAL INFRASTRUCTURE

- Water and wastewater federal spending will “surge” a bit in 2017
- Unclear if any additional money will be added to WIFIA in 2018
- W/WW doesn’t appear to be a major focus for Trump, but water is being mentioned in recent infrastructure press releases
- Flint and the PFO outbreaks will likely to continue to draw Congressional attention, and perhaps funding
 - However significantly increased federal funds for water/wastewater unlikely

CRYSTAL BALL — PRIVATE MONEY FOR W/WW



- May be the only source of big money for needed major infrastructure improvements
- Tax credits – one plan calls for \$137 billion in tax credits for private-equity investments in infrastructure
 - No upfront cash, a tax benefit for private investors
 - Proponents argue that the tax credits would stimulate \$1 trillion in infrastructure investment
- P3s—both public/private and public/public partnerships will become more common, but the devil will be in the details
 - W/WW have guaranteed sources of funding and hence are attractive P3 targets
 - Rates will be “stabilized,” but likely then will increase



QUESTIONS?



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