



International Right of Way Association Weekly Update

Monday, February 6, 2017

Trump Administration

On January 24th President Donald J. Trump took the following executive actions of interest to IRWA:

- [Trump issued a Presidential Memorandum](#) inviting TransCanada to resubmit its application for construction and operation of the Keystone XL Pipeline, which and directs the Secretary of State to review the application expeditiously. The Memorandum also requires the U.S. Army Corps of Engineers (“the Corps”) and the Department of the Interior to expedite their reviews and approvals, including for grants of right-of-way across federal land.
- [Trump issued another Presidential Memorandum](#) directing the Corps to expedite its review and approval of construction and operation of the Dakota Access Pipeline. The Memorandum specifically includes requested easements or rights-of-way across federal land in the Corps’ expedited review.
- [Trump issued Executive Order](#) (“EO”) 13766 titled “Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects,” which puts a thirty (30) day limit on determinations by the Council on Environmental Quality (“CEQ”) as to whether a project qualifies as a “high priority.” It also requires CEQ to coordinate with the head of the relevant federal agency “to establish... expedited procedures and deadlines for completion of environmental reviews and approvals.”
- On January 31, Elaine Chao was confirmed by the Senate and sworn in as the 18th Secretary of Transportation.

Congress

- Also on January 24th, Senate Minority Leader Chuck Schumer (D-NY) and Senate Democrats released a \$1 trillion infrastructure plan, titled the “[Blueprint to Rebuild America's Infrastructure](#),” harkening to President Trump’s campaign promise to increase infrastructure spending by \$1 trillion over ten years.

- On February 1, the House Transportation and Infrastructure Committee held a hearing titled “Building a 21st Century Infrastructure for America,” receiving testimony from the CEOs of FedEx, BMW North America, Cargill and Vermeer and the President of the AFL-CIO.

Analysis

- President Trump’s three executive actions on January 24 signal his priority and interest in accelerating mega infrastructure projects. The timing of these actions so early in his tenure also indicates that these were prepared in advance of his inauguration. As the President and his team now bear the responsibility of governing, progress on rolling out the Administration’s infrastructure policy priorities may slow, especially as the President navigates resistance to his nominations and works with Congressional Republicans to repeal portions of the Affordable Care Act.
- EO 13766 is noteworthy not only for what it says, but for what it does not say. Title XLI of the Fixing America’s Surface Transportation (“FAST”) Act (P.L. 114-94), enacted in December 2015, reformed the process governing federal environmental review for large infrastructure projects, creating the Federal Permitting Improvement Steering Council and an online Permitting Dashboard to coordinate and expedite reviews. EO 13766 is silent as to the mechanism whereby CEQ will implement these policies, and it is possible that EO13766 could be read in harmony with the FAST Act, instead of as creating a separate bureaucratic process for environmental clearance of covered projects. The silence with respect to FAST Act provisions may indicate the Administration has not thought of the tools the Act provides them to accomplish the stated goals.
- The infrastructure plan released by the Senate Democrats provides a basic outline of how to spend \$1 trillion, but does not provide many details beyond that. It is reasonable to conclude that this plan is an opening salvo to drive the conversation relating to Trump’s as-yet-unreleased infrastructure plan and provide a negotiating position.
- The President’s Budget for fiscal year 2018 will be transmitted to Congress in the spring. This document will provide a logical opportunity for the Administration to outline its infrastructure policy goals.