

November 8, 2013

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ICSC Responds to EPA Study on Water Connectivity

On November 6, ICSC signed on to comments to the Environmental Protection Agency's (EPA) Science Advisory Board on a draft report entitled "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence." The Connectivity Report was produced by the EPA Office of Research and Development at the behest of the Office of Water. The comments were submitted by the Waters Advocacy Coalition (WAC), a broad-based industry group of which ICSC is an active member. On November 7, following the submission of industry stakeholder comments, EPA released a draft rule that would significantly expand the agency's authority to assert Clean Water Act jurisdiction on tributary bodies including streams, lakes, ponds, and wetlands.

ICSC is concerned that the draft report makes broad conclusions regarding the concept of connectivity, concluding that wetlands and streams regardless of their size or how frequently they flow, are connected to and have important effects on downstream waters. Further, the report does not consider how to evaluate whether there are quantifiable thresholds that can be specifically linked to significant downstream effects on downstream water quality. It is crucial to define the significance of the findings before using the draft report as the basis for jurisdictional changes to the Clean Water Act.

The study, which is the basis of the draft rulemaking, gives little regard to the impact on downstream waters of isolated bodies. This means that Clean Water Act standards would be imposed on isolated -- and even mostly dry -- ditches and landscaping. ICSC is concerned that under the proposed rulemaking, a substantial amount of properties and waters will be subject to new regulations. Any changes to existing policy should be made through a formal regulatory process with the protections afforded by the Administrative Procedure Act. ICSC will be represented at a meeting at the White House Office of Management and Budget on November 20 to express concerns with the Connectivity Report and the proposed rulemaking.

CO: Election Results

Colorado voters emphatically rejected a \$950 million tax increase and the school funding revamp that came with it, handing Amendment 66 a resounding defeat on November 5. The big-ticket item on the statewide ballot would have injected new tax dollars into K-12 education, but to do so it proposed changing the state income tax from a flat rate of 4.63% to a two-tiered arrangement. Many voters and the business community in general opposed the two-tiered income tax arrangement and the precedent it would set. The measure fell behind by a large margin as the early returns were counted, with nearly two-thirds of voters giving it a thumbs-down, and the outcome was clear just a little more than an hour after the polls closed.

Meanwhile, a measure to impose hefty taxes on recreational marijuana passed by as large of a margin as Amendment 66 failed. Proposition AA imposes a 15% excise tax on the wholesale price and an initial 10% sales tax on the retail price for recreational marijuana. According to the state's voter guide, the measure is expected to bring in \$67 million a year. Of that, \$27.5 million generated by the excise tax would go toward school construction, as specified in last year's constitutional amendment that legalized use of recreational marijuana and also allowed for pot to be sold to anyone over 21 at specially licensed stores. The rest of

the money will go toward paying for the regulation of the pot shops, as well as any associated impacts of legalization. Additional local measures taxing recreational marijuana passed in a number of local jurisdictions.

TX: Water Constitutional Amendment Passes

All nine of the proposed constitutional amendments on the November 5 Texas ballot were adopted by the voters. This included Proposition 6, the constitutional amendment providing for the creation of the State Water Implementation Fund for Texas and the State Water Implementation Revenue Fund for Texas to assist in the financing of priority projects in the state water plan to ensure the availability of adequate water resources. It will provide \$2 billion from the state's Rainy Day Fund for water infrastructure funding. It passed with 73.37% of the vote.

WA: Voters Reject Initiative 517

The Washington voter initiative that would have expanded petition gathers rights while diminishing the rights of private property owners was defeated on Tuesday night, with more than 60% of voters rejecting the measure. Initiative 517 would have made signature gathering a legally protected activity anywhere outside of a store, including directly in front of entrances and exits. I-517 would have infringed not only the private property rights of a store owner or manager by taking away their rights to regulate if, when, and where signature gathering takes place on his or her property, but would have also made it a misdemeanor to interfere with any signature gatherer within a 25-foot protected bubble. Interference would have included asking the gatherer to leave you alone if harassing you, asking him or her to move out of the way if blocking a person's walking path, or expressing any type of disagreement with the initiative content. ICSC members partnered with the "No on I-517 Coalition" to oppose passage of this ballot initiative.

Register Now for SLS 2014: The ICSC Federal Fly-In

For more than 20 years the shopping center industry has assembled in Washington, DC to deliver its legislative agenda to Capitol Hill. This year ICSC will hold the 2014 Strategic Leadership Summit on March 25-26. We invite you to participate in this important event. Make your voice heard during the second session of the 113th Congress on critical legislation ranging from sales tax fairness to tax reform to the environment. SLS provides an opportunity to have face-to-face meetings with Members of Congress or their staff where you can articulate your views on issues of importance to your company and the shopping center industry. [Click here to register and for more information.](#)



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