

Stephen Barlas | Washington Editor

Infrastructure Funding Chances, Opportunities Looking Up in 2019

Infrastructure will be a hot topic again in 2019 in Washington, but it is anyone's guess whether legislation will actually be approved, in part, because of differences between Democrats and Republicans on how to fund any new massive spending. However, the good news is that any bill will likely include water projects, which was not a certainty last year when talk about spending funds centered on roads and bridges. Drinking water and sewer construction wasn't on the table.

The prognosis looks different this year given Sen. Chuck Schumer's letter to President Trump in November, where he advocated to the intersection of pro-climate change policies and investments in "resilient ... water, waste and sewer infrastructure." New House Speaker Rep. Nancy Pelosi (D-Calif.) has also started to emphasize "green" infrastructure.

The tie-in between water projects and infrastructure got an actual boost last October when President Trump signed the America's Water Infrastructure Act (AWIA) which had strong bipartisan support. That law had several pertinent provisions, including one establishing a new Drinking Water System Infrastructure Resilience and Sustainability program.

It is a new program that would offer competitive grants to small or disadvantaged drinking water systems that wish to construct projects that increase the resilience of their infrastructure to a range of natural hazards. These are defined to include earthquakes, tornados, floods, hurricanes, wildfires or other hydrologic changes.

Dan Hartnett, chief advocacy



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officer for legislative and regulatory affairs, at the Association of Metropolitan Water Agencies, said the new program was only authorized at \$8 million over two years. "At this point I am not aware of any effort by EPA to get it up and running," he commented. "But that may change once the agency's FY19 funding comes through."

Continuing resolutions

The 2019 fiscal year for all federal agencies and departments began on Oct. 1, 2018. However, Con-

gress has failed to pass appropriations bills for some agencies, such as the EPA, and has instead passed continuing resolutions that keep the EPA budget at fiscal 2018 levels.

It may be instructive to remember that the Water Infrastructure Finance and Innovation Act (WIFIA) program took three years to get funded after being established by Congress in 2014. But the EPA has been awarding significant funds in that program, starting in early 2018.

The continuing resolution that the EPA has been working under also affects still unapproved 2019 budgets for the Drinking Water and Clean Water State Revolving Funds (SRFs). The same is true for the WIFIA budget. It appears likely that both SRFs will get increases in fiscal 2019, once final appropriations are passed. The House Appropriations Committee, generally more draconian with funding than its Senate counterpart, already approved a \$300-million increase in total for both funds. It includes \$1,543,887,000 for the Clean Water State Revolving Loan Fund and \$1,013,233,000 for the Drinking Water State Revolving Loan Fund.

WIFIA funding will also increase in fiscal 2019, based on the House Appropriations bill moving up from \$63 million in FY 2018 to \$75 million in 2019. While the SRFs provide revolving loans to the states and localities, WIFIA provides credit assistance for large projects with the expected FY 2019 appropriation leading to about \$8 billion in loan capacity.

Another agency having its fiscal 2019 budget held up by the continuing resolution is the Agriculture Department. That is significant because the 2018 Farm Bill passed by Congress in November 2018 included several provisions that were promoted by the National Association of Clean Water Agencies (NACWA). Adam Krantz, chief executive officer at NACWA, points to language in the bill recognizing and encouraging partnerships at the watershed level between clean water utilities and farmers to advance the goals of the Clean Water Act.

Farm Bill connection

The Farm Bill also includes important reforms to the Regional Conservation Partnership Program (RCPP), which numerous utilities have considered or used since its creation in the 2014 Farm Bill. These changes include streamlining the application process, providing an expedited renewal process, expanding in-kind match eligibility, increasing the focus on quantification of conservation outcomes, and robust funding. The Farm Bill notably includes dedicated funding for source water protection, as well as support for implementing precision conservation practices and tracking conservation metrics.

Krantz said, “The conservation and partnership language in the

Farm Bill makes critical strides in acknowledging and encouraging the collaborative work between municipal clean water utilities and agricultural partners to address water quality challenges through holistic watershed approaches that can provide the most effective and cost-efficient water quality improvements.”

An important supplement to any new spark the Farm Bill gives to water utility construction on agricultural lands is the EPA’s new proposed rule on what is known as the “Waters of the U.S.” rule. This determines when anyone wanting to build a sewer, drinking water line or gas pipeline in a wetlands area – anywhere, not just near or on farms – needs to obtain a federal permit

from the Army Corps of Engineers. The Obama Administration finalized a rule that broadly defined the waters, like ponds and tributaries, which when designated to be crossed by utility construction required a permit.

Under this new Trump Administration proposal, traditional navigable waters, tributaries to those waters, certain ditches, certain lakes and ponds, impoundments of jurisdictional waters and wetlands adjacent to jurisdictional waters would be federally regulated. The major change going forward into 2019 and beyond, once this proposal is finalized as will likely happen this year, is clarity on what are not “waters of the United States.” These include features that only

contain water during or in response to rainfall; groundwater; many ditches, including most roadside or farm ditches; prior converted cropland; stormwater control features and waste treatment systems.

Ann Navaro, a former long-time chief counsel of litigation at the Army Corps of Engineers and at the Interior Department in both the Obama and Trump Administrations, said, “The Administration’s proposed definition of waters of the United States is going to trigger a huge fight. It will eventually end up in litigation that will likely go to the Supreme Court, where it may very well be upheld if the Administration does a good job of substantiating its approach.”