



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS/WATER QUALITY **Clean Water Act/SRFs**

On September 14, the Governors of 22 states sent a joint letter to Senate and House Appropriations Committee leaders expressing concern regarding the impacts of Community Project Funding/Congressionally Directed Spending on the ability of Clean Water and Drinking Water State Revolving Funds (SRFs) to finance state projects going forward. Western state governors included: Jared Polis (D-CO); Laura Kelly (D-KS); Jim Pillen (R-NE); Michelle Lujan Grisham (D-NM); Tina Kotek (D-OR); Kristi Noem (R-SD); Greg Abbott (R-TX); Spencer Cox (R-UT); and Mark Gordon (R-WY).

The governors noted the following impacts: (1) by side-stepping the states' processes for prioritizing limited funding for water infrastructure, Congress has delayed construction of critical state projects; (2) by diverting funds to projects in non-disadvantaged communities, Congress has jeopardized SRF capitalization funds for grants and principal forgiveness that helps build water infrastructure for communities that could not otherwise afford it; (3) Congress has hindered the ability of states to take "set-aside" funding from capitalization grants, with repercussions for technical assistance for small and rural communities, source water protection and capacity development, and other state and local water protection activities; and (4) using the capitalization grant funding for congressionally directed projects reduces the state match and diminishes the leveraging power of the SRFs to issue bonds to increase funding for water infrastructure.

The Governors said: "We appreciate the leadership and interest of Congress in ensuring access to clean and safe water in our communities, but if the current policy is maintained after 2027, when the emergency supplemental appropriations included in the Infrastructure Investment and Jobs Act expires, the SRFs will be decimated. We ask you to reconsider the approach of funding Community Project Funding/Congressionally Directed Spending out of the SRFs and encourage you to preserve the revolving nature of the fund so that states can continue to assist localities in maintaining their water infrastructure in this cost-effective manner."

ADMINISTRATION/WATER QUALITY **EPA/CWA 401**

On September 14, the Environmental Protection Agency (EPA) announced a final 2023 Clean Water Act (CWA) §401 Water Quality Certification Improvement Rule (88 FR 66558). EPA noted in its overview that the rule: (1) provides flexibility for states to engage with project proponents and federal agencies before the certification process begins; (2) defines the criteria for a complete request for certification, while still allowing states to define the water quality-related information needed to start the certification process; (3) provides a default six-month timeframe for review, with flexibility for collaborating state and federal agencies to determine a longer timeframe for review, up to the statutory maximum of one year; (4) focuses on the adverse water-quality impacts of proposed project activities; and (5) requires states to collaborate with federal agencies to modify certifications to protect water quality over the life of a project. EPA will host separate outreach webinars for the public, states, federal agencies, and tribes. State certifying authority webinars will be held on September 28 and October 4. <https://www.epa.gov/cwa-401/>

ADMINISTRATION/WATER RESOURCES **Bureau of Reclamation/WaterSMART**

On September 7, the Department of the Interior (DOI) announced a new large-scale water recycling program with \$180M in initial funding, part of a total \$450M available through the Bureau of Reclamation's (USBR) WaterSMART program. The new program has no cap on project size and seeks to advance water recycling and reuse by incentivizing larger scale projects.

Water management agencies considering or planning larger water reuse projects can apply within multiple application deadlines in 2023 and 2024. The USBR said: "Projects that secure and stretch reliable water supplies for drought-stricken states and communities, provide water quality improvements, reduce impacts on projects owned by federal or state agencies, or provide benefits to disadvantaged, underserved and Tribal communities will be prioritized." <https://www.usbr.gov/newsroom/news-release/4622>

CONGRESS/WATER QUALITY

Senate/IIJA

On September 7, the Senate Environment and Public Works (EPW) Committee held a hearing on Implementing the Infrastructure Investment and Jobs Act (IIJA). Senator Tom Carper (D-DE), Chairman, opened the hearing, noting that he was attending Ohio State University in 1969 when the Cuyahoga River caught fire. He said: "Investing in our nation's infrastructure is deeply personal to me.... Clean water is critical to our health and the nation's economy."

Senator Shelley Capito (R-WV), the Ranking Minority Member, emphasized the importance of federally-provided technical assistance and training to small, rural, and disadvantaged water systems. Capito said: "With PFAS contamination going back decades and regulatory efforts to protect our drinking water, which I support, there will be an increasing need to protect our water systems.... As we look to preserve safety, reliability, and affordability of drinking and wastewater systems for the future and maximize the benefits of the IIJA's investment...is something Congress must get right... the successes we have had to date have been based in cooperative federalism as enshrined in the Safe Drinking Water and Clean Water Acts. Communities and States know their needs the best and need a helping hand from the government, but not a heavy hand."

Eric Volk, North Dakota Rural Water Systems Association, gave an overview of North Dakota's IIJA implementation, water system needs, project completion challenges, and the State's SRF implementation. Volk highlighted the technical assistance provided as part of the EPA Water Training and Technical Assistance Program: "This type of hands-on assistance is the most effective method to help staff and management become more successful operating their systems, and results in a better understanding of the laws' requirements."

WATER QUALITY

ECOS/SRFs

On September 20, the Environmental Council of the States (ECOS) sent a joint letter to Congressional leaders and House and Senate Appropriations Committees, urging Congress to fully appropriate authorized funds for the Clean Water and Drinking Water SRFs. Western state agencies included the Alaska Department of Environmental Conservation, Arizona Department of Environmental Quality (DEQ), Colorado Department of Public Health and Environment, Idaho DEQ, Kansas Department of Health and Environment, Montana DEQ, Nebraska Department of Environment and Energy, Nevada Department of Conservation and

Natural Resources, New Mexico Environment Department, North Dakota DEQ, Oklahoma DEQ, Oregon DEQ, South Dakota Department of Agriculture and Natural Resources, Texas Commission on Environmental Quality, Utah DEQ, Washington State Department of Ecology, and Wyoming DEQ.

The state agencies expressed concerns about "proposed congressional committee actions" related to congressionally directed spending, community project funding, and future funding levels "...that would significantly reduce SRF capitalization grants and set a troubling precedent with significant cascading consequences." They noted that congressional projects siphoning SRF resources will: (1) "erode both the short- and long-term buying power of established state infrastructure programs, which leverage federal investments and grow public-private partnerships to meet future needs;" (2) "shift funding from state management to federal management, which imposes additional paperwork on states and locates project administration farther from the communities to be served;" (3) drive down "state core program resources that support seasoned state staff that work with communities to meet regulatory requirements to protect public health and the environment;" and (4) reduce "states' ability to provide additional subsidy to communities seeking SRF support," particularly for rural and economically disadvantaged communities to "keep water and sewer rates affordable for users."

WATER RESOURCES

Corps/Dams/CWIFP

On September 20, the Army Corps of Engineers opened the first round of applications for credit assistance under the Corps Water Infrastructure Financing Program (CWIFP). The Notice of Funding Availability (NOFA) in the Federal Register (88 FR 64892) provides the threshold and selection criteria, the factors for budgetary screening, and outlines the process that prospective borrowers should follow to be considered for credit assistance made available for this funding round. "CWIFP has been developed to accelerate non-federal investments in water resources infrastructure by providing credit assistance to creditworthy borrowers. CWIFP facilitates local investment in non-federal dam safety projects that enhance community resilience to flooding, promotes economic prosperity, and improves environmental quality."

Interested borrowers can access the online application portal at CWIFPapp.usace.army.mil and the deadline for the first round of applications closes on December 19.

The WESTERN STATES WATER COUNCIL is a government entity of representatives appointed by the Governors of Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.