Stephen Barlas | Washington Editor

Infrastructure Funding is Next Big Legislative Target

Having passed and signed a major tax reform bill at the end of 2017, the Trump Administration and Congress move on to their next big legislative target in 2018: infrastructure spending. While sewer and drinking water projects may receive additional federal funding as a result, that is not certain. In fact, there is some concern that any new water project funding in any infrastructure package could be paid for, so as not to increase the federal deficit, by reducing funding in existing programs, such as the Clean Water and Drinking Water State Revolving Funds.

"While we strongly support increased infrastructure funding, we are watching closely that funding isn't decreased from other important clean water programs to pay for more infrastructure funding," said Steve Dye, legislative director for the Water Environment Federation.

While the Trump Administration has been hell bent on deregulation, there is likely to be at least two prominent regulatory initiatives this year affecting diggers for pipelines and water systems: the Environmental Protection Agency's proposed revision of its lead and copper rule, which mandates corrosion measures for local water systems, will publish this summer; and its revisions to the wetlands permitting rule, the Obama version of which the Trump EPA cancelled, is reworking.

Any infrastructure legislation will be written over the course of this year, if it is written at all. If infrastructure follows the example of the tax cut bill, President Trump will provide some broad details and Congress will write the fine print. The president has spoken about a $200 million federal commitment leveraging a $1 trillion program, with private entities, states and local governments providing the lion's share of funds. It is likely that Congress will have to find $200 billion in federal spending reductions, rather than adding another $200 billion to the federal deficit on top of the $1.6 trillion it added via the tax cut bill. Finding those program cuts is definitely not a given. Nor is the inclusion of water projects in any infrastructure initiative, which is expected to focus on roads, highways and bridges.

While the Trump Administration has been hell bent on deregulation, there is likely to be at least two prominent regulatory initiatives this year affecting diggers for pipelines and water systems: the Environmental Protection Agency's proposed revision of its lead and copper rule ...

Dye acknowledges that Trump and his White House team have seemed to focus on a package that heavily relies on public-private partnerships and user fees, arrangements typically used for highway projects, not water projects. DJ Gribben, special assistant to the President for Infrastructure Policy, worked for Macquarie Capital, a company that funds highway projects, and served as chief counsel for the Federal Highway Administration. However, Michael Patella, senior advisor on Infrastructure at White House Council on Environmental Quality, recently worked at the EPA on financing issues and is fully knowledgeable about the SRFs and the Water Infrastructure Finance and Innovation Act (WIFIA) program.

But Dye believes that any "highway heavy" package arriving on Capitol Hill will probably be broadened to include water infrastructure projects. The threat there is that Congressional appropriators could take any new money for sewers and drinking water construction from existing EPA programs, for example, funding work in the Great Lakes or the Chesapeake Bay, where EPA funds sometimes go for underground construction work.

WIFIA

Then, of course, there is the possibility that any new infrastructure spending comes out of the pockets of the SRF or WIFIA programs. Legislative efforts had already emerged in 2017 aimed at making changes to the WIFIA program, and extending it. The WIFIA is a companion to the SRFs, except the funding mechanisms for the two programs are different, and WIFIA was created for large regional projects over $20 million. Draft WIFIA legislation surfaced late last year from Sen. John Boozman (R-Ark.).

The bill establishes a carve-out within WIFIA for SRF projects to have more favorable loan terms than they would through the SRF program. The WIFIA uses federal Treasury credit subsidies to leverage state and local spending, currently, according to the EPA based on the 12 WIFIA loan applications it is considering, at a ratio of 92:1.

The Association of Metropolitan Water Agencies joined the American Water Works Association and WEF in sending a letter to Congress in December, stating, "We are aware of draft legislation circulating on Capitol Hill that would create preferential borrowing terms and exclusive, dedicated budget authority within the Water Infrastructure Finance and Innovation Act (WIFIA) program for state revolving loan funds (SRFs). We urge you to oppose this idea. It does not make sense particularly from an economic standpoint."

The three water associations argued that creating an SRF "preference" within WIFIA, as the Boozman bill would do, "would consume an enormous amount of budget authority with the interest rate subsidy, resulting in a dramatically lower leveraging ratio of just 6:1."

While the Boozman draft has not germinated into a bill at this writing, a bi-partisan House bill extending WIFIA's authorization was introduced in 2017 and probably has a better chance of moving forward and passing, in some shape, in 2018. Rep. Brian Mast (R-Fla.) is the lead sponsor of the Water Infrastructure Finance and Innovation Reauthorization Act of 2017, which extends WIFIA until 2024 and doubles the authorization to $90 million. The WIFIA authorization level for fiscal 2018, which began last Oct. 1, is $45 million. President Trump only asked for $20 million. Congress has not passed a 2018 appropriation bill yet, so the budget for WIFIA and all other federal programs for 2018 are not set.

The Trump Administration is asking for $863 million for the Drinking Water SRF and $1.39 billion for the Clean Water SRF in fiscal 2018. The SRFs would get $1.6 million and $2.65 million increases, respectively, over their 2017 budgets if the appropriations committees in Congress ratify those numbers.

Both the WIFIA and SRFs are important underground water programs, but sewer and drinking water projects are also funded by private activity bonds used by municipalities. They will continue to be used in 2018, despite a threat to eliminate their tax advantaged status by the House via a provision in its version of the tax reform legislation. The final bill passed by Congress maintains tax deductibility for the interest costs of PABs, but it repeals the ability to advance refund municipal bonds. Under current law, governmental bonds and 501(c)(3) bonds are permitted after.

Emily Brock, director of Federal Liaison Center, Government Finance Officers Association, says groups like hers who support advance refunding will try to reinstate it as part of the discussion on the contents of any infrastructure package. She notes, however, that Rep. Kevin Brady (R-Texas), influential chairman of the House Ways & Means Committee, stated during debate on the tax package that he does not believe private activity bonds fund infrastructure projects. Brady may make another attempt to eliminate the interest deduction for PABs in order to raise some of the $200 billion to fund the infrastructure package.

Lead, copper

On the regulatory front, the EPA plans to publish a proposed rule forcing local public water agencies to upgrade efforts to combat levels of lead and copper in water lines. At hearings in the House Energy & Commerce Committee on Dec. 7, 2017, Scott Pruitt, the EPA administrator, talked about the importance of getting lead out of water service lines and linked President Trump's comments on the need to address infrastructure to his own feeling that any infrastructure package would "address some of these things," meaning lead service lines. He said the costs of replacing service lines across the country has been estimated at "as much as $30 billion, or maybe upwards of $50 billion." He said that he would approach Congress next year to "announce a very strong initiative on a war on lead." The most ambitious goal would be to require replacement of the roughly 6 to 10 million lead service lines in the country.

Changes to the Obama Administration-issued "Waters of the U.S." rule are already underway at the EPA. Both the EPA and the Army Corps of Engineers manage applications for permits to dig in wetlands, with the Obama rule expanding the types of bodies of water requiring permits for certain operations, such as digging for pipelines, which has its own Nationwide Permit, number 12. At the Energy and Commerce hearings, Pruitt said his agency would have a proposed rule by April. ■