

2018 America's Water Infrastructure Act of 2018 (S 3021)

December 18, 2018

* Requires EPA budget appropriation, cannot work on under a Continuing Resolution; if a CR is extended through 2019, these programs/changes cannot begin.

** Indicates specific appropriations are needed for the program

Immediate Impacts

DWSRF Fund Eligibility and Uses –

Adds “replacing or rehabilitating aging treatment, storage, or distribution facilities of public water systems” to the list of eligible fund uses. Also requires Davis-Bacon provisions to apply to any construction project that uses the state fund. Requires states to use not more than 35% for disadvantaged community assistance and, to the extent that there are sufficient applications, not less than 6%. Loans will be fully amortized not later than 30 years after project completion unless the state extends the term to 40 years for disadvantaged communities and the extension does not exceed the design life of the project. Also extends commencement of repayment from one year to 18 months. Includes new requirements for Needs Surveys to include an assessment of costs to replace all lead service lines and describe, separately, the costs associated with PWS-owned lines and those to replace any remaining portions, to the extent practicable (collection of next Needs Survey expected in 2020; states need to begin preparing for this change now). Makes updates to source water protection area delineations and assessments eligible for DWSRF. (Title II, Section 2015). Additional DWSRF impacts listed under 3-5 years.

Source Water – Under wellhead protection, adds source water protection assessment implementation activities as an eligible use and allows source water activities as an eligible use of the 15% set-aside. (Title II, Section 2002)

Consumer Confidence Reports – Allow electronic distribution. (Additional CCR impacts listed in 1-2 years) (Title II, Section 2008)

Spill Response – Requires the state emergency response commission to promptly notify applicable state agencies of any release that requires notice; provide Tier II information; and provide a written follow up emergency notice. Receiving state agencies shall then forward such notice, information, and follow up to any CWS with affected source waters. (Title II, Section 2018)

American Iron and Steel – Extends AIS requirements through FY 2023. (Title II, Section 2022)

****State Capitalization Grants** – Authorizes DWSRF Capitalization Grants for FY 2019 at \$1,174,000,000; \$1.3 billion for FY 2020; and \$1.95 billion for FY 2021. (Title II, Section 2023)

Asset Management – Describes how states will encourage development/use of asset management plans, assist systems to implement asset management through training and technical assistance.

Within 5 years, and every 5 years thereafter, EPA shall review and update materials for information and best practices related to asset management strategies for public water systems. (Title II, Section 2012)

****Disaster Assistance** – DWSRF funds can be used to provide assistance to systems that serve an area that has had a Stafford Act declaration after January 1, 2017 and has provided disaster assistance or is capable of extending its potable drinking water service into an underserved area. Authorizes \$100 million for EPA to provide additional capitalization grants to eligible states for 24 months. (Title II, Section 2020)

Compliance Monitoring Data – EPA must develop by October 2019 a strategic plan for improving the accuracy and availability of compliance monitoring data. (Title II, Section 2011)

Impacts in 1-2 years

****Voluntary School/Childcare Lead Testing** – Requires EPA to continue to provide technical assistance to the voluntary school lead grants program to assist in source identification, assist in other Federal or state lead elimination grant opportunities and applications, information on other financing options (under 1464(d) of the SDWA, WIIN grant). Authorizes \$25M for each FY 2020 and 2021. Within one year of enactment, EPA shall establish grants to provide assistance to local educational agencies to replace water fountains manufactured prior to 1988. Authorizes \$5M for each FY 2019-2021. (Title II, Section 2006)

***Consumer Confidence Reports** – Adds new language requiring information on exceedances for which corrective action has been required by EPA or the state and violations that occurred during the covered monitoring period; adds corrosion control efforts to the information notice requirements. Adds new requirements for EPA to issue by October 2020 revisions to the regulations to increase readability and understandability; accuracy of information presented and risk communication. CWS serving more than 10,000 are required to provide a CCR at least biannually. (Title II, Section 2008)

****PWSS Grants** – Increases PWSS program authorizations from \$100 million through 2003 to \$125 million for each FY 2020 and 2021. (Title II, Section 2014)

***Consolidation Considerations and Contractual Agreements** – Allows states to require a PWS to assess options for consolidation if it has repeated NPDWR violations and is unwilling/unable to take actions to return to compliance; DWSRF loans may be used to carry out such consolidation or transfer. EPA shall promulgate regulations for these actions by October 2020. (Title II, Section 2010) Allows contractual agreements for significant management or administrative functions of the system to correct violations. (Title II, Section 2009)

***Intractable Water Systems** – Commissions EPA study to identify intractable systems (definition in statute) and describe barriers to delivery of potable water to individuals served by such a system within 2 years. Intractable systems are defined in statute as a public water system that serves fewer than 1,000 individuals where the owner or operator is unable or unwilling to provide safe and

adequate service or has abandoned the water system or is in significant noncompliance with the Safe Drinking Water Act. (Title II, Section 2003)

****Resiliency and Sustainability** Allows EPA to issue grants to states on behalf of underserved communities for activities related to a potentially harmful contaminant. EPA may establish a new Drinking Water System Infrastructure Resilience and Sustainability Program (subject to available appropriations) to award grants for FYs 19 and 20 to increase resilience. Authorizes \$4M for each FY 2019 and 2020. (Title II, Section 2005)

****Source Water Petition Program** – Authorizes \$5M for each FY 2020 and 2021 for the Source Water Petition Program. (Title II, Section 2016)

Impacts in 3-5 years

DWSRF Fund Eligibility and Uses – Requires EPA to collect information from the states on SRF loan administration including efforts to streamline the application process, application assistance, incentives for large and small system partnering options to assist with applications, and other best practices. EPA shall disseminate the results to states within 3 years of enactment. (Title II, Section 2015)

****UCMR Monitoring** – Requires PWS serving between 3,300 and 10,000 to monitor for unregulated contaminants not later than 3 years after enactment if funding is appropriated and if there is sufficient lab capacity. Authorizes \$15 million annually to cover the additional costs of testing and lab analyses. Otherwise, reauthorizes \$10 million for each FY 2019-2021 for UCMR monitoring. (Title II, Section 2021)

Minor Impacts to States

Non-potable Water – Offers the sense of Congress that access to non-potable sources for industry can relieve the supply & demand challenges in water stressed regions and that water users are encouraged to continue implementing and incentivizing water reuse programs to achieve greater conservation. (Title II, Section 2004)

WaterSense – Formally establishes WaterSense – a voluntary program to identify and promote water-efficient products, buildings, landscapes, facilities, processes, and services. (Title IV, Section 4306)

****Technology Review** – Requires EPA to review existing and potential methods, means, equipment, and technologies that: ensure physical integrity of CWS; prevent, detect, and respond to any contaminant covered by an NPDWR; allow use of alternate drinking water supplies from nontraditional sources; and facilitate source water assessment and protection. Authorizes \$10M for FY 2019. (Title II, Section 2017)

***Regional Liaisons** for Minority, Tribal and Low Income Communities – calls for EPA to assign at least one employee in each Regional Office to serve as a liaison to the above mentioned communities. (Title IV, Section 4305)

****Innovative Technologies** – EPA shall carry out a competitive grant program to accelerate development and deployment of innovative water technologies. Authorizes \$10M for each FY 2019-2020. (Title II, Section 2007)

****CWS Risk and Resilience** – CWS serving more than 3,300 persons shall conduct a risk assessment for built, technological, and financial infrastructure and must certify to EPA assessment has been completed - assessments must be reviewed every five years. Requires emergency response plans for all systems serving more than 3,300 persons. Small systems will receive guidance and technical assistance from EPA on how to conduct assessments and prepare plans. EPA to establish a grant program for CWS owners and operators to increase resilience. Authorizes \$25 million for each FY 2020 and 2021. (Title II, Section 2013) It's possible states may be involved in tracking down water systems that have not submitted assessment certifications that could lead to potential compliance and enforcement actions.

HABs – Corps of Engineers shall implement a 5 year harmful algal bloom technology development demonstration program under the Aquatic Nuisance Research program for HABs-related events. (Title I, Section 1109)

Federal Cross-Cutters – Within one year, the Comptroller General shall submit a report to Congress on the results of a study to identify demonstrations of compliance with a state or local environmental law that may be substantially equivalent to any demonstration required by EPA for Federal cross-cutters. (Title II, Section 2019)

****WIFIA Reauthorization** – Disallows state borrowers to use Federal DWSRF or CWSRF capitalization grant funds as sources of repayment funds. Authorizes \$50 million for each FY 2020 and 2021 and EPA may use not more than \$5 million/year for administration and technical assistance. State infrastructure finance authorities shall be held solely responsible for repayment of any provided assistance that results in a project default. DWSRF and CWSRF funds must be greater than 2018 levels or greater than 105% of the previous fiscal year's appropriation, whichever is greater, for funds to be made available under WIFIA (Title IV, Section 4201)

****Water Infrastructure and Workforce Investment** – Congress urges collaboration among Federal, state and local governments and various educational programs to align workforce training programs to accelerate career pipelines. Requires EPA to establish a competitive grant program to help develop workforce and career opportunities. Authorizes \$1 million for each fiscal year 2019 and 2020. (Title IV, Section 4304)