



TO: Rebecca Long

FROM: Eric Sapirstein

DATE: April 19, 2021

SUBJECT: Washington Update

Following the White House’s unveiling of its American Jobs Plan (Plan), which sets out an ambitious \$2.2 trillion effort to legislate infrastructure assistance, jobs creation, tax increases, and a host of funding priorities to advance technology and workforce development, Congress has shifted its legislative focus to infrastructure investment using the Plan as a guide. In addition, the annual appropriations process began as Members in the House and Senate submitted project and/or programmatic funding requests from public agencies. The Administration transmitted a limited budget request for Fiscal Year (FY) 2022 to the House and Senate Committees on Appropriation. During this period of time, OC San’s leadership met virtually with many of its congressional delegation to discuss federal priorities. The following summarizes the past month’s activities in Washington.

Fiscal Year 2022 Appropriations

As Congress readies to begin the appropriations process for FY 2022, the White House’s Office of Management and Budget (OMB) transmitted a “skinny” budget request. The request details topline funding levels for federal agencies and departments’ programs. A more comprehensive budget request is expected in May.

The request reinforces the Administration’s priorities to support climate change and resiliency, environmental justice, and environmental protection initiatives and is requesting a total of \$769 billion in domestic discretionary funding. The request provides for a 16 percent increase over the FY 2021 funding of such programs. Discretionary spending supports federal programs and activities, including water infrastructure assistance. The U.S. Environmental Protection Agency (USEPA) would receive \$11.2 billion, which represents a 21.3 percent increase from the FY 2021 level. The request supports the Administration’s environmental justice priorities and directs that funding to USEPA would support implementation of the Justice 40 commitment to target 40 percent of total federal benefits of climate investments to disadvantaged communities. Additionally, the request identifies the following funding priorities:

- \$1.8 billion in programs that help reduce greenhouse gas emissions, while also supporting environmental justice and job creation.
- \$936 million to support new Accelerating Environmental and Economic Justice initiative at USEPA. Includes \$100 million to develop new community air quality monitoring and notification program to provide real-time data in places with highest level of exposure to pollution. An additional \$30 million would be provided to enforce existing laws to protect communities from hazardous pollution.
- \$3.6 billion for water infrastructure, representing a \$625 million increase over FY2021 enacted level. Funds could be used to advance water infrastructure improvement efforts for community water systems, schools, and households, as well as broader efforts to improve drinking water and wastewater infrastructure.
- \$75 million to accelerate toxicity studies and research to inform enforceable limits for Per- and polyfluoroalkyl substances (PFAS) under Safe Drinking Water Act. Funding request includes grants to support technical assistance as States and local governments deal with PFAS contamination.

Infrastructure Policymaking

The Administration's American Jobs Plan was unveiled to partisan debate this month. Republicans and some Democrats rejected provisions to address non-infrastructure issues and raise taxes. Democrats unity also splintered over either too little funding for green projects, questions over the kind of taxes contemplated, and the absence of support for the restoration of the deduction of State and Local taxes.

Under the plan, \$111 billion would be dedicated to water infrastructure, but the majority of the assistance is targeted to support the replacement of drinking water service lines that contain lead, assistance to disadvantaged communities in need of safe and reliable drinking water, and PFAS groundwater cleanups. As one Member of Congress noted, it is a plan, and Congress will draft the actual legislative proposal, suggesting that a rebalancing of funding priorities is likely.

While the White House is a plan, the House and Senate committees with jurisdiction over clean water infrastructure have acted on legislation. In the House, the Committee on Transportation & Infrastructure conducted a hearing into the Water Quality Protection and Job Creation Act of 2021 (H.R. 1915) that is expected to serve as the basis for any final House clean water bill. Under the draft bill, it would:

- authorize the clean water SRF at \$8 billion per year for five years;
- renew the Alternative Water Sources Act and authorize \$1 billion for grants to support water recycling;
- provide wastewater agencies with a new grants program of \$1 billion to support PFAS pretreatment standards implementation; and
- support clean water workforce development assistance.

The Senate Committee on Environment and Public Works approved the Drinking Water and Wastewater Infrastructure Act (S. 914). It is more limited, providing just \$16 billion to support the clean water SRF. As approved, the bill would:

- Provide states with increased funding and program flexibilities to invest in community water projects that address aging infrastructure and improve water quality through the State Revolving Loan Funds.
- Promote resiliency projects to address the impacts of climate change.
- Increase investment to address recruitment, training, and retention challenges facing the water and wastewater utility workforce.

Timing for action on the House bill is optimistically slated for May based upon Chairman Peter DeFazio's comments. The Speaker has set July 4th as the deadline for House action on a comprehensive infrastructure bill. The Senate, where all action is subject to a filibuster, is slated to consider S. 914 the week of April 19. Taken collectively, it appears that any final water infrastructure bill is unlikely to be voted on before the early fall and is highly likely to become part of a larger infrastructure bill.

House Lawmakers Reintroduce PFAS Legislation With CERCLA Designation

This month, congressional lawmakers introduced the PFAS Action Act of 2021 (H.R. 2467), a comprehensive bill that aims to address the public health and environmental risks posed by PFAS contamination, including addressing, monitoring, and treating for PFAS contamination in water supplies. H.R. 2467, sponsored by Representative Debbie Dingell (D-MI), is a reintroduction of a bill Dingell tried to advance in the 116th Congress, H.R. 535, that OC SAN monitored closely due to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, designation provision the bill contained for PFAS. The PFAS Action Act of 2021, like last year's bill, includes the same CERCLA designation provision, directing USEPA to designate PFOA and PFOS as hazardous under CERCLA within one year of the bill's enactment, and to determine whether to designate all PFAS substances as hazardous under CERCLA within five years of enactment of the bill. H.R. 2467 does not address how such a designation would impact the land use application of biosolids, nor does it identify an alternative application use for biosolids if PFAS are designated as hazardous.

In addition to the CERCLA designation, the bill would also do the following:

- Direct USEPA to review and determine whether to establish effluent and pretreatment standards for PFAS substances under the Clean Water Act and provide grants assistance to publicly owned treatment works for implementation of developed standards. Grants program would be authorized at \$200 million for each of the fiscal years 2022 through 2026. Individual awarded grants are not to exceed \$100 thousand.
- Establish a national primary drinking water regulation standard for PFOA and PFOS within two years that protects public health, including the health of vulnerable subpopulations.
- Establish a PFAS infrastructure grants program for affected community water systems authorized at \$125 million for each of the fiscal years 2022-2023 and \$100 million for each fiscal years 2024-2026.
- Require that EPA to place discharge limits on industrial releases of PFAS and provides \$200 million annually for wastewater treatment.

Buy American Legislation Reintroduced in the House

Representative John Garamendi (D-CA) reintroduced the Made in America Act (H.R. 2468) this week, which strengthens Buy America requirements for federally funded infrastructure projects, including clean water. The measure would for the first time require that “manufactured products”, in addition to the already regulated American iron and steel, be subject to the mandate. Earlier, identical legislation, S. 1094 was introduced by Senators Tammy Baldwin (D-WI) and Mike Braun (R-IN). Both measures hold the potential for inclusion in any final infrastructure package.

Specifically, H.R. 2468 identifies federal infrastructure funding programs that do not currently subject projects to Buy America standards and would ensure that these programs require that building materials used in the "taxpayer-funded projects" are produced domestically, including iron and steel materials. The bill directs the U.S. Department of Commerce to certify construction materials are made in America and the manufacturing processes support American jobs.

Administration Appointments

President Biden has announced he will nominate three new people to fill leadership roles at the U.S. Environmental Protection Agency (USEPA). The nominees include Radhika Fox to be Assistant Administrator for the Office of Water, Michael Freedhoff to lead the Office of Chemical Safety and Pollution Prevention, and Faisal Amin to be the Agency’s chief financial officer. Fox has currently been serving as the Principal Deputy Assistant Administrator for the Office of Water and Freedhoff currently serves as the Principal Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention.