Water Infrastructure Funding in the American Recovery and Reinvestment Act of 2009

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Water Infrastructure Funding in the American Recovery and Reinvestment Act of 2009

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August 19, 2009
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Summary

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (P.L. 111-5, the ARRA, or Recovery Act). This report identifies funding for water infrastructure programs and projects contained in the legislation, including amounts in the House- and Senate-passed versions that preceded the conference agreement. Among the purposes identified in the legislation are preservation and creation of jobs and promotion of U.S. economic recovery, and investment in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.

Under the legislation, additional appropriations are directed to a number of existing federal programs that either directly invest in water infrastructure projects or provide assistance to states and localities for such activities. Water infrastructure funding in the bill, available for obligation for the remainder of FY2009 and through September 30, 2010, is provided to five federal agencies and one commission. This funding totals $13.5 billion.

The bill provides funding for locally built wastewater and drinking water treatment projects through assistance programs administered by the Environmental Protection Agency (EPA) and the U.S. Department of Agriculture (USDA). For the EPA wastewater program, the enacted bill provides $4.0 billion. For the EPA drinking water program, P.L. 111-5 provides $2.0 billion in additional funds. These funds will be allocated to states according to established formulas, and states will award actual assistance to projects and communities. As of late April, EPA has awarded Recovery Act funds to about a dozen states. For the USDA programs that benefit rural communities, the enacted legislation provides $1.38 billion in grants and loans; none has yet been disbursed to USDA state offices, which will make individual project decisions. Additional funding in the bill for these programs is three to four times more than the level of regular appropriations.

The enacted legislation provides funding for water resources development and management projects administered by four agencies. It provides $4.6 billion for the U.S. Army Corps of Engineers (Corps) and $1.0 billion for the Bureau of Reclamation (Reclamation). The legislation also provides $340 million for USDA’s Natural Resources Conservation Service (NRCS) agricultural watershed program, and $220 million for the Department of State’s International Boundary and Water Commission (IBWC) levee and dam upgrades. Congress directed that the funds be used consistent with the eligibility and prioritization constraints and direction provided in P.L. 111-5 and the accompanying conference report, H.Rept. 111-16. Discretion regarding which specific projects received funds was largely left up to the Administration. Congressional Committees have held hearings on use of ARRA water resources funds.

Even after enactment, implementation of the additional water infrastructure funding in the American Recovery and Reinvestment Act is raising a number of issues, including how the additional funds included in this legislation will influence decisions on regular appropriations bills beyond FY2009. Another issue concerns matching fund requirements. Unless project assistance is provided entirely as grants, communities and project sponsors will need to come up with matching funds, which could be very challenging in the current fiscal environment.
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Introduction

On January 28, 2009, the House passed H.R. 1, the American Recovery and Reinvestment Act of 2009. On February 10, the Senate passed an amended version of H.R. 1 (S.Amdt. 570). On February 13, the House and Senate adopted a conference report (H.Rept. 111-116) that President Obama signed on February 17 (P.L. 111-5). This report identifies funding for water infrastructure programs and projects included in the bill. Among the purposes identified in the legislation are preservation and creation of jobs and promotion of U.S. economic recovery, and investment in transportation, environmental, and other infrastructure that will provide long-term economic benefits. Under the legislation, additional appropriations are directed to a number of existing federal programs that either directly invest in water infrastructure projects or provide assistance to states and localities for such activities. Water infrastructure funding, available for obligation for the remainder of FY2009 and through September 30, 2010, is summarized in Table 1.

Table 1. Water Infrastructure Funding in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5)

<table>
<thead>
<tr>
<th>Agency</th>
<th>Program</th>
<th>H.R. 1 as Passed by the House</th>
<th>Senate Amdt. to H.R. 1</th>
<th>Enacted Version of H.R. 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPA</td>
<td>Clean Water State Revolving Fund capitalization grants</td>
<td>$6.0 billion</td>
<td>$4.0 billion</td>
<td>$4.0 billion</td>
</tr>
<tr>
<td>EPA</td>
<td>Drinking Water State Revolving Fund capitalization grants</td>
<td>$2.0 billion</td>
<td>$2.0 billion</td>
<td>$2.0 billion</td>
</tr>
<tr>
<td>RUS/USDA</td>
<td>Rural water and waste disposal grants and loans</td>
<td>$1.5 billion</td>
<td>$1.375 billion</td>
<td>$1.38 billion</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>D.C. Water and Sewer Authority</td>
<td>—</td>
<td>$125 million</td>
<td>—</td>
</tr>
<tr>
<td>Reclamation/DOI</td>
<td>Water and Related Resources</td>
<td>$500 million</td>
<td>$1.4 billion</td>
<td>1.0 billion</td>
</tr>
<tr>
<td>Corps/DOD\a</td>
<td>Army Corps of Engineers Civil Works Program</td>
<td>$4.5 billion</td>
<td>$4.6 billion</td>
<td>$4.6 billion</td>
</tr>
<tr>
<td>NRCS/USDA</td>
<td>Agricultural Watershed Programs</td>
<td>$400 million</td>
<td>$340 million</td>
<td>$340 million</td>
</tr>
<tr>
<td>IBWC/State Dept.</td>
<td>International Boundary and Water Commission</td>
<td>$224 million</td>
<td>$224 million</td>
<td>$220 million</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$15.1 billion</td>
<td>$14.1 billion</td>
<td>$13.5 billion</td>
</tr>
</tbody>
</table>

Source: Compiled by CRS.

Note: Table does not include funds for the Economic Development Administration’s Public Works and Economic Development program or the Department of Housing and Urban Development’s Community Development Block Grant program, both of which could be used for water infrastructure and other projects. See discussion on page 5.

a. Amounts include the $25 million for the Corps regulatory program that appeared in the House, Senate, and final versions of the legislation, and $100 million in the S.Amdt. 570 to H.R. 1 and the final bill for the Formerly Utilized Sites Remedial Action Program (FUSRAP).
The infrastructure activities discussed here comprise one of many broad categories of infrastructure that are receiving additional funding under the legislation, for construction, repair, and modernization of a range of infrastructure categories both traditional (e.g., highways, airports, passenger rail, and schools) and less traditional (e.g., broadband and the electric power transmission grid). These provisions of the legislation reflect a concept that has drawn much attention by policymakers as one option for addressing the nation’s faltering economic conditions: the concept of countering the effect of the current recession with increased government spending on public works in order to create jobs while also promoting long-term economic growth.1 Proponents have argued that states and localities have hundreds of infrastructure projects that are “ready to go” to construction in 90 or 120 days, except for funding, and thus could contribute quickly to job creation and economic stimulus,2 especially in the construction sector that has been particularly hard hit by the recession. During House and Senate debate, both supporters and critics of the legislation favored more infrastructure spending, with critics urging changes to increase short-term, stimulative provisions of the bill, including more targeted infrastructure spending, and less spending on activities with less certain quick stimulative effect. Nevertheless, in the floor debates concerning the overall size and composition of the legislation, only one specific proposal to increase infrastructure funds in the bill was adopted.3 The enacted legislation includes some additional funds for high-speed rail projects that were not included in the House or Senate versions of H.R. 1.4

Wastewater and Drinking Water

**EPA State Revolving Fund (SRF) Programs**

The federal Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) impose regulatory requirements regarding wastewater treatment and drinking water quality in the United States. For wastewater treatment, the CWA prescribes performance levels to be attained by municipal sewage treatment plants in order to prevent the discharge of harmful wastes into the Nation’s lakes, rivers, and other surface waters. For drinking water quality, public water systems are subject to federal regulations under the SDWA which limit levels of contaminants in treated water and require, for example, system monitoring, treatment to remove certain contaminants, and reporting. Both of these laws authorize financial assistance so that communities can construct treatment facilities in compliance with these requirements.5 Under both laws, Congress

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1 For background, see CRS Report R40107, *The Role of Public Works Infrastructure in Economic Stimulus*, coordinated by Claudia Copeland.

2 State and local water agencies have reportedly identified from $9 to $20 billion in wastewater treatment projects and $10 billion in drinking water projects that are “ready to go.” Inside EPA, “States Seek over $9 Billion for Clean Water Projects in Stimulus Bill,” September 12, 2008; “AWWA members Asked to Contact Congress on Drinking Water Infrastructure and Stimulation Bill,” [http://www.awwa.org/Government/Content.cfm?ItemNumber=3821&navItemNumber=1618](http://www.awwa.org/Government/Content.cfm?ItemNumber=3821&navItemNumber=1618).

3 While the House adopted an amendment to increase transit capital grant funding by $3 billion, the Senate rejected an amendment offered by Senators Murray and Feinstein that would have provided $25 billion more for highway, transit, and drinking water and wastewater projects.

4 For information, see CRS Report R40214, *Transportation and Transportation Security Related Provisions of House and Senate Stimulus Legislation (H.R. 1)*, by John W. Fischer et al.

5 For additional information, see CRS Report RL30478, *Federally Supported Water Supply and Wastewater Treatment Programs*, coordinated by Claudia Copeland.
appropriates federal capitalization grants as seed money to support State Revolving Funds (SRFs), and states provide matching funds equal to 20% of the federal capitalization grant. States, in turn, provide loans from the SRFs to communities for water infrastructure projects. Over the long term, the loan programs are intended to be sustained through repayment of loans to states, thus creating a continuing source of state assistance for other communities.

The SRF capitalization grants are appropriated through the Environmental Protection Agency’s (EPA’s) State and Tribal Assistance Grants account (in the Interior and Environment Appropriations bill) and are allocated among the states according to formulas. Historically, the federal government has had a large financial role in assisting communities to meet their wastewater funding needs (having appropriated more than $75 billion since 1973) and also more recently in meeting drinking water treatment needs (more than $10 billion since 1997). However, estimates of funding needs remain very high ($203 billion for wastewater and $277 billion for drinking water), while appropriations for EPA assistance have declined in recent years. The economic recovery legislation provides additional FY2009 funding for the two SRF capitalization grant programs.

The enacted version of H.R. 1 provides an additional $4.0 billion for clean water SRFs and $2.0 billion for drinking water SRFs, as proposed by the Senate. House-passed H.R. 1 would have appropriated $6.0 billion for clean water SRFs and the same $2.0 billion for drinking water SRFs. Total stimulus funding for the two SRF programs would be four times larger than the funding levels for these programs in regular FY2009 appropriations. As requested by many states, the legislation waives the current law requirement that states must provide a 20% match to the federal capitalization grant. Under the enacted bill, states are to use not less than 20% of capitalization grants to support green infrastructure, water efficiency, or other environmentally innovative projects (unless there are insufficient applications for such projects).

Under the Recovery Act, funds appropriated to states were allocated according to existing formulas, or methods of apportionment. Under current law, clean water SRF capitalization grant allocation is governed by a formulation in the CWA,6 while drinking water SRF capitalization grants are allocated according to a formula developed by EPA that reflects the proportional share of each state’s funding needs.7 Based on those formulas, Table A-1 in the Appendix to this report shows amounts that states are eligible to receive under the funding levels in the bill. The table reflects that, before funds are distributed to states, 1.5% is reserved for EPA to provide assistance to Indian Tribes and, under the drinking water SRF, to Alaska Native Village water systems, consistent with current law. Also, the table reflects that an additional 1.0% of the funds is reserved for program oversight by EPA and remains available for the agency’s use through September 30, 2011. States are to award SRF assistance to projects already included on their Intended Use Plans, lists that states develop to identify which projects in which communities will receive funding.

Under a general provision in section 1602 of P.L. 111-5, preference is to be given to activities that can start and finish quickly, with a goal that at least 50% of the funds go to activities that can be initiated within 120 days of enactment. EPA is directed to submit a report to the House and Senate Appropriations Committees within 30 days of enactment containing a general plan for...
expenditure of funds provided by the legislation, another report within 90 days providing detailed project level information associated with the general plan, and bi-annual reports on implementation, but there are no deadlines for actually awarding the funds in the bill. However, these reports to Congress will not necessarily identify wastewater and drinking water projects that will be funded, because states will be making those decisions, not EPA. States are to give priority to wastewater and drinking water projects that can proceed to construction within 12 months of enactment, i.e. by February 17, 2010. Further, the funds are provided as “use it or lose it,” because EPA is directed to redistribute any SRF capitalization grant funds that are not under contract or construction within that time.

Another general provision, section 1605(c), requires that local entities that receive ARRA financial assistance use American-made iron, steel, and manufactured goods in the construction of their projects. Section 1605(b) of the legislation allows federal agencies, with limited exceptions and applied consistently with U.S. international obligations, to waive this “Buy American” procurement requirement if doing so is in the public interest because there are insufficient American supplies, or if the use of American supplies will increase the cost of the project by more than 25%.

The enacted bill omits other general provisions in House-passed H.R. 1 concerning timing. The House bill would have required federal agencies to award formula grants within 30 days of enactment and competitive grants within 90 days of enactment. It also would have required that binding commitments for 50% of the funds be made within one year of enactment, and the remainder within two years.

Current law allows states to make low-interest or no-interest loans from the SRF. The House-passed, Senate-passed, and enacted versions allow states to also provide additional subsidization in the form of negative interest loans, principal forgiveness, grants, or a combination, but the legislation sets no project-specific limits on such assistance. Under the final version of the American Recovery and Reinvestment Act, states are to use 50% of the capitalization grant to provide additional subsidization. The final bill omits provisions from the House-passed bill that would have required that 80% of such funds go to municipalities that meet state affordability criteria (presumably meaning economically disadvantaged), and 20% to projects involving water- or energy-efficiency, stormwater mitigation, or other environmentally sensitive projects. The Senate amendment to H.R. 1 did not specify a percentage of funds that must be used for additional subsidization.

Other Federal Programs

Under the EPA SRF programs, rural and non-rural communities compete for funding; rural areas and other small communities have no special priority. For rural areas, the U.S. Department of Agriculture (USDA) administers grant and loan programs for water and wastewater projects, with eligibility limited to communities of 10,000 or less. These programs are administered at the national level by the Rural Utilities Service (RUS) at USDA. Funding needs in rural areas are high (at least $50 billion, according to EPA surveys), and there is heavy demand for funds. At the

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4 The SDWA already allows principal forgiveness for assistance provided to economically disadvantaged communities.

5 For information, see CRS Report 98-64, Rural Water Supply and Sewer Systems: Background Information, by Claudia Copeland.
end of FY2007, USDA reported a $2.4 billion backlog of requests for 928 water and wastewater projects. The economic recovery legislation also provides additional appropriations for these programs. The enacted version of H.R. 1 provides $1.38 billion ($968 million in grants and $412 million in direct loans). House-passed H.R. 1 would have provided $1.5 billion ($400 million in direct loans, $1.1 billion in grants), and the Senate amendment would have provided $1.375 billion total for the RUS water and waste disposal program. Funding under the enacted bill is more than 2.5 times larger than the funding level in FY2009. The general provisions of P.L. 111-5 concerning preference for projects that can start quickly and Buy American requirements, described on pages 3 and 4, would also apply to these USDA funds.

Funding for a specific wastewater infrastructure project was included in the Senate amendment to H.R. 1, but was omitted from the final bill. The Senate amendment included $125 million for the District of Columbia Water and Sewer Authority to continue its program to remediate sewerage overflow problems. The District is implementing a long-term sewerage overflow remediation program that is estimated to cost more than $2 billion. Under the bill, the District of Columbia would have been required to provide a 100% match for the federal payment.

The economic recovery legislation also includes funding for other federal programs that are not targeted to water infrastructure (or even to infrastructure exclusively), but could potentially be used for such purposes. One is the Public Works and Economic Development program of the Economic Development Administration (EDA, Department of Commerce). EDA is authorized to provide economic development grants to areas experiencing substantial economic distress in order to directly encourage business expansion, diversify local economies, and general or retain long-term jobs in the private sector. Economic development grants may be used for a wide range of purposes. The enacted version of H.R. 1 provides $150 million for EDA grants (as proposed by the Senate; the House bill would have appropriated $250 million). Regular FY2009 funding, enacted in March after enactment of the ARRA, is $133 million.

The enacted bill also includes $1.0 billion for the Community Development Block Grant (CDBG) program administered by the Department of Housing and Urban Development (HUD), as proposed by the House (the Senate bill included no CDBG funding). CDBG funds are used by about 1,200 state and local governments for a broad range of activities to invest in their own economic development priorities that are intended to result in decent housing in a suitable living environment. Program policy requires that at least 70% of funds must benefit low- and moderate-income persons. Regular FY2009 funding for the CDBG is $3.6 billion.

Discussion

For wastewater and drinking water programs, the House-passed and Senate-passed bills were quite similar, the main differences relating to funding levels (e.g., $6.0 billion in House-passed H.R. 1, compared with $4.0 billion in the Senate amendment, for clean water SRF capitalization grants) to provide additional funding for existing infrastructure programs. The bills also contained some differences concerning specified timing or procedures for awarding or obligating funds (see page 3). The Senate amendment included funds for a specific wastewater project in the District of Columbia that was not addressed in the House-passed bill and was omitted from P.L. 111-5.

As noted, in the EPA SRF provisions, the legislation allows states to provide subsidization in the form of principal forgiveness, negative interest loans, grants, or a combination. Traditionally, SRF assistance to communities is provided as loans that eventually are repaid to states. The concept of allowing principal forgiveness or negative interest loans means that communities will have less of
a repayment burden. There is, however, a tension in how states will use this authority. As much as state budgets are under pressure from the current recession, so, too, are cities’ budgets, and recipients of SRF assistance would rather receive a grant or partial grant than a loan that must be fully repaid. If states are generous in the amounts of subsidization that they provide (for example, requiring only small amounts of assistance or even none to be repaid), a few communities will benefit greatly. But if states are more restrictive (for example, providing only a small amount of additional subsidization), it may be possible to assist more communities in the state, yet those communities will have a larger repayment responsibility.

More broadly, the infrastructure funding provisions of the legislation raise some general issues. Funding infrastructure is a long-term investment, not quick-fix spending, that should lead to something durable, useful, and financially productive. The long-term nature of such investments can be at odds with the stimulus goal of quickly injecting money into the economy. Thus, one question in debating infrastructure spending as part of economic recovery is, what is truly stimulative? Critics contend that the haste to fund “ready to go” projects is likely to result in spending on many projects with marginal value, such as projects with plans that have been backlogged for some time because they lack sufficient merit, but for which now there is an opportunity to get funding. One issue of interest is, will states and communities be able to effectively manage the large increase in project spending provided by the legislation. The legislation includes oversight measures. These appear to be focused on the important issues of identifying waste, fraud, and abuse, and ensuring compliance with applicable standards and competition requirements in contracts and grants, but not necessarily on evaluating or ensuring the quality of funded projects. That type of accountability will reside with state and local officials who will be responsible for determining priorities and making the majority of actual funding decisions for wastewater and drinking water investments.

Implementation and Oversight

Recovery Act funds for wastewater and drinking water projects are being disbursed by the federal government to states and localities where most of the actual project decisions will be made and spending will occur in the coming months. EPA moved quickly after enactment of the legislation to issue guidance to states on how the agency will award and administer grants to wastewater and drinking water state revolving funds. The guidance addressed a number of issues unique to the ARRA SRF funds, such as how states are to meet the law’s requirement that at least 20% of the funds shall be used for green infrastructure projects, additional reporting requirements to comply with the act’s mandates for accountability and transparency, and details that states must provide on their plans for using the federal funds, including principal forgiveness. Most states reportedly are planning to fund projects from existing priority lists (in order to meet the law’s requirements to select projects that can proceed quickly to construction), while some have developed supplemental project priority lists (especially where projects to meet the law’s green infrastructure project reserve had not previously been identified).

The legislation provides oversight funds for agency Inspectors General and for the Government Accountability Office. It also establishes a Recovery Accountability and Transparency Board to coordinate and conduct oversight and to report quarterly to the President and Congress.

As of July 31, states have submitted applications with their Intended Use Plans for clean water and drinking water SRF capitalization grants, and EPA has obligated nearly $5.1 billion (out of the $6.0 billion appropriated) to all 50 states, the District of Columbia, Puerto Rico, and one Territory. States, in turn, are beginning to award funds to specific projects; actual outlays as of July 31 total about $33 million. Officials say that when recipient reporting begins in October, more information on spending details and jobs created will be available.

Both OMB and EPA have issued guidance on implementing the law’s Buy American provision (see page 4), which is another new consideration in using the ARRA funds. EPA's guidance issued in April details how an SRF assistance recipient (i.e., local government) may apply for a waiver from the Buy American requirement and how the agency will evaluate such requests. As of August, EPA has issued four nationwide “Buy American” waivers based on the ARRA's public interest provision, as well as 10 project-specific waivers because U.S.-made products meeting specifications justified by local conditions and requirements were not available. In April EPA issued a nationwide waiver to allow some already-funded SRF projects to refinance loans to access the more attractive financing options that the Recovery Act provides, but this waiver only applies to eligible projects for which debt was incurred on or after October 1, 2008, and before February 17, 2009. Two waivers issued in May apply to projects that solicited bids on or after October 1, 2008, and before February 17, 2009, and for “de minimis” use of non-domestic iron, steel, and manufactured goods in a project where such components comprise in total no more than 5% of materials in the project. A fourth nationwide waiver, issued July 24, clarifies the previous “de minimis” waiver.

The Buy American requirement has become among the most contentious provisions of the ARRA for water infrastructure projects. For example, some state and local officials criticized the relatively high threshold in the law for waiving the provision based on increased costs (25%). Further, the provision has prompted special concern in the water infrastructure sector because only a limited amount of equipment and materials is manufactured in the United States, according to reports. Some critics say this could result in monopolies for certain companies and could increase the cost of ARRA projects because domestic content may be more expensive than foreign-supplied materials. A Canadian trade official characterized the provision as discriminatory and as a threat to traditional trading openness between the two countries. Others generally support the Buy American provision, saying that it will help create domestic jobs.

Other federal agencies that received ARRA funds for wastewater and drinking water projects also are proceeding with implementation. For example, as of early August, USDA has awarded $1.29 billion of the $1.38 billion in grant and loan funds that it received for rural water and waste disposal projects. The Economic Development Administration’s six regional offices are responsible for selecting and administering the $150 million in ARRA funds that EDA received, and EDA’s goal is to fully obligate the funding by September 30, 2009. EDA expects to fund at least $135 million in public works grants. As of July, EDA had announced 15 grants totaling $23 million. Finally, HUD, which received $1.0 billion in ARRA CDBG funds, announced allocation
