

Summary of Federal Legislative Report – May 21

Fiscal Year 2019 Appropriations Update

Interior-Environment

The House Appropriations Committee recently approved the fiscal year 2019 Interior-Environment spending bill. All told, the legislation would provide nearly \$35.3 billion in funding for the Department of the Interior (excluding the Bureau of Reclamation), the Environmental Protection Agency, and a number of related agencies. The proposed spending is on par with the fiscal year 2018 enacted level.

Among other things, the bill would provide over \$1.5 billion for the Clean Water State Revolving Fund and \$1 billion for the Drinking Water State Revolving Loan Fund, a cut of \$150 million to each program. The measure also includes \$75 million for the *Water Infrastructure Finance and Innovation Act* (WIFIA) program, or an increase of \$12 million when compared to current spending.

In addition to providing funds for departmental operations, the legislation contains several policy add-ons (known as appropriations riders). Most notably, the spending bill includes language that would insulate the California WaterFix project from federal or state legal challenges. Notably, the WaterFix provision would not only preclude state and federal judicial review of the final Environmental Impact Report/Environmental Impact Statement, the language would shield the forthcoming Record of Decision – as well as any other agency decision or downstream determination – from the threat of litigation.

As expected, the inclusion of the WaterFix rider has been met with fierce opposition from a number of the members of the California congressional delegation, including several lawmakers from the Bay-Delta region. Those members, aided by key Delta area stakeholders – including Solano County and the Delta Counties Coalition (DCC) – will be working to ensure that the provision is not finalized as part of the fiscal year 2019 budget.

Energy and Water

On May 16, the House Appropriations Committee approved the fiscal year 2019 Energy and Water spending bill. The legislation funds the Department of Energy, the U.S. Army Corps of Engineers, the Bureau of Reclamation, and several independent agencies.

The measure would spend \$44.7 billion in fiscal year 2019, or \$1.5 billion above the fiscal year 2018 enacted level and \$8.2 billion above President Trump's budget request. Notably, the Army Corps would see its budget increase by over \$450 million, while an additional \$75 million would be available for the Bureau of Reclamation.

For Army Corps dredging activities, the bill includes just over \$3 million for San Pablo Bay and Mare Island Strait and nearly \$3.7 million for the Suisun Bay Channel. The funding levels mirror the administration's budget request.

In addition, the bill includes \$134 million for water storage projects authorized in the *Water Infrastructure Improvements for the Nation* (WIIN) Act. With regard to California, the federal funds could be used for the following projects: design and pre-construction work on the Shasta Reservoir project; feasibility study completions for the Sites Reservoir and the Temperance Flat Reservoir; and, initiation of a feasibility study to address subsidence on the Friant Kern Canal.

It should be noted that the Committee Report accompanying the Energy and Water spending package includes language regarding the Department of the Interior's ongoing environmental analysis of potential modifications to the coordinated operation of the Central Valley Project (CVP) and State Water Project (SWP). Specifically, the language directs the secretary of the Interior – acting through the Bureau of Reclamation and in conjunction with the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) – to complete its “reconsultation” on the Long-Term Operational Criteria and Plan (OCAP) for coordination of the CVP and SWP by May 31, 2020.

The reconsultation effort is expected to result in modifications to the existing Reasonable and Prudent Alternative actions identified in the Biological Opinions that were issued by the FWS and NMFS in 2008 and 2009, respectively. In its December 29, 2017 Notice of Intent, Reclamation stated the purpose of the reconsultation is to, among other things, “evaluate alternatives that maximize water deliveries.”

Commerce-Justice-Science

The House Appropriations Committee approved the fiscal year 2019 Commerce-Justice-Science (CJS) Appropriations bill on May 17. The legislation would provide \$62.5 billion in total discretionary funding for the Departments of Commerce and Justice, NASA, and related agencies. The proposed investment represents a \$2.9 billion increase over fiscal year 2018.

With regard to state and local law enforcement and criminal justice grant programs, the legislation would provide \$2.9 billion, or roughly level funding. Within the aforementioned total, the CJS bill includes \$255 million for the State Criminal Alien Assistance Program (SCAAP), an increase of \$15 million. If enacted, the funding boost would build upon the \$30 million increase that SCAAP received in the current fiscal year 2018.

In addition, the legislation would increase funding for the Byrne-Justice Assistance Grant program (+26 million) and the *Violence Against Women Act* (+\$1 million). The bill would provide level funding (\$225.5 million) for the Community Oriented Policing Services (COPS) program; within the COPS account, the bill specifies several carve outs, the effect of which would reduce the amount of funding available for core hiring grants.

With regard to the *Victims of Crime Act* (VOCA), the legislation would provide \$2.6 billion for victim services programs authorized under the law. The proposed funding level represents a \$1.8 billion reduction when compared to the FY18 omnibus, which set the VOCA cap at an all-time high of \$4.4 billion. It should be noted that the House bill's funding level for VOCA is more on par with the FY17 enacted budget (and is \$300 million more than the amount recommended by the Trump administration in its budget proposal).

Like the Energy and Water spending bill, the House CJS measure is accompanied by Report language that addresses California water policy. Specifically, the Report directs the secretary of Commerce, acting through NOAA, to consult with the Bureau of Reclamation and FWS to immediately implement authorities provided under the *WIIN Act* in order to provide maximum water supplies to the CVP and SWP. Under the Act, the Interior and Commerce departments are required to increase water deliveries from the Delta above the maximum rate allowed under the applicable biological opinion to capture high flows during storm events for South-of-the-Delta water contractors.

Transportation-HUD

The full House Appropriations Committee is slated to consider the fiscal year 2019 Transportation-Housing and Urban Development (HUD) spending measure on May 23. In total, the legislation reflects an allocation of \$71.8 billion in discretionary spending – \$1.5 billion above the fiscal year 2018 enacted level and \$23.8 billion above the Trump administration's request.

Pursuant to the spending package, \$46 billion from the Highway Trust Fund would be available for the Federal-aid Highway program, which is \$1 billion above the fiscal year 2018 level and on par with the funding authorized by the *Fixing America's Surface Transportation* (FAST) Act. In addition, the bill would provide an extra \$4.25 billion in discretionary highway funding – a total increase of \$2.76 billion for roads and bridges over current spending.

The measure also would provide \$750 million for the multimodal BUILD program (formerly known as TIGER grants), or a 50 percent cut in funding. The bill includes language to ensure a balanced allocation of BUILD program funding among rural, suburban, and urban areas, while \$250 million would be set aside for port projects.

With regard to community planning and development, the measure includes \$7.6 billion for various HUD activities and programs, or \$115 million below the fiscal year 2018 enacted level. The bill would fund the Community Development Block Grant (CDBG) program at \$3.3 billion, equal to the fiscal year 2018 spending level. Additionally, the legislation would provide \$1.2 billion for the HOME Investment Partnerships Program, which represents a \$162 million cut.

Homeless Assistance Grants would be slated for an increase under the House bill, with the program receiving \$2.5 billion (+\$33 million). The measure includes language targeting the

funding to address geographic areas that have seen an increase in homelessness and to provide assistance to victims of domestic violence.

WRDA Reauthorization

The Senate Environment and Public Works (EPW) Committee recently approved a bipartisan water infrastructure bill (S 2800). The legislation, entitled *America's Water Infrastructure Act of 2018*, would authorize a host of flood control, navigation, ecosystem restoration, and other water resources projects under the purview of the U.S. Army Corps of Engineers.

In addition to specific project authorizations, the measure would revamp the process by which the Corps' prepares its budget. Under the bill, the Corps would be required to submit to Congress on an annual basis a five-year budget that includes a work plan for the current fiscal year and a proposed budget for the subsequent four-year period. While Corps headquarters would be responsible for submitting a budget that addresses projects and initiatives of national significance, each district office would be required to provide a plan for projects of regional, tribal, and local significance.

S 2800 also includes provisions designed to increase local and non-federal stakeholder input in the Corps' budgeting process. Additionally, the measure would change cost-sharing rules to allow a state, local government, or private entity that splits the cost of an Army Corps project to be entitled to a partial reimbursement of their contribution if the project comes in under budget.

While the majority of provisions in the Senate's water infrastructure bill pertain to the Corps, the legislation also would make modifications to several key programs that are administered by the Environmental Protection Agency (EPA). For example, the bill would expand authorized activities under the *Safe Drinking Water Act* State Revolving Loan Fund (SRF) to allow states to use up to 10 percent of their SRF capitalization grants to implement source water protection plans.

Additionally, S 2800 would reauthorize the *Water Infrastructure Finance and Innovation Act* (WIFIA). Specifically, the measure would extend the authorization for the WIFIA program – which provides long-term, low-cost supplemental loans for regionally and nationally significant water infrastructure projects – at \$100 million annually for fiscal years 2020 and 2021. Authorized by Congress in 2014, EPA issued its first-ever WIFIA loan earlier this year.

The bill also would authorize two key WIFIA studies. The first study, which would be conducted by the Corps, would require the Secretary of the Army to submit a report to Congress on WIFIA implementation impediments. To date, the Corps' WIFIA program has no published guidance and lawmakers have not appropriated any money for the Corps to launch the program. The study also would need to identify all projects that the secretary determines are potentially viable to receive assistance, as well as identify any legislative amendments or regulatory changes that would improve the secretary's ability to implement the program.

The second study, to be completed by the General Accounting Office, would examine WIFIA projects in small, rural, disadvantaged, and tribal communities. Specifically, the study would need to focus on how EPA can create flexibility under WIFIA for the aforementioned entities, including ways to improve access to assistance under the program.

Across Capitol Hill, the chairman of the House Transportation and Infrastructure (T&I) Committee recently introduced his own WRDA reauthorization measure. The bill is more of a traditional project authorization measure and does not include the budget reforms or other policy provisions found in the Senate version of the legislation.

The T&I Committee is scheduled to mark up its WRDA package on May 23.

Farm Bill Reauthorization

In a defeat for House Republicans, the chamber on May 18 voted down a GOP-sponsored FARM bill reauthorization package (HR 2). Thirty Republicans joined with all Democrats to reject the legislation on a 198-213 vote.

There were several areas of contention on the FARM bill, including disagreements over provisions designed to restrict eligibility for Supplemental Nutrition Assistance Program (SNAP) benefits. Some Republicans, however, voted against the bill due to their ongoing frustration with a lack of action on unrelated immigration legislation.

With regard to SNAP, HR 2 would require all able bodied adults – unless there are children under age six in the household – to be engaged in at least 20 hours of work or work-related activities each week in order to remain eligible for SNAP. The requirement would be effective after the first month of receiving benefits.

The bill also would restrict categorical eligibility to only those individuals receiving Temporary Assistance for Needy Families (TANF) cash assistance or other TANF supports, such as child care. Currently, there are other ways of becoming eligible for SNAP, such as receiving a state assistance program or Supplemental Security Income. Additionally, the proposal would effectively eliminate the use of the standard utility disallowance and instead would require SNAP participants to submit utility bills and would count any Low Income Home Energy Assistance Program benefits when determining SNAP benefits. Given the focus on work, the measure would nearly triple the amount of funding for SNAP Employment and Training programs.

Looking ahead, House Republicans have indicated that they intend to revisit the Farm Bill next month. According to GOP leaders, a second vote on the legislation is planned for June 22.

TANF Reauthorization

Late last week, Republicans on the House Ways and Means Committee introduced a TANF reauthorization bill. The legislation, entitled the *Jobs and Opportunity with Benefits and Services (JOBS) for Success Act of 2018* (HR 5861), is slated to be marked up by the full committee on May 23.

It should be noted that a previously released draft version of the bill included a modified TANF allocation formula that, if approved, would have cut the federal allocation to CalWORKs by 11 percent. After receiving pushback from key California stakeholders, Republicans agreed to drop the provision.

As introduced, HR 5861 would abolish the current process for determining state and county Work Participation Rates (WPR). In its place, the bill would introduce a system that calculates WPRs based on *Workforce Innovation and Opportunity Act* (WIOA) outcome metrics. The measure also would expand the definition of TANF work activities, including allowing individuals to count as work time spent in vocational education for more than 12 months. Additionally, states, upon HHS approval, would be allowed to tap their TANF block grants in order to fund other work activities if the state were to deem the activities to be necessary to move individuals into economic independence.