



Water Infrastructure Funding in the American Recovery and Reinvestment Act of 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). 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. This report identifies funding for water infrastructure programs and projects contained in the legislation.

The legislation directs additional appropriations 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 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 were allocated to states according to established formulas, and states will award actual assistance to projects and communities. For the USDA programs that benefit rural communities, the Recovery Act provides \$1.38 billion in grants and loans; USDA state offices are making 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) for 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 water resource projects received funds was largely left up to the Administration.

Even after enactment, implementation of the additional water infrastructure funding in the ARRA is raising a number of issues, including how general restrictions in the legislation, such as "Buy American" requirements, will affect timely spending of ARRA funds. 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. Congressional committees have held several hearings on use of ARRA water infrastructure funds, and additional oversight is likely during the remainder of the 111th Congress.

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Introduction

In response to a deteriorating national economy and recession, in February 2009 the Congress passed and President Obama signed into law the American Recovery and Reinvestment Act of 2009 (P.L. 111-5). 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. This report identifies funding for water infrastructure programs and projects included in the bill. The legislation directs additional appropriations 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 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)

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

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 received 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 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 on the legislation, both supporters and critics favored more infrastructure spending, with some 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.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

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

² In late 2008, state and local water agencies 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 Stimulus Bill," <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 Recovery Act provides an additional \$4.0 billion for clean water SRFs and \$2.0 billion for drinking water SRFs. Total stimulus funding for the two SRF programs is 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.

The CWA and SDWA allow states to make low-interest or no-interest loans from the SRF. The Recovery Act allows 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.⁶ States are to use 50% of the capitalization grant to provide additional subsidization. In addition, 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).⁷

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,⁸ 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.⁹ Based on those formulas, **Table A-1** in the Appendix to this report shows amounts that states were eligible to receive under the funding levels in the bill. The table reflects that, before funds were distributed to states, 1.5% was 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 was reserved for program oversight by EPA and remains available for the agency's use through

⁶ The SDWA already allows principal forgiveness for assistance provided to economically disadvantaged communities.

⁷ ARRA omits provisions from the House-passed bill that would have required that 80% of capitalization grant funds go to municipalities that meet state affordability criteria. Under the existing SDWA SRF program, states use affordability criteria to determine whether a community is economically disadvantaged.

⁸ For information, see CRS Report RL31073, *Allocation of Wastewater Treatment Assistance: Formula and Other Changes*, by Claudia Copeland.

⁹ See http://www.epa.gov/safewater/dwsrf/allotments/funding_dwsrf_allotments_2008.html.

September 30, 2011. States award SRF assistance to projects 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 was 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 do not identify wastewater and drinking water projects that will be funded, because states will be making those decisions, not EPA. Under the legislation, 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.

Other general provisions concerning timing that had been included in House-passed H.R. 1 were omitted from the final version. 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.

Another general provision of ARRA, 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%.

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.¹⁰ Funding needs in rural areas are high (at least \$50 billion, according to EPA surveys), and there is heavy demand for funds. At the end of FY2007, USDA reported a \$2.4 billion backlog of requests for 928 water and wastewater projects. The Recovery Act also provides additional appropriations for these programs totaling \$1.38 billion (\$968 million in grants and \$412 million in direct loans). 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 above, would also apply to these USDA funds.

¹⁰ For information, see CRS Report 98-64, *Rural Water Supply and Sewer Systems: Background Information*, by Claudia Copeland.

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's Water and Sewer Authority to continue its long-term program to remediate sewerage overflow problems 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.

ARRA 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. ARRA provides \$150 million for EDA grants. Regular FY2009 funding, enacted in March after ARRA, was \$133 million, and FY2010 funding is \$158 million.

ARRA also includes \$1.0 billion for the Community Development Block Grant (CDBG) program administered by the Department of Housing and Urban Development (HUD). 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 was \$3.6 billion, and FY2010 funding is \$3.99 billion.

Discussion

The infrastructure funding provisions of the Recovery Act 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.¹¹ 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.

As noted, the EPA SRF provisions of the legislation allow states to provide subsidization in the form of principal forgiveness, negative interest loans, grants, or a combination. Traditionally, SRF

¹¹ 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.

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.

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.¹² 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 decided 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 developed supplemental project priority lists (especially where projects to meet the law's green infrastructure project reserve had not previously been identified).

As of December, EPA had awarded nearly all of the \$6.0 billion in clean water and drinking water SRF capitalization grants to states, the District of Columbia, Puerto Rico, and one Territory. States, in turn, are beginning to award funds to specific projects, and local governments to enter into contracts. But actual outlay of funds is slow: as of November, about 30% of clean water SRF and 17% of drinking water SRF funds were reported to be under contract. In reaction, federal officials and Members of Congress have begun to raise concern about the ability of states to have all funds under contract or construction by February 17, 2010, as required by ARRA, or EPA will be required to reallocate remaining funds.

Both OMB and EPA 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 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.¹³ EPA has issued four nationwide "Buy American" waivers based on the ARRA's public interest provision, as well as more than two dozen project-specific waivers because U.S.-made products meeting specifications

¹² James A. Hanlon and Cynthia O. Dougherty, "Award of Capitalization Grants with Funds Appropriated by P.L. 111-5, the 'American Recovery and Reinvestment Act of 2009,'" memorandum, March 2, 2009. http://www.epa.gov/water/eparecovery/docs/604bARRA_guidance_memo_FINAL.pdf

¹³ James A. Hanlon and Cynthia O. Dougherty, "Implementation of the Buy American provisions of P.L. 111-5, the 'American Recovery and Reinvestment Act of 2009,'" memorandum, April 28, 2009. http://www.epa.gov/water/eparecovery/docs/04-29-2009_BA_waiver_process_final.pdf

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, 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. 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.¹⁴ But many policymakers 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 January 2010, USDA has obligated 56% 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 were responsible for selecting and administering the \$150 million in ARRA funds that EDA received (which is the normal process for that agency), and as of September 30, EDA had awarded all of these funds. Finally, HUD, which received \$1.0 billion in ARRA CDBG funds, announced allocation of the funds in March to approximately 1,200 state and local governments; as of December 2009, grantees have spent less than 8% of the total.

Congressional committees have held several hearings on implementation of the Recovery Act. At the time of the legislation’s enactment, the chairman of the House Transportation and Infrastructure Committee sent letters to governors requesting that they provide specific certifications and accountability information regarding ARRA-funded projects. On April 29, July 31, and November 4, the committee held hearings on implementation of the legislation’s water infrastructure funding provisions, receiving testimony from EPA, EDA, the Army Corps of Engineers and others within that committee’s jurisdiction on steps to disburse funds to states and award assistance to specific projects. Other committees that have begun oversight activities include the House Natural Resources Committee (see discussion below) and the House Science and Technology Committee which, among other topics, has investigated how government agencies are ensuring transparency and accountability for Recovery Act spending.

At the April hearing of the Transportation and Infrastructure Committee, the EPA Inspector General (IG) testified that EPA and its grantees will be challenged to spend the Recovery Act funding in a timely manner, as required by the legislation. The IG also observed that, because Recovery Act-funded grants do not require a match by the recipient and the law includes

¹⁴ Guy Saint-Jacques, Deputy Head of Mission, Embassy of Canada to the United States, Address to the 2009 National Clean Water Policy Forum, May 4, 2009.

provisions for loan forgiveness, there is risk of fraud, waste, and abuse that EPA will need to monitor closely.¹⁵ In December, the EPA IG issued a report that faulted EPA management for not establishing procedures or specific actions to identify states at risk of not meeting the February 17, 2010, statutory deadline to have ARRA-funded wastewater and drinking water projects under contract. At the November hearing, Members officials expressed concern about the ability of some states to meet the deadline, noting that a few states had reported no progress in awarding funds to specific wastewater projects. EPA officials acknowledged the concern, but said that the agency is working to help states, so as to avoid having to reallocate funds. Many states are challenged by the Buy American and “green infrastructure” requirements of the law, according to EPA.

Water Resources

The federal government has a long history of involvement in water resource development projects, such as dams, levees, coastal protection, and navigation works, to facilitate navigation, expand irrigated agriculture, and reduce flood losses. More recently, Congress has authorized and funded federal projects and programs to restore aquatic ecosystems, develop water recycling projects, and construct western rural water supply projects.

At the federal level, these activities are principally the responsibility of two agencies. Under its civil works program, the U.S. Army Corps of Engineers (Corps, Department of Defense) constructs and operates primarily navigation, flood, coastal protection, and aquatic restoration throughout the country. The Bureau of Reclamation (Reclamation, Department of the Interior) is authorized to construct and manage multi-purpose projects serving irrigation, municipal and industrial water supply, flood control, power production, and recreation purposes in the 17 western states.¹⁶ Congress provides appropriations to support these activities through annual Energy and Water Development appropriations bills.

The economic recovery legislation provides supplemental funding above regular appropriations for the Corps, Reclamation, and other water resources activities at the Department of Agriculture’s Natural Resources Conservation Service (NRCS) and the Department of State’s International Boundary and Water Commission (IBWC). A general provision in section 1602 of the enacted bill, which applies to all these water resources activities, states that preference should be given to activities that can start and finish quickly, with a goal that at least 50% of the funds go to activities initiated within 120 days of enactment.

Corps of Engineers Projects

P.L. 111-5 provides a total of \$4.6 billion for the Corps. All of the funds go toward Corps civil works activities, however, some of the funds are directed toward activities other than federal water resources projects—\$25 million for the Corps regulatory program and \$25 million for the

¹⁵ U.S. Environmental Protection Agency, Office of Inspector General, *EPA Action Needed to Ensure Drinking Water State Revolving Fund Projects Meet the American Recovery and Reinvestment Act Deadline of February 17, 2010*, Audit Briefing Report No. 10-R-0049, December 17, 2009.

¹⁶ For more information, see CRS Report R40180, *Water Resources Issues in the 111th Congress*, coordinated by Betsy A. Cody.

Formerly Utilized Sites Remedial Action Program (FUSRAP), a program to investigate and clean up or control sites that were part of the early atomic energy and weapons program. The legislation also reserves \$200 million for water-related environmental infrastructure projects, which are projects more similar to the municipal water and wastewater systems previously discussed, than the Corps' primary flood, navigation, and aquatic restoration missions.¹⁷

P.L. 111-5 directs that the ARRA funds be used for either entire projects, programs, or activities, or elements of those. It states that funds are directed to activities that can be completed with the stimulus funds, and that do not create future budgetary obligations. It also states that funds shall only be used for programs, projects, or activities that "heretofore or hereafter" receive funds provided in Energy and Water Development appropriations acts.¹⁸ P.L. 111-5 authorizes unlimited reprogramming authority for Corps funds provided under the legislation. It requires quarterly reports to the House and Senate Appropriations Committees on the allocation, obligation, and expenditure of the funds.

Bureau of Reclamation Projects and Programs

ARRA provides a total of \$1.0 billion for Reclamation projects and programs. The law directs that the funds be used for projects, programs, or activities that can be completed with these funding amounts, and that do not create future budgetary obligations. It also authorizes unlimited reprogramming authority for Reclamation funds provided under the legislation.

Of the total ARRA funds for Reclamation, P.L. 111-5 provides \$126 million for water reclamation and reuse projects (Title XVI projects, which typically treat municipal wastewater for reuse rather than discharge or desalinate brackish groundwater or seawater). The law also provides \$50 million for projects under the Central Utah Project Completion Act, \$50 million for California Bay-Delta projects, \$60 million for rural water projects, and \$10 million for inspection of canals in urbanized areas, amounts that were proposed by the Senate.

The Recovery Act also authorizes Reclamation to extend up to 50 years, with interest, the timeframe for water supply customers to repay the U.S. government for extraordinary maintenance and replacement of facilities. Short repayment times for major maintenance and rehabilitation projects have been of great concern to Reclamation water users in recent years, and are a growing concern as existing infrastructure ages. In the earlier House and Senate versions of the bill, Reclamation would have been authorized to extend repayment up to 25 years without interest.

Agricultural Watershed Programs

Under several small watershed programs, NRCS provides technical advisory services and financial assistance (partial grants) to state and local organizations to plan and install measures to prevent erosion, sedimentation, and flood damage to conserve, develop, and utilize land and

¹⁷ For information on Corps environmental infrastructure projects, see CRS Report RL30478, *Federally Supported Water Supply and Wastewater Treatment Programs*, coordinated by Claudia Copeland.

¹⁸ This statutory language may indicate that not only may projects previously funded be eligible for stimulus funds, but also activities funded in subsequent legislation, such as regular FY2009 appropriations legislation, which Congress enacted in March 2009 (P.L. 111-8), after enactment of the ARRA.

water resources. The programs fund land treatment, and nonstructural and structural facilities for flood prevention, erosion reduction, agricultural water management, public recreation development, fish and wildlife habitat development, and municipal or industrial water supplies. Structural measures can include dams, levees, canals, pumping plants, and other facilities.¹⁹ Agricultural watershed programs have existing formulas for allocating program funding. Factors considered include risk to life, flood damage reduction, water conservation, water quality, and erosion control, to name a few.²⁰

P.L. 111-5 provides ARRA funding for three agricultural watershed programs. One is Watershed and Flood Prevention Operations, used to design and build flood prevention, water quality improvement, and similar projects. The enacted legislation provides \$290 million divided in half, with \$145 million for Watershed and Flood Prevention Operations and \$145 million to purchase and restore floodplain easements through the Emergency Watershed Protection program. Under a floodplain easement, a landowner voluntarily offers to sell NRCS a permanent conservation easement that provides NRCS with full authority to restore and enhance the floodplain's functions and values. The third program is Watershed Rehabilitation, which rehabilitates dam projects previously constructed with NRCS assistance that have reached the end of their engineering design life. P.L. 111-5 provides \$50 million for these activities. This amount is equal to 4.5 times the appropriations for these NRCS activities in FY2009 (which were enacted in March 2009). ARRA requires that spending be used to fully fund projects that can be completed and allocated to projects that can be commenced promptly. The conference report, H.Rept. 111-16, provides further direction to USDA on prioritization of the funds.

International Boundary and Water Commission Projects

The Recovery Act includes \$220 million for the International Boundary and Water Commission for its water quantity program. The bill directs that IBWC use the funds for immediate repair and rehabilitation requirements. The four projects specified to receive the funds (Rio Grande Flood Control System, Safety of Dams, Colorado Boundary; and Capacity Preservation) are for flood damage reduction infrastructure upgrades (i.e., levee improvements and dam safety measures).

Discussion

Unlike some of the other water infrastructure activities funded in the legislation (including the EPA wastewater and drinking water programs discussed previously), little was publicly known about how most of the water resources funds would be distributed when P.L. 111-5 was enacted. Generally, formulas are not used to distribute funds to the Bureau of Reclamation and Corps of Engineers. Instead, Congress typically, in either the text or report language of appropriations bills, distributes most of the appropriated funds across individual Corps and Bureau projects or programs, or the distribution is delegated to the agency. In contrast, P.L. 111-5 and the conference report (H.Rept. 111-16) list broad prioritization criteria and identified several broad categories in which it expects the agencies to allocate funds. Until the Administration notified Congress on

¹⁹ For information, see CRS Report RL30478, *Federally Supported Water Supply and Wastewater Treatment Programs*, coordinated by Claudia Copeland.

²⁰ These formulas are established by NRCS and are made publicly available through its website. For the NRCS FY2009 fund allocation formulas and methodologies, see http://www.nrcs.usda.gov/programs/pdf_files/2009_Allocation_Formulas.pdf.

how it chose to distribute the funds (discussed below), it was largely unknown which projects would be funded and how much assistance each state would receive.

Implementation and Oversight

Water resources projects often involve complicated planning and construction efforts that span multiple years; whether federal water resources agencies, and their contracting officers in particular, will be able to obligate and expend stimulus funds in a timely, yet transparent and efficient manner depends on many factors. The amounts in P.L. 111-5 represent roughly 80% of the typical annual Corps appropriations,²¹ 80% of the typical Reclamation appropriations, and 4.5 times current annual agricultural watershed funding.

Army Corps of Engineers

The Corps released its list of projects to receive ARRA funds on April 28, 2009, and subsequently made multiple updates to the list.²² Of the \$4.6 billion directed to the Corps, the Administration distributed \$4.4 billion across 1,182 water projects in 49 states and nine FUSRAP sites; it also reserved \$200 million in order to cover cost contingencies for these projects.

According to the Corps, the Administration arrived at its list of projects using the criteria in P.L. 111-5 and its conference report; it also limited the set of eligible projects to those that were consistent with long-standing executive branch policy as well as policy established for distributing ARRA funds. This meant that only those projects that had been reviewed by the Assistant Secretary of the Army (Civil Works) and approved by the Office of Management and Budget were considered. For example, beach nourishment projects, which place sand on beaches to reduce property damage from coastal storms, were not included in the Administration's list. Budget requests under the Bush Administration had not supported beach nourishment projects. Congress, however, stated in Section 2018 of WRDA that it is the policy of the United States to promote beach nourishment. There has been criticism by some Members of Congress and other stakeholders regarding the exclusion of beach nourishment projects from the ARRA list and also regarding the project list's exclusion of all "new starts," including those authorized by Congress in the Water Resources Development Act of 2007 (WRDA, P.L. 110-114).

On April 29, July 31, and November 4 the House Transportation and Infrastructure Committee held oversight hearings that included testimony on Corps ARRA implementation. At the second hearing, concerns were raised about Corps projects not moving as quickly as hoped. At the November hearing, Corps officials reported to the Subcommittee on Water Resources and Environment that the Corps had obligated \$2.3 billion (52% of its ARRA funds), outlaid \$428 million, and completed eight projects.²³ The bids for Corps ARRA contracts are lower than

²¹ For the Corps, contracting for the civil works stimulus is occurring concurrently with significant contracting for its domestic and international military operations, including contracts related to defense base closures.

²² For a list of how the ARRA funds are distributed across the projects, see <http://www.usace.army.mil/recovery/Pages/Projects.aspx>. For a map of where the ARRA projects are located, see <http://www.usace.army.mil/recovery/Pages/ProjectLocations.aspx>. Corps projects receiving ARRA funds are located in 49 states; according to the Corps, Wyoming had no eligible projects (see Frequently Asked Questions and Answers, ARRA of 2009 at <http://www.usace.army.mil/recovery/Pages/FAQ.aspx>).

²³ Oral testimony Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works), before the House Transportation and Infrastructure Subcommittee on Water Resources and Environment, at the Hearing on Recovery Act: Progress Report (continued...)

anticipated; consequently, this may allow for ARRA funds to be reassigned to additional projects.²⁴ The Corps estimates that its ARRA funds directly support 50,000 jobs and that 75% of contract actions have been awarded to small businesses.²⁵ At a June 18, 2009, hearing on the FY2010 budget request by the Senate Appropriations Subcommittee on Energy and Water Development, concern was expressed regarding the selection of the Corps projects by the Administration for the FY2010 budget request and ARRA funds.

Bureau of Reclamation

Reclamation announced its first outline of projects to be funded under ARRA on April 15, 2009.²⁶ The agency announced that a total of \$945 million in funding would be awarded to projects in six program areas—meeting future water supply needs (\$450.9 million); infrastructure reliability and safety (\$164.6 million); environmental/ecosystem restoration (\$236.3 million); green buildings (\$13.5 million); water conservation challenge grants (\$40.0 million); and emergency drought relief \$40.0 million. An additional \$50 million will be transferred to the Department of the Interior’s Central Utah Project Completion Act effort, and \$5 million will be set aside for management and oversight.

The House Natural Resources Water and Power Subcommittee held an oversight hearing on Reclamation ARRA funding on April 28, 2009. Several Members of Congress and witnesses questioned why there was not more emergency drought funding, while others questioned a perceived high level of spending on environmental and ecosystem restoration projects. In response, the Reclamation witness noted that much of the environmental/ecosystem spending could be directly or indirectly tied to water supply reliability and that drought projects had not been fully identified.²⁷ Other witnesses were pleased with the funding levels, particularly supporters of Title XVI projects. Remaining questions at the hearing explored which reuse, drought, and conservation projects may receive future funding and how the FY2010 budget request would complement ARRA funding.

Of the \$450.9 million for water supply needs, the Department of the Interior announced on July 1, 2009, that \$134.3 was designated for 27 projects authorized under Reclamation’s water reuse authority, commonly known as the Title XVI program. Twenty-six of those listed are in

(...continued)

on Water Resource Infrastructure Investment, on November 4, 2009, available at <http://transportation.house.gov/hearings/hearingDetail.aspx?NewsID=1037>

²⁴ Ibid.

²⁵ Testimony Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Words), before the House Transportation and Infrastructure Subcommittee on Water Resources and Environment, at the Hearing on Recovery Act: Progress Report on Water Resource Infrastructure Investment, on November 4, 2009, available at <http://transportation.house.gov/Media/file/water/20091104/Darcy%20Testimony.pdf>.

²⁶ See <http://recovery.doi.gov/press/bureaus/bureau-of-reclamation/summary-of-projects/#meeting>. The evaluation and selection criteria used by Reclamation in developing the list is summarized at http://recovery.doi.gov/docs/bor/project_criteria.pdf.

²⁷ Of particular note among the environmental projects was \$109 million for a Red Bluff (CA) fish passage facility within Reclamation’s Central Valley Project, which received widespread and bipartisan support. The project represents nearly one-third of the environmental and ecosystem ARRA funding outlined by Reclamation; according to Reclamation, the project will help facilitate the delivery of water supplies elsewhere in the CVP service area.

California; the one New Mexico project identified in the July 1 list received \$2.5 million in ARRA funds. Another \$200 million will be used for authorized rural water supply projects.²⁸

Since the July 2009 allocation announcement, Reclamation has funded numerous projects. According to Reclamation, regional funding ranges from \$28.3 million for the Upper Colorado Region to \$260 million for the Mid-Pacific Region (California and Klamath River Basin).²⁹

Agricultural Watershed Programs

On April 6, 2009, NRCS allocated \$45 million of the \$50 million provided for the Watershed Rehabilitation Program to selected projects. NRCS obligated \$17.8 million in FY2009 and is expected to obligate the remaining \$32.2 million in FY2010. Overall the funding was distributed to rehabilitate 26 aging flood control structures in 12 states.

NRCS announced the allocation of \$84.8 million on April 16 and \$42.3 million on June 2 of the original \$145 million for selected projects within the Watershed and Flood Prevention program. This funded a total of 81 previously authorized, but unfunded, projects in 47 states and U.S. territories, and reduced a backlog of almost 300 projects worth approximately \$1.3 billion.³⁰ NRCS reports allocating most all of the original \$145 million to 36 states to fund floodplain easements under the Emergency Watershed Program (EWP). The application period closed in April of 2009 and offers to purchase easements were sent to landowners in July of 2009. Approximately 35,000 acres are expected to be enrolled as floodplain easements by September 2010. Of the total \$290 million provided for Watershed and Flood Prevention and floodplain easement under EWP, \$120 million was obligated in FY2009 and \$170 is expected to be obligated in FY2010.

International Boundary and Water Commission Projects

On March 9, 2009, the Department of State released a list of IBWC levee projects (without funding levels for each project) to receive the ARRA funds.³¹ By November, IBWC had awarded contracts or begun construction on a number of projects identified on the list, especially for rehabilitation of portions of the Lower Rio Grande Flood Control Project in Texas.³² With ARRA and other prior year appropriations, construction for the highest priority IBWC levees is anticipated to be completed by September 2011.

²⁸ For information on these projects and selection criteria, see <http://recovery.doi.gov/press/bureaus/bureau-of-reclamation/summary-of-projects/>.

²⁹ For a breakdown of project funding by region, see <http://recovery.doi.gov/press/bureaus/bureau-of-reclamation/#releases>.

³⁰ For exact agricultural watershed project locations, see <http://www.usda.gov/recovery/map/>.

³¹ For the project list, see <http://www.state.gov/recovery/communications/120222.htm>.

³² For weekly Department of State reports on ARRA financial activity, see <http://www.state.gov/recovery/>.

Concluding Thoughts

ARRA provides emergency supplemental appropriations for FY2009 and FY2010 for a number of existing federal programs.³³ ARRA was unusual in many respects, including the fact that the FY2009 supplemental funds in the legislation were enacted before resolution of the regular FY2009 appropriations for most agencies, which were contained in a full-year omnibus appropriations bill that the President signed on March 11, 2009 (P.L. 111-8). The regular FY2009 appropriations for water infrastructure programs provided in that legislation were about the same as in FY2008.

As described in this report, some of the water infrastructure funds included in the Recovery Act represented a significant increase above recent program funding levels—for some, from three to four times higher than the FY2009 amount. Many infrastructure stakeholder groups then urged Congress to sustain similar high levels in regular appropriations in FY2010 and beyond, because infrastructure projects typically involve outlays over multiple years. They argued that individual project planning and implementation would be disrupted if federal assistance is uneven or unpredictable, very large one year and much lower the next year. But because the infrastructure funds in P.L. 111-5 are to be available for obligation through FY2010 and will be spent out over several years,³⁴ some policymakers argued that it would not be necessary to appropriate increased levels for these programs in FY2010.

Still, with Administration support in the FY2010 budget request, regular FY2010 appropriations for the water infrastructure programs discussed in this report, which were enacted later in 2009, were for the most part slightly higher than regular FY2009 appropriations, but generally not as large as the substantial supplemental amounts that agencies received under ARRA. Whether it will be possible to sustain high spending levels for these programs in future years, beyond the period covered by P.L. 111-5, is uncertain because of the significant fiscal challenges that policymakers face, but it is likely that there will continue to be calls for Congress to do that very thing.

³³ By designating the appropriations as emergency spending, the discretionary spending in the bill was not subject to the constraints of the congressional budget resolution (S.Con.Res. 21, 110th Congress) under provisions of the Congressional Budget Act of 1974. For information, see CRS Report RL34711, *Consolidated Appropriations Act for FY2009 (P.L. 110-329): An Overview*, by Robert Keith.

³⁴ For example, the Congressional Budget Office estimated that 55% of the EPA SRF capitalization grant funds in the legislation will be spent in Fiscal Years 2010 and 2011. Only 3% will be spent in FY2009. A total of 79% will be spent between FY2009 and FY2012. Letter from Douglas W. Elmendorf, Director, Congressional Budget Office, to Honorable Nancy Pelosi, Speaker, U.S. House of Representatives, February 13, 2009, <http://www.cbo.gov/ftpdocs/99xx/doc9989/hr1conference.pdf>.

Appendix. State Allocation of EPA Wastewater and Drinking Water Funds in ARRA

Table A-1. State Allocation of EPA Wastewater and Drinking Water Funds in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5)

(Millions of Dollars)

| STATES | CLEAN WATER SRF FUNDS (\$4 BILLION) | DRINKING WATER SRF FUNDS (\$2 BILLION) |
|----------------------|--|---|
| Alabama | \$44.3 | \$19.5 |
| Alaska | \$23.7 | \$19.5 |
| Arizona | \$26.7 | \$55.3 |
| Arkansas | \$25.9 | \$24.5 |
| California | \$283.1 | \$159.0 |
| Colorado | \$31.7 | \$34.4 |
| Connecticut | \$48.5 | \$19.5 |
| Delaware | \$19.4 | \$19.5 |
| District of Columbia | \$19.4 | \$19.5 |
| Florida | \$133.6 | \$88.1 |
| Georgia | \$66.9 | \$54.8 |
| Hawaii | \$30.7 | \$19.5 |
| Idaho | \$19.4 | \$19.5 |
| Illinois | \$179.0 | \$79.5 |
| Indiana | 95.4 | \$27.2 |
| Iowa | \$53.6 | \$24.3 |
| Kansas | \$35.7 | \$19.5 |
| Kentucky | \$50.4 | \$20.5 |
| Louisiana | \$43.5 | \$27.6 |
| Maine | \$30.6 | \$19.5 |
| Maryland | \$95.7 | \$26.8 |
| Massachusetts | \$134.4 | \$52.2 |
| Michigan | \$170.2 | \$67.5 |
| Minnesota | \$72.8 | \$35.1 |
| Mississippi | \$35.7 | \$19.5 |
| Missouri | \$109.7 | \$37.9 |
| Montana | \$19.4 | \$19.5 |
| Nebraska | \$20.2 | \$19.5 |
| Nevada | \$19.4 | \$19.5 |

| STATES | CLEAN WATER SRF FUNDS (\$4 BILLION) | DRINKING WATER SRF FUNDS (\$2 BILLION) |
|--------------------------|--|---|
| New Hampshire | \$39.6 | \$39.5 |
| New Jersey | \$161.8 | \$43.2 |
| New Mexico | \$19.4 | \$19.5 |
| New York | \$436.9 | \$86.8 |
| North Carolina | \$71.4 | \$65.6 |
| North Dakota | \$19.4 | \$19.5 |
| Ohio | \$222.9 | \$58.5 |
| Oklahoma | \$32.0 | \$31.5 |
| Oregon | \$44.7 | \$28.5 |
| Pennsylvania | \$156.8 | \$65.7 |
| Rhode Island | \$26.6 | \$19.5 |
| South Carolina | \$40.6 | \$19.5 |
| South Dakota | \$19.4 | \$19.5 |
| Tennessee | \$57.5 | \$20.2 |
| Texas | \$180.9 | \$160.7 |
| Utah | \$20.9 | \$19.5 |
| Vermont | \$19.4 | \$19.5 |
| Virginia | \$81.0 | \$20.8 |
| Washington | \$68.8 | \$41.8 |
| West Virginia | \$61.7 | \$19.5 |
| Wisconsin | \$107.0 | \$37.8 |
| Wyoming | \$19.4 | \$19.5 |
| American Samoa | \$3.6 | \$0.5 |
| Guam | \$2.6 | \$2.1 |
| Northern Mariana Islands | \$1.7 | \$1.8 |
| Puerto Rico | \$51.6 | \$19.5 |
| Virgin Islands | \$2.1 | \$2.0 |
| TOTAL | \$3,909.0 | \$1,950.0 |

Source: EPA (http://www.epa.gov/recovery/docs/Final_SRF_eco_recovery_allotments.pdf)

Note: Individual state allocations and totals reflect the fact that under the legislation, before funds are allocated to states, 1.5% was reserved for EPA to provide assistance to Indian Tribes, consistent with current law. Also, an additional 1.0% was reserved from the combined funds for program oversight by EPA, for a total of 2.5% in reserved funds.

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