



NACo Legislative Analysis

U.S. Senate Water Resources and Clean Drinking Water Authorization Drafts

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U.S. SENATE UNVEILS BIPARTISAN DRAFTS OF WATER RESOURCES AND CLEAN DRINKING WATER AUTHORIZATIONS

NACo Analysis: *The America's Water Infrastructure Act of 2020 and the Drinking
Water Infrastructure Act of 2020*
May 4, 2020

Introduction

On April 21, the U.S. Senate Committee on Environment and Public Works (EPW) [unveiled bipartisan draft texts](#) of a \$17 billion water resources reauthorization bill, the [America's Water Infrastructure Act of 2020](#) (AWIA 2020), as well as a separate \$2.5 billion clean drinking water authorization, the [Drinking Water Infrastructure Act of 2020](#) (DWIA). As major owners, users and regulators of water resources and systems with the responsibility for funding 95 percent of all local public water infrastructure needs, counties and other local governments are directly impacted by the policies and funding authorized under both pieces of legislation. Counties invest \$134 billion annually in the construction of infrastructure and the maintenance and operation of public works, including public water systems and water infrastructure projects.

Historically, Water Resource Development Act (WRDA) legislation, commonly referred to collectively as WRDA, authorizes water resource studies and projects and sets policies for navigation, flood control, hydropower, recreation, water supply and emergency management for the U.S. Army Corps of Engineers (Army Corps). This legislation is often passed on a biennial basis and addresses county interests related to ports, inland waterways, levees, dams, wetlands, watershed and coastal restoration. Each 2014, 2016 and 2018 water resource bill was enacted into law, and lawmakers are expected to consider and pass AWIA 2020 this year in the same bipartisan fashion.

The most recent water resources law [P.L. 115-270](#), the *America's Water Infrastructure Act of 2018* (AWIA 2018), is set to expire on September 30, 2020. Congress must either extend AWIA 2018 or pass another authorization for projects prior to its expiration.

In addition to water resource projects, AWIA 2018 authorized clean drinking water programs, which are also set to expire at the end of FY 2020. EPW's DWIA draft, if enacted, would further amend [P.L. 93-523](#), the *Safe Drinking Water Act* (SDWA) and build onto progress made in AWIA

2018. Unlike AWIA 2018, however, lawmakers in the 116th Congress have decided to separate water resources and clean drinking water bills. DWIA would reauthorize clean drinking water programs administered by the U.S. Environmental Protection Agency (EPA).

The dollar amounts provided in AWIA 2020 and DWIA are authorization levels and act as guidance for U.S. House and Senate Appropriations Committees who are ultimately responsible for allocating funds.

The National Association of Counties (NACo) and the 3,069 counties we represent appreciate the leadership of Chairman Barrasso (R-Wyo.), Ranking Member Carper (D-Del.) and all members of the Senate EPW Committee for consistently passing clean, two-year water authorizations. Counties look forward to continuing our work with members in both the U.S. House and Senate to ensure county water priorities are addressed in future water legislation.

View NACo's April 28 comment letter to the EPW Committee that outlines our priorities and key issues for both discussion drafts [here](#).

The America's Water Infrastructure Act of 2020

Background

According to a December 2019 Congressional Research Service [report](#), the Army Corps faces an approximate \$98 billion project backlog. To address this, the draft EPW bill would authorize new Army Corps projects and studies, streamline the regulatory process by setting a two-year goal for the Army Corps to complete feasibility studies for potential projects, reauthorize the Clean Water State Revolving Fund at increased levels for the first time in more than 30 years, increase water storage in the west and build new flood management infrastructure in the Midwest.

As major owners, users and regulators of water resources and systems with the responsibility for funding 95 percent of all local public water infrastructure needs, counties and other local governments are directly impacted by the policies and funding authorized under both pieces of legislation. The EPW Committee utilizes this authorization bill to address challenges facing communities across the country dealing with aging and failing water infrastructure. As a strong intergovernmental partner with the Army Corps, counties rely on the certainty provided by consistent two-year water resource authorizations and appreciate the Corps' work with counties to strengthen local port infrastructure.

As written, AWIA 2020 would require the Army Corps to develop a list of approved projects that can be funded through congressional appropriations and would also provide flexibility to the

Army Corps to recommend funding for projects with lower benefit-to-cost ratios if the project serves small, financially disadvantaged or rural communities. The bill reauthorizes the Water Infrastructure Finance and Innovation Act (WIFIA) program to finance shovel-ready water infrastructure projects and also streamlines the WIFIA application process by requiring only one final rating opinion letter as opposed to the previous requirement of two letters. Finally, among other provisions, it provides an additional \$25 million for technical assistance to combat invasive species.

However, the draft of AWIA 2020 does not include provisions to revise or further unlock the Harbor Maintenance Trust Fund (HMTF). The *Coronavirus Aid, Relief, and Economic Security (CARES) Act*, [P.L. 116-136](#), unlocked the HMTF's annual receipts for use by the Army Corps; however, it did not allow for a full spend down of the fund's balance. Counties support the full expenditure of HMTF collections on dredging and harbor maintenance, while also providing equity for deep draft ports that do not have significant dredging needs by allowing them to use funds for other limited purposes. We also support the revision of NEPA to strengthen the involvement of local government in the federal decision-making process, increase public involvement for local communities, expedite project analysis and make decisions in a timely but effective manner.

Key Legislative Highlights

Reduces red tape: AWIA 2020 would cut red tape by setting a two-year goal for the Army Corps to complete its feasibility studies for potential projects, consistent with the standards issued by the Trump Administration. The bill would direct the Army Corps to share a list of the existing Corps' categorical exclusions for environmental review with other federal agencies and direct those federal agencies to conduct a rulemaking process if they determine that it is appropriate to adopt similar categorical exclusions.

Counties support implementing measures that would eliminate regulatory impediments on local and state sponsored federal aid projects to achieve our shared goals of strengthening infrastructure networks, improving public safety and advancing our economic competitiveness.

Funds waterways management: The AWIA 2020 draft would help deepen and dredge specific ports, maintain the navigability of inland waterways and support our nation's global economic competitiveness.

Counties believe that a vibrant waterway transportation system is vital to our economy and provides our nation with the ability to meet the needs of the shipping public.

Increases water storage: AWIA 2020 would increase water storage in the West and build new flood management infrastructure in the Midwest. The draft would also fix aging dams and irrigation systems and upgrade wastewater systems across the country.

Counties recognize the threat posed to the health and safety of our nation as it faces a crucial time of aging and crumbling water and wastewater infrastructure and an increased risk for both natural and human-made disasters. Counties call for a reliable, long-term and substantially increased federal investment in water infrastructure, watershed protection and the protection of water resources and facilities from physical and chemical security threats.

Provides technical assistance to rural, small and tribal municipalities: AWIA 2020 would increase authorizations for technical assistance and training grant programs at the U.S. Environmental Protection Agency (EPA) for purposes of providing technical and financial assistance to these communities.

Counties believe that the federal government should be responsible for supporting or conducting research, setting general standards, developing policies and providing guidance and financial and technical assistance, while recognizing the need for flexibility and regional differences.

Reduces harmful air pollution emissions: The AWIA 2020 draft would seek to reduce harmful air pollution emissions at ports and wastewater treatment facilities through improved energy technologies and increased energy efficiency.

Counties support a reduction of emissions for sulfur dioxide, nitrogen oxides and mercury from power generators. NACo also supports significant reductions from other major sources.

Authorizes funding for a variety of programs important to counties: The AWIA 2020 legislation would establish and authorize several other programs that provide funding for counties to address an array of water resources and infrastructure needs, such as the:

- **Water Infrastructure Finance and Innovation Act (WIFIA):** The measure would authorize WIFIA at \$50 million per year for FY 2022 and FY 2023.
- **Clean Water State Revolving Loan Fund (CWSRF):** AWIA 2020 would reauthorize the CWSRF and increase its authorization to \$3 billion over three years. The increase would be incremental: \$2 billion for FY 2021, \$2.5 billion for FY 2022 and \$3 billion for FY 2023. The CWSRF provides communities low-cost financing for a wide range of water quality infrastructure projects.

- **New Wastewater Infrastructure Discretionary Grant Program:** The bill would create an EPA discretionary grant program for publicly owned treatment works. The new program, authorized at \$50 million annually from FY 2021 through FY 2024, would provide priority funding to systems that need assistance complying with federal regulations and laws, or those that need additional assistance in completing work because of inadequate financing.
- **Harmful Algal Blooms (HABs) Demonstration Program:** The measure would authorize a demonstration program to determine the causes of and how to effectively treat and eliminate HABs within the Great Lakes, Lake Okeechobee, Florida, as well as applicable tributaries. \$25 million is provided to carry out this program.

Counties support the renewal of the Harmful Algal Bloom and Hypoxia Research and Control Act and encourage Congress to direct the EPA to collaborate with other federal agencies to identify nutrient reduction strategies and scalable HAB mitigation processes.

- **Great Lakes Restoration Initiative:** The measure would authorize the Great Lakes Restoration Initiative (GLRI) at \$375 million in FY 2022. The GLRI funds programs that support the health of the lakes, such as restoring habitat and wetlands, fighting invasive species and limiting stormwater runoff.
- **Non-Federal Implementation Pilot Program:** The bill would extend a pilot program that authorizes non-federal partners to carry out feasibility studies and construction projects for flood risk management, hurricane and storm damage prevention, ecosystem restoration and coastal and inland harbor navigation. This program is set to expire at the end of 2026.

The America's Drinking Water Act of 2020

Background

In addition to WRDA legislation, EPW is also seeking to reauthorize clean drinking water programs this Congress, which were first regulated by the SDWA upon its passage in 1974. The SDWA would be further amended should the AWIA 2020 draft be enacted.

Counties support the goals of the SDWA to provide safe drinking water and believe that the federal government should adopt clear federal policies and regulations that strengthen the intergovernmental partnership by allowing maximum flexibility for state and local governments to implement programs that ensure access to clean drinking water and other critical public health protections.

Counties play a vital role in the administration of the SDWA as both co-regulators and regulated entities under the law, acting as partners with the EPA who is responsible for administering drinking water programs. The SDWA established protective drinking water standards for more than 90 contaminants, including drinking water regulations issued to strengthen public health protections. The EPA estimates that over 92 percent of the population supplied by public water systems have access to drinking water that meets all health-based standards all of the time.

Key Legislative Highlights

Makes public water systems of all sizes eligible for U.S. Environmental Protection Agency (EPA) drinking water grant program during emergencies: DWIA would amend the SDWA to allow for communities, where – as a result of a natural disaster or act of terrorism in another area – there is an unanticipated significant influx of population, to be awarded grants through the EPA’s Drinking Water Infrastructure Risk and Resilience Program (DWIRRP). Currently, only water systems serving 3,300 or more individuals (and that meet additional criteria) are eligible. With the proposed change, “disadvantaged communities or populations of fewer than 10,000 persons” would become eligible for DWIRRP grants during emergencies. Under this program, grants are made available to owners or operators of community water systems for the purpose of increasing the resilience of such community water systems.

Creates new direct discretionary grant program for counties: DWIA would create a new discretionary grant program, authorized at \$50 million annually over FY 2022 through FY 2024, with a waivable local match of 20 percent, to be administered by the EPA for expenditures related to planning, replacing or rehabilitating aging public water system facilities where improvements would facilitate compliance with regulations or significantly improve public health protections (operations and maintenance costs are explicitly prohibited). Counties would be eligible to apply directly to the EPA.

Counties support legislation that provides direct grants to local governments that may be used to address the unique needs of individual communities.

Authorizes emergency appropriations for public water systems: DWIA would restore SDWA’s authority to ensure communities facing drinking water emergencies have access to a fund authorized at \$35 million annually over FY 2021 through FY 2024. This provision would also reauthorize \$15 million per year over FY 2021 to FY 2024 to provide technical assistance to public water systems facing emergencies.

Mandates states use a percentage of Drinking Water State Revolving Loan Fund (DWSRF) for grants: DWIA would require states to use 20 percent of DWSRF funds for capitalization grants

(grants awarded to states to create and maintain state water revolving funds), negative interest loans or for debt purposes, for communities struggling to maintain regulatory compliance. Provisions within the bill would codify the “Buy America” directive for the DWSRF, reauthorize a provision mandating that no less than two percent of the fund be used to provide technical assistance through the EPA and provide \$300 million in grants to states to remediate PFAS and other contaminants for FY 2021. States could then use these grant funds for cleanup at sites that meet certain criteria.

Counties support the DWSRF and other similar funds as supplements to, not substitutes for, direct federal grants. We believe grants and technical assistance should be made available to those small, rural and/or disadvantaged communities that are unable to meet their needs solely with loans. Additionally, counties support federal efforts to study the impacts of PFAS. We encourage Congress and the administration to work closely with state and local governments as directives around this and other contaminants are promulgated.

Reauthorizes the Source Water Petition Program (SWPP) and authorizes counties to act:

DWIA would reauthorize the SWPP, which allows counties and other owners and operators of public water systems to submit a source water quality protection partnership petition to a state at its current level of \$5 million per year over FY 2021 through FY 2024. It would also authorize a county to act on behalf of an unincorporated area should the area so choose.

Expands the Assistance for Small and Disadvantaged Communities Program (SDCP): DWIA would reauthorize the SDCP at \$100 million annually from FY 2022 to 2024 and expand the program by allowing funds to purchase filters that remove contaminants from drinking water systems, for educating consumers on proper maintenance, for replacing degraded water infrastructure and for providing technical assistance. The cost share for county-supported public water systems and other eligible entities is currently 45 percent; however, DWIA would revise this match downward to ten percent and also allow for the match to be waived entirely at the discretion of the EPA administrator.

Creates new competitive grant programs: DWIA would expand the existing Assistance for Small and Disadvantaged Communities program to allow for the use of funds to purchase filters that remove contaminants from public drinking water systems. A section would also create new competitive grant programs, including:

- The State Competitive Grants for Underserved Communities Program, authorized at \$50 million annually over FY 2021 through 2024, to be administered by the EPA, for which a state’s eligibility would be determined by its proportion of underserved communities. These grants will be solely awarded to states that apply directly to the EPA. The EPA is directed to give priority to states with a high proportion of underserved communities.

- A program authorized at \$20 million annually over FY 2021 and FY 2022 to be administered by the EPA that would provide grants to utility or nonprofits that voluntarily connect low-income households to public water systems. Counties that own or operate a public water system that assists or seeks to assist customers with connecting the household to the public water system would be eligible. The application procedures would be determined by the regulatory process and submitted directly to the EPA.

Reauthorizes the Drinking Water Infrastructure Risk and Resiliency Program (DWIRRP): DWIA would also reauthorize the existing DWIRPP at \$10 million per year from 2021 through 2024, an increase of \$6 million annually from current levels. This includes a waivable non-federal share of 10 percent. The EPA awards grants under the DWIRPP for the purpose of increasing the resilience of community water systems with certification deadlines varying based on the size of the population served.

Creates new pilot program to address lead contamination: DWIA would authorize a pilot program at \$10 million under which eligible recipients are public water system operators who have identified through lead mapping that a system has, or is likely to have, lead in at least 30 percent of its service lines.

Counties urge Congress to establish a new, adequate funding source for counties to carry out necessary lead remediation activities beyond the \$10 million pilot program provided for in the draft bill.

Establishes new operational sustainability program for small public water systems: DWIA would provide \$10 million annually over FY 2021 through FY 2024 for a program designed to assist the ability of small public water systems (defined as serving less than 10,000 people and owned by a local government; public corporation; nonprofit; public trust; or cooperative association) to respond to water infrastructure breakdowns through asset management, including the identification of leaks, breaks and other system failures. The program would have a waivable local cost share of 10 percent.

Counties support effective and adequate federal funding to small, rural communities for drinking water treatment facilities.

Creates new grant program for small and disadvantaged communities and mid-size water systems: DWIA would create a new grant program authorized at \$5 million annually from FY 2021 through 2024, for public water systems serving communities between 10,000 and 100,000, to enhance water efficiency, supply and conservation, create desalination facilities,

improve the resiliency of vulnerable water systems and the resiliency of all water systems facing natural hazards.

Counties believe that federal research and grant programs should focus on water reclamation, recycling, reuse and desalination.

Directs EPA to study the accessibility of affordable public drinking water to low-income households: DWIA would authorize \$5 million for the EPA to conduct a study on the prevalence of low-income households who lack access to affordable public drinking water services, with a focus of the study on how to increase access for these populations.

Grants new funding eligibility to county-owned public water systems serving schools: DWIA would make public water systems that service schools and other childcare institutions, including those owned and operated by counties, eligible grant recipients for the Voluntary School and Childcare Lead Testing Grant Program and would also extend the program's authorization through FY 2022 at the current level of \$25 million annually.

Counties support increased federal commitment to fund the repair and rehabilitation of America's non-federal, publicly-owned dams, with priority funding given to structures presenting the highest risk of failure and which present the highest risk to homes, schools, businesses or other important public infrastructure assets.

Reauthorizes and expands the Tribal Drinking Water Program (TDWP): DWIA would reauthorize the TDWP, first established in AWIA 2018 ([P.L. 115-270](#)), at \$50 million annually from FY 2021 through FY 2024. 50 percent of the funds would be divided among projects across the nation while the other 50 percent would be dedicated to 30 projects equally divided between the Missouri River Basin (two projects must go to a reservation serving more than one tribe), Upper Rio Grande River Basin and Columbia River Basin.

Directs EPA to study emerging water technology, creates new grant program: DWIA would direct the EPA to study emerging water technologies that have the potential to enhance the treatment, monitoring, affordability, efficiency and safety of public drinking water systems.

The draft would also establish a new grant program, authorized at \$10 million annually from FY 2021 through FY 2024, with the goal of implementing new or emerging drinking water technologies that enhance the treatment, monitoring, affordability, efficiency and safety of drinking water provided to eligible public water systems, defined as those serving populations of 100,000 or less, or a disadvantaged community. This provision would mandate a waivable 10 percent local match, as well as a grant ceiling of \$500,000.

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ABOUT NACo

The National Association of Counties (NACo) strengthens America's counties, including nearly 40,000 county elected officials and 3.6 million county employees. Founded in 1935, NACo unites county officials to advocate for county government priorities in federal policymaking; promote exemplary county policies and practices; nurture leadership skills and expand knowledge networks; optimize county and taxpayer resources and cost savings; and enrich the public's understanding of county government.

Each year, NACo's Board of Directors, in consultation with over 1,400 county officials on 10 policy steering committees, adopt the association's federal policy priorities. These policy priorities help shape NACo's advocacy efforts on behalf of America's counties.

