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CARDINAL INFRASTRUCTURE

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City of Sparks, NV
Federal Report

Fiscal Year 2019 Appropriations
The President has signed two Fiscal Year (FY) 2019 minibus appropriation packages into law; the first package included funding for Energy and Water Development, Military Construction and Veterans Affairs, and Legislative Branch; the second package, for the Department of Defense and the Departments of Labor, Health and Human Services, and Education.

The Senate passed a funding package for Interior, Environment; Financial Services and General Government; Transportation, Housing and Urban Development; Agriculture, Rural Development, Food and Drug Administration. This package remains in conference and has not been signed into law.

The appropriations package for the Department of Defense and the Departments of Labor, Health and Human Services, and Education included a Continuing Resolution (CR), funding any remaining federal agencies (Homeland Security, Commerce-Justice-Science, and State, Transportation-Housing and Urban Development, Financial Services, Agriculture, and Interior-Environment) through December 7, 2018. This may delay their ability to issue notices of funding opportunity for key grant programs due to the lack of full year funding.

The combined Fiscal Year (FY) 2019 appropriations measure for Energy and Water Development, Military Construction and Veterans Affairs, and Legislative Branch. Key provisions of the appropriations package include:

- $7 billion to the Army Corps of Engineers, an increase of $172 million, which will boost navigation and flood control improvements.
- $276 million for activities related to the electricity grid, including cybersecurity, $28 million above FY 18.
- $2.38 billion for Energy Efficiency and Renewable Energy, $57 million above FY 18.
- $86.5 billion discretionary funding for the Department of Veterans Affairs, an increase of $5 billion from FY 18. This includes funds for new and expanded Mission Act programs, increases in mental health services, modernizing health records systems, and addressing the claims backlog.
- $348 million for opioid treatment and prevention programs and $52 million to continue to implement opioid safety initiatives outlined as part of the Comprehensive Addiction and Recovery Act.
- $7.18 billion for environmental cleanup activities, $23 million above FY 18.
- $1.39 billion in water conservation, reuse, reclamation, and drought activities, including funding for programs authorized in the Water Infrastructure Improvements for the Nation Act of 2016.
- The minibus does not include language from the House bill legislatively repealing the Waters of the United States rule.

The combined funding for the Department of Defense and the Departments of Labor, Health and Human Services, and Education contains a total of $856.9 billion in funding. Key components include:

- $90.1 billion in funding for Health and Human Services – the FY 18 enacted funding was $88.2 billion;
- $71.4 billion in funding for the Department of Education – the FY 18 enacted funding was $70.9 billion;
- $93 million decrease in Department of Labor funding from the $12.2 billion FY 18 enacted level;
- $3.7 billion to fight opioid abuse;
- $400 million increase for certain elementary and secondary education formula grants;
- $160 million for apprenticeships opportunities;
- $2.8 billion in workforce training programs;
- $39.1 billion for the National Institutes of Health - $2 billion more than the FY 18 enacted level.

Opportunity Zones
The Treasury Department and Internal Revenue Service (IRS) proposed rules clarifying what kinds of taxable gains can be deferred from investments in the Opportunity Zone program created by last year's federal tax reform bill. The IRS issued three pieces of guidance pertaining to this announcement: (1) Notice of Proposed Rulemaking; (2) Revenue Ruling; and, (3) and Draft Tax Form 8996 for Investors. Once officially published in the Federal Register, the proposed rule will be open for comments for 60 days. Additional opportunity zone guidance will be issued before the end of the year.

Under the program, an investor who sells an asset and reinvests the gains in a qualifying opportunity fund can defer tax on the gains until Dec. 31, 2026. Also, taxes are forgiven on gains from investments held in opportunity funds for at least 10 years. Even though opportunity zones will keep their designations for 10 years, the proposed regulations provide the chance to hold investments in opportunity funds through 2047 without losing the corresponding tax benefits.

While Treasury said there is a 180-day rule for deferring gains by investing in a qualified opportunity fund (QOF), it will also seek guidance on whether the final regulations should contain exceptions and if it would be helpful to include other guidance to explain how the general 180-day rule works.

The IRS designed the rules for the Opportunity Zone program to give businesses enough flexibility and certainty to start making major investments. As provided for in the proposed rule, an eligible taxpayer (which includes qualified entities) may rely on the rules proposed before the final regulations' date of applicability, but only if the rules are applied in their entirety and in a consistent manner.

This Notice of Proposed Rulemaking and Public Hearing contains proposed regulatory guidance pertaining to Opportunity Zone investments. The notice focuses on the establishment of Qualified Opportunity Funds and clarifies capital gains eligible for deferral. The proposal outlines the different types of capital gains that investors can utilize, the timing of those investments, certification and valuation of Opportunity Funds, and more.

The Revenue Ruling provides guidance on the "original use" requirement for land purchased after 2017 in Opportunity Zones. The ruling provides a mock scenario for investors who might face this scenario. The Draft Tax Form is the proposed tax document investors will utilize to show their investment in a Qualified Opportunity Fund. At this time, the link for the draft form has not yet been published.

Water Infrastructure
Congress passed the America's Water Infrastructure Act of 2018 (WRDA 2018) bill – S.3021. The bill addresses Army Corps operations and projects, water, and wastewater infrastructure. It includes at least $9 billion in authorized money for such projects and initiatives. The bill did include provisions relevant to localities, including requiring the Army Corps to engage with local stakeholders on future and pending projects. It included provisions (section 1152) that will allow projects to move forward with non-federal partners, in order to reduce the backlog of authorized, but not funded, projects.

Most importantly, the bill authorizes $181 million in funding for the Truckee Meadows Flood Control Project. The legislation ensures that the funds can be appropriated in future spending bills for Truckee River Flood Management Authority.

The bill provides $4.4 billion for the Drinking Water State Revolving Fund and makes changes to the Water Infrastructure Finance and Innovation Act (WIFIA) program designed to ease the application process. It would also authorize $100 million over the next two fiscal years to help rebuild drinking water systems in areas where a natural disaster has struck since the beginning of 2017.

The bill includes a Community Water System Risk and Resilience section, which provides that "each community water system serving a population of greater than 3,300 persons shall conduct an assessment of the risks to, and resilience of, its system." The assessment will include:

- Risk to the system from malevolent acts and natural hazards;
- Resilience of the pipes and constructed conveyances, physical barriers, source water, water collection and intake, pretreatment, treatment, storage and distribution facilities, electronic, computer, or other automated systems (including the security of such systems) which are utilized by the system;
- Monitoring practices of the system;
- Financial infrastructure of the system;
- Use, storage, or handling of various chemicals by the system; and
- Operation and maintenance of the system; and;
- May include an evaluation of capital and operational needs for risk and resilience management for the system.

Certification of the assessment is to be submitted by March 31, 2020 (in the case of systems serving a population of 100,000 or more). The community water systems are to then prepare or revise, where necessary, an emergency response plan that incorporates findings of the assessment.

The bill authorizes $25 million for each of FY 2020 and 2021 for the Drinking Water Infrastructure Risk and Resilience Program, for the purpose of increasing the resilience of community water systems. The grant funds are to be used exclusively to assist in the planning, design, construction, or implementation of a program or project consistent with the emergency response plan prepared following the system's assessment (mentioned above).

The bill also funds the Innovative Water Technology Grant Program, intended to accelerate the development and deployment of innovative water technologies that address drinking water supply, quality, treatment, or security challenges of public water systems. The federal share is not to exceed 65%, with a maximum grant amount of $5 million.

FY 2020 President's Budget

The Congressional Budget Office (CBO) published their FY 2018 report on government spending. The 2018 fiscal year produced a $782 billion deficit – a 17% increase from last year. CBO also projected a return to trillion-dollar deficits by 2020. Following the release of this report, the President asked his cabinet to cut their departments' budgets next year by 5%. He said, "I'd like you all to come back with a 5% cut...we'll call it the nickel plan." The President suggested, however, that the Pentagon take a smaller percentage cut.

The President has previously called for cuts to federal departments and agencies; Congress has largely rejected these cuts. We will likely see similar reactions by Congress following the release of the President's FY 2020 budget. Kevin Hassett, Chairman of the White House's Council of Economic Advisers said, "As you watch our next budget come out — and you'll start to see things in the next few weeks — then you'll see a much more aggressive stance."

Wireless Broadband

A group of nonpartisan intergovernmental organizations filed official comments with the Federal Communications Commission (FCC) in response to the Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (Docket No. 17-79 and Docket No. 17-84).

The filing was made on behalf of the U.S. Conference of Mayors (USCM), National League of Cities (NLC), National Association of Counties (NACo), National Association of Regional Councils (NARC), and the National Association of Telecommunications Officers and Advisors (NATOA). This is one of the three proposed FCC rulings that would inhibit local governments authority in the wireless broadband deployment space. The FCC is moving forward with one of those rules, which would curtail local governments authority in 5G expansion. The rule institutes strict approval times for local governments to approve contracts and caps the fees jurisdictions can provide, among other requirements. Local government organizations signed a letter detailing their opposition.

The FCC released its September 5th Order which, among other things, does the following:

1. Interprets the law to limit state and local governments to charging fees that are no greater than a reasonable approximation of their costs for processing applications and for managing deployments in the rights-of-way.

2. Establishes two new shot clocks for small wireless facilities (60 days for collocation on preexisting structures and 90 days for new builds) and codify the existing 90 and 150 day shot clocks for nonsmall wireless facility deployments that were established in the 2009 Declaratory Ruling.

Essentially, the above Order preempts local government authority to manage and receive fair compensation for installation of small cells and other related facilities in the right-of-way and on city-owned infrastructure. In a separate action, the FCC made a final Order prohibiting cities, other local governments and states from imposing "moratoria" that might delay companies from accessing local rights-of-way and local property to deploy wireless and wireline facilities.

Infrastructure

House Transportation and Infrastructure Committee Chairman Bill Shuster shared a discussion draft for "Building a 21st Century Infrastructure," providing a framework for a more comprehensive package in the future. This discussion draft is a result of bipartisan consensus-building among Republican and

Democratic colleagues, industry stakeholders, and the Administration. The proposal would extend the authorization of the Fixing America's Surface Transportation Act (FAST Act) and its grant programs by one year through FY 2021.

The proposal seeks to raise the gas tax to address immediate shortfalls in the Highway Trust Fund and to establish a 15-member Commission to recommend legislative solutions to address its long-term solvency. The Chairman proposes to phase increases to the federal user fees on gasoline and diesel fuel – by 15 cents and 20 cents per gallon respectively – over a period of three calendar years. The new user fees would then be indexed to inflation until September 30, 2028, when these user fee rates would become zero. The draft creates a national voluntary pilot program to examine whether a per-mile user fee can replace those existing user fees.

The Chairman's draft also seeks to accelerate project delivery, encourage innovative finance and public-private partnership (P3) opportunities, and reauthorize the Water Infrastructure Finance and Innovation Act (WIFIA) program and the Economic Development Administration.

In the event that the House majority flips following November elections, the infrastructure proposal will reflect the priorities of the presumptive House Transportation and Infrastructure Committee Chairman, Peter DeFazio (D-OR). In February 2018, Ranking Member DeFazio released an infrastructure proposal that would invest $500 billion in highway and transit infrastructure by indexing gas and diesel user fees. The increase in the gas and diesel user fees is estimated to be one cent per year, and is capped at 1.5 cents per year.

Additionally, to assist in paying for infrastructure improvements, the proposal would lift the cap on passenger facility charges (PFCs) at airports, a per-passenger fee that airports may choose to collect to improve capacity, reduce noise, or stimulate competition among airlines. Congress last increased the PFC cap, from $3 to $4.50, in 2000; it has remained untouched since that time.

Senate Democrats released an infrastructure proposal that would invest $210 billion to repair roads and bridges, $110 billion to modernize water and sewer systems, $180 billion to replace and expand rail and bus systems, $200 billion for a new Vital Infrastructure Program to get major projects moving, $75 billion towards school infrastructure, $65 billion to modernize ports, airports, and waterways, $100 billion in funding for energy infrastructure, $20 billion towards expanding broadband access, $20 billion to address infrastructure backlogs on public and tribal land, $10 billion to construct new VA hospitals and extended care facilities, and $10 billion to support new innovative financing tools.

These proposals are in reaction to the President's previous proposals on infrastructure investments. The President's infrastructure proposal, "Legislative Outline for Rebuilding Infrastructure in America" was included in the Administration's FY 19 Budget. The proposal includes:

- Infrastructure Incentives Program - Under this program, States and localities would receive incentives in the form of grants. $100 billion would be made available with funds divided in specific amounts to be administered by the United States Department of Transportation, Army Corps of Engineers, and Environmental Protection Agency.
- Rural Infrastructure Program - Under this program, States would be incentivized to partner with local and private investments for completion and operation of rural infrastructure projects. $50 billion would be made available. Eighty percent of the funds under the Rural Infrastructure Program would be provided to the governor of each State via formula distribution.

- Transformative Projects Program – This program would provide federal funding and technical assistance for bold, innovative, and transformative infrastructure projects that could dramatically improve infrastructure. Funding under this program would be awarded on a competitive basis to projects that are likely to be commercially viable, but that possess unique technical and risk characteristics that otherwise deter private sector investment – $20 billion would be made available.
- Infrastructure Financing Programs – Under this program, $14 billion would be made available for the expansion of existing credit programs to address a broader range of infrastructure needs, giving State and local governments increased opportunity to finance large-scale infrastructure projects under terms that are more advantageous than in the financial market. This includes, providing change-of-use provisions to preserve the tax-exempt status of governmental bonds.