

Memorandum

Date: January 18, 2017
To: Interested Clients
From: Holland & Knight
Re: President-elect Donald Trump's Proposed Infrastructure Package

With a few days to go until the mantle of power is passed to the Trump administration, the focus on infrastructure continues to grow both within the new incoming administration and with the 115th Congress. The following memo is intended to help understand the path the administration may take and what will need to be done to engage the new team as it moves ahead on broad infrastructure changes and potential investments.

President-elect Donald Trump's *Contract with the American Voter* promised that the administration will prioritize infrastructure development during the first 100 days in office by seeking to introduce and pass the "American Energy and Infrastructure Act." The package, which the President-elect has stated will leverage \$1 trillion worth of public-private partnerships and private investments, may include support for transportation, energy, water, telecommunications and cybersecurity projects. The President-elect's selection of Elaine Chao for the Department of Transportation (DOT), along with his selections of Wilbur Ross for the Commerce Department and Steve Mnuchin for the Treasury Department, confirm his plan to focus on private infrastructure will likely continue to be the hallmark of his push to develop American infrastructure. Ross is the co-architect of the 10-page memo outlining the President-elect's proposal, which would offer \$137 billion in federal tax credits to private investors.

Not surprisingly, certain campaign promises, including repealing the Affordable Care Act (ACA) and focusing on comprehensive tax reform, are first in queue. However, action on infrastructure already has begun and, while it may take time to create the compromise needed to complete any package, perhaps beyond the first 100 days, it is still critical to engage decision-makers early in the process.

Democrats, including House Minority Leader Nancy Pelosi, have expressed a willingness to work with the President-elect to develop this bipartisan infrastructure package. The President-elect intends for the package to be based on tax incentives — a proposal that has been the subject of widespread criticism, with both right- and left-wing economists asserting that private investors only will fund projects that have tolls or user fees that can recoup investment costs. Projects to fix existing roads, repairing aging pipes or repairing bridges may fall through the cracks, critics assert. The American Society of Civil Engineers (ASCE) has likewise expressed skepticism about the plan, stating that the promised \$1 trillion investment falls short of the \$3.6 trillion America needs to update its infrastructure.

In a speech he made in Cincinnati on Dec. 1, 2016, President-elect Trump made an additional announcement regarding his infrastructure plan: "We will have two simple rules when it comes to this massive rebuilding effort: buy American and hire American." Congress quickly rallied around the promise, particularly Senate Democrats that supported the "Buy America" provision included in the Senate-passed Water Resources and Development Act (WRDA) of 2016 — though Republicans stripped the Buy America provision from the House version of the bill and during conference negotiations.¹ During the speech, the President-elect also indicated his intention to provide funding for projects to deepen harbors in addition to the road, bridge and hospital infrastructure financing he previously had suggested the package would support.

Republicans and the business community have pushed back on the proposal insofar as they are concerned such a package will resemble the American Reform and Recovery Act of 2009 (ARRA). U.S. Chamber of Commerce Executive Director of Transportation Infrastructure Ed Mortimer has insisted the President-elect should consider America's long-term transportation needs, rather than focusing on employing people by pursuing immediate, "shovel-ready" projects. Yet, government spending on concrete and steel also could result in economic influxes in the rust belt and rural communities that the President-elect pledged to help during his campaign.

In a conference call with reporters, the Senate's Democratic Minority Leader, Sen. Chuck Schumer (D-N.Y.), also pushed back on the President-elect's proposal, insisting that the package must include traditional government-funded highway and water projects, not just privately financed initiatives. Democrats continue to argue that allowing the private sector to make infrastructure decisions may result in more toll roads and bridges without addressing some of the nation's most critical infrastructure needs. Congressional Republicans, including President-elect Trump supporter Rep. Chris Collins (R-N.Y.), likewise have expressed support for a package with mixed incentives for both private and public sector projects.

While the President-elect has stated that infrastructure is a top priority and has tasked a high-level team to fill in the details, there is no clear picture yet of what it will look like and how it will be funded. House Speaker Paul Ryan, Vice President-elect Mike Pence, Senate Majority Leader Mitch McConnell, incoming White House Chief of Staff Reince Priebus and the President-elect himself all have signaled that they want healthcare, nominees, overturning regulations and tax reform to be considered before infrastructure. Recently Speaker Ryan stated that he plans to consider infrastructure in "our spring budget." He provided few details, but reiterated plans will be focused on "leveraging private sector dollars" and streamlining regulations.

Financing for the Proposal

A "Revenue Neutral" Infrastructure Plan

The President-elect has stated that his infrastructure plan will use revenue-neutral tax incentives to leverage \$1 trillion worth of public-private partnerships and private investments, focusing

more on tax incentives than new infusion of actual funding. The tax credit would incentivize private sector companies to borrow the upfront equity needed for the investment and would cover more than 80 percent of the equity investment necessary to kick-start this infrastructure renaissance by using increased tax revenues from the expected additional wage income and contractor profits associated with the increased private sector activity. Similar to proposals from the Obama administration and Congress over the last few years, President-elect's proposal focuses on a one-time 10 percent repatriation tax on overseas retained earnings as either a direct one-time funding infusion or an offset for direct spending. The state of the nation's infrastructure has been deteriorating for many years, and there always has been a bipartisan approach to increasing investments in infrastructure overall, although more approaches have historically included a mix of both funding and financing. Any major focus on tax incentives will have to be included in a tax reform package that the Congress will put forth, as it has been in years past.

Infrastructure Bank and Tax Credits

The concept of a federal infrastructure bank also has been around for many years and has had a range of bipartisan support from Democrats and Republicans along with the U.S Chamber of Commerce and AFL-CIO. However, over time, distrust between a Congress controlled by one party and an executive branch controlled by another, along with serious policy differences over how the I-Bank would be originally funded, tabled the proposal. The Infrastructure Bank (I-Bank) model had been advocated during the election by Hillary Clinton and others, but was one idea that the President-elect originally did not support. However, recent comments by Steven Mnuchin, a Trump transition team member and Treasury Department secretary nominee, to key media sources included "looking at the creation of an infrastructure bank to fund infrastructure investments." What remains unclear is if the I-Bank will provide both direct funding and financing, or simply follow a financing model akin to the President-elect's proposal to use tax credits for infrastructure investments. The private sector has long been a supporter of an I-Bank, and pressures from private partners will need to be addressed by the new administration.

Public-Private Partnerships (P3s) and Tolls

All of the President-elect's proposals include an underlying focus on Public-Private Partnerships (P3s), which have been a mainstay of the Obama administration, across transportation, energy, water and wastewater for years. Congress created innovative finance methods for the DOT to implement in the late 1990s. Over time, these methods have extended to other forms of infrastructure as well. Inherent to any form of P3 is the need to have a dedicated payment source to repay the private sector's original investment. The payment structure can take many forms, including tax increment financing, availability payments and other sources of funding. In certain instances, tolling can be a model that can sustain itself for certain highway-related projects. Even in these instances, public support tends to focus on "greenfield investments," where new capacity is added, not brownfield projects where tolls are simply added to an existing facility.

The Moving Ahead for Progress in the 21st Century Act (MAP-21) required DOT and the Federal Highway Administration (FHWA) to develop P3 transaction model contracts. FHWA published a series of guides describing terms and conditions typically adopted in P3 concession agreements.

Opposition has grown in some parts of the country when tolls are added by a private sector partner with limited oversight by the public-sector partner. Other parts of the country, such as the Washington, D.C. area, have been more supportive of greenfield tolling projects that reinvest funds into the same corridor and provide revenue sharing. While the President-elect's transition team has yet to confirm additional details on these proposals, it is likely that the Trump administration will continue the current policy focus on the use of tolling.

Government Bonds

While the details are still in the air — an increase in the financing of new projects also could lead to an increase in the issuance of taxable municipal bonds, which is a significant portion of the overall market. The President-elect's tax plan notes that while not a complete solution, taxable bonds will play an important part in infrastructure spending. Specifically, the President-elect supports the Build America Bond program, which, under the Obama administration, allowed government issuers to offer taxable bonds, giving them access to a broader group of investors. However, this program faces opposition from Republican members, as it was created by the Obama administration in ARRA.

Transportation Infrastructure

The President-elect has nominated Elaine Chao for secretary of transportation. In addition to being the wife of Senate Majority Leader Mitch McConnell (R-Ky.), Chao served as secretary of labor under George W. Bush and deputy secretary of transportation under George H.W. Bush. During her time as a banker for Citicorp, she worked on transactions that involved transportation financing, experience she will bring to DOT as the administration explores methods to assist in financing transportation infrastructure. In her Senate confirmation hearing, Chao stated, "Our infrastructure is the underpinning of our world class economy. . . . And it has provided us with unprecedented mobility, safety and security." The hearing went very smoothly, and she is expected to be easily confirmed.

Surface Transportation

The President-elect has stated several times that he intends to improve America's highways and bridges. Currently, government programs governing American surface transportation are locked into place through 2020 as a result of the Fixing America's Surface Transportation (FAST) Act, which President Obama signed into law on Dec. 4, 2015. The first long-term surface transportation reauthorization law passed in over a decade, the five-year authorization provides for \$280 billion in spending from the Highway Trust Fund through 2020, an average of \$56.2 billion per year. The bill also established a new National Surface Transportation and Innovative Finance Bureau (replacing the Build America Bureau), meant as a one-stop shop for state and local governments to identify, apply for and receive government assistance for financing large-scale infrastructure projects. Additionally, this bureau will be responsible for the Transportation Infrastructure Finance and Innovation Act (TIFIA), Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE), Railroad Rehabilitation & Improvement Financing (RRIF) and private activity bonds programs.

Thus, the near-term transportation opportunities for the President-elect's infrastructure package may lie in increased funding and assistance for initiatives outside the scope of surface transportation. However, the business community and congressional Republicans alike have advocated for the infrastructure package to "supplement" existing government transportation programs created in the FAST Act. The U.S. Chamber of Commerce, for example, has encouraged the President-elect to increase funding for existing financing mechanisms, such as TIFIA, rather than developing a new infrastructure bank.

Indeed, the FAST Act's most significant criticism was that this \$56.2 billion of support fell far short of the funding needed to adequately update America's infrastructure. President Obama's plan for infrastructure investment originally sought \$478 billion.

Currently, the most significant source of federal funding for transit, rail, road and bridge projects has been the Transportation Investment Generating Economic Recovery (TIGER) grant program, which has never been formally authorized in law. The TIGER program — which may be reformed and rebranded by the Trump administration — will continue to fund transportation infrastructure projects at least through 2017, as both the Senate and House Fiscal Year 2017 Transportation-HUD Appropriations (THUD) bills included funding for the program and has widespread bipartisan support.

This noted, Republican lawmakers have been discussing reinstating earmarks in the House. Should Congress once again be able to earmark funds for specific infrastructure projects in their districts, the TIGER program may become redundant and could be targeted for elimination. Speaker of the House Paul Ryan (R-Wi.) successfully lobbied the Republican caucus to push a closed-door vote on bringing earmarks back to the first quarter of 2017, arguing against bringing earmarks back "two weeks" after "we had a 'drain the swamp' election."ⁱⁱ We expect this proposal to be addressed early in 2017.

The FAST Act created another discretionary grant program at DOT for road, rail, port and bridge projects of regional or national significance: the FASTLANE program. This program will continue under the Trump administration, as the FAST Act authorized it at \$4.5 billion for FY 2016 through 2020, including \$850 million for FY 2017. Project eligibility is narrower than TIGER, as the focus is on highways and freight only, and projects must generate national or regional economic, mobility or safety benefits. Under the law, DOT is required to distribute 90 percent for large projects (i.e., project that have project costs of \$100 million or greater) and 10 percent to small projects. The minimum award is \$25 million for large projects and \$5 million for small projects.

The highway and transit formula programs also will continue under the Trump administration, as the program authorizations were included in the FAST Act. For highways, such programs include Congestion Mitigation and Air Quality (CMAQ), Federal Lands, Ferry Boat, Highway Safety Improvement Program (HSIP), Intelligent Transportation Systems (ITS), Railway-Highway Crossings, Surface Transportation Block Grant (formerly known as Surface Transportation Program) and the Transportation Alternative Program (TAP). The FAST Act also created several new programs for highways and bridges, including the National Highway Freight

Program and the Advanced Transportation and Congestion Management Technologies Deployment Program.

The TIFIA credit program, the main source of government credit financing for large-scale highway and transit investments also will continue as the FAST Act continued funding for the program at \$1.435 billion over five years.

For transit, the FAST Act continues Urbanized Area Formula Program, Capital Investment Grants (New/Small Starts and Core Capacity), State of Good Repair, and Bus and Bus Facilities programs. The FAST Act also created a bus and bus facilities competitive grant program and a low or no emissions bus deployment program.

Regarding transit, the Trump administration may seek to focus on traditional bus and light/commuter rail transit programs rather than initiatives such as streetcars, which the President-elect's DOT transition team lead, Shirley Ybarra, has staunchly opposed.

Rail

There was a great deal of activity during the 114th Congress and the last two years of the Obama administration. Amtrak and the Surface Transportation Board (STB) were reauthorized with major changes to Amtrak's funding structure and an increase to five board members (from three) for the STB. There were also major safety regulations promulgated, including a major rule regarding the shipment of crude by rail. Also, the positive train control (PTC) mandate was extended by three years to December 2018. Some might say that the next two to four years should be a little slower, since the major reauthorizations will not expire until 2020; however, many issues remain unresolved.

Further, because of the unknown of what could change with the new Trump administration, the industry is readying for a busy 115th Congress and new administration. There are five major issues that will be heavily discussed, with a possibility of regulatory or legislative action, during this next administration. These topics are:

- **Foreign owned/state owned enterprises (SOE) rail manufacturing:** For many years, the Obama administration has focused on in-bound foreign investment to help bring a greater influx of dollars to the U.S., including infrastructure. At the same time, certain countries, such as China, have been making massive inroads in infrastructure investment around with world, including with a focus on the U.S. marketplace. In the last few years, China has been aggressive in attempts to expand involvement in the U.S. passenger and freight rail market. It has the potential to change the entire dynamic of a multi-billion-dollar industry, with current manufacturers concerned that more Chinese involvement could lead to price dumping. Given the President-elect 's campaign rhetoric and his recent selection for United States Trade Representative, Robert Lighthizer — a vocal critic of China trade practices in particular — this issue could be a high priority for the incoming administration.
- **Surface Transportation Board (STB):** The Surface Transportation Board Reauthorization Act of 2015 created two new STB seats, and President Obama did not

fill these slots. It will be up to the new president to make those nominations. Currently, there are two Democrat-nominated board members and one Republican board member. Thus, the two new board members should be Republican picks. These selections historically receive heavy scrutiny from both shippers and railroads. The new board members will have a huge impact regarding issues that should arise in the next two years, including the proposal to revoke existing class exemptions from railroad transportation regulations for certain commodities, reciprocal or competitive switch, whether to revise the Stand Alone Cost (SAC) test for rate reasonableness and the formula for determining revenue adequacy.

- **Federal Railroad Administration review of Obama promulgated or proposed rules:** A mandate requiring electronically controlled pneumatic brakes, a proposed rule requiring two individuals in the cab and potential further action on crude oil volatility will be on the top of the new administration's list to visit, revisit or totally change. These actions had many detractors last administration, and industry is revving up for these issues.
- **Passenger Rail issues:** Passenger rail has historically faced funding challenges. Republicans in Congress have opposed increasing funding in the annual appropriations bills and high speed rail implementation. The Trump administration will have a chance to address some of this if there is a large infrastructure bill. The number one priority for Amtrak and many business and passenger advocates is finding resources to fund the Gateway Tunnel between New Jersey and Manhattan. It is in dire need to be replaced, but has a very large, \$20 billion price tag. Also, the new administration will have a chance to propose funding for new infrastructure grant programs that are authorized in the FAST Act but subject to appropriations. Finally, as always, there is an upcoming Positive Train Control (PTC) deadline in December 2018, and commuter railroads are griping about meeting it. The administration has the authority to grant extensions, but PTC involves the entire rail network, so we will be closely watching how this administration will handle this very sensitive safety issue.

Aviation

With the 14-month Federal Aviation Administration (FAA) extension passed in 2016 set to expire on Sept. 30, 2017, another reauthorization for the FAA will be a priority for the 115th Congress. A multi-year authorization could be in the cards, though such a compromise would likely require House Transportation & Infrastructure Chairman Bill Shuster (R-Pa.) to abandon his hopes to spin off air traffic control into a separate entity.

Should a larger infrastructure package move before the Sept. 30, 2017 deadline, Congress may seek to include funding for aviation in the legislation. Specific proposals aim to reform the airworthiness certification process and to further integrate drones.

Autonomous Vehicles

The incoming Trump administration has already acknowledged an interest in autonomous vehicles, although few details have been made about the President-elect's future plans. On Sept.

20, 2016, DOT issued its long-awaited guidance on autonomous vehicles. At the same time, the National Highway Traffic Safety Administration (NHTSA) sent a Final Notice for Safety-Related Defects and Automated Safety Technologies to the Federal Register, making it clear that safety issues that result from the use of automated technology, as well as cybersecurity, fit under its existing enforcement authorities.

All of this is the result of a multi-year focus by the Obama administration and Congress on safety, cybersecurity and privacy issues around the use and operation of autonomous vehicles. However, it effectively kicks off a much more detailed series of debates on these matters. The four-part policy makes clear DOT's role and oversight of autonomous vehicles, as well as expectations on cybersecurity and privacy issues. At the same time, it cites a Volpe March 2016 study that noted that "current Federal Motor Vehicle Safety Standards (FMVSS) do not directly address new automated vehicle technologies," indicating that changes to existing authorities may be needed. DOT is clear about the need for strong cybersecurity and privacy components in autonomous vehicles. As recent as Jan. 12, 2017, NHTSA issued a Notice of Proposed Rulemaking (NPRM) on establishing a new FMVSS to mandate vehicle-to-vehicle communications for new light vehicles and to standardize the transmission of these communications.

It is clear that this will be a continued priority for the new administration and that it will need to balance safety and security issues — along with the advent of new innovation and technology — in the next few years.

Energy Infrastructure

While the development of infrastructure legislation may afford significant opportunities for compromise with Congressional Democrats on transportation programs and cybersecurity initiatives, the energy provisions stand to be among the more controversial components of the legislation. The administration's priorities for energy infrastructure likely will align with the President-elect's campaign focus on oil and gas exploration, production and transportation. As the development of energy infrastructure in the oil and gas sector is typically led and financed by private industry, the energy title of the infrastructure package is more likely to be laden with policy and regulatory reforms to expedite permitting processes than the funding and financing assistance that may appear under other titles.

Both Republican members of the incoming 115th Congress and the incoming administration have indicated that reducing the federal regulatory burden on oil and gas developers will indeed be their energy priority for 2017. The campaign's infrastructure memo cited a *Wall Street Journal* article estimating that \$33 billion worth of projects have been either rejected by regulators or withdrawn by developers since 2012; the U.S. Chamber of Commerce's "Progress Denied" report lists 351 energy infrastructure projects stalled because of the current regulatory framework.ⁱⁱⁱ The study asserts that successful construction of these projects could produce a \$1.1 trillion short-term boost to the economy and create millions of jobs — exactly the economic boom the Trump administration hopes to create in the energy sector.^{iv}

Democrats will not look favorably upon regulatory reform that hastens the permitting for projects akin to the controversial Keystone XL and Dakota Access pipelines — symbolic legislative approvals for which may be included in the legislative package for good measure, although the administration is expected to quickly approve applications for both projects. Regulatory reform that directs the Department of the Interior to revise its drill permit application process also will be controversial; previous legislative proposals have included a provision establishing an automatic approval after 60 days if the Department of the Interior does not issue a decision. Moreover, the package could draw on previous Republican proposals to speed the permitting process for the development of Liquid Natural Gas (LNG) export facilities, which have included requirements that the Department of Energy issues decisions on applications within 30 days after the conclusion of National Environmental Policy Act (NEPA) review.

Other legislative options to support the oil and gas industry include expanding the federal land available for oil and gas exploration. This expansion likely will include a five-year Outer Continental Shelf leasing program and additional leasing opportunities in the Alaskan National Petroleum Reserve (NPR). Opening the Arctic National Wildlife Refuge for oil and gas exploration is also on the agenda for the Trump administration. To assist with financing oil and gas exploration, previous proposals have sought to establish a fund to provide 50 percent matching funds for joint projects with states to conduct oil and gas resource assessments on federal lands with oil and gas potential.

Beyond these regulatory reforms, the infrastructure package could provide financing opportunities for energy projects — both traditional and renewable — if it stands up an infrastructure bank. Moreover, if the infrastructure package is connected to a larger tax reform initiative, federal tax credits to support traditional energy resources could be expanded and could have significant implications for existing credits that support renewables and biofuels.

Cybersecurity and Infrastructure

Cybersecurity risks to the nation's critical infrastructure continue to grow exponentially, and the incoming administration has made it clear that it is a mainstream national, homeland and economic security priority. The President-elect has included cybersecurity in his Top Ten priorities as well as an action item in the First 100 Days. He has raised the need to create a "Cyber Review Team," which includes a core role for the U.S. Department of Defense and U.S. Cyber Command as well as for law enforcement and the private sector.

This effort builds on the priority focus given to it by the Obama administration. The new Cyber Review Team is tasked with conducting an immediate review of all U.S. cyber defenses and vulnerabilities, including "vital" infrastructure, which includes 16 critical infrastructure sectors, with a priority focus on key aspects of the infrastructure world, including aviation, transit, maritime, automotive/autonomous vehicles and highways, along with energy, communications and telecommunications, among others. The Cyber Review Team will "provide specific recommendations for safeguarding different entities with best defense technologies tailored to the likely threats, and will [be] followed up regularly at various Federal agencies and departments."

As nation-state attacks against key aspects of the U.S. private sector continue, the President-elect has publicly discussed focusing on a more offensive approach to cybersecurity around the world and a more proactive deterrence strategy. It is expected that the Department of Homeland Security, Department of Justice and other agencies will take an active approach to working with and trying to address the threats to the private sector, as well as to deal with the increases in cyber-espionage and cyber-crime. At the same time, it is expected that Congress will continue an activist oversight role on all fronts, and other executive branch agencies will increase cybersecurity audits on all aspects of infrastructure. While many sectors within the broad-based infrastructure community also include gathering and maintaining personally identifiable information, issues around privacy and information security requirements likely will increase as well.

The transportation and infrastructure sector has been a prime target for cybersecurity attackers and, unlike other sectors, transportation (aviation, transit, maritime, highway, rail, automotive) as well as water/wastewater systems, do not have existing cybersecurity regulatory regimes and are seen as increasingly at risk. Other infrastructure sectors, such as communications/telecommunications, are regulated for reliability and have had an increased focus on cybersecurity. Sectors such as energy/utilities are regulated for cybersecurity, yet continue to be vulnerable to attacks.

Telecommunications and Broadband Infrastructure/Rural Access

The President-elect's "America's Infrastructure First" policy calls for investments in a modern and reliable electricity grid and telecommunications security infrastructure. This is consistent with his plan to conduct a comprehensive cybersecurity risk evaluation, which will include identifying potential vulnerabilities in critical infrastructure. The focus on broad-based infrastructure would expand the use of broadband in rural and suburban areas, locations where the President-elect received substantial support. However, he has not yet specifically stated whether he will continue investment in grant and loan programs administered by the Federal Communications Commission as well as the Department of Agriculture and Department of Housing and Urban Development, which seek to improve internet infrastructure in rural areas. For example, the funding future of such programs, including Connect America Fund (CAF) rural utilities service program and Broadband Technology Opportunities Program (BTOP), may be uncertain.

Water Infrastructure

Public water utilities across the country are facing challenges to provide clean water and safe drinking water, as the existing infrastructure is aging, deteriorating, and in need of repair and upgrading. Utilities cannot pay for this on their own. The Environmental Protection Agency (EPA) has identified \$384 billion in drinking water needs and \$271 billion in wastewater needs over the next 20 years, based on capital improvement plans developed by local utilities.

During his campaign, President-elect Trump committed to updating water and wastewater infrastructure as part of a larger infrastructure package. According to his campaign platform, the

President-elect plans to triple funding for the Clean Water State Revolving Fund (CWSRF) and Safe Drinking Water State Revolving Fund (DWSRF) programs and provide technical assistance to states looking to upgrade their systems. Much of the country's water infrastructure needs to be overhauled, as seen by a national spotlight on the Flint, Michigan water contamination issue. In an investigation by *USA Today*, nearly 2,000 additional water systems, serving six million people in Flint, had levels of lead contamination above the acceptable level.

Many local governments and utilities use the state revolving fund programs to fund their water infrastructure projects; however, there has not been enough money appropriated for these popular programs, and traditionally, states have prioritized program funding for rural and low-income areas. Currently, the only other source of funding for water infrastructure is the Water Infrastructure Finance and Innovation Act (WIFIA) program. The Water Resources Reform and Development Act (WRRDA) of 2014 created the WIFIA program, which is modeled after the DOT TIFIA program. The FAST Act amended WIFIA to allow the use of tax-exempt financing in WIFIA-funded projects.

Until the Continuing Resolution (CR) was passed, Congress had only appropriated \$2.2 million to fund the operations and set-up of WIFIA, which EPA has used to set up webinars and listening sessions throughout the country. The CR, which passed in December 2016, provides \$20 million for the program, which is enough credit subsidy to finance \$1.2 billion in loans. Since the program has been stagnant for several years and is authorized at \$35 million for 2017, the infrastructure package could include additional funding for the WIFIA program. Additionally, utilities, local governments and Nongovernmental organizations (NGOs) have been advocating for a water grant program and were able to secure funding from the EPA State and Tribal Assistance Grant (STAG) program under earmarks. Such types of program also could be included in the infrastructure package similar to the sewer overflow grants that have been authorized in the annual WRDA bills.

ⁱ Nancy Ognanovich, "Home Stretch: Stopgap, WRDA Lawmakers' Last 'Must-Dos'," *Bloomberg BNA*, Dec. 5, 2016, accessed Dec. 8, 2016, available at: <https://www.bna.com/home-stretch-stopgap-n73014448069/>

ⁱⁱ Deirdre Walsh and Ted Barrett, "Ryan slams brakes on vote to bring back earmarks," *CNN Politics*, Nov. 16, 2016, accessed Dec. 8, 2016, available at: <http://www.cnn.com/2016/11/16/politics/house-republicans-earmarks/>.

ⁱⁱⁱ Peter Navarro and Wilbur Ross, "Trump Versus Clinton On Infrastructure," Oct. 27, 2016, accessed Nov. 29, 2016, available at <http://peternavarro.com/sitebuildercontent/sitebuilderfiles/infrastructurereport.pdf>

^{iv} Steve Pociask and Joseph P. Fuhr, Jr., *Project No Project Initiative*, U.S. Chamber of Commerce, "Progress Denied: A Study on the Potential Economic Impact of Permitting Challenges Facing Proposed Energy Projects," March 20, 2011, accessed Nov. 29, 2016, available at http://www.projectnoproject.com/wp-content/uploads/2011/03/PNP_EconomicStudy.pdf