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The Authoritative Resource on Safe Water<sup>SM</sup>

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### **2009 in Review, 2010 Look Ahead**

Infrastructure and security dominated the last legislative year for AWWA and the water community, with climate change thrown in for good measure. However, a lot of what happened in 2009 merely sets the stage for definitive action in 2010. Or maybe not. Read on to learn more.

#### **SRF Gets a Boost**

Last February the new president signed a broad-ranging economic stimulus bill that included \$2 billion in spending for drinking water infrastructure, to be distributed through state revolving loan fund (SRF) programs. This program was slow getting started, as the agency had to develop guidance for two new features: a 20-percent set-aside for “green infrastructure” (provided there were sufficient “green” applications) and Buy American requirements for materials used in stimulus-funded projects.

Capitol Hill staff have told AWWA that these “green” and Buy American features will likely be included in future water infrastructure legislation. In fact, S.1005, a bill that would authorize increased SRF funding for both water and wastewater and make a number of administrative improvements to the programs, now includes the Green projects requirement. That bill is awaiting action on the Senate floor. AWWA provided substantial input in the drafting stage and has urged final passage. Last March the House passed a similar bill (H.R. 1262), which due to committee jurisdiction, addresses wastewater only. We expect that the House will address drinking water funding during “reconciliation” when differences in the House and Senate bills are resolved, and that any final bill going to the President’s desk will include funding for both water and wastewater.

AWWA has been calling on Congress for several years to increase support for investment in water infrastructure, and that message appears to be sinking in. The FY 2010 appropriations bill boosted spending for the drinking water SRF to \$1.38 billion, an increase of more than \$500 million annually for this program. Furthermore, in December the House passed H.R. 2487, the Jobs for Main Street Act, which contains an additional \$1 billion in SRF funding for drinking water infrastructure. The Senate is expected to act on the bill in January and its passage is likely.

#### **Discussions Begin on Water Infrastructure Bank**

On another infrastructure front, AWWA released its report, “Financing Water Infrastructure: A Water Infrastructure Bank and Other Innovations,” in 2009. The report looked at a number of water infrastructure financing mechanisms, and pointed to a water infrastructure bank as the most effective tool. This report has generated significant interest among members of Congress and other groups, and AWWA has on-going discussions with them about advancing legislation in 2010.

### **Fly-In Tradition Continues Strong**

One of the higher-profile legislative events for AWWA continues to be the annual Water Matters! Fly-In in the spring. In 2009, AWWA attracted more than 130 AWWA members from 48 states to Washington for the event. After a morning of briefings and discussion, members stormed Capitol Hill to bring AWWA's issues to the attention of Congress. The issues, as might be expected, included infrastructure, chemical security and climate change. These visits to the Hill generated calls from Congress for more information and follow-up.

The 2010 Fly-In will be held on March 24-25, and AWWA Section leaders have been sent a "call for delegates." It is likely that water infrastructure finance – and the water infrastructure bank in particular – plus chemical security will again be among the headline issues.

### **Congress Focuses on Chemicals at Drinking Water Utilities**

An equally dominant subject for AWWA in 2009 was legislation regarding the security of chemicals used at drinking water treatment plants. Existing law governing security at chemical manufacturing plants was set to expire on September 30, 2009, and Congress used the date as a target for renewing the underlying legislation and bringing drinking water and wastewater utilities into the program.

In November, the House of Representatives passed a bill (H.R. 2868) that revised the existing program for the chemical industry and created a new chemical security program for the water sector. AWWA and other water organizations met extensively with congressional staff and expressed a number of concerns with this legislation. Chief among them were whether EPA could force water utilities to adopt an "inherently safer technology (IST). AWWA believes that the final decision on which disinfection processes and chemicals to use should rest with local officials. As passed by the House, the bill gives the final decision on IST to state drinking water agencies, with EPA looking over the states' shoulders.

AWWA and other water groups also remain concerned over the bill's information protection provisions. A key concern is a provision that would include representatives of collective bargaining agents, whether or not they work at the utility, in the development of vulnerability assessments and site security plans. AWWA maintains that people outside the employ of the utility or the appropriate government agency should not be involved in or have access to these plans.

The Senate has yet to act on chemical security legislation, but staff for the Senate Committee on Homeland Security and Governmental Affairs say they will take up the issue this year. AWWA will continue to talk to the Senate about the drinking water community's concerns with this legislation. In the meantime, Congress agreed to a simple one-year extension of the underlying law, to September 30 of this year. That has become the new deadline to act on chemical security.

### **Nexus of Climate Change and Water Comes into View**

In 2009 AWWA invested substantial effort in communicating to Congress about the potential impacts of climate change on the nation's drinking water, and legislation approved by the Senate Committee on Environment and Public Works (S. 1733) includes two drinking water features: formal authorization of USEPA's WaterSense conservation program and creation of a "Blue Bank" grant program to help water systems address or mitigate climate-related impacts on water quality or quantity. While AWWA has concerns over other parts of the bill – for example the way it promotes quick adoption of geosequestration of carbon dioxide – we should be encouraged by the growing awareness that climate change can affect drinking water utilities.

Although S. 1733 was reported by the Senate EPW Committee, it has drawn strong opposition from Republicans and significant reservations from some Democrats, so its future on the Senate floor is in doubt. Given those uncertainties, Senate Majority Leader Harry Reid, D-Nev., introduced a bill (H.R. 1712) to formally authorize WaterSense in case the bill mentioned above does not pass. He also introduced S. 1035, the Drinking Water Adaptation, Technology, Education and Research Act. Its aim

is “to enhance the ability of drinking water utilities in the United States to develop and implement climate change adaptation programs and policies and for other purposes.” AWWA supports S. 1035.

Concerns about climate change have triggered a rush to exploit relatively clean energy resources such as natural gas, and there is a strong push by industry to prevent regulation of hydraulic fracturing (used to free up underground gas and oil). The water community needs to be vigilant to ensure that underground water supplies don't become casualties in the fight against climate change, as the result of hydraulic fracturing or the underground sequestration of CO<sub>2</sub>.

### **What Bodes for Water in 2010?**

Obviously, there was much work on water infrastructure finance, chemical security and climate change in 2009. For better or worse, the national debates over the economy and health care crowded the legislative calendars of both the House and Senate and precluded final action on the bills described above. Now President Obama has asked Congressional leaders to focus on climate change legislation as soon as they finish work on health care. If health care or climate change bog down in total stalemate, will Congress look for other bills that are easier to pass, such as infrastructure legislation or chemical security? Perhaps. But there are several factors that make such a prediction more than usually difficult this year.

First, the federal budget deficit is getting more and more attention. It has been estimated that for every dollar of federal spending in 2009, the government had to borrow almost 45 cents, principally from China and the oil-rich Gulf kingdoms. It's hard to find anyone who believes that is sustainable. Will the deficit kill Congress' appetite for big-thinking bills, including those on infrastructure? Maybe. But arguing against that are reports that for the decade that just ended the US economy created no – that is, zero – net new jobs and that middle class families actually ended the decade with less purchasing power (adjusted for inflation) than they had in 1999. Those statistics give rise to powerful arguments about the need to continue or even to expand federal spending in order to stimulate the economy, at least in the short run. What is one man's scary wasteful deficit spending is another man's investment in job creation and a more modern infrastructure. The way this debate plays out will be crucial to Congressional action on infrastructure and other issues.

Another complicating factor is that 2010 is an election year for Congress. As elections get closer, Congress gets increasingly reluctant to take votes on controversial issues. Both infrastructure and chemical security legislation can be controversial, and Congress could fail to finalize action on any of these issues in 2010. On infrastructure, the political calculation for members of Congress from both parties is this: am I helped more by being tough on spending or by more job-creating deficit spending? On chemical security they will calculate: am I helped more on Election Day by being “tough on industry” or by standing up for local control?

An important factor here is that the party in the White House almost always loses a significant numbers of seats in Congress during its first mid-term election, and the Democrats may feel they have to appease their base voters in order to staunch those losses in November. Particularly in the Senate, where there are 60 Democrats and Independents who vote with them and it takes 60 votes to pass bills, party losses in November could jeopardize the party's ability to pass legislation in the Congress that convenes in 2011. The question then becomes whether Senate Democratic leaders will attempt to force as many bills as possible through this year because they see 2010 as their last best chance to control the legislative agenda.

Taken together, how will all these factors play out in 2010? To learn definitively, you'll have to check back at this time next year. In the meantime, you can be assured that we are paying attention in Washington and will keep you informed as these issues develop. Just be prepared for surprises and unexpected turns in 2010!

As always, please contact your AWWA Washington Office if you have questions or comments.