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## 2016 Water Legislation Reaches New Areas & Sets the Stage for President-Elect Trump

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*In enacting the “Water Infrastructure Improvements for the Nation Act,” Congress expanded the traditional role of Water Resource Development Acts. Where past legislation focused solely on water and navigation projects to be completed by the Army Corps of Engineers, the 2016 legislation goes further to create new obligations and opportunities for infrastructure constructors, owners/operators of public water systems and their lenders. The 2016 legislation and related appropriations could pave the way for significant investment in American water infrastructure proposed by President-elect Trump.*

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### 2016 Water Legislation Expands the Federal Government’s Role

The 2016 omnibus water legislation, ultimately enacted as the “Water Infrastructure Improvements for the Nation Act” (“WIIN Act”), and signed into law on December 16, includes the Water Resources Development Act of 2016, the Water and Waste Act of 2016, significant tribal and natural resources legislation, and other important measures to help improve and manage our nation’s infrastructure. The WIIN Act fulfills the traditional role of federal water resources legislation addressing projects related to navigation, coastal protection, and flood control such as the construction, maintenance and operation of dams, levees, harbors and canals to be carried out by the United States Army Corps of Engineers (the Corps).

However, the WIIN Act also addresses projects and activities to be carried out by other federal agencies such as the United States Environmental Protection Agency (EPA) and affects industries beyond traditional water infrastructure. The WIIN Act also expands the situations in which the Corps may utilize non-federal funds, including private funds in some instances, to complete certain types of projects.

The WIIN Act also contains significant provisions related to drinking water quality, innovative financing mechanisms for local drinking water and wastewater infrastructure projects and water quality standards and related requirements.

In particular, the WIIN Act and related appropriations under the Further Continuing and Security Assistance Appropriations Act (also signed into law this month) will affect the following types of businesses in the ways outlined below.

▪ **Infrastructure Constructors and Lenders:**

- Appropriates \$20 million to the previously established (but unfunded) **Water Infrastructure Finance and Innovation Act of 2014 (WIFIA)** to allow EPA to begin making loans under the program. WIFIA is modeled after the successful Transportation Infrastructure Finance and Innovation Act (TIFIA) and expands access to capital by providing federal funds to guarantee much larger underlying loans from private institutions. The expectation is that every dollar Congress appropriates to the WIFIA program will facilitate up to sixty dollars in infrastructure loans.
- Authorizes new funding and expands the situations in which projects may be eligible for financing from the **Drinking Water State Revolving Fund**. The Drinking Water State Revolving Fund program is a federally funded, state-administered, low-interest loan program established under the federal Safe Drinking Water Act.
- Creates a one-year **Buy America** requirement for projects financed with Drinking Water State Revolving Fund loans. A permanent Buy America provision already exists for wastewater projects financed with loans via the similar Clean Water State Revolving Fund program.

▪ **Water Utilities and Municipal Owners or Operators of Public Water Systems:**

- Revises the **Safe Drinking Water Act** to create new standards, sampling requirements and notice provision related to the presence of **lead and other contaminants in drinking water systems**. These amendments include significant new involvement or potential involvement by EPA in the lead detection and notification process.
- Authorizes **\$100 million of additional funding** to the Safe Drinking Water State Revolving Fund program to be used where an **emergency has been declared relating to the public health threats** associated with the presence of **lead or other contaminants in drinking water** provided by a public water system.
- All of the construction and financing items mentioned above.

### Expectations for Water Infrastructure Projects under the Trump Administration

Based on President-elect Trump's repeated statements regarding the need for significant investment in infrastructure, it is possible that he will advocate for new legislation on long term water infrastructure needs. While fiscal conservatives have traditionally resisted expansion of the federal government's role in local infrastructure projects such as municipal drinking and wastewater systems, President-elect Trump has promised repeatedly to pursue an "America's Infrastructure First" policy that supports federal investments in transportation, clean water, a modern and reliable electricity grid, telecommunications, security infrastructure, and other pressing domestic infrastructure needs." While the contours are not entirely clear, his plan would promote private investment in public civil works projects, including water projects, through the use of tax credits. He has also pledged to reduce the "endless studies, layer-upon-layer of red-tape, bureaucracy, and lawsuits" that often delay infrastructure projects, which signals possible attempts to limit pre-permitting federal environmental review, among other things. Water industry groups like the American Water Works Association have called on the President-elect to streamline administrative

hurdles to obtaining financing under the State Revolving Fund and WIFIA programs addressed above, as well as to work with them on laws and policies aimed at ensuring the security of domestic water supplies (as potential targets for terrorist attacks), energy efficiency and the “water-energy nexus” (large amounts of water are used in energy production and – conversely – large amounts of energy are used in drinking water and wastewater systems), affordability issues, and development of reasonable water quality standards for commonly occurring elements. Given the expansive nature of the WIIN Act legislation, many of these are likely to be addressed in future legislation and agency actions during Mr. Trump’s term.

### **Understand the New Requirements and Opportunities under the WIIN Act and Likely Future Legislation**

Pillsbury attorneys across our construction, environment, public policy, projects, finance and insurance practices are monitoring implementation of the WIIN Act and advising clients with respect to the new obligations and opportunities it creates. Similarly, we proactively help clients to participate in the related legislative and regulatory processes related to water infrastructure projects, water quality, and drinking water standards and requirements. Clients with interests in the areas discussed above should feel free to contact the authors or any other Pillsbury attorney they work with to discuss if and how the WIIN Act impacts their business.

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If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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