

Client Alert

International Trade & Litigation Practice Group

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President Obama Signs Water Resources Reform & Development Act of 2014

Legislation expands American iron and steel requirement to additional water programs

Earlier today, President Obama signed into law the Water Resources Reform and Development Act of 2014 (“WRRDA”). Today’s action follows Congressional approval of the Conference Agreement reached in May by House and Senate negotiators that resolved the differences between each chamber’s version of the water resources reauthorization legislation.

The final version of WRRDA signed by President Obama adopts the same American iron and steel (“AIS”) requirement that was included in the Consolidated Appropriations Act of 2014, and which requires the use of specific AIS products in (1) all treatment works projects funded by a Clean Water State Revolving Fund assistance agreement and (2) all public water system projects funded by a Drinking Water State Revolving Fund assistance agreement in Fiscal Year 2014. The U.S. Environmental Protection Agency (EPA) administers that AIS requirement and has already issued interpretive guidance and waivers to permit the use of non-domestic iron and steel products in specific projects. *See* http://water.epa.gov/grants_funding/aisrequirement.cfm.

As a result of WRRDA’s enactment, the AIS requirement also will apply to a new funding program known as the Water Infrastructure Finance and Innovation Act (“WIFIA”) and to funds made available from a State water pollution control revolving fund under Title VI of the Federal Water Pollution Control Act (33 U.S.C. § 1381 *et seq.*). WRRDA authorizes \$175 million in WIFIA funding during fiscal years 2015-2019 (which is a reduction from \$250 million in funding contained in the Senate version of the bill).

Like the Consolidated Appropriations Act of 2014 before it, WRRDA mandates that no funding from either of the above sources may be used for “a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.”

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“Iron and steel products” are defined by WRRDA to include the following types of “products made primarily of iron and steel”:

- lined or unlined pipes or fittings,
- manhole covers,
- municipal castings,
- hydrants,
- tanks,
- flanges,
- pipe clamps and restraints,
- valves,
- structural steel,
- reinforced precast concrete, and
- construction materials.

As explained above, the EPA provided additional interpretive guidance regarding the AIS provisions of the Consolidated Appropriations Act. Thus, the EPA may allow for use of the same guidance in connection with WIFIA and State water pollution control revolving funding authorized by WRRDA.

In sum, WRRDA expands the reach of the AIS requirement to WIFIA and to State water pollution control revolving funds. The final version of WRRDA adopted the AIS language contained in the Consolidated Appropriations Act of 2014. Thus, the interpretive guidance already issued by the EPA should also be instructive, at least informally, for the programs covered by WRRDA’s AIS requirement.

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