

July 1, 2014

No. 194

## **Congress Needs to Repeal “Buy America” Law** **Water Ratepayers Will Pay a High Price if Congress Fails Act**

*By Bonner R. Cohen\**

Communities will pay excessively high prices for water infrastructure upgrades during the coming decades unless Congress repeals a recently passed “Buy American” law. Rep. Robert Aderholt (R-Ala.) slipped the provision into the Infrastructure Finance and Innovation Act (WIFIA), which the president signed into law in June. It requires localities that accept federal water funds to buy only American steel pipes and other products necessary for water supply infrastructure upgrades—even when more affordable options are available. This blatantly anti-competitive provision will cast a long shadow over efforts to fix the corroding, leaking underground water pipes that plague many of America’s municipalities.

Many of the nation’s water networks are in an advanced state of decay. Government mandates that drive up repair will only make a bad situation worse. How bad is it? According to a 2010 U.S. Conference of Mayors report, rehabilitating the nation’s water and wastewater systems will require spending \$3.8 trillion over the 20-year period 2009-2028. Underground pipes account for some 60 percent, or \$2.28 trillion, of that total, according to the U.S. Environmental Protection Agency (EPA).<sup>1</sup>

Widespread corrosion in metallic pipes is the primary cause of an estimated 300,000 water-main breaks in North America every year. Hundreds occur every day. Gregory M. Baird, former chief financial officer for Aurora Water, Colorado’s third largest water utility, estimates that leaking underground pipes lose 2.6 trillion gallons of water every year, about 17 percent of all water pumped in the United States. Montana State University microbiologist and water researcher Timothy Ford argues that as pipes corrode and break, water escapes and diseases enter the system, posing a serious threat to public health.<sup>2</sup>

Water systems are capital-intensive operations. When jurisdictions fail to raise sufficient funds to cover the cost of rehabilitating their underground water networks, repairs are put off, decay accelerates, and upgrades require even more funds. This is why the Aderholt provision will do so much harm. It limits the choices water utilities can make, which is a sure way to drive up the cost of repair and replacement.

---

\* *Bonner Cohen is an adjunct scholar with the Competitive Enterprise Institute and a senior fellow with the National Center for Public Policy Research.*

**Background.** Rep. Aderholt originally inserted the “Buy America” language into an Environmental Protection Agency appropriations bill covering fiscal year 2014, which was signed into law in February. Specifically, it directs recipients of the EPA-administered State Revolving Funds (SRFs) to “use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of the Federal Fiscal Year 2014.”<sup>3</sup>

Three months later, the same Buy America provision mysteriously made its way into Section 436 of WIFIA, making the mandate permanent, unless other members of Congress step up to the plate and repeal this rent-seeking special-interest provision.

Iron and steel products covered under the Aderholt provision include lined and unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.<sup>4</sup> It discriminates not only against foreign-produced products, but against any American-made water infrastructure product that is not made with steel or iron.

Section 436 also sets forth the following conditions under which the EPA can waive the Buy America requirement. Specifically, the law states:

- 1.) application of the provision is deemed to be inconsistent with the public interest;
- 2.) iron and steel products are not produced in the United States in sufficient and reasonable available quantities and of a satisfactory quality; or
- 3.) inclusion of iron and steel products made in the United States will increase the cost of the overall project by more than 25 percent.<sup>5</sup>

Unfortunately, cities and counties will have to request such waivers, rather than be free to make rational decisions about what products meet their water infrastructure needs.

Added to WIFIA without debate, the Buy America provision can be fairly described as a sop to the domestic ductile-iron pipe industry, which is based near Rep. Aderholt’s 4<sup>th</sup> district in north central Alabama. American Cast Iron Pipe Company and McWane Cast Iron Pipe Company are both headquartered in nearby Birmingham.

**The Role of State Revolving Funds.** State Revolving Funds, combined with funds raised from taxpayers and ratepayers at the local level, provide the bulk of the revenues used to maintain underground water and wastewater systems. Authorized under amendments to the Clean Water Act and the Safe Drinking Water Acts, SRFs have provided water systems with needed funds to replace aging pipes and make other improvements.

Under the SRF program, Congress authorizes the EPA to make capitalization grants to states. States then match these grants with 20 percent of their own funds, and use that money to provide loans and other assistance to public water systems. Communities repay the loan into a fund which, in principle at least, replenishes the finance mechanism, thereby making funds available for other communities.<sup>6</sup>

The Aderholt provision, by burdening the already underfunded SRF program with Buy America mandates, will only compound the challenges faced by hard-pressed water utilities. WIFIA is an entirely new funding mechanism that allows utilities to borrow money at long-term U.S. Treasury rates, much as banks do now. The idea is to lower the cost of borrowing, thereby making water infrastructure projects less expensive.<sup>7</sup> Yet, whatever money utilities may save through lower borrowing costs stands to be offset by the Aderholt provision's anti-competitive mandates.

**Competitive Bidding, Not Government Mandates.** The American Water Works Association recently reported that the EPA is losing patience with states that have not spent their SRF grant money. In addition, some Capitol Hill lawmakers are threatening to rescind appropriations for state water and wastewater projects “that have not been spent down within a reasonable timeframe.” California, for example, reportedly has unliquidated obligations—the amount of SRF funds that states are not matching—totaling more than \$455 million.<sup>8</sup>

And if they are not spending the money, then upgrades to water and wastewater systems are being put off. Congress, by including the Aderholt provision in its water-infrastructure appropriations bill and WIFIA, is making a bad situation worse.

Instead of tilting the playing field to favor one group of suppliers over another, Congress, along with state and local governments, should embrace competitive bidding to encourage innovation and reduce costs. In the area of underground water pipes, by far the biggest expense facing water utilities, let the producers of polyvinylchloride (PVC) pipes, ductile-iron pipes (domestic and foreign), and pipes of any other material slug it out in an open and transparent bidding procedure.

A growing number of jurisdictions are doing just that. Municipalities as diverse in size and location as Charlotte, Cleveland, Dallas, Denver, Fargo, Houston, Indianapolis, Jacksonville, Las Vegas, Louisville, Myrtle Beach, Oakland, San Antonio, and San Diego have joined a host of other cities in allowing the competitive bidding process to decide the future of their water networks.<sup>9</sup>

The results of procurement reform can be dramatic. Great Falls, Montana, introduced competitive bidding into its underground-pipe-selection procedure and saw its water-main break rate drop from 122 in 1997 to 35 in 2009, according to City Engineer Dave Dobbs. Similarly, the Canadian cities of Calgary and Edmonton have each saved about \$5 million annually in water maintenance costs since they turned to competitive bidding to deal with their underground water infrastructure needs.<sup>10</sup>

Instead of mandating the use of this or that material, Congress should follow the example of the cities cited above that have cast aside cronyist policies and are now looking out for the best interests of their taxpayers and ratepayers.

In fact, when it comes to fostering competition and benefitting taxpayers, lawmakers could learn a thing or two from the U.S. Department of Agriculture's (USDA) Rural Utilities Service (RUS) program, which provides funding for water projects across the country. In a March 16, 2002 internal memorandum that was sent to state directors of rural development, USDA stated, "All procurement transactions regardless whether by sealed bid or negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition." It further stipulates that, "Contractors, manufacturers, and suppliers with acceptable equipment and materials should have a chance to participate in the project. Once the facility requirements have been established that assures good quality, the goal is to construct the project at the best price for the system and the taxpayer."<sup>11</sup>

**Conclusion.** Clean and affordable water is much too important to fall victim to cronyism in Washington that that rewards the well-connected to the detriment of everyone else. USDA and reform-minded cities have it right and the Aderholt provision has it wrong. The mandate to purchase American iron and steel products will lead to higher costs and more bureaucracy for water utilities that already struggling to keep their systems in an acceptable state of repair. That in turn will lead to higher rates for consumers. Congress should go back and undo the damage by repealing it.

## Notes

---

<sup>1</sup> Bonner R. Cohen, "Fixing the Nation's Leaky Waterworks," *The Washington Times*, Dec. 12, 2013, <http://www.washingtontimes.com/news/2013/dec/12/fixing-the-nations-leaky-waterworks/>.

<sup>2</sup> Ibid.

<sup>3</sup> United States Environmental Protection Agency, Memorandum, Implementation of American Iron and Steel Provisions of P.L. 113-76, Consolidated Appropriations Act of 2014, p. 1, [http://water.epa.gov/grants\\_funding/upload/AIS-final-guidance-3-20-14.pdf](http://water.epa.gov/grants_funding/upload/AIS-final-guidance-3-20-14.pdf).

<sup>4</sup> Ibid, p. 2.

<sup>5</sup> Ibid, p.2.

<sup>6</sup> Bonner R. Cohen, *Fixing America's Crumbling Underground Water Infrastructure: Competitive Bidding Offers a Way Out*, Competitive Enterprise Institute, April 2012, p. 9, [http://www.cei.org/sites/default/files/Bonner\\_Cohen\\_Fixing\\_America's\\_Water\\_Infrastructure.pdf](http://www.cei.org/sites/default/files/Bonner_Cohen_Fixing_America's_Water_Infrastructure.pdf).

<sup>7</sup> American Water Works Association, "Infrastructure Financing," Web page, undated and accessed on June 24, 2014, <http://www.awwa.org/legislation-regulation/issues/infrastructure-financing.aspx>.

<sup>8</sup> "EPA Pressures States to Use SRF Funds," *Water Services Insider* May 23, 2014.

<sup>9</sup> Cohen, *Fixing America's Crumbling Underground Water Infrastructure*, p. 11.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid. p. 11-12.