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EPA, N.Y. Clash Over State Plan to 'Siphon' Clean Water Funds for Bridge.

NEW YORK — A state agency approved Gov. Andrew Cuomo's plan yesterday for borrowing \$511 million from the federal Clean Water State Revolving Fund to help finance construction of a new \$4 billion Tappan Zee bridge across the Hudson River.

The New York State Environmental Facilities Corp. (EFC) approved an idea hatched by the Democratic governor despite fire from prominent environmental groups that charge it is an inappropriate use of money that's intended for sewage system upgrades at eligible municipalities.

During an EFC board meeting, members justified the move with claims that the money would help protect the Hudson River estuary and threatened sturgeon. They argued they have the legal basis for spending the money on the bridge under a joint New York-New Jersey estuary management plan for the Hudson that allows for environmental mitigation costs related to the construction project to come from the federal fund.

"It is an extraordinary transportation project and a project that is going to protect the environment and the Hudson River estuary in extraordinary fashion," said EFC Chairman Joseph Martens, also the head of the state's Department of Environmental Conservation.

The new Tappan Zee, which would replace the old span and include eight traffic lanes as well as mass transit corridors, has separately been guaranteed \$1.6 billion in federal dollars through the Department of Transportation. The bridge carries an estimated 134,000 vehicles daily and 160,000 on some weekends.

Martens appeared surprised by the attention the plan has received, and environmentalists in Albany have suggested that Cuomo's team tried to get the funding stream through unnoticed until a state senator caught on just last week. Martens insisted during the meeting that the money would be unused otherwise and would roll over to the next fiscal year if left unspent.

Martens also referenced a letter sent to the EFC this week from U.S. EPA Region 2 Administrator Judith Enck outlining eight concerns the federal agency has with the concept. EPA has the right to veto such use of Clean Water Act funds if the agency deems it inappropriate.

"We intend to fully address EPA's questions and any concerns they have," Martens said.

Enck's letter notes that EPA hasn't approved the move, calling it an "unconventional approach" to the use of the clean water fund. She also explained that historically EPA uses the fund for low-interest loans to local governments looking to build or upgrade wastewater treatment systems.

"It bears mention that we do not believe New York state has previously used the CWSRF for many of the types of estuary projects now under consideration for funding," she said.

Enck further pressed the EFC and Martens to answer how such use of the funds would, among other

items, help to improve water quality or adhere to a regional conservation management plan in place since 1996.

"New York's administration of a strong and reliable CWSRF depends upon its careful stewardship of that fund and scrutiny of proposed expenditures," Enck wrote.

'Straight-face test'

Environmentalists charged up about the developments staged two press conferences on the matter yesterday, before and after the board's vote.

Riverkeeper President Paul Gallay, who previously helped to spearhead his group's crucial support for building the bridge, has said he was blindsided by the plan and wants the Cuomo administration to back down.

Gallay also attacked the EFC, arguing that the agency is controlled by the governor and effectively has been put in the position to argue that New York state has become an eligible municipality under the federal clean water fund.

"The EFC [yesterday] said that New York state is a municipality of New York state," he said. "None of this passes the straight-face test."

Gallay and others believe Cuomo is using the fund because financing for the bridge has become complex, raising the specter of much-higher tolls to cross the span once it is completed. Cuomo in a release earlier this month acknowledged that he was hoping to avoid raising tolls as much as possible.

New York Assemblyman James Brennan, a Democrat, has sided with the environmental groups. He said the clean water fund is meant for towns and cities, which are "inherently subdivisions" of the state, he argued.

"It seems ludicrous to pass the state of New York off as a municipality," Brennan said, adding that a number of Empire State towns and cities' sewage systems "are at risk of imminent failure" and need the money. He also cited the rising cost of water in New York City, which has doubled in the last 10 years, partly because wastewater plants are in dire need of upgrades, he said.

"The issue of how much the tolls will go up is a legitimate issue, but [this fund] should not subsidize a bridge," he said.

Chris Goeken, director of public policy at the New York League of Conservation Voters, added that if New York is allowed to move forward, it could set a precedent for other states looking to "siphon" wastewater money to, say, build a causeway or a bridge.

"They would love to get their hands on this big pot of money," he said, adding that such a precedent might also make it harder in Congress to argue for Clean Water Act appropriations if members feel the loans are being used for other purposes.

"It will be much easier for Congress to deny wastewater money if this continues," he said.

Gallay during one of the press conferences was pressed on why the governor shouldn't look for innovative funding for the bridge since the money isn't being spent in any event. Gallay responded that municipalities are hesitant to borrow because of caps on spending and the "unintended consequences of efforts to control taxes."

“Municipalities would seek this money if not for limits on borrowing,” he said.

Gallay added that it is premature to talk about suing the state over Cuomo’s financing plan for the bridge.

“We don’t think it’s going to need to go to court,” he said.

Click [here](#) to view EPA’s letter to the EFC.

Colin Sullivan, E&E Reporter
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