



To: Coachella Valley Water District
From: Ana Schwab, Lowry Crook, and Samantha Sabol
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RE: Federal Report

A Continuing Resolution Has Passed, Congress Now Looks Ahead To November Elections

After a busy end to a full session in September, both the House and the Senate are out of session gearing up for the November election and a potentially busy month of legislating to follow. The end of September brought the highly anticipated passage of a Continuing Resolution (CR). On September 26th, the Senate released bill text via [H.R. 6833](#), the Affordable Insulin Now Act, which was amended and became the legislative vehicle for the continuing resolution. This bill averted a government shutdown and continued federal funding until December 16th. The bill most notably provided \$12 billion in aid to Ukraine. Initially it incorporated permitting reform measures from Senator Manchin's proposed legislation. However, after tense negotiations, Senator Manchin agreed to remove permitting reform provisions from the bill due to opposition from many Republican and some Democratic Senators. The Senate passed the CR on Thursday September 29th, and the House subsequently passed this legislation and it was signed into law by President Biden on Friday, September 30th. Congress must still pass appropriations bills before funding expires on December 16th.

As a reminder, in July, the House passed H.R.8294, the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, a six-bill appropriations package that included \$400 billion in appropriations for Agriculture-FDA, Energy and Water Development, Financial Services-General Government, Interior-Environment, Military Construction-Veterans Affairs, and Transportation-HUD bills. The House still must pass the Commerce-Justice-Science, Defense, Homeland Security, Labor-HHS-Education, Legislative Branch, and State-Foreign Operations appropriations bills. It is predicted that the appropriations bills and full FY23 budget will be signed into law by the close of the year.

In addition to the FY23 appropriations, Congress must pass the National Defense Authorization Act (NDAA) before the end of the year. The House passed the NDAA in July, and the bill currently awaits Senate consideration. It is currently expected that the Water Resources Development Act (WRDA) will be attached to the NDAA. Depending on how the election goes, the Congressional majority may negotiate some additional end-of-year packages to pass and have signed into law before the new Congress on January 3, 2023.



The November Election

The general election will take place on November 8th, and with many close races in play there has yet to be a decisive prediction on the outcome and makeup of the 118th Congress. This tense and unpredictable election will put the majority party of both chambers in question, and the current and historic 50-50 Senate will likely lose its balancing numbers, but predictions are still unclear. The 118th Session of Congress will begin on January 3rd, 2023.

Senator Manchin's Bill On Permitting Reform

On September 21, 2022, Senator Manchin introduced his bill on permitting reform, focusing on measures that would reduce the length of time for federally approved permits, expand eligibility and financial assistance for certain permits, and create a federal council to lead agency review and approval of permits. The bill is formally titled the [Energy Independence and Security Act of 2022](#). While this bill did not make it into the final Continuing Resolution, it played a large role in negotiations, and will likely be a priority for future legislation in the Senate.

Important provisions in Senator Manchin's bill include:

- Designation of 25 high-priority infrastructure projects to expedite permitting for. The bill sets criteria for the projects to be selected, and mandates the President will determine these designations via an Executive Order.
- Sets maximum timelines for permitting reviews and expands the Federal Permitting Improvement Steering Council (FPISC) to do so. Limits include two years maximum for NEPA reviews, and one year for Environmental Assessments.
- Incorporate both Trump and Biden amendments to Section 401 of the Clean Water Act by limiting review timeline to one year, clarifying reviews are based on water quality impacts, and requires state and tribes to formally clarify requirements for water quality certification.
- Sets a statute of limitations for court challenges to avoid excessive litigation delays.
- Changes jurisdiction of the Federal Energy Regulatory Commission (FERC) regarding regulation of hydrogen pipelines, and interstate electric transmission facilities.
- Completion of the Mountain Valley Pipeline.

Senator Manchin's West Virginia counterpart, Senator Shelly Moore Capito (R-WV), has endorsed Manchin's bill, while also introducing a separate bill on permitting reform. A few key relevant pieces of Senator Capito's proposal includes: (1) Codification of Trump Administration Section 401 Certification, (2) Codification of the Nationwide Permits from 2021 regarding Section 404 of the Clean Water Act – which notably includes NWP 59, (3) Extends NPDES permit period from five years to ten years. Senator Capito's endorsement of Senator Manchin's bill is a large step in gaining the needed Republican support.



A Push To Include PFAS Restrictions In Upcoming Legislation

[S.4348](#), Food and Drug Administration Safety and Landmark Advancements Act of 2022 (FDASLA), was introduced on May 26, 2022 by Senator Patty Murray (D-WA), and would renew FDA fees for reviewing drug and medical devices. In June, Senators Maggie Hassan (D-NH) and Lisa Murkowski (R-AK) offered [S.3169](#), Keep Food Containers Safe from PFAS Act of 2021 as an amendment to the FDASLA, and the amendment passed the Senate Health, Education, Labor and Pensions Committee with bipartisan support in a 13-9 vote. This amendment would ban the use of PFAS in food packaging and containers.

The FDLSA also included language that would examine the use of PFAS in cosmetics by requiring the FDA to conduct a study on the impacts of these chemicals. However, while this provision addresses PFAS in cosmetics, it does not go as far as many environmentalists and other supporters would like. This issue has been a priority for many advocacy groups, and additional legislative action has been taken to address this. On June 14, 2022, Senator Susan Collins (R-ME) introduced [S. 2047](#), the No PFAS in Cosmetics Act, which would effectively ban the use of PFAS in cosmetics and accomplish the results many supporters are advocating for. This bill was included in a larger legislative package, known as the Safer Personal Care and Beauty Bill Package, which would address and prevent the use of PFAS in cosmetics.

The FDASLA Act was included in the Continuing Resolution, but did not include S. 3169 as an amendment or language requiring a study on PFAS in beauty products. Environmentalists and other groups are now urging members of Congress to support the excluded provisions and address the use of PFAS in everyday items.

Supreme Court Opening Hearing

The Supreme Court of the United States (SCOTUS) opened their new term on October 3rd, 2022, with a landmark environmental protection case. *Sackett vs. Environmental Protection Agency* (EPA) brought up controversies over the jurisdiction of the Clean Water Act over wetlands and streams. The property owners, the Sacketts, sought to develop the property and ran into the Army Corps position that the property contained jurisdictional wetlands.

The issue before the Court was whether the property contained wetlands that qualify as Waters of the United States (“WOTUS”) based on the fact that wetlands across the street from the property connect to Priest lake via a drainage ditch that connects to a stream that leads to the Lake.

Based on the questions during Oral Arguments, it seems a majority decision will move away from the “significant nexus standard” that came out of the 2006 Rapanos case and seeks a more concrete and limited way of determining what is jurisdictional. From their comments during the hearing, it appears that Justices Gorsuch, Alito and Thomas are aligned and would adopt a very narrow interpretation of what constitutes WOTUS. Justices Barret, Kavanaugh, and Roberts seemed to be



looking for a more moderate position that is more limited than “significant nexus” and provides some concrete way of determining what is jurisdictional. From their questions, Justices Jackson, Sotomayor and Kagan appear to believe that the Sackett’s property contains wetlands that qualify as WOTUS. It is possible that the conservative Justices will not split 3-3, and instead will find a unified test that is similar to Justice Scalia’s decision in the *Rapanos* case. But, it is also possible that Justices Barrett, Kavanaugh and/or Roberts could join the liberal wing with some alternative test. This is what happened in the *Maui* case, and we could see a repeat.

Congressional Hearings

On September 20th, the House Transportation and Infrastructure Subcommittee on Water Resources and Environment held a hearing to commemorate the 50th anniversary of the Clean Water Act becoming law in 1972. Panelists included E. Joaquin Esquivel, Chair of the California State Water Resources Control Board, and Michael Witt, a member of NACWA, among others. The discussion included the accomplishments of the Clean Water Act, along with the work still needed to sanitize and treat water, and ensure water accessibility for residents.

On Wednesday, September 21st, House Homeland Security Committee met to discuss water infrastructure and preparedness. The hearing included a panel of witnesses including the Honorable Craig Fugate, former Administrator of the Federal Emergency Management Agency (FEMA), and John O’Connell, Senior Vice President of the National Rural Water Association. Discussions included preparedness and resiliency of water infrastructure, and the challenges and successes we have seen. Panelists also answered questions regarding environmental justice and critical infrastructure needs in underserved communities.

Additionally, on Wednesday, September 28th, Senate Environment and Public Works Committee held a hearing to discuss stakeholder views on the reauthorization of the Brownfields Program. In the hearing, Senators and witnesses discussed nation-wide successes from the Brownfields Program. A representative from the National Brownfields Coalition advocated that for a renewal of the Federal Brownfield Tax Deduction, the creation of a Brownfield Loan Guarantee Program, and other financial assistance programs. Stakeholders also discussed the involvement of the committee’s three agency jurisdictions, the Federal Highway Administration, the Army Corps of Engineers, and the Economic Development Administration, and how these agencies can have a more effective role in supporting the Brownfield Program.



Funding Opportunities

Bureau of Reclamation Funding Opportunity

The Bureau of Reclamation announced a funding opportunity for innovative proposals related to water treatment technology. This is particularly focused on projects that will reduce water treatment costs and increase water availability. The Bureau is offering \$250,000 in funding over two years for laboratory-scale projects, and \$800,000 in funding over three years for pilot-scale projects. The deadline for applications is November 30, 2022. More information can be found [here](#).

Environmental Protection Agency Funding Opportunity

The Environmental Protection Agency (EPA) announced multiple Brownfield grant opportunities with a total of \$169 million allocated for funding. These grants include Multipurpose, Assessment, Revolving Loan Fund, and Cleanup (MARC) Grants. The purpose of this funding is to address water contamination of hazardous substances, including PFAS, and assist communities in the effort to clean their water from these chemicals. The deadline for applications is November 22, 2022. More information can be found [here](#).