



TO: STEVE SMITH
TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION

FROM: MIKE McINTYRE

SUBJECT: MARCH MONTHLY LEGISLATIVE UPDATE

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The March Monthly Legislative Update provides information on the following topics:

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 - EPA Releases Long-Awaited Guidance to States on How to Implement Clean Water and Drinking Water Provisions in the IJJA
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 - EPA and Army Select 10 Roundtables to Highlight Regional Implications of WOTUS
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WASHINGTON NEWS

Congress Approves \$1.5 Trillion Federal Budget for FY 2022

After months of delays, Congress finally approved a \$1.5 trillion [spending bill](#) to fund the federal government for the rest of the fiscal year (through September 30, 2022). The \$1.5 trillion bill includes all 12 annual appropriations bills in one package, which is referred to as an omnibus.

The deal was reached in the early morning hours of March 9. The House approved the deal later that same day, along with another stopgap spending bill that will continue government funding at current levels through March 15 to allow time for the bill to be processed and signed into law. The Senate ultimately approved the bill on March 10, one day before the March 11 deadline. President Biden signed the bill into law on March 15.

The 2,741-page bill provides a 6.7 percent increase in non-defense discretionary spending and a 5.6 percent increase in defense spending, as well as \$13.6 billion in aid to Ukraine. It is the first omnibus to include earmarks since they were banned in 2011.

The bill will provide more funding to implement the Infrastructure Investment and Jobs Act (IIJA), fully funding the transportation-related programs that were authorized funding in the IIJA.

EPA Releases Long-Awaited Guidance to States on How to Implement Clean Water and Drinking Water Provisions in the IIJA

On March 8, the U.S. Environmental Protection Agency (EPA) [released](#) a long-awaited [memo](#) providing guidance to states on how clean water and drinking water funding approved in the IIJA should be implemented over the next five years. EPA said the memo “is a key implementation step that outlines requirements and recommendations for the Drinking Water and Clean Water State Revolving Funds (SRFs) to ensure the country is working together to deliver clean and safe water and replace lead pipes for all Americans, especially disadvantaged communities.”

The majority of the water infrastructure funding provided by the IIJA—\$43 billion—will flow through the Clean Water and Drinking Water SRFs. EPA’s implementation memo provides critical information that will help each state suballocate the funds to eligible public entities, including local governments and utilities.

EPA explains that states will have significant flexibility in suballocating the funding. As it relates to program administration and processes, states have the flexibility to:

- Determine priorities and select projects.
- Combine Intended Use Plans (IUPs) and Project Priority Lists (PPLs) for both the IIJA and base funding or submit separate IUPs and PPLs for both base and IIJA funding.
- Apply for conditional or partial grants.
- Craft single assistance agreements (e.g., loans or grants) that contain multiple types of construction components and activities funded by multiple pots if the funds are tracked separately.
- Design and manage the application process.
- Take administrative funds from each funding stream.
- Transfer funds between programs to address state needs.
- Use recycled funds for any eligible purpose.
- Set interest rates and repayment terms.

As it relates to the additional grant/loan forgiveness subsidies, states have the flexibility to:

- Define disadvantaged community and affordability criteria.
- Determine the amount of additional subsidization provided in each assistance agreement.

As it relates to emerging contaminants, states have the flexibility to:

- Choose projects that are CWSRF eligible whose primary purpose is to address emerging contaminants using a broad definition.
- Select projects that are DWSRF eligible whose primary purpose must be to address emerging contaminants, with a focus on PFAS.

In the memo, EPA emphasizes the need to direct the funding (particularly the grant and loan forgiveness subsidies) to disadvantaged communities. The memo explains that 49 percent of funds provided through the DWSRF General Supplemental Funding and DWSRF Lead Service Line Replacement Funding must

be provided as grants and forgivable loans to disadvantaged communities. The IJJA also requires that not less than 25 percent of funds provided through the DWSRF Emerging Contaminants Funding be provided as grants and forgivable loans to disadvantaged communities or public water systems serving fewer than 25,000 people. For the CWSRF, the IJJA mandates that 49 percent of funds provided through the CWSRF General Supplemental Funding must be provided as grants and forgivable loans to the following assistance recipients or project types: (1) Municipalities that meet the state's affordability criteria, (2) Municipalities that do not meet the state's affordability criteria but seek additional subsidization to benefit individual ratepayers in the residential user rate class, and (3) Entities that implement a process, material, technique, or technology that addresses water or energy efficiency goals; mitigates stormwater runoff; or encourages sustainable project planning, design, and construction.

The State of North Carolina will use this memo to implement IJJA clean water and drinking water funding at the state level. We expect it will take the state weeks or months to review EPA's memo and develop the appropriate guidance to implement the funding at the state level.

Key Senator Proposes a Scaled-Down Version of Build Back Better Act

Senator Joe Manchin (D-WV), who rejected President Biden's Build Back Better Act proposal last year, stalling the bill in the Senate ever since, said he is open to negotiating a significantly scaled-down version of the legislation.

The Build Back Better Act, as proposed by the White House, would cost anywhere from \$1.9 trillion to \$2.3 trillion, funding large components of President Biden's proposed [American Jobs](#) and [Families Plans](#). These plans propose funding for education, child care, family and medical leave, the child tax credit, the earned income tax credit, the child and dependent care tax credit, and additional funding for infrastructure (including funding for some programs that were authorized in the IJJA but not appropriated funding), among other provisions.

According to [The Hill](#), Senator Manchin said he could support a package that reforms the tax code and lowers the cost of prescription drugs if the money raised is split between spending on new climate change proposals and deficit reduction and fighting inflation. The Senator said he has not made any formal counterproposal to the White House but is sketching the outlines of a proposal that he could support along with the rest of the Senate Democratic Caucus.

EPA and Army Select 10 Roundtables to Highlight Regional Implications of WOTUS

On February 24, the EPA and Army Corps of Engineers announced the selection of ten regional roundtables across the country to facilitate discussion on implementation of "waters of the United States" (WOTUS). These regional roundtables will help the agencies consider regional variation in implementation of WOTUS and provide opportunities to discuss geographic similarities and differences, particular water resources that are characteristic of or unique to each region, and site-specific feedback about the ongoing implementation of WOTUS by the agencies. The agencies anticipate hosting these regional roundtables virtually over the spring and summer.

The ten selected roundtables will be with:

- Amigos Bravos (Southwest)
- Arizona Farm Bureau (Southwest)
- Cahaba Brewing (Southeast)
- California Farm Bureau (West)
- Kansas Livestock Association (Midwest)
- Natural Resources Defense Council (Northeast)
- National Parks Conservation Association (Midwest)
- North Carolina Farm Bureau (Southeast)
- Regenerative Agriculture Foundation (Midwest)
- Wyoming County Commissioners Association / Montana Association of Counties / Idaho Association of Counties (West)

Numerous House Republicans, including Representative Rouzer, are [calling](#) on the Biden administration to halt the agencies' current rulemaking activities, pointing to a case that will soon be considered by the Supreme Court (*Sackett*). In a [joint letter](#), the members state, "We urge the EPA and the Corps to halt all current rulemaking actions surrounding the WOTUS definition as the United States Supreme Court takes up this landmark case. The Agencies should instead use this time to continue meaningful engagement with stakeholders..." the members wrote. "This would allow the Agencies to fully understand and account for the impacts to small businesses, farmers, rural communities, and countless other stakeholders that will result from any regulatory change to the definition of WOTUS."

ADVOCACY UPDATE

We are pleased to report to you that Congress has approved \$390,000 for New River Inlet operations and maintenance (O&M) in the [FY 2022 federal budget](#), which was approved by Congress last week and signed into law by President Biden on March 15. The line item can be found on page 44 of the Energy and Water Development (E&W) [Joint Explanatory Statement](#) that accompanies the budget. Congress also provided \$5,950,000 to the Corps of Engineers for Atlantic Intracoastal Waterway O&M in North Carolina. Please see the first item under “Washington News” for more information on the FY 2022 federal budget.

North Topsail Beach CBRA Mapping Issue

Over the past week, we have been in contact with Representative Murphy’s staff and Representative Rouzer’s staff regarding the proposed technical corrections to Topsail Unit L06. Staff have contacted the House Natural Resources Committee to request an update on the Committee’s efforts to draft a bill related to the proposed FWS technical corrections, which we anticipate will be part of a larger technical corrections package that includes map changes to at least six other CBRS units. We will provide an update to TISPC once the delegation receives an update on the status of the bill.

Sand Borrowing Issue

We continue to await the release of draft 2022 Water Resources Development Act (WRDA) bills in the House and Senate with the expectation that SHORRE Act provisions will be included in the draft bills. We expect Congress to include in WRDA the SHORRE Act provision requiring the federal government to cover the excess cost of using sand from borrow sites that are not considered to be the least cost method of disposal (for certain projects). As we reported last month, this provision does not address all the issues that have arisen due to the Biden administration’s decision last year to restrict the borrowing of sand from within a Coastal Barrier Resources Act (CBRA) unit for use outside of CBRA unit, but it is a start. We will continue to discuss the importance of resolving this issue for other projects, including those using FEMA funding, with your Congressional delegation.

Greater Island-Wide Coordination in Disaster Recovery

On March 10, Congressman McIntyre and Stephanie Missert hosted a video conference with Town Managers Rose, Breuer, and Derian to discuss FEMA disaster recovery coordination issues. We appreciate each Town Manager taking time to discuss these issues in detail with us. Based on this discussion, Congressman McIntyre and I will develop a list of the key issues being experienced in disaster recovery efforts, as they relate to FEMA, and determine possible administrative or legislative solutions. We plan to follow-up with the Town Managers within the next two months to check in on our progress and discuss next steps.

Support and Promote the Community Rating System and the Federal Flood Insurance Program

Another short-term extension of the NFIP was approved in the FY 2022 federal budget that was signed into law on March 15, extending the program through September 30, 2022. This marks the 23rd short-term extension of the program in the past three years. Congress will continue to work on NFIP reauthorization legislation, but the committees of jurisdiction are still far from agreeing on compromise legislation.

Once the committee begins to work seriously on a compromise NFIP reauthorization bill, we will begin discussions about how TISPC can best support and benefit from changes to the CRS and NFIP.

As a reminder, Risk Rating 2.0 (FEMA's new flood insurance premium rating system) will go into effect starting April 1, 2022, for all flood insurance policies. Risk Rating 2.0 already went into effect for *new* policies starting October 1, 2021.

We do not expect Congress to halt or roll back implementation of Risk Rating 2.0 at this point in the process, as some Members of Congress, including the Majority Leader of the Senate Chuck Schumer, have already tried to do so to no avail. However, Congress may consider measures to mitigate any negative impacts of Risk Rating 2.0 in the next NFIP reauthorization. One of the provisions that has gained bipartisan support includes capping rate increases at 9 percent annually as opposed to the current 18 percent. Another is implementing a voucher program to help low- and moderate-income households keep up with increasing premiums. There also remain some widespread concerns that FEMA needs to be more transparent about the data and methods used to calculate risk under Risk Rating 2.0.