



TO: STEVE SMITH
TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION
FROM: MIKE McINTYRE
SUBJECT: JULY MONTHLY REPORT AND LEGISLATIVE UPDATE
DATE: JULY 21 2023

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

- Washington News
 - New WOTUS Rule Planned Before September
 - Update on the FY 2024 Appropriations Process
 - EPA Announces Over \$50 Million to Help Communities Access Clean and Safe Drinking Water
 - Treasury Issues Guidance on Accessing Clean Energy Tax Credits
 - Corps of Engineers Publishes Request for WRDA 2020 Project Proposals
 - EPA Inspector General Finds \$162 Million Mismanagement in Water Infrastructure Funding
 - Department of Commerce Launches FY 2023 NOAA Climate Resilience Regional Challenge
 - EPA to Update Environmental Justice Guidelines
 - Southeast Crescent Regional Commission (SCRC) Announces New Funding Opportunities
- Advocacy Update

Washington News

New WOTUS Rule Planned Before September

The Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) have announced plans to amend their final "Waters of the U.S." (WOTUS) Rule by September. This comes in response to the Supreme Court's decision in *Sackett v. EPA*, which endorsed a narrower test for determining what qualifies as WOTUS. The revised rule will likely remove the broader "significant nexus" test and address key terms not addressed in the *Sackett* ruling.

The current WOTUS rule has been temporarily halted in about half of the country by court orders, but the agencies intend to interpret WOTUS consistently with the *Sackett* decision even in the unaffected states. Some Corps Districts have also suspended the issuance of approved jurisdictional determinations under the Clean Water Act pending guidance from the amended final WOTUS rule.

In a separate development, industry groups and GOP-led states have filed motions to vacate the entire Biden final WOTUS rule, arguing that it violates the agencies' authority under the Clean Water Act and the Constitution. They seek a new rule within 45 days and the resumption of issuing jurisdictional determinations for permitting processes.

EPA has also filed a motion in a North Dakota court seeking a stay of ongoing litigation brought by Republican state attorneys general. The agency plans to revise and amend the 2023 WOTUS rule by September to address the Sackett decision. The court granted a stay in another case, indicating a recognition of the upcoming rule's potential impact on future litigation.

These legal actions suggest potential future court challenges as the Biden Administration navigates the redefinition of WOTUS under the Clean Water Act.

Update on the FY 2024 Appropriations Process

The House and Senate Appropriations Committees recently approved their allocations for the Fiscal Year (FY) 2024 subcommittees. However, there is a significant gap in the topline discretionary spending caps between the two chambers, amounting to a difference of \$120 billion across the twelve spending bills. Reconciling these discrepancies will be crucial to avoid a potential government shutdown or reliance on a long-term "Continuing Resolution."

The House Appropriations Committee has decided to base its Fiscal Year 2024 spending bills on the enacted funding levels from Fiscal Year 2022, setting a topline discretionary spending cap of \$1.47 trillion. On the other hand, the Senate Appropriations Committee has chosen to utilize the topline discretionary spending cap of \$1.59 trillion outlined in the recently enacted Fiscal Responsibility Act of 2023. Appropriators and congressional leaders will need to work together to reconcile these spending differences later this year to ensure the government's continued functioning and prevent any disruption in funding.

EPA Announces Over \$50 Million to Help Communities Access Clean and Safe Drinking Water

The EPA recently [announced](#) \$50.4 million in annual funding to help communities in need access clean and safe drinking water. The funding will support projects and activities in underserved, small, and disadvantaged communities, helping them upgrade their water infrastructure and comply with the Safe Drinking Water Act. The grant program, established under the Water Infrastructure Improvements for the Nation (WIIN) Act, provides funding to states and territories based on factors such as poverty levels, small water systems, and underserved communities. This funding, combined with other resources, aims to strengthen the nation's water infrastructure, and ensure everyone has access to clean and safe water.

Treasury Issues Guidance on Accessing Clean Energy Tax Credits

The U.S. Department of Treasury and Internal Revenue Service have recently provided [guidance](#) on how tax-exempt entities can access clean energy tax credits included in the Inflation Reduction Act (IRA). Previously, tax-exempt entities were unable to benefit from such incentives as they do not pay taxes. However, the IRA introduced "elective pay" and "transferability" provisions, allowing tax-exempt entities to receive full payment for qualifying clean energy projects or transfer certain tax credits to other parties.

These tax credits cover various clean energy initiatives, including solar, wind, and battery storage projects, the installation of electric vehicle (EV) charging infrastructure, and the purchase of clean vehicles for government fleets. The credit for commercial EVs can reach up to \$7,500 for vehicles under 14,000 pounds and up to \$40,000 for vehicles over 14,000 pounds. Tax-exempt entities opting for direct payment will receive compensation through their tax filing process.

Corps of Engineers Publishes Request for WRDA 2020 Project Proposals

The Army Corps of Engineers [is seeking](#) proposals for a pilot program that will fund projects for economically disadvantaged communities. This program, mandated by the Water Resources Development Act of 2020, allows for projects to be carried out under a continuing authority program at 100% federal cost. The Corps is accepting proposals for pilot projects and has the authority to select up to 20 projects. The deadline for submitting proposals is August 21, 2023.

EPA Inspector General Finds \$162 Million Mismanagement in Water Infrastructure Funding

The EPA Inspector General has released [a report](#) revealing that the Environmental Protection Agency failed to properly account for over \$162 million in federal grants intended for water assistance and lead service line replacement in small and disadvantaged communities.

The management alert highlighted discrepancies in how the EPA reported funding received between 2017 and 2021 under the Water Infrastructure Improvements for the Nation Act. The findings raise concerns about unreliable reporting and oversight of grant funds, urging the EPA to ensure accurate monitoring and use of funds to address critical public health drinking water issues. The report comes as the EPA is preparing to allocate significantly larger amounts of federal funding under the bipartisan infrastructure law, while Republican lawmakers increase scrutiny of spending activities.

Department of Commerce Launches FY 2023 NOAA Climate Resilience Regional Challenge

The Department of Commerce has opened applications for the [FY 2023 NOAA Climate Resilience Regional Challenge](#). This program aims to promote equitable adaptation by encouraging collaborative efforts and implementing actions to mitigate weather and climate impacts. It offers an opportunity to strengthen coastal areas' resilience and focuses on marginalized, underserved, and underrepresented communities.

Eligible applicants include coastal states, territories, tribes, local governments, educational institutions, non-profit organizations, and regional councils. The funding, totaling approximately \$575 million, supports projects that enhance the resilience of coastal communities against extreme weather events, climate change impacts, and other challenges such as sea-level rise and drought.

Funding for this program is made possible by the Inflation Reduction Act, a significant federal investment in climate resilience efforts. The grant program emphasizes risk reduction, regional collaboration, equity, and the development of long-lasting adaptation capabilities. NOAA offers technical assistance to support organizations throughout the application and implementation process.

Interested parties can submit letters of intent by August 21, 2023, and full applications by February 13, 2024.

EPA to Update Environmental Justice Guidelines

The EPA is planning to revise its guidelines for assessing the combined risks posed by pollution from various sources. The proposed guidelines, the first update since 1997, aim to provide considerations and steps for conducting cumulative risk assessments (CRAs) when appropriate. The EPA defines CRAs as comprehensive evaluations of the combined health and environmental risks from multiple agents or stressors. The new guidelines will offer an eight-step process for planning assessments and address uncertainties that may affect the results. This update is part of the Biden administration's broader efforts to address environmental justice concerns and will undergo [public comment](#) before finalization.

Southeast Crescent Regional Commission (SCRC) Announces New Funding Opportunities

The Southeast Crescent Regional Commission has announced the availability of \$20 million in grant funding, available to communities across the Southeastern United States, including North Carolina. Eligible uses for the funding include a wide variety of economic development and infrastructure projects, such as telecommunications, drinking water, wastewater, beach access, tourism, and environmental conservation. Congressman McIntyre sponsored the legislation authorizing the Commission during his service in Congress. More information is available [here](#) and [here](#).

ADVOCACY UPDATE

In the wake of delays in Congress caused by the debate over the debt ceiling and other contentious legislative issues, the House and Senate have returned to a more normal pace of work. Congress has swiftly returned to a full schedule of legislative hearings and floor activity. It will take time for legislators to work through the backlog of issues that accumulated during the slowdown. Further, they are facing several tight time constraints, including many important agricultural, conservation, and nutrition priorities that are set to expire at the end of September without passage of the 2023 iteration of the Farm Bill.

Since our last update, the Biden Administration has also published its Spring 2023 Regulatory Agenda, encompassing more than 2600 regulatory actions that the President has identified as priorities. TFG has provided an analysis of notable components of the agenda in a special report which can be accessed [here](#). This agenda not only provides notice of proposed regulatory actions, but also is indicative of general priorities of the President.

North Topsail Beach CBRA Mapping Issue

Your advocates at TFG and Ward and Smith (W&S) previously met with your congressional delegation in May to discuss CBRA mapping issues impacting North Topsail Beach. The discussions were enlightening and provided us with a good sense of each Member's priorities. Still, aforementioned delays in Congress have slowed action on legislative priorities across the country,

We remain hopeful that the reintroduction of the *Strengthening Coastal Communities Act* (SCCA) will occur soon, though we do not have a concrete timeframe within which to expect reintroduction. As you will recall, this legislation would implement a total of 11 new and 184 updated Coastal Barrier Resources System (CBRS) maps, including maps in North Carolina. Due to our efforts on behalf of TISPC, the legislation would also ensure that 2.5 acres of the Barton Bay area are removed from Topsail Unit L06, including two structures along Barton Bay Drive and New River Inlet Road, as well as a portion of one lot to the south of New River Inlet Road.

Senator Tom Carper (D – DE), the original sponsor of the legislation in the prior Congress, has announced his retirement from Congress in 2024, after more than 50 years in elected office. It is possible this will encourage Senator Carper and his allies to reintroduce and push for passage of the legislation sooner rather than later. Further, retiring Members of Congress are often given favorable consideration and prioritization of their legislative priorities, especially those with bipartisan backing like the SCCA.

We will also continue our advocacy with Rep. Murphy and Rep. Rouzer to advance their [legislation](#) to amend the Coastal Barrier Resources Act to remove parts of North Topsail beach from the CBRS. Though a more regular legislative schedule has resumed in Congress, no Committee hearings or other activity has been scheduled with regards to this bill yet.

Sand Borrowing

Rep. Rouzer's [bill](#), which creates an exemption to the restriction on the use of federal funds for certain shoreline borrow sites within the CBRS, received a legislative hearing on May 10, 2023 in the House Natural Resources Committee. No further action has been taken on this legislation since our June Monthly

Report. As previously reported, TISPC would not currently qualify for exemptions under this bill but would qualify upon reaching the 15-year threshold set forth in the legislation. This exemption would enable TISPC to use sand from the New Topsail Inlet and New River Inlet CBRA zones for non-CBRA zone beach renourishments even when Federal monies are involved.

The U.S. Army Corps of Engineers' (USACE) recent announcement of the utilization of emergency exemption authority to conduct sand borrowing activity from Masonboro Inlet for renourishment on Wrightsville Beach remains a welcome sign. USACE expects that the renourishment will occur between November 2023 and March 2024, barring any further impediments. Several environmental non-profits, including the Audubon Society, have decried the decision, and there is a distinct possibility that litigation may further delay action.

FEMA Issues

Several FEMA-related rules and proposals were included in the 2023 Spring Regulatory Agenda, released by President Biden on June 13, 2023. One of these proposed rules would update federal flood standard by changing FEMA's floodplain definition, as well as incorporating elements of the Federal Flood Risk Management Standard.

This Agenda also made notice of the forthcoming publication of an Interim Final Rule (IFR) aiming to improve the efficiency of and ease-of-access to FEMA's Individual Assistance Program. This IFR is expected to be published by October, though no exact date has been provided. We are optimistic that this IFR will adhere to the principles that the notice details – namely that it will increase ease-of-access to the program, though specific details of the change have yet to be published. Broadly speaking, given the increasing pace and scale of disasters in both the Eastern and Western United States, we believe that there will be significant pressure on this administration to ensure that relief and pre-disaster mitigation resources flow from FEMA in the most efficient manner possible.

Surf City General Reevaluation Report (GRR)

Your advocates at W&S and TFG stand ready to assist the Commission on the Surf City General Reevaluation Report (GRR) at the Commission's discretion and should the need arise. We will continue to work with the USACE to ensure the project moves forward with due haste.