



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER QUALITY **EPA/PFAS**

On October 31, the Environmental Protection Agency (EPA) issued a rule (88 FR 74360) that changes reporting on per- and polyfluoroalkyl substances (PFAS) to the Toxics Release Inventory (TRI) by eliminating an exemption under the National Defense Authorization Act (NDAA) that allowed facilities to avoid reporting information on PFAS when used in small quantities. The new rule classifies PFAS as a chemical of special concern, thereby removing the *de minimis* exemption and requiring more detailed reporting than other TRI-listed chemicals.

The TRI program, regulated under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), requires certain industry facilities (typically manufacturing, metal mining, electric power generation, chemical manufacturing and hazardous waste treatment) to report annually on environmental releases and waste management quantities of listed toxic chemicals. The NDAA provides a number of burden-reducing tools for standard TRI-listed chemicals which include: (1) the *de minimis* exemption, which allows facilities to disregard chemicals occurring at low levels; (2) use of Form A, a simplified and less rigorous reporting method; and (3) range reporting, which allows facilities to report within wide ranges rather than specific amounts. By classifying PFAS as chemicals of special concern, the EPA has removed eligibility for these tools.

EPCRA also requires suppliers to notify persons to whom they distribute mixtures or trade name products containing toxic chemicals that they contain such chemicals. As part of the new rule, EPA has removed the availability of the *de minimis* exemption under the Supplier Notification Requirements (40 CFR 372.45).

Michal Freedhoff, Office of Chemical Safety and Pollution, said: "People deserve to know if they're being exposed to PFAS through the air they breathe, the water they drink, or while they're on the job. Under this new rule, EPA will receive more comprehensive data on

PFAS and looks forward to sharing that data with our partners and the public."

USBR/Agriculture

On October 30, the Bureau of Reclamation (USBR) announced \$65M for rural water projects in FY24 through the Infrastructure Investment and Jobs Act (IIJA). These investments will support six projects already under construction or in the planning phase: \$7M for the Eastern New Mexico Rural Water System; \$10M for the Jicarilla Apache Rural Water System in New Mexico; \$27M for the Garrison-Diversion Unit of the Pick-Sloan Missouri Basin Program in North Dakota; \$11M for the Rocky Boys/North Central Montana Rural Water System in Montana; \$7M for the Lewis & Clark Rural Water System in South Dakota, Iowa, and Minnesota; and \$3M for the Musselshell-Judith Rural Water System in Montana.

Department of the Interior (DOI) Secretary Deb Haaland said: "Water is life. It is essential for feeding families, growing crops, sustaining wildlife, and powering agriculture businesses. Yet far too many rural communities lack access to adequate clean, reliable water supplies that they need. When President Biden promised to invest in every community in America, he meant it. In the wake of severe drought conditions, the Biden-Harris administration is bringing every tool and every resource to bear, ensuring that we both minimize the impacts of drought and develop a long-term plan to facilitate conservation and economic growth, because no community should be left behind."

CONGRESS

Appropriations/Energy-Water

On October 26, the House of Representatives voted 210-199 to approve the Energy and Water Development and Related Agencies Appropriations Act (H.R. 4394). The bill provides \$56.9B in discretionary spending, including \$32.5B in defense spending, an increase of \$1.1B; and \$24.4B in non-defense spending, a decrease of \$857M which is \$2.6B below the President's Budget

Request. The bill also rescinds \$5.6B from the Inflation Reduction Act (IRA). The Office of Management and Budget (OMB) issued a statement that the President would veto H.R. 4394 if he were presented with it.

Appropriations/Interior-Environment

On November 3, the House voted 213-203 to approve their version of the FY24 Interior-Environment appropriations bill (H.R. 4821). The bill provides \$25.4B in new non-defense discretionary spending, 35 percent below FY23 level. The bill would repeal the EPA's recent regulation on Waters of the United States (WOTUS) and rescinds \$9.4B in IRA funding to the EPA, the Presidio Trust, and the Council on Environmental Quality.

Rep. Mike Simpson (R-ID), who introduced the bill, said these cuts are to prioritize critical needs within a reduced appropriations allocation, and to address concerns mentioned in over 8,000 member requests. H.R. 4821 provides funding to the Bureau of Indian Affairs at or above FY23 enacted levels. The bill includes a \$1.6B discretionary increase for Wildland Fire Management accounts at the DOI and the Forest Service. Nearly every other appropriation in the bill is reduced, including a \$3.962B (39%) reduction to the EPA.

Simpson said: "Cutting funding is never easy or pretty, but with the national debt in excess of \$33 trillion and inflation at an unacceptable level, we had to make tough choices to rein in federal spending. Last Congress alone, \$3 trillion was spent outside of the normal appropriations process, that is \$3 trillion that went onto the national debt. Simply holding funding flat is not enough. We must work to curb out-of-control spending and get our budget back on track. This bill does that."

On October 30, OMB issued a statement notifying policymakers that the President would veto H.R. 4821, and pointed to the Fiscal Responsibility Act (P.L. 118-5) as a bipartisan agreement which already set spending levels for FY24 and FY25.

CONGRESS/WATER RESOURCES **Clean Water Act of 2023**

On October 18, Ranking Member of the House Committee on Transportation and Infrastructure Rick Larsen (D-WA), Ranking Member of the Subcommittee on Water Resources and Environment Grace Napolitano (D-CA), Rep. Don Beyer (D-VA), Rep. Melanie Stansbury (D-NM) and 114 Democrat co-sponsors introduced the Clean Water Act of 2023 (H.R. 5983). The act would amend the Clean Water Act (CWA) (33 U.S.C. 1251) to change the terms and definition for waters controlled

under the CWA. Regulated waters of the United States would be termed "Protected Water Resources" and be defined as: "All waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters (and their tributaries), including lakes, rivers, streams (including intermittent and ephemeral streams), wetlands, and all impoundments of the foregoing, to the fullest extent that these waters are subject to the legislative power of Congress under the Constitution." H.R. 5983 would also amend the definition of "wetlands" to mean "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

The bill was informed by a July 2023 roundtable of Congressional Democrats and clean water advocates that resulted in a report, "Murky Waters: Navigating a Post-Sackett World." The 18-page report identified critical water bodies at risk of degradation and destruction, and discussed how the past 50 years of clean water investments would be squandered even if proactive measures are taken at a state or local level. Rep. Larsen said: "Clean water means the difference between healthy communities and sick ones, thriving businesses and stunted ones, preserved natural environments and polluted ones. The Clean Water Act of 2023 restores historic, bipartisan protections to the estimated 50% of wetlands and 70% of streams lost through the misguided *Sackett* decision. I commend Ranking Member Napolitano, Rep. Beyer, and Rep. Stansbury for their leadership as well as the more than one hundred House Democrats who cosponsored this critical legislation, which balances essential protections of the health of our environment and our local economies."

Rep. Napolitano said: "Clean water is not and should not be a partisan issue. Families depend on clean water to drink, farms depend on clean water to grow their crops, and businesses depend on clean water for a healthy economy. The Clean Water Act of 2023 will restore the strong federal protections struck down by the conservative Supreme Court and put back into place the successful protections which cleaned up our rivers over the last five decades...."

Rep. Stansbury said: "New Mexicans know that water is life and that we must protect our clean water. Now, with the recent *Sackett* Supreme Court decision that undermines our access to clean water, it's more important than ever that we protect our waterways. That's why I am proud to be a co-lead of the Clean Water Act to restore critical federal protections..." See <https://beyer.house.gov/news/>

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