



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **CONGRESS**

#### **Appropriations/Continuing Resolution**

On November 17, the President signed into law the Further Continuing Appropriations and Other Extensions Act (H.R. 6363), preventing a government shutdown with another continuing resolution (CR). The new CR provides funding through January 19, 2024, for agencies and programs that were funded in the following four FY23 appropriations bills: (1) Agriculture, Rural Development, Food and Drug Administration; (2) Energy and Water Development; (3) Military Construction and Veterans Affairs; and (4) Transportation, Housing and Urban Development.

Current spending for eight remaining appropriations bills was extended through February 2. The “laddered” deadlines in the bill are designed to allow negotiations of full-year spending bills and avoid an omnibus.

The CR also extends several programs and authorities, including programs authorized by the 2018 Farm Bill (P.L. 115-334). All Farm Bill programs are extended through September 2024. However, discretionary programs are subject to the availability of appropriations.

On November 14, the House passed H.R. 6363 in a 336-95 vote, with 127 Republicans and 209 Democrats in favor. The “clean” resolution, containing no cuts, or added provisions, was opposed by 93 Republicans and 2 Democrats. Republican leadership brought the bill to the floor under “suspension of the rules” procedure, which requires a two-thirds majority vote to pass.

House Speaker Mike Johnson (R-LA) said: “Getting us beyond the shutdown and making sure the government stays in operation is a matter of conscience for all of us. We owe that to the American people. I believe that we can fight on principle and do these things simultaneously. When you have a small majority...some things are going to have to be bipartisan.”

Johnson also said: “We have broken the fever. We’re not going to have a massive omnibus spending bill right before Christmas. That is a gift to the American people because that is no way to legislate. It is not good

stewardship.... This was a very important first step to get us to the next stage so we can change how Washington works. And I think the [ladder CR] is a big important part of that and I think every member in that room agrees that’s an important innovation and it changes the way things are done.”

On November 15, the Senate passed the bill in a 87-11 vote, with 10 Republicans and 1 Democrat voting in opposition.

Majority Leader Chuck Schumer (D-NY) said: “Obviously, the Republican-led House needed Democratic votes to avoid a shutdown, and I was pleased to see that the speaker was willing to work with Democrats and resisted the siren song of the hard right in the House. And if that continues, we can avoid further shutdowns and finish the work of funding the government.”

#### **Weather Reauthorization Act/S2S Forecasting**

On November 8, the House Science, Space, and Technology Committee held a markup of the Weather Reauthorization Act (H.R. 6093). The Committee unanimously approved the bill with amendments. Committee Chair Frank Lucas (R-OK) sponsored the bill and noted that it reauthorizes existing programs at the National Oceanic and Atmospheric Administration (NOAA), “establishes new programs to advance forecasting, expands commercial data partnerships, strengthens emergency preparedness, and advances tools for farmers, ranchers, and resource managers.” It reauthorizes the National Integrated Drought Information System (NIDIS), the National Mesonet Program, and the National Coordinated Soil Moisture Monitoring Network. It also establishes “new research and development programs related to the next generation of radar, atmospheric rivers, coastal flooding and storm surges, aviation weather, and more.” <https://lucas.house.gov/>

Section 501 would establish two pilot projects (\$45M for each for FY24-28) in NOAA’s Weather Research Program under the Oceanic and Atmospheric Research Office to improve sub-seasonal to seasonal precipitation forecasts for water management in the western United States and agriculture in the central United States. The

western precipitation project is directed to: (1) improve operational model resolution, for air-sea interactions, and across mountainous terrain, resolving issues of precipitation intensity and type (snow vs. rain); (2) improve fidelity in modeling the atmospheric boundary layer in mountainous regions; and (3) resolve challenges in predicting blocked or unblocked atmospheric circulation over the Pacific Ocean and the western United States. The central agriculture project is directed to: (1) improve resolution of land surface and hydrologic cycle modeling, including soil moisture and flash drought processes; (2) improve fidelity in modeling warm season precipitation processes; and (3) improve understanding and predictions of spring and summer large-scale upper-level dynamical flow anomalies.

Section 502 reauthorizes NIDIS (\$15M for FY24, with \$500,000 increases for each of FY25-28), and directs NIDIS to: (1) incorporate flash drought research and tools into its early drought warning system; (2) utilize observational networks and optimize data and resources on snowpack, soil moisture, groundwater, and rapid intensification data; (3) work in partnership with the National Mesonet Program to provide coordinated drought information, “including integrated soil moisture information in accordance with the 2021 report, ‘A Strategy for the National Coordinated Soil Moisture Monitoring Network;’” and (4) directs NIDIS and NOAA’s Climate Prediction Center “to transition existing drought products to probabilistic forecasts and incorporate new and improved dynamical and statistical forecast modeling tools.”

**LITIGATION/WATER RESOURCES**  
**Nebraska/Transbasin Diversions**

On October 6, the Nebraska Supreme Court affirmed a decision of the Nebraska Department of Natural Resources (NDNR) and dismissed objections to an interbasin transfer application for lack of standing. (*In Re Application A-19594, Central Platte Natural Resources District et al. v. NDNR*, 315 Neb. 311 (2023)).

In the underlying application, the Platte to Republican Basin High Flow Diversion Project (PRD) filed for a conditional interbasin transfer permit to divert up to 150 cubic feet per second (cfs) of excess surface water flow from the over appropriated Platte River Basin into the Republican River Basin. The conditions included: (1) that the interbasin transfers would only occur when the Platte River reached a minimum level of discharge; and (2) that the PRD appropriation would be in a perpetually junior status and would never be able to exercise a call over any future junior appropriations on the Platte River. The water transfers, when available, would be used for Republican River Compact compliance.

Several entities filed objections to the application alleging that they would be harmed by the interbasin transfer, including, among other concerns, that less excess water would be available in the Platte River for other downstream recharge projects. The court held that, where the demands of state-protected instream flows and all other water rights would be met, the argument that “potentially less water would be available” was a speculative harm that was insufficient to confer standing for an objection to the application.

**WATER RESOURCES**  
**Utah/Water Marketing**

On November 7, the Utah Department of Natural Resources (DNR) reported on the three-year effort to review and assess opportunities for water marketing and increasing access to water in Utah, including four pilot projects authorized under the 2020 Utah Water Banking Act (Utah Code §73-31-101(20)). the Statewide Water Marketing Strategies report addressed water marketing tools and facilitate water movement is motivated in part by the need to implement other policy goals and programs, such as regional conservation goals, compact compliance, instream flows, and water quality compliance.

The Water Banking Act created new authority for water management options, with benefits including: (1) a streamlined administrative process for change applications; (2) protection of water rights against forfeiture and condemnation; (3) local control by requiring voluntary participation by local water rights users; (4) authorization of leases that can be used to meet water quality needs or environmental flows; (5) flexibility to use the water either in the bank service area or the original place of use (“on/off” switch).

DNR identified several methods of marketing water for various transactions (purchases, leases, and exchanges) including: negotiated agreements, auctions and reverse auctions, bulletin boards, rental pools, agricultural conservation programs, and the two new alternatives in Utah, either a Contract Water Bank or a Statutory Water Bank.

The pilot projects also highlighted the need to expend more resources for critical components of good water management, including: (1) the need to establish baseline hydrologic conditions; (2) improvements in telemetry, data, and modeling; (3) efficiencies in administration; (4) legal advancements and statutory tweaks; (5) private-public partnerships; (6) infrastructure improvements; and (7) shepherding water from point A to point B. <https://water.utah.gov/water-marketing/>

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