

**GOVERNMENT AFFAIRS AND
COMMUNITY OUTREACH
COMMITTEE MEETING
AND
SPECIAL MEETING OF THE
BOARD OF DIRECTORS**

**Monday, June 5, 2023
4:00 p.m.**

Committee Members:

Tony R. Fellow, Chair
Ed Chavez, Vice-Chair



248 E. Foothill Blvd, Room 103
Monrovia, CA 91016

(626) 443-2297
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*The Government Affairs and Community Outreach Committee meeting is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Government Affairs and Community Outreach Committee may attend and participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the Committee as advisory to the Board, members of the Board who are not assigned to the Government Affairs and Community Outreach Committee will not vote on matters before the Committee.

Communications

1. Call to Order
2. Public Comment

Discussion/Action

3. Legislative Update
 - a. Washington D.C.
 - b. Sacramento
4. State Bill Summaries and Positions *(staff memorandum attached)*

Oral Reports

5. Update on Communication Plan Review
6. Update on Drought Communications

Other Matters

- 7.

Adjournment

Next Meeting: Monday, July 10, 2023 at 4:00 p.m.



American Disabilities Act Compliance *(Government Code Section 54954.2(a))*

To request special assistance to participate in this meeting, please contact the Upper District office at (626) 443-2297 or venessa@usgvmwd.org at least 24 hours prior to meeting.



Upper San Gabriel Valley Municipal Water District

April 24, 2023

John Freshman, Ana Schwab, Lowry Crook, and Samantha Sabol

CONGRESS

House Natural Resources Subcommittee Holds Field Hearing on Legislative Priorities

On April 11th, 2023, the House Natural Resources Subcommittee on Water, Wildlife, and Fisheries held a legislative field hearing on H.R. 215 “WATER for California Act” and H.R. 872 “FISH Act”. The field hearing was located at the World Ag Expo, in Tulare, CA. Congressman Valadao and Congressman Costa, although not members of the Natural Resources Committee, were granted permission to participate in the hearing. Subcommittee Chairman Cliff Bentz (OR-02) and Ranking Member Jared Huffman (CA-02) heard testimony from the following witnesses: Tony DeGroot from DG Bar Ranches, Aaron Fukuda from Tulare Irrigation District, Jason Phillips from Friant Water Authority, Jeff Sutton from Tehama-Colusa Canal Authority, Chris White from San Joaquin River Exchange Contractors Water Authority, and William Bourdeau from Westlands Water District.

Members of Congress discussed impacts of the drought in the Western United States, and the impact on agriculture. Members acknowledged challenges farmers face during drought conditions and a lacking water supply, which further reduces available produce, food, and the nation’s economic development. Congressman Valdao highlighted that while the Central Valley encompasses less than 1% of farmland in the U.S., it produces 25% of the food in this country. Discussions also emphasized the dire need to make water supply more reliable and available by increasing water storage and the capacity of storage. Committee Chairman Bruce Westerman (AR-04) highlighted the need to update important infrastructure, such as dams and levees, and expressed frustration at the “bureaucratic blocks” from changing regulations that are causing halts and delays on projects.

Background:

H.R. 215 Working to Advance Tangible and Effective Reforms (WATER) for California Act

Congressman Valadao introduced this legislation in September of 2022, and is re-introducing it in the 118th Congress. Last congress it was cosponsored by the entire California Republican delegation.

The bill would:

- ✓ Require the central valley project and state water project operate under 2019 regulations, which allowed the projects to be independently peer-reviewed.
- ✓ Ensures CVP and SWP users receive the water they are allotted.
- ✓ Fund the Shasta Enlargement Project
- ✓ Reauthorizes elements of the WIIN act, including a surface water storage project program and CVP and SWP coordination.

H.R. 872 Federally Integrated Species Health (FISH) Act

Congressman Ken Calvert introduced this legislation on February 8th 2023. The bill has bipartisan support from five Republicans, Rep. Tom McClintock (CA-5), Rep. Michelle Steel (CA-45), Rep. Jay Obernolte (CA-23), Rep. Darrell Issa (CA-48), Rep. Doug LaMalfa (CA-1), and Rep. Michael Simpson (ID-2). Democratic member Jim Costa (CA-21) is also cosponsoring the bill.

This legislation would make the U.S. Fish and Wildlife Service the sole authority over endangered species regulation. Currently, the authority is shared with the National Marine Fisheries Service.

Natural Resources Subcommittee Holds Hearing on the 50th Anniversary of the Endangered Species Act

On April 18th, 2023, the House Natural Resources Subcommittee on Water, Wildlife, and Fisheries held a hearing to discuss the 50th anniversary of the Endangered Species Act becoming law, and to consider multiple pieces of legislation, including H.J. Res. 29, H.J. Res. 46, H.J. Res. 49 and H.R. 1213.

Subcommittee Chairman Cliff Bentz (OR-02) and Ranking Member Jared Huffman (CA-02) divided the hearing into multiple panels to review the legislation. They heard testimony

from over 10 witnesses, some of which included Mr. Stephen Guertin from the U.S. Fish and Wildlife Service, Mr. Rick Horton from the Minnesota Forest Industries, Mr. Fred Flippance from the Oregon Rural Electric Cooperative Association, and Mr. Sam Rauch from the National Marine Fisheries Service.

Members of congress discussed the Endangered Species Act and associated regulations, and the impact the act has had on those in rural locations. How to protect species of animals that are endangered or recovering from endangered status, and the conflicting regulations that cause delays and burdens for many. Members on both sides of the aisle agreed for the need to protect endangered species while ensuring land is available for use as needed for the well-being for our country.

Chairman Bentz highlighted the billions of dollars spent to recover even one species of animals, and the need to find a regulatory solution that is more fiscally responsible. He shared that his resolution would rescind the Biden administration rule and leave the management plans established by the U.S. Forest Service or the Bureau of Land Management.

Ranking Member Huffman discussed legislation put forward to keep certain species on the Endangered Species Act, and the need to keep current regulations. Rep. Huffman believes the Chairman's legislation would go too far to narrow the definition of endangered species, make regulations unclear, and threaten the existence of certain animals without habitat protection.

Background:

H.J. Res. 29, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to "Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment"

This legislation was introduced by Rep. Tracey Mann (KS-01). This joint resolution nullifies the final rule issued by the U.S. Fish and Wildlife Service that adds the Northern Distinct Population Segment of lesser prairie-chicken to the list of threatened species and the Southern District Population Segment of lesser prairie-chicken to the list of endangered species.

H.J. Res. 46, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the National Marine Fisheries Service relating to "Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat"

This legislation was introduced by Subcommittee Chairman Cliff Bentz. This legislation would nullify regulations put in place by the Biden Administration regarding determinations for endangered species, and would default back to the rules under the Trump Administration.

H.J. Res. 49, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to "Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat"

This legislation was introduced by Rep. Pete Stauber (MN-08). This joint resolution nullifies the final rule issued by the U.S. Fish and Wildlife Service that adds the Northern Long-Eared Bat Segment to the list of endangered species.

H.R. 1213 (Rep. Grijalva), "Restoring Effective Science-based Conservation Under Environmental laws protecting Whales Act of 2023" or the "RESCUE Whales Act of 2023".

This legislation was introduced by Congressman Raul Grijalva (AZ-07). H.R. 1213 would repeal language passed in the FY23 omnibus that poses a threat to the North Atlantic right whale by allowing "lethal entanglement" materials to be used as fishing gear.

Congress Votes to Override President Biden's Veto of WOTUS Jurisdiction Legislation

On Tuesday, April 18th, 2023, the House of Representatives voted to override the President's veto of H.J.Res 27, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Army, Corps of Engineers, Department of Defense and the Environmental Protection Agency relating to "Revised Definition of 'Waters of the United States'".

Although the legislation initially passed in both the House and the Senate with a simple majority, both chambers of Congress would need $\frac{2}{3}$ majority, also known as a super majority, to override the veto. This measure failed with a vote of 227-196.

Background:

H.J.Res 27, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Army, Corps of Engineers, Department of Defense and the Environmental Protection Agency relating to "Revised Definition of 'Waters of the United States'".

This legislation was introduced by Rep. Sam Graves (MO-6) on February 2, 2023, and received 170 Republican cosponsors. Eight cosponsors are from California, and include Rep. Tom McClintock (CA-5), Rep. David G. Valadao (CA-22), Rep. Doug LaMalfa (CA-1), Rep. Mike Garcia (CA-27), Rep. Darrell Issa (CA-48), Rep. Kevin Kiley (CA-3), Rep. John Duarte (CA-13), Rep. Ken Calvert (CA-41).

H.J.Res 27 nullifies the rule published by the U.S. Army Corps of Engineers and the Environmental Protection Agency, submitted on January 18, 2023, and took effect on March 20, 2023. However, due to ongoing litigation at the Supreme Court of the United States (SCOTUS), the new implementation has been paused, and agencies are interpreting the rule consistent with pre-2015 regulatory standing.

The rule published by the Army Corps and EPA broadened the definition of “navigable waters” to include protections of waters that flow intermittently, while the joint resolution would return the regulations to include a narrower definition.

On March 9th, 2023, the resolution passed the Senate in a 53-43 vote. The bill received bipartisan support in both the House and the Senate. President Biden vetoed the measure on April 18th, expressing concerns over the impact a narrower rule will have on farmers and agricultural workers across the country. The President’s statement released in conjunction with the veto stated that nullifying the rule passed would reduce clarity and remove “regulatory certainty”.

House Republicans Introduce a Bill to Raise the Debt Ceiling

On April 19th, 2023, Speaker of the House Kevin McCarthy introduced legislation to raise the debt ceiling, a proposal that will cut federal spending and repeal many of the Administration’s priorities. While this bill is the first concrete action to be taken in addressing the debt limit, there are many negotiations, and likely changes to the bill, that will need to take place before both chambers of Congress and the President agree to a solution. McCarthy is bringing this bill to a vote as early as next week. With the Republican’s slim majority in the House, the Speaker can’t afford to lose more than four votes from his party.

Speaker McCarthy's debt limit bill includes many provisions to decrease federal spending and make cuts to certain federal programs. The plan would ultimately either suspend the debt limit until March 31, 2024, or raise the debt ceiling by \$1.5 trillion. It reduces federal spending by \$130 billion, but does not specify agencies and departments that would be cut, leaving these determinations to the congressional appropriations process. The bill does, however, cap any increase to agency budgets at 1%.

The plan changes work requirements for adults without children to receive Supplemental Nutrition Assistance Program (SNAP) benefits, increases work requirements for those receiving Medicaid, with exceptions for pregnant women or those with children, and blocks the President's plan to cancel student debt. The proposal would also cut certain provisions from the Inflation Reduction Act by repealing funds dedicated to the IRS and tax credits for energy programs and electric vehicles. The bill would also take back any unspent funding provided from previous coronavirus aid packages.

Lastly, it would include H.R. 277, the Regulations From the Executive in Need of Scrutiny (REINS) Act introduced by Rep. Kat Cammack (FL-3). This bill would amend and broaden the Congressional Review Act, mandating congressional approval of major agency regulations before they are implemented.

Administration/Regulatory

U.S. Bureau of Reclamation Releases Draft Supplemental Environmental Impact Statement (SEIS)

On Tuesday, April 11th, 2023, the Bureau of Reclamation (USBR) released a draft SEIS to address water shortages in the Colorado River. The guideline will amend the current operational strategy of Glen Canyon and Hoover Dams. The draft proposes a framework for alternatives to current operational levels, namely, revising the 2007 Record of Decision for Colorado River Guidelines, which provided a framework for the operation of Lake Powell and Lake Mead.

The public comment period is open for 45 days, ending on May 30th, with a final Record of Decision predicted in the summer of 2023. Plans are estimated to go into effect in 2024.

A summary of alternatives is as follows:

1. No Action Alternative: No changes are made to current operations. An assessment is provided regarding consequences of no action taken.
2. Action Alternative 1: Reduction in releases from Glen Canyon Dam, with larger additional shortages, and an analysis of the consequences and the priority of water rights.
3. Action Alternative 2: Reduction in releases from Glen Canyon Dam, and Lower Colorado River Basin reductions distributed evenly across basin states, with larger additional shortages.

EPA Seeks Comment on Regulating Additional PFAS Chains Under CERCLA

On April 13, EPA issues an Advanced Notice of Proposed Rulemaking (ANPRM) requesting comment on the potential for additional PFAS Chains to be designated as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as the “Superfund” law. The request for public input on this consideration, follows EPA’s fall 2022 proposed rule to designate PFOA and PFOS as hazardous substances under CERCLA.

Under this ANPRM, EPA is considering proposing seven additional chains under CERCLA: PFBS, PFHxS, PFNS, HFPO-DA (GenX), PFBA, PFHxA, PFDA. Additionally, EPA is seeking comment on the designation of the precursors to PFOA, PFOS, and the seven chains above, as well as categories of PFAS as hazardous substances under CERCLA.

Comments are due by June 12, 2023.

Funding Opportunities

Department of Energy

The Department of Energy opened the application period for \$430 million in Energy Efficiency and Conservation Block Grant (EECBG) Program formula grant funding from the BIL for clean energy projects and programs in local communities. Applications will be accepted on a rolling basis, and DOE will prioritize its review based on the order in which applications are received. All applicants should fill out a Pre-Award Information Sheet by

April 28th, and local government applications are due before **January 31, 2024**. More information can be found [here](#).

Bureau of Reclamation

The status of WaterSMART program funding opportunities can be found [here](#). Many opportunities are predicted to open in May and June of 2023.



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Upper San Gabriel Valley Municipal Water District

June 1, 2023

John Freshman, Ana Schwab, Lowry Crook, and Samantha Sabol

CONGRESS

House Votes on Legislation to Suspend Debt Ceiling

On Sunday, May 28th, 2023, Congressman Patrick McHenry (R-NC-10) introduced H.R. 3746, the Fiscal Responsibility Act of 2023. Congressman McHenry is Chairman of the House Financial Services Committee, and has been a top negotiator in the deal. The bill would suspend the debt ceiling through January 1st, 2025, and limit federal discretionary spending over the next two years. The bill will also:

- Expand work requirements under federal nutrition and assistance programs, excluding Medicaid.
- Rescind unobligated COVID-19 funding.
- Rescind nearly \$1.4 billion dollars in IRS funds that were allocated through the Inflation Reduction Act.
- Removes the federal student loan pause, reinstating payments on federal loans.
- Streamlines energy permitting, including the National Environmental Policy Act (NEPA).
- Caps non-defense spending at \$703.7 billion in FY24, and \$710.7 billion in FY25.
- Caps discretionary defense spending at \$886.3 billion in FY24, and \$895.2 billion in FY25.
- Approves completion of the Mountain Valley Pipeline, a priority put forward by Senator Joe Manchin (D-WV).

On May 31st, 2023, the House of Representatives passed the bill in a 314-117 vote, with 149 Republicans and 165 Democrats voting in favor. This bill passed with strong bipartisan support, and now moves to the Senate for consideration.

Background:

The United States reached the debt limit in January of 2023, forcing U.S. treasury Secretary Janet Yellen to authorize “extraordinary measures”, pushing the deadline to June 1st. Speaker Kevin McCarthy and President Biden have met multiple times to discuss the debt ceiling deadline of June 1st, trying to reach a bipartisan deal before then. With narrow

margins in both the House and the Senate, Republicans and Democrats must find a bipartisan deal that will pass both chambers.

President Biden has made it clear over recent months that he will only support a “clean” bill to address the debt limit, meaning one that only lifts the spending limit without other legislative items included. He believes measures to reduce federal spending should be included in separate legislation. However, House Republicans have been adamant that any legislation to raise the debt ceiling must also include cuts to federal spending.

In April, House Republicans introduced and passed legislation to address the debt ceiling. The bill was formally introduced by Congressman Jodey Arrington (TX-19) on April 25th, 2023, as H.R. 2811, the Limit, Save, Grow Act of 2023. The House of Representatives voted on H.R. 2811 on April 26th, 2023, and it passed in a 217-215 vote.

States Reach Deal Regarding Colorado River Cuts

After months of tense negotiations over Colorado River water usage between the Upper and Lower Basin states, Lower Basin states have come to an agreement with the Biden Administration on a proposal to cut and allocate water usage. In exchange, the Administration has agreed to provide the states with \$1.2 billion in federal funding. The proposal to cut water usage is meant to conserve water shortages in the two largest reservoirs in the nation, Lake Powell and Lake Mead. The deal constitutes that the three states making up the Lower Basin of the Colorado River, California, Nevada, and Arizona, will cut three million acre-feet of water over three years. The Administration will compensate these states using funds from the Inflation Reduction Act, giving money to farmers, Tribes, and others who voluntarily conserve their water usage. This deal is not yet a final outcome; the proposal must still be evaluated by the Department of Interior before it is implemented.

Members of Congress Relaunch Bipartisan Congressional PFAS Task Force

Congressman Dan Kildee (D-MI-08) and Congressman Brian Fitzpatrick (R-PA-04) have relaunched the Congressional PFAS Task Force in the 118th Congress. The goals of the task force are to spread awareness on PFAS chemicals, find ways to better protect communities, and reduce PFAS usage and contamination. The task force consists of over 50 Democrat and Republican members of congress, including California Representatives Ro Khanna (D-CA-17) and Katie Porter (D-CA-47).

Senate Holds Hearing to Review the FY24 President's Budget Request for Department of Interior

On May 2nd, 2023, the Senate Committee on Energy and Natural Resources held a hearing titled, *Examination of the FY24 President's Budget Request for the Department of Interior*. This hearing discussed the proposed budget for the Department of the Interior and other relevant issues. The Administration is requesting \$18.9 billion for FY 2024, which is a 12% increase over FY 2023 appropriations. The committee discussed the justifications for such large increases on top of historic funding, as well as current leasing programs and processes.

During the hearing, the committee largely centered its attention on the ongoing conflict surrounding the Administration's intention to restrict oil and gas leasing, a move that members of the Committee feel is crucial to maintaining U.S. leadership and energy security. In addition, the hearing addressed the pressing water-related challenges that the nation, particularly in the West, is facing, including the allocation of funding for water projects and the levels of snowpack in the region.

During the hearing, Chairman Joe Manchin (D-WV) expressed his apprehension regarding the lack of progress and prolonged delay in licensing and permitting for coal and other fossil fuels. He further criticized the Biden administration's alleged lack of support for such projects. Manchin stressed the importance of supporting both clean energy and fossil fuel projects to ensure the fulfillment of the country's energy and mineral needs.

Ranking Member John Barrasso (R-WY) raised concerns on the licensing and permitting issues, but also chose to specifically criticize Secretary Haaland's proposed funding cut to the Bureau of Reclamation, which would be its third cut in as many years.

Programs of Emphasis:

Indian Water Rights Settlement – The budget proposes \$2.5 billion in mandatory funding over 10 years to expand the Indian Water Rights Settlement Completion Fund and \$340 million in mandatory funding over 10 years for ongoing costs related to enacted water settlements managed by the Bureau of Reclamation. This funding aims to provide stable support for Indian water rights settlements and ensure reliable water supplies for Tribal communities.

Bureau of Reclamation – The Bureau of Reclamation's FY 2024 budget requests a total of \$1.45 billion in federal discretionary appropriations. The budget includes funding for the California Bay Delta account (\$33.0 million), the Central Valley Project Restoration Fund (\$48.5 million), and the Dam Safety Program (\$105.3 million). There is also \$62.9 million

for the WaterSMART Program, which collaborates with States, Tribes, and local entities to address water shortages. These investments, along with funds from the Bipartisan Infrastructure Law and Inflation Reduction Act, will help Reclamation provide dependable water and power to the West, and respond to drought and climate change.

The Senate Environment and Public Works Committee Holds Hearing on WRDA

On May 3rd, 2023, the Senate Environment and Public Works Committee held a hearing titled, *FY24 Budget for Civil Works Program of U.S. Army Corps of Engineers and Implementation of the WRDA of 2022*. The FY24 request for the U.S. Army Civil Works Program amounts to a historic \$7.4 billion, the largest request in the program's history. This substantial amount will be further supplemented by an additional \$1.05 billion from the infrastructure Investment and Jobs Act.

The hearing examined the urgent water resource challenges of the 21st century, with a focus on climate change and future economic ramifications. Members of the Committee emphasized the need for coordination between Congress and the Army Corps of Engineers to effectively address challenges the Corps is facing.

Chairman Tom Carper (D-DE) stressed the importance of utilizing the allocated funds not just for immediate benefits but also for the future. In 2022, there were 18 "climate disasters" that caused at least \$1 billion in damage, and the same number of disasters are anticipated in 2023. He expressed concern that funding for this program is typically used for disaster response rather than proactive preparation and building infrastructure resilience. Ranking Member Shelly Moore Capito (R-WV) highlighted the significance of the 25 new projects and 100 feasibility studies planned under the Water Resources Development Act (WRDA) of 2022. She emphasized that these projects and studies are crucial in addressing future water resource challenges, and stressed the importance of the Army Corps of Engineers in completing these within the set timeline and budget.

Senator Alex Padilla (D-CA) underscored the need to prioritize disadvantaged communities in the aftermath of disasters. He suggested revisiting the benefit-to-cost ratio used by the Army Corps in selecting projects, as it tends to overlook the pressing need for mitigation and preparation in low-income areas with low property values. Additionally, he raised concerns about the record snowpack in the West, which poses a risk of flooding to downstream communities. Assistant Secretary Michael Connor responded that effective communication and coordination will be needed to prepare the day-to-day operators of levees for the anticipated increase in downstream water volume.

The House Committee on Transportation and Infrastructure Holds Hearing on Clean Water Act

On May 16th, 2023, the House Committee on Transportation and Infrastructure holds a hearing titled, *'The Next Fifty Years of the Clean Water Act: Examining the Law and Infrastructure Project Completion'*. Witnesses included Andrea Travnicek, Director, Department of Water Resources for the State of North Dakota, Serena Coleman McIlwain,

Secretary of the Environment for the State of Maryland, Mickey Conway, CEO, Metro Water Recovery in Denver, Colorado, and Brandon Farris, Vice President of E&R Policy for the National Association of Manufacturers.

Since its inception, the Clean Water Act (CWA) has successfully reduced pollution and improved water quality through regulations on point source discharges and wetland protection. The Committee discussed the modern challenges that require updates to the CWA. These include addressing non-point source pollution, emerging contaminants, climate change impacts, environmental justice concerns, and incorporating technological advancements. Revisions to the CWA, increased funding, and collaboration among stakeholders are necessary to effectively tackle these challenges and safeguard water resources for the future.

The Committee addressed PFAS contamination and its impact on water infrastructure. Secretary McIlwain highlighted the urgency of addressing this issue, as it wastes valuable resources and poses significant risks, especially to disadvantaged communities. Congresswoman Hillary Scholten (D-MI) raised concerns regarding PFAS liability for the wastewater industry, with immense costs associated in changing filters, and the threat of increased litigation.

Senate Committee on Environment and Public Works, Subcommittee on Transportation and Infrastructure, Holds Hearing on the Army Corps of Engineers and Water Management Issues

On May 16th, 2023, the Senate Committee on Environment and Public Works, Subcommittee on Transportation and Infrastructure, held a hearing titled, *Perspectives on New and Existing U.S. Army Corps of Engineers Authorities to Respond to Water Management Issues*. Witnesses included Stephen Roe Lewis, Governor of the Gila River Indian Community, Leslie Meyers, Chief Water Executive of the Salt River Project, Christy Plumer, Chief Conservation Officer for the Theodore Roosevelt Conservation Partnership, Andrea Travnicek, Director of the North Dakota Department of Water Resources, and Jennifer Verleger, Chair of Western States Water Council.

This hearing focused on the increasing severity and frequency of droughts in the West, and the growing need for the U.S. Army Corps of Engineers (USACE) to adapt its approach to water management. This includes promoting sustainable water practices, exploring alternative water sources, and collaborating with other community stakeholders to ensure strategies are in place to effectively manage drought while conserving water.

USACE faces a significant challenge in navigating the competing priorities between federal and state governments in water management. Senator Kevin Cramer (R-ND) noted that while USACE's involvement may be necessary in certain cases to achieve optimal outcomes, but there are instances where their actions impede the states' ability to manage water effectively. Senator Cramer emphasized the importance of granting states greater control over their own water resources while also fostering partnerships between federal and state governments to achieve the best results.

Gila River Indian Community Governor Stephen Lewis shared comments on the historically unproductive relationship between Tribes and USACE, and that future commitments to establish a partnership will be critical. The benefits of these partnerships are already being experienced in his own Gila River Indian Community through 2022 agreements with the Community to fund a pilot project that will install solar panels to cover canals on the Reservation. The project has the potential to simultaneously increase system efficiency, conserve water, and generate renewable energy for the community.

In an exchange between Senator Alex Padilla (D-CA) and Christy Plumer from the Theodore Roosevelt Conservation Partnership, they discussed various water management strategies and their potential benefits for the western states. Senator Padilla expressed interest in understanding how water conservation and drought provisions included in the 2022 Water Resources Development Act (WRDA) could help stakeholders implement watershed-scale multi-benefit projects to mitigate climate impacts. Ms. Plumer expressed support for a range of authorities, such as section 206, which empower non-federal partners to engage in wet meadow restoration, floodplain restoration, and other natural infrastructure projects.

Senator Padilla also enquired about the management of reservoir flows by USACE to minimize flood risks in California's Central Valley communities. He inquired about how Flood Managed Aquifer Recharge (Flood-MAR) near Corps facilities, like those in California, could help mitigate flood risk for these communities. Ms. Plumer responded by emphasizing the need to slow down water and store it through natural infrastructure encouraged in section 206. Utilizing natural infrastructure along with the facilities already in place in California would be a win-win in terms of reservoir health and storage.

Judicial/Courts

U.S. Supreme Court Removes Federal Clean Water Act Protections and Permitting Requirements from Most U.S. Wetlands

Below is the full legal alert from Best Best and Krieger:

On May 25, 2023, the U.S. Supreme Court announced a five-Justice Majority decision in the case of *Sackett v. Environmental Protection Agency*. Justice Alito, writing for the majority, stated that the Clean Water Act only applies to “wetlands with a continuous surface connection to the bodies that are ‘waters of the United States’ in their own right,’ so that they are ‘indistinguishable’ from those waters.”

The Majority opinion ended the “significant nexus” test for jurisdictional waters and wetlands from Justice Kennedy’s plurality opinion in the 2006 decision *Rapanos v. United States*. Justice Alito and the majority largely adopted a narrower test proposed in Justice Scalia’s four-justice opinion in *Rapanos* test to determine the meaning of “the waters of the United States” that are protected by the federal Clean Water Act. The two prong-test to determine jurisdiction over an adjacent wetland requires (1) “that the adjacent [body of water constitutes]...‘water[s] of the United States’ (i.e. a relatively permanent body of water connected to traditional interstate navigable waters)” and (2) “that the wetland has a continuous surface connection with water, making it difficult to determine where the ‘water’ ends and the ‘wetland’ begins,” or that it is “indistinguishable” from the water.

All nine justices agreed that the *Sackett*’s property at issue in the case was not subject to federal Clean Water Act jurisdiction and permitting. However, Justices Kagan, Sotomayor, Jackson, and Kavanaugh all asserted that the narrow test put forward by the majority went beyond the intention of the Clean Water Act and would therefore not protect a significant number of wetlands. Justices Thomas and Gorsuch published a concurring opinion agreeing with the test and conclusion, but felt that the Majority opinion did not go far enough to define “navigable” and “of the United States.”

Justices Kagan, Sotomayor and Jackson’s concurrence disagreed with the two-part test put forward by the Majority. Rather, the Justices argued that the longstanding application of the Clean Water Act permits the U.S EPA and U.S. Army Corps of Engineers to have jurisdiction over the wetlands that are “(i) contiguous to or bordering a covered water, or (ii) separated from a covered water only by a manmade dike or barrier, natural river berm, beach dune, or the like.” The concurrence goes on to find that the Majority’s conclusion removes protections for wetlands under category (ii).

Justice Kavanaugh also wrote a concurrence that was joined by Justices Kagan, Sotomayor, and Jackson. Justice Kavanaugh's opinion argued that wetlands that are adjacent to waters covered by the Clean Water Act are also covered and protected. Justice Kavanaugh agreed with the decision not to adopt the significant nexus test but asserted the test created by the Majority departs from the Clean Water Act's text, which refers to "adjacent wetlands." Justice Kavanaugh's opinion argued that the Clean Water Act does not require the continuous surface connection that the majority decision required, as put forward by the Majority. Specifically, Justice Kavanaugh would have held that the "term 'adjacent' is broader than 'adjoining' and does not require that the two objects actually touch."

Implications of the Court's Decision

The Court's decision ends federal Clean Water Act protections and permitting requirements for all wetlands in the United States that either (1) lack a continuous surface water connection to a body of water that is subject to Clean Water Act jurisdiction, or (2) are "distinguishable" from the adjacent water body. According to a 2017 analysis of the Trump Administration's proposed definition of Waters of the United States by the Environmental Protection Agency and Army Corps of Engineers, the first exclusion would remove 51% of the nation's wetlands from federal Clean Water Act jurisdiction. It is not clear how the agencies and the courts will apply the second, and new, "indistinguishable" standard in the coming months and years, but it will certainly remove some amount of additional wetlands from federal jurisdiction. Wetlands no longer under federal Clean Water Act jurisdiction are no longer subject to federal permit requirements, protections, or mitigation requirements of Section 404 of the Clean Water Act, and no longer require Section 401 state water quality certifications, if they are drained or filled. They are also no longer protected against or subject to permit requirements for pollution discharges into them under Section 402 of the Clean Water Act.

Some states, such as California, have asserted state protections and permitting requirements for wetlands no longer protected by the Clean Water Act. In many other states across the country, the decision removes all protections and permitting requirements for draining and filling wetlands that are "distinguishable" from water bodies under federal jurisdiction.

Background on Sackett v. EPA

The case arose out of a decades-long dispute over whether the Sackett's property is subject to federal permitting requirements under the Clean Water Act. The Sacketts previously were before the U.S. Supreme Court in 2012, when the Court ruled that an Army Corps of Engineers jurisdictional determination is a final agency action that an applicant can challenge in court. In the case decided May 25, 2023, the Sacketts were back before the Supreme Court to ask the Court to rule on whether Ninth Circuit properly held that the

Sackett's property was subject to Clean Water Act jurisdiction and whether the Clean Water Act covers adjacent wetlands with a significant nexus to traditional navigable waters.

With any questions, please contact Ana Schwab at ana.schwab@bbklaw.com.

Supreme Court Announces it will Consider a Case that Could Overturn the 1984 *Chevron v. Natural Resources Defense Council* Ruling

The Supreme Court of the United States (SCOTUS) announced it will consider *Loper Bright Enterprises v. Raimondo*, a case brought by four New Jersey fishing companies. This case raises a challenges to the *Chevron* doctrine set forth by SCOTUS in 1984 in *Chevron v. Natural Resources Defense Council*. *Loper Bright Enterprises v. Raimondo* has arisen from an appeal by the fishing companies who argue a federal requirement, set forth by the National Marine Fisheries Services (NMFS) that fishing companies pay for third-party monitors aboard their vessels. A monitor is an individual who is hired by fishing companies to observe and report on their fishing activities to ensure they are practicing good conservation and management. The parties do not question NMFS authority to require third-party monitors, the issue rests on the requirement NMFS lays out for the fishermen to pay the observers upwards of 20 percent of the vessel's annual returns.

The outcome of this case will have far-reaching implications for federal regulatory authority. For nearly four decades, *Chevron* deference has been applied in cases to determine when a federal court should defer to a government agency's interpretation of a statute. Some of the Justices of SCOTUS, including Justices Gorsuch, Kavanaugh, and Thomas, have previously authored opinions against *Chevron* deference. When issuing its decision on the case, the Court may decide not to do away with *Chevron* completely, but could decide to narrow the scope of deference as it relates to statutory silence.

Funding Opportunities

Department of Interior

The Fish and Wildlife Service opened an grant opportunity, titled 'Fish Restoration and Irrigation mitigation Act'. This program provides assistance to state and local governments to remove instream barriers to allow fish and aquatic organism passage. The goal of the program is to restore fish populations and ecosystems. Initial proposals are due **June 6, 2023**. More information can be found [here](#).

Department of Energy

The Office of State and Local Energy Programs has opened the Energy Efficiency and Conservation Block Grant Program. This opportunity aims to reduce carbon emissions and

improve energy efficiency to state and local governments. The grant provides technical assistance to entities, which includes thorough planning and strategizing energy efficiency goals, and implementation of programs to incentivize and monitor efficiency goals. Applicants must submit a pre-award information sheet, which is due **July 31, 2023**. More information can be found [here](#).

Department of Agriculture

The Inflation Reduction Act funded the Urban and Community Forestry program, which provides investments that improve community forest resilience for extreme weather and climate change-related events. Applications are due by **June 1, 2023**. More information can be found [here](#).



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June 1, 2023

TO: Government Affairs and Community Outreach Committee, Upper San Gabriel
Valley Municipal Water District
FROM: Steve Baker
SUBJECT: June 5, 2023 Legislative Update

Budget Update

The Governor released the May Revise on May 12th. The Governor projects a budget shortfall of \$31.5 billion, up from \$22.5 billion in January. The Administration proposes to resolve the shortfall through a series of spending reductions, trigger cuts, and delays of spending authorized previously, as well as internal borrowing and fund shifts. The \$224 billion General Fund spending plan would protect many ongoing investments made in prior years, mostly maintain state reserves that are projected to total \$37.2 billion. The Governor is also proposing shifting some capital expenditures to a bond measure. In addition, we have been working with a coalition formed by Metropolitan Water District of Southern California to request \$50 million in state funding to address a variety of regional water shortage issues in the Metropolitan service territory.

Bills of Interest

Friday, June 2nd was the deadline whereby all legislation had to pass out of house of origin. The following are a few highlights of some of the bills Upper District has an interest in.

Bond

As mentioned in the budget update, the Governor has opened the door for a negotiation over a resources bond. We have been working with Metropolitan and Water Reuse on including \$1.8 billion for recycled water projects in whichever bond measure makes it on the 2024 ballot. There are numerous bills that have been introduced to provide the Legislature's priorities for bond funding. Those include:

AB 1567 (Garcia, D-Coachella Valley). This bill would provide a general obligation bond to go before the voters in March 2024 that would authorize \$4.1 billion for clean drinking water, flood protection, drought preparation, and wildfire prevention. The bill is in the Senate. Upper District is watching the measure.

AB 305 (Villapudua, D-Stockton). The bill would provide a general obligation bond of \$4.5 billion to go on the November 2024 ballot to fund flood protection projects. The bill is in the Senate. Upper District is watching the measure.

SB 638 (Eggman, D-Stockton). The bill would provide a general obligation bond to go before the voters on the November 2024 ballot that would authorize \$6 billion for climate resiliency and flood protection. The bill is in the Assembly. Upper District is watching the measure.

SB 867 (Allen, D-Santa Monica). The bill would provide \$15.5 billion general obligation bond to go before the voters in the November 2024 ballot to fund drought, flood and water resilience, and a variety of other natural resource related projects. The bill in the Assembly. Upper District is watching the measure.

Water Rights

There are numerous bills introduced that seek to enhance the Water Board's authority for dealing with curtailments and addressing water rights. Upper District is part of a broad coalition that opposes the bills because they deny senior water right holders due process and provide the Water Board overly broad authority. The water rights bills are among the most controversial bills in the Legislature.

AB 460 (Bauer-Kahan, D-Orinda). This bill grants the State Water Resources Control Board authority to issue interim relief orders to enforce the Reasonable Use Doctrine, Public Trust Doctrine, water rights and other provisions of water law. The bill increases penalties for violations from \$500 per day to \$10,000 per day, and \$2,500 per acre foot of water illegally diverted. The bill is in the Senate. Upper District is opposed.

AB 1337 (Wicks, D-Oakland). This bill would expand the instances when the diversion or use of water is considered a trespass punishable as a crime. The bill is in the Senate. Upper District is opposed.

SB 361 (Dodd, D-Napa). This bill would require the Department of Water Resources to install, upgrade or reactivate stream gages in California waterways to determine how much water is being moved throughout the state. Water data is necessary to determine appropriate water rights. The bill is now a Two Year bill and dead for the year. Upper District is watching the measure.

SB 389 (Allen, D-Santa Monica). The bill would authorize the Water Board to investigate the diversion and use of water from water right holders to determine whether the diversion is based on appropriate water rights. This bill is in the Assembly. Upper District is opposed.

Turf Related Issues

AB 1572 (Friedman, D-Glendale). This bill would direct state agencies to encourage and support the elimination of irrigation of non-functional turf with potable water. Upper District is concerned with the variance in definition of the facilities where non-functional turf would be prohibited. We have requested an amendment to exclude multifamily homes from the bill's provision. The bill is in the Senate. Upper District's position is Oppose Unless Amended.

AB 1423 (Schiavo, D-San Fernando Valley). The bill would ban the use of PFAS in the manufacture of artificial turf. This bill is in the Senate. Upper District is watching this measure.

Water Planning

SB 366 (Caballero, D-Merced) The bill requires the Department of Water Resources to establish a stakeholder advisory committee to expand to include tribes and environmental justice interests to develop a comprehensive plan for addressing the state's water needs and meeting specified water supply targets established by the bill for the purposes of the California Water Plan. The bill is in the Assembly. Upper District is in support.

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MEMORANDUM



ITEM 4.

DATE: June 5, 2023
TO: Government and Community Affairs Committee and Board of Directors
FROM: General Manager
SUBJECT: State Legislative Summaries and Positions

RECOMMENDATION

Approve staff recommendation for state legislative bill positions AB 1423, AB 1567 and SB 867 which are consistent with Upper District's 2023-24 Legislative Policy Principles adopted by the Board in January 2023.

State Bill Analysis

AB 1423 (Shiavo): Product safety: perfluoroalkyl and polyfluoroalkyl substances: artificial turf or synthetic surfaces

Introduced: 02/17/2023; **Amended:** 4/13/2023; **Location:** Senate Rules

Summary: Existing law, beginning January 1, 2025, prohibits the manufacture, sale, delivery, hold, or offer for sale in commerce of any cosmetic product that contains any intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS), as defined. Existing law similarly prohibits, commencing January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale in the state any new, not previously used, textile articles that contain regulated PFAS, except as specified, and requires a manufacturer to use the least toxic alternative when removing regulated PFAS in textile articles to comply with these provisions.

Analysis: This bill would, commencing January 1, 2024, require a manufacturer or installer of a covered surface, defined as artificial turf or a synthetic surface that resembles grass, proposing to design, sell, or install a field with a covered surface to any party to notify the party at the earliest possible date that the covered surface contains regulated PFAS, as defined. The bill would also prohibit, commencing January 1, 2024, a public entity, including a charter city, charter county, city, or county, any public or private school serving pupils in kindergarten or any of grades 1 to 12, inclusive, a public institution of higher education, other than the University of California, or a private institution of higher education from purchasing or installing a covered surface containing regulated PFAS, as provided. It has been determined that chemicals, such as perfluoroalkyl and polyfluoroalkyl substances, are highly toxic and persistent in the environment, and have been identified to cause health issues.

Staff Recommendation: Support

AB 1567 (Garcia): Safe Drinking Water, Wildlife Prevention, Drought Preparation, Flood Protection, Extreme Heat Mitigation, and Workforce Development Bond Act of 2023

Introduced: 2/17/2023; **Amended:** 5/26/2023 **Location:** Senate Rules

Summary: Existing law requires, except under certain circumstances, a 2/3 vote of the Legislature and a majority vote for the people at an election, before the state may issue a general obligation (GO) bond. It also prescribes the state's responsibilities regarding the issuance and sale of GO bonds.

Analysis: This bill would enact the Safe Drinking Water, Wildlife Prevention, Drought Preparation, Flood Protection, Extreme heat Mitigation, and Workforce Development Bond Act of 2024, which, if approved by the voters, would authorize the sale of \$15.995 billion in general obligation bonds. This bill would provide for the submission of these provisions to the voters at a statewide general election. If this bill passes, funding would be allocated to the following Chapters:

- Wildfire Prevention, Climate Risk Reduction, and Protection Against Power Shutoffs: \$2.275B
- Protecting Coastal Lands, Bays, and Oceans from Sea Level Rise and Other Climate Risks: \$1.655B
- Ensuring Safe Drinking Water, Drought Preparation, and Enhancing the State's Flood Protection: \$5.255B
- Protecting Fish, Wildlife, and Natural Areas from Climate Risks: \$1.5B
- Protecting Farms, Ranches, and Working Lands from the Impacts of Climate Change: \$520M
- Responding to Extreme Heat, Community Enhancement, and Resilience: \$1.59B
- Strengthening California's Regional Climate Resilience: \$1.2B
- Clean Energy: \$2B

This bill seeks to make California more climate resilient by investing in various adaptation activities throughout the state, ranging from wildfire risk reduction to drought preparation, to protection against sea-level rise. This measure would also help with providing Californians with long-term green jobs to rebuild the workforce. Upper District staff and Steve Baker have been working on a larger allocation for water recycling and is seeking an amendment in the amount of \$1.8B for water recycling projects. Currently the bill allocates \$500M with \$300M for recycled water project criteria favorable to the MWD service area. We will continue to work with the regional advocacy group and WaterReuse to advocate for this funding increase.

STAFF RECOMMENDATION: Support and Amend

SB 867 (Allen): Drought, Flood and Water Resilience, Wildfire and Forest Resilience, Coastal Resilience, Extreme Heat Mitigation, Biodiversity and Nature Based Climate Solutions, Climate Smart Agriculture, Park Creation and Outdoor Access, and clean Energy Bond Act of 2024.

Amended: 4/20/2023; **Location:** Assembly

Summary: Existing law requires, except under certain circumstances, a 2/3 vote of the Legislature and a majority vote for the people at an election, before the state may issue a general obligation (GO) bond. It also prescribes the state's responsibilities regarding the issuance and sale of GO bonds. This bill would provide for the submission of these provisions to the voters at a future statewide election.

Analysis: This bill would authorize the issuance of bonds in the amount of \$15.5B pursuant to the State General Obligation Bond Law to finance projects for drought, flood, and water resilience, wildfire and forest resilience, coastal resilience, extreme heat mitigation, biodiversity and nature-based climate solutions, climate smart agriculture, park creation and outdoor access, and clean energy programs. If this bill passes, funding would be allocated to the following Chapters:

- Drought, Flood, and Water Resilience: \$5.2B
- Wildfire and Forest Resilience: \$3B

- Coastal Resilience: \$2B
- Extreme Heat Mitigation: \$500M
- Protect Biodiversity and Accelerating Nature Based Climate Solutions: \$2B
- Climate Smart Agriculture for Sustainability and Resiliency: \$300M
- Park Creation and Outdoor Areas: \$500M
- Clean Energy: \$2B

The bill sets aside \$550M for recycled and stormwater projects; \$100M for ag and urban water conservation and \$250M for groundwater projects. Upper District staff and Steve Baker will continue working with a larger regional advocacy group to increase the funding for water recycling to \$1.8 billion.

Staff Recommendation: Support and Amend