



TO: STEVE SMITH
TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION
FROM: MIKE McINTYRE
SUBJECT: JULY REPORT AND LEGISLATIVE UPDATE
DATE: JULY 18, 2024

This report and legislative update provides information on the following topics:

- Washington News
 - Supreme Court Overturns Chevron Deference In Loper Decision
 - House Transportation and Infrastructure Committee Marks Up WRDA 2024 Legislation
 - House Energy and Water Appropriators Daylight FY 2025 Spending Measure
 - House Interior and Environment Bill Would Reduce EPA, Interior Spending in FY 2025
- Advocacy Update

Washington News

Supreme Court Overturns Chevron Deference In Loper Decision

The U.S. Supreme Court has overturned the Chevron doctrine, a significant 1984 decision that required courts to defer to a federal agencies' "reasonable" interpretations of ambiguous statutory language. This move states that the Chevron doctrine granted the executive branch excessive power over judicial review.

The 6-3 decision in the cases of *Loper Bright Enterprises v. Raimondo* and *Relentless v. Raimondo*, authored by Chief Justice John Roberts and supported by the Court's conservative bloc, mandates that courts independently interpret statutes without deferring to agency interpretations just because the language is ambiguous. This change emphasizes the role of courts in determining the "best" interpretation of statutes rather than relying on executive branch interpretations.

The decision retains the Skidmore deference, where judges give "respect" to agency expertise without being bound by it. This marks a shift from Chevron's more binding deference, potentially increasing legal challenges against agencies like the EPA as they defend their regulatory actions. Although previous rulings under Chevron remain binding, the new ruling signals a significant change in how courts will handle federal agency interpretations moving forward.

Justice Elena Kagan, in her dissent joined by Justices Sonia Sotomayor and Ketanji Brown Jackson, criticized the majority's view, arguing that this shift would not yield more consistent judicial decisions and expressed concerns over the future judicial interpretation and respect towards agency expertise.

Alongside this report, we have provided a memo from TFG further detailing the implications of *Loper* and the end of Chevron Deference. This memo was also previously provided to Chairman Smith in response to questions about implications of the case.

House Transportation and Infrastructure Committee Marks Up WRDA 2024 Legislation

On June 26, the House Transportation and Infrastructure (T&I) Committee marked up and advanced its version of WRDA 2024 ([H.R. 8812](#)). The amended bill, containing several differences from the Senate's version marked up by the Senate Environment and Public Works (EPW) Committee in May of 2024, was approved by a vote of 61-2.

T&I Chair Sam Graves (R-MO) and Ranking Member Rick Larsen (D-WA) expressed strong support for WRDA, urging its swift passage to address pressing flood issues. Members noted that over 1,900 project requests were submitted to the bill by over 300 members.

Bill Overview

The House version of WRDA 2024 contains several notable differences from the Senate version ([S.4367](#)) passed by the Senate EPW Committee. The Senate version would authorize \$3 billion in funding for eight water resource development projects, while the House version would authorize more than three times that amount, \$9.8 billion, for twelve projects. The additional projects include a navigation project in California, hurricane, storm, and flood risk reduction projects in Virginia/Washington, D.C., and Louisiana, and an ecosystem restoration project in Arizona. The Louisiana project represents the biggest portion of the increased funding in the House version, authorizing nearly \$5.9 billion to construct a large levee and flood walls in the coastal St. Tammany Parish—the home district of Majority Leader Steve Scalise (R-LA).

General Provisions

The bill proposes:

- Naming water supply and stormwater damage as issues to be targeted by the USCAE via drought resilience and stormwater management projects due to increasingly severe drought and storm problems.
- Creating a community project advisor program to guide communities through WRDA-related USACE processes.
- Implementing an electronic tracking and submission system for environmental reviews.
- Modifying the depth at which Federal ports and harbors projects can receive Federal support for construction and operation and maintenance.
- Incorporating greater use of Forecasted-Informed Reservoir Operations (FIRO).

- Reauthorizing the Federal Emergency Management Agency’s (FEMA’s) National Dam Safety Program through 2028.

Studies and Reports

The House WRDA authorizes 159 new feasibility reports in comparison to the Senate’s proposed 81, as well as the expedited completion of 13 current feasibility studies.

Floor votes for both versions of WRDA 2024 have not yet been announced, but WRDA is expected to pass by the end of the year given its historically strong bipartisan support. Members of the House and Senate will have to reconcile the differences between the two bills.

House Energy and Water Appropriators Daylight FY 2025 Spending Measure

The House FY 2025 Energy and Water Development spending measure, a \$59.2 billion appropriations bill, proposes significant cuts to the Biden Administration’s clean energy programs while increasing overall funding for key agencies. Notably, the Bureau of Reclamation would receive a funding boost to \$1.77 billion—\$329.5 million over the Biden Administration's request. The bill includes a GOP-backed provision to reinstate a Trump-era policy under the *Endangered Species Act* (ESA) to pump more water to California's Central Valley farmers through the Sacramento-San Joaquin River Delta's ecosystem. The Army Corps of Engineers also sees increased funding for projects addressing inland waterways, flood damage, and harbor maintenance.

The bill would provide nearly \$10 billion to the Army Corps in FY 2025, an increase over President Biden's request of \$2.7 billion. The bill would also direct the Army Corps and EPA to provide additional guidance documents explaining the regulatory scope of the Clean Water Act and specifically the latest definition of “waters of the U.S.” (WOTUS).

House Interior and Environment Bill Would Reduce EPA, Interior Spending in FY 2025

The FY 2025 Interior-Environment bill, unveiled by House Republicans, proposes a \$38.5 billion funding package that aims to bolster wildland firefighting and energy production while making substantial cuts to several Biden administration priorities. Key aspects of the bill include:

Environmental Protection Agency

- Funding: \$7.36 billion, a 20% reduction from fiscal 2024 and significantly lower than Biden's \$11 billion request.
- Policy Riders: Block regulations on methane emissions, vehicle emission standards, and several water protection measures. Funding for environmental justice work is eliminated.
- Programs Maintained: Diesel Emissions Reduction Act program (\$90 million) and Targeted Airshed Grants (\$67.8 million).

- Other Funding: \$2 billion for Clean and Drinking Water State Revolving Funds, \$64.6 million for Water Infrastructure Finance and Innovation Act, and \$661 million for Superfund cleanup.

Interior Department

- Funding: \$14.7 billion, \$42 million below fiscal 2024, emphasizing energy production.
- Energy Programs: Increased funding for the Bureau of Safety and Environmental Enforcement and the Office of Surface Mining Reclamation and Enforcement.
- Offshore Energy Management: \$199 million, \$43 million less than Biden's proposal, with a directive to hold a 2025 offshore oil sale.

Specific Agency Impacts

- Fish and Wildlife Service: Riders to block Endangered Species Act actions for certain species.
- Bureau of Land Management (BLM): Funding cuts with restrictions on conservation funding.
- National Park Service (NPS): A 6.3% budget cut, with prohibitions on housing migrants and flying non-official flags.

Forest Service

- Funding: \$8.43 billion, with increased spending on fire suppression (\$2.41 billion) and maintaining recent pay increases for federal wildland firefighters.
- Non-Fire Related Spending: Reduced to \$3.63 billion.

Overall, the bill reflects a shift towards enhancing energy production and firefighting capabilities, while reducing environmental protection efforts and slashing key Biden Administration initiatives.

Advocacy Update

Congressional Appropriators continue work on Capitol Hill to draft and approve appropriations bills for FY 2025, setting the federal government's spending levels for the next fiscal year, which starts on October 1, 2024. Progress has been relatively slow in both the House and Senate. The House has passed four of the 12 annual bills, including the Military Construction-Veterans Affairs, State-Foreign Operations, Homeland Security, and Defense bills. The Senate has passed zero appropriations bills, though we are optimistic that passage of a few of the less controversial bills, such as the Legislative Branch and Defense bills, will pass before the end of July. Still, a significant amount of work remains before the bills pass each chamber. The bills must also pass through a process known as a Conference Committee, comprised of members of both the House and Senate, before the bills can be sent to the President for signature.

In the meantime, Congress also continues to work on several other legislative priorities, including the Water Resources Development Act (WRDA) of 2024, the 2024 Farm Bill, and more. July also represents

one of the last extended work periods for Congress before it breaks for the annual August Recess. Moreover, as this is an election year, much of Congress, including essentially all members of the House, will be back in their respective States and districts for campaign-related activities.

The lame duck period, after the elections but before the sitting of Congress and potentially a new Administration, may represent a difficult period for legislation to make it through Congress. Given that Congress is divided, with Republicans in control of the House and Democrats in control of the Senate, it is difficult to imagine that much legislating will occur in the lame duck. Depending on election outcomes, the respective party leadership in each chamber will likely attempt to stall any legislating by the opposing party until a new Congress is seated. It remains possible that Congress passes certain non-controversial legislative items during the lame duck, but very unlikely that they pass any major legislation.

North Topsail Beach CBRA Mapping Issue

We remain optimistic that [H.R. 2437](#) will have an opportunity for consideration and passage into law before the end of the year and the current Congress. As a reminder, H.R. 2437 is Congressman Murphy's bill to revise the boundaries of Coastal Barrier Resources System (CBRS) maps, in particular as they relate to CBRS Unit L06 in North Topsail Beach and the challenges presented by previous improper CBRS mapping.

H.R. 2437 was passed out of the House Natural Resources Committee by a party-line vote on November 15, 2023. The bill remains before consideration of the whole House and, to date, has not been scheduled for a vote before the House. Prior to consideration on the floor of the House, H.R. 2437 must also receive an assessment of its potential budgetary impacts by the Congressional Budget Office (CBO). This estimate is known as a "score." In general, all bills that are to be voted on by either the House or the Senate must have a CBO score in order to inform members of the impacts the bill may have on the federal budget and/or economy.

We are hopeful that H.R. 2437 will receive a CBO score soon and thus allow for it to be voted on by the House and, subsequently, the Senate. Receiving a low or zero CBO score is an important condition that will mitigate certain procedural and potentially political concerns over the bill.

H.R. 2437 must pass out of the House and then pass out of the Senate before it can be sent to the President to be signed into law.

We also continue to monitor the status of two pieces of legislation of significant interest to the Commission. [H.R. 5490](#), the *Bolstering Ecosystems Against Coastal Harm Act*, and its companion in the Senate, [S. 2958](#), the *Strengthening Coastal Communities Act*, make certain modifications to the Coastal Barrier Resources System (CBRS). As you are aware, both bills include technical corrections that would remove 2.5 acres from CBRS Unit L06 in the Barton Bay area, including two structures along Barton Bay Drive and New River Inlet Road and a portion of one lot to the south of New River Inlet Road. The U.S. Fish and Wildlife Service first proposed these technical corrections in 2021, but Congress has yet to approve the technical corrections. The House and Senate has been actively working to ensure that these technical corrections are approved this year. The House Natural Resources Committee passed H.R. 5490 in December and is awaiting action on the House floor. S. 2958 was passed in the Senate by voice vote on April 18, 2024.

(Passage by voice vote is a positive indicator for the bill’s chances of passing Congress and ultimately being signed into law.) We are optimistic that Congress will approve a bill this calendar year that includes these technical corrections to CBRS Unit L06.

In addition, we are pleased that representatives from the U.S. Fish and Wildlife Service were able to visit North Topsail Beach to survey areas of the Town that were inappropriately included in CBRS Unit L06. We understand the importance of this issue to the Commission, and we corresponded with Alderman Leonard regarding preparations for the visit. We look forward to hearing how the visit went.

Sand Borrowing

As with many other legislative items, [H.R. 524](#), Congressman Rouzer’s bill to allow certain federally authorized USACE beach nourishment projects to borrow sand from within the CBRS for use outside the CBRS, remains stalled in consideration before the Senate. After passing the House on April 11, 2024, under “suspension of the rules”—a procedure reserved for non-controversial bills with near-unanimous support—H.R. 524 was referred to the Senate Committee on Environment and Public Works (EPW). Although it has not yet been heard before EPW, because of its recent (on a Congressional timescale) and overwhelmingly favorable passage out of the House, we remain optimistic that the bill will become law before a new Congress is seated.

Water Resources Development Act

As previously mentioned in the “Washington News” section of the report, the House and Senate continue to work to develop the latest iteration of the *Water Resources Development Act*. This legislation, written and passed biannually, authorizes a variety of water infrastructure and related activities. Specifically, the bill authorizes the U.S. Army Corps of Engineers to carry out water infrastructure projects, and a range of other activities across their civil works jurisdiction. Below, we have outlined and summarized several provisions within the House WRDA bill (H.R. 8812) that may be of interest to TISPC.

Section 101. Continuing Authorities Programs

Directs the Corps to implement a pilot program to allow a non-Federal interest or the Secretary to carry out a project under a Continuing Authorities Program (CAP) through the use of an alternative delivery method. The Corps must solicit project proposals from non-Federal interests and reach out to non-Federal interests that have previously submitted projects requests. Congress authorizes \$50 million per fiscal year.

Section 102. Community Project Advisor

Directs the Corps to establish a single office to assist non-Federal interests in accessing Federal resources made available by the Corps related to water resources development projects, headed by a community project advisor. The Corps must establish an online, interactive platform that provides information related to Federal resources available through the Corps.

Section 103. Minimum Real Estate Interest

Directs the Corps to provide to the non-Federal interest for an authorized water resources development project a real estate plan for the project that includes a description of the real estate interests required for construction, O&M, repair, rehabilitation, or replacement of the project, including any specific details and legal requirements necessary for implementation of the project.

Section 104. Study of Water Resources Development Projects by Non-Federal Sponsors

Clarifies requirements for a non-Federal interest carrying out a study of an authorized project or a study of a modification for an authorized project.

Section 105. Construction of Water Resources Development Projects by Non-Federal Interests

Clarifies requirements for a non-Federal interest carrying out construction of an authorized project.

Section 116. Dredge Material Disposal Facility Partnership

Allows non-Federal entities to utilize certain non-Federal disposal facilities managed by the Secretary for dredged material disposal with permission from the facility owner and the Secretary.

The term “non-Federal disposal facility” means a dredged material disposal facility under the jurisdiction of, or managed by, the Secretary that is owned by a non-Federal entity.

The Secretary may allow non-Federal use of these facilities if the Secretary determines that such use will not reduce the availability of the facility for the authorized water resources development project on a channel in the vicinity of the disposal facility for the 20-year period following the date of the request. The Corps must make a determination no later than 90 days after receiving a request.

Fees would be imposed to recover capital, operation, and maintenance costs associated with the non-Federal entity’s use of the facility. However, the Secretary is directed to reduce the fee to account for improvements made to the facility by the non-Federal entity for recovering capacity in the facility.

The Secretary is also authorized to perform disposition evaluations for non-Federal disposal facilities not utilized for 20 years. The owner of a non-Federal disposal facility may request that a disposition evaluation be performed by the Corps if the Secretary has not used the facility for the disposal of dredged material during the 20-year period preceding the date of the request; and the Secretary determines that the non-Federal disposal facility is not needed for such use by the Secretary during the 20-year period following the date of the request.

Section 117. Maximization of Beneficial Use

Encourages additional beneficial reuse of dredged materials by making the program permanent, increasing the use of regional sediment management plans, and codifying the Corps’ goal of beneficially using 70 percent of dredged material.

Section 139. National Coastal Mapping Program

Authorizes the Secretary to carry out a National coastal mapping program to provide recurring mapping of coastlines to support navigation, flood risk management, environmental restoration, and emergency operations projects.

Section 141. Removal of Abandoned Vessels

Authorizes the Secretary to remove abandoned vessels.

Section 146. Easements for Hurricane and Storm Damage Reduction Projects

Directs the Secretary to provide flexibility and transparency for real estate requirements for hurricane and storm damage reduction projects.

Section 149. Sense of Congress Relating to Comprehensive Benefits

Expresses a sense of Congress that the Secretary should follow, when carrying out a feasibility study: (1) the guidance included in the “Comprehensive Documentation of Benefits in Feasibility Studies” memorandum, dated April 3, 2020; and (2) the policies included in the “Policy Directive – Comprehensive Documentation of Benefits in Decision Document,” dated January 5, 2021.

Section 202. Expedited Completion

Directs the Secretary to expedite completion of certain feasibility studies, including the Surf City Coastal Storm Risk Management Project.

Section 338. Environmental Infrastructure

Authorizes new Corps Environmental Infrastructure (EI) projects and makes modifications to existing EI authorities. Under the subsection that makes modifications to existing EI project, the bill allows the Corps to consider natural and nature-based infrastructure projects for certain authorities. One of the authorities modified under this subsection is the North Carolina Section 5113 authority. The bill increases the Section 5113 authorization from \$13 million to \$50 million.

The Section 5113 authority allows the Corps to provide design and construction assistance for publicly owned facilities at a 75% Federal/25% non-Federal cost share. Eligible projects under Section 5113 currently include:

- Wastewater treatment and related facilities
- Combined sewer overflow, water supply, storage, treatment, and related facilities
- Drinking water infrastructure, including treatment and related facilities
- Environmental restoration
- Stormwater infrastructure

- Surface water resource protection and development

Should the aforementioned WRDA language be approved, natural and nature-based infrastructure projects would also be eligible under Section 5113.

FEMA Issues

We have been in contact with your Congressional representatives regarding FEMA issues of interest to the Commission, specifically as it relates to the National Flood Insurance Program and your concerns about FEMA Depth of Closure (DOC) calculations. We spent time in the last couple of weeks briefing Congressional staff about the DOC issue in an effort to find an appropriate path forward. We, in conjunction with Congressional staff, are still in the process of determining how best to address the DOC issue and will update the Commission on possible options more thoroughly in the next monthly report.

Surf City General Reevaluation Report (GRR)

As referenced above, Section 202 of the House WRDA bill includes language that directs the Secretary of the Army to expedite completion of certain feasibility studies, including the Surf City Coastal Storm Risk Management Project. This is a significant development which will not only help the Surf City Project move to construction as soon as possible, but also shows Congress's commitment to ensuring that the project is a success and treated as a national priority. The Surf City Project is one of only 14 projects that received such treatment by Congress.