



MEMORANDUM

TO: SLDMWA BOARD OF DIRECTORS
FROM: DAN KEPPEL, EXECUTIVE DIRECTOR
SUBJECT: EXECUTIVE DIRECTOR'S REPORT
DATE: JANUARY 10, 2022

This memo is intended to keep you apprised as to what is happening behind the scenes on policy issues the Family Farm Alliance is engaged in. In the past month, much of our efforts have focused on engaging in Biden Administration rulemaking efforts, preparing for our 2022 annual conference, public outreach and speaking engagements. These issues and other matters important to our members are further discussed in this memo.

BIDEN ADMINISTRATION DEVELOPMENTS

1. Recent Appointments

Maria Camille Calimlim Touton last month was sworn in as Bureau of Reclamation Commissioner by Interior Department Secretary Deb Haaland. Ms. Touton has served as Reclamation's Deputy Commissioner since January. The Family Farm Alliance has a long, positive history with Ms. Touton and formally supported her nomination to this position last year. Over the past decade, Ms. Touton has participated in Alliance annual conferences as a speaker or panelist several times. Last February, she led the discussion on the traditional "Reclamation Roundtable" at the Alliance's first ever "virtual" annual conference.

President Biden last month named several top-level appointees for federal posts across the country, including regional administrators at EPA. The White House announced administrators for EPA Regions 6, 7 and 9. Ms. Martha Guzman was named EPA Region 9 Administrator. Its main office is in San Francisco, and it manages agency operations in Arizona, California, Hawaii, Nevada and the Pacific Islands. EPA has 10 regional administrators, which do not require Senate confirmation. Before last week's announcement, the Administration had only named five of them at the agency.

EPA now has two more to fill in its Boston and Seattle offices with an appointed Regional Administrator.

2. Federal Agencies Mobilize to Overhaul Water Infrastructure

Federal agencies are moving fast to using newly enacted funding from the *Infrastructure Investment and Jobs Act* (IIJA) to address aging water and power infrastructure challenges across the country, including the American West. White House infrastructure coordinator Mitch Landrieu has asked governors to appoint state-level point people to drive the implementation of the infrastructure law and promised to give them more guidance later this month. With President Joe Biden's signature on the bipartisan IIJA on November 15, the Family Farm Alliance and others involved with the year-long effort to secure \$8.3 billion in Western water infrastructure provisions are now working with the Biden Administration to immediately clear the path for projects that will address critical Western water supply needs. Now, the energies of our infrastructure coalition will be redirected to the agencies overseeing administration of the funds; namely – the Bureau of Reclamation (Reclamation). We want to ensure that most of these dollars are spent on-the-ground for the intended purpose, and we're already working with them to ensure that billions of dollars are spent on new infrastructure in a way that is efficient and effective.

a. Reclamation Opens up Application Period for XM Projects

Reclamation has already initiated the first application period for Extraordinary Maintenance (XM) projects that will address aging water and power infrastructure across the West. Newly enacted funding from the Bipartisan Infrastructure Law will be applied to the program following the new application period requirements set out in the separate Consolidated Appropriations Act of 2021 (Pub. L. 116-260) which became law in December of 2020. With the recent passage of the Bipartisan Infrastructure Law, there is \$3.2 billion over five years in the Aging Infrastructure Account to be used for extraordinary maintenance needs. Reclamation's infrastructure is either reserved, which means operated by Reclamation, or transferred, where it is operated by local beneficiary parties through a contract with Reclamation. Both reserved and transferred works are eligible for BIL funding through the application process.

The Family Farm Alliance and others have shared concerns with Reclamation leadership in recent months about finding ways to most efficiently make loans to project beneficiaries to repair aging federal water facilities. A complex and lengthy process will make it very difficult to get the significant funding provided to the aging infrastructure account disbursed in a timely manner. Delays in accessing or distributing funds increases the risk that Congress will claw back unobligated funds in the future, despite the massive and growing needs, and could further delay much needed improvements to aging federally owned water infrastructure in the West. Reclamation appeared to recognize and appreciate many of our concerns, we believe those will be reflected in modified directives and standards that should be rolled out later this month. In the coming months, we'll continue to monitor with our members how this program and application

process works out in the coming year and communicate with Reclamation leadership if challenges arise.

The first application period opened on December 16, 2021—only a month after the BIL was enacted—and it will close on January 31, 2022. I encourage anyone interested in applying for this program to contact your local Reclamation Area Office as soon as possible if you are interested in applying for one of these loans. Reclamation says that analysis of applications from local beneficiaries will take place during the second and third quarters of fiscal year 2022. There will be additional opportunities to apply for funds and extended repayment at least once each year. Reclamation regional and area office staff will reach out to transferred works operators and project beneficiaries in the coming weeks to discuss the application process and collaborate with those interested in submitting funding proposals.

b. EPA Initiates Historic “Single Largest Investment in Water Infrastructure”

The Biden administration last month announced that the U.S. Environmental Protection Agency (EPA) will distribute \$7.4 billion to states, tribes and territories for 2022 focused on water infrastructure grants and loan forgiveness. EPA Administrator Michael Regan said in an interview with NBC that it is the "single largest investment in water infrastructure" in the history of the federal government. Mr. Regan is also urging governors to prioritize water infrastructure funds from the bipartisan infrastructure law for environmental justice (EJ) communities, underscoring concerns from top White House officials and their EJ advisors that some states may misuse funds intended for such communities.

3. Treasury Department Issues Final Rule for SLFRF Program

The U.S. Department of Treasury last week issued the much-anticipated Final Rule for the for State and Local Fiscal Recovery Funds (SLFRF) program created in the American Rescue Plan ([P.L No: 117-2](#)). The ruling provides increased flexibility and simplifies requirements for state and local governments so officials can “focus on responding to the crisis in their communities and maximizing the impact of their funds,” the [release](#) states.

The Treasury Department’s final rule will take effect on April 1, 2022 and clarifies or allows for the SLFRF to do several new things. Notably, Treasury broadened eligible water, sewer, and broadband infrastructure projects – understanding the unique challenges facing each state and locality in delivering clean water and high-speed broadband to their communities. The final rule text can be viewed in its entirety [here](#). The Treasury Department also included an overview of the [major provisions](#). Treasury is hosting a series of webinars to brief and answer questions about the Final Rule:

- January 7, 2022 at 1:00pm ET: [Register here](#).
- January 10, 2022 at 4:00pm ET: [Register here](#).
- January 12, 2022 at 1:00pm ET: [Register here](#).

Recordings for these webinars will be posted on the website as they expect RSVPs to reach capacity.

4. Reclamation Releases \$210 million CR Drought Spend Plan

Reclamation last month released their spending plan for the \$210 million provided in the Extending Government Funding and Delivery Emergency Assistance Act (P.L. 117-43) FY 2022 continuing resolution (CR). The legislation provided Reclamation with \$200 million to address drought conditions throughout the West, as well as \$10 million for fire remediation and suppression emergency assistance related to wildfires. Highlights of the funding provided by Reclamation:

- \$40 million for the implementation of conserving 500,000+ acre-feet of water over the next two years to stabilize the decline of Lake Mead.
- \$1.2 million for the Lower Colorado River Operations Program to initiate coordination of post 2026 operational guidelines and studies related to drought resiliency.
- \$61.8 million to California's Central Valley Project to address ongoing drought needs throughout the region.
- \$20 million to the WaterSMART Drought Response Program.
- \$10 million for drought mitigation activities for Native Americans.
- \$22 million for drought-specific projects and activities, such as additional storage facilities for the Mni Wiconi Project (SOUTH DAKOTA) and water conservation improvements for the Yakima River Basin Water Enhancement Project (WASHINGTON).
- \$35 million for contingency funding to address the most pressing and emerging drought-related needs as the FY 2022 water year hydrology unfolds.

The drought-stricken Klamath Basin will receive another \$10 million in relief funding. The latest funding from the US Bureau of Reclamation adds to \$33 million in federal funding secured earlier this year for irrigators, Klamath Tribes, and wetlands important to wildlife.

5. EPA to Release New WOTUS Definition Later in the Year Than Expected

The Biden Administration last fall had proposed a February 2022 timeline for their new Clean Water Act (CWA) definition of jurisdictional "waters of the U.S." (WOTUS), but now is planning to unveil a new definition of what constitutes a WOTUS later in the year. Currently, the Biden Administration has moved to formally rescind the Trump Administration's Navigable Waters Protection Rule (NWPR) and to put back in place pre-2015 CWA regulations informed by past court precedent. This proposed rulemaking is currently out for public comment until February 7, which could be extended. EPA has also announced that they will be holding some stakeholder roundtables on a new WOTUS definitional rule but have not yet released a schedule for these roundtables. The regional roundtable "contest" has many in the water world scratching their heads and scrambling to find partners and put together proposals. We worked with the Arizona and California state Farm Bureaus to fill slots on two regional roundtable proposals.

6. Interior Announces Public Forums on “30x30” Conservation Initiative

The Department of the Interior announced a series of public forums this month as the agency weighs how to best track progress on the Biden Administration's aggressive “30x30” conservation pledge. In an announcement posted in the January 4 [*Federal Register*](#), Interior says it will host three virtual sessions on January 13, 19 and 21 to take comments on its "American Conservation and Stewardship Atlas" conservation database. The Atlas project, announced in May 2021, is being rolled out in conjunction with the Administration's "America the Beautiful" program, which aims to set aside 30 percent of the nation's lands and waters in a natural state over a 10-year period ending in 2030 (“30x30”). In a year-end report released last month, the Administration acknowledged that it will be at least another year until the database is released, and then only in a "beta" format as the Administration wants to include public input. In addition to the three comment sessions, the *Federal Register* notice will open a 60-day period for written comments commencing on the publication date.

Family Farm Alliance President Patrick O’Toole and I last month participated in a 4-hour working session hosted by Western Landowners Association that featured briefings by Robert Bonnie, (USDA Under Secretary for Farm Production and Conservation), Kate Kelly (Interior Department Deputy Chief of Staff for Policy) and other senior policy officials from the Biden Administration. The overall intent of this workshop was to identify solutions to keep working lands whole and healthy, support and revitalize rural communities, and achieve conservation objectives of the 30 x 30 initiative and other federal initiatives. We have serious concerns that the federal agencies are not prepared to implement this initiative at-scale. Local producers and resource managers must be at the table. Much of the conversation revolved around ongoing conservation measures and which of those warrant inclusion in the conservation atlas.

7. Lawsuit Against Reclamation over Leaking Canal Dismissed

A federal judge has dismissed a rural Nevada town's lawsuit seeking to block the Bureau of Reclamation's plan to renovate a 115-year-old earthen irrigation canal with changes that would eliminate leaking water that residents long have used to fill their own domestic wells. The \$148 million project includes lining parts of the Truckee Canal with concrete to make it safer after it burst in 2008, flooding nearly 600 homes in Fernley about 30 miles east of Reno, which would eliminate the waste of federal project water before it gets to farmers downstream. The City of Fernley filed the lawsuit under the National Environmental Policy Act (NEPA) arguing the project is illegal because the government failed to fully consider the environmental impacts of reduced groundwater levels. But the District Court ruled the city lacked legal standing to bring their claims under NEPA because their interests are economic, not environmental.

8. Basin Studies and Water Management Options Pilots

Reclamation is requesting letters of interest from eligible non-federal entities for Basin Studies

and Water Management Options Pilots. Letters of interest are due by February 11, 2022, to the nearest regional office. Through basin studies, Reclamation works with state and local partners to develop projections of future water supply and demand, including the impacts of climate change, and to identify collaborative strategies to ensure sustainable future water supplies in river basins across the Western United States. Since establishing the program in 2009, Reclamation has funded 27 basin studies. Reclamation is also requesting letters of interest for Water Management Options Pilots. These pilots allow Reclamation to work with state and local partners to evaluate solutions to water management challenges by building on completed basin studies. Pilots may include both additional analysis that further develop strategies identified in a basin study and/or efforts to update or expand analysis.

The Basin Study Program is part of WaterSMART – the Department of the Interior’s water initiative that uses the best available science to improve water conservation and help water resource managers identify strategies to narrow the gap between supply and demand. To learn more about WaterSMART Basin Studies and to locate contact information for your respective regional office, visit www.usbr.gov/watersmart/index.html.

9. National Levee Safety Program

The U.S. Army Corps of Engineers has initiated a partnership with FEMA to develop a new National Levee Safety Program. USACE and FEMA have been entrusted to lead a national discussion and develop an integrated framework for managing reliable levee systems and improving community resiliency in areas behind all levees throughout the Nation.

Since late 2010, Western water managers engaged with the National Committee on Levee Safety (NCLS), a group that was authorized in WRDA 2007 and which included the Corps and FEMA as the only federal agencies represented on the Committee. The Committee was established to deal with post- Katrina flood risk issues, with an emphasis on Corps levees. However, the Committee developed a plan that essentially would apply Corps-level engineering specifications and standards to levees and canal embankments throughout the country, with little to no coordination with the Bureau of Reclamation (Reclamation) and Western water managers. We’ll likely monitor the current process, and if necessary, advocate that any federal or transferred water delivery canals or laterals outside of urban areas be exempted from the program and that Reclamation’s Urban Canal Safety Program be utilized to address other canal reaches.

Over the next two years as the major components of this program are developed, collaboration with stakeholders will be key to the program’s continued success. The list of stakeholders for this program is long and includes states, tribes, local communities, emergency managers, and flood plain managers. The stakeholder engagement activities will be conducted in three phases. The first phase has started and will last until March 31, 2022. For this phase, the agencies are focused on understanding stakeholder needs to help shape the components of this program. All materials related to this approach to develop this program, including specific questions the agencies are seeking feedback on, can be found at www.leveesafety.org. You can receive email

announcements about this program by visiting the “Get Involved” page at this site and clicking on “Sign-Up to Receive Email Announcements.”

10. Biden Administration Climate Actions

President Biden signed an executive order last month that directs the U.S. government to reduce its greenhouse gas releases by 65 percent by 2030 and make sure buildings and facilities are powered with no carbon energy, with the goal that the U.S. government be “net-zero” on carbon emissions by 2050 and have a zero-emissions vehicle fleet within 13 years. That will mean 300,000 buildings, 600,000 cars and trucks, and \$650 billion annual purchases will all need to have a “net-zero” impact on carbon.

The U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) is announcing several new and expanded opportunities for climate smart agriculture in 2022. Updates include nationwide availability of the [Environmental Quality Incentives Program](#) (EQIP) Conservation Incentive Contracts option, a new and streamlined EQIP Cover Crop Initiative, and added flexibilities for producers to easily re-enroll in the [Conservation Stewardship Program](#) (CSP). These improvements to NRCS’ working lands conservation programs, combined with continued [program opportunities in all states](#), are part of the Biden-Harris Administration’s broader effort to support climate-smart agriculture.

11. FDA Proposes Produce Safety Regulations

The Food and Drug Administration (FDA) is proposing to amend the agricultural water provisions of the produce safety regulation that covered farms have already found to be complex and challenging to implement. The proposed rule, if finalized, would change certain pre-harvest agricultural water requirements for produce and farms subject to the PSR, other than sprouts operations. Key provisions in the proposed rule include:

- A requirement for farms to manage their agricultural water quality based on the results of a comprehensive systems assessment (“agricultural water assessment”) that is adaptable to the wide variety of water sources and uses and future scientific advancements.
- An annual assessment by farms of their pre-harvest agricultural water to identify any conditions likely to introduce hazards into, or onto, covered produce or food contact surfaces. Based on these assessments, farms would then determine whether corrective or mitigation measures are reasonably necessary to reduce the potential for contamination.
- A requirement that farms implement expedited mitigation measures for hazards related to certain activities associated with adjacent and nearby lands, to protect the quality of the water used on produce.
- The removal of certain testing requirements for pre-harvest agricultural water and replacing them with the agricultural water assessments identified above.

Family Farm Alliance representatives and some individual members participated last month in an online seminar on FDA's proposed rule, which was hosted by United Fresh Produce Association in collaboration with PMA, Georgia Fruit & Vegetable Growers Association, Northwest Horticultural Council and Western Growers. Many producers are concerned with the proposed rule, and some are still adjusting to the water testing protocol that was established under another rule adopted in 2015. FDA says it intends to continue working closely with stakeholders to provide necessary training, technical assistance, education and outreach. The agency will hold two virtual public meetings to discuss the proposal and hear feedback, and more details will be announced in a forthcoming Federal Register notice. In addition, the agency is also developing an online tool to assist growers in understanding agricultural water assessments. More information is available at <https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-proposed-rule-agricultural-water>.

The Alliance will work with Western Growers and other allies as we develop comments for FDA, and we're encouraging our members to engage in this process and also submit individual comments. We'll also be considering ways to make it easier for producers to determine exactly what they must do to reach compliance with the proposed rule. Electronic or written comments on the proposed rule must be submitted to FDA by April 5, 2022.

DEVELOPMENTS IN CONGRESS

12. Fate of BBB/FY2022 Spending Bills in Flux

Negotiations continue with Senate moderate Joe Manchin (D-WV) on the Biden Administration's signature \$1.7 trillion *Build Back Better Act* (BBB) that has stalled in Congress over his objection. With a 50-50 Senate and no Republicans in support of BBB, the legislation will need the vote of every member of the Democratic Caucus to pass (with Vice President Harris breaking the tie vote).

Democrats are still hoping to use the coming weeks to negotiate a bill the West Virginia senator could support in a party-line vote. Meanwhile, Senate Majority Leader Chuck Schumer (D-NY) has said he will bring BBB up for a potentially doomed vote in the Senate regardless of Sen. Manchin's objections to put lawmakers on the record, and has also promised action on Democrats' voting rights legislation, including a debate on whether to change Senate 60-vote filibuster rules to make it happen on or before January 17.

Congress will also be working on an omnibus spending package for FY 2022, with a goal of finishing by February 18 when the current stopgap continuing resolution (CR) funding measure expires. At stake are increased spending levels promoted by the Biden Administration to provide new money for environmental justice programs, more federal workers at climate agencies, a Civilian Climate Corps and climate resiliency, among other priorities. Democrats and Republicans, however, have been unable to agree on overall spending levels which has stalled progress on the 12 FY 2022 appropriations bills.

13. House Bill Would Open Access to WaterSMART Funds to Tribes

A bipartisan contingent from mostly Western states, led by Rep. Melanie Stansbury (D-NM), have introduced the “*WaterSMART Access for Tribes Act*,” a bill that would allow the Secretary of the Interior to reduce or waive the Bureau of Reclamation’s WaterSMART cost-share requirement for tribal nations. This would help tribal communities access more federal financial support for critical water projects through the Interior Department. Co-sponsors include Reps. Teresa Leger Fernandez (D-NM), Steven Horsford (D-NV), Ruben Gallego (D-AZ), Tom Cole (R-OK), Joe Neguse (D-CO), Grace Napolitano (D-CA), Jim Costa (D-CA) and Jared Huffman (D-CA).

The WaterSMART program uses several water conservation authorities through Reclamation to provide cost-shared grants to support water conservation, water-use efficiency, drought planning, and water reuse and recycling projects. But according to the bill’s sponsors, fewer than 5 percent of the projects funded under the WaterSMART program since 2010 have been led by tribes or pueblos.

14. Western Senators Introduce Bill on ESA Transparency

Sen. Cynthia Lummis (R-WYOMING) along with Senators John Barrasso (R-WYOMING), Jim Risch (R-IDAHO), and Mike Crapo (R-IDAHO) last month introduced the *State, Tribal, and Local Species Transparency and Recovery Act* (S. 3315). The legislation would amend the federal Endangered Species Act (ESA) to require federal agencies, including the U.S. Fish and Wildlife Service, to provide states, counties, and tribes with the scientific reasoning behind ESA determinations. The bill would also require federal agencies to use up-to-date research when making decisions about wildlife protected under the ESA, including information that states, tribes, and other stakeholders provide them. The bill was previously sponsored by the late Senator Mike Enzi (R-WYOMING) in the last Congress. The Family Farm Alliance has supported similar legislation in previous Congresses. We continue to believe that collaboration and consultation with states and private stakeholders as partners are needed to meet the objectives of the ESA. At the same time, the focus of reforming the ESA should emphasize that the law is applied consistently and without conflict of interest.

ALLIANCE INITIATIVES

15. 2022 Annual Meeting and Conference

The 2022 Family Farm Alliance Annual Conference is set for February 24-25, 2022 at the Silver Legacy Resort in Reno (NEVADA). Registration information is available on our website: www.familyfarmalliance.org. We’re planning on an in-person event, although the COVID-19 Omicron variant has folks nervous, especially on the East Coast. We’ll definitely have engagement from Congress and the Biden Administration, although some of the speakers may participate via ZOOM, including Reclamation Commissioner Camille Touton, who is expecting her third child that week. Conference highlights include:

- **Reclamation Roundtable** featuring U.S. Bureau of Reclamation Commissioner Camille Touton, Regional Directors, and other top Reclamation officials.
- **A Look at D.C. From the Hill:** Mark Limbaugh moderates this panel of Democrat and Republican staff from key congressional water committees.
- **Report from Glasgow:** Hear from Alliance President Pat O'Toole and other leaders of Solutions from the Land who served as delegates at COP26.
- **The Western Water Infrastructure Coalition** "behind the scenes" of the effort that succeeded in achieving \$8.3 billion for Western water infrastructure.
- **Colorado River:** Hear how agricultural water interests from the Continental Divide to the Mexican border are helping decision-makers facing shortages due to drought and over-allocation.
- **Innovation in Western Water Management.**
- **Plus, Western regulatory and litigation updates, appearances by top Biden Administration appointees, and much, much more!**

The full agenda will be shared as we approach the date of the conference.

16. On the Road Again

Alliance President Patrick O'Toole and I will be speaking later this week at the Four States Irrigation Council annual conference in Fort Collins (COLORADO). This conference brings in attendees from the Platte River watershed in Colorado, Kansas, Nebraska and Wyoming. While on the road, I'll also make a virtual presentation to the East Valley Water District (OREGON).

Mark Limbaugh - our representative in Washington, D.C. – and I will participate in a panel discussion later this month at the Mid-Pacific Water Users Conference in Reno (NEVADA) with John Watts (Senator Feinstein's leg director) and Kiel Weaver (House Resources Committee Republican senior advisor) to talk about Western water developments on Capitol Hill. I've served on the planning committee for the MP conference since 1999!

This is a quick summary of just a few of the issues the Alliance has been engaged in. Please do not hesitate to contact me at dan@familyfarmalliance.org if you would like further information about what the Alliance is doing to protect water for Western irrigated agriculture.