



MEMORANDUM

TO: SAN LUIS & DELTA-MENDOTA WATER AUTHORITY DIRECTORS
FROM: DAN KEPPEL, EXECUTIVE DIRECTOR
SUBJECT: UPDATE REPORT
DATE: OCTOBER 2, 2023

This memo is intended to keep you apprised as to what is happening regarding policy issues the Family Farm Alliance (Alliance) is engaged in. In the past month, much of our efforts have focused on advancing farm bill ideas with Western Senators and committee staff, assessing Biden Administration changes to NEPA implementation, planning and participating in a fundraising event in central Washington, engaging in our farmer lobbyist trip to D.C., public outreach, and organizational administrative matters. These issues and other matters important to our members are further discussed in this memo.

BIDEN ADMINISTRATION

1. White House Summit Highlights Recent Climate Actions

President Biden on September 28 hosted the first-ever White House Summit on Building Climate Resilient Communities. The Summit – which included representatives from more than 25 states, territories and tribal nations – was touted as an opportunity for practitioners and senior Administration officials to jointly discuss needs and opportunities for further climate resilience efforts. It also provided a forum to highlight some recent aggressive climate actions taken by the Biden Administration.

a. National Climate Resilience Framework Released

In conjunction with the Summit, the Administration released its “National Climate Resilience Framework”, intended to guide and align climate resilience investments and activities by the

federal government and its partners. The Administration also announced more than a dozen new actions – including the awarding or availability of more than \$500 million in dedicated funding – to help build a “climate resilient Nation”, and \$800 million in commitments from major philanthropies to expand financial support for climate resilience and align investments with national climate resilience priorities. The Department of Interior’s Bureau of Reclamation (Reclamation) announced up to \$328 million in funding through the Infrastructure Investment and Jobs Act (IIJA) and annual appropriations to help make Western communities more resilient to drought and climate change, including in the Colorado River Basin. Funding will support grants for water desalination, recycling and reuse, and small water storage projects.

b. Wildland Fire Commission Releases Report

In the week leading up to the Summit, the Wildland Fire Management and Mitigation Commission, established by the IIJA, released a report recommending improvements to federal policies related to preventing, mitigating, suppressing, and managing wildland fires, as well as rehabilitating affected lands. Today, fire seasons routinely destroy more than 8 million acres annually, and in the last 10 years three fire seasons have consumed over 10 million acres. Composed of representatives from federal agencies, state, local and Tribal governments, and representatives from the private sector, the Commission has met monthly over the last year to discuss and craft recommendations to address this crisis.

Among other recommendations, the report calls for “urgent new approaches”, such as establishing a Community Wildfire Risk Reduction Program to proactively address risk, change financial incentives and change agency metrics to better focus on performance of ecological health over acres treated. The report acknowledges that successfully meeting the challenge of wildfire mitigation and management requires approaches that “better involve all relevant entities and every scale of society” and shifting from a reactive stance into being more proactively. This is the second report to be released by the Commission. The first report, which focused on aerial equipment and a strategy to meet equipment needs through 2030, was released in February. Western GOP Members of Congress appeared to agree with the report’s findings, noting that they have raised similar concerns in the past.

c. Considering the “Social Cost of Carbon” in Decision Making

One week before the White House summit, the Administration [announced plans](#) to consider climate costs in most government policies and decisions, including how the federal government procures goods and services, federal agencies' budgets, permitting decisions, and foreign assistance programs. While the social cost of greenhouse gases measuring the damage to the climate from a ton of carbon dioxide or methane as it enters the atmosphere has been used as a metric against human-caused emissions for years, the policies announced last month would broaden its application across the federal government. According to the Administration, in the

short term, considering the social cost of climate change would save taxpayers money by reducing federal energy bills. In the longer term, it would help stave off "the most catastrophic effects of the climate crisis." But, as reported in *E&E News PM*, Senator Shelley Moore Capito (R-WV), Chair of the Senate Environment and Public Works Committee, called the metrics "unproven figures" the administration used "to justify its environmental policies that drive up costs for families, hamstringing American employers and delay job-creating infrastructure projects from ever moving forward."

2. Bureau of Reclamation: Stakeholder Workshop

Many of you likely saw the recent announcement for Reclamation's interactive Tribes and stakeholders' workshop, scheduled to be held at the Denver Federal Center, Building 67, in Lakewood, Colorado, October 17-18, 2023. The October 17 meeting will run from 9:00 a.m. to 5:00 p.m. The meetings on the 18th will begin at 9:00 a.m. with the concluding remarks wrapping up at 3:00 p.m., with a tour of the Technical Services Center hydraulic lab from 3:30-5:00 p.m.). Several of us attended a similar workshop back in 2019, before the pandemic. They were helpful, and well-attended. It sounds like Reclamation has been itching to get the public workshops rolling again, and they plan to do at least two in-person workshops per year in the near future.

Here's a list of the topics that Reclamation will cover in the October meeting:

- Aging Infrastructure Account
- Implementation of the Inflation Reduction Act
- Water Resource Planning Activities
- Climate Change Adaptation Strategy
- WaterSMART
- Tribal Initiatives

In addition to sharing what Reclamation and the Department of the Interior are doing in these areas, they will be seeking individual input into how they can improve engagement in these areas. The agenda is still being developed. If you would like to attend, please [RSVP online](#) to reserve your seat. Reclamation will need your name for the security list to enter the building for the meeting. Here is a link to a map of the [Denver Federal Center](#). Visitors who need to enter the Federal Center through Gate 1 will enter Building 67 through the south entrance. The agenda and more information will be available soon at <https://www.usbr.gov/stakeholders/>. If you have any questions, please send an email to stakeholderworkshop@usbr.gov.

3. EPA: States'/Tribal Control of Water, Infrastructure CWA Permitting

EPA announced a final [rule](#) earlier this month that reversed Trump-era limitations on state permit

approvals under Section 401 of the Clean Water Act (CWA), a move the agency said would bolster state and tribal regulation to protect their waters. In addition to restoring certain oversight powers, the move also gives states, tribes, and territories a direct role in determining the duration of review processes. Section 401 of the CWA requires any applicant for a federal license or permit to conduct any activity which may result in any discharge into the navigable waters to obtain a permit from the state prior to the federal license or permit being issued.

At issue is how Section 401 of the CWA enables states, tribes, and territories to approve or deny federal CWA permit certifications for water/energy infrastructure projects based on concerns over impacts to their water resources. Under the Trump Administration's rulemaking, EPA limited Section 401 certification oversight from "the activity as a whole" to discharges alone, a move that sparked major backlash from some states and environmental groups. The Biden Administration is now reversing that reduction in powers and expanding state and tribal authorities. EPA officials said there will be a default time frame of six months for a 401 certification when a federal agency and certifying state or tribal authority fail to reach an agreement, a shift from the 60-day period initially proposed. A one-year maximum time frame is also in place for certification review, which is the statutory maximum.

4. CEQ Closes Comment Period for NEPA Phase II Rule

The White House Council on Environmental Quality (CEQ) last summer released its long-awaited Phase 2 National Environmental Policy Act (NEPA) rule, called the "[*Bipartisan Permitting Reform Implementation Rule*](#)," that would codify NEPA reforms included in recent debt-ceiling legislation as well as to ensure inclusions of Biden Administration priorities on climate change and environmental justice. The public comment period on the proposed rule ended on September 29. The proposed phase 2 rule aims to implement congressionally mandated efficiencies and address the twin Biden administration priorities of climate change and environmental justice. Unfortunately, the proposed new mitigation, assessment, and other mandates may drive new litigation opportunities and further delay project approvals.

a. Overview of the New Rule

Among the newly proposed provisions are measures that toughen mitigation mandates by encouraging agencies to select "environmentally preferable alternatives," strengthen consideration of projects' potential climate change and environmental justice (EJ) effects, require agencies to use new science, and more. Such measures seem to be at odds with other provisions in the rule that aim to codify statutory changes that Congress and the Biden Administration agreed to in recent debt ceiling legislation, the [*Fiscal Responsibility Act \(FRA\)*](#), including allowing project sponsors to prepare environmental impact statements (EISs), setting deadlines and page limits on reviews and allowing project sponsors to sue over missed deadlines. The debt ceiling legislation also allows agencies to create categorical exclusions (CE) from any NEPA review in planning documents rather than as a separate action and authorizes agencies to adopt each other's CEs.

The new requirements mark a significant change from prior NEPA rules, particularly for mitigation. In the past, cooperating agencies were able to suggest potential mitigation measures if they objected or expressed concern about a project’s effects. Instead, the phase 2 proposal “directs cooperating agencies to specify mitigation measures in all circumstances.” And CEQ directs the agencies to make all mitigation enforceable “with accompanying monitoring and compliance plans, whenever agencies consider such mitigation in their analysis of the reasonably foreseeable environmental effects of an action.”

The newly proposed climate and EJ assessment requirements depart from long-standing approaches that required federal agencies to assess adverse effects that have a sufficiently close causal connection to a proposed action. The new provisions also would require agencies to mitigate such potential effects. CEQ provides very few details in the proposed rule about how their new measures that allow agencies to adopt “innovative approaches” under NEPA will work, while also eliminating Trump-era rule language that required project critics to detail concerns during the comment phase if they later sought to challenge a NEPA approval.

As for new CEs, the proposal requires a lot more documentation, including for mitigation commitments and inventories of each agency’s CEs. Further, it says mitigation -- either in a CE or in a “mitigated Finding of No Significant Impact (FONSI)” – will require follow-up and additional requirements if the mitigation effort fails. Further, the public engagement requirements in the proposed rule are key because they are a dramatic shift from “public participation” to requiring agencies “to truly engage with” affected EJ communities.

In a nutshell, while the proposed rule does include some permit streamlining measures required by the debt ceiling agreement, it also contains provisions that would further delay project approvals. The Alliance’s final 18pp letter to CEQ was transmitted last week and formalized our concerns for the record. Please let me know if you would like me to send you a PDF version of our letter.

b. Response from Congressional Republicans

The House Committee on Natural Resources, Subcommittee on Oversight and Investigations held a hearing last month examining systemic government overreach at CEQ, which was established as part of NEPA, one of several environmental laws passed in the early 1970s. Housed within the Executive Office of the President, CEQ has historically been tasked with overseeing agency compliance with NEPA. From 2019 to 2023, CEQ's baseline budget grew from \$2.89 million to approximately \$4.67 million, an increase of roughly 63 percent in four years. CEQ received an unprecedented \$62.5 million from the Inflation Reduction Act and CEQ staff has almost doubled in recent years, with environmental activists claiming that CEQ should continue to increase staff. Under Chairman Bruce Westerman (R-Ark.), the House Committee on Natural Resources has held two hearings explicitly focused on what they see as “overreach” at CEQ. Brenda Mallory, CEQ

Chair, was invited to testify but declined to appear or send a designee to testify on behalf of the agency. Later in the month, Senate Environment and Public Works Committee Ranking member Shelley Moore Capito (R-W.Va.) led committee Republicans [in a September 29 letter](#) blasting CEQ Chair Mallory for the proposed rule, saying it would do the opposite of streamlining NEPA.

DEVELOPMENTS IN CONGRESS

Well, Congress has once again averted a government shutdown — for 45 days. After a frantic week that saw the House and Senate operating in completely different spheres and the White House nowhere to be seen, Congress passed a bill late Saturday night to fund the federal agencies at FY2023 levels until Nov. 17. The legislation reauthorizes the FAA and the national flood insurance program through the end of this year. There’s also \$16 billion for disaster relief accounts. The House passed the continuing resolution (CR) 335-91. Ninety Republicans voted and just one Democrat voted “yes”. The Senate followed suit, voting 88-9 to approve the bill, although the vote was delayed for several hours after Sen. Michael Bennet (D-COLORADO) sought assurances that the Senate would vote on additional Ukraine aid in the weeks ahead.

Conservative hardliner Rep. Matt Gaetz will move to oust Rep. Kevin McCarthy this week as speaker of the House, Rep. Gaetz said Sunday on CNN’s “State of the Union.” The Florida Republican has threatened to force a vote to remove Rep. McCarthy from leadership for weeks, promising to follow through if Rep. McCarthy worked with Democrats to avert a government shutdown. The Speaker did so on Saturday, after a group of far-right Republicans led by Rep. Gaetz tanked Speaker McCarthy’s efforts to pass legislation that would prevent a government shutdown one day earlier.

5. 2023 Farm Bill

As the 2023 fiscal year came to a close Saturday night, one piece of legislation not passed by Congress was the 2023 Farm Bill. As you know, the farm bill is an omnibus, multiyear law that is typically renewed about every five years. Given the delays from the debt ceiling and appropriations negotiations, lawmakers have yet to release the draft text of the Farm Bill legislation in both chambers. While most programs funded through the 2018 Farm Bill are expected to continue through the end of the year, lawmakers are hopeful and expect the new five-year legislation to pass by the end of December.

But many interest groups are worried the bill will get sidelined much longer than that. Behind closed doors, lawmakers are starting to raise whether a one or two-year delay will be necessary, particularly as Republicans demand new increases for key farm programs and divisions within the GOP are mucking up House progress. In the Senate, a key topic of contention is how the \$20 billion included in last year’s Inflation Reduction Act (IRA) should be spent. Democrats are under pressure from the left to protect the money for climate friendly agricultural practices. Senate Republicans want additional flexibility on how the money can be spent if it’s added to the farm

bill. Still, Senate Agriculture Committee Chair Debbie Stabenow (D-Mich.) and Ranking Member John Boozman (R-Ark.) are committed to continued collaboration in order to get the farm bill across the finish line. If Congress can't pass a new farm bill by the end of the year, senators have begun warning that a long extension of the current legislation might be unavoidable. That prospect would force Congress to continue negotiating politically sensitive topics through the heat of 2024 presidential and congressional races. A two-year extension would punt the farm bill clear into the next Congress. (*POLITICO*, 9/29/23).

a. PL-566 update

As previously reported, we've been working with the office of Senator Michael Bennet (D-COLORADO) on legislation intended to streamline the NRCS Watershed and Flood Prevention Operations program (also known as "PL-566"). Last summer, Senator Bennet, along with Senators Deb Fischer (R-NEBRASKA) and Jeff Merkley (D-OREGON) issued a press release announcing the introduction of [S.2636, the Healthy Watersheds and Healthy Communities Act](#). We've spent much of the last month working to assess the possibility of introducing a House companion bill, particularly one that can be co-sponsored by a Western Republican. As is the case with many issues related to the farm bill, this one is contentious, with the Senate and House ag committees having differing perspectives on making changes to PL-566, which has long been a "go-to" funding source for flood control projects in the Southeast.

6. Water Infrastructure Finance and Innovation Act Amendments

Rep. Garamendi (D-CALIFORNIA) and Schrier (D-WASHINGTON) two weeks ago reintroduced their bipartisan Water Infrastructure Finance and Innovation Act (WIFIA) Amendments, which is similar to legislation we supported in the last Congress (Rep. Costa's "Restoring WIFIA Eligibility Act"). As you may recall, this bill incorporates several key provisions for Western water projects including guaranteeing eligibility for transferred works and State-led storage projects under the 2016 WIIN Act. Rep. Schrier has made some minor changes to the bill for this Congress to incorporate feedback from EPA.

Our support for this legislation was noted in Rep. Schrier's press release last month, which also included a quote from me. The bill sponsors are hoping to get a markup in the House Transportation and Infrastructure Committee, and then make a play for the 2024 Water Resources Development Act, or any forthcoming Western water package. We also supported similar legislation in the prior Congress, since it allows for transferred work operators to use WIFIA.

7. Senate ENR Committee Oversight Hearing on Drought, Water Availability

The Senate Energy and Natural Resources (ENR) Water and Power Subcommittee, chaired by Sen. Ron Wyden (D-OR), held an oversight hearing two weeks ago entitled "Drought Impacts on Water Availability." The hearing focused on the effects of drought on both drinking water access and water availability in the West. Michael Brain, acting Interior Department Assistant Secretary

for Water & Science was the government witness at the hearing and answered questions on aquifer recharge, Colorado River drought expenditures, and the application of OpenET.

8. House ESA Working Group Holds Forum

On September 13th, the House Committee on Natural Resources and the Congressional Western Caucus' joint Endangered Species Act (ESA) Working Group held its first forum, featuring testimony from six witnesses representing a variety of agricultural, mining, wildlife sportsmen, energy, local government, and private landowner stakeholders. The forum was co-chaired by Congressman Dan Newhouse (R-WA), Chairman of the Congressional Western Caucus, and Congressman Bruce Westerman (R-AR), Chairman of the House Natural Resources Committee. A handful of witnesses also testified, focusing on their personal experiences on familiar themes, particularly how the ESA has become a magnet for environmental litigation, “sue and settle” patterns by the federal government, and undermining the ability of states, which generally have better expertise and partnerships with landowners, to manage species to keep them off the list and to delist those that have recovered.

House and Senate Republicans on the day following the hearing introduced legislation that would prevent the Biden Administration's U.S. Fish and Wildlife Service and National Marine Fisheries Service from finalizing three federal regulations that would strip three key ESA reforms by the Trump Administration enacted to provide more flexibility for affected stakeholders. These reforms included: rescinding the outdated “blanket rule” that automatically granted “endangered”-level protection to species listed as “threatened,” allowing for research and consideration of economic impacts of ESA listing determinations, and limited critical habitat designations to areas only where species occupied the areas. As previously reported, the Alliance in August prepared detailed comments that were critical of all three of the administration's proposals.

ALLIANCE INITIATIVES

9. Washington State Tour

I spent five days last month in Central Washington state, where Alliance directors Charlie Lyall and Mark Hansen organized a tour of the Columbia and Yakima Basins and a fundraising dinner that took place at a hay barn outside of Yakima. The community dinner was intended to increase awareness of the Alliance in Central Washington, and to generate new membership. Alliance President O'Toole, General Counsel Norm Semanko, our D.C. advocate Mark Limbaugh and I all spoke at the event, which was moderated by Alliance Advisory Committee member Urban Eberhart. Over 180 people – including several local and state elected officials and the president of the Washington Farm Bureau – showed up at the barbecue dinner organized by Charlie and Mark! The tour also featured visits to local potato processors, irrigation districts, dairies, orchards, fruit packing plants and dams. We met with Yakima Basin Plan leaders, hay exporters, forest managers, orchardists, and row crop producers. Washington state farmers right now are really feeling the pinch from recent ag overtime laws and carbon taxes.

10. 2023 Farmer Lobbyist Trip

I returned late Friday after spending the working week in Washington, D.C. as part of the Alliance's annual farmer lobbyist trip. The Alliance's annual Farmer Lobbyist trip is one of our "cornerstone" programs which brings family farmers and water professionals to Washington, D.C. to meet with legislators and Administration policy leaders on critical water issues. The Alliance philosophy has long held that the most effective voice in Washington DC is the individual family farmer.

a. This Year's Trip

This year's farmer lobbyist contingent included nearly 30 representatives from Arizona, California, Colorado, Idaho, Oregon, Washington and Wyoming. In addition to meeting with Congressional Members from those seven states, the group also met with senior officials from the Department of the Army, Department of Interior, Department of Agriculture (USDA), Environmental Protection Agency (EPA), and staffers from key Congressional water committees. The Western contingent visited 39 offices in the course of 2-1/2 days.

The purpose of this year's trip was for farmer lobbyists to discuss crucial Western water policies and issues with members of Congress and their staff and Biden Administration agency officials. Key topics of discussion with Congressional agriculture and water committees included current water legislation and the 2023 Farm Bill. Meetings also took place with Assistant Interior Secretary for Water and Science Michael Brain and Reclamation Deputy Commissioner David Palumbo, the office of the Chiefs of the Forest Service and Natural Resources Conservation Service (NRCS), the office of the Assistant Secretary for the Army, Civil Works, EPA Assistant Administrator for Water Radhika Fox, and Sara Gonzalez-Rothi (Director for Water Policy at the White House Council on Environmental Quality). The crew we had this year also had plenty of good stories to share about on-the-farm, regional and integrated water resources management projects they have undertaken or have proposed to undertake in the future.

b. Priorities and Messaging

Our farmer lobbyists relied upon the "Six Point Plan" approved by the board of directors earlier this year to drive our messaging this week. Our interaction with the Biden Administration focused on three priority "asks":

1. Federal agencies must efficiently and effectively implement the billions of dollars now available to repair aging water infrastructure, improve conservation efforts, and develop new storage and delivery infrastructure.
2. Agricultural water users dependent upon the Colorado River must be included as partners as Reclamation develops future long-term operating provisions on the River. Something

needs to be done, or Colorado River water users are facing “dead pool” conditions in the country’s largest reservoir – Lake Mead – in the near future.

3. Restore our dead and dying federal forest lands through active forest management and work to better quantify watershed health improvements associated with these and other water conservation actions.

On Capitol Hill, our advocacy was built around these requests:

1. Cut Red Tape - If we are serious about building and rebuilding infrastructure, improving forest health, and protecting and promoting American production agriculture, then Congress must pass real, meaningful solutions that expedite federal permitting processes.
2. Pass a Farm Bill that Addresses Western Agriculture Challenges - Projects that help producers and water managers adapt to the water supply impacts of climate change must also be encouraged and supported.
3. Carefully evaluate legislation that could have negative unintended impacts to Western producers.

Our team did a good job of sharing positive examples of how current federal programs and/or policies have helped their operations and also sharing the pain that they have been experiencing from the drought, agency implementation of federal grant and loan programs, and other challenges.

c. Meetings with 17 Members of Congress

Farmer Lobbyists were able to meet directly with Members of Congress from their respective states, including Senator John Barrasso (R-WYOMING), Senators Jeff Merkley and Ron Wyden (D-OREGON), Senator Mark Kelley (D-ARIZONA), Senator Krysten Sinema (I-ARIZONA), Senator Alex Padilla (D-CALIFORNIA), Senator Patty Murray (D-WASHINGTON), Rep. Dan Newhouse (R-WASHINGTON), Rep. Debbie Lesko (R-ARIZONA), Senator Jim Risch (R-IDAHO), Rep. Harriet Hageman (R-WYOMING), Rep. Jim Costa (D-CALIFORNIA), Rep. Doug LaMalfa (R-CALIFORNIA), Rep. Joe Neguse (D-COLORADO), Rep. Russ Fulcher (R-IDAHO), Rep. Juan Ciscomani (R-ARIZONA) and Rep. Kim Schrier (D-WASHINGTON). Meetings were also held with staffers from ten other House and Senate offices. As you can see, for many of these meetings, the Members themselves were present, which is a testament to our good reputation, particularly given the busy time in Congress last week.

11. Colorado River Developments

The Bureau of Reclamation is working to make all of the Post-2026 scoping comments received in response to the Notice of Intent published on June 16, 2023 publicly available. Most of the comments are now posted on the Post-2026 Scoping webpage. The remaining comments are

expected to be posted next week. You can find information about who submitted comments and review the comment letters [here](#). Remember those alfalfa papers we wrote last year? Well, they're starting to get some media attention. *E&E Daily* published [an article](#) that addresses one of those reports in a fairly balanced way, although the first reference it makes is misleading. Good quotes from Alliance President Pat O'Toole in here, as well.

ADMINISTRATIVE & MISCELLANEOUS

- It's time to get ready for the busiest travel time of the year for us here at the Alliance, as the annual speaker circuit season gets underway. In the next two months, Alliance reps will be speaking at water forums in Ventura County, the Imperial Valley, Washington state (twice) and Hood River (OREGON). The past month had several of us on the road to D.C. (farm lobby trip) and Central Washington, as reported earlier in this memo.

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 541-892-6244 or dan@familyfarmalliance.org if you would like further information about what the Alliance is doing to protect water for Western irrigated agriculture.