



## MEMORANDUM

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**TO:** SAN LUIS & DELTA-MENDOTA WATER AUTHORITY DIRECTORS  
**FROM:** DAN KEPPEL, EXECUTIVE DIRECTOR  
**SUBJECT:** UPDATE REPORT  
**DATE:** MARCH 6, 2023

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This memo is intended to keep you apprised as to what is happening on policy issues the Family Farm Alliance (Alliance) is engaged in. In the past month, much of our efforts have focused on planning for and executing our successful 2023 annual conference, trekking water legislation with Senate committee staff, planning for upcoming House committee hearings, engaging in litigation and administrative matters, and expanding public outreach associated with global food insecurity and the importance of Western irrigated agriculture. These issues and other matters important to our members are further discussed in this memo.

### **BIDEN ADMINISTRATION**

#### **1. Biden Administration Announces New Hires**

The White House Council on Environmental Quality (CEQ) announced it has hired Mr. Michael Drummond as director for permitting and innovation. He joins the permitting and environmental review team led by Ms. Jayni Hein, CEQ's senior director for clean energy, infrastructure and the National Environmental Policy Act (NEPA). CEQ is responsible for overseeing the implementation of NEPA, which requires agencies to assess the environmental impacts of their actions. Also, Ms. Miriam Goldstein has been hired as CEQ's ocean policy director. Ms. Goldstein hails from the Center for American Progress and was most recently legislative director for Rep. Jackie Speier (D-CA). And Mr. Brendan Philip is CEQ's new deputy director for water infrastructure. He was previously an ocean policy fellow at CEQ and a fellow in EPA's Office of Wetlands, Oceans and Watersheds. Ms. Goldstein and Mr. Philip join the team led by Ms. Sara Gonzalez-Rothi, CEQ's senior director for water.

At the U.S. Department of Agriculture (USDA), President Biden announced that he's chosen a former New Mexico congresswoman Xochitl Torres Small to serve as the next Deputy Secretary of the Agriculture Department. Ms. Torres Small joined the Biden Administration's USDA in 2021 as undersecretary for rural development after losing her House seat to Rep. Yvette Herrell (R-NM) in 2020. If confirmed by the Senate, Ms. Torres Small would replace former USDA Deputy Secretary Jewel Bronaugh who retired in January of this year.

## **2. White House to Advance New Round of NEPA Rule Changes**

CEQ has sent the White House Office of Management and Budget (OMB) a second phase of changes to NEPA standards. The updated guidance calls for federal agencies to take a broader look at the climate change impacts from major new infrastructure projects, government policies and federal decisions. The often slow and cumbersome federal regulatory process is a major obstacle to realization of projects and actions that could enhance Western water supplies. NEPA implementation, in particular, can have a direct bearing on the success or failure of critical water supply enhancement projects. The guidance will likely stall progress on the reviews of projects ranging from pipelines to federal policy actions, since agencies will be instructed to consider not only the amount of greenhouse gases federal projects and decisions directly cause, but also the effects a warming world will have on the nation and its infrastructure. That reverses Trump administration NEPA guidance, which had narrowed agencies' review of the effect major federal decisions have on climate change. The Trump Administration adopted changes that reduced review times, cut page counts, limited public input, cut out "cumulative impacts" analyses, and expanded projects that could be excluded entirely from NEPA review. At the time, we were very supportive of these changes.

Last year, the Biden White House released the first phase rulemaking on NEPA in an effort to erase many of the Trump Administration's changes made to the NEPA regulations. The goal was to again highlight climate change and environmental justice in the application of new NEPA rules regulating new infrastructure projects being planned and constructed nationwide. The particulars of this second proposal remain unclear at a time when Congress may be considering permitting reforms to accelerate infrastructure investment. The CEQ issued an interim policy, Reg. 0331-AA06, which went into effect on January 9, in an effort to provide clearer guidance for how federal agencies should assess greenhouse gas emissions through NEPA.

## **3. Encouraging Developments at USDA**

### **a. Meeting with Robert Bonnie, USDA Under Secretary for FPAC**

Earlier this month, Alliance leaders met (virtually) with Robert Bonnie, USDA Under Secretary for Farm Production and Conservation (FPAC) and other speakers who we had invited to participate in a watershed panel discussion on Friday, February 24<sup>th</sup> during the general session of our annual conference. During our conversation, our reps did a nice job explaining the challenges of getting USDA agency staff moving efficiently to spend all the money they got in the Bipartisan

Infrastructure Law (BIL) and Inflation Reduction Act (IRA). We also reiterated the concerns we made in our December 2022 coalition letter to NRCS regarding “climate smart agriculture” practices that could be funded with the \$20 million in the IRA provided to NRCS late last year. Recall that we pushed NRCS to include irrigation management and conifer removal as eligible activities. Leftist environmental interests are pushing back, and instead want the dollars going strictly to actions that lead to quantifiable reductions in greenhouse gas (GHG) emissions. Mr. Bonnie noted that the IRA statute ties these practices closely to greenhouse gas (GHG) mitigation. However, he also said that USDA would listen to our concerns.

“It’ll be pretty good, but it won’t be perfect,” he predicted.

Well, it looks like USDA has been listening. One week after our conversation with Mr. Bonnie, USDA rolled out its game plan. Nearly \$20 billion of the total IRA investment in agriculture will support existing conservation programs that directly assist producers. The first of the funds have now been released, with [USDA announcing last month](#) that the NRCS is making \$850 million available to farmers, ranchers and foresters in fiscal year 2023. The funds will expand access to financial and technical assistance for producers to advance conservation on their farms, ranches or forest lands through practices like cover cropping, conservation tillage, wetland restoration, prescribed grazing, nutrient management, tree planting and more.

USDA Secretary Tom Vilsack also announced a new framework - [The Western Water and Working Lands Framework for Conservation Action](#), a comprehensive, multi-state strategy under NRCS) to address key water and land management challenges across 17 Western States. It is intended to provide direction, support and coordination to address resource concerns and threats across state boundaries and leverage new scientific tools to guide strategic program implementation on the ground. The Framework includes guidelines for identifying vulnerable agricultural landscapes and 13 strategies to help NRCS state leaders, water resource managers, and producers respond to priority challenges.

It sounds like this program has its roots in a listening session conducted by USDA and NRCS in the latter months of the Trump Administration (!). Guided by this new framework, Interior’s [WaterSMART Initiative](#) will invest \$25 million in three new priority areas and 37 existing priority areas, assisting communities and producers in the West. NRCS leveraged stakeholder feedback, input from the field and the latest scientific data to shape and inform the framework.

b. NRCS Western Water and Working Lands Framework for Conservation Action

NRCS has identified six major water and working land management challenges resulting from threats to water supply in the West: 1) Forecasting water supply; 2) Sustaining agricultural productivity; 3) Protecting groundwater availability; 4) Protecting surface water availability; 5) Managing and restoring rangelands and forestlands; and 6) Responding to disruptions from catastrophic events. For each of these major management challenges, opportunities exist to help individuals, entities and communities better manage water and working lands, conserve natural resources and build resilience to drought and climate change. Strategies include:

- Improve reliability of water supply forecasts.
- Improve soil moisture and irrigation water management.
- Improve water and nutrient management in crop fields and pastures.
- Modernize water infrastructure.
- Improve community water supply by completing watershed projects.
- Increase reuse of wastewater for agriculture and conservation.
- Prolong aquifer life.
- Complete managed aquifer recharge projects.
- Reduce surface water withdrawals.
- Install conservation systems that protect water quality.
- Restore and protect streams and wetlands.
- Manage and restore rangelands and forestlands.
- Increase resilience during disaster recovery.

NRCS will use this framework to set comparable goals for effective program delivery and coordinate and track progress on helping individuals, entities and communities across the West address their management, conservation and resiliency needs. NRCS believes it can build upon recent investments and expand support by advancing innovative targeting at the state, local and regional levels, while also utilizing additional funds from the IRA that advance both climate mitigation and Western water priorities. (*Emphasis added.*)

c. WaterSMART Initiative

The \$25 million investment in three new priority areas and [37 existing priority areas](#) in the West is the result of a collaboration with NRCS and Interior’s WaterSMART Initiative to help farmers and ranchers conserve water and build drought resilience in their communities. These investments complement projects led by irrigation districts, water suppliers and other organizations receiving WaterSMART program funds from the Bureau of Reclamation (Reclamation). The three new priority areas include: 1) Madera Irrigation District Area (Funding amount: \$1.5 million); Kohala, HI Watershed Partnership Area (Funding amount: \$345,000); Quincy Columbia Basin Irrigation District (WA) West Canal Area (Funding amount: \$1.8 million).

**4. Reclamation: \$728 M for New Water Conservation Projects**

Last month Reclamation announced \$728 million in new investments for water conservation measures in the West. Funded by the BIL, seven authorized rural water projects under construction in Iowa, Minnesota, Montana, New Mexico, North Dakota and South Dakota will receive \$278 million. These investments build on the allocation of \$420 million for [rural water construction activities](#) in fiscal year 2022. The funding is helping projects complete construction of water treatment plants and intakes, supporting work related to pipeline connections, pump systems, and

reservoir construction, and advancing other efforts to provide potable water to rural and Tribal communities.

Reclamation also announced it would release up to \$125 million in federal funds from the FY 2023 Omnibus Appropriations bill to pay water rights holders in the Upper Colorado River Basin to temporarily forgo their allocations, as part of the System Conservation Pilot Program to reduce pressure on the drought affected river. Reclamation is currently reviewing proposals in an attempt to cut river use by up to 4 million acre-feet annually in an effort to protect hydropower production at the Glen Canyon and Hoover Dams. More than 20 years of drought has reduced the river's flows, drawing down the region's major reservoirs to meet water deliveries under the Colorado River Compact of 1922. The program, available in Colorado, New Mexico, Utah and Wyoming, could pay water users at least \$150 per acre-foot of water conserved. Based on accounts we heard at our recent conference in Reno (*see below*), I think Reclamation is going to have a challenge finding takers for this program, based in part on the “insultingly low” offering price, and the fact that the hay market is short, and prices are high. Not too many folks are going to be willing to forsake that market to get compensated by Uncle Sam not to farm.

## **DEVELOPMENTS IN CONGRESS**

### **5. March 8, 2023 House Water, Wildlife and Fisheries Subcommittee Hearing**

The House Committee on Natural Resources, Subcommittee on Water, Wildlife and Fisheries (WWF) is conducting a hearing this Wednesday afternoon on the importance of multi-purpose water management across the country. While conflicts over water resources have existed long-term, federal policies and non-elected government agency staff have exacerbated some of these conflicts and threatened economies, the environment and ways of life. This hearing will explore those threats while focusing on solutions. I've been asked to testify at this hearing, along with Scott Corwin (Executive Director, Northwest Public Power Association), Martha Guyas (Southeast Fisheries Policy Director, American Sportfishing Association) and Amy Cordalis, a long-time advocate for, and member of, the Yurok Tribe in northern California.

We'll be sending out additional information on this hearing, including my written testimony and a live stream link, in the coming days. My spoken, 5-minute statement will focus on: 1) the huge snowpack in California, and the importance of managing that in a way that sends most of it out to the ocean with minimal environmental benefits and NO benefits for human uses; 2) the multi-decade failure of the flow-centric management scheme to “protect” fish on the West coast. I'll also briefly touch on the need for accountability and a new way of doing business regarding Endangered Species Act implementation, pointing to efforts in the Sacramento Valley and Yakima Basin as templates for success; and 3) Now is not the time for our government to be taking farmland out of production.

## 6. FY 2024 Appropriations Process

The Senate Appropriations Committee recently [announced](#) that the committee will again be accepting earmark requests from senators for the FY 2024 appropriations cycle, in addition to posting a list of [subcommittee deadlines](#) for senators to submit FY24 earmark requests back to the Committee, which range from March 30—April 13, 2023. Many Senate offices have now set internal deadlines for public entities to submit FY24 earmark requests to their office (to provide time to vet and approve them), ranging from February 28-March 24. The Committee has sent FY24 earmark guidance directly to all Senate offices—see [here](#) for a copy of the detailed guidance document provided by Senate Majority Leader Chuck Schumer’s (D-NY) office. All Senate earmark accounts that were available for FY23 are, once again, available in FY24 and no new accounts have been added.

The Ferguson Group (TFG) – our advocate in Washington, D.C. – recently prepared an excellent report that outlines detailed information and guidance documents for all eligible earmark accounts utilized in the enacted FY 2022 and FY 2023 omnibus spending packages (which were signed into law on March 15, 2022 and December 29, 2022, respectively). Please let me know if you would like to see the TFG “earmark” report.

## 7. *Protect the West Act*

Sens. Michael Bennet (D-CO) and John Hickenlooper (D-CO) unveiled legislation last week, the *Protect the West Act of 2023*, that would create a USDA-managed \$60 billion Outdoor and Watershed Restoration Fund for investments in Western forest and watershed restoration programs. Under the legislation, a new Restoration Fund Advisory Council would allocate the money for various projects in the West. The legislation would assign \$20 billion for direct payments to state and local governments, tribal nations, special districts and nonprofit organizations. The other \$40 billion would go to state and tribal nations to address the wildfire mitigation backlog and other projects. As reported last month, Senator Bennet’s office reached out to us to discuss suggestions to improve the bill from the last Congress. The revised legislation incorporates all of those recommendations. Two weeks ago, we let the Bennet office know we are on board with supporting this legislation.

Wildfire is back on the congressional agenda this week with hearings on forest policy and on the climbing economic costs of blazes associated with climate change. The Senate Budget Committee will hear from experts in prescribed fire, climate change and other issues surrounding wildfire policy, while the newly formed House Agriculture Subcommittee on Forestry holds its first hearing on the upcoming five-year farm bill. The Senate hearing — entitled "Burning Issue: the Economic Costs of Wildfires" — could shed light on wildfires' implications for insurance and lending, as well as on-the-ground impacts in places like New Mexico, home of a county commissioner who's set to testify.

## **8. DRAFT NEPA Legislation**

We've been working with GOP staff at the House Natural Resources Committee for the past year on ways to modernize implementation of NEPA. We are always looking for ways to clarify ambiguous provisions, align NEPA with relevant case law, reflect modern technologies, optimize interagency coordination, and facilitate a more efficient, effective, and timely environmental review process. The NR Committee conducted an oversight hearing last week on NEPA to hear testimony on how agency implementation of the law is generally mucking things up on the infrastructure front.

## **9. 2023 Farm Bill**

The farm bill is an omnibus, multiyear law that is typically renewed about every five years. With enactment of the omnibus spending bill in December 2022, lawmakers laid the groundwork for battles to come in the next farm bill. The current farm bill expires at the end of September. The planning and budgeting process for the 2023 Farm Bill has begun, and Congressional Agriculture committees are starting to outline the next five years' spending for national conservation, food, farm and nutrition programs.

### **a. Update from Capitol Hill**

*Politico* recently reported that the House leadership chaos of January 2023 may have wide implications for the farm bill — including holding up work on the bill and complicating its eventual path to passage. However, the House and Senate Agriculture Committees are poised to focus on debating a new farm bill after lawmakers used the newly enacted omnibus funding package to clear their to-do lists. House Ag Republicans will make increasing oversight of the Supplemental Nutrition Assistance Program and other nutrition programs a general priority in this Congress. *Politico* reported earlier today that Congressional Agriculture committees will hold hearings this week that could showcase partisan disagreements on regulations and programs affecting farms and forests ahead of this year's farm bill. In the Senate Agriculture Committee, lawmakers will hear from top forest and conservation officials and will likely question how USDA is responding to climate change and to the growing wildfire crisis. In the House, the new Republican majority has scheduled a session on the broader topic of challenges facing farmers, including economic conditions and federal regulations as Republicans look to highlight what they view as shortcomings in the Biden administration's approaches.

### **b. Family Farm Alliance Farm Bill Priorities**

The Alliance throughout 2022 prepared for the next farm bill by engaging with agricultural and conservation partners, developing written testimony for Congressional hearings, and working with its members to prioritize its energies in the farm bill debate. Earlier this year, we put together our Farm Bill “wish lists” for Congressional offices and committees. Once again, the Alliance will

work closely on this with its partners in the Western Agriculture and Conservation Alliance (WACC). In light of what could likely be a polarized and unstable environment in the House, it will be interesting to see what legislation is actually enacted by the body. In this divisive political environment, a thoughtful group like the WACC is needed more than ever. Outside of WACC engagement, the Alliance this year will continue to work directly with Congressional agriculture committee staff and Western Members of Congress on the next farm bill. We had key members of the House and Senate Ag committees participate in our “DC Update” panel two weeks ago in Reno, and House Ag Committee Senior Policy Director Josh Maxwell helped lead our “Farm (Bill) to Fork” event on February 24 (*see below*). A large portion of the energies at the Alliance will be devoted to the 2023 Farm Bill conservation title.

## ALLIANCE INITIATIVES

### **10. 2023 Annual Meeting and Conference**

This year’s Family Farm Alliance annual meeting and conference took place two weeks ago, February 23-24, 2023, at the Silver Legacy Resort and Casino in Reno, Nevada. The 2023 annual conference theme was, “*A Wake Up` Call for America - Why Farms, Water and Food Matter*”. Rep. Cliff Bentz (R-OREGON), the new chair of the House Water, Oceans & Wildlife Subcommittee, Interior Assistant Secretary Tanya Trujillo and Reclamation Commissioner Camille Touton all made the trip to Reno, despite the complications caused by a major winter storm which resulted in over 2,500 flight cancellations from Minneapolis to Denver to Portland to Reno. USDA Under Secretary Robert Bonnie was not able to join us due to the funeral of a close friend that conflicted with his travels.

Despite a slight tick in conference participation due to the weather, we still had the largest audience ever for one of our conferences. Great kudos, all around, including one from a journalist who said our conference featured “the highest level of intellectual discussion” she had ever experienced. [Here is the link to the recently completed 2022 "Activities and Accomplishments" report.](#) Everyone at the conference in Reno received a hard copy of this report.

### **11. Six CO River States Agree on Plan to Cut Deliveries: California has Separate Plan**

The seven states that depend on the Colorado River have not reached consensus on a plan to sharply reduce water use from the river, missing a January 31 deadline set by the Biden Administration. Six of the seven states agreed to a proposal called “consensus-based modeling alternative,” outlining a framework for possible water cuts to help prevent Basin reservoirs from falling to dangerously low levels. The six-state agreement outlined an alternative that builds on existing guidelines, deepens water cuts and factors in a large volume of water that’s lost through evaporation and conveyance, something that currently is not included in calculating water deliveries. Meanwhile, California released its own plan on how cuts can be made in the Basin more closely following water rights dictated by the “law of the river”. California has spent the past two decades successfully working together to resolve intra-state supply and demand imbalances to



sustain the Colorado River. Since the signing of the Quantification Settlement Agreement, the largest ag-to-urban water conservation and transfer agreement in U.S. history, IID's water management programs have generated over 7.2 million acre-feet in support of the Colorado River system. If you're interested the actual proposals themselves, and want to avoid all of the media interpretation, please let me know.

## **12. Waters of U.S. (WOTUS)**

### **a. Republicans File Disapproval Resolution Against Biden WOTUS Rule**

In January, both House and Senate Republicans introduced disapproval resolutions under the Congressional Review Act (CRA) to nullify the Biden Administration's final rule defining "waters of the U.S." (WOTUS) under the Clean Water Act (CWA). In the House, Transportation and Infrastructure Committee Chairman Sam Graves (R-MO) and Water Resources Subcommittee Chairman David Rouzer (R-NC) led 152 Members of Congress in introducing a disapproval resolution under the CRA on the Administration's WOTUS rule. Senate Environment and Public Works Committee Ranking Member Shelley Moore Capito (R-WV) also introduced the same resolution in the Senate.

### **b. Subcommittee Examines Stakeholder Impacts From Rule**

The House Subcommittee on Water Resources and Environment held a hearing entitled, "Stakeholder Perspectives on the Impacts of the Biden Administration's WOTUS Rule," on February 8. The witness list included representatives from agriculture, the building industry and aggregate mining.

### **c. Supreme Court Implications**

The new WOTUS rule comes as the Supreme Court is already weighing a decision in *Sackett v. EPA*, which deals with the jurisdictional standard for wetlands under the CWA. According to sources, a majority decision expected from the more conservative wing of the high court in *Sackett* could derail much of the final WOTUS rule. In fact, many House and Senate GOP Members and several trade organizations representing those impacted by CWA implementation denounced the rulemaking as overreaching and premature due to the *Sackett* case currently before the court. Over 190 House Republicans in a letter blasted the Biden Administration for its "premature and reckless" WOTUS final rule. The Members demanded that EPA and the Corps rescind the rule and postpone any subsequent agency action on WOTUS to allow the Supreme Court to issue an opinion on *Sackett*. Agriculture and water groups (including the Family Farm Alliance) have asked the justices in an amicus brief to reinterpret the CWA and exclude most wetlands and streams from the definition of WOTUS.

Citing the "major questions" doctrine used in striking down overly broad regulations in *West Virginia v. EPA*, 24 Republican-led states have filed a lawsuit in the U.S. District Court for the

District of North Dakota over the new definition of WOTUS. The states are set to ask federal courts to find the new Biden WOTUS rule overly broad and a regulatory overreach by the federal government without the clear direction of Congress. The lawsuit comes on the heels of a legal challenge by the State of Texas over the WOTUS rule as well as a coalition of 18 industry groups challenging in court that the Biden WOTUS regulation is unconstitutional and that EPA and the Army Corps overstepped in finalizing the rule before the Supreme Court makes a decision in *Sackett v. EPA*, in which Idaho landowners have asked the justices to adopt a narrower definition of WOTUS. The Texas and industry WOTUS lawsuits are requesting an injunction until the *Sackett* ruling comes down from the Supreme Court.

## **ADMINISTRATIVE & MISCELLANEOUS**

### **13. Media “Training”**

I had a very interesting call a few weeks ago with staff from the Intermountain West Joint Venture (IWJV) about journalist engagement on flood irrigation and wildlife values in the Colorado River Basin. In the coming months, I’ll be working further with IWJV on this initiative, which is very focused, and has proven success, based on the results of a similar venture undertaken in Utah’s Bear River watershed.

Also, I’ve been invited to speak next August at the “Ag Media Summit” (AMS) in Palm Springs (CALIFORNIA). I’ll be on a water panel with Mike Wade from California Farm Water Coalition and maybe also someone from the Coachella Valley Water District. The thought is to have a 30,000-foot view of Western water issues, then allow the water district representative to share the more local issues they see. The audience for this event will be a few hundred agricultural communications professionals from around the United States. The event is geared around professional development. Most of those attending are from the Midwest and East Coast. Some will be agricultural writers for various publications. Others will be public relations professionals who work with agricultural clients. This is the first time ever that the AMS event has been held in California.

*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](mailto:dan@familyfarmalliance.org) if you would like further information about what the Alliance is doing to protect water for Western irrigated agriculture.*