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**MEMORANDUM**

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**TO:** SLDMWA BOARD OF DIRECTORS  
**FROM:** DAN KEPPEL, EXECUTIVE DIRECTOR  
**SUBJECT:** EXECUTIVE DIRECTOR'S REPORT  
**DATE:** MARCH 1, 2021

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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, our efforts have focused on working with new Biden administration, preparing and advocating for a stimulus infrastructure package that includes Western water provisions, and conducting our 2021 "virtual" annual conference. These issues and other matters important to our members are further discussed in this memo.

**BIDEN ADMINISTRATION DEVELOPMENTS**

**1. Confirmation of Cabinet Positions: Overview**

Biden Cabinet nominees with important roles that impact Western farmers and ranchers are steadily being confirmed by the U.S. Senate. Importantly, the Senate last week voted to confirm former Iowa Gov. Tom Vilsack to Secretary of the U.S. Department of Agriculture (USDA). He was the Secretary of Agriculture during the Obama Administration. Other recently confirmed Cabinet members whose leadership will have bearing on Western irrigators include Energy Secretary Jennifer Granholm and Transportation Secretary Pete Buttigieg. Various Senate committees held confirmation hearings for additional cabinet or cabinet-level positions in the Biden Administration, including Rep. Deb Haaland (D-NM) to be Secretary of the Interior, and Michael Regan to be Administrator of the environmental Protection Agency (EPA). Several committees also held votes to advance the nomination of Neera Tanden to be Director of the Office of Management and Budget.

The Family Farm Alliance's West-wide, primarily rural membership works closest with the Departments of Agriculture and Interior (which houses the Bureau of Reclamation, Fish and

Wildlife Service, Bureau of Land Management, among other agencies) and the Environmental Protection Agency. Senior appointed officials in these departments play an important role in directing and implementing policies that have a real bearing on the well-being of Western farmers and ranchers.

## **2. Senate Confirms Vilsack as Secretary of Agriculture**

The Senate by a 92-7 vote on February 23 confirmed Tom Vilsack to lead USDA for the second time. He is the ninth member of President Biden's Cabinet to be confirmed by the Senate. Mr. Vilsack previously served for eight years as head of USDA under former President Obama. Mr. Vilsack, 70, earlier received bipartisan praise from the Senate Agriculture Committee and his nomination was unanimously advanced. Most agricultural organizations have been supportive of Mr. Vilsack's return to USDA. Secretary Vilsack during his February 2 confirmation hearing emphasized to the Senate Agriculture, Nutrition and Forestry Committee that he will work to stabilize trade policy, focus on climate change and work with Congress on efforts to achieve President Biden's goal of "zero emission" agriculture. Secretary Vilsack believes this can be accomplished through more farmland conservation and encouraging carbon markets to give farmers a financial incentive.

## **3. Rep. Haaland's Confirmation Hearing for Secretary of the Interior**

President Biden's nominee for Secretary of the Interior, Rep. Deb Haaland (D-NEW MEXICO) endured a two-day confirmation hearing before the Senate Energy and Natural Resources (ENR) Committee last week. As an enrolled member of the Pueblo of Laguna in New Mexico, Rep. Haaland would be the first Native American to be elevated to the office of Secretary at the Department of the Interior, if she is confirmed by the Senate. In her opening statement at her confirmation hearing on February 23<sup>rd</sup>, Rep. Haaland noted that fossil energy does and will continue to play a major role in America for years to come.

Committee Ranking Member John Barrasso (R-WYOMING) and other Senate Republicans during the course of the two-day hearing raised concerns over Rep. Haaland's early endorsement of the Green New Deal, her participation in protests against the Dakota Access pipeline, and her position on other issues surrounding oil and gas development and banning the practice of fracking on federal lands. They did not appear to be fully satisfied with Rep. Haaland's responses at the hearing. Senator Steve Daines (R-MONTANA) in the weeks leading up to the hearing threatened to stall the nomination by placing a hold preventing her from advancing through a procedural vote and instead forcing a more time-consuming cloture vote. However, Rep. Haaland has garnered the support of progressives, Native American, and major environmental groups, as well as House Natural Resource Committee Chairman Raul Grijalva (D-AZ). Chairman Grijalva's committee is charged with oversight of many Interior Department matters.

If Senate Republicans are united in their opposition to Rep. Haaland, it will only take one Senate Democrat's opposition to prevent the confirmation. All eyes prior to the hearing were on Chairman

Manchin, who hails from a carbon energy production state. The hearing wrapped up without a vote. Afterward, Senator Manchin announced that he would vote in favor of confirming Rep. Haaland to lead the Interior Department.

#### **4. Tanden Confirmation in Jeopardy**

Rep. Haaland appeared to have escaped the plight of Ms. Neera Tanden, President Biden's choice to lead the White House Office of Management and Budget (OMB). Ms. Tanden's confirmation is now in jeopardy after Sen. Manchin and Sen. Susan Collins (R-ME) said they would not support her. Ms. Tanden has been one of President Biden's most controversial nominees, in part because of her scathing Tweets against political opponents, regardless of their political affiliation, including Senators Bernie Sanders (I-VT) and Mitch McConnell (R-KY). Senator Collins criticized Mr. Tanden for deleting tweets in the days before her nomination was announced and said that "raises concerns about her commitment to transparency." Ms. Tanden apologized for the tweets in two recent hearings, and her defenders have pointed to her deep policy expertise and experience. She cannot afford to lose any Democratic support with a 50-50 Senate.

#### **5. Committee Advances EPA Administrator Nominee**

On February 9, the Senate Environment and Public Works (EPW) Committee voted 14-9 to advance Michael Regan's nomination to be Administrator of the EPA, clearing the way for full Senate consideration of his confirmation. His written testimony suggests he will employ a centrist, consensus-driven approach in his new position, if confirmed by the full Senate. Mr. Regan started his career at the EPA, serving in the Clinton and Bush Administrations until 2008. Regan then spent eight years at the Environmental Defense Fund, where he ultimately became the associate vice president for clean energy and a Southeast regional director. He has served as Secretary of the North Carolina Department of Environmental Quality since 2017. Mr. Regan's confirmation by the full Senate is imminent.

#### **6. USDA Role in Biden Climate Change Initiative**

The Biden administration is evaluating options for using USDA's Commodity Credit Corporation (CCC) to quickly launch its ambitious food and farm agenda without relying on appropriations from a closely divided Congress. The CCC – established in the Depression-era - is authorized to borrow \$30 billion from the U.S. Treasury for the purpose of stabilizing the farm economy. Former President Donald Trump used the CCC as means of paying farmers for coronavirus relief and mitigating for trade impacts. President Biden's team is looking at their creative opportunities to apply the fund for a whole new agenda. One option could be using the agency to create a "carbon bank" that pays farmers and ranchers to sequester greenhouse gases in their farmland soil.

The Biden Administration also plans to raise the figure it will use to assess the damage that greenhouse gas pollution inflicts on society to \$51 per ton of carbon dioxide. This rate is seven times higher than that used by the Trump Administration. This so-called "social cost of carbon"

could reach as high as \$125 per ton once the Biden administration completes a more rigorous analysis. The final figure will be incorporated into federal agency decisions, including purchasing, pollution control requirements, and which types of infrastructure are permitted in the future.

## **7. Role of Farmers and Ranchers in Climate Programs**

Many Western producers are anxious about President Biden's executive order to protect 30% of the country's land and waters by 2030, the so-called "30x30" initiative. Senate Republicans have expressed concerns about how 30x30 will affect production agriculture and resource development, including on federal land. Mr. Vilsack at his confirmation hearing pledged to "aggressively" seek advice from farmers about how best to involve agriculture in the new administration's climate change policies. One of those groups of farmers is Solutions from the Land (SfL), a nationwide network of agricultural leaders that seeks to mobilize public demand and support for solutions from the land. SfL last month released a report, "21<sup>st</sup> Century Agriculture Renaissance", written by farmers, ranchers, foresters and other land stewards in partnership with climate, energy and conservation experts. It seeks to stimulate empathy and action towards the many roles that farmers must take on for them to be successful and for all to live and grow. The report features a write-up and video by Family Farm Alliance President Pat O'Toole on sustainable water management on his family's Ladder Ranch. Mr. O'Toole represents the Alliance on the SfL board of directors, and he shared the link to report with Mr. Vilsack, who responded in an encouraging way.

## **DEVELOPMENTS IN CONGRESS**

### **8. House Passes COVID Stimulus Package**

With the second impeachment trial of former President Donald Trump behind them, House Democrats moved fast to enact a new COVID-19 relief package in recent weeks. Democrats employed the little-used budget reconciliation process to quickly pass a massive COVID relief package recommended by nine House committees before an earlier round of unemployment insurance benefits runs out on March 14. On February 22, President Biden issued a proclamation remembering the 500,000 Americans lost to COVID-19. Congressional activity on the COVID-19 front accelerated after the Senate last month voted to acquit former President Donald Trump on the House's charge of inciting the Jan. 6 insurrection at the Capitol. The 57-43 vote marks the first time since 1868 that a majority of the Senate voted to convict a president on an impeachment charge. But it still fell short of the two-thirds majority needed to secure a conviction. Mr. Trump's attorneys argued that it was unconstitutional to try a former president for impeachment and said the House managers did not meet the standard for an incitement charge.

The House passed the massive COVID stimulus package last Friday, setting the stage for a Senate vote on a package that will likely look much different. Senate Democratic leaders are working on the changes to the package that will be needed to get all 50 Senate Democrats and Independents on board. Budget reconciliation only requires a simple majority vote in the Senate - overriding the 60-vote requirement for most bills to be considered in the Senate. The House will need to vote

again on an amended Senate passed bill.

Included in budget reconciliation recommendations approved by the House committees are mandatory funding, program changes, and tax policies aimed primarily at mitigating the continuing effects of the Covid-19 pandemic. The package includes \$350 billion to states, localities, tribes and territories in flexible funding to “replace revenue that was lost, delayed, or decreased” as a result of the COVID-19 pandemic (as of January 27, 2020), as well as other costs related to responding to or mitigating the impacts of the pandemic and addressing negative economic impacts. Notably, the package provides \$1,400 in direct payments to certain individuals and dependents and additional transportation and agricultural funding, including \$1 billion for racial justice provisions for farmers. Also of import, the Senate parliamentarian ruled Thursday that Democrats would be deemed out of order if they include a \$15 minimum wage hike in their coronavirus relief package, a major blow to Senate Budget Committee Chair Bernie Sanders (I-Vt.) and progressives. House Democrats still included the minimum wage provisions on their version of the COVID-19 bill on Friday. However, according to *POLITICO*, the Senate decision means Democrats need to find another route to increasing the minimum wage.

The Republican Study Committee (RSC) – the largest conservative caucus in the House - authored a three-page memo to conservatives to outline "all the left-wing items Democrats are hoping the public won't find about." *Fox News* first obtained a copy of the fact sheet that was widely circulated last week. Among the provisions generating angst among the GOP are \$1,400 stimulus checks going to mixed-status families with undocumented immigrants; allowing Planned Parenthood to receive Paycheck Protection Program funds designed to keep small businesses afloat; and nearly \$600 million for additional emergency paid family leave for federal employees and U.S. Postal Service workers, according to the RSC memo.

#### **9. Alliance Supports Special Districts Assistance Legislation**

The National Special Districts Coalition (NSDC) – comprised of state special districts associations in California, Colorado, Florida, Oregon and Utah – along with 126 national, state, nonprofit and private business organizations – including the Family Farm Alliance – last month formally expressed support of the *Special Districts Provide Essential Services Act* (S.91/H.R.535). In a letter to House and Senate leadership, these organizations, who are the voice of more than 30,000 special districts across the country, urged Congress to include the needs of special districts in future COVID-19 relief aid legislation. Special districts – like irrigation and water districts - are independent local governments that provide critical infrastructure and essential services. S.91 / H.R. 535 would provide these districts certain access to future Coronavirus relief funding. Even as the anticipated fiscal impact of the pandemic on special districts tops \$30.5 billion nationwide, many districts have not been able to access federal assistance to help their communities respond to and recover from the spread of the virus. The legislation would allocate critically needed financial relief to special districts that have experienced unforeseen expenditures, decreases in revenue, or both, as a result of the COVID-19 health crisis.

## **10. Congress Gears Up to Move Infrastructure Package**

Democrat leaders in Congress have responded to President Joe Biden's plea last month for Congress to move quickly on a large infrastructure improvement plan. President Biden leveraged his observations from an earlier two-hour call with Chinese President Xi Jinping. "If we don't get moving, they're going to eat our lunch," he told reporters. China plans to invest billions of dollars in rail projects, automobile manufacturing and environmental improvements.

Committees in both house of the Democrat-led Congress last week initiated hearings that were seen by many as the official start of the legislative process required to pass a massive infrastructure stimulus package by July Fourth. Top House Democrats are also preparing to tee up an overhauled version of congressional earmarks, a legislative tool that was banned in 2011 due to claims that it led to wasteful spending. The work could start quickly, with infrastructure and spending bills as prime vehicles.

*Bloomberg News* reports that House Appropriations Committee Chair Rosa DeLauro (D-Conn.) will be releasing details of what the next generation of earmarks will look like "in coming weeks". Sen. Patrick Leahy (D-Vt.), chair of the Senate appropriations panel, is also preparing for a return to earmarks. Earmarks are seen by some as a way that contributes to bipartisan compromise. For President Joe Biden, getting member buy-in through earmarked funds could smooth the ability to pass a massive infrastructure package, *Bloomberg* opines. The Freedom Caucus and the Republican Study Committee both recently released statements in opposition to a revived use of earmarks.

### **a. House T&I Subcommittee Debates Price Tag**

The House Transportation and Infrastructure (T&I) Subcommittee on Water Resources and Environment held a hearing last week to study the need for water infrastructure upgrades, from wastewater and drinking water facilities to pipes and other equipment. The Subcommittee probed both legislative and funding solutions, including the use of existing tools within federal agencies, in dealing with the current state of clean water systems, the backlog of water infrastructure major maintenance and replacement needs, and the challenges many cash-strapped communities are facing when paying for such upgrades. The infrastructure package price tag was a point of contention between committee Democrats and Republicans. Much of the discussion centered on provisions in last Congress' H.R. 2, the *Moving Forward Act*. That \$1.5 trillion bill from Chairman Peter DeFazio passed the House last year but stalled in the Republican-led Senate. Included in that overarching infrastructure bill were provisions from H.R. 1497, the *Water Quality Protection and Job Creation Act of 2019*, which Rep. Napolitano co-sponsored with more than 50 House members, including Chairman DeFazio.

b. Senate Committee Hearing on “Build Back Better”

The Senate Environment and Public Works (EPW) Committee last week held a hearing on the "Build Back Better" COVID recovery initiative, President Biden's broad outline for infrastructure, clean energy, COVID recovery and economic stimulus. Republican and Democrat Senators said during the hearing they're hoping to craft a bipartisan bill that invests in aging transportation infrastructure and expands the nation's electric vehicle infrastructure. EPW Committee Chair Tom Carper (D-Del.) earlier in the month said he plans to pass two major infrastructure bills out of his committee by Memorial Day. On the surface transportation bill specifically, Carper said his goal is to "beat the record" for moving it through committee. In addition, Senator Carper said the committee would focus on water infrastructure legislation and intends to advance a version of the Water Resources Development Act by the end of May.

Any transportation infrastructure bill that comes out of these efforts may turn into a legislative vehicle to move a broader infrastructure package and could attract bipartisan support in the current highly partisan political atmosphere in Washington. Senator Carper, EPW Committee Ranking Member Shelley Moore Capito (R-WV) and President Biden have advocated a bipartisan approach. However, others, including Vermont Democrat Senator Bernie Sanders has advocated that infrastructure and climate policies could be folded into a second budget reconciliation bill, which would allow Democrats to bypass filibusters by Senate Republicans with a simple majority vote. Chairman Tom Carper (D-Del.) has similarly downplayed talk of moving infrastructure through reconciliation.

c. Valadao Introduces WIIN Act Extension Legislation

Representative David G. Valadao (R-CALIFORNIA) last month introduced the *Responsible, No-Cost Extension of Western Water Infrastructure Improvements*, or RENEW WIIN, Act, a clean extension of operations and storage provisions of the WIIN Act (P.L. 114-322). The RENEW WIIN Act would extend the general and operations provisions of Subtitle J of the WIIN Act and extend the provision requiring consultation on coordinated operations of the Central Valley Project and State Water Project in California. The legislation would also extend the authorization of appropriations for water storage projects that the Secretary of the Interior finds feasible. The RENEW WIIN Act is supported by the entire Republican delegation of California, and some of California's largest water organizations, including the Fresno Irrigation District, Friant Water Authority, Westlands Water District, and San Luis & Delta-Mendota Water Authority.

d. Family Farm Alliance Efforts

As reported in the January 2021 "Monthly Briefing", over 200 urban and rural water districts urged President-elect Joe Biden and congressional leadership last month to address aging Western water infrastructure in any potential infrastructure or economic recovery package. The effort was spearheaded by the Family Farm Alliance, ACWA, California Farm Bureau, National Water Resources Association and Western Growers Association. In separate letters to President-elect

Biden and congressional leaders, the coalition said existing Western water infrastructure is in desperate need of rehabilitation and improvement. Most of the federal water projects in the West were built more than 50 years ago and were not designed with the present and future population demands and climate conditions in mind. The coalition is working with stakeholders from several Western states and Western Congressional offices to encourage federal investment in a diversified water management portfolio that enhances water supply and quality for urban and environmental uses while keeping water flowing to Western farms.

### **11. House Democrats Fast-Track Public Lands Package**

House Democrats with support from President Biden last week quickly passed legislation along partisan lines that would permanently protect public lands and waters in Colorado, California, and Washington by designating approximately 1.5 million acres of wilderness and incorporating more than 1,000 river miles into the National Wild and Scenic Rivers System. H.R. 803, the *Protecting America's Wilderness and Public Lands Act* also contains provisions to create and maintain additional recreational access by authorizing new trails, services, and facilities.

House Republicans strenuously protested the bill and the process used to advance it. They claim that if H.R. 803 had gone through regular order, it would have come before the Committee on Natural Resources for hearings and a markup. House Democrats, they say, bypassed this procedure and sent the legislation straight to the Committee on Rules. During a hearing before the Rules Committee last week, House Democrats struck down every Republican outdoor recreation and wildfire amendment, including one offered by Rep. Russ Fulcher (R-IDAHO) and others that would have prevented agency secretaries from superseding water law or water rights that individual states have already established. The western states are governed by a senior water rights doctrine usually determined by a state water engineer or board. Rep. Bruce Westerman, Ranking Member of the House Committee on Natural Resources, led Republicans on the House floor in opposing H.R. 803 last Thursday evening. The House on Friday passed H.R. 803 largely along party lines, 227-200.

### **12. Wild and Scenic and Conservation Corps Legislation**

Several bills aimed at protecting Western land and waters have also been introduced in the Senate, including a bill authored by Oregon Democrats Ron Wyden and Jeff Merkley that would add nearly 4,700 miles of rivers and streams in Oregon to the national Wild and Scenic Rivers system – the largest Wild and Scenic Rivers effort in the nation's history. Sen. Wyden and Rep. Joe Neguse (D-CO) have also reintroduced the "21st Century Civilian Conservation Corps Act," modeled after the initiative of the same name in the Roosevelt Administration's "New Deal" era that provided employment and job training to 3 million out-of-work Americans between 1933 and 1942. The companion bills would establish a \$9 billion account to hire and train individuals for jobs in the outdoors planting trees, constructing trails, controlling invasive species, restoring wetlands, and building parks. The bills authors have said these new jobs are needed for rural and tribal areas to fully recover from the COVID pandemic while supporting the restoration of public lands and



forests across the country. Along the same lines, President Biden recently signed an executive order that called for the Interior and Agriculture Departments to develop the logistics for the creation of a "climate conservation corps" with objectives that also match up with the newly reintroduced legislation.

### **13. Snake River Dam Removal**

Rep. Mike Simpson (R-ID) has proposed a sweeping \$33.5 billion plan to save the Pacific Northwest's salmon that includes breaching four Army Corps of Engineers' dams on the Lower Snake River in Eastern Washington State. The proposal also offers a framework that would remake the region's energy system and replace power production and barging lost from the breached dams. Rep. Simpson plans to draft legislation to include in President Biden's infrastructure stimulus package planned for later this year. The regions' stakeholders, and even the Congressman, say the entire proposal will be a heavy lift politically. The Idaho Grain Producers and Idaho Farm Bureau Federation have already expressed full-throated opposition.

Much of the media coverage to date has implied widespread support for the proposal, particularly from tribes, fishing and environmental groups, and some Northwest governors. However, the story on the ground may be a different one. Four Pacific Northwest Republican House members introduced a resolution to reaffirm the country's support for hydropower. Rep. Cathy McMorris Rodgers opposes removing the dams. And she was joined last month in a resolution of support for existing and new hydropower by Republican Reps. Dan Newhouse and Jaime Herrera Beutler in Washington state and Russ Fulcher in Idaho. Northwest RiverPartners (NWRP), a not-for-profit, member-driven organization representing community utilities, farmers, ports, and businesses across the region, issued a balanced but firm public statement on Rep. Simpson's proposal. NWRP believes the case for breaching to save salmon lacks scientific rigor. In addition, they point to a growing body of science suggests warming, acidifying oceans are the driving factor behind worldwide declines in marine fish populations, including salmon. NWRP does believe Rep. Simpson's plan has the best of intentions and deserves to be vetted among Northwest stakeholder groups.

## **ALLIANCE INITIATIVES**

### **14. 2021 Family Farm Alliance "Virtual" Annual Conference**

Our first (and hopefully, last) virtual annual conference was held February 18 and 19. Throughout the two days, audience participating hovered between 150 and 200. The reaction from participants was very positive and encouraging, but honestly, I think everyone wishes we could have met in person in Reno. The silver lining of having a virtual event is that we were able to get participating from four Members of Congress, which was a first for us. If you didn't have a chance to participate, we have made recordings of the event available. Links to each day's events, along with the agenda and associated time stamps are provided below.

Session Link for February 18 (Day 1)

0:00:10 Welcome – Alliance President Pat O’Toole  
0:15:00 U.S. Senator Michael Bennet (D-CO)  
0:21:50 Q&A moderated by Alliance Executive Director Dan Keppen  
0:49:40 Reclamation Roundtable  
0:52:22 Opening Remarks of Interior Deputy Commissioner Camille Touton  
0:59:45 Regional Director Roundtable Discussion  
1:57:00 Q&A moderated by Dan Keppen  
2:12:58 U.S. Representative Dan Newhouse (R-WA)  
2:24:00 U.S. Representative Jim Costa (D-CA)  
2:37:16 Q&A moderated by Dan Keppen  
2:46:45 Washington, D.C. Roundtable  
3:32:35 Past Commissioner of Reclamation, Brenda Burman

Session Link for February 19 (Day 2)

0:00:00 Welcome - Pat O’Toole  
0:14:00 Food and Agriculture Climate Alliance(FACA) Panel  
1:30:27 The 2020 Western Wildfire Season: How did we get here, what have we learned, and how do we prepare for 2021?  
1:36:55 CA State Senator Brian Dahle (R- Lassen County)  
3:05:30 Pat O’Toole introduction  
3:14:05 U.S. Senator John Barrasso (R-WY)  
3:19:50 Pat O’Toole introduction  
3:25:00 Principal Deputy Assistant Secretary Tanya Trujillo, U.S. Department of Interior  
3:41:15 Q&A moderated by Dan Keppen  
3:51:00 Closing remarks - Pat O’Toole

*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.*

George Bradshaw  
*President*  
Larry Collins  
*Vice-President*  
Lorne Edwards  
*Secretary*  
Lori French  
*Treasurer*

**PACIFIC COAST FEDERATION  
of FISHERMEN'S ASSOCIATIONS**



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[www.pcffa.org](http://www.pcffa.org)

Mike Conroy  
*Executive Director*  
Glen H. Spain  
*Northwest Regional Director*  
Vivian Helliwell  
*Watershed Conservation Director*  
**In Memoriam:**  
Nathaniel S. Bingham  
Harold C. Christensen  
W.F. "Zeke" Grader, Jr.

**Please Respond to:**

**California Office**

P.O. Box 29370  
San Francisco, CA 94129-0370  
Tel: (415) 561-5080  
Fax: (415) 561-5464

**Northwest Office**

P.O. Box 11170  
Eugene, OR 97440-3370  
Tel: (541) 689-2000  
Fax: (541) 689-2500

February 16, 2021

President Joseph R. Biden  
Office Of The President  
The White House  
1600 Pennsylvania Ave. NW  
Washington, DC 20500  
[j.robinette.biden@joebiden.com](mailto:j.robinette.biden@joebiden.com)

Secretary Designate Debra Haaland  
Department of Interior  
1849 C St NW  
Washington, DC 20240  
[exsec@ios.doi.gov](mailto:exsec@ios.doi.gov)

**Re: Request for Rescission of Trump Administration Memoranda on Status of CVPIA  
Implementation Funding, Illegal Water Contracts and Cost Allocations**

Dear Mr. President and Secretary Designate Haaland,

We call on you to reverse a grave environmental injustice brought on by recent and last-minute actions of the Trump Administration by Interior Secretary Bernhardt, formerly employed by one of the biggest beneficiaries of these actions—Westlands Water District. Without your timely help, permanent diversions of water for corporate agriculture in the California's Central Valley threaten the health of Winnemem Wintu tribal homelands, fishing rights and water rights of the Hoopa Valley Tribe, rivers and estuaries, and the benefits these waters bring to imperiled salmon stocks and dependent fishing communities up and down the northern coast of California, Oregon, and Washington.

The vital water resources of these communities, including water sustaining the Pacific Flyway that supports countless migratory birds and provides critical food sources for the indigenous people of Alaska, are at stake due to permanent water contracts and last-minute administration actions that lock up water for agriculture and slash funding for environmental mitigation and restoration. This permanent allocation of Central Valley Project (CVP) water supplies without environmental review and endangered species consultation, all while slashing statutorily required water and payments for environmental mitigation and restoration—thus shifting the burden to taxpayers—must be reversed.

We urge you to move quickly in taking the following actions to remedy the potential damages before they occur:

1. Withdraw former Secretary Bernhardt's January 19, 2021 memorandum<sup>1</sup> that slashes statutorily required Central Valley Project mitigation and restoration funding.
2. Rescind illegally executed permanent water contracts for Westlands Water District and other CVP contractors to ensure Reclamation laws, the Central Valley Project Improvement Act, Endangered Species Act and the National Environmental Policy Acts are followed.
3. Withdraw the Business Practices and Guidelines pending before OMB that would shift hundreds of millions of dollars owed by the CVP contractors to the American taxpayer.
4. Withdraw and peer review the Trump Administration cost allocation methodology for the CVP that shifts hundreds of millions in costs owed by water and power beneficiaries to the American taxpayer.

If these Trump administration actions are not reversed, each will contribute to a closely related and interconnected web of adverse environmental, cultural, and economic impacts that will be difficult, if not impossible, to correct in the future. The causes and nature of these impacts are explained in more detail in Attachment 1.

Your leadership is urgently needed to ensure statutory obligations are enforced, the permanent water contracts are rescinded, and that there is meaningful oversight of federal agencies' performance under the CVPIA.

Sincerely,



Mike Conroy  
Executive Director



Bill Jennings  
Chairman Executive Director  
California Sportfishing Protection Alliance

CC: cc: Senator Feinstein, Senator Padilla,  
Rep Raúl Grijalva, Rep Jared Huffman, Rep. Katie Porter, & Rep Mike Thompson

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<sup>1</sup> <https://calsport.org/news/wp-content/uploads/SIGNED-Concurrence-to-ASWS-ASFWP-from-Secretary-CVPIA-Jan-19-2021.pdf> & <https://calsport.org/news/wp-content/uploads/ASFWP-ASWS-to-Secretary-re-CVPIA-completion-Wallace-AND-Petry-e-sign.pdf> & <https://calsport.org/news/wp-content/uploads/BOR-CVPIA-Memo-Jan-15-2021-Date-Stamp.pdf> & <https://calsport.org/news/wp-content/uploads/SOL-Memo-to-RD-Re-Completion-Jan-2021.pdf>

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## ATTACHMENT 1

### Trump Administration CVP Actions and Adverse Impacts

#### 1. Secretary Bernhardt's January 19 Memorandum Slashes Restoration Funding<sup>2</sup>

In the dying hours of the Trump administration, then Interior Secretary Bernhardt signed a memorandum of concurrence, which overturns the findings and recommendations of the 2009 Central Valley Project Improvement Act Program Activity Report ("CPAR")<sup>3</sup>. In its place, Bernhardt's memorandum adopts the findings and recommendations of a 14 January 2021 Interior Solicitor's memorandum entitled "Interpretation of Central Valley Project Improvement Act Sections 3406 and 3407".

The Bernhardt memorandum radically undermines the environmental restoration purpose of the Central Valley Project Improvement Act (Public Law 102-575 Title XXXIV (October 30, 1992) (CVPIA)). Specifically, the Bernhardt memorandum:

- (1) incorrectly declares environmental restoration measures complete;
- (2) arbitrarily reduces by fifty percent the contractors' obligation to fund ongoing environmental restoration and mitigation actions; and
- (3) ignores the separate obligation for contractors to reimburse environmental restoration costs specified in section 3406 of the CVPIA in cases where CVP Restoration Fund collections are insufficient to fund them.

Rather than adhering to the 2009 CPAR's determination of when Section 3406 responsibilities will have been met, the January 19 memorandum simply declares that "the actions required under Section 3406 of the Central Valley Project Improvement Act have been completed" and that the requirements that CVP contractors contribute to the CVP Restoration Fund are therefore halved and other cost collection requirements in section 3406 will be abandoned.

The reality is that much of the CVPIA-mandated fish and wildlife restoration is yet to be completed. Many CVPIA-mandated fish and wildlife restoration projects and programs have languished. USFWS has not been provided the funding and authority sufficient to carry out these Congressionally mandated obligations. Instead, Reclamation has served as a handmaiden to the water contractors, taking more and more water without meeting their restoration and mitigation obligations. Multiple Inspector General reports have highlighted how Reclamation has failed to collect sufficient money to repay taxpayers and has failed to collect sufficient funds from the contractors to meet their mitigation and restoration obligations within statutory deadlines.<sup>4</sup>

<sup>2</sup> <http://www.schlosserlawfiles.com/~hoopa/Pages%20from%20Hoopa%20Letter%20.pdf> Bernhardt's Completion Memos

<sup>3</sup> <https://www.usbr.gov/mp/cvpia/docs-reports/docs/report-cvpia-cpar-08-25-09.pdf> Central Valley Project Improvement Act Program Activity Review Report 2009

<sup>4</sup> <https://www.doi.gov/sites/doi.gov/files/WR-EV-BOR-0003-2012Public.pdf> OIG California's Central Valley Project Repayment Status  
[https://www.doi.gov/sites/doi.gov/files/FinalAudit\\_BayDeltaPlan\\_Public.pdf](https://www.doi.gov/sites/doi.gov/files/FinalAudit_BayDeltaPlan_Public.pdf) OIG Delta Tunnels Audit

## 2. Permanent Water Contracts Shift Costs to Taxpayers and Short-Change Water for the Environment.<sup>5</sup>

Secretary Bernhardt set the table to grant permanent water allocations that cement exports from the Trinity River and Delta Estuary of quantities of water that simply do not exist under our changing climate. The required court validations of these contracts, which were issued in 2020, have not been secured so they are not binding on the United States.<sup>6</sup> Despite these legal deficiencies, Reclamation has set the costs of this water at rock bottom prices without peer reviewed allocation methodology and without the statutorily required contractual payments for environmental mitigation and restoration.

The permanent contracts also exempt Westlands and other irrigators from acreage limits and give them an allocation of public water without collecting sufficient payments for mitigation and restoration of damage being caused to the environment and to those communities and Tribal lands from which the water is taken. Westlands, which is comprised of some 350 vertically integrated corporations<sup>7</sup>, is price gouging the low-income communities of El Porvenir and Cantua Creek by selling them water at inflated prices that is not safe to bath, cook or drink—all while keeping the cheap taxpayer-subsidized water for themselves.

These permanent contracts granted by Bernhardt's Interior to Westlands and other CVP contractors put these irrigators in charge of decisions regarding the allocation of these public waters without environmental review or compliance with the Central Valley Project Improvement Act. In short, the permanent contracts would be a massive transfer of wealth from public ownership to select irrigators. The CVPIA (section 3404(c)) requires the inclusion of environmental cost collection provisions in CVP contracts, which the Trump Administration

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<sup>5</sup><https://calsport.org/news/wp-content/uploads/PCL-et.-al.-Comments-on-WWD-Permanent-Contract-Conversion-Jan-6-2020.pdf>

<sup>6</sup> **May 28, 2020** Ernest Conant, Regional Director of the California Great Basin Regional Office, in a letter to Westlands, agrees to treat WWD's Converted Contract as controlling as of its intended "effective date" of June 1, 2020, despite Westlands' failure to obtain a "decree of the court" confirming the validity of its proceedings, required under law for such contracts under 43 U.S.C. § 511.

**May 26, 2020** Westlands writes to Reclamation [Ernest Conant] that Validation statutes should not apply to them. **June 24, 2020** San Joaquin County writes to Reclamation to alert the US to misrepresentations made by Westlands Water District (Westlands) in the May 26, 2020 letter to you (Reclamation) from its General Manager, Thomas Birmingham (Ex. 1, "Westlands letter"). That letter contains materially false and misleading statements about the challenged agreement to convert Westlands' time-limited water contract into a permanent repayment contract. (Contract No.14-06-200-495A-IR1-P, "Converted Contract")

**June 6, 2020** Coalition Letter to FitchRatings and S&P Global the groups warn; *The undersigned organizations are united in awareness of extraordinary economic, environmental and legal risks associated with pending attempts of Westlands Water District (Westlands)—thus far without success in any court of law—to expedite the conversion of its long-term water service contract with the United States Bureau of Reclamation (Bureau) into a permanent repayment contract ("contract conversion") before complying with numerous requirements of law. The future of the contract at issue, the largest in the Central Valley Project system, will have profound consequences for water users, protected species, ratepayers, and consumers from the Trinity River watershed through the Delta and beyond.*

<sup>7</sup> <https://www.latimes.com/business/hiltzik/la-fi-hiltzik-20150920-column.html> *How a rich water district beat the federal government in a secret deal.* Michael Hiltzik

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refused to do. Recall in December 10, 2016 around 2 AM, Representative McCarthy foisted the permanent water contract mechanism into a carefully crafted WRDA bill and threatened funding for the cleanup of Flint Michigan's drinking water funding unless these changes were adopted. Senator Feinstein promised existing law would be followed<sup>8</sup> and these changes would be temporary. Pushed by Westlands' lobbyist David Bernhardt at the time, as Secretary of Interior he later interpreted the legislation as exempting his former client Westlands and other contractors from NEPA, ESA and the CVPIA environmental mitigation and restoration provisions despite Senator Feinstein's assurances. Interior's interpretation is wrong and the contracts are being challenged in federal court.

### **3. Bernhardt-Proposed Revisions to Business Practices and Guidelines Shift Costs from Water Contractors to Taxpayers.<sup>9</sup>**

The Central Valley Project Business Practice Guidelines are now under review in the Office of Management and Budget at the request of the Trump administration. These guidelines bear directly on the accounting of past, present and future financial obligations of CVP contractors under the CVPIA. Proposed modifications to the Guidelines would relieve hundreds of millions of dollars in CVPIA restoration costs assigned to the CVP contractors and shift them to the federal taxpayer.

The proposed revisions are particularly egregious because they upend the CVPIA requirement that CVP water and power contractors pay the cost of repairing the systemic environmental damage to Central Valley rivers and streams caused by construction and operation of the CVP. Simply put, environmental restoration is a cost of doing business for CVP contractors. Section 3406 of the CVPIA identifies specific fish and wildlife restoration measures to be undertaken by the Secretary and paid for in whole or in part, depending on the action, by the CVP contractors. These measures include the restoration of the fishery resources of the Trinity River and the doubling of salmon numbers in Central Valley streams adversely impacted by CVP operations.

The CVPIA establishes a number of funding mechanisms for its environmental restoration actions. Section 3406 itself establishes reimbursement obligations for the contractors to pay for these damages created by the export of water from these rivers, communities and Tribal homelands. Section 3407 of the Act creates the Central Valley Project Restoration Fund and specifies, among other things, the manner in which CVP contractors will be assessed the costs of fish and wildlife restoration measures to help fund those obligations set out in Section 3406. The Business Practices and Guidelines should not be changed.

### **4. Revised Cost Allocation Model for the Central Valley Project Shifts Hundreds of Millions of Costs from Agricultural and Power Contractors to Taxpayers.<sup>10</sup>**

<sup>8</sup> <https://www.feinstein.senate.gov/public/index.cfm/press-releases?id=FF5C94EB-667A-4DEC-A0A4-296AB5027BE4> Feinstein declares in 2016 the WIIN Act rider is temporary and ensures compliance with existing laws, including the ESA, NEPA, CVPIA and Reclamation laws.

<sup>9</sup> <https://calsport.org/news/wp-content/uploads/Env-Advocates-Cmts-CVPIA-Restoration-Fund-True-Up--Proportionality-9....pdf> & <http://www.schlusserlawfiles.com/~hoopa/Pages%20from%20Hoopa%20Letter%203.pdf> HVT Comments on the draft USBR Business Practices and Guidelines

<sup>10</sup> <https://calsport.org/news/wp-content/uploads/Conservation-Fishing-and-Tribe-Cmts-RE-CVP-Cost-Allocation-Study-Burman-1-2-2020-.pdf> 20 Tribal, Conservation and Fishing Groups Denounce Reclamation's CVP Cost

The CVPIA (section 3404(c)) also requires the inclusion of cost collection provisions in CVP contracts, which the Trump Administration refused to do. At the last minute<sup>11</sup>, Representative McCarthy foisted the permanent water contract mechanism into a carefully crafted WRDA bill and threatened funding for the cleanup of Flint Michigan's drinking water funding unless these changes were adopted. Senator Feinstein promised existing law would be followed<sup>12</sup> and these changes would be temporary. Pushed by Westlands' lobbyist David Bernhardt at the time, as Secretary of Interior he interpreted the legislation as exempting his former client Westlands and other contractors from NEPA, ESA and the CVPIA environmental mitigation and restoration provisions. In January 2020, Bernhardt's Interior adopted new cost allocation methods shifting hundreds of millions of dollars owed by the contractors to the taxpayers.<sup>13</sup>

The final result of the new CVP cost allocation proposal is that the taxpayers will pay more and the project beneficiaries will pay less. This outcome results from arbitrary changes for which the benefits have been misrepresented and the costs to the environment and costs of required mitigation have been arbitrarily and inappropriately shifted away from the irrigation contractors. The latest cost allocation study also repeats other serious flaws: Reclamation has included inappropriate costs and made questionable estimates of project benefits and alternative costs.

Moreover, no assurance is provided that repayment obligations and water quality obligations of the project will be met. Further, if the allocation of costs for any reimbursable purpose is too low, the annual rates necessary to ensure repayment of the full allocated amount by 2030 must increase each year and, if delayed, it is possible that irrigation water users will not have the ability to pay the high rates ultimately necessary to repay their obligation.

Our concerns about the Draft Final Central Valley Project Cost Allocation Study (CAS) include both inadequate study review and documentation, and inadequate transparency and justification of study methods and results. The new approach needs to be peer reviewed. The proposed Cost Allocation approach reduces costs borne by irrigators by dramatically underestimating benefits to irrigators. If capital repayment from Irrigation contractors continues to be under collected, capital rates will begin to spike as 2030 approaches. Failing to take corrective action now will likely result in failure to meet Congressionally mandated repayment deadlines, because it will be

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Allocation Methodology for its failure to collect sufficient monies from water and power contractors and shifting costs to taxpayers. No Peer Review was conducted and Reclamation's faulty assumptions include that more than 80% of the CVP benefits exist without the CVP projects and diversions lacks credibility and scientific justification.

<sup>11</sup> <https://www.mecleahydc.com/news/politics-government/congress/article/120131428.html> *After years of drama, farmers score a big win in California water battle* Michael Doyle December 10, 2016

<https://www.sfgate.com/bayarea/article/Boxer-ends-career-with-a-filibuster-over-surprise-10786696.php> Carolyn Lochhead Dec. 9, 2016 *Boxer ends career with a filibuster over surprise rider in water bill*

<sup>12</sup> <https://www.feinstein.senate.gov/public/index.cfm/press-releases?id=FF5C94EB-667A-4DEC-A0A4-296AB5027BE4>

<sup>13</sup> <https://calsport.org/news/wp-content/uploads/PCL-IFR-Coalition-CVP-Cost-Allocation-Completion-October-2019-Cmts.pdf> & See <https://www.gwire.com/2020/12/16/northern-california-tribe-asks-judge-to-block-permanent-water-contract-with-westlands> *Northern California Tribe Asks Judge to Block Permanent Water Contract With Westlands*. Jim Jakobs December 16, 2020 "The Hoopa Valley Tribe in Humboldt County argued before a federal judge last Thursday that no Trinity River water can be sent to the Central Valley at the expense of the tribe's fishery."

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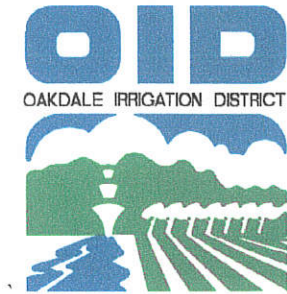


too late to take corrective action after several more years. The magnitude of underpayment will soon reach a point where three choices are available: set water rates at levels that Irrigation Contractors cannot afford, force power contractors to pay the deficit or fail to meet the statutory requirement deadline of 2030. Under the provisions of PL 99-546 power contractors and their ratepayers will be on the hook for the shortfall in order to meet the statutory deadline of 2030. Thus, this ballooning aid to irrigation will likely have an unplanned impact on power rates.

Put another way, the broad purpose of the new January 2020 CAS is to remedy past mistakes and chart a course toward meeting the 2030 deadline. The adopted methodology fails to meet that purpose. The Bureau of Reclamation has waited far too long to address the longstanding problem of underpayment by CVP Irrigation Contractors. Further procrastination of this repayment responsibility will magnify the problem. Unless a pro-rated share of each Irrigation Contractor's outstanding capital balance is collected from 2020 through 2030, capital rates will balloon the aid to irrigators. The time to implement fair and effective change is past due.

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SOUTH SAN JOAQUIN  
IRRIGATION DISTRICT

March 15, 2021

**Contact:** Steve Knell, OID general manager, (209) 840-5508 or [srknell@oakdaleirrigation.com](mailto:srknell@oakdaleirrigation.com)  
Peter Rietkerk, SSJID general manager, (209) 249-4645 or [prietkerk@ssjid.com](mailto:prietkerk@ssjid.com)

## **OID, SSJID propose water release on Stanislaus River to support juvenile salmon and water supply needs**

The Oakdale and South San Joaquin Irrigation Districts – in an effort to support the outmigration of juvenile salmon as well as assist water-short farms and communities – are seeking approval to send up to 100,000 acre-feet of additional water down the Stanislaus River to the Delta this spring.

The proposal has been submitted to the federal Departments of Interior and Commerce for evaluation pursuant to the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act. Signing on to the proposal are the San Luis & Delta-Mendota Water Authority (SLDMWA) and the State Water Contractors (SWC). (A copy of the letter is attached.)

Due to below-average hydrology, flows this spring at Vernalis near the confluence of the San Joaquin and Stanislaus rivers are projected to be 50% of what is required by State Water Board Decision D-1641 to provide protection to outmigrating juvenile salmon in the Stanislaus River. The dry hydrology has also resulted in initial water allocations of only 5% to federal agricultural water service contractors by the U.S. Bureau of Reclamation and only 10% to the SWC by the California Department of Water Resources, respectively. (The attached fact sheet shows the dire situation for fish, farms and communities.)

For fisheries, D-1641 pulse flow requirements are required to be an average of 3,140 cfs between April 15 and May 15. However, based on current planned water releases, flows are projected to be less than 1,500 cfs during those 31 days. The proposed releases by OID and SSJID from their shared water rights could produce nearly 3,000 cfs at Vernalis and provide up to 100,000 acre-feet of water to farmers in the San Joaquin Valley and communities.

SLDMWA and the State Water Contractors would pay \$250 per acre-foot for the released water. The amount of water ultimately available for the release is dependent on continuing hydrology in the Stanislaus River watershed and the resulting supply available to OID and SSJID this spring.

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“The Districts are fortunate to have been able to make these releases in the past -- to generate revenue to build projects that allow us to conserve water -- so that in tough times like these we can help those farmers who have helped us develop that conserved water,” said OID General Manager Steve Knell.

The pulse flow releases are consistent with the Districts’ long-term commitment to support fisheries in the Stanislaus River.

“With California water being as contentious as ever, this proposal illustrates the art of the possible for collaborative water management that supports both the environmental and human water supply needs,” said SSJID General Manager Peter Rietkerk.

The water made available under the release would not resolve the shortage in state and federal allocations this year, but nonetheless would be critical for West Side farmers.

**“In dry years like this one, every acre-foot of water is precious,” said Federico Barajas, Executive Director of the SLDMWA. “Water transfers are a lifeline for our members and the communities that are reliant on the water they deliver, particularly with low allocations. Multi-benefit transfers like this one, that benefit both out migrating salmon and provide additional water supplies for our members, simply make good sense. The Water Authority appreciates our partnership with OID and SSJID and we are hopeful that federal agencies approve this action.”**

The Districts are hopeful that federal agencies will be willing to coordinate and facilitate this multi-benefit proposal.

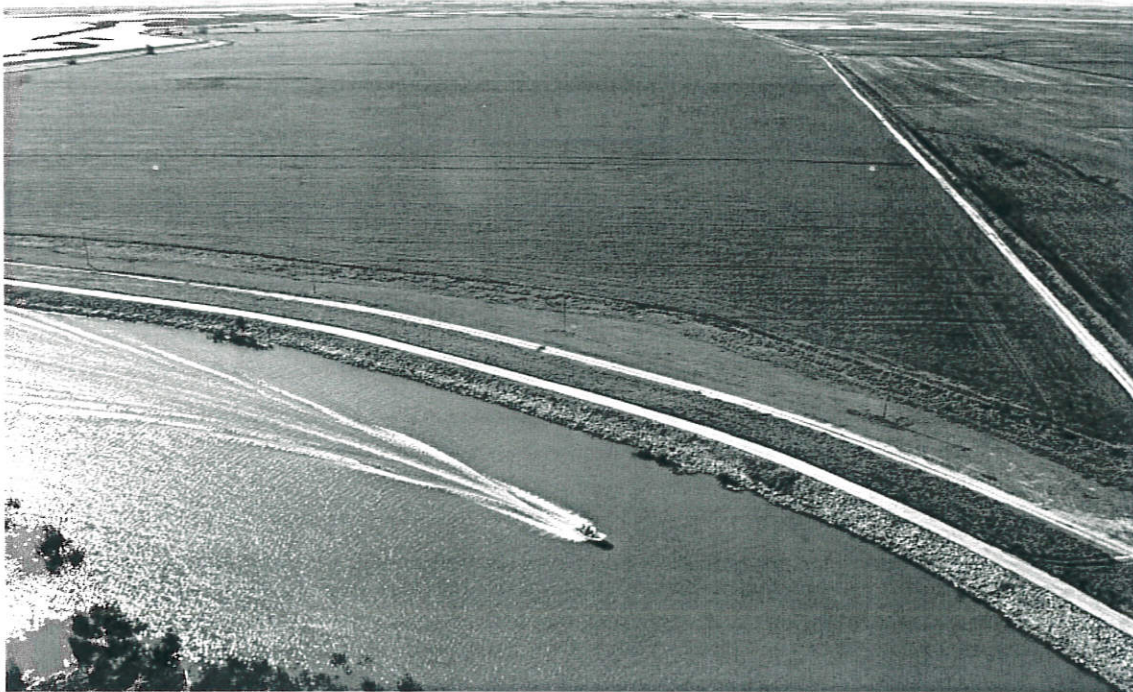
**About Us:** The [South San Joaquin Irrigation District](#) was established in 1909 and is located in Manteca. It provides agricultural irrigation water to about 55,000 acres in Escalon, Ripon and Manteca. In 2005, the district expanded into providing domestic water service to selected cities within its territory. The [Oakdale Irrigation District](#) was created in 1909 and provides agricultural water to about 62,000 acres in northeastern Stanislaus County and southeastern San Joaquin County.

OID and SSJID hold senior water rights on the Stanislaus River. For more than 100 years, the Districts have responsibly delivered surface water to farms in San Joaquin and Stanislaus counties, and for SSJID, thousands of homes in San Joaquin County. The Districts committed to sensible water policies, innovative irrigation techniques, prudent conservation practices, and important investments in biological studies of the river and fish habitat.

OPINION &gt; EDITORIALS

## Editorial: Newsom should kill plan to drain state reservoirs

Preserving the health of the Delta is crucial for ensuring the region's water supply for future generations



(AP File Photo/Rich Pedroncelli)

If state agencies follow through on plans to send water from the Sacramento-San Joaquin River Delta, shown above, south to Central Valley farms, it wouldn't leave enough cold water flowing into the Sacramento River and the Delta during the summer, potentially killing chinook salmon runs and other fish species.

By MERCURY NEWS & EAST BAY TIMES EDITORIAL BOARDS |

PUBLISHED: March 10, 2021 at 5:30 a.m. | UPDATED: March 10, 2021 at 5:40 a.m.

On the tail end of the second dry winter in a row, with water almost certain to be in short supply this summer, California water officials are apparently planning to largely drain the equivalent of the state's two largest reservoirs to satisfy the thirst of water-wasting farmers.

Gov. Gavin Newsom must stop this irresponsible plan, which threatens the environmental health of the Sacramento-San Joaquin Delta and the water supply for about one-third of the Bay Area residents. We should be saving water, not wasting it. Employing conservation measures now will lessen mandatory water restrictions in the event of a long-term drought.

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Powerful agribusiness interests are expected to pressure the governor to waive state water quality standards. Gov. Jerry Brown did just that in 2014 and 2015, sending additional water from the Delta to the Central Valley with devastating consequences to salmon runs and other wildlife. Newsom should let farmers know now that he plans to adhere to the state standards.

Unfortunately, according to Doug Obegi, an attorney with the Natural Resources Defense Council, Central Valley farmers have already received notification from the state Department of Water Resources and the Bureau of Reclamation that they will allocate about 5 million acre feet of water this year. That would be the equivalent of draining the state's two largest reservoirs, Shasta Lake and Lake Oroville. It wouldn't leave enough cold water flowing into the Sacramento River and the Delta during the summer, potentially killing chinook salmon runs and other fish species.

Farmers claim the water is needed to "feed America." It's true that the Central Valley provides about 25% of the nation's food supply. But the Central Valley's dirty little secret is that Big Ag used roughly 10% of the state's total water supply last year to produce almonds. And 70% of that crop was sent overseas.

The state's almond production in 2020 was 3 billion pounds, the largest on record, and double that of a decade ago. It takes about a gallon of water to grow a single almond. California shouldn't allow the largest estuary west of the Mississippi to be destroyed so that Big Ag can continue to line its pockets with this environmentally reckless export.

Newsom wouldn't be facing this problem if California had developed a long-term water strategy during the last decade. The governor can get that process started by reminding farmers of his promise to "rely on the best available science to protect our environment."

When it comes to the Delta, scientists have made clear that allowing more, not less, water to flow through the Delta and west toward San Francisco Bay is essential for protecting fish life and providing a clean supply of drinking water. The threat of climate change heightens the need to invest in conservation, recycling and storage efforts.

Newsom should do everything possible to protect the Delta for current and future generations.

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