

X III.

Anthea Hansen

From: Reclamation Public Affairs <publicaffairs@usbr.gov>
Sent: Monday, May 16, 2022 2:00 PM
To: Anthea Hansen
Subject: Reclamation selects 22 projects to receive \$17.3 million to improve water efficiency in West



— BUREAU OF —
RECLAMATION

NEWS RELEASE

For Release: May 16, 2022

Contact: Peter Soeth, psoeth@usbr.gov, 303.445.3615

Reclamation selects 22 projects to receive \$17.3 million to improve water efficiency in West

The 22 projects support \$89.1 million in projects in California, Idaho, Kansas, Montana, Nebraska, Nevada, Oklahoma, Texas, Utah, Washington and Wyoming

WASHINGTON – The Bureau of Reclamation selected 22 projects to share \$17.3 million in WaterSMART Water and Energy Efficiency Grants. These competitive projects improve water use efficiency, increase renewable energy production, reduce the risk of water conflicts, and provide other benefits that will enhance water supply sustainability in the Western United States.

"The projects announced today are an example of the Biden-Harris administration's actions to help ensure we are using as many tools as possible to build resiliency and respond to the ongoing drought," said **Assistant Secretary for Water and Science Tanya Trujillo**. "The funding for these projects is an example of how the Bipartisan Infrastructure Law is supporting the Department of the Interior's work to address the impacts of climate change by helping water districts become more efficient in water delivery."

"Conserving water is saving energy and helping Western communities become more resilient to drought," said **Acting Commissioner David Palumbo**. "Water and Energy Efficiency Grants provide communities with the necessary, cost-shared funding to modernize their existing infrastructure and conserve water for their communities and the environment."

The selected projects include:

- Lining and piping canals.
- Installing and upgrading water meters and timers.
- Installing solar to reduce power demand.
- Adding automated gate controls.

The projects will be completed in two or three years, depending on the funding received. To view all the selected projects, please visit www.usbr.gov/watersmart/weeg/.

The Bard Water District, located in southern California near the Arizona border, will line a 1/2 mile section of the currently earthen upper Mohave Canal with concrete. The project is expected to result in annual water savings of 498 acre-feet, which is currently lost to seepage, evapotranspiration, and operational losses. Conserved water will remain in the Lower Colorado River System and can be used by other water users during drought years and in times of shortage, including the Quechan Indian Reservation. The project will also allow farmers to continue to work with the Natural Resources Conservation Service's Environmental Quality Incentives Program to improve irrigation systems. The project will receive \$484,340 with a total project cost of \$968,680.

The Quincy-Columbia Basin Irrigation District in central Washington will line 2,500 feet of the earthen West Canal. The project will help address regional water reliability concerns, including drought, groundwater issues, and improved stream flows to assist salmon recovery. The project will receive \$300,000 with a total project cost of \$750,000.

The Lower Republican Natural Resources District in southern Nebraska will install near real-time telemetry equipment on 1,057 irrigation flow meters and other water management sensors for improved on-farm water management and reporting. In addition, the district will install eight solar-powered weather stations to collect evapotranspiration data to inform irrigation scheduling in the area. The project will receive \$2,000,000 with a total project cost of \$4,360,858.

This funding supplements the investments from the Bipartisan Infrastructure Law, which contains \$400 million over five years for WaterSMART grants, including drought resiliency projects. In 2022, Reclamation is making \$160 million available and will release other funding opportunities this spring. To learn more about how Reclamation implements the Bipartisan Infrastructure Law, please visit www.usbr.gov/bil.

For more than 100 years, Reclamation and its partners have developed sustainable water and power solutions for the West. This funding opportunity is part of the Department of the Interior's WaterSMART Program, which focuses on collaborative efforts to plan and implement actions to increase water supply reliability, including investments to modernize infrastructure.

Find out more information on [Reclamation's WaterSMART program webpage](#).

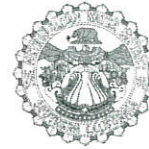
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Bureau of Reclamation, Denver Federal Center, Alameda & Kipling Street PO Box 25007, Denver, CO 80225 United States

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XIII.



Water Blueprint

for the San Joaquin Valley

April 19, 2022

The Honorable Gavin Newsom
Governor
1021 O Street, Suite 9000
Sacramento, California 95814

The Honorable Toni Atkins
Pro Tempore California State Senate
State Capitol, Room 205
Sacramento, CA 95814

The Honorable Nancy Skinner
Chair, Joint Legislative Bdgt. Cmte.
State Capitol, Room 5094
Sacramento, CA 95814

The Honorable Bob Wieckowski
Chair, Senate Bdgt. Sub 2
State Capitol, Room 4085
Sacramento, CA 95814

The Honorable Anthony Rendon
Speaker, California State Assembly
State Capitol, Room 219
Sacramento, CA 94814

The Honorable Philip Ting
V. Chair, Joint Legislative Bdgt. Cmte
State Capitol, Room 3173
Sacramento, CA 95814

The Honorable Bloom
Chair, Assembly Bdgt Sub 3
State Capitol, Room 2003
Sacramento, CA 95814

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RE: Strengthening statewide drought and flood resilience (\$6.5 billion)

Dear Governor Newsom, Pro Tem Atkins, Speaker Rendon, and Chairs Skinner, Ting, Wieckowski, and Bloom,

The increasing volatility of precipitation across California and the Colorado River basin is a warning that the state must act swiftly to protect its residents and businesses from the threat of droughts and floods. To strengthen California's resilience to these climate-related challenges, the below signed entities from across the state respectfully request California include a \$6.5 billion appropriation to strengthen statewide drought and flood resilience in the General Fund budget for fiscal year 2022-2023.

California's overwhelming dependence on rain and snow-based water systems places the state's residents, businesses, and ecosystems at heightened risk of catastrophic disruption. The only way to avoid a calamitous water shortage and subsequent environmental and economic degradation is to improve the adaptive management capacity of our current water system, increase water efficiency, conservation, and storage in the state, and to increase the availability of drought-resilient water resources.

California's water infrastructure needs cannot be met by ratepayers alone. Necessary maintenance and repair of legacy water systems and rising costs to purchase, treat and distribute water have, in recent years, increased the cost of water across California. Between 2010 and 2018, water rates in San Diego increased 60 percent, rates in Los Angeles increased 87 percent, in San Jose 93 percent, and in San Francisco 141 percent. The rising costs have left more Californians struggling to keep up. The state paid down \$900 million in water bill arrearages in 2021 but the fundamental problem persists. General fund support for water efficiency and infrastructure is the most progressive, equitable way for California to strengthen its resilience to drought and floods.

We respectfully ask that your administration and the legislature consider the following priorities:

Investments in recycled water projects: \$1.76 billion

Recycled water is a sustainable, local source of water that is nearly drought proof. The State Water Resources Control Board has a list of recycled water projects statewide totaling more than \$3 billion. A recent WaterReuse California survey indicates that more than \$10 billion in investments is needed for planned reuse projects statewide.

- **Statewide grants for small/medium scale water recycling: \$1 billion**
In the Bay Area, agencies are interested in completing recycled water investigations related to water quality and potential direct and indirect potable reuse infrastructure. Direct potable reuse is contingent on study and regulation now pending at the State Water Board along with significant planning, design, and construction costs. Indirect potable reuse infrastructure will require groundwater investigations to inform any design and implementation of potable reuse via groundwater recharge. Maintaining sustainable local water supply and groundwater storage is critical for reducing reliance on imported water, particularly during droughts. Pilot tests and demonstration facilities also need funding to explore institutional processes that could facilitate multi-agency implementation of potable reuse, educate the public, and evaluate appropriate treatment technologies. A State investment of \$1 billion would substantially accelerate the construction of much-needed recycled water projects to improve water resilience and drought preparation throughout California.

- **Large-scale regional water recycling: \$760 million**
Large-scale regional water recycling projects can scale the transition to a drought-resilient future at a lower per-unit cost. Within the Southern California region, the Metropolitan Water District of Southern California is partnering with the Los Angeles County Sanitation Districts in planning to construct a Regional Recycled Water Program that will purify treated wastewater to replenish groundwater basins, supply businesses, and augment Metropolitan's treated supply for Southern California. This new project would provide needed water quality and supply benefits for many underserved communities in Southern California and, at full-scale, could produce enough water to serve 500,000 households. A State investment of \$500 million to support the early design and construction of the project over multiple years would accelerate the program.

A comparable major water recycling project in the City of Los Angeles is being planned by LA Sanitation and the LA Department of Water and Power. A \$10 million grant allocation to accelerate the planning of this project would facilitate regional cooperation with the Metropolitan Water District and surrounding cities to increase the reliability and cost effectiveness of both regional water recycling projects.

In the Bay Area, the Santa Clara Valley Water District is partnering with local municipalities in planning a state of the art advanced wastewater purification facility, the Purified Water Project, that will be used to replenish

Silicon Valley's high priority groundwater basin that is stressed by extended droughts due to climate change and the resulting large reductions in available imported water. A \$250 million state investment would help support approximately one-third of the cost of the Purified Water Project that will provide drinking water and help prevent subsidence in this region of critical economic importance.

Regional resilience: \$1.25 billion

State assistance is needed to help local water managers meet the "Conservation as a Way of Life" objectives without disproportionately impacting under-resourced customers and exacerbating water affordability challenges. Investments in conservation, efficiency, interconnectivity, conjunctive use, groundwater storage, and additional local water supply development, including stormwater management and ocean and brackish water desalination, will also help advance the "All of the Above" concept of providing necessary tools and mechanisms for water managers to protect their communities and economies from future drought. Throughout Southern and Central California alone, there are more than \$20 billion in shovel-ready infrastructure projects that have been identified by water suppliers.

In the San Joaquin Valley, the Water Blueprint for the San Joaquin Valley is developing a solution to improve the regional resilience of the San Joaquin Valley and address the imbalance between water supply and demand, which will only grow in the future without significant action. This solution involves a combination of improved utilization of local San Joaquin Valley water supplies, increased reliability of surplus Delta water when available, and demand reduction through land repurposing and agricultural efficiency improvements and conservation.

Dam safety/Reservoir Operations: \$860 million

According to DWR's Division of Safety of Dams, 102 California dams are rated less-than-satisfactory. Of those, 84 dams had hazard classifications of significant or above, indicating risk to life or property should the dams fail. However, dam repair and rehabilitation are not an eligible use of State Revolving Funds or Proposition 1 dollars. Eligible grant projects should include, but not be limited to: dam safety projects at high hazard dams; new spillways and repairs at existing dams to facilitate implementation of Forecast Informed Reservoir Operations; and reservoir seismic retrofit projects.

Proposition 1 adjustments: \$645 million

Nearly a decade has passed since California voters approved \$2.7 billion to support the Water Storage Investment Program as part of Proposition 1.

However, due to inflation, the Proposition 1 grant awards no longer cover the full value of the public benefits these projects provide. An adjustment to the grant awards is needed to cover public benefits as originally intended by Proposition 1.

Subsidence repairs: \$585 million

We are appreciative of the preliminary investments made in 2021 (\$100 million) and proposed in the 2022-23 State Budget (\$100 million) towards the State's share for repair of arterial water supply canals that are vital components of the State Water Project and the federal Central Valley Project.

The California Aqueduct, Delta-Mendota Canal and Friant-Kern Canals are critically important facilities that convey Central Valley Project and State Water Project water throughout California. Significant subsidence along the alignment of these facilities has impaired Central Valley Project and State Water Project operations and deliveries, forcing higher operational power costs, increased outages, and major repairs. As California strives to boost the resilience of its water supply in the face of climate change impacts, we must adapt existing infrastructure to capture and convey as much water as possible during less frequent, more intense weather patterns. State funding will help address subsidence impacts that have substantially reduced the carrying capacity of these water delivery systems, increase resiliency during droughts, and advance groundwater recharge projects necessary to meet the groundwater sustainability goals established under state law.

A broad coalition of state and federal contractors support the creation of a 10-year, \$785 million Canal Conveyance Capacity Restoration Fund, to help restore critical conveyance systems, which would be matched by \$785 million from local water agencies and \$785 million of Federal funding. State funding to address subsidence will help keep water affordable, reduce carbon emissions, and create good paying jobs. We support allocation of the remaining \$585 million from the state budget surplus funds to fully fund the state's share of this critical infrastructure project and to leverage the federal government's full share of its \$785 million.

Clean drinking water: \$500 million

An estimated 7.5 million Californians rely on drinking water contaminated by Per- and Polyfluoroalkyl Substances (PFAS), a grouping of more than 4,500 chemicals that resist heat, oils, and water. Current scientific research suggests that exposure to high levels of certain PFAS may lead to adverse health outcomes. In 2019, the State Water Board developed a phased investigation action plan requiring testing of drinking water systems and site investigations at high-risk locations for PFAS. Regional water agencies and water suppliers need state

assistance to identify and remove PFAS and other contaminants of emerging concern and to provide drinking water to small systems across the state.

Urban flood resilience: \$500 million

Most of California's built urban environment is designed to quickly discharge stormwater into rivers, streams, and the ocean. However, much of this aging stormwater infrastructure needs repair and is not equipped to manage the increasingly severe precipitation events because of climate change. Greater investments in stormwater management can accomplish multiple goals, including flood resilience, drought resilience, and improved water quality for people and ecosystems. \$500 million in new state investment for urban stormwater management, including but not limited to DWR's Flood Subvention Program and State Water Board's Stormwater Grant Program, are needed to defend California's urban economy from increased flood risks and to provide cost share for priority U.S. Army Corps of Engineers projects.

Sea level rise resilience: \$300 million

The Ocean Protection Council estimates sea levels along the California coast will likely (66% probability) rise 13 inches by 2050 and 41 inches by 2100, placing critical infrastructure in many of California's coastal communities at risk of destruction. The current budget includes \$350 million for coastal wetland protection and adaptation projects. However, the Bay Area alone has identified over \$1.5 billion worth of projects, many shovel-ready. Science shows California only has about eight years to begin these nature-based adaptation projects until rising sea levels begins making them cost-prohibitive. We respectfully request adding an additional \$300 million to the Coastal Protection and Adaptation Program.

Data and innovation: \$55.35 million

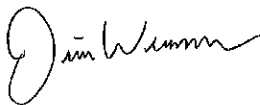
California's water challenges cannot be met without harnessing the power of data and California's innovation economy. In 2016, the legislature passed AB 1755 (Dodd) to move California's water data system to an open and transparent platform to. Open and transparent data will create opportunities to improve water supply reliability, science-based decision making, and other benefits. We support DWR's three-year, \$5.35 million Budget Change Proposal to lead the partner-agency team on the Consortium's Steering Committee. Additionally, advancing innovation in the water sector has the dual benefit of strengthening California's drought resilience while supporting the development of California's emerging water-technology sector. We support Senator Caballero's budget request for \$50 million to support implementing innovative water technologies.

Multi-Benefit Land Repurposing: \$50 million

Implementation of California's Sustainable Groundwater Management Act in critically overdrafted groundwater basins in the San Joaquin Valley is anticipated to result in the loss of a minimum of 500,000 acres of productive farmland. This funding would increase regional capacity to repurpose irrigated agricultural land to reduce reliance on groundwater while providing community health, economic well-being, water supply, habitat, renewable energy, and climate benefits.

Thank you for your leadership and for considering our views.

Sincerely,



Jim Wunderman
President & CEO
Bay Area Council



Charles Wilson
President & CEO
Southern California Water Coalition



Tracy Hernandez
Founding CEO
Los Angeles County BizFed



Justin Skarb
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Contra Costa Water District



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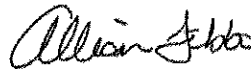
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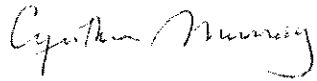
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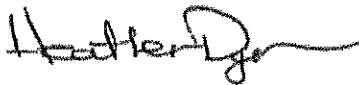
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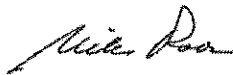
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Rick Callender
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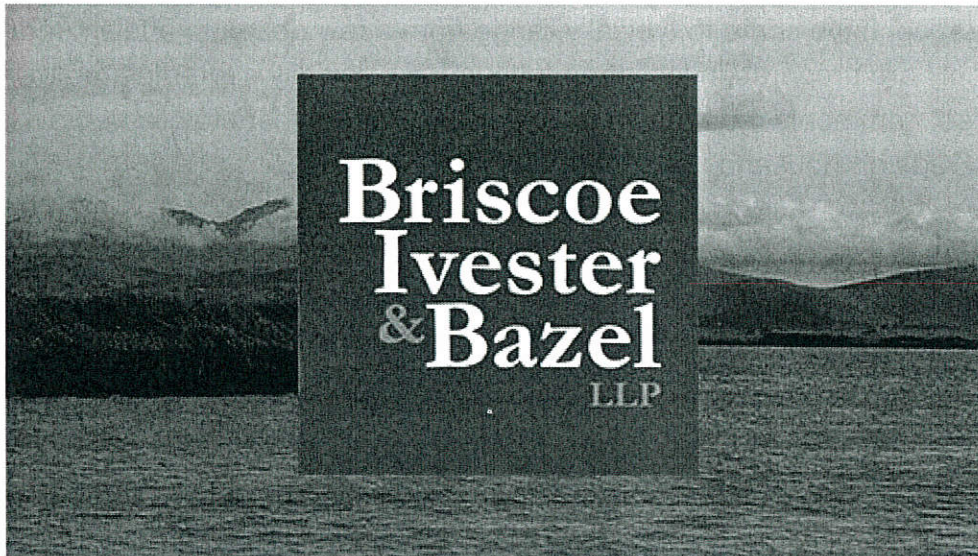
CC: Secretary Crowfoot, Secretary Blumenfeld

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New Federal Rules for Environmental Review of Projects Reverse Some Trump-Era Rules and Ease Consideration of Climate Change; More to Follow

B briscoelaw.net/new-federal-rules-for-environmental-review-of-projects-reverse-some-trump-era-rules-and-ease-consideration-of-climate-change

April 28, 2022



In what it dubs Phase I, the White House Council on Environmental Quality (CEQ) has reversed part of the regulations it adopted in 2020 and announced plans for a more leisurely comprehensive review to consider more sweeping changes in Phase II. The 2020 regulations overhauled how federal agencies review environmental impacts of projects under the National Environmental Policy Act (NEPA).

Concerned that those regulations could hinder consideration of climate change and unduly limit the scope of impacts and alternatives considered in such review, CEQ has amended the parts it deemed most pressing, largely restoring them as they had been since the 1970s, when NEPA was enacted.

Background

NEPA, signed by President Nixon in 1970, is the nation's most extensive environmental law. Other laws typically focus on specific resources (such as air, water, or land), specific activities (such as surface mining or releases of hazardous substances), or specific places, flora, or fauna (such as wilderness areas or endangered species). NEPA regulates the actions of all federal agencies in all of these areas. It requires federal agencies to determine, disclose, and consider the environmental implications of actions they propose to undertake,

fund, or permit. While NEPA directly governs only federal agencies, it effectively regulates many actions of private persons as well as state and local governments, since their activities often entail federal funding or approval.

Generally, NEPA calls on federal agencies to discuss the environmental effects of proposed projects and alternatives to such projects either in a relatively brief Environmental Assessment (EA) or, if the project may “significantly” affect the environment, in a much longer Environmental Impact Statement (EIS). EAs, intended to be 10 to 15 pages according to CEQ guidance, have come to typically range from a few dozen to a few hundred pages; they commonly are prepared in less than a year. EISs, initially contemplated to be completed in a year or so, commonly require two to five or even more years to prepare and amount to several hundreds or thousands of pages.

Over the last five decades, CEQ issued guidance and reports and courts rendered hundreds of decisions elaborating on various aspects of NEPA and implementing regulations, much of which has lent to increasing complexity of NEPA environmental review. Presidents Obama and Trump also issued memoranda and executive orders aiming to improve and modernize the NEPA process.

In 2020, CEQ issued regulations substantially revising its NEPA regulations, which had remained largely unchanged since 1978. The aim of the revisions was to simplify and shorten the environmental review process, limit the scope of environmental impacts and project alternatives to be considered in such review, and reduce the risks that agency decisions will be overturned by litigation.

Phase I Rule

On his first day in office, President Biden issued Executive Order 13990, which established various environmental policies and called on federal agencies to review regulations issued during the Trump Administration for consistency with those policies. CEQ then reviewed its 2020 NEPA regulations and decided on a two-phase approach to revise them. It proposed Phase I to promptly address certain pressing concerns and committed to work on Phase II to develop comprehensive revisions of the rest of its regulations.

On April 20, 2022, it adopted its **Phase I regulations** amending the 2020 regulations in three respects.

Scope of Environmental Effects. CEQ restored consideration of “direct,” “indirect,” and “cumulative” effects of projects, thus facilitating review of greenhouse gas emissions that contribute to climate change. The 2020 rule collapsed these three categories into a single term—“effects” that are “reasonably foreseeable” and have a close causal relationship to the project. In its new rule, CEQ restored the earlier three categories of effects that should be considered and removed some related limitations of the 2020 rule. It did not, though, require

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agencies to categorize effects in these separate categories and rather allowed agencies to holistically evaluate all such effects that are “reasonably foreseeable.” How agencies will interpret this “reasonably foreseeable” limitation, which is drawn from tort law principles limiting liability to actions that are the “proximate cause” of damages, remains to be seen. CEQ also made plain that NEPA review encompasses beneficial as well as detrimental effects of projects. It explained, for instance, that a utility-scale solar facility may have short-term direct adverse effects arising from construction as well as long-term indirect beneficial effects such as reductions in air pollution and GHG emissions arising from displacing more GHG-intensive energy sources like coal or natural gas.

Purpose and Need. Seeking to ensure agencies have sufficient flexibility and are not unduly constrained to prioritize an applicant's goals, CEQ eliminated a requirement to define a project's “purpose and need” in an EA or EIS based on the goals of an applicant and the scope of the agency's authority. The statement of purpose and need of a proposed agency action (e.g., issuance of a permit) serves to frame the discussion of issues in an EA or EIS and limit the reasonable range of alternatives that could feasibly fulfill that purpose and need. Under the new rule, an agency may define a project's purpose and need more broadly than merely meeting an applicant's goals, and take into account other factors such as carrying out policies and requirements established by law and the agency's statutory authority and programs.

Agency NEPA Regulations. In its new rule, CEQ freed federal agencies to adopt procedures for environmental review beyond those prescribed by CEQ. While CEQ's regulations apply to all federal agencies, NEPA also requires each agency (with CEQ's oversight) to adopt its own regulations to implement NEPA. Some agencies have basically adopted or parroted CEQ's regulations; others have tailored procedures for their particular programs. Seeking to eliminate inconsistencies between agency regulations, CEQ provided in its 2020 regulations that, with certain exceptions, an agency's NEPA regulations could not impose additional procedures beyond those set forth in CEQ's regulations, thus establishing a “ceiling” for agency procedures. Now thinking better of that, CEQ has removed that limitation, figuring that its oversight and review of each agency's adoption of implementing regulations suffices to avoid troublesome inconsistencies.

CEQ's Phase I rule takes effect on May 20, 2022.

What Is Next?

CEQ continues to review the remainder of the 2020 regulations and intends to propose comprehensive revisions in Phase II “in the coming months.” As a practical matter, adoption of a Phase II rule is likely a year or two away.

The 2020 regulations covered a lot of ground so there is much for CEQ to assess. Some of those regulations may be rescinded or reversed for policy reasons as is typical with a change of administrations. Some, though, provided common sense good-government reforms of CEQ's outdated 1978 regulations that may be widely supported. Revisions to simplify and shorten environmental review include:

Allowing agencies to rely on applicants or contractors to provide information and prepare environmental documents provided the agencies supervise them, independently evaluate their work, and ultimately take responsibility for the scope and contents of the environmental documents.

Allowing use of modern electronic technologies (like email) to communicate with applicants, other agencies, and the public and to circulate environmental documents.

Other revisions designed to reduce risks and uncertainties posed by litigation include:

Enhancing agencies' discretion in determining whether projects "significantly" affect the environment.

Prescribing requirements and standards for comments on EISs.

Reinforcing rules regarding exhaustion of administrative remedies by providing that comments must be provided within prescribed time periods, or otherwise be deemed unexhausted and forfeited.

Requiring agencies to include a summary of alternatives, information, and analyses in EISs and to certify that they have considered all of that, including information submitted by public commenters, in developing the EISs, and providing that EISs thus certified "are entitled to a presumption that the agency has considered the submitted alternatives, information, and analyses" in the EISs.

CEQ may see merit in some of the reforms and decide to retain or revise them.

In the meantime, CEQ also extended the one-year deadline in the 2020 regulations for agencies to adopt their own conforming regulations, adding two more years, until September 14, 2023. CEQ said it did not want agencies to waste time and effort developing regulations to conform to rules CEQ may well change.

Also, litigation challenging the validity of the 2020 regulations grinds on. Several pending suits were stayed following President Biden's issuance of EO 13990 directing agencies to reconsider Trump-era regulations. One was dismissed on grounds the plaintiffs lacked standing and the case was not yet ripe for judicial review, since no agency had adopted regulations conforming to the 2020 rule nor had any agency applied the rule to a specific project. An appeal of that dismissal is pending. Plaintiffs have argued that overturning the

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2020 rule and restoring the 1978 regulations remain important so, if CEQ's new Phase I and Phase II rules are challenged and set aside, CEQ would default to the 1978 regulations rather than the 2020 regulations.

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CalPERS Board Selects New Asset Allocation for Investment Portfolio, Keeps Discount Rate at 6.8%

November 15, 2021

Communications & Stakeholder Relations

Contact: Megan White, Information Officer
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Sacramento, Calif. – The CalPERS Board of Administration today selected a new asset allocation mix that will guide the fund’s investment portfolio for the next four years, while at the same time retaining the current 6.8% target it assumes those investments will earn over the long term. The board also approved adding 5% leverage to increase diversification.

The decision concludes a nearly yearlong comprehensive review of the pension system’s investment portfolio and actuarial liabilities. Known as the Asset Liability Management process (ALM), the board conducts the evaluation every four years.

“The actions we’ve taken today provide the framework for the long-term success of the CalPERS fund,” said Theresa Taylor, chair of the Investment Committee. “The portfolio we’ve selected incorporates a diverse mix of assets to help us achieve our investment return target of 6.8%. And by adding 5% leverage over time, we’ll better diversify the fund to protect against the impact of a serious drawdown during economic downturns.

“We’ve heard from stakeholders, public agency leaders, and investment experts throughout this year, and I’m proud of the work we did together on behalf of California’s public employees.”

As part of the ALM process, led by CalPERS’ investment, actuarial, and financial offices, the board examined different investment portfolios and their potential impact to the CalPERS fund. Each portfolio presented a different mix of assets and corresponding rate of expected return and risk volatility. Ultimately, the board selected the portfolio with expected volatility of 12.1% and a return of 6.8%. The discount rate has been at 6.8% since July, when a strong double-digit fiscal year investment return automatically triggered a reduction under the Funding Risk Mitigation Policy.

New Asset Mix		Current Asset Mix
42%	Global Equity	50%
30%	Fixed Income	28%
15%	Real Assets	13%
13%	Private Equity	8%
5%	Private Debt*	0%
0%	Liquidity	1%

The portfolio includes a 5% allocation to leverage. The new asset allocation takes effect July 1, 2022.

Notable changes for employers include a decrease in median total employer contribution rates, which includes both normal and unfunded actuarial liability costs, from less than 1% in miscellaneous plans to a decrease of more than 2% in some safety plans.

Employees hired on or after January 1, 2013, following the implementation of the Public Employees' Pension Reform Act (PEPRA), also will be affected. Most PEPRA employees will see median increases ranging from 1.2% in miscellaneous plans to 1.5% in safety plans in their total normal cost.

Contribution changes will take effect in fiscal year 2022-23 for state and schools plans, and FY 2023-24 for public agencies.

"We understand that the law will affect the contributions that PEPRA employees pay, and we'll make sure we're accurately communicating that information so they fully understand the change," said Marcie Frost, CalPERS CEO. "And we know that even the smallest change to our portfolio can have an effect on employers' bottom line, especially as they recover from a global health and economic crisis. "We're committed to working with our employer partners to make sure they have the resources necessary to plan their budgets and prepare for the future."

The ALM process included a review of demographic assumptions, including life expectancy, retirement and disability rates, and potential changes in job growth and salaries. The most recent findings show that life expectancies of healthy members at age 55 increased slightly from the last study in 2017.

Specifically, the study showed that men are expected to live roughly eight months longer and women approximately five months longer since the previous study. The study also projected higher rates of retirement for certain member groups, including the California Highway Patrol and other safety members, while some miscellaneous members experienced fewer.

For members, these actuarial changes impact two key areas: an increased retirement benefit amount of a few dollars for every \$1,000 of retirement allowance if they chose the option that provides a benefit for a spouse or beneficiary, and increased cost of service credit purchases for some types of service credit.

For additional information and FAQs, including how this decision impacts employers and members, visit our ALM webpage.

About CalPERS

For more than eight decades, CalPERS has built retirement and health security for state, school, and public agency members who invest their lifework in public service. Our pension fund serves more than 2 million members in the CalPERS retirement system and administers benefits for more than 1.5 million members and their families in our health program, making us the largest defined-benefit public pension in the U.S. CalPERS' total fund market value currently stands at approximately \$495 billion. For more information, visit www.calpers.ca.gov.

**The asset allocation chart was updated on 11/16/21.*

XIII.



MEMORANDUM

TO: SLDMWA BOARD OF DIRECTORS
FROM: DAN KEPPEL, EXECUTIVE DIRECTOR
SUBJECT: EXECUTIVE DIRECTOR'S REPORT
DATE: MAY 9, 2022

This memo is intended to keep you apprised as to what is happening behind the scenes on policy issues the Family Farm Alliance is engaged in. In the past month, much of our efforts have focused on engaging in Biden Administration rulemaking efforts, monitoring federal agency implementation of the Infrastructure Investment and Jobs Act, working with Congressional staff on upcoming hearings and draft legislation, 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.

UKRAINE, RUSSIA, DROUGHT AND GLOBAL FOOD INSECURITY

War in Ukraine, sanctions and destroyed ports could take nearly 30% of the world's grain supply out of production or off the market this year. Drought persists across Western and central North America, the heart of our wheat, barley, corn and soybean supply. U.S. Treasury Secretary Janet Yellen last month convened a meeting of top international financial officials to address a global food-security crisis, with the world policy leaders urging action to address dire consequences of record price surges caused by Russia's invasion of Ukraine. Ukraine and Russia are among the top five grain exporters, and the war poses a massive blow to both production and shipments, causing food prices to rise at their fastest pace yet (Bloomberg).

In the meantime, irrigated agriculture that was built to provide security at precisely this moment, is being dried up by our government. The Alliance board at its meetings in Reno last February directed contractors to work with others in an effort to find ways to improve communications and push back on those who demonize producers and Western irrigated agriculture. Here's some recent history and developments on this initiative.

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1. Wall Street Journal Ad

Producers in March caught in the crosshairs banded together to take out a full-page ad in the *Wall Street Journal*, sharing the viewpoint that the government's delivery of water to farmers is critical to ensuring a strong domestic food supply. Western agriculture has long wrestled with its ability to communicate with the people who take for granted that food will always be plentiful and available. In late March, an idea to sound the alarm of the pending food scarcity issue began with some Klamath Basin farmers. The idea seemed simple: tell the story in a full-page ad in a major newspaper to start the conversation with the unaware public.

It was a much bigger project than we could have imagined. The Alliance and California Farm Water Coalition (CFWC) teamed up with the Klamath interests and went to work. The paper chosen was the *Wall Street Journal* (WSJ). Circulation of that paper is the largest on Saturdays, about 900,000 copies in print. The digital version reaches even further, but the readership and reputation of the paper make it the ideal place to make an impact.

The ad ran on Saturday, April 2 and the QR code at the bottom of the ad led readers to a web page with more information about this dire situation and what must be done to correct it: <https://www.farmwater.org/food-security-and-water>. By clicking on the image of the ad you can be taken to its pdf link. The landing page links to a recent Alliance report – “A Wake-up Call to Our National Leaders from an American Rancher” – which further describes current and projected food shortages resulting from the Russia-Ukraine war. It also links to this report describing the remarkable contributions Western irrigated agriculture makes to the national economy, household income, and the ability for U.S. consumers to pay less of their disposable income on food than anywhere else in the world.

2. WSJ Next Steps

Consumers are aware of rising prices in the grocery store but connecting those concerns to Western farms and ranches and a lack of water is not yet on consumers' radars. That's our job. The WSJ ad was a great first step, but it was only a first step. Now we need to hammer that message home through social media and other outreach if we are to have any hope of the message penetrating. It's critical that the next phase keeps the focus on impact on consumers, not impact on farmers. We are part of a small working group that did the heavy lifting of raising the money for the WSJ ad, but without additional reinforcement of that message, it will not hit home.

Working with CFWC, efforts are underway to do some focused social media advertising, as a follow-up to the full-page ad. We ran Facebook and Instagram ads for two weeks, promoting it to audiences in Sacramento, San Francisco, Salem (OREGON), Olympia (WASHINGTON), Washington, D.C. and Los Angeles. The result was that the ad was seen by 230,000 people and generated 25,000 visits to the WSJ landing page. The average viewer was on the page a total of 4:18, which is an amazing result and shows how interested (concerned?) people are in this issue.

The second ad started last Friday. We added Portland (OREGON), Seattle and Spokane (WASHINGTON), and Colorado and Arizona to the audience mix.

Other related recent efforts include:

- We blasted out a good blog last month that draws further attention to this issue.
- Western Farm Press ran this story I authored: <https://www.farmprogress.com/commentary/food-supply-shouldnt-be-uncertainty>
- Alliance Director Paul Orme and I co-authored another guest opinion which the *Arizona Republic* published last week: "**Water Policy Threatens Our Food Supply**". The *Republic*, published in Phoenix, is circulated throughout Arizona and is the state's largest newspaper.
- The Alliance board last week authorized me to run a full-page ad in *The Arizona Capitol Times*, which is publishing an upcoming special Focus section that will be devoted entirely to water related topics. The ad is essentially a full-page reprint of the guest column co-authored by Paul Orme and me.
- Alliance Director Don Schwindt and I submitted a guest editorial to the *Colorado Sun* that links food security with the role Colorado River ag communities play. I learned last week that the *Sun* is going to publish this in the coming weeks.
- The Farm Bureau in Fresno County re-ran the story we wrote about food supply concerns for our April newsletter.

3. **NBC Nightly News Coverage of California Drought**

Two of our California producers and CFWC Executive Director Mike Wade were interviewed recently for **a segment that was reported on by Lester Holt on NBC Nightly News**. Central Valley producers Joe Del Bosque and Bill Diedrich joined Mike in some tightly scripted interviews that built upon our recent messaging regarding global unrest and inflated food prices. Mr. Wade was also interviewed by *The Daily Wire*, which ran **a story** about the Metropolitan Water District of Southern California board's announcement of a Water Shortage Emergency, putting forward an emergency program 6 million residents to restrict outdoor watering to 1 day per week.

4. **Growing Attention**

We certainly have the public's attention in a way we have not had in the past. As sad as the situation is, it provides us with a tremendous opportunity to deliver a message about the value of Western farms. It's an interesting approach. Our job this time around is to keep everything we say tightly focused on consumer impacts, not impacts on farmers. Many, many businesses are struggling with inflation, workforce issues, and more. Individual families are also struggling with inflation, gas prices, COVID, kids schooling, and general life issues. So, instead of making this about farmers, we've been trying to speak to the concerns of the national audience.

As reported further below, House Republicans this week are having an oversight forum examining how the ongoing Western drought contributes to skyrocketing grocery and electricity prices nationwide. Members will hear from witnesses across the country who are experiencing these impacts firsthand and further examine the need to implement short and long-term drought solutions for American consumers. I'll be testifying at that forum and will focus on the efforts we have been involved with.

BIDEN ADMINISTRATION

5. White House Releases Agency "Equity Plans"

The White House last month released agencies' equity plans, following up on an executive order that was issued on President Biden's first day in office. Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. The President's Order emphasized the "enormous human costs of systemic racism", persistent poverty, and other disparities, and directed the Federal Government to advance an ambitious "whole-of-government" equity agenda. In the time since the Executive Order was signed, over 90 federal agencies across the federal government, have mobilized in the past year to implement the Executive Order. Agencies conducted equity assessments of their agency's high-impact services, to uncover where systemic barriers to access may exist. Using those findings, agencies developed "Equity Action Plans" for addressing equity in their mission delivery.

Equity Action Plans were required to include accountability mechanisms and to identify success metrics and key milestones toward progress. These plans are part of a broader equity agenda, which also includes implementing the first-ever national strategy on gender equity and equality; working to ensure the federal government is a model for diversity equity, inclusion and accessibility in the workforce; delivering environmental justice through the Justice40 Initiative; and advancing LGBTQI+ civil rights.

a. Justice Department: New Environmental Justice Office

The Justice Department announced last week that it will create a new office focused on environmental justice. In addition to the office, the department also announced that it would use a new environmental justice strategy. Associate Attorney General Vanita Gupta said the department's environmental justice strategy would involve prioritizing enforcement of environmental laws and civil rights statutes. She also said it will direct the DOJ to prioritize cases that reduce environmental harm for overburdened communities.

b. Opposition to the Administration's Racial Equity Platform

As recently reported in *Greenwire*, the Biden administration is attempting to walk a fine line on this matter: They want to ensure that policies aid minority groups, but they also want to avoid legal pitfalls that could come by explicitly citing race as a factor for distributing federal cash. A U.S.

federal judge last June already blocked a part of the Biden administration's federal stimulus relief package that forgave agricultural debts to farmers of color. The Biden Justice Department declined to appeal the judge's order in that case. Former Trump administration aide Stephen Miller's America First legal group led the fight on that case and continues to barrage the Biden administration with legal challenges against its approach to racial equity.

6. White House CEQ: Final Phase I NEPA Rule Issued

The Biden White House Council on Environmental Quality (CEQ) has issued its final Phase 1 National Environmental Policy Act (NEPA) rule, restoring a series of rigorous review mandates that the Trump Administration eliminated in its rewrite of the rule, while pushing back on expected criticisms that the measure will create confusion and delay critical projects. The final rule is little changed from the draft rule CEQ proposed last year, when officials sought to restore NEPA requirements that agencies again assess "direct," "indirect" and "cumulative" effects, requirements the Trump Administration had stripped from previous regulations. The rule also requires agencies to "work with communities to develop and analyze alternative approaches that could minimize environmental and public health costs," and re-instates a provision that CEQ's rules are a floor, rather than a ceiling, for federal agencies' review.

The regulations that were finalized by CEQ were open for public comment in the Phase 1 notice of proposed rulemaking, published on October 7, 2021. The Alliance in November 2021 submitted a 13-page letter to CEQ that detailed opposition and provided alternative approaches to all three of these points. The Alliance position has been that NEPA should not be used as a vehicle to advance climate regulations that are outside the law's scope and original intent. Federal agencies implementing the requirements of NEPA should not engage – or be forced to engage – in costly and unnecessary assessments specific to a potential influence on or because of climate change. And, we do not need a flood of litigation that attempts to change NEPA into a global warming prevention statute.

Last month's rulemaking is the first step in a two-phase approach that CEQ is taking to reform and modernize the regulations that guide NEPA implementation. Over the coming months, CEQ will be proposing a Phase 2 NEPA rulemaking that will provide further improvements to the efficiency and effectiveness of environmental review processes and reflect the Administration's commitment to achieving environmental justice and confronting climate change.

7. Bipartisan Infrastructure Law (BIL) Implementation

a. OMB: 'Buy America' Memo

The White House Office of Management and Budget (OMB) has issued guidance for EPA and other agencies on how to interpret the new "Buy America" requirements in the BIL, although EPA and other agency guidance is expected soon to provide additional clarity to infrastructure project proponents concerned about inadequate domestic supplies of certain construction materials and

other items. The new 17-page guidance released by OMB is intended to assure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States,” said Shalanda Young, OMB Director.

Water utilities have expressed concerns to EPA about the “Buy America, Build America” provisions, noting that while they have experience complying with longstanding American iron and steel requirements to obtain EPA infrastructure funding. The drinking water industry is also struggling to understand the broader provisions in the BIL governing construction materials and manufactured items, which require a new learning curve. We’ve been working with some associates in the drinking water industry who have been heavily engaged with OMB on implementing this provision. We believe that the key effort is going to involve working with the federal agencies – including the Bureau of Reclamation - to ensure that they use their authority to issue waivers on a general applicability basis to avoid project delays or cost increases.

b. White House Releases BIL Guidance

The White House Office of Management and Budget (OMB) has released new guidance to help agencies implement last year's BIL. OMB's guidance directs agencies to hire new staff, appoint senior accountability officials and create equity teams. Agencies have been on a hiring spree related to the \$1.2 trillion law. The memo says the White House's goal is to create “a governance structure that will break down barriers and eliminate silos” by mandating coordination between agencies and the President's infrastructure task force. The memo also directs agency coordinators to consider equity concerns. That includes supporting access for rural communities to federal funding and working with tribal governments. President Joe Biden's Justice40 plan calls for spending 40 percent of climate-related dollars on environmental justice communities. Detractors of the guidance say they take away from state control over infrastructure spending.

c. USDA Invests \$420 Million in Watershed Infrastructure Projects

USDA last month announced it will invest \$420 million in 132 infrastructure projects in 31 states, including rehabilitating dams, flood prevention, and watershed restoration projects. The recent investments are funded by the BIL and build on a \$166 million investment announced earlier this year. The infrastructure announcement includes funding through two programs: the Watershed and Flood Prevention Operations (WFPO) Program provides technical and financial assistance for new watershed infrastructure, and the Watershed Rehabilitation Program (REHAB) upgrades existing USDA Natural Resources Conservation Service (NRCS) dams. In total, NRCS received \$918 million of BIL funding to allocate through its watershed programs. In addition to WFPO and REHAB, this includes funds for Emergency Watershed Program (EWP) to help communities recover from natural disasters. NRCS will continue to review additional requests and compile a third round of BIL watershed funding as funds are available. A full list of projects is available on [NRCS' Bipartisan Infrastructure Law webpage](#).

d. Bureau of Reclamation BIL Implementation

Reclamation a few weeks ago conducted a call on the BIL and also provided some information on the FY 2023 budget request. Bob Wolff walked through the President's budget request which provides \$1.270 billion to the Water and Related Resources account. The FY 2023 request is less than the enacted FY 2022 (\$1.7 billion) because the first Continuing Resolution for 2022 included a \$210 million emergency supplemental appropriation for fire and drought response, and because the Indian water rights settlements account has been moved to a Bureau of Indian Affairs account.

Approximately 2/3 of Reclamation's BIL funds rely on an application process (\$5.4 billion). In addition to the WaterSMART Water & Efficiency Grants announcement detailed below, there are other funding opportunities on the horizon:

- Environmental water resources projects (including CWMP Phase II) (2022)
- Large Scale Water Recycling (2022-2023)
- Water Marketing Strategy Grants (2022)
- Small Scale Water Storage (2022)
- Aquatic Ecosystems (FY 2023)

Reclamation and Interior are working through Build America and Buy America OMB Guidance that was released on April 18. As discussed previously, full guidance must be issued by DOI/BOR no later than May 14, 2022.

8. Other Developments at the Bureau of Reclamation

a. WaterSMART Water and Energy Efficiency Grants Programs

Reclamation has released the solicitation for the FY 2023 WaterSMART Water and Energy Efficiency Grants Program. This program support projects that result in quantifiable and sustained water savings, implement renewable energy components, and support broader sustainability benefits. Projects will conserve and use water more efficiently, increase the production of renewable energy, mitigate conflict risk in areas at a high risk of future water conflict, and accomplish other benefits that contribute to sustainability in the Western United States.

Eligible applicants are states, tribes, irrigation districts, water districts, any state, regional, or local authority whose members include one or more organizations with water or power delivery authority, and other organizations with water or power delivery authority located in the Western United States, as well as nonprofit conservation organizations working in partnership with the entities listed above. In FY 2023, an unspecified amount of funding is available to support projects of up to \$5 million. The new maximum award of \$5 million is a change from previous solicitations which capped awards at \$2 million. Applicants must be capable of cost sharing 50 percent or more of the total project costs. Project periods may be two or three years, depending on the funding type.

Applications are due July 28, 2022.

b. Reclamation Manual Update

Reclamation has announced that its Reclamation Manual website has been updated. Available for review until June 2, 2022 is the draft Real Property Disposal policy (CMP 11-03). To access the draft materials, visit <https://www.usbr.gov/recman/index.html>.

c. Suggested Categorical Exclusion Actions for the Bureau of Reclamation

The coming months will be crucial to ensure that implementation of the IJA is set up for success, delivering efficient and timely construction of water infrastructure, watershed health, and water conservation projects. The Alliance and Trout Unlimited – working through the Western Agriculture and Conservation Alliance (WACC) – recently helped lead the development of a letter requesting Reclamation to develop an informal, collaborative working group to look at all ways to achieve environmental compliance under NEPA. This could be accomplished through the development and creative, flexible, and predictable use of new and existing Categorical Exclusions (CEs) on appropriate water and conservation projects. Our letter also recommended some immediate actions Reclamation could take to adopt CEs that are already included in the Department of the Interior’s NEPA Manual of Existing Categorical Exclusions and utilized by other bureaus and offices.

9. Environmental Protection Agency (EPA): A New Plan to Address Water Pollution

EPA has released a new strategy that promotes a voluntary approach to remove nutrients polluting the nation’s waterways. Radhika Fox, EPA Assistant Administrator for Water released a nine-page memo that laid out steps the agency plans to take to combat nutrient loading to rivers and streams. The memo lays out a set of tools, increased engagement with the USDA and financial tools such as grants that EPA is considering helping states rein in nutrient pollution, including a new rule that allows states to add nutrient trading to water permits. Importantly, the memorandum strives to “deepen collaborative partnerships with agriculture” by collaborating with USDA leadership and expand engagements with agricultural stakeholders and highlight their successes. EPA in the guidance document makes clear it plans to lean more on the Clean Water Act to serve as an “incentive and backstop” for collaboration with states, utilizing Total Maximum Daily Loads in reducing nutrients entering water quality stressed water bodies. Some environmental groups have dismissed the plan as not doing enough to combat pollution.

DEVELOPMENTS IN CONGRESS

10. GOP Forum: How Western Drought Affects Every American

House Committee on Natural Resources Republicans on May 11 will host a forum examining how drought in the American West causes increased grocery prices for American families at a time

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when inflation is already skyrocketing. Committee Ranking Member Bruce Westerman has invited Republican Members to participate in an oversight forum examining how the ongoing western drought contributes to skyrocketing grocery and electricity prices nationwide. Members will hear from witnesses from across the country who are experiencing these impacts firsthand and further examine the need to implement short and long-term drought solutions for American consumers.

The hearing will start at 2:00 p.m. (Eastern) new Wednesday. It is a hybrid forum that will take place at the Capitol Visitor Center in D.C., where Members can join in person. Witnesses – to be selected by each Member – will participate virtually via Zoom. Since NWRA’s D.C. fly-in is scheduled for that same week, it is likely that several witnesses will have NWRA and/or Alliance ties. Committee staff last week advised me that I will be invited to provide the Family Farm Alliance perspective at the request of Ranking Member Westerman. This hearing will provide an ideal opportunity to capture some of the recent outreach work we’ve been doing on this matter, starting with the launch of the *Wall Street Journal* ad.

11. Alliance and Others Gear Up for 2023 Farm Bill

While the actual “brass tacks” work on drafting the next Farm Bill may not occur until 2023, farm and conservation groups are beginning to advance their own policies to take to Congress. Engaging in the development of the 2023 Farm Bill was identified as a Top 5 priority by the Family Farm Alliance Board of Directors at its 2022 planning meeting held on February 23 in Reno (NEVADA). Since our meeting in Reno last February, we have begun initial discussions on the Farm Bill, both internally and through our association with the Western Agriculture and Conservation Coalition. Every five years, Congress passes a Farm Bill, which encompasses a wide range of issues, including conservation, rural development, forestry, and nutrition. Since the 2018 Farm Bill will expire in 2023, Congress has begun to hold hearings and receive input about the next iteration of the bill. While additional Congressional field hearings could potentially be scheduled this year, actual brass tacks work on crafting the bill won’t start until 2023.”

The Alliance – through its engagement with the WACC – has worked closely on the last several farm bills, and the 2018 Farm Bill conservation title contains many provisions the WACC and the Alliance advocated for. The conservation title of the last farm bill was a good thing, and parts are due to the direct work of the Alliance and its agricultural and conservation allies. It reflects the growing trend in the West, where individual producers – working with irrigation districts, non-governmental organizations and state and federal partners - are performing large-scale projects that benefit the environment, improve on-farm water management, and provide a new cash stream that helps rural communities.

The WACC last month teed up a letter to the Senate Subcommittee on Agriculture Appropriations, asking for provide full funding in the FY23 agriculture appropriations bill for the Environmental Quality Incentives Program, Regional Conservation Partnership Program, Agricultural Conservation Easement Program, and the Watershed and Flood Prevention Operations Program. In seeking the fullest possible funding, we particularly asked appropriators to resist using the

accounts for these programs as banks to fund member non-agriculture committee interests. In the face of worsening drought, flood, and weather events that continue to impact critical working landscapes and communities, we believe these funds could be deployed more strategically through a combination of incentive structures and streamlined procurement processes that would drive funding to high impact projects much more quickly. These arguments will likely be advanced by the WACC as the 2023 Farm Bureau negotiations begin.

12. Coalition Letter Requesting Funding for S2S Forecast Pilot Study

The “Weather Research and Forecasting Innovation Act of 2017,” reauthorized in 2019 together with the National Integrated Drought Information System program, resulted in a NOAA report that specifically recommends a pilot project for winter S2S precipitation forecasts for water management in the Western U.S. Skillful subseasonal to seasonal (S2S) forecasts have the ability to provide state and local water managers with reliable extended precipitation outlooks. The pilot project would be modeled after NOAA’s hurricane forecasting improvement project which has successfully improved hurricane track forecasting. The letter - signed off by the Alliance and several other Western and national water organizations - was sent last week to a Senate appropriations subcommittee, requesting support for the \$15 million pilot program.

13. Senate EPW Committee Marks Up WRDA

The Senate Environment and Public Works (EPW) Committee last week marked up and adopted their *Water Resource Development Act (WRDA) of 2022*, " (S. 4137) legislation that includes climate, flood-control and ecosystem restoration provisions, which could help the Army Corps of Engineers (Corps) ability to deal with climate change, including sea-level rise, more intense flooding, and drought. WRDA legislation generally moves through Congress every two years and authorizes Corps flood control, navigation and ecosystem restoration projects. Committee Chair Tom Carper (D-DE) and Ranking Member Shelley Moore Capito (R-WV) have said their legislation builds on the recently passed \$1.2 trillion bipartisan infrastructure package and would authorize Corps projects in all 50 states. Here is a **17-page section-by-section summary** of the bill and a **2-page bill summary**.

Here are the sections we’ll be keeping an eye on as this legislation moves:

- SEC. 117. CORPS WESTERN WATER COOPERATIVE COMMITTEE.
- SEC. 118. UPDATES TO CERTAIN WATER CONTROL MANUALS.
- SEC. 134. WATER SUPPLY CONSERVATION.
- SEC. 141. COLUMBIA RIVER BASIN FLOOD RISK MANAGEMENT.
- SEC. 205. NEPA REPORTING.
- SEC. 214. WESTERN INFRASTRUCTURE STUDY.
- SEC. 341. ACEQUIAS IRRIGATION SYSTEMS.

We’ll continue to monitor this legislation as it moves through Congress.

ALLIANCE INITIATIVES

14. Sackett v. EPA....and other WOTUS News

Legal briefs on the merits were submitted on April 11 in *Sackett v. EPA*, the closely watched Supreme Court case that could determine the definition of “Waters of the United States” (WOTUS) under the Clean Water Act (CWA). In the case, the high court is set to determine whether the U.S. Court of Appeals for the 9th Circuit “set forth the proper test for determining whether wetlands are ‘waters of the United States’” under the CWA. That court referenced Justice Kennedy’s “significant nexus” test of jurisdictional waters, as opposed to the late-Justice Scalia’s “relatively permanent continuous flow” test. The Alliance board of directors at its February meeting in Reno authorized General Counsel Norm Semanko to work with other national agricultural interests to file an amicus brief in the Supreme Court review of the *Sackett* case this fall. The Alliance is joining in an “agriculture” brief, led by the American Farm Bureau (AFB).

Our brief – completed last month - generally explains how the uncertainly and broad scope of jurisdiction asserted by the agencies over the years have made it difficult for farmers to operate, that the agencies have failed to create a workable definition, and the need for SCOTUS to clearly define WOTUS. This brief will help push the Court in the right direction and hopefully get them to put appropriate guardrails on the agencies moving forward. Others in the “ag” coalition include the American Sheep Industry Association, National Pork Producers Council, U.S. Poultry & Egg Association, The Fertilizer Institute, National Corn Growers Association, National Cotton Council, The National Council of Farmers Cooperatives, American Soybean Association, United Egg Producers, American Sugar Alliance, USA Rice and National Association of Wheat Growers.

a. GOP Members of Congress and 25 State AGs File Briefs

Last month, 155 House Republicans and 46 Senators also filed an amicus brief in support of the petitioners in the pending U.S. Supreme Court case. On April 18, eleven Western state Attorneys General joined fourteen others in signing an amicus brief led by West Virginia Attorney General Patrick Morrisey (R). The attorneys general warned that the 9th Circuit decision would undermine congressional intent and urged the Supreme Court to reverse.

b. EPA Rulemaking Efforts

EPA is currently developing a “more durable” definition of WOTUS in an attempt to reflect the reality of diverse regional differences in waterbodies. But now that the Supreme Court agreed to hear the appeal in *Sackett v. United States*, Republican lawmakers and other supporters of the Trump-era WOTUS definition have urged EPA and the Corps to pause development of any new WOTUS definition until after the high court rules. EPA and the Corps announced in February that they plan to hold a series of virtual regional roundtables over the spring and summer to discuss regional differences in waterbodies. EPA Assistant Administrator Radhika Fox said at the time that the agencies, through the regional roundtables, “will work toward a shared understanding of

the challenges and opportunities to enhance WOTUS implementation to support public health, environmental protection, agricultural activity, and economic growth.” And Assistant Secretary of the Army for Civil Works Michael Connor said the Corps and EPA are “committed to gaining a better understanding of the various regional perspectives through these roundtables to develop an implementation approach that accounts for these diverse voices and regional variations.”

We will be represented on WOTUS Western Region roundtable, scheduled for June 16. Our thanks go out to California Farm Bureau for including us in their formal regional roundtable request. EPA and the Corps most recently proposed an interim WOTUS definition and took comment on it through February 7, 2022. The Alliance developed a formal comment letter on this matter. That proposed rule interprets WOTUS to mean the waters defined by a collection of Corps and EPA regulations referred to as the “1986 regulations,” with amendments to reflect the agencies’ interpretation of the statutory limits on the scope of WOTUS as informed by past Supreme Court decisions, including *Rapanos v. United States*. The agencies have said they plan a second “more durable” WOTUS rulemaking “that they anticipate proposing in the future” and “which would build upon the foundation of this proposed rule.”

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