Family Farm ALLIANCE SM

Protecting Water for Western Irrigated Agriculture

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Monthly Briefing

A Summary of the Alliance's Recent and Upcoming Activities and Important Water News

Alliance Sends WOTUS Comments to Feds

Proposed rule intends to clarify what are "Waters of the U.S."

The Family Farm Alliance earlier this month sent formal comments to the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) on the Trump Administration's proposed revised rule defining what "waters of the United States" (or WOTUS) are jurisdictional under the federal Clean Water Act (CWA).

This rulemaking seeks to clarify the long-standing confusion over this definition.

Over the years, such confusion has resulted in lengthy legislative and legal battles, including several cases before the U.S. Supreme Court since the CWA was enacted in the 1970s. The proposed rulemaking effectively lays out the full legal and regulatory history of the tortuous twists and turns that the interpretation of the WOTUS definition has taken over the decades and which has brought us to this point in time.

Waters of the Western U.S.—Gerber Reservoir, Oregon.

"The result is a rule which establishes a regulatory structure that moves importantly in the direction of bringing clarity to CWA regulation by establishing what categories meet the definition under WOTUS," said Alliance Executive Director Dan Keppen. "Just as importantly, it explains what does not."

Improved Certainty for Western Irrigated Agriculture

The proposed rule would provide a significant level of certainty with regard to what falls in the definition and what does not.

As the agencies indicated in the proposed rule: "traditional navigable waters, tributaries to those waters, certain ditches, certain lakes and ponds, impoundments of jurisdictional waters, and wetlands adjacent to jurisdictional waters would be federally regulated."

For those features that are not WOTUS, the proposed rule specifically clarifies that "waters of the United States" do not include features that flow only in response to precipitation. In the West, these would include ephemeral flows, dry washes, arroyos, and similar features. Groundwater, including groundwater drained through subsurface drainage systems are not WOTUS. Neither are certain ditches, prior converted cropland and artificially irrigated areas that would revert to upland if artificial irrigation ceases. In addition, the agencies are proposing to clarify and define the term "prior converted cropland" to improve regulatory predictability and clarity.

"These proposed actions are a positive development," said Mr. Keppen, whose sentiments were shared by many

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STORIES INSIDE……

Shining light on the need for modernized water infrastructure

Family Farm Alliance General Counsel Norm Semanko earlier this month addressed the House Committee on Natural Resources, Subcommittee on Water Oceans and Wildlife (WOW), where he testified on the state of water infrastructure and innovation in the Western U.S. Mr. Semanko appeared before the subcommittee in his capacity as the leader of the Water Law Practice Group for the Boise, Idaho law office of Parsons Behle & Latimer, where he serves as general counsel for several water user organizations, including the Alliance.

WOW Chairman Jared Huffman (D-CALIFORNIA) has said his goal as the new chair of the subcommittee was to "focus on the factual and scientific baseline for natural resources issues" in a series of hearings he is calling "WOW 101."

In addition to Mr. Semanko, witnesses included Mr. Dave Eggerton (Executive Director, Association of California Water Agencies), Mr. Vicente Sarmiento (President, Orange County Water District Board of Directors), and Ms. Ellen Hanak (Water Policy Center Director, Public Policy Institute of California).

Mr. Semanko's written testimony - based on his experience serving Western water organizations for a quarter century - underscored the critical importance of having sufficient infrastructure in place to optimize Western water supplies.

Family Farm Alliance general counsel Norm Semanko
(Photo courtesy of Idaho Business Review)

"When we do have good water years, there is insufficient storage available to take advantage of mother nature's generosity in the dry years that inevitably follow," he said.

The case for more water storage

The need is obvious, and this belief is shared by many in the West. The week before Mr. Semanko's appearance, the Family Farm Alliance – working with the California Farm Bureau Federation and Western Growers Association – transmitted a letter signed by over 100 national and Western agriculture and water organizations, calling upon Members of Congress to develop an infrastructure package that addresses water infrastructure needs for storage and conveyance.

"While water conservation, water efficiency, and water transfers can be important tools for addressing certain water supply challenges, these tools are limited and do not yield the quantities of water that storage facilities do," said Mr. Semanko. "Adequate water supplies for the future require supply enhancement measures – new and expanded water storage projects - that provide long-term solutions across the West."

The Family Farm Alliance in 2014 released a report that provides detailed answers to 20 frequently asked questions about new water storage projects.

"The need has only increased," since then, says Mr. Semanko. His written testimony includes several examples of potential new water storage, conveyance and recharge projects that have been proposed in California, Idaho and Washington.

"Now it is this generation's responsibility to provide the water infrastructure that future generations will rely upon," said Mr. Semanko. "There is no doubt we can do it. The question is whether we will."

Advocating for a Western water infrastructure package

In the weeks following Mr. Semanko's appearance on Capitol Hill, the Alliance worked with other Western water interests to make the water infrastructure issue front and center with Western members of Congress.

"In recent weeks, there has been strong focus and bipartisan attention on the Colorado River Drought Contingency Program legislation which passed Congress, and our groups would like to use that as momentum to create something on the infrastructure front," said Alliance Executive Director Dan Keppen. "This would be a West-wide effort, that would go beyond, but include, the Colorado River Basin states."

House Speaker Nancy Pelosi and Senate Minority Leader Chuck Schumer are scheduled to meet before the end of the month with President Donald Trump to discuss infrastructure. Speaker Pelosi said the plan "has to be at least $1 trillion."

"I would like it to be closer to $2 trillion," she said.

Speaker Pelosi is optimistic she can reach an agreement on infrastructure legislation with President Trump. Education, workforce training, broadband and water should be in the package, she says.

"There's plenty of areas of common ground," she said.

Please see Page 5 for a related story on the Colorado River Drought Contingency Plan legislation that was passed by and signed into law by President Trump earlier this month.

Supreme Court to Address Clean Water Act Groundwater Discharge

Alliance seeks to engage as "friend of the court"

The Supreme Court has agreed to hear what many believe may be the biggest environmental case of this year: a dispute over which types of pollution discharges trigger the Clean Water Act (CWA). The issue reached the high court in two different cases: *County of Maui, Hawaii v. Hawai'i Wildlife Fund* and *Kinder Morgan Energy Partners LP v. Upstate Forever*. The justices will hear the first case - *Maui* – which involves the discharge of municipal wastewater into injection wells. Environmentalists allege the County of Maui needed a CWA permit for the discharges because the wastewater eventually seeped through groundwater and ended up in the Pacific Ocean

Groundwater as a "conduit"

Circuit courts agreed with environmental groups in *Kinder Morgan* and *Maui* that the CWA— which governs the discharge of pollutants from discrete "point sources" into "waters of the United States" — applies even when the pollution migrates through groundwater before reaching a waterway that is subject to federal jurisdiction. The Supreme Court took no action on the *Kinder Morgan* dispute, and will likely resolve it after it decides the *Maui* case.

The U.S. Supreme Court **(Picasa 2.7 Photo)**

The outcome of the Maui case has significant potential impacts on irrigators and other water users. If ground water is considered a "conduit" to connected surface water for purposes of the Clean Water Act, then any water placed on the surface of the ground, that percolates into the ground, will be examined as a potential point source discharge of pollution. That could include canals, ponds, regulating reservoirs, drains, recharge sites, even farms - anything that results in water seeping into the ground.

Implications for Western Irrigated Agriculture

The Alliance board of directors earlier this month authorized joining an ag-centric *amicus* effort being led by the American Farm Bureau Federation in the Supreme Court *Maui* groundwater case, since this case has implications for irrigators. The Alliance joins seven other national agricultural organizations involved in the Farm Bureau effort, among them the National Cattlemen's Beef Association, National Corn Growers, The Fertilizer Institute and the Agricultural Retailers Association.

The Alliance and other parties involved in the amicus curiae ("friend of the court") effort are not parties to the *Maui* particular litigation but seek to advise the Supreme Court in respect to those matters of law that directly affect the case.

"This amicus effort is intended to protect routine agricultural operations from a potentially limitless expansion of the Clean Water Act National Pollution Discharge Elimination System (NPDES) program," said Norm Semanko (IDAHO), General Counsel for the Family Farm Alliance.

Mr. Semanko believes the upshot could be endless third-party lawsuits regarding the application and scope of ag- related exemptions in the Clean Water Act, whether Western irrigators are contributing pollutants to surface waters via a groundwater connection, and potentially NPDES point source discharge permits being required for some or all of these activities.

"If it can happen to Maui, it can happen to the rest of us," said Mr. Semanko.

EPA Stance

Meanwhile, the U.S. Environmental Protection Agency (EPA) earlier this month issued an Interpretive Statement to clarify the application of CWA permitting requirements to groundwater. The agency concluded that "releases of pollutants to groundwater are categorically excluded from the Act's permitting requirements because Congress explicitly left regulation of discharges to groundwater to the states and to EPA under other statutory authorities."

The Interpretive Statement is intended to guide states and EPA regions in future permitting decisions outside the 9th and 4th Circuits, where court decisions have applied an interpretation of the CWA that differs from EPA's guidance. The agency is soliciting additional public input on what may be needed to provide further clarity and regulatory certainty, with a 45-day comment period once the Interpretive Statement is published in the Federal Register. In a press release, EPA stated that they considered over 50,000 comments to their February 2018 request, and undertook a comprehensive review of prior agency statements as well as the text and legislative history of the CWA.

House Hearing Reviews Tribal Water Settlement Fund

House Natural Resources lawmakers held a hearing earlier this month on H.R. 1904, from Committee Chairman Raul Grijalva (D-ARIZONA), which would amend the Omnibus Public Land Management Act of 2009 to make the Reclamation Water Settlements Fund permanent. The fund established by 2009 legislation can be used starting in 2020 for funding Indian water rights settlements.

"Water is a basic necessity, and tribes shouldn't have to fight for access to basic necessities," Chairman Grijalva said. "This bill gives tribes the resources they need to build and improve their water systems, sustain cultural practices, improve health, welfare and agriculture, and help their economies grow."

The bill has a Senate companion, S. 886, introduced by Senator Tom Udall (D-NM).

"In the West and in Indian Country, these settlements play a critical role in communities' long-term economic sustainability," said Senator Udall. "This legislation will provide predictable and reliable funding for current and future Indian water rights settlements, curtailing the use of securing water rights through costly litigation, while protecting the Bureau of Reclamation's budget."

A canal on the Swinomish Reservation in Washington.
(Photo: Greg Corbolotti / U.S. Department of the Interior)

Tribal water settlements involve negotiations between tribes, the federal government, states, water districts, and private water users, among others, to determine specific terms of water allocation and use. Over the last 50 years, negotiated settlements have been the preferred course for many tribes because they are often less lengthy and costly than litigation.

Even after settlements are reached, tribes often cannot immediately get water delivered to their homelands without additional steps being taken to secure federal funding for water infrastructure. The Grijalva-Udall bill offers funding necessary to implement finalized settlements.

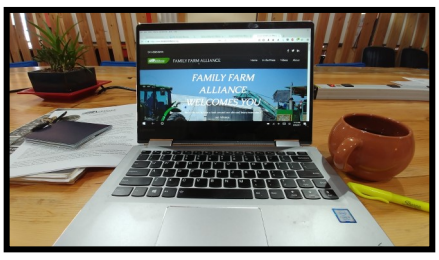
The Family Farm Alliance earlier this year provided qualified support for this bill because the organization has members in Arizona, Colorado and Idaho, in particular, who have a long history and ongoing interactions in Indian water rights settlement efforts.

"The Alliance supports the intent of this legislation, since water rights settlements will continue to move forward, with or without the fund, and future settlements that are authorized by Congress will hit the Bureau of Reclamation's budget even harder," said Alliance Executive Director Dan Keppen. "However, many of our members also believe there are more direct needs for Reclamation projects, such as addressing and modernizing aging water structures. We will continue to work with Congress to advance the necessary suite of funding, demand management and supply enhancement actions that are required to fairly and effectively address water challenges in the Western U.S."

Witnesses at the hearing testified on the critical role that funding plays in implementing authorized Indian water rights settlements, providing greater water security for both Indian and non-Indian communities. Alan Mikkelsen, Senior Advisor to the Secretary, Water and Western Resource Issues, Department of the Interior emphasized the Trump Administration's support for settlements. He pointed out that settlements can be costly, and that costs have increased over the years.

"Each of these settlements contain deadlines by which funding must be completed or the settlement fails and long standing, expensive, and disruptive litigation resumes," he said.

Congress created the Reclamation Water Settlement Fund in 2009 and directed $120 million into the Fund per year from 2020 through 2029. Most of that funding has already been committed to certain water rights settlements. The Indian Water Rights Settlement Extension Act will extend the Fund so that additional tribal water settlements can be implemented.



Change of E-Mail Address!

If you haven't done so already, please note that Alliance Executive Director Dan Keppen's email address has changed.
His new address is dan@familyfarmalliance.org.

President Trump Signs Colorado River Drought Bill into Law

President Trump earlier this month took a historic step to reduce risk on the Colorado River by signing bipartisan legislation authorizing the Department of the Interior to implement Drought Contingency Plans (DCPs) in the Upper and Lower Basins of the Colorado River. The House and Senate both passed identical bills authorizing a Colorado River Basin Drought Contingency Plan earlier in the month, which sent the legislation to the President's desk.

"All levels of government stepped up to address the Basin's worst drought in recorded history," said Bureau of Reclamation Commissioner Brenda Burman. "We've seen collaborative efforts among the seven Basin states, local water agencies, Tribes, Mexico and the Department of the Interior. Congress took prompt action on implementing legislation for the Drought Contingency Plans, and the President acted swiftly to sign that legislation into law. Adopting consensus-based DCPs is the best path toward safeguarding this critical water supply."

The bill is the culmination of years of years of negotiations between seven states in the Colorado River basin on how much each state can draw from the river if Lake Powell and Lake Mead drop to crisis levels. The bill also prevented actions that would have bypassed federal environmental laws. The votes came in rapid succession on the same day with little debate and each chamber approved the measure by acclimation.

Glen Canyon Dam on the Colorado River.
(Photo by Francisco Kjolseth/The Salt Lake Tribune)

"We have passed a solution that saves a river that...irrigates vast amounts of farmland, and encourages clean, emissions-free hydropower," said House Natural Resources Committee Ranking Member Rob Bishop (R-UTAH).

"By acting so quickly, the Lower Basin States will be able to immediately begin saving hundreds of thousands of acre-feet of water behind Hoover Dam, and this will dramatically reduce the risk of reaching critically low reservoir levels and ensure that Mexico's water contribution to Lake Mead will be made beginning next year," said Senator Martha McSally (R-ARIZONA).

DCP Elements and Need

Key elements of the plan for the Upper Basin states include: (1) protection of critical elevations at Lake Powell and help to assure continued compliance with the 1922 Colorado River Compact; and (2) authorization of storage for conserved water in the Upper Basin that could help establish the foundation for a Demand Management Program that may be developed in the future. The Lower Basin DCP is designed to: (1) have Arizona, California and Nevada contribute additional water to Lake Mead storage at predetermined elevations; and (2) create additional flexibility to incentivize additional voluntary conservation of water to be stored in Lake Mead.

"This action supports agriculture and protects the water supplies for 40 million people," said Commissioner Burman.

The need for the DCP is, in part, to address requirements of previous agreements. Under the existing usage guidelines that the basin states agreed to in 2007, if the level at Lake Mead dips below 1,075 feet it would trigger automatic water cuts across the Southwest, specifically to Arizona and Nevada. The drought plan also create incentives for storing water when the Lower Basin states believe that they could be removed from Lake Mead if water levels are dropping too low.

IID Sues Met

On the same day President Trump signed the Drought Contingency Plan into law, Imperial Irrigation District (IID) filed a petition in Los Angeles Superior Court alleging violations of the California Environmental Quality Act by the Metropolitan Water District of Southern California, and names the Coachella Valley, Palo Verde and Needles water districts as well. IID officials say the Salton Sea should have been included in the plan. It asks the court to suspend the Lower Basin DCP until a thorough environmental analysis has been completed.

"The logic in going forward without (us) was that the (drought plan) couldn't wait for the Salton Sea," Henry Martinez, IID general manager, said in a statement. "This legal challenge is going to put that logic to the test and the focus will now be where it should have been all along — at the Salton Sea."

Water Supply Outlook

The Colorado Basin River Forecast released earlier this month reported Lake Powell's elevation was 3569 feet with live storage of 9.02 million acre-feet (MAF), or 37% full. On the same date, Lake Mead in the Lower Basin was at an elevation of 1089 feet, holding 10.8 MAF, or 41% full. Under the 2007 Interim Guidelines, with current inflow projections, Reclamation anticipates normal releases from Lake Powell somewhere above 7.5 MAF and as much as 9 MAF. This would be a significant improvement over January 1 projections, and would likely forestall cuts in deliveries in the Lower Basin.

Senate Approps Subcommittee Considers Budget Proposals for Water

The Senate Appropriations Subcommittee on Energy and Water Development held a hearing earlier this month to review the Trump Administration's Fiscal Year (FY) 2020 budget requests for the U.S. Army Corps of Engineers (Corps) and the Bureau of Reclamation (Reclamation). The Trump Administration's FY 2020 budget request to Congress totals $4.75 trillion. The budget would renew the administration's call for $200 billion in infrastructure spending that, combined with private sector and local financing, would amount to $1 trillion for a wide range of projects.

The budget for the Corps provides $4.827 billion in funding for Civil Works, a $2.17 billion decrease from the FY 2019 enacted funding level. Of that amount, $1.011 billion is provided for flood and storm damage reduction and $187 million for aquatic ecosystem restoration.

Bureau of Reclamation FY 2020 Budget Highlights

The Department of Interior budget for FY 2020 provides $1.1 billion in funding for Reclamation, a $461 million decrease from the FY 2019 enacted funding level. Highlights of the proposed budget for Reclamation include:

- $1.1 billion for Reclamation's water resource programs to ensure that millions of customers continue to receive essential water and power;
- $19.9 million for WaterSMART, including water conservation grants and Title XVI water recycling reuse research grants, which support local innovation to stretch water supplies;
- $27.8 million for Rural Water projects, including $1.3 million to incentivize research through Reclamation's Water and Power Technology Prize Competition;
- Funding reductions for the Klamath River Basin, the Central Valley Project Restoration Fund, California Bay-Delta Restoration, the Central Valley Project; the Yakima River Basin Water Enhancement Project; the San Joaquin Restoration Program; the Endangered Species Recovery Implementation Program; and the WaterSMART Program, among others;
- Increased funding for the Dam Safety Program and the San Joaquin Restoration Fund, among others;
- Elimination of funding for Reclamation's Loan Program Account, among others.

Concerns with WIIN funding

Witnesses at the hearing included R.D. James (Assistant Secretary of the Army for Civil Works) Brenda Burman (Commissioner of Reclamation) and Tim Petty (Assistant Interior Department Secretary for Water and Science).

During the hearing, Committee Ranking Member Dianne Feinstein (D-CA) asked targeted questions to Commissioner Burman, regarding the *Water Infrastructure Improvements for the Nation Act of 2016* (WIIN) funding. She asked Commissioner Burman if she agreed that projects receiving WIIN Act funds could use more funding than what has been allocated to them in FY 2017 and FY 2018. Commissioner Burman responded that WIIN Act funding has been used to advance many projects, but that for storage, Reclamation has made recommendations to Congress for $75 million for use on storage projects largely in California, Washington, and Idaho. She stated that the $75 million included in the recommendation to Congress is critical for moving storage projects forward with feasibility studies and environment compliance.

When asked by Senator Feinstein what Congress can do to get this funding "moving", Commissioner Burman explained that while Congress has appropriated WIIN Act funds, the Act's process requires Reclamation to send Congress a recommendation for funding including a list of individual projects, which then Congress can include in legislation to release funding for such recommended projects. Reclamation sent their FY 2018 recommendation to Congress in February 2019.

"If Congress was willing to in a future bill, either in appropriations or not, to list those projects that [were included] in the recommendations we sent up, then we would be able to use that funding to complete feasibility studies and move to construction," the Commissioner responded.

Let the Appropriations Games Begin

The Administration's FY 2020 budget proposal is certain to face opposition from lawmakers in both parties, particularly with Democrats now in control of the House. Divided House Democrats earlier this month backed a plan that could help avert billions of dollars in proposed cuts to EPA and other domestic agencies in FY 2020. The House adopted, 219-201, a procedural "deeming" measure that would set an overall top line discretionary spending level to $1.295 trillion for the upcoming year. This equates to a 10% increase over across-the-board cuts, known as "sequester," due to kick in when the new fiscal year begins on October 1. The move will allow appropriators to begin writing their 12 annual spending bills now that Congress has returned from a two-week congressional recess that began April 15.

House Democrats deemed the spending cap, rather than voting on a more robust bill that would have raised spending restraints for the next two years, after their caucus had disagreements over the increased level of domestic spending. Progressives and liberals in the Democratic caucus wanted more than the proposed 5.7% increase over current levels for domestic programs and less for defense. A handful of conservative Democrats wanted to see more action toward balancing the budget.

"Congress will still need to pass legislation in order to raise the sequester caps that the Trump Administration has used to justify cutting EPA by about a third and making the reductions at the Energy and Interior departments in their proposed FY 2020 budgets," said Mark Limbaugh, the Family Farm Alliance's representative in Washington, D.C. "If lawmakers do not act, current budget law would force the automatic sequester cuts."

Committees in both chambers will continue to hold hearings to examine the Administration's proposals for each of the federal departments and agencies as they begin to work on FY 2020 appropriations bills.

USDA Moves Forward on Farm Bill Implementation

U.S. Secretary of Agriculture Sonny Perdue earlier this month announced the implementation status of the 2018 Farm Bill, an issue that the Family Farm Alliance board of directors identified as a top 2019 priority for the Alliance to engage in. Here are some key developments related to the conservation title, which the Alliance was heavily engaged in over the past two years:

- Agricultural Conservation Easement Program: USDA has published an announcement regarding the availability of $450 million for wetland and agricultural land easements that will help private landowners, tribes, land trusts and other groups wanting to restore and protect critical wetlands and protect agricultural lands and grasslands.
- Regional Conservation Partnership Program (RCPP): NRCS has determined that RCPP projects with agreements entered into prior to September 30, 2018, may continue to enter into new RCPP-CSP contracts with eligible producers, which will be administered under the new CSP authority.
- Environmental Quality Incentives Program (EQIP): This program operates through a continuous signup process. Applications may be submitted throughout the year.

NRCS is requesting public comments on how to improve conservation practice standards that support programs such as EQIP, which help producers cover part of the costs for implementing these practices.

"We are currently putting together some brief recommendations addressing areas of concern our members may have regarding implementation of conservation title programs," said Alliance Executive Director Dan Keppen. "If any of our members in the Western U.S. have any ideas you'd like to have us advance, please let me know as soon as possible".

President Trump signed this Farm Bill into law on December 20th, 2018 and the U.S. Department of Agriculture (USDA) promptly began implementation of key programs. USDA held several listening sessions with stakeholders and the public, specific to each agency's respective mission areas.

"At USDA we are implementing the 2018 Farm Bill as quickly as possible. We know the programs that are renewed and updated in this farm bill are critical to farmers, ranchers, and producers as they plan for the future," said Secretary Sonny Perdue. "Our mission areas have all held several public listening sessions, both formally and informally, to receive stakeholder input. Our goal is to have programs that function best for the people that we serve."

"Waters of the U.S." *(Continued from Page 1)*

others in American agriculture.

Concerns with the Proposed Rule

Some states and conservation organizations have grave concerns with the proposed rule.

The California State Water Quality Control Board earlier this month adopted a new regulation that established strict rules for virtually any human activity that could disrupt the natural flow of water, including farming, home building and highway construction. This was seen as a move to preempt the perceived proposed "weakening" of the Clean Water Act by the Trump Administration.

The Theodore Roosevelt Conservation Partnership (TRCP) – consisting of 59 non-profit organizations with a 28-member council - opposes the Trump agencies' proposed Waters of the United States redefinition.

"On behalf of sportsmen and women across the country, our partner organizations and their affiliates, the TRCP implores the agencies to withdraw the proposed rule and go back to the drawing board," wrote Melinda Kassen, Senior Counsel for TRCP. "[H]unters and anglers remain willing to work with the administration on drafting a new rule that meets the requirements above, without triggering the dramatic losses of vital aquatic and hydrological resources that this grossly inadequate and inappropriate proposal would."

The State of Oregon believes implementation of the rule will result in significant changes in how the nation protects water quality with consequences ranging from the loss of important protections to uneven protections across states.

"As a consequence, the proposed rule fails to achieve the objective of protecting the chemical, physical and biological integrity of Oregon's and our nation's waters," wrote Oregon Governor Kate Brown.

The argument for cooperative federalism

Some critics of the proposed rule believe it may impose unrealistic expectations on states that may not have the capacity to meet. Robert Lynch, an attorney who represents the Irrigation & Electrical Districts' Association of Arizona (IEDA), disagrees.

"The attacks on this process are essentially attacks on the competence of the states," says Mr. Lynch. "The law was passed to create a cooperative relationship between the federal government and the states. The delegation authority is the key to that relationship and it has, over the years, positioned the states to adequately address water quality issues under the federal Clean Water Act and the counterpart legislation in each of these states."

Mr. Lynch believes attacking the competency of the states or the willingness of the states to shoulder additional responsibility where necessary is contrary to the track record the CWA has had in implementation. He thinks these arguments should be ignored by the federal agencies.

"In short, we know that Arizona can step up to the plate if necessary to add to its point source discharge program as evidence would support," Mr. Lynch wrote in a letter to the federal agencies. "We see no reason to believe that the other states would ignore that responsibility either. We urge you to stay the course and to keep this exercise in cooperative federalism on track."

All public comments on the proposed WOTUS rule will be posted on the regulations.gov website, identified by Docket

Western Water Hot Spots

Bay-Delta Flow Objectives

The U.S. Department of Justice and the Department of the Interior (collectively, "Federal Government") on March 28 filed lawsuits in both federal and state court challenging the State Water Resources Control Board's (State Water Board) recent amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Amended Plan). According to the Sacramento law firm Somach Simmons & Dunn, the Amended Plan adopted by the State Water Board last December has touched off a series of lawsuits due to its controversial unimpaired flow requirements for the Lower San Joaquin River and its tributaries. The Amended Plan calls for 30 to 50 percent of the unimpaired flow of the Lower San Joaquin River for declining fish populations. The State Water Board proposes to assign responsibility for meeting these unimpaired flow objectives to water right holders through water rights proceedings and has suggested that water users could develop and submit agreements between water users to address how the new unimpaired flow objectives will be implemented. The Federal Government's lawsuits allege that the State Water Board violated the California Environmental Quality Act , and set the stage for another battle between the Federal Government and the State of California over how water resources should be managed in the Bay-Delta.

Central Valley Project Operations

The Bureau of Reclamation earlier this month announced water allocations for California's Central Valley Project (CVP). South-of-Delta agricultural water service contractors were surprised to learn their allocation was only increased to 65%. This minor increase was "astonishing" to CVP contractors, since precipitation has been well above average in 2019, and snowpack throughout the state was still more than 150% of average for this time of year.

"This announcement begs the question, what has to happen before south-of-Delta farmers served by the Central Valley Project can get a full supply?", Thomas Birmingham, Westlands Water District's general manager, observed.

Although Reclamation was able to meet full allocations for most CVP water users, the agency has had ongoing challenges in providing higher allocations for South-of-Delta water service contractors in recent decades. Even in above average water years, threatened and endangered species' requirements, storage limitations and lost conveyance capacity from land subsidence pose challenges on Reclamation's ability to export water South-of-Delta.

"The increased precipitation has allowed us to increase the amount of water we allocate to our South-of-Delta contractors. Our goal is to maximize the supply available to our contractors in the short term, while continuing to improve the reliability of CVP water supplies in the long run," said Mid-Pacific Regional Director Ernest Conant. "This is the type of year when additional storage and conveyance capacity would benefit the CVP."

Reclamation is currently engaged in several processes to improve its ability to meet the water supply needs of the CVP in an environmentally and economically sound manner. These include several efforts directed by President Trump's October 2018 Memorandum on Water in the West, such as the effort to develop new biological opinions for the long-term coordinated operations of the CVP and State Water Project. Meanwhile, the California Department of Water Resources (DWR) says the Trump Administration's water plans are not scientifically defensible and is developing its own plans on how Bay-Delta water will be managed.

Water Infrastructure Developments

Rep. John Garamendi (D-CALIFORNIA) introduced the *Sites Reservoir Protection Act* in March to provide federal support for the building of Sites Reservoir and other water infrastructures in the Central Valley. The act, also known as House Resolution 1453, would direct Reclamation to complete a feasibility study for the project, which aims to provide 1.8 million acre-feet of off-stream water storage capacity for California and help local communities prepare for droughts.

U.S. Rep. Kevin McCarthy's House Resolution 1600 - the *RAILWAY Act* - proposes to reclaim $3.5 billion that had been earmarked for California high-speed rail. It would shift that money toward projects outlined in the 2016 *Water Infrastructure Improvements for the Nation Act* (WIIN Act). That latter bill advanced but did not fully fund the Shasta Dam and Reservoir Enlargement Project, the Sites Reservoir Storage Project, the Upper San Joaquin River Basin Storage Project, the Los Vaqueros Reservoir Phase 2 Expansion Project and repairs to the Friant-Kern Canal.

In response to Governor Gavin Newsom's rejection of the controversial Delta twin tunnels project, the California DWR and Reclamation have requested and were granted a 60-day stay of hearings with the State Water Board.

Continued on Page 5

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Western Water Hot Spots (*Cont'd from Pg 8*)

Klamath River Basin

The Klamath Water Users Association (KWUA) announced earlier this month the selection of Paul Simmons as its new Executive Director. Simmons has worked for KWUA as its attorney for over two decades. KWUA is a non-profit private corporation that has represented Klamath Reclamation Project farmers and ranchers in its current form since 1953. The Klamath Project is home to over 1200 family farms and ranches and encompasses over 170,000 acres.

Irrigation water users in the Klamath Project also recently announced they will challenge the new federal rules restricting irrigation water supply for the Project. The plan, adopted by federal agencies on April 2, will be in effect for five years, and includes new rules and limitations based on the Endangered Species Act. The new limitations are based on protection for endangered suckers in Upper Klamath Lake and coho salmon in the Klamath River. Klamath Irrigation District has filed its lawsuit in federal district court in Oregon, and another will be filed jointly by KWUA, three districts and individual farmers.

Missouri River Basin Flooding

The Senate Environment and Public Works Committee held a field hearing earlier this month in Glenwood, Iowa on the devastating March 2019 flooding in the lower Missouri River basin. Representatives from the Corps of Engineers were present at the hearing, and explained that the Missour River flood event that began on March 13 was triggered by a bombogenesis, or 'bomb cyclone' rain event. This generated a significant amount of precipitation and brought warmer temperatures to an area that spanned central and western Nebraska, southeastern South Dakota, western Iowa, and a portion of northern Missouri and Kansas. The combination of rainfall and warmer temperatures quickly melted the plains snowpack, and thawed its frozen soils, resulting in rapid runoff and ice jams. This led to record discharges on a number of tributaries of the Missouri River, particularly the lower Platte, Elkhorn, and Niobrara Rivers, and in portions of the main stem of the Missouri River downstream of these tributaries.

Destroyed grain silos—a result of flooding—spill corn onto a muddy field on a farm near Bellevue (NEBRASKA). **(Photo courtesy of Nati Harnik / Rapid City Journal)**

Most of the rain fell downstream of the large dams on the mainstem Missouri River, which can capture runoff from approximately half of the Missouri River drainage basin. Many levees in portions of Iowa, Nebraska, Missouri, and Kansas, overtopped. At least 32 levee systems were overtopped or completely under water, and many other levees were damaged, some of them severely.

In North Dakota, the Red River of the North hit flood stage downstream of Fargo. In Colorado, near-record amounts of snow pack were recorded in mountain areas.

Joel Euler, an attorney from Doniphan County, Kansas testified at the hearing, emphasizing the need for flood control and questioning whether habitat work for species recovery acts to impede the flow of water during a flood event. He also testified regarding significant changes to the Corps long-term risk management adopted in collaboration with the U.S. Fish and Wildlife Service in 2004 to protect endangered and threatened species, under the Missouri River Recovery Program (MRRP).

"While Mother Nature plays a role in providing water for flooding, the fact is that the manner in which that water is managed by the Corps plays a major role in whether that water ultimately results in the type of flooding that has been devastating the Midwest since the adoption and implement of the MRRP in 2004," said Mr. Euler.

Missouri Farm Bureau President Blake Hurst, who farms near the Missouri River, also testified at the hearing, and urged that the lessons from this year's flooding should lead to changes about how the river is managed.

"Going forward, government agencies and stakeholders should engage in renewed discussion on how to enhance flood control throughout the system," said Mr. Hurst, who was the keynote speaker at the 2016 Family Farm Alliance annual conference in Las Vegas. "Serious consideration must be given to increased upstream flood control storage, whether that be in the mainstem dams or on tributary projects. Any proposed change in flood control storage must also keep an eye toward times of drought, which the Missouri River system is just as prone to."

Meanwhile, over 130 national farm organizations wrote congressional leaders later in the month calling on Congress to immediately pass a disaster aid package addressing the recent floods and other disasters, including hurricanes Florence and Michael, unprecedented wildfires, droughts, and other natural disasters.

"For many farmers, these events have meant near complete losses," the letter stated. "Further, while many producers benefited from the Market Facilitation Program assistance provided by the administration last fall, those producers who lost their crops due to natural disaster received no assistance."

The Senate left for two weeks this month without an agreement on a multi-billion dollar disaster aid package.

Continued on Page 10

Divided Senate Confirms Bernhardt as Secretary of the Interior

The Senate earlier this month confirmed David Longly Bernhardt as Interior Department Secretary by 56-41 vote. One independent, Sen. Angus King of Maine, joined three Democrats and all voting Republicans in support of Mr. Bernhardt, who has served for upward of a decade in a variety of increasingly influential Interior jobs.

"He has what it takes to lead this Department – coming from the West, he understands our public lands, has more experience at the Department than all but one of his predecessors, and has extensive knowledge of the issues that will come before him," said Senate Energy and Natural Resources (ENR) Chair, Lisa Murkowski (R-AK). "David Bernhardt has proven to be a strong partner not only for Alaska, but states all across the country. I'm pleased to continue working with him and his team on a wide range of energy, lands, and water-related issues."

Democrats voting for him were Sen. Martin Heinrich (NEW MEXICO), Sen. Krysten Sinema (ARIZONA) and Senate Energy and Natural Resources Committee ranking member Joe Manchin of West Virginia.

"Based on my extensive discussions with him and my review of his record, I believe Mr. Bernhardt is clearly qualified to serve as Secretary," said Senator Manchin. "He knows the Interior Department inside and out, and he is well versed on all of the issues that come before it. The opposition to Mr. Bernhardt's nomination comes not from any lack of knowledge or experience, but from questions about appearances of conflicts of interest arising from his law practice prior to being confirmed as Deputy Secretary."

Then-Deputy Interior Secretary David Bernhardt, delivering the keynote speech at the 2018 Family Farm Alliance Annual Conference in Reno , NV.

Currently the Acting Interior Secretary, as well as being the Department's Senate-confirmed Deputy since August 2017, the 49-year-old Bernhardt will replace the departed Interior Secretary Ryan Zinke. While Mr. Bernhardt enjoys more experience at the Interior Department than nearly all of his 52 predecessors as Secretary of the Interior, his confirmation also came over the objections of most Democrats and myriad environmental organizations.

The inspector general of the Interior Department has opened an investigation into Secretary David Bernhardt's past work on behalf of Westlands Water District (CALIFORNIA) and other organizations. The action follows requests from several Congressional Democrats, including Senate Minority Leader Sen. Chuck Schumer (New York), Sen. Elizabeth Warren (Massachusetts) and Sen. Richard Blumenthal (Connecticut). The senators asked Interior's inspector general to investigate, among other things, Bernhardt's involvement in proposals that would revise rules protecting the endangered delta smelt.

The Family Farm Alliance in March sent a formal letter of support for Mr. Bernhardt's confirmation to the Senate ENR Committee.

"We believe Mr. Bernhardt is a strong leader. He's a person with vision, common sense and high ethical standards," said Alliance Executive Director Dan Keppen. "We have worked with Mr. Bernhardt in the past on several Western water issues and, as a Westerner himself, believe he understands the unique challenges faced by rural ag producers living in states where the federal government is the majority landowner and plays a significant role in the management of land and water that can impact our members."

Western Water Hot Spots (*Cont'd from Page 9*)

Washington State

Washington Gov. Jay Inslee has declared a drought emergency for the upper Yakima Basin and the Okanogan and Methow valleys based on forecasts of low summer streamflows. *Capital Press* reports that the Okanogan River is forecast at 58% of normal streamflow for April through September, the Methow River at 72% of normal and the upper Yakima at 74%, according to state and federal projections. These areas are all prime agricultural regions in Washington, where the state threshold for drought is 75%.

"We must take steps to ensure that Washingtonians have the water they need to sustain their farms and livestock," Governor Inslee said.

Examples of those programs include growers activating emergency drought wells, farmers leasing water from senior water right holders willing to part with some of their supply for a price, and diverting water to dry streams for fish, said Urban Eberhart with the Kittitas Reclamation District.

"If this declaration wasn't in place, we would not be able to set up quickly enough," said Mr. Eberhart, who sits on the Family Farm Alliance Advisory Committee.

Bureau of Reclamation Hosts Stakeholder Workshops

Family Farm Alliance representatives and members were in the audience earlier this month in Denver to participate in interactive stakeholder workshops held at the Bureau of Reclamation's Federal Center. There were roughly 70 attendees who participated in the two-day workshop, including Alliance Director Clinton Pline (IDAHO), Executive Director Dan Keppen (OREGON), several Alliance Advisory Committee members, and many other Alliance irrigation district managers, engineers and attorneys. There were also representatives from the conservation community (The Nature Conservancy, National Audubon, and Theodore Roosevelt Conservation Partnership) and Southern California urban water representatives interested in Title XVI-type projects.

The workshops were led and organized by Deputy Commissioners Shelby Hagenauer and David Palumbo. Meeting topics included updates from Reclamation's leadership with discussions on:

Kristi Evans, Reclamation's Design, Engineering and Construction Program Manager, explains how Reclamation conducts feasibility studies at a stakeholder workshop held in Denver earlier this month.

- WaterSMART
- Economic Benefits and Cost Estimates in Reclamation Planning Studies
- Identifying, Designing, and Executing Repairs, Replacements, and Additions at Transferred Works Facilities
- Improving the Environmental Review Process
- Cultural Resources Compliance on Transferred Works

To see the PowerPoint presentations delivered in Denver for each one of these topics, go to https://www.usbr.gov/stakeholders/. All materials from the 2019 Bureau of Reclamation Stakeholders Workshop are available on this stakeholder website.

Transferred works are defined as those Reclamation project facilities where the Operations and Maintenance (O&M) of that facility is carried out by a non-Federal entity under the provisions of a formal O&M transfer contract. At times, uncoordinated changes between Reclamation and the non-Federal entity have resulted in adverse consequences. Reclamation has developed a draft Directive and Standard (D&S) intended to improve collaboration on these matters in the future. In response to stakeholder feedback and discussion at the Denver Workshop, the Reclamation Manual D&S - "Substantial Changes on Transferred Works, Bureau of Reclamation Facilities" (CMP 10-05) - has been reposted on the Reclamation Manual website for an additional 3-week external comment review period. You can access the posting using the following link: https://www.usbr.gov/recman/drafts/cmp10-05webdraft.pdf

Comments on this draft release are due no later than May 10, 2019 and should be submitted to Katharine Dahm at kdahm@usbr.gov.

A Big Thank You to Our New and Supporting Members!

JANUARY-MARCH 2019

CHAMPION ($10,000 and Above)

Banta-Carbona Irrigation District (CA) South Valley Water Association (CA)

ADVOCATE ($5,000 - $9,999)

Arvin-Edison Water Storage District (CA) Central Nebraska Public Power and Irrigation District
Friant Water Authority (CA)
Idaho Water Users Association Oregon Water Resources Congress
San Luis Canal Company (CA) Southwestern Water Conservation District (CO)
Stone Land Company (CA) Wilbur-Ellis (CA)

A Big Thank You to Our New and Supporting Members!

JANUARY-MARCH 2019 (Continued from Page 11)

DEFENDER ($1,000-$4,999)

Agri Business and Water Council of Arizona Association of California Water Agencies
Bill Diedrich (CA) Dolores Water Conservancy District (CO)
Fremont-Madison ID (ID) Kings River Water Association (CA)
Kittitas Reclamation District (WA) Langell Valley Irrigation District (OR)
Orange Cove Irrigation District (CA) Pathfinder Irrigation District (NE)
Poe Valley Improvement District (OR) Salt River Project (AZ)
Santa Ynez River Water Conservation District 1 (CA)
Southeastern Colorado Water Conservancy District Tulelake Irrigation District (CA)
Upper Arkansas Water Conservancy District (CO) Yuma County Water Users Association (AZ)

PARTNER ($500-$999)

Bailey Brothers (CA) Barncastle Law Firm (NM) Britz, Inc. (CA) Burley Irrigation District (ID)
Carlsbad Irrigation District (NM) Central Colorado Water Conservancy District
Colorado River Water Conservation District (CO) Farm Credit of New Mexico
Four States Irrigation Council (CO) Jordan Ramis PC (OR) K-Cubed, LLC (OR)
Kansas-Bostwick Irrigation District (KS) Lower South Platte Water Conservancy District (CO)
Joe Mahaffrey (CO) Parreira Almond Processing (CA) Pioneer Irrigation District (ID)
Rubicon Water (CO) Ryan Family Farms (CA) Salopek 6U Farms (NM)
Salopek Foundation (NM) Stanfield Irrigation District (OR)
Uncompahgre Valley Water Users Association (CO) Walla Walla River Irrigation District (OR)
Western Canal Water District (CA)

SUPPORTER ($250—$499)

Arizona Cotton Growers Association Colorado River Energy Distributors Association (AZ)
Columbia Basin Development League (WA) Emprasas Del Bosque (CA) ERO Resources Corp. (ID)
Falls Irrigation Company (ID) Midge Graybeal (OR) Frank Hammerich (OR)
Hermiston Irrigation District (OR) Kaweah Delta Water Conservation District (CA)
Love Farms (OR) Mason, Robbins, Browning & Godwin (CA) Midland Tractor (CA)
Clinton Pline (ID) Seus Family Farms (CA) State of Idaho Water District #63 Tempe Farming (AZ)
Tumalo Irrigation District (OR) Weber River Water Users (UT) Water Resources Consulting (AZ)

DONOR SUPPORT

Make your tax-deductible gift to the Alliance today! Grassroots membership is vital to our organization. Thank you in advance for your loyal support. If you would like further info, please contact Dan Keppen at dan@familyfarmalliance.org, or visit our website: www.familyfarmalliance.org.

Contributions can also be mailed directly to: Family Farm Alliance 22895 S. Dickenson Avenue Riverdale, CA 93656.