

# Monthly Briefing

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

## Western Agriculture Struggles to Rebound As American COVID-19 Deaths Surpass 100,000

Western U.S. agriculture is facing one of its biggest crises since the Great Depression, as the COVID-19 pandemic has impacted markets, disrupted the food supply chain, collapsed commodity prices, and intensified labor challenges.

"Rural Western economies are staggering from government actions intended to limit the spread of the virus," said Family Farm Alliance executive director Dan Keppen. "Unfortunately, these actions have affected the food supply chain in our country and around the globe."

Since January 22, 2020 the United States has reported over 1.6 million cases, according to Johns Hopkins University. President Trump recently noted on Twitter over 100,000 Americans have died due to the

coronavirus, calling it a "very sad milestone."



*Volunteers assembling a display of 2,000 white crosses, which will play a critical symbolic role in a public water rally scheduled for May 29 in Klamath Falls, OR. Klamath producers this summer are saddled with a severe lack of irrigation water, a high level of uncertainty, and COVID-19 impacts on themselves, the workforce and markets. See related story, Page 5. Photo courtesy of Shut Down & Fed Up.*

Globally, over 5.5 million people have caught the virus and it has killed over 350,000. However, in the U.S. and many other countries, the number of new cases confirmed each day is on a downward trend.

U.S. workers filed 2.1 million new unemployment claims last week, the Department of Labor reported. The ten-week total for unemployment claims reached 40.8 million, according to the Department of Labor. This suggests about a quarter of the workforce has lost jobs during the coronavirus pandemic.

Tension is growing in many Western states, as most rural areas have shown significantly lower numbers of COVID-19 cases, and residents in those areas are pushing

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## **COVID-19 Food Service and Ag Impacts (*Cont'd from Pg. 1*)**

hard to lift shelter in place and accessibility requirements, in an effort to revive rural economies that are staggering from government actions intended to limit the spread of the virus.

### **Impacts to Western Farmers and Ranchers**

The new COVID-19 pandemic has hit the agriculture sector hard in recent months, due primarily to loss of markets, disruptions in the food supply chain, collapse in commodity prices, and labor challenges.

"Whatever hit consumers have taken, I would argue that farmers have taken an even bigger hit," said Jayson Lusk, who heads the Department of Agricultural Economics at Purdue University.

The livestock sector has been hit especially hard. Producers began reducing herds when restaurants started to close in late March. With restaurants shuttered amid the coronavirus pandemic, the market is disappearing for sheep, cattle, and pork producers.

The beef and pork markets have been further disrupted by the closure of more than a dozen processing plants across North America due to significant COVID-19 outbreaks among workers. Ten of the largest beef packing plants process about 60% of all cattle, and roughly a dozen of the largest pork packing plants process around 60% of all hogs. So, when even one of these plants goes out of commission, it imparts a significant impact on the industry as a whole. Beef processing capacity is currently down by more than 10 percent and pork by as much as 25 percent, industry leaders say.

Dairy producers have been dumping millions of gallons of milk over the past month. With the sudden drop in the wholesale, food-service market resulting from the closure of schools and restaurants, dairy processing plants have yet to catch up with the packaging and logistical changes that must come with a massive shift in demand for dairy products at grocery stores and other retail outlets.

California farmer and former State Agriculture Secretary A.G. Kawamura addressed the massive impacts to the food supply chain in a recent call held among world food industry leaders in anticipation of the World Food Summit, set for September 2021 in New York.

"It is quite possible that the greater crisis in the making is not the pandemic, but the slowly accelerating collapse of multiple sectors of the global food chain," said Mr. Kawamura, who co-chairs Solutions for the Land, an organization that works to promote innovative strategies for sustainable agricultural systems. "He emphasized that the agriculture sector's response to the growing crisis will dictate "how many lives and livelihoods will be impacted in the months and years ahead."

On the ground in several Western states, farmers and ranchers must now contend with new regulations intended to limit outbreaks in agricultural fields, orchards, and labor camps. For example, in Washington state, new emergency rules adopted earlier this month regarding temporary farm-worker housing are intended to help increase worker safety and reduce the spread of COVID-19. The rules detail specific steps required at farms where temporary workers live in licensed temporary housing facilities.

In Oregon, the state's Occupational Health and Safety

Administration, issued a temporary rule April 29 that, among other provisions, requires farms to provide more portable toilets and handwashing stations for workers while keeping beds 6 feet apart in housing units. However, a survey conducted by the Oregon Farm Bureau indicates the rule could displace thousands of workers from on-farm housing and cost farmers thousands of dollars more to meet all conditions.

"Many farms will not survive the cumulative weight of these unattainable rules, which are more burdensome than any set for other sectors of Oregon's economy," Oregon Farm Bureau said in a public statement.

### **Trump Administration**

President Trump in the past month has directed numerous actions intended to address impacts facing a sector that helped get him into the White House: American agriculture. Earlier this month, he signed Executive Order 13924 ordering federal agencies to roll back or change regulations "that may inhibit economic recovery" in order to boost the economy impacted by the COVID-19 pandemic.

"The order does not provide specific instructions but is a blanket message across the U.S. government to help the economy recover by easing regulations," said Mark Limbaugh, the Family Farm Alliance's representative in Washington, D.C. "Federal agencies have already been implementing the Administration's efforts to deregulate for several years."

### **Strengthening U.S. Food Supply Chain Protections**

President Trump in late April invoked the 1950 Defense Production Act and ordered meat processing plants to stay open to protect the nation's food supply. U.S. farmers say they still need importing countries, including China, to buy their pork.

"There's enough meat for all channels if we could get these plants back up and rolling," Brian Duncan, a hog farmer and vice president of the Illinois Farm Bureau, recently told *Bloomberg*.

The USDA and Food and Drug Administration (FDA) earlier this month announced a Memorandum of Understanding (MOU) to help prevent interruptions at FDA-regulated food facilities, including fruit and vegetable processing. The MOU creates a process for the two agencies to make determinations about circumstances in which the USDA could exercise its authority under the Defense Production Act (DPA) with regard to certain domestic food resource facilities that manufacture, process, pack, or hold foods, as well as to those that grow or harvest food that fall within the FDA's jurisdiction.

USDA Secretary Sonny Perdue recently noted that he thinks high food prices will level out as school, restaurants, meatpacking plants and other businesses come back online.

"I don't think we need to look at doing different things in our food supply chain," he told *Politico*.

### **Farmers to Families Food Box Program**

USDA's Farmers to Families Food Box program is part-

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## Homeland Security Recognizes Ag as Critical (*Cont'd from Pg 2*)

nering with regional and local distributors whose workforces have been significantly impacted by the closure of many restaurants, hotels, and other food service entities, to purchase \$3 billion in fresh produce, dairy, and meat and deliver boxes to Americans in need.

USDA, through the Farm Service Agency (FSA) is now accepting applications from agricultural producers who have suffered losses.

Ivanka Trump, the president's daughter/adviser recently joined Secretary Perdue at a producer distribution center in Maryland to mark the launch of the new program.

"I'm proud that the majority of the recipients are small and regional food suppliers who prioritize smaller farms and nonprofits in their bids," Ms. Trump said at the event.

Some in the produce industry have expressed concern that the list of distributors includes unknown entities with no previous connection to the industry and/or no established infrastructure to carry out the contracts they were awarded. Other distributors are already making the program work.

"We are honored to be chosen for the USDA Families First Coronavirus Response Act," the Pacific Coast Fruit Company (PCFCo.) said in a public statement. "Family is extremely important to our culture here at Pacific Coast Fruit Company. By being awarded this generous grant we are able to help support multiple families all across Oregon, Washington, Idaho, and California during this trying time."

Altogether, PCFCo. will box 12 million pounds of fresh fruits and vegetables and 8 million pounds of dairy, eggs, and protein. Nonprofit partners will help get the boxes to where they are needed most in local communities across the region. In total, PCFCo. is preparing 810,000 boxes beginning May 18th through June 30th, reaching 135,000 people every week, including food insecure families who need it most.

### Injury Disaster Loan Program for Ag Producers

Agricultural producers, for the first time, are now eligible for the Small Business Administration (SBA)'s Economic Injury Disaster Loan (EIDL) and EIDL Advance programs.

"America's farmers, ranchers, and producers need the same help that other American businesses need during this unprecedented time," said Secretary Perdue. "This significant new authority signed by President Trump will make a tremendous difference for America's agricultural community."

SBA's EIDL portal has been closed since April 15. However, the Agency was able to reopen the portal, in a limited capacity, as a result of funding authorized by Congress through the *Paycheck Protection Program and Healthcare*

*Enhancement Act*. The legislation, which was signed into law by the President in late April, provided additional critical funding for farmers and ranchers affected by the COVID-19 pandemic.



***Pacific Coast Fruit Company (OREGON) was awarded a contract from the United States Department of Agriculture (USDA) for the production of 810,000 produce and dairy boxes, working with local non-profits on the ground to distribute to families in need across Oregon, Washington, Idaho, and California. Photo Source: PCFCo.***

### Direct Payments

Secretary Perdue recently announced details of the USDA's Coronavirus Food Assistance Program (CFAP), which will provide up to \$16 billion in direct payments to deliver relief to America's farmers and ranchers impacted by the coronavirus pandemic. Beginning May 26, USDA, through the FSA, will be accepting applications from agricultural producers who have suffered losses. CFAP provides vital financial assistance to producers of agricultural commodities

who have suffered a five-percent-or-greater price decline due to COVID-19 and face additional significant marketing costs as a result of lower demand, surplus production, and disruptions to shipping patterns and the orderly marketing of commodities.

USDA's announcement drew praise from some lawmakers and criticism from others.

Organizations representing small and first-time farmers said the program's details are geared toward bigger, more successful farms, despite some agency efforts to distribute aid more equitably.

"We are deeply concerned that the CFAP program will not help farmers who rely primarily on direct sales to consumers," said Ben Feldman, executive director of the Farmers Market Coalition, a nonprofit group based in California.

The announcement won praise from Senate Agriculture Committee Chairman Pat Roberts.

"I thank President Trump and Secretary Perdue for their efforts to help our farmers, ranchers, and growers manage their operations during these unprecedented times," said Senator Roberts (R-KANSAS).

Farmers and ranchers will receive direct support, drawn from two possible funding sources. The first source of funding is \$9.5 billion in appropriated funding provided in the CARES Act to compensate farmers for losses due to price declines that occurred between mid-January 2020, and mid-April 2020 and provides support for specialty crops for product that had been shipped from the farm between the same time period but subsequently spoiled due to loss of marketing channels. The second funding source uses the Commodity Credit Corporation Charter Act to compensate producers for \$6.5 billion in losses due to on-going market disruptions.

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## COVID-19 relief packages signed into law (*Cont'd from Pg 3*)

"We applaud the announcement of a direct payment program for fruit and vegetable growers," said Tom Stenzel, President of the United Fresh Produce Association.

### Loan Guarantees

Secretary Perdue announced that USDA is making available up to \$1 billion in loan guarantees to help rural businesses meet their working capital needs during the coronavirus pandemic. Additionally, agricultural producers that are not eligible for FSA loans may receive funding under USDA Business & Industry (B&I) CARES Act Program provisions included in the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

"Under the leadership of President Trump, USDA is committed to being a strong partner to rural businesses and agricultural producers and being a strong supporter of all aspects of the rural economy," Secretary Perdue said. "Ensuring more rural agricultural producers are able to gain access to much-needed capital in these unprecedented times is a cornerstone of that commitment."

B&I CARES Act Program loans must be used as working capital to prevent, prepare for or respond to the effects of the coronavirus pandemic. The loans may be used only to support rural businesses, including agricultural producers, that were in operation on Feb. 15, 2020.

### **Congress**

The House of Representatives earlier this month passed the *HEROES Act* (H.R. 6800), a \$3 trillion coronavirus response package introduced by House Democrats, by a vote of 208-199, with one Republican voting in favor and 14 Democrats voting against. The legislation would provide nearly \$1 trillion in relief for state and local governments, including \$375 million in direct aid to *all* local governments via a new State and Local Coronavirus Relief Fund. The *HEROES Act* would also allow local governments to receive tax credits to cover the cost of providing the paid sick and paid family leave programs mandated by the Families *First Coronavirus Relief Act* and would make lost revenue an eligible use of *CARES Act* Coronavirus Relief Funds. In addition, the legislation includes \$5.5 billion for Lifeline and E-Rate funds to keep low-income households and students connected to high-speed Internet and provides additional funding for these programs.

House Speaker Nancy Pelosi (D-CALIFORNIA) indicated she is open to negotiating the details of the *HEROES Act*, but Senate Republicans are in no rush to approve a fourth coronavirus response package and currently have no plans to introduce their own legislative proposal. Senate GOP Leadership have called the House bill "unserious" and a "Democratic wish list". Senate Majority Leader Mitch McConnell (R-KY) and the Trump Administration have expressed objections to taking

up another COVID-19 relief package right now, saying there has not been enough time since the \$2 trillion *CARES Act* was enacted in March to determine whether new legislation is needed or necessary.

"In terms of what the timing would look like, I suspect that doesn't happen until sometime after Memorial Day," said Senate Majority Whip John Thune (R-SOUTH DAKOTA).

"If the economy continues the momentum that we're beginning to see over the last couple of weeks of data, then I think that one might conclude that the stimulus we've already passed is enough," White House economic adviser Kevin Hassett recently told reporters.

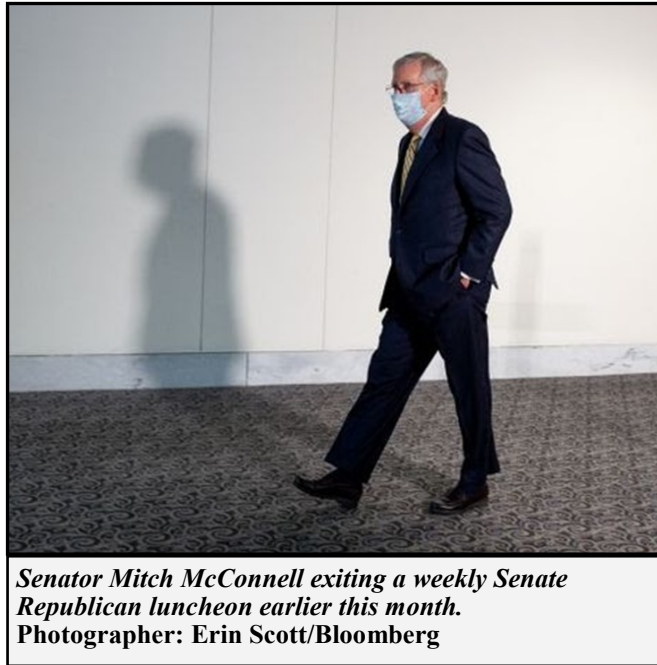
As things stand, the outlook for additional COVID-19 relief legislation, including the *HEROES Act*, remains uncertain as House and

Senate Republicans, and the Trump Administration, are generally in favor of waiting to see the results of relief legislation already enacted. Majority Leader McConnell recently said that another relief bill is likely "in the next month or so."

The House recently returned to Washington, D.C. and is now back in session with new proxy voting rules in place – a first in American history. However, House Republicans are suing Speaker Nancy Pelosi in an attempt to block the voting mechanism. Democrats argue that the proxy system is the only safe way to have hundreds of lawmakers cast votes during the pandemic, with a busy calendar ahead.

Over the next few weeks, the House and Senate will likely need to revisit key parts of coronavirus relief programs, which expire in the coming months. The House is back in Washington, beginning work on two bills dealing with the Paycheck Protection Program (PPP) from the *CARES Act*, which provides coronavirus-relief loans to small businesses, and will need to negotiate their version with the Senate, which is nearing a deal on its own version of a loan flexibility bill. The Senate is in recess until early June. The Senate's bill would give businesses up to 16 weeks to use their PPP loans, while the House bill would provide businesses 24 weeks.

"We have a full agenda that people have been working on for a long time, so it's a continuation of that, but also an intensification," Speaker Pelosi recently told reporters.



**Senator Mitch McConnell exiting a weekly Senate Republican luncheon earlier this month.**  
Photographer: Erin Scott/Bloomberg

# Crisis Brewing on the Klamath River

## Public Protest Set for May 29

As the Klamath Irrigation Project marks the 115<sup>th</sup> anniversary of its authorization, Project producers may be facing their worst year ever.

Things are looking grim for local irrigators, who will likely received less than a third of their surface water supplies out of Upper Klamath Lake. The Klamath Water Users Association (KWUA) has been working with the Bureau of Reclamation (Reclamation) and U.S. Department of Agriculture (USDA) with the hopes of bringing more USDA resources to the situation, which is looking dire due to the combination of poor hydrology and a highly criticized biological opinion that guides Klamath Project operations.

Reclamation officials are working toward a significantly reduced version of the April 1 140,000-acre-foot allocation with the Klamath and Yurok Tribes as well as agricultural producers in the Klamath Project in light of an extremely dry May 1 forecast released by National Resources Conservation Service .

“Overall, the KWUA process in the past month has consisted of joint assessment and inventory of existing programs, including their limitations and any potential flexibility,” said Paul Simmons, KWUA’s executive director. “We’re also trying to identify what might be possible outside the standard programs.”

This month marks the 115<sup>th</sup> anniversary of the authorization of the Klamath Project under the National Reclamation Act, which was adopted to promote western settlement and feed a hungry nation and world. The Project incorporated and borrowed from the plans of visionaries in the 19<sup>th</sup> and early 20<sup>th</sup> centuries, and went on to support hardy settlers and homesteaders who built the communities that carry on today.

“Unfortunately, Klamath Project irrigators today are saddled with a severe lack of irrigation water, cruel uncertainty, and COVID-19 impacts on themselves, the workforce and markets,” said Mr. Simmons. “They are chastised and regulated based on frightening misunderstandings of who they are and what they do. Rural producers do not draw salaries. They work extremely hard to produce food, while stewarding land, water, and wildlife.”

KWUA and Reclamation received some good news earlier

this month when a federal judge in San Francisco sided with local water users and the federal government, one week before thousands of farmers, ranchers and business owners plan to rally for their cause in the Klamath Basin.

Judge William Orrick of the U.S. Court for the Northern District of California indicated that he would deny an emergency motion filed a week earlier by the Yurok Tribe and environmental organizations. The Yurok Tribe filed a case under the Endangered Species Act (ESA) last July. The parties agreed to stay the case in March 2020 after Reclamation agreed to an Interim Operating Plan for the Klamath

Project to be applicable until September 2022. Those parties also asked the Court for a temporary restraining order to require Reclamation to release an additional 391 cubic feet per second for flows below Iron Gate Dam. Judge Orrick concluded the hearing by indicating he will deny the Yurok Tribe’s motion to lift the stay and will not reach the motion for a temporary restraining order.

“This decision does not add water to the meager allocation we were promised earlier this month,” said Scott Seus, a Klamath Project farmer from Tulelake, California. “However, it does prevent an immediate interruption of the reduced supply we already have.”

In the meantime, local community leaders have made significant progress preparing for a May 29 water rally. A planned tractor convoy will start in Merrill, Oregon and will wind its way through Klamath Project farmlands, proceed down Klamath Falls’ Main Street and end up in a local farmer’s field near Midland, Oregon.

More information on the event can also be found on the convoy website: <https://shutdownfedup.org/convoy-for-change/>.

Local water leaders are hopeful that the event will renew attention from decision-makers committed to solve problems rationally and relieve the burdens on rural communities.

“As bad and unfair as the current situation is, we pause, look back and look forward,” said Tricia Hill, president of KWUA. “We are proud to be part of the Klamath Project heritage, and remain committed to reclaiming our strong agricultural tradition.”



## Bureau of Reclamation Update

### New WaterSMART Drought Grants, New Leadership

The Department of the Interior earlier this month released the FY 2021 WaterSMART Grants: Drought Response Program Drought Resiliency Project Grants program. The program supports a proactive approach to drought by providing assistance to water managers to: develop and update comprehensive drought plans and implement projects that will build long-term resiliency to drought. Eligible applicants are states, tribes, irrigation districts, water districts, and other organizations with water or power delivery authority located in the Western United States.

"We are looking for applicants that are working to implement projects that are identified in their drought response plans to avoid future crises and reduce the need for emergency response actions," said the Bureau of Reclamation's Acting Drought Response Program Manager John Whitler.

In FY21, approximately \$2.9 million is available to support 10-15 cooperative agreements through this program.

Awards are provided through two separate funding groups:

- Group I: Up to \$300,000 will be available for projects generally completed within two years
- Group II: Up to \$750,000 will be available for projects completed within three years and funded on an annual basis, contingent upon future appropriations.

Applicants must provide nonfederal cost share of 50 percent or more of project costs using cash or in-kind contributions.

In other Reclamation news, Commissioner Brenda Bur-

man recently named Chris Beardsley as director, policy and programs.

"Reclamation's Policy and Programs office enables Reclamation to carry out its mission with consistency and transparency to our customers and the public," said Commissioner Burman. "The Director plays an instrumental role in the safety of our employees and stakeholders, as well as the implementation of Reclamation law and compliance with environmental laws. I know Chris Beardsley will do a great job."

Mr. Beardsley will be responsible specifically for the planning and execution of the following divisions: Security, Safety and Emergency Management, Environmental Compliance, Reclamation Law Administration, and Design, Estimating and Construction Oversight.

Commissioner Burman also named Dr. David Raff as Reclamation's Chief Engineer, a role that dates back to the beginning of Reclamation in 1902. Out of use for several decades, Reclamation has created this historic position for the 21<sup>st</sup> Century. As the Chief Engineer, Dr. Raff will direct Reclamation's engineering and scientific programs in Technical Services, Dam Safety and Infrastructure, Hydropower, Research and Development, and Water Planning.

"This position reinforces the legacy of Reclamation's professional excellence, science-based decision making, technical rigor, and construction quality," said Deputy Commissioner of Operations, David Palumbo.

## Judge Temporarily Blocks New CVP Water Plan

A federal court earlier this month temporarily blocked the Trump administration's new California water plan, in response to litigation launched by the State of California and environmental activist groups.

"Today's victory is critical, but the fight is not over," said California Attorney General Xavier Becerra (D) said. "We have the facts, science, and the law behind us, and we look forward to making our case in court."

The state's opposition to the Trump water plan remains a priority. On the same day California Governor Gavin Newsom announced \$19 billion in budget cuts to his 2020-2021 budget, two of California's environmental protection agencies filed a request to provide an additional \$1.03 million to fund the lawsuit against the U.S. Departments of Interior and Commerce.

This lawsuit is being carefully monitored by agricultural water users served by the federal Central Valley Project (CVP) and the State Water Contractors, who are served by the State Water Project (SWP). Many of these water users support a voluntary agreement process that, when fully negotiated could provide a framework to allow the State to settle its lawsuit with the federal government and resolve the differences between the federal biological opinions and the State's incidental take permit for the long-term operation of the SWP.

While several media outlets reported that the May 11 fed-

eral court ruling related to the Federal Biological Opinion case governing CVP and SWP operations was a wholesale rebuke of the 2019 Biological Opinions, the injunction granted by U.S. District Judge Dale Drozd was actually very narrowly focused and most aspects of the litigation were denied.

In hearing the two separate preliminary injunction requests from the environmental groups and the State of California, the Judge organized the ruling into three topics: Shasta operations, Stanislaus River operations, and Delta operations. In its May 11 ruling, the court denied the plaintiffs' preliminary injunction for Stanislaus River and stated it will rule separately on Shasta operations.

"Given that it appears to be undisputed that [California Central Valley] steelhead are declining," Judge Drozd wrote, "the court has serious concerns as to whether this reasoning satisfies [NOAA Fisheries'] obligations under the [Endangered Species Act] to evaluate whether the [opinions] would jeopardize the species or destroy or adversely modify critical habitat."

The remainder of the ruling focused on Delta operations, but was far from a "slam dunk" for the State, according to the State Water Contractors.

"The ruling was not about Delta Smelt or Longfin Smelt,

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# Waiting to Sue over WOTUS? Get in line!

## Coalition of States File for Nationwide Injunction of New Clean Water Act Rule

Groups spanning the range of the political spectrum are lining up to take the Trump Administration to task over the recently published final version of the Navigable Waters Protection Rule. This rule, published by the Administration in April, is intended to clarify what constitutes “waters of the U.S.” (or, WOTUS) under the federal Clean Water Act (CWA). It provides a new definition of what marshes, wetlands and streams qualify for protections under the CWA.

“Having farmed American land myself for decades, I have personally experienced the confusion regarding implementation of the scope of the Clean Water Act,” said R.D. James, Assistant Secretary of the Army for Civil Works last January, at the time the rule was finalized. “Our rule takes a common-sense approach to implementation to eliminate that confusion. This will ensure that land use decisions are not improperly constrained, which will enable our farmers to continue feeding our Nation and the world, and our businesses to continue thriving.”

The rule now faces legal challenges from environmental groups, conservative interests, and property rights advocates. The lawsuits are scattered across federal district courts throughout the country.

In April, a group of 17 Democrat-led states and several environmental organizations sued the Administration over their newly finalized rule. The case was filed in the U.S. District Court for the District of Massachusetts. The Southern Environmental Law Center also led a challenge in the U.S. District Court for the District of South Carolina.

The States claim violations of the Administrative Procedures Act including: (1) the interpretation of WOTUS is impermissible; (2) the rule disregards scientific evidence, prior factual findings, and policy and practice; and (3) the rule fails to consider statutory objectives and the impact on water quality. The States request that the court vacate the rule as “arbitrary, capricious, and not in accordance with law.”

The State coalition earlier this month asked the U.S. District Court for the Northern District of California to block the new rule while they battle with government lawyers over its legality. The coalition argues that the rule should be put on hold pending the court’s decision on the coalition’s lawsuit in order to prevent widespread harm to national water quality

and to avoid disruption to state and local water pollution control programs. The rule goes into effect on June 22.

The new WOTUS rule from the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) limits CWA protections for headwaters like creeks, wetlands and seasonal water bodies caused by rainfall or snowmelt which were covered under the now-repealed 2015 Obama-era WOTUS rule.

“The litigation will undoubtedly run beyond Election Day, so the future of this WOTUS rule likely depends on whether Trump wins a second term,” said Mark Limbaugh, the Family Farm Alliance representative in Washington, D.C.

Meanwhile, the New Mexico Cattlemen's Association – represented by the Pacific Legal Foundation (PLF) – is also targeting the new WOTUS, but for different reasons. The group originally filed a lawsuit in November 2019 challenging an earlier 1986 CWA regula-

tion. When the Trump EPA finalized a repeal of the 2015 rule, the repeal reverted back to the 1986 rule until the most recent rewrite was completed. The amended lawsuit alleges the 1986 and 2020 rules are “arbitrary and capricious”.

“Over the years, EPA has changed the definition of ‘navigable waters’ to increase its regulatory authority at the expense of property owners’ rights,” Tony Francois, an attorney at PLF, said in a statement. “Despite the improvement of the new rules, its regulations are still unconstitutionally broad. Specifically, the new rules let federal agencies control ponds, wetlands and other property far removed from navigable waterways. These were never intended by Congress to be covered by the Clean Water Act.”

Democrats in Congress are also looking for ways to prohibit the implementation of the new Navigable Waters Protection Rule. House Transportation and Infrastructure Chairman Peter DeFazio (D-OREGON), and Representative Grace Napolitano (D-CALIFORNIA), earlier this month introduced the *Clean Water for All Act*. The bill specifically would prevent EPA and the Corps from implementing the new rule, and no later than two years from the enactment of the act requires the agencies to promulgate a new rule-making defining WOTUS.

“By removing critical protections at the behest of industry, Trump’s Dirty Water Rule will make streams and waterways more vulnerable to pollution, which is devastating for the 117 million Americans who rely on these waterways for drinking water,” said Rep. DeFazio.



# Water Infrastructure Developments on Capitol Hill

House Majority Leader Steny Hoyer (D-MD) recently said that House Democrats will focus this summer on passing essential legislation, including the Water Resources Development Act (WRDA), the surface transportation reauthorization bill, the FY2021 National Defense Authorization Act, and the twelve FY2021 Appropriations bills.

“We are hearing that, given the COVID-19 pandemic amidst the presidential election year of 2020, Congress may be working during typical summer and fall recesses in order to play catch up on must-pass legislation,” said Mark Limbaugh, the Alliance’s representative in Washington, D.C.

As far as infrastructure goes, Democrats earlier this year released a framework for infrastructure efforts, and the Transportation and Infrastructure (T&I) Committee is poised to release their version of a Water Resource Development Act (WRDA) soon. The focus of the House WRDA will be solely on the civil works mission of the Army Corps of Engineers (Corps), including navigation, flood damage reduction, hurricane and storm damage reduction, shoreline protection, and ecosystem restoration.

Congress has made it a priority to pass a WRDA bill every two years, with a Senate version of a WRDA bill (the America’s Water Infrastructure Act (AWIA)) already approved by the Environment and Public Works (EPW) Committee for a future Senate floor vote (see April 2020 “Monthly Briefing”).

Family Farm Alliance President Patrick O’Toole in September 2019 testified before the EPW Committee, which held a brainstorming hearing on ideas for the 2020 WRDA. The Alliance developed a comment letter that was transmitted to the EPW Committee before this month’s markup.

“The gist of our comments focuses on the absence of a Reclamation title in the draft AWIA,” said Alliance Executive Director Dan Keppen. “We would like to see such a title, and our letter reiterates that key point.”

In other water legislation-related news, Rep. T.J. Cox (D-CALIFORNIA) led seven of his colleagues in sending a letter to House leadership calling for any COVID-19 infrastructure

stimulus package to include Bureau of Reclamation infrastructure.

“As Congress continues working to respond to the economic impacts of the pandemic, we must include funding for Bureau of Reclamation projects, especially those that increase our water storage capacity,” Cox wrote in a press release.

The Family Farm Alliance - working with the California Farm Bureau Federation and Western Growers Association – last month sent similar letters to Congress and the White House, urging that aging Western water infrastructure be addressed as further measures

are considered to help the U.S. economy recover from the ongoing coronavirus crisis. The letters were signed on to by over 150 Western water and agricultural interests.

Elsewhere, Senator Dianne Feinstein (D-CALIFORNIA) earlier this month introduced the *Restoration of Essential Conveyance Act*, a bill to authorize \$800 million in federal funding to repair critical canals – including the Friant-Kern and Delta-Mendota Canals (pictured, left) in the San Joaquin Valley damaged by land sinking from over pumping of groundwater, known as subsidence, and for environmental restoration. If the canals are not restored to their original capacity, 20 percent of the farmland – approximately 1 million acres – might have to be retired in a region that produces \$36 billion in crops annually, including a third of the nation’s produce.

Representatives Jim Costa and TJ Cox (both D-CALIFORNIA) have introduced similar legislation in the House.

“We have to find better ways to use the water we have,” said Senator Feinstein. “Restoring the San Joaquin Valley’s canals is one of the most efficient ways to improve the sustainability of California’s water supply. It would allow us to capture more winter storm floodwa-

ters and use that extra water to offset necessary reductions in groundwater pumping. This bill would give our farmers a fighting chance.”



**Friant-Kern Canal (Eastern San Joaquin Valley (CALIFORNIA)) Photo courtesy of Friant Water Authority**



**Land subsidence along the Delta-Mendota Canal, Western San Joaquin Valley (CALIFORNIA). Photo Credit: Michelle Sneed, USGS.**



## **CVP Decision (Continued from Page 6)**

or Delta outflow as the State argued,” the State Water Contractors noted in a widely distributed blog post. “The ruling was narrow and focused on the last 20 days of May, specifically on San Joaquin River steelhead.”

The court ultimately decided that “[t]he record is too mixed for the court to conclude at this time that plaintiffs are clearly likely to be able to show that NMFS has violated the Administrative Procedures Act.”

Judge Drozd has noted the court will rule shortly on the broader issues environmental groups have in their case.

"The court's decision is a temporary reprieve for salmon and other imperiled species in the Bay-Delta," said Doug Obegi, an attorney with Natural Resources Defense Council.

The State Water Contractors were impressed with Judge Drozd's commitment to sifting through substantial technical and legal materials that were submitted by all parties, and his caution in granting unfettered injunctions.

"Unfortunately, the Attorney General is correct that this is likely to be a long fight," the State Water Contractors posted on-line. "It's too bad, because we were very close to a pathway where the CVP, SWP and other water users all worked together to develop habitat and flows to the benefit of the

entire watershed through the Voluntary Agreements. We hope we can find our way back to that path."

The Family Farm Alliance – working with California Farm Water Coalition (CFWC) and the California Farm Bureau Federation – this month spearheaded the development of a letter sent to California Governor Gavin Newsom - signed by over 75 prominent California agricultural organizations, county farm bureaus, and farmers – requesting that the governor take the necessary steps to help secure next year's food supply. The parties urge the governor to direct state agencies and departments to find ways to maximize water supplies for farmers this year, until such time that the food supply chain from farmer to grocery store shelf can be normalized.

"There seems to be a lot of willingness to work together to solve some of the current crises that we're facing in day to day life and we hope that that does transition to other parts of the business world and the economy and a huge part of that for agriculture, of course, is water," CFWC Executive Director Mike Wade told AgNet West. "Having adequate, dependable water supplies provides certainty for farmers and it provides certainty to consumers who trust that the foods that they want for their families are being planted for the coming fall and winter seasons."

## **A Big Thank You to Our New and Supporting Members!**

### **MARCH 2019– APRIL 2020**

#### **CHAMPION (\$10,000 and Above)**

**Banta-Carbona Irrigation District (CA)**  
**Westlands Water District (CA)**

#### **ADVOCATE (\$5,000 - \$9,999)**

**Arvin-Edison Water Storage District (CA)**  
**Central Nebraska Public Power and Irrigation District**  
**Roza Irrigation District (WA)    San Luis Water District (CA)**

#### **DEFENDER (\$1000-\$4999)**

**A&B Irrigation District (ID)    Harvey A Bailey (CA)    Borba Farms Partners (CA)**  
**Buckeye WCDD (AZ)    Central Arizona Irrigation and Drainage District**  
**Central Oregon Irrigation District    Central Oregon Seeds, Inc.**

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**MARCH 2020-APRIL 2020 CONTRIBUTORS (Continued from Pg 9)****DEFENDER (\$1,000-\$4,999) - Continued**

Coleman Farming Co. LLC (CA) Elephant Butte Irrigation District (NM)  
Farwell Irrigation District (NE) Ferguson Farming LLC (CA) Fresno Irrigation District (CA)  
Glenn-Colusa Irrigation District (CA) Grand Valley Water Users (CO)  
Kings River Conservation District (CA) Klamath Drainage District (OR)  
Maricopa Water District (AZ) Metropolitan Water District of Southern California  
Meyers Farms Family Trust (CA) Minidoka Irrigation District (ID) PacifiComm LLC (WA)  
Palo Verde Irrigation District (CA) Payette River Water Users Association (ID)  
Roosevelt Irrigation District (AZ) Snow Goose Farms (CA) Solano Irrigation District (CA)  
Tehama-Colusa Canal Authority (CA) Twin Falls Canal Company (ID)  
Yuba County Water Agency (CA) Yuma County Water Users Association (AZ)

**PARTNER (\$500-\$999)**

A Tumbling T Ranches (AZ) Bengard Ranch, Inc. (CA) Benson Farms, LLC (CA)  
Bransford Farms (CA) Camelback 240 Ltd. Partnership (AZ) Circle G Farms (CA)  
Columbia Canal Company (CA) Fresno Equipment (CA) H-Four Farms (AZ)  
Heart Mountain Irrigation District (WY) Hermiston Irrigation District (OR)  
Linneman Ranches (CA) Maricopa-Stanfield Irrigation District (AZ)  
New Magma Irrigation District (AZ) North Side Canal Company (ID)  
North Unit Irrigation District (OR) Pine River Irrigation District (CO)  
Provident Irrigation District (CA) Ryan Family Farms (CA) Sargent Irrigation District (NE)  
Somach, Simmons and Dunn (CA) Stotz Equipment (AZ)  
Tualatin Valley Irrigation District (OR) Twin Loups Reclamation District (NE)  
West Extension Irrigation District (OR)

**SUPPORTER (\$250—\$499)**

Mark Booker (WA) Britz, Inc. (CA) Campbell Brothers Farms (CA)  
Davis and Weber Counties Canal Company (UT) Duyck Ranches (WY)  
Empradas Del Bosque (CA) Flying R Farms (AZ) BE Giovanetti & Sons (CA)  
Farmers Irrigation District (NE) Griswold, LaSalle, Cobb Dowd (CA)  
Kirwin-Webster Irrigation District (KS) Mancos WCD (CO) MBK Engineers (CA)  
Milner Irrigation District (ID) North Fremont Canal System (ID)  
Ogawa Farms (WY) Paul R. Orme Farms (AZ) Orton Management Associates (NE)  
Princeton-Cordora-Glenn Irrigation District (CA) Gary W. Robertson (CA)  
Don Schwindt (CO) Thomason Tractor Co. (CA) Weber River Water Users (UT)  
Brian Werner (CO) Gary Wright (CA)