

Monthly Briefing

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

Standing up for Colorado River Agriculture

....Plus, other Colo. River Basin policy developments

Family Farm Alliance President Patrick O’Toole, whose family owns and operates a sheep and cattle ranch on the Wyoming-Colorado border, vigorously argued for the importance of Colorado River agriculture in a panel discussion last month at a prestigious University of Colorado water conference.

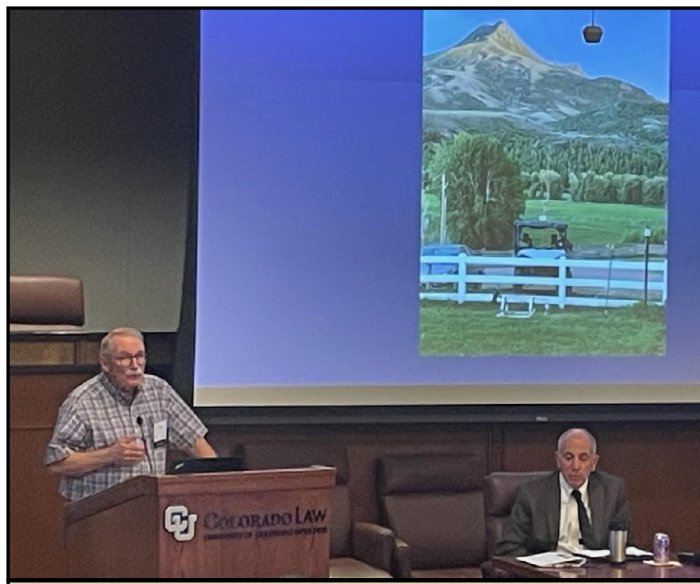
“All Colorado River water users need certainty for effective future planning,” said Mr. O’Toole. “Agricultural water users need – and want – to help shape their future, instead of relying upon others to design their future for them.”

The Colorado River serves 40 million individuals and irrigates 5.5 million acres of farmland across seven states. More than two decades of drought have significantly diminished flows in the 1,450-mile-long river, and drained water supplies in lakes Powell and Mead, which also provide hydropower to millions of people.

Mr. O’Toole and his fellow panelists – including another member of the Alliance – focused on the role farmers and ranchers can play to drive solutions to the Colorado River crisis at the 43rd Annual Conference on Natural Resources at the Getches-Wilkinson Center for Natural Resources, Energy and the Environment.

Mr. O’Toole participated in a June 9 panel titled, “How Can Agriculture Thrive with Less Water?”. He was joined by fellow panelists Meghan Scott (Noble Law Firm, Yuma, Arizona), Mark Squillace (University of Colorado Law School) and Jim Holway (Babbitt Center for Land and Water Policy).

“The question being posed is ‘how can agriculture thrive with less water?’, said Ms. Scott. “In Yuma, and in other areas across the Basin, put simply, it cannot. And so, I think the question really becomes whether having a domestic food supply is something we value enough to deem agriculture’s use of water in



Alliance President Patrick O’Toole addresses the 43rd Annual Conference on Natural Resources at the University of Colorado on June 9, 2023. Photo courtesy of Felicia Marcus

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Colorado River Policy Developments (*Cont'd from Pg. 1*)

the Colorado River Basin a beneficial use and a use worthy of protecting.”

The panel discussion took place following opening remarks by former Interior Secretary Bruce Babbitt, who is urging the Biden administration to consider long-term programs targeting farmland.

"We need to start looking for models that will work, rather than these random 'We're going to go out and buy a year's water from X; we'll toss out a little bit of money here,'" Mr. Babbitt said, as reported in *E&E News*.

He also suggested that the Biden administration utilize a regulatory option that could rule that certain crops are not a "beneficial use," and then reduce those water deliveries.

"It's an important way for Interior to demonstrate that it's really engaged," Mr. Babbitt said.

Prior to the Boulder event, Mr. O'Toole vowed to make the voice of Colorado River agriculture heard, loud and clear.

"We're tired of the relentless demonization of agriculture coming from competing interests, whose main solution appears to be questioning the viability of producing alfalfa and other forage crops in the Colorado River Basin," he said. "We're individual families who are participating in something we think is good — producing food."

Meghan Scott said farmers are willing to make changes, but only if those changes are practical (*CowboyStateDaily*).

"I've never heard of people feeding their animals beet pulp," she said. "I'm not saying there's not people who do that, but I've never heard of it."

Mr. O'Toole and other Alliance leaders for over the past decade have warned about the dangers of taking safe domestic food production for granted. In late 2022, he and his wife Sharon traveled to Ireland to engage in a week-long event attended by livestock interests from 23 nations.

"We were struck by the delegation report from Africa, where in some places, the goal is to simply ensure one glass of milk per child per day," said Mr. O'Toole. "When you take alfalfa out of the Western farm production equation, how can we continue to produce milk to satisfy the demands in our own country? "

DOI Announces Long-Term Colo. River Planning Process

The conference in Boulder took place just weeks after the Colorado River Lower Basin states coalesced around a plan to voluntarily conserve a major portion of their river water in exchange for more than \$1 billion in federal funds. The availability of those federal funds, as well as improved recent hydrology, helped grease the Lower Basin deal.

The June 2023 forecast from the Colorado Basin River Forecast Center shows a projected inflow of 13.85 million acre-feet into Lake Powell for 2023, which is 144% of the average inflow. Now, all 7 Basin states can focus on the critically important long-term solution: advancing the process for the development of new operating guidelines replacing the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead at the end of 2026.

The Department of the Interior last month initiated a formal process for the development of a long-term but interim operating plan for the Colorado River Basin, commencing a multiyear process that will shape the future of the river. The Bureau of Reclamation will oversee efforts to create a new operating plan for the river and its reservoirs.

"Developing new operating guidelines for Lake Powell and Lake Mead is a monumentally important task and must begin now to allow for a thorough, inclusive and science-based decision-making process to be completed before the current agreements expire in 2026," said Reclamation Commissioner Camille Calimlim Touton. "The Bureau of Reclamation is committed to ensuring we have the tools and strategies in place to help guide the next era of the Colorado River Basin, especially in the face of continued drought conditions."

The agency expects to release a draft proposal for public comment late in 2024. Now, Reclamation is taking comments on what stakeholders would like to see (or not see) in a new operating plan for the system through a 60-day comment period. The *Federal Register* notice also revealed that Reclamation plans to release a web-based tool that will allow users to "explore, create, and compare potential operating strategies" for the Colorado River. The online tool is set to be released in the fall of this year.

Alliance leaders will continue to underscore the importance of protecting Western irrigated agriculture, using policy principles adopted by the board of directors in March 2022.

"The solutions developed on the Colorado River must continue to follow the law, but also match the science and hydrology," said Don Schwindt, an Alliance director who farms near Cortez, Colorado. "Mother Nature gives us no choice. The Colorado River Compact, coupled with the prior appropriation doctrines of the seven Basin states, provide the framework we must continue to follow."

Public Input Sought for Upper Basin Water Projects

Reclamation last month also issued a call for public input on the types and nature of projects, project selection criteria, and program administration considerations that the agency should consider when distributing the second phase of funds for the Upper Colorado River Basin System Conservation and Efficiency Program. Reclamation is seeking input on Phase 2 projects that could fall into the following three general categories:

- System conservation and efficiency projects that achieve verifiable, multi-year reductions in use of or demand for water supplies;
- Demonstration projects to spur advances in water conservation and efficiency using innovative techniques; and
- Ecosystem and habitat restoration projects to address issues directly caused by drought.

Reclamation is also seeking input on the administration of the program. Comments will be taken until Friday July 07, 2023, and can be sent via email to: UCBEfficiency@usbr.gov.

Alliance Witness Testifies at House Legislative Hearing

The Family Farm Alliance last month was represented by one of its California directors at a legislative hearing conducted by the House Subcommittee on Water, Wildlife and Fisheries.

Cannon Michael, a farmer from the San Joaquin Valley who serves on the Alliance board of directors and is also Chairman of the San Luis & Delta-Mendota Water Authority, represented both organizations at the hearing.

The hearing focused on legislation addressing hydropower, water resources and water infrastructure improvements:

- H.R. 1607 introduced by Rep. Schweikert (R-ARIZONA), would withdraw approximately 17,095 acres of federal lands from the National Forest System in Arizona for the development of pumped storage hydropower and the development, generation and transmission of electrical power and energy.
- H.R. 3675, introduced by Rep. Boebert (R-COLORADO), reauthorizes expired authorities that allow Bureau of Reclamation (Reclamation) agriculture and municipal water users to prepay what they owe to the federal government.
- H.R. 3027, introduced by Rep. Porter (D-CALIFORNIA), would extend the authorization of Reclamation’s WaterSMART Basin Studies Program for another 10 fiscal years. The law directs BOR to establish a program to assess the effects of global climate change on western water resources and analyze how supply changes in eight river basins might impact customers, fish, wildlife, recreation and more.

“The common thread?” asked Subcommittee Chairman Cliff Bentz (R-OREGON). “Increasing flexibility for our local communities and removing bureaucratic red tape.”

The Alliance is on record for supporting H.R. 3675.

“The Water Authority and the Alliance fully support enactment of this bill, which will extend important, win-win authorities that allow water users to accelerate repayment of capital construction costs for Reclamation facilities,” Mr. Michael testified. “We appreciate Congresswoman Boebert for introducing this bill and want to thank all of the cosponsors.”



Rep. Lauren Boebert (R-COLORADO) and Cannon Michael, a Family Farm Alliance board member who farms in California’s Central Valley, in the hearing room of the House Natural Resources Committee, June 19, 2023.

In the past, Congress has specifically allowed early repayment for certain projects or facilities. However, until a temporary authorization was enacted in the Water Infrastructure Improvements for the Nation Act (WIIN Act; P.L. 114-322) there was no general allowance or prescribed process in Reclamation law to allow accelerate payout. That authority has now expired.

“The concept of contract prepayment was something we started advocating for way back, starting around 2005,” said Alliance Executive Director Dan Keppen. “While many districts have already taken advantage of this authority, there are still a few out there who could benefit from having these provisions made permanent. We’re thankful that Cannon was able to advance this message and testify with very short notice.”



Eastern Washington Family Farm Alliance Tour
 Tour of Columbia River Project and Yakima Basin Agriculture Industry
 Fundraising Dinner
September 11-13, 2023

Tri-tip & lamb BBQ dinner prepared by the Washington State Cattle Feeders Association
September 13, 2023
5:30 p.m. - 9:30 p.m.
For more information:
 Go to <https://www.familyfarmalliance.org/farmtour/>.



Importance of Snake River Dams Highlighted

Environmentalists concerned about salmon spawning have advocated to undam the Snake River for decades, focusing their efforts on four dams on the lower part of the Snake, just above its confluence with the Columbia River.

Western Republicans in Congress and the *Wall Street Journal* last month pushed back, and publicly highlighted the importance of dams in the Pacific Northwest and their impacts on river commerce, agriculture and energy production.

“The Four Lower Snake River Dams are integral to flood control, navigation, irrigation, agriculture, and recreation in Central Washington and throughout the Pacific Northwest—to put it simply, we cannot afford to lose them,” Rep. Dan Newhouse (R-WASHINGTON) said earlier this year.

In a one-week period, Republicans from the House of Representatives hosted a Capitol Hill forum on the importance of hydropower and conducted a field tour and hearing in Eastern Washington focusing on plans to breach the dams.

Capitol Hill Forum

The Congressional Western Caucus (Caucus) hosted a June 21 hydropower forum titled, “The Importance of Hydropower for Rural Communities.”

Rep. Newhouse – the current Chair of the Caucus - and Energy and Commerce Committee Chairwoman Cathy McMorris Rodgers (R-WASHINGTON) led Members and witnesses from the power industry and agriculture in a discussion about these efforts and the importance of hydropower for rural communities.

“The lower Snake River dams are a critical linchpin to North Idaho and for the Pacific Northwest,” said Rep. Fulcher (R-IDAHO), who participated in the forum. “And the removal of those or breaching those would be economic devastation.”

Members heard from industry experts and organizations who highlighted the importance of these pieces of infrastructure.

In addition to the irreplaceable power assets generated by the dams, 10% of the wheat that is exported in the United States passes through the four locks and dams along the lower Snake.

“The lower Snake River dams are a critical infrastructure system required to move U.S.-grown wheat to high-value

markets around the world,” said Chandler Goule, CEO of the National Association of Wheat Growers.

“To be more specific, this corridor is the third largest grain export corridor in the world and is the single largest corridor for U.S. wheat exports.”

Eastern Washington Tour and Field Hearing

House Subcommittee on Water, Wildlife and Fisheries Chairman Cliff Bentz (R-OREGON), Rep. McMorris Rodgers and Rep. Newhouse five days later hosted members for a site visit to one of the targeted dams - Ice Harbor - and a field hearing at Richland High School in Richland, Washington.

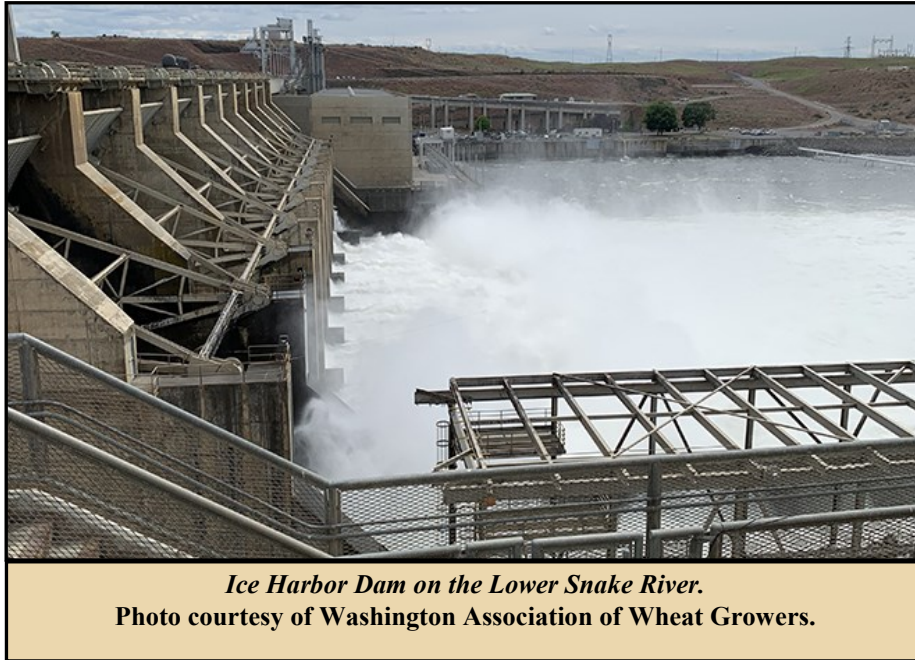
Members were critical of the “secret” nature of the mediation process driven by the White House Council on Environmental Quality designed to reach a solution in long-running litigation over the four lower Snake River dams.

“There have been too many back room conversations recently at the highest levels of government focused on tearing out the Lower Snake River dams,” said Rep. McMorris Rodgers. “What’s worse is that those who rely on them the most — the families, businesses, and farmers in Eastern Washington — have been shut out of the discussion.”

The Family Farm Alliance in April transmitted a letter to U.S. Secretary of Agriculture Tom Vilsack, requesting Biden Administration Cabinet-level intervention in ongoing mediation talks involving the Lower Snake River dams.

Western Farmer-Stockman in April also ran a guest editorial by Alliance Executive Director Dan Keppen explaining why Pacific Northwest ag interests should be better integrated into the river talks.

“Altering operations along the Columbia and Lower Snake Rivers, whether through shifted flow regimes or dam removal, would send ripple effects throughout the broader agricultural community served by this system,” said Mr. Keppen. “The multiple-year drought we have faced in many parts of the West— coupled with other domestic and global developments — has already affected the availability and price of food for many Americans.”



**Ice Harbor Dam on the Lower Snake River.
Photo courtesy of Washington Association of Wheat Growers.**

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BLM on the Hot Seat for Draft Conservation Rule

The Bureau of Land Management (BLM) in March unveiled a draft rule, which among other things would designate conservation as a public lands management priority, on par with energy development, grazing and recreation. In the ensuing months, the proposal has generated a fierce response from ranchers and other critics, particularly Western GOP congressional leaders.

“The Biden Administration’s extreme unilateral action will kill multiple use. This is a clear violation of the law,” said Senator John Barrasso (R-WYOMING), ranking member of the Senate Committee on Energy and Natural Resources (ENR). “I will do everything in my power to stop this proposal.”

Summary of the Draft Rule

The draft rule lays out a suite of proposals, including requiring that all 245 million acres of BLM-managed lands meet land-health standards currently limited only to federal livestock grazing allotments. It would also place a priority on local field offices identifying lands that need restoration work to meet those standards of rangeland health.

In addition, the draft rule would establish a new conservation leasing system that would allow private companies and NGOs to purchase leases that would allow them to fund restoration work to be done on some of BLM’s most degraded landscapes.

Critics of the draft rule are concerned that environmental groups could purchase conservation leases in an effort to remove large swaths of BLM lands from other uses.

Critics Fight Back

“As drafted, the proposed rule would open the door to removal of grazing and a host of other multiple uses on federal lands, and the process around the proposed rule has so far left stakeholders feeling unheard, disenfranchised, and re-

signed to a poor outcome,” said Kaitlyn Glover, Executive Director of the Public Lands Council (PLC).

PLC last month launched a grassroots campaign to encourage individual ranchers to weigh in with the BLM on their proposed rule.

“We need many voices to weigh in to avoid longstanding harm to Western federal land management,” said Ms. Glover.

Many Western GOP Members of Congress are also concerned about the lack of local input on the proposed rule.

Senate Republicans, led by Sen. Barrasso, introduced a bill to block the rule, which would require BLM Director Tracy Stone-Manning to withdraw the draft rule, which is currently open for public comment, and forbid BLM from taking “any action to finalize, implement, or enforce the proposed rule.”

The House Committee on Natural Resources last month held a hearing on companion legislation, H.R. 3397, introduced by Rep. Curtis (R-UTAH).

The hearing featured testimony from Republican Govs. Kristi Noem (SOUTH DAKOTA) and Mark Gordon (WYOMING).

Both expressed strong opposition to the draft rule.

“[We] heard testimony from two Western governors who shared how the Biden administration’s proposed policies would devastate rural communities in their state, and now we’re moving legislation through committee that would prevent these adverse actions from moving forward,” said House Committee of Natural Resources Chairman Bruce Westerman (R-Ark.) after the hearing.

Committee Democrats defended the draft rule during the more than three-hour hearing.

The Committee later in the month marked up and passed the bill on a partisan vote.



BLM Director Tracy Stone Manning (third from right) spend a day touring Battle Creek and other areas of the Little Snake River watershed with Family Farm Alliance President Pat O’Toole, his family, and other local resource managers.

Photo courtesy of Ladder Ranch.

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Water Users Applaud SCOTUS Decision in *Arizona v. Navajo Nation Alliance and Western Water User Amicus Cited in Decision*

The Supreme Court of the United States (SCOTUS) last month ruled 5-4 against the Navajo Nation, supporting the U.S. argument that the treaty at issue does not require the federal government to take the affirmative steps that the Navajo Nation contends.

"The 1868 treaty reserved necessary water to accomplish the purpose of the Navajo Reservation," Judge Brent Kavanaugh wrote for the majority. "But the treaty did not require the United States to take affirmative steps to secure water for the Tribe. We reverse the judgment of the U. S. Court of Appeals for the Ninth Circuit."

The Family Alliance was part of a Western water user *amicus* brief filed in support of the federal government and Arizona in this case. In its decision, the Court specifically recognized the concerns raised in the Western Water Users *amicus* brief and cited that brief.

"Allocating water in the arid regions of the American West is often a zero-sum situation," the Court found. "And the zero-sum reality of water in the West underscores that courts must stay in, proper constitutional lane and interpret the law (here, the treaty) according to its text and history, leaving to Congress and the President the responsibility to enact appropriations laws and to otherwise update federal law as they see fit in light of the competing contemporary needs for water."

The Court also embraced the Alliance's and water users' argument that water right claims should be made in water right adjudications.

". . . [T]he Navajos may be able to assert the interests they claim in water rights litigation, including by seeking to intervene in cases that affect their claimed interests, and courts will then assess the Navajos' claims and motions as appropriate", the Court found.

The Arizona Department of Water Resources praised the

decision.

"Arizona's primary concern in this case has been preserving the Secretary of the Interior's ability to manage the Lower Colorado River system pursuant to the Law of the River, through drought, climate change and historical overuse," the agency said in a statement. "Today's opinion allows the Secretary to do just that."

However, Rep. Raúl Grijalva (D-ARIZONA) told *Greenwire* that the SCOTUS ruling will further complicate an already tense water allocation negotiation process.

"Ruling against the Navajo Nation in this way while we face a third decade of intensifying drying of the West is especially egregious," said Rep. Grijalva, who intends to pursue legislation to address the tribe's water needs.

Attorneys for the Navajo Nation will consider their next steps to obtain "quantified water rights," or the specific amount of water the tribe is allowed to draw from the river.

"The Navajo Nation established a water rights negotiation team earlier this year and we are working very hard to settle our water rights in Arizona," Navajo Nation President Buu Nygren Nygren told *Greenwire*. "I am confident that we will be able to achieve a settlement promptly and ensure the health and safety of my people."

Family Farm Alliance leaders were pleased by the Court's judgment, which eliminates another possible layer of uncertainty regarding Western water decision-making.

"From a practical standpoint, this decision should eliminate the possibility of a new method being established for tribes to pursue water outside of the established process of filing and pursuing claims in basin-wide adjudications, involving all affected water users and States," said Alliance General Counsel Norm Semanko (IDAHO). "It also demonstrates the importance that amicus briefs can play in these kinds of cases."

BLM Proposed Rule Draws Fire (*Continued from Page 5*)

Family Farm Alliance Engagement

The Family Farm Alliance last month signed on to a "partners" letter driven by the PLC and National Cattlemen's Beef Association (NCBA) to a final "partners" letter to BLM, calling for a reset of BLM's proposed public lands rule.

"We....request the agency withdraw the proposed rule and reset the conversation to ensure appropriate stakeholders are at the table to find durable answers to some of the West's most pressing challenges," the letter urges.

The Alliance joined PLC, NCBA, American Sheep Industry Association, American Quarter Horse Association, American Mining and Exploration Association, National Association of Counties, Association of National Grasslands, Safari Club International, Western Energy Alliance, American Forest Resource Council, and a half dozen other fairly diverse organizations on the letter.

BLM later committed to extending the original comment period by 15 days, to July 5.

Alliance President Pat O'Toole and others have been raising concerns with BLM's leadership on this matter. Director Stone Manning spent a day last month at O'Toole's Ladder Ranch and the surrounding watershed in Wyoming and Colorado, showing how effective watershed management planning can be developed and implemented using local landowners and resource managers as the drivers.

"That's how we find durable solutions, by working together," said Mr. O'Toole. "Partnership with BLM's permittees is a vital component of working together and is key to effective public lands management."

Western Water Bills Introduced in Advance of July Senate Hearing

In advance of a legislative hearing planned by the Senate Energy and Natural Resources Committee later this month, Western Senators have introduced a slew of bills intended primarily to address persistent drought in the West. The Family Farm Alliance is reviewing all of them with an eye towards preparing written testimony for the hearing.

Water Legislation Introduced by Senator Feinstein

The Alliance worked with the office of Senator Dianne Feinstein (D-CALIFORNIA) on three bills she introduced last month.

California’s senior Senator, along with Senators Mark Kelly (D-ARIZONA) and Kyrsten Sinema (I-ARIZONA), introduced the *Support to Rehydrate the Environment, Agriculture and Municipalities Act* or *STREAM Act*, which authorizes water infrastructure funding and provides programmatic authorization for non-Federal Reclamation water projects.

“As the last years have proven, climate change is making severe and prolonged drought a stark reality for the West. We must act now to improve our resilience to severe drought in the future,” Senator Feinstein said. “We need an ‘all-of-the-above’ strategy to meet this challenge, including increasing our water supply, incentivizing projects that provide environmental benefits and drinking water for disadvantaged communities, and investing in environmental restoration efforts.”

The Restore Aging Infrastructure Now (RAIN) Act – co-sponsored with Senator Alex Padilla (R-CALIFORNIA) - would authorize grant funding for 15% of the cost of aging infrastructure projects out of the \$3.2 billion appropriated for these purposes in the Bipartisan Infrastructure Law (BIL), if the projects are modified to add public benefits including drinking water for disadvantaged communities.

“Senator Feinstein introduced a very similar version of this legislation last Congress as the extraordinary operation and maintenance provisions in section 107 of the STREAM Act,” said Alliance Executive Director Dan Keppen. “The Alliance once again supports it.”

The Canal Conveyance Capacity Restoration Act would fund 1/3 of the cost of restoring the original conveyance capacity of three important canals in California’s Central Valley: the Friant-Kern Canal, Delta Mendota Canal, and California Aqueduct. It provides additional authorized funding for

the Restoration Goal of the San Joaquin River settlement. This is also identical to legislation Senator Feinstein introduced in the last Congress.

“All three bills are fairly similar to legislation Senator Feinstein introduced last Congress, which we supported,” said Mr. Keppen. “After soliciting input from our Members, we developed a letter to Senator Feinstein expressing formal Alliance support for all three of these bills.”

Water for Conservation and Farming Act

Last month, Senators Ron Wyden and Jeff Merkley (D-OREGON) reintroduced S. 963, the "Water for Conservation and Farming Act." The bill would establish a \$300 million fund at the Bureau of Reclamation (Reclamation) for water recycling, efficiency, and dam safety projects. The legislation would also authorize another \$40 million to support water and conservation projects in disadvantaged communities.

The legislation would authorize \$25 million for fish passage projects through 2029 via the Fisheries Restoration and Irrigation Mitigation Act (FRIMA).

“Our members in California, Idaho, Oregon, Montana, and Washington are strong supporters and benefactors of FRIMA,

which supports voluntary fish screen and passage projects,” said Family Farm Alliance Executive Director Dan Keppen. “When funded, this has been a successful program to protect native and endangered fish and other aquatic species.”

The bill also includes the "Deschutes River Conservancy Reauthorization Act," which would authorize up to \$2 million in funding annually for 10-years for water quality and conservation.

Urban Canal Modernization Act

Senator Jim Risch (R-IDAHO) has introduced the *Urban Canal Modernization Act* to allow Recla-

mation aging infrastructure funding to help address repairs for urban canals with extraordinary maintenance issues.

Many western canals, like the New York Canal in Idaho’s Treasure Valley, have gone from being rural in nature to being surrounded by urban infrastructure over time.

“Many urban canals need repairs that, if left unattended, could pose substantial danger to the communities that have



The New York Canal, near Boise (IDAHO). Photo source: U.S. Bureau of Reclamation, Columbia-Pacific Northwest Region.

Continued on Page 8

Western Water Bills (Continued from Page 7)

been built around them,” said Senator Risch. “The *Urban Canal Modernization Act* is a commonsense fix that establishes access to existing aging infrastructure funds to address these canals’ extraordinary maintenance issues. Maintaining these canals will protect our way of life in the West and our property.”

The Family Farm Alliance and several of its Idaho members support Senator Risch’s legislation.

“The increase in development has resulted in many such canals being designated as urban canals of concern,” said Paul Arrington, Executive Director & General Council with the Idaho Water Users Association. “Importantly, the challenges, and associated significant increase in costs for maintenance, were not anticipated when the canals were constructed. Thank you to Senator Risch for working with water users to provide opportunities for resources to help offset these significant costs.”

Great Salt Lake Water Stewardship Act

Senator Mike Lee (R-UTAH) and Rep. John Curtis (R-UTAH) recently introduced S. 1955/H.R. 4094, the “Great Salt Lake Water Stewardship Act” in their respective chambers. Those bills would expand water conservation programs and allocate unexpended budget authority currently funded under the Central Utah Project Completion Act (CUPCA) to the entire Great Salt Lake drainage basin to bolster water levels in the Great Salt Lake which, until this year’s exceptional winter, were receding at an alarming rate.

Open Access Evapotranspiration Data Act

Senator Catherine Cortez Masto (D-NEVADA) and Senator John Hickenlooper (D-COLORADO) earlier this year reintroduced *The Open Access Evapotranspiration (OpenET) Act*, legislation intended to get critical water use data in the hands of farmers, ranchers, and decision-makers for improved water management across the Western U.S. The bill would establish a program to use publicly available data from satellites and weather stations to provide estimates of evapotranspiration (ET), a measure of actual water use.

“We share the concerns expressed by other agricultural producers in the West regarding this OpenET bill, which would inject major federal funding into the OpenET program,” said Mr. Keppen. “We have proposed alternative language that would scale down the scope, remove the linkage to federal conservation program compliance programs, and address privacy and data quality concerns raised by farm groups through the use of pilot projects. We stand ready to work with the bill sponsors to ensure these bills do not have unintended consequences for Western agriculture and water management.”

Voluntary Agricultural Land Repurposing Act

Senator Alex Padilla (D-CALIFORNIA) has introduced the *Voluntary Agricultural Land Repurposing Act*, legislation that is intended to build drought resiliency and reduce water use by providing federal funding to states and tribes that work to voluntarily “repurpose” certain agricultural lands.

“Agriculture is essential to California’s economy and allows us to put food on the table for families across the country, but the climate crisis and historic droughts require us to adapt to long-term water scarcity,” said Senator Padilla. “My *Voluntary Agricultural Land Repurposing Act* will provide another tool for communities to support the collaborative planning and voluntary actions already underway to reduce water use in the West.”

In California, it is estimated that at least 750,000 to 1



million acres of farmland will need to come out of development due to water scarcity. If this land transition is not proactively managed, it could result in increased dust, pests and weeds, and widespread economic impacts. In response, the California State Legislature established the Multibenefit Land Repurposing Program to help regions “repurpose” agricultural land while providing community health, economic well-being, water supply, habitat, renewable energy, and climate benefits.

Specifically, the bill would modify Reclamation’s emergency drought authority and its WaterSMART program to authorize funding for states and tribes to run voluntary and multibenefit land repurposing programs.

Given the current backdrop of recent severe drought conditions in the Western U.S., significantly inflated food costs, global food supply challenges, and a looming global famine, the Alliance believes taking additional Western American agricultural land out of production must be carefully and thoughtfully evaluated. The Alliance worked constructively with Senator Padilla’s office to raise this issue as draft legislation was being contemplated in the last Congress.

“We’ll continue to advocate for a more narrowly focused, pilot approach, administered by USDA or funded through a state-run program, and intended to be implemented in a voluntary manner, as a last resort,” said Mr. Keppen. “We look forward to working further with Senator Padilla’s office to address our concerns.”

The Alliance in the weeks leading up to the hearing will be working with its members and allies to ensure that these and other concerns of Western irrigators are heard as these bills are debated.

“As always, we intend to be proactive and constructive in conveying our concerns and will work to find a place at the decision-making table” said Mr. Keppen.

Federal Agencies Roll Out Proposed ESA Rule Revisions

More Rulemaking Coming, Including on WOTUS

The U.S. Fish and Wildlife Service (“FWS”) and National Marine Fisheries Service (“NMFS”) (collectively, “the Services”) last month published three proposed rules related to implementation of the Endangered Species Act (“ESA”). The Biden Administration will proceed on other rulemaking efforts important to Western water users in the year ahead.

“The Endangered Species Act is the nation’s foremost conservation law that prevents the extinction of species and supports their recovery,” said FWS Director Martha Williams. “These proposed revisions reaffirm our commitment to conserving America’s wildlife and ensuring the Endangered Species Act works for both species and people.”

The proposed revisions are made in response to President Biden’s Executive Order 13990, which directed the Services to review and revise certain agency actions taken between January 2017 and January 2021.

The three proposed rules would:

- Revise regulations regarding interagency consultation, including broadening the scope of the Services’ conditioning authority;
- Reinstate a blanket protection for threatened species managed by FWS; and
- Clarify any misconceptions created by the Trump administration when it removed language in 2019 referencing economic impacts within the context of the classification process. This rule would also change the Services’ critical habitat designation rule regarding not-prudent determinations and unoccupied areas.

The Biden Administration agreed to rewrite the three ESA rules in response to a lawsuit filed by Earthjustice on behalf of the Center for Biological Diversity, Defenders of Wildlife, the Sierra Club, the Natural Resources Defense Council, and other litigious environmental organizations.

Reaction to Proposal

“These are promising steps toward restoring the purpose and power of the Endangered Species Act, and getting these protections back is why we challenged the harmful Trump rules for the past four years,” said Earthjustice attorney Kristen Boyles. “By mending the rules interpreting the ESA, the Biden administration can significantly help us address the worsening biodiversity crisis and celebrate the 50th anniversary of the Act.”

Republican critics in Congress believe the Biden Administration’s proposed action is a step backward.

“The Endangered Species Act has long been weaponized by special interest groups to halt projects and economic development in rural communities, even as it fails to achieve the very goal it was put in place to achieve: recovering species,” said Rep. Dan Newhouse (R-WASHINGTON) on the day after the proposed rules were rolled out. “Yesterday’s move by the Biden Administration erases any progress we’ve been able to achieve in modernizing this statute and rolls it back to a former, more archaic version.”

Implications for Western Water Users

Implementation of the ESA certainly impacts the management of land and water throughout the West. For example, federal water supplies that were originally developed by the Bureau of Reclamation primarily to support new irrigation projects have, in recent years, been redirected to ESA uses.

“The result is that these once-certain water supplies – one of the few certainties in Western irrigated agriculture – have now been added to the long list of existing uncertainties,” said Alliance Executive Director Dan Keppen.

Given the nature of water storage and delivery, Alliance members are often directly impacted by the implementation of the ESA and other federal laws.

“A constant frustration our members experience is the lack of accountability for success or failure for the implementation of these federal laws,” said Mr. Keppen. “The ESA has at times been interpreted to empower federal agencies to take action intended to protect listed species without consideration of the societal costs of such action, even when it is not clear that the action taken will actually yield conservation benefits for the particular species.”

The Alliance has consistently and strongly supported efforts to reform the ESA and its implementing regulations – like the effort initiated by the Trump Administration - to provide clearer direction to the agencies in applying and enforcing the law. The Alliance in November 2021 developed a detailed comment letter to the Services that reaffirmed the support the organization placed behind the substance and process used to finalize the 2020 ESA rules that were rescinded by the current administration.

“It looks like we’ll go back to the drawing board again, and reiterate those concerns to the agencies once more,” said Mr. Keppen.

Comments on the proposed rules are due August 21, 2023.

More Federal Rulemaking on the Horizon

The Biden Administration on June 13 -about two months late - released their spring Unified Agenda, which describes upcoming rule making across the federal government, including at the Environmental Protection Agency (EPA), the Interior and Energy Departments. The Unified Agenda shows a number of major rulemakings planned to be finalized in the spring of 2024, an election year.

“The Administration knows that any rules finalized late in the year will be within the timeframe for Congressional Review Act, or CRA resolutions,” said Mark Limbaugh with The Ferguson Group, the Alliance’s representative in Washington. “That could undo many rules if Republicans win the White House and gain control of Congress in the election.”

Several climate-related rulemakings have been moved up on the schedule and the White House Council on Environmental Quality plans to release their Phase 2 National Environmental Policy Act reforms soon, with final climate guidance under NEPA due in February.

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Biden Administration Rulemaking (Cont'd from Page 9)

WOTUS Rulemaking to Resume After *Sackett* Decision

The EPA had been planning a follow-up rulemaking to further refine the definition of “waters of the U.S.” (WOTUS) under the Clean Water Act (CWA), but that has now been “withdrawn” from the Unified Agenda, since the Supreme Court’s recent *Sackett* decision is at odds with the Biden WOTUS rule.

In *Sackett*, the court ruled unanimously against the use of the “significant nexus” test for waters under the jurisdiction under the CWA. The Biden WOTUS rule incorporates the “significant nexus” test which is no longer valid. “This could mean the Administration will need to rewrite their WOTUS rule to straighten out what the *Sackett* decision means while the country is now reliant on the 1986 CWA regulations and guidance,” said Mr. Limbaugh.

Michael Connor, assistant secretary of the Army for civil works, told a Congressional committee last month that efforts are underway to amend the WOTUS rule.

“I was disappointed with the recent decision by the Supreme Court,” said Mr. Connor. “We are nonetheless working closely with EPA to develop a new rule to amend the waters of the United States definition.”

One week after the hearing, EPA and the Army Corps of Engineers announced plans to issue a final WOTUS rule by September and that work is underway already to that end.

Meanwhile, the Army Corps has already paused processing approved jurisdictional determinations in the wake of the decision.

That pause is likely to remain in place while the agencies work on guidance in implementing the CWA under *Sackett*.



Michael Connor, Assistant Secretary of the Army for Civil Works. Photo source: Department of Defense.

Snake River Dams (Continued from Page 4)

Government witnesses also assessed how the four dams impact salmon populations and underscored the importance of Lower Snake dams to the region.

Jennifer Quan, the West Coast Regional Administrator for the National Marine Fisheries Service at the hearing acknowledged that the latest ESA biological opinion issued by her agency assessed and concluded that the operations and maintenance of the Columbia River Systems’ 14 dams was not likely to jeopardize the continued existence of listed salmon and steelhead or result in the destruction or adverse modification of their critical habitat.

NOAA officials last spring also acknowledged that the vast majority of salmon are getting up, over, around and through the four lower Snake River dams. For every 100 young chinook and steelhead that head downstream and past the four dams every spring, about 75 survive.

“That’s pretty good,” Ritchie Graves, Columbia Hydro-power Branch chief for NOAA, told *Capital Press* in May. “In a lot of river systems, that would be something they would shoot for.”

Last year, Bonneville Power Administration (BPA) commissioned an independent economic study of the cost to the region for replacing the energy and reliability services of the 4 Lower Snake River Dams.

“The study found that replacing these dams while meeting clean energy goals and maintaining system reliability is possible but doing so comes at a substantial cost to the region,” said John Hairston, BPA’s Administrator and CEO.

Wall Street Journal Underscores Importance of Dams

The Western Republicans’ hydropower forums took place just days after the *Wall Street Journal* published an editorial explaining how removal of the four lower Snake River dams would make electricity far costlier and harm local residents, with the salmon seeing little benefit. The *Journal* quoted President Biden, who said the lower dams needed to be breached to protect “the livelihoods of people who depend on them, like the family farms, outdoor recreation businesses and rural communities.”

“Those are precisely the people who will suffer the most if the dams are removed,” the *Journal* opinion countered. “The loss of reliable hydropower would cause blackouts, and the addition of new trucking and train infrastructure would cause pollution in the communities of southeastern Washington.”

The Biden administration says it has not taken a position on whether it will recommend that Congress authorize breaching the four lower Snake River dams.

“We are committed to working together to bring healthy and abundant salmon runs back to the Columbia River System and honoring federal commitments to tribal nations while supporting local and regional economies — including critically important agricultural production and transportation,” Alyssa Roberts, communications director at CEQ, told the *Capital Press*.

Following Debt Ceiling Deal, Congress Shifts Attention to Farm Bill

The House and Senate are in a two-week recess for the July 4th holiday. The chambers will return on July 10 and 11, respectively. Negotiations surrounding the debt ceiling legislation in May delayed much of the progress on other priorities. With that now behind Congress, lawmakers will turn their attention to other matters, including the 2023 Farm Bill.

All signs point to a short-term extension for several Farm Bill-related provisions from the 2018 Farm Bill covering numerous food and nutrition policies and programs. Like government funding, the Farm Bill expires on September 30, 2023, creating a critical time crunch for lawmakers, who have yet to release draft text of the legislation.

House Agriculture Committee Chair GT Thompson (R-Penn.) aims for an early September markup of the lower chamber's bill. The move would leave just a few weeks for the Senate to pass and both chambers to conference the bill.

"It would not surprise me" if Congress passed a short-term extension providing extra time to work on the bill, Chairwoman of the Senate Agriculture Committee, Senator Debbie Stabenow (D-Mich.) remarked.

The Senate and House are on a collision course over the topic of SNAP (food stamp assistance), as reported recently by *Politico Morning Ag*.

Senate Agriculture Chair Debbie Stabenow (D-Mich.) told *Politico*, that, from her perspective, Congress is "done" with any discussion around SNAP changes, since the debt limit agreement included some work requirement changes requested by Republicans.

"What's clear to me is once this is done we are not revisiting it in the farm bill." Senator Stabenow said in an interview.

But Speaker Kevin McCarthy, in his speech last month celebrating the House's passage of the debt bill, appeared to gear up House Republicans for a farm bill battle over SNAP work requirements.

"Let's get the rest of the work requirements," Speaker McCarthy said.

The House Appropriations Committee approved an annual spending bill last month that would slash funding for climate change and rural energy programs at the Department of Agriculture next year, in the face of strong opposition from minority Democrats (*see related story, below*).

The Family Farm Alliance has been working with its allies in the Western Agriculture and Conservation Alliance (WACC) and other partners on the 2023 Farm Bill, with emphasis on finding ways to make existing conservation title programs more efficient and properly funded.

House Committee Approves FY 2024 Energy-Water Appropriations Bill

The House Appropriations Committee last month followed the GOP playbook setting FY 2024 spending levels below the spending caps agreed to in the debt ceiling deal and approved their version of the FY 2024 spending legislation last week, with deep cuts to Biden Administration priority renewable energy and climate-related spending.

The bill funds the Department of Energy, Army Corps of Engineers (Corps) and Bureau of Reclamation and passed by a 34-24 vote.

"Funding for the Bureau of Reclamation totals \$1.8 billion and prioritizes projects that increase water supply and support drought response," said Energy and Water Development and Related Agencies Subcommittee Chairman Chuck Fleischmann (R-TN).

The Corps would receive more than \$9.5 billion in the proposal, significantly more than the \$7.4 billion proposed by the Biden Administration in their budget request, and \$900 million more than FY 2023 levels. But Reclamation would see current FY 2023 spending levels slashed by \$91 million, even though the bill calls for FY 2024 spending levels for Reclamation to be \$392.4 million more than the Biden budget request.

During the markup, Committee Republicans rejected amendments offered by the Democrats that would have funded Inflation Reduction Act (IRA) climate initiatives, diversity initiatives, or advanced critical race theory.

Republicans say the spending bill would reduce appropriations for programs that are unnecessary and wasteful and would reprioritize spending that help with the overall economy and our Nation's security.

While the bill contains targeted cuts to clean energy, climate, and diversity efforts at the Department of Energy, it also offsets proposed spending increases by clawing back \$6 billion in spending approved in last year's IRA and the 2021 bipartisan Infrastructure Investment and Jobs Act (IIJA).

The bill also includes some controversial policy and legislative riders, including Rep. Valadao's (R-CA) H.R. 215, the *WATER for California Act* and Rep. McClintock's (R-CA) H.R. 186, the *Water Supply Permitting Coordination Act* in their entirety.

Among other things, the bill would kill the Biden Administration's "waters of the U.S." final rule, which has already been significantly weakened by the recent Supreme Court decision in *Sackett v. EPA* (*see related story, Page 10*).

"The Senate Appropriations Committee is planning to markup their version of the bill in the coming weeks, which will likely turn out to be much different than the House counterpart," said Mark Limbaugh with The Ferguson Group, the Alliance's representative in Washington.

The Senate Appropriations Committee held two markups last month, including the Agriculture and the Military Construction-Veterans Affairs bill.

"Senators are skipping subcommittee markups to expedite the process, as they hope to send all 12 spending bills to the floor before August recess," said Mr. Limbaugh.

The debt ceiling deal enacted last month included a provision that would reduce FY 2024 spending by 1% across the board if the 12 bills were not enacted by January 1, 2024, incentivizing Congress to move FY 2024 spending bills in 2023.

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MAY-JUNE 2023

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