

Monthly Briefing

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

Senate ENR Subcommittee Tees up 16 Western Water Bills

The Senate Energy and Natural Resources (ENR) Water and Power Subcommittee last month heard testimony on sixteen bills dealing with the impacts of drought across the West, including restoration of fish habitat and permitting new hydro-power projects.

Prior to the hearing, the Family Farm Alliance submitted written testimony that addressed most of the bills that were heard.

“We have actively advocated for and contributed to the development of several of the West-wide bills on the hearing docket,” said Alliance Executive Director Dan Keppen.

Legislation addressed in the Alliance testimony includes:

- **S. 482**, the "Klamath Power and Facilities Agreement Support Act" from Subcommittee Chair Ron Wyden (D-OREGON) that would address issues related to impacts of the removal of non-federal hydro dams on the Klamath River, among other things left over from the failed Klamath Basin Restoration Agreement (KBRA).



Senate ENR Committee Chairman Joe Manchin (D-WV) flanked by Family Farm Alliance President Pat O'Toole and his wife, Sharon, who shared a flight from Washington, D.C. to Denver after the O'Tooles spent a week in the nation's capitol in July.

- **S. 1521**, the "Community and Hydropower Improvement Act" from Senators Steve Daines (R-MONTANA) and Maria Cantwell (D-WASHINGTON) which would improve the Federal Energy Regulatory Commission (FERC) licensing and relicensing processes across existing generation, nonpowered dams and pumped storage projects.
- **S. 2247**, from Senators John Hickenlooper (D-COLORADO) and Mitt Romney (R-UTAH) which would extend endangered fish recovery programs in the Upper Colorado and San Juan River Basins.
- **S. 1118**, the "Open Access Evapotranspiration Data Act (OpenET)," from Sen. Catherine Cortez Masto (D-NEVADA), which would provide for federal funds from the USGS to calculate water used by crops and vegetation across the landscape.
- **S. 2102**, the "Water for Conservation and Farming Act," from Sen. Wyden, would establish a \$300 million fund at the Bureau

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16 Water Bills on Senate Leg. Hearing Docket (Cont'd from Pg 1)

of Reclamation for water recycling, efficiency, and dam safety projects, among other programs.

- [S. 2160](#), from Sen. Jim Risch (R-IDAHO), which would help accelerate repairs to high-risk canals running through urbanized areas of the West through additional financial assistance from the Aging Infrastructure Account funded by the bipartisan infrastructure law.
- [S. 2161](#), the "Canal Conveyance Capacity Restoration Act," from Sen. Dianne Feinstein (D-CALIFORNIA), that would authorize \$653 million to restore three San Joaquin Valley canals impacted by subsidence and old age, and \$180 million for the restoration program on the San Joaquin River.
- [S. 2162](#), the "Support to Rehydrate the Environment, Agriculture and Municipalities (STREAM) Act," from Sen. Feinstein, which would increase water supply and modernize water infrastructure across the West.
- [S. 2166](#), the "Voluntary Agricultural Land Repurposing Act," from Sen. Alex Padilla (D-CALIFORNIA), which would provide grants to state and Native American tribes for programs to repurpose agricultural lands for at least 10 years in a bid to reduce groundwater use.
- [S. 2169](#), the "Watershed Results Act," from Sen. Wyden, would authorize the Interior Department to spend up to \$15 million annually for as many as five watershed pilot projects designed to provide measurable results from prioritized conservation activities across a watershed using advance watershed analytics and streamlined federal grants.

- [S. 2202](#), the "Restore Aging Infrastructure Now Act," from Sen. Feinstein, would draw from \$3.2 billion appropriated to the Bureau of Reclamation in the bipartisan infrastructure law to help pay for upgrades to aging Reclamation-owned canals that provide for additional public benefits, including drinking water for disadvantaged communities.

The sole witness at the hearing was Camille C. Touton, Commissioner of the Bureau of Reclamation.

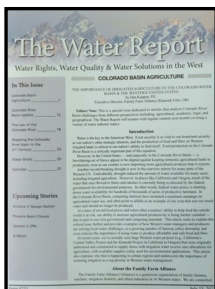
"The American West faces severe water reliability challenges due to climate change, persistent drought, and the aging of critical infrastructure," Commissioner Touton testified. "The changing climate in the West highlights the need for immediate actions as well as for thoughtful planning and on-the-ground work to make both our infrastructure, and our operations, more resilient."

Chairman Wyden conducted an efficient hearing, where the subcommittee ploughed through the docket in just over an hour.

The panel also spent a portion of its hearing heaping praise on Commissioner Touton, highlighting the recent agreement by Colorado River Basin states over how to address shortfalls in that watershed (*E&E Daily*).

"I mean, I thought it was going to be a bouquet tossing contest because one senator after another kept saying, 'Ms. Touton, you've done this well. You've done that well,'" Chairman Wyden said in the midst of the hearing, following remarks from Sens. Mark Kelly (D-ARIZONA), Senator Cortez Masto and Senator Padilla.

"We appreciate your professionalism," said Mr. Wyden.



The Water Report

<https://www.thewaterreport.com/>

Alliance Executive Director Dan Keppen authored a 7,500-word article on Colorado River agricultural water that ended up being the cover story for this month's *The Water Report*, a publication that provides monthly detailed analyses from a variety of industry experts across the West.



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>

Save the date

DOI Announces \$152 Million Investment in Western Water Storage

The Department of the Interior (DOI) last month announced a \$152 million investment from the Infrastructure Investment and Jobs Act (IIJA) for six Western water storage and conveyance projects.

The projects in California, Colorado and Washington are expected to develop at least 1.7 million acre-feet of additional water storage capacity, enough water to support 6.8 million people for a year. The funding will also invest in a feasibility study that could advance water storage capacity once completed.

“Water is essential to every community – for feeding families, growing crops, powering agricultural businesses and sustaining wild-life,” said Bureau of Reclamation Commissioner Camille Calimlim Touton. “Our investment in these projects will increase water storage capacity and lay conveyance pipeline to deliver reliable and safe drinking water and build resiliency for communities most impacted by drought.”

Through the IIJA, Reclamation is investing a total of \$8.3 billion over five years for water infrastructure projects, including water purification and reuse, water storage and conveyance, desalination and dam safety. The Inflation Reduction Act (IRA) is investing an additional \$4.6 billion to address the historic drought.

The Family Farm Alliance helped lead nation-wide coalitions in support of Congressional action to advance both initiatives in the past two years.

“New water infrastructure will help keep water flowing to our nation’s farms and ranches,” Family Farm Alliance Executive Director Dan Keppen said. “It will also improve our ability to provide water supply reliability for cities and the environment in future droughts.”

California Projects

The recent funding announcement will support three new storage projects in the Golden State.

“The Alliance has championed all three of the projects, some of which have been on the books for decades,” said Family Farm Alliance Executive Director Dan Keppen.

Reclamation will provide \$10 million to the San Luis and Delta-Mendota Authority, to pursue the B.F. Sisk Dam Raise and Reservoir Expansion Project, a Safety of Dams (SOD)

modification project. Once completed, the project will develop approximately 130,000 acre-feet of additional storage.

Phase II of the Los Vaqueros Reservoir Expansion will receive \$10 million to efficiently integrate approximately 115,000 acre-feet of additional water storage through new conveyance facilities with existing facilities. This will allow Delta water supplies to be safely diverted, stored and delivered to beneficiaries.

The Sites Reservoir Project received \$30 million to pursue off stream storage capable for up to 1.5 million acre-feet of water in the Sacramento River system, located in the Coast range mountains west of Maxwell, California. The reservoir would utilize new and existing facilities to move water in and out of the reservoir, with ultimate release to the Sacramento River system via existing canals, a new pipeline near Dunnigan, and the Colusa Basin Drain.

“Sites Reservoir creates

new resiliency for California in the face of climate change,” Fritz Durst, chairman of the Sites Project Authority, previously said in a statement.

California Governor Gavin Newsom unveiled proposals in May to expedite permitting and review procedures for vital infrastructure projects, including Sites Reservoir and Los Vaqueros. The purpose is to help speed up the overall process of bolstering water resiliency in California. All seven water storage initiatives established under California Proposition 1 are eligible under recently signed legislation.

“We are grateful to Governor Newsom and the State Legislature for their leadership on such a challenging aspect of our regulatory process,” Executive Director of the Sites Project Authority, Jerry Brown said in a press release. “Their actions to incorporate these policy changes will expedite securing our water supplies to become more resilient to a changing climate.”

Arkansas Valley Conduit

The Arkansas Valley Conduit in Colorado will received \$100 million to continue construction of a safe, long-term water supply along the Arkansas River.

“I’ve fought to ensure the federal government keeps its



Promo piece for Sites Reservoir in California. Source: Sites Reservoir Authority

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2018 Farm Bill Likely to be Extended Lawmakers Await Draft Text for New Bill

All signs point to at least 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 Chair Glenn Thompson (R-Pa.) has said he still expects to mark up a farm bill in the Agriculture Committee in mid-September and that a bill could be ready for President Joe Biden to sign by the end of the year if the Senate keeps pace, according to *Politico*.

“That would require an extension past the 2018 farm bill’s expiration Sept. 30, something that has happened several times in the past few decades,” said Family Farm Alliance Executive Director Dan Keppen.

The farm bill is an omnibus, multiyear law that is typically renewed about every five years

Given the delays from the debt ceiling and appropriations negotiations, lawmakers have yet to release the draft text of the Farm Bill legislation in both chambers. Leaders in the House and Senate, Rep. Thompson and Sen. Debbie Stabenow (D-Mich.) have mentioned their desire to share draft legislation soon. Even with the progress, all signs point to a short-term extension to the early part of next year.

“Engaging in the development of the 2023 Farm Bill is one of our top priorities this year,” said Family Farm Alliance Executive Director Dan Keppen.

The Alliance in April publicly rolled out its “Six Point Plan” intended to guide the organization’s advocacy efforts in Washington, D.C.

“Passing a 2023 Farm Bill that addresses Western agricultural challenges is a top priority,” Mr. Keppen said. “We want to see 2023 Farm Bill conservation title programs that are administered efficiently and effectively, and support projects like irrigation modernization that provide multiple, stacked benefits, rather than simply focusing on climate fixes.”

Once again, the Alliance is working with its partners in the Western Agriculture and Conservation Alliance - the “WACC” – on the conservation title. The WACC earlier this year finalized its Farm Bill platform, which, among other things, puts priority on improving implementation of the Watershed and Flood Prevention Operations (“PL-566”) and the Regional Conservation Partnership Program, encouraging active management for grazing, and seeking to provide better and faster conservation program technical assistance and compliance.

The Alliance co-founded the WACC 12 years ago in an effort to better advocate for farm bill conservation title provisions that help Western farmers and ranchers, as well as the environment.

“The current farm bill has a strong Western flavor in large part due to the efforts of the WACC,” said Jeff Eisenberg, the WACC coordinator. “Hill interest in WACC Farm Bill activity remains robust.”

\$152M for Western Water Storage (Cont’d from Page 3)

word and finishes this vital infrastructure project for southeast Colorado,” Senator Michael Bennet (D-COLORADO) said in a statement. “I’m grateful to have helped deliver this new funding to provide safe, clean water to nearly 40 communities and 50,000 Coloradans along the Arkansas River.”

Once completed, the project will replace current groundwater sources contaminated with radionuclides and help communities comply with Environmental Protection Act drinking water regulations for more than 103 miles of pipelines designed to deliver up to 7,500 acre-feet of water per year from Pueblo Reservoir.

Washington State Projects

Drought conditions continue to impact Yakima River basin irrigators in Eastern Washington. Junior water-right holders were cut to 72% of their full water allotments earlier this summer. However, the recent DOI announcement includes \$2 million for projects that will provide additional flows for fish.

The Cle Elum Pool Raise Project will receive \$1 million to continue to increase the reservoir’s capacity to an additional 14,600 acre-feet to be managed for instream flows for fish. Additional funds for shoreline protection will provide mitigation for the pool raise.

The Upper Yakima System Storage Feasibility Study received a boost of \$1 million to begin a feasibility study to identify and assess storage alternatives within the Kittitas Reclamation District (KRD) area.

The district could utilize conserved water or water diverted for storage as part of total water supply available for tangible improvements in meeting instream flow objectives, tributary supplementation efforts, aquatic habitat improvements, and support the delisting of steelhead and bull trout populations to meet the goals of the Yakima Basin Integrated Plan.

“All of this funding is a direct result of the constant professional efforts of the Family Farm Alliance team to work collaboratively with others,” said Urban Eberhart, KRD general manager.

Last month’s investments build on \$210 million in funding announced last year from the IJA for water storage and conveyance projects.

“These new water storage investments are possible because of the Alliance successfully working together with a broad coalition to include federal authorization language for water projects throughout the western U.S. in the IJA,” said Mr. Eberhart, who is also the current chair of the Family Farm Alliance Advisory Committee.

EPA to Use ‘Good Cause’ Authority in WOTUS Rewrite

The Biden Administration’s Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) have announced they will quickly and surgically amend their final “Waters of the U.S.” (WOTUS) Rule to incorporate the landmark Supreme Court decision in *Sackett v. EPA* by September.

Under the Administrative Procedure Act (APA), agencies can enact final rules without taking comment on a proposed version in limited cases, including where the agency has “good cause” to believe that the notice-and-comment process would be “impracticable, unnecessary, or contrary to the public interest.”

“Litigation over this decision is certain,” said Family Farm Alliance General Counsel Norm Semanko.

Implications of *Sackett* Decision

The May 25 decision in *Sackett* rendered parts of the Biden final WOTUS rule moot when a five-justice majority endorsed a narrower test for determining whether wetlands and other water bodies are considered WOTUS, based on a “relatively permanent” surface-water connection from late-Justice Scalia.

The Administration’s final WOTUS rule relied on both the Scalia test, as well as the broader “significant nexus” test from then-Justice Kennedy in the Supreme Court’s previous *Rapanos* decision, with allowances for “temporary interruptions” in that connection.

“Any revised rule is, at a minimum, expected to excise the ‘significant nexus’ test,” said Mr. Semanko, “It could also define key terms left unaddressed by the high court’s ruling in *Sackett*.”

The White House Office of Management and Budget’s (OMB’s) recent listing for the rule confirms that the new definition is designated a final action, meaning it bypassed the APA’s notice and comment process for most rulemakings.

“That was expected given the short timeline for enacting it,” said Mr. Semanko.

EPA Office of Water Assistant Administrator Radhika Fox told committee members at a July 13 House hearing that the agency intended to invoke its authority to skip the proposal step for “good cause.”

WOTUS Rewrite a Priority for T&I Subcommittee Questioning Radhika Fox

During last month’s House Transportation and Infrastructure (T&I) Subcommittee on Water Resources and Environment hearing, both Republicans and Democrats alike questioned EPA Assistant Administrator Radhika Fox repeatedly about the Biden Administration’s work revising their final WOTUS rule following the Supreme Court decision in *Sackett v. EPA*.

Majority Republicans have praised the Supreme Court decision as effectively gutting the “significant nexus” definition of WOTUS used in the Administration’s final rule but were concerned about the proposed accelerated timeline for rewriting the rule, with EPA and Corps officials announcing that the newly revised WOTUS rule would be released in September of this year.

T&I Chairman Rep. David Rouzer (R-NC) expressed some skepticism at the hearing that the upcoming rule would modify the definition that EPA and the Corps released early this year beyond eliminating the significant nexus standard (*Inside Washington Publishers*).

Assistant Administrator Fox answered that while the rule will have to remove the significant nexus test, the *Sackett* decision also affects other provisions.

“The justices spoke very clearly on the definition of adjacency -- that adjacency [means] you must have a direct surface connection,” she said. “That is a definition of adjacency that is narrower than currently in the 2023 rule, so we are going to have to address that too.”

Assistant Administrator Fox said her office is “carefully looking” at the rule and “intends to follow the law” as it moves forward with a new rule by September. She stated at the hearing that once that good-cause rule is finalized, EPA intends to host implementation discussions “with a range of stakeholders who have a stake in the Clean Water Act” if there are ongoing questions on the reach of WOTUS under the Clean Water Act as informed by the *Sackett* decision.

Democrats were equally interested in the speedy rulemaking, sending a letter to the Administration asking for clarity as



**Family Farm Alliance General Counsel
Norm Semanko (IDAHO).**

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House WWF Subcommittee Oversight Hearing: Endangered Species Act's 'Destructive Cost'

The House Natural Resources Subcommittee on Water, Wildlife and Fisheries (WWF) held an oversight hearing last month with the focus on the enormous costs and regulatory burdens created by the implementation of the Endangered Species Act (ESA).

"The ESA is an act that could work if it were implemented as intended – to recover actually threatened or endangered fish, wildlife and vegetation," said Rep. Harriet Hageman (R-WYOMING). "It has instead become a business in and of itself, with an entire economy built around endless studies, monitoring, field work, and lawsuits which allow environmental groups to use the federal government to impose restrictions on the use of private property and limit our ability to use our energy, land and water resources, while also receiving massive federal subsidies through "sue and settle" actions."

With the ESA turning 50 years old in December, there is a renewed debate among lawmakers over the law and how it's implemented. Over the history of the ESA, approximately 1,700 species have been listed but only three percent have ever been considered recovered. The last time Congress significantly amended the ESA was in 1988.

The Biden administration has rolled back reforms made by the Trump administration intended to modernize the ESA.

"I think we should be celebrating the ESA. This is a historic and popular conservation law which has prevented countless species from going extinct," said Subcommittee Ranking Member Jared Huffman (D-CALIFORNIA). "But so far this year, my Republican colleagues have been more inter-

ested in using this form of this committee to villainize, attack and misinform people."

The House Appropriations Committee recently released their FY 2024 spending bill that includes several policy riders to prevent the Fish and Wildlife Service (FWS) from using appropriated funding in FY 2024 to implement some specific ESA listing decisions such as the greater sage grouse and the northern long-eared bat, among others.

FWS Director Martha Williams and NOAA Fisheries Deputy Administrator Janet Coit testified at last month's oversight hearing, as did Sean Vibbert, owner of the Obsidian Seed Co. in Madras (OREGON).

"You guys don't understand what it's costing you," Mr. Vibbert said, summarizing a series of ESA-related challenges he and other Oregon residents face because of obligations to the federally protected Oregon spotted frog (*E&E Daily*).

Rep. Westerman last month also announced the creation of a joint ESA Working Group with the Congressional Western Caucus to examine how the ESA is being implemented by federal agencies, ESA's practical impacts on the American people, how litigation is driving ESA decision making and how success is defined under the ESA.

"It is time for Congress to act and amend the ESA to reign in its power and return the act to its original intent when first passed by Congress," said Rep. Westerman. "I am excited to begin and help lead this process of reforming the ESA in the Natural Resources Committee with today's hearing."

The work of the subcommittee and the working group will inform legislation in the Natural Resources Committee to modernize and reauthorize the ESA.



Rep. Harriet Hageman (R-WY)
Source: Office of Rep. Hageman

WOTUS Rewrite A Priority (Continued from Page 5)

to just what changes they intend to make to the rule and stating that they are prepared to possibly take measures amending the Clean Water Act to better safeguard areas that now lack protections.

On July 10, Rep. Rick Larsen (D-WASHINGTON), the Committee's Ranking Member, and Rep. Grace Napolitano (D-CALIFORNIA), wrote asking EPA and the Corps to "...systematically document the individual and cumulative impacts of the U.S. Supreme Court's (Court) misguided decision in Sackett."

"In its Sackett decision, the Court dramatically limited the scope of federal protections over the nation's waters and wetlands provided by the Clean Water Act," the letter stated.

"These new criteria are likely to result in greater adverse impacts to the nation's waters than the Trump administration's 2020 rulemaking – a rulemaking that a prior Federal court characterized as causing serious environmental harm."

Prior to that hearing, EPA and the Corps had not specified what authority they would use to complete the rulemaking process so quickly. The OMB received the final WOTUS rule from EPA on July 17 for approval.

"The current rule has already been stayed by the courts in approximately half of the country," said Mr. Semanko. "However, EPA recently won litigation stays in two of the three legal challenges against the previous final WOTUS rule based on the pending rulemaking."

CEQ Proposes Long-Awaited NEPA Rule Intended to Mesh Biden, Congressional Priorities

The White House Council on Environmental Quality (CEQ) last month released a proposed rule that it says would fully implement and build upon new permitting efficiencies directed by Congress under the Fiscal Responsibility Act (FRA) of 2023.

“These reforms to federal environmental reviews will deliver better decisions, faster permitting, and more community input and local buy-in,” said Brenda Mallory, CEQ Chair. “This rule is a key element of President Biden’s permitting reform agenda that will help us speed the build-out of our clean energy future while reducing pollution and harms in communities that have been left out and left behind for far too long.”

CEQ claims it’s “Bipartisan Permitting Reform Implementation Rule” would modernize and accelerate environmental reviews under the National Environmental Policy Act (NEPA), encourage early community engagement, accelerate America’s clean energy future, strengthen energy security, and advance environmental justice.

Hill Republicans who fought to include permitting reform provisions in the FRA signed into law earlier this summer believe the CEQ rule is a step in the wrong direction.

“While CEQ claims to focus on much-needed NEPA reforms, their actual proposed rule ignores the will of Congress expressed in the FRA in many instances and instead opens future projects up to new litigation and extended delays,” said House Natural Resources Committee Chairman Bruce Westerman (R-Ark.). “We expect CEQ and other agencies to

follow the intent of Congress and adhere to the clear deadlines, page limits and directives regarding environmental reviews in the FRA.”

The FRA contained many of the key provisions from the Building U.S. Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act, introduced by U.S. Rep. Garret Graves (R-La.) and passed in the House of Representatives as a part of H.R. 1, the Lower Energy Costs Act, introduced by Majority Leader Steve Scalise (R-La.).

The legislation codified many of the Trump-era regulations regarding NEPA, actions supported by the Family Farm Alliance.

The Alliance has previously supported the bill’s provisions to set 150-page limits for environmental impact statements (300 pages if the project is of extraordinary complexity) and 75-page limits for environmental assessments. It would also set time limits of one year for environmental assessments and two years for environmental impact statements and provide a right of action to project applicants if the agency does not adhere to these deadlines.

“We are always looking for ways to clarify ambiguous provisions, align NEPA with relevant case law, reflect modern technologies, optimize interagency coordination, and facilitate a more efficient, effective, and timely environmental review process,” said Alliance Executive Director Dan Keppen. “We’ll review the new CEQ proposal with an eye towards how it meets those objectives.”

Biden Administration: Recent Appointments and Departures

A former Congresswoman from New Mexico has risen to the number two position at the U.S. Department of Agriculture (USDA) and another friend of Western farmers and ranchers announced her resignation from the Department of Interior last month.

Xochitl Torres Small is new USDA Deputy Secretary

The Senate last month confirmed Xochitl Torres Small as Deputy Secretary of the USDA.

“At this critical time when USDA and the Biden-Harris Administration are laser-focused on mobilizing historic investments to rebuild our economy and secure healthier, more vibrant communities for future generations, I am grateful to have Xochitl’s partnership at the helm of the People’s Department,” said Agriculture Secretary Tom Vilsack. “She has time and again met the moment with a collaborative approach and a can-do spirit, and I applaud Congress for confirming her as USDA’s next Deputy Secretary.”

Since October 2021, Torres Small has served as Under Secretary for Rural Development at USDA. Effective July 14, Rural Development Chief Operating Officer Roger Glendenning will serve as Acting Under Secretary.

Prior to joining USDA, Torres Small was a United States Representative for the fifth largest district in the country. As a Member of Congress, she served as a member of the House Agriculture Committee, the House Armed Services Committee and as chairwoman of the Oversight, Management, and Accountability Subcommittee of the House Homeland Security Committee.

Tanya Trujillo Steps Down as Interior Assistant Secretary

The Department of the Interior (DOI) Assistant Secretary for Water and Science Tanya Trujillo stepped down from her position in early June and officially exited on July 17.

“Since the start of the Biden-Harris administration, Interior has taken a leading role in making unprecedented investments in drought resilience and water management and ensuring that the Department’s decisions are made with sound science. Tanya has been at the center of these efforts. We are grateful for her strong leadership and vision at the Department and wish her the very best in her future endeavors,” said DOI Chief of Staff Rachael Taylor.

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Tanya Trujillo Leaves Interior Department (Cont'd from Page 7)

Ms. Trujillo, an expert on the Colorado River, was confirmed by the Senate in the summer of 2021 to the Interior post. She has been working with the seven Colorado River Basin States, along with Interior Deputy Secretary Tommy Beaudreau and Bureau of Reclamation (Reclamation) Commissioner Camille Calimlim Touton, in negotiations over Colorado River operations.

“In these tough times, we needed someone at Interior who had Colorado River policy experience in her portfolio,” said Family Farm Alliance Executive Director Dan Keppen. “Tanya’s other seasoned qualities provided a steady hand at the helm in this important leadership position.”

Before joining the Biden Administration, Secretary Trujillo served on New Mexico’s Interstate Stream Commission, which governs the state’s waters. A native of New Mexico, Ms. Trujillo’s extensive career in water law also included work on Capitol Hill, where she was employed by former Sen. Jeff Bingaman (D-NEW MEXICO) and in the Obama Administration as counselor to the Assistant Secretary for Water and Science.

Over the past decade, Ms. Trujillo has participated in Family Farm Alliance annual conferences as a speaker or panelist several times. In recent years, she has delivered the keynote address at Alliance conferences.



“In our view, throughout her career, Tanya has excelled in her capacity in all that we worked with her on.”
Alliance President Pat O’Toole
Photo Source: DOI

“In our view, throughout her career, Tanya has excelled in her capacity in all that we worked with her on,” said Alliance President Pat O’Toole. “She was very responsive and effective on the issues we raised. We wish her the best in her future endeavors.”

Michael Brain Named Principal Deputy ASWS

DOI on July 19 announced that Deputy Commissioner of Reclamation Michael Brain has been named Principal Deputy Assistant Secretary for Water and Science.

“We welcome Michael, who brings more than a decade of experience in water resource development and management issues, as Principal Deputy Assistant Secretary for Water and Science,” said Chief of Staff Taylor. “Michael will play a key role as Interior continues to implement President Biden’s Investing in America agenda that is delivering historic resources to communities, helping advance drought resilience and strengthening local economies.”

Before joining Reclamation, Mr. Brain held a variety of positions in the U.S. House of Representatives, including as Counsel for the Subcommittee on Water Resources and the Environment and as a professional staffer for the Subcommittee on Energy and Water Development Appropriations.

Senate EPW Committee Begins Talks on the Next WRDA

The Senate Environment and Public Works (EPW) Committee last month informally kicked off discussions over the next Water Resources Development Act (WRDA) bill, citing the need to begin early to continue to achieve the success of past WRDAs.

“As you will recall, the biennial WRDA legislation is an opportunity for us to once again consider the policies, projects, and programs of the U.S. Army Corps of Engineers,” said Committee Chairman Tom Carper (D-Del.) in his opening statement. “Our most recent WRDA legislation passed the Senate in 2022 with a vote of 93-1 and became the engine that carried the annual defense authorization bill to President Biden’s desk. That is a level of bipartisanship not often seen in Congress these days.”

WRDAs address some of the nation’s most pressing infrastructure concerns, providing the Army Corps of Engineers (Corps) with new authorizations for studies and construction of locks and dams, ports, environmental restoration, and projects bolstering climate resiliency.

“We do not anticipate that WRDA 2024 will be a policy-

heavy bill,” said Committee Ranking Member Shelley Moore Capito (R-WV). “Instead, the bill will focus on authorizing new or modifying existing studies and projects, as well as making needed technical changes to prior provisions in order to reflect the intent of Congress. This limited scope will enable the Corps to fully implement the provisions of prior WRDA legislation, and help ensure that the Agency can be responsive to the water resources needs of all communities.”

Of the issues discussed, some were more controversial than others, such as providing the Corps with permitting reforms to allow projects to be constructed more swiftly than in the past. The recently passed debt ceiling deal included some reforms to the National Environmental Policy Act (NEPA) process for permitting infrastructure projects but talks continue about another round of reforms to help move these projects forward even faster.

The Committee also raised issues to be contemplated for the next WRDA bill including extraordinary drought and floods that have been getting worse in various parts of the country.

FY 2024 Appropriations Process Continues

CR Likely Needed Beyond September

House and Senate leaders have scheduled consideration of FY 2024 appropriations bills this month, but with deep divisions between House Republicans and Democrats and considerable differences in spending levels between Senate and House versions, a temporary continuing resolution (CR) will most likely be needed to keep the government open past September 30.

House Ag Appropriations Update

The full House late last month took up their version of the Military Construction-VA (HR 4366) appropriations bill for FY 2024, which represented the only spending bill it was able to pass so far this Congress.

The House appropriations bill to support agriculture, rural development, and the Food and Drug Administration (HR 4368) was supposed to go to the floor for a vote in the last week of July, but internal GOP disagreements prevented that from happening.

Members of Congress made a beeline out of D.C. for their annual August recess. They'll return for a bruising September, the last month before the 2018 bill expires, with just three weeks to prevent a government shutdown.

"While these two appropriations bills are usually considered as non-controversial as any of the 12 annual spending measures, how the GOP controlled House dispatches these bills will impact how the rest of the FY 2024 appropriations process plays out this year," said Mark Limbaugh with The Ferguson Group, the Family Farm Alliance's representative in Washington, D.C.

The White House has issued veto threats for both House bills, citing GOP-led spending cuts and targeted policy riders affecting climate-related and other programs as reasons for not supporting the bills.

"House Republicans had an opportunity to engage in a productive, bipartisan appropriations process, but instead, with just over two months before the end of the fiscal year, are wasting time with partisan bills that cut domestic spending to levels well below the Fiscal Responsibility Act (FRA) [debt limit] agreement and endanger critical services for the American people," said the White House.

House Speaker Kevin McCarthy (R-CALIFORNIA) has said he still intends to pass all 12 appropriations bills before the new fiscal year begins October 1. However, Speaker McCarthy and the House GOP leadership team have been struggling to placate the far-right members of the Freedom Caucus, who are demanding steeper cuts.

"Sometimes when you come in and say, 'OK, I'm gonna get savings here. I'm gonna squeeze here,' the balloon pops up in other places," Rep. Garret Graves (R-La.), one of McCarthy's top negotiators, said in a brief interview with *Politico*. "So I just lost four moderates and picked up two Freedom Caucus guys."

Twenty-one House Republicans wrote to Speaker McCarthy announcing that they wouldn't vote to approve spending

bills at the levels indicated in the FRA, passed earlier this summer to address the national debt limit (*Epoch News*).

"We plan to vote against any appropriations bills designed to achieve the approximately \$1.586 trillion top-line level—roughly equal to the spending caps agreed to with President Biden in the debt ceiling deal and representing a mere 1 percent reduction from Democrats' egregious post-COVID spending level," the signers, led by Rep. Scott Perry (R-Pa.) said on July 10.

The bill would already slash more than \$8 billion from various recissions and would fund the agencies at close to \$18 billion. There are now about 160 amendments proposed for the bill (*Politico Weekly Agriculture*).

Senate Appropriations Committee Approves Energy and Water Development Bill

Senate appropriators, meanwhile, are quickly marking up their FY 2024 spending bills with strong bipartisan support, setting higher spending levels that were set in the June FRA. They sent some of the year's biggest bills to the floor, including those that would fund the Pentagon and the largest swath of domestic programs (*Politico*).

"Today, our Committee will continue passing serious Appropriations bills that can actually be signed into law and making sure the voice of the Senate—and the voice of our constituents—is heard loud and clear in this process," Senator Patty Murray (D-WASHINGTON), Chair of the Senate Appropriations Committee, said at the July 20 markup. "As the bills we are discussing today show, we aren't just talking about numbers on a page. We are talking about our country's competitiveness and leadership on the world stage, the safety and well-being of our families and communities, and the future for our children."

The Senate Appropriations Committee added almost \$14 billion in emergency funds beyond the debt ceiling deal and marked up all but one of its final four spending bills by the end of the month. The Committee moved its Energy and Water, State and Foreign Operations, and Transportation-HUD bills with bipartisan support, fully funding and even boosting funding for some of the programs sustaining cuts in the House bills.

The Committee approved their \$1.92 billion version of the FY 2024 Energy and Water Development bill and report funding the Department of Energy, the Army Corps of Engineers (Corps), and the Bureau of Reclamation (Reclamation).

"Our energy and water infrastructure need significant investment to meet the needs of Americans throughout the country, particularly in the West," said Senator Dianne Feinstein (D-CA), Chair of the Senate Appropriations Subcommittee on Energy and Water Development. "The bill passed by the Appropriations Committee today will help modernize our water systems to improve and increase dam safety, water storage,

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Activists to Ask Judge to Order Breaching of Snake River Dams

Last month, a coalition of environmental groups announced its intent to ask a federal judge to order the lower Snake River dams to be breached as a necessary step to prevent the extinction of endangered sockeye salmon that spawn in central Idaho.

As reported in the June 2023 edition of the *Monthly Briefing*, 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.

The Columbia River Keeper, Idaho Rivers United, Idaho Conservation League and the Northwest Sport Fishing Alliance filed a 60-day notice of intent to sue the Army Corps of Engineers (Corps). They claim the impoundments behind the four dams cause the river to overheat just as adult sockeye salmon are migrating upstream to spawn near the Sawtooth Mountains.

“If we look back at the last five to 10 years of (sockeye) survival, we’ve had bad years and we have had terrible years,” Miles Johnson, executive director of Columbia Riverkeeper, told the *Idaho Tribune*. “If we continue to have terrible years like 2021 and 2015 this species is not going to be around very much longer.”

Government witnesses at Congressional hearings in June provided a different assessment of how the four dams impact salmon populations.

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 salm-

on and steelhead or result in the destruction or adverse modification of their critical habitat.

Other experts believe the legal arguments advanced by the environmental groups will not prevail.

“The Ninth Circuit in 2004 has already held that the Corps has no authority to remove/breach the federal dams to address water temperatures,” said Norm Semanko (IDAHO), General Counsel for the Family Farm Alliance. “Only Congress can do that.”

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

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

Last spring, Republican Representatives from Washington state Cathy McMorris Rodgers and Dan Newhouse introduced legislation to preserve the dams.

The Family Farm Alliance earlier this year sent a letter to Agriculture Secretary Vilsack, urging his engagement on this matter, with an eye towards defending the interests of farmers and ranchers.

“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,” the Alliance letter stated. “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.”



Rep. Russ Fulcher (R-IDAHO)
Photo Source: Office of Rep. Fulcher

CR likely as House Spending Bills Stall (Cont'd from Page 9)

water recycling, desalination projects and more.”

The Senate appropriations bill includes nearly \$58.1 billion in discretionary funds, about a \$3.4 billion increase. The Corps would get \$8.9 billion for civil works in the Senate bill, about a \$600 million increase from FY 2023. Reclamation, meanwhile, would see a slight cut, getting \$1.9 billion, about \$10 million lower than the current funding level.

As reported in the July *Monthly Briefing*, the House Appropriations Committee in June 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 month, with deep

cuts to Biden Administration priority renewable energy and climate-related spending.

The House Appropriations Committee approved their \$1.83 billion version of the bill earlier in the month. Both bills exceed the Biden Administration’s budget request of \$1.44 billion.

“Once passed by each respective chamber, any differences will need to be worked out in a conference before final passage,” said Mr. Limbaugh. “We do not expect Congress to move these bills to the President’s desk for his signature before the end of FY 2023 on September 30, so a temporary CR will be needed to keep the federal government open on October 1.”

Supreme Court Urged to Adopt Settlement in *Texas v. New Mexico*

The Special Master has released his decision in *Texas v. New Mexico*, a long-running case involving an interstate dispute regarding New Mexico's compliance with the Rio Grande Compact of 1938.

This Compact established a plan for equitable apportionment of the water in the Rio Grande Basin among the states of Colorado, New Mexico, and Texas.

"This has been one of New Mexico's most important water cases in recent history, and we are proud to have reached an agreement that equitably divides the water below Elephant Butte Reservoir to ensure that New Mexico farmers and municipalities receive their fair share of water for decades to come," New Mexico Attorney General Raúl Torrez said in a press release.

However, the U.S. Justice Department (DOJ) warned that the agreement could deplete the Rio Grande Project, which includes the Elephant Butte Dam and its power plant, and provides irrigation to nearly 200,000 acres.

"The mandates of the proposed decree ... overrides the complex operations of the [Rio Grande] Project that ensure the releases and delivery of the project water," said Lee Leininger, a trial attorney in the DOJ's Environment and Natural Resources Division at a February 2023 hearing in Cedar Rapids, Iowa.

New Challenges for EBID

Elephant Butte Irrigation District (EBID) general manager Gary Esslinger said prolonged droughts from 1951 until 1978 and from 2003 until today, limited the water supply in the reservoir (*NM Political Report*).

"Farmers responded by doing what? Drilling wells to provide the supplement that they were not getting from the surface water," he said. "If we didn't have a groundwater system, agricultural farming would likely not exist."

But relying on groundwater for irrigation has caused the aquifer to decline and the use of groundwater by farmers in New Mexico led to a lawsuit Texas filed against the state in 2013, which resulted in a proposed settlement agreement earlier this year.

Under the 1938 compact, Texas' share of the river is measured below Elephant Butte Reservoir, approximately 100 miles north of the Texas border. Texas had accused New Mexico of allowing its residents to remove water below the reservoir, depleting expected water deliveries to Texas.

The consent decree would implement a new reporting system, including a new gauge near El Paso, and requirements for recording groundwater pumping and river flows, to deter-

mine whether Texas has received its share of the river. The agreement says that if New Mexico draws too much water from the river basin, it must temporarily transfer water from EBID to the El Paso County Water Improvement District No. 1 in Texas.

"We've got this impending settlement which is going to put a new set of constraints on the way we operate," Elephant Butte Irrigation District (EBID) engineering consultant Phil King recently told the New Mexico Legislative Finance Committee. "Because now not only do we have to get our water to the farmers, and to Texas and Mexico to meet their Rio Grande Project orders, but we also will have to meet this new state line index, which is a bit trickier than meeting the index at Elephant Butte."

EBID officials say that infrastructure will be key to meeting that index, particularly improving stormwater flood control, but that alone will be insufficient.

"Let me start by saying that this infrastructure is absolutely necessary to adapt to this changing climate that we're in," said Mr. King. "It is necessary but not sufficient, we're definitely going to have to change the way we administer our water."

D.C. Activist Report Targets New Mexico Agriculture

Meanwhile, a deep-pocketed activist group from Washington, D.C. released a report last month targeting the water use of New Mexico pecan, dairy and alfalfa farmers. "Big Ag Fuels New Mexico's Water Crisis" – a report released by Food & Water Watch (FWW) – uses misleading terms like "industrial-scale agriculture" and "mega-dairies", in addition to the "Big Ag" reference in the report's title.

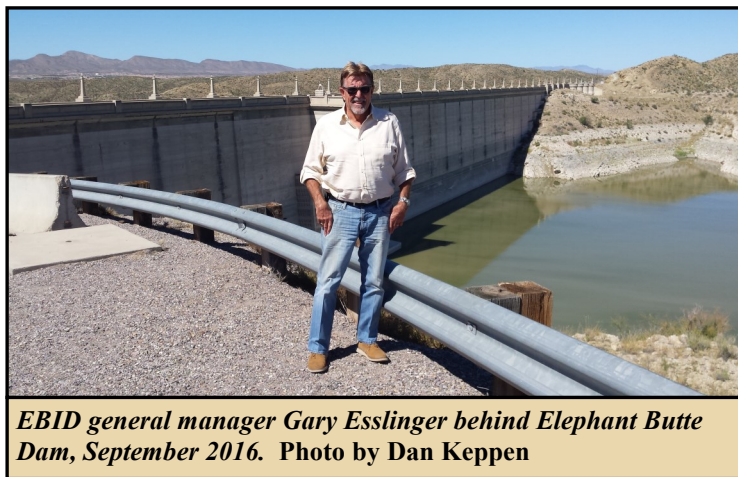
"We cannot protect our future against drought without combating corporate agriculture," the FWW report intones. "It is past time for New Mexico to address the corporate abuse of water."

The report points out that the number of New Mexico alfalfa farms over 1,000 acres in size doubled from nine to 19 between 1997 and 2017. It fails to mention that over half of the farms in the state are

less than 50 acres in size, and a third of the farms are one to nine acres in size, according to a representative of the New Mexico Farm and Livestock Bureau.

Food and Water Watch operates on a \$17 million budget and employs a staff of over 80 individuals to "protect people from the corporations and other destructive economic interests that put profit ahead of everything else", according to its website.

"They're going nuts over water use on pecans," Mr. Esslinger observed.



EBID general manager Gary Esslinger behind Elephant Butte Dam, September 2016. Photo by Dan Keppen