President Trump Signs Executive Memorandum On Western Water Management

The Family Farm Alliance and other Western agricultural organizations earlier this month applauded President Trump for taking the unusual move of issuing an executive memorandum intended to reduce regulatory burdens and promote more efficient environmental reviews of water infrastructure projects in the West. The president signed an Executive Memorandum ordering enhanced coordination between Federal agencies that oversee Endangered Species Act (ESA) reviews and promised to finalize biological opinions under the ESA for state and federal projects that move water in California and other areas of the West.

“Today’s order by President Trump will provide welcome relief to Western farmers, cities, rural communities and wildlife refuges that have struggled under water supply rules that are long overdue for an update,” four Western agricultural organizations said in an October 22 joint press statement. “The president’s action today fulfills his campaign commitment to help solve the state’s water supply shortages and will greatly benefit Central Valley communities and the environment.”

The joint statement was issued by California Farm Bureau Federation, California Farm Water Coalition, Western Growers, and the Family Farm Alliance. The order aims to improve coordination between the Interior and Commerce departments, which house the U.S. Fish and Wildlife Service (FWS) and NOAA Fisheries (NMFS), respectively. The order also follows up on Interior Secretary Ryan Zinke’s August memo calling for max-

President Trump, flanked by Central Valley Republican Congressmen, fields questions from reporters in Scottsdale (ARIZONA) earlier this month. Photo courtesy of Jason Phillips.

Continued on Page 2
imizing water deliveries to California farmers served by the federal Central Valley Project (CVP). Since 1992, water supply restrictions have caused severe economic consequences for farms and the people who depend on them for work.

“We have to make sure American farmers and their families, wherever they may be, wherever they may go, have the infrastructure projects that they need to compete and grow,” the president said in a prepared statement.

Many of the state’s most disadvantaged communities have suffered due to scarce water supplies. Wildlife refuges that are a critical component of the Pacific Flyway have had insufficient water to meet the needs of millions of ducks, geese, shorebirds, songbirds and endangered animals in large parts of the Central Valley and the Klamath Basin.

“This action will also help address water shortages that have occurred across the West as the result of federal regulations overseen by multiple agencies,” the ag organizations stated. “It offers hope to farmers and ranchers served by federal water projects in the Pacific Northwest, including the Columbia Basin and the Klamath Basin.”

The president’s order places the responsibility of operating the federal water projects with the Department of the Interior, to be supported by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. The action prohibits any impacts to threatened or endangered species protected under the federal ESA.

This issue has been scrutinized by the Executive Branch as far back as 2011. At that time, President Obama observed that the Interior Department is in charge of salmon while they’re in freshwater, but the Commerce Department handles them when they’re in saltwater. Those overlapping jurisdictions have only slowed efforts to help the fish.

A committee convened by the National Research Council also studied this matter a few years ago. The NRC found that the lack of a systematic, well-framed overall analysis between the two services is “a serious scientific deficiency, and it likely is related to the ESA’s practical limitations as to the scope of actions that can or must be considered in a single biological opinion.”

The Family Farm Alliance in 2017 testified before the House Water, Power and Oceans Subcommittee, advocating that improved coordination between federal agencies will promote more efficient, effective and coordinated management of all ESA responsibilities for anadromous and freshwater fish in Western watersheds, from the highest reaches of our headwaters to the Pacific Ocean.

“The action is an important and common-sense move that will benefit Western farmers and ranchers whose livelihoods depend on federal water projects,” said Dan Keppen, executive director of the Family Farm Alliance. “It’s a practical and assertive change to Western water management and species recovery that our membership strongly supports.”

California’s GOP congressional delegation from the Central Valley played an important role in identifying the problems in the state’s water system. Over the past two years, they have worked closely with the Trump administration to produce a solution that is consistent with federal law and will improve the water delivery system. House Majority Leader Kevin McCarthy and Representatives Devin Nunes, David G. Valadao, Jeff Denham, Ken Calvert, Tom McClintock and Doug LaMalfa—all Central Valley Republicans—released a statement on President Trump’s executive memorandum.

“The President’s announcement is an immense relief for the farmers and families of the San Joaquin Valley and communities across California,” they stated. “California families can now rest assured that help is on the way.”

Some environmental groups predictably blasted the president’s action.

“This order stems from ignorance and election year pandering to wealthy Central Valley agribusiness interests,” said John Buse, legal director with the Center for Biological Diversity, an organization with a long history of litigating Western environmental matters.

Farm organizations were pleased to see the president keep the focus on the working families who live and work in the Central Valley.

“There’s no question that the Central Valley has lagged behind the economic recovery experienced in other parts of the state,” said Mike Wade, executive director of the California Farm Water Coalition. “We’re optimistic that these changes will not only help improve water supplies for farms, farm-related businesses, and disadvantaged rural communities, they will provide the incentive to put science-based solutions to work to help recover iconic native fish species that have suffered under the existing regulatory approach.”

“Implementation of the Endangered Species Act can be better for both species and people, and the president’s action moves us in that direction,” added California Farm Bureau Federation President Jamie Johansson. “We need streamlined solutions that benefit species and that benefit both the farmers who provide California-grown food and farm products and everyone who depends on those products.”

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**2018 FAMILY FARM ALLIANCE ANNUAL MEETING & CONFERENCE**

**FEBRUARY 20-22, 2019**

**ELDORADO RESORT & CASINO**

**RENO, NEVADA**

**SAVE THE DATE**
President signs the "America's Water Infrastructure Act of 2018"

President Donald Trump signed a sweeping law earlier this month, which includes provisions that authorize and fund water resource projects and policies in the Western United States. The U.S. Senate earlier this month passed the America’s Water Infrastructure Act (AWIA), S. 3021, by a vote of 99-1. The House previously passed the bill on a voice vote.

AWIA - also known as the Water Resource Development Act (WRDA) - is a biennial piece of legislation that is the main vehicle for authorizing water projects to be studied, planned and developed by the U.S. Army Corps of Engineers (Corps). It is also the legislative vehicle for implementing policy changes with respect to the Corps’ and other federal water resource projects and programs.

“This new law is very important to the rural communities of the Western United States,” said Patrick O’Toole, Family Farm Alliance president. “It includes specific provisions that will benefit my home state of Wyoming, the Upper Missouri River watershed, the Klamath Basin in California and Oregon, as well as rural communities and agricultural water users in parts of the rural West.”

Some of the key provisions of AWIA 2018 that apply to the Upper Missouri River system and the West include modifications to Fontenelle Reservoir in Wyoming, flood protection on the Snake River, reauthorization of the national levee safety program, adjustment of flood control rule curves on non-Federal reservoirs, control of invasive species, and evaluation of federal agency capabilities and capacity, among others.

“The AWIA 2018 also includes several sections we believe would give local interests a stronger role in flood management and provide a balanced fair means of addressing the challenges faced by rural communities with limited funds and human resources,” said Pat Riley, a member of the Alliance's Advisory Committee from Montana, who testified before the Senate Environment and Public Works (EPW) Committee in support of this legislation last May.

Mr. Riley and Mr. O’Toole both represented the Alliance at Senate hearings as this legislation was being developed and debated.

Senator John Barrasso (R-WYOMING), who chairs the EPW Committee, was consistent in his belief that this bill should include provisions that address the unique challenges faced by Western rural communities.

“The Family Farm Alliance thanks Chairman Barrasso, Western Members of Congress, and President Trump for their strong leadership in getting this important bill signed into law,” said Alliance Executive Director Dan Keppen.

Interior seeks comments on title transfer NEPA matters

The U.S. Department of the Interior has published a Federal Register notice seeking public comment on a proposed categorical exclusion under the National Environmental Policy Act (NEPA) for certain transfers of title of projects and facilities from the Bureau of Reclamation to qualifying non-federal entities. Reclamation is proposing to establish a new categorical exclusion to facilitate the transfer of title for a limited set of simple, noncontroversial or uncomplicated projects and/or project facilities.

Title transfer is a voluntary conveyance of ownership for water projects including dams, canals, laterals and other water-related infrastructure to the beneficiaries of those facilities. It divests Reclamation of responsibility for the operation, maintenance, management, regulation of, and liability for the project, lands and facilities to be transferred. The benefitting non-federal entity is also provided with greater autonomy and flexibility to manage the facilities to meet their needs in compliance with federal, state, and local laws and in conformance with contractual obligations.

“We worked closely with the Interior Department earlier this year as it was developing these proposed rules, and several of our members have continued that effort in recent months,” said Family Farm Alliance executive director Dan Keppen.

Public comments on this proposed action are due to Reclamation on November 16, 2018.

A transfer of title is a federal action under NEPA. That law requires that when a major federal action may have significant impacts on the quality of the human environment, a statement must be prepared to describe the impacts and effects on the human environment associated with the federal action. If it is determined that a certain category of actions will not normally have a significant effect on the human environment, those actions may be excluded from further NEPA review.

You can learn more about title transfers at the Bureau of Reclamation at www.usbr.gov/title. - Excerpts of this article derived from a Bureau of Reclamation press release—
Alliance Engages in Important Ninth Circuit ESA Appeal

ESAs scope should not extend to the presence of existing dams

The Family Farm Alliance this month joined a “friend of the court” (amicus curiae) filing in a Ninth Circuit Court of Appeals case that has Endangered Species Act (ESA) ramifications for water users throughout the Western U.S. The Alliance joined San Luis & Delta-Mendota Water Authority and the Coalition for a Sustainable Delta on the side of defendants National Marine Fisheries Service (NMFS) and Yuba County Water Agency (CALIFORNIA) to argue that the scope of ESA section 7 and liability under ESA section 9 do not extend to the presence of dams already built at the direction of Congress.

The environmental organization Friends of the River (FOR) earlier this year continued litigation against the United States, arguing in federal court that a NMFS Biological Opinion (BiOp) and letter of concurrence are deficient under the ESA. Specifically, FOR argues the ESA requires the U.S. Army Corps of Engineers (Corps) to consult with NMFS regarding, and to minimize impacts to, endangered fish species due to the mere existence of two federal debris dams on California’s Yuba River.

The district court previously ruled that the effects of the presence of dams that an agency has no discretion to remove are properly assigned to the environmental baseline for purposes of consultation under ESA section 7, and are not deemed effects of the proposed agency action. The district court further ruled that an agency is not liable under ESA section 9 for species “take” caused by an existing structure that it has no discretion to remove. FOR is challenging both rulings, arguing the future effects of the presence of the dams should be deemed effects of the action, and that the Corps is liable for take related to the presence of the dams.

“The consequences of an adverse decision in this litigation could be significant,” said Norm Semanko, General Counsel for the Alliance. “If FOR’s lawsuit is successful, federal agencies and others may be compelled to make costly modifications to dams, roads, bridges, airports, flood control levees, harbors, and other essential societal infrastructure and their operations.”

The owners or operators of such existing infrastructure could also be held liable for harm caused to endangered species by the mere ongoing presence of the existing facilities.

These types of “environmental baseline” issues formed the centerpiece of Family Farm Alliance ESA comments submitted to the Interior Department in September.

This case presents direct risks to owners and operators of dams and other infrastructure, and those who rely on these facilities, throughout the United States. In view of these risks, the Alliance board of directors recently agreed that the Alliance should join in a “friend of the court” filing in an effort to influence the Ninth Circuit to rule in favor of the federal defendants and affirm the District Court’s judgment.

The amicus brief filed with the court addresses how effects on listed species arising from the existence of dams are addressed by the federal ESA, and the importance of that issue to federal and non-federal water projects across the western states, including California.

“We argue that the district court correctly ruled that the effects of the presence of dams that an agency has no discretion to remove are properly assigned to the environmental baseline for purposes of consultation under ESA section 7, and are not deemed effects of the proposed agency action,” said Mr. Semanko.

The brief filed by the Alliance and the others makes three key arguments. First, California’s Central Valley Project and State Water Project contain a multitude of dams subject to the ESA that could potentially be affected by this court’s decision. Second, the effects of the presence of existing dams are properly included in the environmental baseline assessment. And third, there can be no liability under Section 9 for take caused by the existence of the dams, because 1) The existence of the dams is not a proposed, affirmative agency action; 2) The existence of the dams is not within the discretionary control of the Corps; 3) The proposed agency action is not the proximate cause of take and cannot give rise to Section 9 liability; and 4) Adoption of FOR’s argument would cause uncertainty for water supply throughout the West.

“In this case the Court should reaffirm that the effects of the presence of the dams is not attributable to the proposed agency action because the presence of the dams is a matter outside the Corps’ discretion,” the amicus brief reads, “and that for the same reason the Corps is not liable for take related to the presence of the dams.”

Englebright Dam, one of two dams that is the focus of litigation on California’s Yuba River. Photo source: Nate Chute, Appeal-Democrat
New Trump Appointments and Nominations Announced

Positions and policies important to Western water users

The Trump Administration in the past month has made progress in filling several key positions important to Western irrigated agriculture, both at the Department of Interior and the Department of Agriculture.

**Director of Fish and Wildlife Service**

President Trump recently announced his intention to nominate Ms. Aurelia Skipwith as Director of the U.S. Fish and Wildlife Service (FWS), a Senate-confirmed position. Ms. Skipwith is an attorney with an undergraduate biology degree and a master's in animal sciences, and currently serves as the Interior Department's Deputy Assistant Secretary for Fish, Wildlife and Parks. A 2003 graduate of Howard University, Ms. Skipwith earned a master's degree from Purdue University and a law degree from the University of Kentucky.

"For the past year and a half while she served as a deputy assistant secretary, I've come to know Aurelia Skipwith as a professional, a scientist and passionate conservationist, and I know she will be an incredible director of the U.S. Fish and Wildlife Service," Interior Secretary Ryan Zinke said in a statement.

The top FWS job has been vacant since the start of the Trump Administration, with deputy directors filling in on an acting basis.

"If not confirmed in the final days of the current 115th Congress, Ms. Skipwith would have to be re-nominated in the new 116th Congress that convenes in January 2019, when the Senate may have a different composition, one way or another," said Mark Limbaugh, who represents the Family Farm Alliance in Washington, D.C.

A new principal deputy director, Ducks Unlimited Chief Policy Officer Margaret Everson, is slated to start in mid-November, replacing Mr. Greg Sheehan who left the position in August to return to his home in Utah. From 2006 to 2008, Ms. Everson served as counselor to then-FWS Director Dale Hall in the George W. Bush Administration. She also worked for the Interior solicitor's office for four years.

**Interior Dep’t Deputy Solicitor for Parks & Wildlife**

Karen Budd-Falen, a Wyoming attorney and longtime advocate for Western ranchers, will be the new deputy solicitor for parks and wildlife in the Interior Department.

Ms. Budd-Falen “brings extensive industry experience to the Department, and we are excited to have her on our team,” the Interior Department said in a press statement.

As deputy solicitor, she will issue legal opinions that impact how Interior laws and policies are implemented. She has said she expects to work on legal issues surrounding the Endangered Species Act (ESA), the National Park Service and national monuments.

Research conducted by Ms. Budd-Falen while in Wyoming revealed that, over a 15-year period, 14 environmental groups brought over 1,500 federal cases in 17 states and the District of Columbia, and collected over $37 million in taxpayer dollars through the federal Equal Access to Justice Act, or other similar laws. Ms. Budd-Falen addressed this issue at the 2010 Family Farm Alliance annual conference held in Las Vegas.

Some in the conservation community who she targeted in her research bashed the appointment.

“Her history is there. We see what she stands for,” said Randi Spivak, public lands program director at the Center for Biological Diversity. “We know we're going to go head to head with Budd-Falen.”

**Other Changes at Interior**

In another hallway at Interior, Mr. Austin Ewell has left his position as Deputy Assistant Secretary for Water and Science at the Department of the Interior to return to his home state of California. The Assistant Secretary for Water and Science oversees the Bureau of Reclamation, (Reclamation), the Central Utah Project, and the U.S. Geological Survey.

Reclamation Commissioner Brenda Burman has announced the appointment of Shelby Hagenauer as Reclamation's Deputy Commissioner. Ms. Hagenauer has nearly two decades of experience working on natural resource issues including the ESA, Clean Water Act and federal water policy.

“Shelby’s understanding of natural resource policy and

Continued on Page 8
A mild winter could be in store for much of the United States this winter according to NOAA’s Climate Prediction Center. In the U.S. Winter Outlook for December through February, above-average temperatures are most likely across the northern and western U.S. Additionally, El Nino has a 70 to 75 percent chance of developing.

“We expect El Nino to be in place in late fall to early winter,” said Mike Halpert, deputy director of NOAA’s Climate Prediction Center. “Although a weak El Nino is expected, it may still influence the winter season by bringing wetter conditions across the southern United States, and warmer, drier conditions to parts of the North.”

El Nino is an ocean-atmosphere climate interaction that is linked to periodic warming in sea surface temperatures in the central and eastern equatorial Pacific. During the winter, typical El Nino conditions in the U.S. can include wetter-than-average precipitation in the South and drier conditions in parts of the North.

Other climate patterns that can affect winter weather are challenging to predict on a seasonal time scale. For example, the Madden-Julian Oscillation can contribute to heavy precipitation events along the West Coast – which could play a large role in shaping the upcoming winter, especially if El Nino is weak, as forecasters predict.

Warmer-than-normal conditions for December through February are anticipated across much of the northern and western U.S., with the greatest likelihood in Alaska and from the Pacific Northwest to the Northern Plains. Drier-than-average conditions are most likely in parts of the northern Rockies and Northern Plains. Drought conditions are likely to persist across portions of the Southwest, Southern California, the central Great Basin, central Rockies, Northern Plains and portions of the interior Pacific Northwest. Drought conditions are anticipated to improve in areas throughout Arizona and New Mexico, southern sections of Utah and Colorado, the coastal Pacific Northwest and the Central Plains.

NOAA’s seasonal outlooks give the likelihood that temperatures and precipitation will be above-, near- or below-average, and how drought conditions are expected to change, but the outlook does not project seasonal snowfall accumulations. Snow forecasts are generally not predictable more than a week in advance. Even during a warmer-than-average winter, periods of cold temperatures and snowfall are still likely to occur.

NOAA’s Climate Prediction Center updates the three-month outlook each month. The next update will be available on Nov. 15.
The Family Farm Alliance this month submitted written testimony for the Senate Environment and Public Works (EPW) Committee, which held a hearing entitled, “From Yellowstone’s Grizzly Bear to the Chesapeake’s Delmarva Fox Squirrel -- Successful State Conservation, Recovery, and Management of Wildlife.”

The purpose of this hearing was to consider the testimony of state officials and other stakeholders regarding successful state work to conserve, recover, and manage wildlife, in partnership with federal agencies, landowners and stakeholders. The Alliance testimony was prepared to supplement the hearing record with additional examples of challenges associated with state and local species efforts to recover species protected by the federal Endangered Species Act (ESA) and tackle challenges associated with invasive species in parts of the American West.

“Our organization is on record in strong support of improved state-federal consultation relating to conservation and recovery of wildlife and plant species in the Western U.S.,” said Alliance Executive Director Dan Keppen. “We continue to believe that there is a way to encourage collaboration and consultation with states and private stakeholders as partners in meeting the objectives of the ESA, while ensuring that the law is applied consistently and without conflict of interest.”

The Family Farm Alliance membership includes ranchers, farmers and water managers who have dealt with challenges associated with species protected by the ESA across the West, from the Delta smelt in California and salmon in the Pacific Northwest, to the greater sage grouse in Wyoming and razorback sucker in the Colorado River. Invasive species proliferate the West, particularly in the estuary formed by San Francisco Bay and the confluence of the Sacramento and San Joaquin Rivers.

“The purpose of our testimony was to provide some positive examples of how states can conserve, recover, and manage wildlife, in partnership with federal agencies, landowners and local interests,” said Mr. Keppen. “It also serves to underscore the critical importance of addressing invasive species in California and other parts of the West.”

The Bureau of Reclamation is also drawing attention to the importance of tackling invasive quagga and zebra mussels. Commissioner Brenda Burman announced this month that Reclamation has selected three submissions for its prize competition seeking ideas to eradicate mussels in open water.

“Providing water managers with new tools to control invasive quagga and zebra mussels is an important part of protecting infrastructure and ecosystems,” Commissioner Burman said. “Reclamation is committed to working with our partners to prevent the spread of quagga and zebra mussels in the West.”

In other ESA news, a federal judge in Seattle has ordered the U.S. Environmental Protection Agency to regulate water temperatures in the Columbia and Snake rivers that environmental activists claim have caused the deaths of hundreds of thousands of threatened salmon and steelhead protected by the ESA. At issue in the lawsuit brought by Columbia Riverkeeper, Snake River Waterkeeper, Idaho Rivers United, the Pacific Coast Federation of Fishermen’s Associations and the Institute for Fisheries Resources are the rising river temperatures they say are caused by dams and other point-source discharges. Under Judge Ricardo Martinez’s ruling, EPA has 30 days to approve or disapprove a temperature regulation. If the agency disapproves the one currently under consideration, it has another 30 days to issue a new one.
knowledge of Capitol Hill will be a great asset for Reclamation,” said Commissioner Burman. “Her policy experience will help us craft common sense water policy and enable us to better deliver water and hydroelectric power to the west.”

Ms. Hagenauer has close to 20 years of experience working in and with the federal government through positions on Capitol Hill and the private sector. Her policy experience ranges from work on natural resource, agriculture and California water policy to financial services and defense issues.

Other key Interior Department positions still awaiting nominees some 21 months into the Trump Administration include solicitor; inspector general; assistant secretary for fish, wildlife and parks; and director of the Bureau of Land Management.

**New Forest Service Chief**

U.S. Secretary of Agriculture Sonny Perdue earlier this month announced that Vicki Christiansen will serve as the 19th Chief of the U.S. Department of Agriculture’s (USDA) Forest Service. Christiansen has been serving as Interim Chief since March of this year.

“As a former wildland firefighter and fire manager, Chief Christiansen knows what’s needed to restore our forests and put them back to work for the taxpayers,” said Secretary Perdue. “With seven years at the Forest Service and 30 years with the states of Arizona and Washington, Vicki’s professional experience makes me confident that she will thrive in this role and hit the ground running.”

Prior to joining the Forest Service, Ms. Christiansen served as the Arizona State Forester and Director of the Arizona Division of Forestry. She also served as the Washington State Forester where she had a 26-year career with Washington State Department of Natural Resources.

**Trump Regulatory Reforms**

Meanwhile, the Trump Administration recently announced its progress on 2018 regulatory reforms by releasing their “Fall 2018 Unified Agenda of Regulatory and Deregulatory Actions.” According to the report, Federal agencies have “greatly exceeded” initial targets for slashing regulatory costs, cutting four significant rules for every new one put in place. The de-regulatory push resulted in $23 billion in net regulatory cost savings in FY 2018, according to the White House. Agencies surpassed the initial target of eliminating the cost of two rules for every new one, as mandated by Executive Order 13771.

On water, the Administration plans to propose a new definition of what constitutes “waters of the United States” (WOTUS) soon, with a final WOTUS rule due to be finalized in September 2019.

“There are rumors that the release of a new draft WOTUS rule could be delayed to later in the year, after the mid-term elections,” says Mark Limbaugh, the Family Farm Alliance representative in Washington, D.C.

The Administration also plans to finalize a repeal of the Obama-era Clean Water Rule on WOTUS in March 2019. Further, the Environmental Protection Agency expects a June 2019 proposed rule limiting when the agency can use its veto power under Section 404(c) of the Clean Water Act to veto an Army Corps of Engineers dredge-and-fill permit.

The White House Council on Environmental Quality (CEQ) is continuing its push to rewrite its National Environmental Policy Act (NEPA) regulations, a move that could affect permitting across the federal agencies. CEQ wrapped up a comment period on the initial stage of the rulemaking in August, and the agency will likely issue a proposal detailing what, exactly, it plans to change in coming months.

The Family Farm Alliance sent detailed comments to CEQ on the proposed NEPA re-write, as well as numerous other rulemaking proposals advanced by the Trump Administration in the past 18 months.

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**Change of E-Mail Address!**

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

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**Monthly Briefing**

October 2018
Grim Hydrology Drives Colorado River DCP Efforts

Ongoing historic drought conditions in the Colorado River Basin, coupled with predicted dire near-term Colorado River water supply scenarios, have created a sense of urgency that is driving recent efforts to develop drought contingency plans (DCPs). The Family Farm Alliance board of directors earlier this month conducted a special Colorado River-focused teleconference call, where Bureau of Reclamation Commissioner Brenda Burman visited with the board on the urgent need for the DCPs and fielded questions about the agreements and the importance of the Colorado River.

A Sense of Urgency

In 2007, Secretary of the Interior Dirk Kempthorne signed a decision to implement innovative strategies for Colorado River management, interim operational guidelines to address the operations of Lake Powell and Lake Mead during drought and low reservoir conditions. The development of these guidelines was spurred at the time by a multi-year drought, decreasing system storage, and growing demands for Colorado River water. They were intended to guide Colorado River operations until 2026. A decade later, and with drought conditions persisting, Commissioner Burman used the 10-year anniversary of the signing of the interim guidelines as an opportunity to highlight the pressing need for prompt action to protect the Colorado River Basin.

“We’ve gained valuable operational experience over this past decade, but what have we learned?” she asked the audience at the December 2017 Colorado River Water Users Association conference. “Simply put, we’ve learned the guidelines are not enough.”

At that time, Commissioner Burman called on the seven Colorado River Basin States and water entitlement holders in the Lower Colorado Basin to continue developing DCPs. “Adoption of the DCP is needed, and it’s needed soon,” Commissioner Burman said at the time. “Adopting the DCP will protect the Basin against a deepening or worsening drought.”

Commissioner Burman’s call to action was in response to ongoing historic drought conditions in the basin and was intended to reduce the likelihood of Colorado River reservoirs – particularly Lake Powell and Lake Mead – further declining to critical elevations. If dry conditions continue, diminishing reservoir levels in Lakes Powell and Mead will have extremely negative consequences for water and power users throughout the watershed, including urban areas outside of the Basin that rely on Colorado River trans-basin di-

Recent Developments

Last May, Commissioner Burman again emphasized the need for prompt action following another year of low runoff in the ongoing drought and called on the states to complete their drought planning by this December. Since that time, the seven Colorado River Basin States, the Department of the Interior and water entitlement holders in the Upper and Lower Basins have continued to work diligently on a set of draft DCP agreements. Earlier this month, the states published their draft agreements.

A few weeks later, Commissioner Burman provided an update to the Alliance board of directors, where she observed that Reclamation seldom uses words like “dire” or “crisis”. This past spring, for the first time, they have.

“Everyone now sees that the risk is so much greater than imagined when the 2007 interim guidelines were developed,” she said.

Upper Basin DCP

The Upper Basin DCP - proposed by water officials in Colorado, New Mexico, Utah and Wyoming - is designed to protect critical elevations at Lake Powell and helps assure continued compliance with the 1922 Colorado River Compact and establish the foundation for the storage of water in the Upper Basin as part of a Demand Management Program that may be developed.

If Lake Powell drops below 3490 feet above sea level, hydropower production and efficient operations at Glen Canyon Dam will decline with unprecedented impacts to operations, along with impacts to existing uses of Colorado River supplies for the Upper Basin. To better protect hydropower production at Glen Canyon Dam, the Upper Basin DCP would reduce the likelihood of Lake Powell declining below elevation 3490 feet by drawing on non-contracted for storage – when available - in Aspinall, Flaming Gorge and Navajo reservoirs to prop up Lake Powell. Once target elevations are protected at Powell, water will be restored to the upper reservoirs.

Continued on Page 10
Colorado River DCP Efforts (Cont’d from Page 9)

In addition to drawing on available storage at the Upper Basin reservoirs to better protect Lake Powell, the Upper Basin states are also looking at ways of preventing a call from the Lower Basin on the Upper Basin. The proposal under consideration is to open up storage space in Lake Powell and other Upper Basin reservoirs, while providing time for the states to work out ways to fill that storage space. Reserving space in Lake Powell serves to protect the Upper Basin against a call from the Lower Basin. The current proposal would also provide that storage space without incurring financial charges from the Bureau of Reclamation, which currently charges anyone using storage in Upper Basin facilities. Taken together, the states indicated their intent to help protect Upper Basin water users from the impact of continued or worsening low runoff conditions.

**Lower Basin DCP**

The Lower Basin plan, being worked on by officials in Arizona, California and Nevada, is designed to require those states to contribute additional water to Lake Mead storage at predetermined elevations and create additional flexibility to incentivize additional voluntary conservation of water to be stored in Lake Mead.

The 2007 framework specified that the Department of the Interior would declare a shortage when Lake Mead’s elevation hit 1,075 feet. Nevada and Arizona, which have rights junior to California, would then start delivery reductions. The DCP is very important for Arizona, where agricultural water users served by the 1968 Central Arizona Project (CAP) are last in line.

“CAP farmers are in favor of DCP, but will still take huge cuts of water if Lake Mead levels fall to low levels as some predict,” said Dan Thelander, an Alliance board member who farms with CAP water. “Our cuts will be in the range of 60 to 65% of the CAP Ag Pool, and we will have to turn to more groundwater pumping to try and offset some of the loss of surface water.”

Arizona water officials plan to work through November to develop an agreement that state lawmakers would need to approve next spring.

California’s senior water right holders will get their needs met, through the development of intentionally-created storage, which allows them to get that water back in the future, when the hydrology improves.

The Upper and Lower Basin DCPs contain actions in addition to the provisions of the December 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead. The Basin States seek to finalize the Upper and Lower Basin DCPs prior to the end of 2018 through the key DCP agreements and federal legislation.

**Concerns in the Upper Basin**

Under the draft Drought Response agreement, the states’ “plan to do a plan” effort may seek to emphasize demand reduction as one of the primary tools to stave off critical water shortages. One of the ways that the legally secure pool of water in Lake Powell (or other upstream reservoirs) might be filled is with water “conserved” after falling farm fields, primarily, in Colorado, Wyoming and Utah. Many steps remain in each of the four Upper Basin States before a Demand Management Program could be implemented.

This issue is a controversial one, and has the attention of many agricultural producers on the West Slope of the Rocky Mountains.

“The Upper Basin DCP is a framework, and I don’t see a real downside there,” said Larry Hicks, a Wyoming state legislator who serves on the Advisory Committee of the Family Farm Alliance. “The real rubber meets the road when the Demand Management Plans are developed by the individual states. Right now, it looks like the water is coming from agriculture.”

Mr. Hicks and others want to ensure that the companion agreements also provide for new storage, and that the pain involved with demand management be shared with non-ag interests, like cities outside of the Basin that rely on trans-basin diversions.

Before the Colorado River District, located on the West Slope, will support the pending federal legislation to proceed, it wants the state of Colorado to adopt a policy providing sideboards and protections from the risks they.

“We’ve got to have some principles that guide the way this program is set up, and its consistency with the state water plan, it’s equitable distribution of wet water coming from both the Front Range and the Western Slope, it’s voluntary, it’s compensated, it’s temporary,” said Andy Mueller, general manager of the Colorado River District.

Like Mr. Hicks, the River District believes all sectors of the water-using economy need to share the pain.

Brent Newman, Colorado Water Conservation Board’s (CWCB) point person on Colorado River issues recently told the River District’s point person that the state is not working on a mandatory curtailment program to avoid a call on the river system under the 1922 Colorado River Compact. It was also made clear during the river district’s meeting that “anticipatory mandatory curtailment” of water rights in Colorado is seen as a direct threat to family-run farms and ranches on the Western Slope.

"It will be voluntary, compensated and temporary," CWCB board member Steve Anderson, who is also the general manager of the Uncompahgre Valley Water Users Association, said at another recent Colorado forum.

Commissioner Burman said right now, nothing creates or prevents how that space in Lake Powell will get developed.

“The future agreements will determine that,” said Commissioner Burman. “We’re opening the possibility, so those activities can be worked on in the next few years.”

Family Farm Alliance director Don Schwindt served on the CWCB when the 2007 interim guidelines were being developed, and said the DCP roll-out is a big step in Colorado, with

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Colorado River DCP Efforts (Cont’d from Page 10)

Bob Snow, who works for the Department of Interior Solicitor’s Office on Colorado River issues, emphasized that nothing has been pre-determined.

“The states are looking for the time to come up with creative solutions,” Mr. Snow told the Alliance board of directors. “There is time for that, so nothing will be foreclosed in the short-term, or long-term.”

Lower Basin Challenges

The 2007 framework specified that the Department of the Interior would declare a shortage when Lake Mead’s elevation hit 1,075 feet. Nevada and Arizona, which have rights junior to California, would then start delivery reductions. Under the proposed DCP, Arizona, Nevada and Mexico would make additional contributions to storage at Lake Mead, at greater levels than outlined in 2007, but be able to recover those contributions in the future. Similarly, California would make contributions to Lake Mead if Lake Mead levels decline and hit 1,045 feet — and would also be recoverable when Lake Mead returns to healthy storage levels. California’s contributions —shared by Imperial Irrigation District, Metropolitan Water District of Southern California, Coachella Valley Water District and Palo Verde Irrigation District—would increase as the lake level drops, and would be capped at 350,000 acre-feet a year.

The DCP agreement also includes commitment by all parties to work together to protect elevation 1,020’ in Lake Mead should lake levels continue to decline. This would be implemented through an obligation to consult when Lake Mead is projected to fall below elevation 1,030’ in any 24-month period — so that the parties can discuss what additional actions would be implemented.

In Arizona, farms and rural areas, rather than cities and tribal interests, could be restricted. In Nevada, measures to reduce urban water use may not be enough, say Colby Pellegrino, with Southern Nevada Water Authority, which serves metropolitan Las Vegas.

“The thing we have to remember is (water use) in the basin is over 80 percent agriculture,” Ms. Pellegrino told National Public Radio. “We can take out all the lawns we want and still not solve the problems that climate change is going to throw at us.”

Alliance Engagement

Alliance members share a desire to keep water in its place of use in the rural West, to the maximum extent practicable to ensure long-term agricultural sustainability.

“We understand that some water will inevitably move from agricultural use in the Basin as long-term transitional strategies are developed,” said Family Farm Alliance President Patrick O’Toole, whose family runs a sheep and cattle ranch in Wyoming. “This is regrettable, since numerous studies and forecasts suggest that we will need to double our food and fiber output in the next 40 years to keep up with global hunger. Agriculture is also a strong foundation for many rural communities in the Western U.S. and is vital to the economic, social and environmental health of those communities.”

President O’Toole in June of this year appointed a Colorado River Committee to compare notes and determine the appropriate level of Alliance engagement regarding the recent release of the DCP documents. The committee for most of the summer mostly monitored the quiet development of the DCPs, but that level of engagement ramped up this month as rumors of the impending DCP release swirled up and down the river. The teleconference call with the board of directors was intended to provide direction on a topic that impacts Alliance members in 7 different states, and is viewed in as many ways.

For example, some of the organization’s leaders believe the Alliance could provide a useful clearinghouse for information and ideas on how to fill the new storage space in Lake Powell, and related processes.

“The states have a huge job ahead, and we can provide a service to our Colorado River membership by explaining how each state is tackling this issue,” said Mark Limbaugh, the Alliance’s representative in Washington, D.C.

“The more common, shared knowledge we can develop, the better place we will all be,” added Mr. Schwindt. “It’s a critical, strong place for us to be.”

The Family Farm Alliance in 2015 crafted a white paper articulating the organization’s principles and recommendations for smart, effective management of water resources in the Colorado River Basin. At the time, the Alliance sought to help decision-makers in the Basin deal with the harsh realities of current and future water shortages due to drought and over-allocation of water to growing, predominantly municipal, demands.

“It’s possible that we will develop a case study report that would be useful in telling our story and emphasizing the recommendations developed in our 2015 paper,” said Alliance Executive Director Dan Keppen. “We should encourage our members to get involved, and give them the tools – like an updated version of our 2015 white paper - to do so.”

The Alliance board of directors agreed on a set of short-term steps to take, including directing the Alliance’s Colorado River Committee to convene and begin developing detailed recommendations for the board. Mr. Snow thanked the board for its willingness to engage and said it is preferable to take a collaborative approach to problem-solving, rather than having the courts make the decisions.

“We’ve been able to solve our issues on the Colorado River through informed decision-making,” he said. “We need groups like yours and passionate people to stay engaged.”

2015 Colorado River white paper
A Big Thank You to Our New and Supporting Members!

SEPTEMBER 2018

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