



MEMORANDUM

TO: WESTLANDS WATER DISTRICT BOARD OF DIRECTORS
FROM: DAN KEPPEL, EXECUTIVE DIRECTOR
SUBJECT: EXECUTIVE DIRECTOR'S REPORT
DATE: DECEMBER 14, 2020

This memo is intended to keep you apprised as to what is happening behind the scenes on policy issues the Family Farm Alliance is engaged in. In the past month, our efforts have focused on the preparing for the new Biden-Harris administration, tracking water legislative developments in Congress, engaging in federal agency rulemaking efforts, planning for our 2021 "virtual" annual conference and addressing some important administrative matters, including fundraising and social media upgrades. These issues and other matters important to our members are further discussed in this memo.

2020 ELECTION

The 2020 election has important ramifications for the country and rural communities in the American West. Joe Biden, 77, will become the oldest president-elect in U.S. history, while Donald Trump is the first president since 1992 to fail to win a second term. President Trump has challenged numerous states' election results, claiming widespread illegal voting. He recently committed to leaving the White House in January if the Electoral College votes for Joe Biden, but says he'll continue to contest the election results and still refuses to concede. While they maintained their majority, Democrats lost seats in the House, and the balance of power in the Senate will be decided by two Senate races in Georgia on January 5, 2021.

1. Biden-Harris Transition Team

The Biden-Harris election team within days of the election announced a list of mostly volunteers to serve on "agency review teams" that are meant to spend the coming weeks learning about Federal agency operations and how to effectively implement Mr. Biden's policies when he is inaugurated on January 20. The General Services Administration (GSA) has told President-elect Joe Biden that the Biden-Harris transition can officially begin. GSA Administrator Emily Murphy will now make resources and services available to the Biden-Harris team to assist in the presidential transition. The GSA administrator ascertains the "apparent" winner of the race under

the Presidential Transition Act and then frees up federal funds and access to agencies' staff and documents to the president-elect's transition team. With President Trump contesting the results, GSA waited to ascertain the 2020 race's winner, citing precedent by the Clinton Administration after the 2000 election. Then the agency only authorized the George W. Bush transition team's use of federal money and office space 36 days after the election, when former VP Al Gore conceded. Members of the Electoral College will meet today in their respective states to formally cast their votes and make Democrat Joe Biden's presidential election win official.

2. Biden Administration Environmental Priorities

The Biden-Harris teams assigned to environmental and energy agencies have the task of helping Mr. Biden deliver on one of his highest priority campaign promises – a \$2 trillion plan to fight climate change. Also, the teams will help assess which policies and executive actions a President Biden would want to overturn on day one of a new Administration. Numerous volunteers from academia, non-governmental organizations (NGOs), and former Obama Administration officials were appointed to begin the transition to a Biden-Harris Administration.

Mr. Biden has promised that combating the U.S. outbreak will be his highest priority, along with fixing a once vibrant economy that was nearly shattered by the COVID pandemic. He has signaled that he is planning to quickly sign a series of executive orders after being sworn into office on Jan. 20. One of those will reportedly bring the U.S. back to the table for the Paris climate accords, and another will reverse President Trump's withdrawal from the World Health Organization. According to *POLITICO*, Mr. Biden will repeal the ban on immigration from many Muslim-majority countries, and he will reinstate the program allowing “dreamers,” who were brought to the United States illegally as children, to remain in the country. Environmentalists and immigration advocates are also calling for Biden to halt construction of the wall along the southern border. The new administration will likely move in a different direction from the Trump Administration on issues like global trade, environmental regulations and food assistance. Mr. Biden has also said he would reevaluate the Trump Administration's new “Waters of the U.S.” (WOTUS) rule, incorporating feedback from farmers and ranchers.

Much of Mr. Biden's early agenda — including which pieces of legislation to prioritize — will be determined in the coming weeks as his transition team begins to take shape. However, it appears likely he'll have a Senate Republican majority ready to block more ambitious and controversial plans, unless Republican Senators from Georgia lose their seats in runoff elections on January 5.

3. Potential Biden Cabinet Members

The Departments of Agriculture and Interior house the federal agencies that have the greatest role in the day-to-day operations of Western irrigators. President-elect Joe Biden has officially selected Tom Vilsack to once again serve as U.S. Secretary of Agriculture. Mr. Vilsack has promised to use the agency as a central piece of the federal government's efforts to fight climate change. We have been in communication with Mr. Vilsack in recent weeks, and also Robert Bonnie, who is

the head of the Biden review team for USDA. We also shared a copy of our transition team letter with both of them (see Item 4, below).

Several New Mexican politicians are being considered to head the Department of Interior, including Senator Martin Heinrich, Senator Tom Udall, Rep. Deb Haaland, and former Deputy Interior Secretary Mike Connor. More than 50 House Democrats, led by Rep. Raul Grijalva (D-ARIZONA), are endorsing Rep. Haaland as the new Interior Department Secretary. A group of Native American organizations also sent President-elect Biden a letter backing Rep. Haaland. Retiring Sen. Udall believes he remains a top contender to be President-elect Joe Biden's Interior secretary, according to *E&E News*. An old friend of the Alliance – Mike Connor, former Deputy Interior Secretary in the second term of the Obama Administration – is also in the mix.

Michael Regan is now among the top contenders to be Environmental Protection Agency (EPA) administrator, according to sources. Mr. Regan spent nearly a decade working under two presidents at the EPA and is now the secretary of North Carolina's Department of Environmental Quality. Others under consideration may include former EPA chief Gina McCarthy and environmental lawyer Brenda Mallory. Biden transition officials had been eyeing National Wildlife Federation head and former Delaware regulator Collin O'Mara for the job, as well as Mary Nichols, the longtime head of the California Air Resources Board. As you likely know, Ms. Nichols was California's top air quality appointee for over a decade and also led EPA's air office during the Clinton administration. Some Senate Republicans have vowed to make her passage through the confirmation process very difficult.

Many other Cabinet positions still have yet to be decided.

4. Alliance Activities

Last month, the Alliance transmitted a letter for the Biden-Harris transition team that outlines the issues important to our organization. We are looking with an eye towards finding common ground, and using new avenues and messaging to drive our initiatives. Many of the new policies implemented by the Trump Administration are successful and have value. Aging infrastructure and payment for ecosystem services are areas of focus, and we also believe that the Trump Water Subcabinet concept should be advanced. All of these recommendations are infused in our letter with a message conveying the importance of domestic food production and a reliable food supply chain, issues that have been highlighted due to the COVID crisis.

The Alliance and others in the ag sector are already working with constructive conservation organizations to get organized ahead of a new focus on addressing climate change in a Biden administration. We are also working with our allies in Western agriculture and water on letters to Congress and the White House intended to tee up federal policy makers of the need to include Western water infrastructure in any new stimulus package that includes an infrastructure component.

The National Ocean Policy Coalition (NOPC) last week transmitted a [letter](#) to President-elect Biden requesting support for collaborative, transparent, and balanced multi-use ocean policies that support economic and environmental goals and help achieve mutual desires for greater economic prosperity and job creation, including through a vibrant "Blue Economy". The letter was signed by 70 groups - including the Family Farm Alliance- representing a wide array of commercial and recreational interests from across the United States. The Alliance testified before two Congressional committees in 2017 on the state of the National Ocean Policy and the program's interaction with existing laws and regulations for ocean management. The transcript of the December 12, 2017 stakeholder hearing held before the U.S. Senate Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard can be found [HERE](#).

5. Outlook for the 117th Congress – House of Representatives

Because the Democrats will continue to hold a majority in the U.S. House of Representatives, all the Chairmanships of all 22 standing Committees will continue to be held by Democrats. The sense from many is that, if the Republicans hold the Senate, the slim majorities in each chamber may empower the moderates from both sides of the aisle in the next two years.

a. Leadership

House Speaker Nancy Pelosi earlier this month secured the Democratic Caucus nomination to be Speaker in the 117th Congress and has indicated this may be her last term as Speaker. She will now need to garner 218 votes from the House floor in January to be re-elected as Speaker. She will need to have the entire Democratic Caucus coalesce around her candidacy due to a much narrower majority over the GOP, which picked up more seats in the House in November than previously predicted. House Democrats also re-elected many of their current leaders for the 117th Congress, including Majority Leader Steny Hoyer (D-MD) and Majority Whip Jim Clyburn (D-SC), and they selected Rep. Katherine Clark (D-MA) as Assistant Speaker.

California Rep. Kevin McCarthy was re-elected as House Minority Leader for the 117th Congress. Louisiana's Rep. Steve Scalise was re-elected a Minority Whip and Rep. Liz Cheney of Wyoming was again picked to be GOP conference chair. Committee ranking members will be chosen sometime in December.

b. House Committee Leaders for 117th Congress

House Democratic and Republican Caucuses have voted on who will serve as committee chairmen and ranking members in the 117th Congress next year. California Rep. Jim Costa lost the vote for chair of the House Agriculture Committee to Georgia Rep. David Scott. Mr. Costa received key endorsements from the Family Farm Alliance and over 70 agricultural organizations because of his extensive experience and effectiveness in delivering results for American agriculture. Rep. Scott, who had the endorsement of a dozen House colleagues and a letter of support from current Chairman Peterson, will become the first African American to lead the committee.

On the GOP side, Rep. Cathy McMorris-Rodgers (R-WA) will be ranking member on the House Energy and Commerce Committee, while Rep. Bruce Westerman (R-AR) will serve as ranking member for the House Natural Resources Committee. The complete list of Democratic House committee chairs can be found [here](#); the list of House GOP ranking members can be found [here](#).

c. New Congressional Western Caucus Chair

The Executive Committee of the Congressional Western Caucus earlier this month elected Rep. Dan Newhouse (R-WASHINGTON) as Chairman of the Caucus for the 117th Congress. The Congressional Western Caucus has long been a strong supporter of Western irrigated agriculture. The Western Caucus, currently led by Chairman Paul Gosar (R-ARIZONA), is a bipartisan coalition of nearly 70 Members of Congress from 35 different states and territories who advocate for rural, western, and resource-based communities.

6. Outlook for the 117th Congress – Senate

Three incumbent Senators running for re-election were defeated: Sens. Doug Jones (D-AL), Cory Gardner (R-COLORADO), and Martha McSally (R-ARIZONA), resulting in a net gain of one seat for Senate Democrats, from 47 to 48. The Senate GOP will have 50 seats in the upper chamber leading up to the January 5th runoff elections in Georgia, and Senate Democrats will have 48 seats. Control of the Senate now depends on the outcomes of the Georgia runoff elections.

a. Sens. McConnell, Schumer Reelected to Senate Leadership Posts

With control of the Senate still up in the air, Senate Republicans and Democrats reelected their respective leadership teams for the 117th Congress. Current Majority Leader Mitch McConnell of Kentucky won another term as the top Senate Republican, with South Dakota's John Thune to serve as GOP Whip, John Barrasso of Wyoming as conference chairman, Missouri's Roy Blunt as policy committee chairman and Joni Ernst of Iowa as conference vice chair. Senate Democrats reelected Chuck Schumer of New York as Minority Leader, Illinois' Dick Durbin as Whip, Patty Murray of Washington as assistant Leader, and Michigan's Debbie Stabenow as lead for the Democratic Policy and Communications Committee (DPCC) again.

b. Barrasso to Chair Senate Energy and Natural Resource (ENR) Committee

Sen. John Barrasso (R-WYOMING) – a long-time supporter of Alliance initiatives - has announced that he intends to chair the Senate ENR Committee next Congress (assuming the GOP still controls the Senate), vacating his current position as chair of the Environment and Public Works (EPW) Committee. Current ENR chair Sen. Lisa Murkowski (R-AK) is term limited in that position.

COVID-19 UPDATE

The Centers for Disease Control (CDC) [announced](#) the national “ensemble forecast” predicts that the number of newly reported COVID-19 deaths will likely increase over the next 4 weeks, with 12,600 to 23,400 new deaths likely to be reported in the week ending January 2, 2021. The national ensemble predicts that a total of 332,000 to 362,000 COVID-19 deaths will be reported by this date.

7. Trump Administration Actions

The U.S. Food and Drug Administration has issued the first emergency use authorization (EUA) for a vaccine for the prevention of COVID-19. The emergency use authorization allows the Pfizer-BioNTech COVID-19 Vaccine to be distributed in the United States. Through Operation Warp Speed, the Trump Administration provided \$14 billion to accelerate vaccine development and manufacture all of the top candidates in advance. This included nearly a \$2 billion investment in Pfizer to produce 100 million doses of their vaccine with an option to produce 500 million additional doses. This vaccine will be free for all Americans, and through partnerships with FedEx and UPS we have already begun shipping the vaccine to every state and zip code in the country.

8. Developments in Congress

Lawmakers are racing against the clock to clinch a desperately needed coronavirus relief deal while also finishing work on a massive omnibus spending deal. Pandemic aid programs are set to expire before the end of the year. Last week, Treasury Secretary Steven Mnuchin offered House Speaker Nancy Pelosi (D-CA) and Senate Minority Leader Chuck Schumer (D-NY) a \$916 billion COVID relief proposal, which is broadly similar to the bipartisan, bicameral \$908 billion proposal unveiled on December 1. The two major sticking points in getting a final COVID relief deal done are liability protections for businesses (a Leader McConnell must have), and state and local government aid (Democratic must have). Leader McConnell suggested that both parties consider abandoning their demands on liability provisions and state/local government aid and put the issues to the side until early 2021, when another relief package may be considered by Congress. Speaker Pelosi and Leader Schumer rejected Leader McConnell’s proposal.

Senator Joe Manchin (D-WV) was on Fox News Sunday yesterday and said the packages would be formally introduced today. Reuters is reporting that House Majority Leader Steny Hoyer said his party might be willing to accept a coronavirus relief deal without the state and local aid that Democrats have been insisting should be part of it. Here is an [article](#) from some additional background from *Roll Call* with additional background.

9. Biden-Harris Transition

The Biden-Harris Transition [announced](#) the board members for their COVID-19 Advisory Board.

TRUMP ADMINISTRATION ACTIVITIES

10. Water Subcabinet

Recall that President Trump in late October signed an executive order formalizing the creation of the Water Subcabinet. We have been working with staff for the Subcabinet in recent weeks with the intent of continuing to elevate nutrient management and water quality strategies as referenced in the Executive Order on Modernizing Water Management and Infrastructure.

11. Department of Interior Bureau of Reclamation: Excess Capacity D&S

Last month, Mark Limbaugh and I spoke with Reclamation Deputy Commissioner Hagenauer regarding two Directives and Standards (PEC 05-10, and PEC 05-11) that Reclamation is preparing to finalize that relate to pricing for Excess Capacity at Bureau of Reclamation projects. The revised draft of PEC 05-10 Contracting for Non-Project Use of Excess Capacity in Reclamation Project Facilities can be found [HERE](#). The revised draft of PEC 05-11 Charges for Non-Project Use of Excess Capacity in Bureau of Reclamation Project Facilities can be found [HERE](#). These were last circulated in draft form among stakeholders in 2015-2016, in the previous administration, and we spent some energy in working to put this effort on ice, at least temporarily. The Commissioner's office believes the new Directives and Standards (D&S) releases would benefit customers by protecting project receipts (rather than losing access to those funds) and use those revenues to help address maintenance needs. Because comments from the prior review have now been incorporated, right now, Reclamation is asking to identify any 'fatal flaws.'

We worked closely with San Luis & Delta-Mendota Water Authority (SLDMWA) and other parties interested in this matter in recent weeks, prior to a stakeholder ZOOM meeting hosted by Reclamation last Wednesday. That meeting featured participation from Reclamation officials in Washington and Denver, as well as 40 stakeholder participants, including several Family Farm Alliance representatives and members. Reclamation reported that the two most significant comments they received on the two 2015 D&S included: (1) instead of Reclamation taking part of the funds generated from the replacement component and prioritizing the greatest extraordinary needs Reclamation-wide, Reclamation should keep these funds for the projects that generate them; and (2) a focus on the pricing approach, in order to make Reclamation's practices more in line with industry practice for calculating replacement costs, which resulted in slightly lowering what the charges would be in most cases. Reclamation intends to adhere to existing contracts, which will almost always mean that those funds will go to the transferred works operating entity (unless the contract says something different). The end result is a shift from this money going back to the Reclamation's General Fund without being credited to the project, and now being able to be kept for the project for those emerging extraordinary maintenance challenges.

12. NEPA Overhaul in Court

The Trump Administration is actively defending litigation against the White House Council on Environmental Quality's (CEQ's) new regulations governing how federal agencies analyze the

impacts of major projects under the National Environmental Policy Act (NEPA). CEQ asked the U.S. District Court for the Northern District of California to dismiss another lawsuit challenging its overhauled implementing regulations for NEPA. The Administration said the environmental groups opposing the new regulations (which had not been revised since their passage in 1978) did not have standing to bring their case. The filing came after CEQ asked the U.S. District Court for the Southern District of New York to toss out a separate challenge to the regulations on nearly identical grounds. Environmental groups suing the Administration over the NEPA reforms are arguing that the regulations hurt the government's ability to measure a project's effects on climate change and other environmental impacts. The Alliance spent considerable time developing comments for the Trump Administration to consider as it was developing the draft NEPA rules, and overall, we think they are a big improvement.

13. EPA to Clarify Supreme Court *Maui* Ruling

A draft memo from Environmental Protection Agency (EPA) Assistant Administrator for the Office of Water David Ross appears to provide some clarity to industry follow the Supreme Court opinion in *County of Maui v. Hawaii Wildlife Fund*, on how permits would be required under the Clean Water Act (CWA) for pollution that moves through groundwater. In the opinion, the Supreme Court justices said such a determination hinges on several factors, including time and the distance the pollution travels, as well as the nature of the material through which the contaminants move. Some indirect paths, the court wrote, may have the ability to dilute or chemically alter pollution that travels through them. The Court added the term "functional equivalent" as a test whether pollutants moving through groundwater to CWA jurisdictional "navigable waters" are a direct discharge into such waters. The draft memo offers several recommendations to the regulated community and permitting authorities on how to implement the *Maui* opinion as part of the National Pollutant Discharge Elimination System (NPDES) permit program. The Family Farm Alliance was part of an amicus effort in this case, arguing on the side of the County of Maui.

14. Natural Resources Conservation Service (NRCS): Western Water Listening session

NRCS will host a virtual, open, public listening session with remote participation only, for public input about water quantity in the West as it relates to existing NRCS programs. The listening session will be held on December 17, 2020, starting at 10:00 a.m. Eastern time. A mid-day break will be scheduled at approximately 12:00 p.m. (noon). The [notice of the session](#) was published in the Federal Register two weeks ago. The listening session will begin with brief opening remarks, with an overview of NRCS efforts to address water related issues in the west. Then speakers will be called to provide oral comments (limited to 3 minutes). This event derived from actions suggested by our partners in the Western Agriculture and Conservation Coalition (WACC), including Alliance director Marc Thalacker, Jeff Eisenberg (WACC coordinator) and yours truly working with Ron Alvarado at NRCS. Several of us will be participating and making statements.

DEVELOPMENTS IN CONGRESS

President Donald Trump signed a one-week stopgap spending bill Friday, ahead of a midnight

deadline to avert a federal government shutdown. Funding is now extended until the end of the day on Dec. 18. U.S. lawmakers aim to complete a full-year \$1.4 trillion spending bill combined with Covid-19 relief legislation by the new deadline. The Senate approved the stopgap bill by voice vote earlier Friday after several senators tried to hold the process up, seeking to force votes on unrelated issues. The House passed the measure on a 343-67 vote Wednesday.

We expect the COVID-19 relief package in combination with the FY 2021 omnibus appropriations bills to consume most of the time this week in Washington as the new CR now expires on Friday December 18 at midnight. As for WRDA (see below), we are expecting it may be attached to the omnibus bill. While there is still time to get everything finished by the end of this week, there are rumors another short term, three month Continuing Resolution may be needed if negotiations stall in the lame duck. Also, Congress may have to return after Christmas to vote on a threatened presidential veto of the National Defense Authorization Act (NDAA), so that may give them a few more days to work to pass legislation.

15. Senate Releases FY 2021 Spending Bills – Negotiations Commence with House

The Senate Appropriations Committee last month released its 12 annual government funding bills, without holding any markups, to serve as an opening bid in negotiations with the House, which has passed all but two of their FY 2021 appropriations bills. The Senate FY 2021 Energy and Water Development spending bill would provide additional funding for WaterSMART and other ongoing work for the Corps of Engineers (Corps) and the Bureau of Reclamation (Reclamation) much like the House bills did. However, the Senate version did not include the roughly \$20 billion in emergency spending for the Corps and Reclamation provided in the House bill. The Senate bill also did not name storage projects requested by the Administration for Water Infrastructure Improvements for the Nation (WIIN) Act funding, something the House bill did do, with the caveat the Administration would need to provide their list of recycling and desalination projects (which has not occurred to date) for the water storage projects to gain the requested funding. Both bills added funding to WIIN Act water infrastructure account, which continues to grow faster than expenditures to listed projects. The Alliance and National Water Resources Association two weeks ago co-signed a letter to Congressional leaders, urging that the WIIN Act be extended for one year, to allow certain feasibility studies for projects that are in the queue to move towards completion.

The Senate FY 2021 Interior, Environment and Related Agencies bill (which funds the Environmental Protection Agency (EPA) and the Department of the Interior) came out \$18 million less than FY 2020 and about \$1 million less than the House passed bill. Senate appropriators would provide an additional \$60 million to the Water Infrastructure Finance and Innovation Act (WIFIA) loan program to provide low-interest loans to local utilities to finance up to 49% of the cost of upgrades to their systems.

16. Western Water Infrastructure Priorities in the Lame Duck

House and Senate Water Resources Development Act (WRDA) bills would authorize the U.S. Army Corps of Engineers (Corps) to carry out a two-year roadmap of water infrastructure projects.

House and Senate staff have been informally negotiating and seeking to reconcile differences “behind the scenes” for many weeks. Mark Limbaugh reported on Friday that the final WRDA, S. 1811 has been filed for a vote this week. Unfortunately, wastewater, stormwater, drinking water and clean water provisions were left out of the final WRDA bill due to cost concerns. Proponents of those provisions are hopeful that the new Congress will take up a large infrastructure bill early next year that will include program reauthorizations and increased funding for those types of water infrastructure projects. There are also no Reclamation provisions in this bill, but we believe a Reclamation Western Water Package (including bills that we’ve been working on for much of the past year) could move on the omnibus appropriations bill for FY 2021 by December 18. It is unclear whether the measure will make its way into a sprawling omnibus funding package that could come together this week.

ALLIANCE INITIATIVES

17. Wildfires and Forest Watershed Health

Massive wildfires in Western headwaters forests and lands can create significant impacts to downstream water uses. The two elements of water quality and quantity are the pillars upon which ecosystems, cities, ranches and farms stand. Water in the West is the single element without which our country’s high-quality food and fiber would cease to exist. Roughly 50,000 wildfires have burned more than 8.5 million acres this year in the West. The Family Farm Alliance joined the Association of California Water Agencies and other partners and sent [a letter](#) to Congressional Leadership last month urging action on a wildfire legislative package before the end of session. The Family Farm Alliance is on record for supporting S. 4431, the bipartisan *Emergency Wildfire and Public Safety Act of 2020*, sponsored by Sens. Dianne Feinstein (D-CALIFORNIA) and Steve Daines (R-MONTANA). Check out the related [guest column](#) I wrote that was published in the September 25, 2020 edition of *Western Farmer- Stockman* magazine.

18. 2021 Annual Conference

We hope you will join the Family Farm Alliance (virtually, that is) on February 18-19, 2021, to learn how Western agricultural water users are working with their communities, federal and state governments, investors and NGOs to shore up their water reliability. The 2021 Family Farm Alliance annual conference originally scheduled to be held in Reno (NEVADA) at that time will now be a virtual event. This decision by the Alliance board of directors was made after careful consideration of all options. With the global COVID pandemic, and the associated uncertainty that surrounds us during this difficult time, the board decided it was not in the best interest of our attendees to move forward with an on-location event. More information - including final dates, registration and sponsorship opportunities, and a program agenda - are being developed and will be shared with Alliance membership and the public in the coming weeks.

This is a quick summary of just a few of the issues the Alliance has been engaged in. Please do not hesitate to contact me at dan@familyfarmalliance.org if you would like further information about what the Alliance is doing to protect water for Western irrigated agriculture.