Senate Passes Bipartisan Infrastructure Agreement
House of Representatives will act later this month

The Senate last month passed the 2,702-page, five-year Infrastructure Investment and Jobs Act, which includes a full surface transportation reauthorization bill, in addition to funding for the electric grid, broadband, water infrastructure, resiliency and western water storage, environmental remediation, and more.

“The Bipartisan Infrastructure Investment and Jobs Act invests in building resilience to climate change, while creating good-paying jobs to safeguard our communities at risk,” said U.S. Secretary of Agriculture Tom Vilsack. “The bill helps farmers grappling with intensifying drought and makes the West’s water infrastructure more resilient.”

The long-awaited vote took place after months of bipartisan negotiations, headlined by talks led by a group of 10 senators spearheaded by Sens. Rob Portman (R-Ohio) and Kyrsten Sinema (D-ARIZONA).

“Congress has talked about truly modernizing our nation’s infrastructure for as long as we can remember,” Sens. Portman, Sinema and the eight other senators said in a joint statement after the vote. “The United States Senate delivered so that we can finally give the American people the safe, reliable, and modern infrastructure they deserve.”

The legislation totals around $1.2 trillion, with roughly $550 billion constituting new federal spending and the rest coming from existing, planned investments in roads, highways and bridges.

Environmentalists are pressing their House allies to revise or remove a series of provisions in the bipartisan Senate infrastructure bill that overhaul the National Environmental Policy Act (NEPA), including measures that make permanent expiring fast-track procedures, create new categorical exclusions and curb their ability to sue.

“As of now, yes, we are focused on the House and trying to get these provisions eliminated or improved,” one environmentalist told Inside EPA last month.

Some House Republicans, on the other hand, believe that, without regulatory reform, infrastructure investment is almost futile.

“Laws the like of NEPA are intended to ensure environmental protections, but the burdensome requirements result in years of permitting delays and red-tape that hinders investment, especially in rural America,” said Rep. Dan Newhouse (R-WASHINGTON), Chairman of the Western Caucus.

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A July 16 letter from a group of environmentalists urged lawmakers to preclude a slate of additional NEPA provisions from the bill, including categorical exclusions that “completely bypass environmental review and public input on projects with potentially severe health and environmental impacts.”

But the greens appear to face a steep hurdle as the White House and Democratic leaders are generally reluctant to amend the bipartisan bill.

**Western Water Infrastructure Provisions**

The Western Water Title in the infrastructure bill passed by the Senate includes $8.3 billion for the Bureau of Reclamation (Reclamation), including $3.2 billion for aging infrastructure, $1.15 billion for new storage and conveyance, $100 million for small-scale storage projects, $250 million for ecosystem restoration, $100 million for multi-benefit watershed projects and $400 million for WaterSMART, including $100 million for natural infrastructure projects.

A national coalition representing thousands of Western farmers, ranchers, water providers, businesses and communities underscored the significance of Senate passage of the bipartisan bill and urged the House to mirror the water provisions in its own infrastructure package.

“The Western water provisions included in this package represent a once-in-a-lifetime opportunity to invest in a reliable and sustainable water supply that supports our farms, businesses and rural and urban communities,” Family Farm Alliance Executive Director Dan Keppen said. “We applaud the bipartisan approach taken by our Senate champions in moving this solution forward at a time of unprecedented drought in the West.”

Importantly, the *Infrastructure Investment and Jobs Act* aligns with the solutions advanced by a Western water coalition that collectively represents thousands of Western farmers, ranchers, water providers, businesses and communities who help provide $120 billion of agricultural production on millions of acres of productive land. The coalition is led by a steering committee comprised of the Alliance, Association of California Water Agencies (ACWA), California Farm Bureau, National Water Resources Association (NWRA) and Western Growers.

“We need to make major investments, including in water recycling, ecosystem restoration, desalination and storage projects to modernize and upgrade our water infrastructure to ensure local, safe, reliable, high quality water now and in future years,” ACWA Executive Director Dave Eggerton said. “This bipartisan legislation accomplishes that.”

**Senate Passes $3.5 T Budget Resolution**

With passage of the bipartisan infrastructure package behind them, the Senate quickly proceeded to pass a $3.5 trillion budget resolution on a party line vote, sending instructions to Senate committees to hammer out details of a budget reconciliation package by mid-September that would direct spending to various programs over ten years.

The $3.5 trillion package would include funding for President Biden’s *Build Back Better* plan to provide for expanded climate and environmental programs, expanded child tax credits, community college, universal pre-kindergarten and an expansion of Medicare to include dental and vision coverage.

The package would also raise taxes on corporations and wealthy Americans to help pay for a portion of the increased spending.

Several concerns are being raised regarding a “transfer tax.” Former Chairman of the House Agriculture Committee Collin Peterson points out that there is a provision in the plan that would enact a transfer tax when an asset changes hands.

“I would argue this transfer tax, which could be as high as 43.4 percent, is the worst idea that has been proposed in terms of its impact on agriculture in my lifetime,” Mr. Peterson wrote in an editorial. “This proposal is a direct assault on agriculture because it will prohibit the transfer of a family farm from one generation to the next which is the last thing we should want to do.”

**House Adopts Senate Resolution, Commits to Consider Senate Bipartisan Package**

The House on August 23 returned to Capitol Hill from their August recess and passed, by a party-line vote, a resolution which includes the adoption of the Senate-passed FY 2022 budget resolution, and commitment to consider the $1.2 trillion Senate-passed *Infrastructure Investment and Jobs Act* no later than September 27.

Adoption of the FY22 budget resolution by both the House and Senate officially kickstarts the budget reconciliation process. This will allow congressional Democrats to pass an expansive $3.5 trillion social spending and tax package to “enact the Build Back Better agenda,” including large swaths of President Joe Biden’s proposed American Jobs and Families Plans unveiled earlier this year.

“The House of Representatives is taking a significant step toward making a historic investment that is going to transform America -- cut taxes for working families, and position the American economy for long term, long term growth,” President Biden said after the House vote.

The FY22 budget resolution directs 13 House committees to write and markup their parts of the reconciliation package by Wednesday, September 15.

The multiple bills marked up and passed by the committees will then be bundled together by the House Budget Committee as a single, mammoth bill prior to a vote by the House, which is likely to occur during the week of September 20. This would then be followed by a vote in the Senate, where only a simple majority will be required for passage.

While 12 Senate committees are also tasked by the FY22 budget resolution with writing their parts of the reconciliation package by September 15, Senate Democrats will very likely work with their House Democratic counterparts behind-the-scenes over the next three weeks to come to agreement on various policy and spending items, allowing only the House committees to formally markup parts of the package.

Importantly, the House must now consider the $1.2 trillion Senate-passed Infrastructure Investment and Jobs Act no later than September 27.

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House Speaker Nancy Pelosi (D-CALIFORNIA) reached a deal that included this commitment with 10 moderate House Democrats, led by Rep. Josh Gottheimer (D-NJ), who had initially threatened not to vote in favor of the FY22 budget resolution until the House voted on the Senate-passed infrastructure bill first.

"With roads and bridges crumbling across our nation, this agreement does what we set out to do: secure a standalone vote for the bipartisan infrastructure bill, send it to the President’s desk, and then separately consider the reconciliation package," nine of the moderate holdouts said in a statement.

“I think it’s important that those of us who are moderate Democrats make sure that our voices are heard,” added Representative Jim Costa (D-CALIFORNIA). “We’re representing our constituencies.”

Speaker Pelosi has pledged for months that the House would wait to vote on the bipartisan Senate-passed infrastructure bill until the $3.5 trillion reconciliation package was also passed by the Senate because of previous threats from progressives that they would oppose the infrastructure bill until their priorities were addressed in the reconciliation package.

“I am committing to pass the bipartisan infrastructure bill by September 27,” said Speaker Pelosi in a press statement. “I do so with a commitment to rally House Democratic support for its passage.”

Progressives warned in a statement that they would vote against the infrastructure bill if the reconciliation bill does not pass first.

“If that is not the case then they shouldn’t count on us,” Representative Alexandria Ocasio-Cortez (D-NY) said, underscoring that the Sept. 27 deadline set in the rule for infrastructure isn’t binding.

Republicans slammed Democrats for not addressing the crisis in Afghanistan and for pushing the budget resolution, which they say will hurt businesses and expand the deficit.

"Maybe in your caucus, you think it is a great day for you and the Democrats," House Republican Leader Kevin McCarthy (R-CALIFORNIA) said. "It's an embarrassing day to America, it’s an embarrassing day for this floor and it's embarrassing that you would even move forward with it."

**Next Steps**

House Democrats can only lose three votes to retain a majority to move legislation. House Republicans are universally opposed to the $3.5 trillion reconciliation package, while most progressive Dems (100+) oppose the bipartisan infrastructure bill without enactment of the much larger reconciliation package. Even though the budget resolution passed on a partisan 50-49 vote, the budget reconciliation package faces some tough going in the 50-50 Senate, with two moderate Democrats (Sens. Joe Manchin (D-WV) and Krysten Sinema (D-ARIZONA)) stating they might oppose the $3.5 trillion reconciliation package without significant reductions in the size of the measure.

“Proceedings in the U.S. House will have no impact on Kyrsten’s views about what is best for our country - including the fact that she will not support a budget reconciliation bill that costs $3.5 trillion,” said Senator Sinema’s spokesperson, John LaBourd. This would put the Biden agenda at risk of failing to attract a simple majority in the chamber.

The House Natural Resources Committee will mark up its piece of the reconciliation bill, which will spend $25.6 billion - on September 2. The $25.6 billion allocation was negotiated by the White House, Senator Schumer, and Speaker Pelosi, but largely omitted funding for the Department of the Interior (DOI) programs.

Of interest to Western water users, the Committee’s reconciliation package will include:

- $650 million through Reclamation for emergency drought relief and $250 million for aquatic ecosystem restoration;
- $9.5 billion through National Marine Fisheries Service for shovel ready restoration projects;
- $150 million through Fish and Wildlife Service (FWS) for recovery plans and $50 million for habitat conservation plans; and
- $3.620 billion for the civilian climate corps ($3 billion through Interior).

“These funds will be available over the next ten years, without the need for additional action by the committees on appropriations,” said Mark Limbaugh, the Alliance’s representative in Washington, D.C. “This is mandatory spending.”

In a memo that was obtained by the Center for Biological Diversity, the Natural Resources Committee said it planned to raise $5.5 billion to $6 billion from fees on drilling and pipelines as well as coal and hard rock mining. This may draw some opposition from moderate Democrats in carbon-based energy states.

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Western Drought Impacts More Water Users
Colo. River Shortage, Calif. Water Rights Calls Have Irrigators Nervous

Mother Nature was somewhat cooperative in the past month, bringing cooler temperatures and additional precipitation to certain parts of the parched West. However, legal and policy directives in California and the Colorado River Basin could lead to reduced water supplies – both in the short-term, and in future years – for some farmers and ranchers.

Drought Hydrology

Drought continues to plague much of the West, according to the U.S. Drought Monitor. However, due to recent monsoonal rainfall, drought conditions improved in New Mexico, southern Utah, adjacent parts of southern Nevada and southeast California. Monsoons are helping those parts of Arizona that provide water to Salt River Project (SRP) customers in the Valley of the Sun.

“That’s a good thing,” said Patty Garcia-Likens, SRP spokeswoman. “We’re able to store that water and we’re able to provide that water to the more than two million Valley residents.”

Parts of the Midwest, High Plains, and West regions received beneficial rainfall near the end of August, which led to improvement in drought conditions in some locales. Rain fell over wide areas of Nebraska, South Dakota, North Dakota, Wyoming, and western Colorado, leading to some improvements in drought conditions. Unfortunately, southwest Nebraska missed out on the rain, and agricultural drought impacts and precipitation deficits continue to mount.

Ongoing drought has also impacted the bee population in North Dakota.

"Last fall, it was dry as a bone and we never got any rain in this area. No winter snow either," said North Dakota beekeeper Dwight Gunter in Reuters. "The pollen flow this year has been considerably less."

The drought is leading to policy decisions in California and the Colorado River Basin that could have both short-term and delayed impacts to many Western water users.

California cracks down on diversions

In California, the entire Central Valley, the southern Sierran Bay, and the East Bay are in exceptional drought, the worst designation of the U.S. Drought Monitor.

According to the Northern California Water Association, over 50 environmental, water provider, business and public agency interests representing over two dozen organizations passed an urgent resolution on August 26 calling on the Sacramento Water Forum, its members and the public to reduce water use by 15 percent to preserve water supplies in Folsom Reservoir.

“The urgent call for action passed by Water Forum members reflects a growing water and environmental emergency in the Sacramento region, across California and the West,” said Water Forum Executive Director Jessica Law. “It is critical that the public conserve water now.”

California’s second largest reservoir – Lake Oroville - is at its lowest point in nearly 44 years. California’s fifth largest reservoir and the nation’s largest off-stream reservoir—San Luis — is less than 16 percent of capacity.

Hyatt Power Plant at Lake Oroville officially stopped making power in early August, as the power plant went offline as the lake’s water level continued to sink.

Ironically, California – a state that has placed high priority on reducing hydrocarbon emissions is now seeking relief to an energy crisis driven by high temperatures, wildfires and drought with the import of five 30-MW gas-fired emergency generators, according to multiple news sources.

U.S. Congressman Doug LaMalfa (R), State Senator Jim Nielsen (R-Gerber), and Assemblyman James Gallagher (R-Marysville) last month met at the top of the Oroville Dam to decry Governor Gavin Newsom’s “lack of leadership and gross mismanagement of the state’s water, power and forests/wildlands.”

“Lake Oroville was at full capacity two years ago, as well as in 2017,” said Rep. LaMalfa, whose district spans a large chunk of northeastern California. “This dam was designed to provide water and power through five years of drought.”

Rep. LaMalfa claims Governor Newsom’s administration “mishandled and wasted so much water” that Oroville ran out of water in less than two years.

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“Throughout the winter and spring, the state let water out of the lake, ignoring that we were in a drought,” said Rep. LaMalfa. “The government has used our water for its pet projects like the delta smelt, a fish no one has found a single one of in over three years. Yet families and farms have seen dramatic cutbacks in their water availability.”

Now, California regulators are cracking down on water use in the Sacramento River and San Joaquin River watersheds, ordering 4,500 farmers, water districts and other landowners, including the city of San Francisco, to stop drawing water in the basins — or face penalties of up to $10,000 a day.

“The State Water Board is attempting to wrest regulatory control over pre-1914 water rights, just as it did during the last drought,” said Russell Kagehiro, Board President of the Byron-Bethany Irrigation District (BBID). “By targeting agriculture in the Delta region, the State Water Board is unfairly imposing an enormous burden on those who will sustain the greatest socioeconomic damage, by unfairly threatening thousands of jobs and valuable crops.”

Other irrigation districts don’t expect an impact this year from the emergency drought regulation that could stop other farmers from diverting water from the state’s major rivers. However, they are concerned about precedent and how this year’s actions could impact farmers in 2022.

“Our concerns are less about this year and more about the potential precedent of such a state action,” said Michael Frantz, a board member for Turlock Irrigation District.

The emergency regulations are based on the unavailability of natural flows throughout the Bay-Delta watershed, including the Sacramento Valley.

“There is a methodology the State Board has developed to help make this determination,” said NCWA Executive Director David Guy. “The State Board followed the water rights priority system as well as we could ask. It hopefully will not affect anyone this year as they finish farming, and they are better prepared for next year.”

**Secretary Vilsack visits California and Oregon**

Just days after state regulators announced the water cutbacks for thousands of Central Valley farmers, U.S. Secretary of Agriculture Tom Vilsack promised federal relief to help combat the Golden State’s drought disaster.

At least $41 million will be available to four states severely impacted by the drought, including California.

"We're also using COVID relief dollars and the American Rescue Plan dollars to provide additional assistance under our pandemic assistance and build back better effort," Secretary Vilsack said.

The secretary visited both Oregon and California last month to discuss the historic drought and the fires ravaging the West Coast. Meeting attendees focused on the need for better water management in the state from the federal government, according to the Fresno County Farm Bureau.

**Impacts to food prices**

California leads the United States in agriculture production; however, the industry continues to be impacted by the weather conditions. Lodi rancher Curtis Thomas told *Fox Business* that the drought conditions and wildfires are making things more difficult this year.

"If you don’t have water, you don’t have anything," Mr. Thomas said. "I think this is the worst so far, it’s gotten progressively worse."

The current drought conditions are similar to ones in 2015, where the state lost billions of dollars in potential profit.

"Over a three-year period of time, over $5 billion in losses of crops that weren't being produced, marketed and harvested," said Karen Ross, California's Secretary of Agriculture.

The U.S. Department of Agriculture reported that beef prices could rise by another 4% by the end of the year and fresh fruit prices could rise by another 6%.

**Shortage Declaration Announced for Colorado River**

As the historic Colorado River drought continues, low run-off conditions in the Colorado River Basin have prompted the Bureau of Reclamation (Reclamation) to reduce downstream releases from Glen Canyon Dam and Hoover Dam in 2022 due to declining reservoir levels.

In the Lower Basin the reductions represent the first-ever “shortage” declaration—demonstrating the severity of the drought and low reservoir conditions. The declaration means that in January 2022 the agency will reduce water deliveries to the Lower Colorado River Basin states of Arizona and Nevada.
Colorado River Shortage Declaration (Cont’d from Page 5)

and to Mexico.

“Like much of the West, and across our connected basins, the Colorado River is facing unprecedented and accelerating challenges,” said U.S. Interior Department Assistant Secretary for Water and Science Tanya Trujillo. “The only way to address these challenges and climate change is to utilize the best available science and to work cooperatively across the landscapes and communities that rely on the Colorado River.”

Most of the flow of the Colorado River originates in the upper portions of the Colorado River Basin in the Rocky Mountains. The Upper Basin experienced an exceptionally dry spring in 2021, with April to July runoff into Lake Powell totaling just 26% of average despite near-average snowfall last winter. The projected water year 2021 unregulated inflow into Lake Powell—the amount that would have flowed to Lake Mead without the benefit of storage behind Glen Canyon Dam—is approximately 32% of average. Total Colorado River system storage today is 40% of capacity.

“Today’s announcement of a Level 1 Shortage Condition at Lake Mead underscores the value of the collaborative agreements we have in place with the seven basin states, Tribes, water users and Mexico in the management of water in the Colorado River Basin,” said Reclamation Deputy Commissioner Camille Touton. “Reclamation is committed to working with all of our partners in the basin and with Mexico in continuing to implement these agreements and the ongoing work ahead.”

Plans that have been developed over the past two decades lay out detailed operational rules for Lakes Powell and Mead.

In July 2021, drought operations to protect Lake Powell were implemented under the Upper Basin Drought Response Operations Agreement which project releasing up to an additional 181,000-acre feet of water from upstream initial units of the Colorado River Storage Project to Lake Powell.

Impacts to Producers

Under the 2007 Colorado River Interim Guidelines and the 1944 Water Treaty Mexico, Lake Mead will operate under shortage status for the entirety of calendar 2022. This includes required reductions and contributions for each individual state forming the lower basin. These requirements include about 18 percent of Arizona’s annual apportionment, 7 percent of Nevada’s annual apportionment and 5 percent of Mexico’s annual apportionment.

The cuts will be the largest to date on the river, and will hardest hit farmers who receive water from the Central Arizona Project (CAP), who are preparing for the supplies to be entirely shut off in 2023. The reductions will force growers in Pinal County to leave some fields dry and unplanted, while the state is providing funds to help local irrigation districts drill wells to pump more groundwater.

“The cutbacks are happening. The water’s not there,” Will Thelander, who grows cotton, alfalfa and corn, told the Desert Sun. “We’ll shrink as much as we can until we go away. That’s all the future basically is.”

After two decades of drought, Mr. Thelander - whose fa- ther, Dan, recently served on the Family Farm Alliance board of directors - and other farmers have known the reductions were coming. He estimates the loss of Colorado River water will cut his bottom line by about half.

Dr. Robert Glennon, a veteran analyst of Western water law and policy, notes that cities served by the CAP will fare better than CAP ag customers. He does not believe that this declaration will halt growth in the affected states. But, he also says growth can no longer be uncontrolled.

“Increasing water supply is no longer a viable option, so states must turn to reducing demand,” he recently wrote.

Senior water rights holders on the Colorado River will fare better. While not directly affected by the shortage reductions next year, the Imperial Irrigation District (IID) is actively monitoring the ongoing drought conditions and forecasted reservoir elevations as the district looks to protect the Imperial Valley’s sole water supply.

“As a long-standing advocate for the expansion of water storage opportunities in Lake Mead, IID looks forward to identifying additional water conservation or reuse opportunities, including those within IID’s service area while fully protecting public health and wildlife at the Salton Sea,” said IID Board President James C. Hanks.

Since late 2003, IID has generated over 6.2 million acre-feet of conserved water for transfer or storage to further water supply resiliency in both California and the Lower Basin. IID’s ongoing implementation of the Quantification Settlement Agreement, the nation’s largest agriculture-to-urban water conservation and transfer program, will generate nearly 500,000 acre-feet of additional conservation in 2021.

Urbs look to pay farmers not to plant crops

The river has been a lifeline for Southern California for more than 80 years, says Adel Hagekhalil, general manager of the Metropolitan Water District (MWD) of Southern California.

“The Colorado River is sending us a clear message: conserve, reuse and recycle,” he said. “We are already at the table with our partners on the river exploring longer-term solutions to shared risks and vulnerabilities. The next chapter in the history of this river must be one of collaboration and historic action to stabilize a supply that is so vital to seven states and two countries.”

MWD is working with other Lower Basin interests – including urban water purveyors in Las Vegas and Phoenix - to slow the drop in Lake Mead’s water levels over the next few years by paying Southern California farmers not to plant crops. The plan builds on a 2004 agreement between MWD and Palo Verde Irrigation District (PVID) which allowed the water district to pay farmers in PVID to temporarily fallow portions of land. Water saved by not irrigating that farmland is then made available for urban use in Southern California.

Officials estimate the program could keep up to 180,000 acre-feet — equal to 60 percent of Nevada’s annual river water allocation — in the lake.
What’s Driving Western Wildfires?
Is it climate change, management...or something more complicated?

As raging wildfires in northern California and southern Oregon have literally destroyed communities and displaced tens of thousands of residents, another debate is raging in the West over the causes of those fires and what can be done to reduce future wildfire risk and protect at-risk communities.

More than 75 million acres across America have burned in the last decade. Nearly 3 million acres have already burned this year. The US Forest Service Pacific Southwest Region last month issued an emergency closure of nine national forests through at least September 6, citing “extreme fire conditions throughout northern California, and strained firefighting resources throughout the country.”

President Biden last month issued a major wildfire disaster declaration which makes Federal funding available to affected individuals in a handful of California counties. A letter signed by Rep. Joe Neguse (D-Colo.) and Rep. Jared Huffman (D-Calif.) asked the administration and FEMA to deliver the necessary resources states required to battle the "historic dry conditions and devastating wildfires." A bipartisan group of governors lobbied similar concerns in a separate letter earlier in the month.

The argument for climate change

Much of the recent media coverage on the fires raging in Northern California has featured commentary from politicians, environmental activists and academics who point to climate change as the driving factor behind a dozen wildfires that have forced more than 42,000 Californians to flee their homes.

The Los Angeles Times reported that more than 300 scientists, stakeholders and community members last March signed a letter to California Governor Gavin Newsom, noting that logging and clearance projects have "consistently failed to protect our neighborhoods from wildfire."

“The fact is that forest management is not stopping weather-and climate-driven fires,” said Chad Hanson, president of the John Muir Project, said in that same Los Angeles Times article.

Washington Gov. Jay Inslee, at a July meeting with other Western governors and President Biden, said that the federal government should be focusing on long-term solutions to climate change rather than on short-term management of the individual forests.

“There is nothing in human intervention against these fires while climate continues to ravage our forests,” said Governor Inslee.

The Los Angeles chapter of the Sierra Club in January 2021 posted a blog titled “Another Climate Change Issue: Extreme Fire Behavior”.

“Since the 1970s, the wildfire season in California has been growing increasingly worse year over year due to extended drought seasons and dry forestry combined with increasingly hotter temperatures,” the blog stated. “We need the help of fellow Sierra Club members to help instill new mindsets in California regarding the immediate impacts of current climate changes and the nature of wildfires.”

Many of the fire scientists quoted in recent media reports say that the solution involves implementing more controlled burns.

Scott Stephens, a professor of wildfire science at the University of California-Berkeley, told NBC News that the flareup of wildfires in the past decade has been fueled by the culmination of drought conditions, hotter temperatures and flammable forest debris, all of which are exacerbated by climate change.

"We have to do much more forest restoration work, like burning small, controlled fires," he said. "If we don't change, we are never going to chase this problem down."

Rural interests push for thinning, restoration, replanting

Climate change concerns may certainly be shared by some rural Westerners who live in once-thriving timber-dependent communities. However, there is also a growing frustration that forest management – or rather, the perceived lack of management by federal agencies, driven in part by environmental litigation – fails to get the attention it deserves in many media accounts of the current Western wildfire infernos.

Some rural Westerners who have watched the condition of federal forests deteriorate in recent decades have a different perspective. They have witnessed how federal forest management actions have been hampered in recent decades, in part due to environmental litigation actions initiated by activist groups like the Sierra Club. In fact, a Facebook public group called “The Sierra Club is destroying our forests” has now

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Rural Westerners Want Forests Managed (Cont’d from Pg 7)

grown to include nearly 15,000 members.

Many of them share the views expressed by Nadine Bailey, executive director of the Family Water Alliance, lives in Anderson, California and has been working on forestry and fire issues over the last three decades.

“For the last 30 years we have curtailed most timber harvest on federal forest lands,” she recently said in an email to the NBC reporters who interviewed Mr. Stephens. “This and 100 years of fire suppression have created an unnatural situation, of too many trees. There are tons of material out there waiting to burn. Before fire can be added to the system, something has to be done with that material.”

A dry ecosystem with low fuel loads can tolerate fire. However, inactive management on federal lands - coupled with 100 years of fire suppression - is a different story.

Ms. Bailey believes it would take millions of dollars to do what Mr. Stephens is suggesting and would entail a total change in the way the Forest Service approaches fire.

“Thinning, restoration and replanting is the key to forests for the future and a healthy watershed,” she said. “Little fires everywhere is not a good strategy for protecting our watersheds.”

It’s complicated

David Willms, Senior Director for Western Wildlife at the National Wildlife Federation, notes that while billions are being spent suppressing fires, little is going to proactive solutions.

“Time is of the essence, and the time to act is now. People are losing their homes and dying. Local economies are being destroyed,” Mr. Willms wrote in a paper published last year. “Water supplies are at risk. Billions of dollars are allocated to the problem every year to fund reactive activities, with only limited resources allocated to proactive ones.”

Mr. Willms, a former advisor to then-Governor of Wyoming Matt Mead, points out that today’s fires are not the result of a single factor. They are a result of climate change, forest management practices tied to fire suppression and a complicated statutory/regulatory framework, invasive species, natural drought cycles, human ignitions, changing timber markets, and likely several other factors.

“Consequently, solutions for addressing wildland fire issues are multifaceted and complex,” he wrote. “Done correctly, these solutions could create thousands of jobs, save billions of dollars and dozens of lives every year, protect watersheds, and leave a healthier landscape for our wildlife and future generations.”

Developments in Congress

The only two registered foresters in Congress have come together to propose science-based solutions to prevent these catastrophic fires from happening in the first place. Senator Jim Risch (R-IDAH0) and Congressman Bruce Westerman (R-Ark.) recently co-authored an opinion piece for Fox News that claims more than 80 million acres of national forests are overgrown and in dire need of active management.

“The only way we can prevent wildfires from getting out of control is addressing them long before they ignite,” they wrote. “We need forest management that uses proven science to identify high-risk areas, clear hazardous brush, thin dead and decaying trees, and provide healthy space for remaining trees to grow far enough apart to prevent fires from climbing into the canopy and spreading from tree to tree at an uncontrollable rate.”

There are several bills that have been introduced in Congress, intended to facilitate responsible forest management by simplifying and expediting environmental analyses, cutting bureaucratic red tape and frivolous litigation, giving land managers essential management resources, and accelerating reviews for reforestation activities.

One of those is the Resilient Federal Forests Act (H.R. 4641), re-introduced from the past Congress by Rep. Westerman. This bill - supported by 85 organizations, including the Family Farm Alliance - would address the environmental and economic threats of catastrophic wildfires.

“We repeatedly hear the same refrain: forest management isn’t enough, we need more to address climate change,” Senator Risch and Rep. Westerman wrote. “Forest management isn’t the only solution to the environmental challenges we face, but it is a winning solution. Reducing fuel loads is scientifically proven to reduce wildfire risk and protect at-risk communities and wildlife habitats immediately.”
EPA Cancels Chlorpyrifos Use, Releases BEs for 3 Other Insecticides

The burden of regulations continues to grow for Western farmers

The Environmental Protection Agency (EPA) has announced it will stop the use of the pesticide chlorpyrifos on all food to better protect human health. The agency is also releasing its draft biological evaluations (BEs) for three other insecticides known as the neonicotinoids, for public review and comment.

Use of chlorpyrifos curtailed

In a final rule released last month, EPA is revoking all “tolerances” for chlorpyrifos, which establish an amount of a pesticide that is allowed on food.

“Today EPA is taking an overdue step to protect public health. Ending the use of chlorpyrifos on food will help to ensure children, farmworkers, and all people are protected from the potentially dangerous consequences of this pesticide,” said EPA Administrator Michael S. Regan. “After the delays and denials of the prior administration, EPA will follow the science and put health and safety first.”

In addition, the agency will issue a Notice of Intent to Cancel under the Federal Insecticide, Fungicide, and Rodenticide Act to cancel registered food uses of chlorpyrifos associated with the revoked tolerances. The announcement follows an order issued by the Ninth Circuit Court of Appeals that gave the agency limited time to either find uses for the pesticide that are safe or outlaw it.

“The EPA has spent more than a decade assembling a record of chlorpyrifos’s ill effects and has repeatedly determined, based on that record, that it cannot conclude, to the statutorily required standard of reasonable certainty, that the present tolerances are causing no harm,” the majority opinion in that case stated.

Managing insects without chlorpyrifos can be a challenge in some parts of the West. Most newer pesticides are designed to kill specific pests, making it hard to find alternatives for every application of chlorpyrifos. In Oregon, the EPA ruling will become effective much sooner than the state Department of Agriculture’s planned phase-out of chlorpyrifos, which will impact a number of agricultural industries in that state.

“The timeline for viable alternatives is even shorter now, and we will continue to advocate for significant state investments in the identification of alternatives,” said Katie Fast, with Oregonians for Food and Shelter (OFS). “We also hope to see a federal level response to this need, given the impacts this regulatory decision will have across the US.”

Draft BEs released for three other insecticides

EPA later in the month released draft BEs identifying three additional, common agricultural insecticides as likely harmful to the majority of endangered plants and animals, including all 38 endangered amphibians.

In the studies, the EPA identified three insecticides: clothianidin, imidacloprid and thiamethoxam. The three are used for ornamental vegetation as well as crops and turf. According to the draft evaluations, each of the three meet the criteria for “likely to adversely affect” (LAA) at least one endangered or protected species.

Lori Ann Burd, with the litigious activist group Center for Biological Diversity, said the assessments indicated the need for aggressive action on the agency’s part.

“Knowing what they know now about the gravity of the impacts these pesticides have on endangered species, they should work to restrict their uses in the places where they are having the most impact,” Ms. Burd told The Hill.

This could include steps such as labeling changes that ban the use of the pesticides in protected amphibian habitats.

“The LAA threshold for a BE is very sensitive because the likely “take” of even one individual of a species, which includes unintentional harm or death, triggers and LAA determination,” OFS said in a recent blog post. “This is the case even if a species is almost recovered to a point where it no longer needs to be listed. As a result, there are often a high number of “may effect” and LAA determinations in a BE.”

An LAA determination, however, does not necessarily mean that a pesticide is putting a species in jeopardy.

Average total regulatory costs per acre by farm size, 2012 & 2018 (California). Source: Cal Poly, San Luis Obispo.

Regulatory costs increase for California farmers

Farmers in Oregon and other Western states face raising regulatory compliance costs associated with a vast array of factors. A study tracking regulatory compliance costs in California was recently released, with striking findings.

Researchers looked at data from 22 different farms of various sizes in the San Joaquin Valley between 2012 and 2018. During that timeframe, regulatory costs increased by 265 percent.

The report, published by Cal Poly San Luis Obispo, cites several factors, including the Food Safety Modernization Act, labor-related policies, and air quality emissions.

The timing of the study only covered the very beginning of the phase-in of California’s Sustainable Groundwater Management Act, which will have a major impact on the future of agriculture in the Golden State.

Costs have likely increased since then as the rule continues to be further implemented.
Alliance Develops WOTUS Comments for EPA, Corps
...and other Clean Water Act news

The Family Farm Alliance last month developed formal comments in response to the Biden Administration’s efforts to revise the Trump Administration’s definition of “waters of the United States” (WOTUS) to “better ensure clean and safe water for all”.

“The Alliance has made engagement on WOTUS – which now spans three presidential administrations- a top priority,” said Alliance Executive Director Dan Keppen. “Once again, we developed comments with input from top Western attorneys, our board and Advisory Committee.”

The Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) intend to replace the Trump Administration’s Navigable Waters Protection Rule following a process that includes two rulemakings. A forthcoming foundational rule would restore the regulations defining WOTUS that were in place for decades until 2015, with updates to be consistent with relevant Supreme Court decisions. A separate, second rulemaking process would refine this regulatory foundation and establish an updated and durable definition of WOTUS under the Clean Water Act (CWA).

During the Trump Administration era, working with a team of Western attorneys and water managers, the Alliance developed detailed comment letters to EPA and the Corps, urging them to repeal the 2015 Clean Water Rule developed by the Obama Administration, and providing guidance as to how the new rule should look. Overall, the Trump Administration’s “Navigable Waters Protection Rule” was favorably viewed by many Western agricultural interests.

“We thought the Trump rule repeal and replacement was actually a good thing for the West, despite what many media outlets reported,” said Mr. Keppen. “Our latest letter reiterates that message, and outlines the concerns we will address in the upcoming rulemaking process.”

The Alliance letter advocates for guidance that sustains, recognizes, and implements the CWA provisions in Sec. 404 (f) that exempt the construction, operation, maintenance, repair, and rehabilitation of man-made ditches and canals and maintenance of drains from CWA Section 404 jurisdiction.

“We will also insist that the new rule ensures that Congressionally-approved permitting exemptions for point source regulation of agricultural stormwater discharges and irrigation return flows are acknowledged and protected,” said Norm Semanko (IDAHO), the Alliance’s General Counsel.

Mr. Keppen said the Alliance will continue to advocate for clearly written exclusions of dry washes, arroyos, and other ephemeral features, as well as the other ten non-jurisdictional features that the “Navigable Waters Protection Rule” excluded from the definition of WOTUS.

The Alliance and many of its leaders participated in a series of public meetings that began last month, hosted by EPA to provide perspectives on the upcoming rulemaking process.

In other Clean Water Act news, EPA and the Corps last month issued a memo that lays out circumstances under which states or tribes can take more than a year to approve permit applications under the CWA Sec. 401 certification process, circumventing the Trump Administration’s 2020 “Clean Water Act Section 401 Certification Rule” that allows only one year for states or tribes to approve or deny CWA permits for utilities and oil and gas pipelines. The EPA earlier this year announced it was redoing the Trump rule, criticizing the regulation for eroding state and tribal authority. The EPA itself has been criticized by the environmental community and certain states and tribes for not removing the rule, or for that matter repealing the Trump “Navigable Waters Protection Rule”.

“EPA cannot simply take rules like WOTUS or the CWA Section 401 rule off the books,” notes Mark Limbaugh, the Alliance’s representative in Washington, D.C. “The agencies must go through a formal rulemaking process, including taking public comment.”

Meanwhile, a federal district court judge in Arizona has granted a request from six tribes to vacate the Trump-era definition of WOTUS, citing precedent from the U.S. Court of Appeals for the 9th Circuit and potential environmental harms from leaving the rule in place, though it is unclear whether the vacatur will apply nationwide.

Deborah Hamlin to retire from Irrigation Association

The Irrigation Association (IA) – an organization that the Family Farm Alliance has close ties to - is announcing that its CEO, Deborah Hamlin, is retiring from the association at the end of the year.

“I really appreciated IA board member Steve Smith and Deborah reaching out to the Family Farm Alliance with an opportunity to serve on the IA board,” said Alliance Executive Director Dan Keppen, who served a three-year term as an IA director. “That led to a fruitful collaboration between our organizations on several fronts.”

Ms. Hamlin has served as the CEO for 15 years and led IA through numerous milestones, including establishing a new brand and mission, consolidating industry training, and developing a profitable online learning center. During her tenure, she also bolstered the certification program to third-party accreditation, created a standards and codes arm, and expanded into the publishing arena with two industry magazines.

“My years at the IA have been incredibly fulfilling,” said Ms. Hamlin. “I have thoroughly enjoyed working with all of the amazing individuals in our industry as well as the professional staff. The strong staff-volunteer partnership is what has allowed us to achieve such success. Working and interacting with those teams is what I will miss the most.”

The IA Board of Directors has appointed a volunteer search committee to begin the process of finding Ms. Hamlin’s replacement. The board plans to have the new CEO attend the Irrigation Show in San Diego in December.
Deschutes Basin Irrigation Districts Defend HCP

Hundreds of farmers, ranchers and community members from Central Oregon’s Deschutes River gathered last month at the Deschutes County Fairgrounds with agricultural-environmental legal experts to explore amending the Deschutes Basin Habitat Conservation Plan (HCP).

Despite extreme and persistent drought conditions this summer, all eight irrigation districts belonging to the Deschutes Basin Board of Control (DBBC) remain firmly committed to implementing the conservation measures outlined in the HCP, as outlined in a recent public statement.

"The HCP was the product of 12 years of scientific study, hard work and collaboration," says the statement. "The plan sets the course for conservation efforts for the next 30 years and provides the (eight irrigation) districts with both a pathway and time for modernizing their delivery systems through canal piping and other projects."

Craig Horrell, DBBC president and managing director of the Central Oregon Irrigation District (COID) signed the statement along with Mike Britton, district manager of the North Unit Irrigation District (NUID), and a member of the Family Farm Alliance Advisory Committee.

According to the statement, a number of national groups on both sides are taking an interest in the issues, sometimes making inaccurate and inflammatory statements.

"We do not intend to allow those sentiments to influence or undermine our resolve. As we’ve noted, the HCP is the result of over 12 years of studies and negotiations between all interested parties in the basin. Despite what detractors and late comers may attempt to suggest, the districts remain firmly convinced that the HCP strikes the right balance between the diverse interests in the basin and that implementation should continue."

This year’s drought has been extraordinarily difficult for farmers in the Deschutes Basin. Live flows (i.e., natural flows that are not stored in a reservoir in the winter and released during the irrigation season) fell well below pre-season predictions, much to the surprise of basin hydrologists with decades of experience. As a result, the irrigation season will be much shorter than originally planned for many basin water users, even in light of proactive measures to extend the irrigation season.

NUID essentially shut off flows of water into its canal on August 23, effectively shutting off water to its patrons. The shut-off was the earliest that North Unit has closed its canal since Wickup Reservoir was completed in 1949. Wickup Reservoir, which holds back storage water for NUID patrons, is only at 2% of capacity.

But unlike some other basins in the West, the HCP provided some water supply protections. District patrons were able to access much of their live flow and stored water supplies that were available even with the drought, while simultaneously supporting fish and wildlife habitat and remaining in compliance with the Endangered Species Act.

“This was not an accidental or unanticipated outcome of the HCP. Rather, it was something the districts, their regional partners, and the U.S. Fish and Wildlife Service spent the past 12 years planning for,” the DBBC said. “The magnitude of this year’s drought took us all by surprise, but the possibility of a drought is something we recognized and painstakingly accounted for in the design of the HCP.”

The districts now coordinate water management in real-time with the Fish and Wildlife Service, and this coordination has made it possible to utilize the limited amount of water we have this year to the mutual benefit of farmers, fish and wildlife. Without this coordinated management, conditions for all concerned would be much worse.

Three days after the meeting at the fairgrounds, Senator Jeff Merkley (D-OREGON) visited COID to kick off the second phase of a project to pipe the canal that delivers water to Central Oregon irrigators.

"Water is really the lifeblood of our ecosystem and our economy both," said Senator Merkley. "It's what matters when it comes down to healthy streams and lakes and drinking water. It certainly matters a hell of a lot when it comes to farming and ranching. You can't grow crops in an arid situation without a good irrigation system."

This piping project will save 30 cubic feet per second, or 10,000-acre feet. Craig Horrell says that amount of water would have extended the irrigation season two to three weeks for Jefferson County farmers this year.

The extra water will help irrigators meet the benchmarks set down in the HCP.

The districts remain firmly convinced that the HCP strikes the right balance between the diverse interests in the basin and that implementation should continue. The DBBC acknowledges the difficulties this year is presenting for everyone in the Deschutes Basin.

“We are committed to tackling problems, exploring solutions, and most importantly, maintaining an open, constructive and collaborative dialogue with our regional partners about water management in our basin, for both irrigation and fish and wildlife habitat purposes,” the DBBC stated.

One of those potential solutions is a $400 million pumping project that NUID wants to build to deliver Lake Billy Chinook water to farmers in Jefferson County. That project could get across the finish line with strong backing from the local community.

"Let's spend that energy trying to get the Lake Billy Chinook project done,” said Mike Britton.
Biden CEQ to Revamp Trump NEPA Regulations

The Biden White House Council on Environmental Quality (CEQ) advanced what will become a three-step plan to revamp the 2020 changes to National Environmental Policy Act (NEPA) regulations. CEQ is charged with coordinating the NEPA process across dozens federal agencies.

The NEPA regulations help guide agencies on environmental review for some of the nation’s biggest projects, like highways, bridges, water infrastructure, and electric transmission lines.

“The often slow and cumbersome federal regulatory process is a major obstacle to realization of projects and actions that could enhance Western water supplies,” said Family Farm Alliance President Patrick O’Toole (WYOMING).

“NEPA implementation, in particular, can have a direct bearing on the success or failure of critical water supply enhancement projects.”

The Trump Administration adopted changes that reduced review times, cut page counts, limited public input, cut out “cumulative impacts” analyses, and expanded projects that could be excluded entirely from NEPA review.

The Alliance in March 2020 prepared a detailed comment letter on those proposed regulations, and believed they would help modernize the Federal environmental review process, which would lead to improvements in Western water resource development and management.

“We very much appreciated the Trump CEQ’s effort to reform the regulations, which had not seen a significant upgrade since 1978,” said Dan Keppen, Alliance Executive Director. “In our view, many of the changes the Trump Administration made regarding implementation of decades-old federal environmental laws like NEPA helped bring them into the modern era.”

The Alliance believes these process improvements will actually allow for more efficient, informed and transparent management and infrastructure development decisions without impacting the effectiveness of environmental or species protection measures.

The Biden Administration has laid out a three-step plan to overhaul the Trump regulations, with CEQ advancing the first step recently when it sent to the White House Office of Information and Regulatory Affairs (OIRA) a proposal that would make a “narrow set of changes” to the Trump rules. In a second step, CEQ has extended a deadline by two years to 2023 for agencies to comply with procedural requirements mandated by the Trump regulations. The third step would be to replace the regulations altogether.

Environmental groups are complaining the Trump regulations are still being implemented by the Biden Administration and should have been withdrawn first.

“It is unclear how much the Trump regs are being used or how much [the Biden administration is] using their own regs and avoiding the changes,” Brett Hartl, government affairs director for the litigious Center for Biological Diversity told E&E News.

Bipartisan Infrastructure Package (Continued from Page 3)

A group of ten other environmental groups - including The Wilderness Society, Natural Resources Defense Council, Environmental Defense Fund and Sierra Club – sent a letter to Congressional leadership earlier in the month, urging Congress to provide at least $80 billion to DOI.

“WE cannot tackle the climate crisis while ignoring our public lands, waters, and wildlife,” the groups wrote.

In order for the House to realistically pass the Senate-passed Infrastructure Investment and Jobs Act by September 27, both the House and Senate will need to have made significant progress on the budget reconciliation package prior to that date.

There is some skepticism at this point that those dates will be fully met.

“That’s not even to mention the fact that House and Senate passage of a Continuing Resolution needs to happen by midnight on September 30, which will likely include an increase or suspension of the debt limit,” said one D.C. lobbyist who wished to remain unnamed. “We shall see. It’s going to be a fun late September in DC.”

Family Farm Alliance Actions

“Our Western Water Infrastructure Steering Committee are now working with the Senate and House agriculture committees to use the reconciliation process to fill in the gaps behind our $30 billion forest health and $4 billion PL-566 asks,” said Mr. Keppen.

Efforts are also underway to encourage a Western bipartisan letter in the House, urging Members to hold the line on the water infrastructure provisions included in the Senate package.

Media attention on this matter continues to grow. New coverage in outlets like the Associated Press, USA Today, Fox News, ABC News, POLITICO and Agri-Pulse reported on the Western ag/urban coalition’s efforts, and Western water and ag interests have been steadily feeding the op/ed pages of Western newspapers with guest columns.

“As Californians know all too well, climate change has brought us wetter wet years and drier dry ones. Just two short years after our reservoirs were full, we’re once again in drought,” Mike Wade, executive director of the California Farm Water Coalition wrote in the Marin Independent Journal last month.

“This infrastructure legislation will expand our ability to capture both surface and groundwater in times of excess for use in times of scarcity,” he wrote.
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