EXECUTIVE COMMITTEE MEETING | Agenda

SEPTEMBER 14, 2020
FRIANT WATER AUTHORITY
HELD AT THE VISALIA CONVENTION CENTER
CHARTER OAK BALLROOM (DIRECTORS/STAFF ONLY)

8:30 AM (CLOSED SESSION)
The public may call-1-866-893-0375 Pin 5595626900# at 8:30 A.M. with any comments prior to Closed Session

9:30 AM (OPEN SESSION)
VIA WEBEX FOR ALL OTHERS: Video system or application Dial: Webex.com, join, 1334252325@friantwater.webex.com. Phone access dial 1-415-655-0001. Meeting number (access code): 133 425 2325. Meeting password: dsXcQbn672 (37927726 from phones)

In accordance with the Governor’s Executive Order (N-29-20) and the declared State of Emergency, including social distancing directives as a result of the threat of the COVID-19 virus, physical attendance at the meeting will be limited to Committee members and FWA staff due to space limitations. Members of the public may participate remotely as noted above.

Email: You may submit comments on a specific agenda item via email to tmarie@friantwater.org. Please send your email at least one hour prior to the start of the meeting.

If members of the public have any problems using the WebEx number during the meeting, please contact the FWA office at 559-562-6305. The Friant Water Authority thanks you for your understanding and for doing your part to prevent the spread of COVID-19.

At the discretion of the Board of Directors, all items appearing on this agenda, whether or not expressly listed for action may be subject to action by the Board. The order of agenda items is subject to change.

1. CALL TO ORDER/ROLL CALL – (TANTAU)
2. APPROVAL OF THE AGENDA – (TANTAU)
3. PUBLIC COMMENT ON CLOSED SESSION ITEMS – (DAVIS) (Public may call 1-866-893-0375 Pin 5595626900# at 8:30 A.M. with any comments.)
4. ADJOURN TO CLOSED SESSION
   Closed Session Items (90 min)
5. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
   (Government Code section 54956.9(d)(1))
   A. NRDC v. Murillo, U.S. District Court, Eastern District of California (Sacramento Division), Case
CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

(Government Code section 54956.9(d)(2))
Significant Exposure to Litigation: Two potential matters.

CONFERENCE WITH LEGAL COUNSEL-INITIATION OF LITIGATION

(Government Code section 54956.9(d)(4))
Initiation of Litigation: Two potential cases.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Government Code section 54956.8)
Property: Friant-Kern Canal facilities and right-of-way
Agency negotiator: CEO, COO, General Counsel
Negotiating parties: United States (Bureau of Reclamation)
Under negotiation: Cost Share Agreement (price and terms of payment)

RECONVENE INTO OPEN SESSION (9:30 am)
Announce reportable action taken during closed session.

PUBLIC COMMENT / PUBLIC PRESENTATIONS – (TANTAU)
Public comment is welcome at this time on any matter within the jurisdiction of the Board that is not on the agenda. Under the State's open meeting law - the Brown Act - no action may be taken on any item not on the agenda. Public comment on items on the agenda will be allowed at the time the Board considers the item.

ACTION ITEMS (5 MINUTES)
A. Approval of the Minutes – Executive Committee meeting of August 17, 2020.

BOARD RECOMMENDATIONS (60 MINUTES)
A. Draft 2021 GM Budget – Approve GM Budget for recommendation to the Board of Directors (Phillips/Willard)
B. Approval of Pre-Construction Budget Not to Exceed $200,000 for Utilities Relocation Design and Planning Costs for the FKC Middle Reach Capacity Correction Project.

DISCUSSION/DIRECTION (60 MINUTES)
A. FKC Middle Reach Capacity Correction Project Update. (DeFlitch/Davis/Phillips)
   i. Schedule
   ii. Funding
   iii. Establishment of Project Ad Hoc Committee
B. External Affairs Update. (Amaral/Biering/Villines)
C. Jones Pumping Plant Unit Rewind Project Public Financing Discussion. (Phillips/DeFlitch)
D. CEO Report. (Phillips)

14. ADJOURNMENT

Public Participation Information

Agenda reports and other disclosable public records related to each Open Session agenda item are available on FWA's website under "Calendar" at Friantwater.org and at FWA's main office, 854 N. Harvard Ave., Lindsay, CA 93247, during regular business hours. Under the Americans with Disabilities Act, if you require a disability-related modification or accommodation to participate in this meeting, including auxiliary aides or services, please contact Toni Marie at 559-562-6305 at least 48 hours prior to the meeting.
1. **CALL TO ORDER/ROLL CALL** – Chair Chris Tantau called the meeting to order at 8:30 a.m. Committee members present: Tantau, Camp, Kisling, Loeffler, Stephens; Staff present: DeFlitch, Marie, Biering, Willard, Phillips, Davis, Buck-Macleod, Amaral, Bezdek, Hunter, Hickernell, Faria, Swenson. Others: Atkinson, Villines, Tomlinson, Luce, Limas, Quinley, Ewell, Collup, Dalke, Muhar, Wallace, Fukuda, Larsen, Geivet, Morrissey, Greci, Gosling, Maurin, Doud, Vanden Heuvel, Ottemoeller, Carpenter, Swanson, Munn, Wright, Capello; Committee Members Absent: None

2. **APPROVAL OF THE AGENDA** – The agenda was approved. (Stephens/Borges); approved unanimously - Ayes – Tantau, Loeffler, Camp, Kisling, Stephens; Nays – None; Absent – Borges, Erickson

3. **PUBLIC COMMENT ON CLOSED SESSION ITEMS** – There was no comment from the public on closed session items.

4. **ADJOURN TO CLOSED SESSION**

   **Closed Session Items**

5. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

   (Government Code section 54956.9(d)(1))

   A. NRDC v. Murillo, U.S. District Court, Eastern District of California (Sacramento Division), Case No. 88-cv- 01658-JAM-GGH

   B. California Natural Resources Agency v. Ross, U.S. District Court, Eastern District of California (Fresno Division), Case No. 1:20-cv-00426-DAD-SKO

   C. Tehama-Colusa Canal Authority, et al., v. California Department of Water Resources, et al. Fresno County Superior Court, Case No. 20CECG01303

6. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

   (Government Code section 54956.8)

   Property: Friant-Kern Canal (Middle Reach Capacity Correction Project - MP 88 (Fifth Avenue Check) to MP 121.5 (Lake Woollomes Check))

   Agency negotiator: CEO, COO, General Counsel

   Negotiating parties: United States (Bureau of Reclamation)

   Under negotiation: Cost Share Agreement (price and terms of payment)
7. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

(Government Code section 54956.9(d)(2))
Significant Exposure to Litigation: Two potential matters.

8. CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION

(Government Code section 54956.9(d)(4))
Initiation of Litigation: Two potential cases.

9. RECONVENE INTO OPEN SESSION

There was no reportable action taken during closed session.

10. PUBLIC COMMENT / PUBLIC PRESENTATIONS – (TANTAU)

There was no public comment.

11. ACTION ITEMS

A. Approval of the Minutes – Executive Committee meeting of July 13, 2020. The minutes were approved. (Kisling/Loeffler); approved unanimously - Ayes – Tantau, Loeffler, Camp, Kisling, Stephens; Nays – None; Absent – Borges, Erickson

12. DISCUSSION/DIRECTION (60 MINUTES)

A. FKC Middle Reach Capacity Correction Project Update. (DeFlitch/Davis/Phillips)
   i. Schedule – COO DeFlitch and General Counsel Davis went through the agenda report as presented. Current work items include final design; environmental compliance/permitting; and continued activity in the land acquisition program. 20 appraisals have been received and 8 have been approved and acquisition of property could start to occur at the earliest at the end of October following approval of the NEPA/CEQA environmental documents.
   ii. Funding – CEO Phillips went through the agenda report as presented. He focused most of the report on the current commitment of dollars identified as the project nears actual construction. An example of potential cost share by District for reimbursable and non-federal funding for Segments D&E of the Project was provided in the report for discussion purposes. The Finance Plan will continue to be updated until it can be presented to the Board for action.

B. External Affairs Update – CEA Amaral, GAC Biering and Mike Villines provided an external affairs update as provided in the agenda report. GAC Biering and Mike Villines reported on current state legislation noting that the bill passage deadline is August 31, 2020 for hundreds of bills; Senator Hurtado and her staff continue to work on SB 559 which is in Assembly Appropriations and had been put into suspense; and the Governor’s final version of the Water Resilience Portfolio was released on July 28, 2020. CEA Amaral reported on current Federal activities that included the likelihood of Congress passing a short-term Resolution to fund the government through January 2021.

C. Pump-Back Project Update. – WRM Buck-Macleod provided an update on the Pump-Back Project as outlined in the agenda report and noted that FWA is planning to resume Pump-Back Project development and environmental compliance analysis in September and seek Board approval for modifications to Consultant Agreements from CDM, P&P and Stantec at the August Board
Draft 2021 GM Budget – CEO Phillips provided an overview on the upcoming 2021 GM Budget as outlined in the agenda report. He also said that based on the feedback he received last month for funding some portion of ASO program, he recommended that it be placed in the budget and seek additional cost share partners to cover the costs of the program for 2021. Final approval for GM 2021 budget will be presented to the Board in September 2020.

E. CEO Report – CEO Phillips reminded everyone to RSVP to attend the upcoming November 16-19 Board Retreat assuming there will be no cancellation due to COVID-19. Key decisions will be teed up for the Strategic Plan as well as other issues facing the Friant Water Authority.

14. ADJOURNMENT

The meeting was adjourned at 11:44 a.m.
DATE: September 14, 2020
TO: Executive Committee
FROM: Jason Phillips, CO; Don Willard, Business Administration Manager
SUBJECT: FY 2021 GM Budget

SUMMARY:
Staff has developed the attached draft of the General Member Budget needs for FY 2021. The current FY 2021 GM Budget, at $2,575,000, reflects an increase of $461K from FY 2020, at $2,114,000. This is a 22.0% increase overall.

An Exhibit A is attached which indicates the breakdown by member district.

The following categories reflect the larger increases or decreases being proposed.

**Special Counsel:**
For FY 2021 the Special Counsel category has increased $299.5K. This increase is the result of FWA’s participation in the litigation regarding the BiOps (California vs. Ross), and the State Water Project CEQA action (TCCA vs. DWR). The engagements with the law firms Kaplan, Kirsch Rockwell and Stoel Rives are the major additions to this category.

**Professional Support – Operations:**
This category is forecasted to have a $98K decrease for FY 2021 due to a reduced forecast in needs from consultants.

**Dues Fees and Contributions:**
For FY 2021 there is an increase of $26.5K. This is the result of an anticipated increase of in the application fee to SWRCB, (Area of Origin application), of $15.5K, an estimated increase of in CVPWA dues, which is based on the number of FWA General Members and a $5K increase in TFRA contributions based on their approved budget.

**Airborne Snow Observatory:**
Currently the level of participation by the State and U.S. Bureau of Reclamation (Reclamation), is still uncertain. There was support expressed at previous BOD meetings for funding some portion of the ASO Program for 2021. It has also been determined, based on comments at the July BOD meeting and the August FKC Managers meeting, that there is interest from organizations other than FWA Membership to
support the program with FWA. While in the past there was support for approximately 33% of the costs, 20% has been utilized as an estimate for this Budget. Staff is currently in the process of firming up the amounts of this potential support. The proposed funding consists of two flights at $170K each, ($340K), less 20%, ($68K), for a net of $272K.

The proposed budget for ASO in FY 2017 was $750K. The FY 2018 budget included $305K and FY 2019 included $148K. The total budgeted for those three fiscal years was $1,203K. There have been two payments made to DWR for the Program in the past 3 years totaling $576K. FWA has received cost share contributions from South Valley Water Association and San Joaquin River Exchange Contractors Water Authority in the amount of $197,583.30 for the program. In most years, FWA committed budget funds for flights that ended up being funded partially or fully by state or federal sources, lessening the overall financial burden for members. The net FWA expense Program-to-Date is $378,622.70.

For FY 2021 potential funding options, see the attached Airborne Snow Observatory FY 2021 Funding Possibilities.

RECOMMENDED ACTION:

The Executive Committee provide any final comments on the Draft 2021 GM Budget so Staff can make any necessary adjustments in order to propose a Final Budget for adoption at The Board of Directors September 24, 2020 meeting.

MOTION:

A motion that the Executive Committee, subject to any comments provided recommend to the Board of Directors approval of the FY 2021 General Member Budget at their meeting on September 24, 2020.

ATTACHMENTS:

FY 2021 General Member Budget.

Airborne Snow Observatory FY 2021 Funding Possibilities.

FY 2021 Exhibit A
**Airborne Snow Observatory FY 2021 Funding Possibilities:**

In FY 2019, Proposition 84 local assistance funding was used to fund all ASO activities. In FY 2020, Reclamation provided all funding through the San Joaquin River Restoration Program (SJRRP). Based on coordination with the DWR, the State only has $500k in FY 2021 funding that will be prioritized for basins with local cost-sharing and those in need of bare earth surveys (which San Joaquin is not). For FY 2021, Reclamation (through SJRRP) is proposing to cover the costs for at least one flight and iSnobal modeling with potential for additional funding if external Federal funds become available (e.g. unused FY 2020 funding). Reclamation has asked if water users can provide for costs of up two flights and post-processing (approximately $320-340k) with option for up to two additional flights (up to $680k).

### Proposed FY 2021 SJRRP Contribution

<table>
<thead>
<tr>
<th>Task</th>
<th>Notes</th>
<th>Low Estimate</th>
<th>High Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>iSnobal Modeling for 6 months</td>
<td>Transfer iSnobal modeling from USDA-ARS to vendor</td>
<td>$95,000</td>
<td>$200,000</td>
</tr>
<tr>
<td>Base Cost</td>
<td>Aircraft mobilization and instrument calibration</td>
<td>$50,000</td>
<td>$75,000</td>
</tr>
<tr>
<td>1 Survey</td>
<td>Cost dependent on survey frequency</td>
<td>$160,000</td>
<td>$170,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$305,000</strong></td>
<td><strong>$445,000</strong></td>
</tr>
</tbody>
</table>

### Suggested Water User FY 2021 Contribution

<table>
<thead>
<tr>
<th>Task</th>
<th>Notes</th>
<th>Low Estimate</th>
<th>High Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 surveys</td>
<td>Cost dependent on survey frequency</td>
<td>$320,000</td>
<td>$340,000</td>
</tr>
<tr>
<td>Optional 2 additional surveys</td>
<td>Cost dependent on survey frequency</td>
<td>$320,000</td>
<td>$340,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$320,000 - $640,000</strong></td>
<td><strong>$340,000 - $680,000</strong></td>
</tr>
</tbody>
</table>

Reclamation is targeting finalizing their contract with ASO Inc. by January in order to perform the first survey. FWA would need to finalize a contract with ASO Inc. by February in order to perform follow-on surveys. The contract could include base task for two surveys with optional task for up to two more surveys. For GM budgeting purposes, the total potential high estimate for all four flights could be included or only two flights with potential for additional call for GM funds in February, depending on how the water year is progressing. FWA is beginning to coordinate with non-FWA member districts to confirm potential contribution for ASO (currently assumed 20%).
Below is a table summarizing the preferred default ASO schedule depending on water year forecast.

<table>
<thead>
<tr>
<th>Default ASO Schedule</th>
<th>90% NWS RFC forecast is at:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>&lt;50% of Mean Precipitation</td>
</tr>
<tr>
<td>Early Season</td>
<td>Date Varies</td>
</tr>
<tr>
<td>Accum. Season</td>
<td>Jan 24–Feb 2</td>
</tr>
<tr>
<td>Accum. Season</td>
<td>Feb 21 – Mar 2</td>
</tr>
<tr>
<td>Accum. Season</td>
<td>Mar 24 – Apr 2</td>
</tr>
<tr>
<td>Ablation Season</td>
<td>At fixed intervals (Apr 15, May 1, May 15, Jun 1*)</td>
</tr>
<tr>
<td>Total ASO Surveys:</td>
<td>4 – 6+</td>
</tr>
</tbody>
</table>

* Surveys that may be omitted from schedule with lower risk to operations and flood management on a watershed-by-watershed basis
### Friant Water Authority

**Exhibit "A" for General Member Budget**

**GENERAL MEMBER ALLOCATION**

**DRAFT**

**Fiscal Year Ending September 30, 2021**

| District                  | Class I | Class I Times 2 | 2 x Class I | Plus Water | Class II | Class II | Contract | Equal Allocation | Total Allocation | October 1 Call for Funds | January 1 Call for Funds | April 1 Call for Funds | Final Call for Funds | Total Call for Funds |
|---------------------------|---------|-----------------|-------------|------------|----------|----------|----------|------------------|-----------------|-------------------------|------------------------|------------------------|------------------------|----------------------|----------------------|
| Arvin-Edison              | 40,000  | 80,000          | 311,675     | 391,675    | 8.828%   | 3.125%   | 11.953%   | 76,586.11        | 76,586.11        | 76,586.11               | 76,586.11              | 76,586.11              | 306,344.44            |
| City of Fresno            | 60,000  | 120,000         | 120,000     | 120,000    | 2.705%   | 3.125%   | 5.830%    | 37,352.91        | 37,352.91        | 37,352.91               | 37,352.91              | 37,352.91              | 149,411.64            |
| Chowchilla WD             | 55,000  | 110,000         | 160,000     | 270,000    | 6.085%   | 3.125%   | 9.210%    | 59,014.75        | 59,014.75        | 59,014.75               | 59,014.75              | 59,014.75              | 236,059.00            |
| Fresno                    | 0       | 75,000          | 75,000      | 75,000     | 1.690%   | 3.125%   | 4.815%    | 30,854.36        | 30,854.36        | 30,854.36               | 30,854.36              | 30,854.36              | 123,417.44            |
| Kaweah Delta WCD          | 1,200   | 2,400           | 7,400       | 9,800      | 0.221%   | 3.125%   | 3.346%    | 21,438.68        | 21,438.68        | 21,438.68               | 21,438.68              | 21,438.68              | 85,754.72             |
| Kern-Tulare               | 0       | 5,000           | 5,000       | 5,000      | 0.113%   | 3.125%   | 3.238%    | 20,745.50        | 20,745.50        | 20,745.50               | 20,745.50              | 20,745.50              | 82,982.00             |
| Lindmore                  | 33,000  | 66,000          | 22,000      | 88,000     | 1.983%   | 3.125%   | 5.108%    | 32,731.72        | 32,731.72        | 32,731.72               | 32,731.72              | 32,731.72              | 130,926.88            |
| Lindsay-Strathmore        | 27,500  | 55,000          | 55,000      | 55,000     | 1.240%   | 3.125%   | 4.365%    | 27,966.11        | 27,966.11        | 27,966.11               | 27,966.11              | 27,966.11              | 111,864.44            |
| Lower Tule River          | 61,200  | 122,400         | 238,000     | 360,400    | 8.123%   | 3.125%   | 11.248%   | 72,069.62        | 72,069.62        | 72,069.62               | 72,069.62              | 72,069.62              | 288,278.48            |
| Madera ID                 | 85,000  | 170,000         | 186,000     | 356,000    | 8.024%   | 3.125%   | 11.149%   | 71,434.20        | 71,434.20        | 71,434.20               | 71,434.20              | 71,434.20              | 285,736.80            |
| Orange Cove               | 39,200  | 78,400          | 78,400      | 78,400     | 1.767%   | 3.125%   | 4.892%    | 31,345.36        | 31,345.36        | 31,345.36               | 31,345.36              | 31,345.36              | 125,381.44            |
| Porterville               | 15,000  | 30,000          | 30,000      | 30,000     | 1.352%   | 3.125%   | 4.477%    | 28,688.17        | 28,688.17        | 28,688.17               | 28,688.17              | 28,688.17              | 114,752.68            |
| Sauselito                 | 21,500  | 43,000          | 32,800      | 75,800     | 1.708%   | 3.125%   | 4.833%    | 30,969.89        | 30,969.89        | 30,969.89               | 30,969.89              | 30,969.89              | 123,879.56            |
| Tea Pot Dome              | 7,200   | 14,400          | 14,400      | 14,400     | 0.325%   | 3.125%   | 3.450%    | 22,102.97        | 22,102.97        | 22,102.97               | 22,102.97              | 22,102.97              | 88,411.88             |
| Terra Bella               | 29,000  | 58,000          | 58,000      | 58,000     | 1.307%   | 3.125%   | 4.432%    | 28,399.35        | 28,399.35        | 28,399.35               | 28,399.35              | 28,399.35              | 113,597.40            |
| Tulare                    | 30,000  | 60,000          | 141,000     | 201,000    | 4.530%   | 3.125%   | 7.655%    | 49,050.30        | 49,050.30        | 49,050.30               | 49,050.30              | 49,050.30              | 196,201.20            |
| **Associate Member**      |         |                 |             |            |          |          |          |                 |                 |                         |                        |                        |                        |
| Hills Valley              | 3,000   | 3,000           | 3,000       | 3,000      | 3,000    |          |          | 12,000.00       |                 |                         |                        |                        |                        |
| **Totals**                | 504,800 | 1,009,600       | 1,208,875   | 2,218,475  | 50.000%  | 50.000%  | 100.000%  | 643,750.00      | 643,750.00      | 643,750.00               | 643,750.00              | 643,750.00              | 2,575,000.00          |

**Associate Dues:** 12,000

**Total Call for Funds:** 2,575,000
DATE: September 14, 2020

TO: Executive Committee

FROM Donald M. Davis, General Counsel

SUBJECT: Approval of Pre-Construction Budget Not to Exceed $200,000 for Utilities Relocation Design and Planning Costs for the FKC Middle Reach Capacity Correction Project.

SUMMARY:
In June 2020, FWA, through its contract with Bender Rosenthal Inc. (BRI), which is managing the Right of Way (ROW) acquisition process, retained the firm of Overland, Pacific & Cutler, LLC (OPC) to provide support services for utility relocations and new easements, licenses and agreements for such utilities. OPC has advised that at least one of the major utilities impacted by the Project, Southern California Edison (SCE), requires an advance deposit of $100,000 before it will begin investing staff time in developing plans and taking other steps to begin the process of relocating facilities impacted by the Project. SCE has a number of overhead power lines that will need to be relocated. Other affected utilities include SoCal Gas, AT&T and Charter Communications. OPC has provided a preliminary estimate that utility relocation processing costs could ultimately exceed $500,000, although not all of the utilities require advance deposits. As these costs were not included in the pre-construction budget for OPC’s work, staff is seeking approval of a not to exceed budget amount of $200,000 to initiate this time sensitive work pending formal approval of the Project and a construction budget.

RECOMMENDED ACTION:
The Executive Committee recommend that the Board authorize a not to exceed budget of $200,000 to cover advance deposits required by utilities to process relocation plans for their facilities impacted by the Project.

BUDGET IMPACT:
As this item is not included in the current or pending amended Financial Assistance Agreement with Reclamation, the funds will need to come out of FWA’s current $5 million pre-construction funds and will be credited towards FWA’s cost-share funding obligation.
FRIANT-KERN CANAL MIDDLE REACH CAPACITY CORRECTION PROJECT
TYPICAL OVERHEAD POWER LINE RELOCATION WORK AT CONFLICT POINTS

**STEP 1**
- Existing Overhead Electrical Line
- New Pole

**STEP 2**
- Limits of Excavation for Siphon Construction
- Siphon at Road Crossing
- Temporary Electrical Utility Bypass in Operation

**STEP 3**
- Complete Siphon Construction, Backfill, and Construct New Overhead Electrical Line Back on Original Alignment
DATE: September 14, 2020
TO: Board of Directors
THROUGH: Douglas DeFlitch, Chief Operating Officer
FROM: Janet Atkinson and Bill Swanson, Stantec; Lindy Lee, BRI
SUBJECT: Friant-Kern Canal Middle Reach Capacity Correction Project Update

SUMMARY:
The FKC Middle Reach Capacity Correction Project (Project) is to correct the conveyance capacity problems caused by subsidence and original Project design deficiency from MP 88 (Fifth Avenue Check) to MP 121.5 (Lake Woollomes Check). The Board of Directors (BOD) selected the proposed alternative that consists of a parallel or realigned canal along with enlargement of certain segments of the existing canal (Canal Enlargement & Realignment – “CER”) at the April 25, 2019 BOD meeting for continued design development, environmental compliance and permitting. Current work items include 1) final design; 2) environmental compliance/permitting activities; and 3) land acquisition program.

DISCUSSION/UPDATE: The following is a summary of the work completed since the last BOD update and an update on the Project Schedule:

**Schedule Update**— Provided below is the current milestone implementation schedule.

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date</th>
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<tbody>
<tr>
<td>NOI/NOP Published</td>
<td>December 2, 2019</td>
</tr>
<tr>
<td>Feasibility Report provided to OMB</td>
<td>January 28, 2020</td>
</tr>
<tr>
<td>30-Percent Design Report - Final</td>
<td>February 24, 2020</td>
</tr>
<tr>
<td>NOA/Draft EIS/EIR Published</td>
<td>May 08, 2020</td>
</tr>
<tr>
<td>Biological Opinion Issued</td>
<td>July 13, 2020</td>
</tr>
<tr>
<td>NOA/ FEIS/EIR Published</td>
<td>September 18, 2020</td>
</tr>
<tr>
<td>100-Percent Bid Issue Design Completion</td>
<td>October 20, 2020</td>
</tr>
<tr>
<td>FWA Certification of EIR</td>
<td>October 22, 2020</td>
</tr>
<tr>
<td>NOD Published</td>
<td>October 23, 2020</td>
</tr>
<tr>
<td>ROD Approval/Signature</td>
<td>October 27, 2020</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>Project Section 106 Complete</td>
<td>November 30, 2020</td>
</tr>
<tr>
<td>Award Construction Contract</td>
<td>April 2021</td>
</tr>
</tbody>
</table>

**Turnout and Water District Coordination** – There are many Project coordination details that need input and collaboration with Friant Division Contractors (Water Districts) with distribution facilities within the Project area. The Project design team met individually and collectively with the managers and consulting engineers of these Water Districts to coordinate on items such as the connection piping from new turnouts on the canal to existing facilities, alternatives to provide flexibility to take full head from the restored hydraulic grade line, and potential pump station improvements and modifications.

**Environmental Compliance, Cultural Resources and Permitting** – Following is a description of NEPA/CEQA compliance and Permitting activities for the Project.

- Continued weekly calls with Environmental team to discuss progress on NEPA/CEQA and permitting, continued bi-weekly calls with the Project Management Group to discuss progress with Management Group.
- Continued working on CEQA findings and Board resolution for EIS/R certification.
- Finalized all electronic documents and attachments so they are ADA (Section 508 website) compliant, sent copies to Reclamation DC liaison and Regional Director for review and approval.
- Continued to conduct check-in meetings with the United States Army Corps of Engineers (ACOE) regarding status of their review of the wetland delineation.
- Collected additional field wetland data to respond to questions from ACOE and transmitted.
- Conducted coordination call with Reclamation and FWA on preparation of the Alternative Analysis anticipated to be required by ACOE.
- Revised draft Indirect Source Review (ISR) application and Voluntary Emissions Reduction Agreement (VERA) Agreement based on comments received; and has now been submitted to Reclamation for review and input.
- Updated draft Historical Properties Treatment Plan (HPTP) based on comments received.
- Began preparing the Notice of Availability for Final EIS/R.

**Engineering and Design** –

- Conducted 7th Tulare County coordination call to progress the design coordination and steps to further a Memorandum of Understanding (MOU) for the Project as it pertains to potential impacts to County facilities and property. Regularly scheduled coordination meetings are planned for these coordination items. The County has indicated it will provide a draft of the MOU later this month.
- Conducted a coordination call with CALTRANS and Tulare County regarding temporary detour route for State Highway 190 crossing of the new parallel canal. Revising traffic control plan based on comments received and coordinating with City of Porterville for revised detour route.
- Proceeding with design revisions to address 60% design submittal comments received.
- Prepared information package for Friant Division Contractors’ turnouts, including draft alternative evaluation matrix review comments, turnout design principles, review comment compilation, design
drawing compilation showing proposed delineation for OM&R, and compilation of canal design water surface elevations compared to existing conditions. Participated in coordination meeting with Friant Division Contractors.

- Continued structural, electrical, mechanical, and civil designs to advance to the 90% submittal.
- Continued preparation of draft technical specifications to advance to the 90% submittal.
- Completed 90% design submittal and provided to Reclamation, FWA, Tulare County, and Water Contractors for review.
- Supported specialty utility relocation firm in providing utility relocation materials requested by utility companies. This included completion of the conversion of Civil 3-D files to previous AutoCAD files for Southern California Electric (SCE) Company use in preparing electrical relocation designs.
- Participated in coordination calls with SCE and Southern California Gas Company.
- Prepared updated construction cash flows for several scenarios.
- Conducted meetings with Reclamation and FWA on design and construction elements. Topics included construction sequencing and scheduling, construction contractor procurement process.

Feasibility Report
- Continued to progress the Ability to Pay Study.

Land Acquisition
- Continue to make progress on the action items established during joint Friant, BOR, Stantec bi-weekly meetings.
- BRI has submitted twenty-five (25) out of thirty-four (34) appraisals to AVSO for review, fourteen (14) appraisals have been approved. It is anticipated another seven (7) appraisals will be submitted by the end of September.
- BRI has mailed six (6) First Written Offer packages to the owners the first week of September. BRI anticipates seven (7) more First Written Offers will be sent by the middle of September.
- BRI continues to draft Preliminary Title Reports Opinions to clear title for final ALTA insurance policies required by BOR.
- All ASTM 1527-13 Phase 1 Environmental Site Assessments (Phase 1 ESA) reports for each parcel have been reviewed and accepted by BOR.
- The Phase 1 ESA reports that indicated further Phase 2 investigations may be needed have been reviewed and discussed with BOR and a consensus was reached that none of the land to be acquired appears to be impacted by the presence of significant levels of hazardous materials. Therefore, no further investigation is necessary. BOR has provided written confirmation that no Phase 2 reports are required at this time.
- BRI continues to work with the County of Tulare to determine the best way to acquire property rights over county roads in locations where the realigned canal will cross such roads. The final determination of ownership with maps have been approved by both the County of Tulare and BOR. Deeds for the County Road ownerships are currently being drafted and will be finalized by BOR and delivered to the County by the end of the month. The County will then prepare documents for the County Board of supervisors to transfer ownership. This is anticipated to be completed in the next 3 months.
- OPC continues to directly participate in ROW group and design meetings on matters related to utility issues/rights/easements determination.
• OPC has delivered all conflict mapping to all identified utility owners.
• OPC continues to attend meetings with Stantec with various irrigation district owners to discuss the resolution of project conflicts with their facilities.
• OPC continues to research regarding assorted utility owners’ rights of installation.
• OPC will schedule meetings with all the assorted utility owners to discuss relocations and liability.
• OPC will continue research and review of prior rights documents regarding responsibility for utility relocation costs.
• OPC has submitted estimates of support costs to Friant for engineering relocation work by the utility owners affected.
• OPC will submit the plan for utility potholing to BRI so Rights of Entry can be obtained.
• OPC will start the first set of formal meetings with SCE to go over relocation mapping issues. SCE has requested advance payment for Engineering Relocation Support efforts.
• OPC will continue to meet with all third-party utility owners to discuss resolution to conflicting utility facilities. These will include SCE, AT &T, Ducor, Charter, and CVIN.

Landowner Coordination and Outreach
• Field coordination activities conducted during the period included planning for implementation of utility potholing on private and public property immediately following Reclamation's execution of the Record of Decision. Four of 21 sites are on private property. The work will serve to inform contractor bidding for the project.
• Outreach to landowners included engagement with owners for preparation of easements and road vacation. Landowners contacted included those adjacent to Avenue 32 between Roads 184 and 192 to coordinate preparation of agreements and support letters for the vacation of Avenue 32.
• Coordinated and facilitated weekly internal and Project-level Right-of-Way Team meetings, bi-monthly coordination meetings with County of Tulare staff, and other meetings as necessary. ROW meetings are held on alternating weeks. The internal meetings include FWA, BRI, OPC staff. The Project-level meeting includes these resources and Reclamation staff. The meetings focus on appraisal and real estate activities, utility relocations, Project design coordination, and landowner coordination.
• Continued coordination of release of the Project’s Final EIR in cooperation with Reclamation. Notification of release is targeted for Sept. 18 and will include posting of documents on www.friantwater.org/projects. Notification methods to landowners in the Project area, commenters to the Public Draft EIR, and other interested parties will include email and U.S. Mail distribution, and the weekly Friant Water Update.

RECOMMENDED ACTION:
None.

SUGGESTED MOTION:
None.
DATE: September 14, 2020

TO: Executive Committee

FROM: Doug DeFlitch, Chief Operating Officer
       Jason Phillips, Chief Executive Officer
       Brian Thomas, PFM

SUBJECT: FKC Middle Reach Capacity Correction Project Update – Project Funding

BACKGROUND:

The FKC Middle Reach Capacity Correction Project (Project) is needed to correct the conveyance capacity problems caused by subsidence and original canal design deficiencies. Funding for the Project is anticipated from federal and non-federal sources. Non-federal sources could include Friant Contractors, Groundwater Sustainability Agencies, and state funding.

DISCUSSION:

In order to move forward with the Project in 2021, it may be necessary to initiate certain segments of the Project based on the amount of funding available at the time the construction contract will be awarded. As discussed with the Executive Committee on August 17, 2020 and the August 27, 2020, Board meeting, this could mean the first phase of the Project would consist of segments D&E, which work would restore capacity in the Friant-Kern Canal to approximately 2,500 cfs. If sufficient funding could be identified, the initial phase could include proposed Segments D, E & F, which would restore capacity to approximately 2,750 cfs.

FWA staff is meeting with the districts that responded to the Zone 3 Request for Interest solicitation to begin formalizing agreements. Several of the southern Friant-Kern Canal districts (SFKCDs) most affected by subsidence in the Friant-Kern Canal are interested in providing a Zone 3 contribution that would convert to a Zone 2 capacity when such funding is available. In addition, FWA is in negotiations with the Eastern Tule Groundwater Sustainability Agency to determine funding mitigation for subsidence of the Friant-Kern Canal. Finally, FWA continues to work with Reclamation on additional federal funding and scheduling.

In order to begin construction in 2021, FWA would need to execute a cost share agreement with the Bureau of Reclamation (Reclamation). The cost share agreement would identify the federal and non-federal funding responsibilities. A portion of the federal funding could include reimbursable amounts, which could come from some or all of the Friant Contractors and paid over time as provided in a repayment agreement between FWA and Reclamation.
Construction Costs. Construction of proposed Segments D & E is estimated to cost about $215 million and adding Segment F would increase the total to $277 million.

Initial Funding Principles. As previously noted, the potential level and timing of funding from Eastern Tule GSA and other GSAs remains uncertain. FWA staff and districts interested in Zone 3 funding are discussing an agreement based on the following principles to help guide funding and financing commitments for the Project:

a. FWA would provide up to $50 million in funding. This funding would be provided on an annual basis (pay as you go construction), with debt (either publicly or privately placed debt), through a repayment agreement with the Bureau or a combination of these methods.

b. Zone 3 funding districts would provide the balance of non-federal funding needed to meet construction cash flows and some or all of the Zone 3 funds would be provided as a loan to fund Zone 2 improvements. It is estimated that these Zone 3 agreements would need to provide about $91 million in funding. Further, it is expected that the total commitments would need to be finalized by the middle of next year in order to award a construction contract.

c. FWA would continue to aggressively pursue “mitigation” from landowners/pumpers responsible for anticipated additional subsidence (through their GSA). All “mitigation” funds would be reimbursed to FWA and the Zone 3 funding districts that provide a Zone 2 loan.

Federal and Non-federal Cost Shares. The following table was presented at last month’s board meeting and shows the estimated construction cash flows for Segments D&E, along with an example of Zone 3 and FWA cost shares given an estimated federal contribution of $107.9 million, of which $75 million would be non-reimbursable.

<table>
<thead>
<tr>
<th>Fiscal Year ending September 30</th>
<th>Construction Cash Flow - Segments D&amp;E</th>
<th>Federal Funding Non-reimbursable</th>
<th>Federal Funding Reimbursable</th>
<th>FWA General</th>
<th>SFKCDs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior Periods</td>
<td>22,804,000</td>
<td>20,164,000</td>
<td>-</td>
<td>2,640,000</td>
<td>-</td>
</tr>
<tr>
<td>2021</td>
<td>54,687,000</td>
<td>41,015,250</td>
<td>-</td>
<td>5,000,000</td>
<td>8,671,750</td>
</tr>
<tr>
<td>2022</td>
<td>113,606,000</td>
<td>13,820,750</td>
<td>32,902,000</td>
<td>7,458,000</td>
<td>59,425,250</td>
</tr>
<tr>
<td>2023</td>
<td>19,622,000</td>
<td>-</td>
<td>32,902,000</td>
<td>2,000,000</td>
<td>17,622,000</td>
</tr>
<tr>
<td>2024</td>
<td>5,084,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>5,084,000</td>
</tr>
<tr>
<td>2025</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>215,803,000</strong></td>
<td><strong>75,000,000</strong></td>
<td><strong>32,902,000</strong></td>
<td><strong>17,098,000</strong></td>
<td><strong>90,803,000</strong></td>
</tr>
</tbody>
</table>

Reimbursement Requirements:
FWA General 32,902,000
SFKCDs -

As discussed last month, this funding plan assumes that federal funding would provide 75% of the costs in the first year of construction. The non-federal share increases to 58% in fiscal year 2022,
and then is 100% in the following two years. The resulting cost shares between the federal and non-federal sources are equal at the end of construction of Segments D&E.

FWA Financing. FWA would be responsible for up to $50 million of the initial construction costs. The current model includes $5 million of funding from the OM&R budget to be provided to the Project costs in Fiscal Year 2021. It is also assumed that FWA would be able to borrow through a public offering or private placement to fund the total of $9.5 million needed in fiscal years 2021/22 and 2022/23. FWA would also be responsible for the $32.9 million repayment obligation.

Zone 3 Funding. As seen in the above table, a total of $90.8 million would be needed from the SFKCDs initially. As noted in the Funding Principles, the Zone 3 funding districts providing “loans” would be reimbursed for their contributions as “mitigation” payments were received from the GSAs. But – in order to move forward with construction, the Zone 3 funding districts would have to commit to fund the shares shown in the table.

Total annual FWA costs include $5 million in Fiscal Year 2020/21. In addition, the FWA financing is assumed to be repaid over ten years and the repayment to Reclamation would be at zero interest over forty years. Annual debt service payments of about $1.2 million begin in Fiscal Year 2021/22. It is assumed the repayment to Reclamation would begin in Fiscal Year 2024/25 and would be equal to about $825,000.

FWA staff is continuing to discuss terms with those Districts who have expressed interest in providing Zone 3 funding, including “loans” to fund the initial phase of the project.

Next steps. FWA will continue to work with Reclamation, the Zone 3 funding districts, and the GSAs to develop agreements needed to fund the Project, including:

- Confirming $5 million to be paid from the FWA OM&R in Fiscal Year 2020/21.
- Reach agreements with the Zone 3 districts to fund a portion of the non-federal share.
- Pursue steps to complete a loan by Fiscal Year 2021/22 to fund the $9.5 million needed from the FWA “Family Plan”. These next steps include the following:
  - Develop financing alternatives and discuss with FWA (Months 1,2)
  - Select a placement agent (Month 2)
  - Finalize credit structure (this would be based on OM&R shares, but we would want to determine whether we want to have reserve, step up, etc.) (month 3)
  - Approve soliciting offers for bank loan (month 4)
  - Issue RFP to banks (month 5,6)
  - Select bank (month 6)
- Negotiate terms and conditions (months 7,8)
  Close loan (month 9)

d. Complete the needed cost share and repayment agreements with Reclamation.

**RECOMMENDED ACTION:**
None; informational only.

**BUDGET IMPACT:**
None; informational only.

**ATTACHMENTS:**
Zone 3 white paper

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**EXAMPLE OF ANNUAL SHARE OF CONSTRUCTION COST BY SOUTHERN FRIANT-KERN CANAL DISTRICT**

<table>
<thead>
<tr>
<th>District</th>
<th>% Share by SFKCD Contractor (1)</th>
<th>Fiscal Year Ending September 30</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2021</td>
<td>2022</td>
</tr>
<tr>
<td>Arvin-Edison WSD</td>
<td>60.00%</td>
<td>5,203,050</td>
</tr>
<tr>
<td>Delano-Earlimart ID</td>
<td>13.00%</td>
<td>1,127,328</td>
</tr>
<tr>
<td>Kern Tulare WD</td>
<td>1.02%</td>
<td>88,096</td>
</tr>
<tr>
<td>Lower Tule River ID</td>
<td>10.00%</td>
<td>867,175</td>
</tr>
<tr>
<td>Saucilito ID</td>
<td>2.00%</td>
<td>173,435</td>
</tr>
<tr>
<td>Shafter-Wasco ID</td>
<td>6.98%</td>
<td>605,644</td>
</tr>
<tr>
<td>S.S.J.M.U.D.</td>
<td>7.00%</td>
<td>607,023</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100.00%</strong></td>
<td><strong>8,671,750</strong></td>
</tr>
</tbody>
</table>

(1) Example only. Shares of construction cost, financing methods, shares by District are to be negotiated.
### Structure of Proposed Friant Contractor Additional Funding and Resulting Zone 3 Capacity

The capacity in the FKC below milepost 88 would be divided into 3 Zones.

<table>
<thead>
<tr>
<th>Zone 3 – Capacity Due to Friant Contractor Additional Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Calculated as CFS capacity added on top of Zone 2</td>
</tr>
<tr>
<td>• Zone 3 funding would be provided by Friant Contractors</td>
</tr>
<tr>
<td>• The funding level would result in a specified capacity in Zone 3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Zone 2 – Capacity Due to FWA, Public, GSA, Conveyance Charge Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Calculated as CFS capacity added on top Zone 1</td>
</tr>
<tr>
<td>• Current operating priorities apply (FOG)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Zone 1 – Capacity Without Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Calculated capacity updated annually</td>
</tr>
<tr>
<td>• Current operating priorities apply (FOG)</td>
</tr>
</tbody>
</table>

### A. Definitions:

**FKC OM&R funding:** Funding from FKC OM&R Contractors allocated per the FKC OM&R cost allocation methodology or other agreed upon methodology.

**Friant Contractor additional funding:** Funding provided by a Friant Contractor above the amount established as FKC OM&R funding, Public funding, and GSA funding, for the purpose of gaining specified rights to capacity in the proposed Zone 3 of the repaired Friant-Kern Canal.

**GSA funding:** Funding collected by a Tule Subbasin GSA for implementation of the Project as a means of mitigation for land subsidence caused by transitional groundwater pumping.

**Public funding:** Funding provided by Federal or State government for implementation of the Project with no requirement for the recipient to repay.

**Project:** The Friant-Kern Canal Middle Reach Subsidence Correction Project.
B. Description of Zones:

Zone 1 is the conveyance capacity that currently exists without any correction or restoration action.

Zone 2 is the increased capacity attributed to the construction of the Project that is financed by non-reimbursable Public funding, GSA funding and FWA OM&R funding (including any reimbursable Public funding repaid via FWA OM&R funding).

Zone 3 is the additional increase in capacity of the FKC above Zones 1 & 2 that would result from the construction of the part of the Project with the funds derived from the Friant Contractor additional funding. Any reimbursable Public funding not repaid with FWA OM&R funding or GSA funding will be considered a contribution towards Zone 3.

Note: The applicable capacity in Zone 2 and Zone 3 would be periodically reviewed and recalculated as funding is received. Also, available capacity will be updated each year as necessary based on measured subsidence.

C. Benefits of Zone 3 Funding:

- The primary benefit of funding of Zone 3 would be that Friant Contractors would have dedicated access to Zone 3 capacity consistent with their level of funding and would not be subject to a conveyance charge. If Zone 2 is full, Zone 3 participants would still have their capacity available. Zones 1 and 2 would continue to be prorated consistent with the applicable FOG.

- A Zone 3 conveyance charge would be collected by FWA from: (1) any Friant Contractor using Zone 3 capacity that has not provided funding for Zone 3, and (2) any Friant Contractor who uses more capacity than its level of funding, provided such capacity is not being used by other Friant Contractors who have provided additional funding for Zone 3.

- The revenues collected from conveyance charges would be used to offset loans or other reimbursable obligations to Friant Contractors providing additional funding for Zone 3.

D. Potential Funding Structure for Zone 3:

- Friant Contractor participation in Zone 3 is voluntary and the terms and conditions of any financing would be subject to a participation agreement between the Friant Contractors providing the additional funding and FWA.

- FWA will analyze with the Friant Contractors providing additional funding for Zone 3 the benefit of credit structures to enhance the credit quality of a collective financing
structure. This assumes that the participating Friant Contractors would prefer that FWA arrange the financing on their behalf.

- Each Friant Contractor providing additional funding for Zone 3 would have the option of self-financing and providing the additional construction funds directly to FWA.

E. Proposed Method to Formalize Zone 3 Operations:

FWA/Reclamation Agreement: Reclamation and FWA will enter into an agreement recognizing that Zone 3 of the Project is only made possible through the Friant Contractors that provide the additional funding for the Project, and that FWA will have the responsibility to manage water priorities and collection of funds from Friant Contractors related to Zone 3 use.

Friant Operations Guidelines: The text below is copied from the last FOG that was finalized and distributed to Friant Contractors by Reclamation in 2005. The blue text represents examples of the changes that would be required to address the benefits for Friant Contractors that provide additional funding to create the Zone 3 capacity.

“VII. Canal Capacity Prorate

During periods when water demands exceed canal capacity and it becomes evident there is a need for a delivery prorate, the Contractors shall meet or otherwise confer and may take mutually agreeable action to coordinate water demands and alternate water supplies in order to avoid or minimize a canal prorate. If a canal capacity prorate is required, the prorate priority shall be pursuant to the tiers defined in Sections VII-A and VII-B below. Each entity with requested water in the affected tier is entitled to a percentage of the available supply based on its prorata share of their contractual entitlement within that tier. If a Contractor has not requested water or has otherwise used its water within the tier being prorated, that share of canal capacity shall be distributed among the other affected users.

A. Friant-Kern Canal

Contractors that provide the funding for the Zone 3 conveyance capacity will always have their proportionate share of capacity available between MP 88 and MP 121.5 for any type of water supply, consistent with their funding agreement with FWA. If there is unused capacity in Zone 3 during a Zone 1 or 2 prorate in the same canal reach, Contractors may only use Zone 3 capacity upon approval of FWA and subject to the applicable conveyance charge. Tiers of priority of water deliveries in those reaches of the Friant-Kern Canal that are affected during a canal capacity prorate will be as follows:

1. Class 1 water used by Friant-Kern Canal (FKC) Long-Term Contractors

2. Class 1 water transferred or exchanged from a FKC Long-Term Contractor to a FKC
Long-Term Contractor or Cross Valley Contractor (including subcontractors), provided that the change in the point of diversion of the transferred water does not cause a Class 2 contractor to suffer a loss of prorated canal capacity that would not have otherwise occurred had the transfer not been approved. A transfer that causes a loss in the prorated canal capacity of a Class 2 contractor due to a change in the point of diversion of the transferred water shall lose its priority over Class 2 water used by a FKC Long-Term Contractor.

3. Class 2 water used by FKC Long-Term Contractors

4. Class 2 water transferred or exchanged from FKC Long-Term Contractors to a FKC Long-Term Contractor or Cross Valley Contractor (including subcontractors)...

(Note: the FOG includes 11 additional types of water not included here. This proposal would not change that.)

F. Future Subsidence:

Once the Project is complete and operational, it is anticipated that some amount of subsidence will continue in the future for a number of years. As subsidence is measured, the calculated loss of capacity in the canal will be updated, and the total reduction in capacity will be shared by each Zone consistent with its proportionate share of the earlier capacity.
DATE: September 14, 2020
TO: Executive Committee
FROM: Jason Phillips, CEO
Donald M. Davis, General Counsel

SUBJECT: Establishment of FKC Middle Reach Capacity Correction Project Ad Hoc Committee/Group

SUMMARY:
As the FKC Middle Reach Capacity Correction Project (Project) moves towards final plan approval and initiation of construction, there are a number of Project-related issues that would benefit by a small group review and recommendation prior to consideration by the full Board. Some examples include: (1) ROW acquisition negotiations involving cost demands that exceed or differ from appraised values; (2) requests by Friant Division districts for improvements to distribution facilities that may differ from the initial Project design; and (3) Project change orders. It may also be necessary at some point to delegate some defined approval authority to the Project ad hoc committee/group.

The amount of time members of this ad hoc committee/group will need to devote is unclear at this time, but it could likely be significant with potentially multiple special meetings necessary in a given month. Much of the work will likely occur over the next year or so as the Project gets underway.

There are a number of options for the composition of a Project-specific ad hoc committee or group to provide such reviews and recommendations to the Board. Some options include:

A. Executive Committee members (with additional or alternate directors, including non-FWA directors, as well as participation by managers)

B. Finance Committee members (with additional or alternate directors, including non-FWA directors, as well as participation by managers)

C. Select group of directors (and potentially managers), with emphasis on representation by districts most impacted by subsidence

RECOMMENDED ACTION:
None. This is for initiation of discussion and development of a recommendation to the Board.
DATE: September 14, 2020

TO: Executive Committee

FROM: Alex Biering, Government Affairs and Communications Manager
       Johnny Amaral, Chief of External Affairs

SUBJECT: External Affairs Update

SUMMARY: Update on State and Federal legislation and communications activities.

RECOMMENDED ACTION: None; informational only.

SUGGESTED MOTION: None; informational only.

DISCUSSION:

State Affairs

August 31 was the deadline for the Legislature to pass all bills in its current session. The last few days of session, several attempts were made to pass a bill that would fund anywhere between $500 million to $2.5 billion in wildlife risk reduction efforts. As reported during the last FWA Board of Directors meeting, one of these bills, Assembly Bill (AB) 1659, included around $300 million for water-related investments, including $50 million for the Friant-Kern Canal Middle reach Capacity Correction Project and $50 million for the San Joaquin River Restoration Program, specifically for funding Paragraph 11 actions, the Technical Advisory Committee, and the Restoration Administrator. This bill was eventually downsized to $500 million, including $5 million for general canal conveyance improvements. But, at the end of the day, the Legislature could not agree on a package nor how it should be funded; the revenue source for the bill – rate increases on investor-owned electric utilities – was unpopular among many legislators and the public.

FWA staff and consultants continued to work closely with Senator Melissa Hurtado and her staff to see SB 559 through the end of the legislative session. On August 30, SB 559 was passed on the Assembly floor and then sent to the Senate for concurrence on August 31, where the vote was “Ayes” 37 and “Noes” 2 (Senators Ben Allen and Bob Wieckowski). It is now headed to Governor Newsom’s desk.
Federal Affairs

**Senate Returns to Deal with COVID-19 Relief and FY 2021 Spending Bills**

The Senate returned to Washington last week (the House is scheduled to return mid-month) with a list of must-pass bills including funding the government and providing additional relief for the economic and health impacts of the COVID-19 pandemic. With a limited number of days to legislate (there are no votes scheduled in October) and not much progress in the Senate on FY 2021 appropriations bills, Congress will need to pass a temporary continuing resolution (CR) this month to extend federal funding to at least December and prevent a government shutdown on October 1 ahead of the November elections. And, with negotiations stalled on a bipartisan COVID relief package, Senate GOP leaders are setting the stage for consideration of a slimmed-down package ($500 billion) of pandemic relief funding in September, but Democrats seem to be sticking to a $2.2 trillion compromise offer they recently put on the table. The “skinny” GOP COVID bill would extend unemployment benefits, provide more small-business relief, grant liability protections to businesses and schools, and send $10 billion in emergency funds to the U.S. Postal Service to address delivery delays, but Democrats are expected to oppose the measure.

After the election, Congress will likely introduce an FY 2021 omnibus appropriations package to wrap up work on FY 2021 spending bills. But, if the Senate, the White House, or both, change control and the House remains the same, Democrats may be unmotivated to cut deals with the GOP on COVID relief, FY 2021 spending or any other legislation and instead put much work on the shelf until January, when the new Congress convenes. The House’s last scheduled day in session is December 10, while Senate Majority Leader McConnell is targeting December 18 for adjournment. Beyond the COVID/funding bills, Congress at any time could also take up pending legislation related to infrastructure (highway/water resources), the National Defense Authorization Act (NDAA) and energy policy between now and the end of the year.

**Water Storage Bill Introduced in House**

California Democrat T.J. Cox has introduced legislation to increase funding for surface and groundwater storage and water conveyance projects. The "Western Water Storage Infrastructure Act" would authorize the Bureau of Reclamation to partner with non-federal entities to spend up to $800 million for increased water storage, as well as provide cost-shared funding to repair key canals in California that have been damaged due to land subsidence from over-pumping of the local groundwater aquifers. The bill, H.R. 8166 has garnered broad water user support, including the California Farm Bureau Federation and many California and west-wide irrigation associations and districts, and extends provisions of the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, some of which may be deemed too controversial by the House Natural Resources Committee.

**White House Directs EPA to Weigh New Limits on Enforcement Actions**

The White House Office of Information and Regulatory Affairs (OIRA) has issued a memo directing the Environmental Protection Agency (EPA) and other federal agencies to weigh revising their enforcement policies in order to restrict potential enforcement actions against regulated entities and individuals, including possible new limits on consent decrees and higher standards of evidence in administrative proceedings. The memo is designed to implement President Trump’s May 9 Executive Order (EO) 13924 directing agencies to take a host of deregulatory steps to counter the economic downturn spurred by the
COVID-19 pandemic. The EPA’s enforcement discretion has been a major political issue during the COVID-19 pandemic, most prominently because of the agency’s just-expired policy of declining to take action against facilities that could not fulfill monitoring or reporting requirements due to the virus.

**House Democrats Oppose FWS Proposed ESA Habitat Definition; FWS Proposes New ESA Critical Habitat Rules**

In a letter last week to Fish and Wildlife Service (FWS) Director Aurelia Skipwith, more than 100 House Democrats called the Administration’s proposal that would narrow the definition of "habitat" under the Endangered Species Act (ESA) the latest in the "onslaught of environmental rollbacks that threaten the survival of our nation's wildlife." Several weeks ago, the FWS proposed the following new definition of habitat under the ESA: "The physical places that individuals of a species depend upon to carry out one or more life processes. Habitat includes areas with existing attributes that have the capacity to support individuals of the species." At the same time, the FWS also announced it would seek public comment on an alternative definition: one that would "include areas where individuals of the species do not presently exist but have the capacity to support such individuals, only where the necessary attributes to support the species presently exist." And, just prior to receiving the congressional letter, the FWS announced yet another recommendation to narrow the definition of "habitat," this time to require that federal agencies consider, among other factors, the economic implications of designating new critical habitats prior to making such designations.

FWS also proposed new ESA critical habitat rules that could make it easier to shrink future critical habitats designated under the ESA. Section 4(b)(2) of the ESA gives the Secretary of the Interior the authority to exclude any particular area from a critical habitat designation if the benefits of exclusion outweigh the benefits of inclusion for that area, so long as excluding the habitat will not result in the species’ extinction.

**BUDGET IMPACT:**

None.

**ATTACHMENTS:**

Family Farm Alliance Executive Director’s Report (September 2020); Letter from FWA to Gov. Newsom Requesting Signature on SB 559 (Sept. 10, 2020); SB 559 as passed August 31, 2020; Comment letter from FWA on CVPIA 1993 Guidelines draft revisions (September 4, 2020).
This executive director’s report (EDR) is intended to keep you apprised as to what is happening behind the scenes on policy issues the Alliance is engaged in, some of which we will discuss on our next joint ZOOM meeting of the Board of Directors and Advisory Committee, scheduled for Friday, September 11, at noon (Pacific, including Arizona) 1:00 p.m. (Mountain); 2:00 p.m. (Central), 3:00 p.m. (Eastern). In the past month, our efforts have focused on the federal response to COVID-19, preparing for our first “virtual” farmer lobbyist “trip”, tracking water legislative developments in Congress, engaging in federal agency rulemaking efforts, and addressing some important administrative matters. These issues and other matters important to our members are further discussed in this EDR.

This report is intended for your use, but I understand that you may wish to share this information with your local board members and close associates. I would ask that you be circumspect when you distribute this, however.

TRUMP ADMINISTRATION ACTIONS

1. Administration Response to COVID-19 Pandemic

Over six months since the pandemic broke out in the U.S., the percentage of those infected with the coronavirus who die of COVID-19 is starting to decline in most states, due primarily to improved treatments, younger patients, and more widespread testing. While the coronavirus has caused a record-setting economic decline and tens millions of Americans have lost their jobs, the White House has been reporting on other encouraging developments that get little coverage in the mainstream media. President Trump continues to entrust the governors of each state to develop
and enforce their own mask policies and other policies following guidance from the Federal Government and the Center for Disease Control (CDC).

The American economy gained nearly 1.4 million jobs in August, making it the fourth month in a row of over 1 million jobs added. A record 10.6 million jobs have been gained since April, bringing back about 50% of the jobs lost from the lockdowns. The unemployment rate dropped by 1.8 percentage points to 8.4%, beating expectations which only predicted a 0.4 percentage point decrease. The August unemployment rate drop is the second largest decrease on record. However, White House economic advisors warn that as the economy recovers, the path to full employment becomes tougher. In April, nearly four out of five jobs lost could be attributed to temporary layoffs, reflecting efforts by Congress and the Administration to keep workers attached to their employers. Four months later, the number of temporary layoffs has dropped to just 50 percent as 80 percent of small businesses are now open relative to their pre-COVID-19 levels. At its peak, temporary layoffs hit over 18 million. Since then, temporary layoffs have decreased to just 6 million, a recovery of nearly 67 percent.

a. White House Response

The Trump Administration continues to exercise the authority under the Defense Production Act, dispersing over $3.5 billion to speed the development and manufacturing of essential materials. President Trump has been touting Operation Warp Speed, which he says is making incredible progress in helping to rapidly develop a vaccine. Three strong vaccine candidates are already moving through phase three trials in the United States, and the Administration is investing billions to secure vaccine doses so they can be distributed as soon as a candidate is approved. Over 270 clinical trials are currently underway for coronavirus treatments.

President Trump last month signed four executive actions aimed at providing economic relief in the wake of the coronavirus pandemic after negotiations between congressional leaders and the White House failed to produce new coronavirus relief legislation:

- On the payroll tax, he deferred payments of the employee portion of certain payroll taxes from September 1st through the end of 2020.
- On unemployment assistance, he directed that states would provide 25 percent cost sharing, amounting to a total of $400 per week in benefits through the end of the year.
- He extended eviction protections by directing HUD to prevent evictions resulting from financial hardships caused by the virus.
- Finally, on student loans, he extended 0 percent interest and suspended loan payments through the end of the year.

Some Republicans were unhappy with the president’s executive moves, and Democrats slammed the orders as weak and unconstitutional.

The White House is calling for either the FY2021 spending bills or a temporary government-wide continuing resolution (CR) to be included in a COVID-19 relief package expected to be taken up by Congress when they return this week. Since the House and Senate are still miles apart on their versions of FY2021 spending legislation, passage of a CR to temporarily extend FY2020 funding
for the entire government will be necessary to avoid a shutdown on October 1.

b. **CFAP Progress**

The U.S. Department of Agriculture (USDA) has led the charge on most of the farm rescue efforts since March to fix the massive disruptions in the food supply chain and other impacts to the agriculture sector from the pandemic. The Coronavirus Food Assistance Program (CFAP) has now delivered nearly $5.4 billion, out of the total $16 billion available for farmers and ranchers hurt by supply chain disruptions. More than 220,000 farmers have received funding so far, with livestock producers having received about half of all the money dispersed. The Trump administration is expected to roll out another round of farm stimulus programs this week.

U.S. Secretary of Agriculture Sonny Perdue last month announced that additional commodities are covered by CFAP in response to public comments and data. Additionally, USDA is extending the deadline to apply for the program to September 11th, and producers with approved applications will receive their final payment. More information on CFAP and how to apply can be found [here](#). In addition to CFAP, USDA has other programs and services available to farmers impacted by the coronavirus pandemic. Learn more at [farmers.gov/coronavirus](http://farmers.gov/coronavirus).

c. **Farmers to Families Food Box Program**

President Trump and Secretary Perdue last month announced up to an additional $1 billion for the Farmers to Families Food Box Program. The Farmers to Families Food Box program has provided over 75 million boxes to hungry Americans across the country. Distributors are now prioritizing resources to send boxes to Opportunity Zones and areas most in need by providing relief to America’s most underserved communities. In addition, President Trump is including a letter that reinforces COVID-19 safety guidelines and how Americans can best protect themselves and their families, a move that is raising questions with some House Democrats. According to *Politico*, dozens of lawmakers are demanding to know who ordered the Trump letters and whether it’s mandatory or voluntary for contractors and nonprofits to include them in their food boxes. The new controversy could further motivate key lawmakers who are pushing to tighten restrictions on how USDA spends any future farm relief funds.

d. **Plan to Help Farmers of Seasonal and Perishable Fruits and Vegetables**

The Office of the U.S. Trade Representative, USDA, and the Department of Commerce recently released a report outlining the Trump Administration’s plan to address the threat posed by increased foreign imports to American producers of seasonal and perishable fruits and vegetables. The plan follows public hearings held in August where more than 60 witnesses testified, in addition to over 300 written submissions. Based on information collected from these hearings, the agencies commit to several key actions to support America’s seasonal and perishable fruit and vegetable producers. To read the plan, click [here](#). Click [here](#) to read the full transcript of the virtual hearing held on August 13. Click [here](#) to read the full transcript of the virtual hearing held on August 20.
2. **Other White House Policy Developments**

   a. **OIRA: Memo to EPA to Weigh New Limits on Enforcement Actions**

   The White House Office of Information and Regulatory Affairs (OIRA) has issued a memo directing the Environmental Protection Agency (EPA) and other federal agencies to weigh revising their enforcement policies in order to restrict potential enforcement actions against regulated entities and individuals, including possible new limits on consent decrees and higher standards of evidence in administrative proceedings. The memo is designed to implement President Trump’s May 9 Executive Order (EO) 13924 directing agencies to take a host of deregulatory steps to counter the economic downturn spurred by the COVID-19 pandemic. The EPA’s enforcement discretion has been a major political issue during the COVID-19 pandemic, most prominently because of the agency’s just-expired policy of declining to act against facilities that could not fulfill monitoring or reporting requirements due to the virus.

   b. **Council on Environmental Quality (CEQ): Final NEPA Rule**

   A coalition of 21 states, the District of Columbia and Guam have sued in federal court to strike down the Trump Administration's changes to the implementing rules for the National Environmental Policy Act (NEPA). The lawsuit, filed in the U.S. District Court for the Northern District of California, argues that CEQ’s revisions to the NEPA regulations will undermine vulnerable communities' power to get involved in decision making on pipelines, bridges and other major projects. The Trump Administration's NEPA rule revisions have already faced legal challenges from green groups and environmental justice advocates.

   NEPA implementation and related litigation can be lengthy and significantly delay major infrastructure and other projects. The Alliance last March prepared a detailed comment letter on the CEQ proposed regulations for implementing the procedural provisions of NEPA. In our view, the new NEPA regulation is just one of several proactive rulemaking efforts undertaken by the Trump Administration. These actions, in part, are intended to correct and rebalance the significant negative impacts to Western farmers and ranchers that have resulted from past federal implementation of environmental laws.

3. **Department of Interior, Bureau of Reclamation**

   c. **California Water Supply Reliability**

   Within a one week period last month, the Bureau of Reclamation (Reclamation) took several separate actions to improve water reliability for farms across the state and communities from the Bay Area to southern California. The actions follow up on two executive memoranda issued in the past two years by President Trump, providing specific instructions to improve water supplies.
i. **Shasta Dam Raise**

Reclamation’s first action was the release of a Draft Supplemental Environmental Impact Statement for the raise of Shasta Dam by 18.5 feet to the 600-foot dam, which would provide an additional 634,000 acre-feet of storage. Congress first directed Reclamation to look at the feasibility of raising Shasta Dam in the 1980s. More recently, recognizing the need for increased surface water storage and the need to find funding mechanisms that work in today’s vastly overstretched federal budget, Congress passed the Water Infrastructure Improvements for the Nation (WIIN) Act in 2016 with broad bipartisan support and has appropriated $335 million for surface storage, providing $20 million for preconstruction activities to raise Shasta Dam, including additional environmental analysis and engineering designs. The Alliance, working with several of our California members, has been working on rebuttal arguments to recent flawed criticism of the proposed raise made by CalTrout and other environmental groups.

ii. **B.F. Sisk Safety of Dams and Dam Raise Projects**

Reclamation transmitted to Congress the *Modification Report for the B.F. Sisk Safety of Dams project* - the largest dam safety project in Reclamation’s history. Modernizing this structure will ensure the dam can safely and reliably deliver benefits while continuing to serve the CVP and the State Water Project. Reclamation later in the week released a draft Supplemental Environmental Impact Statement IS for a proposed raise of B.F. Sisk Dam for additional water supply in San Luis Reservoir. Reclamation is partnering with the San Luis & Delta-Mendota Water Authority on this project, which would be implemented in conjunction with the dam safety modification project.

iii. **Los Vaqueros Reservoir Expansion Project**

Reclamation also presented Congress with the *Final Feasibility Report for the Los Vaqueros Reservoir Expansion Project*. Reclamation partnered with Contra Costa Water District (CCWD) in the Bay Area on the project to increase storage capacity in the reservoir by over two-thirds, from 160,000 acre-feet up to 275,000 acre-feet. This expansion project, providing additional storage capacity on an existing footprint, would provide increased water supply reliability and operational flexibility to the Bay Area, the CVP, and Central Valley wildlife refuges.

The Family Farm Alliance has long advocated for raising Lake Shasta and other new storage projects in California and elsewhere in the West. The Alliance in 2014 released a report- prepared by Alliance staff, with input from agricultural irrigators, water managers, engineers and attorneys from throughout the Western U.S. – that poses reasoned responses to 20 questions that often pop up when policy makers discuss new Western water storage projects. Additional on-line storage to capture more water in wetter periods would improve water management flexibility, bolster the health of imperiled fish species, and better protect rural communities in future droughts.
d. **Excess Capacity D&S**

Reclamation in late 2015 drafted two Directives and Standards (D&S) related to: 1) calculating and adding “replacement cost” charges to excess capacity contracts; and 2) redirecting some of the revenue from these increased carriage contract or Warren Act wheeling rate charges. The Alliance “Excess Capacity” subcommittee participated in a series of teleconference calls in 2015 and 2016 with Reclamation officials to discuss the draft D&S. Ultimately, Reclamation announced in March 2016 that consideration of the D&S was suspended. Reclamation’s Denver Technical Services Center at that time indicated that the Bureau did not have any plans to bring this D&S back up. Reclamation discussions on this topic are starting up again, at least in the California-Great Basin region. We have followed up with the Commissioner’s office on this matter. Reclamation is now looking at other ways of looking at how incidental revenues could be used address extraordinary maintenance challenges and to pay off loans. A formal D&S review process will launched by Reclamation soon, and we’ll be apprised of those efforts.

e. **National Historic Preservation Act (NHPA) Compliance**

Reclamation is taking steps to simplify cultural resources compliance on canals and ditches. Reclamation is requesting that the Advisory Council on Historic Preservation, which oversees the federal historic preservation process, grant a “program comment” to document the historic significance of water distribution systems as a whole, instead of on a case-by-case basis. The “program comment” is an alternative approach to streamline compliance with Section 106 of the NHPA by reducing the repetitive nature of recording historic sites. It will also allow Reclamation to focus its cultural resource efforts on sites in the most need of further recording, protection and interpretation. Under the current process, whenever there is a federal action, there is a requirement to review the potential effect to all historic properties eligible for or listed on the National Register of Historic Places, irrespective of their abundance or purpose. This has the potential to add time and cost to proposed federal water projects. Over the next 45 days, Reclamation will be conducting public outreach and seeking public comment on the proposed ACHP program comment. To learn more or comment, visit [www.usbr.gov/cultural](http://www.usbr.gov/cultural).

4. **Department of Interior, U.S. Fish and Wildlife Service: Definition of “habitat”**

The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) have proposed a regulatory definition of the term “habitat” that would be used in the context of critical habitat designations under the Endangered Species Act (ESA). The new definition will be used to guide the designation of "critical habitat" under the ESA that is necessary to protect the existence of a listed species. It identifies habitat as "the physical places that individuals of a species depend upon to carry out one or more life processes. Habitat includes areas with existing attributes that have the capacity to support individuals of the species." As an alternative, the two agencies also solicited comments on a possible definition that "habitat includes areas where individuals of the species do not presently exist but have the capacity to support such individuals, only where the necessary attributes to support the species presently exist." The Alliance last Friday transmitted a comment letter to FWS, urging the agency to finalize this rule using the “depend upon” standard
for designating non-occupied critical habitat and to require the existence of necessary natural features in the land at the time of designation.

Western Governors Association requested that federal agencies and state wildlife managers “maintain a close working relationship” in its comments to FWS and NMFS about the proposed rule. The letter was signed by WGA Chair Oregon Gov. Kate Brown and Vice Chair Idaho Gov. Brad Little. In a letter last week to FWS Director Aurelia Skipwith, more than 100 House Democrats called the Administration’s proposal the latest in the “onslaught of environmental rollbacks that threaten the survival of our nation's wildlife”.

Just prior to receiving the congressional letter, the FWS announced yet another recommendation to narrow the definition of "habitat," this time to require that federal agencies consider, among other factors, the economic implications of designating new critical habitats prior to making such designations. FWS also last week proposed new ESA critical habitat rules that could make it easier to shrink future critical habitats designated under the ESA. Section 4(b)(2) of the ESA gives the Secretary of the Interior the authority to exclude any particular area from a critical habitat designation if the benefits of exclusion outweigh the benefits of inclusion for that area, so long as excluding the habitat will not result in the species’ extinction.

5. **Army Corps of Engineers: New Nationwide CWA Permits**

The U.S. Army Corps of Engineers (Corps) is proposing to reissue its existing Nationwide Permits (NWPs) and associated general conditions and definitions, with some modifications, and to issue five new NWPs. Two of those proposed new NWPs would authorize certain categories of mariculture activities (i.e., seaweed and finfish mariculture) that are not authorized by NWP 48. The agency is also proposing to divide the current NWP that authorizes utility line activities (NWP 12) into three separate NWPs that address the differences in how different linear projects are constructed, the substances they convey, and the different standards and best management practices that help ensure those NWPs authorize only those activities that have no more than minimal adverse environmental effects. Specifically, they are proposing to modify the current utility line NWP 12 to authorize only oil and natural gas pipeline activities. Two proposed new NWPs would authorize activities associated with the construction, maintenance, repair, and removal of electric utility lines/telecommunication lines and utility lines that convey water, sewage, and other substances. The fifth proposed new NWP would authorize discharges of dredged or fill material into jurisdictional waters for the construction, expansion, and maintenance of water reuse and reclamation facilities.

The Corps states that they are proposing these modifications in order to simplify and clarify the NWPs, reduce burdens on the regulated public, and continue to comply with the statutory requirement that these NWPs authorize only activities with no more than minimal individual and cumulative adverse environmental effects. The Corps is requesting comment on all aspects of these proposed nationwide permits once published in the Federal Register.
Meanwhile, Sen. John Cornyn (R-TEXAS) has introduced S. 4402 to stipulate that if the Corps and project proponents comply with all existing requirements and the Corps documents that each authorized activity would have no impact on listed species or designated habitat, then the ESA section 7 requirements are met. While the legislation is driven by the litigation over the Keystone XL pipeline, the bill would apply to all NWPs and industries.

6. **EPA/Corps: WOTUS Rule Guidance Replaces RGL 07-02**

EPA and the Corps have released four guidance documents on implementation of the “waters of the U.S.” (WOTUS) jurisdiction rule and are exploring guidance on the recent U.S. Supreme Court groundwater ruling in *County of Maui v. Hawaii Wildlife Fund*. In particular, their Ditch Memo would replace the Regulatory Guidance Letter (RGL) 07-02 related to the exemption for construction and maintenance of ditches and maintenance of drains under the Clean Water Act (CWA). Mark Limbaugh and I scheduled a virtual meeting with high-level representatives from EPA and the Corps to provide a brief overview of the recently finalized guidance memo. We’ll discuss this briefing on Friday’s ZOOM call.

7. **USDA Natural Resources Conservation Service: RCPP Funding**

USDA recently released the [FY 2020 Regional Conservation Partnership Program (RCPP)](https://www.nrcs.usda.gov/wps/portal/nrcs/main/naturalresources/conservationpartnership), which promotes coordination of National Resource Conservation Service conservation activities with partners that offer value-added contributions to expand the collective ability to address on-farm, watershed, and regional natural resource concerns. You may recall that the Alliance, through its participation in the Western Agriculture and Conservation Alliance, was intensely engaged in past Farm Bill negotiations that led to the formation of this program.

RCPP applicants must propose projects that generate conservation benefits by addressing specific natural resource objectives in a state/multistate area or address one or more priority resource concerns within one of the designated critical conservation areas (CCAs). Projects must be for land management, land rental, entity-held easements, U.S.-held easements, or public works/watersheds. Eligible applicants are agricultural or silvicultural producer associations, states, local governments, Indian tribes, farmer cooperatives, water districts, institutions of higher education, conservation districts, and other qualified organizations.

In FY 2020, up to $360 million is available to support awards ranging from $250,000 to $10 million through this program. Of the total available funding amount, 50 percent is dedicated to projects occurring in designated critical conservation areas (CCAs), and 50 percent is dedicated to state/multistate projects. Also of note, the Klamath Basin is now a CCA; the change was made essentially overnight to be effective for the current $360 million funding cycle. Applicants must provide any combination of cash and in-kind contributions to leverage the award; however, it is the funding agency's goal that applicant contributions at least equal the agency's investment in the project. Applications are due November 4, 2020.
DEVELOPMENTS IN CONGRESS

Mark Limbaugh reports that the Senate returns to Washington this week (the House is scheduled to return mid-month) with a list of must-pass bills including funding the government past September 30 and providing additional relief for the economic and health impacts of the COVID-19 pandemic. There are a limited number of days to legislate (no votes scheduled in October) and not much progress in the Senate on FY 2021 appropriations bills. So, Congress will need to pass a temporary continuing resolution (CR) this month to extend federal funding to at least December and prevent a government shutdown on October 1 ahead of the November elections. And, with negotiations stalled on a bipartisan COVID relief package, Senate GOP leaders are setting the stage for consideration of a slimmed-down package ($500 billion) of pandemic relief funding in September. However, Democrats seem to be sticking to a $2.2 trillion compromise offer they recently put on the table. The “skinny” GOP COVID bill would extend unemployment benefits, provide more small-business relief, grant liability protections to businesses and schools, and send $10 billion in emergency funds to the U.S. Postal Service to address delivery delays. Democrats are expected to oppose the measure.

After the election, Congress will likely introduce an FY 2021 omnibus appropriations package to wrap up work on FY 2021 spending bills. But, if the Senate, the White House or both change control and the House remains the same, Democrats may be disinclined to cut deals with the GOP on COVID relief, FY 2021 spending or any other legislation. Instead, they may put much work on the shelf until January, when the new Congress convenes, and Democratic nominee Joe Biden may be inaugurated. The House’s last scheduled day in session is December 10, while McConnell is targeting December 18 for adjournment. Beyond the COVID/funding bills, Congress at any time could also take up pending legislation related to infrastructure (highway/water resources), the National Defense Authorization Act, and energy policy between now and the end of the year.

8. Western Water and Infrastructure Developments

As previously reported, the House of Representatives has passed important legislation authorizing Corps programs. The Senate continues to consider several pieces of water and infrastructure legislation, some of which were highlighted at a July Senate subcommittee hearing where I delivered (virtually) testimony on behalf of the Family Farm Alliance. Mark Limbaugh and I have been working with Senate committee staff on finding ways to advance a Senate water package that would include a mix of demand management, new infrastructure, and aging infrastructure repair provisions. Other key water bills are discussed below.

- **Snow Water Supply Forecasting Program Authorization Act**

California Democrat Representative Josh Harder and Senator Dianne Feinstein last month introduced [H.R. 8041/S. 4530](https://www.congress.gov/bill/117th-congress/house-bill/8041), the *Snow Water Supply Forecasting Program Authorization Act* to establish an airborne snow observatory (ASO) and measurement program within the Department of the Interior. According to a [joint statement](https://www罹离子/science/2021/08/05/snow-water-supply-forecasting-program-authorization-act), without accurate readings water managers could be forced to unnecessarily release water from reservoirs, resulting in millions of dollars in financial...
losses. A previous program run by NASA is no longer in operation, leaving water managers without the public information they need to make smart decisions about their water supplies. The bill would establish a program, with Reclamation as the lead coordinating federal agency, and would authorize a total of $15 million for fiscal years 2022 to 2026. The Alliance’s support for this legislation was noted in the joint statement.

b. **Western Water Storage Infrastructure Act**

California Democrat T.J. Cox has introduced legislation to increase funding for surface and groundwater storage and water conveyance projects. The *Western Water Storage Infrastructure Act* would authorize Reclamation to partner with non-federal entities to spend up to $800 million for increased water storage, as well as provide cost-shared funding to repair key canals in California that have been damaged due to land subsidence from over-pumping of the local groundwater aquifers. The bill, [H.R. 8166](https://www.congress.gov/bill/116th-congress/house-bill/8166) has garnered broad water user support, including the Family Farm Alliance and many California and west-wide irrigation associations and districts, and extends provisions of the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, some of which may be deemed too controversial by the House Natural Resources Committee.

c. **WIFIA Improvement Act**

Rep. John Garamendi (D-CALIFORNIA) is planning to introduce the “WIFIA Improvement Act” in the coming weeks. This legislation would amend the *Water Infrastructure Finance and Innovation Act (WIFIA) of 2014* to:

- Provide a new 55-year loan term for WIFIA repayment, in addition to the current 35-year loan term. This lowers financing costs for projects with longer project lifecycles.

- Clarify that the WIFIA loans can indeed be used for the repair, replacement, and rehabilitation of “transferred works” owned by Reclamation but maintained by a local non-federal agency. The White House Office of Management & Budget and the Congressional Budget Office revised their guidance to make transferred works effectively ineligible for future WIFIA financing since they are now treated as “federal projects” that cannot get federal loans for budgetary/scoring purposes. This provision would reverse that.

WIFIA loans are available to public and private borrowers for a wide range of drinking water, wastewater, drought mitigation, and alternative water supply projects. The Family Farm Alliance is supportive of the WIFIA Improvement Act.

**ALLIANCE INITIATIVES**

9. **Climate Smart Agriculture**

The Alliance board of directors at its 2020 annual meeting supported its long-time policy of using climatic extremes and findings from its climate change report to advocate for “climate-smart”
agriculture and needed changes in Western water policy. Through our involvement on the Steering Committee of the North American Climate Smart Agriculture Alliance (NACSAA), we have been monitoring United National global climate talks over the past two years and bringing the voice of North American producers and land managers to the discussion table. NACSAA believes public policy should provide incentives for climate-friendly and common-sense farm improvements.

a. **NACSAA Webinar**

The Alliance last month was represented on a NACSAA panel which took a closer look at the recently released majority staff report from the House Select Committee on the Climate Crisis. The NACSAA webinar provided an opportunity for industry experts to share perspectives on the report’s recommendations regarding agriculture's role in taking on climate change. Patrick O’Toole participated in the webinar, and was joined by fellow presenters Ray Gaesser (representing Solutions from the Land, or SfL), Jeremy Peters (National Association of Conservation Districts), Brian Jennings (American Coalition for Ethanol) Roger Wolf (Iowa Soybean Association), NACSAA Chairman Fred Yoder; and SfL President Ernie Shea. On the webinar, President O’Toole explained that the relationship between water, biodiversity and farming in the West is a distinct, complex problem that appeared to be harder for the Select Committee to fully grasp, though he said there is promise. He also noted that effective water management requires watershed-level, public-private land management. Most habitat is on private lands, while federal forests help capture water in the system.

Pat and his wife Sharon recently wrote a guest opinion that was picked up by over a dozen Western newspapers, including the *Salt Lake Tribune*, titled “If you like birds and fish; hug a cow”. The opinion confronts the current public narrative that has become accepted that if more people — especially Americans — stop eating meat, the planet will magically improve.

b. **Sustainable Development Goals (SDG) White Paper**

Pat O’Toole and I are part of the team developing SfL’s Sustainable Development Goals white paper, which has forged consensus on the framework outline of the report and drafting is now underway. The report will offer a “farmers roadmap” for SDG attainment and is being written for an audience consisting of member states, policy makers, the research community, private sector partners, civil society and most importantly- farmers and the organizations that represent them. The report will include case studies of farmers using CSA systems and practices and hopefully a video series where the farmers we are featuring will showcase their operations on film. Pat and I recently put together a 3,000 word essay on water management and infrastructure needs associated with dealing with changing climate in the West for including in this white paper.

c. **Senate Democrats Climate Report**

Senate Democrats last month issued a 260-page climate report recommending trillions of dollars in investments and a wide-ranging federal plan to cut greenhouse gas emissions. In order to hit their “net-zero” greenhouse gas emissions goals, the report calls for increased federal regulation
and spending on climate amounting to at least 2% of gross domestic product (GDP), or about $400 billion per year based on current GDP estimates. The report is a product of the Democratic Special Committee on the Climate Crisis and could be viewed as a blueprint of Democratic thinking ahead of the 2020 election.

11. **Colorado River Initiative**

As previously reported, the state of Colorado is currently updating its State Water Plan. While the original plan provided some valuable information for the agricultural community, some agricultural water users – including the Colorado Ag Water Alliance (CAWA) – felt it was lacking in terms of goals related to agriculture. In their initial research and discussions with staff at Colorado State University’s Water Institute, CAWA learned that metrics related to irrigated agriculture are not common and tend to focus on delivery, efficiency, supply, consumptive use, etc. While there are certain metrics in those categories they are looking at, in general, there seems to be a large void when it comes to metrics that measure and articulate the communal and societal benefits (ecosystem services, erosion, open space, local food, local and rural economies, jobs, riparian habitat, alluvial aquifer recharge, etc.) of irrigated agriculture.

CAWA and other ag water interests often struggle, trying to convey the benefits of agriculture to regular citizens and those in the environmental and recreational community. They are thinking of putting together a document/report/white paper on trying to categorize and get some initial steps towards how to even measure and possibly estimate some of those metrics. They are interested in coordinating with the Family Farm Alliance on this effort. On our last ZOOM call, participants agreed that it is important for the Alliance to be involved in this effort. I notified CAWA staff of our interest, and await their response.

12. **COVID-19 Pandemic Response**

Mark Limbaugh and The Ferguson Group have been closely monitoring the federal response to the pandemic. In recent months, I’ve participated in several briefings, describing how Western agriculture has been impacted by the government response, and summarizing the Alliance’s work. That work has primarily entailed advocating that any infrastructure stimulus package include Western water provisions, and working to ensure that the irrigation industry be considered essential. Briefings have been provided in ZOOM sessions hosted by the Idaho Water Users Association, Tri-States (IDAHO, OREGON, and WASHINGTON), Colorado Water Congress, Pacific Power community liaisons (OREGON), federal and state conservative policy interests and think tanks, including the Heritage Foundation, and others.

The Senate Energy and Natural Resources (ENR) Committee conducted a hearing in July on the COVID-19 pandemic. While the hearing focused primarily on impacts associated with closures of public lands like national parks, campgrounds, Doug Kemper of the Colorado Water Congress also addressed challenges related to water supply. Doug’s testimony included a section prepared
by the Alliance that addresses on-the-ground impacts of the pandemic to Western agriculture.

A new report released Aug. 26 by the American Society of Civil Engineers and the U.S. Water Alliance’s Value of Water Campaign calls for more funding and policy changes to support water and wastewater infrastructure investment, saying such moves could help pull the nation out of the current recession brought on by COVID-19. According to the report, “The Economic Benefit of Investing in Water Infrastructure,” local, state and federal funding streams are meeting just a fraction of the billions needed each year to replace the nation’s water infrastructure. The Alliance, California Farm Bureau Federation and Western Growers earlier this year crafted a letter to Congress and the White House calling for similar attention on Western agricultural water infrastructure. That letter was signed on to by over 150 organizations.

13. **2020 Virtual Farmer Lobbyist Trip**

This year’s annual farmer lobbyist "trip" will be of the "virtual" variety. We are looking at conducting a series of on-line "meetings" with high-level Trump Administration officials, Congressional Members and committee staff. These will be scheduled over 2-3 consecutive days, sometime between September 21 and October 2. Key topics of discussion with the Congressional committees will be water legislation, including infrastructure and WIIN Act extension. Meetings with individual Members from Western states, will likely not be scheduled. Instead, the focus will be to try to get sessions set up with the key water and environmental committee chairs, ranking members and their staff. Meetings will also be set up with the Assistant Interior Secretary for Water and Science, Commissioner of Reclamation, and possibly their counterparts at USDA and EPA. We’ll likely not tackle appropriations requests, but focus on bigger picture issues. Mark Limbaugh’s crew is working on scheduling the meetings, and I’m also developing a summary of the key issues and talking points. We’ll share that information with you in the coming weeks.

**WESTERN WATER HOT SPOTS**

14. **Western Wildfires**

Soaring temperatures, high winds and widespread lightning strikes have sparked wildfires that have burned millions of acres, mostly in the western United States. The related, unusually high energy demands across the West – particularly in California – have also demonstrated hydropower’s integral role as a renewable, reliable, abundant, carbon-free source of electricity. As this report was being written, helicopter rescues were underway near Fresno and California's largest utility was cutting off power to more than 170,000 customers as intense heat, dry conditions and high winds fueled historic wildfires across the Pacific Northwest. Almost 1,000 fires have raged in California since mid-August, many sparked by lightning strikes. California already has set a record with more than 2 million acres scorched this year, with several weeks remaining in the core of fire season. Fires are raging in 15 Western states, and red flag warnings have been issued from the Northwest into the Rockies, as well. Hurricane-force winds and high temperatures catalyzed wildfires across Oregon and Washington state. Almost 250,000 homes and
businesses in the two states were without power.

Impacted agricultural producers have been working through various mandatory evacuation orders and warnings to accomplish what they need to on their farms. For example, the massive LNU Lightning Complex Fire in Northern California has burned through rangelands and destroyed miles of fencing, creating challenges for grape growers and livestock producers alike.

California Gov. Newsom, addressing the recent Democratic National Convention, said the series of wildfires ripping through his state should be proof to “climate deniers” that climate change is happening before their eyes. Others believe decades of fire suppression, expanding development, and inactive forest management – especially on federal forest lands - are the real culprits.

a. Impacts to the Power Grid

The enormous power demand - due in part to increased air conditioner use by millions of Californians last month- contributed to an imbalance in the demand for electricity in the Golden State, leading to rolling blackouts at a time when triple digit temperatures and COVID-19 restrictions had citizens sheltering in place. With an increased demand on the state's energy supply due to the steady intense heat, the California Independent System Operator began implementing rotating power outages to prevent a total blackout of the state's power grid. The *New York Times* highlighted the “stunning failure of planning, poor record keeping and sheer bad luck” of California’s electric grid managers to deal with power demand associated with the heat wave. The shortfall forced grid managers to order rolling blackouts at the same time wildfires were spreading across the state. Governor Newsom has criticized state energy regulators and has ordered an investigation into what went wrong this month in California.

b. The Important Role of Hydropower in Emergencies

When the wind dies down and the sun sets, renewable energy sources like wind turbines and solar arrays can no longer be relied upon to generate power. The *Times* story downplayed this angle, and suggested that California’s reliance on renewable energy was not a factor because the state was facing such a huge shortfall in generating capacity. However, hydropower dams throughout the West clearly demonstrated that they are a crucial part of the interconnected electrical grid in the western U.S. and provide the unique ability to respond almost immediately to system emergencies and changes in demand.

Reclamation responded to the unusually high energy demands across the western United States. Reclamation’s dams are positioned to quickly generate power during sudden or prolonged utility shortfalls, making energy available to balance the load and prevent outages. These shortages include heatwaves and fluctuations in wind and solar output. As temperatures hit records in California, power providers turned to sources in Nevada, Utah and Arizona to cope with the surge in demand across its electrical grid. Reclamation ramped up power production at Glen Canyon, Morrow Point, Hoover, Davis and Parker dams in response to California’s electrical emergency and to help stabilize the Western electrical grid. Reclamation’s CVP also maximized generation
and reserves to make more energy available during peaks as well as shifting pumping operations to off-peak periods to reduce system load. Pacific Northwest federal dams generated enough electricity to meet load requirements for the Columbia River Basin and sell surplus power to California via the Bonneville Power Administration.

c. **National Hydropower Day**

National Hydropower Day (Aug. 24) provided a recent opportunity for officials of Reclamation, the U.S. Department of Energy, and the Corps to come together at Hoover Dam to advance hydropower. The officials signed a Memorandum of Understanding to work together to identify and collaborate on hydropower technology research, development, and demonstration projects. The agencies will prepare an action plan that will consider the value of hydropower, workforce recruitment and training, water supply reliability, and optimizing environmental outcomes.

15. **Colorado River**

Arizona, Nevada and Mexico will again receive less water from the Colorado River next year under a set of agreements intended to help boost the level of Lake Mead, which now stands at just 40% of its full capacity. Reclamation recently released projections showing that Lake Mead will be at levels next year that continue to trigger moderate cutbacks in the two U.S. states and Mexico. Those reductions could eventually increase in the next few years if Lake Mead drops further. The estimates show the reservoir near Las Vegas will likely begin 2021 about 10 feet above a level that would trigger larger cuts. The reductions to Arizona and Nevada are part of a 2019 deal called the Lower Basin Drought Contingency Plan (DCP), which also calls for California to face cuts if reservoir levels continue to fall. Under a separate accord, Mexico will contribute next year by leaving some of its allotted water in Lake Mead. The cuts in Arizona are shrinking the amount of water that flows through the Central Arizona Project Canal, reducing deliveries for agriculture and eliminating water for “banking” and groundwater replenishment at facilities along the canal.

16. **Willamette River Basin (OREGON)**

A U.S. District Court for the District of Oregon judge has ruled that the Corps had illegally delayed putting measures in place at federal dams on the Willamette River in Oregon to protect salmon and steelhead species listed under the ESA. Plaintiffs argued that the Corps violated the ESA and other laws by failing to implement mitigation requirements included in the “Reasonable and Prudent Alternative” (RPA) in the 2008 ESA biological opinion, including fish passage at the dams. The Corps unsuccessfully argued that the delays in implementing the RPAs were caused by the need to conduct in-depth studies of the mitigation measures before beginning construction. The next phase in the litigation will be about what remedies the court may order the Corps to implement. The dams were built in the 1940s as part of the Willamette Valley Flood Control Project, which consists of 13 dams on the river and its tributaries.
17. **Klamath Basin (CALIFORNIA / OREGON)**

Last month, the House Natural Resources Subcommittee on Water, Oceans and Wildlife (WOW), held a virtual forum on the status of the proposed removal of several privately owned dams on the Klamath River. WOW Subcommittee Chairman Jared Huffman (D-CA) pressed the dam owner PacifiCorp on the status of a settlement to remove four PacifiCorp owned dams on the Klamath River in Northern California and southern Oregon after a recent order from the Federal Energy Regulatory Commission (FERC) that would continue to hold PacifiCorp liable for the dams until they are removed. PacifiCorp entered into a settlement with the states and tribes to transfer ownership of the dams to another entity for their removal after calculating that the cost of FERC relicensing was more than the cost of removal. Chairman Huffman reiterated in the forum that the dams have had a negative impact on the river's threatened salmon runs and to local tribes. The PacifiCorp witness stated the company continues to view dam removal as a potential "outcome" but that the recent FERC requirement is "another setback" as it has changed the conditions of the settlement by not allowing the company to shield their ratepayers and stockholders from the liability for dam removal. Removing the four dams is expected to cost about $450 million. PacifiCorp has agreed to pay $200 million, and the project will get $250 million from a 2014 California water bond.

**ADMINISTRATIVE AND MISCELLANEOUS**

- The contract for Jane Townsend to coordinate fundraising activities was executed last month. Jane will officially start her duties this month.

- General Counsel Norm Semanko has made great progress on getting the Alliance trademark re-registered. He contacted one of his partners who does trademark law, and she filed with the patent office on August 4th. We expect action in the next 6-9 months.

- On August 24, the Proceedings of the National Academy of Sciences published an article called “The Global Value of Water in Agriculture.” It highlighted that the value of water is hard to determine because of the absence of water markets to price it accurately, with only seven countries (including the United States) where water markets and trading of water rights can be found. The goal of the study was to develop an economic model to determine the value generated by water in irrigated agriculture.

- *Reuters* reports that a new report from the World Resources Institute says that 17 countries face “extremely high” levels of water stress, while more than 2 billion people live in countries experiencing “high” stress. With an ever-increasing human population, water shortages are already occurring in many areas and are only expected to get worse. The *American Chemical Society* reports that researchers have now estimated the freshwater supply and demand of about 11,000 water basins across the globe, determining that one-fourth of freshwater consumption exceeds regional capacities.

*I appreciate all the helpful input I have received from many of you in the past month. Please do not hesitate to contact me if you have any questions about this report.*
September 10, 2020

The Honorable Gavin Newsom
Governor of California
State Capitol
Sacramento, CA 95814

Subject: Request for Signature on Senate Bill 559

Dear Governor Newsom:

On behalf of Friant Water Authority (FWA), I am submitting this letter to request your signature on Senate Bill (SB) 559, introduced by Senator Melissa Hurtado on February 22, 2019. As passed by the Legislature, SB 559 directs the California Department of Water Resources to submit a study to the Legislature that reports on progress to secure federal funds for the Friant-Kern Canal Middle Reach Capacity Correction Project (Project) and recommends a potential State investment, among other requirements.

The Friant-Kern Canal provides surface water to more than 1 million acres of the world’s most productive agricultural land, 15,000 farms, and multiple cities, including California’s fifth-largest city, Fresno. Additionally, it delivers water used for groundwater recharge that is critical for sustaining the supplies of nearly all of the small or rural communities on the eastside of the San Joaquin Valley, including about 50 disadvantaged communities. Groundwater overdraft is causing massive land subsidence in the San Joaquin Valley, reducing the ability of regional and local canals like the Friant-Kern Canal, Delta-Mendota Canal, and California Aqueduct to deliver water.

The Project aims to restore a portion of the Friant-Kern Canal’s conveyance capacity that has been lost due to subsidence. As you may know, by April 2017, the canal had lost 60% of its original conveyance capacity in the lower third of the structure. This prevents between 100,000 acre-feet and 300,000 acre-feet of water from being delivered annually. This water would otherwise have been used for irrigation, for delivery to communities, or to recharge critically-overdrafted groundwater aquifers within the Friant service area.

There are not only a broad and diverse set of interests that would benefit from this project, but the underlying cause of the problem we’re trying to fix is also very diverse and complex. Because of this, we have been working diligently with our local and federal partners to develop a broad mix of public cost-sharing responsibilities. A State contribution to this project as part of the overall cost-sharing would be very meaningful to helping this project be a success. The federal government anticipates paying for about half of this in dedicated funding or financing, but the funding will
require a matching non-federal cost share. This means that a State investment could be a critical component of ensuring the federal government contributes as much as it can to fix the canal. FWA’s members districts are also looking to commit a significant amount to the Project, and we continue to have discussions with local agencies about how to increase the local cost-share, ensuring that those who benefit from the canal or who may have had a role in damaging it will pay the cost to fix it.

The consequences of letting the Friant-Kern Canal’s conveyance constriction go unaddressed are severe. A permanent reduction in capacity will worsen existing drinking water supply and water quality challenges for communities who rely on groundwater supplies made possible by the canal. Additionally, even if as little as 50,000 acres of land is retired in Tulare and Kern counties as a result of this problem, we estimate that it could result in a permanent loss of more than 2,500 jobs in Tulare and Kern counties combined, with more likely statewide. With implementation of the Sustainable Groundwater Management Act ramping up in the San Joaquin Valley, we collectively need more – not less – capacity in our regional canals to deliver surface water when it is available.

Thank you for your consideration and your leadership on water issues. Alexandra Biering, FWA’s Government Affairs and Communications Manager, is available at (916) 628-0431 or abiering@friantwater.org to answer any questions you may have on SB 559.

Sincerely,

Jason Phillips
Chief Executive Officer

CC:
Rachel Wagoner, Deputy Legislative Secretary, Office of the Governor
Wade Crowfoot, Secretary, California Natural Resources Agency
Karla Nemeth, Director, California Department of Water Resources
Senate Bill No. 559

Passed the Senate August 31, 2020

Secretary of the Senate

Passed the Assembly August 30, 2020

Chief Clerk of the Assembly

This bill was received by the Governor this _________ day of _____________, 2020, at _____ o’clock ___м.

Private Secretary of the Governor
CHAPTER ______

An act to add and repeal Section 140.5 of the Water Code, relating to water.

LEGISLATIVE COUNSEL’S DIGEST


Under existing law, the United States Bureau of Reclamation operates the federal Central Valley Project and the Department of Water Resources operates the State Water Project to supply water to persons and entities in the state. Existing law requires the Friant-Kern Canal to be of such capacity as the department determines necessary to furnish an adequate supply of water for beneficial purposes in the area to be served by the canal.

This bill would require the Department of Water Resources to report to the Legislature, no later than March 31, 2021, on federal funding approved by the United States Congress in its 2021 Congressional Budget Resolution and related appropriations bills or otherwise provided to the Friant Water Authority or other government agency to restore the capacity of the Friant-Kern Canal, as specified. The bill would require the department to include in its report a proposal for the state to pay a share of the project cost, not to exceed 35%, and how the money will be spent.

This bill would make these provisions inoperative on March 31, 2025, and would repeal them as of January 1, 2026.

The people of the State of California do enact as follows:

SECTION 1. Section 140.5 is added to the Water Code, to read:

140.5. (a) The department shall report to the Legislature, in compliance with Section 9795 of the Government Code, on or before March 31, 2021, on federal funding approved by the United States Congress in its 2021 Congressional Budget Resolution and related appropriations bills or otherwise provided to the Friant Water Authority or other government agency to restore the capacity
of the Friant-Kern Canal, including whether the restoration is to
original design capacity or a different capacity.

(b) The report shall include a proposal for the state to pay a
share of the project cost, not to exceed 35 percent of the total cost,
and how the money will be spent.

(c) Pursuant to Section 10231.5 of the Government Code, this
section shall become inoperative on March 31, 2025, and, as of
January 1, 2026, is repealed.
Approved ______________________, 2020

__________________________
Governor
September 4, 2020

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Dear Mr. Orvis, Ms. Casillas, and Mr. Walden:

On behalf of Friant Water Authority (FWA), thank you for the opportunity to provide comments on the proposed redlines for the 1993 Guidelines for Central Valley Project Improvement Act (CVPIA) implementation that were distributed on August 6, 2020. We appreciate the Bureau of Reclamation’s (Reclamation) efforts over the past year to address some of the remaining unresolved aspects of CVPIA and provide meaningful updates to the guidance for implementing it. We are providing the following comments for your consideration:

1. **Removal of “Contract” and “Contractor” Definitions.** There are a number of different types of contractors within the Central Valley Project (CVP). It seems odd to retain only the definitions for “Exchange Contract” and “Exchange Contractors,” particularly because the document later refers to “Friant Contractors,” “Settlement Contractors,” and others. FWA appreciates that Part A’s initial reference to consistency with terms in the Reclamation Manual is meant to avoid having different definitions floating throughout Reclamation guidance documents, but the inclusion of some definitional terms and omission of others is confusing. Deleting these definitions may result in unintended consequences. At a minimum, an explanation as to why the definitions are being deleted here should be somehow memorialized to provide an administrative record of Reclamation’s intent. We also note that even
though several of the definitions are being deleted, these terms are still included in later sections of the guidelines.

2. **Clarity on Collection and Deposit of Charges.** The concluding paragraph of Part B(1) is unclear as to Reclamation’s intent. As currently drafted, this section could be read to establish that Reclamation will collect all future CVPIA charges (not merely the penalties, interest, etc. for late payments) and deposit those amounts in the general fund of the U.S. General Treasury rather than specifically the Restoration Fund. It is our view that such an outcome may not be consistent with the CVPIA itself. We recommend this language should be revised to remove “and charges required by this Act” or to otherwise clarify that CVPIA charges outside of penalties, etc., will be deposited into the Restoration Fund.

3. **Unsure of Reason Class 1 and Class 2 Contracts are Specifically Mentioned in Discussion of Water Service and Repayment Contracts.** We are unsure why Class 1 and Class 2 Water are being specified in Part E(1). All Friant Division contracts (whether they are Class 1 only, Class 2 only, or have both Class 1 and Class 2) are either a repayment contract or a water service contract, so they are included in those terms. Additionally, as written it seems to indicate all Friant Division contracts are repayment contracts. That is not the case as not every Friant Division contractor has converted their water service contract to a repayment contract.

4. **Consistency with Existing Direction on Collection of the Friant Surcharge.** Part F(4) updates the section on the Friant Surcharge to reflect changes in its collection under Public Law 111-11, the San Joaquin River Settlement Act (Settlement Act). Please ensure that any portion of the guidelines that address scheduled or discretionary changes to the Friant Surcharge are completely consistent with the actual language in the Settlement Act or otherwise reference the relevant portions of the Settlement Act in which changes to the Friant Surcharge are addressed, in their entirety.

5. **Annual Financial Reports to Congress.** Part K(2) describes the annual financial reports to Congress on CVPIA collections and expenditures, including that the reports should contain “All deposits made to the Restoration Fund during the prior fiscal year including the source(s) of each deposit.” As FWA has said to Reclamation in both formal and informal venues related to CVPIA, we encourage Reclamation in these reports and elsewhere to provide a more comprehensive and detailed annual accounting of all CVPIA receipts by contractor.

Sincerely,

Jason Phillips
Chief Executive Officer
Friant Water Authority
AGENDA REPORT

DATE: September 14, 2020

TO: Board of Directors

THROUGH: Jason Phillips, Chief Executive Officer

FROM: Douglas DeFlitch, Chief Operating Officer

SUBJECT: Jones Pumping Plant Rewind Project Public Financing Discussion

SUMMARY:
San Luis Delta Mendota Water Authority (SLDMWA) has been in the process of rewinding the 6 pumps at the Jones Pumping Plant (JPP). Two pumps have previously been completed; the first pump was financed by the USBR on a 15-year repayment term in FY 2018. The second pump was self-funded through the OM&R Budget in FY 2019.

In a recent (second) repayment agreement the USBR has agreed to finance up to $12.7M towards 2 additional pumps on a 23-year repayment term (one of which was started in FY-20), leaving 2 pumps remaining to finance by SLDMWA.

SLDMWA’s preferred option to accomplish financing for their two-pump obligation is through a WIFIA Loan for which they have been invited to apply. They have applied and the application is currently being reviewed and the due diligence process is underway by the EPA. It is still not certain that the loan can be finalized as the JPP is a Federal facility and the WIFIA Program currently does not allow for loans to do work on Federal assets.

To ensure continuity of construction, SLDMWA has chosen to pursue a backup for the WIFIA loan through a Public Bond. SLDMWA through is recommending those public bonds be issued not to exceed $15M for a 25-year term. SLDMWA Finance and Administration Committee (FAC) of which FWA has a seat, is being asked to forward a draft resolution (attached) to the SLDMWA BOD moving the Public Bond obligation forward.

DISCUSSION:

Friant Water Authority (FWA) staff has done an analysis (summary attached) and based on figures currently available it looks like the Public Bond route is a potentially the most expensive option. Total Project costs, for the 2 pumps, are estimated at $12.4M. Total repayment costs are estimated to be more than $18M through the Public Bond process. The finance costs themselves closely equate to the costs of an additional pump rewind. The Friant Division’s total costs, (estimated to be a 40% share), would be approximately $4.96M for project costs (based on self-funding) and finance costs of $2.54M for a total of $7.5M should Public Bonds be pursued with an assumed interest rate of 4.5%.

If a debit repayment option is chosen, FWA staff believes it would be prudent to continue to pay down the principle on this debit by applying any potential refunds received from OM&R overpayment on an annual
basis. While we realize there is no guarantee of refunds now or in the future, as a matter of principle consideration should be given prior to returning overpayment.

**ALTERNATE OPTIONS:**

Self-funding could be considered as an alternative. While we recognize the significant cost outlay, there are at least two reasons this option may be advantageous; it is the lowest cost alternative and it has the potential to avoid potential adverse impact to a district’s ratio of debt/worth.

Another alternative could be to not look for a back-up plan, and instead rely solely on the risk WIFIA loan process. While a much more attractive loan at 1.48% up to 30 years, there still would be a cost associated with financing. It is a risky option, that’s why the SLDMWA BOD asked for staff to look into other alternatives.

**RECOMMENDED ACTION:**

None.

**SUGGESTED MOTION:**

None.
RESOLUTION PROVIDING FOR THE ISSUANCE OF REVENUE BONDS TO FINANCE A PORTION OF THE COST OF EXTRAORDINARY MAINTENANCE TO THE JONES PUMPING PLANT, AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the San Luis & Delta-Mendota Water Authority (the “Authority”) operates and maintains certain Delta Division and San Luis Unit facilities of the Central Valley Project pursuant to a Transfer Agreement with the United States acting through the Department of Interior Bureau of Reclamation (“Reclamation”); and

WHEREAS, the Board of Directors of the Authority (the “Board”) previously adopted Resolution No. 2020-454, a Resolution Providing for the Prioritization of Use for OM&R Revenues (the “Master OM&R Resolution”); and

WHEREAS, the Authority receives certain “OM&R Revenues” as defined in the Master OM&R Resolution from Water Delivery Contractors, Parties Entitled to Utilize or Receive Other Water, and Reclamation pursuant to the terms of the Transfer Agreement and from the Friant Water Authority pursuant to the Friant MOU (as all such terms are defined in the Master OM&R Resolution); and

WHEREAS, the Master OM&R Resolution provides for the issuance by the Authority from time to time of Operating and Maintenance Obligations, as defined in and in accordance with the Master OM&R Resolution; and

WHEREAS, the Board now desires to issue revenue bonds (the “Bonds”) to fund a portion of the cost of certain extraordinary maintenance at the Jones Pumping Plant which Bonds will constitute Operation and Maintenance Obligations in accordance with the Master OM&R Resolution; and

WHEREAS, the Board does hereby determine that authorizing (1) the issuance of revenue bonds to finance a portion of the cost of maintenance at the Jones Pumping Plant, (2) the execution of certain documents, and (3) all steps that are reasonably convenient or necessary to issue revenue bonds, does not constitute a project or projects under CEQA because the proposed actions fund continued operation and maintenance of existing facilities within established parameters and represent administrative activities of the Authority that will not result in direct or indirect physical changes in the environment (Section 15378(b)(5) of the CEQA Guidelines); further, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the CEQA Guidelines).

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS, THAT:

SECTION 1. Findings. The Board hereby specifically finds and declares that the actions authorized hereby constitute and relate to public affairs of the Authority and that the statements,
findings and determinations set forth above and in the preambles of the documents approved herein are true and correct.

SECTION 2. Indenture of Trust. The proposed form of Indenture of Trust in substantially the form attached hereto as Exhibit A, is hereby approved. The Chair and the Vice Chair of the Board and the Executive Director of the Authority or the written designee thereof (each an “Authorized Officer”) are each hereby individually authorized and directed to execute and deliver the Indenture of Trust with such changes, insertions and omissions as may be recommended by the Authority General Counsel or Stradling Yocca Carlson & Rauth, a Professional Corporation, as Bond Counsel (“Bond Counsel”), and approved by the Authorized Officer executing the same, said execution being conclusive evidence of such approval.

SECTION 3. Continuing Disclosure Certificate. The proposed form of Continuing Disclosure Certificate in substantially the form attached hereto as Exhibit B, is hereby approved. Any Authorized Officer is individually authorized and directed to execute and deliver the Continuing Disclosure Certificate with such changes, insertions and omissions as may be recommended by Authority General Counsel or Bond Counsel, and approved by the Authorized Officer executing the same, said execution being conclusive evidence of such approval.

SECTION 4. Purchase Contract. The proposed form of Purchase Contract with Citigroup Global Markets Inc., as underwriter in substantially the form attached hereto as Exhibit C, is hereby approved. Any Authorized Officer is individually authorized and directed to execute and deliver the Purchase Contract with such changes, insertions and omissions as may be recommended by Authority General Counsel or Bond Counsel, and approved by any Authorized Officer executing the same, said execution being conclusive evidence of such approval; provided, however, that in no event shall the aggregate principal amount of the Bonds exceed $15,000,000, nor shall the underwriting discount for the Bonds exceed 0.8%, nor shall the true interest cost of the Bonds exceed 4.5% per annum.

SECTION 5. Bonds. The Board hereby authorizes the sale and issuance of one or more series of Bonds in an aggregate principal amount not to exceed $15,000,000. The Bonds are being issued to finance public capital improvements and utility projects within the meaning of Government Code Section 6584, et seq., including without limitation Section 6599.3. The Board hereby finds and determines that issuance of the Bonds to finance such public capital improvements will result in significant public benefits within the meaning of Government Code Section 6586.

SECTION 6. Trustee. MUFG Union Bank, N.A., is hereby appointed to act as trustee under the Indenture of Trust.

SECTION 7. Good Faith Estimate of Costs. The Board acknowledges that the good faith estimates required by Section 5852.1 of the California Government Code are disclosed in Exhibit D, attached hereto, and have been made available to the public at the meeting at which this Resolution is approved.

SECTION 8. Bond Counsel. Stradling Yocca Carlson & Rauth, a Professional Corporation, is hereby reaffirmed as Bond Counsel to the Authority in accordance with the terms of the engagement letter on file with the Secretary.
SECTION 9. Bond Insurance and Reserve Surety. If any Authorized Officer determines that it will be advantageous to the Authority to purchase municipal bond insurance or other credit enhancement with respect to some or all of the Bonds or to purchase one or more reserve fund surety policies or other credit instruments for the benefit of any reserve fund established for the Bonds or to obtain a particular rating or ratings on all or a portion of the Bonds or to provide for the establishment and funding of a reserve fund for all or a portion of the Bonds, any Authorized Officer is hereby authorized to purchase such insurance or other credit enhancement and such reserve fund surety policies or other credit instruments at market rates and to take such other actions as may be necessary to obtain such rating or ratings or to provide for the establishment and funding of a reserve fund for all or a portion of the Bonds. Without limiting the generality of the foregoing, any Authorized Officer is hereby authorized to negotiate any and all terms of a commitment for such municipal bond insurance policy or other credit enhancement and such reserve fund surety policies or other credit instruments and to negotiate covenants of the Authority or approve such other changes to the proposed forms of the Indenture of Trust and the Purchase Contract as may be necessary or appropriate to obtain such municipal bond insurance policy or other credit enhancement and such reserve fund surety policies or other credit instruments or to obtain a particular rating or ratings on all or a portion of the Bonds or to provide for the establishment and funding of a reserve fund for all or a portion of the Bonds, in each case after consultation with the Authority’s Bond Counsel.

SECTION 10. Updated Disclosure Procedures. Updates to the San Luis & Delta-Mendota Water Authority Disclosure Procedures, adopted by the Board through Resolution No. 2019-443, attached hereto as Exhibit E, are hereby approved.

SECTION 11. Other Actions. Each Authorized Officer and the Treasurer of the Authority or the written designee thereof and any other proper officers of the Authority, acting singly, are each authorized and directed to do any and all things and to execute and deliver any and all documents and certificates which such officers may deem necessary or advisable in order to consummate the sale, execution and delivery of the Bonds, the delivery of the Indenture of Trust, the Continuing Disclosure Certificate, the Purchase Contract and otherwise effectuate the purposes of this Resolution, and such actions previously taken by such officers are hereby ratified and confirmed.

SECTION 12. Effect. This Resolution shall take effect immediately.

SECTION 13. Recitals. Each of the foregoing recitals is true and correct.
PASSED, APPROVED AND ADOPTED this 17th day of September, 2020, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

AYES:

NOES:

ABSENT:

APPROVED:

______________________________
Cannon Michael, Chairman
SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY

Attest:

______________________________
Federico Barajas, Secretary
*****

I hereby certify that the foregoing Resolution No. 2020-__ was duly and regularly adopted by the Board of Directors of the San Luis & Delta-Mendota Water Authority at the meeting thereof held on the 17th day of September, 2020.

Federico Barajas, Secretary
# Friant Water Authority

## Jones Pumping Plant Unit Rewind Project - Exchange Contractor Liability

### FWA Share %

<table>
<thead>
<tr>
<th>Costs</th>
<th>WIFIA Loan</th>
<th>Public Offering</th>
<th>Self-Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Units</strong></td>
<td>2.4</td>
<td>2.4</td>
<td>2.4</td>
</tr>
<tr>
<td>Construction</td>
<td>$11,758,430</td>
<td>$11,758,430</td>
<td>$11,758,430</td>
</tr>
<tr>
<td>USBR Oversite (Design Cost Included)</td>
<td>129,320</td>
<td>129,320</td>
<td>129,320</td>
</tr>
<tr>
<td>DHR PSA (Design Cost Included)</td>
<td>1,066,034</td>
<td>1,066,034</td>
<td>1,066,034</td>
</tr>
<tr>
<td>SLDMWA Labor</td>
<td>1,633,890</td>
<td>1,633,890</td>
<td>1,633,890</td>
</tr>
<tr>
<td>Application Fees (EPA) WIFIA</td>
<td>160,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Consultants &amp; Rating Agency WIFIA</td>
<td>138,800</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Interest Burden</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Totals After Interest</strong></td>
<td>$18,153,241</td>
<td>$19,176,729</td>
<td>$16,628,581</td>
</tr>
<tr>
<td>Effective Interest Rate</td>
<td>21.9%</td>
<td>31.5%</td>
<td>14.0%</td>
</tr>
</tbody>
</table>

### Order of Repair

<table>
<thead>
<tr>
<th></th>
<th>Scenario #1</th>
<th>Public Offering</th>
<th>Self-Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>$2,562,088</td>
<td>$2,562,088</td>
<td>$2,562,088</td>
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<tr>
<td>2</td>
<td>2,449,172</td>
<td>2,449,172</td>
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<tr>
<td>5</td>
<td>3,241,546</td>
<td>3,241,546</td>
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<tr>
<td>1</td>
<td>3,220,040</td>
<td>3,727,685</td>
<td>2,462,859</td>
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<td>4</td>
<td>3,266,351</td>
<td>3,782,194</td>
<td>2,498,872</td>
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<tr>
<td><strong>Subtotal - #1 &amp; #4</strong></td>
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<td>7,509,879</td>
<td>4,961,731</td>
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<tr>
<td>3</td>
<td>3,414,044</td>
<td>3,414,044</td>
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</tr>
<tr>
<td><strong>Totals After Interest</strong></td>
<td>$18,153,241</td>
<td>$19,176,729</td>
<td>$16,628,581</td>
</tr>
</tbody>
</table>

### Total Cost

<table>
<thead>
<tr>
<th>Costs</th>
<th>WIFIA Loan</th>
<th>Public Offering</th>
<th>Self-Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Units</strong></td>
<td>6</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Construction</td>
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<td>$29,396,076</td>
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<tr>
<td>USBR Oversite (Design Cost Included)</td>
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<td>323,300</td>
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<tr>
<td>DHR PSA (Design Cost Included)</td>
<td>2,665,086</td>
<td>2,665,086</td>
<td>2,665,086</td>
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<tr>
<td>SLDMWA Labor</td>
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<td>4,084,726</td>
<td>4,084,726</td>
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<tr>
<td>Application Fees (EPA) WIFIA</td>
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<tr>
<td>Consultants &amp; Rating Agency WIFIA</td>
<td>347,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Interest Burden</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Totals After Interest</strong></td>
<td>$45,383,102</td>
<td>$47,941,822</td>
<td>$41,571,452</td>
</tr>
<tr>
<td>Effective Interest Rate</td>
<td>21.9%</td>
<td>31.5%</td>
<td>14.0%</td>
</tr>
</tbody>
</table>

### Order of Repair

<table>
<thead>
<tr>
<th></th>
<th>Scenario #1</th>
<th>Public Offering</th>
<th>Self-Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>$6,405,221</td>
<td>$6,405,221</td>
<td>$6,405,221</td>
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<tr>
<td>2</td>
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<td>6,122,930</td>
</tr>
<tr>
<td>5</td>
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<td>8,103,864</td>
<td>8,103,864</td>
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<tr>
<td>1</td>
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<td>9,319,213</td>
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<td>4</td>
<td>8,165,877</td>
<td>9,455,485</td>
<td>6,247,181</td>
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<td><strong>Subtotal - #1 &amp; #4</strong></td>
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</tr>
<tr>
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<td>8,535,110</td>
<td>8,535,110</td>
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<tr>
<td><strong>Totals After Interest</strong></td>
<td>$45,383,102</td>
<td>$47,941,822</td>
<td>$41,571,452</td>
</tr>
</tbody>
</table>