


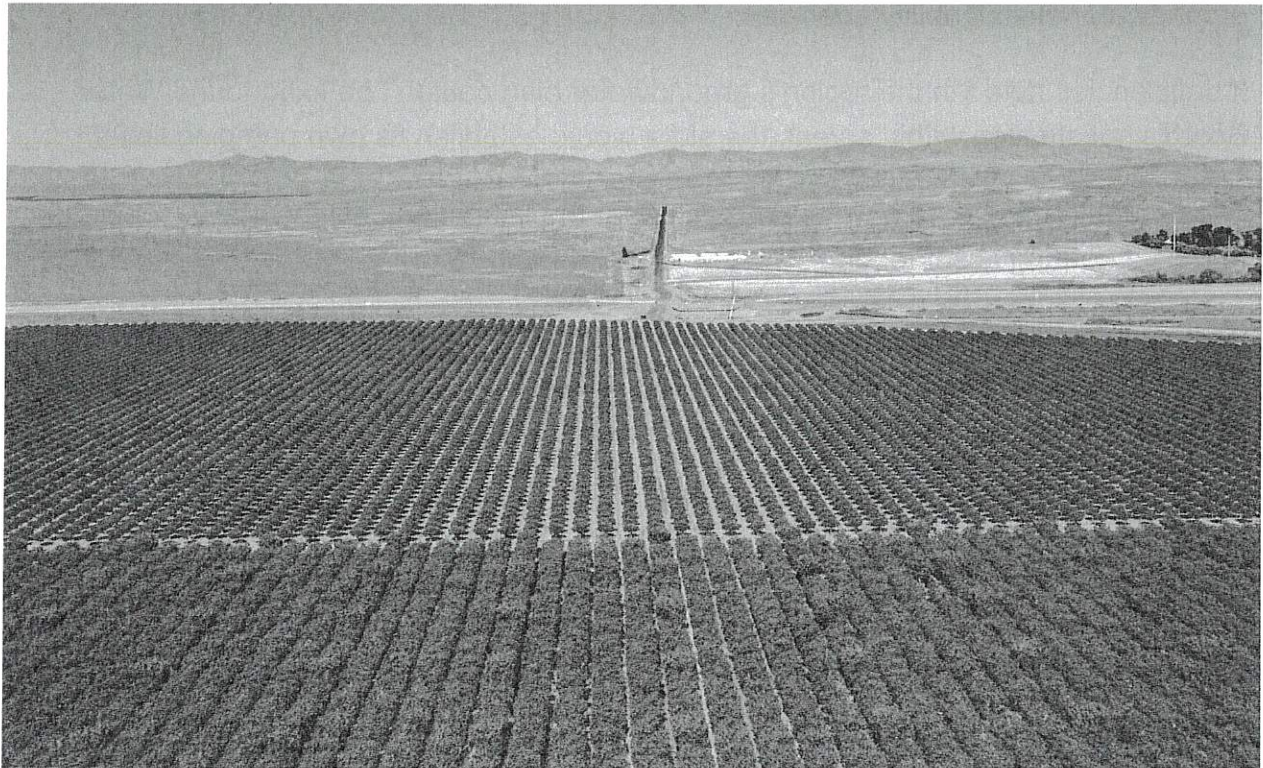
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# SJV WATER: Kings County judge rules against state Water Board in high-stakes groundwater case

 [mavensnotebook.com/2024/09/13/sjv-water-kings-county-judge-rules-against-state-water-board-in-high-stakes-groundwater-case/](https://mavensnotebook.com/2024/09/13/sjv-water-kings-county-judge-rules-against-state-water-board-in-high-stakes-groundwater-case/)

SJV Water News September 13, 2024 1 865

September 13, 2024



*By Lois Henry, Lisa McEwen, Monserrat Solis*

The state Water Resources Control Board exceeded its authority, operated under a web of “underground regulations” and made unlawful demands of Kings County water managers, according to a preliminary injunction that is a near total repudiation of state actions in its attempt to reign in excessive groundwater pumping.

“Clearly, the actions of this state agency have not been transparent, are only known to SWB, and there has been no review, analysis or ability to challenge their conduct,” Kings County Superior Court Judge Kathy Ciuffini wrote in the injunction issued Friday.

The ruling is part of a lawsuit brought by the Kings County Farm Bureau against the Water Board after the board placed the region, known as the Tulare Lake subbasin, on probation at an April 16 hearing.

“Today’s ruling highlights the validity of our claims and showcases our likelihood to win in court in the future,” Dusty Ference, executive director of the Farm Bureau, said in a statement.

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## Reprieve

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It also means a significant financial reprieve for Kings County farmers.

Probation would have meant farmers pumping 500 acre feet or more a year would have had to meter and register their wells at \$300 each, report extractions and pay \$20 per acre foot pumped. That is on top of what farmers already pay their water districts and groundwater sustainability agencies.

If deficiencies noted in the region's groundwater plan couldn't be fixed to the Water Board's satisfaction within a year, the state would establish its own pumping limits.

Those requirements are now all paused under the injunction until the trial is concluded. The next hearing is set for Jan. 10, 2025.

Edward Ortiz, a spokesman for the Water Board wrote in an email that the board disagreed with Friday's ruling, "which prevents the Board from taking action stemming from the probationary designation of the critically overdrafted Tulare Lake Subbasin."

Though Ortiz noted this ruling only applies to the Tulare Lake subbasin, water managers in other San Joaquin Valley subbasins facing probationary hearings are paying close attention.

The neighboring Tule subbasin comes before the Water Board on Tuesday. The Kaweah subbasin's hearing is scheduled for Jan. 7, 2025, then the Kern subbasin goes to the board on Feb. 20, 2025. The Delta-Mendota and Chowchilla subbasins will face probation hearings some time later in 2025.



Members of the State Water Resources Control Board, L-R, Sean Maguire, Laurel Firestone, Dorene D'Adamo, Nichole Morgan and Board Chair Joaquin Esquivel, listen to a presentation on the Kern subbasin in Bakersfield Aug. 29. Lois Henry / SJV Water

## **“Not transparent”**

In the Tulare Lake subbasin, the Kings County Farm Bureau had argued, among other things, that the requirements under probation would cause extreme hardship on Kings County farmers and were not justified under the Sustainable Groundwater Management Act.

Judge Ciuffini agreed, writing that the Water Board had not publicly adopted regulations giving clear direction for the processes it would use to: 1) place subbasins on probation; 2) determine if parts of the subbasin could be exempted; 3) adopt an interim pumping plan for subbasins; 4) administer the subbasin during probation; or 5) how a subbasin could get off probation.

In one example, Judge Ciuffini details her reasons for denying the Water Board's argument that the court doesn't have jurisdiction because the plaintiffs didn't first exhaust all administrative remedies, meaning to bring their concerns to the Water Board first.

Citing the Water Board's own resolutions on how farmers or water managers can appeal concerns, Judge Ciuffini writes that the instruction "...leaves more questions than answers. It is not transparent." For instance, the instructions don't include a named person to contact, nor contact information.

“There is no process to follow; nor does it give the right to appeal any decisions,” Ciuffini writes. “SWB failed to consider this and remained indifferent to plaintiffs’ struggles, which they created.”

### **“Underground regs”**

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The ruling goes on to state the Water Board adopted resolutions – such as a requirement adopted in 2021 to analyze the impacts of groundwater plans with particular consideration to impacts on communities of color – without a full public process and after plans were crafted in 2020 under previous rules. That and other similarly adopted resolutions, Ciuffini noted, created “underground regulations.”

Her ruling chides Water Board staff for ignoring a mandate to consider the so-called “good actor clause.” That clause states that if some groundwater agencies within a subbasin are found to be compliant with SGMA, they should be exempted from probation. But Water Board staff didn’t do the required analysis when two Kings County groundwater agencies requested exemption, the ruling states.

The ruling states the Water Board unlawfully required new or amended groundwater plans be submitted to the board when SGMA states new or amended plans should go back to the Department of Water Resources for evaluation.

### **Finding clarity**

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Eric Limas, general manager of the Lower Tule River and Pixley Irrigation District groundwater agencies in the Tule subbasin, hoped the ruling would “at least provide some clarity.”

“This is our first time through this, for all of us including the state board,” he said in reference to how SGMA should be implemented to bring over pumped areas into balance.

Other water managers were pleased on behalf of farmers who were facing increased fees and fines under probation.

“But with that, SGMA is not going away,” said Deanna Jackson, general manager of the Tri County Water Authority, which covers lands in both the Tulare Lake and Tule subbasins. “I do think it means that the state has to find some clarity around what the fees will be used for.”

She noted that any money taken out of the subbasins to pay those state fees is less money that can be used locally for needed programs such as fixing dry wells.

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**Executive Director**  
 Michael Wade

**TO:** San Luis & Delta-Mendota Water Authority Board of Directors  
**FROM:** Mike Wade, Executive Director  
**DATE:** September 9, 2024  
**RE:** Program and Activities Update

**Social Media Influencer Tour**

CFWC hosted one of its two annual social media influencer tours on August 21-23 in the Salinas Valley. The tour participants were Valerie Mitchell (@valerie.mitchell), Alison Needham (@agirl\_defloured), and Kate Ramos (@holajalapeno), all from Southern California. The tour covered many aspects of Salinas Valley agriculture, including a stop at Hartnell College's Ag Tech Center where the focus is on robotics and automation. We visited Huntington farms to see broccoli and celery harvest operations, with an added stop where they are cultivating wild bee populations.

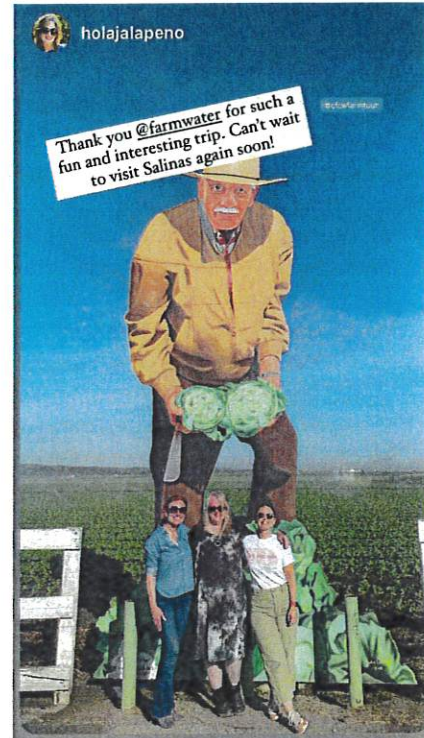
Next was a stop at Braga Farms for a first-hand look at leafy green processing for salads in a hyper clean room. Food safety requirements had everyone covered from head to foot and sanitized before entering the facility. The second stop for Braga Farms was a number of fields dedicated to regenerative farming research, or ways that crop production can be leveraged into carbon capture and soil health improvements. They're seeing other farms in the area begin to adopt these practices.

The next morning, the group visited Monterey County Water Resources Agency General Manager, Ara Azhderian. Ara is the former water resources director for the San Luis & Delta-Mendota Water Authority. If you know him, you know what a great host he is and the terrific job he did representing the water supply and water quality challenges on the Monterey Peninsula.

**Congressional Hearing**

The House Natural Resources Subcommittee on Water, Wildlife & Fisheries met on September 6 in Santa Nella to take testimony from witnesses on the topic Water Abundance: Opportunities and Challenges in California. CFWC provided data to speakers in advance of the hearing on exports, flowing, and groundwater impacts. The data, from federal and State sources, provided an accurate picture of the San Joaquin Valley's water supply over several decades, painting a picture of economic harm and threats to the nation's food security because of missed opportunities for food production.

In response to the hearing, CFWC issued a press release and produced social media content on Facebook and X, informing our followers and members of the public about the important message being delivered to the committee members.



*Continued*

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### **Pumping the Great Lakes to California**

CFWC and the Family Farm Alliance collaborated to draft an opinion piece on the success farmers in California and Arizona have achieved in self-managing their resources because of SGMA and other water management activities. Westlands Water District is cited in the essay for its success in managing groundwater recharge during the last year. The piece emphasizes local control over a top-down approach and says that the U.S. does not need a drastic, nationwide overhaul of water policy or the construction of transcontinental pipelines. Instead, localized, science-based solutions tailored to the unique needs of each region offer the most effective path to sustainable water management.

An outrageous opinion piece by Jay Famiglietti that appeared in the New York Times warned of the West's need for water supplies and threatened people in the Great Lakes region with the specter of giant pipelines carrying water to farmers and other users across the country. The essay was a warning that overuse of Western groundwater has resulted in the need for a national groundwater policy. The effort is being driven by the Biden White House's Council of Advisors on Science and Technology's (PCAST's) creation of the "Groundwater Working Group". Farmers across the West are concerned that tasking federal agencies to develop a national strategy on groundwater would inevitably result in yet another one-size-fits-all, top-down approach. On July 22, the working group hosted a workshop on this matter at Arizona State University (ASU) in Tempe. Now, the White House is working on a document that will reflect the findings of the Tempe workshop.

The piece is currently awaiting publication.

### **Cultivate California and ACWA**

CFWC gave presentations to both the ACWA Agriculture and Communications committees on its popular Cultivate California program. ACWA has been a dedicated supporter of the program for several years and wanted more information for its committee members and staff. Cultivate California delivered more than 200 individual social media posts, reels, and advertisements on Facebook, Instagram, and X during the 2023-2024 program year. The program's reach increased by over 2.68 million accounts over previous efforts in the 2022-2023 program year with a total of 6.45 million accounts reached for the year on 38 million impressions.

### **Colorado Water Congress**

I spoke at the Colorado Water Congress, similar to ACWA in California, with Dan Keppen of the Family Farm Alliance on the topic, "Ag Perspectives on the Colorado River and Food Security". The presentation was aimed at helping the audience understand the vital importance of California's Mediterranean Climate and its role providing specialty crops to the United States and our trading partners around the world. With global unrest, a history of supply chain disruptions, trade imbalance, and the risk posed by unsustainable foreign food production, we shared the importance of delivering reliable farm water supplies in the Western United States.

A similar presentation was scheduled this week for the California Ag Irrigation Association Conference in Pismo Beach.

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**MEMORANDUM**

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**TO:** SAN LUIS & DELTA-MENDOTA WATER AUTHORITY BOARD  
**FROM:** DAN KEPPEL, EXECUTIVE DIRECTOR  
**SUBJECT:** UPDATE REPORT  
**DATE:** SEPTEMBER 9, 2024

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This memo is intended to keep you apprised as to what is happening regarding policy issues the Family Farm Alliance (Alliance) is engaged in. In the past month, much of our efforts have focused on preparing for our farmer lobbyist trip to Washington, D.C. later this month, engaging in a troubling White House groundwater initiative, monitoring a new Department of Agriculture (USDA) drought resilience program, preparing for the return of Congress from August recess, public and media outreach, and organizational administrative matters. These issues and other matters important to our members are further discussed in this memo.

**BIDEN ADMINISTRATION**

**1. White House: “America’s Groundwater Challenges”**

In July, we transmitted a letter to the White House in response to the April 25, 2024 announcement of the President’s Council of Advisors on Science and Technology’s (PCAST’s) creation of the “Groundwater Working Group”. Our letter expressed concerns that tasking federal agencies to develop a national strategy on groundwater would inevitably result in yet another one-size-fits-all, top-down approach. This would add a new layer of conflicting regulatory interference in existing state groundwater management and undermine water rights and the flexibility of local water users. PCAST earlier this year invited public input on “America’s Groundwater Challenges”; the comment period ended on July 8.

The day after our letter was transmitted to the White House, we received an invitation from the Groundwater Working Group to participate in a one-day workshop to aid in the formulation of a policy recommendation report that will “propel government-wide action” on groundwater

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concerns. This event took place at Arizona State University (ASU) in Tempe on July 22 and concentrated on three pivotal themes: governance and incentives, data gaps and opportunities, and community empowerment and engagement. The organizers of the Tempe meeting admitted that there is distrust of the federal government getting involved in groundwater, particularly in the regulatory arena. There is stakeholder support for the government in a supportive fashion, such as providing on-the-ground resources. Those who participated believe the event organizers recognize that trust must be established with local stakeholders, who will oppose any sort of federal mandate.

The White House is working on some sort of document that will reflect the findings of the Tempe workshop, although details are unclear. We'll continue to monitor the progress of this effort and engage as appropriate. A few weeks after the event in Tempe, the *New York Times* ran this amusing column – [Will We Have to Pump the Great Lakes to California to Feed the Nation?](#) - authored by Dr. Jay Famiglietti, who also happens to be a professor at ASU. The author basically asserts that the Northeastern U.S. will have their water poached by Western states if we don't adopt a national water policy. California Farm Water Coalition's Mike Wade and I are working with some of our leaders in Arizona and California to develop a rebuttal to this piece. We think a jointly co-authored op/ed piece could help set a more reasonable tone at the national level and point to successes that support local control of groundwater.

Meanwhile, a reporter from the *New York Times* reached out to us regarding our July letter to the White House. His perception was that some in agriculture may be overreacting to the federal regulation threat resulting from the PCAST initiative. Alliance President Paul Orme pointed out the wording in the July 22 Workshop document where "regulation" is actually used, and the reporter appeared to be surprised. Paul also explained the sensitivity (particularly in Arizona) to the concept of federal groundwater management, as that state's history has been one of local to state management. Overall, the exchange with this reporter was cordial.

## 2. White House CEQ: Using Tech to Speed Up Permitting Processes

The Biden Administration's White House Council on Environmental Quality (CEQ) has released new recommendations to accelerate permitting for critical infrastructure by enhancing federal agencies' use of digital technology. CEQ Chair Brenda Mallory emphasized the Administration's focus on improving the permitting process, aiming to streamline it through advanced technological tools. The CEQ report highlights the need for a unified digital experience across agencies, improving efficiency and public engagement. Key recommendations include:

- Creating a data standard for NEPA (National Environmental Policy Act).
- Developing interoperable agency systems.
- Adopting shared digital tools.
- Automating data exchanges among agency systems.

CEQ's push for digital advancements responds to the debt ceiling deal with House Republicans, which mandated the study of technology in accelerating permitting processes. But despite these



advancements, the Administration faces resistance to its revised Phase 2 NEPA regulations, which aim to expedite reviews while considering climate change and pollution impacts on underserved communities.

### **3. Integrated Water Resources Science and Services Partnership**

The Bureau of Reclamation (Reclamation) is joining the Integrated Water Resources Science and Services, an innovative partnership of federal agencies, to address significant challenges in water management and science. The partner federal agencies include the U.S. Army Corps of Engineers, U.S. Geological Survey, National Oceanic and Atmospheric Administration and Federal Emergency Management Agency. The agreement will allow the participating agencies to work together on sharing water information more efficiently, developing better ways to estimate and map water conditions from floods to droughts, and collaboratively enhancing capabilities to reduce water management risk, increase resilience and support water resources adaptation in a changing climate. The goal of this MOU is to:

- better coordinate water resources programs within current authorities.
- enhance interagency and stakeholder communications.
- increase the exchange and availability of releasable data and information.
- enhance collaboration on water resources mapping and modeling.
- establish opportunities for joint projects, programs, facilities, and other collaborative science, services, and tools to support integrative and adaptive water resources management.

To learn more about this MOU, please visit <https://www.usgs.gov/iwrss>.

### **4. Recent Ag/Water Federal Spending Announcements**

The months leading up to a presidential election are typically seen by whoever is occupying the White House as an opportunity to showcase the accomplishments of the administration over the previous three years. This summer, dozens of events have been staged by leaders in the Biden-Harris Administration, who have distributed hundreds of millions of dollars of funding provided by massive spending bills passed by Congress in 2021 and 2022. A good portion of those dollars will benefit purveyors of water to Western irrigated agriculture communities.

President Biden signed the Infrastructure Investment and Jobs Act (IIJA) into law in 2021, which provides a total of \$8.3 billion to Reclamation over five years for water infrastructure projects, including rural water, water storage, conservation and conveyance, nature-based solutions, dam safety, water purification and reuse, and desalination. Since the IIJA was signed in November 2021, Reclamation has announced more than \$4.1 billion for more than 537 projects. Less than one year after the IIJA was signed into law, President Biden on August 16, 2022 signed the \$459 billion Inflation Reduction Act (IRA) – a massive health care, climate and tax bill – into law. Senator Kyrsten Sinema (D-ARIZONA) was the key vote on the IRA in the Senate, where she helped secure \$4 billion of funding for Reclamation, intended to address the Western drought

crisis. Among other provisions, the legislation provided \$20 billion to the U.S. Department of Agriculture (USDA) to provide farmers and ranchers climate-smart agriculture tools they need to address the climate crisis. The Family Farm Alliance was part of a five-organization steering committee that led over 220 water and agriculture organizations who played a critical role in securing the IIJA and IRA funding for Western water infrastructure and drought mitigation efforts. Both the IIJA and IRA laws collectively provided a once in a generation level of federal funding to support water infrastructure and drought needs in the West.

August was marked by several IIJA and IRA funding announcements by Reclamation and IRA investments by USDA. Other important IIJA and IRA funding investments are being made in the Colorado River Basin.

a. USDA Marks Two-Year Anniversary of IRA

Last month marked the two-year anniversary of the IRA being signed into law, and USDA used the occasion to highlight how that funding has increased access to lower-cost clean energy, and climate-smart agriculture and conservation while creating good paying jobs. The IRA provided unprecedented funding available for USDA conservation, forestry and climate-smart agriculture programs. For Fiscal Year 2023, NRCS released data showing an investment of over \$2.8 billion in financial assistance for conservation and supported more than 45,000 contracts. The agency released [state-by-state data](#) showing where investments went in FY23 for Farm Bill and IRA funding. For Fiscal Year 2024, which began October 1, 2023, the IRA provided \$1.65 billion for the [Environmental Quality Incentives Program](#), \$754 million for the [Regional Conservation Partnership Program](#), and \$472 million for the [Conservation Stewardship Program](#).

USDA's Natural Resources Conservation Service (NRCS) also announced [\\$90 million for 53 Conservation Innovation Grant](#) projects to support the development and adoption of new tools, practices and technologies to further natural resource conservation and improve agricultural operations on private lands, including targeted projects to address enteric methane. The agency also invested [\\$138 million for new climate-smart conservation easements](#) that farmers and ranchers use to conserve wetlands, grasslands and prime farmlands through the Agricultural Conservation Easement Program. The IRA included \$300 million to improve measurement, monitoring, reporting and verification of greenhouse gas emissions and carbon sequestration in climate-smart agriculture and forestry.

Building on the investments made in the IIJA, the IRA also made \$4.9 billion in additional funding available to the Forest Service to protect communities from wildfire and invest in climate smart forestry. For example, the IRA provided \$1.2 billion to reduce hazardous fuels and wildfire risk to communities, critical infrastructure, and natural resources across the country. Another \$170 million is provided to help conserve private forest lands.

b. USDA Seeks to Create an “Equitable Agricultural Future”

The Biden-Harris Administration on July 31 [announced it had issued payments](#) to eligible applicants under the IRA’s Discrimination Financial Assistance Program (DFAP). USDA provided \$2.4 billion to over 43,800 distressed direct and guaranteed Farm Service Agency (FSA) loan borrowers, helping them reach long-term stability and operate successful, thriving agricultural businesses. USDA also announced it would provide [\\$2 billion to 43,000 farmers](#), ranchers, and forest landowners who “experienced discrimination” in USDA farm lending programs prior to January 2021.

c. Reclamation IRA Funding for Drought Resilience

Reclamation last month announced the availability of over \$55 million in funding to help make water supplies in Western communities more resilient to the impacts of drought and climate change. The funding comes from the IRA and annual appropriations. This drought resilience funding will support a variety of projects designed to bolster water management flexibility and reliability. Projects include developing new infrastructure, upgrading existing infrastructure, recharging aquifers, advancing water recycling and treatment, strengthening innovative technologies to address water scarcity challenges for water users, and constructing domestic water supply projects that benefit Tribes and disadvantaged communities. This opportunity builds on the Department’s May announcement of \$147 million to help communities prepare and respond to water reliability challenges due to drought and other water scarcity concerns. Learn more about this opportunity, which will be open until October 7, at Reclamation’s [WaterSMART Drought Response Program page](#).

d. Reclamation IJA Funding Announcements

Reclamation last month announced an \$8.9 million investment from the IJA to protect watershed health and build more resilient water supplies across the West. Funding will support 6 new cooperative projects and 12 existing cooperative projects in 12 states, bringing together diverse stakeholders to develop solutions that meet local water management needs. Through the WaterSMART Cooperative Watershed Management Program, Reclamation encourages diverse stakeholders to cooperate to develop sustainable local solutions to address ecosystem and water management needs. Reclamation defines a watershed group as a grassroots non-regulatory entity that addresses water availability and quality issues within the relevant watershed. They must be capable of promoting the sustainable use of water resources and make decisions by consensus.

Reclamation last month also announced a nearly \$105 million investment for 67 water conservation and efficiency projects that will enhance drought resilience across the nation. The investment comes from the IJA and annual appropriations. Reclamation anticipates that the projects, located in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, Texas, Utah and Wyoming, will save more than 111,000 acre-feet of water annually. That’s enough water to supply approximately 447,000 people for a year. This builds upon [\\$140 million](#)

[announced](#) for water and energy efficiency projects last year. You can view a full list of funded projects on the [Bureau of Reclamation's Website](#).

Last but not least, Reclamation last week announced the availability of up to \$43.5 million from the IIJA for small water storage projects that will create new sources of water for communities in the West. Surface water and groundwater storage are essential tools in stretching the limited water supplies worsened by a changing climate. These projects will increase water management flexibility, making water supply more reliable and communities more resilient. The Small Storage Program, authorized by the IIJA, funds projects with a water storage capacity between 200 acre-feet and 30,000 acre-feet. The funding opportunity announcement can be found on [www.grants.gov](http://www.grants.gov) by searching for opportunity number R25AS00392. Please visit Reclamation's [Small Storage Program website](#) for more information.

#### **5. EPA: Farm, Ranch, and Rural Communities Federal Advisory Committee**

The U.S. Environmental Protection Agency (EPA) in July announced a solicitation for nominations to serve on its Farm, Ranch, and Rural Communities Federal Advisory Committee (FRRCC). This is a great opportunity for agricultural producers, allied industries, and/or rural community leaders located in their state to share their knowledge and expertise with EPA on issues and topics that impact them. In the past, the Alliance has formally endorsed candidates interested in similar types of appointments. Two weeks ago, Alliance President Paul Orme formally supported the nomination of Samantha Barncastle Salopek on this committee. Samantha is actively engaged in her family's farming operation but also is a prominent water and environmental attorney and the long time General Counsel of the Elephant Butte Irrigation District in New Mexico. She has also been an active participant in our Advisory Committee.

The deadline for EPA to receive nominations was September 5. For more information, please refer to the *Federal Register* notice posted by EPA on July 22, 2024. In a related matter, EPA's senior adviser for agriculture has left the agency. Rod Snyder, a key liaison for farmers and ranchers at EPA, helped set up the agency's agricultural affairs office. At the agency, he led outreach to the farming community and tackled tough issues such as the renewable fuels standard and pesticide regulations. His last day at EPA was August 14.

#### **6. DOI, Bureau of Reclamation: Draft D&S ACM 01-01**

As reported extensively over the past two months, Reclamation has proposed changes to the existing directive and standard (D&S) ACM 01-01, which outlines requirements for award and administration of financial assistance agreements. The draft document includes new definitions, more citations to the Code of Federal Regulation, and descriptions of new positions at Reclamation. DOI has tightened up some of its internal financial requirements, so Reclamation is doing the same. However, since this D&S does drive some marquee programs, such as WaterSMART, it is also of interest to Reclamation's customers. Some of our member districts and

some NGOs involved with securing Reclamation financial assistance have experienced long response times, detailed and extended budget reviews, and extended periods of time to get a financial award under contract, even for a modest planning grant with no ground-disturbing activities. We suggested to Reclamation that conducting a webinar on the draft D&S would allow for some of our more vocal members to weigh in on the timelines and potential efficiencies that “could” be addressed in the newly revised D&S.

In response to the Alliance’s request, Reclamation has agreed to extend the public comment period on the draft D&S by 30 days (closing on August 9, 2024) and to host a webinar for customers and stakeholders. The webinar was conducted on July 9, it lasted 25 minutes and just 35 total participants, 13 of which were Reclamation staff. We put together a brief comment letter, noted that our members continue to have concerns about the challenges with overall WaterSMART implementation, and took them up on their offer to do a more interactive workshop later this year on WaterSMART / IRA / etc. implementation issues.

#### **5. DOI, U.S. Fish and Wildlife Service: ESA Fish Listing Decisions...Good and Bad**

The U.S. Fish and Wildlife (USFWS) Service in June determined that the Rio Grande chub and the Rio Grande sucker do not warrant listing under the Endangered Species Act (ESA). Environmentalist group WildEarth Guardians petitioned USFWS to list the Rio Grande chub and Rio Grande sucker in 2013 and 2014, respectively. In 2016 USFWS determined that the fish may warrant listing, beginning an ESA decision deadline of one year. USFWS missed the deadline and WildEarth Guardians sued. A 2021 D.C. District Court decision agreed to give USFWS until June 2024 to issue a determination. As you likely know by now, USFWS on July 29 announced it was listing the San Francisco Bay-Delta distinct population segment of longfin smelt as endangered under the ESA. The longfin smelt was previously listed as threatened under the ESA and is also currently listed as threatened under California’s Endangered Species Act. The federal rule listing the longfin smelt as endangered will go into effect on August 29. [HERE](#) is the link to the Federal Register notice announcing the listing.

### **DEVELOPMENTS IN CONGRESS**

The U.S. Senate returned from August recess on September 5. The house returns on September 12. *POLITICO* reported over the weekend that House Speaker Mike Johnson rolled out the House GOP’s strategy for a high-stakes government funding fight, teeing up a showdown with Senate Democrats ahead of the Oct. 1 shutdown deadline. House Republicans on Friday [unveiled a stopgap](#) funding bill, (Continuing Resolution, or “CR”) that will fund the government at largely current levels through March 28. [Read the latest.](#)

#### **6. NEPA Reform**

House Natural Resources Chair Bruce Westerman (R-Arkansas) has unveiled draft legislation to overhaul NEPA, part of the ongoing debate in Congress on project permitting. Rep. Westerman

has been negotiating changes to NEPA with Rep. Scott Peters (D-CALIFORNIA), but the recently released [discussion draft](#) appears to be a Republican-only effort. The Committee will conduct a hearing on this matter this week. We provided input to Committee staff as this legislation was being crafted.

The legislation would make clear that NEPA forces agencies to consider the environmental impact of projects but doesn't dictate results. It would also limit the scope of reviews. That includes requiring agencies to only consider environmental impacts within the lead agency's jurisdiction and control. The plan would also place restrictions on new scientific research, according to [a fact sheet](#). Among other things, the bill attempts to raise the threshold for triggering NEPA reviews by specifying that a project getting federal funds is not enough to trigger a "major federal action." When it comes to litigation, only people and groups who participated in the comment process would be allowed to challenge a permit. Complaints would have to be related to those comments. And, lawsuits challenging categorical exclusions would be barred.

## **7. Senate ENR Subcommittee Legislative Hearing**

The Senate Energy and Natural Resources (ENR) Subcommittee on Water and Power is holding a legislative hearing this Wednesday to consider the following bills. The hearing will be held on Wednesday, September 11, 2024, at 2:30 p.m. in Room 366 of the Dirksen Senate Office Building in Washington, D.C. The purpose of this hearing is to receive testimony on the following bills:

- [S. 2927](#), to amend the Omnibus Public Land Management Act of 2009 to increase Tribal access to water conservation and efficiency grants, and for other purposes (Lujan);
- [S. 4016](#), to amend the Boulder Canyon Project Act to authorize the Secretary of the Interior to expend amounts in the Colorado River Dam fund, and for other purposes (Sinema);
- [S. 4242/H.R. 4385](#), to extend the authorization of the Reclamation States Emergency Drought Relief Act of 1991, and for other purposes (Hickenlooper/Lummis);
- [S. 4245/H.R. 5770](#), to amend the Omnibus Public Land Management Act of 2009 to reauthorize certain United States Geological Survey water data enhancement programs, and for other purposes (Lummis/Hickenlooper);
- [S. 4347](#), to provide for the conveyance of certain Federal land at Swanson Reservoir and Hugh Butler Reservoir in the State of Nebraska, and for other purposes (Fisher/Ricketts);
- [S. 4458](#), to reauthorize the Reclamation Rural Water Supply Act of 2006, and for other purposes (Rounds/Klobuchar);
- [S. 4576](#), to amend the Energy and Water Development and Related Agencies Appropriations Act, 2015, to reauthorize the Colorado River System conservation pilot program (Hickenlooper/Barrasso);
- [S. \\_\\_\\_\\_\\_](#), to establish a new Reclamation program to support collaborative positions at eligible partner organizations to help develop, fund, and implement water projects with benefits for water management and the environment (Hickenlooper);

- [S. \\_\\_\\_\\_](#), to amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge purposes (Risch);
- [S. \\_\\_\\_\\_](#), to authorize additional funding for the San Joaquin River Restoration Settlement Program (Padilla);
- [S. \\_\\_\\_\\_](#), to establish an interest-bearing account for the non-Federal contributions to the Lower Colorado River Multi-Species Conservation Program (Padilla);
- [S. \\_\\_\\_\\_](#), to establish the Integrated Water Management Federal Leadership Committee and to provide for improved drought resilience and dam safety (Padilla);
- [S. \\_\\_\\_\\_](#), to amend Public Law 89–108 to modify the authorization of appropriations for State and Tribal, municipal, rural, and industrial water supplies (Hoeven);
- [S. \\_\\_\\_\\_](#), to make certain modifications to the repayment period and payment of interest for the Fryingpan-Arkansas project in the State of Colorado (Bennet);
- [S. \\_\\_\\_\\_](#), to prohibit the use of amounts from the Upper Colorado River Basin Fund to implement a certain record of decision (Lee); and
- [H.R. 6062](#), to restore the ability of the people of American Samoa to approve amendments to the territorial constitution based on majority rule in a democratic act of self-determination, as authorized pursuant to an Act of Congress delegating administration of Federal territorial law in the territory to the President, and to the Secretary of the Interior under Executive Order 10264, dated June 29, 1951, under which the Constitution of American Samoa was approved and may be amended without requirement for further congressional action, subject to the authority of Congress under the Territorial Clause in article IV, section 3, clause 2 of the United States Constitution (Rep. Radewagen).

The hearing will be webcast live on the Committee’s website, and an archived video will be available shortly after the hearing concludes. We will develop written testimony for the hearing record on those bills of interest to the Alliance membership. Please let me know if you have any questions or would like to weigh in on any of these bills.

#### **8. WRDA Bill Heads to Conference after Senate Vote**

Just before the August recess, the Senate passed the Thomas R. Carper Water Resources Development Act (WRDA), [S. 4367](#), by unanimous consent, authorizing Army Corps of Engineers (Corps) water resources policies, studies and projects nationwide. This biennial legislation enjoys bipartisan support. The House had previously passed its version ([H.R. 8812](#)) in late July. Both chambers will now enter a conference committee to reconcile their versions. Congressional leaders aim to finalize the bill by October. The Senate's bill, named after retiring Senator Tom Carper (D-DE), mandates the Corps to initiate 13 construction projects to mitigate storm damage and enhance navigation, alongside 83 feasibility studies addressing diverse water challenges. Notable projects include flood risk reduction in the Washington metro area, flood resilience on Staten Island, and wetland restoration in Arizona. Key policy provisions, among others, include improving the Corps’ project evaluation and communication processes, managing dam operations for drought response, and developing climate-related models. Additionally, the bill addresses invasive species control and aims to expedite the completion of delayed projects.

Section 121 of the House version is based on legislation sponsored by Congresswoman Grace Napolitano (D-CALIFORNIA) that would establish water supply as one of the core missions of the Corps Civil Works Program. Section 121 would enhance work already underway to provide water supply and help prepare states, communities, and regions for future water supply challenges brought on by growing populations and climate variability. Section 121 specifically stipulates that it will not affect state water allocation or management, Corps authority under section 6 of the Flood Control Act of 1944, or section 301 of the Water Supply Act of 1958.

#### **9. ENR Clears Manchin-Barrasso Permitting Reform Legislation, DOI Nomination**

The Senate ENR Committee last month marked up the Energy Permitting Reform Act of 2024, [S. 4753](#), proposed by Chairman Joe Manchin (I-WV) and Ranking Member John Barrasso (R-WYOMING). The legislation received strong bipartisan support, passing with a 15-4 vote. Chairman Manchin stressed the importance of stakeholder input, compromise and bipartisan cooperation in achieving effective and lasting permitting policy reforms, noting broad support from various organizations, including the American Clean Power Association and the National Mining Association. He praised the committee's commitment to sensible policy amid a divided political climate, asserting that the bipartisan vote reflects the necessity of reliable, affordable, and clean energy. Additionally, the ENR Committee considered President Biden's nomination of Hon. Shannon A. Estenoz for Deputy Secretary of the Interior, which was favorably reported by a 16-3 vote and will now proceed to the Senate floor for full consideration.

#### **10. Western Senators Advance Drought Mitigation Recommendations**

On August 7, Senators Michael Bennet (D-CO) and Roger Marshall (R-KS) wrote asking Secretary of Agriculture Tom Vilsack to adapt the USDA's drought mitigation programs to provide sufficient resources to western farmers and ranchers. The letter included testimony and recommendations from producers, water managers, and state officials gathered at a field hearing held in Burlington, Colorado in June. The letter outlines recommendations for the Conservation Reserve Program (CRP), the Environmental Quality Incentives Program (EQIP), the Watershed and Flood Prevention Program (PL-566), research and data, and scaling voluntary water conservation programs.

Regarding EQIP, the letter reads: "The USDA must implement the EQIP water management entity provision that allowed the Natural Resources Conservation Service (NRCS) to enter contracts with entities such as irrigation districts, ditch companies, and groundwater management districts to implement voluntary regional-scale water conservation and efficiency improvements. Despite this authorization, NRCS has not widely utilized this new authority within western states, partly due to limited NRCS guidance on how best to implement these provisions in line with the statute and limited financial and technical resources."



The Alliance – working with the Western Agriculture and Conservation Coalition (WACC) - successfully advocated for the provision that allows irrigation districts to contract with NRCS on EQIP in the last farm bill. The August 7 letter also recommends modernizing PL-566 to meet increasing demands and unique western water challenges, which aligns with similar advocacy advanced by the Alliance and the WACC.

### **11. Committee Holds California Field Hearing on Water Issues and Challenges**

The House Subcommittee on Water, Wildlife and Fisheries Chairman Cliff Bentz (R-OREGON) and U.S. Rep. John Duarte (R-CALIFORNIA) last Friday hosted a field hearing titled, "Water Abundance: Opportunities and Challenges in California" at the Hotel Mission De Oro in Santa Nella. Specifically, this hearing focused on the regulatory and other challenges facing water supply deliveries for farms and communities, the impact this is having on them, and the opportunities to increase water supply and reliability in the Central Valley and across California. The field hearing was streamed live [here](#). We sent an e-mail blast out last Friday morning with hearing information and links to written testimony of the witnesses, including Alliance director William Bourdeau and Advisory Committee members Allison Febbo (Westlands Water District) and Jason Phillips (Friant Water Authority).

## **IN THE COURTS**

### **12. Environmentalists Begin Challenging Agency Decisions Using *Loper Decision***

Environmentalists, despite their public criticisms, are leveraging the Supreme Court's recent decision to overturn the *Chevron* deference doctrine to challenge the EPA and other agencies on matters like clean water permits and air quality compliance. The Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo* and *Relentless v. Department of Commerce* replaced the *Chevron* standard with the less-deferential *Skidmore* standard, meaning courts now only grant "respectful consideration" to agency interpretations. Environmental groups see this as an opportunity to argue that agencies' interpretations of statutes often do not meet congressional mandates or provide sufficient protections. One environmental group pointed out that environmental laws demand more stringent implementation than agencies have historically provided.

### **13. Hydropower Industry Challenges Biden Administration Over ESA Mitigation Rule**

Hydropower companies are challenging a new ESA rule by the Biden Administration, which mandates mitigation measures as part of obtaining a hydro license. Filed by the National Hydropower Association and the Northwest Hydroelectric Association, the lawsuit seeks to reverse this rule, arguing it is burdensome and unjustified. USFWS and NOAA Fisheries finalized this rule in May 2024 to strengthen ESA regulations. It requires hydropower projects to implement offsets to protect vulnerable species, a step beyond the previous policy that merely encouraged minimizing harm. The lawsuit contends that the agencies lack the authority to impose such a requirement, and that the agencies' interpretation of the ESA is incorrect. The hydropower industry

claims that the previous policy sufficed to minimize harm to protected species. USFWS and NOAA Fisheries defend the change, stating that the previous approach led to continued deterioration of species and their habitats. They argue that mandatory offsets are necessary to fully achieve the ESA's conservation goals. Environmental groups have expressed concerns about the rule, arguing that offsets are a less preferred and less reliable conservation method. The lawsuit is filed in the U.S. District Court for the District of Columbia, challenging the agencies' authority to enforce this new requirement.

#### **14. 6th Circuit Revives Kentucky's Legal Challenge of Biden WOTUS Rule**

A federal appeals court has revived Kentucky's legal challenge against the Biden Administration's final revised definition of "waters of the U.S." (WOTUS). The 6th U.S. Circuit Court of Appeals ruled that a lower court erred in dismissing Kentucky's lawsuit over the EPA's revised WOTUS rule. However, the court acknowledged that many of Kentucky's issues might be resolved following the Supreme Court's decision in *Sackett v. EPA*, which reduced protections for most U.S. wetlands and prompted the EPA to revise its rule. The court instructed Kentucky to either file a notice to initiate a new lawsuit, amend its current complaint, or drop the litigation. The judges involved in this decision were Stephanie Davis (a Biden appointee), and Julia Gibbons and Raymond Kethledge (both appointed by George W. Bush). Kentucky was the only state to lose its initial challenge against Biden's original March 2023 WOTUS rule. The 6th Circuit had previously halted the rule in Kentucky, aligning with other nationwide injunctions. The EPA has yet to comment on the ongoing legal matters.

### **ALLIANCE INITIATIVES**

#### **15. 2024 Farmer Lobbyist Trip**

I've previously reported that this year's farmer lobbyist trip will take place the week of September 23. That means Monday, September 22 would be a travel day, our meetings would be scheduled for Tuesday, Wednesday and Thursday morning, and Thursday afternoon and Friday (September 27) would be times for folks to fly home. This is a good time for our fly-in. There will be some distance between our event and the past spring's fly-ins, and Congress is in town before recessing prior to the election. So far, we have twenty farmer lobbyists from Arizona, California's Central Valley, Colorado, Idaho, Oregon, Washington and Wyoming committed to participate.

During our time in D.C., farmer lobbyists will advocate for Family Farm Alliance priorities, ideas and potential solutions for problems affecting irrigated agriculture in the West, including the ongoing Western drought and climate resiliency, implementation of the Bipartisan Infrastructure Law and the Inflation Reduction Act, the 2023/24 Farm Bill, national food security, aging water infrastructure, endangered species management, water conservation and management, clean water, forest health, payment for ecosystem services, and other pertinent topics.

## WESTERN WATER “HOT SPOTS”

Western drought conditions recently have been a mixture of improvements in the northwest and Four Corners areas and degradations in the desert areas of Nevada, Arizona, and California, plus isolated areas of the northern Rockies. It's quite likely that Summer 2024 will be deemed the hottest on record across much or most of the American Southwest, perhaps including Arizona, Nevada, California, and maybe Utah at a statewide level.

## ADMINISTRATIVE & MISCELLANEOUS

- Last month, Mike Wade (California Farm Water Coalition) and I accepted an invitation to the Colorado Water Congress summer meeting and presented a “tag-team” Ted Talks-style speech on food security and Colorado River irrigated ag challenges. Mike and I will be presenting again on this topic at the California Agricultural Irrigation Association's Fall Meeting in Pismo Beach this week. I'll be back in Colorado on September 20 to speak at the Colorado River District's Annual Water Seminar in Grand Junction. I've also got some upcoming virtual presentations I'll be making to the Tri State Water Users (IDAHO/OREGON/WASHINGTON) and Southeastern Colorado Water Conservancy District board of directors.
- Alliance Advisory Committee member Jeff Sutton recently took on a new position as general manager of Glenn-Colusa Irrigation District in California's Sacramento Valley. The Northern California Water Association posted a great blog about Jeff and his family ties to GCID. Check it out [HERE](#).
- A query on the chatbot that uses artificial intelligence is estimated to require at least 10 times more electricity than a standard search on Google, the [Los Angeles Times recently reported](#). AI is also thirsty for water, [calculates Shaolei Ren](#), associate professor of electrical and computer engineering at UC Riverside. The increasing consumption of energy and water by AI has [raised concerns in California](#) and around the globe. Experts have detailed how it could stall the transition to green energy while increasing consumers' electric bills and the risk of blackouts.
- Surprise! The Breakthrough Institute released a new report that further proves that environmental NGOs are intentionally delaying energy and public lands projects through litigation. NGOs instigated 72% of the total challenges. Of those, just 10 organizations initiated 35% and had a success rate of just 26%, merely 6% higher than the average for all types of plaintiffs. Read the full report [here](#).

*This is a quick summary of just a few of the issues the Alliance has been engaged in. Please do not hesitate to contact me at 541-892-6244 or [dan@familyfarmalliance.org](mailto:dan@familyfarmalliance.org) if you would like further information about what the Alliance is doing to protect water for Western irrigated agriculture.*

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# NEWS RELEASE: High-Speed Rail Authority and Grassland Water District Reach Settlement Agreement

August 30, 2024

**SAN JOSE, Calif.** – The California High-Speed Rail Authority (Authority) and the Grassland Water District, Grassland Resource Conservation District, and Grassland Fund (Grassland) have reached an agreement that releases Grassland’s potential California Environmental Quality Act (CEQA) claims regarding the Authority’s adoption of environmental review documents for the San Jose to Merced portion of the high-speed rail project.

The agreement fosters a collaborative partnership between Grassland and the Authority as it works to connect the high-speed rail system from the Central Valley to the Bay Area while further building on its commitments to avoid and reduce impacts in the sensitive Grassland Ecological Area.

*“This settlement reflects the hard work of state and local public agencies striving to protect natural resources and provide the public with new, state-of-the-art transportation that is clean, sustainable, and reduces our collective carbon footprint. This agreement further reflects our organizations’ understanding that the best way to deliver these services is through collaboration.”*

– Brian Kelly, Authority CEO

*“The Grassland entities have worked with the High-Speed Rail Authority for almost two decades to better anticipate and reduce the effects of the project on our important wetland complex. This settlement reflects an important milestone in achieving acceptable mitigation.”*

– Ric Ortega, Grassland’s General Manager


In sensitive wildlife areas along the planned high-speed rail corridor, such as Coyote Valley, Pacheco Pass, and the Grassland Ecological Area, the Authority has incorporated project elements to allow for wildlife movement and protect the natural environment in its Final Report/Environmental Impact Statement (EIR/EIS) (approved in 2011).


crossings, an avian enclosure, and noise barriers.

The settlement further commits the Authority and Grassland to a collaborative process during advanced design and construction in the Grassland Ecological Area, consistent with commitments in the Authority's Final EIR/EIS. The agreement provides additional environmental protections by including measures to address the impact of noise, visual disturbances, and wildlife movement by adding an extended sound wall near the Volta Wildlife Area, additional measures to reduce disturbance of wildlife during construction, and a process to consider the placement of the avian enclosure during advanced design.


The Authority and Grassland will also work in good faith to identify opportunities for conservation easements and other areas where mutual support would be beneficial, including, but not limited to, the pursuit of grant or legislative funding opportunities.

The Authority has begun work to extend the 119 miles under construction to 171 miles of electrified high-speed rail from Merced to Bakersfield. Since the start of construction, the Authority has created nearly 14,000 construction jobs, with more than 70 percent going to residents from disadvantaged communities.

For the latest on high-speed rail construction including the more than 25 active job sites underway in the Central Valley, visit [buildhsr.com](http://buildhsr.com). 

The following link contains recent video, animations, photography, press center resources and latest renderings: <https://hsra.app.box.com/s/vyvjv9hckwl1dk603ju15u07fdfir2q8> 

These files are all available for free use, courtesy of the California High-Speed Rail Authority.

Register to Vote 

REAL ID 

The California High-Speed Rail Authority makes every effort to ensure the website and its contents meet mandated ADA requirements as per the California State mandated Web Content Accessibility Guidelines 2.0 Level AA standard. If you are looking for a particular document not located on the California High-Speed Rail Authority website, you may make a request for the document under the Public Records Act through the Public Records Act page. If you have any questions about the website or its contents, please contact the Authority at [info@hsr.ca.gov](mailto:info@hsr.ca.gov).