January 18, 2022

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

The Honorable Brenda Mallory, Chair
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Dear Secretary Haaland, Secretary Vilsack and Chair Mallory:

The historic enactment of the *Infrastructure Investment and Jobs Act* (IIJA) provides a "once-in-a-generation" funding opportunity to support the modernization of our Western water infrastructure and restoration of our forested watersheds. The IIJA targets billions of dollars for the Bureau of Reclamation ("Reclamation"), the U.S. Forest Service ("USFS") and Natural Resources Conservation Service ("NRCS") and other funds that align with the solutions advanced by over 220 Western water, agricultural and urban organizations. Specifically, the IIJA includes:

1. $8.3 billion for Reclamation projects that will enhance water supply reliability across the West, including repairing aging dams and canals, building new surface and groundwater storage and conveyance facilities, funding water conservation and recycling projects, and improving watershed and ecosystem management;
2. $2.130 billion for forest ecosystem restoration projects, and inclusion of Senator Bennet's Joint Chiefs' Landscape Restoration Partnership between the Chiefs of the USFS and NRCS, which would improve the health and resilience of forest landscapes and grasslands across federal and non-federal land;
3. $618 million over five years for the NRCS Watershed Programs; and
4. $300 million to NRCS for the ''Emergency Watershed Protection Program'' to repair damages to the waterways and watersheds resulting from natural disasters.

Your agencies will play a critical role in the success of these funds. We have several key implementation concerns that we bring to your attention in this letter, including "Build America, Buy America" provisions, Reclamation's interaction with its water customers, the importance of working with local interests on restoration projects, and environmental compliance challenges.

**Build America, Buy America**

Our organizations have generally been very supportive of "Build America, Buy America", given the benefits this policy provides to American agricultural production. However, given the immense challenges faced in the West as it relates to a changing climate, catastrophic wildfire and ongoing drought, we strongly request that OMB, the Departments of Agriculture and Interior, and the White House Council on Environmental Quality (CEQ) work closely to ensure that guidance and implementation reflects the unique circumstances that guide Western water infrastructure projects as the Office of Management and Budget (OMB) works to develop guidance to implement the IIJA's Build America, Buy America mandates (§70914).

Given the extreme and exceptional drought continuing to be experienced in the West, the final rules should emphasize flexibility to avoid project delays or cost increases. We specifically request that you provide a general applicability waiver consistent with the law's public interest criterion to ensure that we can deliver on the Administration's commitment to modernize our water infrastructure to address climate resiliency and safe and reliable water deliveries to Western water users.

We appreciate the commendable work of our House and Senate champions who understood the need for, and worked tirelessly to secure, substantial investments in Western water supply priorities, including repairing aging dams and canals, building new surface and groundwater storage and conveyance facilities, funding water conservation and recycling projects, and projects that improve and protect fish and wildlife. It is now up to your administration to immediately clear the path for these projects. Congress will be watching, and delays in accessing or distributing funds could increase the risk that Congress will reallocate unobligated funds in the future, which could further delay much needed improvements to our critical Western water infrastructure needs.

Our sector has a history of working with federal agencies to ensure compliance with existing Buy American requirements in place for iron and steel. However, the expansion through IIJA to construction materials and manufactured products gives us significant concern over how it may impact project design, investment, and ability to leverage federal funding. Water infrastructure projects can be heavily dependent on manufactured technologies and equipment, both to achieve regulatory compliance and to advance innovative projects for water quality treatment, emissions reductions, resource recovery, and energy efficiency. Scaling up our existing compliance with American iron and steel mandates to meet the expanded IIJA requirements will require significant adjustment in how water purveyors and federal agencies evaluate projects for federal assistance.

We support close collaboration between OMB, Reclamation and NRCS as IIJA guidance is developed and implementation gets underway.

In addition, we urge the following:

- An explicit general applicability waiver for manufactured products for water infrastructure investments;
- Ongoing dialogue with the Western water organizations to discuss concerns and proactively seek resolutions that will ensure effective and efficient implementation of IIJA and compliance with Build America, Buy America; and
- Guidance that explicitly states that projects under construction, under design or awaiting approval of Reclamation or NRCS commitment of assistance will not incur retroactive application of new requirements, and policies to avoid increased project costs and delays.

We strongly advocate for granting the water sector a general applicability waiver based upon the public interest criterion for manufactured products to eliminate the risk of innovative approaches and utility system upgrades being sidelined for federal investment, project delays and increased costs. Specifically, we request that you issue a general public interest waiver for products that: (1) demonstrate the ability to improve energy efficiency, resource recovery, reduce carbon emissions, benefit fish and wildlife, conserve water, improve water quality, or increase water use efficiency; (2) utilize commercial information technology, or (3) replace existing products as part of a specialized system that does not lend itself to a place of origin criterion.

For the Western water sector to accelerate action on climate change, we must preserve access to the best available technologies to reduce carbon emissions and energy use regardless of country of origin.
In many areas of the West, we are witnessing changes to the mountain snowpack hydrology which is a critical water supply source for many areas in summer months. Earlier and more intense spring-time runoff events are occurring, coupled with longer and drier growing seasons. Modernized water storage and conveyance facilities provide improved management flexibility to deal with the West's changing hydrology. The significant funding provided in the IIJA provides greater opportunities to manage climate change impacts through improved operating policies for regional water supply facilities, modifications to existing facilities, development of new facilities that could optimize reservoir systems, and additional new water supply options including desalination and indirect potable reuse.

Water, wastewater treatment and water recycling systems are highly complex and technologically advanced, and utilities must design and invest in projects that ensure federal regulatory compliance. Further, our facilities are not "plug and play," but integrated systems that depend on computers and specialized technologies with components universally sourced to guarantee a reliable supply and compliance with public health regulations. Applying the expanded requirements to projects which impact existing systems and technologies could mean utilities decide not to invest in projects under IIJA or be faced with a process of applying for multiple waivers, denial of any one of which could upend the ability to implement the project.

Already, our sector is experiencing component shortages, labor shortages, and clogged freight and logistics networks that threaten our efforts to modernize our water infrastructure. The proposed waiver will ensure the Buy America mandate does not further burden supply chains and threaten access to the

best available technology to cost effectively and sustainably monitor, treat, and deliver water supplies to all Americans.

**Customer Expectations for Reclamation's Administration of the IIJA**

We have been encouraged by the willingness of the Reclamation to work with its water and power customers to provide opportunities to address key concerns. As we work further with Reclamation to administer the IIJA, we will be judging the success on some key objectives, including transparency in budgeting, accounting and planning; a commitment to cost-effective design, contracting and construction; overhead; and customer input relative to outsourcing decisions.

For example, Reclamation has used contractors and consultants to fill in for staff and expertise shortages, including the use of outsourcing for major maintenance work. Greater opportunities need to be available for customers to provide input and feedback on the selection of contractors, final design and plans, and review of benchmarks and scheduling, including, in some cases, the right to veto a proposed contract for specified reasons (e.g., if the costs are excessive). Outsourcing should not increase Reclamation's (and customers) costs; and should be considered when there are expected cost savings or timely completion. Of course, who does the work rests in large part on whether the project involves reserved works or transferred works, and whether costs are reimbursable or non-reimbursable.

Implementation of these types of processes and objectives will focus Reclamation's capabilities to move IIJA dollars forcefully and effectively towards their intended purpose.

**Work with Local Producers on Working Landscapes Issues**

To increase stakeholder confidence and ensure effective funding delivery, the Departments should invite outside guidance and clearly state to the maximum extent practical, the intended impact of funds, method of distribution, and other discretionary factors. For example, Title VI, Section (1) of the IIJA provides $255,000,000 to the U.S. Fish and Wildlife Service to be used for regional ecosystem restoration purposes, with little further instruction.

We submit that our collective on-the-ground experience can serve as a guide to ensure that such funds broadly dedicated to conservation and restoration are best utilized to the benefit of ecosystem function, local community vitality, and working lands health. Through updating federal land management agency policy and guidance, the Departments have the opportunity to actively manage for both the ecological health and the economic prosperity of neighboring communities. To balance these objectives, we believe that land management strategies should be informed and supported by those working closest to the ground, and that agencies must increasingly look to work across jurisdictional boundaries and break down institutional silos both within and across agencies.

With the Departments' guidance, expertise and capacity and our positioning as effective conveners, partners and advocates for working lands stewards, we believe that we can collectively begin to address known issues that will hamper effective implementation of the IIJA's forest ecosystem restoration provisions and other cross-boundary conservation efforts.

We are aware of numerous barriers that prevent interested landowners and other entities from participating in programs administered by the Departments and, ultimately, prevent funding from reaching the ground in a meaningful way. Statutory limitations such as program payment caps can create misalignment between program eligibility and conservation objectives. Regulatory hurdles, for example presented through interpretation of the National Environmental Policy Act (NEPA), can prolong agency action. More obscure administrative barriers in terms of federal agency staff capacity and siloed communication structures also manifest in very tangible hindrances to effective program implementation on the ground and further complicate already complex processes.

**Environmental Compliance Challenges**

Throughout the Western United States, key challenges irrigators face in times of drought include competition for scarce water supplies, insufficient or aging water infrastructure, growing populations, endangered species, increasing weather variability/climate change, and energy development. Two key water policy challenges stand out, which can be addressed in part through improvements to NEPA implementation.

1. Streamlining Water Projects

The Western water provisions included in the IIJA represent a once-in-a-generation federal investment that will bolster our aging water infrastructure and keep water flowing to our nation's farms and ranches. It will also improve our ability to provide water supply reliability for cities and the environment in future droughts. In our opinion, your Administration will be under incredible scrutiny to ensure that most of these dollars are spent on-the-ground for the intended purpose, and do not instead get swallowed up by red-tape and government permitting bureaucracy. American taxpayers will also want to see that the hundreds of billions of dollars that will be spent on new infrastructure are done so in a way that is efficient and effective. From our standpoint, we do not want to risk unnecessary delay to complete the much-needed improvements we need in the West to address future droughts and other extreme climate events.

We are in a new era, where our country - still struggling with the devastating economic impacts of the COVID-19 pandemic - faces an opportunity to jump start the economy with an influx of over $1 trillion dollars. CEQ must review the infrastructure permitting provisions in the IIJA and develop recommendations to significantly reform the federal infrastructure permitting process while leaving environmental protections in place. The infrastructure permitting provisions are based on S. 2324, the Federal Permitting Reform and Jobs Act, which will lift the sunset on FAST-41, currently set to expire in December 2022, and expand and improve upon existing authorities.

For covered projects only, FAST-41 reduced the statute of limitations for NEPA challenges from six years to two. Since FAST-41 became law, the Federal Permitting Improvement Steering Council has helped more than fifty projects with their permitting processes, saved projects more than a billion dollars, reduced permitting timelines, helped project sponsors create more than a hundred thousand jobs, and resolved numerous interagency conflicts. The permitting provisions will make FAST-41 permanent;

expand FAST-41 benefits to tribal projects; set a two-year goal for permitting covered projects; encourage federal agencies to use one document to track permitting decisions ("One Federal Decision"); and improve the Permitting Council's day-to-day operations.

Admittedly, the NEPA permitting provisions in the IIJA are mostly for transportation projects. A similar approach must be applied to water projects, as well. The unprecedented drought that still grips many parts of the West demands prompt, priority attention from your administration. We cannot let red tape stall or block the many long overdue projects necessary to repair and enhance our aging water infrastructure and develop reliable new sources of water supply. Similar to our earlier arguments regarding application of Categorical Exclusions in forest restoration work, Reclamation should be looking at all ways to achieve environmental compliance through the creative and flexible use of existing CEs on appropriate water projects.

Reclamation does have some CEs for Routine Maintenance as reflected at pages 40-44 of the DOI list of Existing Categorical Exclusions. In particular, there exists a CE for maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation. We understand that whether this or another CE listed at that link could be applied to extraordinary O&M ("XM") funded by IIJA would very much depend on the particulars of the XM work to be done.

In the Columbia Basin and elsewhere, Reclamation encourages districts to conserve water, including providing WaterSMART grants to projects that pipe and line ditches. However, Reclamation also wants to see compliance with NEPA and National Historic Preservation Act (NHPA) Section 106 on these projects. NEPA compliance is burdensome, especially the time and cost involved with the NEPA process. For these ditch lining / replacement projects, it appears that Reclamation at times has waived NEPA if the ground is not disturbed below the invert (bottom) of the ditch. This is a broad and simplistic assumption regarding the extent of ground disturbance that took place during original construction. It would be helpful if a CE could be applied to piping and lining projects within some range of the existing ditch prism. This would greatly streamline and simplify water conservation efforts, while also recognizing the uncertainty involved with the extent of construction ground disturbance.

Anything that can be done to simplify the NHPA Section 106 process would be helpful, particularly if projects are tied to post-disaster work like wildfires, floods or storms. NEPA and NHPA exemptions should be granted for post-disaster work conducted by Reclamation, or a transferred works operating entity, for the following activities: 1) Repairing, replacing, or maintaining existing facilities, structures, or appurtenances damaged by a natural disaster; 2) Removing or relocating debris and sediment following a natural disaster (including a wildfire, flood, or storm) to restore a facility (including a dam, reservoir, or canal) to pre-disaster conditions; and 3) Repairing, replacing, or maintaining existing fish ladders, screens, or spawning areas to pre-disaster conditions.

2. Forest Restoration Activities

Increasingly fierce Western wildfire disasters are becoming an annual occurrence and underscore the importance of improving on-the-ground management actions that can lead to improved forest health. Improving the condition of our nation's forested lands is of primary importance to water providers.

National Forest lands are overwhelmingly the largest single source of water in the U.S. and, in most regions of the West, contribute nearly all of the water that supplies our farms and cities. In addition, our already fragile water infrastructure can be severely damaged or rendered useless by fire and post-fire flooding and debris flows. The unhealthy state of our national forests, which were initially reserved specifically to protect water resources, has led to catastrophic wildfires that threaten the reliability, volume, and quality of water for tens of millions of Americans, along with the wildlife, recreational, and multi-purpose values of these lands.

A responsible level of continuous fuels reduction includes a combination of robust mechanical thinning and prescribed fire. This can be employed to significantly reduce evapotranspiration, tree stress, disease, and pest infestation, preserve health forest conditions, and protect species and habitats. Failure to employ this approach will continue the downward, accelerating spiral of fuel accumulation, drought, disease, and invasive insects. This will lead, inevitably, to additional high-intensity fire events in the future.

In 2019, the Association of California Water Agencies, California Farm Bureau, Family Farm Alliance and National Water Resources Association provided comments to the USFS on streamlining that agency's application of environmental laws. We reiterate two of those general recommendations here, as the spate of wildfires scorching the Western U.S. is becoming an annual occurrence, related in part to lapses in forest management associated with federal environmental regulations:

- Allow landscape-level land management plans to guide individual actions on the ground without duplicative administrative process under federal environmental laws; and
- Direct the creation and use of Categorical Exclusions ("CEs") already allowed under NEPA in preventing wildfires and restoring forest habitat and ecosystems more effectively and on a timely basis.

Landscape-level planning can be seen as a stewardship approach. Performing a larger review at the beginning as a programmatic approach with a landscape-level plan can serve as a springboard for implementation activities which would be treated as CEs.

Another notion is a magnified approach to pre-Scoping under NEPA, which would be used to 'take a hard look' at the beginning of a project and thereby offer another method of sweeping a project off the EA/EIS tract and streamlining into a CE. While this many not exactly fit into the existing NEPA framework, such an approach could rely heavily upon the theories of tiering and incorporation by reference.

By eliminating duplicative or unnecessary processes, using streamlining tools already allowable under the law, and promoting actions instead of litigation, we believe these provisions could help federal agencies use their limited resources to actually implement land management actions designed to prevent wildfires and improve habitat for priority, endangered and/or threatened species, instead of spending those resources on more bureaucratic process and litigation. These types of procedural changes to NEPA implementation would improve our Western landscapes, protect our valuable water supplies from the devastating effects of wildfires, and allow agencies to improve habitat and restore ecosystems for the benefit of federally important species to allow continued agricultural use of our public lands.

President Biden has long been a champion of streamlining process for infrastructure, notably in his role as Vice-President overseeing the infrastructure package during the Obama Administration. In 2009, then-Vice President Biden was "Sheriff Joe," the enforcer making sure federal dollars from a massive economic aid package were getting to the right places and quickly. President Biden and his administration need to be equally relentless in cutting through the red tape, promoting faster and easier permitting to get the money from his own bipartisan infrastructure package out the door.

**Conclusion**

The next six months will be crucial to ensure that implementation of the IIJA is set up for success, delivering efficient and timely construction of water infrastructure and forest restoration projects. We look forward to working with you to advance an effective policy that can lead to swift project construction to ensure safe, reliable, and affordable water for our Western members. We also appreciate the opportunity to engage in ongoing discussion around how to effectively support working lands stewardship as a means of achieving the Administration's conservation and community development objectives. We respectfully submit these recommendations and invite you to an ongoing discussion to further expand on these ideas.

Sincerely,



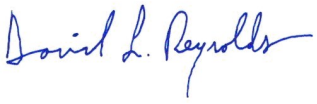
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