

Battle over Colorado River heats up on two fronts

The Imperial Irrigation District (IID) has set some ground rules in its future negotiations over Colorado River allocations. On Monday, it passed a resolution recognizing the water conservation efforts of farmers while also prioritizing the restoration of the Salton Sea, a growing public health and environmental crisis. IID is also engaged in a legal battle with a local farmer that could cripple its negotiating power if it loses.

IID has senior rights to 40 percent of the water available to the Lower Colorado River Basin, the greatest amount of any agency. This has enabled IID to become the largest irrigation district in the nation. All but 3% of its water deliveries go to agricultural users. Imperial County produces more than \$2 billion annually in farmgate sales, ranking it No. 10 in the state.



The All-American Canal transports Colorado River water to Imperial County.

Now any new transfers taking water away from the Imperial Valley must be both in the best interest of the valley and approved by the IID board. The resolution asserts as well that only the board can negotiate water agreements for the district. With the Salton Sea, it also warns if the state “were to fail in its commitment,” IID will consider it a breach of the Quantification Settlement Agreement of 2003 (QSA) and will take actions “to preserve its own rights and the public health.” The QSA required California to reduce its use of the river as other states began to take larger shares of their allocations.

IID’s resolution is an attempt to clarify its stance after decades of soured negotiations with the six other basin states, as well as with California, its cities and the district’s own farmers and utilities.

The most prominent instance was the voluntary Drought Contingency Plan (DCP), an emergency measure in which water rights holders along the river voluntarily cut back allocations to restore two key reservoirs before levels dropped below the pump intakes and halted all water deliveries.

The coalition approved the DCP in April over the objections of IID, with Congress quickly authorizing the plan. IID had refused to vote until the state followed through on funding cleanup efforts for the Salton Sea. (The state has since secured five years of funding for a 10-year project to restore the lake.) Many viewed IID's reluctance as holding the negotiations hostage over "an insignificant amount of money." In response, the Metropolitan Water District of Southern California, which supplies Los Angeles and San Diego, volunteered to cover IID's share of the water cutbacks in order to pass the DCP.

The IID resolution pushes back on Metropolitan's move to override its vote, while further stressing the critical link between the Colorado River and the health of the Salton Sea.

"When the DCP was being considered, (the Salton Sea) fell out of the mainstream and became an issue of controversy," said IID General Manager Henry Martinez during Monday's board meeting. He explained this resolution will communicate to partners on the river "what issues we can be flexible on and other ones where we cannot be."

According to IID, negotiations have already begun over long-term drought measures after the DCP expires in 2026. The board is resolute that these measures will not include further cutbacks for farmers, beyond the existing QSA.

"This document says there's not going to be a QSA 2," said Chuck DuMars, a water attorney advising the board. **"That's not a solution."**

The QSA still carries strong feelings of betrayal in the valley. Board member Bruce Kuhn made it clear he had originally voted against the QSA because it did not include a plan for restoring the Salton Sea. Then the State Legislature passed the Salton Sea Restoration Act of 2003, and Kuhn carried the swing vote to ultimately approve the QSA. According to Kuhn, the state then decided not to appropriate funds for the restoration.

The QSA has led IID and its farmers to conserve a total of about 5 million acre-feet of water. By 2026, the district plans to save nearly 500,000 acre-feet per year, or about 15 percent of its entitlement from the Colorado River. Yet in 2018, the QSA no longer required IID to release flows to the sea, which resulted in much of the lake drying up.

"We are finding our growers can conserve more water than what the growers, and certainly ourselves, anticipated," said board member James Hanks on Monday.

Both Kuhn and DuMars said they hoped to see a return on IID's "enormous" capital investments for on-farm conservation. Kuhn asked to amend the resolution to state that any extra water – after meeting the reasonable and beneficial needs of the district – should be monetized before sending it outside of the district.

"Why would we let Metropolitan have water for nothing?" he said, though he agreed to table the issue for a later resolution.



Representatives from each of the Colorado River Basin States and federal agencies sign the DCP at Hoover Dam.

IID is also facing pressure to keep that water within the district. JB Hamby, who is running for a board seat, raised questions over “who owns the water once it’s sold out of the valley.” He pushed to amend the resolution to give the general public a two-thirds vote on any water negotiations. Hamby argued every drop of water should remain in the district.

Kuhn was quick to correct Hamby that any “extra” water would be from high-flow periods, when all needs are met, and no other storage opportunities are available.

In a similar sentiment to Hamby, Michael Abatti, whose farming family is recognized throughout the valley, has long battled IID over water rights. During the drought in 2013, he sued the district over the QSA, claiming farmers are the senior water rights holders and the district cannot legally authorize cutbacks in water allocations on their behalf. Abatti won that case in 2017, but it is currently in a state appeals court.

In a joint amicus brief filed for that case, the county farm bureau, a county vegetable growers association and a local farm water group sided with Abatti. They argued “IID has no power to take away a vested water right created under the laws of this state” more than a century ago. The brief claims IID had “betrayed the trust” by prioritizing public use over farmers, without defining what “public” actually means.

“Were it not for the appropriation of the water and the beneficial use of the water on the land, this would still be a desert,” the brief reads. “Landowners took this risk, spent their money, labored and produced something that has benefitted all residents in the Valley.”

The State Water Resources Control Board and three other water agencies and organizations filed counter briefs on behalf of IID. The Water Board argued the trial court failed to follow longstanding laws that water users have “only a right to continued water service” and not ownership of a certain quantity of water. Similarly, the Association for California Water Agencies argued districts are granted flexibility in managing water in order to adhere to state environmental laws and conservation programs.

Kuhn, who has ties to the Abatti family, recused himself from board decisions on this lawsuit as well as a number of other occasions. In a separate issue Monday, IID General Counsel Frank Oswald cited a conflict of interest with Kuhn when he recently cast a vote on expanding a water contract for a geothermal facility. Kuhn was the lone no vote against granting additional water allocations to the utility. Michael Abatti’s lawyers had intervened, claiming the contract violated the trial court’s 2017 decision. They argued IID was not authorized to commit water to non-domestic or non-agricultural users during times of shortage.

Kuhn was furious. He said the board’s vote “didn't have anything to do with Abatti.” Oswald asked Kuhn to leave the room and the board rescinded the vote before voting again to approve the contract. The embarrassment added to a long list of frustrations for Kuhn.

Kuhn had also announced at the meeting he would not be seeking reelection, saying, “It’s just not fun anymore.” He pointed to increasing pressure “from the younger generation” over his vote on the QSA. “Had we not done that, we'd be in a far worse position,” he said. “It's brought hundreds of millions of dollars into the valley and we've been able to farm more acres with less water.”

Seven questions for the Central Valley Water Board's Patrick Pulupa

As the executive officer for the Central Valley Regional Water Quality Control Board, Patrick Pulupa leads an agency that regulates 40% of the land in the state.

The board supplies drinking water to more than 23 million people and irrigation water to more than three million acres of farmland. It regulates water quality through the Irrigated Lands program and waste discharge through both the Confined Animal Facility program and more recently the Cannabis Cultivation program.

Pulupa began as lead attorney for the board in 2006, moving to his current role in 2018. He now oversees more than 260 staff across 20 regulatory programs. He has also been deeply involved in the decade-long negotiations over the CV-SALTS plan for reducing salts and nitrates in drinking water.



Pulupa spoke with *Agri-Pulse* this week about balancing reason with science in regulating agriculture, about seeing farmers as environmentalists and about the many regulatory challenges farmers face today.

1. Can you describe your role at the board?

It's an interesting assignment in the Central Valley, in that it's the biggest of the regional boards.

My boss (when I arrived) basically said, "This is a tough assignment. You can choose to work here for a little while, and we can get you assigned to some other region." But the issues kept coming, and they were innovative and intriguing enough that I just kept going in the Central Valley.

It's an interesting agency in that it is an environmental agency, but it is not ideologically driven. It is really just working with the communities to find solutions that can be protective of our resources and work towards common goals. We're lucky in this region in that most people are pulling on the same team.

2. What is your approach to coordinating and balancing the many stakeholders and interest groups here?

The two touchstones I usually rely upon are first to try and be reasonable and second to go where the science leads you.

If the science says there's a pollution problem and reasonableness says that problem can only be solved in a 10-year timeframe, you pretty much have your course of action charted out for you.

Just listening to the different opinions, you really can work through a lot of solutions using those two guideposts as the touchstones.

3. Can you explain the challenge of balancing permitting fees with staffing costs?

The fees are, of course, set by the State Board. But we have a role to play, in that we have to maximize the efficiencies on our end to essentially keep our staff costs low. Regardless of the program, in most cases upwards of 80 to 90% of our resources come from the permittees themselves. So, we have a responsibility to make sure that we use those funds wisely.

In the Irrigated Lands context, that means figuring out how we can have both permitting efficiencies – and the coalitions play a very central role in minimizing costs there – and also monitoring efficiencies. Not collecting data for data collection sake is a big part of that and making sure the data we make folks gather is data that’s useful to us in the decision making we go through. It's a push-and-pull.

We acknowledge there's an expense associated with that and there’s staff time associated with processing that. But we want to really narrowly focus our efforts on the most meaningful data to make good decisions.

4. How has the engagement from ag changed over time?

My personal sense is the vast majority of the agricultural industry here in California – and they might not want to admit it – but they're environmentalists.

When you look at what they do for their land, for their soil, for their water, for their air, and compare it to the standards met in many other places of the country and in the world, we really are on the forefront of environmental protection.

When I came aboard in 2006, as the program was evolving, you still had a lot of folks saying they were not really causing that much of a problem here, they were stewards of the land and didn't really need to be regulated. Now we're working in partnership with a lot of the agricultural coalitions. They recognize there are problems caused by a lot of their operations, but they're working with us to solve them.

If we can extend our hands in a good-faith effort to meet them on their turf and understand the problems and economic realities they're wrestling with, we can be better informed as regulators as we chart a path forward to tackling the problems.



5. What’s the biggest issue going forward?

CV-SALTS is the biggest issue for the next decade or more. We are working hard to figure out the next solutions for drinking water issues in the Central Valley.

The agricultural community recognizes their practices have had an adverse impact on drinking water in many parts of the valley. But that's their workforce and their neighbors, and they want to work with them to find solutions to these drinking water problems.

The communities clamoring for drinking water solutions, likewise, view the ag community as the lifeblood of their communities. There's a lot of shared goals when we talk to both stakeholders on the environmental justice and the small community side and agricultural side.

6. With SGMA coming online, what do you expect to see at the board?

It's really the missing piece of the puzzle for a lot of the water quality issues we work with. One of our biggest concerns is those communities that are dependent on groundwater and seeing their supplies dry up or be contaminated.

If you can't assess what is happening within the aquifer, you'll never really get your arms around how to deal with the water quality issues. In many cases, we're talking about loads impacting water quality based on how much water is there.

I absolutely appreciate the challenges the agricultural community faces with respect to SGMA. It is a heck of a regulatory program.

There's going to be some tough decisions on the horizon for how groundwater can be managed. It's going to change the economics for a lot of folks who are planting crops out there. The folks hardest hit aren't the folks who are planting the almonds, or pistachios or other high-value crops. One of the challenges is to figure out what the solution is for those growers.

7. Any other messages for farmers?

As a board, we very much try to be cognizant of all the different regulatory programs (farmers are) working under.

It's easy to get ensconced in your regulatory program and ignore the fact that there are also water quality issues, air quality issues and land use issues – and not to mention marketing orders – that the ag community has to comply with.

The level of effort the agricultural community has put into making substantial investments, into learning about these new requirements and into rising to the challenge of growing in California is truly remarkable. The growers we interact with are far more sophisticated than the caricatures the media tends to portray them as. You have very intelligent folks doing intelligent things with their land and their water.

Regulatory uncertainty hangs over production of industrial hemp

Nearly a year after the 2018 farm bill legalized industrial hemp production, the business community continues to seek answers to questions about testing and marketing of products derived from the crop, the commercial potential of which has sparked interest throughout the country.

They may be a long time coming, attendees at a Food & Drug Law Institute conference heard this week.

Hemp has been one of the most talked-about issues in agriculture over the past year as growers look to diversify in the face of low commodity prices and ongoing trade disputes. Estimates of the market potential for hemp-derived CBD, short for cannabidiol (pronounced canna-bi-DIOL), usually range in the billions annually, though some have also said all the talk of hemp is simply hype.

Government regulators told the audience of lawyers, business representatives and state regulators — among others — that they are working diligently to provide as clear a regulatory path as

possible, but they need help sorting through the many issues involved in turning hemp into a profitable crop for American farmers.

“Now is the time to come talk to us,” said Sharon Mayl, a senior adviser for policy in the Food and Drug Administration’s Office of Food Policy and Response. “We are actively looking to get better data on CBD.”

A public meeting earlier this year and a comment period resulted in about 4,500 comments, Mayl said, but “we did not see a lot of data around the issues we specifically requested comments on,” such as the cumulative effects of CBD consumption.

“We should not be getting ahead of the science,” Mayl said, noting FDA is not exercising “enforcement discretion” when it comes across CBD in food or dietary supplements. “If you’re selling it in violation of the Food, Drug & Cosmetic Act, you’re doing it at a risk,” she said.

“There are no special rules for CBD,” Lowell Schiller, FDA’s principal associate commissioner for policy, told the Council for Responsible Nutrition earlier this month. He said the agency has been “considering carefully” whether to issue a rule that would allow the use of CBD in foods or dietary supplements.

“We hope to issue a more comprehensive update in the near future,” Mayl said.

Rick Ball, a lawyer with Duane Morris in Boston, said on the sidelines of the FDLI meeting that he has “no clue” when FDA might take action.

Ball said regulatory confusion is stoked in some cases by different rules in different states. In Massachusetts, for example, farmers were left holding their hemp after the state followed FDA and said CBD cannot be used in foods or dietary supplements or marketed with health claims.

“They lost a huge market for their product,” Ball said.

The industry also is looking for clarification on testing. USDA’s recent interim final rule, which likely will govern hemp production through the 2021 growing season, says testing to determine THC levels must be conducted within 15 days before harvest, in order to get as accurate a reading as possible.

In addition, the testing will have to take place at a lab registered by the Drug Enforcement Administration.

But farmers have said the 15-day window may be too tight, and that there may not be enough accredited labs to do the necessary testing.

“I don’t think there are in any way enough processors or labs,” Ball said.

Mai T. Dinh, a lawyer with USDA’s Agricultural Marketing Service who has been working on hemp, encouraged anyone having trouble with implementation, such as access to testing facilities, to “let AMS know.”

Dinh said she knows the interim final rule is not perfect. "We had to push this out really quickly," she said. "We're really very, very interested in comments."

Ball said some labs that have been testing medical or recreational marijuana are trying to decide whether to get into the hemp testing business, but are worried if they get registered by the DEA, they won't be able to keep testing marijuana.

As it stands with USDA's rule, hemp that tests above 0.3% for THC must be destroyed. But Dinh said USDA is trying to give growers some wiggle room.



Sharon Mayl, FDA

"The one area USDA provided a little bit of flexibility is measurement uncertainty," Dinh said. As USDA put it in the interim final rule, "If a laboratory reports a result as 0.35% with a measurement of uncertainty of ± 0.06 , the distribution or range is 0.29% to 0.41%. Because 0.3% is within that distribution or range, the sample, and the lot it represents, is considered hemp for the purpose of compliance."

Questions about what to do with a "hot crop" — one that tests above acceptable levels — persist, however.

Patrick Moen, managing director and general counsel at Privateer Holdings, a private equity company in Seattle, said, "We're stuck in the Twilight Zone," describing how a grower could suddenly be "in possession of a controlled substance" because of a THC test. There needs to be a "common-sense solution" to that dilemma.

In the case of hot crops and the required disposal of them, Dinh said, "We are working with DEA to work through those operational issues." DEA rules require the crop be rendered "non-retrievable," but Dinh said USDA and DEA are discussing the exact meaning of that.

Transportation is still an issue, said Moen, a former DEA agent and New York City police officer. USDA stated clearly in its rule that hemp can be transported across state lines, even driving through states such as South Dakota and Idaho that have not legalized the crop.

"I think that's going to continue to be a challenge," he said. "We're going to continue to see (challenges with) state and local law enforcement." Because hemp and marijuana look and smell the same and testing takes time, simply having a certificate of analysis won't protect a driver, Moen said.

"Your average patrol officer who gets involved in a shipment of products is not going to know what to do," he said.

The hypothetical patrol officer is not alone. "The biggest regulatory hurdle is uncertainty at this point," said Evelina Norwinski, a lawyer with Arnold & Porter in Washington, D.C.

Farms could face mandatory E-Verify; current users say it's flawed

Farmers nationwide could be forced sometime soon to start ensuring the eligibility of all new employees using the federal E-Verify system, which current agricultural users say is so flawed that many undocumented applicants can easily get around it.

So far, E-Verify is mandatory for farmers in only a handful of states, but producers nationwide would be required to start using it under a bipartisan agricultural labor bill that's headed for committee markup today: The Farm Workforce Modernization Act.

E-Verify is an online system that compares Department of Homeland Security and Social Security Administration records to information provided to employers on I-9 forms.

Within seconds, employers receive notice whether the person has the necessary documentation to work in the United States or a tentative non-confirmation is returned. If the prospective employee and employer cannot rectify the error, a final non-confirmation is issued.

Critics say the system frequently misses job applicants who are unauthorized to work in the United States while incorrectly flagging people who are eligible. An analysis by the Cato Institute, a free-market think tank, alleges that E-Verify has failed to stop nearly 12 million illegal hires from happening since 2006, including 1.8 million in fiscal 2018.

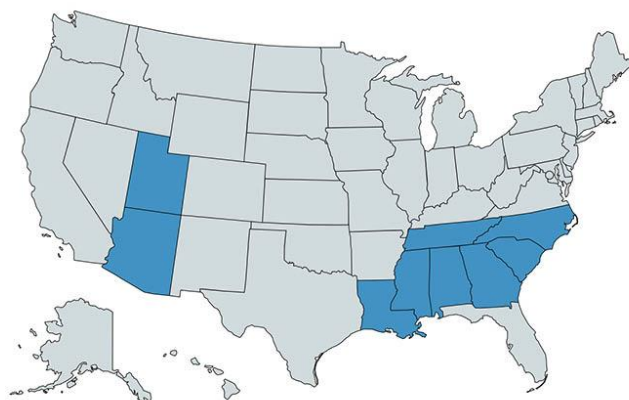
“The amount of ID theft occurring to defeat E-Verify is astronomical,” says Chandler Keys, principal of the Keys Group, a consulting firm in Washington, D.C. “A farmer could join E-Verify tomorrow. It is very easy, but it is also easy to defeat.”

Under the House bill, farmers would face the E-Verify requirement in exchange for getting broader access to foreign workers under an expansion of the H-2A visa program. The bill would for the first time make year-round workers eligible for H-2A. The program is currently limited to seasonal workers.

The bill also would provide a path to legal status for farmworkers who are currently in the country illegally.

While many major agricultural organizations including the Western Growers Association and the National Council of Farmer Cooperatives have come out in favor of the bill, the American Farm Bureau Federation has voiced concerns over whether the changes to the H-2A program would provide a sufficient number of workers—particularly since E-Verify would become mandatory, which could mean stepped-up

Some farms already face E-Verify



Shaded states have E-Verify requirements that apply to agricultural employers.

deportations of unauthorized workers. The California Farm Bureau has broken from AFBF to endorse the legislation.

Farms wouldn't be required to check E-Verify for existing employees, and that is a critical point for farm groups backing the House bill.

E-Verify would not become mandatory nationwide for even the nation's largest agricultural employers for two-and-a-half to three years after the bill is signed into law. First, the regulations would have to be written, typically a 12- to 18-month process, and then there would be an 18-month window for receiving certified ag worker applications from current workers under the earned legalization program.

E-Verify would then begin to be phased in six months after the application window for the earned legalization program has closed. The six-month phase-in of E-Verify would begin with the largest employers, those with 500 workers or more, said Craig Regelbrugge, senior vice president of AmericanHort, which represents greenhouse growers and supports the bill. After that, E-Verify would be phased in for the rest of agriculture over the next 15 months.

Thus, before E-Verify becomes mandatory, unauthorized workers who are in the United States now would have an opportunity to transition to legal status using one of two routes: They could transition into H-2A status or pursue certified agricultural worker status if they pass a background check.

Employees who would not be eligible for certified status include those who have a felony (excluding state offenses involving immigration and minor traffic offenses), an aggravated felony, or multiple misdemeanors (excluding misdemeanors that occurred on the same day, state offenses involving immigration, and minor traffic offenses) or two misdemeanors involving moral turpitude.

While some workers who are employed full-time might be wary of applying for legal status because they risk being deported if they fail the background check, seasonal workers would be more likely to apply since they continuously seek new employment and would be subjected to continuous E-Verify checks, sources say.

Assuming an adequate, authorized workforce is in place by the time E-Verify becomes mandatory, the concern for farmers and agribusinesses centers around the known faults of the current system: errors in the underlying database that can reject a share of authorized workers, and liability given the vast amount of fraud that allegedly occurs.

David Bier, a policy analyst with the CATO Institute, said the majority of unauthorized employees are approved when they are run through the system.

“Making E-Verify mandatory is not likely to be effective, and to think significant changes will be made to the program is not realistic. So many employers are already using the system,” Bier said. “To significantly alter it would impose a burden on those employers.”



David Bier, CATO Institute

According to the Cato analysis, E-Verify catches fewer than one in six illegal workers, and it is becoming less effective as workers learn to work around the system. “Once E-Verify became more common, illegal workers realized what was happening and quickly adjusted,” he says.

For the past few decades, packers and poultry processors have been the focus of government enforcement. These employers offer year-round jobs that provide better pay than seasonal positions, attracting workers who can better afford the \$1,000 or so needed to obtain false documents and making these companies magnets for both workers with false identities and ICE enforcement.

“There is a verbal safe harbor from ICE, but you hope and pray they are not going to make an example of you,” Keys says. “There is a subjectivity to, ‘If you use E-Verify in good faith, we won’t come after you.’ There is no protection under the law.”

To avoid the risk of an ICE raid, such as the one that occurred in Mississippi where 680 unauthorized poultry plant workers were arrested earlier this year, many packers and poultry processors use one or more risk mitigation strategies: ICE’s IMAGE program, a connect-the-dots process for screening employees, and E-Verify’s Records and Information from DMVs for E-Verify (RIDE) program, which incorporates state driver’s license records into the verification process.

In an August letter to President Donald Trump, Mike Brown, president of the National Chicken Council, wrote: **“An employer that does everything possible to avoid hiring unauthorized employees should not be exposed to further liability. It is the responsibility of employers to help ensure that the law is followed, but it is the obligation of the government — not U.S. employers — to provide a secure worker verification system.”**

To avoid raids, the nation’s largest meatpackers and poultry processors were instrumental in developing the process referred to as “connect the dots,” which relies on a detailed application form and interview process as well as connect-the-dots software.

The purpose is to weed out workers with false identities by connecting the points in their employment and financial history, and asking them questions such as: What make and model of car was your recent car loan for?

“It’s very expensive,” Keys said of the system. “If you don’t hire that many people, you are going to be reluctant to use connect-the-dots software.”

These same companies also participate in ICE’s IMAGE certification program.

For those who join the program, ICE and U.S. Customs and Immigration Service provide education and training. In return, employers must complete a questionnaire, enroll in E-Verify, establish a hiring and employment eligibility verification protocol that includes an annual I-9 internal audit, submit to a I-9 inspection, and sign an official agreement with ICE. Expanding this program to farms would be very difficult and expensive, Keys said.

E-Verify’s RIDE program allows employers to enter prospective employees’ driver’s licenses into the system to verify their validity.

However, not all states participate in RIDE and the federal government cannot mandate participation. “It is not particularly effective,” Bier said. “Prospective employees can use an out-of-state driver’s license and the photo will not be in the photo library.” And some states will likely never participate, he said.

Keys doesn’t think ICE is going to go after “Joe Blow farmer,” but he warns that “if you have scale, you better be in ICE’s IMAGE program.”

At least nine states, primarily in the South, now have E-Verify mandates that apply to agricultural employers: Alabama, Arizona, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Utah.

House Dems split, but narrowing on USMCA

President Donald Trump has said there are enough Democratic votes in the House to approve the U.S.-Mexico-Canada Agreement and lawmakers like Rep. Henry Cuellar, D-Texas, agree, but there are still deep reservations by some over how to replace the North American Free Trade Agreement.

There is growing enthusiasm — especially among freshman and younger House Democrats — to bring home a trade win before Christmas, but there are also deep concerns that USMCA still won’t be able to do what NAFTA failed to do: Keep U.S. manufacturers from relocating factories south of the border to take advantage of cheap labor.



House Speaker Nancy Pelosi

It’s those concerns that were at the core of a meeting Tuesday between House Speaker Nancy Pelosi, AFL-CIO President Richard Trumka, and freshman House Democrats. One of the lawmakers in the meeting said Pelosi is seeking Democratic solidarity.

“If the stories are that we’re breaking apart because of concerns, then (Pelosi) doesn’t have the kind of leverage she needs in negotiations,” said Rep. Donna Shalala, D-Fla. The Tuesday meeting was upbeat, Shalala said, and Trumka is working with Pelosi to “get to yes” on a USMCA deal with the White House.

But there is still plenty of opposition in the Democratic ranks.

“If you can’t show me how you’ll stop the hemorrhaging of jobs, it’s a no,” Rep. Bill Pascrell, D-N.J., told reporters last week.

Pascrell and others remain deeply suspicious that, despite promises from the White House and Mexican President Andrés Manuel López Obrador, U.S. companies like General Motors and Goodyear will still be able to set up shop in Mexico and hire nonunion workers for less than \$2 an hour.

Mexico’s legislature, following up on promises made in USMCA, has already approved sweeping labor reforms that allow workers to unionize and renegotiate hundreds of thousands of labor contracts that were written under corporate-crafted, union-like organizations.

But many U.S. lawmakers say they won't be convinced until USMCA is altered to include strong enforcement policy to make sure that Mexico does not backslide on its promises in the years to come.

Trumka, House Ways and Means Committee Chairman Richard Neal tells *Agri-Pulse*, is in lockstep with House Democrats on pressing the White House to agree to strong labor enforcement measures in USMCA that will ensure Mexico lives up to its promises.

"I think we all feel that the controversies surrounding enforcement have not been helpful to the trade discussions," Neal said. "We believe that by copper-fastening enforcement mechanisms, that will help us get there."

More may be known about the White House's response to the enforcement demands soon. Neal said Tuesday morning he is in contact with U.S. Trade Representative Robert Lighthizer, the Trump administration's point man in talks with House Democrats, and Neal said he planned on conferring with Lighthizer again Tuesday afternoon.

Some House Democrats still want to know more about how the labor provisions will be enforced and some are offering up enthusiastic support, ready to vote 'yes' on the trade pact, said Rep. Jim Costa, D-Calif. But others, who are still hurting from the exodus of jobs after NAFTA was implemented 25 years ago, are not going to vote for USMCA.

"There are some who won't support it under any circumstances," Costa told *Agri-Pulse*. "The memories of the fallout of the loss of jobs that were attributed to NAFTA are still very heartfelt." And NAFTA is still being blamed by lawmakers and unions for jobs going south of the border. The Goodyear factory in Gadsden, Ala., laid off 175 employees in August and Mickey Ray Williams, president of the United Steelworkers Local 12 in Gadsden, blames NAFTA. Goodyear opened up a factory in San Luis Potosi in 2015 and pays its employees as little as \$2 an hour, Williams told *Agri-Pulse* in an interview.

"We can't compete with that," said Williams, who stressed that he's expecting more layoffs and even fears closure of the Gadsden Goodyear plant where he also works. "At the end of the day, what Goodyear has done is to take our work to Mexico to utilize the cheap Mexican labor." It's a sentiment that lawmakers are keenly aware of as they consider associating their name with a new version of NAFTA, an acronym that is still reviled by unions.

Goodyear spokeswoman Melissa Monaco was unavailable for immediate comment Tuesday, but in correspondence earlier this year over conditions at the company factory in San Luis Potosí, Mexico, she said the company is "proud of our record of providing a safe and fulfilling work environment for our associates at our SLP manufacturing facility."

Still, Williams' sentiment is one that lawmakers are keenly aware of as they consider associating their name with a new version of NAFTA, an acronym that is still reviled by unions.

"**Some members want it done now,**" said Rep. Jimmy Gomez, D-Calif., a member of the select working group House Speaker Nancy Pelosi tasked with negotiating Democratic demands with the White House. "I get it. It's a big issue for their districts. But it has to have the right enforcement. If not, it's going to be something that haunts them for the rest of their careers."

Rep. Jan Schakowsky, D-Ill., said she is optimistic that a deal can be reached on USMCA this year, but she also cautioned that speed is not the priority on an issue that could come to define lawmakers that vote for it.

“This is a legacy vote,” she said. “You can talk to people who are still furious about NAFTA from the nineties. When ... pushing to get it passed, we need to get it right. It’s not just a matter of it being a bit better than the old NAFTA. It means that we want a ... trade deal that can be patterned for future trade deals.”

But there are lawmakers who appear ready now to vote for USMCA.

“We heard from freshman and they said, ‘We want to go home and take something to the public,’” Cuellar said. “We don’t want the American public to feel that Democrats don’t want to pass this trade agreement.”

One of those anxious Democrats throwing their weight behind USMCA is Rep. Cindy Axne, an Iowan with plenty of farmers in her district. She took to the House floor last month to prod House Speaker Nancy Pelosi on speeding up the process of ratifying USMCA.

“They are asking for our help as elected representatives,” she said of the producers in her district. “We must answer their call and get this deal done right and without unnecessary delay. I thank my colleagues for the work that they have done and urge them to expedite negotiations and finalize this agreement soon to make sure we can make lives whole for the people suffering in the state of Iowa and across this country.”



Rep. Cindy Axne, D-Iowa

Another Democrat to get out ahead of Pelosi and other Democratic leaders is Rep. Abigail Spanberger of Virginia.

“In the House, I’ve continued to push for a vote on the USMCA this year, and I’ve heard directly from our district’s business owners and farmers about the need for movement on this agreement,” she said in a recent statement.

Neal has repeatedly said his goal is to ratify the pact this year, but he also stressed to reporters Thursday that it won’t happen before he’s shown an acceptable deal in writing.

“We want the text,” Neal said, who later added that he hopes to get new proposals in writing this week from Lighthizer.

Lighthizer's expected reply is of crucial importance, said Gomez. As USMCA stands now, without Lighthizer addressing in writing the remaining concerns that labor enforcement mechanisms aren't strong enough, he wouldn't vote for it.

“It seems like we’re moving in the right direction,” said Schakowsky. “We just have seen nothing in writing yet. A deal is just air unless you’ve seen something in writing.”

Dean Foods bankruptcy filing leaves industry watching for next steps

Dean Foods, the country's largest fluid milk processor, grabbed the attention of the American dairy industry this month when it filed for reorganization in U.S. bankruptcy court and announced a planned sale of operating assets to Dairy Farmers of America (DFA), the nation's biggest dairy farmer cooperative.

The nearly century-old company has 58 plants coast to coast and distributes 88 trademarked dairy products. It reported \$7.9 billion in sales last year. For consumers, the collapse may be no big whoop.

In California, the top dairy producing state, for example, Dean Foods products (Berkeley Farms, Altadena, and others) enjoy a major slice of the market. But, Geoff Vanden Heuvel, economic affairs director for California-based Milk Producers Council, says that with “this Chapter 11 reorganization, sale of the company, or whatever it ends up being ... (Dean Foods') intent is to have it seamless from the consumer standpoint.” Its brands “have been around a long, long time, and I don't think a change in corporate ownership really changes the public perception of those brands,” he says, **“so I don't think it matters” from a consumer perspective.**

Mark Stephenson, director of dairy policy analysis at the University of Wisconsin, takes a similar view. The company secured \$475 million this week in short-term operating cash, and he says, “it appears Dean Foods will continue to ... buy milk and pay for it (and) ... consumers will see those same products in the store shelves.”

On the other hand, the failure of a mega processor is significant to the dairy industry. The company's declaration to the court spelled out reasons for its financial collapse. The company reported its costs for processing milk rose about 21% from 2013 to 2018 as its volume shrank by 4.2% overall in 2017, then 5.8% in 2018. **The shrinkage was exacerbated this year when Walmart — its biggest customer, buying 15% of its production — curtailed that volume as it opened its own milk plant.**

Dean Foods also reported trying “a series of well-intentioned cost-savings and strategic initiatives throughout 2018 and 2019 that fell short.”

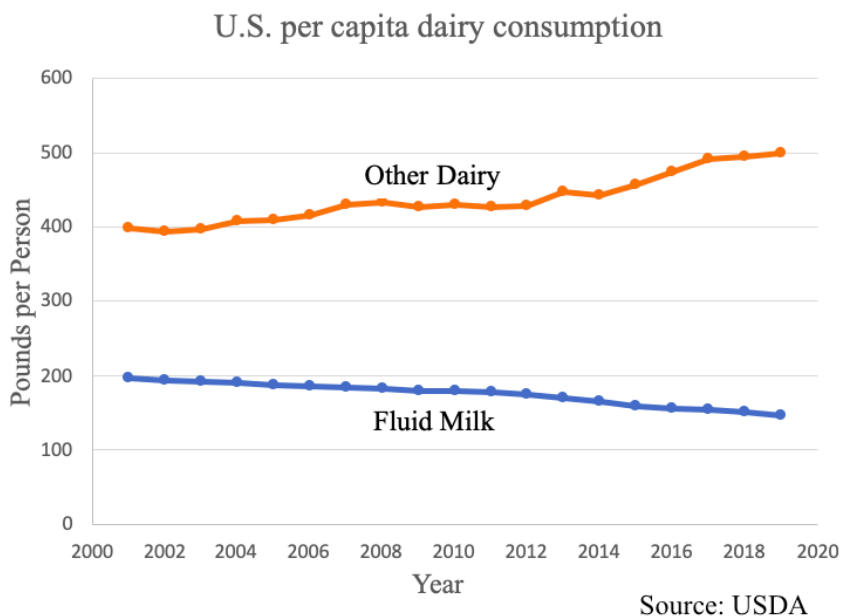
But industry experts say its primary weakness has been its continued concentration in the fresh fluid dairy products arena. Three-fourths of its 2018 production was in milk and cream products, and another 15% was ice cream, its annual report says.

Meanwhile, nationwide, as the per capita volume of U.S. consumption and exports of dairy products is steadily growing, U.S. fluid milk consumption per person (see chart) fell 18% in 2008 through 2018, according to the latest USDA data. Ice cream consumption was down 10% in the same period.

Dean Foods' position is comparable to an automobile manufacturer who would stick to making only sedans (now just 23% of the U.S. vehicle market), while 65% of the American market has moved to SUVs, crossovers and pickups.

Stephenson says Dean Foods not only operates in a withering leg of the industry but milk processing is “a thin-margin business ... (that has) declining consumption. That is almost a recipe for disaster.”

That’s the view, too, from Phil Plourd, president of Blimling and Associates, a Madison, Wis., a division of Dairy.com, who says, it would be “**a mistake to extrapolate doomsday thinking” into Dean’s troubles.**



“While I think everybody would prefer that major processors don’t go bankrupt,” Plourd says, “there’s a lot more to the dairy industry than one large company that faced challenges with its business model, its asset mix — you know, its own challenges. Look, I mean dairy farming has never been easy,” he says, but “Dean Foods’ bankruptcy is as much about Dean Foods as about anything else.”

International Dairy Foods Association President Michael Dykes, agrees. He says Dean Foods “is in the fluid milk business, and ... dairy is so much more than just milk.”

Dykes points out that Americans’ per capita cheese consumption is breaking records (40 lbs. in 2018) and butter use is at a 50-year high. Plus, dairy manufacturers are diversifying with countless products and, for example, “we’re fractionating milk into different proteins and isolates, and they are going into products as ingredients,” he says.

So while the bankruptcy declaration points to the stampede of competing milk alternatives — almond, soy, oat, rice, coconut, hemp — and other beverages, Dykes points out that per capita dairy product consumption is up 6% from a decade ago, and “we’re seeing milk prices increase because we’re seeing demand for dairy products increase.”

The filing is, of course, “of intense interest to dairy farmers,” said Alan Bjerga, the National Milk Producers Federation senior vice president for communications.

He notes Dean Foods is “in advanced discussions” with DFA to determine which assets DFA will buy, “so it’s really hard at this point to make any blanket statement as far as impact on farmers.”

But, “clearly, whatever happens ... there is one less buyer, which is Dean Foods,” Bjerga says, and he expects the impacts will spell “a lot of variety ... based on what part of the country ... the prevalence of processors, how much competition there is among cooperatives.”

Many independent dairy farmers who now sell to Dean Foods may have questions, he agreed, about their future market if DFA buys the plant were they now deliver milk.

But, Bjerga says, “the situation shows a lot about what the value of farmer-owned cooperatives really is. If you’ve got a co-op, you’ve got a buyer. The co-op’s got your back.”

Plourd expects, with a farmer co-op that markets perhaps a third of U.S. milk production wanting to buy up such a big milk processor, that “regulators will have to take a look at how the various assets are arrayed and make sure that, whatever the rules or laws of competition ... (they) are maintained.”



Phil Plourd, Blimling and Associates

But, “first of all, DFA is a farmer-owned cooperative. Presumably, that means something,” he says. That is, “if certain of the assets do go to DFA, they’re moving into farmer-owned hands.”

Stephenson, too, expects there will be concerns about monopoly control. “We’ve already had lawsuits brought against both of them (Dean Foods and DFA) on the East Coast because it was difficult for independent farmers to find other access to the fluid (milk) markets,” he said.

However, he believes excessive concentration in the industry “is not as big of a concern under this (situation),” considering what Dean Foods and DFA “are doing in this part of the supply chain.” DFA farms are Dean Foods' biggest milk suppliers. However, although DFA runs some dairy product plants, it’s not a big processor or distributor of milk and cream, as is Dean Foods.

Stephenson opines, “DFA probably sees this as, ‘we’ve been the sole supplier (to Dean Foods) in many regions of the country, for many of their plants, and we want to continue to (be) that supplier.’” So, for DFA, he says, “It’s as much about retaining the sales opportunity to the fluid (processing) sector as anything else.”

For Plourd, the Dean Foods failure is another example of industry pain in adapting to consumers’ evolving tastes. But, he says, “I think what’s a little jarring is the pace of innovation and change seems to be quickening,” and “I think there’s a lot more (change) out there. It’s noisy and it’s fast, but it’s all part of a long, unfolding story ... even if it’s not with the same product mix it had five, 10, or 20 years ago.”

News Briefs:

South Korea agrees to quota for US rice. After years of negotiation, South Korea has agreed to U.S. demands to set up a quota to ensure imports of U.S. rice, the Trump administration announced Tuesday. Beginning next year, South Korea will buy a minimum of 132,304 metric tons of U.S. rice, annually. About four years ago South Korea terminated its quota for U.S. rice, replacing it with a TRQ open to all WTO countries. U.S. rice growers had hoped to get back a country-specific quota when the two nations began renegotiating their free trade pact (KORUS) in 2017, but that didn’t happen. "This agreement gives our farmers the largest volume of guaranteed market access for rice in Korea that the United States has ever enjoyed," U.S. Trade Representative Robert Lighthizer said in a statement. “It will prove

enormously beneficial for American producers and their customers in Korea, who will enjoy access to high quality and cost competitive U.S. rice." The USA Rice Federation says the new quota agreement will be signed in December and go into effect Jan. 1. "The industry and U.S. government have spent the better part of five years working to finalize this agreement with Korea, so we are pleased to see it come to fruition," said Michael Rue, chairman of the USA Rice Asia Trade Policy Subcommittee.

CDFA provides technical assistance to address climate change. The California Department of Food and Agriculture selected 33 organizations for Climate Smart Agriculture Technical Assistance awards, totaling \$2.1 million. Recipients, including several conservation districts and the California Land Stewardship Institute, will provide technical assistance to the applicants and awardees of CDFA's Alternative Manure Management Program (AMMP) and the Healthy Soils Program (HSP). A summary of the 2019 technical assistance awards is [here](#). CDFA says that, during the application phases for these programs, the technical assistance award winners will perform outreach for the programs and assist farmers in many application-related tasks such as developing a project design, estimating the benefits of proposals, and submitting applications. After the AMMP and HSP projects have been awarded, technical assistance providers will continue to work with farmers to implement the projects and meet reporting requirements. "These technical assistance grants are so important to supporting farmers and ranchers of every size and in every region of our state understand the application requirements as well as the kinds of climate smart agriculture projects that qualify," said CDFA Secretary Karen Ross. "We are pleased to partner with so many different organizations and technical experts to help our agricultural community mitigate greenhouse gases and adapt to climate change."

For every appropriation to Climate Smart Agriculture Programs, CDFA devotes at least five percent of the funds to technical assistance grants through a competitive request for proposals. Technical assistance efforts are prioritized to farms of less than 500 acres, and at least a quarter of the funding will be spent on assistance to Socially Disadvantaged Farmers and Ranchers. The Climate Smart Agriculture Technical Assistance Funding is part of California Climate Investments, a statewide program that puts billions of Cap-and-Trade dollars to work reducing greenhouse gas (GHG) emissions. For more information, visit the California Climate Investments website at www.caclimateinvestments.ca.gov

Wilbur-Ellis makes largest acquisition in company history. Wilbur-Ellis, a leading international marketer and distributor of agricultural products, animal nutrients, and specialty chemicals and ingredients, announced the acquisition of Nachurs Alpine Solutions (NAS), a specialty liquid chemical manufacturer serving the precision agriculture, transportation, energy, and diversified industrial sectors in North America. Formed in 1946, NAS pioneered precision-placed liquid fertilizer, formulated to meet the nutritional needs of crops and growing conditions in the U.S. and Canada. In its liquid fertilizer business, NAS was one of the first companies to adopt the 4R Nutrient Stewardship philosophy, which promotes the right product being applied at the right rate in the right place at the right time. Over the past 20 years, NAS has organized into six business units and diversified, providing de-icing and freeze prevention solutions for the transportation and mining industries, as well as fluids for the energy sector. As part of Wilbur-Ellis, NAS will operate as a new business division, alongside the company's other core businesses – Agribusiness, Nutrition and Connell. NAS will be led by its current President and Chief Executive Officer Jeff Barnes, who will report to Wilbur-Ellis President and Chief Executive Officer John Buckley, according to a release. "NAS is a great strategic fit for Wilbur-Ellis," said Buckley. "It supports our One Wilbur-Ellis strategy, which promotes collaboration and leveraging our resources, experiences and knowledge across our businesses to add value and

better serve customers." For example, as an industry leader in precision agriculture, NAS has built strong brands and long-term relationships with customers and suppliers. This creates value and supports Wilbur-Ellis' Agribusiness division, a recognized leader in precision agriculture technology and the distribution and marketing of crop protection, seed and nutritional products. Based in San Francisco, Wilbur-Ellis is one of America's largest private companies, with over \$3 billion in revenue, according to Forbes.

Kroger partners with Infarm on produce grown in stores. U.S. Supermarket giant Kroger and Berlin-based Infarm, plan to bring modular living produce farms to grocery stores in North America. The indoor farms will launch this month at QFC — one of Kroger's banner stores in Bellevue and Kirkland, Washington and later expand to 13 more in the region. The partners announced the hydroponic units "are designed to scale and will provide shoppers the freshest and most sustainable living produce options available," according to a release. "Kroger believes that everyone deserves to have access to fresh, affordable and delicious food, no matter who you are, how you shop or what you like to eat," said Suzy Monford, Kroger's group vice president of fresh. "Our partnership with Infarm allows us to innovate by combining groundbreaking in-store farming technology with our passion for fresh, local produce and ecological sourcing. Kroger is excited to be first to market and offer the best of the season, and we're proud to lead the U.S. on this journey." Founded in 2013, Infarm has over 500 farms in stores and distribution centers around the world and has partnered with over 25 major retailers in six other countries: Germany, France, Switzerland, Luxembourg, Denmark, and the United Kingdom.

Farm Hands West: Newsom appoints Silveira

Governor **Gavin Newsom** appointed **Scott Silveira** of Los Banos to serve on the California Partnership for the San Joaquin Valley. Silveira has served on the Merced County Board of Supervisors representing District 5 since 2019. Silveira also worked as managing partner at Banos Royal Farms from 1990 to 2018.

The Wine Institute selected Danielle Giroux to serve as its new director of California Wines Canada. She is responsible for marketing and promoting California wines to the Canadian market. Giroux brings 15 years of wine industry sales and marketing experience to the role. She most recently served as vice president of marketing at Colio Estate.

Steve Roosdahl has been promoted to vice president of operations at the Oppenheimer Group. He has been with the company for 24 years, and previously worked as the executive director of supply chain.

Jarrett Martin succeeds **Chris White** in the general manager position at the Central California Irrigation District. Martin joined CCID in 2016 as an engineer, and became deputy general manager a year ago.

Sunkist added **Matt Shekoyan** as vice president of strategy. Shekoyan will work with Sunkist and sister co-op Fruit Growers Supply on their strategic direction. Shekoyan started his career as director of agricultural trade for the California Department of Food and Agriculture, and then moved on to become the chief financial officer of Wonderful Citrus for eight years. He also became the director of international business development for Wonderful subsidiary Suterra.

Smart & Final, a warehouse-style food and supply store company, has promoted **Sean Mahony** and **Matt Reeve** to senior vice president roles. Mahony will serve as senior vice president of store operations and Reeve will serve as senior vice president of sales and merchandising.

Dana Thomas announced his retirement from Index Fresh, an avocado marketer. Thomas has been at the helm for 24 years. A successor has not yet been named.

The Senate Energy and Natural Resources Committee has advanced the nominations of **Dan Brouillette** to serve as the secretary of energy, **James Danly** to serve as a member of the Federal Energy Regulatory Commission (FERC), and **Katherine MacGregor** to serve as deputy secretary of the Interior.

The Farm Credit Administration created the Office of Data Analytics and Economics and has selected **Jeremy D'Antoni** to serve as its new director. D'Antoni joined FCA in 2015 as an agricultural economist in the Office of Regulatory Policy. In addition to this new role, D'Antoni serves as FCA's chief data officer, a position he was named to in July.

The National Council for Agricultural Education selected **James Woodard** to serve as the new director of agricultural education, FFA board chair and National FFA Adviser. Woodard currently serves as superintendent of the Morgan Charter School Systems in Madison, Ga. The National Council also named **Cheryl Zimmerman** executive secretary for National FFA. Zimmerman has served on the National FFA board of directors as a consultant and member since 2016. She currently serves as the Wisconsin FFA executive director.

Kathryn McLay has been tapped as the new president and chief executive officer of Sam's Club. Her most recent job has been as executive vice president of Neighborhood Markets. McLay joined Walmart in 2015 as the vice president of U.S. finance and strategy. She was then promoted to senior vice president of supply chain before becoming executive vice president of Neighborhood Markets.



Kathryn McLay

The World Food Program USA's board of directors named **Barron Segar** as its new president and CEO, effective Jan. 21. Segar currently serves as the UNICEF USA executive vice president and chief development officer. Segar brings over 20 years of experience in growing philanthropic and cause marketing platforms. Before joining UNICEF USA, Segar served as the director of development for Georgia Public Broadcasting.

The Land O'Lakes government relations team hired **Michael Daniels** as a new director of federal government and industry relations. Daniels most recently served as director of government affairs for NTCA-The Rural Broadband Association. Daniels previously served nearly four years as a White House appointee at USDA, where he focused on rural economic development issues.

House Agriculture Committee Chairman **Collin Peterson** of Minnesota has added **Luke Theriot** to the committee staff as a professional staff member. Theriot comes to the committee from the office of Rep. **Filemon Vela**, D-Texas, where he served as a senior policy adviser. He

has previously worked for Louisiana State University AgCenter's Audubon Sugar Institute, Louisiana Department of Agriculture and Forestry, and the Senate Committees on Small Business and Entrepreneurship, and Energy and Natural Resources. Theriot also served with the Peace Corps in Morocco at Prince Sidi Mohammed Institute of Management and Agricultural Trade.

The J.M. Smucker Co. has made some changes to its leadership team, effective Nov. 25. **Geoff Tanner**, currently senior vice president of growth and consumer engagement, will take on the new role of chief marketing and commercial officer. **Jill Penrose**, currently senior vice president of human resources and corporate communication, will become chief people and administrative officer under the new structure. **Amy Held**'s title will change from senior vice president of corporate strategy, mergers and acquisitions and international, to chief strategy and international officer. The company has also created a chief operating officer position and is in the process of searching for a candidate to fill the position. **Mark Belgya**, vice chair and CFO, announced he will retire Sept. 1, 2020. **Tucker Marshall**, vice president of finance, will succeed Belgya. On Nov. 25 he will become senior vice president and deputy CFO and will succeed Belgya on May 1, 2020. Belgya will continue as vice chair until his retirement.

Dan Lindner is now the communications director for Rep. **Norma Torres**, D-Calif. He previously served in the offices of Rep. **Raúl Grijalva**, D-Ariz., and Rep. **Judy Chu**, D-Calif.

Kristine Lucius has replaced **Rohini Kosoglu** as the chief of staff for Sen. **Kamala Harris**, D-Calif.

Dean Alan Thonesen, a long-time employee of Sunwest Fruit Co., lost his battle with stage 4 pancreatic cancer. Thonesen had a 34-year career at Sunwest. He was a member of the Fresno County Farm Bureau for more than 40 years, and in the 1970s, he chaired the FCFB Young Farmers and Ranchers Committee, which lead him to serve as vice chairman of the American Farm Bureau's Young Farmers and Ranchers Committee. During his career, he was a member of the California Fresh Fruit Association, where he served on the board and executive committee. He also served seven years as a member of the Big Fresno Fair board of directors.

Best Regards,

Sara Wyant

Editor

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