



P.O. Box 216 Klamath Falls, OR
Protecting Water for Western Irrigated Agriculture

A ROAD MAP FOR THE TRUMP ADMINISTRATION

A white paper prepared by the Family Farm Alliance that details specific steps that the Trump Administration can take immediately upon assuming office. It focuses on the Department of the Interior, particularly the Bureau of Reclamation, which plays a vital role in Western water and power development and management. It also provides recommendations for other federal departments and agencies that have a nexus with our West-wide farmer and rancher membership, such as the Department of Agriculture, the Environmental Protection Agency, and others.

Policy priorities that protect and enhance irrigated agriculture in the Western U.S.

Executive Summary

In the world of Western water, a massive flood event or devastating drought is sure to get policy makers focused on the need to update and create more effective water management policy. The recent drought has ramped up much-needed Congressional interest to craft legislation that will allow Western water providers to better manage and prepare for future dry times.

Our view is that the Trump Administration will need to address the issues of Western water resources development and the implementation of federal environmental laws and regulations, such as the National Environmental Policy Act (NEPA), the Clean Water Act (CWA), and the Endangered Species Act (ESA) – all key issues of concern for our membership. Unfortunately, it's hard to shine the light on these issues when energy issues, repealing and/or replacing Obamacare and tax reform are all center stage in Washington.

It's time to make Western irrigated agriculture one of the priorities for the incoming Trump Administration.

Competition for water supplies and land are driving Western farmers off the land at a time when we should be doing everything in our power to prevent American food production from following other industries “off-shore” in search of lower costs. Meanwhile, Americans are spending, on average, less than 8 percent of their disposable income on food. To put this into perspective, just 75 years ago, that figure was more than 25 percent. While more, better and safer food is being produced by our American farmers, these same farmers continue to feel the pinch – and it is only a matter of time before that pinch translates itself back into the supermarket.

For farmers to survive, and for food to continue to be produced here in America, a stable water supply must be available. In many areas of the West, water resources are available and projects are waiting to be developed. However, the policies of the federal government make development of these stabilizing water supplies nearly impossible.

For the past eight years, we've experienced numerous examples of where the Obama Administration favored fish and wildlife management over food production in the West. Over the past decade, we have witnessed escalated engagement by certain activist groups who cynically use fish and wildlife management to attempt to eliminate sectors of production agriculture. It has happened in places like the Klamath River watershed and California's Central Valley, where water originally developed for farms and ranches is being redirected to meet the “perceived” (i.e. unsubstantiated) needs of several species of fish protected under the ESA. It is happening right now in Oregon's Deschutes Basin, where environmental litigants are incrementally taking water away from farmers and dedicating it to the unsubstantiated needs of the ESA-protected Oregon Spotted Frog.

President-elect Trump has vowed to honor "the legacy of Theodore Roosevelt ... one of our great environmentalists." The Family Farm Alliance and the producers and conservationists who we work with are dedicated to the pragmatic implementation of actions that seek to find a sustainable balance of environmental protection and economic prosperity.

There are ways that the federal government can help support Western irrigated agriculture. The federal government really has a role and a duty to reach out to these producers, educate and work with them on a policy level, work in partnership with them using available funding and federal cost-share opportunities, and generally support their efforts to secure a stable water supply for their farms and ranches.

This report details specific steps that the new Administration can take immediately upon assuming office to demonstrate its commitment to the vision presented herein. It focuses on the Department of the Interior, particularly the Bureau of Reclamation, which plays a unique and vital role in Western water and power management. However, it also provides recommendations for other federal departments and agencies that have a nexus with our West-wide farmer and rancher membership, such as the Department of Agriculture, the Environmental Protection Agency, and others.

This "Road Map" document builds around these recommendations, with background information that focuses on the unique nature of the American West. Irrigated agriculture not only provides a \$172 billion annual boost to our economy, it also provides important habitat for western waterfowl and other wildlife, and its open spaces are treasured by citizens throughout the West. Family farmers and ranchers are willing to partner with constructive conservation groups and government agencies, especially if there are opportunities to both help strengthen their businesses and improve the environment.

Still, many Western producers face significant regulatory and policy related challenges, brought on – in part – by federal agency implementation of environmental laws; destructive tactics employed by litigious, anti-farming activists; and a myriad of new rules and policies, many of which have most recently been driven by the Obama Administration. On the ground, water infrastructure that was built early in the last century is aging, and once-reliable federal grants and loan programs are a thing of the past. Meanwhile, little progress has been made in the past 30 years towards developing new and improved water infrastructure through the application of new technologies to keep up with the growing water demands exerted by expanding cities, power plants, and environmental needs.

The challenges are daunting, and they will require innovative solutions. We must find ways to recover water supply certainty by modernizing and expanding Western water infrastructure, curbing environmental litigation against federal agencies and the rural communities they serve, and modernizing and streamlining antiquated federal environmental laws so they work better for the Nation's food production, ecosystems and rural communities. We must start trimming chapters, rather than adding new ones to a regulatory playbook that is much too voluminous, top-

down, and daunting. Throughout, our recommendations reflect a philosophy that the best solutions come from the ground up and are driven locally by real people with a grasp of reality “on-the-ground” and who are heavily invested in the success of such solutions.

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About the Family Farm Alliance

The Family Farm Alliance (Alliance) is a grassroots organization of family farmers, ranchers, irrigation districts, and allied industries in 16 Western states. The Alliance is focused on one mission: to ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. We are also committed to the fundamental proposition that Western irrigated agriculture must be preserved and protected for a host of economic, sociological, environmental and national security reasons – many of which are often overlooked in the context of other national policy decisions. The Alliance is a key player in the context of Western water resource management and how this important function is impacted by implementation of federal laws and regulations.

Contributors

The Family Farm Alliance exists to develop a common vision and address issues that benefit irrigated agriculture throughout the West. We recognize and understand that differences will exist among water users at the local level. However, the Alliance’s purpose is to serve the common good, and the organization focuses its efforts on actions that enhance the viability of all segments of Western irrigated agriculture.

Family Farm Alliance Board of Directors

The primary roles as a board member of the Family Farm Alliance are to focus on the development of policies that govern the implementation of institutional plans and purposes. Alliance board members are producers who own or operate farms or ranches in one or more of the 17 “Reclamation” Western states. The 2016 board of directors includes:

Harvey Bailey (Reedley, California)
Sandy Denn (Willows, California)
Treasurer Dan Errotabere (Riverdale, California)
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Tom Schwarz (Bertrand, Nebraska)
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Advisory Committee Members and Organizations

The Family Farm Alliance Advisory Committee consists of water resources professionals from the 17 Western states, including environmental attorneys, water and agricultural association

managers, engineers, and managers of irrigation, water and natural resources districts. The 2016 Advisory Committee members include:

J. Mark Atlas - Attorney at Law, *Willows, CA*
Larry Bauman - Central Valley Project Water Association, *Sacramento, CA*
Steve Benson – Imperial Irrigation District, *Imperial, CA*
Mike Britton – North Unit Irrigation District, *Madras, OR*
James Broderick - Southeastern Colorado Water Conservancy District, *Pueblo, CO*
Brenda Burman – Salt River Project, *Phoenix, AZ*
Ken Curtis – Dolores Water Conservancy District, *Cortez, CO*
Tom Davis - Yuma County Water Users Association, *Yuma, AZ*
Dean Edgar - Burley Irrigation District, *Burley, ID*
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Bruce Whitehead - Southwestern Water Conservation District, *Durango, CO*
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Contractors

The Alliance was founded in the early 1990's with one overriding ethic: Agriculture doesn't need another association, but it does need an effective, low cost grassroots group that can get the job done. All staff work is done under contract so we maintain flexibility and very low overhead. Alliance contractors who contributed to this report include:

Dan Keppen (Klamath Falls, Oregon), Executive Director for the Family Farm Alliance.

Mark Limbaugh (Washington, D.C.) President of The Ferguson Group (a Washington, D.C. government relations firm) provides strategic policy and legislative advice to the Alliance.

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Introduction

The recent Western drought has ramped up much-needed Congressional interest to craft legislation that will allow Westerner water providers to better manage and prepare for future dry times.

This report details specific steps that the incoming Trump Administration can take immediately upon assuming office to demonstrate its commitment to the vision presented herein.

Western farmers and ranchers are the real stewards of our natural resources and are voluntarily undertaking water and land conservation and management measures to protect these invaluable resources - including the environment - for future generations, many without prodding from the federal government. There are ways that the federal government can help support Western irrigated agriculture. The federal government really has a role and a duty to reach out to these producers, educate and work with them on a policy level, work in partnership with them using available funding and federal cost-share opportunities, and generally support their efforts to secure a stable water supply for their farms and ranches.

The Family Farm Alliance – for nearly three decades – has stood up for Western family farmers and ranchers to defend irrigated agriculture and our Western way of life. Alliance leaders have continued to build this organization into an effective, low cost, grassroots group that can get the job done. The Alliance has a proven track record of success that includes **55** invitations to testify before Congressional committees on water and environmental issues in the past decade.

This report has been developed to recommend key water and environmental policy priorities for the Trump Administration that can help address and improve Western water resource development and management. It is also intended to correct and rebalance the significant negative impacts to our Western farmers that have resulted from the current federal implementation of environmental laws, such as the Endangered Species Act (ESA), the Clean Water Act (CWA), the National Environmental Policy Act (NEPA).

It's time to make Western irrigated agriculture "Great Again" – protecting America's productive and vital Western irrigated farms and ranches for the safety and security of our Nation's future.

Urban encroachment continues to swallow up productive farmlands, and more farmers and ranchers are converting farm land into residential and business developments, as it becomes more difficult to stay viable and continue farming. Competition for water supplies are driving Western farmers off the land at a time when American food production in general should be increased. We must not allow our Nation's food production to follow other industries "off-shore" in search of lower costs.

Meanwhile, Americans are spending, on average, less than 8 percent of their disposable income on food. To put this into perspective, just 70 years ago, that figure was more than 25 percent. While more, better and safer food is being produced by our American farmers, these same farmers continue to feel the pinch of more regulation, reallocation of irrigation water, and restrictive and complicated federal environmental policies – and it is only a matter of time before that pinch translates itself back into the supermarket.

Ironically, because Western irrigated agriculture has been so adaptive and successful at providing plentiful, safe and affordable food– nobody believes there can be a problem. The last Americans to experience any type of food shortages are members of the Greatest Generation and their parents during the Great Depression. For the most part, they have left us, taking with them the memories of empty supermarket shelves. When the issue has never been personalized, it's easy to be complacent.

We have heard many anecdotal accounts from Western farmers and ranchers of valuable and productive agricultural lands being converted to residential and commercial development, or of agricultural water being used (transferred or bought) to support these new developments. Also, new environmental water demands have been imposed by regulatory agencies or the courts to reallocate water away from food production to the environment. While these are all economically-based activities that can legally occur under both state and federal laws, we must question the sanity of a set of policies that is draining our productive farms and ranches of their water supplies while imposing significant regulatory and policy barriers to new water supply development.

We cannot continue to rely on long-term hypothetical processes that focus primarily on continued conservation and downsizing of Western agriculture. The U.S. needs a stable domestic food supply, just as it needs a stable energy supply. The post 9/11 world of terrorist threats makes the safety and stability of domestic food production even more pressing.

For farmers to survive and for food to continue to be produced in America, a stable water supply must be available. In many areas of the West, water resources are available and projects are waiting to be developed. However, the policies of the federal government make development of that water nearly impossible. Water wars are being fought throughout the West simply because

we have not had the vision to develop new, environmentally sound, sources of water for our collective future.

Listen to the “Hopefuls”, not the “Hatefuls”

For the past eight years, we’ve experience numerous examples of where the Obama Administration favored wildlife management over food production in the West. Over the past decade, the Alliance has witnessed escalated engagement by certain activist groups who cynically use wildlife issues to eliminate sectors of production agriculture. The ESA-listed Oregon Spotted Frog threatens to render useless a water project built by the federal government and paid back by local farmers and ranchers as environmental litigants take more and more of the farmers’ water for the frog through litigation. Deschutes Basin irrigation districts and basin interests – including the litigants - have been working collaboratively to find solutions to century old practices. Taking water away from traditional users will put agencies like North Unit Irrigation District (NUID) – and the NUID farmers and ranchers who’ve been paying back its debt to the federal government for generations-out of business. In the Rocky Mountain States, activists are trying to use bighorn sheep as a means of eliminating grazing on public lands. Many of the federal decisions responsible for harming Western producers are driven by litigation coming from groups like the Natural Resources Defense Council, the Center for Biological Diversity (CBD), and WildEarth Guardians (WEG).

The close relationship these activist organizations have shared with certain members of the Obama Administration extends into all regions and resource issues in the West. For example, former Interior Secretary Salazar’s ESA litigation settlements between the USFWS and CBD/WEG regarding the listing of 113 species under the ESA will resonate for many years. It was truly disturbing for Western farmers and ranchers to witness the Obama Administration apparently cooperatively working (albeit behind the scenes) with the most radical environment groups in the Nation to set Federal policy positions that favor, not balance, wildlife management and protections over food production and the health of our rural communities.

Can ranchers and farmers come together with conservationists to have a future where we all can coexist? There are many pressures we all must face in this regard, but we must work to find a balance on these sometimes-contentious issues.

Not all conservation non-governmental organizations (NGOs) should be lumped into the same category as these aforementioned small, radical activist groups that rely on litigation to drive their agenda. The Alliance has worked hard to create the Western Agriculture and Conservation Coalition, a collaborative effort with the goal of finding ways to improve the environment, protect Western irrigated agriculture, and keep farmers and ranchers in business. Other members of our Coalition include Audubon, The Nature Conservancy, California Farm Bureau Federation, Environmental Defense, Wyoming Stockgrowers, Trout Unlimited, and the Irrigation Association, to name a few. These collaborative, solution oriented organizations are considered the “hopefuls” by the Alliance; the others are more appropriated dubbed “the hatefuls”.

A Philosophy of Collaboration

President-elect Trump has vowed to honor "the legacy of Theodore Roosevelt ... one of our great environmentalists." The Family Farm Alliance and the farmers and organizations we work with are dedicated to the pragmatic implementation of actions that seek to find a sustainable balance of environmental protection and economic prosperity.

There is some excitement in the Western agricultural community about what the new Administration and Congress can accomplish. And there is good reason for excitement. But there also is reason for caution, too. While some are speculating that things like “repealing and replacing” the ESA are doable, others view such a repeal in the larger political context in which critics will cast the Trump Administration and Republican Congress as the “most anti-environment government in history.” That will likely limit how many sweeping changes can be made to environmental laws.

The foundation for some true, collaborative solutions will be driven from the constructive “center”, one that steers away from the conflict that can ensue from both new overreach and grassroots activism intended to resist any changes to existing environmental and natural resource laws, regulations, and policies. The threats to a viable and sustainable rural West are numerous, complex, and variegated. Landscape-scale partnerships are the key to resource sustainability for both agriculture and conservation values.

The Unique Nature of Western Irrigated Agriculture

It is critical to understand the wide variety of Western agricultural activities (defined as those activities occurring west of the 100th meridian¹ where rainfall is generally below 20 inches per year) and the unique nature of Western agricultural challenges. Vast differences exist between the circumstances faced by Western producers and their counterparts in the Eastern, Southern and Midwestern regions. These primarily derive from three drivers that have tremendous impacts on Western farmers and ranchers: (1) the large amount of federally-owned lands in the West; (2) explosive population growth in recent decades (expected to continue); and (3) the recent rapid and proposed development of energy resources.

The unique nature of the West presents challenges and opportunities to find creative solutions. Western food and fiber producers face many core challenges today, including:

- ☛ Attempting to align agricultural and food production with improved environmental outcomes;
- ☛ Seeking ways to find common ground with the urban public; and

¹ Source: Intermountain West Joint Venture. 2013 Implementation Plan – Strengthening Science and Partnerships. Intermountain West Joint Venture, Missoula, MT

- Water scarcity and competition with other demands, including growing water needs for expanding energy development. Regulatory challenges, climate change and an aging water infrastructure complicate efforts to find meaningful long-term solutions.

The recommendations proposed in this report can help keep Western agriculture productive and profitable, which promotes solid rural communities, viable economies and healthy landscapes in the West. Sound federal natural resource policies will help drive the programs and activities that lead to great public investments. These will pay for themselves over and over and demonstrate positive long-term impacts.

Economic and Food Production Benefits from Western Irrigated Agriculture

At a time when drought in California and other Western states has critics of irrigated agriculture questioning the economic importance of farming and ranching, the facts demonstrate otherwise. Western agriculture is a significant contributor to the economy. The Family Farm Alliance in 2015 published “The Economic Importance of Western Irrigated Agriculture” (prepared by the Pacific Northwest Project), a white paper specifically drafted to be read by policy makers seeking to better understand the direct economic impact of Western irrigated agriculture, and to acknowledge the growing chorus of voices bringing attention to food security and irrigated agriculture as a national economic issue.

The full magnitude of irrigated agriculture’s contribution to the economy is rarely, if ever, quantified in terms of total household income for the Western U.S. region. For the 17 Western states studied in the 2015 report, the total household income impacts from irrigated agriculture, associated service industries, and food processing sectors is \$172 billion. There is a huge interconnection between agriculture and many other industries. Recent press reports will acknowledge that California agriculture alone is a multi- billion-dollar industry, but then try to minimize this impact by suggesting that it is “only” 2% of the GDP of the state. Unfortunately, that oft-reported number is only the farm gate value of the products. It does not include all the other industries that benefit from the trucking and processing of the agricultural products (and all the fuel, parts, raw materials, etc., from such activities).

Food security is an issue everyone should be taking more seriously. We cannot or should not wait until the supermarket shelves are empty to do something about protecting our ability to feed ourselves and much of the rest of the world.

The national/world food security issue is no longer confined to just basic scarcity problems, but is gaining a much greater awareness toward emerging impacts to irrigated agriculture in both advanced and developing nations. Food security impacts should include an understanding of the direct and indirect linkages to the economy derived from a low-cost food supply, making available large blocks of disposable income to the consumer spending economy (U.S. citizens spend less of their disposable income on food than anyone in the world), as well as the

availability of high quality food sources provided by Western irrigated agriculture. These types of policy considerations should be at the forefront of future decision making for water resources.

Farming and ranching are huge economic drivers for California and other Western states, particularly in rural communities. Given the magnitude of the food security issue to economic wellbeing, policy makers must place protecting irrigated agriculture as a high priority.

Wildlife Habitat Benefits of Irrigated Agriculture to the West

When something is devalued - or worse, demonized - it becomes easy and even desirable to cast it aside. We believe that the current regulatory regime under-values Western agriculture, and some (but not all) environmentalists would have the public and policy-makers believe that growing food is a scourge upon the land that should be minimized if not eliminated altogether. The Trump Administration has a golden opportunity to use their “bully pulpit” to emphasize the economic, cultural and environmental value of farming and ranching in the West, and to have those values recognized by federal laws, regulations and policies. Such an approach to policy making would be consistent with the current public appreciation for open space, land trusts, farmer’s markets, and the rapidly growing interest in local, sustainable, and organic foods.

Rather than focus exclusively on the alleged depredations of Western agriculture, federal regulators need to recognize that many of our wetlands are sustained by irrigated agriculture, and that much of the private farm and ranch lands adjacent to public lands also provide important buffers from developed areas. We run the risk of losing those wetlands, buffer areas and open spaces when agriculture is devalued and demonized by regulatory policies reflecting the agendas of single-purpose interest groups. Instead, Congress and the federal agencies that it oversees should support and advance valuing many ecosystem services created by newly formed partnerships between landowners, businesses, collaborative non-governmental organizations, and federal agencies that can significantly improve the environment, business climate and quality of life within Western watersheds. In fact, many of these partnerships have led to actual payments for ecosystem services (PES) that compensate farmers for making investments in and maintaining vibrant ecosystem service improvements on their private property, reducing the need for the government to own, maintain and manage such lands in order to develop such projects.

Irrigation has increased agricultural productivity in the arid American West, but media coverage often focuses only on how it has altered the natural landscape. Most irrigation projects also provide important benefits to wetlands and wildlife habitat. In California’s Sacramento Valley, rice production provides vitally important surrogate habitat and food for migratory waterfowl and other species of wildlife. In Northern Colorado, a study² by Colorado State University (CSU) researchers found that 92 percent of wetlands in Colorado were visually connected to the irrigation infrastructure. Though land conversion and water diversions have led to dramatic

² Sueltenfuss, Cooper, Knight, and Waskom, “The creation and maintenance of wetland ecosystems from irrigation canal and reservoir seepage in a semi-arid landscape,” Colorado State University, 2012.

reductions in historic wetland acreage in some places, it is clear from the CSU study that current agricultural landscapes create wetlands that rely on irrigation water as their source.

The Intermountain West Joint Venture (IWJV), a public-private partnership with a mission to conserve priority bird habitats through partnership-driven, science-based projects and programs, has determined that agricultural producers that flood-irrigate working wet meadows in certain landscapes play a key role in sustaining Pacific Flyway waterfowl populations during spring migration. For example, the Southern Oregon and Northeastern California (SONEC) region is one of the most important spring migration stopover areas in North America, supporting more than 4.9 million dabbling ducks at North American Waterfowl Management Plan (NAWMP) goal levels. The IWJV's bioenergetics modeling revealed that 64,700 acres of flood-irrigated wetland habitat must be provided annually on private working wet meadows in SONEC during spring migration to support waterfowl populations at NAWMP goal levels.

Clearly, agricultural irrigators play an integral role in sustaining migratory bird populations in the intermountain West. This example, which plays out to varying extents for waterfowl and other wetland-dependent birds each spring in other intermountain valleys, is a "win-win" for achieving wildlife conservation and agricultural production objectives on the same land with the same water³.

Open Space Values Provided by Western Farming and Ranching

Americans should appreciate the fact that Western farming and ranching operations provide invaluable open space. In the Southern Rockies, for example, 43 percent of the private land that is located adjacent to public lands is associated with a federal grazing lease⁴. The approximately 31,000 grazing permits on BLM and Forest Service lands are connected to more than 100 million acres of private land that ranchers utilize for sheep and cattle grazing during the rest of the year⁵. What would happen to wildlife and open space if public land grazing were to end and these private lands were developed? Private lands provide most winter and riparian habitat for many wildlife species. Public lands, being less productive, cannot sustain healthy wildlife populations once the interspersed private lands are developed and reappear as housing subdivisions.

In the long run, conservation that works is conservation that works not only for natural communities, but for human communities as well. Actions that benefit one at the expense of the other are not truly conservation. Urban dwellers want rural landowners to protect wildlife habitat, open space and provide ecosystem services, yet many landowners feel that city people take for granted these societal benefits, without so much as a thankful nod. Meanwhile, the economic reality is that our efforts to produce food and fiber are increasingly placed at risk by

³ Ibid.

⁴ Richard L. Knight, "The Public- Land Grazing Debate is Over (and we won!)," *Working Ranch Magazine*, Spring 2009.

⁵ Ibid.

our global economy, by increasing regulation of our activities, and by cheap – and questionably safe – food from offshore. The rift between the West’s rural and urban societies can be overcome only when we appreciate what each sector contributes to our collective quality of life and the natural interdependencies that bind us.

The Critical Need to Incentivize and Encourage Young Farmers

We are in danger of losing a generation of young farmers, as productive farmlands and Western agriculture’s traditional water supplies are transferred to meet the multiple increasing needs of other uses. This is all happening at a time when the United Nations projects that the world will need to produce 70 percent more food by 2050 to keep pace with world population growth and hunger. Nationally, the median age of active farmers in America has never been higher, with the percentage of farmers under 50-years-old continuing to plummet. More than half of today’s farmers are between 45 and 64 years old, and only 6 percent of our farmers are younger than 35.

While there is renewed interest among young people to enter farming today, it is offset by an even larger trend: the increasing average age of the American farmer. To reverse this course, our country must take bold action to ensure that aspiring farmers have access to land, health care, capital, education and training. Congress should invest now in a farm bill that helps young Americans enter into and succeed in farming, and that creates incentives for diversified and sustainable agriculture.

The Trump USDA should create policies that can attract and retain young farmers to benefit the future of American agriculture, as well as the stability of America’s food supply. One means of bringing new faces into agriculture and keeping young people in the business is to create a more certain, relaxed and reasonable regulatory environment. Increasingly, we hear reports that the level of Federal regulation affecting American agriculture has reached such a magnitude that family farmers and ranchers fear over-regulation more than most other stressors in their profession. These conversations are often about the frustration they feel over the amount of time they spend dealing with regulations and bureaucracy in managing their business. These regulations hit small family farmers the hardest, since they often do not have the resources at their disposal to deal with the maze of the required paperwork and regulatory recordkeeping. These sometimes-daunting requirements could be moving young people to choose careers other than farming, at a time when there are not many young people left in this line of work.

Today, our own Western farmers and ranchers are being subjected to potentially restrictive and duplicative federal regulations on many fronts. Many of these rules have cropped up in just the past eight years. The related uncertainty that comes with all this increased regulatory scrutiny will make it much harder for these farmers to survive in such a harsh economy. Eliminating just a few of these farmers could impart huge limitations on our future ability to feed our country and the world.

Western family farmers and ranchers need to be shown – through leadership and development of common sense agriculture, conservation and water policy priorities – that what they do every day really does matter to this country.

Federal Regulatory and Policy Challenges for Western Irrigated Agriculture

Implementation of Federal Laws, Policies and Regulations

At the top of the list of the challenges confronting Western family farmers and ranchers is the daunting number of federal regulatory policy initiatives they face. These types of federal water resource policies and regulatory practices could potentially undermine the economic foundations of rural communities in the arid West by making farming and ranching increasingly more difficult. The ESA, CWA and NEPA are not working in the West. Environmental pioneers dealt well with the issues of their day, but the water supply and delivery “tools” they built only got us so far. We need to develop the next generation of tools that build on our successes but also recognize our limitations.

The Endangered Species Act

The very significant federal presence in the West presents unique challenges that producers may not face in other parts of the United States, particularly with respect to the reach of the ESA. Federal agency implementation of this law has had very significant impacts on how producers manage land and water. Importantly, once-certain federal water supplies that were originally developed by the Bureau of Reclamation (Reclamation) primarily to support new irrigation projects in recent years have been targeted and redirected to other uses. So, in the West, once certain water supplies – one of the few certainties in Western irrigated agriculture – have now been added to the long list of existing “uncertainties.”

i. Agency Implementation of the ESA

A prime factor concerning Western irrigators is the employment of the ESA by federal agencies as a means of protecting a single endangered or threatened aquatic species under the law by focusing on one narrow stressor to fish: water diversions. For the second time in a decade, Congress in 2010 directed that the National Academy of Sciences (NAS) convene a high-level, independent scientific review of federal restrictions on water deliveries affecting thousands of Western farmers and ranchers. In 2009, those restrictions – based in large part on ESA biological opinions in California’s Sacramento-San Joaquin River Delta (Delta) – were a primary cause for the water cutbacks and rationing afflicting a multitude of communities throughout the state and the resulting economic devastation in the San Joaquin Valley. The NAS report stated, in part, that the large number of stressors, their effects and interactions in the Delta lead to the conclusion that efforts to eliminate any one stressor (such as water diversions) are unlikely to

reverse declines in listed species. Opportunities exist to mitigate or reverse the effects of many stressors. Continued effects analyses, modeling and monitoring are necessary to ensure actions taken to rehabilitate the ecosystem are cost-effective.⁶

A similar decision to focus exclusively on one stressor – the operation of a federal irrigation project- was made by federal agencies in the Klamath Basin in 2001, and that decision and the science used by federal fish agencies to support the decision, was criticized later in a review conducted by the NAS.

The California and Klamath stories are very similar. The NAS stepped in after Klamath Irrigation Project supplies from Upper Klamath Lake were cut off by federal biological opinions under the ESA in 2001. The NAS’ objective scientific review⁷ concluded that there was insufficient evidence to support these biological opinions in restricting agricultural diversions from the Klamath system, which had led to the near collapse of the local agricultural community. In Klamath, the federal regulators looked at only one of the stressors contributing to the fisheries’ decline and they focused on only one solution – cutting off water supplies to agriculture.

Not surprisingly, the listed species apparently are no better off today than they were in 2001, yet the agricultural community struggles with operating capital, input suppliers and sales contracts for agricultural products, due to the lack of a reliable water supply that has been redirected with uncertain benefits to ESA-listed fish. Likewise, in California today, the same federal agencies have refused to assess the impacts of the many stressors affecting the health of the Delta. And, for more than 15 years they have been restricting or cutting off water deliveries, even though their experience during those 15 years have conclusively demonstrated that long-term agricultural water restrictions have not prevented fisheries from declining in the Delta.

As in California, the effects of the Klamath restrictions were immediate and far-reaching, creating losses not just to the economy, but also to wildlife resources as water was diverted away from farms and ranches (and two federal wildlife refuges). And yet, the federal regulators failed to perform any environmental impact analysis before they ordered irrigation water cutbacks in California and Klamath. Clearly, ESA implementation by several biased scientists within federal agencies must also be addressed, primarily with improved peer review and adherence to laws like the Data Quality Act (aka Information Quality Act). Best available science is not simply a slogan for federal agencies to trumpet; such science must truly be used in natural resource decision making.

“Boots-on-the-ground” efforts and actual recovery of species should define success under the

⁶ Sustainable Water and Environmental Management in the California Bay-Delta (2012), NAS Water Science and Technology Board (<http://dels.nas.edu/Report/Sustainable-Water-Environmental-Management/13394>)

⁷ Scientific Evaluation of Biological Opinions on Endangered and Threatened Fishes in the Klamath River Basin: Interim Report (2002), NAS Board on Environmental Studies and Toxicology (<http://dels.nas.edu/Report/Scientific-Evaluation-Biological-Opinions/10296>)

ESA, not endless litigation and what appears to be the opportunistic pursuit of attorney's fees by certain environmental groups. According to a recent Government Accountability Office (GAO) report⁸, in just four years, litigating environmental groups raked in more than \$15 million from taxpayers, with some of these groups' attorneys being paid as much as \$500 per hour from the public treasury. These environmental lawsuits are the poster child for what has become an environmental litigation industry. While others are busy fixing the problems outside the courtroom, including implementation of the historic Nez Perce Water Rights Agreement (IDAHO) and collaborative efforts by ranchers to prevent listing of the Western sage grouse, litigious groups continue to drain resources and time, distracting everyone from the real goals of the ESA.

Our members are often directly impacted by implementation of federal laws, including the ESA, due to the potential for their Western irrigation projects to impact listed species or their critical habitat. A constant frustration our members have experienced with the implementation of the ESA and analogous processes is the lack of accountability for success or failure. There is a demonstrated lack of empirical measure of the success or failure of mitigation measures (or the Reasonable and Prudent Alternatives), and most important, adjustment of those measures, as a result. Right now, the law does not specifically hold federal implementing agencies accountable for failures or for the wasteful use of resources, including water at the expense of state water law and water users. It only provides for the protection of the species, at all costs, but only within their agency's authority.

ii. The Destructive Tactics of the Environmental Litigation Industry

Recent research into litigation associated with federal environmental laws is beginning to uncover some unsettling facts: the federal government appears to be spending about as much money funding environmental plaintiffs' lawyers as it does to directly protect endangered species. Tax exempt, non-profit organizations are essentially receiving attorney fees from the federal government.... for suing the federal government. Funds awarded to the "prevailing" litigants are taken from the "losing" federal agencies' budget. There is no oversight in spending this money, which could otherwise be funding on- the-ground programs to protect public lands, national forests, ranchers, fish and wildlife and other land uses.

A federal judge in 2011 approved a pair of sweeping settlements that require the federal government to consider endangered protections for more than 800 animal and plant species. The order by U.S. District Judge Emmet Sullivan means the government must act on hundreds of imperiled species that could generate new additional uncertainty for producers throughout the Western U.S. Some decisions have already been made while others will be made over the next five years. The agreement between the USFWS and environmental groups resolved more than a dozen lawsuits that challenged the government's handling of roughly 250 so-called "candidate

⁸ Information on Cases against EPA and FWS and on Deadline Suits on EPA Rulemaking. GAO-15-803T: Published: Aug 4, 2015. Publicly Released: Aug 4, 2015

species." Those are animals and plants that activists say are in dire need of protection but that the government has lacked resources to address. The agreements also cover more than 600 species for which environmental activists had filed legal petitions seeking protections. The government agreed to address those petitions, a well.

These two settlement agreements are the culmination of what is known as the "ESA multidistrict litigation". This case was formed in 2010 by combining 13 federal court cases filed by either the WEG or CBD – two of the most litigious environmental activist organizations in the West – regarding 113 species. Unfortunately, the predictably enormous costs and all the other collateral damage that will come from agreeing to move forward with these listings are completely unknown. According to recent research conducted by the Budd-Falen law firm (WYOMING), the cost of the settlement agreements to the American taxpayer will be over \$206 million - just to process the paperwork. That figure does not include the payment of plaintiff attorney fees to the CBD and WEG.

Western producers who have seen firsthand the economic impacts that can accompany ESA single species management are wary and concerned. Litigation that often surrounds ESA listings and federal agency management decisions adds a whole new level of costs and uncertainty for farmers and ranchers who rely on federal water projects located in areas where ESA-protected fish and wildlife live. With the possible addition of several hundred new species to the ESA list, there are also concerns that other agencies – including the Environmental Protection Agency (EPA) over CWA permit decisions – will be forced to consult with federal wildlife officials over the impacts of its decisions to the hundreds of newly protected species. Finally, given the size of the USFWS budget for this, and the aggressive timeline set by the court, there is certain to be a great deal of incomplete and otherwise inadequate science going into these listing decisions.

Clearly, certain litigious groups have greatly abused the original intent of environmental statutes so that they can find procedural flaws in agency actions, sue the federal government, and receive millions of federal taxpayer dollars in attorney fees for settling or winning these cases which in turn, allows them to continue litigating against the government. Unfortunately, accurate statistics have not been kept by the Justice Department or the federal agencies, thus there is no accounting for the total amount of tax dollars paid.

iii. New ESA Administrative Policies

Under the ESA, protections are extended to a species that is endangered or threatened "throughout all or a significant portion of its range." The George W. Bush Administration understood the law to mean that protections may only apply to the "significant portion" where the species is threatened or endangered, not to areas where the species are healthy or where they never existed. However, two federal judges disagreed with that approach because it excluded some members of a listed species from ESA protection. The Obama administration withdrew the previous Bush policy and proposed a replacement to resolve "tensions and ambiguities" in the law. The Obama policy states that if the viability of a species is at risk in a significant portion of

its range, protections will apply across all its range. The first policy deals with how the government deals with a species that faces varying levels of danger across its range. Another looming policy change involves the economic analysis that the government must conduct when designating an area as critical habitat. The issue is especially worrisome because critical habitat designations could result in restrictions on private land if farmers and ranchers have federal crop insurance or other federal assistance. The combined effect of the policies would be to subject more land to ESA restrictions while relieving the government from considering the law's full economic impact in their decision-making process.

The Clean Water Act

Today, more than a third of the 3.6 million stream miles in this country are designated as “impaired” under the federal CWA. Under the ESA, 28 types of salmon have been listed and none have recovered. Though listing of waters as impaired and species as endangered might be perceived by some as victories, they have by and large not translated to real improvements to the species on the ground.

The Obama Administration’s rule that attempted to define the jurisdiction of the EPA and the Corps of Engineers over which “waters of the US” (WOTUS) were protected under the CWA was intended to clarify administration of CWA jurisdictional issues, but is very uncertain, particularly in areas where Western farmers and ranchers store, move and apply water for irrigation. This uncertainty brings with it the risk of additional regulations, time-consuming and potentially expensive processes, expanded opportunities for litigation and a shift from local and state water management toward increased federal agency regulation and oversight.

The Alliance shares many of the views expressed by some states, agricultural organizations and others in the regulated community that, in many ways, the final WOTUS rule expands federal jurisdiction over most waters under the CWA. Small tributaries, adjacent waters and isolated wetlands and ponds will automatically become jurisdictional “waters of the U.S.” under the final rule and not be subject to any interpretational significant nexus analysis.

Despite these concerns, the Alliance in the past two years has also worked constructively with the EPA to ensure that, regardless of what happens with the various court proceedings, assurances will remain that allow for construction and maintenance of irrigation ditches and the maintenance of drainage ditches consistent with Section 404(f) of the Clean Water Act. The EPA and the Corps of Engineers in July 2007 issued Regulatory Guidance Letter (RGL) 07-02 that provides a national approach for conducting exemption determinations for the construction and maintenance of irrigation ditches and the maintenance of drainage ditches consistent with Section 404(f) of the CWA. Section 404(f) specifically exempts from CWA permitting requirements discharges of dredged or fill material into “waters of the U.S.” associated with the construction and maintenance of irrigation ditches and maintenance of drainage ditches. In 2015, high level officials with EPA and the Corps provided the Alliance with a written letter assuring that RGL 07-02 would remain in place, regardless of what the fate of WOTUS becomes.

National Environmental Policy Act (NEPA)

The White House Council on Environmental Quality (CEQ) in February 2010 issued draft guidance that would require federal agencies to consider greenhouse gas emissions and climate change when carrying out NEPA reviews, to “modernize and reinvigorate” NEPA. CEQ had developed draft guidance on the consideration of greenhouse gases, clarifying the appropriateness of “Findings of No Significant Impact” (FONSI) and specifying when there was a need to monitor environmental mitigation commitments, and clarifying the use of categorical exemptions (CEs). CEQ also proposed improved public tools for reporting on NEPA activities. CEQ had been asked for guidance informally by federal agencies and formally in a petition filed in 2008 by three activist environmental groups calling for CEQ to amend NEPA regulations to address climate change. Many believe the NEPA effort was driven by these same extreme environmentalists, who want to slow down or stop major projects solely based on an assumption that they may either accelerate global warming or can be over-designed (i.e. made more expensive) to deal with the predicted impacts of global warming.

CEs and FONSI are both important tools in operating and maintaining federal water projects in the West. A “categorical exclusion” describes a category of actions that do not typically result in individual or cumulative significant environmental effects or impacts. When appropriately established and applied, CEs serve a beneficial purpose. They allow Federal agencies to expedite the environmental review process for proposals that typically do not require more resource-intensive environmental documentation. Applying for a new CE, for example, can potentially ease the Federal Energy Regulatory Commission (FERC) permitting requirements for irrigators who want to install small hydroelectric projects in existing canals and ditches. These projects have minimal environmental impacts and offer over 50,000 opportunities in the U.S. to create new, clean, renewable sources of energy. Unfortunately, there are activist groups who use NEPA to delay and/or block efforts of some Western water users to perform the most routine (yet essential) actions.

The Obama Administration CEQ tried to place more emphasis on monitoring and reporting requirements for NEPA-excluded activities and “frontloaded” environmental mitigation requirements where FONSI or exclusions have traditionally been used. Western water managers often use these NEPA mechanisms in conjunction with annual operations and maintenance activities on ditches or major rehabilitation and repair projects on existing dams. The Obama CEQ directives will impact Western water users by adding costs and delays to traditionally less-expensive NEPA activities and analyses.

Big Picture Solutions

It is very clear to those who work the land that the federal laws created over forty years ago need to be re-evaluated and modernized in Congress to make them work better for the environment and our rural communities. There needs to be regulatory and statutory changes made to these

major acts to empower environmental markets and to establish proven approaches and data considerations for decision making. The constructive scientists working for federal and state fish and wildlife agencies are becoming increasingly hamstrung with paperwork and legal deadlines driven by lawsuits from a handful of activist groups.

Curbing Environmental Litigation Against Federal Agencies

A key component to change the culture of ESA implementation is to end citizen suit and environmental lawsuit abuse. The House of Representatives' Committee on Natural Resources in recent years has considered legislation in the 114th Congress that would have taken significant steps towards addressing some of these concerns. The four bills focused on transparency and species recovery:

- ☛ H.R. 4315, *The 21st Century Endangered Species Transparency Act* would require data used by federal agencies for ESA listing decisions to be made publicly available and accessible through the Internet. The bill would allow the American people to actually see what science and data are being used to make key listing decisions.
- ☛ H.R. 4316, *The Endangered Species Recovery Transparency Act* would require USFWS to track, report to Congress, and make available online: 1) funds expended to respond to ESA lawsuits; 2) the number of employees dedicated to litigation; and 3) attorney fees awarded during ESA litigation and settlement agreements.
- ☛ H.R. 4317, *The State, Tribal, and Local Species Transparency and Recovery Act* would require the federal government to disclose to affected states all data used prior to any ESA listing decisions and require that the “best available scientific and commercial data” used by the federal government include data provided by affected states, tribes, and local governments.
- ☛ H.R. 4318, *The Endangered Species Litigation Reasonableness Act* would prioritize resources towards species protection by placing reasonable caps on attorney fees and making the ESA consistent with another federal law. The Equal Access to Justice Act (EAJA) limits the hourly rate for prevailing attorney fees to \$125 per hour. However, no such fee cap currently exists under the ESA, and attorneys have often been awarded huge sums of taxpayer-funded money. This bill would put in place the same \$125 per hour cap on attorney fees for suits filed under the ESA that currently exist under the EAJA.

The actions that would have been authorized in these four bills would have better allowed implementation of the ESA to help recover and seek to remove species from the list and encourage public engagement and federal agency transparency and accountability. Unfortunately, these legislative efforts were never enacted into law. The Trump Administration must continue to support similar efforts with the new 115th Congress.

There are examples in the West where confrontation and litigation surrounding federal land and water issues have been replaced with collaboration and cooperation. One of those areas is in the Yakima River Basin in Washington state, where an integrated water resources plan succeeded because the diverse groups involved had already spent years sharing findings, discussing potential projects, and building trust and respect. Their recent on-the-ground efforts have kept streamside ecosystems alive, supported fisheries and outdoorsmen, and ensured that farmers received their allotted water supplies, all while providing joint benefits for agriculture and the environment--two sectors long in conflict. Collaboration makes this approach a model for others, and is one that should be copied throughout other western watersheds. Where successful collaborative processes involving federal land and water matters have led to meaningful outcomes, there should be a provision (in law or regulation) that these decisions are *unappealable*, with some type of longer-term “safe harbor” from litigious challenges. This is something Congress and the Trump Administration should advocate for.

Build Upon Past and Existing Efforts to Modernize the ESA

The Family Farm Alliance for decades has worked with our members, other organizations and congressional leaders to develop specific, practical changes to the ESA that we think will make it work better in the modern era. Fortunately, there are existing documents and processes that already exist that can be used to build a foundation for ESA modernization.

The Western Governors Association (WGA) has launched the second year of their Species Conservation and ESA Initiative (Initiative), which will include a series of work sessions and webinars that expand on the bipartisan dialogue of the Initiative’s first year. The Alliance is working with the Western Agriculture and Conservation Coalition (Coalition), seeking to find areas of agreement towards modernizing the ESA. These efforts build upon a recent Coalition letter that was sent to WGA about its May 2106 report. Using the WGA report as a starting point, the coalition is now considering several topics for reforming the ESA, including: 1) Landscape Scale Conservation; 2) Private Landowner Incentives; 3) Species Recovery; 4) The Role of States; 5) Science and Transparency; and 6) Critical Habitat. It is our understanding that WGA is working with the National Governors Association, which will consider adopting a resolution in early 2017 that will make ESA modernization a priority for governors across the Nation.

An excellent list of targeted ESA reforms is also included in the 2014 [“Report, Findings and Recommendations”](#) developed by the Endangered Species Act Congressional Working Group. This report was intended to improve the ESA and remove impediments to species recovery. The Working Group heard several common themes on areas for improvement that fall into four categories: 1) greater transparency and prioritization of ESA implementation to ensure more focus on species recovery and de-listing; 2) ESA litigation and settlement reforms; 3) empowering states, local, tribes and private landowners on ESA; and 4) improving transparency and accountability of ESA scientific data.

There have been several efforts conducted in Congress to find out exactly how much environmental litigation organizations are receiving in legal fees and cost recoveries using taxpayer funds they get because of suing the federal government. Only through on-going investigations into legal fees paid to litigious environmental groups will policy makers and the American public know the answer to exactly how much these groups have received, which may provide a further indication of what types of on-the-ground conservation measures could have been funded with taxpayer money diverted towards “settling” law suits.

The goals of the ESA are laudable. However, this 40-plus year-old law needs some targeted reforms, including commonsense changes to make it work better, encourage incentive-driven recovery efforts, and discourage frivolous litigation:

- ☛ Agencies should focus on applying the ESA in a way that fosters collaboration and efficiency of program delivery and is incentive-driven.
- ☛ Standards for scientific and commercial data that are used to make decisions under the ESA must be established.
- ☛ Peer review of ESA listing decisions and ESA Section 7 consultations should be provided by a disinterested panel. Administrative guidelines and/or legislation can be crafted to create procedures for that process.
- ☛ For ESA litigation settlements involving federal environmental agencies, the federal government can provide better oversight on how (and how much) attorney fees are distributed.
- ☛ Incorporate ideas for improved “Safe Harbor” for landowners, neighboring landowners and water districts. Programmatic safe harbor (ESA Sec. 9 “take” protections) should be provided for anyone conducting normal operations within a certain radius (probably species dependent) of proposed projects.
- ☛ Implement the recommendations of the 2014 ESA Congressional Working Group⁹.
- ☛ If possible, the 2011 settlements between the USFWS and environmental groups should be withdrawn until the full implications are fully understood and publicly vetted.

These are incremental measures that help change the paradigm in Western resource management so that we end up limiting dollars spent on litigation instead of habitat protection and food production.

Modernize and Streamline the National Environmental Policy Act

Members of the Congressional Western Caucus in the 113th Congress introduced legislation that would have prevented NEPA from being used as a vehicle to advance climate regulations that are outside the scope and original intent of NEPA. They wanted to ensure that federal agencies implementing the requirements of NEPA won’t engage – or be forced to engage – in costly and unnecessary assessments specific to a potential influence on or because of climate change. They

⁹ <http://lummis.house.gov/uploadedfiles/esaworkinggroupreportandrecommendations.pdf>

correctly assumed that this initiative would generate a flood of activist-inspired litigation and “change NEPA into a global warming prevention statute”.

Congresswoman Cathy McMorris Rodgers (R-WA) in 2008 oversaw the release of a final report produced by the Task Force on Improving and Strengthening the National Environmental Policy Act. Based on findings and testimony given to the Task Force at seven field hearings across the country, the final report includes 20 recommendations in 9 subcategories on how to strengthen the NEPA process:

- ☞ Addressing delays in the process
- ☞ Enhancing public participations
- ☞ Better involvement for local, state, and tribal stakeholders
- ☞ Addressing litigation issues
- ☞ Clarifying alternative analysis under NEPA
- ☞ Better federal agency coordination
- ☞ Additional authority for the Council on Environmental Quality
- ☞ Clarifying the meaning of “cumulative impacts”
- ☞ Studies

The path to modernizing NEPA through Congressional action will be a lengthy process and must be done at the correct time. Before legislation can be introduced to improve NEPA, the Trump Administration can increase awareness and educate people on the impact of NEPA on their daily lives. Coalition building and a bipartisan approach will be required to pass NEPA legislation, which we believe should build upon the recommendations of the NEPA Task Force¹⁰

Developing and Improving Western Water Infrastructure

We must invest (and reinvest) in the Western water infrastructure necessary to meet current and future demands. Our existing water infrastructure is aging and in need of rehabilitation. We need new water storage to adapt to our changing hydrology and develop usable and sustainable supplies to meet growing demands for water. The federal government can continue to be partners in solving water problems in the West by developing innovative policy and financing mechanisms that have a very low federal cost and make water resources infrastructure development more attractive and affordable for non-federal interests to invest in projects the federal government can no longer fund. New water supply infrastructure must be developed to replace diminishing snowpack during drought conditions, provide for growing recreational and environmental needs, allow for population growth, and protect the economic vitality of the West.

Western family farms and ranches of the semi-arid and arid West— as well as the communities that they are intertwined with – owe their existence, in large part, to the certainty provided by water stored and delivered by Reclamation and other state and local water storage projects. A

¹⁰ <https://ceq.doe.gov/ntf/report/finalreport.pdf>

major reason many Western agricultural water users continue to push for improved water storage and conveyance infrastructure is not to support continued expansion of agricultural water demand (which is NOT happening in most places), but to mitigate for water supplies that have been reallocated away from agriculture toward growing urban, energy, environmental and recreational demands in recent decades.

Federal Funding and Competitive Cost-Shared Grant Programs

New federally backed tools to assist in financing major improvements to aging water infrastructure will be needed in the coming years to ensure that farmers and ranchers charged for these upgrades can afford repayment. Water infrastructure – like farms and ranches - is a long-term investment, as are farms and ranches, and longer repayment and lower interest terms will be crucial in reinvesting in these aging water supply facilities to meet the challenges of tomorrow. Such improvements could include investments in everything from new water storage reservoirs (both on- and off-stream as well as groundwater storage), regulating reservoirs, canal lining, piping open channels, computerized water management and delivery systems, real-time monitoring of ecosystem functions and river flows for both fish and people, and watershed-based integrated regional water management.

Reclamation's WaterSMART program leverages small cost-shared competitive grants with local and state funding for water management improvements and conservation projects, assisting many local water providers in making significant investments in their aging water delivery systems. Expansion of Water SMART grants to include a larger (up to \$20 million) competitive 50-50 cost shared grant for water supply management projects integrated into a regional watershed plan could help fund larger water conveyance and conservation infrastructure. Importantly, it could also help fund small storage reservoirs that are a part of a larger, broader watershed plan. More effective federal investments in on- and off-farm water management improvements could be achieved by improving coordination of WaterSMART and other water management programs at Reclamation with existing conservation programs at the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS).

We must continue to find ways to leverage federal funding to meet even more needs for both aging and new water infrastructure projects. Title II of the Rural Water Supply Act of 2006 (PL 109-451) authorized a loan guarantee program for financing the rebuilding and replacement costs of aging water infrastructure within Reclamation's ownership. This program would leverage a small number of appropriated dollars into a large amount of private lender financing available to qualified Reclamation-contractor water districts with good credit. Unfortunately, this long-awaited critical financing tool for water users across the West has been held up because of incorrect interpretations of federal policy by the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO).

We need to develop innovative ways to allow for non-federal investments in constructing new water supply facilities without requiring that the federal government actually build that

infrastructure. We believe such investments would allow for more cost-effective construction, operation and maintenance of much needed new water supply infrastructure and not impact federal budgets. The proposed Reclamation Infrastructure Finance and Innovation Act (RIFIA) would authorize a new affordable financing mechanism for certain large water supply projects in the West. Under the proposal before Congress, projects would be limited to the 17 Western states, Alaska, Hawaii, and other states where Reclamation is authorized to provide assistance. Priority would be given to areas facing water resource challenges. The RIFIA provisions would be similar, but not identical, to the Water Infrastructure Finance and Innovation Act (WIFIA) enacted in P.L. 113-121, which created a five-year pilot program for EPA and the Corps of Engineers. The WIFIA program was recently updated by the 114th Congress in the passage of the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016 (S. 612) and WIFIA loans were funded for the first time to the tune of \$20 million in the continuing resolution funding the federal government through April 28, 2017.

Federal Permitting and Studies

For many reasons – political, economic, societal, environmental – the construction of traditional surface storage projects is undertaken on a much more limited basis than in decades past. The most frequent reasons center around economics or an inadequate potential water market associated with the given facilities. In other cases, environmental, safety or geologic challenges came to light during a project’s development, and rendered its construction, completion or operation unfeasible. Political opposition often contributed to a project’s demise, leaving the facilities “on the books” awaiting further action, but with external events and new priorities passing them by. Even if funding and authorization is secured for a new storage project, the existing procedures for developing additional water supplies can make project approval incredibly burdensome and time consuming.

Individual surface storage proposals must be evaluated and the associated benefits and risks must be viewed in a net, comprehensive manner. While some critics of new storage projects focus on perceived negative impacts associated with new facility construction (e.g. loss of habitat, disruption of “natural” stream flow patterns, and potential evaporative losses), these perceived impacts must also be compared to the wide range of multi-purpose benefits that storage projects can provide. Properly designed and constructed surface storage projects provide additional water management flexibility to better meet downstream urban, industrial and agricultural water needs, improve flood control, generate clean hydropower, provide recreation opportunities, and create additional instream flows that can benefit downstream fish and wildlife species.

The aforementioned WIIN Act contains provisions that allow irrigation districts to voluntarily prepay contracts with the federal government. The funding that is expected to be generated by these payments over the next ten years would be placed into an account to fund (finance) either the construction of new state-led water storage projects or the expansion of current federally owned water storage reservoirs. The WIIN Act also authorizes Reclamation to implement a surface storage enhancement program to fund new or expanded water storage construction for the purposes of increased municipal supply, agricultural irrigation, and to reduce impacts to

fish and wildlife. The Trump Administration's Bureau of Reclamation should work to ensure that these authorities are implemented as a priority.

Several other bills have been considered in past Congresses intended to facilitate the construction of new surface storage facilities. Some of these provisions were folded into the WIIN Act. For example, H.R. 3980, introduced by then-Water and Power Subcommittee Chairman Tom McClintock (R-California), would make it easier to construct additional storage by streamlining the current multi-agency permitting process for new storage projects and creating a "one-stop-shop" permitting process through the Bureau of Reclamation. Senator John Barrasso (R-Wyoming) introduced similar legislation in the last Congress. Passage of these laws would provide tools that could help project proponents actually build new water storage projects in California and the rest of West.

Many Western water managers operate existing irrigation canals and ditch systems that may provide opportunities to develop in-canal, low-head hydroelectric projects that have the potential for producing, in the aggregate, significant amounts of renewable energy with virtually no negative environmental impacts. Streamlining the permitting process to develop these projects will make it easier for Western agricultural water users to pursue practical small-scale conduit hydropower generation projects. Existing irrigation structures can be retained while the system is updated with modern clean-energy producing technologies. Increased revenues from the sale of this renewable energy can result in a new source of funding for rehabilitating our aging water delivery infrastructure at lower costs to farmers. And, importantly, improved irrigation water delivery services can be realized while utilizing flows for clean, emissions-free energy production.

President Obama in August 2013 signed into law a pair of bills endorsed by the Family Farm Alliance and others aimed at promoting small hydropower development by streamlining the federal regulatory process for certain types of projects. The two bills - "The Hydropower Regulatory Efficiency Act", and "The Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act" - authorize and streamline permitting for Federal Energy Regulatory Commission (FERC) regulatory actions on small non-federal conduit hydroelectric projects, and authorize and streamline permits for small nonfederal conduit hydroelectric projects on Bureau of Reclamation owned canals, respectively.

The actions surrounding the enactment of P.L. 113-23 and P.L. 113-24 have elevated the importance and highlighted the possibilities of low-head hydropower development in Western states. While there has been more development of FERC - licensed projects, the bottom line is that low-head hydro opportunities are being re-examined with renewed interest across the West.

Finally, despite the progress made on low-head hydropower development, these clean green renewable projects are largely financially feasible because of the Public Utility Regulatory Policy Act (PURPA), which has been perhaps the most effective single measure in promoting renewable energy. PURPA is the only existing federal law that requires competition in the utility

industry and the only law that encourages renewables. In recent years, certain investor- owned utilities have tried to hamstring PURPA at the individual state public utility commission level by requiring unrealistic terms for power purchase agreements and qualifying facility requirements. This continued assault on PURPA can be addressed at the federal level through thoughtful amendments to the law.

Principles, Requirements and Guidelines for New Federal Water Projects

As a result of a congressional directive in the Water Resource Development Act (WRDA) of 2007, the Obama Administration’s White House Council on Environmental Quality (CEQ) developed Principles, Requirements and Guidelines (PR&G) for federal investments in water resources. These PR&Gs were originally intended to accelerate Corps of Engineers’ water project approvals, reduce costs, and support water infrastructure projects with the greatest economic and community benefits. These new updates to the original Principles and Guidelines (P&G) called for in the 2007 WRDA had contemplated that the Corps of Engineers, rather than the White House CEQ, would provide the lead on this endeavor. Instead, these PR&Gs were expanded and broadened by CEQ to cover all federal agencies with water infrastructure development authority. They overly emphasize the value of healthy ecosystems and encourage nonstructural options, such as expanding wetlands to manage stormwater and flood runoff, over traditional and time-proven solutions like building levees and dams to provide solutions to flooding, water supply and management problems.

While some environmental groups say the CEQ-driven effort reflects a deeper understanding of “the true costs” associated with water resource development projects, many in the regulated community believe that adding such requirements to the water project planning process could hinder and even stop key projects that are needed to meet rising water demands in fast-growing regions of the Nation. And, placing a subjective “value” on environmental impacts of a project could elevate the “cost” of a project beyond the projected “benefits” in a new P&G benefit-cost analysis.

Federal laws like the ESA, Clean Water Act, and NEPA already provide sufficient (and some say overburdening) requirements for mitigation of environmental damage from water development projects. Overlaying these new, subjectively-derived set of values reflected in the PR&Gs on virtually every federal action that has a nexus to water management goes beyond the intent of Congress and could have a crippling effect on Western water management activities at all levels and for all uses. It is unclear how the various agencies involved with water infrastructure will mesh implementation of individual agency guidelines on projects that involve more than one federal agency. The new guidelines could bring federal water project development to a halt. The process proposed is daunting and uncertain, and the costs and delays it would impose could preclude many planning and development efforts. We do not want to see a program that becomes mired in a process that ultimately delays or prevents implementation of critical water projects. Those projects – especially those that enhance water supplies – already are very time-intensive

and any additional delay for planning and studies will only add to the costs and time frame for providing water supply relief.

The new PR&G overlay a whole new “value set”, not just on new projects, but also on every federal action that has a nexus with water. The proposed Guidelines could impart real disruption to programs that have a long track record of success, such as Reclamation’s Safety of Dams and Operation and Maintenance (O&M) programs. The PR&G and subsequent Agency Specific Procedures (ASP) developed for individual agencies go beyond the legislative intent of Congress stated in the 2007 WRDA. The ASP and PR&Gs could significantly impede water management and development activities in the Western United States by adding significant bureaucratic layers onto already complex federal environmental and engineering decision making processes. They are biased towards nonstructural and demand management strategies and could render future federal water infrastructure investments hopelessly bound in red tape and indecision.

Opportunities for Landscape and Watershed Conservation and Collaboration

Alongside water, and in many cases directly related to it, Western agriculture also confronts the challenges of increased pressure to maintain biodiversity in working landscapes. Recent analyses and regional case studies¹¹ suggest that formally-designated protected areas are not sufficient in size, heterogeneity or location to capture the bulk of North America’s wild biodiversity within their boundaries. In the West, many elements of this biodiversity are better represented and safeguarded on private and tribal lands than on the highly-protected, specially designated public lands managed by federal agencies. A mosaic of private and public forests and rangelands that include protected areas, but are not limited to them, contributes more to maintaining biodiversity than protected areas alone. Ranch lands already serve as a buffer for public lands against invasive plants, domestic cats and dogs, and the danger of wildfires. We can encourage all appropriate land uses, but importantly, only to the degree that the land can sustainably accommodate those uses.

We do not have to sacrifice food production for conservation – we can achieve both objectives. Further, we can:

- ☞ Work across administrative boundaries rather than staying within them;
- ☞ Integrate social capital with ecological and economic dimensions;
- ☞ Encourage bottom-up participation rather than top down initiatives;
- ☞ Increase success, reduce expense and eliminate working at cross-purposes through improved interagency cooperation, which would, for example, complement the role of the Natural Resources Conservation Service (NRCS) in regards to water quality;

¹¹ Gary P. Nabhan, Richard L. Knight, and Susan Charnley, “The Biodiversity that Nature Reserves Can’t Capture: How Western Ranches, Tribal Grazing Lands and Private Forests Sustain Ecosystems and Their Diverse Species” in *Saving the Wide Open Spaces*, 2011.

- ☛ Explore the nexus where the federal government owns the land and the states control the water. This is particularly critical relative to new water storage reservoirs, the siting of which often occurs in upper watershed areas managed by the federal government.

Above all, we need to empower local watersheds to provide leadership, and problem-solve in a unique, locally-driven manner.

Partners Approach

The Alliance supports the efforts of a group within the USFWS called “Partners for Fish and Wildlife” that helps to fund habitat work on private lands. The Partners Program demonstrates a workable process to reconcile inherent conflicts brought about by multiple demands. This program already has the infrastructure and relationships with landowners to get effective habitat work done for ESA listed and candidate species. They have projects on the ground all over the country and are doing yeoman’s work to preserve habitat for toads in Nevada, Sage Grouse in Wyoming, and the Mountain Plover in Colorado, to name just a few success stories.

The Partners program is successful because it employs experts who are on the ground, working with landowners, instead of crafting mandates via biological opinions and the corresponding ‘reasonable and prudent alternatives’ (RPAs) from far-removed government offices. These federal officials recognize that if a species exists and thrives on a property—public or private—the practices that currently occur on that property will not harm and could even possibly protect that species. They learn to recognize, for example, that sage grouse are vulnerable to predators, and that areas where ranchers run sheep tend to have heavy predator control. They take the time to respect the observations of local landowners, who every day see thriving sage grouse populations on their lambing areas. Working with landowners, they gain an understanding and shared belief that the predator control that takes place on private lambing grounds has helped to keep the sage grouse in those areas healthy.

The Partners for Fish and Wildlife is uniquely positioned to fulfill the direction of the ESA for the USFWS to manage threatened and endangered species. We believe that funding for USFWS should be fundamentally re-prioritized to move dollars away from the “regulatory hammer” approach used by some ESA regulators within the agency and towards the Partners program to support these types of partnerships that can provide for real species protections and recoveries.

Value of Ecosystem Services

Western farmers and ranchers can also play a key role in using their lands, water and management practices as tools to engage in payment for ecosystem services (PES) projects. A PES can create opportunities for partnerships with landowners, business, NGOs, and agencies that can significantly improve the environment, business climate, and quality of life within Western watersheds. A voluntary system of payments may be more socially acceptable and

effective than extensive additional regulation. Critical discussion and reflection in the Western farm and rangelands community about PES and more generally market-based approaches will be essential. A well-designed PES program can make a ranching or farming operations even more viable.

We support advancing a Rural Resilience Initiative, a concept proposed by the Freshwater Trust. This initiative will create jobs and rejuvenate rivers in the near term, while catalyzing a new sector of the economy that could drive local investment, middle class job growth, smart natural infrastructure, and environmental outcomes that help secure our water, our food supply, and our rural economy in a dynamic world.

i. Paying for Performance

This initiative is not a new grant program. Rather, it is a set of key systems and tools to catalyze a robust conservation sector that will be paid only for performance. It will require rapid baseline assessment of watershed conditions, targeted restoration, and quantified uplift with on-going monitoring, maintenance and tracking against targets. Done right, this initiative could incentivize local contractors, native plant nurseries, conservation project lenders, and project managers to engage in this emerging business ecosystem. Near term, this means new jobs. Mid-term, this means even more jobs as the tools and systems export to other basins and unlock new finance and market mechanics. Long-term, this means America will never spend another conservation dollar poorly or without performance targets, and can provide enduring resilience to its environment and economy for the inevitable shocks ahead.

Traditional conservation methods can no longer match the scale and complexity of 21st century environmental issues. A White House-led effort could fundamentally reset the nation's approach to conservation, driving unprecedented efficiency and efficacy. Leveraging data, insight, local implementation, and pay-for-performance mechanics, we can transition to a precision-focused and outcome-based future that generates economic and environmental gains across local and watershed scales. Together, these will catalyze the buildout of an entire new sector of the economy that can prosper in a world increasingly marked by natural resource limits.

ii. Leveraging Tech for Efficiencies

The play here is not to create more governance organizations or groups. Tools exist today that allow for smart, distributed, self-interested actions that render quantified environmental gain that can go toward specific public conservation goals or compliance requirements. By providing “basin X-rays” showing specific conservation sites with the highest uplift potential, project management apps to facilitate implementation to certain criteria, and serving as a buyer of environmental outcomes, this Initiative can drive local jobs, smart investment in natural infrastructure, and solve water quality problems around nutrients, sediment, and temperature at the watershed scale.

There are only so many ways to restore health to a river, all which center on restoring the form and function of waterways. Simple actions like planting native trees along streambanks, cover cropping or fencing livestock represent the bulk of these. Newer, more advanced actions, such as drain water management and saturation buffers, can also improve agricultural production while decreasing impacts. However, complicated funding and permitting processes that are poorly timed against work windows thwart efficiency. Further, not all conservation is created equal: some sites make a big difference and some, none. For a generation, too many public dollars have gone to projects that provide little or no targeted uplift. We annually spend \$38 billion (federal, state and local) on conservation in this country, without solving landscape-scale problems. In fact, we do not really know what we are getting. This type of inefficiency need not exist in a world with software architecture, and these failures should end with the Trump Administration. The approach presented here - integrated with the existing programs under NRCS - could provide more clarity of high priority conservation opportunities where we can see greater benefits and measure performance.

iii. New Model for a New Era

In addition to new tools, the legal, biological and transactional mechanics around natural infrastructure can now be standardized. This allows us to know, for example, how many pounds of phosphorus or tons of sediment or kilocalories of thermal loading can be kept out of the watershed by restoring or managing a specific acre in a specific way. We can literally sort millions of acres to find the thousand that will fix the problem. This allows us to set targets, track progress, and hit outcomes in a fundamentally new way and sets up the possibility of principled conservation markets and smart public investment. Taken together, these precision-based actions will allow natural infrastructure to play a significant role in cost avoidance for local municipalities as we replace failing water infrastructure across the nation in the decades ahead.

Department and Agency-Specific Recommendations

For generations, American family farmers and ranchers have grown food and fiber for the world, and these farmers will have to muster more innovation to meet the critical challenge of producing even more to meet projected future increases in world (and U.S.) demand for these commodities. Such innovations in agriculture must be encouraged by the federal government, rather than stifled with new, top-down federal policies and regulations that create uncertainty over the very water supplies originally developed for irrigated farms and ranches in the rural West. Some of the more troubling administrative developments are described below.

Department of the Interior

Bureau of Reclamation (Reclamation)

Of all federal agencies, our membership likely works closest with the Bureau of Reclamation, whose core mission is to provide for the delivery of water and power from its Western U.S. facilities in a manner that meets applicable requirements of state and federal law. Essential components of the core mission are: 1) providing for the operation and maintenance of existing facilities that are likely to remain in federal ownership; 2) providing for the rehabilitation and replacement of infrastructure that is likely to remain in federal ownership; and 3) possessing the ability to manage the construction of new projects that Congress may fund through Reclamation.

The Family Farm Alliance in 2005 asked its members to comment on the performance of Reclamation, with an eye towards developing specific recommendations for a study undertaken by the National Research Council (NRC). NRC, via the Board on Infrastructure and the Constructed Environment, had appointed a committee to advise Reclamation on the organizational, management, and resource configurations to provide Reclamation with the capability to fulfill its core mission.

The Alliance specifically asked irrigation districts and organizations of farmers to provide examples of: 1) poor or exemplary project management by Reclamation; 2) management of Reclamation projects by non-federal authorities; and 3) instances where Reclamation was operating beyond its traditional mission. Nine individual case studies were developed for irrigation districts served by six Reclamation projects in five Western states. Key findings included:

1. Reclamation frequently demanded that design work on water projects be performed only by Reclamation staff.
2. Western water users found that cost estimates prepared by Reclamation for proposed work are often significantly higher than reasonably anticipated costs.
3. Some irrigation districts complained of unsatisfactory contract management by Reclamation staff, and generally question the technical (especially relative to engineering and inspection) abilities of Reclamation staff, particularly newer hires.
4. Reclamation demonstrated an unwillingness or inability to document the basis for accounting of construction, NEPA work, and other cost estimates.
5. Districts sometimes believed they did not have recourse to fully understand and engage with Reclamation in decision-making and related cost estimates.
6. Water users in some cases noted significant Reclamation over-staffing of meetings or work on projects.
7. Reclamation needed to improve "turn-around" times for design work or decisions.

Several contributors to this report observed that Reclamation had carried out few major new construction projects during the previous decade, and consequently, the agency's engineers and

construction management staff lacked practical construction experience. The designers and builders of Reclamation's most impressive works have long since retired, and the current generation of engineers, planners and managers had not had the opportunity to develop the skills of their predecessors. Moreover, many contributors believed that Reclamation had too few licensed engineers.

As a result of the report and the Alliance concerns, Reclamation commenced a multi-pronged approach to dealing with the many management issues facing the agency. Through the Managing for Excellence (M4E) initiative, Reclamation embarked on a months-long analysis of the agency's operation, thoroughly examining core capabilities in several key areas and their ability to respond in an innovative and timely manner to future needs. The [*Managing for Excellence Action Plan*](#), published in February 2006, outlined a process and timeframe for identifying and addressing the specific 21st Century challenges to fulfill Reclamation's mission. While the current Administration has not paid much attention to the Plan's findings, they are still relevant today and could be used to address concerns that persist today – ten years later.

The *Managing for Excellence* Action Plan outlined specific action items organized under eight key functional areas:

1. relationships with customers and other stakeholders;
2. policies and organization;
3. engineering and design services;
4. major repair challenges;
5. project management;
6. asset sustainment;
7. research and laboratory services; and
8. human resources/work force.

Reclamation staff members from regional and area offices can also play a key role in helping to find the right path to make multi-agency processes and projects work. When strong relationships are developed between Reclamation employees (especially in area or regional offices) and local water users, strong, cooperative and innovative solutions can and have been reached (such as in the Yakima River Basin (WASHINGTON)). There are other models in the West – such as implementation of water project grant and loan programs by California's Department of Water Resources – where successful projects have been completed. A template for success might be one where state and federal agency regulators establish criteria, funding agencies write the checks, and local districts and their consultants implement and satisfy regulatory criteria and funding eligibility requirements.

The following recommendations are specific to issues and policies the Alliance has been working on over the past decade:

Recommendations:

- ☞ **The Bureau of Reclamation must either hire skilled and experienced engineers and managers, or turn to their non-federal project managers and the private sector to provide the human resources necessary to maintain and improve the Bureau's facilities.** Meeting the challenge of modernizing the West's aging water infrastructure will require a corps of highly qualified professionals serving in the public and private sectors. Use the February 2006 [Managing for Excellence Action Plan](#) as one resource to address these concerns.
- ☞ **Expand low-head hydropower benefits to cover all of Reclamation.** Reclamation should work with Congress to ensure that projects constructed under the Reclamation Project Act of 1939 are also eligible for lease of power privilege benefits like the "Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act" enacted into law in the 113th Congress.
- ☞ **Work with Congress to amend PURPA in a way that protects its original intent to encourage both competition in the utility industry and development of renewable energy.**
- ☞ **Force consideration of "takings" impacts – using momentum of Klamath Project takings litigation - into considerations of "Reasonable and Prudent Alternatives" during ESA consultation processes for Reclamation project operations plans.**
- ☞ **Support for and funding of:**
 - Colorado River Drought Programs with an emphasis on protecting the continued viability of irrigated agriculture in the Colorado River Basin;
 - Provisions identified in the 2016 Senate Energy Policy Act (S. 2012) for Yakima River Basin Water Enhancement Program and Klamath Project water and power.
 - Implementation of Subtitle J of the WIIN Act, which provides drought relief for California and across the West. This Subtitle authorizes \$535 million to help fund the federal share of new desalination, recycling and water supply storage projects in the West, and for the control of invasive species and fish restoration activities, and allows Western water users to accelerate repayments of project costs to the federal treasury. Bring balance back into Central Valley Project water management.
- ☞ **Review and re-evaluate the Truckee River Operating Agreement in light of potential ESA conflicts. Consider initiating actions to delist ESA listed fish (Cui-ui and Lahontan Cutthroat Trout) from the ESA.**
- ☞ **Delay finalization of Lower Klamath River flow study.** Reclamation's water and power customers served by the Central Valley Project and the Klamath Irrigation Project

have repeatedly submitted formal comments on a Lower Klamath River flow plan that is being driven primarily by fisheries interests working with Reclamation. The flow report employs a flawed flow-centric philosophy and does not tell the complete story regarding artificial flows and fish health on the Lower Klamath River. This report should be delayed until true, unbiased peer review can be provided and water and power users concerns are properly addressed.

- ☛ **Establish a program to facilitate transferring to non-Federal ownership title to mostly small-scale, single-purpose Reclamation projects and facilities.** Title transfers are a positive means of strengthening control of water resources at the local level. In addition, they help reduce federal costs and allow for a better allocation of federal resources. Reclamation should work with Congress to develop a legislative concept for a programmatic approach intended to simplify transfer of “non-complicated” facilities. This would greatly reduce the hurdles and expense that can impede title transfers beneficial to local interests and to the federal government.
- ☛ **Make maximum use of existing financing tools for project beneficiaries, including direct loans and loan guarantees, such as those authorized by The Rural Water Supply Act of 2006 (PL 109-451).** Efforts must continue to compel Reclamation and OMB to implement this program and to investigate opportunities to develop similar loan and loan guarantee programs that can help fund new water infrastructure projects. Reclamation should establish an educational demonstration project that highlights benefits of how a loan guarantee can benefit a project (e.g. Solano Irrigation District in California).
- ☛ **Work with Congress to advance the Reclamation Infrastructure Finance and Innovation Act (RIFIA).**
- ☛ **Prioritize and expand Reclamation’s WaterSMART cost shared competitive grant program to include larger multi-year grants for water management improvements.**
- ☛ **Improve coordination of federal water conservation programs at USDA (NRCS) with other water management improvement programs at Reclamation.**
- ☛ **Work with Congress to find ways to streamline permitting processes associated with developing new water storage projects.**
- ☛ **Withdraw Draft Warren Act Directive & Standard (D&S) -** Draft D&S PEC 05-10 addressed contracting for non-project use of excess capacity in Bureau of Reclamation project facilities. Draft D&S PEC 05-11 addressed charges for non-project use of excess capacity in Reclamation project facilities. Reclamation’s water customers were concerned that the Draft D&S, if adopted, would not advance the purposes for changes, and would substantially increase charges. Also, contributions by water users within one

region could end up “subsidizing” other regions. Ultimately, Reclamation backed off on both draft D&S in 2016; water user concerns would be alleviated if both draft D&S were withdrawn and shelved.

- ☛ **Assess, modify and /or eliminate agency-specific procedures (ASP) for Principles, Requirements and Guidelines (PR&Gs) for Water & Related Resources Implementation Studies.**
- ☛ **Assess, modify and/or eliminate Climate Change Adaptation Policy (CMP P16).** This policy establishes how Reclamation will address climate change impacts upon Reclamation's mission, facilities, operations and personnel. It fails to acknowledge or require that Reclamation must first communicate and coordinate with their water contractors on any climate adaptive measures to be taken that could in any way impact project operations, water deliveries or long-term supplies. It has a “top down” tone that should be modified to reflect a more collaborative process in implementing climate adaptation activities.

U.S. Fish and Wildlife Service (USFWS)

The USFWS guides the conservation, development, and management of the Nation's fish and wildlife resources through enforcement of federal wildlife laws (like the ESA), protecting endangered species, managing migratory birds, restoring nationally significant fisheries and conserving and restoring wildlife habitat such as wetlands. Obviously, these activities provide many opportunities for the agency to interact with, cooperate with, and sometimes conflict with, Western farmers and ranchers. Unfortunately, Western agricultural water managers whose job it is to provide water to their farmer and rancher patrons in some cases have been excluded from participating in the scientific review and decision-making ESA consultation processes that form the basis of biological opinions developed by USFWS biologists.

However, there are opportunities for USFWS to work collaboratively with Western water users. The WIIN Act authorized \$43 million to benefit endangered and threatened fish and wildlife, and reauthorizes \$15 million for fish passage projects, including fish screens, through USFWS. Under the program, originally authorized under the recently expired Fisheries Restoration and Irrigation Mitigation Act of 2000 (FRIMA), funds will be available to cost-share up to 35 percent for fish passage projects in the states of California, Idaho, Montana, Oregon and Washington.

Recommendations:

- ☛ **Funding for USFWS should be fundamentally re-prioritized** to move dollars away from the “regulatory hammer” approach used by some ESA regulators within the agency and towards programs like the Partners for Fish and Wildlife program.

- ☛ **Improve transparency and recourse on ESA consultation activities.** Remedies to fix this problem would be similar to those suggested below for NMFS (see page 47).
- ☛ **Assess recent administrative actions for possible modification or elimination, including,** President Obama’s Executive Memorandum entitled “Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment”, critical habitat policies, and the Obama Administration’s National Fish, Wildlife and Plants Climate Adaptation Strategy.
- ☛ **Work with water user interests to best prioritize and implement programs funded by FRIMA.**
- ☛ **Assess, modify or eliminate rule changes on ESA policies, such as Critical Habitat**

U.S. Geological Survey (USGS)

Created by an act of Congress in 1879, USGS has evolved over the ensuing 125 years, matching its talents and knowledge to the progress of science and technology. USGS is the sole earth science agency for the Department of the Interior and the federal government. It is sought out by thousands of partners and customers for its natural science expertise and its vast earth and biological data holdings.

Without timely and accurate water resources information, human life, health, welfare, property, and environmental and natural resources are at considerably greater risk of loss. The USGS has been a leader in developing and realizing the potential of state-of-the-art technologies to provide real or near real-time data, with the States as essential partners.

Programs like the National Streamflow Information Program (NSIP) and the Cooperative Water Program (CWP) are critical to managing Western water resources. Together, these two programs support much of our national stream gaging system, which is critical for water resources and emergency management, planning and decision-making; water supply project and transportation infrastructure design; long-term planning related to climate change and variability; and other essential uses. We fear that insufficient funding will undoubtedly lead to the loss of important stream gages – many with over 30-years of record.

Recommendations:

- ☛ **USGS budget requests for water-related information gathering should be fully supported.**
- ☛ **Employ full NSIP funding.**

- ☛ **Provide sufficient appropriations to support a 50%-50% CWP match.**
- ☛ **Assess, modify or eliminate guidance published by USGS and EPA entitled ‘EPA/USGS Technical Report: Protecting Aquatic Life from Effects of Hydrologic Alteration’.** This report insinuates that states can use the federal Clean Water Act to control ‘hydrologic alterations’, such as irrigation water diversions and diversions to water storage reservoirs, to benefit the environment. These are clearly state responsibilities and the release of this environmentally driven report provides potential environmental litigants working against irrigated agriculture with a possible pathway to challenge state-sanctioned irrigation diversions under the CWA.

U.S. Department of Agriculture

The U.S. Department of Agriculture (USDA) seeks to provide leadership on food, agriculture, natural resources, rural development, nutrition, and related issues based on public policy, the best available science, and effective management. However, we believe several “disconnects” need to be mended so that USDA policy leaders and the public can better understand the challenges facing Western producers. USDA Secretary Tom Vilsack last year penned an op/ed titled “Rural America is Back in Business.” While the Secretary’s optimistic message in that editorial was better than the normal “doom and gloom” news we often see surrounding agriculture, many Western producers would not agree that rural America is faring better under the Obama Administration.

With all due respect to Secretary Vilsack, there are some things going on out in the real world that are not being fully captured or understood by our federal policymakers. Mr. Vilsack’s editorial was hammered by many Western farmers and ranchers, who pointed to the destructive wildfires destroying watersheds across the West, high local unemployment, demand at local food banks and current economic struggles of farmers.

Western producers find it difficult to understand why agricultural production finds itself continually under attack when farmers and ranchers continue to provide the affordable and abundant food and fiber to feed and clothe the Nation and the world. They are troubled why the USDA and other federal agencies in recent years appear to have partnered up with litigious critics of production agriculture who have a habit of “biting the hand” of those that produce the food. We can only hope that the new Trump Administration will look to Western farmers and ranchers and leaders from rural communities to begin an informed dialogue on food, agricultural and rural policies.

Recommendations for USDA

Some Western producers have observed that conservation and research tend to be lower priorities in USDA’s final budget process, often because of Congressional mandates or OMB decisions. USDA needs to become a zealous advocate for greater inter-agency cooperation with agencies like the Bureau of Reclamation to work together more efficiently and effectively,

avoiding duplicative or cross-purpose programs. The Trump USDA should heed the following major recommendations that emerged from the 2010 National Agricultural Landscapes (NAL) Forum:

- ☛ **Improve Jurisdictional Flexibility and Share Responsibility** – Local, regional and state land managers should be encouraged and provided the tools to lead watershed enhancement efforts at the landscape level.
- ☛ **Improve Program Efficiency and Inter-Agency Cooperation** – Greater facilitation of inter-agency learning and cooperation is required to improve conservation outcomes.
- ☛ **Target Regulations and Reduce Uncertainty** – the U.S. Department of Agriculture (USDA) must harmonize regulations to avoid redundant requirements that do not enhance protection.
- ☛ **Leverage Program Assistance to Maximize Program Effectiveness** – Partnerships and leveraging state, local and private funding are essential to achieving resource conservation goals.
- ☛ **Expand Market-Based Solutions** – Government can play a supportive role in developing ecosystem market regulatory and environmental quality standards.

Western irrigated agriculture is a strategic national resource, and the role of the federal government in the 21st Century should be to protect and enhance that resource. In the past eight years, much of the news media coverage has focused on perceived negative aspects of agriculture. The USDA traditionally was viewed by many of the farmers on the ground as one of the few remaining government agencies that championed agriculture. That well-earned reputation was diminished in the past eight years, as agency priorities focused on perceived negative water quality and quantity impacts caused by agriculture. Policy makers and the public appreciate the positive examples of how conservation groups and farmers and ranchers can work collaboratively with government agencies on “win-win” solutions that are good for agriculture and the environment. We should be thinking of ways to mobilize the public to act favorably on issues that are critical to maintaining economically viable ranching and conservation of resources and to demonstrate the important partnership between land stewards and conservation interests.

Natural Resources Conservation Service Conservation Programs

The Natural Resources Conservation Service (NRCS) draws on a long history of helping people help the land. For 80 years, NRCS and its predecessor agencies have worked in close partnerships with farmers and ranchers, local and state governments, and other federal agencies to maintain healthy and productive working landscapes. Farm Bill conservation programs administered by NRCS can provide useful tools for Western farmers and ranchers.

One of those programs, the Regional Conservation Partnership Program (RCPP) promotes

coordination between NRCS and its partners to deliver conservation assistance and limited funds to participating producers and landowners. RCPP combines the authorities of four former conservation programs, including the Agricultural Water Enhancement Program (AWEP), funding for which was repealed by the Agricultural Act of 2014. AWEP was a voluntary conservation initiative that provided financial and technical assistance to agricultural producers to implement agricultural water enhancement activities on agricultural land to conserve surface and ground water and improve water quality. The Family Farm Alliance has long sought to find ways to provide additional funding opportunities for irrigation districts and other agricultural water delivery and management organizations to solve aging infrastructure and water conservation challenges in a more coordinated and effective manner.

We need to focus on cooperative approaches to enhancing water quantity and/or quality on a regional scale. The Alliance was part of a diverse coalition that crafted the original AWEP concept a decade ago. Irrigation districts or other water agencies are already able to work with multiple producers to achieve locally-generated, measurable objectives and results. Fortunately, an opportunity exists to modernize the NRCS P.L. 566 Watershed Program, which has invested over 6 billion dollars in watershed projects nationwide over the last 50 years. This program does allow direct payments to irrigation districts for large watershed projects. Western water managers have used this program to pipe irrigation district open canals and then used the AWEP (now RCPP) to complete the on-farm conservation projects with the individual farmers and ranchers. These projects have conserved water and conserved energy, restored stream flows for fish and wildlife, increased on-farm water deliveries during water shortages, enhanced local economies, and can also generate renewable energy.

The present conservation priority system employed by NRCS places too much emphasis on whatever national policy is driving current decision-making. In the past, the states' local priorities drove the decision-making criteria. Now, it appears that projects are first evaluated on whether they meet national priority. This ends up disqualifying meaningful local projects, and by default drives funding towards those river basins which have the most national political clout. One size does not fit all. Conservation needs of a rice farm in Arkansas are much different than those of a rancher in Wyoming or a coffee producer in Hawaii. Local control for identification of conservation needs and allocation of funding must be restored and supported.

Recommendations to Improve Conservation Program Delivery

The Trump Administration USDA must create opportunities to further improve the RCPP by adhering to the following:

- **Local and state priorities should be the drivers of conservation.** The national priority ranking criteria should be eliminated, and instead, a block of conservation funds should be provided to each state, where local and state priorities end up driving how funds are spent on the ground, consistent with each program's authorities and goals. States should be allowed to voluntarily assume primacy for implementation of the conservation title of

the farm bill with block grants to the states. This would result in increased efficiency and delivery of conservation needs within each state. Significant cost saving to the federal government could be realized by reduction in duplicate effort with the states;

- ☛ **Program provisions should provide direct payments to irrigation districts to work directly with their landowner member farmers on NRCS-approved coordinated water conservation and management projects.** While NRCS should still approve the contracts, more efficient results that provide measurable, coordinated improvements on the ground will occur if the irrigation districts distribute the funds and work with the landowners directly. These districts can provide opportunities for innovative solutions to water management problems that currently cannot be achieved simply due to bureaucratic barriers and narrowly focused programs. Administrative expenses for such partners should be allowed, but capped;
- ☛ **Irrigation districts and/or landowners should be allowed to implement water conservation or water quality projects outside of the normal projects funded under the EQIP program,** given that they can show improvements to either water quantity or quality;
- ☛ **Modernize the P.L. 566 Watershed Program** and maximize opportunities for irrigation districts and other local water agencies to participate, thereby optimizing opportunities for improved water quality and water use;
- ☛ **Irrigation districts or similar entities should be allowed to be the basis for “pooling” arrangements,** where the benefits of a project which affects multiple landowners is funded by “pooling” their individual interests into a larger, coordinated project;
- ☛ **Direction must be provided to improve how NRCS program administrators deliver timely and accurate information, provide reliable and transparent processes, and set firm deadlines;**
- ☛ **Administrative costs associated with any work performed by the NRCS should be capped at a reasonable level;**
- ☛ **The role of the Bureau of Reclamation in coordinating with NRCS in the implementation of this program in Western states must be well defined,** and should complement the collaborative philosophy (between the Departments of Agriculture and Interior) embedded in the former “Bridging the Headgates” initiative endorsed by both the Bush and Clinton Administrations;
- ☛ **NRCS must provide assurances that the intent of conservation programs is not to reallocate water away from agriculture,** but to help stretch limited water supplies for future regional beneficial use. NRCS monies should not be used to retire farmland or

convert irrigated ground to dryland crops. It must also recognize the traditional deference of federal agencies to state water laws and allocation systems;

- ☛ **The money obligated for these programs in the Farm Bill needs to be “no year” money**, so that it doesn’t have to all be obligated in the first year, with nothing left in later years. This has proven to be real hindrance for projects that take more than one year to build. Water managers have also noticed that the NRCS funding levels fluctuate, and so they are never sure what level of funding their farmers will receive. During the application process to secure funding, NRCS should agree how much a district is going to receive and ensure this money will be there. To minimize administrative complications, sharing some of the control over funds with the partnering irrigation districts would simplify the responsibilities of the NRCS. Districts could be held accountable through audits and reports delivered to the NRCS; and
- ☛ **Create policies that can attract and retain young farmers to benefit the future of American agriculture, as well as the stability of America’s food supply.** One specific action that would help would be to work with Congress to reauthorize adequate funding for the Beginning Farmer and Rancher Development Program (BFRDP).

U.S. Forest Service

USDA’s Forest Service plays an important part in Western natural resources management because in most Western states, much of the available water originates from snowmelt in the headwaters of streams and rivers in the higher elevation mountainous areas, some of which are managed by the Forest Service. A July 2008 report¹² released by the National Research Council underscores the importance of forests to the Nation’s water supplies. Sadly, due to drought and past management practices, many of these western forests are overgrown, unhealthy, and susceptible to unnatural catastrophic wildfires that destroy watersheds.

In recent years, the Forest Service has become more aggressive in the world of Western water resource management. The agency continues efforts to require the transfer of privately held water rights to the federal government as a condition in the permitting process for land uses on Forest Service lands. Additionally, the Forest Service has leveraged Western water users to acquire more water supplies for the government by requiring water users to apply for their rights under state law in the name of the United States, rather than in the name of the beneficial user of those rights. This practice continues, despite objections from elected officials, business owners, private property advocates and a U.S. District Court ruling. In Colorado, water users are still battling with the Forest Service and the U.S. Bureau of Land Management (BLM) over the agencies’ Joint Land Management Plan, which includes more restrictive “standards” to assess stream conditions in a permitting process that will likely lead to by-pass flows from non-

¹² National Research Council; [Division on Earth and Life Studies](#); [Water Science and Technology Board](#); Committee on Hydrologic Impacts of Forest Management. “Hydrologic Effects of a Changing Forest Landscape”, 2008.

federally developed water storage reservoirs and irrigation diversions. We believe any by-pass flows that could be imposed in a special use permit process should be viewed as a “taking” of private property by the federal government, and could have major impacts on existing and future water rights.

The Forest Service under President Obama proposed a new chapter for its Forest Service Manual on managing groundwater resources. The groundwater management and water quality Best Management Practices (BMP) directives the Forest Service proposed were alarming, and would open the door to a jurisdictional expansion that would most likely conflict with the laws of most Western states. Notably, the groundwater directive automatically assumed that groundwater and surface water are hydraulically connected, unless demonstrated otherwise using site-specific information, and thus under the control of the federal government if on or under National Forest lands. The proposed National BMPs would revise Forest Service directives and establish a new national system for meeting mandates under the Federal Water Pollution Control Act, or CWA on Forest Service lands. The vaguely drafted national BMPs appear to be duplicative of existing programs in some cases and overly prescriptive in others. Specifically, the BMPs are duplicative of existing federal and state water quality programs, are prescriptive and could lead to project delays.

Recommendations:

- ☞ **Terminate the Proposed Directive on Groundwater Resource Management, Forest Service Manual 2560**
- ☞ **Terminate the Proposed Directive for National Best Management Practices (BMPs) for Water Quality Protection on National Forest System (NFS) Lands**
- ☞ **Emphasize and respect the state’s role in water rights matters.**
- ☞ **Assess and prioritize opportunities to swap Forest Service lands in potential water storage reservoir locations for state lands.**
- ☞ **Work with Congress to streamline environmental processes to commence forest treatment projects on the ground** to make forests healthy again and to prevent disasters to watersheds and communities (similar to the bipartisan [“Resilient Federal Forests Act” - H.R. 2647](#)).
- ☞ **Stop the budget process of “fire borrowing”, which yearly robs treatment funds to address fire disasters** to allow the Forest Service to fight fires and protect our forest and watershed health.

Thousands of water and land conservation projects have been completed across the Western United States, and these efforts should continue. By recognizing the value of irrigated

agriculture; by understanding the current and future role of irrigated agriculture in the West, by ensuring that federal watersheds are properly managed, and by encouraging federal agencies to work with the agricultural community to solve local water challenges, the Trump Administration USDA can play a truly important role in helping to solve the agricultural challenges that today seem so insurmountable.

Environmental Protection Agency

The mission of EPA is to protect human health and the environment. EPA's purpose, in part, is to ensure that federal laws protecting human health and the environment are enforced “fairly and effectively”. The agency also works to ensure that environmental protection is an integral consideration in U.S. policies concerning natural resources, human health, economic growth, energy, transportation, agriculture, industry, and international trade, and these factors are similarly considered in establishing environmental policy. EPA under President Obama drove a vigorous effort to re-write U.S. environmental policy through administrative rulemaking efforts, some of which hold potentially harmful implications for Western farmers and ranchers. Several recent actions taken by EPA have catalyzed these concerns.

Recommendations for the EPA

Numerous rulemaking efforts undertaken by the Obama Administration EPA hold potentially harmful implications for Western farmers and ranchers. The Trump Administration will likely be bombarded with requests from those in the regulated community who have concerns with these and other administrative actions, which all should be reviewed and assessed for possible modification or withdrawal, if possible, including:

- ☛ **“Waters of the U.S.” (WOTUS) Final Clean Water Act Jurisdictional Rule.** The rule was developed without much consideration or outreach to irrigated agriculture and would dramatically expand the jurisdictional reach of the federal Clean Water Act, possibly including farming and ranching activities. The rule, while under federal court challenge in the 6th Circuit Court of Appeals, should be remanded back to the Trump Administration EPA and either eliminated or redrafted with the assistance and input of irrigated agriculture, farmers and ranchers, the states, and industry.
- ☛ **Aquatic Life Hydrologic Alteration Report.** Last year, EPA and the U.S. Geological Survey (USGS – see above) issued a draft aquatic life hydrologic alteration report that was developed to serve as a source of information for states, tribes and territories on (1) the natural flow regime and potential effects of flow alteration on aquatic life; (2) CWA programs that can be used to support the natural flow regime and maintain the health of aquatic biota; and (3) a flexible, nonprescriptive framework to quantify targets for flow regime components that are protective of aquatic life. This document implies that any water diversion that results in altering the “natural” landscape is “bad” and shouldn’t be done. This is an area that has always been left to the purview of the individual states based upon state

constitutional mandates. Because a state-based water right is a private property right, this amounts to a serious threat to state sovereignty and private property rights and is a direct affront to state water laws.

- ☞ **National Pollutant Discharge Elimination System (NPDES) permit for point source discharges from the application of pesticides to waters.** Many Western water users are significantly impacted by the court order declaring that certain lawful pesticide applications that are already regulated under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) are nevertheless subject to Clean Water Act NPDES permits issued by EPA or delegated states. These permit compliance requirements impose resource and liability burdens on thousands of farms, ranches and agencies (e.g. mosquito abatement) that are legally responsible for protecting public health, and exposes them to citizen law suits over infractions as minor as paperwork violations. Ultimately, we believe that the permit jeopardizes public health protection and the economy as regulators and businesses expend time and resources to implement and comply with these permits, all for no additional environmental benefits.
- ☞ **EPA's five-year strategic plan (2010)** reiterates the agency's intent to implement strong climate change actions. While EPA focused more on incentive programs under the Bush Administration, it vowed to mix voluntary programs with "additional regulatory actions as needed."
- ☞ **EPA's strategy- "Coming Together for Clean Water"** - carries with it the same concerns we have with the Strategic Plan (above).
- ☞ **EPA-mandated emissions upgrades for Navajo Generating Station (NGS).** The Central Arizona Project is facing expensive EPA-mandated emissions upgrades for the NGS. These required emission upgrades are intended to satisfy unique, and some would say questionable, visibility criteria- driven in part by the proximity of NGS to Grand Canyon National Park and other national monuments – and carry with them huge costs that would have to be passed along to local farmers and ranchers and the Navajo Nation.
- ☞ **Recent guidance from EPA regional offices** show a clear bias against water storage projects that appears to prejudge potential projects without consideration of important civic, economic and environmental needs.
- ☞ **Water Transfer Rule.** The Obama administration is reconsidering a 2008 EPA rule recently upheld in the 11th Circuit Court of Appeals that allows water transfers from one water body to another without CWA permits. Any potential new level of regulation, permitting and certain litigation could hamstring the economies of states like Arizona, California and Colorado, where millions of acre-feet of water are transferred every year.
- ☞ **Pesticides and salmon.** EPA in the Northwest has failed to establish clear procedures for its pesticide effects determinations and subsequent actions consistent with 1988 amendments to

the ESA. This has resulted in unnecessary restrictions without any indication that Pacific Northwest salmon will benefit and puts producers along the West coast at a competitive disadvantage.

- ☛ **Environmental Justice.** EPA has awarded millions in environmental justice grants to dozens of non-profit organizations and local governments working on environmental justice issues nationwide. In addition to the traditional criteria, EPA put priority on applications that focused on addressing more politically correct criteria: disproportionate impacts of climate change in communities, energy efficiency, renewable energy, local green economy, and green jobs capacity building.
- ☛ **Northwest Environmental Advocates (NWEA) v. Locke, et al.** EPA and the National Oceanic & Atmospheric Administration (NOAA) agreed to a settlement agreement with environmentalists in the case. This Oregon settlement could set national precedent for establishing enforceable limits for nonpoint sources of water pollution, an approach that could be replicated in other regions to address nonpoint runoff from farms.
- ☛ **The Green Book.** EPA launched an effort to develop the so-called Green Book, a project to ensure all EPA policies are driven by “sustainability”. EPA’s current policies and regulations are driven by statutes that oversee individual issues, such as pesticides, air pollution and drinking water contaminants. It appears EPA is moving from a scientific based regulatory scheme (where their application of true science has long been debated) to an amorphous and ambiguous ‘sustainability’ format. This could very well allow EPA to advance what could be an anti – production agenda, absent administrative or congressional direction and oversight.
- ☛ **Air tributary to waters of the U.S.** EPA issued a remarkable memorandum that has the effect of regulating air quality under the CWA based on the theory that air is tributary to waters of the United States. The memorandum directs states to designate waters bodies as impaired if they do not meet water quality standards because of acidification caused by air pollution. In other words, States or EPA could now regulate CO₂ emissions under the CWA.
- ☛ **Aquatic Resources of National Importance.** EPA is increasingly claiming that waterbodies are "aquatic resources of national importance" (ARNI) when it reviews proposed Army Corps of Engineers' CWA permits, triggering industry concerns that the threatened designations, which elevate permit reviews to the agencies' headquarters, are slowing permitting decisions and forcing stricter discharge limits. Though EPA has used the designation less than two dozen times since 1992 to elevate a CWA Sec. 404-permitting decision, industry sources say the agency is increasingly threatening to designate waters as ARNI in comment letters to suggest that proposed permits could be elevated if key changes are not made. This is troubling, given that the designations are exempt from court review, are based on vague criteria and are difficult to track.

- ☛ ***The Value of Water in the U.S. Economy.*** EPA officials said the report is intended to provide additional support for future capital investments in water infrastructure, among other things. It is unclear as to how this effort will be used to influence future EPA direction. Despite skepticism from industry interests, EPA says this effort was not designed to address regulatory issues and will not be analyzing holistic, systems-level questions that some attendees have raised.

Some of these processes and actions will result in very real impacts to Western irrigated agriculture, while others simply offer the potential for disruption. Overall, however, it is difficult not to be concerned when you consider the overall cumulative effects these actions could place on Western farmers and ranchers. Agency policy makers need to put themselves in the boots of family farmers and ranchers as they view these daunting administrative proposals, and find ways to make them work for producers and the environment. If that is not possible, policy makers should start finding ways to eliminate some of these chapters from what has become a very large rulebook.

NOAA Fisheries

NOAA Fisheries, also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce. NMFS is responsible for the stewardship of the nation's ocean resources and habitat. Using the Magnuson-Stevens Act as the guide, NMFS works in partnership with Regional Fishery Management Councils to assess and predict the status of fish stocks, set catch limits, ensure compliance with fisheries regulations, and reduce bycatch. Under the Marine Mammal Protection Act and the ESA, NMFS works to recover protected marine species while allowing economic and recreational opportunities.

Many Western irrigators – especially those who operate in watersheds that provide habitat for anadromous fish like salmon and steelhead trout that spend part of their lives in marine environments – are significantly impacted by decisions made by the NMFS. As explained earlier in this report, ESA consultation decisions made by NMFS regarding operations plans for federal water projects like those in the Columbia River Basin, the Central Valley Project and the Klamath Irrigation Project have significantly impacted historic operations by rededicating water once used to support agricultural irrigation to the perceived needs of ocean-going fish species protected under the ESA. Western agricultural water managers in some cases have been excluded from participating in the scientific review and ESA consultation and decision-making processes that form the basis of biological opinions developed by NMFS biologists.

Recommendations for NMFS:

- ☛ **Require Involvement of State, Tribe, Local Data and Peer Reviews.** States, tribes, local governments (including public water agencies and irrigation districts), private landowners and other entities, in many cases, have more current and accurate data, which

should be given the highest consideration and presumption in ESA decisions. No ESA petition or listing determination should be approved without incorporating and analyzing data provided by states, tribes, local governments and private landowners. In addition, NMFS should be directed to include states, tribes and local governments in the design, selection and scope of peer reviews of major ESA-related decisions.

- ☛ **Require Real Economic Analyses Up Front for ESA.** The Obama Administration’s finalization of a rule changing the way ESA economic impact analyses are conducted to only include “baseline” costs should be replaced with a rule that codifies a 10th Circuit Court of Appeals ruling requiring agencies to analyze all economic costs of an ESA listing. Moreover, critical habitat economic analyses should be required at the time of any proposed listing, making it publicly available. Both analyses should require the application of NEPA in the decision-making process.
- ☛ **Authorize Private Funding of ESA Permit Processing.** To improve processing of federal ESA consultations, non-federal contractors should be authorized to privately fund the preparation of ESA biological opinions, similar to documents now authorized under NEPA by third-party contractors. In addition, “action agencies” should be permitted to prepare a biological opinion subject to review and approval by NMFS.
- ☛ **Modernize and Clarify “Best Available Scientific and Commercial Data”.** Data, including DNA, should be preferred to support ESA determinations over unpublished reports or professional opinions. ESA-related data should be required to meet Data Quality Act (aka Information Quality Act) guidelines. In addition, NMFS should be required to justify why data relied upon for ESA decision is the “best available” and why such data is deemed “accurate” and “reliable.”
- ☛ **Improve Transparency and Accessibility of Data in NMFS ESA Decisions.** Data used by federal agencies for ESA decisions should be made publicly available and, when possible, reviewable through online access on the Internet. This includes data or information that may be contrary to federal agencies’ own data. A public repository of data should be required for all ESA decisions.
- ☛ **Reform, Transparency and Accountability of ESA-related Peer Reviews.** To ensure accountability, ESA-related peer reviews that do not comply with the Data Quality Act (aka Information Quality Act) should be deemed “arbitrary and capricious,” and all ESA-related peer reviews should be made publicly available and available online on the Internet. In addition, peer reviewers selected should not have a financial or other conflict of interest. NMFS should be required to consult with the National Academy of Sciences and affected states, tribes and local governments, to develop a list of qualified peer reviewers on each controversial ESA action.

These ESA consultation recommendations are the same recommendations proposed for the USFWS, as noted previously.

U.S. Army Corps of Engineers

The U.S. Army Corps of Engineers (Corps) is involved in a wide range of public works throughout the world. The Corps provides outdoor recreation opportunities to the public, and provides 24% of U.S. hydropower capacity. Their most visible missions include planning, designing, building, and operating navigation locks and dams; other civil engineering projects include flood control, beach nourishment, and dredging for waterway navigation; design and construction of flood protection systems through various federal mandates; and environmental regulation and ecosystem restoration.

The Corps of Engineers has a presence in the West, although more irrigated acreage is supplied by projects constructed by the Bureau of Reclamation. In recent years, increased interest has been shown by some Western water managers to find ways to authorize studies and pilot projects to re-evaluate and update Corps reservoir operation manuals, some of which were developed decades ago, to help increase usable water supplies during dry years.

Since late 2010, Western water managers have also become aware of - and are becoming increasingly concerned with - actions undertaken by the National Committee on Levee Safety (NCLS). This group, authorized in the Water Resources Development Act (WRDA) of 2007 includes the Corps and FEMA as the only federal agencies represented on the Committee. The NCLS was established to deal with post- Katrina flood risk issues, with an emphasis on Corps levees. However, the NCLS has developed a plan that essentially could apply Corps-level engineering specifications and standards to levees and canal embankments throughout the country, with little to no initial coordination with Reclamation and Western water managers. Currently, it does not appear that Reclamation's canals and water supply infrastructure are subject to the Army Corps of Engineers' inventory and inspection program, and will remain subject to Reclamation's inspection regime. It is still not clear how non-federal canals that carry water for water delivery and power purposes would fall under the proposed WRDA program.

Recommendations:

- ☛ **Work with interested local water managers to find ways to authorize studies and pilot projects to re-evaluate and update Corps reservoir operation manuals.**
- ☛ **Ensure that National Levee Safety Program implementation does not duplicate existing levee and canal embankment standards adhered to by water and power users through the Bureau of Reclamation and the Western states.**

Concluding Remarks - Future Role of the Government

Western water users face continued challenges on the ground from misaligned federal policies, excessive federal regulation, and federal agency decision-making biased against resource use for farming and ranching. The destructive tactics of the environmental litigation industry, which drives and legitimizes the biased implementation of federal environmental laws by agencies, have eroded once-certain water deliveries to Western producers. However, Western taxpayers strongly support¹³ irrigation water for farmers, and elected officials should be bolstered by that fact as they stand up and provide the strong leadership that is needed to protect irrigated family farms and ranches.

Our goal is to find solutions to Western water conflicts that protect our national ability to feed ourselves, export food to others and continue to lead the world in agricultural production while finding ways to accommodate the water supply needs of growing urban areas, energy development, recreation, and environmental preservation. Fair, balanced and long-lasting solutions will not come easily – they never have. Such solutions require visionary leadership and a firm commitment to sensible, workable policies.

It is critical to assess what the future role of the federal government will be. There is tremendous uncertainty as to the effects of federal budget restraints. Right now, government programs and federal laws are creating winners and losers. Laws and regulations like those imposed by the ESA are being implemented differently in different parts of the country depending on judicial circuit rulings and who you talk to in the agencies. Producers in the Eastern United States have not yet experienced the “regulatory hammer” approach employed by ESA administrators in the West. However, opportunities are likely to arise for an expanded future role for our collaborative conservation group partners, since the federal government can only afford to do less, at least in the near-term. Policymakers and resource managers need to assess those opportunities and allow these partnerships the flexibility to work.

Federal water policy often reflects a “one size fits all” approach. Farmers, ranchers and some conservationists know that the best water solutions are unique and come from the local, watershed and state level. They know we need policies that encourage agricultural producers,

¹³ A 2009 survey released by Colorado State University (Bright Pritchett et al., “Public Perceptions, Preferences, and Values for Water in the West - A Survey of Western and Colorado Residents,” Colorado State University Water Institute Special Report No. 17, February 2009) is remarkable for the strong support average citizens from the American West give agriculture, especially in times of drought. The report provides very interesting findings that underscore Western householders support for water storage projects and irrigation over environmental and recreational water needs in times of shortage. Respondents were keenly aware of the potential for long-term water scarcity and how that could impact farmers and ranchers. For example, among Western respondents to the CSU poll, the most popular strategies for meeting long-term needs were to build reservoirs and reuse water, whether it is on private lawns or public landscapes. The least popular alternative was to buy water from farmers. The survey demonstrated broad support in the Western United States for keeping water in agriculture.

NGOs, and state and federal agencies to work together in a strategic, coordinated fashion. We must modernize and re-build parts of the institutional water supply and delivery infrastructure now in place, so that Western water resources can be managed specifically, not generically. We must get a handle on changing weather patterns and assess how the agricultural landscape and water security will be impacted due to a changing climate. And, we must develop a clear understanding of how the resulting limitations on our farmers' ability to feed this Nation the world is impacted when we take domestic agricultural lands out of production as water tied to those lands is moved elsewhere.

Western irrigated agriculture is a strategic and irreplaceable national resource. It must be protected by the federal government in the 21st Century – we must work to make Western irrigated agriculture 'Great Again'.