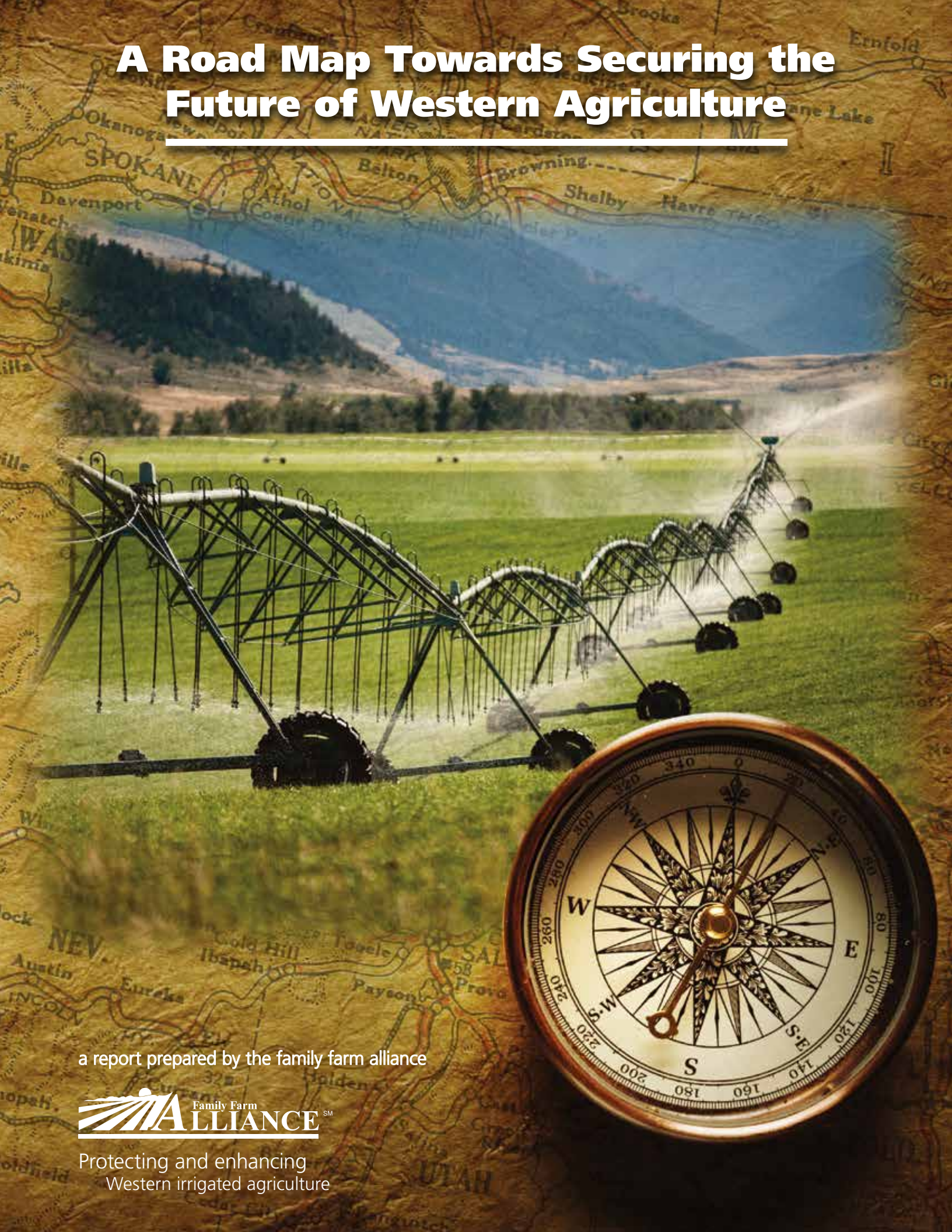


A Road Map Towards Securing the Future of Western Agriculture



a report prepared by the family farm alliance



Protecting and enhancing
Western irrigated agriculture

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Protecting Water for Western Irrigated Agriculture

A Road Map towards Securing the Future of Western Agriculture



It's clear the drought that has encompassed much of the Western United States this year will have a very real impact on consumers who are already keeping a tight hold on their pocketbooks. People are actually starting to think about where their food comes from now. Even when the economy falters, irrigated agriculture remains one of the largest economic engines in the Western U.S.

Irrigated agriculture is key to production agriculture and food and fiber production throughout the West. It is integrally related to the rest of Western production, including the raising and feeding of livestock and federal lands grazing. Irrigated agriculture, and its related ag

production pieces, are critical to the economy of the region, and food production and security for the nation.

For a region that spans the 17 Western states, the total household income impacts derived from the "Irrigated Agriculture Industry" – which is made up of direct irrigated crop production, agricultural services, and the food processing and packaging sectors – is estimated to be about \$156 billion annually.

Importantly, the average American spends less than 7 percent of disposable income purchasing food, the lowest of any country in the world. Clearly, the low cost of U.S. household food purchases affects discretionary income.

Over time, this has contributed substantially to the national economy, since it allows more household income to be devoted to consumer goods and services.

The issue of food security in this country can be directly linked to general U.S. economic health because of its implications to the consumer spending economy. Meeting the food, feed, fuel, and fiber needs of a growing and increasingly prosperous world, while maintaining and improving environmental quality, is one of the grand challenges facing humankind in the 21st century. Towards that end, we need policies that encourage agricultural producers to work together in a strategic and coordinated fashion. We need to find ways to encourage young people who want to work in agriculture. We need to review institutional practices now in place, so that water resources can be managed specifically, not generally.

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.¹ We must develop a clear understanding of the resulting limitations on our ability to feed our country and the world when we take domestic agricultural lands out of production when water tied to those lands is moved elsewhere. Western farmers and ranchers can play a part in a solution to the problem and can continue to provide affordable food on the grocery store shelves – if we can keep them on the farm.

All stakeholders have increasingly important roles to play in meeting the challenges facing the food and agriculture system. The Family Farm Alliance is represented on the Advisory Committee of the AGree process, which, with

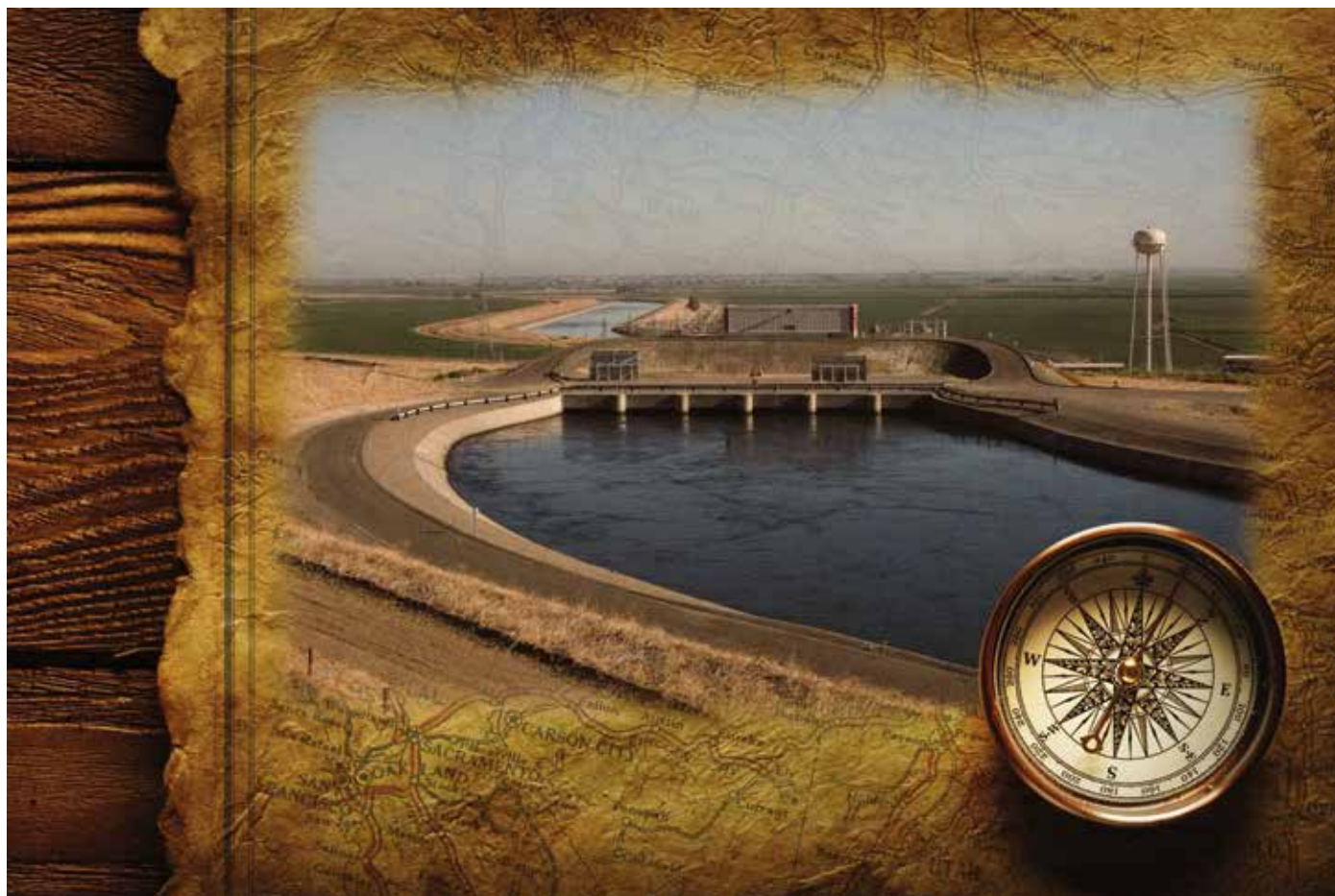
support from nine of the world's leading foundations seeks to engage diverse interests to drive the transformation of this critical system. AGree released five papers, which, while not representing official AGree policy, have helped inform AGree's development of policy and action recommendations by stimulating thinking and discussion. One of those papers, *Securing the Future of Western Agriculture: A Perspective of Western Producers*, was co-authored by the Family Farm Alliance. The AGree paper provides insight into the unique challenges and opportunities facing landowners and agricultural producers in the Western United States.

Flexible, streamlined policies that provide balance and certainty are needed to support collaborative efforts and manage challenges. Solutions for dealing with competition for scarce water supplies, insufficient water infrastructure, growing populations, endangered species, increasing weather variability /climate change, and energy development will be key to enhanced agricultural production, conservation and community outcomes in the West.

The AGree/Alliance paper offers specific policy recommendations to ensure that Western agricultural operations continue to be vibrant and innovative for generations to come. The paper formulates much of the thinking behind our current initiative, which is to provide a road map that Congress can use to develop solutions to four critical challenges facing Western farmers and ranchers: 1) Western water resources; 2) The federal Endangered Species Act (ESA), Clean Water Act (CWA) and other federal environmental laws; 3) Public lands management; and 4) Immigration. Each of these challenges and the actions required to solve them are described further below.

1. The Family Farm Alliance in 2007 was one of the first agricultural organizations in the country to issue a solutions-driven report on climate change: *Water Supply in a Changing Climate: The Perspective of Family Farmers and Ranchers in the Irrigated West*.

Towards Sound Management of Western Water Resources



We need a new way of looking at water resources, one that includes a broader view of how water is used - along with consideration of food production and habitat needs. The goal should be to integrate food production and conservation practices into water management decision making and water use priorities. We must begin to plan now in order to hold intact current options. Planning must allow for flexibility and consider all needs, not just focus on population growth.

In many parts of the West, litigation stemming from citizen suit provisions of environmental laws like the ESA and Clean Water Act (CWA) is driving federal court and agency “management” of water resources. Congress should recognize that this type of litigation harms the overall health and resilience of landscapes and

watersheds and **should seek solutions that reflect a philosophy that the best decisions on water issues take place at the state and local level.**

When water laws and environmental laws conflict, balanced solutions that respect the socio-economic realities of the West must be found. Incentives that create reasons to succeed will do more good for the environment in a shorter period of time than actions that rely on threats of federal intervention. Successful incentives will ultimately reduce the need for judges to be forced to substitute their own judgment for that of professionals and stewards of the land.

A simple commitment should be made by federal agencies to work within the framework of existing state appropriative water rights systems instead of attempting to

fashion solutions which circumvent current water rights allocation and administration schemes. This commitment would form the foundation for eliminating the gridlock that now paralyzes federal water and resource management decisions.

Droughts occur routinely in the West; that is why the Bureau of Reclamation made such important investments in water supply infrastructure over the past century. However, this infrastructure was never designed to meet the burgeoning demands of growing communities and environmental needs, while helping farmers and ranchers make it through periodic droughts. Droughts in the West are predicted to be deeper and longer than we have historically experienced in the 20th century. Congress must take up legislation to ease restrictions created by increased demands for water under other federal laws during times of water shortage, such as droughts. We must manage water to meet all needs but in a manner that shares the pain, not prioritizes winners over losers, especially when the losers are the beneficiaries of the federal projects originally built to serve their needs.

Good water management also requires flexibility, as well as trial and error, more regulation usually reduces flexibility. Federal agencies managing the competing demands for water in the West have failed in creating opportunities for flexible management. **Congress should help compel fish and wildlife agencies to inject some reality, set priorities, and be accountable in their effort to manage the environmental share of the water pie.**

The recent federal management of water in California's Bay-Delta, which has redirected millions of acre feet of water away from human uses and terrestrial wildlife and towards perceived ESA requirements – with no documented benefit to the fish intended for "protection" is a prime

example of this inflexibility and mismanagement of limited water resources. Legislation that puts the burden of proof on the fisheries agency to conclusively demonstrate benefits to targeted imperiled fish species would be helpful.

An institutional structure that ensures true scientific peer review and impartial decision-making relative to this objective would also be useful. As our currently developed water supplies are being stretched by climate variation and drought, all water users are being called upon to become as efficient as possible, and environmental uses of water should be no different.

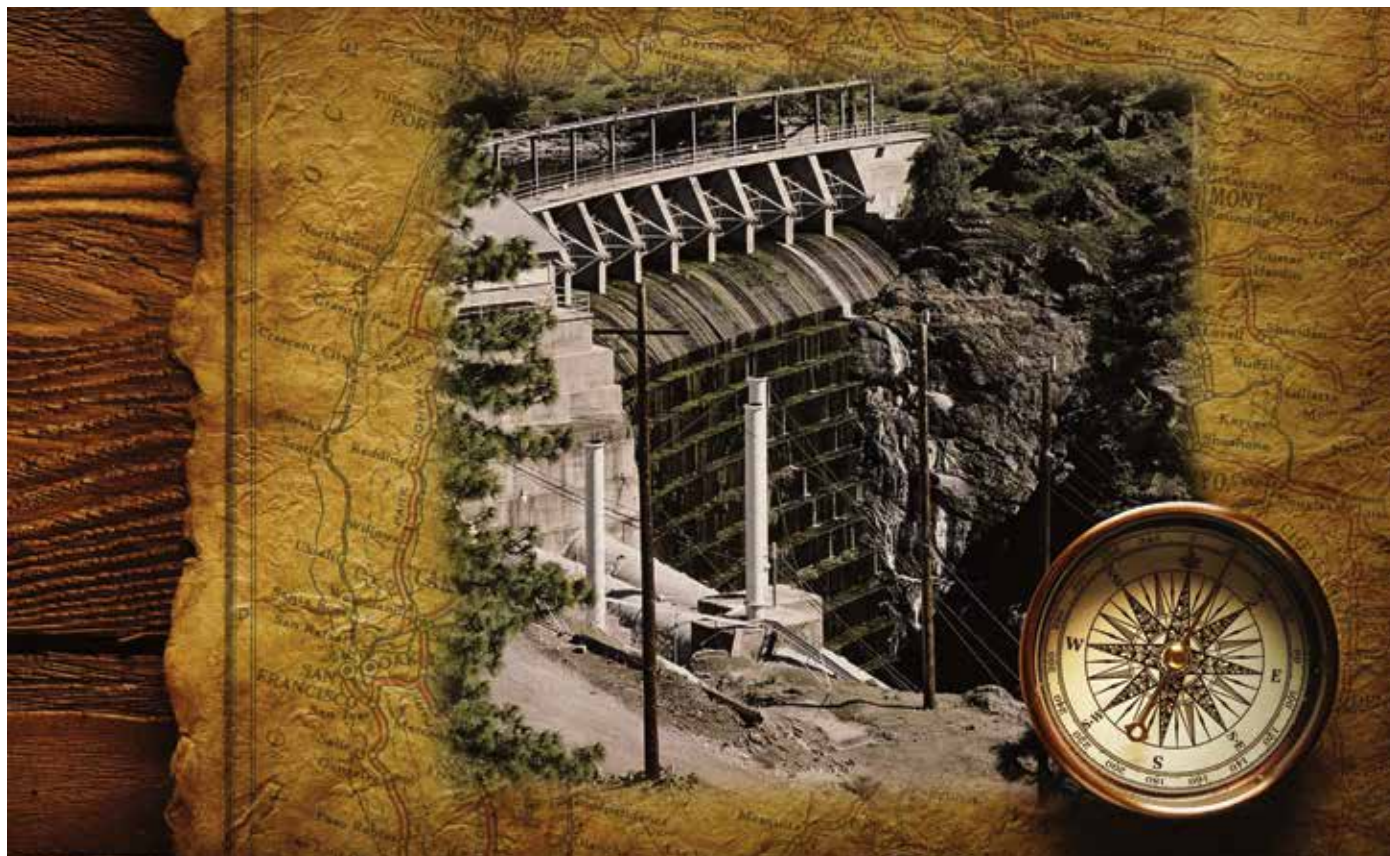
More surface and groundwater storage is still a critical piece of the solution to water shortfalls. **Congress should continue efforts to advance legislation considered in the 113th Congress by the House Natural Resources Committee that would streamline regulatory hurdles to assist in developing new environmentally-sensitive storage projects and other necessary water infrastructure improvements.** Several bills considered by the House of Representatives in the 113th Congress were intended to facilitate the construction of new surface storage facilities. Congress should work to quickly pass all of these bills, providing a more effective process to move water storage projects forward.

There are also potentially new sources of water that can be developed in some parts of the West. In some areas, astounding amounts of "produced water" are brought to the surface daily during petroleum production. This is considered "wastewater" by energy producers, and is usually re-injected back into deep salty aquifers, precluding further beneficial uses. Treating and recovering usable water from sources contaminated by oil and gas drilling operations could significantly help our farmers, ranchers and recreational users, as well as enhancing the habitats of many plants and animals. **Sufficient**

funding should be provided to implement and expand the “More Water, More Energy, Less Waste Act of 2007”. This could lead to the treatment and beneficial use of excess produced water from oil and gas drilling and coal bed methane extraction. This law directs

the Department of the Interior to evaluate the feasibility of recovering and cleaning produced water for further use in irrigation and for other purposes. The bill would also authorize a grant program to test produced water recovery technologies in Western states.

Aging Water Infrastructure will Negatively Impact Future Water Supply Reliability if not Addressed



Aging federal water infrastructure needs in the West must be addressed promptly, affordably, and with priority commitment. Failure to reinvest in these critical facilities will negate economic gains of past generations and threaten water supplies for future generations.

We must find creative ways to provide for the operation, maintenance, and modernization of existing water supply infrastructure. Implementation of the following recommendations would be important first steps towards solving our aging water infrastructure problems, which

include efficiency, modernization, and safety. Our recommendations include:

- Reaffirm the loan guarantee authority provided in the Rural Water Supply Act (P.L. 109-451) to include investments in new non-federal water supply facilities that can take the pressure off aging federal water supply infrastructure.
- Establish a direct loan program under the lending authorities of the Aging Infrastructure Act (P.L. 111-11) for local agricultural

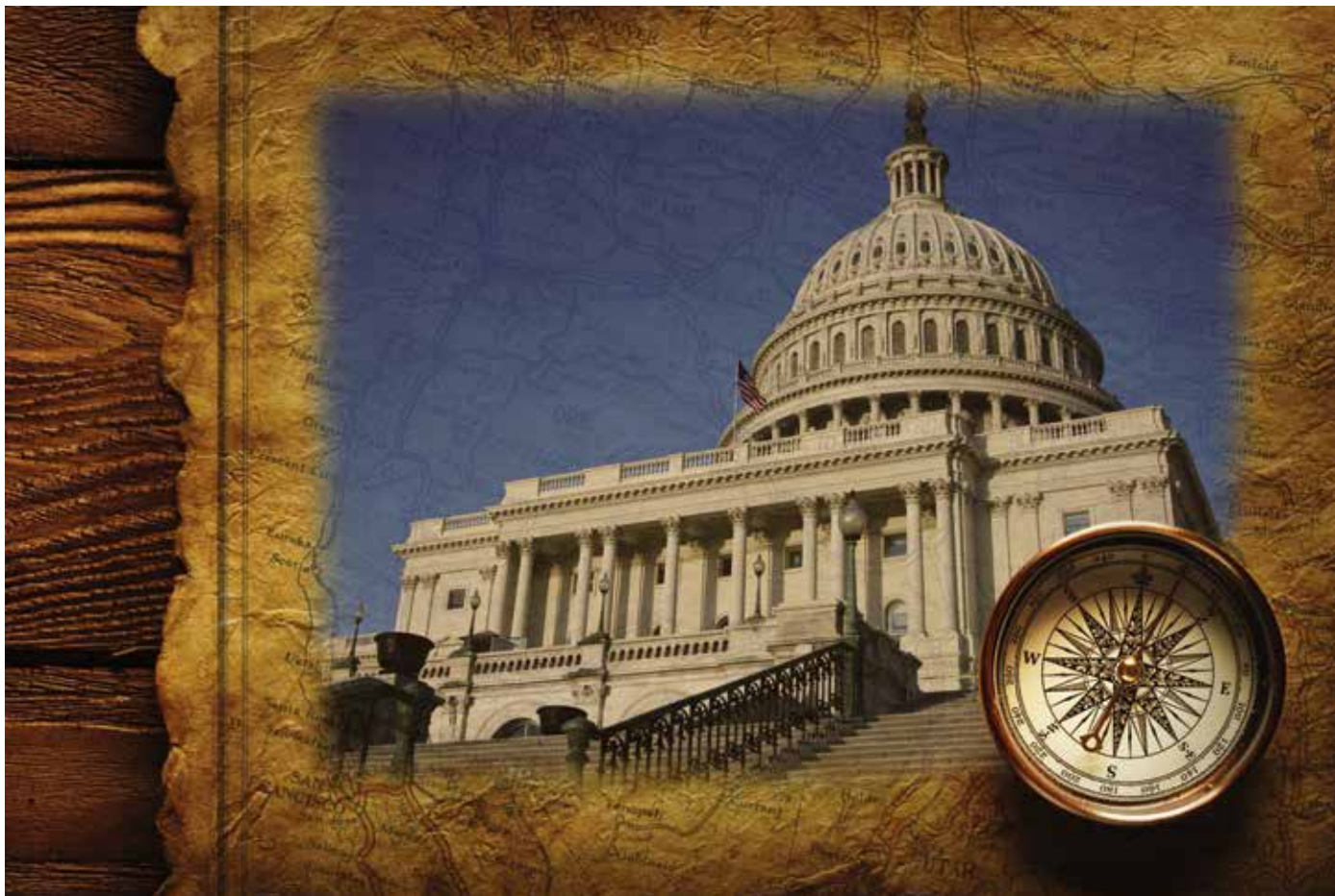
water districts operating decades-old federally owned water delivery systems (transferred works). This would require full appropriation by Congress, over and above what Reclamation already funds. The program would provide low interest loans to irrigation districts, which would be repaid to the federal treasury.

- Better management of water resources can always be part of the solution. **Congress should provide additional funding to support WaterSMART and/or other programs that provide incentive-driven cost share money for new water conservation projects.**

We must begin to implement a balanced suite of both conservation and supply enhancement actions. Conservation alone will not supply enough water for the tens of millions of existing and new residents expected to live in Western cities, or the increasing demands of the environment during the coming decades. We believe that it is possible to meet the needs of cities and the environment in a changing climate without sacrificing Western irrigated agriculture. It is time to start developing and implementing the water infrastructure needed to cope with a changing climate, meet the needs of a growing population and burgeoning energy requirements, protect our environment, and support a healthy agricultural base in the West.



Finding a way to make Federal laws work for the Environment and Rural Communities



The large federal presence in the West presents unique challenges that farmers and ranchers may not face in other parts of the United States, particularly with respect to the reach of the ESA and CWA. These laws have very significant impacts on how agricultural producers manage land. Importantly, once-certain federal water supplies that were originally developed by the Bureau of Reclamation primarily to support irrigation projects have now been targeted and/or redirected to other uses in recent years. So, in the West, these water supplies – one of the few certainties needed in Western irrigated agriculture – have now been added to the long list of existing “uncertainties.”

One not familiar with this nation’s regime

for regulation of the environment would understandably conclude that there is some giant gap in the regulatory scheme that is allowing unchecked pollution in waters that are not currently within the jurisdiction of the CWA. However, this is simply not the case. The CWA is widely recognized as an extremely successful statutory regime. All of this progress has been achieved under the current version of the CWA. And almost 15 years’ worth of this progress has been achieved since the Supreme Court’s SWANCC decision in 2001, which the promoters of a stronger regulatory approach to implementing the CWA allege was the beginning of the Court’s attempts to limit federal jurisdiction. These interests – some with a notable history of utilizing citizen suit provisions of federal laws to halt all kinds of development

- have only spoken of the need for an expansion of federal jurisdiction in the broadest, most vague terms possible, without establishing any real need.

It is very clear to those who work the land that the ESA and CWA need to be addressed using a more performance-based approach. We need to empower those who can actually implement substantive benefits to the environment. We believe private landowners are the key here. Of course, these improvements cannot be done entirely out of their own pockets and without appropriate regulatory assurances. These environmental enhancements are societal benefits and thus should be societal expenses.

Secondly, regulatory and statutory changes are needed to empower environmental markets and to establish proven approaches and data considerations for improved decision making. The constructive scientists working for federal fish and wildlife agencies are becoming increasingly hamstrung with paperwork and legal deadlines driven by lawsuits from a handful of activist groups. A recent settlement between these groups and the U.S. Fish and Wildlife Service (USFWS) could potentially add hundreds more Western species to the ESA list.

Boots-on-the-ground efforts and actual recovery of species should define success under the ESA, not endless litigation and what appears to be the opportunistic pursuit of attorneys' fees by certain environmental groups. These environmentalist lawsuits are the poster children 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 in Idaho and collaborative efforts by ranchers to prevent listing of the Greater sage grouse in Rocky Mountain and Great Basin states, litigious groups continue to

drain resources and time, distracting everyone from the real goals of the ESA.

Meanwhile, the EPA and Corps of Engineers have proposed a new rule intended to "clarify" how "Waters of the U.S." (WOTUS) would be managed under the CWA. While we understand the importance of clean water to the future of irrigated agriculture, we believe that the proposed WOTUS rule does little to promote the goal of providing clean water. It would instead create the potential for an unwarranted expansion of federal jurisdiction over newly defined "tributaries" and associated "other waters" as "Waters of the U.S." Along with the additional bureaucratic red-tape associated with this jurisdictional expansion, the proposed rule could unnecessarily impede Western farm and ranch families' ability to manage the delivery and use of irrigation water to grow food and fiber for America and the world.

The goals of the ESA, CWA, National Environmental Policy Act (NEPA) and other federal laws are laudable. However, the manner in which these laws are currently implemented creates a lack of trust between stakeholders and the Federal government. These laws, which affect nearly every aspect of day-to-day operations in Western agriculture, are applied rigidly, often without adequate scientific basis, by agencies that have no legal mandate to take into account, let alone temper, the human and economic consequences of their actions. Moreover, these agencies work under the constant threat of litigation by interest groups dedicated to stretching the limits of the laws to achieve ends that Congress may never have contemplated or intended. As a result, regulatory agencies tend to default to findings and actions that impose the greatest burden on individual farmers and ranchers. The results

are inconsistent, and often do not effect the outcomes intended. A more modern approach to implementing these laws should build on partnerships that seek to care for water, wildlife and food production, and employ the best conservation practices that achieve measurable results. This approach must be adaptive in nature and consider how to enhance water and habitat, especially if the location of that habitat shifts because of changes in the baseline ecosystem, due to factors such as climate change.

Clearly, these decades-old laws are in need of some targeted reforms, including common-sense changes to make them work better, encourage incentive-driven recovery efforts, and discourage litigation.

Congress should continue efforts to advance legislation intended to improve ESA transparency and species recovery. We know the ESA can play an important role in species protection, but it can only successfully do so with increased public input, stakeholder cooperation and new “outside-the-box” thinking on transparency and accountability. Unfortunately, the manner in which the ESA is being implemented in its current form discourages this sort of an approach. Private landowners should be viewed as potential partners in species recovery, not enemies. Four bills that passed the House in the 113th Congress would better allow implementation of the ESA to help recover and seek to de-list species from the ESA and encourage public engagement and federal agency transparency and accountability.

- *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.

- *The Endangered Species Recovery Transparency Act* would require the U.S. Fish and Wildlife Service 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) attorneys fees awarded in the course of ESA litigation and settlement agreements.
- *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.
- *The Endangered Species Litigation Reasonableness Act* would prioritize resources towards species protection by placing reasonable caps on attorneys’ fees and making the ESA consistent with other federal laws.

Other concepts that merit further consideration as potential legislative initiatives and regulatory and policy reform related to modernizing implementation of dated federal environmental laws include:

- Individual states have tremendous ownership and jurisdiction over wildlife. The future of conservation and effective ESA implementation will be driven by locally-led decisions. Conservation funding should be increased and managed in a way that provides more emphasis on state and local fish and wildlife priorities.
- Implement recommendations of the NEPA Task Force (2006).
- Implement the recommendations of the 2014 Congressional ESA Working Group.

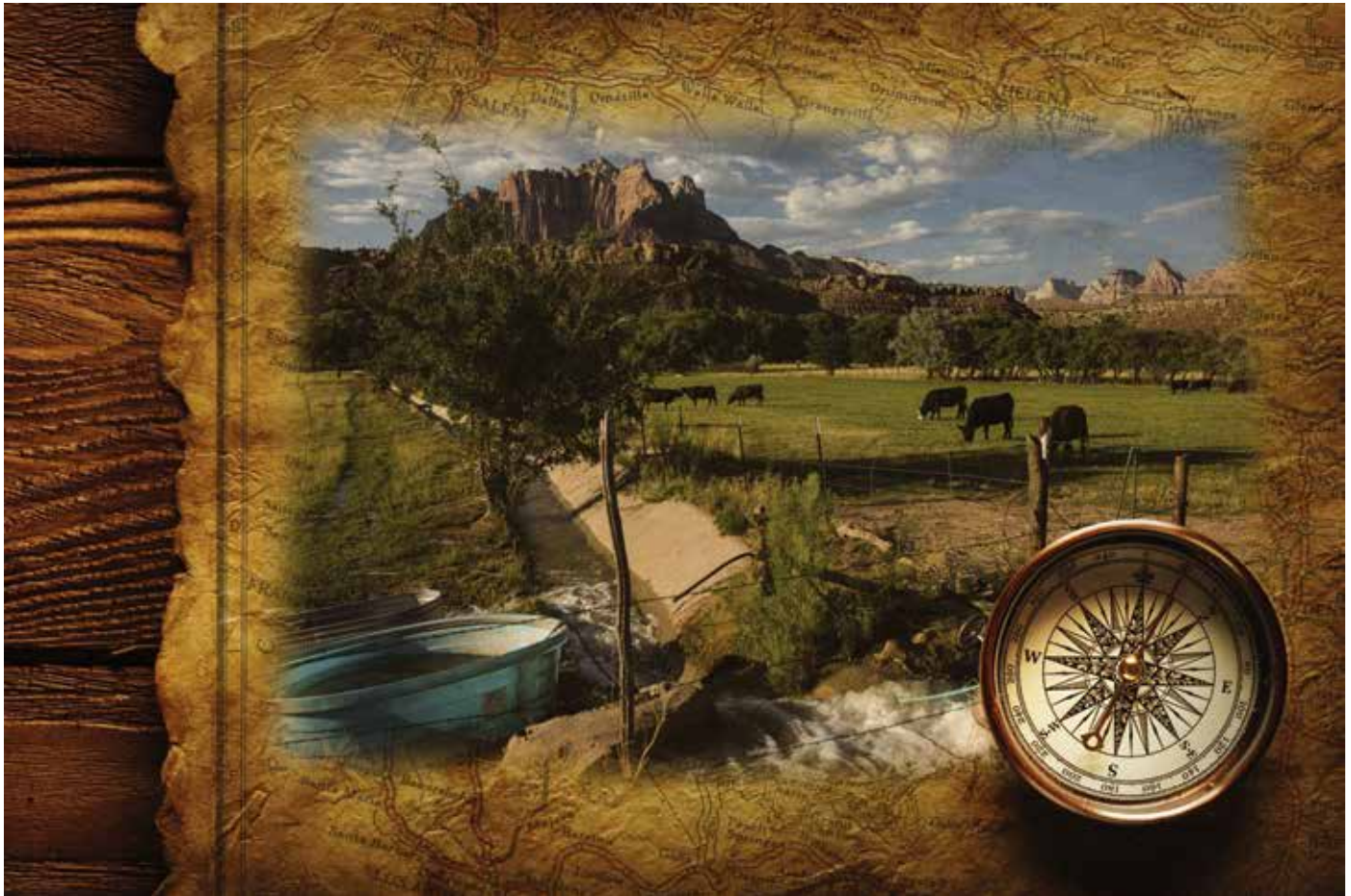
These are incremental measures that help change the paradigm in Western resource management by limiting dollars spent on litigation instead of habitat protection and species recovery.

- EPA and the Corps of Engineers should work collaboratively with the States and other clean water stakeholders to re-write their proposed WOTUS to reflect common sense approaches to CWA jurisdiction in order to work effectively while not interfering with key functionality of farms, ranches, ditches and drains associated with irrigated and other agriculture in the West.
- The “Partners for Fish and Wildlife” program – which resides within the USFWS – has demonstrated encouraging and exciting

results on the ground. Unfortunately, the management directives of the USFWS are largely dominated by the agency’s Ecological Services branch, which tends to employ the ESA as a regulatory hammer. Congress should seek ways – perhaps through agency budgetary controls – that encourage the use of collaborative partnership models that are already in place within USFWS to enhance wildlife habitat and protect rural communities. The “Partners” model is one that has influenced organizations like Partners for Conservation and Solutions from the Land, which seek solutions that actually work. These approaches are incentive-based, consistent, and set goals that lead to desirable future results.



The Route to Improved Stewardship of Public Lands in the West



The American West, unlike other parts of the United States, is evenly divided between government-owned land and private land. In other words, half of the West is public, owned by and generally open to all Americans. When Americans wake up each morning, they do so believing that half of the West is their birthright. Because of this public-private land dichotomy, some tension will always exist between Westerners and the rest of America. In no other region in the United States do all Americans have a say in half of the region's landmass, its land uses, and its future. The vast federal ownership of Western lands and the synchronicity of public and private lands needs to be recognized as critical characteristics of Western agriculture.

Namely, we need to create regulatory certainty for public land permit holders, recognizing that the crazy quilt of land ownership patterns (federal, state, private) overlays a larger, interconnected landscape. This could include perpetual "easements" which tie grazing permits to the private lands which are part of the overall system. There might be various types of permit attachment to private lands, depending on their interconnectedness. Rather than continuing to downsize grazing on federal lands, those U.S. Forest Service and Bureau of Land Management agricultural use permits (e.g. grazing permits) which are not being utilized should be made available to the public, particularly to young farmers and ranchers who are growing more challenged to find lands for food production. Clearly, public land management pol-

icy should take into account biology and biodiversity. However, that policy should also affirm the role that multiple use plays in supporting rural communities – economies, customs and

culture – especially those activities which can be managed to enhance landscape health and wildlife habitat.

Moving to Develop a Safe, Legal Workforce



Agriculture is impacted by labor shortages and immigration laws and policies affect these issues. Immigrants play a critical role in the entire Western agricultural economy. It is not just work on the farms; it is work that takes place in the food processing sector, too. And, we cannot expect that the children of those

workers are going to automatically step in and do that same work. Congress must work with the production agriculture community to find solutions that benefit Western agriculture by providing an affordable, stable, legal workforce, and preventing food from being wasted in the fields due to lack of labor.



Protecting Water for Western Irrigated Agriculture

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