

# Monthly Briefing

*A Summary of the Alliance's Recent and Upcoming Activities and Important Water News*

## New Trump ESA Regs Look Good for Western Ag

Against a backlash of negativity from some environmental organizations and their allies in the media, the Interior Department's U.S. Fish and Wildlife Service (USFWS) and the Commerce Department's National Marine Fisheries Service (NMFS) earlier this month jointly announced three final rules which revise regulations governing sections 4 and 7 of the Endangered Species Act (ESA).

"From the outset, our intent has been to be true to the law; maintaining the legal standards while creating a more transparent more reliable and more efficient and defensible regime," said Interior Secretary David Bernhardt. "This better serves the American people and better focuses our efforts on the ground."

According to the Department of the Interior, the changes are designed to increase transparency and effectiveness and modernize the administration of the ESA. The changes to ESA implementing regulations finalized by

FWS and NMFS will apply to ESA sections 4 and 7. Section 4, among other things, deals with adding species to or removing species from the Act's protections and designating critical habitat for the continued survival of listed species.

authority to automatically grant threatened species the same safeguards as endangered ones from harm or disturbance; also known as the "blanket 4(d) rule." FWS will now have to create individual regulations for each threatened species.

"The new rules will apply only to future listing decisions," said Mark Limbaugh with The Ferguson Group, the Alliance's representative in Washington, D.C. "Plants and animals with existing protections won't be affected unless their status changes under the ESA."

Section 7 covers consultations with other federal agencies over contemplated federal actions.

Interagency consultations are a cornerstone of the ESA to ensure federal actions are not likely to jeopardize the continued existence of at-risk wildlife. This final rule affirms the Services authority to use such streamlining methods that they have developed through experience since they last undertook a revision of their consultation regulations.

"The reality is that the majority of the habitat species need to survive is actually on privately owned lands, and we need great collaboration," said Secretary Bernhardt. "Clarifying what action should be considered during agency consultations will ensure that ESA implementation is more clear and consistent across agencies and even between our own field offices."



**Former California Gov. Arnold Schwarzenegger addresses marchers during a rally by farmers, farm workers, and supporters to bring attention to the California water crisis –created in part by agency implementation of the ESA - in April 2009 at San Luis Reservoir near Los Banos, California. Source: David McNew/Getty Images North America**

The changes will also end a long-running practice by the FWS in using its flexible

### STORIES INSIDE.....

	Page #
Alliance, Other Groups Chime in on New Forest Health Rules	3
Media Climate Coverage Puts the Squeeze on Agriculture	4
Reclamation WaterSMART Grant Funding Opportunities	5
Donor Support	6

*Continued on Page 2*

## New ESA Regulations *(Continued from Pg. 1)*

### Support for the new regulations

The GOP and those in the regulated community generally approved of the changes as adding flexibility and balance in ESA implementation.

"These revisions to the Endangered Species Act are welcome news in Idaho and across the West," said U.S. Senator Jim Risch (R-IDAHO). "The Act should be consistent and science-based, and this work by the Fish and Wildlife Service and the National Marine Fisheries Service is an encouraging step to improve the Act's functionality for conservation, recovery, wildlife managers, and rural communities."

"The ESA affects cattle-producing families across the country," added Jennifer Houston, President of the National Cattlemen's Beef Association. "We are grateful to Secretary Bernhardt and the staff at FWS and NMFS for bringing this long-awaited regulatory relief to American cattle farmers and ranchers."

The Family Farm Alliance was one of a multitude of interests – including members of Congress, state, local and tribal governments and the public – who provided comments and input that were considered in the finalization of these regulations, beginning in 2018. The Alliance's detailed written recommendations were developed by a team of resources, law, and policy experts familiar with Western water resource management and how this important function is impacted by implementation of federal laws and regulations.

### Reaction from environmentalist critics

Already, a flurry of misinformation and "sky is falling" rhetoric has engulfed this important development, driven by certain environmental groups and their allies in academia and urban media outlets. Critics of these rules – days before they were even released – predictably claimed that the Trump administration was systematically dismantling this landmark legislation through policies and this set of proposed regulations.

"If enacted, these rules will be an absolute disaster for efforts to save species from extinction," Stuart Pimm, a conservation ecology professor at Duke University told *E&E News* three days before the rules were publicly announced.

The Center for Biological Diversity (CBD) – one of the most litigious environmental groups in the West – has called the changes "the worst attack on the Endangered Species Act ever."

"We are anticipating being ready to litigate," said Jacob Malcom, director of the Defenders of Wildlife's Center for Conservation Innovation to *E&E News*.

Some of the same organizations bashing the new rules have an established track record for their consistent efforts to thwart the efforts of developers, farmers, ranchers and government agencies. They have done this through petitions to list more species to the ESA, create new ESA critical habitat for other plants and animals, and engage in a seemingly endless string of litigation aimed primarily at the agencies who regulate resource producers.

### Economic Impacts of Listing Decisions

The strongest reaction to the announcement concerns the ESA's economic impacts. The new regulation allows the disclosure of negative economic impacts of listing decisions, without changing the rules that dictate whether and how these impacts are considered in the regulatory process. However, some of the most litigious environmental groups in the country and their allies in the media have spun this proposal to suggest that nothing less than the survival of numerous species is at stake. Consider this characterization by the *Sacramento News Review*:

"Conservation and environmental groups were reeling last week when U.S. Secretary of the Interior David Bernhardt oversaw a stark rewriting of the federal Endangered Species Act, allowing regulators to consider the profit goals of corporate stakeholders alongside the best scientific data when ruling on wildlife protections."

Actually, the ESA does not say whether or not wildlife agencies can decline to list a species as threatened or endangered in order to prevent economic or social harm. However, courts have ruled that those real-world impacts cannot factor into a listing decision: only the biology matters.

"That requirement has not changed, period," said Paul Simmons, executive director of the Klamath Water Users Association and a member of the Alliance committee that put together comments on the Trump Administration's draft regulation in 2018. "The amended rule affords increased transparency and allows the disclosure of negative economic impacts of listing decisions, without changing the rules that dictate whether and how these impacts are considered in the regulatory process. There is no reason, at least no good reason, to fear candid disclosure of facts about the ESA's negative impacts."

### What lies ahead

Several well-funded environmental groups have already filed a lawsuit in federal court, charging that the administration's move conflicts with the 45-year-old law and threatens the survival of untold numbers of plants and animals. The lawsuit against the federal government was filed in Federal District Court of Northern California. The environmental firm Earthjustice submitted the case on behalf of seven organizations, including Center for Biological Diversity, Defenders of Wildlife, Natural Resources Defense Council, WildEarth Guardians and the Humane Society of the United States.

"We're going to court to set things right," Kristen Boyles, Earthjustice attorney, said in an email to the *San Francisco Chronicle*. "Nothing in these new rules helps wildlife, period."

California Attorney General Xavier Becerra has also threatened to sue the federal government over the changes, the *San Francisco Chronicle* reports, while Democratic California lawmakers are reaffirming support of legislation to

*Continued on Page 6*

## Alliance, Other Groups Chime in on Forest Management Rules

The Family Farm Alliance joined three other Western water and agricultural organizations in a comment letter that supports proposed Forest Service changes to modernize how the agency complies with the National Environmental Policy Act (NEPA). The proposed updates are intended to give the Forest Service the tools and flexibility to manage the land and tackle critical challenges like wildfire, insects, and disease.

“The connection between forest health and watershed health is direct and of critical importance to our nation and its water users,” the letter stated. “Forests, particularly those in Western States, provide an abundant source of clean water in the arid West.”

In addition to the Alliance, other co-signers on the letter were the Association of California Water Agencies, the California Farm Bureau Federation, and the National Water Resources Association. The members of these organizations help provide water to more than 50 million Americans and irrigate millions of acres of farmland across the United States.

The proposed Forest Service rule would further modernize the agency’s NEPA policy by incorporating experience from the past 10 years. This experience includes input from comments on the Advance Notice of Proposed Rulemaking from January of 2018, as well as feedback from roundtables, workshops, and input from agency experts. The updates would create a new suite of “categorical exclusions” (CEs), a classification under the NEPA excluding certain routine activities from more extensive, time-consuming analysis under an environmental assessment or environmental impact statement.

The Alliance in February 2018 transmitted formal recommendations to the Forest Service, which focused on ways of improving NEPA processes associated with forest health and new water development projects.

“In recent years – catalyzed by the ominous increase in Western wildfire activity – Alliance members have been seeking ways to discourage litigation against Forest Service relating to land management projects,” said Alliance Executive Director Dan Keppen. “We support efforts to develop CEs for covered vegetative management activities carried out to establish or improve habitat for important Western species like greater sage-grouse and mule deer. We encourage efforts like these, which should expedite and prioritize forest management activities that achieve ecosystem restoration objectives.”

Certain litigious environmental organizations have ripped the plan, calling it a giveaway for corporations and saying it has the potential to destroy the environment. Randi Spivak, a public lands policy advocate for the Center for Biological Diversity, told KQED in Northern California said that if the

rule passes as it is written, the public will have no voice on the majority of decisions the government makes about national forests.

“It’s the voice of the people,” said Randi Spivak, a public lands policy advocate for the Center for Biological Diversity. “Public comment is an opportunity for everyday citizens who love their national forests to get to comment and raise concerns over proposals by the Forest Service.”

The Alliance and its fellow co-signers disa-



*Cattle roundup on the Watson Creek fire near Paisley (OREGON), August 2018. Photo courtesy of Inciweb.*

gree.

“We congratulate the Forest Service on a thoughtful and thorough analysis and proposal, which makes the case that improved NEPA efficiency in these areas will lead to many benefits, including sustainable watersheds,” the letter states. “The Forest Service last updated its NEPA regulations in 2008. Since then, many challenges have made the effort to protect people, communities, and resources from threats like catastrophic wildfires more difficult due to strain on available staff and resources across all mission areas. We believe the changes in the proposed rule will help the Forest Service better manage sustainable, healthy, and productive national forests and grasslands.”

Federal agencies implementing NEPA also have a direct bearing on the success or failure of critically needed water supply enhancement projects in the West. In recent years, Alliance irrigators and water managers throughout the West have identified several regulatory impediments they most frequently encounter as they seek to construct infrastructure projects that enhance water supplies.

“These NEPA horror stories are abundant,” said Alliance Executive Director Dan Keppen. “We have previously identified some of these impediments related to NEPA implementation and offered associated recommendations on how each can be addressed. Those concerns remain, but we look forward to engaging further with the Forest Service to tackle those challenges.”

The joint letter signed on to by the Alliance can be viewed at [Regulations.gov](https://www.regulations.gov), Document ID: FS-2019-00110-0001, Comment Tracking Number 1k3-9bsp-tt0a.



## Media Climate Coverage Put the Squeeze on Agriculture

A barrage of media coverage in recent months has surrounded recent climate reports. In many cases, that coverage has cited the agriculture industry as a major contributor to rising greenhouse gases, purportedly caused by things like methane emissions from livestock and draining of wetlands. Most of the recent attention was sparked by the special report on climate change and land from the United Nations' Intergovernmental Panel on Climate Change (IPCC), where many media accounts once again portrayed agriculture as both a cause of climate change, and a victim of its impacts.

This release, like all IPCC reports, received major media attention as global negotiators set the established scientific consensus on climate change. The IPCC Lands report assessed and summarized the current scientific literature regarding the impacts of climate change on land and adaptation to these changes, as well as the role of land management in driving global warming and the opportunities to reduce and eliminate greenhouse gas emissions from deforestation and agriculture.

Much of the media attention focused on the report assigning blame for climate change on the growing consumption of red meat, which the U.N. scientists claim puts stress on lands for producing animal feed and contributing half of global methane emissions.

"There were plenty of voices across the agriculture industry, and particularly in the livestock sector, that took issue with how the report was cast in the international media frenzy," *Politico* reported. "The message was largely: Eat less meat."

Texas ranchers and cattle feeders are among many in the livestock industry who are pushing back on that assessment, saying that's not the whole story, according to a recent story in *The Dallas Observer*. There's too much focus on the beef industry, they say, and people who claim we should eat less meat are overlooking the benefits of meat protein and the positive ways cattle interact with the environment.

"It's incorrect, and frankly irresponsible, to compare U.S. beef production with global numbers, as the way beef is produced in the U.S. is not the same as the rest of the world," said Carmen Fenton, director of communications for the Texas Cattle Feeders Association.

Others in agriculture believe the new IPCC report shows that we should really be thinking about farms and ranches

as platforms for climate solutions.

"This IPCC report shows how agriculture is hurt by climate change impacts, but more importantly outlines the solutions for how the agricultural community can lead the way with climate-smart farming practices," said Ernie Shea, with Solutions from the Land (SfL), a not-for-profit corporation focused on land-based solutions to global challenges.

The report shows that the largest potential for reducing emissions from the land sector is from curbing deforestation and forest degradation.

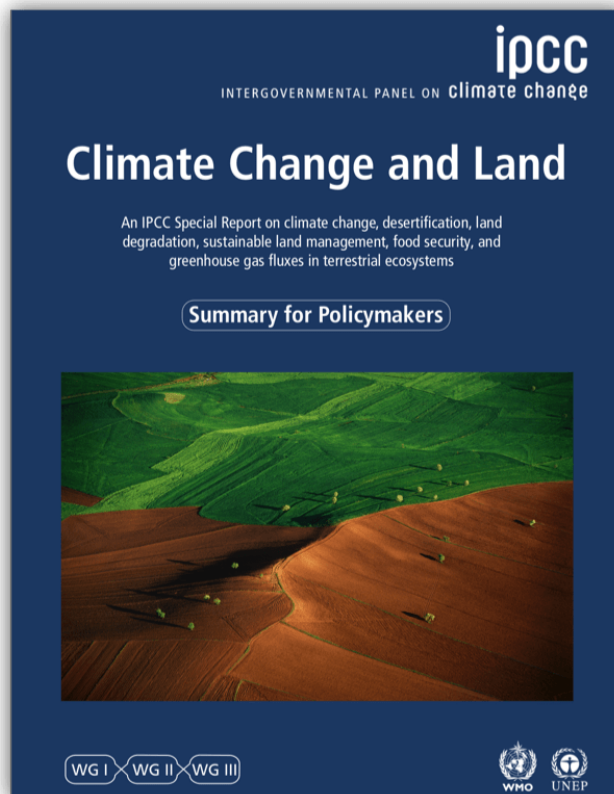
The report also shows that the world's working lands are still a carbon "sink", taking in more emissions than they discharge. From 2007 to 2016, working lands removed a net 6.7 tons of carbon dioxide annually, equivalent to the annual greenhouse gas emissions of the United States.

The report makes clear that there are no "silver bullet" resolutions to the challenges posed by a changing climate. While there may be some tradeoffs, if changes are made correctly, our nation's farm and forest lands could be a major solution platform for producing food, feed, fiber, energy and a host of ecosystem services.

Another important study was released by USDA in

July - "Climate Change and Agricultural Risk Management Into the 21st Century" - delivering the message that the federal government's cost exposure is expected to increase as weather averages and extremes change over the coming decades. The study uses statistical, geophysical and economic models to explore the mechanisms by which climate change could affect future costs of the government's farm safety net programs. All climate scenarios considered suggest that climate change would lower domestic production of corn, soybeans and wheat relative to a future scenario with a climate identical to that of the past three decades. The USDA report puts even more emphasis on the need for policies that can maximize agriculture's contribution to stemming climate change, particularly by financially incentivizing farmers, ranchers and forestland owners to adopt adaptive management systems and practices.

"Farmers need to be able to focus on their capacity to feed the world. Society needs to focus on the will to feed everyone," said SfL Co-Chair AG Kawamura. "Shifting from food



*Continued on Page 5*

## Reclamation Grant Funding Opportunities

The Bureau of Reclamation earlier this month announced the availability of grant funds from two WaterSMART programs.

The FY20 and FY21 WaterSMART Water and Energy Efficiency Grants program has been released by the Bureau of Reclamation. The program provides funding for projects that will result in quantifiable water savings and support broader water reliability benefits. Eligible projects are water conservation, and hydropower projects. Eligible applicants are states, Indian tribes, irrigation districts, water districts, or other organizations with water or power delivery authority located in the Western United States.

Funding will be made through two groups:

- Funding Group I – awards of up to \$300,000 (smaller on-the-ground projects)
- Funding Group II – awards of up to \$1.5 million (larger, phased on-the-ground projects)

It is expected that significantly more awards will be made through Funding Group I. Applicants must provide a 50% match.

Applications are due by October 3, 2019 for FY20, and by September 21, 2020 for FY21. Go <https://www.usbr.gov/watersmart/weeg/> for more information.

"We've seen drought severely impact local, western

*Continued on Page 5*

## Climate Change Policy News (Continued from Page 4)

to feed to fuel will let us utilize what might otherwise be 'waste' when production efforts fall short. Our diversity is the toolkit that maintains the capacity needed to meet our production and sustainability goals."

The media and political attention paid to climate change in recent years has sometimes been overwhelming, and it's easy to get jaded and dismissive of the whole topic.

"It's important to keep an eye on this stuff, since climate change provides a key forum for all kinds of interests to advance agendas that might be harmful to Western irrigated agriculture," warns Alliance Executive Director Dan Keppen.

For example, in July, media outlets highlighted a recent study by Lisa Crozier of the National Oceanic and Atmospheric Administration (NOAA) and colleagues to better understand the vulnerability of Pacific salmon to climate change. Media coverage used climate change as a vehicle to advance arguments of other purported stressors to West Coast salmon.

"Pacific salmon that spawn in Western streams and rivers have been struggling for decades to survive water diversions, dams and logging. Now, a warming climate is pushing four populations in California, Oregon and Idaho toward extinction," was a typical lead in these stories.

Included in the group of four population groups were Chinook in California's Central Valley, where, coincidentally, re-consultation of Central Valley Project (CVP) biological opinions is underway by the Trump Administration. Even before the draft opinions have been released, the Administration is being criticized by newspapers in Sacramento and Los Angeles for purportedly developing a CVP water delivery plan that will lead to "dead fish and starving whales".

"The alleged added stress to salmon noted in the NOAA report will undoubtedly be used by CVP critics as ammo to shoot at the new operations plan, if it provides any kind of needed flexibility in water deliveries for CVP waters users," said Mr. Keppen.

The Alliance board of directors at its 2019 annual meeting supported its long-time policy of using climatic ex-

tremes and findings from its 2008 climate change report to advocate for "climate-smart" agriculture and needed changes in Western water policy.

"Through our involvement on the Steering Committee of the North America Climate Smart Agriculture Alliance, we have been monitoring United Nations global climate talks over the past two years and bringing the voice of North American producers and land managers to the discussion table," said Alliance President Patrick O'Toole.

NACSAA believes public policy should provide incentives for climate-friendly and common-sense farm improvements, like using soil sensors to pinpoint where and how much irrigation, fertilization or pesticides should be used.

The IPCC report acknowledges the growing adoption of agricultural practices, like rotating high-residue crops (corn, hay and small grains), conservation tillage (low- and no-till) and cover crops, that all improve soil health, helping prevent erosion and carbon loss. More efficient use of water and better-managed fertilizer applications are also improvements being employed by more to retain carbon in the soil.

"Fortunately, groups like the NACSAA have been sowing the seeds of climate solutions, making it so that farmers are ready to take the lead, if given the proper support," said Mr. O'Toole.

At a recent climate change forum in Gainesville, Florida, Rep. Kathy Castor, who chairs the House Special Committee on the Climate Crisis, indicated the possibility of a financial incentive being developed for agriculture and forestry operators who build carbon stores in their soils and woodlands. She said the significance of the threat posed by a changing climate will require a "paradigm shift" in how the government takes on the growing challenge.

"We encourage other lawmakers to follow the lead of Rep. Castor and others in Congress who recognize the need for bold action to meet the mounting crisis," said Mr. Shea. "At a time of multiple threats and challenges to the world's agricultural and forestry systems, farmers, ranchers and foresters are coming to the forefront and providing sustainable solutions that benefit all of who call this planet home. Those who work the land deserve the financial ability to ensure it happens."

## New Endangered Species Act Regs (Cont'd from Pg. 2)

counter the move.

The three rules were published in the Federal Register this month and will take effect during the week of October 14, 2019. And – according to comments recently made in Lake Tahoe (CALIFORNIA), more proposed ESA regulations are on the horizon.

"Our next round of regulations is going to deal with, No. 1, what is the definition of habitat" under the ESA, said Karen Budd-Falen, the Interior Department's deputy solicitor for parks and wildlife. Ms. Budd-Falen told *E&E News* that she wasn't sure about the timeline of the next rollout.

The Family Farm Alliance thus far is pleased with the Administration's reception to the recommendations made

on draft rules nearly one year ago.

"We strongly support this Administration's efforts to modernize and improve the ESA and its implementing regulations to provide clearer direction to the agencies in applying and enforcing the law," said Mr. Keppen. "Given the nature of water storage and delivery, Western farmers and ranchers are often directly impacted by the implementation of this federal law, which is over four decades old. The Services are taking a measured approach to assessing and making recommendations to ESA implementation. We endorse this approach, which will better serve the environment and farming and ranching families in the West."

## WaterSMART Grants (Continued from Page 5)

communities," said Reclamation Commissioner Brenda Burman. "Through Water and Energy Efficiency Grants, water districts are partnering with Reclamation on the construction of water conservation and hydropower projects, one of the priorities of this administration to modernize our infrastructure."

Reclamation is also making grant funding available to assist communities build long-term resilience for future droughts. Part of the WaterSMART Drought Response Program, this funding opportunity is for projects in 2020 and 2021.

"Drought across the West is more of a norm than an exception today that severely impacts everyone and everything," said Commissioner Burman. "These grants show Reclamation's commitment to supporting western communities as they build drought resiliency through innovation, investment and collaboration."

Eligible applicants for funding include states, tribes, irrigation districts, water districts or other organizations with water or power delivery authority located in the western

United States or U.S. territories. New this year, projects in Alaska and Hawaii are also eligible. Funding is available for projects that:

- Increase the reliability of water supplies through infrastructure improvements
- Improve water management through decision support tools, modeling and measurement
- Provide protection for fish, wildlife and the environment.

Up to \$300,000 per agreement is available for a project that can be completed within two years. Up to \$750,000 per agreement is available for a project that can be completed within three years. Recipients must match the funding with a minimum of 50% non-federal cost-share.

Applications are due on October 16, 2019, for projects in 2020. Applications are due on October 14, 2020, for projects in 2021. Visit Reclamation's WaterSMART program at [www.usbr.gov/watersmart](http://www.usbr.gov/watersmart) and the Drought Response Program at [www.usbr.gov/drought](http://www.usbr.gov/drought).

## DONOR SUPPORT

**Make your tax-deductible gift to the Alliance today! Grassroots membership is vital to our organization. Thank you in advance for your loyal support. If you would like further info, please contact Dan Keppen at [dan@familyfarmalliance.org](mailto:dan@familyfarmalliance.org), or visit our website: [www.familyfarmalliance.org](http://www.familyfarmalliance.org).**



Contributions can also be mailed directly to:  
**Family Farm Alliance**  
 22895 S. Dickenson Avenue  
 Riverdale, CA 93656.