Alliance Engages in Three-Front ESA Reform Effort

The Family Farm Alliance is active on three fronts regarding legislative and administrative efforts to modernize the federal Endangered Species Act of 1973 (ESA).

The Alliance and hundreds of other organizations representing interests in the regulated community earlier this month weighed in with detailed comments on a three-part package proposed by the Trump Administration to modernize the Act.

The Alliance has also been working with the House Natural Resources Committee, which this month conducted a legislative hearing on a 9-bill ESA modernization package.

Finally, Alliance representatives will also participate in roundtable discussion with Senate Environment and Public Works (EPW) Committee Chairman John Barrasso (R-WYOMING) and committee staff in Washington, D.C. in early October to discuss the contents of a draft ESA modernization bill introduced earlier this year in the Senate.

Why the ESA is so Important to Western Irrigators

The federal government’s significant presence in the West presents unique challenges for Alliance members, who reside in 16 Western states. This is particularly true with respect to the reach of the ESA. Implementation of the ESA impacts the management of land and water throughout the West. For example, federal water supplies that were originally developed by the Bureau of Reclamation primarily to support new irrigation projects have, in recent years, been targeted and redirected to other uses.

“The result is that these once-certain water supplies – one of the few certainties in Western irrigated agriculture – have now been added to the long list of existing uncertainties,” said Alliance Executive Director Dan Keppen.

Given the nature of water storage and delivery, Alliance members are often directly impacted by the implementation of the ESA and other federal laws.

“A constant frustration our members experience is the lack of accountability for success or failure for the implementation of these federal laws,” said Mr. Keppen. “There is no empirical measure of the success or failure of mitigation measures (including reasonable and prudent alternatives) or the adjustment of those measures as a result.”

The ESA has at times been interpreted to empower feder-

Continued on Page 4
Conservation Outcomes That Matter to Species & People

Family Farm Alliance representatives this month participated in a recent tour of Northern California that highlighted how ranchers can play a critical role providing and protecting wetland habitat in the West. Alliance President Patrick O’Toole (WYOMING) and his wife Sharon joined Alliance Executive Director Dan Keppen (OREGON) for a tour of the Ash Creek Wildlife Area in Northern California, hosted by the Intermountain West Joint Venture (IWJV). Mr. O’Toole sits on the management board of IWJV, whose mission is to conserve priority bird habitats through partnership-driven, science-based projects and programs.

“The critical interrelationship between farming, ranching and Western waterfowl must be recognized and protected,” says Mr. O’Toole. “The partnership philosophy of the IWJV is an excellent template for a new paradigm of conservation that benefits the environment and agriculture.”

Dave Smith, IWJV Coordinator, says private landowners have been key players in conserving wildlife for four to five generations. He and others involved with the 60-plus person tour talked about the importance of wetlands in the Closed Basins and Klamath Basin, which are part of a complex extending across Southern Oregon-Northeastern California that provides some of the continent’s most important habitat for waterfowl, shorebirds, and other water birds.

“Approximately 30% of the world’s population fly through this area of the IWJV, so we are aiming to preserve as much as possible,” said Mr. Smith.

In this part of the West, flood irrigation applied by farmers and ranchers is critical to bird habitat.

“We cannot provide wetland habitat in this part of the world, unless we make it a priority to the landowners of this area,” said Mr. Smith. “Flood irrigation still has a large role to play.”

In addition to Ash Creek, the tour group also visited the Five Dot Ranch, Willow Creek Wildlife Area, and the Willow Creek Ranch. Partner presentations were given during both the field tour and dinner by local conservation practitioners and landowners.

Applying Lessons Learned to a Larger Audience

The Southern Oregon and Northeastern California (SONEC) region is one of the most productive spring staging areas for waterfowl in North America. Wetlands in SONEC serve as a crucial migration hub between wintering areas in California and breeding grounds in Alaska and Prairie Canada. The lessons learned in this region will soon be applied to a wider swath of the West.

IWJV is developing the Working Wetlands & Water in the West (Water 4) Initiative to support agricultural producers, public land managers, and other conservation partners with wetlands conservation on working lands in ways that matter to people, including improved forage production, higher quality wildlife-associated recreation, and enhanced groundwater recharge.

The IWJV initiative seeks to:

- Transfer and communicate lessons learned from the SONEC Working Wet Meadows Initiative to other focal landscapes.
- Catalyze proactive and strategic working wet meadows conservation using the latest decision support tools to assess the availability of habitat in space and time linked to the needs of key species.
- Identify new conservation program opportunities and funding sources to support wet meadows conservation on working lands.
- Build partnerships among agricultural and conservation organizations.
- Catalyze communications to help the agricultural community tell the story of the value of working wet meadows in the Intermountain West.

Continued on Page 3
IWJV’s Water 4 Initiative (Continued from Page 2)

The initiative will emphasize work in landscapes that are existing models of an “optimal mix of ecological and social elements”, including the Southern Oregon / Northeastern California region, Upper-Middle Rio Grande corridor, Eastern Idaho/High Divide region, and Bear River watershed.

IWJV is currently in the process of hiring a coordinator for the Water 4 Initiative.

“Working flood-irrigated ranchlands provide vital wetland habitat for waterfowl and a host of other migratory birds,” said Mr. Smith. “Part of this initiative must be to help ranchers in appropriate locations to continue traditional flood irrigation management practices that have been used for generations to produce forage, provide wildlife habitat, and sustain floodplain function.”

The Long-billed Curlew’s Relationship with Irrigated Agriculture

Another piece of science pointing to the value of Western irrigated agricultural lands relates to the Long-billed Curlew, a unique and fascinating bird which breeds in many agricultural and rangeland habitats in the Intermountain West and winters in the Imperial and Coachella Valleys.

“It’s a great story about ag irrigation on both ends of the curlew’s life cycle,” says Mr. Smith.

Long-billed Curlews are not an endangered species but, like all migratory, non-game birds, they are protected by the Migratory Bird Treaty Act. Early findings of ongoing collaborative research reveal the importance of “working lands” to curlews throughout the year. Among the wide range of habitats they use, Long-billed Curlews rely on many types of working lands both for breeding and in the non-breeding season. In the breeding season curlews will nest in dry grasslands or rangelands, wetter meadows and pastures, agricultural fields including alfalfa, wheat, and corn, and pockets of grassland in sagebrush-dominated areas.

During the rest of the year, Long-billed Curlews that breed in the Intermountain West migrate to California and Mexico. The habitats they use range from intertidal mudflats to agricultural lands and grasslands in the interior.

“An ongoing study of Long-billed Curlews shows heavy use by these radio-marked curlews of irrigated agricultural lands in the Imperial Irrigation District in the winter,” says Mr. Smith.

“Our results to date show working lands are critically important to curlews throughout their annual cycle,” write Jay Carlisle and Stephanie Coates, with the Intermountain Bird Observatory at Boise State University. “Maintaining agricultural and rangeland habitats that work well for curlews will be an important element of Long-billed Curlew conservation into the future.”
ESA Modernization Efforts (Continued from Page 1)

al agencies to take action intended to protect listed species without consideration of the societal costs of such action, even when it is not clear that the action taken will actually yield conservation benefits for the particular species. Farmers, ranchers, and rural communities from the California’s Central Valley, to the Klamath Basin, to the Deschutes River (OREGON) have been impacted by these decisions.

“We strongly support efforts to reform the ESA and its implementing regulations to provide clearer direction to the agencies in applying and enforcing the law,” said Alliance President Patrick O’Toole, who runs a sheep and cattle ranch in Wyoming.

The Alliance’s engagement in three different ESA modernization efforts are further detailed below.

**Trump Administration Three-Part ESA Package**

The Alliance on September 24 transmitted a 20-page comment letter to the U.S. Fish and Wildlife Service (USFWS) on revisions to regulations that implement portions of the ESA proposed jointly by USFWS and the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NMFS). Specifically, the Alliance letter was prepared to respond to USFWS’s and NMFS’s proposed three-pronged proposal to revise regulations that 1) implement section 7 of the ESA; 2) extend most of the prohibitions for activities involving endangered species to threatened species; and 3) implement section 4 of the ESA. The letter was 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.

Section 4 of the ESA deals with procedures for listing eligible for protection under the statute. The Section 7 changes proposed by the agencies are intended to improve and clarify the interagency consultation processes and make them more efficient and consistent. The Alliance letter addressed several key issues, including the definitions of “environmental baseline” and “destruction or adverse modification” to critical habitat.

“All of the definitions of terms associated with critical habitat are important to our members and are ripe for us to comment on,” said Norm Semanko (IDAHO), the Alliance’s general counsel.

Mr. Semanko notes that, because of bull trout critical habitat designations on the Boise and Payette Rivers, the application of a revised definition to designation of “unoccupied areas” is a big issue in Idaho.

A priority issue addressed in the Alliance’s letter is the definition of “environmental baseline”, particularly as it relates to dams.

“Pre-existing infrastructure, including the ongoing operation of that infrastructure, should be part of the environmental baseline,” said Paul Arrington, general counsel and executive director of the Idaho Water Users Association. “This includes the continuing operation of Reclamation water projects, administration of the National Flood Insurance Program, and implementation of resource management plans by the Forest Service, among others.”

**Backlash from Environmentalists and Democrats**

The Alliance, American Farm Bureau Federation, National Water Resources Association and others used the public comment period as an opportunity to make constructive changes to how this 45-year old law can be better implemented. However, some in the environmental community and their allies in Congress and academia launched what has become a predictable barrage of opposition to the Trump Administration’s ESA rulemaking effort. Environmental interests reportedly filed about 800,000 opposition comments over the two-month public comment period, including 500,000 comments on the last day alone.

"This drastic proposed revision of the Endangered Species Act is a clear-cut example of the administration favoring industry at the expense of at-risk wildlife," Cathy Liss, president of the Animal Welfare Institute, said in a statement.

*Continued on Page 5*
The grim warnings that the Administration’s effort spelled “doom and gloom” for the environment was echoed in a letter signed by 273 scientists opposed to the proposed administrative changes.

“If enacted, these rules will be an absolute disaster for efforts to save species from extinction,” said Stuart Pimm, a conservation ecology professor at Duke University.

Supporters of the environmentalists in Congress – mostly Democrats – also joined in the chorus opposing “new Trump regulations to undermine the Endangered Species Act” in a “Dear Colleague” letter signed by over 90 members of the House of Representatives.

“Please join us in sending a letter to Secretaries Zinke and Ross urging them to withdraw recently proposed regulatory changes that would weaken the Endangered Species Act and, ultimately, lead to more wildlife extinctions in the future,” the letter stated, signed by Reps. Don Beyer (D-Virginia), Raúl Grijalva (D-ARIZONA) and Debbie Dingell (D-Michigan).

Senators Tom Carper (D-Del.), top Democrat on the Environment and Public Works Committee, and Tom Udall (D-NEW MEXICO), top Democrat on the Senate Appropriations Subcommittee on the Interior, Environment and Related Agencies, led Democratic Senators in urging the two secretaries to reverse course on the changes the agencies intend to make when implementing the ESA. The letter claims the ESA is “one of the most popular and successful environmental laws in the nation” and balks at proposed changes to require federal agencies to analyze economic impacts of protecting species.

“We urge you to reconsider and rework or rescind all of these short-sighted, unfounded proposals that will not improve the conservation of threatened and endangered species,” the Senators wrote.

Justification for Making Change

The Alliance believes the time for modernizing the ESA is long overdue, since it was last amended in 1988.

“We are not seeking to repeal the Act, but simply wish to make it current with the modern age,” said Mr. Keppen.

For many years, the Alliance has worked with federal agencies, the regulated community, and Congress to find ways to make the ESA work better for imperiled species and rural communities. The organization worked closely with the House of Representatives’ ESA Working Group, which in February 2014 issued its final report that concluded the ESA “while well-intentioned from the beginning, must be updated and modernized to ensure its success where it matters most: outside of the courtroom and on-the-ground.”

“The administration is taking a measured approach to assessing and making recommendations to ESA implementation,” said Jason Peltier, executive director of the Coalition for a Sustainable Delta (CALIFORNIA). “We all know of the difficulty in amending the ESA. However, there is considerable discretion in how the ESA is implemented. Given the significant scientific uncertainty with many listed species and the ecosystems in which they reside and the failure of the ESA regulators to look at the host of stressors affecting them, the agencies need to step back and rethink the consequences of their actions.”

House Natural Resources Committee Considers ESA Bills

One day after the deadline expired for the public to comment on the Trump Administration ESA proposals, the House Natural Resources Committee held a hearing on nine ESA bills rolled out earlier this year by the Western Republican Caucus. The following day, despite opposition from Democrats, the committee advanced four of the measures with just a few technical amendments during its last markup before the post-election lame-duck session.

The four ESA bills that passed through the committee, with votes generally split along party lines, included:

- H.R. 6346 from Louisiana Republican Mike Johnson, which would amend the ESA to “provide for consideration of the totality of conservation measures in determining the impact of proposed federal agency action.”
- H.R. 6345, sponsored by Rep. Steve Pearce (R-NEW MEXICO), which would provide for greater county and state consultation on ESA petitions.
- H.R. 3608 from California Republican Tom McClintock, which would require online publication of the basis for determining which species are endangered or threatened.
- H.R. 6355 from Rep. Bruce Westerman (R-Ark.), which would define ESA petition backlogs and provide expedited means to discharge petitions during a backlog.

The Family Farm Alliance sent a letter to Western Caucus Chairman Paul Gosar (R-ARIZONA) expressing support for his efforts to modernize the Act.

“This hearing provided an excellent opportunity to highlight several important reform principles for reforming and modernizing the ESA,” said Mr. Keppen. “We are pleased to see the Committee consider these important bills, many of which are built on concepts we have long supported.”

Some of these principles include codification of “No Surprises”, collaborative agreements to support conservation, clarifying portions of the critical habitat designation process, transparency, and the use of best available science. Witnesses representing Defenders of Wildlife, California Farm Bureau Federation and Pacific Legal Foundation were among those who testified at the hearing.

ESA Work in the U.S. Senate

Earlier this year, John Barrasso (R-WYOMING), Chairman of the Senate Committee on Environment and Public Works (EPW), released a legislative discussion draft that seeks to improve the way the ESA facilitates species’ recovery. The draft legislation originated from the work of the Western Gov-
ESA Modernization Efforts (Continued from Page 5)

errors’ Association (WGA), under the leadership of Wyoming Governor Matt Mead. As then-Chairman of the WGA, Governor Mead and his team worked with a wide variety of stakeholders — including the Alliance - to develop a set of suggestions to improve the way private groups, States, and Federal agencies could work together to ensure a bright future for imperiled plants and animals.

“Representatives from our organization played a prominent public role in several of the WGA public meetings and webinars on ESA reform, and participated in every WGA workshop,” said Mr. O’Toole. “Throughout the course of that process, we outlined our ideas to encourage voluntary conservation efforts to advance the goals of the ESA.”

Senator Barrasso’s discussion draft has turned those recommendations into legislative language. The Senator views the draft as the foundation for a bipartisan effort to bring meaningful, positive change to the way imperiled species are recovered. Thus far, over 175 stakeholders have weighed in on the contents of the draft.

The Alliance and representatives from a dozen environmental, livestock, oil and gas, forestry, construction, transportation and state and local government organizations will participate in a roundtable discussion next month in Washington, D.C., where Senator Barrasso’s staff will be present to discuss the contents of the draft bill and receive input on priorities for the future of species conservation.

“We believe we can have an open and candid discussion about fixing the law to make it work as intended,” said Mr. O’Toole. “Surely, constructive and thoughtful parties can agree that a law addressing the needs of species in trouble is worthwhile. Repealing the ESA in our goal, but the law needs to be updated for it to be effective in today’s world.”

Importance of Considering Human Consequences

Family Farm Alliance leaders and members strongly believe that farmers, ranchers, and some conservation groups know that the best water solutions are unique and come from the local, watershed, and state levels.

“They know we need policies that encourage agricultural producers, NGOs, and state and federal agencies to work together in a strategic, coordinated fashion,” said Mr. Keppen. “They understand that species recovery and economic growth and activity do not have to be mutually exclusive.”

Mr. Peltier and other Family Farm Alliance members recognize that, even though the ESA does not require the human consequences of their decisions to be considered, it does not prohibit such consideration.

“Understanding the impacts on people that come with ESA decisions is simply good public policy,” said Mr. Peltier. “To ignore how people are affected is simply bad public policy. This concern and others deserve further consideration from the highest water policy officials.”

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New Storage Projects Gain Momentum in California

The last federal water storage project constructed in California was built 40 years ago. Now, due in part to a wake-up call caused by prolonged recent drought, momentum for new storage projects is building. Recent state and federal funding has been set aside for supply enhancement projects, the Trump Administration is making new water storage a priority, and Congress is getting creative on how to cut through regulatory red tape that has stymied new storage development in the West for decades.

Several water storage projects in California have already been authorized by legislation and are awaiting funding. The House approved several provisions this month in House-passed America’s Water Infrastructure Act (AWIA – see related story, Page 8) that help fund water storage projects. Republican Rep. Jeff Denham’s provisions allow local irrigation districts to apply for low-interest federal loans from the Environmental Protection Agency to build new reservoirs, below ground storage projects, recycling and desalination projects. Democrat Rep. Jim Costa secured provisions in AWIA that would allow dams and other water facilities regulated by the Corps of Engineers but owned by local entities to use non-federal funds. The Senate is expected to pass AWIA shortly, and President Trump is expected to quickly sign the legislation into law.

The president has also spoken publicly in support of more water for Central Valley farmers. His Bureau of Reclamation is in the preconstruction and design phase of the Shasta Dam and Reservoir Enlargement Project, following Congressional approval of $20 million in Water Infrastructure Improvements for the Nation (WIIN) Act funding last March. Over the next several months, Reclamation geologists are extracting core samples from on, around and deep within Shasta Dam. Gathered data will be used to characterize concrete and geology conditions related to a proposed Shasta Dam raise.

The federal government has been studying the idea of raising the dam and enlarging Shasta Reservoir on and off since the 1980s.

The current Shasta Dam and Reservoir Enlargement Project envisions raising the existing dam by 18 ½ feet, providing an additional 630,000 acre-feet of stored water for the environment and for water users. Enlarging the reservoir will improve water supply reliability for agricultural, municipal and industrial, and environmental uses; reduce flood damage; and improve water temperatures and water quality in the Sacramento River below the dam for anadromous fish survival.

Meanwhile, early funding provided by the California Water Commission is being used to assist in completing the necessary environmental analyses and obtaining permits to build Sites Reservoir, an offstream reservoir proposed north of the Sacramento-San Joaquin Delta. The Commission in July 2018 voted to award the Sites Project $816 million in state funding, the most of any applicant seeking funds from voter-approved Proposition 1.

“Sites is a smart and long overdue investment for California,” said Sites Project Authority Chairman Fritz Durst.

As proposed, Sites will add up to 500,000 acre-feet per year of usable water to the state’s water system, which represents two-thirds of the total amount of annual storage being created through Proposition 1 funding.

“The Sites Project offers the unique benefit of improving water quality and habitat conditions in the Sacramento River and Delta when and where it’s needed most,” Sites General Manager Jim Watson said. “The project will not block fish migration, does not dam a large river or stream, and will only be filled by storm events, when excess water is available in the Sacramento River and after all existing environmental requirements have been met.”

Still, the usual critics of new water storage are finding new ways to obstruct what appears to be a promising project, and claim looming regulatory challenges could limit the ultimate yield of the Sites Project.

One of those challenges is a yet-to-be-released draft document explaining how thousands of water-rights holders would have to reduce their diversions from the Sacramento River watershed in order to meet flow requirements as part of the Bay-Delta Water Quality Control Plan developed by the State Water Resources Control Board.

“When the water board adopts new standards for Delta outflow and Sacramento River inflows to the Delta, that would limit the periods of time when Sites could be diverting,” Doug Obegi recently told Matt Weiser in Water Deeply. “It would significantly reduce the yield of the project.”

Mr. Obegi is an attorney at the Natural Resources Defense Council, an influential and litigious environmental organization that has long been critical of Central Valley Project operations.

Rob Thomson, environmental planning manager for Sites, told Water Deeply that it’s too early to tell how the State Board’s process will affect Sites.

“Of course, it will change our diversion criteria when they implement the plan,” said Mr. Thomson. “But this is a complex project and we’re adding into an already complex water system. So it’s not easy to give yes and no answers.”

Editor’s note – You can download a PDF version of “Twenty Questions on Water Storage Projects: A White Paper that Provides Straightforward Answers to Questions and the Need to Prepare the Western U.S. for Future Droughts” under the “Reports” section of the Alliance website: www.familyfarmalliance.org. This report provides answers to any question you may have regarding water storage projects, and takes on some of the most popular myths that critics of dams have advanced in recent years. 

Shasta Dam & Reservoir. Photo courtesy of USBR.
House Passes Water Resource Bill; Senate Vote Forthcoming

Bill addresses Klamath Basin, but lean on other Reclamation provisions

The U.S. House of Representatives this month passed by voice vote S. 3021, the "America's Water Infrastructure Act (AWIA)," (aka Water Resources Development Act, or WRDA). This bill was cobbled together from the House passed H.R. 8, as well as the Senate's competing version, S. 2800, which cleared the Environment and Public Works (EPW) Committee unanimously in May.

The Senate bill never saw a floor vote due to procedural moves by Sen. Richard Burr (R-NC) to include a vote to permanently authorize the Land and Water Conservation Fund. So, the AWIA bill was “pre-conferenced” between the House and Senate to eliminate the need to negotiate between the two different bills after passage, and saving time in getting the measure approved before the election in November.

The bill would authorize several new Corps of Engineers (Corps) studies, construction and environmental restoration projects as recommended by the Chief of the Corps. It would also reauthorize the Drinking Water State Revolving Fund at more than $4.4 billion over the next three years. Of importance to Western water and power interests, the bill would ease the streamlining process for hydropower projects and reauthorize the popular Water Infrastructure Finance and Innovation Act (WIFIA).

Earlier this year, the Trump Administration proposed a controversial measure to move at least parts of the Corps out of the Defense Department. That move was blocked by the Fiscal Year 2018 Energy and Water spending bill (see related story, Page 10). The pre-conferenced AWIA bill initiates a study with the National Academy of Sciences to review the Administration's proposal. Other provisions important to Western water users are summarized in the inset box on Page 9. Many of these sections were endorsed by the Alliance when Advisory Committee member Pat Riley (MONTANA) testified last May before the Senate EPW Committee on AWIA.

Unfortunately, many other Bureau of Reclamation-focused provisions did not make it into the pre-conferenced version. One area that did get some attention was the Klamath Project (CALIFORNIA/OREGON), where provisions were literally added at the 11th hour to authorize a water bank, allow for conveyance of non-Project water in Project canals, and assess ways to reduce power costs.

“These provisions are a major step forward that will immediately aid both water users and the Bureau of Reclamation in managing water more effectively and efficiently, given the number of constraints we currently face.” said Marc Staunton, a Klamath Water Users Association board member and farmer near Tulelake (CALIFORNIA), who was in Washington DC meeting with law makers and agency officials when the bill passed.

“This legislation includes important language to assist irrigators in the Klamath Basin who are enduring another challenging water year and it helps ensure we are prepared if our farmers are hit again with severe drought conditions in the years ahead,” said U.S. Rep. Greg Walden (R-OREGON), in a news release. “The bill provides the Bureau of Reclamation with the authority to use the funds we secured earlier this year to implement measures such as groundwater pumping and other priorities for our irrigators, and ensures they have that authority to survive difficult water years we may face over the next four years.”

With the House taking up an unrelated Senate-passed bill (S. 3021, naming a courthouse in Minnesota), and substituting the water resources bill text, action in the Senate will now be expedited. Senate Majority Leader Mitch McConnell (R-KY) can, at some future point, take up the AWIA and move it through the Senate faster than if the House simply passed a new bill. A likely vote on Supreme Court nominee Brett Kavanaugh will potentially push a Senate vote on the AWIA into early-mid October. President Trump is expected to sign the bill into law following Senate passage.

House Passes Reclamation Transparency Bill

The House this month fast-tracked passage of several natural resources bills, including one to increase Bureau of Reclamation transparency on water infrastructure projects. The bipartisan H.R. 660, sponsored by Rep. Paul Gosar (R-ARIZONA), would require a detailed list of project repairs and estimated costs from the agency. Rep. Gosar said his bill would improve the agency's accountability and oversight.

“Such actions will allow for meaningful steps to be taken to address the maintenance backlog, as well as to ensure an abundant supply of clean water and power for future generations,” Rep. Gosar said during the bill's debate, noting that most of Reclamation's aging infrastructure was built more than 50 years ago.

The bills were considered under suspension of the rules in the House, a means of fast-tracking votes on noncontroversial measures.

Rep. Paul Gosar

Page 8
Key Provisions of America’s Water Infrastructure Act

Section 1108, Aquatic invasive species research: The Corps will work with diverse geographic regions impacted by aquatic invasive species, including the Atlantic, Pacific, Gulf Coasts, and the Great Lakes.

Section 1126, Purpose and need: directs the Corps to develop and provide to permit applicants for water storage projects, within 90 days, a purpose and need statement and provide an assessment of the purpose of, and need for, the project. A non-federal interest may use the administrative appeals process in relation to a decision of the Secretary related to an application for a water storage project.

Section 1131, Ice jam prevention and mitigation: This section increases the number of pilot projects (from 10 to 20) for preventing and mitigating flood damages associated with ice jams.

Section 1134, Missouri River Reservoir sediment management: This section prioritizes sediment management plans that affect reservoirs that cross State lines and to direct the Corps and Bureau of Reclamation to execute a memorandum of agreement establishing the framework for a partnership and the terms and conditions for sharing expertise and resources.

Section 1138, Surplus water contracts and water storage agreements: This section restricts the Corps from assessing a water storage fee with respect to any water storage in the Upper Missouri Mainstem Reservoirs, and extends, by two years, the current limitation of fees for water storage agreements.

Section 1144, Levee safety initiative reauthorization: This section reauthorizes program within the National Levee Safety Initiative through FY 2023 to continue promoting improved levee safety practices at the local, state, and federal levels.

Section 1152, Study of water resources development projects by non-Federal interests: This section expedites projects by directing the Corps to furnish section 203 reviews to Congress upon completion, instead of after Administration review. Additionally, this section allows non-federal interest to contribute funds to conduct certain activities, including reviews, inspections, and certifications, that will move projects forward through the process.

Section 1153, Construction of water resources development projects by non-Federal interests: This section accelerates project delivery by allowing credit or reimbursement for certain discrete segments of water resources development projects. Additionally, this section allows a non-federal interest to advance projects more expeditiously, including all mitigation required to offset environmental impacts, through the use of a written agreement with the Corps. This section also allows the Corps to transfer all relevant data and documentation to a non-federal interest with respect to a water resources development project, unless the data and documentation are considered proprietary information.

Section 1164, Local government water management plans: This section directs the Corps to allow local communities to participate in the feasibility study, with the consent of the non-federal interest, to help achieve the goals of local or regional water management plans.

Section 4301, Agreement with Commissioner of Reclamation: This section directs the Commissioner of Reclamation to enter into an agreement, within one year of enactment of the bill, with the EPA Administrator under the newly created servicing authority provided in section 4201 of the bill.

Section 4302, Snake River Basin flood prevention action plan: This section requires the Commissioner of Reclamation, in consultation with the Secretary of the Army, to develop a flood prevention action plan, as soon as practicable, for each state or portion of a state within the Snake River Basin located in Washington, Oregon, Idaho, and Wyoming.

Section 4303, GAO audit of contracts and Tainter gate repairs of Harlan County Dam, Nebraska.

Section 4308, Klamath project water and power: see discussion in article, Page 8.

Sec. 4310, Authority to make entire active capacity of Fontenelle Reservoir available for use: This section authorizes the Secretary of the Interior to enter into an agreement with the State of Wyoming to enable the use of all active storage capacity of Fontenelle Dam and Reservoir.

Section 4311, Blackfeet water rights settlement: This section adjusts the authorization for the Blackfeet Water Rights Settlement to allow the Blackfeet Tribe to receive access to funding in a timely manner so that they may complete a range of water-related infrastructure projects on Tribal lands.

Section 4314, Indian dam safety reauthorization.
House Committee Holds Field Hearing on Columbia/Snake Dams

During a field hearing this month in Pasco (WASHINGTON), House lawmakers defended the Federal Columbia River Power System as a vital source of power in the Pacific Northwest and criticized a federal court's decision related to the management of the dams along the Columbia River and its main tributary, the Snake River. The larger concern for most of those testifying at the hearing was keeping the four lower Snake River dams standing, which provide enough power for nearly 2 million homes, while also providing irrigation for agriculture and flood control for communities.

“Washington state is the most trade-dependent state in the country. An estimated 40 percent of jobs are tied to trade,” said Rep. Cathy McMorris Rodgers (R-WASHINGTON), where she said the river system acts as a “super-highway” for moving products.

A recent decision from a federal appeals court in April directed federal dam operators on the Columbia River to release more water over the dams (spill) in order to protect threatened salmon and steelhead listed under the federal Endangered Species Act (ESA). The Washington State delegation representing the region argued that by increasing the water flow over the dams, fish are harmed by gas bubbles created by the spilling water, and less hydropower is generated from the system.

The delegation pushed their H.R. 3144, cosponsored by Reps. McMorris Rodgers and Dan Newhouse (R-WASHINGTON), a measure that passed the House earlier this year. It would effectively overturn the judge's decision to release more water for fish. The bill does not have companion legislation in the Senate, and was rejected by appropriators from inclusion in the recently passed FY 2019 Energy and Water Development spending bill (see article, below).

Two days prior to the field hearing, “RiverFests” were hosted in the Tri-Cities and Clarkston/Lewiston, where over 3,000 people learned about the value of the dams while engaging in fun family activities. The RiverFest events coincided with, and countered, the third annual Snake River flotilla organized by the activist group Save Our Wild Salmon and sponsored by Patagonia. The flotilla drew about 600 participants.

Meanwhile, Save Our Wild Salmon, orca groups, and others are calling for the Orca Task Force to recommend more spill at the federal dams and Snake dam removal to Washington Governor Inslee as a means to chinook salmon restoration and by extension – orcas. The recent news coverage of a mother orca carrying her dead calf for 17 days in Puget Sound only provided more of a platform for dam removal activists and increased the rhetoric.

“Anti-dam groups continue to present Snake dam removal as a silver bullet that will save the Northwest’s endangered salmon and orcas,” said Terry Flores, executive director of Northwest River Partners. “It is a false premise but a powerful fundraising tool.”

Energy and Water Spending Bill Passes Congress

Interior-EPA Minibus May Stall

Congress sent the president a bipartisan FY 2019 energy and water spending bill this month (funding the Corps of Engineers/Bureau of Reclamation/Department of Energy), moving on multiple fronts to avoid a government shutdown at the end of this month. But it remains unclear whether EPA and the Interior Department will soon see a deal on new funding or if they will have to operate under current spending levels until at least December.

The House overwhelmingly backed, 377-20, a $147.5 billion minibus package that contains the fiscal 2019 Energy-Water, Military Construction-Veterans Affairs and Legislative Branch measures. The Senate passed the three-bill spending minibus 92-5. Several contentious policy riders (including a WOTUS rule repeal) were dropped from the deal, as was a plan to fund preliminary work on the Yucca Mountain nuclear waste repository in Nevada. The package contains provisions that prohibit spending on a Trump Administration plan to reorganize the Corps out of the Defense Department.

House Appropriations ranking member Nita Lowey (D-N.Y.) called the bill “a victory for what it does not include,” referring to the policy riders, in a statement, as reported by Bloomberg Government. However, the bill does include a rider restricting the use of regulations under the Clean Water Act in some agricultural areas, including farm ponds and irrigation ditches.

The Energy-Water portion included additional funding for Reclamation and the Corps. Reclamation received $1.565 billion for water resources projects, $85 million above the FY 2018 enacted and $508 million above the President’s budget request. The conference report provides $1.392 billion in water conservation, reuse, reclamation, and drought activities, including $134 million for water storage projects authorized in the Water Infrastructure Improvements for the Nation

Continued on Page 11
Farm Bill Vote Will Wait Until After November Elections

Alliance and other Western ag interests weigh in with recommendations

With the current farm bill expiring at the end of this month, the top Congressional ag committee leaders are admitting they'll likely have to finish their work after the November 6 midterm elections. Some farm bill conferees are warning that waiting until November will add a whole new level of complexity to the negotiations, especially if political leverage shifts should Democrats win the House or Senate.

Senator Heidi Heitkamp (D-NORTH DAKOTA) recently told reporters there "may not be a political will to get it done" after the midterms.

Negotiators have ruled out an extension of the current farm bill because it delays work and "takes away from a sense of urgency to get this [farm bill] done," said Senate Agriculture Chairman Pat Roberts.

Minnesota Rep. Collin Peterson, top Democrat on the House Ag panel, says he's not interested in writing a new farm bill if Democrats win the House and he takes over the gavel from Chairman Mike Conaway (R-Texas). "I want it done now, and Roberts wants it done now. We're not the ones holding this up," Rep. Peterson told POLITICO this week.

According to Chairman Conaway, not a single farm bill title had been finalized as this Monthly Briefing was going to press.

If a deal isn't reached before the new Congress meets on Jan. 3, both the House and Senate would need to reintroduce the legislation and take another vote.

This could put major conservation initiatives in a tough spot. There would be mandatory funding available, but USDA's authority to operate the programs expires at the end of the fiscal year (September 30).

The Family Farm Alliance earlier this month joined California Farm Bureau Federation, California Agricultural Irrigation Association, and the national Irrigation Association in a letter to farm bill conferees, urging them to work toward bipartisan farm bill legislation that can be passed by both the Senate and the House, and signed into law by the President this year.

“Our collective farm bill energies and engagement leading up to the release of the House and Senate farm bills have focused primarily on the conservation and forestry titles,” the parties wrote. “We support a farm bill that maintains funding for the conservation title, and that makes farm bill programs work better for producers in the irrigated West.”

The overall goal of the groups for the farm bill is to increase opportunities for farmers and their related water management and delivery entities to invest in improvements in water management and more efficient irrigation technologies, leading to more reliable water supplies, increased resource conservation, and increased crop yields and environmental benefits. The letter also provides recommendations on forest health, due to the recent spate of wildfires over the past few years negatively impacting Western watersheds. Finally, the signatories offered suggestions on provisions that assist young farmers and regulatory relief to Western producers.

“We stand ready to assist you in this effort to pass bipartisan legislation that can bring the tools needed to help us find solutions that work for the water supply future of all of our communities in the arid West,” the letter concluded.

Energy and Water Spending Bill (Cont’d from Pg 10)

(WIN) Act of 2016. The Corps of Engineers received $6.999 billion, $171.5 million above the FY 2018 enacted level and $2.2 billion above the President’s budget request.


President Trump is expected to sign the measure into law.

Lawmakers also announced they would move a continuing resolution (CR) to maintain level funding for any agencies that do not have new spending bills in place by October 1. The CR would run through December 7, allowing for Congress to vote on remaining spending bills during a postelection lame-duck session. The CR portion is expected only to focus on maintaining FY 2018 funding levels, and will not extend specific expiring programs like the Land and Water Conservation Fund (LWCF) or provide any emergency aid for wildfires or hurricane damage.

More work remains on another minibus that includes the Interior-EPA bill combined with funding for Agriculture, Transportation-Housing and Urban Development, and Financial Services. House and Senate appropriators have held a conference meeting on the third minibus but were not yet ready to announce a deal. They said the major holdup are the many policy riders in the House version of the Interior-EPA portion of the package. The Senate version of the bill did not contain contentious riders in order to attract enough Democrat votes to pass the measure.