Alliance, Other Farm Organizations File Amicus Brief in Supreme Court CWA Groundwater Case

The Supreme Court has agreed to hear what many believe may be the biggest environmental case of this year: a dispute over which types of pollution discharges trigger the Clean Water Act (CWA). County of Maui, Hawaii v. Hawaii Wildlife Fund involves the discharge of municipal wastewater into injection wells. While local environmentalists on the island of Maui pushed for a settlement to prevent this case from being heard by the highest court in the land, numerous amicus briefs supporting Maui were filed from a host of conservative and industry figures, including a group of GOP senators, industry associations, conservative groups, local governments, water utilities and Republican-led states.

The Family Farm Alliance is part of a group of eight national agriculture organizations that joined in an amicus curiae (“friend of the court”) brief that was transmitted to the U.S. Supreme Court earlier this month.

Background

Environmentalists allege the County of Maui needed a CWA permit for the discharges because the wastewater eventually seeped through groundwater and ended up in the Pacific Ocean. The circuit court agreed with environmental groups in Maui that the CWA—which governs the discharge of pollutants from discrete “point sources” into “waters of the United States”—applies even when the pollution migrates through groundwater before reaching a waterway that is subject to federal jurisdiction.

Implications for Agriculture

The outcome of the Maui case has significant potential impacts on irrigators and other water users. If ground water is considered a “conduit” to connected surface water for purposes of the Clean Water Act, then any water placed on the surface of the ground, that percolates into the ground, will be examined as a potential point source discharge of pollution. That could be canals, ponds, regulating reservoirs, drains, recharge sites, even farms—anything that results in water seeping into the ground.

The Alliance board of directors last month authorized joining an ag-centric amicus effort being led by the American Farm Bureau Federation in the Supreme Court Maui groundwater case, since this case has implications for irrigators. The Alliance joins seven other national agricultural organizations involved in the Farm Bureau effort, among them the National Cat-

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Maui Groundwater Case (Continued from Page 1)


“The Alliance and other parties involved in the amicus effort are not parties to the Maui particular litigation but seek to advise the Supreme Court in respect to those matters of law that directly affects the case,” said Norm Semanko, general counsel for the Family Farm Alliance.

This amicus effort is intended to protect routine agricultural operations from a potentially limitless expansion of the CWA National Pollution Discharge Elimination System (NPDES) program.

“The upshot could be endless third-party lawsuits regarding the application and scope of ag-related exemptions in the CWA,” said Mr. Semanko.

Argument from Ag Organizations

The arguments posed by the Alliance and other agricultural organizations fall into two general categories. First, they argue that additions of pollutants to groundwater are not discharges of pollutants to navigable waters under the CWA.

“Requiring NPDES permits for point source additions to groundwater is inconsistent with the Clean Water Act’s plain text,” says Mr. Semanko. “The statutory structure shows that NPDES permits are not required for point source additions to groundwater. Numerous substantive canons and the Clean Water Act’s legislative history provide further justification for the Supreme Court to reverse the lower court decision.”

The second argument emphasizes that requiring permits for indirect additions of pollutants through groundwater would wrongly expand the reach of the CWA to ordinary and routine agricultural activities.

“Many ordinary agricultural activities can result in discharges to groundwater,” said Alliance Executive Director Dan Keppen. “Requiring NPDES permits for groundwater discharges would be devastating for farmers and ranchers and impractical for regulators.”

EPA Backs Industry

The U.S. Environmental Protection Agency (EPA) is backing major industry groups, GOP-led states and others for the U.S. Supreme Court to reject environmentalists’ claim that the CWA limits surface water contamination from groundwater-borne pollution. EPA argues that any such liability in County of Maui v. Hawaii Wildlife Fund, et al. would violate Congress’ intent when developing the water law.

The Trump Administration argues that justices should consider the EPA's newly revised position on the CWA’s reach over groundwater and exclude any sub-surface flows from the CWA’s NPDES permit program. However, EPA stops short of asking the high court to give formal deference to its new groundwater policy.

Instead, the amicus brief touts the agency’s “interpretive statement” as the best reading of the CWA and asks the justices to agree with it on the merits. But EPA asked the court to limit its Maui decision to the narrow subject of groundwater to deter discharges from gaming the system of becoming “indirect” sources.

Meanwhile, plaintiff Earthjustice has made a settlement offer to Maui County, with a County resolution being filed that would direct County officials to send all settlement offers to the council for an up-or-down vote. Those efforts to settle reached an impasse late this month, as the county council’s Governance, Ethics and Transparency Committee split 4-4 in a vote on whether to advance a resolution that favors withdrawing the pending appeal. That committee instead opted to defer the issue, but indicated it expects to take it up again in the future.

Late Breaking CWA News

A Texas court has remanded the 2015 “waters of the US” (WOTUS) rule back to EPA, stating the agency violated the Administrative Procedures Act in promulgating the rule. Meanwhile, the Trump Administration continues its efforts to rescind and replace the WOTUS rule.

The May 28 ruling from the U.S. District Court for the Southern District of Texas also declines to rule on the substantive challenges to the merits of the rule itself, saying “they are premature at this time.” EPA and the Army Corps of Engineers hope to complete a joint rule rescinding the 2015 rule in August and finalize a new, narrower definition of WOTUS in December.
Interior Finalizes First Ever Categorical Exclusion As Part of Improved Title Transfer Process

U.S. Secretary of the Interior David Bernhardt this month announced two actions that will expedite the transfer of eligible Bureau of Reclamation (Reclamation) facilities into local ownership and management: a new Categorical Exclusion (CE) and an update of Reclamation’s operating manual procedures to streamline the title transfer process.

"Title transfers are one of several positive means of strengthening control of water resources at the local level. In addition, they can help reduce federal costs and liability, and allow for a better allocation of federal resources," said Family Farm Alliance Executive Director Dan Keppen.

Despite the benefits, local water agencies are many times discouraged from pursuing title transfer because the process is expensive and slow. Environmental analyses can be time consuming, even for uncomplicated projects that will continue to be operated in the same manner as they always have been. National Environmental Policy Act (NEPA) and the procedures required to address real property and cultural and historic preservation issues are often very inefficient, time consuming and expensive. Moreover, every title transfer currently requires an act of Congress to accomplish, regardless of whether the project covers 10 acres or 10,000 acres.

The actions proposed by Interior make it easier for water users to take title – ownership – to simple and uncomplicated Reclamation facilities by expediting the process following direction from President Trump and Congress. Streamlining the title transfer process incentives new non-federal investment in water infrastructure and allows for more efficient management of water and water-related facilities.

This limited conveyance of federal Reclamation projects or facilities, such as diversion dams, canals, laterals and other water-related facilities, benefit local water beneficiaries who will have greater autonomy and flexibility in managing these facilities. Local ownership can also provide financial collateral for capital improvements that could be made at these transferred facilities. Ultimately, the American taxpayer benefits from the eligible transfers covered under these actions since divestiture decreases federal liability.

“This new title transfer process embodies the President’s goals of streamlining bureaucratic processes and making our government more efficient and accountable,” said Secretary Bernhardt. “Title transfers are a win for local communities and a win for the American taxpayer. The Department looks forward to continuing our work with local water users to reduce title transfer costs, stimulate infrastructure investment through local ownership with the bottom-line goal of making this new streamlined approach a major success.”

While 33 title transfer authorizations have taken place since the mid-1990’s as a result of congressional action, the Trump Administration and Congress agreed that the program needed streamlining to facilitate more voluntary transfers. Interior’s actions follow President Donald Trump’s Fiscal Year 2020 budget request on “title transfer” activities and the recent enactment of S. 47, the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Dingell Act).

Secretary Bernhardt’s first administrative action to facilitate title transfers is a CE under NEPA. The new CE – submitted to the Federal Register – is the first one for Reclamation in decades. The CE lists a number of criteria that will determine if simple, non-controversial or uncomplicated facility transfers can be expedited under NEPA.

The second action is in response to enactment of Title VII of the Dingell Act, in which Reclamation is allowed to transfer title of certain types of Reclamation facilities that will no longer require authorizing legislation at the end of the process. As part of this action, Reclamation updated its operating manual to implement the law and the new CE. Each title transfer will be reviewed on a case-by-case basis to determine if the new CE and the new authority would apply.

“Reclamation and non-federal entities have worked together for many years on specific title transfers that can become time-consuming and costly,” said Reclamation Commissioner Brenda Burman. “This new streamlined title transfer process – including the new CE and the new authority provided by Congress – will allow for appropriate transfers to take place without congressional legislation in a more timely and cost-effective manner.”

The Alliance worked closely with the Interior Department in the past year as it was developing the new rules, which compliment title transfer legislation that was signed into law earlier this year by President Trump as part of the Dingell Act. Alliance Advisory Committee member Tom Knutson (NEBRASKA) and Mr. Keppen both testified before a House subcommittee in the last Congress in support of title transfer legislation.

The new CE and the title transfer process is available on Reclamation’s Title Transfer website at https://www.usbr.gov/title.

Editor’s note- this article includes excerpts of Interior Department press release.
Infrastructure Talks Collapse
Congress Turns to Highway Bill

After a White House meeting on how to pay for $2 trillion in public infrastructure fell apart earlier this month, congressional leaders returned to Capitol Hill with the odds of Congress passing a broad infrastructure package looking slimmer than ever. Now, it seems likely Congress will pursue a narrower surface transportation bill, possibly reauthorizing the Fixing America's Surface Transportation (FAST) Act, which is set to expire in October 2020.

At the White House meeting, President Trump stated he would not work with Democrats on infrastructure unless they dropped their ongoing investigations of his Administration, bringing an end to the meeting.

Prior to the meeting, reportedly a presidential letter to congressional leaders stated the Administration wanted to prioritize trade agreements over an infrastructure push.

Rep. Rodney Davis (R-Ill.) told POLITICO that if a measure isn't passed before August, "it's likely that it would have to be combined with the highways and transit bill, which would take other opportunities for water and other infrastructure needs off the table."

After August, the political energy in Washington will primarily be spent on the presidential campaign. Both congressional leaders and White House officials are deeply skeptical that passing a bipartisan infrastructure bill is possible. "It's all about positioning themselves in a way that you can blame the other side for nothing happening," a source close to the White House told POLITICO.

House Transportation and Infrastructure (T&I) Committee Chairman Peter DeFazio (D-OR) stated that he now will focus on a transportation bill. Reps. Dan Newhouse (R-WASHINGTON) and Jim Costa (D-CALIFORNIA) organized a "Dear Colleague" letter to House T&I leadership calling for water infrastructure to be included in any infrastructure package. That letter was supported by the Family Farm Alliance, as was the SAVE Water Act, legislation introduced by Rep. Josh Harder and other California Democrats.

House Energy and Commerce Rolls Out First Infrastructure Package

Meanwhile, Democrats on the House Energy and Commerce (E&C) Committee released a package aimed at addressing climate change, clean energy, grid modernization and more. The package, the "Leading Infrastructure for Tomorrow's (LIFT) America Act," would specifically provide more than $33 billion for clean energy, including $4 billion for the deployment of more renewables on the grid. With respect to water infrastructure, more than $21 billion would be devoted to ensuring safe drinking water, including $2.5 billion to establish a new grant program for communities affected by a class of chemicals known as per- and polyfluoroalkyl substances, or PFAs. And, the Senate Environment and Public Works (EPW) Committee said that they would continue chugging along on their own surface transportation bill.

Water infrastructure has been widely talked about as being part of an infrastructure deal, but agreement over how to pay for such infrastructure has been a sticking point.

Reps. Newhouse, Costa Urge Inclusion of Water Infrastructure in House Package

Reps. Newhouse and Costa earlier this month led a bipartisan letter to the House T&I Committee to urge inclusion of much-needed water infrastructure provisions in any forthcoming infrastructure package. The letter was signed by 54 Members of Congress, and numerous national and Western water

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Disaster Package Blocked in House: Flood and Fire Assistance on Hold

The Senate earlier this month voted to pass a $19.1 billion emergency aid package that would provide supplemental spending for a wide range of water, agriculture and environmental projects to help communities recover from recent natural disasters and prevent future ones. The Senate-passed bill then made the trek to the House, which had already left town for the Memorial Day recess, to be considered under unanimous consent (UC) on the House floor. Rep. Chip Roy (R-Texas) was the only objector to the UC vote, further delaying the aid package. Another Republican, Rep. Thomas Massie of Kentucky – halting the bill’s passage for a second time during a voice vote, and demanded that the vote be held after the House returns from recess.

This makes it unlikely that President Donald Trump can sign the package before early June, when the House returns for a roll-call vote on the measure.

The White House has indicated support for the bill, which in the West would cover California wildfires and Midwest flooding.

The Army Corps of Engineers would receive billions more for flood-related work; EPA would receive $414 million for wastewater and drinking water infrastructure and other disaster programs. Interior would receive $312 million to reconstruct damaged facilities associated with the natural disasters. NOAA would receive nearly $300 million, including $150 million in economic aid to storm-ravaged fisheries and $50 million for improving its hurricane, wildfire and flooding forecasting abilities, and the U.S. Department of Agriculture would receive billions, with about $3 billion to aid farmers affected by 2018 and 2019 natural disasters. The Forest Service would receive more than $700 million to cover the cost of wildfire suppression.

Infrastructure Momentum Stalls (Continued from Page 4)

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and agricultural organizations, including the Family Farm Alliance.

“Water infrastructure in the Central San Joaquin Valley has simply not kept pace with California’s growing population and changing climate,” said Rep. Costa. “Our water systems were constructed in the 40s, 50s, and 60s. That’s why our levees and flood control systems were recently given a D rating by the American Society of Civil Engineers. We must develop and invest in water infrastructure so our farmers can continue to feed Americans, and so all our community members have access to clean, reliable drinking water.”

On May 1, Rep. Newhouse testified in front of the House T&I Committee to speak about the importance of including water infrastructure investment and modernization in an infrastructure package.

“I come before you to share my earnest belief that any such effort absolutely must include water infrastructure, including vital water storage and water conservation projects, in order to face our nation’s serious hydrological challenges,” he said.

In his testimony, Rep. Newhouse pointed to hydrological conditions in California which continues to experience the longest dry spell since the 13th Century and to the drought conditions in Washington’s 4th Congressional District, which threatens the way of life in the West. The federal government’s lack of investments to address these conditions in rural and urban areas has left communities to face severe water challenges essentially on their own.

Alliance Supports SAVE Water Act

Rep. Josh Harder (D-California) earlier this month introduced the “Securing Access for the Central Valley and Enhancing Water Resources Act of 2019,” or S.A.V.E Water Act, which will provide funding to improve water delivery and water supplies in California and the West.

“Water resource infrastructure investments should be made more attractive and affordable for non-federal interests,” said Alliance executive director Dan Keppen.

The Alliance supports provisions in the SAVE Water Resources Act that would:

• Provide additional funding for WaterSMART grants that can assist Western water managers in investing in modernizing their water infrastructure and resolve conflicts in the process;
• Create the “Reclamation Infrastructure Finance and Innovation Act” (RIFIA) which would provide low interest loans to cover up to 49 percent total water project costs;
• Authorize $450 million in funding levels for the Bureau of Reclamation Title XVI grant program; and
• Reauthorize the Rural Water Supply Program established by the Rural Water Supply Act of 2006.

“This bill provides provide Western water users with the tools to help survive and recover from years of drought and to prepare for future water shortages,” said Mr. Keppen.

Rep. Harder has been working with the House Natural Resources Committee, with the expectation that this bill, along with a handful of other western water bills, will move through the Committee expeditiously. On the other side of the Capitol, Senator Feinstein (Calif.) is working with Senators Cory (R-Colorado) and Senate Energy and Natural Resources Committee Chair Murkowski (R-AK) on a comprehensive western water bill that will address similar issues as the individual House measures.
Alliance supports “Resilient Federal Forests Act of 2019”

In many areas of the West, federal lands and forests make up much of the upper watershed areas where farmers’ water supplies come from. When wildfires burn these upper watersheds, water supplies farmers depend on to irrigate crops downstream are negatively impacted. The Family Farm Alliance earlier this month formally endorsed a bill intended to address the growing risk of wildfires - the “Resilient Federal Forests Act of 2019” (H.R. 2607), introduced by U.W. Rep. Bruce Westerman (R-Ark).

“A massive wildfire in the headwaters of a Western watershed can devastate the water supply so important to the many beneficial uses in that river basin, including the irrigation of farms and ranches that produce some of our Nation’s high-quality food and fiber,” said Alliance President Patrick O’Toole (R-WYOMING). “The procedural changes proposed in this bill would better protect our valuable water supplies from the devastating effects of wildfire.”

Today’s wildfires are often larger and more catastrophic than in the past. Some of the blame can be attributed to climatic conditions, like reduced snowpack in alpine forests, prolonged droughts and longer fire seasons. Western population growth has also played a role, since there are now more homes within or adjacent to forests and grasslands. However, decades of fire suppression and an inability to manage forests through controlled burns, thinning, and pest/insect control probably play an even bigger role. For example, where California once had about 40 trees per acre, it now has about 100 trees per acre.

“We have quite literally loved our trees to death,” said Rep. Westerman. “Forests going up in flames and releasing tons of carbon into the atmosphere is not true conservation; proactive, sound forest management is. Years of mismanagement have led to insect infestation, overstocked stands and dead and decaying trees. It’s time to allow the Forest Service to use proven, scientific methods when managing our forests.”

Today, on average 7 to 8 million acres of forests and grasslands burn annually, double the figure from three decades ago.

“We didn’t think it could get much worse than 2017, which was one of the worst wildfire seasons in history with 71,499 fires burning approximately 10 million acres,” said Alliance Executive Director Dan Keppelin (OREGON).

The 2018 fire season was also a terrible one, with 58,083 wildfires burning approximately 8.8 million acres.

“The Camp Fire, in my district, was the costliest natural disaster in the world last year. It completely devastated the town of Paradise and surrounding areas, destroying over 18,000 structures and killing 85 people. It was one of the worst wildfires California has ever seen,” said Rep. Doug LaMalfa (R-CA) (CALIFORNIA) said. “Earlier in the year, the Carr Fire took 8 lives and burned nearly 230,000 acres in Shasta County. These two fires alone should serve as a wakeup call to those who have denied responsible forest management practices in California. Until we take meaningful steps to make our forests more resilient, much of the West will be at high-risk of future devastating fires.”

Western wildfire disasters have underscored the importance of improving on-the-ground management actions that can lead to improved forest health. The proposed legislation couples strategic forest management reforms with regulatory efficiencies that can empower federal land management agencies to restore health and resiliency to our nation’s forests.

The bill’s expedited environmental analysis and proposed categorical exclusions will make it easier to accelerate critical forest response actions, salvage operations in response to catastrophic events, roadside projects, and other actions that can reduce the risk of wildfire. It removes regulatory and bureaucratic gridlock associated with critical salvage and restoration actions needed to quickly respond to catastrophic wildfires. The bill encourages arbitration instead of litigation to address challenges to forest management activities. And, it improves upon existing practices used to address insect and disease infestation in federal forests.

“We believe these actions collectively will better protect public safety, water supply, and public infrastructure, allowing real, on-the-ground actions to address the primary causes behind the recent infernos,” said Mr. Keuppen.
Congress Addresses Significance of Agriculture’s Role To Provide Climate Change Solutions

The House and Senate each conducted committee hearings earlier this month that provided American producers with an opportunity to demonstrate how farmers and ranchers can play a constructive role in addressing climate change challenges. Agriculture is now emerging as a high-level source of solutions to climate change across the globe.

On the House side, a Select Committee on the Climate Crisis created when Democrats took majority control this year held a hearing on "creating a climate resilient America."

One of the witnesses at that hearing was Matt Russell, the executive director of Iowa Interfaith Power and Light and a fifth-generation Iowa farmer.

"We must start believing in American farmers,” said Mr. Russell. "We can solve global warming by unleashing the power of American farmers to solve problems."

Mr. Russell believes a major climate solution is to pay farmers for building soil health and sequestering carbon.

“Carbon farming can revolutionize agricultural and environmental policy, help us clean our water and air, save our soils, and stabilize our food system and rural economies," he said. Mr. Russell further recommended that Congress:

- Work with farmers to develop smart public policy for farmer and market led climate action;
- Help unleash the power of capitalism to reward entrepreneurs for developing small businesses that can help defeat the climate crisis;
- Incentivize farmers and rural communities to lead on climate action in a bipartisan way; and
- Recognize that carbon farming is an expedient and cost-effective way to reduce emissions.

He also noted that organizations like the North American Climate Smart Agriculture Alliance (NACSA) - which includes the Family Farm Alliance - are also sharing frameworks with farmers for integrating climate resilience and cutting carbon pollution into how they do business.

Last century, farmers innovated to lead the Green Revolution and feed the world, Mr. Russell noted.

"We’re at a similar, pivotal moment in human history. We are facing a catastrophic crisis; the greatest crisis humans have ever faced. American farmers can again lead the world through this crisis and into a future that is even more abundant than our past."

In the Senate, the Agriculture Committee held a hearing on the impact of climate change on the ag sector which provided an opportunity to learn about the needs of farmers, ranchers and forestland owners as they face increasingly turbulent weather conditions. At the witness table were Tom Vilsack, former Secretary of Agriculture and current president and CEO of the U.S. Dairy Export Council; Debbie Lyons-Blythe of Blythe Family Farms in White City (KANSAS); Frank Mitloehner, a professor at the University of California in Davis, and Matt Rezac of Rezac Farms in Weston, (NEBRASKA).

Mr. Rezac, who farms about 2,500 acres in corn and soybeans with his family - told the committee that farmers recognize the importance of technology and innovation in ensuring their operations maximize efficient production.

"Because we're embracing technology and because we are willing to work together, farmers are ready to lead on climate solutions," he said.

But Rezac also emphasized a point long made by the NACSA: producers today face challenges in the marketplace - income lost due to trade disputes, planting disruption attributable to unprecedented weather-related disasters, and others - so steep that they can only focus on sustaining their operations and staying in business.

The Family Farm Alliance in 2007 was one of the first national farm groups to tackle climate change challenges with “Water Supply in a Changing Climate: The Perspective of Family Farmers and Ranchers in the Irrigated West”. This report - which has been the centerpiece for several Alliance appearances before Congressional committees - provides observations of climate change in the West and realistic solutions that can mitigate for expected associated impacts.

Still, many Western producers are frustrated by the climate debate and argue that agriculture is unduly blamed by certain environmental and animal rights groups as the cause for greenhouse gas emissions. Perhaps the most controversial of these allegations was the early rollout of Rep. Alexandria Ocasio-Cortez’s Green New Deal resolution that included a fact sheet referencing the need to eliminate "farting cows". Supporters of farmers and ranchers in Congress also recognize the industry’s wariness of the climate movement.

"I think a lot of them would like us to quit farming," House Agriculture Chairman Collin Peterson told POLITICO in January.

NACSA believes that, to maximize agriculture's contribution to stemming climate change, policies must be adopted that incentivize farmers, ranchers and forestland owners to move to the management practices that serve to curb or avoid emissions that cause changes to our climate. These practices include alternating grazing lands, cropland rotation, cover crops, and forestland conservation efforts that mitigate wildfires, among others.

"It is critical that climate solutions make economic sense for farmers," Mr. Rezac testified, underscoring the need for policy help from Washington, D.C.
Farm Bill Conservation Title Implementation Underway
Need for irrigation modernization efforts highlighted

The Family Farm Alliance earlier this month transmitted a letter with recommendations for the Natural Resources Conservation Service (NRCS) to consider with respect to the rules they are writing to implement the Conservation Title of the 2018 Farm Bill. Many of the organization’s suggestions and examples are drawn from recent positive irrigation modernization projects.

“We believe the 2018 farm bill was a good one, in that it maintains funding for the conservation title, and that makes farm bill programs work better for producers in the irrigated West,” said Alliance Executive Director Dan Keppen. “Our overall goal for implementation of the farm bill is to increase opportunities for farmers and their related water management 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 Alliance supports incentive-driven conservation programs, more local and state control of the funding for those programs, increased emphasis on deteriorating forested watersheds, and streamlined implementation.

“We believe the practical experience of our membership, coupled with the many agricultural water and natural resource policy issues our organization has been involved with over the past several years gives us a unique perspective to provide specific ideas on how conservation programs can be delivered more efficiently and encourage more participation from Western farmers and ranchers,” said Mr. Keppen.

The Alliance has long supported robust and reliable funding for the Environmental Quality Incentives Program (EQIP), the Regional Conservation Partnership Program (RCP), and the Watershed Protection and Flood Prevention program (P.L. 566).

Hearing on Farm Bill Implementation

The House Subcommittee on Conservation and Forestry held on Public Hearing earlier this month to review USDA Farm Bill conservation programs. The Western Agriculture and Conservation Coalition (WACC) – of which the Alliance is a member – provided comments for Subcommittee Ranking Member Doug LaMalfa (R-CALIFORNIA) to consider for his opening statement at the hearing. The WACC conveyed to Mr. LaMalfa two broad positions on the new Farm Bill: 1) Implementation of the new provisions for western producers should be flexible and responsive to drought in the West; and 2) Investments in western, irrigation-delivery infrastructure under EQIP new authority, RCPP, and PL-566 should prioritize multi-benefit projects that rewards multi-stakeholder collaboration and pro-active problem-solving around water scarcity.

Positive Press

Mr. Keppen and Laura Ziemer (Senior Counsel and Water Policy Advisor for Trout Unlimited) co-authored a guest column that ran in The Hill titled, “Infrastructure funding should include irrigation modernization, a proven collaborative approach” which highlighted the activities of the WACC, including the collaborative work undertaken in Oregon’s Deschutes River Basin. There, the Tumalo and Three Sisters Irrigation Districts’ modernization investments in partnership with the NRCS are excellent examples of projects part of a “watershed-wide project” that provide water conservation benefits for fish habitat and drought resilience.

“New Farm Bill authority signed into law in December of 2018 will make more of these kinds of multi-benefit projects possible,” Keppen and Ziemer wrote.

The latest edition of Oregon Department of Environmental Quality’s Clean Water State Revolving Fund newsletter also highlights the benefits of irrigation modernization projects. These are multi-year, multi-million dollar projects that require intensive analysis, strategic planning and diverse funding partnerships. The newsletter highlights the efforts of Alliance members Three Sisters Irrigation District, Tumalo Irrigation District, and Farmers Conservation Alliance and points out support from the Oregon Water Resources Congress and the Family Farm Alliance.

“Focusing the issue on irrigation modernization gave us a chance to highlight this critical work and the leadership of your organization,” said Jennifer Kenny, program analyst with the DEQ Clean Water State Revolving Fund.
House Democrats earlier this month set significant spending increases for the FY 2020 funding bills that cover energy, water and environmental programs. The House Appropriations Committee approved its top-line spending numbers for the 12 annual appropriations bills.

“All 12 spending bills would see some increases in fiscal year 2020, although a less than 1% boost for Homeland Security is sure to spark a fight with the administration, which has prioritized border spending,” said Chris Kearney, with The Ferguson Group.

The Interior-EPA bill would rise by about 4.5% next year to $37.2 billion, rejecting the Trump Administration’s proposed cuts to EPA funding in their FY 2020 budget request. The Energy-Water (Department of Energy/Army Corps/ Bureau of Reclamation) allocation would increase by about 4% to $46.4 billion. Some of the additional dollars are likely to go toward Department of Energy technology programs, including the Advanced Research Projects Agency-Energy slashed in the FY 2020 Trump budget. Still more added funding will probably go to the Army Corps for dealing with the massive flood damage currently affecting the Midwest.

### Bureau of Reclamation

Bureau of Reclamation Commissioner Brenda Burman earlier this month testified on the President’s FY2020 budget request before the House Natural Resources Committee, Subcommittee on Water, Oceans and Wildlife. Reclamation’s budget request is $1.1 billion in discretionary appropriations, “…to be supplemented by over $1 billion in other Federal and non-federal funds in FY 2020”, Commissioner Burman testified.

The Interior-EPA bill provides a total of $1.65 billion for Reclamation, an increase of $82.8 million above the fiscal year 2019 level and $528 million above the President's budget request. The bill provides $15 million for the Central Utah Project, the same as the fiscal year 2019 level and an increase of $5 million above the request. Within Reclamation, the bill provides $400 million in additional funding for water resources projects, including those authorized in the Water Infrastructure Improvements for the Nation (WIN) Act. Within “additional funding”, $121 million is provided for rural water projects above the budget request.

### Next Steps

The Senate has yet to begin their appropriations process, awaiting top-line spending caps from leadership. Talks between congressional leaders and the White House continue on a deal to raise FY 2020 and 2021 spending caps.

“Raising the spending caps is needed in order to avert automatic sequestration cuts set to hit in October and raise the Nation's debt ceiling,” said Mr. Kearney.

Treasury has now said that the debt ceiling will need to be raised before August.

“In general, the goal is to have all 12 bills off the House floor by the July 4th Recess,” said Mr. Kearney. “We’ll see.”

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**White House to Move Quickly on NEPA Rules**

The White House Council on Environmental Quality (CEQ) plans to send reworked implementing regulations for the National Environmental Policy Act (NEPA) to the White House Office of Information and Regulatory Affairs (OIRA) for review in June. According to the newly released spring Unified Agenda, CEQ expects a quick turnaround.

This gives OIRA only a matter of weeks to review the highly anticipated action, since CEQ plans to also release a proposal to the public in June.

This is the first time CEQ will have updated its baseline for agency compliance with the environmental law since the 1980s. Through the new rules, Administration has sought to speed up permitting for federally funded projects and to limit the length of environmental impact assessments. The agency received over 12,500 public comments on their proposed rulemaking, including recommendations developed by the Family Farm Alliance.

“The often slow and cumbersome federal regulatory process is a major obstacle to realization of projects and actions that could enhance Western water supplies,” said Alliance Executive Director Dan Keppen. “NEPA implementation, in particular, can have a direct bearing on the success or failure of critical water supply enhancement projects. Further, our members include many Western water managers, who often use NEPA mechanisms like Categorical Exclusions and Findings of No Significant Impact in conjunction with annual operations and maintenance activities on ditches or major rehabilitation and repair projects on existing dams.”

The new Unified Agenda also lets some deadlines slip for several of President Trump's regulatory rollbacks, including delaying the rescission of the 2015 Clean Water Rule over “waters of the U.S.” (WOTUS) until August (from March) and the final rewritten WOTUS rule until December 2019, slipping from the original deadline of September.
Colorado River Basin DCP Signed at Hoover Dam

The Interior Department and Bureau of Reclamation earlier this month held the signing ceremony for the Colorado River drought contingency plan at the Hoover Dam. President Trump signed the seven-state Colorado River drought agreement into law in April after lawmakers quickly passed a bill, H.R. 2030, that codified states’ plans that would address the threats from a long-running drought.

“This is an historic accomplishment for the Colorado River Basin. Adopting consensus-based drought contingency plans represents the best path toward safeguarding the single most important water resource in the western United States,” said Reclamation Commissioner Brenda Burman. “These agreements represent tremendous collaboration, coordination and compromise from each basin state, American Indian tribes, and even the nation of Mexico.”

In addition to the voluntary reductions and other measures to which the basin states agreed, Mexico has also agreed to participate in additional measures to protect the Colorado River Basin. Under a 2017 agreement, Minute 323 to the 1944 U.S. – Mexico Water Treaty, Mexico agreed to implement a Binational Water Scarcity Contingency Plan but only after the United States adopted the DCP.

The Colorado River, with its system of reservoirs and water conveyance infrastructure, supplies water for more than 40 million people and nearly 5.5 million acres of farmland across the western United States and Mexico. The reservoirs along the river have performed well—ensuring reliable and consistent water deliveries through even the driest years. But, after 20 years of drought, those reservoirs are showing increasing strain; Lake Powell and Lake Mead, the two largest reservoirs on the system and in the United States, are only 39% and 41% full respectively. And, while the basin experienced above-average snowpack in 2019, the total system storage across the basin began the water year at just 47% full.

“The urgency for action in the basin is real, and I applaud all of the parties across the seven states and Mexico for coming together and reaching agreement to protect the Colorado River,” said Commissioner Burman. “I’m glad to finally say that ‘done’ is done.”

Source: USBR Press Release

Risch, Fulcher Introduce Legislation To Better Recharge Idaho Aquifer

Senator Jim Risch (R-IDAHO) and Rep. Russ Fulcher (R-IDAHO) earlier this month introduced the Aquifer Recharge Flexibility Act, legislation to improve aquifer levels in Idaho and across western states by expanding the ability for aquifer recharge through federal lands and facilities. The bill will fortify efforts to recharge Idaho’s vast Eastern Snake Plain Aquifer and others to healthy levels for sustainable long-term use by the state’s farmers, ranchers, and communities.

“The Eastern Snake Plain Aquifer sustains millions of irrigated acres in the Snake River Basin with the water needed for Idaho’s agriculture industry to thrive,” Senator Risch said. “This legislation will remove bureaucratic barriers to effective aquifer recharge and will help restore the Eastern Snake Plain Aquifer, one of the biggest in the world, back to healthy levels for decades to come.”

The Family Farm Alliance and over 100 other water and agricultural organizations in March sent a letter to members of Congress, urging that any infrastructure legislative package be used to help address severe hydrological conditions in the West. New tools are needed to assist in achieving groundwater use sustainability in Idaho and other parts of the West, and the Aquifer Recharge Flexibility Act provides one of those tools.

“Water is the life blood, not only for our agricultural sector, but also for our entire state,” Rep. Fulcher said. "Idaho is fortunate to have a state-wide plan and coordination for management of this critical resource. This legislation will complement our ongoing efforts for aquifer recharge and sustainability by facilitating federal land access and cooperation.”

The bill’s introduction was welcomed by Idaho water users.

Continued on Page 12
Reclamation Seeks Stakeholder Input on Transferred Works

The Bureau of Reclamation (Reclamation) has proposed a draft Directive and Standard (D&S) intended to improve collaboration between Reclamation and non-Federal entities responsible for operations and maintenance (O&M) of transferred works. Transferred works are defined as those Reclamation project facilities where the O&M of that facility is carried out by a non-Federal entity under the provisions of a formal O&M transfer contract. At times, uncoordinated changes between Reclamation and the non-Federal entity have resulted in adverse consequences. Reclamation's draft D&S intended to improve collaboration on these matters in the future.

“In recent weeks, many of our members responsible for operating and maintaining transferred works have expressed serious concerns with the proposed D&S, which is seen by some as being open-ended and subjective,” said Family Farm Alliance Executive Director Dan Keppen. The Alliance and National Water Resources Association (NWRA) both requested that Reclamation suspend this effort until we can work with Reclamation to come up with a new approach.”

Earlier this month, Alliance and NWRA representatives participated in a conference call with senior level Reclamation appointees to discuss this matter. Reclamation at that time expressed a willingness to pause/suspend the public comment period and suspend this D&S process indefinitely.

On Thursday, June 6, 2019, from 10 a.m. to 12 p.m. (MOUNTAIN), Bureau of Reclamation will host a WebEx meeting for interested stakeholders on the proposed D&S. Reclamation leadership and Policy Office personnel will provide a briefing, answer questions, and invite feedback. Finalization of this D&S, in the meantime, has been paused. Join the call at https://bor.webex.com/bor and use meeting number (access code): 907 348 950.

The Alliance, NWRA and the Colorado River Energy Distributors Association have offered to assist Reclamation with the path forward.

“For the time being, we are asking our members who manage transferred works facilities to provide any feedback - such as field experience working with Reclamation – that they think would facilitate the June 6 conversation,” said Mr. Keppen. “We will be seeking a solution that is informed by data and facts from existing contracts.”

Water users also will be seeking additional information and examples from Reclamation to get a better understanding of the exact challenge Reclamation is trying to address.

Reclamation updates 2019 CVP South-of-Delta Water Allocations

The Bureau of Reclamation earlier this month issued updated Central Valley Project (CVP) South-of-Delta allocations for the 2019 contract year. This update reflects ongoing water supply improvements due to the latest series of storms.

With this month’s update, South-of-Delta agricultural water service contractors’ allocations are increased to 70% of their contract total. South-of-Delta allocations for municipal and industrial contractors’ allocations are increased to 95% of their historic use.

“The storms experienced in the Central Valley... are unusual this late in the year, bringing the month’s precipitation to over twice its average,” said Reclamation Mid-Pacific Regional Director Ernest Conant. “The late storms provided an added boost to the already above average precipitation for 2019. Snowpack throughout the state is still about 150% of average for this time of year.”

All other CVP contractors’ allocations were previously increased to 100% of their contract totals in recent months.

While this increase was welcomed by many, given continued wet hydrologic conditions and current CVP reservoir storage, which is well above the long-term average, it was difficult for CVP ag water service contractors to comprehend why the allocation remains below 100 percent.

“The 2019 water year will go down as one of the wettest years on record,” said Thomas Birmingham, Westlands Water District’s General Manager. “Reclamation’s inability to provide south-of-Delta CVP water service contractors with full contract supplies is further evidence of the draconian impact ineffective regulations have had on water supplies for people. These regulations, theoretically intended to protect at-risk fish species, have strangled water supplies while continuously failing to provide effective protection for the species – all of which have continued to decline.”

It is for this reason Reclamation has reinitiated consultation on the long-term operation of the CVP and the State Water Project. This consultation enables the development of new biological opinions based on science developed over the last decade.

“It is the District’s greatest hope these new biological opinions will abandon restrictions on CVP operations that are unsupported by science and lead to absurd water supply reductions,” said Mr. Birmingham. “The new biological opinions must protect at-risk fish species from the risk of extinction without unreasonably tying the hands of project operators. The best science currently available has demonstrated that both of these objectives can be accomplished simultaneously.”

Water reductions to CVP ag water service contractors are not simply the result of climate change or Mother Nature, says Family Farm Alliance Director Dan Keppen.

“Federal management of Bay-Delta water and the policies behind that management also play an important role,” said Mr. Keppen.

Dr. Tricia Dutcher and Mr. Keppen co-authored “The 2014 Drought and Water Management Policy Impacts on California's Central Valley Food Production” which was published in 2015 in the Journal of Environmental Studies and Sciences.
Aquifer Recharge Flexibility Act Introduced (Cont’d from Pg 10)

“Aquifer recharge is a valuable tool used throughout the west to address declining ground and surface water supplies,” said Paul Arrington, the executive director of the Idaho Water Users Association. “In Idaho, the stakeholders are committed to using aquifer recharge in their efforts to restore depleted aquifers and connected rivers and streams. Unfortunately, many optimal aquifer recharge locations in Idaho require the use of federal property - requiring congressional authorizations and federal easements.”

Mr. Arrington believes this legislation will help to reduce the cost and expense of continuing recharge in Idaho.

“We appreciate Senator Risch and Representative Fulcher’s support of the Idaho water user community,” said Mr. Arrington, who also serves on the Family Farm Alliance Advisory Committee.

Editor’s note – the source for elements of this article derive from a joint press release issued by Sen. Risch and Rep. Fulcher.

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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, or visit our website: www.familyfarmalliance.org.

Contributions can also be mailed directly to:
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