

Monthly Briefing

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

Western Water Hearings on Capitol Hill Alliance Witness Testifies on Infrastructure Bill

In March, the Family Farm Alliance – working with the California Farm Bureau Federation and Western Growers Association – transmitted letters signed by over 100 national and Western agriculture and water organizations, calling upon Members of Congress to develop an infrastructure package that addresses water infrastructure needs for storage and conveyance. In the past month, several Congressional committee hearings were held to consider numerous Western water bills recently introduced.

“Western Members of Congress have been listening and leading,” said Alliance Executive Director Dan Keppen. “It’s been encouraging to see the number of Senate and House hearings that have been held on Western water matters in this Congress.”

Senate ENR Subcommittee Legislative Hearing on Western Water

Wade Noble, an attorney who works



Wade Noble (Photo courtesy of Yuma Sun)

for irrigation interests in the Yuma (ARIZONA) area, represented his clients and the Family Farm Alliance when he testified at a July 18 hearing of the Senate Energy and Natural Resources (ENR) Committee, Subcommittee on Water and Power on three Western water bills.

Joining Mr. Noble on the witness dais were Brenda Burman (Commissioner, Bureau of Reclamation), Marshall Brown (General Manager, Aurora Water Wa-

teReuse Association), Melinda Kassen (Senior Counsel, Theodore Roosevelt Conservation Partnership) and Wesley Hipke (Recharge Program Manager, Idaho Department of Water Resources).

The Water Supply Infrastructure Rehabilitation and Utilization Act (S. 2044)

Mr. Noble's testimony focused primarily on S. 2044. This bill includes provisions to deal with extraordinary maintenance challenges and is designed to amend the aging infrastructure section of a 2009 law (P.L. 111-11) that was created, in part, to help

prevent future disasters of the type that occurred in 2008, when the Truckee Canal failed near Fernley, Nevada.

"This legislation is important to Western irrigated agriculture and our nation as a whole," said Mr. Noble, who is a long-time member of the Family Farm Alliance Advisory Committee.

S. 2044 – introduced just before the July Fourth recess - is another bill that gives local operators of federally owned facilities the tools they need to maintain and improve aging water infrastructure in a timely manner. This bill contains two important provisions.

The first provision deals with extraordinary maintenance challenges and is designed to amend the aging infrastructure section of P.L. 111-11, which contains provisions that many Western water interests pushed for

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Trump Administration Fills Positions Key to the West

Two high-level appointments have been in the past month to fill positions important to the interests of Western irrigated agriculture. Meanwhile, the White House has re-submitted its choice to head the U.S. Fish and Wildlife Service after the last Congress failed to confirm the nominee.

Reclamation Announces Upper Colorado R.D.

Bureau of Reclamation Commissioner Brenda Burman announced that Mr. Brent Esplin has been named Regional Director of the Bureau of Reclamation's Upper Colorado Region.

"Brent has been a key leader in western water and power for more than two decades," said Commissioner Burman. "That experience will be crucial in the Upper Colorado Region as we wrestle with complex issues like ongoing drought and develop innovative approaches to secure and protect life-sustaining water resources."

Mr. Esplin, a civil engineer by training, has served as Deputy Regional Director for the Upper Colorado Region since October 2015. A native of Smithfield, Utah, Mr. Esplin holds a bachelor's degree in civil engineering and a master's degree in civil engineering, both from Utah State University.

"I'm honored and humbled to lead the Upper Colorado Region," Mr. Esplin said. "This is a diverse region, from the highest Rocky Mountains to the entrance to the Grand Canyon and down through the Rio Grande Valley, our focus remains to efficiently deliver water and power to the millions of people in our region and beyond who rely on Reclamation facilities."

Mr. Esplin replaces Mr. Brent Rhees, who was appointed Regional Director in 2015.

Pendley Named as BLM Deputy Director

The Department of the Interior has announced that Wil-

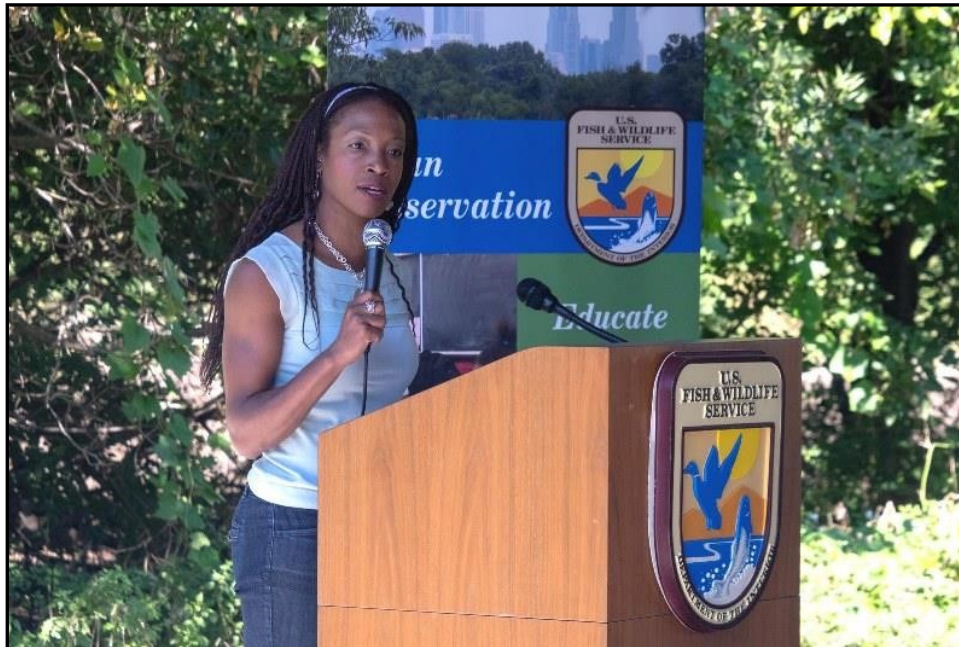
liam Perry Pendley, former President of the conservative law firm the Mountain States Legal Foundation, is the next Deputy Director of Policy and Programs at the Bureau of Land Management (BLM), the second highest position below the Director.

President Trump has yet to nominate a BLM Director for Senate confirmation.

A native of Cheyenne, Wyoming, Mr. Pendley served as Interior Deputy Assistant Secretary for Energy and Minerals during the Reagan Administration. Under Mr. Pendley's lead-

ership, the Mountain States Legal Foundation has defended the federal government against environmental groups that challenged Interior in court; it also has challenged Interior, the Forest Service and others for regulatory overreach.

Mr. Pendley received bachelor's and master's degrees in economics and political science from George Washington University in Washington, D.C. He earned a law degree from the University of Wyoming College of Law.



Aurelia Skipwith, President Trump's nomination to be Director of the U.S. Fish and Wildlife Service (Photo source: DCReport)

White House Resubmits Nomination for USFWS Director

The White House has resubmitted the nomination of Ms. Aurelia Skipwith to be Director of the U.S. Fish and Wildlife Service. Ms. Skipwith's initial nomination died with the previous Congress and needed to be resubmitted in the 116th Congress.

"Aurelia is a leader within the department who has helped us execute our initiatives as outlined by President Trump," said Interior Secretary David Bernhardt. "I look forward to her prompt confirmation, so she can continue her service to the American people."

If confirmed, Ms. Skipwith would be the first African American to hold the position.

She has served in the Administrator as the Interior Department's Deputy Assistant Secretary for Fish, Wildlife, and Parks. She is a 2003 graduate of Howard University, and earned a master's degree from Purdue University and a law degree from the University of Kentucky College of Law.

Congressional Water Hearings (Cont'd from Page 1)

following the Truckee Canal failure in 2008.

"This subject matter literally strikes close to home," said Rusty Jardine, general manager of the Truckee-Carson Irrigation District (NEVADA). "Our world was rocked by that canal failure, and it has taken a full decade to clear the legal fall-out, settlements, inspections, endless reviews, and risk studies. S. 1932 and S. 2044 both provide important steps towards addressing the West's water infrastructure needs on a fiscally responsible basis."

P.L. 111-11 authorizes the Bureau of Reclamation (Reclamation) to finance extraordinary maintenance on reserved and transferred works up to 50-years with Treasury rate interest rates – but appropriated funding is needed up front for these provisions to work. Unfortunately, Reclamation rarely budgets for these non-federal obligations. This bill requires Reclamation to take requests from water users who require federal funding and long-term financing terms to make these improvements possible and to report those requests to Congress for their consideration in the appropriations process.

During the questioning period, Chair Martha McSally (ARIZONA) asked Mr. Noble about the financing challenges that water districts face when it comes to repayment options for investment capital improvements. Mr. Noble stated that smaller water districts do not have access to the traditional financing options such as private financing, borrowing, and bonding. Oftentimes, those means come with high interest rates or collateral requirements that smaller districts cannot meet. He used the example of Imperial Dam on the Colorado River, where the Imperial Irrigation District (IID) in California manages the operation, maintenance and rehabilitation (OM&R) of the dam as a transferred work, but the Arizona beneficiary districts also responsible for paying their share of these OM&R costs could not afford to repay IID for these costs (estimated to be upwards of \$50 million) in the year they are expended.

"They need the financing tools S. 2044 could provide to ensure IID is properly reimbursed for such costs," said Mr. Noble.

S. 2044 also includes provisions that create a pilot project for entities who operate Reclamation facilities to request a re-evaluation of their U.S. Army Corps of Engineers (Corps) water control manuals. Water managers are faced with greater stresses on available supplies and continue to seek to balance reservoir benefits for water supply, fisheries, and flood protection.

"We need to be looking at ways to use existing facilities to work more efficiently," said Alliance Executive Director Dan Keppen. "Operations need to take advantage of modern technology, modeling and forecasting skill and innovation."

The Corps has traditionally operated dams and reservoirs for flood control purposes. In some cases, operation might be constrained by limited on-the-ground water information or existing flood guide rule curves that were developed decades ago, before the advent of modern precipitation forecasting technology. There are opportunities to work with the

Corps to demonstrate the feasibility of innovative technology like Forecast Informed Reservoir Operations (FIRO). Applying FIRO with deviations from past rules could allow for more proactive, rather than reactive, reservoir operations.

"The Alliance has long been a supporter of these efforts and supports S. 2044 for those reasons," said Mr. Keppen. "The ENR Committee has worked very closely with water users throughout the West to address concerns about this bill and exempt particular facilities."

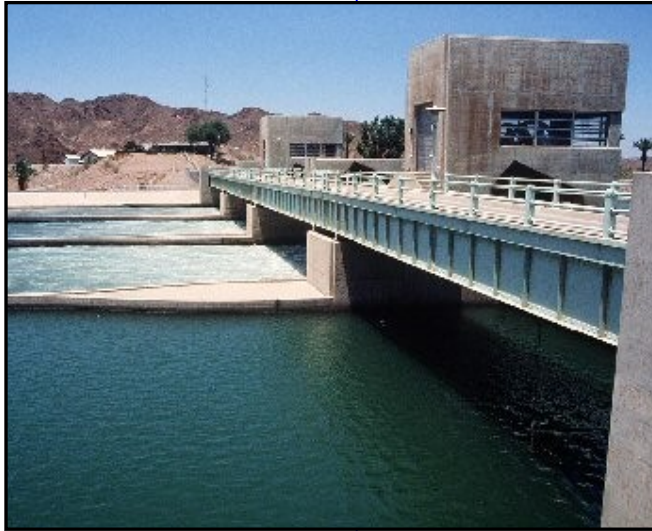
S. 1932 – The Drought Resiliency and Water Supply Infrastructure Act

The Alliance in June supported a bipartisan Western drought and water supply bill introduced by Senators Dianne Feinstein (D-CALIFORNIA), Cory Gardner (R-

COLORADO), Martha McSally and Kyrsten Sinema (D-ARIZONA). The *Drought Resiliency and Water Supply Infrastructure Act* (S. 1932) builds on Senator Feinstein's 2016 California drought legislation that was included in the Water Infrastructure Improvements for the Nation (WIIN) Act.

S. 1932 extends funding under the WIIN Act for an additional five years, including \$670 million for surface and groundwater storage projects, and supporting conveyance; \$100 million for water recycling projects; and \$60 million for desalination projects. It creates a new loan program for water agencies at 30-year Treasury rates (currently about 2.6 percent) to spur investment in new water supply projects. Repayment can be deferred until five years after completion of the project.

This bill also authorizes \$140 million for habitat restoration and environmental compliance projects, including forest, meadow and watershed restoration and projects that benefit threatened and endangered species.



Imperial Dam on the Colorado River was a topic of discussion between Family Farm Alliance Advisory Committee member Wade Noble and Chair Martha McSally during a recent hearing of the Senate Energy and Natural Resources Committee, Water and Power Subcommittee. (Photo source: US. Bureau of Reclamation)

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Congressional Water Hearings (Cont'd from Page 3)

The legislation offsets new costs by in two ways, explains Mark Limbaugh, the Alliance's representative in Washington, D.C.

"First, S. 1932 extends existing WIIN Act provisions allowing water districts to prepay their outstanding capital debts and convert to indefinite length water supply contracts to bring in additional revenue within the next 10 years," he said. "It also creates a process to deauthorize inactive water recycling project authorizations."

While not testifying on the Drought Resiliency and Water Supply Infrastructure Act (S. 1932), Mr. Noble's written testimony expressed support for it.

"S. 1932 will be instrumental in the development of new, additional, much needed water infrastructure," he said. "It is an integral part of addressing the country's water infrastructure needs."

The "Aquifer Recharge Flexibility Act" (S. 1570)

S. 1570, sponsored by Senator Risch (IDAHO) with a House companion bill sponsored by Idaho Congressman Fulcher was also discussed at the hearing. It would apply to all Western states except for California (because of existing Central Valley Project Improvement Act recharge authority) and would allow Reclamation-owned facilities to be used to

recharge aquifers in the West. Currently, such recharge projects need to go through an approval process that requires easements and congressional authorization, Paul Arrington, the executive director of the Idaho Water Users Association, said in a statement.

"This legislation will help to reduce the cost and expense of continuing recharge in Idaho," said Mr. Arrington, who serves on the Family Farm Alliance



Paul Arrington. (Photo courtesy of Idaho Water Users Association)

Advisory Committee. "We appreciate Senator Risch and Representative Fulcher's support of the Idaho water user community."

Next Steps

The Family Farm Alliance is on record for supporting all three bills discussed at this month's Senate ENR Committee hearing.

Reclamation Commissioner Brenda Burman stated the Administration's support for an "all of the above" approach to water infrastructure. Commissioner Burman was also supportive of all three bills at the hearing, but stated that Reclamation saw areas in each of the bills that should be clarified.

Chair McSally closed the hearing and said that she hopes to revise the bills and move the measures along this fall.

House Subcommittee Hearings on Western Water

AWIA and WRDA

The Water Resources and Environment Subcommittee of the House Transportation and Infrastructure (T&I) Committee earlier this month held a hearing on the ongoing implementation of the 2018 America's Water Infrastructure Act (AWIA) as well as recommendations for the next Water Resources Development Act (WRDA), thought to be in the works for 2020. Subcommittee Chair Grace Napolitano (D-CALIFORNIA) and other Democrats have been pushing for a "green" WRDA bill, to include the use of natural "green infrastructure" in managing floods rather than using engineered flood controls funded by Clean Water State Revolving Fund (SRF).

"I am specifically interested in WRDA provisions that involve the National Dam Safety Program, nature-based infrastructure initiatives, using data to enhance operations at our reservoirs, and the Corps' assessment of their authorized project backlog," Chair Napolitano said in her opening statement at the hearing.

The 2018 AWIA law directed the Corps to more closely consider the role of natural infrastructure, including in the feasibility studies required of waterworks projects under WRDA. Other potential issues that may come up in discussions surrounding a WRDA 2020 include the proposal to move jurisdiction over the Corps civil works projects to the Departments of Transportation and the Interior, and the reauthorization of the Clean Water SRF.

With a broader infrastructure package not on the table now after White House talks collapsed in May, transportation reauthorization legislation now seems to be the preferred legislative vehicle for a narrower infrastructure focus. The issue of how to pay for new federal infrastructure may still be a barrier to any bill.

"Water projects will need to be paid for in creative ways, including public-private partnerships, cost-shared grant programs and more affordable federally backed financing," said Mr. Limbaugh.

Reclamation Fund

The House Natural Resources Oversight and Investigations Subcommittee held a hearing to review the Bureau of Reclamation's infrastructure funding this month, including

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Supreme Court to Hear Controversial Groundwater Case in November

The Supreme Court will hear arguments in a contentious Maui County, Hawaii groundwater case on November 6. At issue in the high-stakes *County of Maui v. Hawaii Wildlife Fund* case is whether the Clean Water Act's (CWA) permitting program applies to pollution that gets into federally regulated surface water after moving through groundwater or other conduits. In Maui, treated wastewater injected into groundwater made its way to the Pacific Ocean. The argument is centered on whether the CWA applies to pollutants moving through groundwater to "waters of the U.S."

A group of states, tribes, scientists and former 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 in May. This amicus effort is intended to protect routine agricultural operations from a potentially limitless expansion of the CWA National Pollution Discharge Elimination System program. The EPA has also stat-

ed that such pollution does not require a CWA permit because the law doesn't regulate groundwater.

"The upshot could be endless third-party lawsuits regarding the application and scope of ag-related exemptions in the CWA," said Norm Semanko, General Counsel for the Alliance.

Environmental Protection Agency (EPA) leaders lent their support this month to environmentalists on the other side of the issue. They 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.

Water Infrastructure Hearings (Continued from Page 4)

review of current balances in the Reclamation Fund at Treasury. The Reclamation Fund was established to help pay for construction and maintenance of those water projects in the West, but receipts to the fund have exceeded its annual appropriations, leading to a surplus balance of almost \$17 billion.

Witnesses for the hearing including Federico Barajas (San Luis & Delta-Mendota Water Authority, CALIFORNIA), Paul Arrington (Idaho Water Users Association and National Water Resources Association), Tony Willardson (Western States Water Council) and Deputy Commissioner Grayford Payne (Bureau of Reclamation). Mr. Arrington also serves on the Advisory Committee of the Family Farm Alliance. The Alliance assisted Mr. Barajas with his written testimony, emphasizing the challenges of addressing aging water infrastructure through Reclamation's jurisdiction.

Earlier in this Congress, the Alliance, supported legislation that would extend the Reclamation Water Settlement Fund, which allows for direct access to the Reclamation Fund.

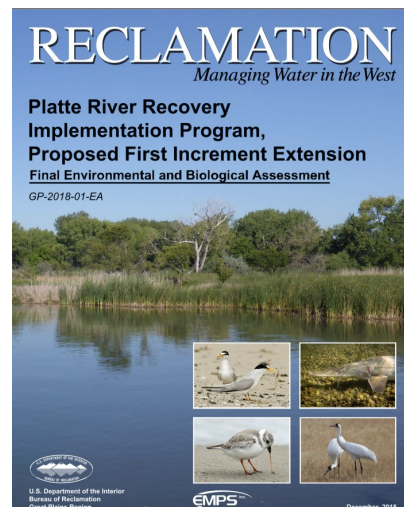
"The Alliance supported this legislation, since tribal water rights settlements will continue to move forward, with or without the Fund," said Mr. Keppen. "Future settlements that are authorized by Congress will hit Reclamation's budget even harder. However, that support was conditioned with a request that Congress apply a similar approach in addressing and modernizing aging water structures utilizing existing balances in the Reclamation Fund. We are pleased to see the subcommittee seriously address this concern with a hearing."

Water, Oceans and Wildlife Legislation

The House Natural Resources Subcommittee on Water, Oceans, and Wildlife (WOW) also held a legislative hearing on several bills, including:

- H.R. 3237, from Rep. Joe Neguse (D-COLORADO), to authorize the Interior Department to participate in the Platte River Recovery Implementation Program First Increment Extension for threatened and endangered species in the central and lower Platte River Basin;
- H.R. 3510, from Rep. Josh Harder (D-CALIFORNIA), to amend the Water Resources Research Act of 1984 to reauthorize grants for applied water supply research; and
- H.R. 3723, from Rep. Mike Levin (D-CALIFORNIA), which includes measures to promote desalination technology.

Karl Stock, Acting Director of Policy and Administration for the Bureau of Reclamation testified on H.R.3237 and H.R. 3723. The majority of the other witnesses were Congressional representatives from districts that would benefit from several other bills addressing coastal and oceans issues.



H.R. 3237 (Rep. Neguse, COLORADO) would authorize the Interior Dep't to participate in the Platte River Recovery Implementation Plan.
(Photo courtesy of Bureau of Reclamation)

Judge Blocks 2015 WOTUS Rule in Oregon

Decision Triggers Further Reconfiguring National 'Patchwork'

A federal judge in Oregon has granted a preliminary injunction on the implementation of the Obama-era Clean Water Act (CWA) jurisdiction rule over "waters of the U.S." (WOTUS) in the state, agreeing that the members of the Oregon Cattlemen's Association would be irreparably harmed by the rule and increasing to 27 the number of states where the rule has been blocked completely.

U.S. District Judge Michael Mosman said it would constitute irreparable harm for farmers and ranchers represented by the association to have to pay for permits that, through their lawsuit, may turn out not to be covered by the rule in the end.

The EPA and Army Corps did not take a position on the merits of the cattlemen's challenge to the WOTUS rule, noting the agencies are re-evaluating the 2015 rule so they did not take a substantive position on it in the case. Meanwhile, the environmental group Columbia Riverkeeper is appealing the court's ruling denying their request to intervene in the case.

In another 2015 WOTUS rule challenge, a federal district court judge in Washington State is allowing Puget Soundkeeper Alliance, Sierra Club and Idaho Conservation League to intervene in a parallel case challenging the 2015 WOTUS rule brought by the Washington Cattlemen's Association.

The Washington cattlemen did not oppose Puget Soundkeeper Alliance from intervening but opposed intervention by Sierra Club and Idaho Conservation League, arguing that neither of those groups has a significant protectable interest in this litigation, which is limited to the application of the 2015 rule in Washington State.

In April, under the Trump administration, the Environmental Protection Agency (EPA) unveiled proposed rules that would significantly reduce the waters regulated under the CWA. The new rules would repeal the 2015 Clean Water Rule and redefine "navigable waters" to exclude groundwater, wetlands that lack a direct surface connection to navigable waters and intermittent streams that don't feed tributaries. The proposed rules effectively lay out the full legal and regulatory history of the tortuous twists and turns that the interpretation of the WOTUS definition has taken over the decades.

"The result is a rule which establishes a regulatory structure that moves importantly in the direction of bringing clarity to CWA regulation by establishing what categories meet the definition under WOTUS," said Alliance Executive Director Dan Keppen, who earlier this year worked with Alliance members to develop a detailed comment letter to EPA and the Army Corps of Engineers in response to the new rule. "Just as importantly, it explains what does not."

Reclamation seeks comment on changes to California operations

The Bureau of Reclamation released a draft environmental impact statement analyzing potential effects associated with long-term water operations for the Central Valley Project (CVP) and State Water Project (SWP). Reclamation's goal is to incorporate updated science into CVP and SWP operations to optimize water deliveries for communities and farms, while protecting threatened and endangered species. The draft environmental impact statement will be available for public input for a 45-day review period.

"This is a huge undertaking that affects water operations throughout California. It is important we listen to as many voices as we can," said Reclamation's Mid-Pacific Regional Director Ernest Conant. "Seeking public input is an essential part of the process to ensure our actions are improving the quality of life for people and also protecting our valuable natural resources."

Proposed actions outlined in the document include temperature management at Shasta Dam, habitat and salinity measures in the Delta, and management of fish entrainment related to water exports from the Sacramento and San Joaquin Delta. Together, these proposed actions aim to give water operators more flexibility to deliver water, optimize power generation and protect threatened and endangered species.

Three Central Valley public meetings are scheduled for the week of July 29 to provide public input.

Current CVP and SWP operations are guided by 2008 U.S. Fish and Wildlife Service and 2009 NOAA Fisheries biological opinions (BOs). Since completion of those opinions, the Department of the Interior, the state of California, federal and state contractors, non-governmental organizations and others invested significant resources to advance the science of the Central Valley and Delta to more effectively manage this system.

The Family Farm Alliance in July 2009 filed a lawsuit in federal district court challenging the science and decision-making used by the federal government in the 2008 BO. This marked the first time since the Alliance was formed 20 years prior that it filed a lawsuit. In December 2008, attorneys for the Alliance raised concerns with the adequacy of the scientific data used to develop the opinion to the attention of the government, using the federal agency's own administrative procedures to seek correction of the opinion. The government refused to address the problems that were raised or correct the opinion. The Alliance was forced to file the lawsuit to compel the government to respond. Ultimately, the BO was invalidated and remanded to Fish and Wildlife Service for correction.

The draft environmental impact statement for the pending biological opinion is available at www.usbr.gov. Written comments must be submitted by close of business August 26.

August 2019 “Water Review” will focus on Colorado River

The Family Farm Alliance *Water Review* focuses on Alliance members and the issues and actions they are involved with at the local level. The next edition of the *Water Review* is planned for release to coincide with the Colorado Water Congress summer meeting in Steamboat in late August.

“It’s been a while since we’ve released a *Water Review*,” said Alliance Executive Director Dan Keppen. “We hope this one is worth the wait.”

The Colorado River is a vital water resource in the southwestern United States and northwestern Mexico. It irrigates nearly 5.5 million acres of farmland and sustains life and livelihood for over 40 million people in major metropolitan areas including Albuquerque, Cheyenne, Denver, Las Vegas, Los Angeles, Phoenix, Salt Lake City, San Diego and Tucson. Since 2000 the Colorado River Basin has experienced its most severe drought in recorded history and the risk of reaching critically low elevations at Lakes Powell and Mead—the two largest reservoirs in the United States—has increased by nearly four times over the past ten years.

Recognizing growing risks in the basin, the Bureau of Reclamation (Reclamation) and the basin states have worked for several years to develop meaningful drought contingency plans (DCPs) for the Upper and Lower Colorado River basins. Two panels consisting of high-profile Colorado River representatives – several of whom are featured in the upcoming *Water Review* - addressed the DCPs on the last day of the Alliance’s 2019 annual conference general

session in Reno last February.

“The current situation on the Colorado River has finally brought the general public to the discussion,” says Don Schwindt, a Colorado farmer who is one of several Family Farm Alliance members profiled in the next edition of the *Water Review*. “Agricultural water users are more engaged than ever.”

All Colorado River water users need certainty for effective future planning. Agricultural water users need - and want - to be helping to shape their future, instead of relying upon others to design their future for them. Thus, ag water users are a major audience for this special edition of the *Water Review*.

“All parties want to have their constructive input considered as the DCPs begin to take shape,” says Alliance President Patrick O’Toole, whose family runs a ranch on the Colorado-Wyoming border. “We are hoping that this *Water Review*

can help to tell the story, with an emphasis on impacts and consequences to agriculture.”

The August 2019 *Water Review* will be built around interviews eleven influential individuals – six from Upper Basin States, and five from the Lower Basin - with ties to irrigated agriculture. All of them personally, or via organizations they represent, are dues paying members of the Family Farm Alliance.

“Five of the individuals we interviewed hail from Colorado,” said Mr. Keppen. “It’s only appropriate that we have this ready to go in time for the Colorado Water Congress summer meeting.”



Family Farm Alliance directors Patrick O’Toole (L) and Don Schwindt will be interviewed for the upcoming ‘Water Review’.

DONOR SUPPORT

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



Contributions can also be mailed directly to:
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