



MEMORANDUM

TO: SLDMWA BOARD OF DIRECTORS
FROM: DAN KEPPEL, EXECUTIVE DIRECTOR
SUBJECT: EXECUTIVE DIRECTOR'S REPORT
DATE: SEPTEMBER 14, 2020

This memo is intended to keep you apprised as to what is happening behind the scenes on policy issues the Family Farm Alliance is engaged in. In the past month, our efforts have focused on the federal response to COVID-19, preparing for our first “virtual” farmer lobbyist “trip”, tracking water legislative developments in Congress, engaging in federal agency rulemaking efforts, and addressing some important administrative matters. These issues and other matters important to our members are further discussed in this memo.

TRUMP ADMINISTRATION ACTIONS

1. Administration Response to COVID-19 Pandemic

Over six months since the pandemic broke out in the U.S., the percentage of those infected with the coronavirus who die of COVID-19 is starting to decline in most states, due primarily to improved treatments, younger patients, and more widespread testing. While the coronavirus has caused a record-setting economic decline and tens millions of Americans have lost their jobs, the White House has been reporting on other encouraging developments that get little coverage in the mainstream media. President Trump continues to entrust the governors of each state to develop and enforce their own mask policies and other policies following guidance from the Federal Government and the Center for Disease Control (CDC).

The Trump Administration continues to exercise the authority under the Defense Production Act, dispersing over \$3.5 billion to speed the development and manufacturing of essential materials. President Trump has been touting Operation Warp Speed, which he says is making incredible progress in helping to rapidly develop a vaccine. Three strong vaccine candidates are already moving through phase three trials in the United States, and the Administration is investing billions to secure vaccine doses so they can be distributed as soon as a candidate is approved. Over 270

clinical trials are currently underway for coronavirus treatments.

a. CFAP Progress

The U.S. Department of Agriculture (USDA) has led the charge on most of the farm rescue efforts since March to fix the massive disruptions in the food supply chain and other impacts to the agriculture sector from the pandemic. The Coronavirus Food Assistance Program (CFAP) has now delivered nearly \$5.4 billion, out of the total \$16 billion available for farmers and ranchers hurt by supply chain disruptions. More than 220,000 farmers have received funding so far, with livestock producers having received about half of all the money dispersed. The Trump administration is expected to roll out another round of farm stimulus programs this week.

U.S. Secretary of Agriculture Sonny Perdue last month announced that additional commodities are covered by CFAP in response to public comments and data. Additionally, USDA is extending the deadline to apply for the program to September 11th, and producers with approved applications will receive their final payment. More information on CFAP and how to apply can be found [here](#). In addition to CFAP, USDA has other programs and services available to farmers impacted by the coronavirus pandemic. Learn more at farmers.gov/coronavirus.

b. Farmers to Families Food Box Program

President Trump and Secretary Perdue last month announced up to an additional \$1 billion for the Farmers to Families Food Box Program. The Farmers to Families Food Box program has provided over 75 million boxes to hungry Americans across the country. Distributors are now prioritizing resources to send boxes to Opportunity Zones and areas most in need by providing relief to America's most underserved communities. In addition, President Trump is including a letter that reinforces COVID-19 safety guidelines and how Americans can best protect themselves and their families, a move that is raising questions with some House Democrats. According to *Politico*, dozens of lawmakers are demanding to know who ordered the Trump letters and whether it's mandatory or voluntary for contractors and nonprofits to include them in their food boxes. The new controversy could further motivate key lawmakers who are pushing to tighten restrictions on how USDA spends any future farm relief funds.

c. Plan to Help Farmers of Seasonal and Perishable Fruits and Vegetables

The Office of the U.S. Trade Representative, USDA, and the Department of Commerce recently released a report outlining the Trump Administration's plan to address the threat posed by increased foreign imports to American producers of seasonal and perishable fruits and vegetables. The plan follows public hearings held in August where more than 60 witnesses testified, in addition to over 300 written submissions. Based on information collected from these hearings, the agencies commit to several key actions to support America's seasonal and perishable fruit and vegetable producers. To read the plan, click [here](#). Click [here](#) to read the full transcript of the virtual hearing held on August 13. Click [here](#) to read the full transcript of the virtual hearing held on August 20.

d. OIRA: Memo to EPA to Weigh New Limits on Enforcement Actions

The White House Office of Information and Regulatory Affairs (OIRA) has issued a memo directing the Environmental Protection Agency (EPA) and other federal agencies to weigh revising their enforcement policies in order to restrict potential enforcement actions against regulated entities and individuals, including possible new limits on consent decrees and higher standards of evidence in administrative proceedings. The memo is designed to implement President Trump's May 9 Executive Order (EO) 13924 directing agencies to take a host of deregulatory steps to counter the economic downturn spurred by the COVID-19 pandemic. The EPA's enforcement discretion has been a major political issue during the COVID-19 pandemic, most prominently because of the agency's just-expired policy of declining to act against facilities that could not fulfill monitoring or reporting requirements due to the virus.

2. Other White House Policy Developments: Final NEPA Rule

A coalition of 21 states, the District of Columbia and Guam have sued in federal court to strike down the Trump Administration's changes to the implementing rules for the National Environmental Policy Act (NEPA). The [lawsuit](#), filed in the U.S. District Court for the Northern District of California, argues that the White House Council on Environmental Quality (CEQ) revisions to the NEPA regulations will undermine vulnerable communities' power to get involved in decision making on pipelines, bridges and other major projects.

The Trump Administration's NEPA rule revisions have already faced legal challenges from green groups and environmental justice advocates. On Friday, Judge James Jones for the U.S. District Court for the Western District of Virginia declined to issue either a preliminary injunction or a stay to prevent the new NEPA rules from taking effect pending his decision on the legality of the regulations. The Southern Environmental Law Center had argued on behalf of a coalition of 16 environmental groups that the regulations are inconsistent with the foundational environmental statute.

NEPA implementation and related litigation can be lengthy and significantly delay major infrastructure and other projects. The Alliance last March prepared a detailed comment letter on the CEQ proposed regulations for implementing the procedural provisions of NEPA. In our view, the new NEPA regulation is just one of several proactive rulemaking efforts undertaken by the Trump Administration. These actions, in part, are intended to correct and rebalance the significant negative impacts to Western farmers and ranchers that have resulted from past federal implementation of environmental laws.

3. Department of Interior, Bureau of Reclamation: NHPA Compliance

Reclamation is taking steps to simplify cultural resources compliance on canals and ditches. Reclamation is requesting that the Advisory Council on Historic Preservation, which oversees the federal historic preservation process, grant a "[program comment](#)" to document the historic significance of water distribution systems as a whole, instead of on a case-by-case basis. The

“program comment” is an alternative approach to streamline compliance with Section 106 of the National Historic Preservation Act (NHPA) by reducing the repetitive nature of recording historic sites. It will also allow Reclamation to focus its cultural resource efforts on sites in the most need of further recording, protection and interpretation. Under the current process, whenever there is a federal action, there is a requirement to review the potential effect to all historic properties eligible for or listed on the National Register of Historic Places, irrespective of their abundance or purpose. This has the potential to add time and cost to proposed federal water projects. Over the next 45 days, Reclamation will be conducting public outreach and seeking public comment on the proposed ACHP program comment. To learn more or comment, visit www.usbr.gov/cultural.

4. Department of Interior, U.S. Fish and Wildlife Service: Definition of “habitat”

The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) have proposed a regulatory definition of the term “habitat” that would be used in the context of critical habitat designations under the Endangered Species Act (ESA). The new definition will be used to guide the designation of "critical habitat" under the ESA that is necessary to protect the existence of a listed species. It identifies habitat as "the physical places that individuals of a species depend upon to carry out one or more life processes. Habitat includes areas with existing attributes that have the capacity to support individuals of the species." As an alternative, the two agencies also solicited comments on a possible definition that "habitat includes areas where individuals of the species do not presently exist but have the capacity to support such individuals, only where the necessary attributes to support the species presently exist." The Alliance earlier this month transmitted a comment letter to FWS, urging the agency to finalize this rule using the “depend upon” standard for designating non-occupied critical habitat and to require the existence of necessary natural features in the land at the time of designation.

In a [letter](#) two weeks ago to FWS Director Aurelia Skipwith, more than 100 House Democrats called the Administration’s proposal the latest in the "onslaught of environmental rollbacks that threaten the survival of our nation's wildlife". Just prior to receiving the congressional letter, the FWS announced yet another recommendation to narrow the definition of "habitat," this time to require that federal agencies consider, among other factors, the economic implications of designating new critical habitats prior to making such designations. FWS also recently proposed new ESA critical habitat [rules](#) that could make it easier to shrink future critical habitats designated under the ESA. Section 4(b)(2) of the ESA gives the Secretary of the Interior the authority to exclude any particular area from a critical habitat designation if the benefits of exclusion outweigh the benefits of inclusion for that area, so long as excluding the habitat will not result in the species’ extinction.

5. EPA/Corps: WOTUS Rule Guidance Replaces RGL 07-02

EPA and the Corps have released four guidance documents on implementation of the “waters of the U.S.” (WOTUS) jurisdiction rule and are exploring guidance on the recent U.S. Supreme Court groundwater ruling in *County of Maui v. Hawaii Wildlife Fund*. In particular, their Ditch Memo would replace the Regulatory Guidance Letter (RGL) 07-02 related to the exemption for

construction and maintenance of ditches and maintenance of drains under the Clean Water Act (CWA). Last week, we hosted a virtual call with high-level Corps and EPA officials to discuss their new Ditch Memo. EPA and the Corps provided a brief overview of the recently finalized guidance memo to about 20 Alliance participants. Now, the Corps is working on training field staff on the new Trump CWA rule and related memos. Public webinar engagement will follow, soon, but for now, the focus is on getting all of internal federal folks on the same page, looking to achieve consistent implementation.

DEVELOPMENTS IN CONGRESS

The Senate returned to Washington from August recess last week, and the House is in session this week. There are a limited number of days to legislate (no votes scheduled in October) and not much progress in the Senate on FY 2021 appropriations bills. So, Congress will need to pass a temporary continuing resolution (CR) this month to extend federal funding to at least December and prevent a government shutdown on October 1 ahead of the November elections. An agreement has been worked out to deliver a clean CR, although it's not clear how long it would extend to.

On the COVID relief front, Congress is back to square one. The Senate Republicans so-called "skinny" relief package (\$500 billion) failed in the Senate earlier this week. It needed 60 votes to pass, but received no Democrat support. The Democrats have trimmed their relief package down to \$2.4 trillion, and the White House has said they would look at a package as large as \$1 trillion. Nothing will likely happen on the COVID relief front until after the November election.

The Senate Environment and Public Works (EPW) Committee will hold a hearing this week on the Trump Navigable Waters Protection Rule. There is no word yet on who the witnesses will be. EPW Chairman Barrasso will soon be introducing ESA reauthorization legislation, an effort that the Alliance has been closely monitoring throughout this Congress.

After the election, Congress will likely introduce an FY 2021 omnibus appropriations package to wrap up work on FY 2021 spending bills. But, if the Senate, the White House or both change control and the House remains the same, Democrats may be disinclined to cut deals with the GOP on COVID relief, FY 2021 spending or any other legislation. Instead, they may put much work on the shelf until January, when the new Congress convenes, and Democratic nominee Joe Biden may be inaugurated. The House's last scheduled day in session is December 10, while Sen. McConnell is targeting December 18 for adjournment. Beyond the COVID/funding bills, Congress at any time could also take up pending legislation related to infrastructure (highway/water resources), the National Defense Authorization Act, and energy policy between now and the end of the year.

6. Western Water and Infrastructure Developments

As previously reported, the House of Representatives has passed important legislation authorizing Corps programs. The Senate continues to consider several pieces of water and infrastructure legislation, some of which were highlighted at a July Senate subcommittee hearing where I

delivered (virtually) testimony on behalf of the Family Farm Alliance. Other key water bills are discussed below.

a. Snow Water Supply Forecasting Program Authorization Act

Democrat Representative Josh Harder and Senator Dianne Feinstein last month introduced [H.R. 8041/S. 4530](#), the *Snow Water Supply Forecasting Program Authorization Act* to establish an airborne snow observatory (ASO) and measurement program within the Department of the Interior. According to a [joint statement](#), without accurate readings water managers could be forced to unnecessarily release water from reservoirs, resulting in millions of dollars in financial losses. A previous program run by NASA is no longer in operation, leaving water managers without the public information they need to make smart decisions about their water supplies. The bill would establish a program, with Reclamation as the lead coordinating federal agency, and would authorize a total of \$15 million for fiscal years 2022 to 2026. The Alliance's support for this legislation was noted in the joint statement.

b. Western Water Storage Infrastructure Act

California Democrat T.J. Cox has introduced legislation to increase funding for surface and groundwater storage and water conveyance projects. The "*Western Water Storage Infrastructure Act*" would authorize Reclamation to partner with non-federal entities to spend up to \$800 million for increased water storage, as well as provide cost-shared funding to repair key canals in California that have been damaged due to land subsidence from over-pumping of the local groundwater aquifers. The bill, [H.R. 8166](#) has garnered broad water user support, including the Family Farm Alliance and many California and west-wide irrigation associations and districts, and extends provisions of the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, some of which may be deemed too controversial by the House Natural Resources Committee.

c. WIFIA Improvement Act

Rep. John Garamendi (D-CALIFORNIA) is planning to introduce the "WIFIA Improvement Act" in the coming weeks. This legislation would make some helpful amendments to the *Water Infrastructure Finance and Innovation Act (WIFIA) of 2014*. WIFIA loans are available to public and private borrowers for a wide range of drinking water, wastewater, drought mitigation, and alternative water supply projects. The Family Farm Alliance is supportive of the WIFIA Improvement Act.

ALLIANCE INITIATIVES

7. Climate Smart Agriculture

The Alliance board of directors at its 2020 annual meeting supported its long-time policy of using climatic extremes and findings from its climate change report to advocate for "climate-smart" agriculture and needed changes in Western water policy. Through our involvement on the Steering

Committee of the North American Climate Smart Agriculture Alliance (NACSAA), we have been monitoring United National global climate talks over the past two years and bringing the voice of North American producers and land managers to the discussion table. NACSAA believes public policy should provide incentives for climate-friendly and common-sense farm improvements.

a. NACSAA Webinar

The Alliance last month was represented on a NACSAA panel which took a closer look at the recently released majority staff report from the House Select Committee on the Climate Crisis. The NACSAA webinar provided an opportunity for industry experts to share perspectives on the report's recommendations regarding agriculture's role in taking on climate change. Patrick O'Toole participated in the webinar, and was joined by fellow presenters Ray Gaesser (representing Solutions from the Land, or SfL), Jeremy Peters (National Association of Conservation Districts), Brian Jennings (American Coalition for Ethanol) Roger Wolf (Iowa Soybean Association), NACSAA Chairman Fred Yoder; and SfL President Ernie Shea. On the webinar, President O'Toole explained that the relationship between water, biodiversity and farming in the West is a distinct, complex problem that appeared to be harder for the Select Committee to fully grasp, though he said there is promise. He also noted that effective water management requires watershed-level, public-private land management. Most habitat is on private lands, while federal forests help capture water in the system.

Pat and his wife Sharon recently wrote a guest opinion that was picked up by over a dozen Western newspapers, including the *Salt Lake Tribune*, titled "If you like birds and fish; hug a cow". The opinion confronts the current public narrative that has become accepted that if more people — especially Americans — stop eating meat, the planet will magically improve.

b. Senate Democrats Climate Report

Senate Democrats last month issued a 260-page [climate report](#) recommending trillions of dollars in investments and a wide-ranging federal plan to cut greenhouse gas emissions. In order to hit their "net-zero" greenhouse gas emissions goals, the report calls for increased federal regulation and spending on climate amounting to at least 2% of gross domestic product (GDP), or about \$400 billion per year based on current GDP estimates. The report is a product of the Democratic Special Committee on the Climate Crisis and could be viewed as a blueprint of Democratic thinking ahead of the 2020 election.

9. COVID-19 Pandemic Response

Mark Limbaugh and The Ferguson Group have been closely monitoring the federal response to the pandemic. In recent months, I've participated in several briefings, describing how Western agriculture has been impacted by the government response, and summarizing the Alliance's work. That work has primarily entailed advocating that any infrastructure stimulus package include Western water provisions, and working to ensure that the irrigation industry be considered essential. Briefings have been provided in ZOOM sessions hosted by the Idaho Water Users

Association, Tri-States (IDAHO, OREGON, and WASHINGTON), Colorado Water Congress, Pacific Power community liaisons (OREGON), federal and state conservative policy interests and think tanks, including the Heritage Foundation, and others.

The Senate Energy and Natural Resources (ENR) Committee conducted a hearing in July on the COVID-19 pandemic. While the hearing focused primarily on impacts associated with closures of public lands like national parks, campgrounds, Doug Kemper of the Colorado Water Congress also addressed challenges related to water supply. Doug's testimony included a section prepared by the Alliance that addresses on-the-ground impacts of the pandemic to Western agriculture.

A new report released Aug. 26 by the American Society of Civil Engineers and the U.S. Water Alliance's Value of Water Campaign calls for more funding and policy changes to support water and wastewater infrastructure investment, saying such moves could help pull the nation out of the current recession brought on by COVID-19. According to the report, "The Economic Benefit of Investing in Water Infrastructure," local, state and federal funding streams are meeting just a fraction of the billions needed each year to replace the nation's water infrastructure. The Alliance, California Farm Bureau Federation and Western Growers earlier this year crafted a letter to Congress and the White House calling for similar attention on Western agricultural water infrastructure. That letter was signed on to by over 150 organizations.

10. Western Wildfires and Related Legislation

To date wildfires have burned more than 5.9 million acres of land and currently 4.6 million acres are actively on fire in 12 different western states. The related, unusually high energy demands across the West – particularly in California – have also demonstrated hydropower's integral role as a renewable, reliable, abundant, carbon-free source of electricity. Gov. Newsom has said the series of wildfires ripping through his state should be proof to "climate deniers" that climate change is happening before their eyes. Others believe decades of fire suppression, expanding development, and inactive forest management – especially on federal forest lands - are the real culprits. [Here's an outstanding guest opinion](#) that ran in the *Washington Post* over the weekend.

We are working with the National Water Resources Association to develop a joint letter in support of S. 4431 (Feinstein, Daines), the *Emergency Wildfire and Public Safety Act of 2020*. This legislation recognizes the need to improve our nation's forest health. It is bipartisan legislation built on collaborative forest management practices and authorizes new programs to safeguard communities and critical infrastructure, streamlines review process, and would improve forest and watershed health.

This is a quick summary of just a few of the issues the Alliance has been engaged in. Please do not hesitate to contact me at dan@familyfarmalliance.org if you would like further information about what the Alliance is doing to protect water for Western irrigated agriculture.