



MEMORANDUM

TO: SLDMWA BOARD OF DIRECTORS
FROM: DAN KEPPEL, EXECUTIVE DIRECTOR
SUBJECT: EXECUTIVE DIRECTOR'S REPORT
DATE: JULY 31, 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, multiple water infrastructure developments in Congress, regulatory streamlining actions taken by the Trump Administration, and public outreach and education. Some of these issues and other matters important to our members are discussed below.

FEDERAL RESPONSE TO COVID-19 PANDEMIC

While federal appropriations and infrastructure legislation are getting attention in Washington, D.C., the top federal priority continues to be responding to the COVID-19 pandemic. Although the number of deaths from the coronavirus have been decreasing nationally for months, recent trends in hard-hit states are causing a nationwide uptick. According to *The Hill*, several states including Arizona, California, Texas, and Florida set record numbers for daily coronavirus deaths in the past month. The U.S. economy shrank at a 32.9% annualized pace between April and June as the coronavirus hammered businesses and consumers, the Commerce Department recently reported, marking the nation's worst quarterly contraction on record. A recent Congressional Research Service (CRS) report and survey shows approximately half of all adults live in a household that has lost some employment income since March 2020. The White House painted a rosier picture and reported 4.8 million jobs were created in June.

Impacts on the Ground - Lost markets and lost off-farm income related to the COVID-19 pandemic have proven doubly difficult for many California farmers and ranchers, according to a survey by the California Farm Bureau Federation. More than half of the farmers responding to the voluntary survey said they had lost customers or sales due to COVID-19, and nearly half said they or someone in their immediate family had lost off-farm income. Nearly 57% of respondents said

they had lost customers or sales during the pandemic, with most citing stay-at-home orders that had closed customers' businesses. Forty-two percent of responding farmers said they or a family member had lost off-farm income, mainly because of jobs unavailable due to stay-at-home orders or to care for children due to school and child-care closures. About three-quarters of the responding farmers said they had been able to maintain operations so far, and had been able to avoid furloughing or laying off employees. Of those who reported reducing operations or staff, most cited cuts to customer orders or revenue. Only 20% reported employees unable to work, mostly because the employees were considered in a high-risk group for the novel coronavirus. About one-third reported being unable to undertake routine planting, cultivation or crop-care activities due to lack of personal protective equipment such as respiratory protection.

Elsewhere, the effects of COVID-19 have delayed the arrival of seasonal immigrants who normally help harvest U.S. wheat. However, due in part to the federal response to rescue struggling farms, there are signs that segments of the agriculture economy have stabilized after months of supply chain disruptions. The shutdown of meatpacking plants across the country earlier this year left many livestock producers without buyers, forcing some to cull their herds. While livestock backlogs persist, slaughter rates have returned to near-normal levels. The coronavirus response in Washington, D.C. remains a priority issue in agriculture policy, and it is likely to remain so, for the remainder of the year.

White House Response - According to the White House, multiple vaccine candidates will reach the final stage of clinical trials this month – a record timeframe. All the top vaccine candidates are being mass produced simultaneously with trials to ensure their distribution as quickly as possible. The *New York Times* reported NIH and biotech company Moderna said a late-stage coronavirus vaccine testing effort began this month with plans to enroll 30,000 healthy people at 89 sites across the United States, one of the first large studies gauging the safety and effectiveness of a drug against COVID-19. The President also noted that his administration had zero unfilled requests for equipment from governors, and reported that fatalities have fallen 7% since mid-April, dropping the case fatality rate below that of Europe and much of the world. President Trump is now urging Americans to continue wearing masks, practice social distancing, and protect the vulnerable.

Meanwhile, the U.S. Chamber of Commerce and others sued the Department of Homeland Security and the State Department to overturn federal action related to a President Trump's proclamation "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak."

Efforts at USDA - 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.

CFAP Changes - 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, according to USDA, with

livestock producers having received about half of all the money dispersed. Secretary of Agriculture Sonny Perdue earlier this month announced an initial list of additional commodities that have been added to CFAP. USDA made other adjustments to the program based on comments received from agricultural producers and organizations and review of market data. USDA's Farm Service Agency is accepting (through Aug. 28), applications for CFAP, which helps offset price declines and additional marketing costs because of the coronavirus pandemic. USDA expects additional eligible commodities to be announced in the coming weeks. Changes to CFAP include expanding for seven currently eligible commodities – apples, blueberries, garlic, potatoes, raspberries, tangerines and taro – CARES Act funding for sales losses. Originally, these commodities were only eligible for market adjustments. Meanwhile, more than 25 California lawmakers earlier this month sent a letter to Secretary Perdue, asking USDA to include wine grapes on the list of specialty crops that are eligible for aid.

Farmers to Family Food Box Program - Secretary Perdue recently announced that USDA's Farmers to Families Food Box Program has distributed over 50 million food boxes in support of American farmers and families affected by the COVID-19 pandemic. USDA will launch a third round of Farmers to Family Food Box Program purchases with distributions to occur beginning by September 1 with completion by October 31, 2020. The purchases will spend the balance of \$3 billion authorized for the program. More information about the third round of food box purchasing will be made available on the Farmers to Families Food Box Program website at www.usda.gov/farmers-to-families.

HEALS Act - Senate Republicans have released their opening offer on a coronavirus relief package, the "Health, Economic Assistance, Liability Protection and Schools (HEALS) Act", after internal divisions forced a delay. The \$1 trillion proposal negotiated with the White House contains new money for testing and vaccines, funds to help schools reopen, additional aid for small businesses as well as more direct payments for individuals. In terms of additional relief funds for agriculture, the Republican proposal would provide \$20 billion in agricultural aid, delegating broad discretion on spending to Agriculture Secretary Perdue. The legislation would allow Secretary Perdue to use the aid to compensate livestock producers for losses from killing animals that could not be sent to slaughterhouses because of virus-related shutdowns and slowdowns. There is no additional funding for state and local governments in the HEALS Act, just added flexibility to cover lost revenue – such as hotel room taxes - due to the pandemic. We are still digging into these components of the bill. Things will obviously change as negotiations continue between the White House and Democrats. We are looking into the applicability of the liability provisions to irrigation districts, and we will let Alliance members know as we know more.

Not only do Democrats oppose the recovery plan, but even Senate Republicans are divided on the proposal. The Senate GOP proposal serves as an opening bid to Democrats who have criticized Republicans for delaying new talks on a COVID stimulus measure since the House passed its \$3 trillion "HEROES Act" in May. The GOP proposal extends the eviction moratorium and reduced unemployment benefits, include liability provisions to shield businesses and schools from litigation as they reopen, adds flexibility on the use of existing COVID funding to state and local

governments, and institutes another round of \$1,200 direct payments to qualifying individuals. Infrastructure and energy assistance have yet again been left out of this round of stimulus talks. The proposal comes after weeks of negotiation between Congressional Republicans and the White House on the details of the package. With the release of the GOP bill, negotiations with Democrats have begun in earnest, even though both sides remain far apart. Democrats are calling for \$1 trillion in state and local funding alone, and they have also expressed concern with including liability protections for employers. Senate Majority Leader Mitch McConnell has consistently stated that “no bill will pass the Senate without liability protection for everyone related to the coronavirus.”

Politico reported this morning that the Senate left town without agreeing on a Coronavirus deal. Speaker Nancy Pelosi and Senate Democratic Leader Chuck Schumer met late into the evening last night (Thursday) with White House chief of staff Mark Meadows and Treasury Secretary Steve Mnuchin, hoping to break the impasse. But they got nowhere and emerged with acrimony and finger-pointing. We look for election year partisan politics to play an outsized role in this round of negotiations.

Senate Committee Conducts Hearing on COVID-19 - Prior to the introduction of the HEALS Act, the Senate Energy and Natural Resources Committee conducted a hearing earlier this month on how the COVID-19 pandemic is impacting public lands and parks. While the hearing focused primarily on impacts associated with closures of public lands like national parks, campgrounds and other sites, witnesses like Ethan Lane (National Cattlemen’s Beef Association) and Doug Kemper (Colorado Water Congress) also addressed challenges related to public lands grazing and water supply. Mr. Kemper’s written testimony included a section prepared by the Family Farm Alliance that addresses on-the-ground impacts of the pandemic to Western irrigated agriculture.

OTHER NEWS

White House Finalizes NEPA Rule - President Trump earlier this month announced the final rule to comprehensively update and modernize the National Environmental Policy Act (NEPA) regulations for the first time in over 40 years. The often slow and cumbersome federal regulatory process is a major obstacle to realization of projects and actions that could enhance Western water supplies. NEPA implementation, in particular, can have a direct bearing on the success or failure of critical water supply enhancement projects. Many Western water managers often use NEPA mechanisms like Categorical Exclusions (CEs) and in conjunction with annual operations and maintenance activities on ditches or major rehabilitation and repair projects on existing dams. When appropriately established and applied, CEs serve a beneficial purpose. They allow Federal agencies to expedite the environmental review process for proposals that typically do not require more resource-intensive environmental documentation. Applying for a new CE, for example, can potentially ease the Federal Energy Regulatory Commission permitting requirements for irrigators who want to install small hydroelectric projects in existing canals and ditches. These projects have minimal environmental impacts and offer over opportunities to create new, clean, renewable sources of energy.

NEPA implementation and related litigation can be lengthy and significantly delay major infrastructure and other projects. The Federal government currently averages over 4.5 years to complete an environmental impact statement (EIS), which average over 600 pages. In many cases, it can take a decade or more before permits are issued and construction can even begin. After a project is approved, it can be tied up in litigation for years over alleged deficiencies in the NEPA analysis. The Alliance last March prepared a detailed comment letter on the White House Council on Environmental Quality's (CEQ) proposed regulations for implementing the procedural provisions of NEPA. Under the new regulations, environmental reviews for major infrastructure projects would be completed in two years. Actions without significant environmental impacts would either be categorically excluded or reviewed in under one year. The new regs also improve coordination, clarify when NEPA applies, reduce unnecessary paperwork by setting page limits, and should reduce frivolous litigation.

The finalization of the rule marks the end of a multi-year review, which produced more than 1.1 million public comments and involved a broad range of stakeholders. White House CEQ sent out a "What They are Saying" press release that included 31 pages of support comments from elected officials and industry organizations, including the Family Farm Alliance. Predictably, many environmentalists also criticized NEPA reform and President Trump's ongoing deregulatory actions. Within one week of President Trump's announcement, 20 environmental groups sued the Administration over the new rule. Numerous Democratic lawmakers also sent statements of disapproval, even ahead of the president's remarks. 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.

Unified Agenda of Regulatory and Deregulatory Actions Released - Under President Trump, agencies have taken 7 deregulatory actions for every new regulation. These efforts have already saved \$50 billion in regulatory costs so far, according to the White House. The Administration this month released its Spring 2020 Unified Agenda of Regulatory and Deregulatory Actions, which reports on the actions administrative agencies plan to issue in the near and long term. Many of the proposed Endangered Species Act actions are of interest to Western water managers, including:

- Revision of the Regulations for Listing Endangered and Threatened Species and Designation of Critical Habitat;
- Revision of the Regulations for Designating Critical Habitat;
- Revised Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species";
- Regulations for Interagency Cooperation; and
- Allowing for Designation of Experimental Populations of Unlisted Species.

The Family Farm Alliance in late 2018 developed detailed comments for the Departments of Commerce and the Interior on many of these issues.

Western Water and Infrastructure Developments in Congress - The House of Representatives has passed important legislation authorizing Corps of Engineers programs and the Senate continues to consider several pieces of water and infrastructure legislation, some of which were highlighted at a recent subcommittee hearing where I delivered (virtually) testimony on behalf of the Family Farm Alliance.

Senate Subcommittee Hearing - The Senate Committee Energy and Natural Resources (ENR) Committee, Subcommittee on Water and Power conducted a legislative hearing earlier this month in the Dirksen Senate Office Building in Washington, D.C. I represented the Family Farm Alliance on the witness panel, along with representatives of the conservation community and the Trump Administration. The purpose of the hearing was to receive testimony on the following bills:

S. 2718 - Western Water Security Act (Udall)

S. 3811 - Restoration of Essential Conveyance Act (Feinstein)

S. 4188 - Water for Tomorrow Act (Harris)

S. 4189 - Water for Conservation and Farming Act (Wyden)

S. _____ - Water-Energy Technology Demonstration and Deployment Act (McSally)

Subcommittee Chairwoman Martha McSally (R-ARIZONA) and Ranking Member Catherine Cortez Masto (D-NEVADA) were present in the hearing room, along with Senator Dianne Feinstein (D-CALIFORNIA) who provided testimony on S. 3811. Chair McSally hopes to combine a variety of bills into a single water package, including a bill (S. 2044) she and Sen. Sinema (D-ARIZONA) introduced that would address aging Bureau of Reclamation water infrastructure. Several members of the committee - including Senators Cory Gardner (R-COLORADO), Tom Udall (D-NEW MEXICO), Ron Wyden (D-OREGON) participated online. Aubrey Bettencourt, Deputy Assistant Secretary for Water and Science at the Department of Interior also testified in person. Freshwater Trust President Joe Whitworth (OREGON) and I testified and answered questions online, in the first Subcommittee hearing held since the COVID outbreak. In addition to the bills discussed at the hearing, I urged the Subcommittee to consider additional legislation that addresses aging water infrastructure and insufficient storage projects.

House Passes Bipartisan WRDA Legislation - The House this month passed H.R. 7575, the bipartisan "Water Resources Development Act (WRDA) of 2020," under suspension of the rules, a move used to fast-track noncontroversial measures. The bill authorizing Army Corps of Engineers water and environmental infrastructure projects and studies unanimously passed the House Transportation and Infrastructure (T&I) Committee earlier this month. The House bill authorizes funding for 38 new projects and 35 studies that include repairing locks and dams on inland waterway to boost coastal shorelines against flooding. A section-by-section analysis of the bill, which is 187 pages long, shows the bill would also authorize the \$10 billion already collected in the Harbor Maintenance Trust Fund to be used to ensure that the maintenance needs of ports

and harbors across the country are met. The Senate Environment and Public Works (EPW) Committee has approved its own \$17 billion water resources bill, the “America’s Water Infrastructure Act” (S. 3591) that awaits a Senate vote.

Family Farm Alliance Engagement - Alliance President Patrick O’Toole and Christine Arbogast (President, National Water Resources Association) recently wrote an opinion piece in the *Reno Gazette Journal*, arguing it is time to invest in Western water infrastructure. This piece caught the eye of Mike Consol, Editor of the Institutional Real Estate, Inc.'s "Real Assets Advisor", who wanted to learn more. Mr. Consol got his answers in a podcast interview with Ms. Arbogast and Mr. O’Toole that that was published earlier this month on both the Institutional Investing in Infrastructure and Real Assets Adviser websites. Earlier this week, I participated in a webinar regarding the impact of water access issues on farmland investment, hosted by US Agriculture and New Current Water and Land. Moderated by Anatole Pevnev (Managing Director, US Agriculture). I provided an overview of Western water challenges, including the need to modernize and expand water infrastructure. Other speakers included Alliance Advisory Committee Member Paul R. Orme (Paul R. Orme, P.C.) and former Alliance general counsel Gary W. Sawyers (Principal, New Current Water and Land, LLC).

Clean Water Act: 401 Certification - A new rule finalized by the Trump administration earlier this month - the “Clean Water Act 401 Certification Rule” - narrows what issues state and tribal governments may consider when determining if a project will comply with state water quality standards. State or tribal approval is a prerequisite for obtaining a federal permit under the Clean Water Act (CWA). Alliance representatives in June participated on an intergovernmental conference call with EPA on their final rule for certification process. This section of the CWA guides the federal permitting of energy and other infrastructure projects that impact water quality through discharges of pollutants to a “waters of the U.S.”. In this final rule, EPA conducted the first comprehensive analysis of the text, structure and legislative history of Section 401. The final rule:

- Specifies statutory and regulatory timelines for review and action on a Section 401 certification—requiring final action to be taken within one year of receiving a certification request.
- Clarifies the scope of Section 401, including clarifying that 401 certification is triggered based on the potential for a project to result in a discharge from a point source into a water of the United States. When states look at issues other than the impact on water quality, they go beyond the scope of the Clean Water Act.
- Explains EPA’s roles under Section 401.
- Reaffirms the agency’s statutory responsibility to provide technical assistance to any party involved in a Section 401 water quality certification process.
- Promotes early engagement and coordination among project proponents, certifying authorities and federal licensing and permitting agencies.

The rule will go into effect on August 1.

House Moves Appropriations Bills - The House earlier this month passed two “minibus” appropriations packages that include important funding provisions for many of the federal agencies we work with in the West.

House Passes FY 2021 Interior-Environment Minibus - The House earlier this month passed 224-189, a four-bill FY 2021 minibus spending package ([H.R. 7608](#)) that contains the fiscal 2021 Interior-Environment bill. The minibus includes \$9.38 billion for the EPA, a \$2.67 billion increase to the President’s budget request, and \$13.83 for the Interior Department, \$2.3 billion more than the Administration’s recommendation. In addition, the Interior-Environment section of the package includes an additional \$15 billion in emergency spending for a supplemental critical infrastructure fund, with \$10.2 billion of that going toward EPA’s Clean Water and Drinking Water state revolving funds.

The bill includes millions of dollars for additional research of per- and polyfluoroalkyl substances, known as PFAS, and pushes for stricter regulation of these “forever chemicals”, as well as additional funding for environmental justice programs at EPA and for lead pipe replacement programs. The bill also includes \$500 million directed towards the international Green Climate Fund to help reduce greenhouse gas emissions worldwide; requires the removal of all Confederate commemorative works in the national parks; and prohibit funds spent on implementing the Trump Administration’s recently finalized rules on CWA Sec. 401 certifications and the implementation of NEPA.

House Democratic appropriators are tying federal funding to agencies' responsiveness. In a dispute with the Trump EPA, the House bill would defund the Water Infrastructure Finance and Innovation Act (WIFIA), the popular infrastructure loan program at EPA, due to the lack of responsiveness to Congressional directives in the FY 2020 spending bill. Provisions in the FY 2020 bill required EPA to develop criteria ensuring WIFIA loans comport to the Federal Credit Reform Act of 1990 (essentially barring any federally owned or authorized assets from obtaining a loan under WIFIA). The criteria have been developed and posted on the Federal Register on June 30, which was after the 120-day time limit set in the FY 2020 bill.

EPA still owes Congress several other reports on the subject, but we fully expect the program to ultimately receive funding from Congress for FY 2021. The rescission and re-appropriation of WIFIA funds in the bill would make all WIFIA balances subject to the criteria EPA has developed. The White House has issued a Statement of Administrative Position (SAP) that recommends the President veto the bill if it reaches his desk. The Senate has not yet marked up any of its FY 2021 spending bills, but it is unlikely the GOP-controlled Senate will include some of the policy riders or the added emergency funding included in the House bill. It is now apparent that Congress will not be able to finish any appropriations bills prior to the end of the fiscal year on September 30

and will require the enactment of a temporary continuing resolution (CR) to keep the government open on October 1.

House Set to Take Up FY 2021 Energy-Water Spending Package - The House today passed, on a 217 to 197 vote, a second FY 2021 minibuss package of appropriations bills, [H.R. 7617](#), which includes the FY 2021 Energy-Water measure. The \$49.6 billion Energy-Water portion of the minibuss includes significant funding increases for the Department of Energy to address climate change, as well as increased funding for water and environmental infrastructure at the Army Corps of Engineers (Corps) and the Bureau of Reclamation (Reclamation). In total, the added spending would represent a \$1.3 billion increase from FY 2020 enacted levels. If the minibuss passes, the House will have moved 11 of the 12 appropriations bills, leaving the Legislative Branch measure as the sole remaining spending bill.

While the regular fiscal year funding levels for the Corps, Reclamation and the Department of Energy are similar to last year due to a bipartisan two-year spending agreement, House Democrats have added billions of dollars in additional “emergency” spending over and above the agreed to budgetary caps. The additional spending (\$23 billion for DOE, \$17 billion for the Corps and \$3 billion for Reclamation) is focused on infrastructure and environmental restoration programs that can help stimulate the economy due to the COVID-19 pandemic. Both the regular and the emergency funding provisions include language that restricts the use of federal funds on the study or construction of the Shasta Reservoir Raise in California.

House GOP members are not supportive of the additional spending in the FY 2021 bills, as this spending is over and above the bipartisan budget deal struck last year and adds to the \$3 trillion in emergency COVID spending already approved by Congress. We do not know what will come of this emergency funding in the Senate.

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.