



MEMORANDUM

TO: SLDMWA BOARD OF DIRECTORS
FROM: DAN KEPPEL, EXECUTIVE DIRECTOR
SUBJECT: EXECUTIVE DIRECTOR'S REPORT
DATE: NOVEMBER 2, 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, conducting our first “virtual” farmer lobbyist “trip”, tracking water and Western wildfire 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.

1. Trump Administration Response to COVID-19 Pandemic

Last month, President Donald Trump and First Lady Melania Trump announced they had tested positive for the coronavirus. The President spent a weekend at Walter Reed National Military Medical Center in Bethesda, Maryland, and was discharged, in high spirits. The second presidential debate was cancelled, but the third debate between President Trump and Joe Biden was viewed by millions on national television.

The U.S. Food and Drug Administration has announced that they approved the first treatment for COVID-19, Veklury (remdesivir). The approval of Veklury was supported by the agency’s analysis of data from three randomized, controlled clinical trials that included patients hospitalized with mild-to-severe COVID-19. One week later, the Centers for Medicare and Medicaid Services (CMS) announced that it had “released a comprehensive plan with proactive measures to remove regulatory barriers and ensure consistent coverage and payment for the administration of an eventual vaccine for millions of Americans.”

The U.S. Commerce Department’s latest report shows that the U.S. economy bounced back in the third quarter at a 33.1 percent annualized rate, marking the fastest pace of annualized growth on

record just after the worst drop on record. But it still left U.S. economic output below pre-pandemic levels. The White House continues to emphasize the resiliency of the U.S. economy, and that the COVID-19 test positivity rate is down among all age groups, dropping below 5%. Individuals under the age of 50 have a 99.98 percent rate of survival from COVID-19. Meanwhile, *The Hill* reported that Center for Disease Control data shows that counties with greater social vulnerability were more likely to become areas with rapidly increasing COVID-19 incidence (hotspot counties), especially counties with higher percentages of racial and ethnic minority residents and people living in crowded housing conditions, and in less urban areas. Most of the worst coronavirus outbreaks in the United States right now are in rural counties with inadequate health care resources to handle a surge of infections. Across the Midwest, cases have climbed on average nearly 60 percent in recent weeks, compared to about 35 percent nationwide.

a. Coronavirus Food Assistance Program (CFAP)

According to *Bloomberg*, Farm Credit System officials warn that a surge in coronavirus could deal another economic blow to U.S. agriculture and require more federal aid. Farmers' financial situation has generally started to stabilize with the help of federal aid since the pandemic-related disruptions in the food system during spring and summer. Farmers are increasingly dependent on federal assistance following two rounds of trade and pandemic aid, with direct government help accounting for about a third of net cash income forecast for 2020. The COVID-19 pandemic continues to affect demand for fresh fruits and vegetables. Farmers and produce marketers say they expect demand from restaurants and other food-service buyers to stay muted due to ongoing, pandemic-related restrictions. But demand at supermarkets and other retailers remains strong, according to the California Farm Bureau Federation.

In the first month of the application period, the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) approved more than \$7 billion in payments to producers in the second round of the Coronavirus Food Assistance Program. CFAP 2 provides agricultural producers with financial assistance to help absorb some of the increased marketing costs associated with the COVID-19 pandemic. Through CFAP 2, USDA is making available up to \$14 billion for agricultural producers who continue to face market disruptions and associated costs because of COVID-19. The Farm Services Agency will accept CFAP 2 applications through December 11.

b. Farmers to Families Food Box Program

USDA also recently announced it has authorized \$500 million for a fourth round of purchases for the USDA Farmers to Families Food Box Program. USDA is issuing solicitations for the fourth round to existing Basic Ordering Agreement holders and expects to award contracts by Oct. 30 for deliveries of food boxes from Nov. 1 through Dec. 31, 2020. In the fourth round, as in the third round, states have been allocated boxes based on the internal need of the state. The program will continue the purchase of combination boxes to include fresh produce, dairy products, fluid milk and meat products.

2. President Trump's Executive Order on Water

President Donald Trump last month signed an Executive Order (EO) on “Modernizing America’s Water Resource Management and Water Infrastructure.” This historic action ensures Federal coordination on water policy is standard practice now and into the future by formally establishing a Water Subcabinet of senior Federal agency officials to facilitate efficient and effective management and modernization of our water supplies and systems while also eliminating duplication between agencies. The formal establishment of the Water Subcabinet was applauded by the Alliance, which hosted several members of an earlier, more informal version of the Subcabinet at our annual conference last February in Reno (NEVADA). At that event, Aubrey Bettencourt, Deputy to Tim Petty (Assistant Secretary for Water and Science, Department of the Interior), acted as master of ceremonies for a 90-minute discussion, providing Western farmers and ranchers with a first-hand opportunity to see how the highest level water officials from multiple departments in the Trump Administration are coordinating on Western water challenges.

The new Water Subcabinet will be co-chaired by Interior Secretary Bernhardt and Environmental Protection Agency (EPA) Administrator Andrew Wheeler, and will include senior officials from USDA, the Department of Commerce, the Department of Energy, and the Department of the Army (Civil Works). The Water Subcabinet will work in close coordination with senior officials from the White House Council on Environmental Quality (CEQ), the Office of Management and Budget, the Office of Science and Technology Policy, and other federal agencies.

a. Completion of Actions Under the Western Water PM

The President’s EO followed up on a meeting conducted earlier in the month, where CEQ joined the Departments of the Interior, Commerce, Energy, the U.S. Army Corps of Engineers, and EPA in announcing the completion of all actions directed by the October 2018 Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West (Western Water PM). Under President Trump’s earlier directive, agencies coordinated to complete the environmental reviews of major water infrastructure projects in California, Oregon, Washington, Idaho, and Montana, to meet the needs of agricultural communities and other water users within the region. The Alliance’s support for these accomplishments were noted in a Trump Administration press release.

b. Follow-Up Actions to Presidential EO

Following the announcement of the Presidential Executive Order, the National Drought Resilience Partnership (NDRP) staff provided an overview of the NDRP’s role under the EO at the National Integrated Drought Information System Executive Council fall meeting. Established in 2016, the NDRP is an interagency task force responsible for enhancing coordination of federal drought resilience policies and monitoring the implementation of the activities and goals as set out in the Presidential Memorandum that established the partnership. Under the EO, the NDRP will implement the “Priority Actions Supporting Long-Term Drought Resilience” document issued on July 31, 2019. The EO was also a topic of discussion at the Western States Water Council (WSWC)

special session on “Mapping Waters of the United States” (WOTUS). At that session, Interior Assistant Secretary for Water and Science Tim Petty focused specifically on the EO’s directive to improve geospatial mapping collaboratively with States, Tribes and local governments, and the work being done to use available tools for improved water resource forecasting and modeling. Dave Ross, Assistant Administrator for Water at EPA, noted that there are currently no maps delineating federally-regulated waters. He described his vision as eventually producing a map that will identify jurisdictional waters, as well as any associated regulatory data.

3. USDA: Agriculture Innovation Agenda

To further USDA work on the [Agriculture Innovation Agenda \(AIA\)](#), USDA two months ago announced it would seek public- and private-sector input on the most innovative technologies and practices that can be readily deployed across U.S. agriculture. USDA is looking for ready-to-go technologies and practices to achieve its goal of increasing agricultural production by 40% to meet global population needs in 2050 while cutting U.S. agriculture’s environmental footprint in half. To help identify and accelerate adoption of ready-to-go innovations, USDA is currently accepting public comments and written stakeholder input through its [Request for Information](#) (RFI) through November 9, 2020, which is published on the *Federal Register*. USDA emphasizes that input is welcome from the private sector, not for profits, farmers, forest sector, trade associations, commodity boards and others involved in the supply chain or development of widely applicable practices, management approaches or technologies.

The Family Farm Alliance, working with its allies in the Western Agriculture and Conservation Coalition (WACC), is formulating a letter in response to this request, which will address water technology matters, environmental markets, and other issues. Based on stakeholder input from the RFI, USDA will develop a comprehensive U.S. agriculture innovation technology strategy for our customer-facing programs. USDA has launched a new [AIA website](#) where visitors can access information on the latest research and data, innovative conservation technologies offered via USDA programs, and other conservation resources.

4. USDA Natural Resource Conservation Service (NRCS): New EQIP Rule

USDA last month released the final rule for its Environmental Quality Incentives Program (EQIP). The rule updates USDA’s flagship program as directed by the 2018 Farm Bill and integrates feedback from agricultural producers and others. NRCS provides producers with financial resources and one-on-one help to plan and implement conservation practices through EQIP. Popular EQIP practices include cover crops, nutrient management, forest stand improvement, prescribed grazing, irrigation efficiency improvement, and water quality improvement practices. Implementing conservation practices can lead to cleaner water and air, healthier soil, and better wildlife habitat while improving agricultural operations. NRCS received nearly 600 comments on the interim final rule, which was published December 17, 2019. The Family Farm Alliance commented on the proposed rule through its involvement with the Western Agriculture and Conservation Coalition (WACC).

The February 17, 2020 WACC letter raised several issues on the interim-final EQIP rule that were addressed in the final rule:

- The interim-final EQIP rule required that 50% of national EQIP funding be allocated for livestock operations. The WACC letter suggested that final rule clarify that the 50% requirement is a statutory requirement and is not simply a matter of developing funding priorities in individual states. No changes were made to the EQIP text language, but NRCS will consider these comments in its allocation process.
- The WACC letter sought explicit language in the rule regarding grazing on public lands. NRCS responded with an explanation in the rule preface. Regarding publicly-owned land, NRCS considers land to be within applicant's control when: 1) The land is a working component of the producer's operation; 2) The applicant can implement terms of EQIP contract; and 3) Conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified resource concern.
- The WACC sought clarifying language on whether ditch and canal companies are eligible for EQIP. In the preface to the rule, NRCS notes that entities may be eligible if they are semi-public (which can be a private or public entity), meaning they serve a "public purpose".

The final EQIP rule was viewed favorably by the Family Farm Alliance, as well as WACC leaders.

5. Interior Department, Fish and Wildlife Service: Critical Habitat Rule

The Family Farm Alliance last month formally responded to revisions proposed by the U.S. Fish and Wildlife Service (FWS) to regulations for designating critical habitat, under section 4(b)(2) of the Endangered Species Act (ESA). This section directs FWS to consider the impacts of designating critical habitat and permits exclusions of particular areas following a discretionary exclusion analysis.

Implementation of the ESA impacts the management of land and water throughout the West. Given the nature of water storage and delivery, Alliance members are often directly impacted by the implementation of the ESA and other federal laws. The ESA has at times been interpreted to empower federal agencies to take action intended to protect listed species without consideration of the societal costs of such action, even when it is not clear that the action taken will actually yield conservation benefits for the particular species. The Alliance letter provides general support for FWS's revisions to:

- Clarify the scope of economic and other impacts that will be considered;
- To assign weight to impacts and benefits based on the expertise of the exclusion proponent and the recognition that nonbiological impacts are outside of FWS's expertise; and
- To always exclude an area when the benefits of exclusion outweigh the benefits of inclusion unless extinction of the species would result.

The Alliance letter also expressed concerns and noted support for the recommendations outlined in the October 8, 2020 letter submitted to FWS by the National Endangered Species Act Reform Coalition on this matter. California Attorney General Xavier Becerra, co-leading a coalition of blue states, filed a comment letter opposing the FWS proposal. In the comment letter, the coalition of 17 attorneys general argue that FWS's proposal is contrary to the plain language of the ESA and arbitrarily limits its ability to protect endangered or threatened species as required by the Act.

6. U.S. Department of Interior, Bureau of Reclamation: Title Transfers

The Bureau of Reclamation (Reclamation) last month finalized the transfer of the Oakes Test Area to local ownership. This is the third water-related facility transferred under a law signed by President Trump last year. The *John D. Dingell Jr. Conservation, Management and Recreation Act* expedites the title transfer process for eligible projects including diversion dams, canals and other water-related facilities. This latest action conveys full ownership to the Dickey-Sargent Irrigation District in Oakes, North Dakota, after the district paid for the Oakes Test Area facilities and lands. The Oakes Test Area was designed as a 5,000-acre prototype irrigation test area. It includes three pumping plants, a canal, pipelines, laterals, drainage system, wells, roads, an office building and several outbuildings. The Dickey-Sargent Irrigation District will now own and manage these facilities to meet current needs in compliance with all applicable federal, state and local laws under the terms of the title transfer agreement.

The Oakes Test Area title transfer aligns with the Department of the Interior's priorities to work with local water users to stimulate infrastructure investment through local ownership. This authorization saves money for the taxpayers and the federal government while enhancing facility use and increasing flexibility for the irrigation district. Title transfer is an important issue to the Family Farm Alliance. In late 1997, the organization launched an initiative to encourage Congressional action on pending project title transfer legislation. That effort was successful, and ultimately led to the historic transfer of title to the Burley Irrigation District in Idaho two years later. Since then, title to over a dozen other projects and facilities have been transferred to local interests who have paid off construction costs of the project. Early on, approximately 1.2 transfers per year were completed by Reclamation. With the new Interior authority and *Dingell Act* provisions, six transfers will likely be completed in 2020 alone.

7. Reclamation: WaterSMART Grants

Reclamation has released the FY 2020 WaterSMART Grants: Cooperative Watershed Management Program (Phase II). This program provides funding to implement on-the-ground watershed management projects, collaboratively developed by members of a watershed group, that will address critical water supply needs, water quality concerns, and restoration needs, helping water users meet competing demands and avoid conflicts over water. Eligible applicants are established watershed groups, and are located in the Western United States and U.S. territories. In FY 2020, approximately \$2 million is available to support up to \$300,000 per award. Awardees

must also provide 50 percent or more of project costs, and cost share may be made through cash, costs contributed by the applicant, or third-party in-kind contributions. Applications are due November 17, 2020.

The Department of the Interior has also updated the FY21 application deadline for the FY 2021 WaterSMART Grants: Drought Contingency Planning Grants solicitation to January 6, 2021. The program provides funding for planning that when implemented will increase water reliability and improve water management through the use of expanded technologies and improved modeling capabilities. Eligible applicants are states, irrigation districts, and other organizations with water or power delivery authority located in the Western United States. In FY 2021, a maximum amount of \$200,000 in federal funding may be allocated to proposals. The federal share for any projects generally shall not exceed 50 percent of the total costs. For more information, go to <https://www.usbr.gov/drought/planning.html>.

8. Reclamation: National Historic Preservation Act Streamlining

The Family Farm Alliance last month submitted formal comments to Reclamation on its proposed request for National Historic Preservation Act (NHPA) Program Comment for Water Distribution Infrastructure. In 1966, Congress enacted the well-intended NHPA in response to fears that properties with historical significance faced destruction or substantial alternation. It was seen as a means to protect the nation's cultural heritage. Now, it is used by some parties as a tool to impede necessary development.

Our organization represents hundreds of irrigation districts in the West. Many of them routinely encounter the NHPA in the context of their ongoing irrigation maintenance, modernization, and water efficiency efforts. Section 106 compliance can result in repetitive and burdensome processes for water distribution infrastructure that provide minimal historic value, unnecessarily delaying projects that would reduce water transmission losses and increase water efficiency. Section 106 most profoundly impacts irrigation and water districts who interact with federal agencies like Reclamation. Because the identification of sites and the evaluation of effects are collapsed into the same process, opponents of proposed projects can use historic designations as surrogates for other agendas. Essentially, those opposed to change look for eligible sites and use their presence to delay or prevent projects they oppose.

For example, opponents of irrigation district piping in Oregon have attempted to leverage the NHPA to thwart irrigation modernization projects. Central Oregon Irrigation District (COID) and other nearby districts are wrestling with water availability challenges brought on by the Oregon spotted frog, a threatened species. The districts have pursued piping as a more efficient way to divert water for irrigation. Piping opponents (i.e. proponents of the National Register listing for an existing, open canal) submitted voluminous materials to the Oregon State Historic Preservation Office, which were eventually sent on to the National Park Service. This ultimately led to the successful designation of a section on either side of the canal as a “historic district” under the NHPA. The designation led to multiple years of local hearings and subsequent appeals.

Eventually, COID had to undertake a district-wide historic resource analysis of its entire canal system. The effort ultimately resulted in mitigation measures that included leaving some of its canal system open and “protected” from piping.

Our letter expressed support for Reclamation’s proposal to streamline the NHPA Section 106 process through a Program Comment, but we also provided some examples as to why the final Program Comment should be carefully crafted to avoid unintended impacts.

9. COVID Response in Congress

Negotiations over another COVID-19 relief package, mainly between House Democrats and the White House, have not progressed far enough to result in an agreement before tomorrow’s election, according to the parties involved. The Senate in recent weeks failed to advance a \$500 billion "skinny" coronavirus relief bill put forth by Senate Republicans titled, the *Delivering Immediate Relief to America’s Families, Schools and Small Businesses Act*. Within minutes of Majority Leader McConnell’s announcement that the bill would be brought before the Senate, President Trump tweeted, “STIMULUS! Go big or go home!!!,” a message that appeared to be at odds with the Majority Leader’s more conservative approach. The legislation needed 60 votes to move forward but only garnered 51 votes in favor. This bill is identical to the “skinny” relief package the Senate failed to advance on September 10. The legislation contains no additional relief funding for state and local governments; however, the bill does extend the period to utilize Coronavirus Relief Funds from December 30 to September 30, 2021.

Days later, the Senate also failed to advance the *Continuing the Paycheck Protection Program Act*, which would provide \$257.64 billion in funds to support the Paycheck Protection Program (PPP) and PPP Second Draw Loans and makes numerous changes to “improve” the PPP. House Speaker Nancy Pelosi (D-CALIFORNIA) and White House chief of staff Mark Meadows pointed fingers at each other as to the cause of the delay in getting to a deal. Speaker Pelosi and Secretary talked by phone on the day that the Senate approved Supreme Court nominee Amy Coney Barrett about a coronavirus relief deal. But there was still no agreement in hand and both chambers left town, with just one week left before the election. Both parties have said there could be an opening for a pandemic relief bill during the lame-duck session after the election, although the size and timing will be dependent on the outcome. President Trump acknowledged that a deal will not be reached until after Election Day, but he remained optimistic a deal will eventually be secured.

The Senate last month passed the “Continuing Appropriations Act, 2021 and Other Extensions Act” (H.R. 8337), to keep the federal government funded through December 11 at enacted FY2020 levels and avoid a government shutdown. The House passed the bill earlier in the month by a vote of 359-57-1. President Trump signed the bill into law. The Continuing Resolution also includes one-year reauthorizations for programs that would have otherwise lapses at the end of September, including the National Flood Insurance Program and the expiring 2015 FAST Act surface transportation bill.

10. Western Wildfires and Watershed Health

As autumn temperatures dropped and the days become shorter, Western wildland fire activity generally started to diminish, although the Silverado and Blue Ridge Fires in California sparked up late in the month. Below average temperatures will continue in much of the Intermountain West, Plains, and Midwest. However, in Southern California, strong Santa Ana winds have renewed high fire risk. The 12,000-acre Silverado Fire has forced tens of thousands of California residents to evacuate as it grows. The fire is one of fifty – 18 of them in the Golden State - currently burning near 3.5 million acres in the West. This year, fires have so far scorched over 8.5 million acres in the West, over 2 million acres above the average for the past decade.

The Family Farm Alliance is on record for supporting S. 4431, the bipartisan *Emergency Wildfire and Public Safety Act of 2020*, sponsored by Senators Feinstein (D-CA) and Daines (R-MT). This bill would direct the U.S. Forest Service (USFS) to complete three landscape-level, collaborative projects proposed by governors to decrease the risk of wildfire. Eligible activities would include mechanical thinning, slash and ladder fuel reduction and controlled burns utilized to improve wildlife habitat, watershed quality and landscape health. Senator Ron Wyden (D-OREGON) has also introduced a bill that would require the USFS and the Bureau of Land Management to use prescribed fire more frequently to preemptively burn off excess vegetation that can otherwise become fuel for out-of-control conflagrations. Unfortunately, Congress left Washington, D.C. before the election recess without passing any meaningful wildfire prevention legislation. The wildfire problem is unlikely to diminish any time soon, and Western Republicans and Democrats will likely have plenty of opportunities to put forward legislative proposals for addressing what is annually becoming an urgent issue.

The drought has already been a major contributor to record wildfire activity in California and Colorado, and it is expected to continue. More than one-third of the West is in “extreme” or “exceptional” drought, the two most severe categories, according to the federal government’s U.S. Drought Monitor. Climate regions covering California, Nevada, Arizona, Colorado, New Mexico and Utah had record heat and record-low precipitation in the three-month period from July through September, according to NOAA data. This winter is likely to be warmer and drier than average for most of the continental United States, conditions typically associated with a La Niña year. La Niña years do not typically generate historic winter snowstorms like El Niño years do, but they can instead intensify drought conditions.

11. 2021 Annual Conference

The Alliance board of directors is still considering the format that we will employ for our February 2021 annual conference, originally scheduled for the week of President’s Day. Obviously, the COVID-19 situation has generated tremendous uncertainty regarding the 2021 event. The managers of The Row in Reno have developed a comprehensive COVID safety plan that applies to dining, nightlife, and function space safety. Mask wearing is mandatory in public places, except when eating or drinking. There are options available to in-place conferences, including a hybrid

option, where technology allows others to take part from remote locations. There are also live stream options, using the ZOOM platform, which has worked out well for other conferences.

The Mid-Pacific Water Users Conference planning committee, which I've serve on for 20 years, recently made the difficult decision to cancel the January 2021 conference, scheduled for the same facility. This decision was not made lightly or without careful consideration of our options. With the global COVID pandemic, and the uncertainty that surrounds us during this difficult time, the committee feels it is not in the best interest of our attendees to move forward at this time. Many past conference attendees expressed concerns that they do not feel comfortable travelling or attending a large event. Travel restrictions currently in place by Reclamation and other government agencies would prevent their in-person participation. In consideration of these factors, the committee felt that cancelling the conference is the most prudent course of action.

Back to the Alliance conference. Because of the good relationship we have with the Silver Legacy/ Eldorado team, we will not be penalized if we decide to go with a "virtual" event. At our last board meeting, the board appeared inclined to host a "hybrid" event, where those that wanted to make the trip to Reno could participate directly, while those who were concerned about travel could participate remotely, using live stream technology. However, knowing now that it may be difficult to secure direct conference participation by Interior and other government representatives, and because the number of positive COVID cases is spiking in some areas of the country again, we'll continue to monitor things before a final decision will be made. I anticipate that decision will be made later this month.

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.