



MEMORANDUM

TO: SLDWMA BOARD OF DIRECTORS
FROM: DAN KEPPEL, EXECUTIVE DIRECTOR
SUBJECT: EXECUTIVE DIRECTOR'S REPORT
DATE: MAY 30, 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 continued to focus on the buzz of activity surround the federal response to the COVID-19 outbreak. We also continue to work to monitor and engage in water infrastructure legislative efforts in Congress. Some of these issues and other matters important to our members are discussed below.

FEDERAL RESPONSE TO COVID-19 PANDEMIC

Western U.S. agriculture is facing one of its biggest crises since the Great Depression, as the COVID-19 pandemic has impacted markets, disrupted the food supply chain, collapsed commodity prices, and intensified labor challenges. Rural Western economies are staggering from government actions intended to limit the spread of the virus. Unfortunately, these actions have affected the food supply chain in our country and around the globe.

1. Impacts to Western Farmers and Ranchers

The new COVID-19 pandemic has hit the agriculture sector hard in recent months, due primarily to loss of markets, disruptions in the food supply chain, collapse in commodity prices, and labor challenges. The livestock sector has been hit especially hard. Producers began reducing herds when restaurants started to close in late March. With restaurants shuttered amid the coronavirus pandemic, the market is disappearing for sheep, cattle, and pork producers. The beef and pork markets have been further disrupted by the closure of more than a dozen processing plants across North America due to significant COVID-19 outbreaks among workers. Beef processing capacity is currently down by more than 10 percent and pork by as much as 25 percent, industry leaders say. Dairy producers have been dumping millions of gallons of milk over the past month.

On the ground in several Western states, farmers and ranchers must now contend with new regulations intended to limit outbreaks in agricultural fields, orchards, and labor camps. For example, in Washington state, new emergency rules adopted earlier this month regarding temporary farmworker housing are intended to help increase worker safety and reduce the spread of COVID-19. The rules detail specific steps required at farms where temporary workers live in licensed temporary housing facilities. Oregon's Occupational Health and Safety Administration issued a temporary rule April 29 that, among other provisions, requires farms to provide more portable toilets and handwashing stations for workers while keeping beds 6 feet apart in housing units. A survey conducted by the Oregon Farm Bureau indicates the rule could displace thousands of workers from on-farm housing and cost farmers thousands of dollars more to meet all conditions. Oregon Farm Bureau believes many farms will not survive the cumulative weight of these unattainable rules.

2. Trump Administration Actions

President Trump in the past month has directed numerous actions intended to address impacts facing a sector that helped get him into the White House: American agriculture. Earlier this month, he signed Executive Order 13924 ordering federal agencies to roll back or change regulations "that may inhibit economic recovery" in order to boost the economy impacted by the COVID-19 pandemic. The order does not provide specific instructions but is a blanket message across the U.S. government to help the economy recover by easing regulation. Federal agencies have already been implementing the Administration's efforts to deregulate for several years.

a. Strengthening U.S. Food Supply Chain Protections

President Trump in late April invoked the 1950 Defense Production Act and ordered meat processing plants to stay open to protect the nation's food supply. U.S. farmers say they still need importing countries, including China, to buy their pork. The USDA and Food and Drug Administration (FDA) earlier this month announced a Memorandum of Understanding (MOU) to help prevent interruptions at FDA-regulated food facilities, including fruit and vegetable processing. The MOU creates a process for the two agencies to make determinations about circumstances in which the USDA could exercise its authority under the Defense Production Act (DPA) with regard to certain domestic food resource facilities that manufacture, process, pack, or hold foods, as well as to those that grow or harvest food that fall within the FDA's jurisdiction. USDA Secretary Sonny Perdue recently noted that he thinks high food prices will level out as school, restaurants, meatpacking plants and other businesses come back online.

b. Farmers to Families Food Box Program

USDA's Farmers to Families Food Box program is partnering with regional and local distributors whose workforces have been significantly impacted by the closure of many restaurants, hotels, and other food service entities, to purchase \$3 billion in fresh produce, dairy, and meat and deliver

boxes to Americans in need. USDA, through the Farm Service Agency (FSA) is now accepting applications from agricultural producers who have suffered losses. Some in the produce industry have expressed concern that the list of distributors includes unknown entities with no previous connection to the industry and/or no established infrastructure to carry out the contracts they were awarded. Other distributors are already making the program work.

c. Injury Disaster Loan Program for Ag Producers

Agricultural producers, for the first time, are now eligible for the Small Business Administration (SBA)'s Economic Injury Disaster Loan (EIDL) and EIDL Advance programs. SBA's EIDL portal has been closed since April 15. However, the Agency was able to reopen the portal, in a limited capacity, as a result of funding authorized by Congress through the *Paycheck Protection Program and Healthcare Enhancement Act*. The legislation, which was signed into law by the President in late April, provided additional critical funding for farmers and ranchers affected by the pandemic.

d. Direct Payments

Secretary Perdue recently announced details of the USDA's Coronavirus Food Assistance Program (CFAP), which will provide up to \$16 billion in direct payments to deliver relief to America's farmers and ranchers impacted by the coronavirus pandemic. USDA, through the FSA, is now accepting applications from agricultural producers who have suffered losses. CFAP provides vital financial assistance to producers of agricultural commodities who have suffered a five-percent-or-greater price decline due to COVID-19 and face additional significant marketing costs as a result of lower demand, surplus production, and disruptions to shipping patterns and the orderly marketing of commodities.

Farmers and ranchers will receive direct support, drawn from two possible funding sources. The first source of funding is \$9.5 billion in appropriated funding provided in the CARES Act to compensate farmers for losses due to price declines that occurred between mid-January 2020, and mid-April 2020 and provides support for specialty crops for product that had been shipped from the farm between the same time period but subsequently spoiled due to loss of marketing channels. The second funding source uses the Commodity Credit Corporation Charter Act to compensate producers for \$6.5 billion in losses due to on-going market disruptions. USDA's announcement drew praise from some lawmakers and criticism from others. Organizations representing small and first-time farmers said the program's details are geared toward bigger, more successful farms, despite some agency efforts to distribute aid more equitably.

e. Loan Guarantees

Secretary Perdue announced that USDA is making available up to \$1 billion in loan guarantees to help rural businesses meet their working capital needs during the coronavirus pandemic. Additionally, agricultural producers that are not eligible for FSA loans may receive funding under USDA Business & Industry (B&I) CARES Act Program provisions included in the Coronavirus

Aid, Relief, and Economic Security (CARES) Act. B&I CARES Act Program loans must be used as working capital to prevent, prepare for or respond to the effects of the coronavirus pandemic. The loans may be used only to support rural businesses, including agricultural producers, that were in operation on Feb. 15, 2020.

3. Developments in Congress

The House of Representatives earlier this month passed the *HEROES Act* (H.R. 6800), a \$3 trillion coronavirus response package introduced by House Democrats, by a vote of 208-199, with one Republican voting in favor and 14 Democrats voting against. The legislation would provide nearly \$1 trillion in relief for state and local governments, including \$375 million in direct aid to *all* local governments via a new State and Local Coronavirus Relief Fund. The *HEROES Act* would also allow local governments to receive tax credits to cover the cost of providing the paid sick and paid family leave programs mandated by the Families *First Coronavirus Relief Act* and would make lost revenue an eligible use of *CARES Act* Coronavirus Relief Funds. In addition, the legislation includes \$5.5 billion for Lifeline and E-Rate funds to keep low-income households and students connected to high-speed Internet and provides additional funding for these programs.

House Speaker Nancy Pelosi (D-CALIFORNIA) indicated she is open to negotiating the details of the *HEROES Act*, but Senate Republicans are in no rush to approve a fourth coronavirus response package and currently have no plans to introduce their own legislative proposal. Senate GOP Leadership have called the House bill “unserious” and a “Democratic wish list”. Senate Majority Leader Mitch McConnell (R-KY) and the Trump Administration have expressed objections to taking up another COVID-19 relief package right now, saying there has not been enough time since the \$2 trillion *CARES Act* was enacted in March to determine whether new legislation is needed or necessary. Majority Leader McConnell recently said that another relief bill is likely “in the next month or so.”

The House recently returned to Washington, D.C. and is now back in session with new proxy voting rules in place – a first in American history. However, House Republicans are suing Speaker Nancy Pelosi in an attempt to block the voting mechanism. Democrats argue that the proxy system is the only safe way to have hundreds of lawmakers cast votes during the pandemic, with a busy calendar ahead. Over the next few weeks, the House and Senate will likely need to revisit key parts of coronavirus relief programs, which expire in the coming months.

OTHER NEWS

4. Trouble Brewing in the Klamath Basin

This month marks the 115th anniversary of the authorization of the Klamath Project under the National Reclamation Act, which was adopted to promote western settlement and feed a hungry nation and world. The Project incorporated and borrowed from the plans of visionaries in the 19th and early 20th centuries, and went on to support hardy settlers and homesteaders who built the

communities that carry on today. Unfortunately, Project irrigators – like Central Valley Project water users - are saddled with a severe lack of irrigation water, cruel uncertainty, and COVID-19 impacts on themselves, the workforce, and markets. They are chastised and regulated based on frightening misunderstandings of who they are and what they do.

Things are looking grim for local irrigators, who will likely received less than a third of their surface water supplies out of Upper Klamath Lake. The Klamath Water Users Association (KWUA) has been working with the Bureau of Reclamation (Reclamation) and U.S. Department of Agriculture (USDA) with the hopes of bringing more USDA resources to the situation, which is looking dire due to the combination of poor hydrology and a highly criticized biological opinion that guides Klamath Project operations. Reclamation officials are working toward a significantly reduced version of the April 1 140,000-acre-foot allocation with the Klamath and Yurok Tribes as well as agricultural producers in the Klamath Project in light of an extremely dry May 1 forecast released by National Resources Conservation Service .

KWUA and Reclamation received some good news earlier this month when a federal judge in San Francisco sided with local water users and the federal government. Judge William Orrick of the U.S. Court for the Northern District of California indicated that he would deny an emergency motion filed a week earlier by the Yurok Tribe and environmental organizations. The Yurok Tribe filed a case under the Endangered Species Act (ESA) last July. The parties agreed to stay the case in March 2020 after Reclamation agreed to an Interim Operating Plan for the Klamath Project to be applicable until September 2022. Those parties also asked the Court for a temporary restraining order to require Reclamation to release an additional 391 cubic feet per second for flows below Iron Gate Dam. Judge Orrick concluded the hearing by indicating he will deny the Yurok Tribe's motion to lift the stay and will not reach the motion for a temporary restraining order.

The “Shutdown & Fed Up Taking a Stand for Ag” protest took place Friday in Klamath County, where farmers and ranchers stood up for what they believe is an injustice to their way of life. The event was broken into two parts, a motorcade, and a rally. The 20-mile long motorcade of 2,500 tractors, trucks, pickups, semis, and various farm equipment started in Merrill before progressing to downtown Klamath Falls and ending at the rally site in Midland. Several farmers and elected officials spoke at the event, including Congressman Doug LaMalfa (R-CALIFORNIA), Congressman Greg Walden (R-OREGON), and Assemblywoman Megan Dahle (CALIFORNIA). Event organizers put together an amazing website: <https://shutdownfedup.org>. Local water leaders are hopeful that the event will renew attention from decision-makers committed to solve problems rationally and relieve the burdens on rural communities.

5. Bureau of Reclamation Update

The Department of the Interior earlier this month released the FY 2021 WaterSMART Grants: Drought Response Program Drought Resiliency Project Grants program. The program supports a proactive approach to drought by assisting water managers to: develop and update comprehensive

drought plans and implement projects that will build long-term resiliency to drought. Eligible applicants are states, tribes, irrigation districts, water districts, and other organizations with water or power delivery authority located in the Western United States. In FY21, approximately \$2.9 million is available to support 10-15 cooperative agreements through this program. Awards are provided through two separate funding groups:

- Group I: Up to \$300,000 will be available for projects generally completed within two years; and
- Group II: Up to \$750,000 will be available for projects completed within three years and funded on an annual basis, contingent upon future appropriations.

Applicants must provide nonfederal cost share of 50 percent or more of project costs using cash or in-kind contributions.

In other Reclamation news, Commissioner Brenda Burman recently named Chris Beardsley as director, policy and programs. Mr. Beardsley will be responsible specifically for the planning and execution of the following divisions: Security, Safety and Emergency Management, Environmental Compliance, Reclamation Law Administration, and Design, Estimating and Construction Oversight. Commissioner Burman also named Dr. David Raff as Reclamation's Chief Engineer. Out of use for several decades, Reclamation has created this historic position for the 21st Century. As the Chief Engineer, Dr. Raff will direct Reclamation's engineering and scientific programs in Technical Services, Dam Safety and Infrastructure, Hydropower, Research and Development, and Water Planning.

6. Clean Water Act “Waters of the U.S.” Litigation

Groups spanning the range of the political spectrum are lining up to take the Trump Administration to task over the recently published final version of the Navigable Waters Protection Rule. This rule, published by the Administration in April, is intended to clarify what constitutes “waters of the U.S.” (or, WOTUS) under the federal Clean Water Act (CWA). It provides a new definition of what marshes, wetlands and streams qualify for protections under the CWA. The rule now faces legal challenges from environmental groups, conservative interests, and property rights advocates. The lawsuits are scattered across federal district courts throughout the country.

In April, a group of 17 Democrat-led states and several environmental organizations sued the Administration over their newly finalized rule. The case was filed in the U.S. District Court for the District of Massachusetts. The Southern Environmental Law Center also led a challenge in the U.S. District Court for the District of South Carolina. The States claim violations of the Administrative Procedures Act including: (1) the interpretation of WOTUS is impermissible; (2) the rule disregards scientific evidence, prior factual findings, and policy and practice; and (3) the rule fails to consider statutory objectives and the impact on water quality. The States request that the court vacate the rule as “arbitrary, capricious, and not in accordance with law.” The State

coalition earlier this month asked the U.S. District Court for the Northern District of California to block the new rule while they battle with government lawyers over its legality. The coalition argues that the rule should be put on hold pending the court's decision on the coalition's lawsuit in order to prevent widespread harm to national water quality and to avoid disruption to state and local water pollution control programs. The rule goes into effect on June 22.

Meanwhile, the New Mexico Cattlemen's Association – represented by the Pacific Legal Foundation (PLF) - is also targeting the new WOTUS, but for different reasons. The group originally filed a lawsuit in November 2019 challenging an earlier 1986 CWA regulation. When the Trump EPA finalized a repeal of the 2015 rule, the repeal reverted back to the 1986 rule until the most recent rewrite was completed. The amended lawsuit alleges the 1986 and 2020 rules are “arbitrary and capricious”.

Democrats in Congress are also looking for ways to prohibit the implementation of the new Navigable Waters Protection Rule. House Transportation and Infrastructure Chairman Peter DeFazio (D-OREGON), and Representative Grace Napolitano (D-CALIFORNIA), earlier this month introduced the *Clean Water for All Act*. The bill specifically would prevent EPA and the Corps of Engineers from implementing the new rule, and no later than two years from the enactment of the act requires the agencies to promulgate a new rule-making defining WOTUS.

7. Water Infrastructure Developments in Congress

House Majority Leader Steny Hoyer (D-MD) recently said that House Democrats will focus this summer on passing essential legislation, including the Water Resources Development Act (WRDA), the surface transportation reauthorization bill, the FY2021 National Defense Authorization Act, and the twelve FY2021 Appropriations bills. As far as infrastructure goes, Democrats earlier this year released a framework for infrastructure efforts, and the Transportation and Infrastructure (T&I) Committee is poised to release their version of a Water Resource Development Act (WRDA) soon. The focus of the House WRDA will be solely on the civil works mission of the Corps, including navigation, flood damage reduction, hurricane and storm damage reduction, shoreline protection, and ecosystem restoration. Congress has made it a priority to pass a WRDA bill every two years, with a Senate version of a WRDA bill (the America's Water Infrastructure Act (AWIA)) already approved by the Environment and Public Works (EPW) Committee for a future Senate floor vote.

Family Farm Alliance President Patrick O'Toole in September 2019 testified before the EPW Committee, which held a brainstorming hearing on ideas for the 2020 WRDA. The Alliance developed a comment letter that was transmitted to the EPW Committee before this month's markup. The gist of our comments focuses on the absence of a Reclamation title in the draft AWIA. We would like to see such a title, and our letter reiterates that key point.

In other water legislation-related news, Rep. T.J. Cox (D-CALIFORNIA) led seven of his

colleagues in sending a letter to House leadership calling for any COVID-19 infrastructure stimulus package to include Reclamation infrastructure. The Alliance - working with the California Farm Bureau and Western Growers Association – last month sent similar letters to Congress and the White House, urging that aging Western water infrastructure be addressed as further measures are considered to help the U.S. economy recover from the ongoing coronavirus crisis. The letters were signed on to by over 150 Western water and agricultural interests.

Elsewhere, Senator Dianne Feinstein (D-CALIFORNIA) earlier this month introduced the *Restoration of Essential Conveyance Act*, a bill to authorize \$800 million in federal funding to repair critical canals –including the Friant-Kern and Delta-Mendota Canals in the San Joaquin Valley damaged by land sinking from over pumping of groundwater and for environmental restoration. If the canals are not restored to their original capacity, 20 percent of the farmland – approximately 1 million acres – might have to be retired in a region that produces \$36 billion in crops annually, including a third of the nation’s produce. Representatives Jim Costa and TJ Cox (both D-CALIFORNIA) have introduced similar legislation in the House.

8. Judge Allows ESA Challenge While Dismissing Another

California, New York and more than a dozen other states along with seven conservation groups challenged the Trump Administration rules issued in August 2018 over how the federal Endangered Species Act (ESA) will be implemented, claiming the new rules would fundamentally weaken species protections and have far-reaching impacts. A federal judge kept the states’ challenge alive while dismissing a similar lawsuit from the conservation groups. The 2018 rules would, among other things, reshape how species are identified for listing and critical habitat is determined. The Family Farm Alliance, working with a team of Western attorneys, developed detailed comments for the Interior Department to consider as this rule was finalized.

9. EPA Updates Nutrient Guidelines

EPA has issued its first update in almost 20 years to the country’s water quality criteria recommendations for nutrients in lakes and reservoirs. The draft [recommendations](#) provide models of total nitrogen and phosphorus concentrations in lakes and reservoirs to protect aquatic life, recreation and drinking water. EPA is taking public comment on the recommendations for the next 60 days.

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 541-892-6244 or dan@familyfarmalliance.org if you would like further information about what the Alliance is doing to protect water for Western irrigated agriculture.