



MEMORANDUM

TO: SLDWMA BOARD OF DIRECTORS
FROM: DAN KEPPEL, EXECUTIVE DIRECTOR
SUBJECT: EXECUTIVE DIRECTOR'S REPORT
DATE: MAY 4, 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 primarily on the buzz of activity surround the federal response to the COVID-19 outbreak. We also continue to track several critical rulemaking efforts driven by the Trump Administration. Some of these issues and other matters important to our members are discussed below.

FEDERAL RESPONSE TO COVID-19 PANDEMIC

Family Farm Alliance representatives in the past month have briefed Congressional staff and participated in a COVID-19 ZOOM meeting with Idaho Governor Brad Little on how the virus has impacted Western irrigators on the ground. Western agriculture has been hard hit in the past two months, due primarily to loss of markets, disruptions in the food supply chain, collapse in commodity prices, and labor challenges.

The coronavirus was first detected in Wuhan, China on December 31, 2019. The first case was reported in the U.S. on January 30, 2020. Currently, more than 67,000 deaths and over 1.1 million cases have been confirmed in the U.S., according to Johns Hopkins University. Globally, over 3.5 million people have caught the virus and it has killed nearly 250,000. Over 26 million Americans are currently out of work.

Countries around the world are working to “flatten the curve” of the coronavirus pandemic. Flattening the curve involves reducing the number of new COVID-19 cases from one day to the next. This helps prevent healthcare systems from becoming overwhelmed. In the U.S. and many other countries, the number of new cases confirmed each day is on a downward trend.

1. Changing Markets

As noted by *Politico*, the coronavirus pandemic has caused a “tidal shift” in consumer behavior, with restaurants shuttered and shoppers flocking to grocery stores instead. Farmers and food suppliers are maneuvering to meet the shifting demand, while regulators try to tackle the logistical challenges caused by a disrupted food distribution network. Farmers that deliver to consumers are a small piece of local ag markets, which could lose nearly \$700 million in sales from March to May, according to estimates by agricultural economists. For some farmers who have sold food to restaurants and school cafeterias, it will prove difficult to recover from the lost business. Farmers are disking under lettuce, being forced to let crops rot, and dumping milk while food bank demand skyrockets. USDA has pledged to buy surplus commodities, including dairy and meat.

2. Supply Chain Disruptions

Throughout the country, shoppers have been greeted by temporarily empty shelves at some stores, but this was initially driven by extraordinarily high demand and not a lack of food supply. However, some experts predict global food prices to escalate due to risks up and down the supply chain. The United Nations Food and Agriculture Organization says it expects disruptions in food supply to continue into May. Major agricultural facilities are temporarily shutting down operations. Some port terminals, truck stops, and other important shipping hubs have been temporarily closed because of virus outbreak among employees. Meat packagers around the country are at less than full capacity because of virus outbreaks. Smithfield Foods last month “closed until further notice” its pork processing plant in Sioux Falls, (SOUTH DAKOTA), one of the largest in the country. A Greely (COLORADO) beef packing plant also shut down.

This reduced processing capacity could ultimately put an even bigger dent in the U.S. meat supply. The cattle market has crashed hard, and cattle ranchers early on in the pandemic sent a letter to the president asking for “emergency measures” to keep livestock producers afloat. Many farmers and ranchers have nowhere to send their animals. Meatpacking plants are now just reopening, or preparing to do so, following President Trump’s executive order to keep the industry operating despite the infection breakout at slaughterhouses across the country. Meanwhile, as farmers deal with supply chain disruptions, drought conditions in California and parts of the Southwest are generating additional challenges for some farmers and ranchers to find water or bring their livestock to a water source.

3. Farm and Ranch Labor Challenges

President Trump last month signed an executive order to temporarily halt most green cards, which allow one to live and work permanently in the U.S. However, the administration is providing flexibility to employers of seasonal agricultural guestworkers on H-2A visas, who make up about 10% of farmworkers. The Department of Homeland Security (DHS), with the support of USDA, earlier announced a temporary final rule to change certain H-2A requirements to help U.S. agricultural employers avoid disruptions in lawful agricultural-related employment and protect the nation’s food supply chain. Under the temporary final rule, employers of H-2A workers can petition to employ foreign workers currently in the U.S. on H-2A visas. Those H-2A workers also

will be allowed to stay in the U.S. beyond the current three-year limit.

4. Trump Administration Response

Agriculture Secretary Perdue last month unveiled a one-stop-shop of federal programs that can be used by rural communities, organizations and individuals impacted by the COVID-19 pandemic. This resource guide is intended to help rural leaders understand what federal assistance is available for their communities during this unprecedented time. President Trump and Secretary Perdue also recently rolled out their plan to directly pay farmers based on their market losses and to buy up commodities and redistribute them to food banks. It appears that cattle, dairy and hog farmers will get \$9.5 billion in aid, with the rest divided among row crops, specialty crops and “other” crops. Producers will be compensated for 85 percent of their price losses that occurred from Jan. 1 through April 15, plus 30 percent of their expected losses from April 15 through the next two quarters. Although there is an additional \$14 billion of USDA spending authority coming in July, many believe more money will be needed.

5. “Essential Workers”

The Trump Administration has classified 16 industries as "critical" to the nation's response to the new coronavirus pandemic. Employees in the designated industries must maintain their usual work schedules to assist with the local and federal response to the pandemic, even as other employees across the country alter their schedules or shift to telework. The industries were identified in the March 19, 2020 DHS memorandum titled, "Guidance on the Essential Critical Infrastructure Workforce." The list of industries includes food and agriculture, water, wastewater, law enforcement, and public works, among others. Irrigation districts and other entities that deliver water to farmers and ranchers were not specifically called out in the DHS list, but we assumed it was implied. Over the past two months, we have worked to get confirmation that irrigation employees are determined critical and would be exempt from ‘shelter in place’ rules.

The Alliance and its allies in Washington, D.C. contacted senior officials at the White House, Interior and Agriculture Department, urging that irrigation employees be specifically treated as "essential" in this guidance. Deputy Commissioner of Reclamation David Palumbo earlier this month issued a letter stating that local operators of Reclamation water and power facilities are "essential employees", and are "free to travel to perform their official water and/or power related duties without regard to any quarantine, shelter-in-place, or other local restriction". Alliance members in the West have also urged their state and federal delegations regarding the importance of irrigation districts operations during the COVID-19 public health emergency. They have been successful in states like Idaho, New Mexico, and Washington.

The general consensus amongst federal policy makers in Washington, D.C. for some time appeared to be that the March 19th DHS memo implied that the water delivery industry would be considered a part of the essential infrastructure workforce. However that connection was not truly formally clarified until DHS’s March 28 version of the “essential workers” list, which included "irrigation infrastructure workers". Many other organizations – National Water Resources Association, Farm

Bureau, Western Growers Association, and others - have been working on this issue as well, so it appears that the overall effort has finally borne fruit.

Mark Limbaugh, the Alliance's representative in Washington, D.C. and I participated in a ZOOM briefing last month hosted by the Idaho Water Users Association, where this issue and others were discussed with Idaho Governor Brad Little. Topics included a state update from the governor, a federal update from Mr. Limbaugh, a discussion of impacts to agriculture from a panel that included your truly, and water user responses to the virus and a recent earthquake that shook parts of the state. You can listen to the recording of the call at <http://iwua.org>

6. Capitol Hill Response

Last month, President Trump signed the \$484 billion *Paycheck Protection Program and Health Care Enhancement Act* (P.L. 116-139), Congress's fourth piece of legislation to respond to the COVID-19 pandemic. The legislation includes an additional \$310 billion in funding for the U.S. Small Business Administration's (SBA) Paycheck Protection Program (PPP); \$75 billion to reimburse hospitals and health care providers for health care related expenses or lost revenues attributable to COVID-19; \$25 billion for COVID-19 testing; and \$60 billion for the SBA's Emergency Economic Injury Disaster Loans (EIDL) and grants program. In addition to adding farmers/ranchers to the PPP program, ag entities with 500 or less employees are now specifically eligible for the SBA EIDL program. The bill also includes a requirement for the U.S. Department of Health and Human Services to submit a COVID-19 strategic testing plan to Congress.

One of the new coronavirus-related response laws is the *Families First Coronavirus Response Act* (P.L. 116-127), the second coronavirus relief package. It featured a dramatic expansion of the food safety net, along with other measures to respond to the worsening pandemic and economic slowdown. Unfortunately, when Congress passes a bill quickly, unintended consequences can pop up later. Under this new law, irrigation districts – along with most other American employers - are required to provide up to 80 hours of paid sick leave and additional extended benefits to employees who are affected by COVID-19. Irrigation districts, which are generally political subdivisions of the States, do not qualify for any of the reimbursement allowances or tax credits related to this new federal mandate. Districts generally do not rely on taxpayer dollars to fund their budgets, and instead, rely solely on assessments to farmers. So, this new legislation imposes an unfair and likely improper unfunded mandate on districts, that, if not corrected by Congress, will cause the districts to resort to raising farmer rates to make up any budgetary shortfall. Mr. Limbaugh and his team at The Ferguson Group are working with national local government associations to try to fix this problem in future COVID-19 legislation.

President Trump also signed into law the third COVID-19 piece of legislation - the largest stimulus package in U.S. history. The CARES Act is a \$2 trillion emergency package intended to stave off total economic collapse in the wake of the coronavirus crisis. The CARES Act also has many problems that need to be fixed, unfortunately. It provides direct payment to middle- and low-class taxpayers and direct aid to states and large municipalities. A paycheck protection program provides

very low-interest loans that can be forgiven. The Alliance last month signed on as a supporter to a bipartisan “Dear Colleague” letter penned by Representative TJ Cox (D-CALIFORNIA), urging House and Senate leadership to make state and local governments eligible for emergency paid family and sick leave payroll tax credits.

7. COVID-19 Relief Package #5

The Senate is back in session today, and negotiating a new coronavirus response package is the top priority. The Administration and lawmakers are posturing ahead of a possible new round of coronavirus relief. President Trump said any new relief – including infrastructure legislation – must include payroll tax reductions. Treasury Secretary Mnuchin on Monday [said](#) bipartisan discussions are underway over whether more government relief funding is needed. GOP senators signaled they do not expect a quick agreement as they work to fine tune the implementation of the \$2.2 trillion coronavirus package passed in late March, although Sen. McConnell’s office said senators may also hold floor votes this week on “mission-critical Covid-19 nominees” as well as national security-related nominees. Meanwhile, five Republican Senators sent a [letter](#) to President Trump noting support for funding for frontline workers but noting “we cannot allow states and localities to get a blank check from American taxpayers to fund areas of their budget that have nothing to do with the Coronavirus.”

House Speaker Nancy Pelosi said Democrats will push for almost \$1 trillion in the next coronavirus relief package to assist states and local governments that have been hit hard by the pandemic. The House may return as soon as May 11 to consider new legislation. Reps. Rose DeLauro (D-CT) and Collin Peterson (D-MN), former USDA Secretaries Tom Vilsack and Dan Glickman, and Chef Jose Andres, announced a [comprehensive action plan](#) to safeguard America’s food supply during the COVID-19 pandemic. The plan, which was sent to USDA Secretary Sonny Perdue, includes steps that USDA should take to divert surplus food from being wasted, protect food supply workers, and assist agricultural operations. The next round of legislation could include ways to increase and expand USDA’ direct aid to farmers and ranchers. However, there is growing debate over how many strings should be attached to this new funding. Infrastructure, including boosting cellular technology and broadband access, could also make it into the package, though lawmakers have never agreed with President Trump on how to pay for it.

8. More Infrastructure Spending on the Horizon?

Infrastructure spending may be an area of potential agreement between Capitol Hill and the White House as approving surface transportation and water infrastructure authorization legislation this year remains a priority for both parties. Discussions continue about providing additional aid to state and local governments in the next package, but bipartisan agreement has not been reached on whether or how much aid should be provided. President Trump has also encouraged Congress to pass a \$2 trillion infrastructure bill as part of coronavirus legislation.

10. Family Farm Alliance Engagement

The Alliance and its allies believe that some sort of infrastructure bill is going to move in the coming months, be it through COVID-19 stimulus legislation, or through traditional vehicles like the Water Resources Development Act or appropriations negotiations. We have already teed this issue up with Congressional leaders, Western Members of Congress, and key water committees. Basically, our ask is - if an infrastructure stimulus package is being considered, please make sure that ag water infrastructure is also considered."

The Alliance - working with the California Farm Bureau Federation and Western Growers Association – earlier this month sent 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. Recent media coverage included [this article](#) in the Denver Post and [AgInfo.net](#) radio interviews I did on [April 22](#) and [April 23](#). Many thanks to our friends at Ag Net West, California Ag Today, California Agricultural Irrigation Association, California Farm Water Coalition, California Farm Bureau Federation, Columbia Basin Development League, Western Growers Association, WaterReuse Association, Wine News Fetch and others for posting our [4/20/20 press release](#) on their websites or in their newsletters.

OTHER NEWS

11. Public Outreach in California

The Alliance has been working with its allies in the Golden State to coordinate messaging on federal water decisions and other water and ag-related matters. We worked with California Farm Bureau Federation and California Farm Water Coalition to developed [a letter](#) that was sent to Governor Newsom on Friday. Copies were sent to every state legislator, as well as the California congressional delegation, and key water and ag committees in the House and the Senate. The letter was signed by over 75 prominent California agricultural organizations, county farm bureaus, and farmers, who requested that Gov. Newsom take the necessary steps to help secure next year's food supply. The parties urged the governor to direct state agencies and departments to find ways to maximize water supplies for farmers this year, until such time that we can normalize the food supply chain from farmer to grocery store shelf. The letter also recommends specific actions regarding state and federal stimulus efforts to ensure they address the water supply infrastructure that serves California's farmers and supports the future of our food supply. Our ag water coalition letter was featured as the [lead story](#) in this morning's Agri-Pulse West Daybreak email.

12. United States Supreme Court Unveils New Test on Scope of Clean Water Act

The Supreme Court has issued an opinion in the high-profile case *County of Maui v. Hawai'i Wildlife Fund*, finding middle ground. The dispute is over whether a Hawaii county should have secured federal permits for a wastewater injection facility that released pollutants into groundwater

that later reached the Pacific Ocean. The 6-3 opinion creates a new test on the scope of the Clean Water Act (CWA), adopting a test written by Justice Steven Breyer requiring a permit when there is a direct discharge of pollutants from a point source into navigable waters or when there is the "functional equivalent of a direct discharge." Justice Brett Kavanaugh joined the majority but wrote a separate concurring opinion. The majority concedes that the "functional equivalent" test "does not present as clear a line" as the interpretations offered by any of the parties in the case or EPA itself, but invites lower courts to interpret and refine it through future rulings. Justice Clarence Thomas and Samuel Alito wrote dissenting opinions. Justice Gorsuch joined Thomas' dissent. In a remand, the Justices instructed the 9th U.S. Circuit Court of Appeals to revisit its determination that Maui County's Lahaina Wastewater Reclamation Facility was subject to CWA permitting requirements because the pollution in the ocean was "fairly traceable" to the facility's wells.

The Court's decision does not provide a clear answer for when discharges through groundwater require a permit. It does, however, establish a national standard. The "functional equivalent" test is the third standard that has been applied in the *Maui* case. At the District Court level, the court held that a discharge to groundwater would require a permit if the groundwater acted as conduit and conveyed the discharge to surface waters. The 9th Circuit held that a discharge would require a permit if it were fairly traceable to the original point source. Other Circuits adopted alternative standards. "Functional equivalent" is now the law nationally, although the new standard still leaves an open question about individual discharges.

This case has been a closely watched dispute over whether pollutants that travel through groundwater on their way to federally regulated water bodies are subject to CWA permitting. The Alliance was part of a group of eight national agriculture organizations that joined in an *amicus curiae* ("friend of the court") brief that was transmitted to the Supreme Court in May 2019. Our amicus effort was intended to protect routine agricultural operations from a potentially limitless expansion of the CWA National Pollution Discharge Elimination System Program. The amicus effort was a worthwhile endeavor that produced a very well-written brief. One thing is for sure, however. More lawsuits will follow, especially where there is any kind of federal nexus involved.

13. Alliance Joins California Groups on Critical Habitat Letter

The Alliance last week transmitted a formal comment letter to the U.S. Fish and Wildlife Service (FWS) on a proposed rule to revise the designation of critical habitat for the western distinct population segment of the yellow-billed cuckoo under the federal Endangered Species Act (ESA). The letter was a joint effort of the Alliance, California Farm Bureau Federation, and California Central Valley Flood Control Association. The California organizations worked with the Alliance to join together on one letter, since this proposal would have major implications for farming and water management in many parts of that state.

The initial October 3, 2013 Federal Register Notice of the proposed rule noted that the geographical breeding range of the yellow-billed cuckoo in western North America included suitable habitat areas west of the crest of the Rocky Mountains in the United States including the upper and middle Rio Grande, the Colorado River Basin, the Sacramento and San Joaquin River

systems, and the Columbia River system. FWS now proposes to designate approximately 493,665 acres as occupied critical habitat, comprised of 72 units in the States of Arizona, California, Colorado, Idaho, New Mexico, Texas, and Utah. While the original proposed footprint has been diminished, still, these areas envelop the core of the membership of our organization, particularly in California. So, the proposed cuckoo critical habitat issue has been on the screen of the Alliance for much of the past decade.

The coalition letter argues that an affirmative decision on the pending delisting could moot the need for a critical habitat designation entirely. At the very least, the status review required for a delisting determination could warrant a reevaluation of any eventual critical habitat designation thereafter. Even if FWS does not reach a delisting determination before its deadline to finalize its rule, the coalition letter believes that the present extraordinary COVID-19 situation could certainly justify an extension of FWS's deadline in court. In any case, the letter urges FWS to share and closely coordinate its Conservation Strategy in connection with relevant state, regional, and local conservation efforts on the ground, both before and after any final critical habitat designation. In closing, the coalition letter requests that FWS temporarily hold or withdraw its rule, pending a determination on a statutorily required delisting petition. The letter recommends that, in the meantime, FWS simultaneously devise a process to properly vet and achieve greater stakeholder input and collaborative participation. We believe this will lead to a revised and strengthened, region-specific Conservation Strategy.

14. Senate EPW Committee Releases Draft Bills

The Senate Environment and Public Works (EPW) Committee has released two draft water resource development bills, the [*America's Water Infrastructure Act of 2020*](#) (“AWIA”) and the [*Drinking Water Infrastructure Act of 2020*](#), that are expected to draw bipartisan support, given they include water projects large and small located in virtually every congressional district. The draft Senate "AWIA" bill includes roughly \$17 billion in new federal project authorizations for the Army Corps of Engineers. Recall that Alliance President Patrick O’Toole in September 2019 testified before the EPW Committee, which is shepherding 2020 Water Resources Development Act efforts in the Senate. We learned last week that EPW Committee will be marking up these bills this coming Wednesday, so we developed a comment letter - along with Pat's testimony from last September - and got it to EPW just in the nick of time, before the comment period ended at 4:00 p.m. Eastern today. 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.

Already today, there has been lots of buzz in Washington about water legislation. The AWIA bill could ultimately be one of the engines that includes provisions beneficial to Western water users. Several Western members – including Reps. Costa, Cox and Harder (CALIFORNIA) and Newhouse (WASHINGTON) all have water bills they are pushing that they would like to be included in a broader water or infrastructure package.

15. USDA Natural Resources Conservation Service (NRCS)

NRCS is looking for input on how it administers the Regional Conservation Partnership Program (RCPP), reflecting changes to the program made by the 2018 Farm Bill. The RCPP “enhances conservation and promotes coordination between NRCS and its partners to help producers and landowners increase the restoration and sustainable use of soil, water, and wildlife on a regional or watershed scale.” The RCPP’s purpose has been expanded to include the protection of drinking water and groundwater on eligible land, and eligible partners now include acequias and conservation districts. We are again working with the WACC – which had a huge influence on the 2018 Farm Bill RCPP provisions – to develop a comment letter.

In related news, the WACC is also working on a public relations effort to help publicize projects that benefit farmers, ranchers, and the environment. The WACC last month discussed selecting projects based on those programs that we want to prioritize supporting in DC, as well as a bottom up strategy of highlighting those projects in which we have the best collaborative partnerships. Right now, we are discussing which projects we want to highlight, where they are and what partners are involved. We also reiterated the importance of making sure we represent the diversity of interests our coalition represents.

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.