

**Testimony of Patrick O'Toole
President
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**Before the Committee on Agriculture
Subcommittee on Conservation and Forestry
United States House of Representatives**

**Oversight Hearing
Focus on the Farm Economy:
Impacts of Environmental Regulations and Voluntary Conservation Solutions**

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Good morning Chairman Thompson, Ranking Member Lujan Grisham and Members of the Subcommittee.

My name is Patrick O'Toole, and on behalf of the Family Farm Alliance (Alliance), I thank you for this opportunity to present this testimony on the impacts to Western irrigated agriculture of federal environmental regulations and the potential for voluntary conservation solutions. The Alliance is a grassroots organization of family farmers, ranchers, irrigation districts, and allied industries in 16 Western states. The Alliance is focused on one mission: To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. We are also committed to the fundamental proposition that Western irrigated agriculture must be preserved and protected for a host of economic, sociological, environmental, and national security reasons – many of which are often overlooked in the context of other national policy decisions.

Our family prides itself on incorporating conservation practices within our ranching operation. Our ranch, the Ladder Ranch, was the 2014 Wyoming Stock Growers/Sand County Foundation Leopold Award winner in recognition of the importance we place upon maintaining and improving natural resources, all the while operating a viable ranching business. Our family, like many, are descendants of folks who headed West in response to President Lincoln's charge and the Homestead Act.

There are many critical issues that the Western family farmers and ranchers we represent are confronted with at this time. At the top of the list is the daunting number of federal regulatory policy initiatives that are facing Western agricultural producers. These types of federal water resources actions and regulatory practices could potentially undermine the economic foundations of rural communities in the arid West by making farming and ranching increasingly more difficult. American family farmers and ranchers for generations have grown food and fiber for the world, and we will have to muster even more innovation to meet this critical challenge. That innovation must be encouraged rather than stifled with new federal regulations and uncertainty over the water supplies and basic operations for irrigated farms and ranches in the rural West.

My testimony will provide some background describing the unique nature of Western agriculture and water, and will summarize key concerns we have with just a small sampling of the administrative regulatory proposals we are grappling with. Since the mission of the Family Farm

Alliance is water-focused, our emphasis in this testimony will similarly place more attention on those regulations that can impact water use for Western farmers and ranchers. However, this testimony is also intended to demonstrate the conservation and open-space benefits provided by Western farms and ranches, and also to investigate the unique opportunities to advance further voluntary, grassroots-driven conservation efforts in those areas.

I. THE UNIQUE NATURE OF WESTERN AGRICULTURE

It is critical to understand the wide variety of types of Western agriculture (defined as those activities occurring west of the 100th meridian¹ where rainfall is generally below 20 inches per year) and the unique nature of Western agricultural challenges. Vast differences exist between the circumstances faced by Western producers and their counterparts in the Eastern, Southern and Midwestern regions. These primarily derive from three drivers that have tremendous impacts on Western farmers and ranchers: (1) the large amount of federally-owned lands in the West; (2) explosive population growth in recent decades (expected to continue into the future); and (3) the recent rapid and proposed development of energy resources.

The unique nature of the West presents challenges and opportunities to find creative solutions. Western food and fiber producers face many core challenges today, including:

- Attempting to align agricultural and food production with improved environmental outcomes;
- Seeking ways to find common ground with the urban public; and
- Water scarcity and competition with other demands, including growing water needs for expanding energy development. Regulatory challenges, climate change and an aging water infrastructure complicate efforts to find meaningful long-term solutions.

This testimony seeks to provide perspective on these matters and offers specific recommendations in several areas important to Western agriculture: water supply, conservation of biological diversity and nature resources, and immigration policy. It also offers reflections on the future role of the federal government. One of the defining principles underscored in this testimony is that policymakers need to change the model from “top-down” federal management to an emphasis on partnerships among private, public and non-governmental interests in order to take care of landscapes and produce food.

The recommendations proposed here can help keep Western agriculture productive and profitable, which promotes sound communities, viable economies and healthy landscapes in the West. Good policies will drive the programs and activities that lead to great public investments. These will pay for themselves over and over and demonstrate positive long-term impacts.

¹ Source: Intermountain West Joint Venture. 2013 Implementation Plan – Strengthening Science and Partnerships. Intermountain West Joint Venture, Missoula, MT

II. WESTERN WATER REGULATORY CONCERNS

A. Overview

Water is the key to economic, social and environmental prosperity in the American West. Food security is as vital to our homeland security as other national security concerns, and the certainty and stability of the production of food and fiber on Western irrigated lands is critical to our nation's and the world's ability to feed a growing human population. As the West's population has grown, water issues have become increasingly important - and polarized. Growing urbanization has led to increased public demand for available water supplies to provide recreational and environmental benefits. This places heavy demands on Western water supplies, which were historically developed and continue to be relied upon for the production of agricultural goods.

Contributing to the loss of productive agricultural land in the Western United States is growing competition to secure agricultural water rights--some of the most senior water rights in the West--to meet growing municipal, energy and environmental demands. In essence, agricultural water has become the default water supply for meeting other demands in the modern West. Unfortunately, the only large potential for moving agricultural water to other uses will come from fallowing great swaths of farmland and transferring that water to meet other demands, which has grave implications for our country's ability to produce food for a growing world population. This factor alone could significantly threaten the luxury Americans currently enjoy – spending a very low percentage of their disposable income on food. These issues and other growing domestic and global food security and scarcity concerns must be considered as federal water policies are developed and implemented.

B. Regulatory Challenges and Recommended Solutions

The very significant federal presence in the West presents unique challenges that producers may not face in other parts of the United States, particularly with respect to the reach of the Endangered Species Act (ESA). Federal agency implementation of this law can have very significant impacts on how producers manage land and water. Importantly, once-certain federal water supplies that were originally developed by the Bureau of Reclamation (Reclamation) primarily to support new irrigation projects in recent years have been targeted and redirected to other uses. So, in the West, once certain water supplies – one of the few certainties in Western irrigated agriculture – have now been added to the long list of existing “uncertainties.” The ESA and Clean Water Act (CWA) are not working in the West. Environmental pioneers dealt well with the issues of their day, but the water supply and delivery “tools” they built only got us so far. We need to develop the next generation of tools that build on our successes but also recognize our limitations. Today, more than a third of the 3.6 million stream miles in this country are designated as impaired under the CWA. Under the ESA, 28 types of salmon have been listed and none have recovered. Though listing of waters as impaired and species as endangered might be perceived by some as victories, they have by and large not translated to real improvements to the species on the ground.

It is very clear to those who work the land that the ESA and CWA need to be addressed using a performance-based approach. We need to empower those who can actually

implement substantive benefits to their environment; and we believe private landowners are the key here. Of course, these improvements cannot be done mostly out of their own pockets and without appropriate assurances (these activities provide societal benefits and thus should be societal expenses). Secondly, there needs to be regulatory and statutory changes made to these major acts to empower environmental markets and to establish proven approaches and data considerations for decision making. The constructive scientists working for federal and state fish and wildlife agencies are becoming increasingly hamstrung with paperwork and legal deadlines driven by lawsuits from a handful of activist groups. For example, a legal settlement reached between these groups and the Obama Administration could potentially add hundreds more Western species to the ESA list.

A prime factor concerning Western irrigators is the employment of the ESA by federal agencies as a means of protecting single endangered or threatened aquatic species under the ESA by focusing on one narrow stressor to fish: water diversions. For the second time in a decade, Congress in 2010 directed that the National Academy of Sciences (NAS) convene a high-level, independent scientific review of federal restrictions on water deliveries affecting thousands of Western farmers and ranchers. In 2009, those restrictions – based in large part on ESA biological opinions in California’s Sacramento-San Joaquin River Delta (Delta) - were a primary cause for the water cutbacks and rationing afflicting hundreds of communities throughout the state and the resulting economic devastation in the San Joaquin Valley. The NAS report stated, in part, that the large number of stressors, their effects and interactions in the Delta lead to the conclusion that efforts to eliminate any one stressor (such as water diversions) are unlikely to reverse declines in listed species. Opportunities exist to mitigate or reverse the effects of many stressors. Continued effects analyses, modeling and monitoring are necessary to ensure actions taken to rehabilitate the ecosystem are cost-effective.²

A similar decision to focus exclusively on one stressor – a federal irrigation project – was made by federal agencies in the Klamath Basin in 2001, and that decision and the science used by federal fish agencies to support the decision, was criticized later in a review conducted by the NAS.

The California and Klamath stories are very similar. The NAS stepped in after Klamath Irrigation Project supplies from Upper Klamath Lake were cut off by federal biological opinions under the ESA in 2001. The NAS’ objective scientific review³ concluded that there was insufficient evidence to support these biological opinions in restricting agricultural diversions from the Klamath system, which had led to the near collapse of the local agricultural community. In Klamath, the federal regulators looked at only one of the stressors contributing to the fisheries’ decline and they focused on only one solution – cutting off water supplies to agriculture.

² Sustainable Water and Environmental Management in the California Bay-Delta (2012), NAS Water Science and Technology Board (<http://dels.nas.edu/Report/Sustainable-Water-Environmental-Management/13394>)

³ Scientific Evaluation of Biological Opinions on Endangered and Threatened Fishes in the Klamath River Basin: Interim Report (2002), NAS Board on Environmental Studies and Toxicology (<http://dels.nas.edu/Report/Scientific-Evaluation-Biological-Opinions/10296>)

Not surprisingly, the listed species apparently are no better off today than they were in 2001, yet the agricultural community struggles with operating capital, input suppliers and sales contracts for agricultural products, due to the lack of a reliable water supply that has been redirected with uncertain benefits to ESA-listed fish. Likewise, in California today, the same federal agencies have refused to assess the impacts of the many stressors affecting the health of the Delta. And, for more than 15 years they have been restricting or cutting off water deliveries, even though their experience during those 15 years have conclusively demonstrated that long-term agricultural water restrictions have not prevented fisheries from declining in the Delta.

As in California, the effects of the Klamath restrictions were immediate and far-reaching, creating losses not just to the economy, but also to wildlife resources as water was diverted away from farms and ranches (and two federal wildlife refuges). And yet, the federal regulators failed to perform any environmental impact analysis before they ordered irrigation water cutbacks in California and Klamath. Clearly, ESA implementation by several biased scientists within federal agencies must also be addressed, primarily with improved peer review and adherence to laws like the Information Quality Act. Best available science is not simply a slogan for federal agencies to trumpet; such science must truly be used in natural resource decision making.

Boots-on-the-ground efforts and actual recovery of species should define success under the ESA, not endless litigation and what appears to be the opportunistic pursuit of attorney's fees by certain environmental groups. According to a recent Government Accountability Office (GAO) report⁴, in just four years, litigating environmental groups raked in more than \$15 million from taxpayers, with some of these groups' attorneys being paid as much as \$500 per hour from the public treasury. These environmentalist lawsuits are the poster child for what has become an environmental litigation industry. While others are busy fixing the problems outside the courtroom, including implementation of the historic Nez Perce Water Rights Agreement (IDAHO) and collaborative efforts by ranchers to prevent listing of the Western sage grouse, litigious groups continue to drain resources and time, distracting everyone from the real goals of the ESA.

The goals of the ESA, CWA, National Environmental Protection Act (NEPA) and other federal environmental laws are laudable. However, these decades-old laws are in need of some targeted reforms, including commonsense changes to make them work better, encourage incentive-driven recovery efforts, and discourage litigation:

- Agencies should focus on applying the ESA in a way that fosters collaboration and efficiency of program delivery and is incentive-driven.
- Standards for scientific and commercial data that are used to make decisions under the ESA must be established.
- Peer review of ESA listing decisions and ESA Section 7 consultations should be provided by a disinterested panel. Administrative guidelines and/or legislation can be crafted to create procedures for that process.

⁴ Information on Cases against EPA and FWS and on Deadline Suits on EPA Rulemaking. GAO-15-803T: Published: Aug 4, 2015. Publicly Released: Aug 4, 2015

- For ESA litigation settlements involving federal environmental agencies, the federal government can provide better oversight on how (and how much) attorney fees are distributed.
- Incorporate ideas for improved “Safe Harbor” for landowners, neighboring landowners and water districts. Programmatic safe harbor (ESA Sec. 9 “take” protections) should be provided for anyone conducting normal operations within a certain radius (probably species dependent) of proposed projects.
- Implement recommendations of the NEPA Task Force⁵ (Report to the Council on Environmental Quality on Modernizing NEPA Implementation 2003).
- Implement the recommendations of the 2014 ESA Congressional Working Group⁶. These are incremental measures that help change the paradigm in Western resource management so that we end up limiting dollars spent on litigation instead of habitat protection and food production.

C. Concerns with Recent Federal Agency Administrative Actions

For generations, American family farmers and ranchers have grown food and fiber for the world, and these farmers will have to muster more innovation to meet the critical challenge of producing even more to meet projected future increases in world (and U.S.) demand for these commodities. Such innovation in agriculture must be encouraged by the federal government, rather than stifled with new, top-down federal policies and regulations that create uncertainty over the very water supplies originally developed for irrigated farms and ranches in the rural West. A handful of some of the more troubling administrative developments is further described below.

1. Principles and Requirements for Federal Investments in Water Resources

Western farmers and ranchers in the past seven years throughout the Western U.S. have feared that new guidelines intended to clarify Environmental Protection Agency (EPA) and Corps of Engineers (Corps) administration of the CWA and the White House Council on Environmental Quality (CEQ) efforts to create new criteria to guide planning efforts for federal water investments could, in fact, actually bring water project development to a halt. Those fears remain. The process originally proposed by CEQ to implement Principles and Requirements for Federal Investments in Water Resources is daunting, subjective and uncertain, and the costs and delays it would impose could preclude many planning and development efforts. We do not want to see a program that becomes mired in a process that ultimately delays implementation of critical projects. Those projects – especially those that enhance water supplies – already are very time-intensive and costly, and any additional delay for planning and studies will only add to the time frame for providing water supply relief.

⁵ <https://ceq.doe.gov/ntf/report/finalreport.pdf>

⁶ <http://lummis.house.gov/uploadedfiles/esaworkinggroupreportandrecommendations.pdf>

2. Waters of the U.S.

I have similar concerns regarding the new “Waters of the US” (WOTUS) rule adopted by EPA and the Corps. The WOTUS rule was intended to clarify administration of the CWA jurisdictional issues, but is very uncertain, particularly in areas where Western farmers and ranchers store, move and apply water for irrigation. This uncertainty brings with it the risk of additional regulations, time-consuming and potentially expensive procedures, expanded opportunities for litigation and a shift from local and state water management towards increased federal agency regulation and oversight. I do appreciate that the new CWA rule would theoretically preserve current CWA exemptions enjoyed by the agricultural community such as the agricultural return flow exemption and the agricultural ditch and drain operations exemption. However, I fear that the new rule’s approach to defining other water features is so expansive and vague that it will be used by opponents of new storage projects to halt further water development in the West. Our farmers and ranchers simply do not need another layer of difficulty added to a profession that is already saddled with significant challenges.

3. EPA’s Aquatic Life Hydrologic Alteration Report

Earlier this year, EPA and the U.S. Geological Survey (USGS) issued a draft aquatic life hydrologic alteration report that was developed to serve as a source of information for states, tribes and territories on (1) the natural flow regime and potential effects of flow alteration on aquatic life; (2) CWA programs that can be used to support the natural flow regime and maintain the health of aquatic biota; and (3) a flexible, nonprescriptive framework to quantify targets for flow regime components that are protective of aquatic life.

From the day of its public release, Family Farm Alliance members have raised concerns with this report. For example, the report notes that “Clean Water Act programs can incorporate strategies to protect water quality and aquatic life from the potentially harmful effects of flow alteration...” and “efforts to implement strategies to protect aquatic life from flow alteration will be most effective if numeric targets are identified for flow-regime components that equate to intact and healthy aquatic communities”. It appears that EPA is stating that any that results in altering the “natural” landscape is “bad” and shouldn’t be done. This is an area that has always been left to the purview of the individual states based upon state constitutional mandates. Because a state-based water right is a private property right, this amounts to a serious threat to state sovereignty and private property rights and is a direct affront to state water laws. Our initial suspicions have been confirmed by others in the agricultural community; please see the commentary prepared by Budd-Falen law firm, of Cheyenne, WY, which I’ve included as an attachment to this testimony.

D. Concluding Remarks on Western Water Challenges

Western water users face continued challenges on the ground. The destructive tactics of the environmental litigation industry, which drives and legitimizes the biased implementation of federal environmental laws by agencies, have eroded once-certain water deliveries to

Western producers. However, Western taxpayers strongly support⁷ water for farmers, and elected officials should be bolstered by that fact as they stand up and provide the strong leadership that is needed to protect family farms and ranches.

Our goal is to find solutions to Western water conflicts that protect our ability to feed ourselves, export food to others and continue to lead the world in agricultural production while finding ways to accommodate the water supply needs of growing urban areas, energy development, recreation, and environmental preservation. Fair, balanced and long-lasting solutions will not come easily. They will require visionary leadership and a firm commitment to sensible, workable policies.

III. CONSERVATION OPPORTUNITIES IN WESTERN IRRIGATION AGRICULTURE

A. Importance of Irrigated Agriculture to Western Waterfowl Habitat

When something is devalued - or worse, demonized - it becomes easy, even desirable to cast it aside. We believe that the current regulatory regime under-values Western agriculture, and some, not all, environmentalists would have the public and policy-makers believe that growing food is scourge upon the land that should be minimized if not eliminated altogether. Part of the Alliance's mission is to emphasize the economic, cultural and environmental value of farming and ranching in the West, and to have those values recognized by federal laws, regulations and policies. Such an approach to policy making would be in-step with the public appreciation for open space, land trusts, farmer's markets, and the rapidly growing interest in local, sustainable, organic foods.

Rather than focus exclusively on the alleged depredations of Western agriculture, federal regulators need to recognize that many of our wetlands are sustained by irrigated agriculture, and that much of the private farm and ranch lands adjacent to public lands provide important buffers from developed areas. We run the risk of losing those wetlands, buffer areas and open spaces when agriculture is devalued and demonized by regulatory policies reflecting the agendas of single-purpose interests groups. Instead, Congress and the federal agencies that it oversees should support and advance payment for ecosystem services (PES) programs that create opportunities for partnerships with landowners, businesses, non-governmental organizations (NGO), and agencies that can significantly improve the environment, business climate and quality of life within Western watersheds. I will expand on the PES program a bit further on in my testimony.

⁷ A 2009 survey released by Colorado State University (Bright Pritchett et al., "Public Perceptions, Preferences, and Values for Water in the West - A Survey of Western and Colorado Residents," Colorado State University Water Institute Special Report No. 17, February 2009) is remarkable for the strong support average citizens from the American West give agriculture, especially in times of drought. The report provides very interesting findings that underscore Western householders support for water storage projects and irrigation over environmental and recreational water needs in times of shortage. Respondents were keenly aware of the potential for long-term water scarcity and how that could impact farmers and ranchers. For example, among Western respondents to the CSU poll, the most popular strategies for meeting long-term needs were to build reservoirs and reuse water, whether it is on private lawns or public landscapes. The least popular alternative was to buy water from farmers. The survey demonstrated broad support in the Western United States for keeping water in agriculture.

Irrigation has increased agricultural productivity in the arid American West, but media coverage often focuses only on how it has altered the natural landscape. However, irrigation projects also provide important benefits to wetlands. In California's Sacramento Valley, rice production provides vitally important surrogate habitat and food for waterfowl and other species. In Northern Colorado, a study⁸ by Colorado State University (CSU) researchers found that 92 percent of wetlands were visually connected to the irrigation infrastructure. Though land conversion and water diversions have led to dramatic reductions in historic wetland acreage in some places, it is clear from the CSU study that current agricultural landscapes create wetlands that rely on irrigation water.

The Intermountain West Joint Venture (IWJV), a public-private partnership with a mission to conserve priority bird habitats through partnership-driven, science-based projects and programs, has determined that agricultural producers that flood-irrigate working wet meadows in certain landscapes play a key role in sustaining Pacific Flyway waterfowl populations during spring migration.

For example, the Southern Oregon and Northeastern California (SONEC) region is one of the most important spring migration stopover areas in North America, supporting more than 4.9 million dabbling ducks at North American Waterfowl Management Plan (NAWMP) goal levels. The IWJV's 2013 Implementation Plan states:

“Most spring-flooded wetland habitat in the SONEC Region occurs on working ranches where flood irrigation of wet meadows is used for hay production and grazing. The timing of flooding and the annual vegetation management practices conducted on these privately managed ranchlands fits well with the needs of spring-migrating waterfowl. These wet meadows are typically flood irrigated from March through July, hayed in late summer, and grazed during the winter. This productive form of wetland habitat management capitalizes on the snowmelt-driven hydrology of the largely closed-basin SONEC landscape. Used in this way, the wet meadows provide spring migrating waterfowl with abundant food resources and desired shallow, open-water wetland conditions.”⁹

The IWJV's bioenergetics modeling revealed that 64,700 acres of flood-irrigated wetland habitat must be provided annually on private working wet meadows in SONEC during spring migration to support waterfowl populations at NAWMP goal levels. Clearly, agricultural irrigators play an integral role in sustaining migratory bird populations in the intermountain West. This example, which plays out to varying extents for waterfowl and other wetland-dependent birds each spring in other intermountain valleys, is a win-win for achieving wildlife conservation and agricultural production objectives on the same land with the same water¹⁰.

⁸ Sueltenfuss, Cooper, Knight, and Waskom, “The creation and maintenance of wetland ecosystems from irrigation canal and reservoir seepage in a semi-arid landscape,” Colorado State University, 2012.

⁹ Source: Intermountain West Joint Venture. 2013 Implementation Plan – Strengthening Science and Partnerships. Intermountain West Joint Venture, Missoula, MT. <http://iwjv.org/2013-implementation-plan>

¹⁰ Ibid.

B. Open Space Values Provided by Western Farming and Ranching

Americans should appreciate the fact that Western farming and ranching operations provide valuable open space. In the Southern Rockies, for example, 43 percent of the private land that is located adjacent to public lands is associated with a federal grazing lease¹¹. The approximately 31,000 grazing permits on BLM and Forest Service lands are connected to more than 100 million acres of private land that ranchers utilize for sheep and cattle grazing during the rest of the year¹². What would happen to wildlife and open space if public land grazing were to end and the private lands were developed? Private lands provide most winter and riparian habitat for many wildlife species. Public lands, being less productive, cannot sustain healthy wildlife populations once the interspersed private lands are developed and reappear as housing subdivisions.

Conservation that works is conservation that works not only for natural communities, but for human communities as well. Actions that benefit one at the expense of the other are not truly conservation. City people want rural landowners to protect wildlife habitat, open space and provide ecosystem services, yet many landowners feel that city people take for granted these societal benefits, without so much as a thankful nod. Meanwhile, the economic reality is that our efforts to produce food and fiber are increasingly placed at risk by our global economy, by increasing regulation, and by cheap - and questionably safe - food from offshore. The rift between the West's rural and urban societies can be overcome only when we appreciate what each contributes to our collective quality of life and the natural interdependencies that bind us.

C. Working Landscapes and the Protection of Biodiversity

Alongside water, and in many cases directly related to it, Western agriculture also confronts the challenges of increased pressure to maintain biodiversity in working landscapes. Recent analyses and regional case studies¹³ suggest that formally-designated protected areas are not sufficient in size, heterogeneity or location to capture the bulk of North America's wild biodiversity within their boundaries. In the West, many elements of this biodiversity are better represented and safeguarded on private and tribal lands than on the highly-protected, specially designated public lands managed by federal agencies. A mosaic of private and public forests and rangelands that include protected areas, but are not limited to them, contributes more to maintaining biodiversity than protected areas alone. Ranch lands already serve as a buffer for public lands against invasive plants, domestic cats and dogs, and the danger of wildfires. We can encourage all appropriate land uses, but importantly, only to the degree that the land can sustainably accommodate those uses.

¹¹ Richard L. Knight, "The Public- Land Grazing Debate is Over (and we won!)," *Working Ranch Magazine*, Spring 2009.

¹² Ibid.

¹³ Gary P. Nabhan, Richard L. Knight, and Susan Charnley, "The Biodiversity that Nature Reserves Can't Capture: How Western Ranches, Tribal Grazing Lands and Private Forests Sustain Ecosystems and Their Diverse Species" in *Saving the Wide Open Spaces*, 2011.

We do not have to sacrifice production for conservation – we can achieve both objectives. However, we need time to make this happen, and a critical step that could be taken to help would be to place a 10-year moratorium on the loss of grazing Animal Unit Months (AUMs) in order to come up with a long-term balanced plan to integrate food production with conservation practices. We cannot afford to lose any more producers while this process takes place, through which we can:

- Work across administrative boundaries rather than staying within them;
- Integrate social capital with ecological and economic dimensions;
- Encourage bottom-up participation rather than top down initiatives;
- Increase success, reduce expense and eliminate working at cross-purposes through improved interagency cooperation, which would, for example, complement the role of the Natural Resources Conservation Service (NRCS) in regards to water quality. The Interior Department Partners for Fish and Wildlife Program demonstrates a workable process to reconcile inherent conflicts brought about by multiple demands and;
- Explore the nexus where the federal government owns the land and the states control the water.

Above all, we need to empower local watersheds to provide leadership, and problem-solve in a unique, locally-driven manner.

D. Support for the “Partners” Approach

The Alliance supports the efforts of a group within the U.S. Fish and Wildlife Service (USFWS) called “Partners for Fish and Wildlife” that helps to fund habitat work on private lands. This program already has the infrastructure and relationships with landowners to get effective habitat work done for endangered species. They have projects on the ground all over the country and are doing yeoman’s work to preserve habitat for toads in Nevada, Sage Grouse in Wyoming, and the Mountain Plover in Colorado, to name just a few success stories.

The Partners program is successful because it employs experts who are on the ground, working with landowners, instead of crafting mandates via biological opinions from far-removed government offices. These federal officials recognize that if a species exists and thrives on a property—public or private—the practices that currently occur on that property will not harm and could possibly protect that species. So - they learn to recognize, for example, that sage grouse are vulnerable to predators, and that areas where ranchers run sheep tend to have heavy predator control. They take the time to respect the observations of local landowners, who every day see thriving sage grouse populations on their lambing areas. Working with landowners, they gain an understanding and shared belief that the predator control that takes place on private lambing grounds has helped to keep the sage grouse in those areas healthy.

The Partners for Fish and Wildlife is uniquely positioned to fulfill the direction of the ESA for the USFWS to manage threatened and endangered species. The funding for USFWS should be fundamentally re-prioritized to move dollars away from the “regulatory hammer”

approach used by some ESA regulators within the agency and towards the Partners program.

E. Payment for Ecosystems Services (PES)

Western farmers and ranchers can also play a key role in using their lands, water and management practices as tools to engage in payment for PES projects. A PES scheme creates opportunities for partnerships with landowners, business, NGOs, and agencies that can significantly improve the environment, business climate, and quality of life within Western watersheds. A voluntary system of payments may be more socially acceptable and effective than extensive additional regulation. Critical discussion and reflection in the Western farm and rangelands community about PES and market-based approaches more generally is essential. A well-designed PES program can make a ranching or farming operation even more viable.

We need to determine the role for PES. As experimentation with PES expands in farming communities and rangeland systems across the United States, it will be important for ranchers, practitioners, researchers, companies, public agencies, and other stakeholders to investigate, collaborate and critically reflect upon PES design, implementation and evaluation. Existing programs can inform and expedite the development of new programs. Similarly, pilot tests of new approaches are likely to help existing programs become stronger and identify opportunities for expansion. The adjacent sidebar highlights some specific models.

Alongside PES experimentation, it will be necessary to document and evaluate desirable and undesirable outcomes to determine whether the approach is advancing or compromising rangeland sustainability. For everyone involved, questions must be addressed. Will PES programs actually help society better manage ecosystem services that are integral to human wellbeing? Is it appropriate to “commodify” and price rangeland ecosystem services in the marketplace? What happens if technological substitutes for ecosystem services become cheaper, and therefore the economic argument for ecosystem service protection is removed? Is there a solid scientific basis justifying the ecosystem service benefits that are being paid for? Are landowners in a position to adopt new management practices that will deliver enhanced ecosystem services, and will PES payments lead to more diversified and robust ranch business models?

F. Concerns with U.S. Fish and Wildlife Service Mitigation Policy

On November 3, 2015, the President issued a Memorandum entitled “Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment.” Within our membership, there have been growing concerns that the Memorandum's standards exceed statutory standards set in law by Congress and will result in further regulatory confusion and burdens. There are very polarizing views on the issue; reminiscent of the WOTUS rule. The Memorandum directed all federal agencies that manage natural resources to avoid and minimize damage to natural resources and to effectively offset remaining impacts, consistent with the principles declared in the Memorandum and existing statutory authority. Under the Memorandum, all federal mitigation policies are directed to clearly set a net benefit goal or, at minimum, a no net loss goal for natural resources,

wherever doing so is allowed by existing statutory authority and is consistent with agency mission and established natural resource objectives.

In response to the Memorandum, on March 8, the USFWS announced proposed revisions to its Mitigation Policy that has guided USFWS recommendations on mitigating the adverse impacts of development on fish, wildlife, plants, and their habitats since 1981. The revised policy provides a framework for applying a landscape-scale approach to achieve, through application of the mitigation hierarchy, a net gain in conservation outcomes, or at a minimum, no net loss of resources and their values, services and functions resulting from proposed actions.

The goal of providing a mitigation framework for conservation using the mitigation hierarchy is laudable. What is particularly noteworthy here is the new broad scope of public and private activities USFWS is seeking to reach through the policy. According to the proposal, “the Service is authorized to recommend or require mitigation [for those resources] that contribute broadly to ecological functions that sustain species.” For example, the Fish and Wildlife Coordination Act covers all classes of wild animals, and all types of aquatic and land vegetation upon which wildlife is dependent. The proposed policy also cites NEPA for authorizing protection of habitat and landscapes. Even though this broad assertion of authority “may overlap with that of the States”, the USFWS proposes no mode of accommodation between these coordinate levels of federal government.

Section 10 of the ESA authorizes USFWS to regulate private “take” of species, including the authority to mitigate the take. As discussed above, the current proposal reaches far beyond threatened and endangered species to authorize “recommendations and/or requirements” for all private actions affecting habitat. No comment is offered on how USFWS will discharge this large new workload when Congress has not provided the financial resources for executing the current portfolio of responsibilities. Nor is any comment offered on how USFWS will coordinate its new responsibilities with similar duties carried out by other federal agencies. Additionally, the proposal suggests no mechanism for how USFWS will engage and encourage landowners to participate in this new, significant federal requirement for land use. As the proposal explains: “The Service will provide mitigation recommendations under an explicit expectation that the action proponent . . . is fully responsible for implementing or enforcing the recommendations.”

We are currently working with other Western resource interests to develop comments on this proposed policy, which I urge your Committee to monitor closely and engage on, as necessary.

G. Concerns with Other Administrative Proposals

There are numerous other threatening non-water related regulations and actions that have demanded our attention recently.

I will not discuss these in detail, but here are just a few of the more troubling examples:

- **BLM/U.S. Forest Service (USFS) Plan Amendments addressing sage grouse** impose unrealistic vegetative standards which cannot be met. In most areas, these standards will lead to reduced livestock grazing or changes in season of use.
- **BLM Planning Rule 2.0.** envisions planning on a broader scale with reduced emphasis on analysis of local socio-economic impacts.
- **Proposed Grizzly Bear Delisting for Wyoming** expands grizzly bear protections into areas previously determined to be "socially unacceptable". This proposal is troubling to the grazing industry because it emphasizes reduction of livestock conflicts through "voluntary" permit relinquishments.
- **USFS Big Horn Sheep Risk of Assessment** evaluates the risk of big horn/domestic sheep interaction based solely on a questionable analysis of recorded forays of individual big horn rams.
- **Livestock grazing reductions to accommodate excessive wild horse populations.** This is happening today in Nevada.

Other proposals that will impact Western farming and ranching operations are Department of Transportation regulations impacting the transportation of livestock, the USFWS listing of the wolverine, and rules and regulations proposed by the Department of Labor on the H2A program and the need for employees to tend sheep, bees and other livestock. I would be happy to provide further information on any of these troubling developments following today's hearing.

H. Future Role of the Government

We are proud of our organization's track record and of the relationship we have with the Department of Interior, Reclamation, Congress, and other proactive NGOs. I believe we are seen as credible leaders in the Western water arena on both sides of the aisle, as evidenced by more than 50 invitations to appear before Congressional committees since 2005.

The Alliance worked hard to create the Western Agriculture and Conservation Coalition, a collaborative effort intended to find ways to improve the environment, protect Western irrigated agriculture, and keep farmers and ranchers in business. Other members of our coalition include The Nature Conservancy, California Farm Bureau Federation, Environmental Defense, Wyoming Stockgrowers, Trout Unlimited, and the Irrigation Association, to name a few. I also represent the Alliance on the advisory committee of the AGree process, a long term, collaborative initiative that seeks to transform U.S. policy affecting the food and agriculture system at home and abroad.

It is critical to assess what the future role of government will be. There is tremendous uncertainty as to the effects of federal budget restraints. Right now, government programs and federal laws are also creating winners and losers. For example, federal ethanol policy works for Midwestern corn growers, but hurts the livestock industry which relies on corn for feed. Laws and regulations like those imposed by the ESA are being implemented differently in different parts of the country depending on judicial circuit rulings. Producers in the Eastern United States have not experienced the regulatory hammer approach

employed by ESA administrators in the West. Also, opportunities are likely to arise for an expanded future role for NGO partners, since government can only afford to do less, at least in the near-term. This is one reason why the aforementioned Western Agriculture and Conservation Coalition was formed. Policymakers and resource managers need to assess those opportunities.

IV. CONCLUSIONS

Western irrigated agriculture is a strategic and irreplaceable national resource. It must be protected by the federal government in the 21st Century. Properly managing federal watersheds and encouraging federal agencies to work with the agricultural community to solve local water challenges are imperative. Ranchers like me and others in the regulated community see increased federal top-down regulations and controls being proposed and put in place, while proven, collaborative partnership-driven approaches to find lasting solutions to vexing water and natural resource problems appear to have been put on the back burner. I find it difficult to understand why agricultural production finds itself continually under attack when farmers and ranchers continue to provide the affordable food and fiber to feed and clothe the Nation and the world. I am troubled why federal agencies appear to be “biting the hand” that produces the food.

I thank you for the opportunity to elevate our concerns regarding the USFWS mitigation policy and the draft EPA flow study. Unfortunately, these are just the latest examples in a sweeping range of processes and actions that can, individually or collectively, have very real negative impacts to Western irrigated agriculture, including the potential for disruption in water supplies and increased production costs.

We appreciate your support in seeking to compel federal agencies to seriously reconsider the cumulative impacts of the resulting regulatory measures before adding additional chapters to what farmers and ranchers already see as a very large rulebook.