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**Testimony Before the Subcommittee on Water and Power**
**Committee on Natural Resources**
**United States House of Representatives**

**Legislative Hearing**
**On**
**H.R. 3980, "Water Supply Permitting Coordination Act"**

**February 5, 2014**

Chairman McClintock, Ranking Member Napolitano and Members of the Subcommittee:

Thank you for the opportunity to appear before you to discuss the "*Water Supply Permitting Coordination Act*", legislation that provides a critical first step towards addressing current regulatory and bureaucratic challenges that many times will delay or even halt the development of new water supply enhancement projects in the Western United States. My name is Patrick O'Toole, and I serve as the president of the Family Farm Alliance. The Alliance advocates for family farmers, ranchers, irrigation districts, and allied industries in seventeen Western states. The Alliance is focused on one mission – To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers.

My family operates a cattle, sheep and hay ranch in the Little Snake River Valley on the Wyoming-Colorado border. I am a former member of Wyoming's House of Representatives and I served on the federal government's Western Water Policy Review Advisory Commission in the late 1990's. I currently serve on the Advisory Committee for AGree, an initiative that brings together a diverse group of interests to transform U.S. food and agriculture policy so that we can meet the challenges of the future. I also served for two years on a Blue Ribbon Panel intended to provide leadership for a project to support the development of the Natural Resource Conservation Service's (NRCS) Program and Policy Statement as a part of the process mandated by the Resource Conservation Act (RCA).

Probably most pertinent to the focus of today's hearing is my personal experience in working with envisioning, designing, permitting, and finally building new water storage projects in the West. I was directly involved with one project that has already been built, and I am currently working with government agencies, conservation groups, and other stakeholder interests to advance another water storage project in my home state of Wyoming.

Family Farm Alliance members rely on the traditional water and power infrastructure built over the last century to deliver irrigation water supplies vital to their farming operations. Our membership has been advocating for new storage for over twenty years, and we have provided specific recommendations to Congress and the White House on how to streamline restrictive federal regulations to help make these projects happen. Water conservation and water transfers are important tools for improving management of increasingly scarce water resources. However, our members believe these demand-management actions must be balanced with supply enhancement measures that provide the proper mix of solutions for the varying specific circumstances in the West.

Regardless of cause, climate variability is one critical factor that underscores the need to develop new water storage projects in the Western U.S. There are several reports[1] that suggest existing reservoirs will

[1] Including: California Climate Change Center, 2006 - *Our Changing Climate – Assessing the Risks to California, Summary Report*. Tanaka et al. 2007, *Climate Warming and Water Management Adaptation for California.* Department of Civil and Environmental

not be capable of safely accepting the earlier, more intense snowmelt that has been predicted for many Western watersheds. A report released in 2006 by the State of California predicted that climate change would result in a drastic drop in the state's drinking and farm water supplies, as well as more frequent winter flooding. The report suggested that warmer temperatures will raise the snow level in California's mountains, producing a smaller snowpack and more wintertime runoff. This means more floodwaters to manage in winter, followed by less snowmelt to store behind dams for cities, agriculture, and fish. Water resources experts in other parts of the West also realize that new surface water storage projects may be necessary to capture more snowmelt or more water from other sources.

Some Western water managers believe there will likely be a "rush" to re-operate existing multi-purpose water storage projects to restore some of the lost flood protection resulting from the changed hydrology associated with climate change. These projects were designed to provide a certain level of flood protection benefits that will be reduced because of more "rain-induced flood" events. There will be a call to reduce carryover storage and to operate the reservoirs with more flood control space and less storage space. If this is done, it will even further reduce the availability and reliability of agricultural and urban water supplies.

Further, many water users are located upstream of existing reservoirs. These users must then rely on direct or natural flows that are primarily fueled by snowmelt. In the Rocky Mountain West, snowmelt traditionally occurs over several months during the onset of the irrigation season, and thus the snowpack can be referred to as a type of water storage. Since conveyance systems are never 100% efficient, water is diverted, conveyed and spread on the land in excess of the net irrigation demand. This surplus returns to the stream and recharges groundwater aquifers, which augments water supplies for all users located downstream from the original diversion. It also supports valuable habitat used by migrating waterfowl. If more runoff were to occur during warm cycles in winter before the onset of the irrigation season, this not only would impact water supply availability to these producers by decreasing the storage capacity usually provided by the tempered melting of the snowpack, but would also impact the utility associated with the return flows from their irrigation practices. As the snowpack is reduced by early melting, this reduced storage capacity must be replaced by new surface water storage just to stay on par with our currently available water supplies.

As you are all aware, actually developing new storage projects is much easier said than done. I testified before this Subcommittee two years ago about the permitting challenges I encountered in building the Little Snake Supplemental Irrigation Supply Project (High Savery Project) in Wyoming. That project was built in less than two years, but took more than 14 years to permit. My experience with the High Savery Project showed me that cooperative efforts are important for moving projects through the National Environmental Policy Act (NEPA) and other permitting processes. On the High Savery Project, the lead federal agency wasted a great deal of time making decisions on the project and at times seemed unable to make decisions. These delays not only postponed the project, they resulted in wasted time and money. I believe that state agencies (in my case, the Wyoming

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Engineering, Department of Agricultural and Resource Economics, University of California, Davis. May 3, 2007 Testimony Submitted on Behalf of The Western Governors' Association to U.S. House Committee on Science and Technology.

Water Development Commission, or WWDC) and local project sponsors should become cooperating agencies in the NEPA process if possible and if not, should be allowed to serve on the project NEPA interdisciplinary team. The bill provides for inclusion of states, at the state's discretion, at Sec. 3(c). We believe the effect of this provision would be to provide equal footing for state agencies with all federal agencies, including contributions to and evaluation of the unified environmental document (which includes NEPA) at Sec. 3(b)(4).

Establishing working relationships with the agencies involved in the NEPA process and permitting is important to keep projects on schedule and to avoid costly delays and disagreements. It is impossible to eliminate all problems associated with permitting dam and reservoir projects, but good cooperation and communications between agencies and groups, with an understanding of each participant's expectations, will help in problem resolution. The primary reason the High Savery Dam was permitted and constructed is the persistence and perseverance of the Savery-Little Snake Water Conservancy District and the residents of the valley. The sponsor's and the state's staying power prevailed in the end.

Clearly, the existing procedures for developing additional water supplies need to be revised to make project approval less burdensome. By the time project applicants approach federal agencies for permits to construct multi-million dollar projects; they have already invested extensive resources toward analyzing project alternatives to determine which project is best suited to their budgetary constraints. However, current procedure dictates that federal agencies formulate another list of project alternatives which the applicant must assess, comparing potential impacts with the preferred alternative. These alternatives often conflict with state law. We appreciate that this Subcommittee had explored opportunities to expedite this process and reduce the costs to the project applicant.

For these reasons, the Family Farm Alliance supports the "*Water Supply Permitting Coordination Act"*, which authorizes the Secretary of the Interior to coordinate federal permitting processes related to the construction of new surface water storage projects on Department of Interior and Department of Agriculture lands and to designate the Bureau of Reclamation as the lead agency for permit processing. This "one-stop shop" bill is a concept we have long advocated for. We support the current bill, and appreciate the provisions in Sec. 5(a) that ensure the "cooperating" federal agencies, some with very different mission statements from the Bureau of Reclamation, must actually buy into the process and work with the lead agency to accomplish the goals and purpose of the legislation by directing strict adherence to the project schedule established by the lead agency (Reclamation), including the coordination of all federal agency reviews under Sec. 4(a)(3). The bill, in Sec. 3(a) also provides broad authority and responsibility to the lead federal agency to coordinate all federal reviews related to a project. We believe this definition includes Fish and Wildlife Service responsibilities under the Endangered Species Act (ESA). Under this definition, all facets of an ESA review would be included (biological assessments, incidental take statements, and section 10 permits, and likely section 7 consultations as well). We ask that additional clarity may be provided on inclusion of ESA related processes by adding the word "consultation" to the bill language.

Another concern relates to the high costs of environmental review. These types of reviews are expensive and often can be beyond the reach of most water associations. For example, the State of Wyoming via the WWDC would likely become a cooperating agency under this bill. The WWDC typically conducts many environmental, hydrologic feasibility studies/analyses to make certain that the project being studied has a good chance of successfully navigating the NEPA/permitting process. We recommend that provisions be made within the bill whereby Reclamation accepts sound scientific/technical studies for review whenever submitted by the applicant. These analyses could be incorporated in Reclamation's review and subsequently reduce review time and costs when complying with NEPA and other federal environmental law/regulations.

Finally, we recommend that the bill include language with specific reference to non-federal state and local projects that could be integrated with the operation of federally owned facilities. We want to ensure Reclamation is the lead agency in the case of permitting a non-federally built storage project that has a direct federal nexus with a Reclamation project – i.e. Sites Reservoir (California) - where it will be integrated into the Central Valley Project operations but (as proposed by the local Joint Power Authority) remain a non-federally developed and owned facility.

The Family Farm Alliance will continue to work with Congress and other interested parties to build a consensus for improving the federal regulatory and permitting process. A major reason the Alliance continues to push for improved water storage and conveyance infrastructure is not to support continued expansion of agricultural water demand (which is NOT happening in most places), but to mitigate for the water that has been reallocated away from agriculture towards growing urban, power, environmental and recreational demands in recent decades. If we don't find a way to restore water supply reliability for Western irrigated agriculture through a combination of new infrastructure, other supply enhancement efforts, and demand management – our country's ability to feed and clothe itself and the world will be jeopardized. Thank you again for this opportunity to testify before the Subcommittee, and I stand ready to answer any questions you may have.