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**Testimony Before the U.S. House of Representatives  
Water and Power Subcommittee  
Oversight Hearing on  
“Creating Abundant Water and Power Supplies and Job Growth  
by Restoring Common Sense to Federal Regulations”  
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Good afternoon, Chairman McClintock, Ranking Member Napolitano, and Members of the Subcommittee. My name is Dan Keppen, and I serve as the Executive Director of the Family Farm Alliance (Alliance).

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.

This oversight hearing could not have come at a more opportune time. We are in danger of losing a generation of young farmers, and productive farmlands and Western agriculture’s traditional water supplies are disappearing as urban, environmental and energy demands increase. This is all happening at a time when the United Nations projects that the world will need to produce 70 percent more food by 2050 to keep pace with world population growth and increased demand for calories.

Today, our own Western farmers and ranchers are currently being subjected to potentially restrictive and duplicative federal regulations on everything from another added layer of water quality protections to air quality requirements that would significantly increase the cost of their water supplies. These farmers are facing potentially ruinous recommendations from a federally-sanctioned committee that could impose additional expensive but unfunded safety standards to their irrigation canals and ditches. The related uncertainty that comes with all of this increased regulatory scrutiny will make it much harder for these farmers to survive in such a harsh economy. Putting just a few of these farmers out of work could impart huge limitations on our future ability to feed our country and the world.

I should emphasize that all these regulations in particular hit the small family farmer the hardest, as they are the least equipped to deal with the maze of sometimes overlapping requirements. We fear that we may be approaching a point where only the larger farm operators will be able to economically deal with these issues, and even they will face significant challenges and hardship.

The rural West faces challenges today that demand strong citizen engagement and aggressive, outspoken leadership by our elected officials. As Western producers of food and fiber continue to disappear, the ripple effect will extend far beyond their rural communities. As a country, we have nearly become complacent as food production has been taken for granted for far too long.

The United States for nearly four decades helped defeat world hunger through its massive productive output of affordable food. Western family farmers and ranchers will continue this campaign, but they need to be shown – through leadership and development of common sense agriculture and water policy priorities – that what they do really does matter to this country.

Fortunately, policy leaders like the Members of this Subcommittee are beginning to recognize the economic and social burdens caused by layers of regulations and bureaucracy. President Obama publicly noted in a recent *Wall Street Journal* Op Ed article that some federal regulations have gotten out of balance, placing unreasonable burdens on business—“burdens that have stifled innovation and have had a chilling effect on growth and jobs.” We were pleased to see the president issue his Executive Order that requires federal agencies ensure that regulations protect safety, health and the environment while promoting economic growth. That order also directs a government-wide review of the rules already on the books to remove outdated regulations that stifle job creation and make our economy less competitive. The President’s actions, in our view, could provide an opportunity for a bipartisan marriage of interests leading to real beneficial change in the way the federal government adopts and implements rules and regulations that impact peoples’ lives, and livelihoods. We will remain hopeful but vigilant, and watch what the regulatory agencies actually do on this front, instead of only what they say.

While the Family Farm Alliance strongly affirms the original goals of well-intended laws like the Endangered Species Act (ESA), Clean Water Act (CWA) and National Environmental Policy Act (NEPA), some of these laws are nearly 40 years old, and some targeted reforms may be needed, including common-sense changes to make them work better, minimize confusion, and discourage unnecessary litigation. The Family Farm Alliance has a proven track record of providing solution-oriented recommendations along these lines. For example, we have previously testified before this subcommittee and provided recommendations for legislation that would require the establishment of quality standards for scientific and commercial data that are used to make decisions under the ESA and other important regulatory laws. We believe that greater weight should be given to data that have been field-tested or peer-reviewed. We support peer review of ESA listing decisions and ESA section 7 consultations by a disinterested scientific panel, and we believe legislation can be crafted to create procedures for that process.

### **IRRIGATED AGRICULTURE IS AN IMPORTANT COG IN OUR NATION’S ECONOMIC ENGINE**

The development of Western water resources over the past one hundred years is one of the great success stories of the modern era. Millions of acres of arid Western desert have been transformed into one of the most efficient and productive agricultural systems in the world. The Bureau of Reclamation (Reclamation) is the largest supplier and manager of water in the 17 Western states west of the Mississippi. It maintains 480 dams and 348 reservoirs with the capacity to store 245 million acre-feet of water. These facilities deliver water to one in every five western farmers to irrigate about ten million acres of land, and provide water to over 31 million people for municipal and industrial (M&I) uses as well as other non-agricultural uses. Reclamation is also the Nation’s second largest producer of hydroelectric power, generating 44 billion kilowatt hours of energy each year from 58 power plants. In addition, Reclamation’s facilities provide substantial flood control benefits, recreational

opportunities, and extensive fish and wildlife habitat. All of this has been accomplished with a total federal investment of only \$11 billion, according to the Bureau of Reclamation.

In early 2010, Secretary of the Interior Ken Salazar released a first-of-its-kind report, *Economic Impact of the Department of the Interior's Programs and Activities*, as an analysis of the job creation and economic growth benefits associated with a wide range of Departmental activities, including those related to Reclamation's irrigation and hydroelectric projects in the West. The report estimates that Reclamation's total estimated economic impact in 2008 was \$39.5 billion, impacting an estimated 261,200 jobs. Of this total, Reclamation's irrigation activities generated an estimated 193,000 jobs and an economic impact of \$25.3 billion, almost double the combined economic impacts (\$14.2 billion, 68,200 jobs) associated with Reclamation's hydropower, municipal and industrial water, and recreation functions.

### **A LOST GENERATION OF FARMERS?**

One of the most troubling aspects of the on-going farm crisis is the decline in the number of young farmers entering the field. More than half of today's farmers are between the ages of 45 and 64, and only six percent of our farmers are younger than 35 ([www.farmaid.org](http://www.farmaid.org)). Fewer than one million Americans list farming as their primary occupation and among those, 40 percent are age 55 or older. In my home state of Oregon, according to a State Board of Agriculture report released earlier this year only 4 percent of farmers are between 25 and 34 years old and 8 percent are between 35 and 44 years old, and 39 percent are older than 65.

Both statistically and anecdotally, for the first time in many generations we see sons and daughters of farmers opting to leave the family farm because of uncertainty about agriculture as a career.

Meanwhile, Western irrigators continue to grow more food and fiber using less water and land. For example, the California Farm Bureau Federation reports that, between 1980 and 2000, water use and irrigated acreage in California decreased, yet crop production still rose 35 percent. And, according to USDA's Economic Research Service statistics, Americans are spending, on average, 9.7 percent of their disposable income on food. To put this into perspective, consider what citizens living in other countries pay. For example, in Brazil, 22.7% of annual household expenditures go for food, and in some underdeveloped countries these levels have reached 75%. Consider the following:

<u>Country</u>	<u>% of Annual Income Spent on Food</u>
Mexico	26.6%
Argentina	32.8%
Lithuania	40.4%
Indonesia	50.6%
Vietnam	64.7%
Tanzania	73.2%

At a time when average Americans are feeling the pinch of the economic recession in their pocket books, the foundation of our country's ability to provide safe and affordable food and fiber is also now at risk. Ironically, it is because Western irrigated agriculture has been so adaptive and successful at providing plentiful, safe and affordable food that it is now in a fight for its future existence – and

nobody believes there is a problem. The last Americans to experience food shortages are members of the Greatest Generation and their parents. For the most part, they have left us, taking with them the memories of empty supermarket shelves, WWII Victory Gardens, the Dust Bowl, and other times of significant hardship and shortage. Their personal experiences helped build today's American agricultural successes, but when the issue has never been personalized, it's easy to become complacent.

## **WESTERN FARMERS & RANCHERS ARE NEEDED TO FEED A HUNGRY WORLD – NOW MORE THAN EVER BEFORE**

Earlier this year, the Global Harvest Initiative released its Global Agricultural Productivity (GAP) Report, which measures ongoing progress in achieving the goal of sustainably doubling agricultural output by 2050. For the first time, the GAP Report quantifies the difference between the current rate of agricultural productivity growth and the pace required to meet future world food needs. The report predicts that a doubling of agricultural output by 2050 will be needed to meet future world requirements for food. This would require increasing the rate of productivity growth to at least 1.75 percent annually from the current 1.4 percent growth rate, a 25 percent annual increase in the productivity growth rate.

Other signs point to the hard truth of a very real food crisis in the world today. The Food and Agriculture Organization of the United Nations (FAO) in June 2009 reported that over 1 billion people world-wide go hungry every day. The world's population is growing by 79 million people each year. The FAO estimates that the world needs to produce 70 percent more food by 2050 to keep pace with population growth and increased demand for calories.

The G-8 agricultural ministers committed at a summit last year to increase international assistance for agricultural development to \$20 billion over the next three years. We believe a similar focus must be placed here in the United States closer to home, where less than two percent of the nation's population produces food for our country and the rest of the world.

Agriculture Secretary Vilsack said at a recent hearing that one of his top priorities will be making sure farmers have access to capital and credit - and that there is a next generation of farmers. Yet we have not heard of any initiatives to reduce or eliminate redundant regulations impacting agriculture that add burdensome paperwork and additional restrictions on everything from critical irrigation water supplies to the use of necessary farm inputs, all of which impact all farmers, young and old, who want to stay in agriculture.

Congress can help by closely examining how current and proposed rules and guidance regulating air and water quality protections are or are not working, identifying the economic impacts, costs and benefits associated with their implementation, and directing legislation that corrects deficiencies and streamlines and modernizes their on-the-ground implementation. Farmers and ranchers are exposed to overlapping and inconsistent mandates from different regulatory agencies that continue to be piled on year after year. Harry Cline in 2008 addressed this point well in an article published in *The Capital Press* newspaper, underscoring the point that pressure is building on farmers to give up the lifestyle and preserve the remaining equity in their property for their families, or to do the unthinkable – move

farming operations to other countries where labor is plentiful, environmental concerns relaxed and economic development is welcomed.

## **THE DISCONNECT BETWEEN ENVIRONMENTAL AND AGRICULTURAL POLICY**

The Family Farm Alliance has long worked on finding ways to streamline the regulatory process, and worked closely with past administrations and Congress towards that end. In the past two years, our members have become increasingly concerned about the number of environmental policies that are currently being re-written either as guidance or in the rulemaking process by this Administration.

Currently, water and environmental policies seem to be considered separately from foreign and domestic agricultural goals and objectives. In the past year, federal agencies have steadily re-written numerous environmental policies that - if left unchecked – could carry the risk of real potential harm for Western agricultural producers. The list of new rulemaking and other potentially burdensome, duplicative, or even unattainable regulations and agency guidance that will impact the availability of Western water supplies continue to grow, and includes the following specific actions:

- Economic and Environmental Principles & Guidelines for Water and Related Resources Studies. The White House Council on Environmental Quality (CEQ) has drafted new standards for federal water projects that for the first time put environmental goals on the same plane as economic development concerns. These proposed changes may have a significant impact on new water project planning and federal funding in the future;
- More stringent EPA pesticide restrictions, which increases costs, liabilities, and risk of crop damage to Western producers. Family Farm Alliance Advisory Committee member Norm Semanko will testify to this in more detail at today's hearing;
- USFWS consideration of wide-ranging policy revisions to ESA administration that could lead to greater legal exposure to water users with ties to federal projects;
- USFWS revisions to designations and critical habitat associated with ESA-protected species, including Western bull trout, the California red-legged frog, Greater Sage Grouse, and Pacific smelt which could lead to even more restrictions on western lands and water users, including family farmers and ranchers;
- CEQ intent to “modernize and reinvigorate” the National Environmental Policy Act (NEPA). Based on our review of the guidance, it appears CEQ would place more emphasis on monitoring and reporting requirements for NEPA activities associated with categorical exclusions and the use of “frontloaded” environmental mitigation where these exclusions have traditionally been used. Western water managers often use these legal NEPA mechanisms in conjunction with recurring actions associated with annual operations and maintenance activities on ditches or major rehabilitation and repair projects on existing dams. If implemented as written, the CEQ directives would definitely impact Western water users by adding additional costs to formerly cost-effective NEPA activities and analyses. Western irrigators and others in the regulated community fear that the net result of these changes will be more expense, delay and bureaucratic red tape in pursuing

federal actions as simple as the ongoing operation and maintenance of existing water management facilities;

- EPA's Strategic Plan for 2011-2016, which strongly indicates that EPA will place more emphasis on regulating greenhouse gases, setting nutrient standards for water bodies, environmental cleanup, chemical regulation, and enforcing environmental laws through "vigorous and targeted civil and criminal enforcement" actions;
- EPA emissions upgrades that may be mandated for the Navajo Generating Station (NGS) in Arizona. The emission requirements being considered by EPA are intended to satisfy unique visibility criteria driven in part by the proximity of NGS to Grand Canyon National Park, and they carry with them a heavy cost to local farmers and ranchers. Family Farm Alliance Advisory Committee member Paul Orme will testify to this matter in greater detail at today's hearing;
- Recent guidance from EPA regional offices which demonstrates a clear bias against the planning and construction of any new water storage projects, which appears to prejudice potential projects without consideration of important civic, economic and environmental needs;
- The Obama administration reconsideration of a 2008 EPA rule recently upheld in the 11<sup>th</sup> Circuit Court of Appeals that allows water transfers from one water body to another without requiring a Clean Water Act (CWA) NPDES permit. This new level of regulation, permitting and certain litigation would hamstring the economies of states like Arizona, California and Colorado, where millions of acre-feet of water are transferred from one river basin to another every year;
- EPA's failure to establish clear procedures for its pesticide effects determinations and subsequent actions in the Pacific Northwest consistent with 1988 amendments to the Endangered Species Act (ESA). This has resulted in unnecessary restrictions on the use of agricultural pesticides without any indication that Pacific Northwest salmon will benefit and puts producers along the West coast at a competitive disadvantage;
- EPA has launched an effort to develop their "Green Book", a project to ensure all EPA policies are driven by "sustainability". EPA's current policies and regulations are driven by statutes that oversee individual issues, such as pesticides, air pollution and drinking water contaminants. But this new project, undertaken at EPA's direction by the National Academy of Science, will develop a framework for the EPA to link all environmental issues and ensure its policies rely on sustainable use of energy, water, land and other resources. There is much speculation of the impacts to agriculture and other resource-dependent industries arising from the outcome of this effort.
- EPA late last year issued a memorandum that has the effect of regulating air quality under the Clean Water Act (CWA) based on the theory that air is tributary to waters of the United States. The memorandum directs states to designate waters bodies as impaired if they do not meet water quality standards because of acidification caused by air pollution. In other words, States or EPA could now regulate CO<sub>2</sub> and other pollutant emissions under the CWA.

- In recent months, Western water managers have become aware of and are becoming increasingly concerned with actions undertaken by the National Committee on Levee Safety (NCLS). This group, authorized and created in the Water Resources Development Act of 2007, includes the U.S. Army Corps of Engineers (Corps) and FEMA as the only federal agencies represented on the Committee. The Committee was established to deal with post- Katrina flood risk issues, with an emphasis on Corps levees. However, the Committee has developed a plan that essentially could apply Corps-level engineering specifications and standards to both levees and water supply canal embankments throughout the country, with little to no coordination with the Bureau of Reclamation and Western water managers. The Committee is now considering draft legislative language that could be used to create a National Levee Safety Program to implement this plan, and thus far, concerns raised by Reclamation and Western irrigation interests do not appear to be gaining traction with the Corps and FEMA. We believe Congress did not intend for water delivery canals that are not part of a flood control system to be subjected to new requirements administered by the Army Corps of Engineers. Wade Noble, President of the National Water Resources Association and a member of the Family Farm Alliance Advisory Committee, will focus solely on this troubling development in his testimony today.

The above federal water resources policy actions and regulatory practices could potentially undermine the economic foundations of rural communities in the arid West by making farming and ranching increasingly difficult and costly. American family farmers and ranchers for generations have grown food and fiber for the world, and we will have to muster even more innovation and resolve to meet this critical challenge. That innovation must be encouraged rather than stifled with new federal regulations and uncertainty over water supplies for irrigated farms and ranches in the rural West.

The Family Farm Alliance hopes that the Administration will give significant consideration to the concerns of agricultural organizations. We pledge to work with the Administration, Congress, and other interested parties to build a consensus for improving the regulatory processes associated with improving water management, water quality, and our environment. At a minimum, federal policies on these and various other water-related issues (Clean Water Act, aging water infrastructure, climate change, land-use, to name a few) should be informed and guided by the goals of preserving our domestic agricultural production capacity and the vitality of rural western communities.

### **ESA IMPLEMENTATION BY FEDERAL AGENCIES A MAJOR CONCERN**

A growing concern to Western irrigators is the employment of the ESA by the federal agencies as a means of protecting single species by focusing on one narrow stressor to fish: irrigation diversions. For the second time in a decade, Congress 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 the Sacramento-San Joaquin Delta (Delta) - were a primary cause for the water cutbacks and rationing afflicting hundreds of communities throughout California and the resulting economic devastation in the San Joaquin Valley. Last year, south-of-Delta water managers estimate that over 1 million acre-feet of water that would normally be diverted to supply San Joaquin Valley farms and Southern California communities were lost to the Pacific Ocean during a five-month period due to the requirements for Delta

pumping restrictions of the biological opinions rendered by federal fisheries agencies to protect endangered fish species.

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.

Unfortunately, agency biologists apparently continue to cling to their belief that the only “switch” that can be pulled to “protect” Klamath River fisheries is to reduce Klamath Project water supplies, because there is no other perceived immediate fix. True solutions to this complicated challenge cannot happen overnight, they are long-term in scope, and all stakeholders must be at the table to contribute to long-lasting success for all interests in this important watershed. We encourage federal agencies to work collaboratively with local interests to find realistic solutions that benefit fisheries in a way that avoids economic hardship to family farmers and ranchers in the Klamath Basin.

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 Academies’ objective scientific review concluded that there was insufficient evidence to support these biological opinions in restricting agricultural diversions from the river, 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.

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 fifteen years, they have been restricting or cutting off water deliveries, even though their experience during those fifteen years have conclusively demonstrated that these restrictions have done little to prevent the fisheries’ decline in the Delta.

As in California, the effects of the Klamath restrictions were immediate and far-reaching– not just losses to the economy but also the wildlife benefits that were lost with the water diversions to farms and ranches (and a federal wildlife refuge). And yet, the federal regulators failed to perform any environmental impact analysis before they ordered cutbacks in California and Klamath.

Last year, U.S. District Judge Oliver Wanger handed a victory to agricultural water users who were seeking to maintain pumping levels in the Sacramento-San Joaquin Delta. In separate decisions involving threatened delta smelt and endangered salmon, Judge Wanger found that the federal government must consider humans along with the fish in limiting use of the delta for irrigation. He also found that water users made convincing arguments that the federal government's science didn't prove that increased pumping from the delta imperiled the smelt.

Among the reasoning for the ruling offered by the court:

- The federal agencies failed to undertake any quantitative analysis to determine how many smelt there are;
- As a result, the agencies' claims with respect to the detrimental impact of water pumping on the overall smelt population were not supported;
- The agencies moreover failed to establish the significance of pumping operations on smelt abundance in relation to all of the other factors affecting the smelt; and .
- The court further found that the federal agencies failed to address alternative approaches to avoid jeopardy to the smelt.

Judge Wanger has directed the USFWS and the NMFS to revise the biological opinions for smelt and for salmon. He has found that the agencies have failed to meet the standards for scientific integrity that the ESA requires. And he has determined that both agencies violated the National Environmental Policy Act as well. As a result, in developing these new biological opinions, the government will finally be required to take into account the impact of these regulations on the human environment. And for the first time, they will be required to take public comment before imposing a new set of regulatory restrictions on the two water systems that serve two-thirds of California's population.

### **IMPEDIMENTS TO ON-FARM ENERGY OPPORTUNITIES**

Farmers and ranchers also face difficulties when they seek to develop new sources of clean, emission-free power using existing infrastructure. A 2010 USDA survey focusing on the 20,000 American farms using methane digesters, solar panels and wind turbines is part of a larger effort from the Obama administration to promote rural energy production. However, there are also tens of thousands of opportunities in the West to install low-head hydroelectric power facilities in existing irrigation canals. Many of our members operate existing irrigation canals and ditch systems that may provide opportunities to develop in-canal, low-head hydroelectric projects that have tremendous potential for producing significant amounts of renewable energy with virtually no negative environmental impacts. Historic irrigation structures can be retained while the system is updated with modern clean-energy producing technologies. Increased revenues from the sale of this renewable energy could result in lower irrigation costs to farmers. And, importantly, irrigation water delivery services can continue while utilizing flows for clean, emissions-free "green" energy production.

Unfortunately, water users who seek to implement multiple low-head hydropower generation sites throughout their service area must undergo costly and time-consuming FERC licensing processes that sometimes impede their ability to implement these projects. Because there are virtually no environmental impacts associated with these easy-to build renewable projects, they should also be promoted and be accorded the same streamlined permitting as new solar and wind projects.

The Alliance supports the "Small-Scale Hydropower Enhancement Act of 2011" – co-sponsored by Congressmen Adrian Smith and Jim Costa – which intends to exempt any conduit-type hydropower project generating less than 1.5 megawatts from FERC jurisdiction. This limited exemption would promote the development of small-scale hydropower while still protecting the environment. This

would help stimulate the economy of rural America, empower local irrigation districts to generate revenue and decrease reliance on fossil fuels – all at no cost to taxpayers.

## **CONCLUSIONS AND RECOMMENDATIONS**

From the standpoint of the Western American farmer, it can be bewildering, daunting and frustrating to view the specter of new rules, regulations, and guidance that are currently under development by federal regulatory agencies. Unfortunately, the very real impacts that existing laws and regulations exert on agricultural producers have already been felt, and those rules do not appear to be going away any time soon. Admittedly, it is simple enough to document these efforts to the best of our abilities and register our complaints. While it is much more difficult to propose constructive solutions that can make existing laws work better, the Family Farm Alliance prides itself in employing this very philosophy. The Alliance and many other organizations representing American producers have developed detailed recommendations over the past decade on how the negative effects of existing environmental regulations can be corrected and improved. We would be happy to provide a compilation of those efforts and make them available to the subcommittee.

Our farmers and ranchers are increasingly subjected to duplicative and expensive federal regulations and their related uncertainty of increased costs, lost critical farm inputs, and reduced water supplies, making it harder to survive in a harsh economy. And forcing farmers out of business and taking farmland out of production so that water supplies can be redirected to new environmental demands will impart huge limitations on our future ability to feed our country and the world.

With the right combination of tools and incentives – the latter, in part, in the form of modernized, streamlined regulations - as well as both public and private sector investments in water management infrastructure for the future, Western irrigated agriculture will be poised to help close the global productivity gap and sustainably meet this Nation's and the world's food and fiber needs in 2050 and beyond.

Thank you for this opportunity to present testimony to you.