

# Monthly Briefing

*A Summary of the Alliance's Recent and Upcoming Activities and Important Water News*

## National Levee Committee Rx Draw Fire from Western Water Users

The Family Farm Alliance, National Water Resources Association (NWRA) and Association of California Water Agencies (ACWA) earlier this month joined forces to raise concerns with a draft legislative framework crafted by the nonfederal members of the National Committee on Levee Safety (NCLS). These organizations, which collectively represent millions of acres of irrigated farmland in the West, delivered a joint letter to the NCLS at a public workshop convened in Sacramento (CALIFORNIA) that was critical of proposed legislative efforts to apply urban levee standards to rural water delivery systems.

The three associations do not believe that the provisions of the Levee Safety Act (Act) apply to facilities operated by the Bureau of Reclamation (Reclamation) or entities responsible for managing works transferred from Reclamation. The Act was passed shortly after the flood damage inflicted to urban New Orleans by Hurricane Katrina and was intended to apply to embankments that provide protection relating to seasonal high water and



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other weather events. This is in contrast to Reclamation canals which are designed to deliver water.

“The nation-wide inspection program and new project condition and maintenance standards required by Committee’s legislative proposal would be duplicative of existing federal law, and would increase federal and non-federal costs

without a corresponding increase in public safety or assurances of financial support,” said Alliance Executive Director Dan Keppen. “It would also open up the potential for greater liability to water project operators.”

### Status of NCLS Efforts

Congress created the National Committee on Levee Safety to develop recommendations for a national levee safety program, including a strategic plan for implementation of the program. The NCLS has been working on this effort since October 2008. The NCLS developed twenty recommendations for creat-

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**Alliance, NWRA, ACWA Raise Levee Concerns (cont'd from P. 1)**

ing a National Levee Safety Program, and presented these in a draft report, *Recommendations for a National Levee Safety Program: A Report to Congress from the National Committee on Levee Safety*, on January 15, 2009. The specific recommendations of the NCLS for a National Levee Safety Program embrace three main concepts: (1) the need for leadership via a National Levee Safety Commission, which would support state delegated programs, provide national technical standards and risk communication, and coordinate environmental and safety concerns; (2) the building of strong levee safety programs in all states, which would provide oversight, regulation, and critical levee safety processes; and (3) a foundation of well-aligned federal agency programs.

According to the draft Report, federal legislation will be necessary to fully implement 12 of the 20 recommendations at a national level. The US Army Corps of Engineers (USACE) and Federal Emergency Management Agency (FEMA) are working within existing authorities and funding to begin the first steps in implementing several of the recommendations that address the basics of communication and outreach, use of common language and refinement of their existing programs. The nonfederal members of the NCLS have

drafted a proposed legislative framework establishing a National Levee Safety Program and addressing the areas where the NCLS sees that legislation is needed to implement their recommendations.

Further, USACE is considering NCLS recommendations in the development of its own levee safety standards and risk assessment and communication methodologies.

“While we support those efforts, it is not appropriate to assume that similar standards and methodologies should also apply to water delivery facilities operated by the Bureau of Reclamation and its local partners, especially when

Reclamation and other interests with ties to Western agriculture were not even represented on the NCLS,” said Keppen.

NCLS is engaging with the federal, state, local, regional, and tribal governments, levee owners and operators, environmental groups, and technical associations to share the findings and recommendations from their draft Report and continue the dialogue on levee safety. Alliance representatives were present at a stakeholder outreach workshop held this month in Sacramento (CALIFORNIA), where senior Reclamation officials also made a presentation on this issue at a NCLS briefing.

**Bureau of Reclamation Position on NLSP Applicability to Reclamation Facilities**

Prior to the release of the draft Report in early 2009, the Bureau of Reclamation in 2008 drafted an internal memo regarding the

(non-) applicability of the Levee Safety Act to Bureau of Reclamation canals, where they noted that the USACE was interpreting the "Levee Safety Act," to include Reclamation canals within its coverage. Reclamation consulted the Interior Department Solicitor's Office and determined that the provisions of the Levee Safety

Act do not apply to Reclamation. They opined that the Act applies to levees, which the law defines as embankments that provide protection relating to seasonal high water and other weather events.

This is in contrast to Reclamation canals which are designed to deliver water.

“After reviewing the Act carefully and consulting with the Solicitor's office, we do not find any indication in the Act that Congress intended to subject Reclamation to the jurisdiction of the Secretary of the Army,” concluded Roseann Gonzales,



*Hurricane Katrina. New Orleans, LA. 2005 Source: NCLS*

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**Alliance, NWRA, ACWA Raise Levee Concerns (cont'd from P. 2)**

Reclamation's then-Director of Policy and Program Services.

The Alliance, NWRA and ACWA agree with the Department of the Interior and Reclamation's position.

**Concerns of Western Water Users**

There clearly is a need to address the deterioration of aging flood control facilities, and preventing failures like the one in New Orleans should be an immediate priority. However, Western water users have reviewed the National Levee Safety Program draft legislation in detail and have a number of concerns. Many believe it mandates new standards that would apply to many existing Bureau of Reclamation water delivery facilities when the focus instead should be on those flood control facilities that pose an actual risk to lives and property in the flood plain.

The Levee Safety Act was intended, in light of the circumstances which led to its enactment, to only deal with levees and the kind of canals around New Orleans into which flood waters were pumped to be conveyed away from the low points in the city.

"We do not believe the proposed draft legislation is required to use the same definition of "levee" as used in the Act, which created the NCLS," the Alliance/ACWA/NWRA letter stated. "The proposed legislation should only address a program for "levees" as that term is traditionally understood, with the embankment sections of water delivery canals and dams excluded."

Canals have unique design and engineering specifications that are much different than levees, and Western water managers believe applying standards meant for levees to their water delivery canals will be not only illogical and irrational, but expensive and unaffordable.

"The nation-wide inspection program and new project condition and maintenance standards required in the legislative proposal would in most cases be duplicative and undermine existing operation and maintenance (O&M) standards and inspection procedures built into Reclamation contracts for both reserved and transferred facilities," said Keppen. "This would increase costs, both federal and non-federal, and in many cases without a corresponding increase in public safety."

It could also open up the potential for greater liability to water project operators, as applying levee standards not

meant for canal delivery structures would make compliance difficult if not impossible due to the excessive costs of rebuilding such structures. Although the draft legislation would authorize financial assistance to non-federal entities responsible for the maintenance of federally-owned facilities, it is not clear how or when that assistance would be realized.

The Alliance/ACWA/NWRA letter also pointed out that Congress recently provided new authority to Reclamation through *P.L. 111-11*, signed into law in March 2009, intended to address aging canal systems in urbanized areas of the West. These authorities were proposed by Senate Majority Leader Harry Reid (NEVADA), who in early 2008 introduced a bill (S. 2842) designed to make aging federally-owned canals safer across the West. Reclamation, in consultation with transferred works operating entities is already moving forward with the development of specific inspection guidelines for project facilities which are in proximity to urbanized areas and which could pose a risk to public safety or property damage if such project facilities were to fail.

"We believe Reclamation's new program for canal safety already addresses the risk of failure of canals and ditches in areas of highest risk, and the NLSP should not duplicate or hinder this effort with more layers of federal bureaucracy," said Keppen.

**"One Size Does Not Fit All"**

In the American West, water supply systems are essential components of communities, farms, and the environment. These facilities are an integral part of the nation's food-production system and their consistent operation helps ensure our farmer's ability to provide a reliable and secure food supply for U.S. citizens and the rest of the world. Population growth, environmental demands and climate change are placing an unprecedented strain on aging water storage and conveyance systems designed primarily for agricultural use.

The Alliance has supported updating Reclamation guidelines for analyzing projects to include considerations for urbanization and other effects that did not exist when these facilities were originally designed many decades ago. However, many Alliance members do not have the financial capability to conduct required repairs or upgrades to their facilities to comply with a national levee standard on their canals, resulting in little or no commensurate increase in public safety.

"One-size still does not fit all, and expensive, nonsensical standards for all Reclamation water delivery facilities are not appropriate or cost-effective," said Keppen.

***"The proposed legislation should only address a program for "levees" as that term is traditionally understood, with the embankment sections of water delivery canals and dams excluded."***

**October 26, 2010 Family Farm Alliance / NWRA / ACWA Letter to NCLS**

# Alliance Joins Four Partners in Agriculture for 2010 Irrigation Show in Phoenix



The Family Farm will join four other associations as partners in The Irrigation Association's December 2010 Irrigation Show in Phoenix (ARIZONA). Joining the Alliance as show partners will be the American Society of Irriga-

tion Consultants (ASIC), the Equipment Marketing and Distribution Association (EMDA), Western Growers Association (WGA), and Field to Market: The Keystone Alliance for Sustainable Agriculture.

"These groups are all natural partners for the 2010 Irrigation Show," said IA Executive Director Deborah Hamlin. "ASIC has a 40-year history of encouraging professionalism and expanding the knowledge of its irrigation designers. The four agriculture groups are leading organizations in production agriculture and agribusiness. On behalf of IA's Board, I'd like to thank them for supporting our show and the larger irrigation industry."

The ASIC is the society for irrigation design professionals in the United States. It provides a forum for the exchange of information and techniques in irrigation design, installation and product application.

The EMDA is the leading association devoted to the marketing of specialized equipment, including agriculture, outdoor power, light industrial, forestry equipment and related parts/components.

The Keystone Alliance for Sustainable Agriculture works to create opportunities across the agricultural supply chain for continuous improvements in productivity, environmental quality and human well-being. The group joins producers, agribusinesses, food companies and conservation organizations seeking to create sustainable outcomes for agriculture.

WGA is the nation's leading agricultural trade association, representing farmers and growers in California and Arizona. The organization's 3,000 members grow, pack and ship 90 percent of the fresh vegetables and nearly 70 percent of the fresh fruit and nuts grown in Arizona and California, about one-half of the nation's fresh produce.

Family Farm Alliance Executive Director Dan Keppen represents the Alliance on the IA board of directors.

"We are encouraged by the relationship that has developed between the Alliance and IA in the past year," said

Keppen. "We have mutually agreed to support each other's annual association meetings, and we are honored to take this first important step and participate as a partner in this year's big IA trade show."

"The Irrigation Show offers growers, designers, manufacturers and all types of irrigation professionals a chance to examine the big picture," said Hamlin. "By serving as partners, these groups testify to the vital role irrigation plays in the current and future business of turf and agriculture, not only to their members but for all professionals."

The 2010 Irrigation Show will be held at the Phoenix Convention Center in Phoenix, Ariz., Dec. 5-7. The only national trade show for irrigation industry professionals, the Irrigation Show features more than 300 exhibitors, more than 20 education classes, seven certification exams and networking opportunities for professionals from around the country.

In 2010, a new Ag Insights Track will feature four sessions that provide insights into key challenges and policy issues affecting growers, dealers, equipment manufacturers and other agriculture attendees.

The Irrigation Association is the leading membership organization for irrigation companies and professionals. Together with its members, IA is committed to promoting efficient irrigation and to long-term sustainability of water resources for future generations. IA works to improve industry proficiency, advocate sound water management, and grow demand for water-efficient products and services.

For more information, visit <http://www.irrigationshow.org>.



*Last year's IA Irrigation Show in San Antonio (TEXAS) drew thousands of irrigation professionals and company representatives to the three-day event.*

# Revised Bull Trout Critical Habitat Rules Blasted by Western Water Interests

The U.S. Fish and Wildlife Service (USFWS) has finalized its controversial bull trout critical habitat designation, much to the alarm of Pacific Northwest water users farmers, ranchers and others that rely on a dependable water supply.

“It couldn't be much worse for Idaho water,” said Norm Semanko, Executive Director of the Idaho Water Users Association, and a member of the Family Farm Alliance Advisory Committee. “Virtually every reservoir, river and stream in southwest Idaho was included in the designation, including areas that are not occupied by bull trout at all.”

Bull trout are a threatened species found throughout

much of the Pacific Northwest and protected under the federal Endangered Species Act (ESA). According to USFWS, bull trout are primarily threatened by habitat degradation and fragmentation, blockage of migratory corridors, poor water quality, the effects of climate change and past fisheries management practices, including the introduction of non-native species such as brown, lake and brook trout.

The bull trout critical habitat designation comes after a successful lawsuit in federal district court in

Oregon brought by environmental groups, *Alliance for the Wild Rockies v. Allen*, challenging an earlier, leaner Bush Administration designation. Under the first rule, the proposed protection area was 21,935 miles of streams and 591,577 acres of lake water. Those numbers were trimmed to 4,800 miles of streams and 136,400 acres of lakes in a 2005 rule, but later were revisited after a 2008 federal inspector general's report charged that Julie MacDonald, a high-ranking Department of Interior official, had improperly influenced this and other endangered species cases (*see related article on page 6*). The new rule designates 18,975 miles of streams and 488,252 acres of lakes and reservoirs in Idaho, Oregon, Washington, Montana and Nevada as critical habitat for the fish.

“This action is the result of an extensive review of the Service's previous bull trout critical habitat proposals and

designation, as well as comments and new information received during the 2010 public review process,” said Robyn Thorson, Regional Director of the Service's Pacific Region. “Our biologists worked hard to ensure the best science was used to identify the features and areas essential to the conservation of bull trout rangewide.”

USFWS notes that, when compared to the proposed rule issued in January of this year, the designation shows a net reduction of approximately 12.5 percent of the streams, 8.5 percent of lakes and 23.5 percent of marine shoreline habitat. The agency claims these changes reflect new biological

information received during the comment period resulting in the addition of some habitats and the removal of others.

Not everyone agrees.

Damien Schiff, an attorney with the Pacific Legal Foundation, a property rights advocacy organization that opposed expansion of bull trout critical habitat, believes USFWS bowed to pressure applied by environmental groups, who criticized the prior designation because USFWS did not designate any “unoccupied” areas as critical habitat. In this

month's designation, Schiff says USFWS has done “a dramatic about-face”, designating over 800 miles of streams and thousands of acres of lakes and reservoirs as unoccupied critical habitat.

“USFWS's actions are especially remarkable when one considers that the standard for designating unoccupied critical habitat is much higher than the standard for designating occupied critical habitat,” Schiff emphasized. “In fact, USFWS must demonstrate that an unoccupied area is essential to the species's conservation.”

Semanko and others have criticized the final critical habitat rule for failing to use the best available science in developing the designation, failure to conduct a timely, appropriate and thorough economic analysis, and the need to do an Environmental Impact Statement.



**Bull Trout critical habitat will impact water users and producers in 5 Western states. Photo source: U.S. Fish & Wildlife Service**

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## **Bull Trout Rules Blasted (Cont'd from P. 5)**

“While we requested that the USFWS exclude southwest Idaho river basins from the final designation, they have been included,” said Semanko.

USFWS also released a final economic analysis that identifies the potential incremental cost of the critical habitat designation at approximately \$5 million to \$7.6 million a year over the next 20 years. Many of the potential costs are associated with additional procedural requirements for federal agencies, which must consult with the USFWS when planning to undertake an action that could potentially harm the bull trout's habitat. However, the USFWS study found that most agencies already are managing their lands and waters to a significant conservation standard due to existing critical habitat designations for salmon and other species and the presence of bull trout in 96 percent of the critical habitat designation. This finding led to USFWS concluding that the designation is not expected to add significant additional conservation requirements.

Semanko believes the potential cost of these designations is significant. Irrigators, cities, industries, and other water users will pay the cost from potential loss of water supplies

and reduced flood control and hydropower customers can expect higher costs from potential reservoir re-operation. Water users will also face new costs associated with consultation and uncertainty caused by the potential additional regulatory burden of critical habitat.

“USFWS failed to properly analyze and calculate these costs, which could approach or exceed \$1 billion,” said Semanko. “The few benefits provided to the fish by these designations are far outweighed by the economic and social costs - and the threat to Idaho water.”

Semanko and Idaho producers recently met with the Governor's Office of Species Conservation and the USFWS in the State Capital to discuss the recent critical habitat designation.

“We simply cannot allow this decision to stand unchallenged,” said Semanko.

The final critical habitat rule is available for viewing online at the Federal Register. It will be published in the Federal Register on October 18, 2010. The new designation takes effect on November 17, 2010.

## **Julie MacDonald, Post-Interior: Reflection and Slow Vindication**

Julie MacDonald – a former Bush-era Interior official who was closely involved with overseeing development of critical habitat rules for bull trout five years ago – is a name that often pops up when Endangered Species Act (ESA) rulemaking is discussed. Ms. MacDonald has been subjected to particularly withering fire over the past five years for allegedly altering scientific field reports to minimize protections for imperiled species like the bull trout.

### **Allegations**

She resigned from the Department in 2007 after an Inspector General's (IG) report appeared to support related allegations made by environmental activists. Those allegations included charges that she had unreasonably interfered with scientific findings relative to ESA issues and that she had conducted herself outside the chain of command by interacting directly with field personnel. Having reviewed the ESA decisions in which Ms. MacDonald involved herself, Interior then determined that eight additional decisions had to be reviewed, and, as is the cases with bull trout designation – essentially reversed.

Later in 2007, at a Congressional oversight hearing, the broader public for the first time discovered that Ms. MacDonald had submitted a written response to the Interior Department allegations. After the hearing, it became apparent that questions lingered in the minds of some regarding Ms. MacDonald's ability to address the charges made against her, and how her input was factored into the IG report. Five weeks later, the Colorado Springs *Gazette* presented an editorial that summarized Ms. MacDonald's response. The editorial was very relevant to the paper's readers, since many of them could have been impacted by the proposed de-listing of the Preble's meadow jumping mouse, protected under the ESA, which falls under Interior Department purview.

In a nutshell, the *Gazette* concluded that Ms. McDonald was “railroaded”.

### **Partial Vindication**

In the years that have followed, MacDonald has stayed out of the media limelight, and as time has passed, she is

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**Delayed Vindication for Julie MacDonald (Cont'd from P. 6)**

slowly being further vindicated. Earlier this month, Matthew Daley of the Associated Press reported that the Obama Interior Department had determined that the Sacramento splittail fish would no longer be listed as “threatened” under the ESA, essentially agreeing with a similar recommendation made by Ms. MacDonald seven years earlier.

Around 2003, field-level biologists with the USFWS had concluded that splittail should remain on the threatened list. They were overruled in 2003 by higher ranking officials, including the USFWS regional director and Ms. MacDonald’s superior, former Assistant Interior Secretary Craig Manson, who also supported the decision to remove protections for the fish. Some environmental groups went ballistic, alleging that the biologists were rolled by a Bush Administration political player – MacDonald. Those allegations were routinely reported in the press and employed by Bush Administration critics in Congress. The Bush administration later reversed the splittail determination and six other rulings that denied endangered species increased protection, claiming Ms. MacDonald’s actions had tainted the decisions.

The AP story noted the irony of the Obama Administration being on the same side as Julie MacDonald on the splittail issue.

Contrary to allegations by the Center for Biological Diversity (CBD) - a well-known, litigious environmental group - and the Interior Department’s IG, Julie MacDonald consistently maintained that she did not change recommendations about the splittail made by the USFWS regional manager. CBD apologized to Ms. MacDonald in 2009 as part of a settlement of a defamation suit she filed. In its apology, which is posted on the CBD website, executive director Kieran Suckling tells MacDonald that the center “retracts and apologizes for any statements ... that you alone were personally responsible for what CBD asserts was the government’s illegal splittail decision.” CBD’s retraction also notes that in the reports of the IG and the Government Accountability Office, the Interior Department concluded:

*“MacDonald’s actual involvement in the Splittail matter occurred several months after the decision to remove the species from the list had already been made by a manager at the (USFWS regional office). MacDonald’s participation did not change the manager’s initial decision to withdraw the Splittail from the list of endangered species.”*



**Julie MacDonald speaks to the 2008 Family Farm Alliance Annual Conference in Las Vegas (NEVADA). Source: Randy McFarland.**

**Reflection**

Close to one year after she resigned from Interior, at the Family Farm Alliance 20<sup>th</sup> annual conference, MacDonald said she had no second thoughts about her experiences in Washington.

“I am proud of the work I did at Interior,” she said. “I would do it all over today.”

Ms. MacDonald asserted that despite allegations of blocking or adversely affecting federal endangered species decisions, changing science and other alleged wrongdoing, her

Interior work was an effort to follow *all* of the ESA’s directives and ensure that a required public process took place and comments were all considered.

“The ESA is not a bad law,” she said. “The ESA is a powerful and flexible law. It has an important purpose and role in maintaining our way of life.”

The problem, Ms. Macdonald contends, is that “over the years that the ESA has been in existence...people stopped following the actual provisions of the law, and started substituting what they wished the law said, depending on the circumstance and the outcome they wanted.”

She told family farmers and ranchers gathered at the Alliance meeting how Washington, D.C. policy makers like to throw around buzz words like: ‘sustainability’, ‘ecosystems’, ‘natural environments’ and ‘open space’.

“But the problem is that the ideas formed behind these words often are the product of people who live in concrete canyons where living space is defined in terms of square feet, not acres,” MacDonald told the audience. “Those people have an ideal they want to impose, but it’s

an ideal not based on reality and the world in which you live in every day, but rather on a world view that is incomplete.”

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