



Senate Committee on Energy and Natural Resources - April 5, 2005 Water Conference
Executive Summary

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The Family Farm Alliance (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. The Alliance is recognized as an authority on critical issues of Western water policy.

We appreciate the opportunity to submit the attached responses to the six questions posed by your Committee. These responses are based, in large part, on Alliance-adopted policy documents, including A Blueprint for Effective Water Policy in the West: An Alternative to the Final Report of the Western Water Policy Review Advisory Commission, which was originally submitted by Commission Member Pat O'Toole, the new president of the Alliance. The themes expressed in our responses generally reflect our belief that streamlined federal regulation and decision-making are the keys to sound Western water policy. Wherever possible, meaningful delegation of decision-making authority and responsibility should be transferred to the local level, with less federal intrusion in basin issues. This philosophy drives the principles that we believe should guide the federal government's role in water resources during the 21st century:

1. The overriding goal of federal water policy must be to provide certainty to all water users; agricultural, tribal, municipal, industrial and environmental, who are dependent on commitments made by the government.
2. When water laws and environmental laws conflict, balanced solutions that respect treaty and contractual obligations must be the goal.
3. State laws and institutions must be given deference in issues relating to water resource allocation, use, control and transfer. The best decisions happen at the state and local level.
4. Renewed and continued support for the development of new, environmentally sound, sources of water supply is essential. New water supplies must be developed if we want to solve environmental problems, allow for growth and protect the economic vitality of the West.
5. Existing water supply infrastructure must be operated, maintained, and modernized in the most cost-effective manner possible. Qualified districts or water user organizations should be provided with the option to perform or contract with qualified private contractors any work on federal facilities that does not fall within the category of "essential governmental functions" so long as appropriate standards are met so that scarce fiscal resources are used most efficiently. Work on federal facilities performed by government agencies must be subject to greater cost control and accountability requirements.

None of these improvements requires the creation of new layers of bureaucracy, or new and different principles for water management in the West. Support - not intervention - is what is required from the federal government.



SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
APRIL 2005 WATER CONFERENCE

RESPONSE BY DAN KEPPEL, FAMILY FARM ALLIANCE

TOPIC #1: Water Supply and Resource Management Coordination

Is there a need for improved coordination of water supply activities and water resources management at the local, state and/or national levels, and if so, what form should this coordination take and how should it function?

The system that has evolved over the past 150 years in the West does not need to be rebuilt by federal intervention. The United States should defer to States, Tribes, and local government decisions regarding water allocation and use, and should advocate constructive ways in which the federal government can support and facilitate those decisions. As a Nation, we have experimented for decades with a governance model that relied heavily on executive-branch agencies. As a result, federal agencies have grown steadily in both number and scope, producing the interlocking, inconsistent, and illogical web of regulations that prompted Congress to find that "federal water policy suffers from unclear and conflicting goals implemented by a maze of agencies and programs."

The source of the problem is obvious - too many federal agencies with too many regulations and overlapping responsibilities. The solution is equally obvious - a reduction in the gridlock that characterizes federal water policy decisions will require a reduction in the number of federal agencies and federal regulations that are involved in those decisions.

What has been the experience with regional, river basin and watershed-based planning efforts and conflict resolution?

In the Western United States, we have witnessed successes and failures with large scale watershed-based efforts and conflict resolution. Three examples that cover the range of success in large-scale Western planning efforts and conflict resolution are summarized below.

CALFED BAY-DELTA PROGRAM

Under existing law, certain state and federal agencies with management and regulatory responsibilities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary participate in the CALFED Bay-Delta Program for the purposes of improving ecosystem quality, water supply reliability, water quality, and the integrity of the levees and channels in the bay-delta. Nearly two dozen state and federal agencies have some role in managing or regulating the natural resources of the bay-delta and its watershed¹.

¹ California Bay-Delta Authority Act of 2003.

The California legislature established the California Bay-Delta Authority as a new governance structure to oversee the Program and the CALFED agencies. Collectively these agencies have allocated nearly \$2 billion for local projects to expand groundwater storage, ensure efficient water use, increase water recycling, stabilize levees and restore ecosystems². Now in its fourth year of implementation, CALFED claims it is delivering on its promise to break through years of gridlock and litigation by providing a balanced, collaborative approach to the state's most challenging water issues. However, while fish populations appear to be improving, agricultural and urban water users question whether water supplies are actually becoming more dependable. When CALFED was in its infancy, water users supported the program because they believed the concept of "balance" to be critical to a successful CALFED. Unfortunately, critical water supply storage and conveyance projects have lagged behind environmental restoration efforts, and many water users believe that these necessary infrastructure works may never be completed.

While all of the planning and actions associated with CALFED contemplate an integrated approach toward water management, regulatory agencies continue to adhere to a rigid application of Clean Water Act – driven alternatives analysis. This requires one to view each of the CALFED potential solutions not as an integrated whole, but rather as alternatives, one to the other. As a consequence, the ability to maximize benefits through integrated water management is lost in favor of rigid analyses developed to deal with situations dissimilar to CALFED³.

At its outset, CALFED held out the promise of mutually beneficial improvements in the Sacramento-San Joaquin Delta system as a mechanism for improving the ecosystems of the Delta, water supply and water quality. While many ecosystem improvements have been realized, and scientific understanding of the Delta has improved, these improvements have not been effectively communicated within the federal and state regulatory agencies. This has resulted in delaying scheduled enhancements and improvements to water supply and Delta water quality.

Critics of CALFED believe that the science – supported linkages between completed ecosystem improvements and the scheduled water supply and quality improvements must be effectively communicated to regulatory agencies⁴. Water users believe that mutually beneficial agreements for the coordination of capacity and storage hold the most immediate promise for improvement in California's water crisis. CALFED must improve its ability to communicate its policy and science successes to the regulatory agencies that participate in it. Absent that improvement, stakeholders may be forced to pursue their objectives outside its framework.. Finally, CALFED and similar programs must not be allowed to degenerate into an endless series of studies at ever-increasing costs.

² CALFED Bay-Delta Authority 2003 Annual Report, March 2004.

³ Testimony of Stuart L. Somach, Before the Committee on Resources, U.S. House of Representatives Hearing to Authorize the Secretary of the Interior to Implement the CALFED Bay-Delta Program, July 24, 2003.

⁴ Testimony of Thomas N. Clark, General Manager, Kern County Water Agency, Before the Water and Power Subcommittee of the House of Representatives Resources Committee, June 28, 2003, Tulare, California.

KLAMATH RIVER WATERSHED

In the last 13 years in the Klamath River watershed, biological opinions rendered by the U.S. Fish and Wildlife Service (for two species of sucker fish) and NOAA Fisheries (for coho salmon), have increasingly emphasized the reallocation of Klamath Project (Project) water as the sole means of avoiding jeopardizing these fish. The net result of these restrictions on local water users was fully realized on April 6, 2001, when the U.S. Bureau of Reclamation (Reclamation) announced that – for the first time in Project’s 95-year history - no water would be available from Upper Klamath Lake to supply Project irrigators.

The resulting impacts to the local community were immediate and far-reaching. Thousands of acres of valuable farmland were left without water, which, in addition to harming those property owners, managers, and workers, also imparted an economic "ripple" effect through the broader community. The wildlife benefits provided by those farms – particularly the food provided for area waterfowl – were also lost with the water. The local farming community is still reeling from the April 6, 2001 decision, and severe business losses echoed the hardship endured by farmers and farm employees.

In 2001, congressional representatives serving the Upper Klamath Basin requested that an independent, unbiased peer review be conducted of the science and decision-making that led to the 2001 curtailment. The decision to reallocate stored water originally intended for irrigation purposes to the alleged needs of three fish species protected under the Endangered Species Act (ESA) was questioned by many in the Upper Basin, who felt that their input was ignored, and that relevant observed empirical information was discarded by agency biologists. The National Research Council (NRC) convened a multidisciplinary panel of experts to review the 2001 decision, and to develop long-term recommendations to address the fishery challenges of the Klamath River watershed.

The final 2003 NRC report recommends a watershed-wide approach to species recovery – one that addresses all the stressors to fish – as essential to improving the environment and saving the local economy. The NRC report’s vision is one where increased knowledge, improved management, and cohesive community action will promote recovery of the fishes. In addition to calling for oversight of current federal agency management, the report recommends that the management structure for ecosystem restoration needs to involve local groups and private landowners in the design of restoration activities and investments. The report urges federal management agencies to recognize the nature of incentives in the ESA for private landowners to participate in ecosystem recovery. The report confirms observations of many landowners in the Upper Klamath Basin: the regulatory approach of implementing the ESA, as opposed to the use of incentives that would encourage landowners to promote the welfare of species, is viewed by landowners as more stick than carrot.

Momentum behind such an approach was bolstered by the October 2004 signing of the “Klamath River Watershed Coordination Agreement”. The agreement – signed by California Governor Arnold Schwarzenegger, Oregon Governor Ted Kulongoski, and four of President Bush’s cabinet level secretaries – underscores the commitment of these parties to solve the fisheries challenges of the Klamath River on a watershed – wide basis.

The movement away from focusing on federal actions and towards a more holistic watershed wide-approach to problem solving is a very slow process in the Klamath Basin. The chief advocates of this process –including the Bureau of Reclamation and local water users – are hopeful that such an approach can be achieved and can replicate the success enjoyed via a similar Colorado River process upon which it is modeled, as discussed below.

UPPER COLORADO RIVER BASIN

In the early 1980's there was potential for massive institutional and legal conflict involving protection of habitat for four endangered fish species and continued water development in accordance with Interstate Compacts and State water law in the Upper Colorado River Basin. After four years of negotiation, a Recovery Program was established in 1988 to assist in alleviating those conflicts. Participants in the Program include United States Fish and Wildlife Service, Bureau of Reclamation, Western Area Power Administration, the States of Colorado, Wyoming, and Utah, Upper Basin water users, environmental organizations, and the Colorado River Energy Distributors Association.

The fundamental objectives of the Recovery Program are to recover endangered fish species while water development proceeds. Protection of instream flows for endangered fish species is to be accomplished under State law, thus providing recognition for all other water rights. Approximately 670,000 acre feet of existing and new depletions involving over 200 Endangered Species Act Section 7 consultations have been approved by Fish and Wildlife Service, and no lawsuits have been filed on any consultation conducted under the Recovery Program - all while proceeding in compliance with State law. While the long-term viability of this Program is not certain, its success to date in fostering cooperation instead of litigation validates the continued use of an approach that works within State law.

What lessons can be learned from these and other models for water supply coordination and water resources management?

Former Assistant Interior Secretary Bennett Raley recently addressed this topic in a speech he delivered in Tucson. According to Raley, large-scale multi-disciplinary/multi agency programmatic approaches to resource challenges can provide great opportunities for progress. However, great care must be taken in the formulation and management of programs like this, as there is no “one size that fits all” and each of these approaches have elements of both success and failure. There are, however, several issues that Raley has observed to be common among the various approaches and disparate locations:

- There is a growing sense among Western water users, particularly farmers, ranchers, and municipalities that the federal government no longer considers itself accountable for policy and operational decisions which adversely affect the operations of others. Many issues might be addressed more effectively if the regulators had a greater appreciation of the impacts caused by regulatory actions.
- There is a need for management of the science that is used in the program. Funds must be managed so that the science is focused on issues that are likely to be priorities for the program instead of being focused on the expertise and interests of the agency scientists that happen to be in place.

- There is a need to manage expectations, both in the formulation and in the implementation stage. For example, the CALFED consensus was formed by essentially promising everyone everything they wanted. Difficult issues were resolved with promises of money. If funds are available in infinite quantities, this is a great approach, and consensus can be achieved. Until very recently, CALFED planning was based on the assumption that all of the previously promised money would in fact be available. However, recent fiscal reality has been traumatic for CALFED, and it remains to be seen whether it will survive in the long term.
- A third common element is the struggle to avoid decision paralysis. Without leadership and the identification of specific, realistic goals, these efforts tend to drift off into massive study programs at the expense of doing things on the ground that can actually result in progress.

What role should the federal government play in this area?

Wherever possible, meaningful delegation of decision-making authority and responsibility should be transferred to the local level, with less federal intrusion in basin issues. This philosophy drives the principles that we believe should guide the federal government's role in water resource issues during the 21st century:

1. The overriding goal of federal water policy must be to provide certainty to all water users; agricultural, tribal, municipal, industrial and environmental, who are dependent on commitments made by the government.
2. When water laws and environmental laws conflict, balanced solutions that respect treaty and contractual obligations must be the goal.
3. State laws and institutions must be given deference in issues relating to water resource allocation, use, control and transfer. The best decisions happen at the state and local level.
4. Renewed and continued support for the development of new, environmentally sound, sources of water supply is essential. New water supplies must be developed if we want to solve environmental problems, allow for growth and protect the economic vitality of the West.

The federal government has played a pivotal role in the development and subsequent regulation of water resources in the West over the past century. However, this involvement has grown exponentially over the past several decades through legislative enactments such as the Endangered Species Act and the Clean Water Act. Implementation of these and other laws has challenged traditional notions about continued control of water resources by the States. The increased control exerted by federal agencies through a variety of means has increasingly led to gridlock in the management of water supplies in the West.

The federal role in this area must be re-examined to determine if a reorganization or consolidation of water management agencies would allow processes to move forward and create solutions acceptable to all stakeholders. The roles of federal agencies should be narrowly defined so as to preclude intrusion upon state allocation procedures. Rather than impose objectives for water quality, listed species and land management by fiat, the federal government should actively engage with state governments to integrate those objectives into existing state systems in a manner which does not unnecessarily or unreasonably impact vested rights.



SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
APRIL 2005 WATER CONFERENCE

RESPONSE BY DAN KEPPEL, FAMILY FARM ALLIANCE

TOPIC #2: Role of the Bureau of Reclamation in the 21st Century.

What should the future role of the Bureau of Reclamation be in the West? Should the Bureau undertake water supply or supply augmentation activities which are designed primarily for municipal and industrial purposes, such as the Title XVI Program? Please also include comments on potential financing mechanisms such as grants or loan guarantees. What role should the Bureau play with respect to addressing: the West's future water needs; drought and flood planning and response; water infrastructure, including dam safety and site security; facility operation and maintenance; rural water needs, including in Indian country; hydroelectric power; recreation; watershed restoration; and water use efficiency?

The Family Farm Alliance strongly supports the focus of the Bureau of Reclamation (Reclamation) on fulfilling its core mission of delivering water and power in accordance with applicable contracts, water rights, interstate compacts, and other requirements of state and federal law. Inherent in this definition of core mission is the need to prioritize the expenditure of federal funds and other resources of the Department of the Interior. Water 2025, so long as it continues to recognize that transfers and the use of market mechanisms must be voluntary and pursuant to state law, provides a strong foundation for defining the role of the Bureau in meeting future water needs of the West.

As is recognized by Secretary Norton's Water 2025 Initiative, it is imperative that Reclamation provide for the operation, maintenance, and modernization of existing water supply infrastructure. Many Reclamation facilities are approaching the end of or are past the design life of the facilities. In addition, many of these facilities also need to be replaced with modern designs that provide for greater water management efficiency. Sound business practices dictate that this existing infrastructure, and the water supply provided by these facilities, be protected and preserved prior to the dedication of scarce funds to the development of new supplies. With respect to the specific question regarding the role of the Title XVI Program, the Family Farm Alliance observes that many of the existing and potential recipients of these funds are entities that have the financial capacity to fully fund the development of alternative water supplies. The Title XVI Program should not be funded at the expense of taking care of existing infrastructure and protecting important agricultural communities that do not have the same financial capabilities.

The Family Farm Alliance supports the Water 2025 matching grant program, and suggests that it be expanded to provide additional opportunities for the investment in water conservation and efficiency measures. However, because this program is unlikely to meet all

of the needs for funding the repair and modernization of existing facilities, additional funding mechanisms must be developed. Alternatives include a return to the Small Project Loan Program, or the development of federally backed loan guarantees that will enable water users to access alternative sources of capital in order to repair and modernize existing infrastructure. With respect to financing projects, the historical use of zero interest loans already authorized by Reclamation law still has some merit; especially when it has been conclusively shown that many projects have returned their construction costs to the Treasury many times over from tax revenues directly related to the project benefits. Even in areas of less intensive irrigation and population, benefits from the various projects have more than returned their cost, especially when all of the project benefits, including those not originally authorized and assigned costs, are considered.

Another possibility would be to allow entities with annual repayment obligations to shift those obligations to operation, maintenance and replacement reserve accounts. Although this does have an impact to the return to the Treasury, it could reduce the potential need for future assistance for major rehabilitation. Also, it would seem appropriate for Congress to allow for the capitalization of OM&R. Many of the infrastructure problems on old Reclamation facilities could have already been addressed if capitalization of OM&R had been authorized.

A number of years ago the Family Farm Alliance took the lead in an effort to provide for cost containment and accountability for work by the Bureau of Reclamation that was either funded in advance by water users or subject to repayment obligations. With the cooperation of the Bureau of Reclamation in general, and Jack Garner in particular, great progress was made in this regard. However, given that federal, state, local, and private funds will be scarce, it is imperative that these efforts continue.

Recent events on several fronts that are related to this issue have been a source of concern to the Family Farm Alliance. First, the unfortunate experience with the cost overrun on the Animas-La Plata Project provided a warning signal that additional work was needed to ensure that Reclamation continues to focus on cost containment and accountability for projects funded through the Reclamation Program. Second, a number of our members have dealt with situations where cost estimates for work that would be done by the Bureau of Reclamation were substantially over the cost of having the work done by the local district itself or under contract with private consultants. There appear to be at least two reasons for the divergence in the cost estimates – excess staffing by Reclamation for work, with attendant increases in costs, and the requirement of design standards that are excessive or unjustifiable. Third, the Family Farm Alliance is deeply concerned to hear that at least one district has been forced to use Reclamation staff for design work and was not given the option of doing the work itself or having it performed by qualified consultants. This incident is of great concern because it is contrary to the practice elsewhere in Reclamation, where contractors who are paying for the work have had the option to have the work performed by Reclamation or by qualified consultants.

In light of the fact that neither Reclamation nor water users can afford to waste money through over-staffing or noncompetitive practices, the Family Farm Alliance encourages the Committee to take a very hard look at the policies and practices of Reclamation with regard to

the involvement of the Reclamation programs located at the Denver Federal Center. The Family Farm Alliance also plans to provide input to the ongoing review of these aspects of Reclamation by the National Academy of Engineering, which appears to be focusing on the question of what capabilities Reclamation should maintain within the agency and what work or functions can and should be performed by others. However, regardless of the outcome of this review, fundamental fairness requires that when a water user is paying for work in advance or through repayment mechanisms, that water user should have the option to have the work executed in the manner that provides the most return for the investment.

These concerns regarding cost containment and accountability do not, in general, implicate the work done at the Regional and Area Reclamation Offices. The Family Farm Alliance is proud of its partnership with Reclamation, and believes that Reclamation has much to be proud of in its service to water users and the public.



SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
APRIL 2005 WATER CONFERENCE

RESPONSE BY DAN KEPPEL, FAMILY FARM ALLIANCE

TOPIC #3: Indian and Federal Reserved Water Rights

The term "Federal Reserved Water Rights" encompasses a wide range of concepts. The perfection of tribal rights is an ongoing process with significant implications for future planning. The dramatic confluence of drought and growth, leading to diminished supply has led to "a perfect storm". This conjuncture coincides with increased contemplation of transfers and restrictions on irrigated systems. The potential is for disruption to agricultural production and to the health of rural communities. The goal of the federal process should be to verify commitments to irrigators and to maintain a productive balance among all water users and the environment.

Nowhere is the federal government's failure to honor its commitments to water users more apparent than in the case of its treatment of Indian Tribes. It is clear that additional water storage and delivery facilities are necessary for Tribes to be able to receive and benefit from the federal water rights which are held in trust by the federal government. Notwithstanding this reality, federal agencies have failed to proceed with water projects that are required in order for the federal government to fulfill its trust responsibility. Instead of offering physical solutions, such as emphasizing infrastructure and storage to solve Tribal water rights issues and allocations, the current trend appears to be simply transferring existing rights to the tribes, thus pitting of one interest against another with the federal government as referee. This reallocation approach will exacerbate already inflamed emotions, lead to inevitable litigation, and leave the tribes without water or solutions for years to come.

Everyone agrees that the best relations and the most constructive associations are those that develop between local communities. The federal government can help facilitate discussions between tribes and their respective communities and states. Beyond that – they should stay out of the way.



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RESPONSE BY DAN KEPPEL, FAMILY FARM ALLIANCE

TOPIC #4: Conservation and Technological Developments

What potential exists and what should be the federal government's role in enhancing the available water supply through the development of new technologies, conservation, metering, more efficient storage, water banking and other water transfers?

Water allocation battles are increasingly being caused because we are forced to make false choices. In most areas of the West, water resources are available and waiting to be developed. However, the policies of the federal government make development of that water nearly impossible. Water wars are being fought throughout the West simply because we have not had the vision to develop new, environmentally sound, sources of water. The following response details the Family Farm Alliance's position on supply enhancement, new technologies, conservation, and water marketing / transfers.

Supply Enhancement

The retention of existing water supplies and the development of critically needed new supplies are of the utmost importance throughout the West. Supplies are already inadequate for the growing demands, but very few plans exist to develop supplies to meet increasing needs. At the federal level, we are told that the dam-building era is over. This is a short-sighted philosophy. The fact that additional storage and other water development projects are necessary in order to meet anticipated needs is a simple reality, mandated by population and demographic information, which cannot be ignored.

The federal government must adopt a policy of supporting new projects to enhance water supplies while encouraging state and local interests to take the lead in the implementation of those projects.

Process Concerns

The existing procedures for developing additional supplies should also be revised to make project approval less burdensome. By the time project applicants approach federal agencies for authorization 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. Opportunities should be explored to expedite this process and reduce the costs to the project applicant.

In addition, the current mitigation procedure for federal agencies should be reviewed to determine the feasibility of clarifying and standardizing mitigation requirements. Currently, requirements for one project become the standard for all subsequent projects. Since no two projects are the same, federal agencies tend to impose increasingly severe mitigation requirements on new projects. The end result is that applicants end up spending tremendous amounts of money for potentially uncertain mitigation.

Another possible solution is the creation of mitigation banking. Under such an approach, applicants faced with excessive mitigation costs would be allowed to pay a reasonable sum per acre to a regional mitigation bank or set aside mitigation lands as a condition to implementation of their project. The federal government should encourage the creation and use of public and private mitigation banks.

New Technologies

Various private entities, academic institutions, and state and federal agencies are engaged in research that could be better coordinated and focused. Recent reports to Congress on potential projects, along with a water desalination research roadmap now under review by the National Research Council, should guide research. Reducing desalination costs, for instance, could enable the cost-effective treatment of brackish groundwater in traditionally water-short areas. In some rural communities and Indian reservations, this salty groundwater is unusable for human consumption, limiting growth and prosperity. Although one alternative is to pipe fresh water from rivers and reservoirs miles away to these water short areas, desalination could offer less expensive and drought-proof alternative while providing reliable and high quality water supplies to these communities¹.

One key aspect of desalination operations that requires special emphasis is the management of the solids and salts that remain after clean water is extracted. The federal government should encourage partnerships between academia and the private sector to make the management and disposal of salts a priority.

We believe that the federal government should encourage Western water managers to seek input from, and coordinate with, their counterparts in the petroleum industry, especially relative to developing innovative ways to enhance and utilize tainted groundwater. Opportunities exist to apply techniques used in oil and gas drilling and production – where large quantities of subsurface connate or saline waters are often encountered – to water resources development.

We support the Department of Interior's intent to facilitate the implementation of desalination and advanced water treatment through improved interagency coordination of research and focused investments to areas most needing planning support. Past collaboration and dissemination of information has led to great technological advances. The Bureau of

¹ U.S. Interior Department *Water 2025* plan.

Reclamation, in cooperation with other federal agencies, water users and private entities, can facilitate technology development and transfer, evaluate product capabilities, and assess research gaps and new technologies².

Conservation

Conservation is often seen as the solution to water supply issues. While conservation is surely a tool that can assist in overcoming water supply problems, it cannot be viewed as the single answer to water shortages. Conserved water cannot realistically be applied to instream uses, as it will more likely be put to beneficial use by the next downstream appropriator or held in carryover storage for the following irrigation season. Moreover, mandated or "one size fits all" conservation programs are doomed to failure in light of the drastically different circumstances of water users across the West. Accordingly, the decision of the Commissioner of the Bureau of Reclamation not to impose mandatory water conservation measures through rulemaking should be applauded. A more productive federal role in conservation would involve the development of programs that foster locally-based conservation tailored to the unique circumstances of each region by providing genuine incentives, rather than the issuance of directives or attempts to inspire conservation by artificially manipulating economics through vehicles like compelled tiered pricing.

The Alliance supports continued voluntary implementation of efficient water management practices and opposes mandatory or enforceable requirements for agricultural water use efficiency. Only practices that reduce irrecoverable losses actually increase the total useable water supply. Furthermore, water saved within a water district or on-farm is used elsewhere within the same district or farm. Western agriculture in many areas – including the Sacramento Valley and the Klamath Basin - is already highly efficient in its use of water and that more efficient water application does not necessarily increase useable water supplies. No attempt should be made to link the attainment of prescribed levels of reroutable flows to new storage projects³.

Water Transfers

The transfer of water is one means of insuring that the West's most precious resource can be put to reasonable beneficial use to the maximum degree practicable. Although water transfers may, in certain years, alleviate water shortages, these resources alone can not meet the West's long-term water supply needs. Existing markets for the transfer of water can be used to shift water to meet new demands, and water markets can be expanded and made more efficient within the scope of state-adopted water rights schemes.

Water transfers, where appropriate, should adhere to certain fundamental principles grounded in the recognition that rights in water are both a property right and a community resource. The

² Source: U.S. Interior Department, *Water 2025*.

³ Source: *The California Agricultural Water Caucus Position on a Solution for the Bay-Delta*.

Alliance believes that the actual water right holder - the owner of the water right – should determine the disposition of the water to be transferred.

All transfer proposals developed pursuant to district or agency water transfer programs should be reviewed to ensure that those proposals, if carried out, will not result in unreasonable community, financial, water supply, operational or environmental impacts. Transfer proposals that result in the least impacts to the area of origin should be preferred over those with greater potential adverse impacts.

Transfer proposals that would result in degradation of groundwater quality or overdraft of the safe yield of affected groundwater basins should also be restricted. The development of groundwater management plans is encouraged as a means of maintaining groundwater quality and to prevent groundwater overdraft⁴.

All transfers should be conducted in accordance with State water law. There are struggles in several Western states involving transfers and how they relate to the beneficial use of water, including the transfer of water made possible through conservation or efficient water management.

The development of water markets should be left to stakeholders. The federal government's involvement in water transfers should be limited to construction of the necessary conveyance and storage facilities that will enable transfers to play a meaningful role in the West's overall water management. To the extent that the federal government identifies a specific role for water transfers as part of regional solutions, reasonable estimates of a range of expected transfers and reliable transfer capacity should be made. However, the federal government should not seek to change existing law regarding water transfers and should not adversely impact existing water rights or transfer programs, either directly or indirectly, through new regulations or controls⁵.

Family Farm Alliance Efforts to Advocate for Supply Enhancement

Local interests have shown enormous creativity in designing creative water development projects; for example, the Kern Water Bank in California has, in its first three years of operation, stored over 500,000 acre-feet of flood water underground while providing increased wetlands habitat in its sinking basins, all without any negative environmental effect. The Phase 8 water rights settlement in California is another example where a suite of on-the-ground actions have been undertaken to resolve long-standing water rights conflicts.

The Board of Directors of the Family Farm Alliance in the past year launched an aggressive and forward looking project that pulled together a master data base of potential water supply enhancement projects from throughout the West. The "Western Water Supply Enhancement Study" is the Alliance's response to Interior Secretary Gale Norton's new Water 2025 process.

⁴ Source: Northern California Water Association Water Transfer Policy.

⁵ Source: *The California Agricultural Water Caucus Position on a Solution for the Bay-Delta*.

Water 2025 is an outstanding opportunity for Western water interests to enter into a conversation with the public about the future of irrigated agriculture in the West. However, Water 2025 needs a supply enhancement component added if it is going to be successful in addressing the future water needs of the fast growing western population. The Alliance is excited to be a part of the process. Our goal was to gather together the great thinking and good ideas from around the West and put them into one master data base. Along with basic information, the database that will result from compilation of the survey will have a GIS element and will include pictures, maps and a description of up to 500 words for each project or proposal. New GIS format technology will be imbedded that will permit viewers to see a map of 17 Western states and then "drill down" to see map details of a project area.

We believe this report will help catalyze the discussion on future water supply enhancement throughout the arid West.

Funding

The President and Congress will prioritize whatever federal funds are available to meet existing and future needs. As for the rest of the capital, it must come either from state and local governments or from the private sector. If the federal government cannot fund the required investments, it should take meaningful steps to provide incentives for non-federal entities to fill the void, and remove barriers to the new ways of doing business that will be required.

For example, most water supply entities are willing to make investments to meet human and environmental needs, but they need to know up front that the federal government will honor its part of the bargain. This means that the federal government should enter into meaningful contracts that protect the expectations of the non-federal parties, and concepts like the "No Surprises Rule" under the Endangered Species Act must be validated and expanded. Entities like California's Bay Delta Authority, which is responsible for investing billions of dollars of state and local funds in a program to achieve water supply and environmental goals, should be provided with appropriate assurances after compliance with all permitting requirements that the regulatory goal line will be moved only in the most extraordinary circumstances and not just because a GS-9 biologist has new data or a new theory⁶.

Conclusion

While on stream storage should not be seen as unacceptable, off stream storage, groundwater banking, and countless other forms of water development should be encouraged as a matter of federal policy and law. The construction of additional water supply infrastructure may allow more efficient management and enable greater cooperation between traditional and non-traditional water users. Federal agencies have a role to play in infrastructure development, but interference with or duplication of state authorities must be minimized.

⁶ Source: Bennett Raley, *Water Policy and Pragmatism*, AWRA National Dialogue on Water Policy, February 2005, Tucson, Arizona.



SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
APRIL 2005 WATER CONFERENCE

RESPONSE BY DAN KEPPEN, FAMILY FARM ALLIANCE

TOPIC #5: Knowledge of Water Resources

Given the fundamental role that water plays in dictating the quality of life and economic opportunities in our communities, do we have the level of scientific understanding needed to assess accurately the sustainability of the surface and groundwater resources upon which we depend? Do we have an adequate scientific understanding to address potential water use conflicts?

Water use conflicts have occurred and continue to occur; potential future conflicts are inevitable. This is not rocket science. The federal government alone – completely ignoring the huge body of research developed by states, local agencies, and non-governmental organizations – has published reams of studies that describe water yield of Western water basins. We know what current water use characteristics are – and we can fairly simply predict what future use will be. The Department of Interior's Water 2025 program sums up the situation nicely:

- Today, in some areas of the West, existing water supplies are, or will be, inadequate to meet the water demands of people, cities, farms, and the environment even under normal water supply conditions.
- Five interrelated realities of water management are creating crises in important areas in the West. These realities are:
 - Explosive population growth
 - Water shortages exist
 - Water shortages result in conflict
 - Aging water facilities limit options
 - Crisis management is not effective
- Explosive population growth is occurring in areas where water supplies are limited and the demand for water is increasing. In some areas the water supply will not be adequate to meet all demands for water even in normal water years. Inevitable droughts merely magnify the impacts of water shortages.
- Recent crises in the Klamath River and Middle Rio Grande basins – where farmers, cities, Native Americans, fish and wildlife all were impacted by the water shortages --

vividly demonstrate the consequences of failing to address competing demands of people and the environment for a finite water supply. The Nation cannot afford repeated water crises. The social, economic, and environmental consequences of water supply crises are too severe.

From a strict supply and demand standpoint, it is clear we are in trouble, and that greater troubles lie ahead. Rather than setting up new commissions and writing new reports to address these problems, action and on-the-ground projects must be implemented. Investments in existing infrastructure and development of new storage are clear actions that will directly address supply challenges.

The issues that appear to generate the most controversy and often lapse into gladiatorial science duals revolve around perceived water needs for imperiled species, particularly fish. No where was this more apparent, perhaps, than with federal agency decisions that led to the curtailment of irrigation supplies to the Klamath Project in 2001. Dr. William Lewis, former chairman of the NRC Committee on Endangered and Threatened Fishes in the Klamath River Basin, elaborated before the House Water and Power Subcommittee in July 2004 on the importance of agency biologists to understand the limits of using personal judgment in resources decisions:

“The listing agencies in the Klamath basin have been strongly criticized for using judgment not supported by bedrock scientific information. The National Research Council (NRC), as expressed in its reports, did not agree with the notion that professional judgment is a useless or inappropriate tool to be used in environmental actions such as those required by the Endangered Species Act (ESA).

Professional judgment, which involves application of knowledge about the basic requirements of a listed species, is mandatory for agencies that implement the ESA.

The NRC Klamath committee did note, however, that the use of judgment is much more defensible when data are not available, or when judgment is confirmed by at least some data, than when it proves to be inconsistent with accumulating data. In the latter instance, the listing agencies would more likely be effective if they were to modify their judgments, and should not be criticized for doing so, given that modification of initial judgments in response to observations or data is a constant feature in all fields of applied science.”

The individuals who make decisions that affect entire communities must be both qualified and accountable for their actions. One hundred years ago, laws were enacted to require minimum professional qualifications to allow engineers to design buildings, bridges and dams that would not collapse. Doctors and attorneys have professional codes that govern their actions and that provide for peer review to ferret out those who do not meet the highest standards and qualifications. And yet, the federal government and the ESA apparently allow staff-level biologists – who require no professional licensing to

practice their art – to make decisions that override engineering, legal and economic considerations. Outside of establishing professional standards for biologists to practice, modernizing the ESA to provide multi-disciplinary peer-review of critical resources decisions may help prevent another Klamath-like decision from occurring in the future.

It is imperative that scientific endeavors are undertaken in the context of existing physical, hydrologic and legal constraints. While certain stakeholder interests continue to advocate for a utopian environment, one that supposedly existed prior to the arrival of Europeans, the reality is that much of the West –especially areas where irrigated agriculture has flourished – is a fundamentally different place than that which existed 150 years ago. We must understand how man-made, physical projects can be relied upon and enhanced to meet new demands, particularly with the rapid expansion of new urban and environmental water needs. The ground rules that form the basis for water resources policy decisions must start with existing water rights, and scientific endeavors should be directed with an understanding that existing water storage and conveyance facilities are part of the landscape.

As the West has grown, water issues have become increasingly polarized. Some argue that society no longer needs irrigated agriculture in the West, and that we should simply reallocate the water historically used by farmers and give it to cities and the environment. Others insist that agricultural water users have no responsibility for addressing allocation issues, and that any changes in water use or management must always be resisted.

The Family Farm Alliance believes that solutions exist in the middle of these two extremes. It is possible for the West to continue to lead the world in agricultural production while finding ways to accommodate exploding urban growth and environmental needs. The solutions will not come easily. They will require visionary leadership, sound scientific understanding, and a firm commitment to a balanced, workable policy. But opportunities exist, if we are prepared to seize them.

What initiatives should be undertaken to improve our scientific understanding in these areas?

Environmental restoration or enhancement should not be undertaken without the benefit of multidisciplinary, unbiased peer-reviewed, sound science. The likely social and economic impacts must also be fully understood, and the economic costs and environmental benefits of water reallocation must be carefully assessed to avoid flawed resource trade-off decisions. The federal government should decline to accept any proposal which cannot be supported by sound science.



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RESPONSE BY DAN KEPPEL, FAMILY FARM ALLIANCE

TOPIC #6: Drought

What role can the federal government play in helping states anticipate and manage responses to drought or other extreme hydrological changes?

The federal government should shy away from trying to create a new commission or report to address drought concerns. As discussed further below, there are already mechanisms and bodies in place to address drought issues. Instead, Congress should focus on real steps that can be implemented in the real world. At the same time, Western water users and other stakeholders must also be realistic. We cannot assume that large amounts of federal funding will be available to drive drought-related changes, which should focus everyone on those options that might actually make a difference in the real world. The funds that are available should first be used to maintain and modernize our existing infrastructure, and then spent on facilities that enhance water supply reliability.

The reality is that in the western United States, "drought happens". Before the West's growing demand outstrips available water supplies (which is already happening in some areas), we need to take responsibility for modernizing our aging infrastructure and facilitating opportunities to enhance water supplies.

We need to get creative about drought and other water-related infrastructure funding. Any federal effort to address drought issues should also include involvement by the nation's top business leaders and other representatives from the private sector. If the Bureau of Reclamation or other components of the federal budget are not going to be the primary funding source in the future, we need to go to Wall Street for new ideas. We can no longer rely on the financial structures of the last century.

Strict conservation measures, which represent one of a suite of actions that can be taken to help during drought periods, cannot be the sole answer. Flexibility is the key to addressing drought, and the more the system is "hardened", the more flexibility that is taken away from water managers. The federal government should endorse a drought strategy that advocates for flexibility through the development of region-specific plans that take into consideration such factors as surface and groundwater quality and quantity, soil quality and type, cultural practices, economic and environmental benefits. Further, the federal government must recognize that increasing irrigation efficiency often reduces the incidental environmental benefits that are associated with agricultural practices, and can actually increase overall agricultural water use rather than decrease it.

Resolving these issues without destroying what we worked so hard to achieve is the challenge that we all face. But to be successful, we must face them together. No resolution will be found unless we find a way to balance all competing needs.

We believe that within the policies outlined in our response to the first question posed by the Committee lay the foundation upon which to build for the future. It will be a foundation that allows for resolution of significant conflicts in a way that supports continued growth of irrigated agriculture.

Are there new projections on the scope and length of the current drought?

Several federal agencies – including the Natural Resources Conservation Service, U.S. Geological Survey, and NOAA – all presumably have up-to-date weather and streamflow forecasting abilities, and we yield to their expertise on this matter. While we have heard various concerns expressed West-wide about the accuracy of forecasting, we would assume that the agencies could best identify where data collection gaps and forecast modeling shortfalls exist within their programs.

What are the impacts on water and power generation in the West?

Again, the water supply impacts felt now due to extreme drought conditions will likely be similar to those we will see in normal water years, come 2025, with the expanding growth we are seeing in the western United States. Water shortfall conditions are inevitable in both situations.

From the standpoint of irrigated agriculture, whether we look at near-term drought conditions, or the future landscape of the West, it all boils down to certainty. Long-term State and federal law regarding the allocation and administration of water were developed to provide long term, certain, predictable and affordable supplies of water to all users. Without some degree of certainty, no investment will be made in the future.

This brings up a much larger policy question, one that has national and international social implications. What happens if the federal government continues to ignore opportunities to enhance water supplies? In recent decades, we have seen a steady reallocation of water away from agricultural purposes and towards urban, environmental and tribal uses. At the same time, opportunities to develop new surface water storage facilities have vanished in the air, and our water supply and delivery infrastructure are beginning to crumble. When 2025 arrives, does the federal government envision that we will import the agricultural products that we now produce domestically? Will our natural resource economy likewise be imported?

The sooner we begin investing to improve our aging infrastructure and enhancing water supply reliability, the sooner and better we will be able to meet the demands of today's droughts and tomorrow's growth in the West.

What range of ideas and/or policies should be encompassed in a comprehensive National Drought Strategy?

We have concerns about developing a comprehensive national drought strategy or related commission. There are government libraries and vaults chock full of water studies, federal and otherwise, that sit on shelves. One of the positive aspects of the Water 2025 plan is that the Interior Department structured it in a way that appears to avoid a "study approach". This prevents the waste of political capital on yet another study, plus, it encourages getting as many dollars as possible "on the ground" in the form of system improvements.

The same philosophy should be kept in mind as Congress addresses national drought issues. It is difficult to envision at this time that the current administration will include support in the budget for a new water program of any material size that is driven by federal dollars. Nor did we see Congress actually finding significant new money to support such a program.

At this point, we do not see the wisdom of "reinventing the wheel" when it comes to drought monitoring, planning, and mitigation. These actions are already underway.

For example, the National Drought Mitigation Center (NDMC) helps coordinate efforts in every state, encouraging people and institutions to develop and implement measures to reduce societal vulnerability to drought, stressing preparedness and risk management rather than crisis management. Most of the NDMC's services are directed to state, federal, regional, and tribal governments that are involved in drought and water supply planning.

The NDMC, established in 1995, is based in the School of Natural Resources at the University of Nebraska–Lincoln. The NDMC's activities include maintaining an information clearinghouse; drought monitoring, including participation in the preparation of the U.S. Drought Monitor and maintenance of the web site; drought planning and mitigation; drought policy; advising policy makers; collaborative research; K–12 outreach; workshops for federal, state, and foreign governments and international organizations; organizing and conducting seminars, workshops, and conferences; and providing data to and answering questions for the media and the general public. The NDMC is also participating in numerous international projects, including the establishment of regional drought preparedness networks in collaboration with the United Nations' Secretariat for the International Strategy for Disaster Reduction.

As it has done in the past, the federal government can do a number of things to help anticipate and manage drought and other extreme hydrological conditions including:

- Continuing to providing incentives and financial assistance towards conservation efforts;
- support to development of under utilized water resources, i.e., shallow water aquifers that are brackish and/or saline;

- support current application of desalinization systems along with continued development and research;
- promote the utilization of existing web based and GIS technology for water management;
- finance and construct new water storage facilities, both off-stream and on-stream where water can be stored during periods of availability;
- support and utilize water banking programs and underground storage projects;
- provide incentives for the development of non-federal storage and conveyance projects that provide additional storage during drought events and flood events;

What is it that NDMC and the numerous other federal agencies that are tasked with drought-related actions are NOT doing that justifies creating another commission or report? A simple commitment by federal agencies to work within the framework of existing drought programs instead of attempting to fashion new solutions appears to be the wisest and simplest tack to take at this point. Any funds that are made available should first be invested in our existing infrastructure, and then spent on projects that actually improve water dependability.