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Protecting Water for Western Irrigated Agriculture

June 24, 2014

The Honorable Tom McClintock, Chair
The Honorable Grace Napolitano, Ranking Member
Water and Power Subcommittee
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

Re: Comments for the record on “*New Federal Schemes to Soak Up Water Authority: Impacts on States, Water Users, Recreation, and Jobs.*”

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

Thank you for this opportunity for the Family Farm Alliance (Alliance) to submit comments to your subcommittee on this important matter. 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. The Alliance has long advocated that solutions to conflicts over the allocation and use of water resources must begin with recognition of the traditional deference to state water allocation systems. Federal agencies must recognize and respect state-based water rights and develop their management decisions according to state law and abide by state decrees defining both federal and non-federal rights. Federal agencies need to work within the framework of existing prior appropriation systems instead of attempting to fashion solutions which circumvent current water rights allocation and administration schemes.

Our comments summarize concerns the Alliance has with proposals put forward by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers (“Waters of the U.S.” rule) and the U.S. Forest Service (groundwater management directive). Each of these issues is dealt with at length, below.

“Waters of the U.S.” Rule

The Alliance membership includes many irrigation districts, water companies, and farmers and ranchers in 16 Western States, with many served by Bureau of Reclamation (Reclamation) owned facilities. The Alliance in 2013 commissioned a study of the economic benefits to the

Nation from Western irrigated agriculture, calculating that the total direct and indirect production value for the 17 states comprising the Western U.S. region was around \$156 billion annually, of which \$117 billion was tied to crops produced on about 42 million irrigated acres in the Western U.S.ⁱ Without irrigation, these lands would not yield the billions of dollars in economic benefits for the region and the Nation, let alone the vast amounts of quality food and fiber enjoyed every single day by the American public. And, since World War II, the percentage contribution of (disposable) household income to food costs has dropped from 25% to around 7%, allowing for the continued growth of our consumer spending economy.ⁱⁱ Thus, the importance of Western irrigated agriculture to the Nation is well documented.

On April 21, 2014 the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) announced a proposed rulemaking under the federal Clean Water Act (CWA) redefining the agencies' jurisdiction over water bodies. The proposed rule is a complicated set of regulatory definitions, including new ambiguously defined terms, that seeks to "clarify" the authority of these two agencies to regulate "navigable waters" which are defined in the CWA as the "waters of the U.S." (WOTUS).

In the Alliance' view, the proposal, if adopted, would not clarify the agencies' jurisdictional determinations over WOTUS. In fact, it would significantly expand the scope of waters protected under the federal CWA beyond those waters currently regulated by asserting jurisdiction over waters, including many ditches, conveyances, isolated waters and other waters, resulting in many negative economic and societal impacts to irrigated agriculture in the West.

The proposed rule asserts that most waters categorically have a "significant nexus" to traditional navigable waters currently regulated under the CWA, and yet allows the EPA or the Corps to establish a "significant nexus" on a case-by-case basis over other waters. The criteria for establishing a significant nexus is ambiguous and could be easily applied to most waters (i.e. "more than speculative or insubstantial effect..."), and would increase federal control over most waters and any land activities that might impact these waters, subjecting these lands and waters to more complicated and layered reviews and potential third party citizen lawsuits.

The proposed rule would change all sections of the CWA: Sections 303, 304, 305 (state Water Quality standards), 311 (oil spill prevention), 401 (state Water Quality certification) 402 (effluent/stormwater discharge permits) and 404 (dredge and fill permits). At a minimum, the proposed rule will require substantial state resources to administer, including issuance of all the additional permits, newly developed/revised water quality standards, and total maximum daily loads (TMDLs) required by the expanded jurisdiction. Third party (citizen) actions will also almost certainly precipitate litigation, leading to these required federal and state administrative actions and further delays in project implementation.

Under the proposal, all tributaries, newly defined as including a bed, banks and an ordinary high water mark, and including any waters such as wetlands, lakes, and ponds that contribute flow, either directly or indirectly through another water body, to downstream traditional navigable

waters or interstate waters would be jurisdictional. All waters adjacent to such tributaries would now be jurisdictional, broadly defined as waters within floodplains and riparian areas of otherwise jurisdictional waters, and including subsurface hydrologic connection or confined surface hydrologic connection to a jurisdictional water. And all man-made conveyances, including ditches, would be considered jurisdictional tributaries if they meet the new definition, regardless of perennial, intermittent, or ephemeral flow.

Under the proposed rule, many private land and water conservation projects designed to benefit watersheds, waterfowl and riparian habitats may be subject to CWA permitting, acting as a disincentive to such important projects. While the EPA and the Corps emphatically deny projects like erosion control or soil stabilization work are exempt from permitting under the proposed rule, this would not stop third parties from raising the jurisdictional question in litigation, creating the uncertainty and instability resource users fear the most. There is nothing “clear” about this rule proposed to “clarify” CWA jurisdiction over “waters of the U.S.,” only the uncertainty created by using ambiguous definitions and convoluted analyses to define what is jurisdiction and what is not. In its haste to get the proposed rule out for comment, the EPA has out run the analysis of its own underlying scientific documentation, the draft EPA *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*, which is still under agency and Science Advisory Board (SAB) review.

The proposed rule has huge implications for irrigated agriculture in the West. Under the proposal, third parties could assert that features such as irrigation and drainage ditches, stormwater ditches, and water storage or treatment ponds and reservoirs would now become jurisdictional waters, and place the burden of proof on irrigation water purveyors, farmers and ranchers to prove they are exempt from CWA jurisdiction. Irrigation water suppliers and private and public landowners will experience increased costs and delays associated with the additional permitting requirements, restrictions on land use options, and the continued uncertainty on the scope of CWA jurisdiction under the proposal.

The costs associated with permitting under the CWA are astronomical and time consuming, with permitting taking hundreds of days to complete (on average) and with permitting costs ranging from the tens of thousands to the hundreds of thousands of dollars. These costs cannot be avoided, because the Clean Water Act imposes criminal liability, as well as escalating civil fines, on a broad range of everyday activities. Expanding the scope of the CWA to additional and uncertain jurisdictional water bodies will only increase those costs and delays as state and federal regulators will simply not have the resources to keep up with these expanded permit requirements.

The categorical exemptions from jurisdiction under the CWA provided in the proposed rule, while laudable, lack the clarity and specificity needed to provide the certainty irrigated agriculture needs to operate on a daily basis. The Alliance believes the rule needs to provide such clarity that the current exemptions for irrigation ditches, drains and associated facilities will continue to be retained. This important infrastructure is the lifeblood of irrigated agriculture in

the West, and the existing distribution system of ditches, canals, drains and diversions work to provide water to thirsty farms and ranches in the most efficient manner possible. If these facilities are not operated and maintained in an efficient and timely manner during critically dry periods during the growing season, the economic and societal result will be devastating to farmers, rural communities and, ultimately, the Nation.

Irrigation ditches are constructed conveyances regularly maintained for the purpose of delivering irrigation water or draining agricultural lands and are distinct from natural waters. These are artificial facilities created for the purpose of irrigation and drainage of irrigated lands from the application of water in the irrigation process. The irrigation ditches and drains carry flows as needed to deliver irrigation water or to drain the agricultural waters from irrigated lands. These man-made canals and ditches would otherwise be dry land, except for the application of irrigation water to produce crops. Where irrigation drains have a more permanent flow, that flow is due to the timing of irrigation water applied to crops and seeping down through the soil until it reaches subsurface perched groundwater or a non-permeable barrier in the soil profile, where these drains can intercept this irrigation return flow to carry it away and prevent water build up in the plant root zone in the field. Permanent flows in drains also can result from these irrigation drains actually picking up flowing groundwater during certain periods of the year, which is exempt from CWA jurisdiction.

Return flows from agriculture are specifically excluded from CWA regulation in the Act, and permits are not required for constructing and maintaining irrigation ditches excavated in dry land and the maintenance of irrigation drains draining those irrigated lands. The Alliance believes that the agencies should make clear in their proposed rulemaking that irrigation canals, ditches and drains are not navigable waters, are not “waters of the U.S.,” and are not “tributary” to WOTUS, and thus are not jurisdictional under the CWA. This was Congress’ intent when it passed the CWA, and requires that the proposed rule should include an express exemption for irrigation canals, ditches and drains, from the definition of navigable waters, waters of the United States, and tributary waters.

Irrigation districts, canal companies and other water providers do routine maintenance work in their conveyance facilities every year. In addition, they are required to make more extensive improvements in the form of rehabilitation or replacement of some of the works from time to time. Water conservation activities such as lining or piping canals and drains are also commonplace activities, along with relocating portions of these water conveyance facilities for improved efficiencies. Without the ability to conduct these necessary activities, agricultural water delivery would come to a screeching halt.

The Corps of Engineers has, in certain cases in the past, asserted that these activities are being conducted in “waters of the United States” and therefore require a Sec. 404 permit or reliance on one of these existing exemptions contained in the Act. As a result, we worked with the Corps, EPA and the Bureau of Reclamation to obtain a Regulatory Guidance Letter (RGL) helping to clarify the scope and breadth of the exemptions contained in the Act as they apply to these

activities. We are certainly appreciative of these efforts by the federal agencies, which culminated with the release of the RGL in 2007. However, the new WOTUS proposal does not clarify whether these canals, ditches and drains are jurisdictional under the CWA as WOTUS, nor is it clear if the proposal provides the same application of the exemptions proffered by the RGL.

Our member districts and water purveyors operate and maintain literally thousands of miles of canals, ditches and drains serving millions of acres of irrigated crop lands. These entities perform routine maintenance work on these conveyance facilities constantly, and at times may improve their facilities by piping or lining ditches and canals to conserve water in the delivery process. If these water providers are required to obtain a CWA permit for each of these routine activities, delivering irrigation water to Western farms and ranches would become much more expensive and time consuming, and could make it almost impossible to deliver water in time to irrigate crops.

The Bureau of Reclamation has a vested interest in ensuring that water is delivered efficiently and on a timely basis, as these farms and ranches are tasked with repaying the federal construction debt on these federal projects. Water conservation and management improvements have become an important part of the Western irrigation landscape today due to the challenges of drought, increased demand, and environmental requirements. Making irrigation ditches and drains jurisdictional under the CWA would hamstring the agency from accomplishing its mission of managing, developing and protecting Western water resources in the delivery of water to water contractors.

Finally, the Alliance believes that the proposed rule is inconsistent with congressional intent, the language of the CWA and Supreme Court decisions. The Supreme Court has twice affirmed that federal jurisdiction under the CWA is limited, rejecting, first, the agencies' broad assertion of CWA jurisdiction based on the use of isolated waters by migratory birds and, second, the agencies' assertion of jurisdiction based on "any hydrological connection". Yet the proposed rule would continue to define CWA jurisdiction as broadly as these previous theories rejected by the Supreme Court.

The Administration and Congress have a unique opportunity to instill a common-sense approach to protecting our water quality and related resources; one that steers clear of creating certain havoc in surface water operations throughout the country by clarifying that man-made ditches are not jurisdictional. Unfortunately, the proposed WOTUS rule is ambiguous and will lead to uncertainty and litigation. We urge you to consider the appropriate protections already afforded U.S. waters under the CWA, particularly via existing state programs. Please reject the unprecedented federal expansion proposed in this rule, and instead find ways to streamline current CWA administration.

Western family farmers and ranchers urge clarity, not ambiguity and expansion of the Clean Water Act.

U.S. Forest Service Directive on Groundwater Management

On May 6, the U.S. Forest Service (USFS) released two separate notices and distinct sets of directives dealing with water resources. The directives, based on provisions found in the 2012 Forest Planning Rule would open the door to even more regulation of national forests in the name of “water quality protection.” Our comments will focus on the draft directive where USFS proposes to assert authority over groundwater – Chapter 2560 (“Groundwater Resource Management”) of Forest Service Manual 2500. However, we would also alert the Subcommittee of the second USFS directive, which would put in place a set of national Best Management Practices (BMPs) for water quality management from non-point sources. The BMPs proposed by the USFS are vaguely written, giving individual forests virtually free rein to create their own BMPs in as strict or lax a manner as they choose. For example, those guidelines call for “special consideration” of areas within 150 feet of a stream—leaving the interpretation of “special consideration” wide open for litigation. Based on the experience of many Alliance members, we can expect certain conservation groups to conclude that a forest’s BMPs are too lax and sue based on their own interpretation of the national BMP guidelines.

The USFS has proposed a new chapter for its Forest Service Manual on managing groundwater resources. As discussed above, many Alliance members have focused attention in recent months on the EPA/Corps rulemaking effort intended to clarify which “waters of the U.S.” would come under jurisdiction of the CWA. Meanwhile, directives that are perhaps even more draconian than what EPA is contemplating are already being forwarded by USFS through the public review process. The new groundwater management and water quality BMP directives USFS has proposed are alarming, and would open up the door to a jurisdictional expansion that would most likely conflict with the laws of Western states. Notably, the groundwater directive automatically assumes that groundwater and surface water are hydraulically connected, unless demonstrated otherwise using site-specific information.

We believe the USFS cannot assume to hold the reserved water rights to all waters – both surface and groundwater – in a National Forest, and as such, does not have the authority to control or regulate those waters, as proposed in the directives. Where such reserved rights are actually held by the USFS (obtained through a McCarron Act state adjudication of such rights), then the proper authority to control or regulate those rights would be through existing state water right administration processes, not through the policy directives of the USFS.

The USFS is becoming more and more aggressive in the world of Western water resource management. In recent years, the agency has attempted to require the transfer of privately held water rights to the federal government as a permit condition on USFS lands. Additionally, USFS has leveraged Western water users in an effort to acquire additional water supplies for the government by requiring water users to apply for their rights under state law in the name of the United States, rather than in the name of the beneficial user of those rights, despite objections from elected officials, business owners, private property advocates and a U.S. District Court ruling. Finally, our members in Colorado are still battling with the USFS and the U.S. Bureau of

Land Management on the agencies' Joint Land Management Plan, which includes more restrictive "standards" to assess stream conditions in a permitting process that will likely lead to by-pass flows. Any by-pass flows that could be imposed in a special use permit process should be considered a "takings" and could have major impacts on existing and future water rights. Colorado water districts, the Colorado Department of Natural Resources, and the Colorado Water Congress appealed the Record of Decision on the Forest Plan, but recently found out the appeal had been denied by the USFS. All of these entities have requested a discretionary review of these matters. If the review is not successful, litigation is a possibility on the by-pass issue.

Thankfully, with the leadership from your Subcommittee, the House has passed the "Water Rights Protection Act", which would put a halt to the conditioning of permits and leases on the transfer, relinquishment, or other impairment of any water right to the U.S. by the Secretaries of the Interior and Agriculture. The latest release of the new USFS directive, however, is seen by some as a way skirting the District Court decision that prevents USFS from forcing water-rights holders to hand over part of their water rights in exchange special use permits. Why is the groundwater directive troubling to Western water users? We have worked with our membership and have identified the following concerns.

The proposed directive goes beyond the authority of USFS and could encroach into states' rights to manage groundwater. A significant portion of the USFS directive is dedicated to listing numerous federal statutes that direct or authorize water or watershed management on NFS lands. The directive states that "several of these statutes" grant authority or provide direction to the Forest Service for the management of groundwater resources. Actually, very few of them specifically grant USFS groundwater management authority, and those that do are passive in nature. Forest Service Directive FSM 2880 provides direction on inventorying and monitoring groundwater resources. USDA Departmental Regulation 9500-8 (DR 9500-8) provides for protection of water users and the natural environment from exposure to harmful substances in groundwater and enhancement of groundwater quality where appropriate through prudent use and careful management of potential contaminants and promotion of programs and practices that prevent contamination. In fact, DR 9500-8 specifically notes that USDA will "advocate and foster programs, activities and practices that can prevent the harmful contamination of ground water from agricultural, silvicultural, and other rural sources to minimize, or make unnecessary, regulatory restrictions on the use of chemicals essential to agricultural production" (emphasis added).

The new directive is much more aggressive in its management approach, and opens the potential for conflict with state and local groundwater management efforts. Our experience shows that the best decisions on water issues are made at the local level. The federal government has repeatedly recognized this fact. In 1952, Congress passed the McCarran Amendment. This law specifically waives the sovereign immunity of the United States in matters that pertain to state water right adjudications.

One of our primary concerns about the USFS Groundwater Directive is how this new directive

may affect claims for reserved water rights by the USFS. For example, there are a number of cases that were filed in the mid-1970's for reserved water rights in Water Division 7 (which is basically all of southwest Colorado). These cases have never been resolved, and are still pending in water court. Our members in Colorado have concerns that the USFS could try to amend these pending applications to include references to groundwater, based on the new directive. We hope the Subcommittee can assist with having USFS explain what the impact, if any, the proposed directive on groundwater will have on pending reserved water rights claims in Colorado and elsewhere in the West, where reserved water rights claims by the USFS have not been resolved.

One of the objectives of the new directive is to “manage groundwater underlying NFS lands cooperatively with States”. The proposed policy directs USFS to manage groundwater quantity and quality on NFS lands “in cooperation” with appropriate State agencies and, if appropriate, EPA. Cooperation is certainly a key component to groundwater management, but USFS needs to demonstrate a stronger commitment to work within the framework of existing state water rights systems and defer to the states in these matters. Such a commitment would encourage states and water right holders to proactively address water allocation issues by eliminating the now omnipresent fear that a subsequent federal mandate will either undermine local efforts to address an allocation issue or suddenly require unexpected additional reallocations of water which render local cooperation impossible.

The directive expands USFS jurisdiction beyond National Forest Service lands. One of the policies of the USFS directive is to manage surface water and groundwater resources as hydraulically interconnected, and consider them interconnected in all planning and evaluation activities, unless it can be demonstrated otherwise using site-specific information. Another policy would focus groundwater resource management on those portions of the groundwater system that if depleted or contaminated, would have an adverse effect on surface resources or present or future uses of groundwater. Since surface water and groundwater are already assumed to be hydraulically connected in this directive, this essentially expands USFS jurisdiction to some uncertain range downstream along runoff channels and streams originating or flowing through NFS lands. Not only is the breadth of the jurisdictional expansion uncertain, the manner in which groundwater will be “managed” is also unclear. Groundwater management can consist of passive activities, such as data collection and well monitoring. It can also consist of more aggressive actions, including regulation or curtailment of pumping. The directive fails to adequately describe the level of groundwater management that is proposed, instead noting that management will occur “on an appropriate spatial scale”. The policy directs the USFS to “prevent, minimize, or mitigate, to the extent practical, adverse impacts from Forest Service actions on groundwater resources and groundwater-dependent ecosystems located on NFS lands.” This too, is vague, as are other provisions in the directive, and potentially could usurp the authority of the state in managing and regulating its surface and groundwater resources.

The directive includes vague and uncertain terminology and provisions. The new policy requires implementation of water conservation strategies in Forest Service administrative and recreational uses and cites FSM 7420. This latter document relates to drinking water projects and

it is unclear how it would apply to ensuring incorporation of “water conservation strategies” for administrative and recreational uses. The term “water conservation strategies” needs to be defined.

The directive calls for USFS to follow applicable State and EPA SDWA regulations for evaluating whether a groundwater source of drinking water is under the direct influence of surface water. This would appear to conflict with the USFS policy in the directive that automatically considers groundwater and surface water to be hydraulically interconnected in all planning and evaluation activities, unless it can be demonstrated otherwise using site-specific information.

The directive states that effects of proposals on groundwater resources will need to be considered and addressed when revising or amending applicable land management plans and evaluating project alternatives. The directive is not clear as to whether these actions apply only to proposed USFS activities or to proposed uses involving surface water or groundwater outside of USFS lands that could theoretically be viewed as “connected” using the new USFS policy.

The directive is biased against human activities and discourages a flexible approach to water management contains a strong bias towards the environment and water demand management. The Forest Service directive proposes to address in planning documents the long-term protection and sustainable use of groundwater and groundwater-dependent resources on USFS lands. The policy directs USFS to appropriately protect groundwater resources on USFS lands that are critically important to surface water resources or to natural features, ecosystems, or organisms. No mention is made of the need to provide water for grazing, recreation, or other human activities on USFS lands.

Several parts of the proposed directive demonstrate a bias against human activities and water infrastructure projects on USFS lands:

- The proposed policy directs USFS to deny proposals to construct wells on or pipelines across USFS lands which can reasonably be accommodated on non-USFS lands and which the proponent is proposing to construct on USFS lands because they afford a lower cost and less restrictive location than non-USFS lands.
- In lieu of accessing water from USFS lands, the directive encourages public water suppliers and other water users to employ new treatment technology to meet water supply needs when water quality in an existing water source has degraded or become polluted.
- When issuing or reissuing an authorization or approving modification of an authorized use, the directive requires implementation of water conservation strategies to limit total water withdrawals from USFS lands “deemed appropriate by the authorized officer”.
- The directive requires that public water suppliers and other proponents and applicants for authorizations involving water supply facilities on USFS lands provide an evaluation of

all other reasonable alternatives to the USFS before authorizing access to new water sources or increased capacity at existing water sources on USFS lands, unless the proposed use is entirely on USFS lands or the proponent or applicant is a public water supplier and the proposed water source is located in a designated municipal watershed.

The USFS directive suggests to us that that some within the agency clearly have anti-infrastructure biases and are inserting those biases into critical federal decision-making processes. The Alliance has been very supportive of increased water use and management efficiencies, including the many voluntary water conservation projects currently implemented across the West. We also believe that to effectively meet future demands for water for people and the environment in the West, water conservation efforts alone will not suffice, and that water infrastructure, including new water storage projects, must be built in the future.

The directive demonstrates a bias against water storage projects that could hamper future ability to address drought and climate change challenges in the West. Western snow-fed, irrigated agriculture will take on more importance to the nation as climate change sparks more extremes in both flooding and droughts. In the West, we have high elevation moisture, and sophisticated storage and conveyance infrastructure, which make us more flexible and adaptive in our water management efforts. Western agricultural water users and the infrastructure that was originally constructed to support our communities will become even more important as climate changes occur. An essential part of water management in the West lies in the past: visionary development of storage and irrigation under the auspices of the Bureau of Reclamation. This has allowed the bountiful production of food and fiber which are crucial to our national food supply. The importance of dams and water delivery infrastructure to Western water supply certainty appears to have been forgotten as USFS prepared this directive.

Interestingly – and what is surprising, coming from an agency like USFS - the directive proposes to protect local groundwater resources by encouraging the use of sources of water other than local groundwater, or “import surface or groundwater from outside the basin where laws, water quality and hydrological conditions in both the source and receiving areas allow”. Is USFS actually advocating for expanded trans-basin diversions to avoid using local groundwater?

The USFS directive would place unqualified personnel in positions where critical groundwater management decisions will be made. The directive defines “qualified groundwater personnel” as USFS staff or contractors with “appropriate education, training, and experience in groundwater science to satisfy project needs and, if applicable, licensed or registered to practice geology, hydrology, soil science, or engineering, as appropriate.” However, other provisions of the directive provide aquatic biologists, or “similarly trained professionals” with the authority to analyze whether groundwater withdrawals or injections would impact surface or groundwater quality and quantity. These professionals would also be authorized to develop analyses used to change or limit authorized activities and modify operations for those cases where monitoring shows potential impacts. These are very complicated, sophisticated duties that are likely beyond the training and experience obtained by aquatic biologists. Qualified

groundwater personnel should oversee these activities, and those personnel should be state-licensed professional civil engineers or geologists.

The Alliance has many concerns with the USFS groundwater management directive, but our biggest worry with this most recent move by the USFS to assert control over groundwater is that it unquestionably exceeds the agency's statutory authority. Unfortunately, in recent years, similar actions by the USFS suggest a move towards federal overreach, ignoring state water laws and processes, and violating private property rights. The USFS proposed directives on groundwater management and water quality Best Management Practices both need to be withdrawn, and USFS should go back to the drawing board and work towards developing a policy that falls within the limits of agency authority, pays deference to states water authorities and emphasizes a collaborative approach to water management that benefits human uses and the environment.

Conclusion

One not familiar with this nation's regime for regulation of the environment would understandably conclude that there is some giant gap in the regulatory scheme that is allowing unchecked pollution and waste of water that are not currently within the jurisdiction of the CWA or the purview of the USFS. However, this is simply not the case. Even though groundwater, smaller intrastate waters and wetlands areas may not be within the jurisdiction of the federal government, they are within the jurisdiction of state and local governments. The implication derived by the perceived need by the federal government to further regulate all waters is that these state and local governments are incapable of, or somehow ignoring the need to effectively protect their water resources. Such arrogance by the federal agencies is appalling and flies in the face of federalism in promoting state governance of these important resources. In addition, it is important to keep in mind that the federal government does have jurisdiction over discharges of solid wastes, hazardous wastes, and hazardous substances to non-jurisdictional waters through the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act.

It is also worth noting that the CWA is widely recognized as an extremely successful statutory regime. All of this progress has been achieved under the current version of the CWA. And more than a decade's worth of this progress has been achieved since the Supreme Court's *SWANCC* decision in 2001, which some proponents of the proposed rulemaking allege was the beginning of the Court's attempts to limit federal jurisdiction. Simply put, the agencies crafting both of these rules have only spoken of the need for an expansion of federal water resource management jurisdiction in the broadest, most vague terms possible, without establishing any real need.

The results of this jurisdictional expansion will put actions and products used by American farmers and ranchers that are critical inputs necessary in the production of food and fiber foremost in the sights of federal regulators. American family farmers and ranchers for generations have grown food and fiber for the world, and we will have to muster even more

innovation to meet this critical challenge, which grows every day. That innovation must be encouraged rather than stifled with new regulations and uncertainty. Unfortunately, many existing and proposed federal policies on water issues, - including proposed rules discussed in this letter - make it more difficult for farmers to produce food and fiber in an arena where agricultural values are perceived as secondary to ecological and environmental priorities. Right now, it seems that water policies being developed at EPA, the Corps and the USFS are being considered separately from foreign and domestic agricultural goals.

Thank you for this opportunity to provide comments for this important oversight hearing. Please do not hesitate to contact the Alliance at (541) 892-6244, or dankeppen@charter.net, if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'DK', with a horizontal line extending to the right.

Dan Keppen
Executive Director

ⁱ “The Economic Importance of Western Irrigated Agriculture” Water Resources – White Paper, prepared by Pacific Northwest Project for the Family Farm Alliance and the Irrigation Association, August 2013

ⁱⁱ *Id.*