CREATING ABUNDANT WATER AND POWER SUPPLIES AND JOB GROWTH BY RESTORING COMMON SENSE TO FEDERAL REGULATIONS

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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OVERSIGHT HEARING ON "CREATING ABUNDANT WATER AND POWER SUPPLIES AND JOB GROWTH BY RESTORING COMMON SENSE TO FEDERAL REGULATIONS."

Tuesday, April 5, 2011
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Natural Resources
Washington, D.C.

The Subcommittee met, pursuant to call, at 2:21 p.m. in Room 1324, Longworth House Office Building, Hon. Tom McClintock [Chairman of the Subcommittee] presiding.

Present: Representatives McClintock, Tipton, Gosar, Labrador, Napolitano, Grijalva, Costa, and Garamendi.

Mr. MCCLINTOCK. The Subcommittee on Water and Power will come to order. The Chair notes the presence of a quorum, which under Committee Rule 3(e) is two Members.

The Water and Power Subcommittee meets today to hear testimony on a hearing entitled, "Creating Abundant Water and Power Supplies and Job Growth by Restoring Common Sense to Federal Regulations."

We will begin with five-minute opening statements, starting with the Chair and Ranking Member. This hearing is being conducted pursuant to House Resolution 72, which directs all Committees of the House to identify current and pending regulations that threaten existing jobs, or impede the creation of new ones.

This Subcommittee, with jurisdiction over water and hydroelectric resources administered by the Bureau of Reclamation, is going to have its hands full in meeting this obligation.

STATEMENT OF THE HON. TOM McCLINTOCK A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MCCLINTOCK. In Southern Oregon, regulators have devastated Klamath Valley agriculture, and now threaten to squander $700 million of ratepayer and taxpayer funds to destroy four hydroelectric dams that are capable of producing 155 megawatts of clean and cheap electricity, and to shut down operation of the Iron Gate Fish Hatchery that produces 5 million salmon smolt each year.

Last year, this government diverted 200 billion gallons of water away from Central Valley farms in California to dump into the Pacific Ocean for habitat restoration, destroying a quarter-million acres of the most productive farmland in the Nation, throwing tens of thousands of farm families into unemployment and contributing to unemployment rates in the Central Valley exceeding 40 percent in some communities.

Even today, with the snowpack at 165 percent of normal for the season—the wettest year in the last 16—San Joaquin Valley farm-

ers have only been guaranteed 65 percent of their contracted allotments.

Family farms on the Rio Grande in New Mexico faced extinction to provide nicer accommodations for silvery minnows until its Delegation found the political will to act a few years ago.

Just over the horizon, the Santa Ana suckerfish in Southern California could have devastating impacts on residents seeking to protect local water supplies. Across the Nation, the EPA has waged an assault on rural America by imposing greenhouse gas regulations that will destroy small livestock operations, creating unjustified buffer zones on pesticide applications, and opposing surface storage projects like the Two Forks Reservoir in Colorado.

The great irony, of course, is that the very projects that have made sustained year-around water flows possible, and that have lowered water temperatures to the benefit of fish populations annually are precisely those under attack by the radical policies of the environmental left.

Not only have these water projects stabilized water flows and lowered water temperatures, the employment of ample fish hatcheries can provide for unparalleled abundance of salmon and other species.

Yet, the Federal Government refuses to recognize fish-hatchery salmon as part of endangered fish counts and refuses to recognize the contributions that fish hatcheries can make to thriving fisheries.

For many years, the central objective of our water and power policy was to create abundance, to make the desert bloom as the Bureau of Reclamation's founders put it. But this original mission seems to have been lost to a radical and retrograde ideology that seeks to create, maintain, and ration government-induced shortages. That is the policy crossroads where we have now arrived.

It is true that with enough government force, fines, lawsuits, edicts, regulations, and bureaucracies, we can restore plant and animal populations to their original prehistoric conditions, but we have to do that by restoring the human population to its original prehistoric conditions.

Or we can return abundance as the central objective of our water and power policy by providing abundant water, clean, and cheap hydroelectricity, new recreational centers, desperately needed flood protection, burgeoning fisheries, reinvigorated farms—not to mention lower electricity, water, and flood insurance bills for American families.

It is toward that brighter and more prosperous future that this majority seeks to proceed. It is my hope that the testimony today will assist the House in identifying those changes in law that will be necessary to get there.

With that, I will yield back the balance of my time, and recognize the Ranking Member, the gentlelady from California, Mrs. Napolitano.

[The prepared statement of Chairman McClintock follows:]

Statement of The Honorable Tom McClintock, Chairman, Subcommittee on Water and Power

Today's hearing is conducted pursuant to House Resolution 72 which directs all committees of the House to identify current and pending regulations that threaten existing jobs or impede the creation of new ones.

This sub-committee, with jurisdiction over water and hydro-electric resources administered by the Bureau of Reclamation, will have its hands full in meeting this obligation.

In Southern Oregon, regulators have devastated Klamath Valley agriculture and now threaten to squander $700 million of ratepayer and taxpayer funds to destroy four hydroelectric dams capable of producing 155 megawatts of clean and cheap electricity—and to shut down operation of the Iron Gate Fish Hatchery that produces five million salmon smolt annually.

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Across the nation, the EPA has waged an assault on rural America by imposing greenhouse gas regulations that will destroy small livestock operations, creating unjustified buffer zones on pesticide applications and opposing surface storage projects like the Two Forks reservoir in Colorado.

The great irony, of course, is that the very projects that have made sustained year-round water flows possible and that have lowered water temperatures to the benefit of fish populations annually are precisely those under attack by the radical policies of the environmental left.

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But this original mission seems to have been lost to a radical and retrograde ideology that seeks to create, maintain and ration government-induced shortages. And that is the policy cross-road where we have now arrived.

It is true that with enough government force, fines, lawsuits, edicts, regulations and bureaucracies we can restore plant and animal populations to their original prehistoric conditions by restoring the human population to its original pre-historic conditions.

Or we can return abundance as the central objective of our water and power policy—by provide abundant water, clean and cheap hydroelectricity, new recreational centers, desperately needed flood protection, burgeoning fisheries, reinvigorated farms—not to mention lower electricity, water and flood insurance bills for American families.

It is toward that brighter and more prosperous future that this majority seeks to proceed. It is my hope that the testimony today will assist the House in identifying those changes in law necessary to get there.

STATEMENT OF THE HON. GRACE NAPOLITANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. NAPOLITANO. Thank you, Mr. Chair, for today's hearing that does focus on indirect and direct regulations that affect the Bureau

of Reclamation, and also specifically focused on the impacts of regulations to the agricultural community, and to our economy as such.

I hope that we don't forget that Native American water rights are also impacted, and that we do include them in any of the discussions that we might continue to have. We do agree that we need to find a balance to ensure that regulations protect the health and safety of the public, and help sustain businesses and our economy—while protecting the environment and allowing for that job growth.

This is one of the goals outlined in President Obama's Executive Order, and we support the Administration's efforts for regulatory review and job creation going hand-in-hand.

Regulations protect the public and, when done right, help to provide a framework for partnership and collaboration, which is sometimes much needed. I have always maintained that, in some of these water wars, the only ones that win are the attorneys.

Across the West, there are many instances of stakeholders partnering together to achieve the goals of sustaining agriculture, as well as improving our environment.

These partnerships were not done at the expense of one party or the environment, but were done in a collaborative manner that allowed for water deliveries and power production, while minimizing and mitigating the risk to the environment.

Regulations should not be done one-sided. We should not have to choose between the farmer who provides our food and the salmon fishermen who also makes a living depending on the same water resources, and economic sustainability in that area.

It has also been mentioned that some of these regulations are decades old, and we agree that many of them have to be thrown out, amended, or replaced with something that reflects our current times.

Some regulations do need some reviewing, and we support the efforts. We should also work with some of the other Federal agencies which overlap in some of our jurisdictions to address these issues collaboratively.

What has not changed is how we as a country put in place these regulations, because we value our clean air, and we value our clean water, and we value our public safety, especially in our agricultural community and in our fishing industry.

We have an even more important task of leaving the next generation with cleaner air, cleaner water, and a healthier environment than what we found during our time, and to do so in a way that allows for job growth—creating a win-win for all.

Mr. Chairman, I have a great grandson, and another one on the way. I want to be sure that we leave something for our future generations that is going to make them proud of the work that was done, not that they will know about it, but that they enjoy better air, a better environment, than we had in our generation.

And I can tell you when I moved to Southern California back in the early '60s that the pollution in the air was intolerable in California. Well, we have worked on that, and we have established a lot of new regulations, and now California does not have the cleanest air, but certainly is one of the best environments in the Nation.

So I understand the need for regulations. I applaud it, but we also must understand how it impacts anything else that we work with, and work to sustain not only our economy, but ensure that we protect the future of our environment.

I do look forward to hearing from our witnesses, and thank you for being here today. I yield back.

[The prepared statement of Mrs. Napolitano follows:]

Statement of The Honorable Grace F. Napolitano, a Representative in Congress from the State of California

Good morning. This hearing focuses on the indirect and direct regulations that affect the Bureau of Reclamation. This hearing also specially focuses on the impacts of regulations to the agricultural community.

We agree that we need to find a balance to ensure that regulations protect the safety and health of the public and the environment while allowing for job growth. This is one of the goals outlined in President Obama's Executive Order and we support the Administration's ongoing efforts on regulatory review and job creation.

Regulations, when done right, help to provide a framework for partnership and collaboration. There are many instances across the west of stakeholders partnering together to achieve the goals of sustaining agriculture as well as improving our environment.

These partnerships were done not at the expense of one party or the environment, but in a collaborative manner that allows for water deliveries and power production, while minimizing and mitigating the risks to the environment. Regulations should also not be a one sided game where have to choose between the farmer who provides our food, and the salmon fisherman who also makes his living depending on the same water resource.

It has been mentioned that some of these regulations are decades old, reflecting a different time. These regulations may need some reviewing, and we support those efforts. What has not changed is how we as a country put in place these regulations because we value our clean air, clean water and our public's safety.

We have an even more important task of leaving the next generation with cleaner air, cleaner water, and a healthier environment than what we found, and do so in a way that allows for job growth.

We look forward to hearing from our witnesses, thank you for being here today.

[NOTE: Charts submitted for the record entitled "California 2006 Causes of Impairment for California Waters, Prepared by the U.S. EPA Office of Water" and "California Waters Impaired by Pesticides: Reporting Year 2006, Prepared by the U.S. EPA Office of Water" have been retained in the Committee's official files.]

Mr. MCCLINTOCK. Thank you. The Chair recognizes Mr. Labrador for an opening statement.

STATEMENT OF THE HON. RAÚL LABRADOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. LABRADOR. Thank you, Mr. Chair. I will be very brief. Good afternoon, and thank you, Chairman McClintock, and Ranking Member Napolitano, for convening this important hearing today.

I would like to especially welcome Norm Semanko, who is the Executive Director and General Counsel for the Idaho Water Users Association, for testifying at this hearing, and also a dear friend.

Today's topic is a high priority of mine, reducing the burdensome regulations that the Federal Government has imposed as critical to the vitality of our Nation. The EPA continues to reach beyond their statutory authority to impose regulations that affect not only the people of Idaho, but also people nationwide.

I would like to thank my colleagues for their support in passing H.R. 872, the Reducing Regulatory Burdens Act of 2011, which is

extremely important to the producers in my State. I look forward to listening to the input our distinguished panel has to offer. Thank you.

Mr. MCCLINTOCK. Are there any other Members that wish to make an opening statement? Mr. Garamendi, five minutes.

[The prepared statement of Mr. Labrador follows:]

Statement of The Honorable Raúl Labrador, a Representative in Congress from the State of Idaho

Good afternoon and thank you, Chairman McClintock and Ranking Member Napolitano, for convening this important hearing today.

I would also like to welcome Norm Semanko, the Executive Director and General Counsel for the Idaho Water Users Association for testifying at this hearing.

Today's topic is a high priority of mine. Reducing the burdensome regulations that the federal government has imposed is critical to the vitality of our nation. The EPA continues to reach beyond their statutory authority to impose regulations that affect not only the people of Idaho but also people nationwide.

I would like to thank my colleagues for their support in passing H.R. 872, the Reducing Regulatory Burdens Act of 2011, which is extremely important to the producers in my state.

I look forward to listening to the input our distinguished panel has to offer.

Thank you.

STATEMENT OF THE HON. JOHN GARAMENDI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. GARAMENDI. Thank you, Mr. Chairman, and Ranking Member Napolitano, and the witnesses. I look forward to your testimony. We have been at this a long time, and the notion that regulations are bad, you may want to talk to the Japanese about the lack of regulations on their nuclear power facilities.

Regulations are a mechanism that we use to provide a balance and an assurance that what we would like to see happen actually happens. Regulations to protect endangered species have had an incredibly positive impact on species, including the human species.

When the very first regulation dealt with DDT, it was not just the raptors that were at risk. It was the human population that was at risk. So we ought to not throw the regulatory regimes out simply because they are called regulations.

I have spent a good portion of my life in the regulatory environment as an insurance commissioner, and I can tell you without it, without any qualms whatsoever, that it is the regulatory environment in that sector that protects human beings from the rapacious nature of the insurance industry.

The insurance industry does not like it, but then the public does not like to be ripped off either. With regard to endangered species, to substitute the natural environment for really an unnatural environment called fish hatcheries. Yes, we do need fish hatcheries but, at the same time, those fish hatcheries don't work if the water in the river is too warm for the fingerlings that leave the hatchery.

And that is a regulatory environment that provides that opportunity for those fish to survive as they head down the river. So abundance, yes, but abundance only for the purpose of abundance will lead to destruction, and we have seen a lot of that.

So we need to be balanced, and we need to be wise, and we need to recognize that the political rhetoric of anti-regulation does not

really solve the underlying problems. So with that, I look forward to hearing from the witnesses.

Mr. MCCLINTOCK. Any further opening statements? Seeing none, the Chair would like to begin by recognizing members of the National Water Resources Association, who have taken time out of their visit to the Capitol to attend today's hearing. Welcome to you all.

And with that, we will begin with the statements of our witnesses. And there is some additional seating over on the other side if you get tired of standing.

Our panel of witnesses today includes Mr. Dan Keppen, who is the Executive Director of the Family Farm Alliance, of Klamath Falls, Oregon; Mr. Wade Noble, President of the National Water Resources Association, in Yuma, Arizona; Mr. Jon Scholl, President of the American Farmland Trust, in Washington, D.C.; Mr. Richard Pool, President of Pro-Troll Products, in Concord, California; Mr. Paul Orme, representing the Central Arizona, New Magma, and Maricopa-Stanfield Irrigation and Drainage Districts of Mayer, Arizona; and Mr. Norm Semanko, Executive Director and General Counsel of the Idaho Water Users Association, in Boise, Idaho.

Gentlemen, your written testimony will appear in full in the hearing record, and so I would ask you to keep your oral statements to five minutes, as outlined in our invitation letter to you, and under Rule 4(a).

I also want to explain how our timing lights work. When you begin to speak, our clerk will start the timer, and a green light will appear on that device in front of you. After four minutes, a yellow light will appear, and at that time, you should begin to conclude your statement, and at five minutes a red light will come on. Please feel free to complete your sentence, but after that, I would ask you to wrap up. So I will now introduce Mr. Keppen for five minutes.

STATEMENT OF DAN KEPPEN, EXECUTIVE DIRECTOR, FAMILY FARM ALLIANCE, KLAMATH FALLS, OREGON

Mr. KEPPEN. Good afternoon, Chairman McClintock, Ranking Member Napolitano, and Members of the Subcommittee. I am Dan Keppen, and I am the Executive Director for the Family Farm Alliance. We are a grassroots organization that represents family farmers, ranchers, irrigation districts, and allied industries in the 17 Western States.

Last February, we had our annual meeting in Las Vegas, and staff members from this very Subcommittee participated in a video conference, where they were able to interact with our members.

At that time, one of our board members, Mark Ricks, from Idaho, stood up and made a really impassioned speech, which I won't be able to replicate, but I did take notes, and I would like to share what he said at that time.

Quote, "When I talk to my sons and their friends, and start conversations, they often talk about the frustration they feel over the amount of time they spend dealing with regulations and bureaucracy."

Right now, my kids are spending roughly a third of their time trying to cut through what they see as unnecessary red tape. This

is time that they know could be spent in a more productive way actually working the land, and starting to take the joy out of their work. It is making young people choose careers other than farming at a time when there are not many young farmer people in the profession.

Mark Ricks is right and the statistics bear out his observations. Right now only six percent of our farmers in this country are younger than 35 years old. In my home state of Oregon, only four percent are 35 years or younger. So this oversight hearing comes at a real opportune time. We are in danger of losing a generation of farmers.

And this is happening at a time when the United Nations projects that the world will need 70 percent more food by the year 2050 to keep pace with the world population growth and hunger.

Today, our own western farmers and ranchers are being subjected to potential restrictive and duplicative Federal regulations on many fronts. Many of these rules have cropped up in just the past two years.

My written testimony includes a nearly two page list of various rulemaking processes that pose threats to agriculture. Other witnesses on today's panel will further elaborate on some of those very issues.

The related uncertainty that comes with all this increased regulatory scrutiny will make it much harder for these farmers to survive in such a harsh economy. Putting just a few of these farmers out of work could impart huge limitations on our future ability to feed our country and the world.

The rural west faces challenges today that demand strong citizen engagement and aggressive outspoken leadership by our elected officials. As western producers of food and fiber continue to disappear, the ripple effect will extend far beyond the rural communities.

As a country, we have become nearly complacent as food production has been taken for granted for far too long. The United States, for nearly four decades, helped defeat world hunger through its massive productive output of affordable food.

Western family farmers and ranchers will continue to this campaign, but they need to be shown through leadership and development of common sense agriculture and water policy priorities that what they do really does matter to this country.

Fortunately, policy leaders like you are beginning to recognize the economic and social burdens caused by the layers of regulations and bureaucracy. We were pleased to see President Obama issue his Executive Order that requires Federal agencies to ensure that regulations protect safety, health, and the environment, while promoting economic growth.

The President's actions could provide an opportunity for a bipartisan marriage of interest leading to a real beneficial change in the way that the Federal Government adopts and implements rules and regulations that impact people's lives and livelihoods.

The Family Farm Alliance strongly affirms the original goals of well intended laws like the Endangered Species Act, the Clean Water Act, and the National Environmental Policy Act.

However, some of these laws are nearly 40 years old, and some targeted reforms may be needed, including common sense changes to make them work better, minimize confusion, and discourage unnecessary litigation.

From the standpoint of the Western American farmer, it can be bewildering, daunting, and frustrating to view the specter of new rules, regulations, and guidance that are currently under development by Federal regulatory agencies.

Unfortunately the very real impacts that existing laws and regulations already exert on agricultural producers have already been felt, and those rules do not appear to be going away anytime soon.

I can see that it is simple enough to document these efforts to the best of our abilities and register our complaints as in our testimony. It is much more difficult to propose constructive resolutions that can make existing laws work better.

The Family Farm Alliance prides itself on employing this very philosophy. We, and many other organizations representing American producers, have developed detailed recommendations over the past decade on how the negative effects of existing environmental regulations can be corrected and improved.

We would be happy to provide a compilation of those efforts and make them available to this Subcommittee. With the right combination of incentives in the form of modernized streamlined regulations, western irrigated agriculture will be posed to help close the global productivity gap, and meet the world's food and fiber needs in the year 2050 and beyond. Thank you.

[The prepared statement of Mr. Keppen follows:]

Statement of Dan Keppen, Executive Director, Family Farm Alliance

Good afternoon, Chairman McClintock, Ranking Member Napolitano, and Members of the Subcommittee. My name is Dan Keppen, and I serve as the Executive Director of the Family Farm Alliance (Alliance).

The Alliance is a grassroots organization of family farmers, ranchers, irrigation districts and allied industries in 16 Western states. The Alliance is focused on one mission: To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. We are also committed to the fundamental proposition that Western irrigated agriculture must be preserved and protected for a host of economic, sociological, environmental and national security reasons—many of which are often overlooked in the context of other national policy decisions.

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

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

I should emphasize that all these regulations in particular hit the small family farmer the hardest, as they are the least equipped to deal with the maze of sometimes overlapping requirements. We fear that we may be approaching a point where

only the larger farm operators will be able to economically deal with these issues, and even they will face significant challenges and hardship.

The rural West faces challenges today that demand strong citizen engagement and aggressive, outspoken leadership by our elected officials. As Western producers of food and fiber continue to disappear, the ripple effect will extend far beyond their rural communities. As a country, we have nearly become complacent as food production has been taken for granted for far too long. The United States for nearly four decades helped defeat world hunger through its massive productive output of affordable food. Western family farmers and ranchers will continue this campaign, but they need to be shown—through leadership and development of common sense agriculture and water policy priorities—that what they do really does matter to this country.

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

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

IRRIGATED AGRICULTURE IS AN IMPORTANT COG IN OUR NATION'S ECONOMIC ENGINE

The development of Western water resources over the past one hundred years is one of the great success stories of the modern era. Millions of acres of arid Western desert have been transformed into one of the most efficient and productive agricultural systems in the world. The Bureau of Reclamation (Reclamation) is the largest supplier and manager of water in the 17 Western states west of the Mississippi. It maintains 480 dams and 348 reservoirs with the capacity to store 245 million acre-feet of water. These facilities deliver water to one in every five western farmers to irrigate about ten million acres of land, and provide water to over 31 million people for municipal and industrial (M&I) uses as well as other non-agricultural uses. Reclamation is also the Nation's second largest producer of hydroelectric power, generating 44 billion kilowatt hours of energy each year from 58 power plants. In addition, Reclamation's facilities provide substantial flood control benefits, recreational opportunities, and extensive fish and wildlife habitat. All of this has been accomplished with a total federal investment of only $11 billion, according to the Bureau of Reclamation.

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

combined economic impacts ($14.2 billion, 68,200 jobs) associated with Reclamation's hydropower, municipal and industrial water, and recreation functions.

A LOST GENERATION OF FARMERS?

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

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

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

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

At a time when average Americans are feeling the pinch of the economic recession in their pocket books, the foundation of our country's ability to provide safe and affordable food and fiber is also now at risk. Ironically, it is because Western irrigated agriculture has been so adaptive and successful at providing plentiful, safe and affordable food that it is now in a fight for its future existence—and nobody believes there is a problem. The last Americans to experience food shortages are members of the Greatest Generation and their parents. For the most part, they have left us, taking with them the memories of empty supermarket shelves, WWII Victory Gardens, the Dust Bowl, and other times of significant hardship and shortage. Their personal experiences helped build today's American agricultural successes, but when the issue has never been personalized, it's easy to become complacent.

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

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

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

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

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

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

THE DISCONNECT BETWEEN ENVIRONMENTAL AND AGRICULTURAL POLICY

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

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

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

- EPA's Strategic Plan for 2011–2016, which strongly indicates that EPA will place more emphasis on regulating greenhouse gases, setting nutrient standards for water bodies, environmental cleanup, chemical regulation, and enforcing environmental laws through "vigorous and targeted civil and criminal enforcement" actions;
- EPA emissions upgrades that may be mandated for the Navajo Generating Station (NGS) in Arizona. The emission requirements being considered by EPA are intended to satisfy unique visibility criteria driven in part by the proximity of NGS to Grand Canyon National Park, and they carry with them a heavy cost to local farmers and ranchers. Family Farm Alliance Advisory Committee member Paul Orme will testify to this matter in greater detail at today's hearing;
- Recent guidance from EPA regional offices which demonstrates a clear bias against the planning and construction of any new water storage projects, which appears to prejudge potential projects without consideration of important civic, economic and environmental needs;
- The Obama administration reconsideration of a 2008 EPA rule recently upheld in the 11th Circuit Court of Appeals that allows water transfers from one water body to another without requiring a Clean Water Act (CWA) NPDES permit. This new level of regulation, permitting and certain litigation would hamstring the economies of states like Arizona, California and Colorado, where millions of acre-feet of water are transferred from one river basin to another every year;
- EPA's failure to establish clear procedures for its pesticide effects determinations and subsequent actions in the Pacific Northwest consistent with 1988 amendments to the Endangered Species Act (ESA). This has resulted in unnecessary restrictions on the use of agricultural pesticides without any indication that Pacific Northwest salmon will benefit and puts producers along the West coast at a competitive disadvantage;
- EPA has launched an effort to develop their "Green Book", a project to ensure all EPA policies are driven by "sustainability". EPA's current policies and regulations are driven by statutes that oversee individual issues, such as pesticides, air pollution and drinking water contaminants. But this new project, undertaken at EPA's direction by the National Academy of Science, will develop a framework for the EPA to link all environmental issues and ensure its policies rely on sustainable use of energy, water, land and other resources. There is much speculation of the impacts to agriculture and other resource-dependent industries arising from the outcome of this effort.
- EPA late last year issued a memorandum that has the effect of regulating air quality under the Clean Water Act (CWA) based on the theory that air is tributary to waters of the United States. The memorandum directs states to designate waters bodies as impaired if they do not meet water quality standards because of acidification caused by air pollution. In other words, States or EPA could now regulate CO_2 and other pollutant emissions under the CWA.
- In recent months, Western water managers have become aware of and are becoming increasingly concerned with actions undertaken by the National Committee on Levee Safety (NCLS). This group, authorized and created in the Water Resources Development Act of 2007, includes the U.S. Army Corps of Engineers (Corps) and FEMA as the only federal agencies represented on the Committee. The Committee was established to deal with post-Katrina flood risk issues, with an emphasis on Corps levees. However, the Committee has developed a plan that essentially could apply Corps-level engineering specifications and standards to both levees and water supply canal embankments throughout the country, with little to no coordination with the Bureau of Reclamation and Western water managers. The Committee is now considering draft legislative language that could be used to create a National Levee Safety Program to implement this plan, and thus far, concerns raised by Reclamation and Western irrigation interests do not appear to be gaining traction with the Corps and FEMA. We believe Congress did not intend for water delivery canals that are not part of a flood control system to be subjected to new requirements administered by the Army Corps of Engineers. Wade Noble, President of the National Water Resources Association and a member of the Family Farm Alliance Advisory Committee, will focus solely on this troubling development in his testimony today.

The above federal water resources policy actions and regulatory practices could potentially undermine the economic foundations of rural communities in the arid West by making farming and ranching increasingly difficult and costly. American family farmers and ranchers for generations have grown food and fiber for the

world, and we will have to muster even more innovation and resolve to meet this critical challenge. That innovation must be encouraged rather than stifled with new federal regulations and uncertainty over water supplies for irrigated farms and ranches in the rural West.

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

ESA IMPLEMENTATION BY FEDERAL AGENCIES A MAJOR CONCERN

A growing concern to Western irrigators is the employment of the ESA by the federal agencies as a means of protecting single species by focusing on one narrow stressor to fish: irrigation diversions. For the second time in a decade, Congress directed that the National Academy of Sciences (NAS) convene a high-level, independent scientific review of federal restrictions on water deliveries affecting thousands of Western farmers and ranchers. In 2009, those restrictions—based in large part on ESA biological opinions in the Sacramento-San Joaquin Delta (Delta)—were a primary cause for the water cutbacks and rationing afflicting hundreds of communities throughout California and the resulting economic devastation in the San Joaquin Valley. Last year, south-of-Delta water managers estimate that over 1 million acre-feet of water that would normally be diverted to supply San Joaquin Valley farms and Southern California communities were lost to the Pacific Ocean during a five-month period due to the requirements for Delta pumping restrictions of the biological opinions rendered by federal fisheries agencies to protect endangered fish species.

A similar decision to focus exclusively on one stressor—a federal irrigation project—was made by federal agencies in the Klamath Basin in 2001, and that decision, and the science used by federal fish agencies to support the decision, was criticized later in a review conducted by the NAS.

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

The California and Klamath stories are very similar. The NAS stepped in after Klamath Irrigation Project supplies from Upper Klamath Lake were cut off by federal biological opinions under the ESA in 2001. The Academies' objective scientific review concluded that there was insufficient evidence to support these biological opinions in restricting agricultural diversions from the river, which had led to the near-collapse of the local agricultural community. In Klamath, the federal regulators looked at only one of the stressors contributing to the fisheries' decline and they focused on only one solution—cutting off water supplies to agriculture.

Likewise, in California today, the same federal agencies have refused to assess the impacts of the many stressors affecting the health of the Delta. And for fifteen years, they have been restricting or cutting off water deliveries, even though their experience during those fifteen years have conclusively demonstrated that these restrictions have done little to prevent the fisheries' decline in the Delta.

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

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

Among the reasoning for the ruling offered by the court:

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

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

IMPEDIMENTS TO ON–FARM ENERGY OPPORTUNITIES

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

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

The Alliance supports the "Small-Scale Hydropower Enhancement Act of 2011"—co-sponsored by Congressmen Adrian Smith and Jim Costa—which intends to exempt any conduit-type hydropower project generating less than 1.5 megawatts from FERC jurisdiction. This limited exemption would promote the development of small-scale hydropower while still protecting the environment. This would help stimulate the economy of rural America, empower local irrigation districts to generate revenue and decrease reliance on fossil fuels—all at no cost to taxpayers.

CONCLUSIONS AND RECOMMENDATIONS

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

Our farmers and ranchers are increasingly subjected to duplicative and expensive federal regulations and their related uncertainty of increased costs, lost critical farm inputs, and reduced water supplies, making it harder to survive in a harsh economy. And forcing farmers out of business and taking farmland out of production so that

water supplies can be redirected to new environmental demands will impart huge limitations on our future ability to feed our country and the world.

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

Thank you for this opportunity to present testimony to you.

Mr. MCCLINTOCK. Thank you very much. We welcome back Mr. Wade Noble to the Committee. He is the President of the National Water Resources Association in Yuma.

STATEMENT OF WADE NOBLE, PRESIDENT, NATIONAL WATER RESOURCES ASSOCIATION, YUMA, ARIZONA

Mr. NOBLE. Thank you, Mr. Chairman, Ranking Member Napolitano, and Members of the Committee. I am Wade Noble, President of the National Water Resources Association. I want to state at the outset that the NWRA is not opposed to Federal regulations.

However, we are opposed to duplicative regulations which serve no purposes and impose unnecessary paperwork, and unwarranted expense, on America's farmers and communities.

In the wake of Hurricane Katrina, and the catastrophic levee failure in New Orleans' Ninth Ward, we clearly understand and support Congress' desire to ensure the safety of levees throughout the Nation.

The establishment of the National Committee on Levee Safety to make recommendations to Congress to ensure the future of safety of levees contiguous with population centers is essential.

However, we fear that the committee has taken on a life of its own, and the extension of its Congressional mandate to the United States Bureau of Reclamation's canals, is unsupportable.

The recommendations contained in the report identified 14,000 miles of core levees, and 8,000 miles of Reclamation's canals. Irrigation canals and flood protection levees are very different structures, and should not be regulated under a one size fits all regime.

Therefore, we believe Congress should consider the following facts regarding the United States Bureau of Reclamation irrigation canals before embracing the Committee's recommendation.

Reclamation inspects its facilities, including water delivery canals, on a regular basis. In addition, Subtitle G of Public Law 111-11, the Omnibus Public Land Management Act of 2009, directed Reclamation to conduct inspections of their facilities in proximity to urbanized areas.

Reclamation has completed inspections on urban canals in the Salt River project, Maricopa County, Arizona; the central Arizona project, Maricopa County, Arizona; and the Yuma County Water Users Association, Yuma County, Arizona.

Reports on the inspections are being completed. The inspections were comprehensive and extensive. Of Reclamation's 8,000 miles of canals, West-wide, only one in eight, approximately 1,000 miles, are in proximity to urbanized areas.

Unlike levees, if a breach occurs, the water can be shut off in a short period of time, eliminating or greatly reducing the potential of property damage and making the risk of loss of life remote.

Equating canals to levees will require canal operators and agriculture to pay the increased flood insurance premiums in areas potentially impacted by a canal failure. Such unnecessary additional costs will further compromise farmers' abilities to provide a reliable and secure food supply to this Nation's citizens.

In summary, we believe that this Committee needs to assert its jurisdiction to ensure that future legislation resulting from the recommendations of the National Committee on Levee Safety does not adversely impact American agriculture.

Thank you, Mr. Chairman, and Members of the Committee, for the opportunity to bring our concerns to your attention. The NWRA stands ready to assist the Committee in any manner that it deems appropriate.

[The prepared statement of Mr. Noble follows:]

Statement of Wade Noble, President, National Water Resources Association

Good afternoon Chairman McClintock, Ranking Member Napolitano and Members of the Subcommittee, my name is Wade Noble and I am here on behalf of the National Water Resources Association (NWRA). I am the President of the Association and also an attorney in Yuma, Arizona.

NWRA is a federation of state water associations representing agricultural and municipal water providers in the seventeen Western Reclamation states. Its strength is due to "grassroots" participation on virtually every national issue affecting western water and power resources conservation, management, and development.

We appreciate the opportunity to comment on federal regulations impacts on water and power supplies. NWRA unequivocally supports *common sense* federal regulations. We are increasingly concerned about duplicative and unnecessary regulations, many of which may have negative consequences for western water users. Specifically, I will address the direct impacts the recommendations of the National Committee on Levee Safety will have on Bureau of Reclamation projects and irrigators west wide.

Western water managers are progressively apprehensive with actions of the National Committee on Levee Safety (NCLS). The group, authorized in the Water Resources Development Act of 2007 (WRDA), includes the U.S. Army Corps of Engineers (Corps) and the Federal Emergency Management Agency (FEMA) as the only federal agencies. The Bureau of Reclamation, with thousands of miles of levees and canals, is not at the table.

The Committee, established to deal with post-Katrina flood risk issues emphasizing Corps levees, plans to apply Corps-level engineering specifications and standards to levees and canals. There will be little or no coordination with the Bureau of Reclamation and Western water managers. Thus far, concerns raised by Reclamation and Western irrigation interests do not appear to be gaining traction with the Corps and FEMA.

Congress created the NCLS to develop recommendations for a national levee safety program, including a strategic plan for implementation of the program. The NCLS began development of recommendations in October 2008. The result so far is twenty recommendations for creating a National Levee Safety Program which were in a January 15, 2009 draft report, *Recommendations for a National Levee Safety Program: A Report to Congress from the National Committee on Levee Safety.*

The recommendations for a National Levee Safety Program (NLSP) are grouped into three concepts: (1) the need for leadership via a National Levee Safety Commission which would—support state delegated programs, provide national technical standards and risk communication, and coordinate environmental and safety concerns; (2) the building of strong levee safety programs in all states which would—provide oversight, regulation, and critical levee safety processes; and (3) a foundation of well aligned federal agency programs.

Federal legislation will be necessary to implement 12 of the 20 recommendations. The Corps and FEMA are working within existing authorities and funding to implement several recommendations addressing the basics of communication and outreach, use of common language and refinement of their existing programs. The non-federal members of the NCLS have drafted a NLSP addressing areas where NCLS foresees needed implementation legislation. The Corps is considering NCLS rec-

ommendations in development of levee safety standards and risk assessment and communication methodologies.

NWRA supports NCLS efforts applicable to Corps facilities. It is, however, not appropriate to apply similar standards and methodologies to water delivery facilities operated by the Bureau of Reclamation and its local partners.

Bureau of Reclamation Position on NLSP Applicability to Reclamation Facilities

Prior to the release of the draft Report, the Bureau of Reclamation circulated an internal memo regarding (non-) applicability of the Levee Safety Act ("Act") to Bureau of Reclamation canals. The memo noted that the Corps' interpretation of the Act included Reclamation canals.

Reclamation consulted the Interior Department Solicitor's Office and was told the provisions of the Act do not apply to Reclamation. The Solicitor determined the Act applies to levees defined as embankments providing protection relating to seasonal high water and other weather events. In contrast, Reclamation canals are designed to deliver water.

Additionally, the Act does not include inspection of Reclamation canals among the responsibilities of the Secretary of the Army. The test of agency jurisdiction assertion over another agency requires a clear congressional statement of intent that one agency have jurisdiction over another.

In this case, there is no clear statement of intent that the Secretary of the Army have jurisdiction over Reclamation regarding levees or canals. Further, there is no indication in the Act that Congress intended to subject Reclamation to the jurisdiction of the Secretary of the Army.

We agree with the Department of the Interior's and Reclamation's position.

Concerns of Western Water Users

There is a need to address deterioration of aging flood control facilities and preventing failures like the one which occurred in New Orleans. It should be an immediate national priority.

However, after reviewing the NCLS' recommendations in detail, we have critical concerns.

(1) The approach is overly broad.
(2) *It mandates new standards that would apply to existing Bureau of Reclamation water delivery facilities.*
(3) The focus should be on control facilities that pose actual risk to life or property in the flood plain.
(4) The Act was intended to deal with levees in and around New Orleans into which flood waters were pumped to be conveyed away from the low points in the city.
(5) Legislation should not define "levee" as used in the Act which created the NCLS.
(6) The legislation should only address a program for "levees" as that term is traditionally understood, with the embankment sections of water delivery canals and dams excluded.

Canals are designed and engineered different than levees. Applying flood control levee standards to water delivery canals is a non-sequitur. It will be expensive and for many, unaffordable. The nation-wide inspection program and new project condition and maintenance standards required in the legislative proposal would in most cases be duplicative and undermine existing operation and maintenance (O&M) standards and inspection procedures built into Reclamation contracts for both reserved and transferred facilities. The cost increase, both federal and non-federal, in almost every case would provide no increase in public safety.

There would be a potential for greater liability to water project operators because applying levee standards not meant for canal delivery structures would make compliance difficult, if not impossible, due to the excessive costs of rebuilding such structures. Although the draft legislation would authorize financial assistance to non-federal entities responsible for the maintenance of federally-owned facilities, it is not clear how or when that assistance would be realized.

Finally, and perhaps most important, Congress and this Committee recently provided new authority to Reclamation through *P.L. 111–11,* signed into law in March 2009. The law addresses aging canal systems in urbanized areas of the West. These authorities were proposed by Senate Majority Leader Harry Reid (D–NV) who in early 2008 introduced a bill (S. 2842) designed to make aging federally-owned canals safer across the West. Reclamation is inspecting urban area canals. This program for canal safety addresses the risk of canal failure in areas of highest risk. The

NLSP should not duplicate or hinder this effort with more layers of federal bureaucracy.

The examples of the negative impact of the NLSP on irrigation projects with federally owned facilities in Arizona are:

1. Salt River Project, Maricopa County, Arizona
   - Reclamation project
   - 131 miles of canals
   - 30 miles of "urban" canals
   - Regular periodic inspections of canals
   - "Urban" canals have been inspected by Reclamation within the last year
2. Yuma County Water Users' Association, Yuma County, Arizona
   - Reclamation project
   - 60 miles of canals
   - 14 miles of "urban" canals
   - Periodic canal inspection by Reclamation
   - "Urban" canals have been inspected by Reclamation within the last year
3. North Gila Valley Irrigation and Drainage District, Yuma County, Arizona
   - 6,587 authorized irrigable acres
   - 2.5 employees
   - 20 miles of canals
   - 0 miles "urban" canals
   - Regularly safety inspected by Reclamation

Conclusion

In the American West, water supply systems are essential components of communities, farms, and the environment. These facilities are an integral part of the nation's food-production system and their consistent operation helps ensure our farmers' ability to provide a reliable and secure food supply for our own citizens and the rest of the world. Population growth, environmental demands and climate change are placing an unprecedented strain on aging water storage and conveyance systems designed primarily for agricultural use. The NCLS, with no membership or representation from Reclamation or Reclamation states in the West, represents a real and significant threat to the continued operation of the canals with no additional public safety benefit.

Our members have a long standing tradition of good working relationships with the Bureau of Reclamation and have supported updating Reclamation guidelines for analyzing projects to include considerations for urbanization and other effects that did not exist when these facilities were originally designed many decades ago. However, one-size still does not fit all, and blanket inspections and expensive, nonsensical standards for all Reclamation water delivery facilities are not appropriate or cost-effective. Further, many local districts do not have the financial capability to conduct required repairs or upgrades to their facilities to comply with a national levee standard on their canals, resulting in little or no commensurate increase in public safety. We believe this Committee and Reclamation have the appropriate knowledge and tools to develop strong safety standards for our water supply systems and should not be subjected to a "one size fits all" approach by the NCLS.

Mr. MCCLINTOCK. Thank you, Mr. Noble, and thank you doubly for your brevity today. Our next guest is Mr. Jon Scholl, President of the American Farmland Trust.

STATEMENT OF JON SCHOLL, PRESIDENT, AMERICAN FARMLAND TRUST, WASHINGTON, D.C.

Mr. SCHOLL. Good afternoon, Chairman McClintock, and Ranking Member Napolitano, and other Members of the Committee. Thank you for inviting me to testify. My name is Jon Scholl, and I am the President of the American Farmland Trust, a national conservation organization dedicated to protecting farmland, promoting sound stewardship, and helping to assure a sustainable future for farms and ranches.

I am a partner in a family corn and soybean farm in McLean County, Illinois. Prior to joining the AFT, I was the Counselor to

the Administrator for Agricultural Policy at the U.S. EPA, and before that, I worked for the Illinois Farm Bureau for 25 years.

I began by acknowledging the tremendous demands and pressures facing United States agriculture. With a global population anticipated to reach nine billion, we will need to produce more with less, nearly doubling production with less land, less water, and less inputs.

I also acknowledge that there are legitimate environmental concerns associated with agricultural production, but I firmly believe that farmers and ranchers, if engaged properly, can be the solution to a lot of the environmental challenges that our Nation faces.

Last year the USDA published conservation effects assessment project reports for the Upper Mississippi River Basin and the Chesapeake Bay. The reports documented significant progress of farmers in improving environmental performance.

For example, in the bay, sediment loss has been reduced 55 percent, nitrogen, 42 percent, and phosphorus, 41 percent. These are real reductions, real improvements. However, these reports also highlight serious environmental concerns yet to be addressed.

In the Upper Mississippi, it stated 8.5 million acres, or 15 percent of the crop takers, are critically under-treated for one or more of water, sediment, nitrogen, phosphorus, and these are real challenges at a real area of focus to be working on.

So the question then becomes what is the most effective way to change the behavior of farmers on a landscape scale if we are to take the steps toward cleaner air and water, and play the role that agriculture can play in that.

I submit that economic incentives and markets, not widespread regulation, are the most effective ways to change behavior in the field. However, we must recognize the fact that a regulatory framework is needed to propel progress.

An effective regulatory framework is important because it provides several things. First, it assures a basic level of performance that is needed to control pollution.

Second, it assures fair competition and a more level playing field for those who do the right thing to protect their farms and ranches.

And, third, it provides a measure of accountability. We will not know if we are making sufficient progress if we don't have a yardstick by which to measure.

I suggest three points on a way to move forward. First, build a culture of collaboration. Every farmer wants to leave their farm in better shape for their children than when they got it.

In my years at the EPA, it was evidence to me that these regulators cared about the environment, and wanted to assure effective actions. We shared common objectives, but our approach to solving problems, and the language that we used to communicate, was very, very different.

A recent example helps illustrate what I mean. Eighteen months ago, Region III EPA staff began a series of farm inspections in the Chesapeake Bay States to assess compliance with State and Federal regulations.

When EPA inspectors arrived in the Watson Run Water Shed in Lancaster, Pennsylvania, not many doorbells were answered. After an inauspicious start, the head of the county conservation district

suggested that district staff could help by arranging visits and accompanying the inspection team.

With the assistance of trusted local partners, all 24 farms were visited in relatively short order. What did they find? Things weren't perfect. Many of the farms did not have conservation and manure management plans required by State law.

But the EPA staff also discovered significantly more conservation practices on the ground than what they expected to find. What started as a predictably contentious regulatory process turned into a collaborative effort focused on what needed to be done.

The second point, combine incentives and regulations. Use both carrots and sticks. We should rely on incentives in markets to drive the change in behavior, and not the regulation of each producer.

Simply applying traditional point source regulation to all farmers, to all non-point sources for that matter, won't work. It will not get us where we want and need to go, and that is clean water and viable farms.

And, third, provide regulatory certainty. A common complaint that I have heard from producers has been that they are never certain if they take the prescribed actions that will satisfy the regulators.

Our environmental policy must provide some sort of safe harbor or regulatory relief. If a farmer has a plan and is on track to making changes in conservation practices, they should not be faced with the onerous regulatory burdens making it difficult for them to stay in business.

Farming is one of the few businesses where multiple generations of the family members continue to own and operate family businesses. As farmers, we have to take a long term view if our farms are to thrive for our children and their children.

We need an approach that builds trust, cooperation, and innovation to make agriculture a part of our solution to our Nation's efforts to clean water and air. Thank you.

[The prepared statement of Mr. Scholl follows:]

Statement of Jon Scholl, President, American Farmland Trust

Good Afternoon, Chairman McClintock, Ranking Member Napolitano and other Members of the Committee, thank you for inviting me to testify today. My name is Jon Scholl. I am the President of the American Farmland Trust headquartered in Washington, DC. I am a partner in a family farm in McLean County, Illinois.

American Farmland Trust is an organization that has for the last thirty years worked at the intersection of agriculture and the environment. We work to protect farmland and promote sound stewardship while also looking out for the economic viability of agriculture. Before joining American Farmland Trust, I had the privilege of serving for four years as the Counselor to the Administrator for Agricultural Policy at the United States Environmental Protection Agency during the Administration of George W. Bush. Before that, I worked at the Illinois Farm Bureau for 25 years in a variety of capacities.

As someone involved in my family's farm operation, a former EPA agricultural appointee, and the President of American Farmland Trust, let me be the first to say that our Nation faces serious environmental problems and that agriculture is both a contributor and a big part of the solution to these challenges. Having spent my life in agriculture, I know that farmers and ranchers across this country feel increasing environmental pressure as a result of these challenges, especially with respect to water. This pressure is coming on many fronts. It's not just coming from the federal government but also states, localities and increasingly corporations to whom we sell our products. I can appreciate why you have called this hearing and thank you for the opportunity to contribute to this discussion and the search for answers.

I. Defining the Challenge

I begin my testimony by acknowledging that there are legitimate environmental concerns associated with agricultural production. Let me give you just a few concrete examples using two recent reports published by the United States Department of Agriculture.

Last year USDA published the first report from their Conservation Effects Assessment Project for the 8 states encompassing the Upper Mississippi River Basin. In that report, USDA highlighted serious environmental concerns attributable to the agricultural sector. USDA found for example, 36 million acres (62 percent of cropped acres in the watershed) "are under-treated for one or more of sediment loss, nitrogen lost with surface runoff, nitrogen in subsurface flow, or total phosphorus loss," of which 8.5 million acres (15 percent of cropped acres in the UMRB) are critically under-treated and are among the most vulnerable cropped acres in the region; most of these acres have either a high or moderately high soil runoff or leaching potential" (United States Dept of Agriculture, National Resources Conservation Service, *Summary of Findings of the Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Upper Mississippi River Basin,* June 2010, page 7).

Likewise, USDA's report evaluating the Chesapeake Bay watershed shows that 19 percent of cropped acres have a high level of need for additional conservation treatment. "Acres with a high level of need consist of the most vulnerable acres with the least conservation treatment and the highest losses of sediment and nutrients." (United States Dept of Agriculture, National Resources Conservation Service, *Summary of Findings of the Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Chesapeake Bay Region,* March 2011, page 3). Using USDA's data, it is evident that agriculture has legitimate environmental concerns that require attention.

Interestingly, those same two reports also help point the way on how to move forward. Namely, both reports highlight the potential for substantial progress that agriculture could make in years to come. In the Upper Mississippi, for example, the report estimates that if we apply a combination of fairly common nutrient management and soil erosion prevention techniques onto the 36 million undertreated acres, compared to the baseline, runoff of sediment could be reduced by 21 percent, nitrogen by 44 percent, phosphorus by 27 percent and Atrazine by 18 percent. (United States Dept of Agriculture, National Resources Conservation Service, *Summary of Findings of the Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Upper Mississippi River Basin,* June 2010, page 7.) These gains would be in addition to the significant record of accomplishment already evident in the region. Existing application and treatment of conservation practices has reduced sediment loads by 37 percent, nitrogen loads by 21 percent, phosphorus loads by 40 percent, and Atrazine loads by 51 percent (*Id.* at p. 4).

In the Chesapeake Bay, USDA reports that adoption of additional conservation practices on undertreated acres would, compared to the 2003–06 baseline, "further reduce edge-of-field sediment loss by 37 percent, losses of nitrogen with surface runoff by 27 percent, losses of nitrogen in subsurface flows by 20 percent, and losses of phosphorus (sediment-attached and soluble) by 25 percent" (United States Dept of Agriculture, National Resources Conservation Service, *Summary of Findings of the Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Chesapeake Bay Region,* March 2011, page 3). Again a focus on these acres would add to the impressive record of achievement that conservation has had on the landscape in which adoption of conservation practices has reduced edge-of-field sediment loss by 55 percent, losses of nitrogen with surface runoff by 42 percent, losses of nitrogen in subsurface flows by 31 percent, and losses of phosphorus (sediment attached and soluble) by 41 percent (*Id.*).

It strikes me that an important place to start in addressing agriculture's contribution to environmental problems is to recognize and learn from the gains that agriculture has made.

II. What needs to be done?

So what then needs to be done to both address environmental concerns and reduce burdens on producers – burdens which in some cases lead to significant financial stress? I would suggest three general courses to follow:

1) Build a "culture of collaboration"

Farmers are pragmatic and they will acknowledge that the industry can and should do more to address environmental concerns. But they also need to be recognized for the progress they've made. Virtually every farmer will tell you that he or she wants to leave their farm in better shape for their children than it was when they got it. In the many years I spent working at EPA during the Bush Administra-

tion, I can attest to spending many hours talking about, explaining and working through concerns that staff had with agriculture. It was quickly evident to me that these "regulators" cared deeply about the environment and wanted to assure that appropriate actions were taken to achieve their worthy objectives. While we shared common objectives, our approach to solving problems and the language we used to communicate about them were very different. My time working with state government likewise informed me that we need a lot more effort to overcome the barriers to achieving common objectives if we are to assure a productive agriculture and a clean environment.

A more recent field example also helps illustrate what I mean. About 18 months ago, the staff in EPA Region III began a series of inspections on farms in Bay states to assess environmental performance and compliance with state and federal laws. When EPA inspectors arrived in the driveways of farms in the Watson Run watershed in Lancaster County, PA, not many doorbells were answered. After an inauspicious start, the head of the county conservation district suggested that he might help in arranging visits and accompany the inspection team. With this local assistance all 24 farms were visited in relatively short order. What did they find? Things weren't perfect. Many of the farms did not have conservation and manure management plans required by Pennsylvania state law. But EPA staff also learned that conservation practices and stewardship performance was significantly higher than what they expected, particularly in adoption of no till, soil testing and use of cover crops. In the end, what had started as a predictably contentious process that created ill will in the farming community turned into a more collaborative effort that showed that farmers are committed to good stewardship and the work yet to be done. An important outcome of all this is that the Lancaster County Conservation District is now implementing a program to ensure that farms are doing all they need to do, both in terms of practices and paperwork, using education, careful planning, follow-up, and, when necessary, compliance enforcement by the local district board. I believe this serves as a lesson in the value of collaborative action that can turn around an adversarial relationship to one of engagement. In the end, EPA needed local cooperation and guidance to do its job and local and state officials were able to use momentum created by the inspections to focus the attention of the community in a constructive manner.

2) Back up collaboration with action

I believe in that old adage that "actions speak louder than words." As a result not only do we need more talking, we need more action to create real collaboration.

One measure of action is the commitment the federal government applies to non-point sources under our water policies. Since 1988 the federal government has made a significant commitment to wastewater treatment and collectively has spent more than $30 billion dollars of the Clean Water State Revolving Fund which has wastewater as a primary purpose (Environmental Protection Agency, *FY 2011 Budget in Brief,* page 86). Indeed, in FY10 the federal government spent more than $2 billion in the CWSRF with large sums flowing to wastewater (Environmental Protection Agency, *FY 2012 Budget in Brief,* page 109). While that money no doubt is necessary, by comparison, EPA's section 319 non-point source funds measure in the millions, and in FY10 the federal government spent $200 million, with most of this money directed towards planning, not implementing (*Id* at page 89). While money is not the only measure and it is a difficult resource to come by in a tough budget environment, this disparity points out that we haven't really put a priority on solving non-point problems, certainly as compared to what we have invested in point source pollution issues.

Another way to translate collaboration into action is to work to reduce farmers' and ranchers' fears. I can't tell you the number of times I talk to producers and I am told that he or she doesn't want to collect data, implement practices voluntarily or participate in EPA monitoring for fear their actions will subsequently lead to additional regulation. American Farmland Trust is currently working, for example, in the Ohio River watershed with the electric power industry to develop a region-wide water trading system. Utilities would pay farmers to reduce nitrogen runoff and, in turn, those reductions would satisfy EPA and state level water pollution standards. This is a classic win-win scenario in which producers earn income, utilities avoid costlier compliance obligations, and society gains cleaner water. Yet many farmers have said that while they are attracted to the concept, they fear that as soon as they begin implementing nitrogen reduction practices, those practices will be used against them as the basis for further regulation. This is one example of many I could give, the point of which is we must create regulatory certainty for producers so when they step up to help, they don't feel as though they will be contributing

to the establishment of a new regulatory standard that different farms, climate conditions or evolving technology might not find workable.

A strong emphasis on a classical regulatory approach to farm conservation issues causes many farmers to fear the expensive, unmanageable and tangled web in which they might get caught instead of focusing their energy and resources on a more appropriate and natural desire to strive for continuous improvement in their operations. Incentivizing good behavior draws people into action; the threat of regulations makes them hide.

Last year American Farmland Trust supported a bill (HR 5509) by Congressman Goodlatte from Virginia and Holden from Pennsylvania that created safe harbors for conservation practice adoption in the Chesapeake Bay. Under this approach producers would be responsible for undertaking certain conservation practices but doing so relieves them of regulatory burdens. I encourage this Committee to explore changes like that in order to create collaboration through certainty.

3) Overcome unnecessary barriers

In addition to creating a culture of collaboration, we need to break down silos that send dramatically mixed signals to those whose behavior we seek to influence. Since the Chairman and Ranking Member are both from California, I use an example from your state. As all of us know the State of California has created, with voter agreement, a carbon cap and trade system. Under that system, the California Air Resources Board has the power to create offsets. This means that farmers and ranchers could be paid to capture and sequester carbon. One well known technique to do that is by creating methane digesters that destroy harmful methane gas generated from livestock manure. The Air Resources Board has in fact acknowledged the high value of digesters by approving them as one of California's first offset types. Yet while one arm of ARB approved use of digesters, another arm of ARB refuses to issue permits to build digesters over a concern they may violate NO_x standards.

Commonsense dictates that something is wrong here. I believe we should be trying to examine the net environmental benefits of carbon versus potential NO_x emissions. I believe a culture of collaboration, one of thinking with the parties involved about how to get things done, would have the federal and state governments working together to explore this problem and resolve it so that those digesters can be built. In fact, at a recent meeting with the EPA, I asked them to do just that – work outside the box, break down silos and help ARB solve this obvious problem. I would note that in the world of water, that sort of federal and state breaking down of silos and looking for ways to overcome barriers has lead to recent work in the Chesapeake Bay. USDA, the state departments of agriculture, state departments of environment and the EPA are all now working together in the Bay to tackle pressing environmental problems in which agriculture is part of the problem but also a key to their solution.

III. Finding a better way

I find the current level of contention between agriculture and those charged with protecting society's interest in a clean environment to be very sad. We share common objectives but we can't seem to get beyond classical means of dealing with pollution to creative and workable ways to engage each other. At American Farmland Trust, we know that there is a right way and a wrong way to work with farmers on environmental issues. The environmental challenges farmers and ranchers grapple with are complex, and difficult to identify and resolve. While we know that regulations have their place and indeed are sometimes necessary, we need to approach these issues differently because the classic 1970s-era regulatory approach to environmental clean-up is a poor fit for agriculture. Many of these laws, which have helped to clean our air and clean our water, were expressly designed to deal with industrial point source polluters. If we are entering a world in which non-industrial, non-point source pollution is now one of our central challenges then we must look to another approach.

It's critical to understand that protecting the environment is an important issue to farmers and ranchers. They feel the effects first, and often in their pocketbooks, if problems persist. They have a strong incentive to keep their land productive and clean. Building upon these natural and long standing realities of farm life while reaching out and seeking ways to build trust and cooperation are vital to the future success of our Nation's efforts to clean our air and water. We stand ready to assist in this worthy endeavor.

Mr. MCCLINTOCK. Thank you very much. Our next witness is Mr. Richard Pool, President of Pro-Troll Products, in Concord, California. You have five minutes.

STATEMENT OF RICHARD POOL, PRESIDENT, PRO-TROLL PRODUCTS, CONCORD, CALIFORNIA

Mr. POOL. Thank you, Mr. Chairman. My name is Richard Pool. I am a member of the California salmon fishing industry. I appreciate the opportunity to appear before you today.

The fishing industry is a heavily regulated industry by both the Federal Government and States. There is virtually no fish in this country that does not have some sort of regulation on its take, on its survival, and so on.

I am here today to talk about regulations that we are very concerned about relative to salmon. We need some regulations to remain intact. I was deeply disturbed to read the public announcement of the hearing by this Subcommittee scheduled for Fresno on April 11th.

It appears to me that some on this Committee are willing to shut down the entire California salmon fishing industry and allow the salmon runs to go extinct in an effort to get more money for some junior water rights holders.

I am very concerned about this and the jobs and economic repercussions that it could create. I am a manufacturer of salmon fishing equipment located in Concord, California. We have been in business for 32 years, and we are one of the largest manufacturers of specialized lures and attracters that catch salmon.

I have been involved in salmon recovery for over 30 years. I am here today on behalf of my own company, other companies, and all the organizations involved in the California sport and commercial salmon industry.

On the back of my testimony is a chart, and I am not sure that it was distributed to the Committee. It is a chart, and I hope if it was not distributed that you can see, but it is a chart which shows the decline of the most important salmon run in California.

It is the fall run salmon of the Central Valley. The chart shows that between 2002 and 2009 that this run declined 97 percent. Only three percent remain. This is the largest salmon crash in the history of the United States since the era of the dams.

The fall run is the mainstay of the salmon fishing industry. Because of this crash, the entire salmon industry was shut down completely in 2008 and 2009 with only a token season in 2010.

The economic and jobs impact of that shutdown was staggering. Tens of thousands of jobs were lost in coastal communities from Morro Bay to Crescent City, who lost their primary economic engine.

The primary reason for the fall run crash was a lack of regulation in the policies of the government, which allowed unlimited pumping of water from the California-Sacramento delta between the years of 2000 and 2007.

In the spring of each year, in excess of 30 million tiny salmon smolts attempt to migrate down the Sacramento River, and through the delta on their way to the ocean. Studies show that when the pumps are run to maximum without regulation, up to 92

percent of these smolts are either lost in the river, or are pulled in the central delta, where there is no foliage cover and there is no food.

The result is that most of these small smolts perish. If you look at my chart again, you will see that in 2010 the trend was finally reversed, and the run size increased. There are two factors that appear to be the primary reasons for the increase.

First of all, in the spring of 2008 the Federal Court curtailed the pumping rate, which in-turn cut the smolt mortality in the delta. In essence, the Court brought in regulations.

The result three years later in 2010 was that there were more mature adult salmon came back. Another factor which helped the 2010 recovery was trucking hatcheries smolts around the delta.

In the spring of 2008 approximately 13 million hatchery smolts were trucked around the delta to San Pablo Bay. These two factors reduced pumping and the trucking of smolts around the delta and reduced the regulatory problem in the delta. The 2010 returns increased.

The Brown Administration and the State Legislature are working diligently to formulate the best water policies for all sectors of California. We believe interference with this process is counterproductive. It will only result in more delays and more lawsuits, which compound the problem.

The salmon industry needs salmon recovery. We do not need policies which only exacerbate our problems. We urge the Water and Power Subcommittee, and the agricultural community, to work with us toward real solutions for both farmers and fish. Thank you.

[The prepared statement of Mr. Pool follows:]

Statement of Richard Pool, President, Pro-Troll Fishing Products

My name is Richard Pool and I am a member of the California salmon fishing industry. I appreciate the opportunity to appear before you today.

I was deeply disturbed to read the public announcement of the hearing by the Sub Committee on Water and Power scheduled for Fresno on April 11th. Based on some very strong words by several representatives, it appears that the objective of this hearing is to lay the groundwork to shut down the California salmon fishing industry and allow the Central Valley salmon runs to go extinct. Should these actions take place, my company and thousands of others will be out of business. I am here today to respond.

I am a manufacturer of salmon fishing equipment located in Concord, California. My company has been in business 32 years. We are one of the largest manufacturers of the specialized lures and attractors that are used to catch salmon. I have been involved in salmon recovery efforts for thirty years and have served on numerous state and federal advisory committees involving salmon. I am here today on behalf of my own company, Pro-Troll Fishing Products, The Golden Gate Salmon Association and Water4Fish. I am also here on behalf of the thousands of businesses involved in the economic activity related to salmon fishing in California. This includes both sport and commercial businesses. We are the fishermen who catch the salmon. We are the seafood processors who handle the fish and bring it to market. We are the marinas and other infrastructure facilities that support the salmon industry. We are the manufacturers and distributors of the specialized equipment used to catch salmon. We are the salesmen who represent the manufacturers in the market. We are the retailers that provide the access to salmon equipment in our stores. We are the ocean charter operators and river guides that carry up to 300,000 salmon fishermen a year. We are the recreational fishermen who choose salmon fishing as a preferred healthy outdoor family activity. And finally, many of us are those that are 100% unemployed and have lost our businesses, our boats and sometimes our homes.

It seems rather clear that the target of those who represent the junior water rights holders of the West Side of the San Joaquin valley is to undo the biological

opinion of the National Marine Fisheries Service that was put into place to keep salmon and steelhead from going extinct. To accomplish this they appear willing to destroy the billion dollar salmon industry and the economic engine for hundreds of coastal communities.

For over one hundred years the salmon industry has been a mainstay of the California economy and a major food producer for California and the nation. As recently as 2002, 720,600 Central Valley salmon were harvested sending over 8.6 million pounds of fresh salmon to the market Since that time the policies of the state and federal water agencies have devastated most of this production. It can be recovered, but it cannot be recovered without policies that balance the water needs of the salmon with the other water needs of the state. A water grab by a few agricultural interests at the expense of the salmon industry and the other water users of the state is simply fallacious public policy.

I am attaching a chart which shows the decline of the most important salmon run in the state. It is the fall run salmon of the Central Valley. The chart shows that between 2002 and 2009 the run declined 97%. This is the largest salmon decline in U.S. history since the era of dam construction. The fall run is the mainstay of the salmon industry. Because of this crash, the entire salmon industry was shut down in 2008 and 2009 with only a token season in 2010. The economic impact of the shutdown was staggering. Tens of thousands of jobs were lost and coastal communities from Morro Bay to Crescent City lost their primary economic engine.

Last year Governor Schwarzenegger reported to the Commerce Department that the economic damage from the closure of salmon fishing in California amounted to at least $250 million per year. Southwick Associates calculated the real cost at approximately $1.4 billion to California alone and probably half that much again to Oregon. This calculation was based on the use of federal and state data. It also showed a job loss of 23,000.

The primary reason for the fall run crash was the policies of the government which allowed unlimited pumping of water from the Delta between 2000 and 2007. In the spring of each year, in excess of 30 million tiny salmon smolts migrate down the Sacramento River and through the Delta on their way to the ocean. Studies show that when the pumps run at maximum, up to 92% of these smolts are either lost in the river or are pulled into the central Delta where there is no foliage cover and there is no food. The result is that the smolts perish.

If you look at the fall run chart again, you'll see that in 2010 the trend was finally reversed and the run size increased. There are two factors that appear to be the primary reasons for this increase. In the spring of 2008, the Federal Court ruled that the biological opinion which was in place did not protect the salmon from extinction. Based on the scientific evidence, the court curtailed the spring 2008 pumping rate which cut the smolt mortality in the Delta. The result, three years later, was that the mature adults came back in increased numbers in the fall of 2010. Another factor which helped the 2010 recovery was trucking hatchery smolts around the Delta. In the spring of 2008, approximately 13 million hatchery smolts were trucked around the Delta to San Pablo Bay thereby avoiding the destruction by the Delta pumping. These two factors minimized the damage by the pumps. The improved 2010 returns show the results.

There are some who say the decline of salmon was caused by poor ocean conditions but this is contradicted by the fact that native delta fish, which never venture to the ocean, declined precipitously at the same time the pumps were ramped up and the salmon declined. In other words, the ocean conditions theory doesn't explain the loss of fish like the delta smelt that don't live in the ocean.

There are three other salmon runs in the Central Valley. They are also in deep trouble. The table shows the current situation and how much they have dropped. Unfortunately, these runs are wild fish and cannot be trucked around the Delta. They suffer the full impact of the pumps. The Winter Run, which is listed as endangered, is once again very close to extinction.

	Base Year	Base Yr Returns	2010 Returns	Percent Drop
Late Fall Run	2007	17,840	8,848	50.4%
Spring Run	2003	30,171	4,606	84.7%
Winter Run	2006	16,929	1,555	90.8%

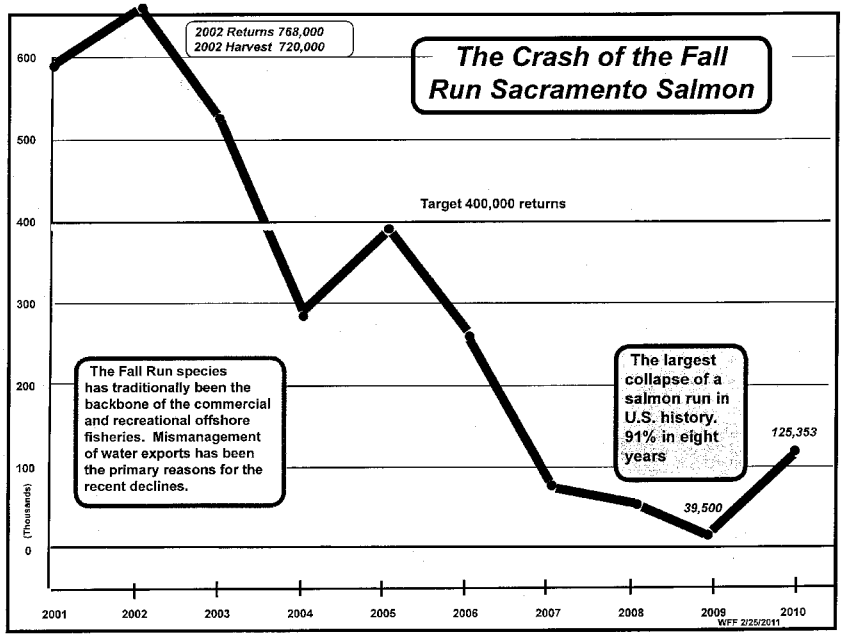
The political thrust to overturn the biological opinion of 2009 is the wrong policy. In all likelihood the biological opinion is the only thing left between survival and extinction of the salmon runs and the thousands of jobs that depend on them.

The biological opinion also represents the best available science. The National Marine Fisheries Service spent six years researching the causes of the salmon declines and the needed corrective actions. Their conclusions were peer reviewed three times. At the request of Congress, the National Academy of Sciences also reviewed the NMFS findings. The NAS supported the basic findings of the opinion.

The future water policies in California are extremely important and are highly complex in nature. The Brown Administration and the State Legislature are working diligently to formulate the best policies for all sectors of the state. We believe the track which some in the Water and Power Sub Committee are currently proposing which attempts to put a small sector of the water users in a preferred position is highly counterproductive to the states best interests. It will only result in more delays and more lawsuits which compound the problem.

The salmon industry in California is hurting badly and we are seeking government assistance for our plight. I am attaching two exhibits which demonstrate the problems we are facing. The first is a list of fifty salmon-related businesses that have completely shut down since 2008. The other exhibit shows three examples of salmon businesses that are hurting badly. I can add Pro-Troll to that list. We lost 40% of our business with the 2008 salmon closure. In spite of our best efforts at selling in other regions, we have not been able to replace that loss. We have not made money in three years, our credit line has been cut off and we have cut expenses to the bone to survive. We have laid off employees, cut nearly all advertising and stopped most new product development.

The salmon industry needs salmon recovery. We do not need policies which only exacerbate our problems. We urge the Water and Power Sub Committee and the agricultural community to work with us towards real solutions for both the farmers and the fish.



California Salmon Industry
Typical Distress Stories

Wil's Bait Shop in Bodega Bay California opened in the early 1990s serving the recreational fishery in Bodega Bay. This port was a thriving hub of commercial and recreational salmon fishing. When Wil Morrow, the owner, was diagnosed with cancer, he sold the business to his two long term employees Judy and Bonnie Kendall. This was a dream come true for Judy and Bonnie. Salmon fishing was good and supported 60 to 70% of their business. They purchased a charter boat to add to their business. Things were fine until 2007 when the salmon populations first crashed. By 2008 they had lost everything and were destitute. They lost their business, their house, their boat and their savings. They left town on a Greyhound bus to go live with relatives in Oregon and Florida.

Peggy Beckett is the owner of Huck Finn Sportfishing in Half Moon Bay California. This is her story:
My husband and I opened our fishing business at the Pillar Point Harbor on Half Moon Bay in 1990. We run a retail tackle and bait store and we take bookings for some of the charter boats that work out of this port. The business was successful until 2007 when the salmon populations in the ocean first crashed. Unfortunately my husband passed away last year. I am struggling to survive. The 2008 and 2009 closures stopped nearly all our activity and 2010 has been equally as bad or worse. I have struggled to find some part time work just to pay a few of the bills. This business is my only source of income and my age precludes my changing careers. My prayers are that the government will soon fix the Central Valley problems that it has caused. I have very little time left for my business to survive.

Steve Golsby is the Owner of Smalley's Wholesale in Oakdale California.
Smalley's is a wholesale distributor of fishing equipment. We have traditionally supplied the tackle needs of hundreds of salmon fishing retailers in Northern California. On top of the devastating impact of the 2008 and 2009 closures, we now have a new problem in 2010. Most of our customers have lost their credit lines and most of them are hurting badly in 2010 salmon equipment sales. Consequently, they are unable to pay our bills. The result is that we are forced to cut off their shipments and our cash flow has crashed. This is an extremely serious situation for us and for our customers. Our bank has cut off our credit line. The financial infrastructure of the industry is spiraling downward. It is very upsetting to see the financial institutions unwilling to make small business loans. We need government help in solving the Central Valley salmon problems and we need it now.

Salmon Industry Business
Failures 2008 - 2010

Many salmon related businesses have already failed and many more are hanging in the balance. This exhibit shows a sampling of the failures

Reeds Sport Shop – San Jose, Delta Sport Boats-Antioch, Cope & McPheters, Livermore, Wil's Bait Shop- Bodega Bay, North River Boats-Redding, Berkeley Marina Bait Shop-Berkeley, Olympic Boats-San Jose, Fishon Bait-Bodega Bay, Hammer Ski &Marine-Petaluma, Salty's Bait–Sausalito, Boats Unlimited-Modesto, The Fuel Dock-Fort Bragg, Gunther's Marine-Santa Rosa, Olympic Boats-Santa Rosa, Barry Paulsen's-Sacramento, Bayshore Marine-Stockton, Calif Custom Marine-Redding, Cope & McPheters-Santa Clara, Marine Max-Sacramento, Olympic Boats-Antioch, North River Boats-Sacramento, Adams Marine-Suisun City, Aqua Marine-Yuba City, Auburn Outboard-Penryn, Maximum Marine-Santa Rosa, Monterey Bay Marine-Santa Cruz, Pacific Boat-Oakley, M&M Marine-Lincoln, Marine Max-Santa Rosa, Olympic Boat-So San Francisco, Oasis Marine-Redding, Cope & McPheters-Fairfield, Pacific Marine-Madera, Cope & McPheters-Rocklin, Specialty Marine-Dunsmuir, Flagship Marine-Clear Lake, Connection Motor Sports-Sacramento, Western Boat Shop-San Rafael, Galaxie Marine-Auburn, Olympic Boats-Livermore, Kevin's Marine-Sacramento, Western Sport Shop- Santa Rosa, Tri Valley-Livermore, Cal's Marine-Penryn

Mr. MCCLINTOCK. Thank you for your testimony. Our next witness is Mr. Paul Orme, who is an attorney for Stanfield, Central Arizona, and New Magma Irrigation and Drainage Districts, in Mayer, Arizona.

STATEMENT OF PAUL ORME, ATTORNEY, CENTRAL ARIZONA IRRIGATION AND DRAINAGE DISTRICT, MARICOPA-STANFIELD IRRIGATION & DRAINAGE DISTRICT, AND NEW MAGMA IRRIGATION AND DRAINAGE DISTRICT

Mr. ORME. Chairman McClintock, Ranking Member Napolitano, and Members of the Committee, my name is Paul Orme, and I am an Arizona attorney representing three irrigation districts which receive irrigation water through the Central Arizona Project.

Combined, these three districts total over 200,000 irrigable acres in Pinal County, Arizona, and utilize approximately 60 percent of the agricultural water delivered annually through the CAP.

These remarks concern the Navajo Generating Station located near Page, Arizona, and the emissions control options being considered for improving visibility in that area, which includes the Grand Canyon National Park.

The Environmental Protection Agency is in the process of determining the best available retrofit technology, or BART, to reduce nitrogen oxide emissions at NGS. Litigation has also been filed by a coalition of environmental groups on these same visibility standards, which may or may not be partially driving this process.

The EPA's ultimate BART decision will significantly impact the people and economy in and around Page, including the Hopi and Navajo Indian Reservations. Their stories deserve to be heard, and are being told by others.

My focus will be the impact in the farm communities of Central Arizona. NGS is the source of power needed to deliver the major share of Arizona's entitlement of Colorado River water, over 300 miles, via the Central Arizona Project from Lake Havasu to Tucson.

Twenty-four percent of the plant is held by the United States Bureau of Reclamation. The majority of water delivered through the CAP aqueduct is used by farmers. In a typical year, non-Indian agriculture uses nearly 50 percent of the total water delivered through the CAP. Agricultural water for Indian use adds another 200,000 acre-feet to the total.

Vital to agriculture's future in Arizona is access to a low cost, affordable, and reliable supply of water. Some of the emissions control options being considered by the EPA at the Navajo plant could render CAP water an uneconomical water resource option for agriculture.

And for those farmers unable to access water resources other than CAP water, these regulatory requirements will put agriculture's viability as a business in jeopardy. Family farmers, irrigation districts, associated farming and agricultural businesses, and the local economies of several farming communities in Central Arizona, face significant impact and economic hardship should the emissions controls at NGS render CAP water unaffordable for agricultural use.

Currently, two emission control options are being considered. One are low NO_x burners. The second is selective catalytic reduction, or SCR, with bag houses to collect particulates, options with a significant difference in associated costs, but with air visibility results imperceptible to the human eye.

If the EPA selects the more costly option for BART, it is possible that the existing owners of the plant will decide to shut it down, requiring CAP to find an alternative source of power, resulting in water costs entirely beyond the capability of agriculture to pay.

For a variety of reasons, a decision to shut down NGS would be the worst possible result for Arizona and the CAP. The SCR option is estimated to have an impact of adding $16 per acre-foot to the water costs to agriculture, or a 33 percent increase.

This increase will have a significant cascading negative impact on agriculture and the economy of Central Arizona. If available to farmers, they will increase their use of non-renewable groundwater supplies, and some will have to discontinue farming.

Local businesses that support agriculture will suffer, aquifer levels will decline, with related degradation of water quality, and increased unemployment can be expected due to agricultural related job losses during one of the worst recessions experienced by our country.

This is of particular concern for a community such as Maricopa-Stanfield, which has seen astronomical population growth in the last 10 years, which growth is dependent or partially dependent on a stable groundwater supply for future urban use.

The irony of this situation is that the 1968 CAP enabling legislation passed by Congress, and then the 1980 Groundwater Management Act passed by the State of Arizona, which is one of the most restrictive groundwater pumping laws in the country, both were passed with the idea that the CAP water would be a replacement supply for groundwater—not a supplemental supply.

If the NGS is shut down, or the most expensive technology is adopted, much of Central Arizona farming will have to return to expensive groundwater pumping.

Arizona and western water policies are extremely complicated, and interwoven throughout all water sectors. The 2004 Arizona Water Settlements Act was signed into law to ensure certainly and reliability when it came to resource management and planning in Arizona.

One such component resolved long term standing rights associated with the Gila River Indian community. To make the settlement work, non-Indian agricultural water users provided a substantial supply of long term CAP water in return for short term affordable CAP water use through the year 2030.

The Tribes received assurance of affordable water in lieu of free winter rights water.

Mr. MCCLINTOCK. I am sorry, but I am going to have to ask you to wrap up here, and if you could summarize in a sentence.

Mr. ORME. Yes. If the NGS technology requires a 33 percent increase in costs for agricultural water use, then the non-Indian agricultural water use will be denied one of their main benefits under the Gila River Indian Water Rights Settlement, which will undoubtedly chill future water rights settlements if one Federal agency, such as the EPA, can deny the benefits that another Federal agency, the Department of the Interior, granted in the original settlement. Thank you.

[The prepared statement of Mr. Orme follows:]

Statement of Paul Orme, General Counsel to the Central Arizona Irrigation and Drainage District, Maricopa-Stanfield Irrigation & Drainage District, and New Magma Irrigation and Drainage District

My name is Paul Orme and I am an Arizona Attorney representing three irrigation districts which receive irrigation water through the Central Arizona Project. Combined these three districts total over 200,000 irrigable acres in Pinal County, Arizona and utilize approximately 60% of the agricultural water delivered annually through the CAP.

These remarks concern the Navajo Generating Station (NGS), located near Page, Arizona, and the emissions control options being considered for improving visibility in that area which includes the Grand Canyon National Park. The Environmental Protection Agency (EPA) is in the process of determining the Best Available Retrofit Technology (BART) to reduce nitrogen oxide (NO_X) emissions at NGS. Litigation has also been filed by a coalition of environmental groups on these same visibility standards, which may or may not be partially driving this process.

EPA's ultimate BART decision will significantly impact the people and economies in and around Page, including the Hopi and Navajo Reservations. Their stories deserve to be heard and are being told by others. My focus will be the impact in the farm communities in Central Arizona.

NGS is the source of power needed to deliver the major share of Arizona's entitlement of Colorado River water over 300 miles via the Central Arizona Project (CAP) aqueduct from Lake Havasu to Tucson. Twenty four percent of the output of the plant is held by the United States Bureau of Reclamation.

The majority of water delivered through the CAP aqueduct is used by farmers. In a typical year, non-Indian agriculture uses nearly 50% of the total water delivered through the CAP. Agriculture water for Indian use adds another 200,000 acre feet to the total. Vital to agriculture's future in Arizona is access to a low cost and reliable supply of water. Some of the emission control options being considered by the EPA at the Navajo plant could render CAP water an uneconomical water resource option for agriculture. And for those farmers unable to access water resources other than CAP water, these regulatory requirements would put agriculture's viability as a business in jeopardy. Family farmers, irrigation districts, associated farming and agricultural businesses, and the local economies of several farming communities in Central Arizona face significant impact and economic hardship should the cost of emission controls at NGS render CAP water unaffordable for agricultural use.

Currently two emission control options are being considered: 1) low NO_X burners; and 2) selective catalytic reduction (SCR) with bag houses to collect particulates, options with a significant difference in associated costs, but with air visibility results imperceptible to the human eye. If the EPA selects the more costly option for BART, it is possible the existing owners of the plant will decide to shut it down, requiring CAP to find an alternative source of power resulting in water costs entirely beyond the capability of agriculture to pay. For a variety of reasons, a decision to shut down NGS would be the worst possible result for Arizona and the CAP.

CAP estimates that the impact to energy charges within the water rates to install the low NO_X burners at NGS are in the range of $0.50 per acre-foot. This is a manageable increase in exchange for a significant reduction on NO_x emissions. Conversely, the SCR treatment is estimated to have an impact of over $16.00 per acre-foot. An increase of $16.00 per acre-foot will have a significant cascading negative impact on agriculture, the economy and environment of Central Arizona. Farmers will turn to increasing the use of non-renewable groundwater supplies and some will discontinue farming. Local businesses that support agriculture will suffer, aquifer levels will decline with related degradation of the water quality, and increased unemployment can be expected due to agriculture-related job losses during one of the worst recessions experience by our country.

The introduction of CAP water as a renewable water supply to Central Arizona has benefited the agricultural economy and the State of Arizona—by assisting the agricultural user in meeting regulatory objectives to reduce groundwater use, ensuring long term availability of groundwater resources as a resource for future drought conditions, and through a reliable water supply helping to sustain economic growth and vitality of the agricultural communities that depend upon agriculture for their livelihoods.

For example, one of my clients is the Maricopa-Stanfield Irrigation & Drainage District (MSIDD) located in Pinal County Arizona. That District pumped between 300,000—400,000 acre-feet of groundwater per year before the introduction of CAP water in the late 1980's. During calendar year 2010, MSIDD pumped a total of 81,000 acre-feet while providing irrigation water services to over 70,000 acres. CAP water during the same year constituted 70% of total water deliveries, or approxi-

mately 200,000 acre feet. Should water costs increase by $16 per acre foot as predicted through the installation of the SCR technology and bag houses, irrigation districts such as MSIDD will resume groundwater pumping as a less costly option for the farmers served by this District. The 200,000 acre-feet of CAP water that was used by the District in 2010 will be partially replaced with less expensive groundwater.

To add further perspective, since 1987 MSIDD has delivered 3.8 million acre feet of renewable CAP water, essentially preserving a like amount of groundwater in District aquifers for drought purposes. Where historically during the 1970's and 1980's there was significant overdraft of the aquifer within MSIDD boundaries and regularly occurring subsidence, today the aquifers in Central Arizona have stabilized or rebounded underlying those agricultural lands that have had access to CAP water. Should the CAP water become uneconomic to use due to NGS emission controls, aquifer overdraft and possible subsidence will return. The irony of the situation is that two epic and very successful Federal and State policies that were implemented in Central Arizona in the 1980's, the CAP Enabling Act and the Arizona Groundwater Management Act, originated to reduce groundwater overdraft and large scale pumping in Central Arizona. Now, if the EPA requires SCRs and bag houses on NGS, large scale groundwater pumping in central Arizona will return.

If the EPA restrictions are fully implemented, MSIDD estimates agricultural lands will shrink by 35–50% reaching upwards of 35,000 acres. With anticipated urban growth in the area over the next 50 years, water supply and water quality problems may be further exacerbated due to over-pumping in the near term.

For a typical farmer in Central Arizona, the cost of purchasing and delivering water is the single highest operating expense, comprising over 20% of the total expense to operate a farm. In order for the farmer to remain competitive, it is essential that all operational costs are managed closely. Cost increases not related to the agricultural market are difficult for the farmer to pass on to the consumer. With increased water costs, farmers will be forced to absorb those costs directly without the ability to pass on those cost increases. A $16 per acre-foot increase in water costs equates to a cost increase of over $50 per acre based on a farm using 4.5 acre feet per acre of water per year, and assuming 70% of the water is from the CAP. For a 1,000 acre farm, the total cost increase would be over $50,000. Crops typically grown in this region are of the variety that competes on the world market. There is very little room to pass on any cost increases due to the nature of this highly competitive market. Furthermore, the $16 per acre-foot will have the same impact on all the farmers in the CAP including the Native Americans sector.

The impacts to an irrigation district such as MSIDD are also substantial. MSIDD estimates that almost 75% of its entire budget is devoted to water costs, both CAP and groundwater. Of those costs, 95% is energy. Should EPA require the SCR control option be employed, MSIDD would be facing a budget increase of over $3.0 million. It is this cost increase that is passed along to farmers. Should NGS be shuttered, CAP estimates that replacement energy costs would add $30—$115 an acre foot to the price of water, or a 60—200% cost increase for MSIDD, and all CAP agricultural water users.

Arizona and western U.S. water policies are extremely complicated and interwoven throughout all water use sectors. In 2004, the Arizona Water Settlements Act was signed into law. This comprehensive act had several components associated with it in ensuring further certainty and reliability as it came to water resource management and planning in Arizona. One such component resolved a long standing dispute on determining the extent of the water rights associated with the Gila River Indian Community (GRIC). Substantial time and effort was spent by the federal government, Gila River Indian tribes, cities, and irrigation districts in negotiating a workable solution for all parties. The agricultural sector provided the largest allocation of water to settle the GRIC water claims. With the relinquishment of the long term CAP water allocations, the agricultural sector was to receive in turn an adequate and affordable supply of CAP water through the year 2030. The Tribes received assurance of affordable CAP water in lieu of free Winters Rights water. Under the SCR emission control options proposed by the EPA, the principles associated with the assurance of affordable CAP water for agricultural use will be violated. Consequently, an uneconomical CAP water source will have far reaching impacts not only to the individual Indian and non-Indian farmers, but may also have the potential to undermine the water settlement agreement. It will certainly give potential parties to future water settlements pause, if one agency of the Federal government (EPA) can undo benefits agreed to by another agency (DOI) before the ink is barely dry on the settlement agreement.

Unplanned or unforeseen adverse economic impacts due to catastrophic natural events are well understood risks that farmers accept as a cost of doing business.

Farmers, where possible, protect the business by insuring for such occurrences. Adverse economic impacts that are purposefully planned without consideration on a broader scale on how those actions impact others are careless and irresponsible. Farmers going out of business, irrigation district and farming related job loss, and local communities economies harmed as a result of the questionable emission control options currently being considered at NGS are major economic implications for Central Arizona. Pinal County's economy will be hit particularly hard, with some of the nation's most productive farmland going fallow. The EPA's emission control options will have real impacts directly on many people's livelihoods not only on the Hopi and Navajo Reservations in Northern Arizona and in the Town of Page, but also on the farm and tribal communities of Central Arizona.

We urge the House Water and Power subcommittee to recognize the damaging economic, social and environmental impacts these actions from the EPA may have on the agriculture industry in Central Arizona.

Thank you for the opportunity to provide the Subcommittee with this testimony.

Mr. MCCLINTOCK. Thank you, and your full testimony will be included in the record. Our final witness is Mr. Norm Semanko, Executive Director and General Counsel of the Idaho Water Users Association, in Boise, Idaho. Welcome.

STATEMENT OF NORM SEMANKO, EXECUTIVE DIRECTOR AND GENERAL COUNSEL, IDAHO WATER USERS ASSOCIATION, BOISE, IDAHO

Mr. SEMANKO. Thank you, Chairman McClintock, Ranking Member, and Members of the Subcommittee, my name is Norm Semanko, and I am the Executive Director and General Counsel of the Idaho Water Users Association.

I appreciate the opportunity to provide testimony on this important topic. It is a particular pleasure for me to appear before my Congressman and good friend, Subcommittee Member Raúl Labrador, from Idaho's First Congressional District. We appreciate his ongoing dedication and support on issues of importance to our membership.

Recent regulatory efforts at the EPA carry the risk of real potential harm for western irrigators and the rural communities that they serve. Our concerns with EPA's actions are numerous. I focus my testimony on issues related to the use of pesticides and water storage.

With regard to the issue of pesticides, the proposed regulations at the EPA, and the ongoing consultations regarding the use of pesticides threaten our very ability to deliver water.

On June 2 of last year, the EPA released its draft NPDES permit for point source discharges from the application of pesticides to waters of the United States. This permit is also known as the Pesticide General Permit, the PGP.

The PGP was developed in response to the 2009 decision of the Sixth Circuit Court of Appeals in National Cotton Council versus EPA case. The court vacated EPA's 2006 rule and longstanding interpretation that NPDES permits were not required for the applications of pesticides to United States waters.

As a result of the court's decision, discharges to waters of the United States from the application of pesticides will now require NPDES permits when the court's mandate takes effect.

The EPA intends to issue a final general permit by October 31 of this year, just a few short months away. Western agricultural water users regularly apply aquatic herbicides in accordance with

FIFRA approved methodologies to keep their water delivery systems clear and free from aquatic weeds.

The use of aquatic herbicides provides the efficient delivery of water, avoids flooding, promotes water conservation, and helps avoid water quality problems associated with other methods of aquatic weed control.

Working Americans rely upon the use of these products. We have several concerns with the pesticide general permit. First, the definition of water in the United States is expansively included in the Pesticide General Permit beyond what was interpreted and established by Congress.

The PGP does not clearly exempt aquatic weed and algae control activates from expensive and duplicative Federal Clean Water Act regulations. Multiple opportunities exist for Stacked Clean Water Act violations and citizen suits in the PGP, with $37,500 per occurrence or day of violation.

Implications of the Endangered Species Act requirements resulting from consultation are also extreme. The consultation process with the fishery services has not been completed, and we don't know what those requirements will look like in the PGP.

The draft PGP requirements are unrealistic, impractical, and burdensome for local governments and small amount profit organizations to implement. It is just too much paperwork, too much red tape, and services no purpose beyond the requirements of FIFRA, which we are fully compliant with.

The EPA did not properly solicit comments on the PGP. We showed up at a public hearing in Boise that was advertised in the Federal Register as an ability to give comments, and we were not allowed to give public comments at that hearing. We were allowed to ask a few questions, but we were not allowed to provide testimony.

There are legal risks to operators associated with the likelihood of the EPA and the States meeting the current October 31, 2011 deadline. It is not just the EPA. It is also the 44 delegated States.

If that process is not in place, if that permit is not in place, what will the regulators do? How will they view the ability of folks to continue to treat for mosquitos, to keep the canals clear? They will be in violation of the NPDES permit requirement.

We are also very concerned about EPA's process for consultation on the use of aquatic herbicides and the ongoing process resulting from the different court actions as detailed in my written statement.

Finally, I wanted to highlight that the EPA has shown a clear anti-water storage bias, thereby jeopardizing our ability to continue to provide sufficient water supplies. Both in Region IV and in Region VIII, clearly EPA staff have shown that instead of building storage, we first need to demonstrate how we can reduce the need for the water in the first place. This puts cities and rural communities pitted against one another. It is a shortsighted and arbitrary strategy by the EPA.

Mr. Chairman, it appears that the EPA and other Federal agencies are moving in a direction where a heavier regulatory hammer will be wielded, and litigious actions will be encouraged through the use of citizen suits, and products used by American farmers

and ranchers in the production of food and fiber will be regulated to death.

While it may be difficult for the EPA and the Administration to change their policies, we appreciate your attention to these issues, and thank you for your time today.

[The prepared statement of Mr. Semanko follows:]

Statement of Norman M. Semanko, Executive Director & General Counsel, Idaho Water Users Association, Inc., Boise, Idaho

Chairman McClintock, Ranking Member Napolitano, and members of the House Subcommittee on Water and Power, my name is Norm Semanko and I am the Executive Director and General Counsel of the Idaho Water Users Association (IWUA), located in Boise, Idaho. I am also the Chairman of the Federal Affairs Committee and Past President of the National Water Resources Association, a long-standing member of the Advisory Committee for the Family Farm Alliance, and a past member of the Western States Water Council. I appreciate the opportunity to provide testimony on the important topic of creating abundant water and power supplies and job growth by restoring common sense to federal regulations. It is a particular pleasure for me to appear before my Congressman, Subcommittee member Raul Labrador from Idaho's First Congressional District. We appreciate his ongoing dedication and support on issues of importance to our membership.

IWUA is a statewide, non-profit association dedicated to the wise and efficient use of our water resources. IWUA has more than 300 members, including irrigation districts, canal companies, water districts, municipalities, hydropower companies, aquaculture interests, professional firms and individuals. Our members deliver water to more than 2.5 million acres of irrigated farms, subdivisions, parks, schoolyards and other lands in Idaho.

Western water users are becoming increasingly concerned about the number of environmental regulations and policies that are currently being rewritten or reconsidered by the Obama Administration. In particular, recent rulemaking efforts at EPA and the White House Council on Environmental Quality carry the risk of real potential harm for Western irrigators and the rural communities that they serve.

These types of federal water resource actions and regulatory practices threaten to undermine the economic foundations of rural communities in the arid West by making farming and ranching increasingly difficult and costly. In the rural West, water is critically important to farmers and ranchers and the communities they have built over the past century. However, in recent decades, we have seen once-reliable water supplies for farmers steadily being diverted away to meet new needs. Rural farming and ranching communities are being threatened because of increased demand for limited fresh water supplies caused by continued population growth, diminishing snow pack, increasing water consumption to support domestic energy production, continually expanding environmental demands—and additional, burdensome requirements imposed by EPA.

Our concerns with EPA's actions are numerous. Many of them are addressed in the testimony of other witnesses. I have focused my testimony on issues related to the use of pesticides and water storage, as detailed below.

1. Proposed Regulations and Consultations Regarding the Use of Pesticides Threaten Our Ability to Deliver Water.

Pesticide General Permit (PGP) for Point Discharges to the Waters of the United States from the Application of Pesticides (Draft)

On June 2, 2010 EPA released its draft National Pollutant Discharge Elimination System (NPDES) permit for point source discharges from the application of pesticides to waters of the United States. This permit is also known as the Pesticide General Permit (PGP). The PGP was developed in response to a 2009 decision by the Sixth Circuit Court of Appeals (*National Cotton Council, et al. v. EPA*). The court vacated EPA's 2006 rule that said NPDES permits were not required for applications of pesticides to U.S. waters. As a result of the Court's decision, discharges to waters of the U.S. from the application of pesticides will require NPDES permits when the court's mandate takes effect. EPA intends to issue a final general permit by October 31, 2011. Once finalized, the PGP will be implemented in six states, Indian Country lands and federal facilities where EPA is the NPDES permitting authority, and will be the benchmark for permit issuance in the 44 delegated states.

Western agricultural water users regularly apply aquatic herbicides, in accordance with FIFRA approved methodologies, to keep their water delivery systems

clear and free from aquatic weeds. The use of aquatic herbicides provides for the efficient delivery of water, avoids flooding, promotes water conservation and helps avoid water quality problems associated with other methods of aquatic weed control. The organizations I represent include members responsible for irrigating millions of acres of farmland, as well as residential subdivisions, parks, schools, yards and other irrigated lands throughout the West. All of these working Americans and the general public stand to be directly impacted by regulations proposed by EPA in the draft PGP, as outlined further below.

Concern: Definition of "Waters of the United States"

One key concern with this draft general permit is that the definition of "Waters of the United States" used in the PGP is the one that existed in Federal Regulations prior to the U.S. Supreme Court's *Rapanos* decision. The decision was made by the Bush Administration not to issue a new rule, but instead to issue guidance in interpreting Clean Water Act jurisdiction under *Rapanos.* We have compared the December 2, 2008 guidance memo issued by the U.S. Army Corps of Engineers and EPA that takes into account the *Rapanos* decision to the current regulations and discovered discrepancies.

However, as we understand it, the guidance was not prepared in accordance with the Administrative Procedures Act and instead merely provides guidance to field offices. It therefore does not rise to the level of a regulation and technically does not supersede the pre-existing regulations. However, the guidance is, to our knowledge, the only post-*Rapanos* statement by either EPA or the U.S. Army Corps of Engineers on Clean Water Act jurisdictional determinations. 33 CFR §§ 328.3(a)(1), (a)(5), and (a)(7), and 40 CFR §§ 230.3(s)(1), (s)(5), and (s)(7) defining "navigable waters" and "waters of the United States" all predate the Supreme Court decision in *Rapanos* and, to the extent they are inconsistent with the *Rapanos* decision, have been effectively voided by that decision. The proposed permit thus: (i) uses a regulatory definition that is inconsistent with the current judicial interpretation; (ii) incorporates language from antiquated definitions; and (iii) effectively attempts by administrative action to overturn Supreme Court precedent.

The guidance memo is much more detailed as to what is jurisdictional and what is not under *Rapanos.* We have recommended that the section of the draft permit that defines and addresses "Waters of the United States" be rewritten to provide consistency with the December 2, 2008 guidance memo. As was the case during the development of the guidance memo, EPA should coordinate with the Corps of Engineers in this endeavor.

The draft definition of "Waters of the United States" in the PGP opens up the potential for non-navigable "Waters of the State" enforcement through CWA citizen suits and federal penalties. NPDES permits should limit their coverage to federally protected waters of the U.S., and not extend federal enforcement (e.g. citizen suits) to every pond or other water of the states.

Our concern about EPA's expansive interpretation of "Waters of the United States" is further collaborated by the agency's statements that H.R. 5088—legislation introduced during the last Congress that would have radically expanded jurisdiction under the Clean Water Act—is consistent with previous agency interpretations. Through administrative fiat, EPA is attempting to expand its jurisdiction beyond what Congress has chosen to do.

Concern: The PGP Does Not Clearly Exempt Aquatic Weed and Algae Control Activities from Expensive and Duplicative Federal Clean Water Act Regulations

The application of aquatic herbicides in canals, ditches, drains and other irrigation delivery and drainage facilities is statutorily exempt from the definition of "point source" under the Clean Water Act and therefore does not require an NPDES permit. The PGP fails to clearly state that NPDES coverage is not required for these activities. EPA appears to be employing the PGP as a vehicle to eliminate or dilute the existing statutory point source exemptions.

Canals, ditches, drains and other irrigation delivery and drainage facilities are not uniformly "waters of the U.S.". Therefore, the application of aquatic herbicides to these facilities does not automatically require an NPDES permit. Once again, EPA is using the PGP as a vehicle to summarily and inappropriately make these jurisdictional determinations.

Concern: Multiple Opportunities for Stacked Clean Water Act Violations and Citizen Suits

The current draft creates numerous, overlapping opportunities for paper violations to be tacked onto a violation associated with a water quality criteria exceedance or the observance of an adverse effect on a water body use. Such additional violations include the requirement for very timely mitigation ***plus*** very timely

reporting ***plus*** updating of the pesticide discharge management plan ***plus*** update of other records. Each of these could be separate violations according to EPA. We have suggested that EPA should eliminate such overlapping or stacked potential violations

Concern: Implications of Endangered Species Act requirements resulting from consultation

The current draft has a placeholder for the potential severe NPDES permit restrictions that the ongoing consultation with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) could produce. EPA's economic analysis does not take into account any such ESA restrictions. However, we know from the extremely stringent requirements for buffers around all Pacific Northwest waters that both Services' requirements and the economic consequences thereof can be severe. If the Services add significant restrictions to the permit prior to its finalization, EPA should conduct a new economic analysis and then re-propose the permit for public comment.

Concern: Draft PGP Requirements Are Unrealistic, Impractical and Burdensome for Local Governments and Small, Non-Profit Organizations to Implement

The measures set forth in the Draft PGP to "identify the problem", develop "pesticide discharge management plans" and provide new levels of record keeping and annual reporting are beyond the capacity of small government irrigation districts, and small non-profit canal company organizations. Irrigation districts and canal companies are responsible for irrigation delivery systems that often cover hundreds or thousands of square miles. These small government and small non-profit organizations do not have the staff or the budget to identify all areas with aquatic weed or algae problems, identify all target weed species, identify all possible factors contributing to the problem, establish past or present densities, or any of the other documentation requirements in the Draft PGP. Several of the measures set forth in the draft PGP are overly burdensome and, in many cases, impractical—if not impossible—to implement.

Concern: EPA Did Not Properly Solicit Public Comment on the PGP

I have personally witnessed EPA's failure to provide meaningful public input on this matter. Relying upon EPA's *Federal Register* notice, my organization—the Idaho Water Users Association—encouraged our members to attend the public meeting in Boise and provide oral comments. However, at the meeting, EPA staff told meeting attendees that comments would not be accepted, but instead would need to be submitted in writing afterwards; oral comments were not accepted at all. This meeting certainly was not conducted in accordance with the notice published in the *Federal Register.*

Concern: There are Legal Risks to Operators Associated with the Likelihood of EPA and States Meeting the Current October 31, 2011 Deadline

Some significant questions remain surrounding the current October 31, 2011 deadline. What is EPA's and states' contingency plan if the permits aren't operational? How are operators (applicators and decision-making organizations) expected to continue their work if their protections under the 2006 EPA rule disappear on October 31, 2011? How are these organizations expected to plan between now and then? While we appreciate EPA and the Obama administration securing a recent extension of the stay from the Sixth Circuit Court of Appeals, extending the deadline from April 9 to October 31, 2011, this does little to alleviate our underlying concerns.

Concern: The Time for Action by Congress is Now

We are hopeful that a concerted good-faith effort working with EPA will result in a streamlined pesticide permitting regulatory process that will be efficient, fair and effective to American farmers and ranchers, as well as consistent with existing statutory exemptions in the Clean Water Act. However, because of our experience with EPA earlier on in the public comment process, and the agency's failure to defend the 2006 rule or pursue other reasonable alternatives, we have concerns about how serious our comments will be received. In addition, we are concerned about the possibility of so-called citizen lawsuits by activist environmental groups once the PGP is adopted and implemented. As a result, we believe the better course—and the necessary one—is for Congress to approve legislation to eliminate the double-permitting requirement imposed by the Sixth Circuit Court of Appeals' decision.

We do not support, and believe it would be counterproductive, to pursue alternative regulatory or legislative approaches to the problem, as suggested by some. The solution is not to provide EPA with more regulatory authority under FIFRA or

the Clean Water Act. Rather, the answer is to eliminate the unnecessary and burdensome double-permitting requirement imposed by the Court.

We applaud the U.S. House of Representatives' approval of H.R. 872, the Reducing Regulatory Burdens Act of 2011, on March 31, 2011, by a vote of 292–130. This was a significant step in the process of clarifying that the additional regulatory requirements of the NPDES permitting process are not necessary and that continued use of pesticide products pursuant to FIFRA is sufficient. We look forward to your Senate counterparts moving forward in a similar fashion so that legislation can be signed into law later this year, prior to the current October 31 deadline imposed by the Sixth Circuit Court of Appeals.

EPA's Failure to Improve Implementation of the Endangered Species Act

The Endangered Species Act (ESA) consultation process is broken. EPA and the National Oceanic and Atmospheric Administration (NOAA) have been required by a federal court to consult regarding how the pesticide registration process may affect salmon in the Pacific Northwest. The current process is not based on the "best available data." It takes too long, excludes input from affected stakeholders, and results in unneeded restrictions on pesticide use which will be harmful to food production while failing to help salmon. In Washington State, monitoring data shows that salmon are already being protected by current labeling laws.

Congress recognized the need to include agricultural producers in the implementation of the ESA when it wrote Section 1010 in the 1988 Amendments to the ESA. [Pub. L. No. 100–478, 102 Stat. 2306, Section 1010 (1988); codified as a note to 7 U.S.C.]. The intent of Section 1010 is to minimize harm to agricultural producers. The Conference Report states:

Agriculture is a major part of the U.S. economy and provides nutritional sustenance for our population and exports abroad. . .. The Conferees, therefore, anticipate that. . .[the Federal agencies shall] implement the Endangered Species Act in a way that protects endangered and threatened species while minimizing, where possible, impacts on production of agricultural foods and fiber commodities. [Conference Rpt. at 23–24 (Sept. 16, 1988).]

In 2005, when EPA announced changes to the Endangered Species Protection Program [ESPP; 70 Fed. Reg. 66392, 66400 (Nov. 2, 2005)], it acknowledged that Section 1010 *"provided a clear sense that Congress desires that EPA should fulfill its obligation to conserve listed species, while at the same time considering the needs of agriculture and other pesticide users."*

EPA committed at that time to provide an opportunity for input at three points in an ESA assessment:

- Prior to making a "may affect" determination
- In identifying potential mitigation options, if necessary; and
- Prior to issuance of a Biological Opinion to EPA by the Services.

Despite a 20-plus year old statute and a 2005 commitment by EPA to include agricultural producers, pesticide applicators, and other end users in the effects determination and consultation processes, EPA has yet to establish procedures to do so. Last year, a coalition of Western grower organizations was forced to file a petition with the court requesting EPA take immediate action to establish clear procedures for EPA's pesticide effects determinations and subsequent actions consistent with Section 1010 of the 1988 amendments to the ESA.

Failure to correct a process resulting in unnecessary restrictions without any indication that salmon will benefit puts producers along the West coast at a competitive disadvantage. The magnitude of the damage could be severe enough to drive fruit, berry, citrus and vegetable growers to foreign countries, costing both jobs and exports.

An additional problem with the consultation process, very frankly, is that the "federal family" is a dysfunctional family—particularly EPA, NOAA and the U.S. Fish and Wildlife Service. The federal agencies' inability to coordinate—let alone agree—on critical aspects of the consultation process and resolution of important issues has adversely impacted agriculture and irrigators in terms of cost and time in meeting the requirements of the ESA.

We welcome continued Congressional oversight in this area in the days to come.

2. EPA Has Shown a Clear Anti-Water Storage Bias, Thereby Jeopardizing Our Ability to Provide Sufficient Water Supplies.

One key concern voiced by water users relates to administrative policy making occurring within EPA that will make it even tougher to accomplish what is already a daunting challenge: the obvious need to develop new water supplies to meet growing water demands and to adapt to, or mitigate for, the impacts on water supply due to climate change. For example—EPA Region 4 (which covers the Southeastern

U.S.)—is implementing new guidelines that focus on proposals calling for additional storage capacity due to projected future demands. These guidelines were developed to inform local governments and water utilities of the actions EPA expects them to take "in order to eliminate or minimize the need for additional capacity before consideration of a water supply reservoir project on a stream or river." EPA will also use these guidelines to evaluate water demand projections for new or significantly increased public surface water withdrawals or public ground water supply wells which are being reviewed through the National Environmental Policy Act or EPA programs.

The Clean Water Act permit process requires a clearly stated project purpose, which for water supply reservoirs includes a projected demand analysis to support additional water capacity needs, and an analysis of alternatives. Before EPA considers a water supply reservoir as an alternative to address the need for additional water capacity, the water utility must take actions to ensure that, to the maximum extent practicable, they are implementing "sustainable" water management practices, which consist primarily of water use efficiency measures. According to EPA, these measures "are designed to help an applicant eliminate the need for, or reduce the impacts to aquatic resources from future water facility expansions including the construction of water supply reservoirs."

While these guidelines have been proposed for Region 4, and we don't yet know if similar standards will be proposed for the Western U.S., it is troubling that EPA is so blatantly biased against structural solutions to water challenges. EPA is already one of the more obstructionist agencies when it comes to developing new storage projects, something Colorado interests recently learned. On August 9, 2010, then-Colorado Governor Bill Ritter sent a letter to EPA Administrator Lisa Jackson describing the cooperative/collaborative efforts regarding the Chatfield Reservoir Reallocation Project, which involved numerous interests representing municipal, environmental and agricultural entities and would result in up to 20,600 acre-feet of additional storage space for beneficial uses in the Denver metro area. Although the U.S. Army Corps of Engineers supports the proposed reallocation plan, EPA Region 8 staff in June of 2010 stated that they would deny it, and recommended that the ultimate decision be elevated to higher levels in Washington, D.C.

> "I am greatly concerned that a disagreement between two federal agencies could result in denial of a project so important to Colorado and fifteen of our communities," Gov. Ritter wrote Jackson. The Governor also asked that EPA proceed with "a thoughtful and transparent process that does not prejudge a project but instead balances important civic and environmental needs."

This should never occur when all of the stakeholder interests have agreed on a workable solution for all parties.

Unfortunately, based on the Region 4 guidelines and the behavior of Region 8 staff, it appears that some in EPA clearly have anti-storage biases and are not afraid to insert those biases into critical federal decision-making processes. This is reckless, arbitrary and short-sighted. Without new sources of water, increasing urban and environmental demands threaten to deplete existing agricultural supplies and seriously threaten the future of Western irrigated agriculture.

The often slow and cumbersome federal regulatory process is a major obstacle to realization of projects and actions that could enhance Western water supplies. We must continue to work with federal agencies and other interested parties to build a consensus for improving the regulatory process, instead of using administrative channels that create new obstacles.

Conclusion

Mr. Chairman, it appears that EPA and other federal agencies are moving in a direction where a heavier regulatory hammer will be wielded, litigious actions will be encouraged through the use of "citizen suits", and products used by American farmers and ranchers in the production of food and fiber will be foremost in the sights of federal regulators. Important water management and supply tools like pesticides and water storage have certainly been put at risk.

American family farmers and ranchers for generations have grown food and fiber for the world, and we will have to become more innovative than ever before to meet this critical challenge. That innovation must be encouraged rather than stifled with new federal regulations and uncertainty. Unfortunately, many existing and proposed federal policies on water issues make it more difficult for farmers in an arena where agricultural values are at a disadvantage to federal ecological and environmental priorities. Right now, it seems that water policies being developed at EPA and the White House Council on Environmental Quality are being considered separately from foreign and domestic agricultural goals. Many of these administrative

changes are drawing praise from environmental organizations that have been advocating for them for some time, but ultimately the huge negative impacts of such destructive policies will be aimed at the heart of the economy in rural America.

We can only hope that the Obama Administration will give equal consideration to the concerns of agricultural organizations. We welcome your leadership to help make that possible.

While it may be difficult to get EPA and other Administration agency policy makers to change the approach they are taking, we are pleased that this Congressional hearing is being provided and that you are paying attention. We look forward to working with you and other Members of Congress towards this end.

Thank you for the opportunity to share this testimony with you today.

Mr. MCCLINTOCK. Thank you for your testimony. At this point, we will begin with questions of the witnesses. To allow all of our members to participate, and to ensure that we can hear from everyone today, we will be limiting Members to five minutes for their questions. But if there are additional questions, we will continue to a second round, and I will begin with five minutes, and begin with Mr. Keppen.

Your testimony states that water supply restrictions benefit fish, quote, "conclusively demonstrated that these restrictions have done little to prevent the fisheries decline in the Delta." Yet, Mr. Pool in his testimony suggests otherwise. How did you come up with that conclusion, and what are your observations?

Mr. KEPPEN. Well, primarily based on my review of the National Academy of Sciences report that was done, and also some other reports that were done. In 2010, the Academy put out a report called Scientific Assessment of Alternatives to Reducing Water Management Effects on Threatened and Endangered Species in California's South Delta.

In that report, there are flat out statements that suggest that there are other things than the pumps that are affecting the fish, and I will just stick to the facts. This comes out of page 33 of the study.

It says that no scientific studies have demonstrated that pumping in the South Delta is the most important or the only factor accounting for the Delta's smolt population decline.

Therefore, the multiple other stressors that are affecting the fish in the Delta environment, as well as in the other environments they occupy during their lives must be considered, as well as their comparative importance with respect to the effects of exporter pumping.

And the report goes on to suggest a holistic approach to managing the ecology of the fish in the Delta will be required if species declines are to be reversed. It is very similar to the findings that the National Academy had in Klamath in 2003.

Mr. MCCLINTOCK. This is also similar to the National Marine Fisheries Service Southwest Science Center report to the Pacific Fisheries Management Council, where the NMFS scientist, Steve Lindley, concluded that the primary reason for the decline of the fall run was poor ocean conditions.

I would also note that the claim that 92 percent of the salmon smolt died because they were lost in the river or pulled into the Central Delta when the pumps were operating at maximum capacity does not mean that the pumps caused 92 percent mortality.

Most of the mortality, I am told, occurs in the main stem of the Sacramento River, and not at the pumps.

Mr. KEPPEN. Good points, and there is another study, too, that I dug up on the flight out here. It is Bruce McFarland's, who did a report in 2008 to the Delta Stewardship Council, and he said that that year, all up and down the coast, the salmon population suffered, which again suggests that it might have been ocean conditions.

Mr. MCCLINTOCK. And I think I would also want to note for the record that the Sacramento hatchery fall chinook fish output increased dramatically in 2008, and in 2006, for example, the release was 3 million, and in 2008, it went up to 8.5 million, and current shifts and dramatically increased hatchery releases coincided with increased salmon populations.

Mr. Keppen, how would new water storage help overcome the negative impacts of water regulation?

Mr. KEPPEN. Well, we always use a term, I guess, in our organization, and my board members like to say this term, that in the West right now, we have probably four competing sectors for water.

We have agriculture, urban growth, the environment and ecology, and then power. Those are kind of the big four demands. And over the last several decades that pie has pretty much stated the same, the same size.

I am talking about the water supply that is available, and we have not developed a lot of new infrastructure relative to storing water. However, what has happened particularly with the environmental demands that we now have, because society places greater value on that now than it did perhaps 40 years ago, we have a bigger slice of that pie going to the environment primarily.

So storage makes the pie bigger, and I think that the new demands that we are seeing I don't think come from agriculture in the west. It is really coming from development, power, and the environment.

Our guys are just saying let us have the water that we originally were provided when these projects were built, and thus create storage to meet some of these new demands.

Mr. MCCLINTOCK. Mr. Noble, the same question, additional water storage, good for the environment?

Mr. NOBLE. Yes, Mr. Chairman, I believe it is. The additional water storage is good for the environment, but we have to be careful. All too often, we place the environment above human needs, and I believe they can be reconciled.

But additional water storage is something that needs to be looked to in the future, and I find in the areas that I deal with that there is a lot more talk about providing that now.

Mr. MCCLINTOCK. Mr. Keppen, very briefly, what are the impediments to water storage in California these days?

Mr. KEPPEN. Regulatory impediments. I think it is the way that the Endangered Species Act, and NEPA, and the Clean Water Act, are implemented. It is just the overlapping sense of regulations that you have.

I would also say that it comes down to litigation. Environmental laws provide all kinds of opportunities for opponents to projects to stop all kinds of citizens supervision, and that sort of thing.

And then finally I just think leadership. I think some folks are just concerned that if they stand up for storage that they are going to get blasted by some environmental community and the urban media.

In fact, there are actually surveys out there that show that when average Americans are asked about what kinds of things need to be done to deal with these challenges, storage is way up there. Taking water away from farmers and giving it to cities is way down there.

Mr. MCCLINTOCK. Thank you very much. My time is expired. I will now yield to the Ranking Member, Ms. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair, and this is my thirteenth year on this Subcommittee, and we have had great discussions, and lengthy discussions, about some of the impacts, especially on the Delta, and the fish, and the pumps, and all that good stuff.

So in certain areas it is redundant. We have asked for collaboration, and we have asked for all of this that we keep hearing, but Mr. Keppen, in your testimony, you mentioned that the agencies should use the best available developing regulations.

Would you agree that the agencies should use the best available science and developing regulations even if the use of those science results, those scientific results, result in reduced water deliveries to some of the farmers?

Mr. KEPPEN. Well, definitely we support the use of the best available science, and I think again how do you define that. In my experience the agencies often times are given deference, and their science kind of trumps everybody else's science.

We just want to make sure that we have a place at the table so that our science can be considered along with theirs, and with the same weight.

Mrs. NAPOLITANO. That is where we should view the partnerships, and I agree with you on being able to work together. But are you aware that the National Academy of Sciences determined that most of the restrictions in the Bay-Delta biological opinions were scientifically justified?

Mr. KEPPEN. I am aware of that.

Mrs. NAPOLITANO. All right. That is all. Thank you.

Mr. KEPPEN. Yes.

Mrs. NAPOLITANO. Thank you. My time is running low. I would like to introduce a couple of things into the record:

- The California 2006 Causes of Impairment for California Waters, prepared by the USEPA Office of Water, Number 1 on the list is Pesticides.
- The California Waters Impaired By Pesticides Report, Year 2006, prepared by USEPA Office of Water. It lists all the water bodies in California that are affected.
- The National Summary Causes of Impairment. It says for rivers and streams that pesticides again are number 16 on that list.
- Specific Causes of Impairment that makes up the National Pesticides cost of impairment and growth threatened for impairment of rivers and streams. Third is pesticides. Those I would like to have entered into the record, Mr. Chair.

Mr. MCCLINTOCK. Without objection.

[NOTE: The documents submitted for the record have been retained in the Committee's official files.]

Mrs. NAPOLITANO. And to Mr. Semanko, you mentioned in your testimony that the EPA has taken an anti-storage position, citing the Chatfield Reservoir Reallocation Project. Were you aware that last October the EPA sent a letter to the Corps endorsing the Corps analysis in its proposal to permit the project?

And I would like to introduce into the record a letter from Carol Ruskin, Deputy Regional Administrator, dated October 6, from the EPA, reversing the EPA statements made on September 7th.

Mr. MCCLINTOCK. Without objection.

[A letter from Carol Rushin, Deputy Regional Administrator, U.S. Environmental Protection Agency, to the U.S. Army Corps of Engineers submitted for the record by Mrs. Napolitano follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

October 6, 2010

Ref: 8EPR-EP

Colonel Robert J. Ruch
District Commander
U.S. Army Corps of Engineers, Omaha District
1616 Capitol Avenue
Omaha, Nebraska 68102-4901

Dear Colonel Ruch:

I am writing regarding the preliminary draft Clean Water Act (CWA) §404(b)(1) Guidelines analysis for the Chatfield Reallocation Project provided for review to the Environmental Protection Agency (EPA) on September 7, 2010. We appreciate the U.S. Army Corps of Engineers (Corps) work with us on this project, and acknowledge your significant effort in preparing this analysis.

In the draft CWA §404(b)(1) analysis provided in September, the Corps proposed that reallocation of storage space will not require a discharge of dredge or fill material into waters of the U.S. Based upon our review of the specific facts for the Chatfield Reallocation Project, EPA is comfortable with the approach taken by the Corps in the preliminary draft CWA §404(b)(1) analysis.

We would like to continue our ongoing collaborative efforts to formulate alternative scenarios or other means to avoid and minimize the overall environmental impacts of the project. It will be necessary to develop a comprehensive and thorough Compensatory Mitigation Plan to address unavoidable impacts of the project. The details related to monitoring, mitigation and adaptive management will be critical parts of the document for public review.

I'd like to thank you and your staff for your work with EPA on this project, and I look forward to our continued efforts. Should you have any questions, please feel free to contact me at 303.312.6308 or have your staff contact Jim Luey of my staff at 303.312.6791.

Sincerely,

Carol Rushin

Carol Rushin
Deputy Regional Administrator

Mr. SEMANKO. I believe there was a question. Thank you. No, I was not aware of that, and we will pass that information along to our members in California.

Mrs. NAPOLITANO. We would be glad to furnish you a copy of this if you don't mind. That way they will have that letter.

Mr. SEMANKO. Thank you.

Mrs. NAPOLITANO. Because that kind of contradicts your statement, because they did reverse it according to that letter.

Mr. SEMANKO. Thank you. We are still concerned about the bias, but thank you very much for the update. We appreciate that.

Mrs. NAPOLITANO. Thank you. Mr. Pool, you have shown us a list of 50 salmon related businesses that have completely shut down since 2008. Do you expect these businesses and the jobs that they have created to be permanently lost, and if they are permanently loss, what other forms of employment do these people are likely to turn to?

We hear a lot about farming losing a lot of farmhands and farms being fallowed, and all of that. What about the fishermen?

Mr. POOL. The 50 some-odd businesses on that list, it is only a partial list. When people go out of business, it is hard to identify them, but they are gone permanently. They have lost their equity in their businesses.

One of them that I cite, two ladies lost their business, and they were very profitable, and the salmon closure came, and a year-and-a-half later, they lost their business, they lost their boat, and they lost their house, and they lost their life savings, and they left town on a Greyhound bus.

Mrs. NAPOLITANO. Mr. Pool, let me cut you because I only have a few more seconds left. Was it just in California or were there other places affected?

Mr. POOL. No, about 50 percent of the impact occurs in the State of Oregon from the Central Valley Delta.

Mrs. NAPOLITANO. So it isn't just California?

Mr. POOL. It is not.

Mrs. NAPOLITANO. How about Washington and Oregon?

Mr. POOL. Some. I would say Southern Oregon mainly, and below the Columbia River, where the Central Valley fish migrate, and the impacts there are just as serious as along the California coast.

Mrs. NAPOLITANO. Thank you. Mr. Chair, I hear a lot about the use of pesticides, and as I sat in the State House, I remember going through the list of pesticides being used.

And I know that they are used for vector control, for termite control, and for all those things. But those are very regulated by the States. So to me it makes no sense to equate them to the pesticides that are used in farms and other agricultural products. Thank you, Mr. Chair.

Mr. MCCLINTOCK. Next is Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman, and I appreciate our panel being here. Mr. Keppen, I was kind of interested. You started the closing of one question about the Academy of Sciences, and when you said but, and so go ahead and continue.

Mr. KEPPEN. Thanks for that opportunity. Yes, what I was going to say is that the National Academy report found general concep-

tual support for aspects of the biological opinions, meaning that the smolt and salmon opinions.

But it also criticized specific management measures as not being well supported. That was the rest of my sentence.

Mr. TIPTON. Thank you so much. Mr. Scholl, I was interested during some of your commentary where you had mentioned about a culture of collaboration and gave an example. When the EPA went through did they issue any fines?

Mr. SCHOLL. I am not aware of any specific fines being levied in that case. I think the main point that we were trying to make is that having a regulation is one thing, but then what you do to try and get compliance with those regulations is something that certainly requires a lot of work to be done.

Farmers don't want to see bad stuff get into the water. They care about the land, and trying to build upon their desires to run clean operations, and to be able to pass their farms on to future generations, is something that I think that we can build upon, and create a much more healthy environment on which to really solve environmental issues.

Mr. TIPTON. Great. Thank you. And, Mr. Noble, I was just a little interested about when you were talking about in regards to irrigation canals being related to levees down south, and farmers and ranchers being required to take out flood insurance.

What does that add in terms of costs of operations and the rest?

Mr. NOBLE. Congressman, I am not exactly sure what the cost of the flood insurance would be, but it does add a cost, and that was one of the recommendations that was contained in the report of 2009 by the NCLS committee, as well as when they equate them under the proposals, and then farmers would have to provide those types of coverages in areas that really have no risk of flooding, except for the failure of an irrigation canal.

Mr. TIPTON. Right. Are farmers and ranchers able to pass those costs on?

Mr. NOBLE. Not really.

Mr. TIPTON. Not really? So that leads us back to Mr. Keppen. When you were talking about that six percent of our farmers and ranchers are under the age of 40. Is that a correct representation?

Mr. KEPPEN. Under 35.

Mr. TIPTON. So we have an aging farm population, and to quote someone else who is saying that we are producing on less land, with less water, with fewer farmers, are we literally starting to drive farmers out of business in this country?

Mr. KEPPEN. Well, I am seeing it. Mark Ricks, as I mentioned in my testimony, one of my directors from Idaho very passionately said the same thing, and a lot of our members are seeing that.

I travel throughout the west, and going to irrigation district meetings, and water conferences all the time, and don't see to many folks under 40 at those meetings, and there are other factors, but the regulatory climate is definitely an issue.

Where I live in Klamath Falls, certainly parents are telling their kids that you don't even want to go into farming.

Mr. TIPTON. And on a nationwide basis, we are seeing statistics that are showing that we are spending $1.750 billion a year in regulatory costs in this country. It is staggering.

And we all know that there needs to be some sort of regulations to be able to manage things. We heard great testimony to that point. What are the regulatory costs? Do you have some overall regulatory costs? What type of burdens is it adding to driving more farmers out of their jobs?

Mr. KEPPEN. I think that it would be very useful to get such a study done kind of nationwide, but what I have seen just in the community that I moved to Klamath Falls in 2001 when the farmers got their water supply shut off at the beginning of the irrigation season for the first time in 90 some years.

And there are so many costs. I have actually provided testimony to this Subcommittee on impacts to the community. But in the Central Valley, it was tens of thousands of jobs, and hundreds of thousands of acres that went fallow.

It has a ripple effect through the community that affects businesses, and that affects fertilizer, and implement dealers, and all those sort of things.

It has a horrible dynamic on the community, just as far as relationships go, because some people are able to take advantage of programs and get assistance, and others are not. You get a have versus a have not mentality that can really tear up a community.

Mr. TIPTON. You bet. You know, we were talking a little bit about pesticide application, and I found coming from a farm and ranch community that they are pretty good stewards, and they all read, and they typically follow directions well.

Are you seeing an overreach by the EPA clamping down and hurting our farmers and ranchers ability to be able to earn a living?

Mr. KEPPEN. Is that directed at me?

Mr. TIPTON. Anybody that would like to take a short.

Mr. MCCLINTOCK. A brief shot.

Mr. SEMANKO. I will take a shot at that. Thank you, Congressman. The issue here really is not whether the EPA is clamping down or not. There is a very comprehensive program under the Federal Insecticide, Fungicide, and Rodenticide Act, that requires that these products be tested against the environment, and make sure that they are not having an adverse impact on the environment. Then they are certified by the EPA for general sale and use out in the community, and our folks have used these products for any number of years to assist in the delivery of water.

Mr. MCCLINTOCK. I am going to interject. That is a brief answer. Mr. Garamendi.

Mr. GARAMENDI. Thank you, Mr. Chairman. I have been in agriculture my entire life, and I have yet to have a farmer or a rancher not complain about everything. It is the nature of the beast.

When they are complaining the loudest, it is usually when they are doing the best. When they shut up and don't complaint, then the bank is probably about to knock on their door.

Enormous progress has been made over the years that I have been involved in agriculture. We have seen regulations in the cattle industry that have, in fact, been difficult. I endure those myself because I am a cattle rancher. But the end result has been a much better and more stable cattle industry, all the way from animal health to the regulations about the quality of the supply. You can

scream and yell about quality, but you get bad meat on the market, and it is a serious problem for the cattle industry.

One recall and serious. You want to shut down Japan, and do you want to shut down Korea? Have a bad meat issue. It will happen. Regulation is not bad. It is necessary to protect the industry as a whole.

With regard to the report that you cited, sir, about the National Academy of Science, I think you are talking about a report that was in fact not peer reviewed, and was put aside as being not completely peer reviewed, and based upon a limited study.

In fact, there are many, many stressors in the Delta. We understand that. And certainly pumping is one of the stressors. So is the ammonia released from the Sacramento Municipal Sanitation Project.

We understand that. Also, from my own operation, I run a ranch or a farm in the Delta and, fortunately, the EPA regulations, the clean water regulations, require that all of us who operate in the Delta, and in the streams flowing into the Delta, we have gotten together, and we are monitoring our water. And when somebody is out of line, we find out who it is, and we go after that person, and require them to clean up their act. All of this is good for Jimmy Costa downstream, who wants to pump.

But the reality is that the pumping is also a problem. We need to deal with all of these things, and to simply say that regulation is the problem is ignoring the fact that the problem is us. It is all of us. It is the demand for water in the urban, and it is the demand for water in the agriculture, and it is the demand for water for the environment, and it is those of us who are polluting the water. And we do it.

We need the regulatory environment to set up the framework in place in dealing with the multiple interests. So, a committee hearing such as this, and for whatever its purpose is, OK, let's hear about the regulations. Fine. But, simultaneously, we need to understand that the regulatory environment is necessary because there are a whole heck of a lot more of us on this planet today than there were 50, 60, or 100 years ago. We are going to have to live together and the regulatory environment allows us to do that.

Now, with regard to the salmon, and let's focus directly on those. There was a crash, was there not? And it was directly associated with the pumping due to the dramatic increase in pumping. Is that what you——

Mr. POOL. Are you directing that to me?

Mr. GARAMENDI. I am.

Mr. POOL. Well, yes. According to the study after study, those fish are being lost, and they have this acoustical tracking now where they can see exactly where fish is lost. And even in the upper river, the fish are being lost because of the pumping and the movement of the water, and the lifecycle of the salmon.

Mr. GARAMENDI. In your opinion, and as someone who has been involved in this forever, is the solution more hatcheries?

Mr. POOL. The solution—unfortunately, hatcheries are mitigating for the dams, but hatchery fish are not—they are inferior to wild fish. One of our problems in California is that our hatchery fish are increasing, and the wild fish are decreasing.

We do not want to stop the hatcheries. We rely on that for business, but we have to improve the wild fish populations.

Mr. GARAMENDI. OK. There are a whole series of questions that we ought to get into on hatcheries, and we ought to deal with it. You have laid out the foundation for a much further, and a much more detailed discussion on that.

I am going to let it go at that. We are going to go round and round on this, I suspect, for some time, but we have to look at this in a very holistic and in a very comprehensive way.

The regulation in and of itself is not the—is part of the overall solution, as well as part of the overall problem. There are duplications and there are foolish regulations along the way.

Rather than just generally trash regulations, I appreciate your lists that you put together on the two pages. I would like more detail. Most of that deals with the potential problem, and not that the problem has been actually created. Thank you, Mr. Chairman.

Mr. MCCLINTOCK. Thank you. Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman. Norm, according to the statement just made, regulation is not bad. It is necessary to protect industry. I don't think you disagree with that, do you?

Mr. SEMANKO. Congressman, no. We comply with FIFRA, and we understand the purpose for it, and we want to make sure that we can deliver clear, clean water to our folks.

Mr. LABRADOR. So what exactly are you trying to say, because there seems to be an argument that is being made on the other side that we are completely against all regulations.

Mr. SEMANKO. Well, Congressman, this issue arises from litigation, and it is what I call gamesmanship by certain national environmental groups who enjoy filing these lawsuits, and frankly recouping attorneys fees.

Under FIFRA, there is no citizen suit provision. If someone violates the label, and does not do what they are supposed to do, and jeopardizes the environment, and kills fish, that is clearly a violation of law, and something that the EPA can enforce.

But there is no hook under the Clean Water Act, and through years, and in fact decades of litigation, environmental groups have found the hook through the argument that these products are pollutants when they break down into the water, and therefore require a discharge permit under the Clean Water Act. So this entire regulatory standard that was not meant for this context is applied over the top of the regulatory context that was required.

It is just another piece of paper. It is another permit. It brings in a whole another statute, and importantly for the environmental groups, it brings in the citizen suit provision.

So, for example, if you under the regulations fail to do something that is in the label, now you can be accorded a $37,500 a day or occurrence Clean Water Act violation, and attorneys fees go to the citizen suit, and the folks that bring the citizen suit.

So we are saying avoid the duplicative regulations. We understand FIFRA, and we agree with FIFRA. We agree with the registration, and re-registration processes, because they protect the environment.

Our folks understand them, and they are trained on those, but this NPDES overlay on top of that. When you are talking about

something that increases by five times the current regulated universe under NPDES, which is what this would do, increase what we have been doing over the last 40 years by five times. That is not what was intended, and so we appreciate Congress, and the House in particular, helping to clarify that.

Mr. LABRADOR. So your concern is with taking advantage or overuse of regulations, and misuse of the regulatory process; is that correct?

Mr. SEMANKO. Congressman, yes, and frankly, the misuse of the EPA's resources. The EPA has a lot of work to do out there under the NPDES permit program, and other programs, and doing this kind of paperwork exercise within an NPDES general permit, when the Office of Pesticides is already fully regulating that, the Office of Water that is over NPDES, has other things to do, and it is just inconceivable that that much regulation, and that much resources is going to be dedicated.

So equally we are concerned about the wise use of precious taxpayer dollars that you all allocate.

Mr. LABRADOR. OK. In Idaho, there are numerous Federal agencies that are responsible for the implementation of the Endangered Species Act, like the Bureau of Reclamation, and the United States Fish and Wildlife Services.

How does the coordination or lack thereof of Federal agencies impact water users?

Mr. SEMANKO. Well, Congressman, it is incredibly important. The Federal agencies sometimes look like a dysfunctional family in their inability to communicate and get on the same page on these regulations, and when they are frozen, and certainly when they don't know how to act, it boxes our folks out, in terms of getting the permissions, getting the permits granted, and getting the reasonable terms and conditions granted that allow us to proceed and to move forward.

So at the end of the day, the lack of decision, and the delay in process, creates uncertainty amongst our folks, and an inability to operate and move forward. That is a worst case scenario.

And when they operate together, and we are able to work with them, and when we get the biological opinion issued, as we did in the walk of the Nez Perce Water Rights Settlement, and the biological opinion that resulted from that, then things work well, and we all understand what needs to be done to protect the fish, and to deliver the water.

Mr. LABRADOR. OK. Now, you mentioned the regulatory bias against water storage at EPA regional offices. Now, when water storage is taken off the table, does that place pressure on municipalities to find water from other sources, like the purchase of agricultural water rights and the fallowing up of farmland?

Mr. SEMANKO. Congressman, absolutely, as Mr. Keppen said earlier, the pie is only so big. There is enough for irrigation, and if there need to be additional water supplies for other purposes, we need to look at building additional storage.

Otherwise, it pits one interest against the other in this scarce resource, and once you get through NEPA, and ASA, and the Clean Water Act, the water is available, and it meets those requirements, there ought to be discussion about additional storage.

I can't believe that in the past that if we had made these kinds of limitations that we would be where we are in the west with water development.

Mr. LABRADOR. Thank you.

Mr. MCCLINTOCK. Mr. Grijalva.

Mr. GRIJALVA. Thank you very much, Mr. Chairman. Mr. Pool, if I may, without the protections for salmon, will we see fishing communities also dry up? And what will this do to the opportunities that remain for a new generation of fishermen? A younger generation? We hear one side of it, but I want to ask you about this particular side.

Mr. POOL. Sure. We are already seeing the opportunities dry up. The fishing season or the salmon fishing has essentially been shut down for three years. Thousands of boats have been abandoned, and they are in yards now being disposed of because they couldn't pay their fees.

Communities from Morro Bay through Crescent City in California, and on into Oregon, are hurting very badly right now, and this can be recovered. Salmon can be recovered, and our organizations have outlined policies to the State and Federal Governments on what has to happen for them to be recovered. These communities can recover, but we have a big job ahead of us.

Mr. GRIJALVA. Thank you. Mr. Orme, as I understand it, negotiations are ongoing, or are underway for the Navajo Generating Station with EPA, and can you maybe outline for the Committee what the owners are proactively doing at this point to improve air quality outside of the EPA BART process that is going on right now?

Mr. ORME. Yes, Congressman. The owners are adopting the low NO_x alternative, and implementing that before being required to do it by the EPA or whatever that the BART finally requires.

The stakeholder group that has been working to come up with a recommendation to the EPA, which the EPA can accept or reject, would provide a situation where the low NO_x option, which we favor, would be implemented initially, and then stricter standards would be adopted sometime in the future, which would allow a transition of time to those stricter admission standards, which could include the SCR technology, or something as effective, but maybe less costly.

That appears to be the way the stakeholder process is moving. That will ultimately be a recommendation to the EPA, which they can reject or not.

Mr. GRIJALVA. So at this point, if I may, at this point the negotiations are relative to the low NO_x. It is an interim transition step that is—I am assuming the stakeholders will be recommending to the EPA as an interim step toward the full implementation of the regulations as time goes forth?

And the timeline on that would be what? Do you know, from this initial transition step, to what year?

Mr. ORME. The timeline has been discussed from the stricter admission standards anywhere from 2020 to 2030 time period. But I want to emphasize the point that the low NO_x burners are being put in place now without any requirement by the EPA yet.

The owners have just done that on their own accord to move forward with that.

Mr. GRIJALVA. With the intention of making that installation part of the transition period?

Mr. ORME. Correct.

Mr. GRIJALVA. OK. Thank you. I don't have any further questions. Thank you, Mr. Chairman.

Mr. MCCLINTOCK. Thank you. Mr. Gosar.

Dr. GOSAR. Mr. Pool, just as a quick followup to the Member on the other side, fish hatcheries have had a big impact, particularly if I am not mistaken, in our war against Whirling Disease, has it not?

Mr. POOL. Oh, fish hatcheries are the life blood of a lot of the industry. They take care of the losses of the fish for the dams. There is quite a movement to analyze. There has been a lot learned about fish, and fish hatcheries, and Whirling Disease, and a lot of other things.

There is a big effort to improve hatchery quality, and to more closely match the wild fish.

Dr. GOSAR. I understand, but I wanted to make sure that got in there. I would like to focus my next questions on the regulatory aspect of NGS, Mr. Orme. And for Arizona, this is extremely—in the southwest, it is extremely important, not only that it has a thousand jobs that are on the line, and most of them Native American. But this has a severe consequence to a number of situations in Arizona.

Can you express if we lost NGS what kind of impact that would have on the cost of irrigation, or water for irrigation down the southern part of the State, and the impact if the costs went up significantly?

Mr. ORME. Yes, Congressman. If we were to lose NGS, and if the owners had to make the decision to shutter the plant, the Central Arizona Project estimates that alternative power supply to move CAP water would run in the range of 60 to 300 percent more than what we are paying right now.

It would be completely and totally unaffordable for agriculture. Agriculture, which is over 50 percent of the use of CAP water now, would go off-line the minute that occurred.

That would obviously cost many jobs, and be very harmful to the economy, and not only to the non-Indian areas of Central Arizona, but also the reservation areas that depend on CAP water for irrigation water as well, because they are required to pay the costs of energy just like the non-Indian agriculture users are.

Dr. GOSAR. Well, I think this is a fabulous story. I look particularly at the southern part of the State of Arizona. For example, the Teddy Roosevelt Dam. A lot of the landowners, and ranchers, and farmers, gave up their water just to get that dam put into place.

The farmers, particularly in the southern part of the district, did that as well did they not with CAP water, and giving up some of those entitlements or water rights, to actually have some water?

Dr. GOSAR. Well, what we recently did in the 2004 Indian Water Rights Settlement is that non-Indian agricultural water users, the irrigation districts have held the long term contracts of CAP water, and gave up those long term contracts so the water would be available for reallocation, mostly for Indian settlements, but also a fairly significant piece of M&I, municipal and industrial use in the State.

And in return for partial relief from payment of their distribution systems, and an assurance of a short term supply of affordable CAP water through the year 2030, while the non-Indian irrigators could figure out a transition away from CAP water after that time.

One of our concerns in this with the NGS is that affordable feature of CAP water to 2030 will not be provided because of these requirements on the Navajo Station.

Dr. GOSAR. Now, I know that we are sitting with a number of Native American water settlements coming up here. So this has some real dire consequences right now and in the future of shaping of Arizona's water supply, as well as their agriculture, does it not?

Mr. ORME. Yes, I would say that it does. With respect to settlements in place, the largest is the Gila River Indian community, and one feature of that settlement is that they were to receive an affordable supply of CAP water indefinitely in return for their winter's rights, which was to be free water.

And the cost of the energy increased for NGS threatens again that affordability feature for them. If NGS were to be shuttered altogether, and the Central Arizona Project would not be able to sell Navajo surplus power, it is the revenues from the sale of that power that go into the Lower Basin Development Fund to fund not only the Gila River settlement, but future Indian settlements as well.

That revenue stream would no longer exist, and would jeopardize future settlements.

Dr. GOSAR. A real quick question. Is there anything on the horizon that could replace the Navajo Generating Station?

Mr. ORME. In my opinion, there is not.

Dr. GOSAR. Five years?

Mr. ORME. No.

Dr. GOSAR. Ten years?

Mr. ORME. No.

Dr. GOSAR. Thank you.

Mr. MCCLINTOCK. Thank you. Mr. Costa.

Mr. COSTA. Thank you very much, Mr. Chairman, for this hearing, and the future hearings that we are going to hold on issues affecting waters of the west, and particularly obviously our focus this afternoon seems to be on California.

Let me make just a couple of overlapping statements, because I think my problem with the regulatory environment, and the restrictions that we are dealing with, is the lack of flexibility as they are applied.

But let me first make a couple of general statements. I do agree that there are a number of stress factors that are impacting fisheries. But the fact is that California produces half of the Nation's fruits and vegetables, half of the Nation's fruits and vegetables.

And we have an issue of food not only in our country as it relates to hunger, but also the world, and water is going to be the big issue in how we ensure that we can grow as much as we can, not only in the Indian Nation, but in the world.

We have a host of issues that we deal with as it relates to biological opinions that have been in place. We have had numerous biological opinions in place on the Columbia River, and they have been reconsulted, and we have established new biological opinions.

And that is not different than in the Sacramento-San Joaquin Delta area.

The mortality rate. Since 2000, the National Marine Fisheries established a jeopardy standard for winter runs of chinook salmon. Originally, it was a 25 percent of the adult population as a result of ocean fisheries. Now it is 20 percent as of 2010. But for the smolts, for the impacts of the exports that we were talking about here today, it is one percent. One percent.

Now, Mr. Pool, I am symbiotical that the fishery, the salmon fishery, was closed down for the last two years. As you have testified, it has a dramatic impact. But when there was a zero allocation to the farm communities on the west side over the last three years, it had a devastating impact to us as well.

And I am happy that they opened up the fisheries this year, the salmon fisheries, for your folks. But you are allowing a 20 percent take. These are adult salmon that can come back and spawn and repopulate. Not hatchery fish.

But we are saying a one percent take at the exports. I don't understand the fairness, nor do I understand the justification, for that extreme amount of differential on the take.

Now, Mr. Pool, we have testified or we have stated that exports are not the only stress factors. Do you agree with that or not?

Mr. POOL. I agree they are not the only stress factors. They are the most important stress factor.

Mr. COSTA. Well, then you and I disagree on that point. On the final draft on 11/28 of the San Joaquin River Fall Run Chinook Salmon Population, the Department of Fish and Game reviewed the scientific analysis on exports in salmon production, and found that it appears that the Delta export are not having the negative influence on the San Joaquin River salmon production they once thought they had.

But you disagree with the Department of Fish and Game analysis don't you?

Mr. POOL. Yes. I have to confess that I am not privy to all of those details, and so I am sorry, but I can't answer.

Mr. COSTA. OK. Well, can you refer to me the scientific analysis that supports your position that the pumping, that the export pumping, is the major reason of the decline of the salmon?

Mr. POOL. Yes. I think if you go back to the biological opinion and the science behind that. There were six years of studies.

Mr. COSTA. But that was under reconsultation as ordered by the Court?

Mr. POOL. Certain small pieces.

Mr. COSTA. Dr. Ken Newman wrote on a peer review report the evaluation of the Sacramento-San Joaquin River Scholl to Juvenile salmon survival studies, and have you reviewed Dr. Newman's report?

Mr. POOL. Not on the San Joaquin. I have focused on the solution to our salmon problems are in the Sacramento for the most part. So that is where most of us in the industry have focused on.

Mr. COSTA. Well, you talked about, and you are familiar with, I am sure, the National Geographics study that talked about the decline of salmon from Alaska, all the way down the Canadian West Coast, down to Washington and Oregon, are you not?

Mr. POOL. I am. Ocean conditions for two years impacted the fishery pretty much along the coast. A lot of those things have survived.

Mr. COSTA. And on the Napa River as well?

Mr. POOL. Everywhere except the Central Valley, there have been some pretty good recoveries.

Mr. COSTA. Well, if there was not a recovery, you testified that there was a recovery, and that is why we have opened up the salmon season this year, right?

Mr. POOL. There was a recovery, yes, for a couple of reasons. Regulatory reasons. The Court shut the pumps down in 2008.

Mr. COSTA. But the Court also said that the scientific study did not support the biological opinion. The best science was not being used.

Mr. POOL. Well, maybe——

Mr. COSTA. I mean, why are we having a reconsultation of both biological opinions?

Mr. POOL. I don't think we are having——

Mr. COSTA. Well, we are.

Mr. POOL. We are responding to lawsuits by the water contractors.

Mr. COSTA. The Judge has ruled that the best science was not used, and so they are reconsulting.

Mr. MCCLINTOCK. I am afraid that I am going to have to intervene here. The gentleman's time has expired. We will go to a second round of questions in a few minutes.

Mr. COSTA. Thank you.

Mr. MCCLINTOCK. Actually, we will go to that second round of questioning right now, and I will begin. Mr. Keppen, could you give us a picture of the human toll of these policies for the family farms in the San Joaquin Valley, or in the Klamath Valley?

Mr. KEPPEN. Well, Mr. Chairman, as I testified here a little bit ago, in Klamath—and I would actually ask to have this document maybe resubmitted to the Subcommittee. I provided testimony of personal experiences of farmers and business people in the Klamath Falls area after the 2001 water shutoff, and how their lives were impacted in a lot of ways that you just don't read about in the papers. And it has to do with financing, ability to get loans, mental health issues, and so I guess to be brief, if I could perhaps submit that testimony to the Committee and the Committee could review that.

Mr. MCCLINTOCK. How many families have been thrown out of work by these policies?

Mr. KEPPEN. Well, in 2001, and again this is just based on my personal experience in Klamath Falls, there were 1,400 family farms that were impacted and did not receive water, and they were all impacted one way or the other.

Mr. MCCLINTOCK. How many in the San Joaquin Valley? I have seen estimates——

Mr. KEPPEN. Tens of thousands I would say. There is a lot of controversy over the exact number, but I would say tens of thousands. I would say hundreds of thousands of acres to just generally characterize it.

Mr. MCCLINTOCK. Thank you. Mr. Pool, you said that there is a difference between hatchery salmon and wild salmon. Would you explain to us the genetic differences between those two types of fish? It seems to me that the difference is between a baby born at a hospital, and a baby born at home.

Mr. POOL. In genetic differences, I am not sure that you will find a lot, but——

Mr. MCCLINTOCK. Do you find any?

Mr. POOL. You find differences in their surviving.

Mr. MCCLINTOCK. Well, isn't that because we mutilate them when we release them by cutting off their fins in the case of the Klamath? I understand the policy is to remove the left or right lower mandible, and that is the jaw bone of the fish, before they are released?

Mr. POOL. I think that most of those policies——

Mr. MCCLINTOCK. And we wonder why they don't do quite as well in the natural environment, and yet even so, tens of thousands return every year to spawn.

Mr. POOL. Well, I agree that there is concern about those fins. They have to pull the fin, and it is perfectly safe to remove, and that is where most of the marking of the fish takes place.

Mr. MCCLINTOCK. Well, in Alaska, the marking is done simply by varying nutrients that does not require any mutilation, and those fish seem to get along just fine.

Mr. POOL. A lot of fish get along fine if they have the ability to reproduce, and spawn, and migrate. Salmon will recover quickly if the conditions are good for them.

Mr. MCCLINTOCK. And again we want to see an abundance of salmon. We want to see healthy, thriving salmon populations as well. What struck me as being bizarre was to discover that the huge populations being produced by these fish hatcheries are simply ignored in the counts for Endangered Species Act population counts, as well as in mitigation to assure that we do have large abundant thriving populations. And again that is the objective that we are after. Mr. Keppen, and Mr. Semanko, and Mr. Noble, I have one question and if each of you could take a 30 second whack at it. There are a lot of water users that we are hearing from that believe that the Obama Administration has come up with proposed rules called the Principles and Guidelines That Govern New Water Infrastructure Construction, and that are going to stack the deck against new water storage. What are your views on these policies? Just very briefly in 30 seconds.

Mr. KEPPEN. I will take a crack at it. In a nutshell, the old traditional analysis that they used to figure out if a water project was viable or not was kind of a cost benefit sort of approach.

This factors in the environment. So the environment has to be looked at with the same sort of attention. I guess our concern is the environment issues might be elevated above other issues, and that is kind of the language that you see in the draft rules right now.

Mr. MCCLINTOCK. Mr. Noble.

Mr. NOBLE. Mr. Chairman, I agree with Mr. Keppen. The risk that is being run by these guidelines is that we are going to elevate as the Endangered Species Act has the environment and the envi-

ronmental uses threatened the endangered species above human consideration, without giving the flexibility to deal with the issue.

Mr. MCCLINTOCK. Mr. Semanko.

Mr. SEMANKO. The only thing I would add, Mr. Chairman, is that these projects are projects largely that Congress has decided to authorize, and they are already subject to NEPA, and ESA, and the Clean Water Act, and all these things. And what you are doing potentially through the principles and guidelines is inserting the substitution of judgment for what Congress has decided, and intruding Congress' areas. That is one of the things that we are concerned about.

Mr. MCCLINTOCK. Great. Thank you. Ms. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair, and I would start off with a clarification for the record. That the NOAA salmon biological opinion is not under reconsultation, and the science has been upheld by the National Academy of Sciences, and that is for the record.

Now, Mr. Noble, in your testimony, you mentioned that Reclamation currently has programs in place to assist canal safety. How do we ensure that the reclamation of water canals is safe, and that another canal breach like the one in Fernley, Nevada, will not happen again?

Mr. NOBLE. Congresswoman Napolitano, canals and levees are not designed or built to fail. But I am not sure that there is any program that can guarantee that they won't. Currently, Reclamation has introduced an aggressive program following Public Law 111-11 to inspect canals in urban areas, and the experience that we have had with those inspections is that they are thorough and detailed, and are looking at issues that present the greatest risk.

Mrs. NAPOLITANO. Thank you. Mr. Scholl, you mentioned in your testimony that a culture collaboration is necessary in solving our environmental concerns, while preserving industry.

There are others who believe that removing all regulations would be the solution. Do you believe that removing all regulations would solve all of our Ag problems?

Mr. SCHOLL. No.

Mrs. NAPOLITANO. Why?

Mr. SCHOLL. Well, some of the reasons that I stated in my testimony, if you talk to farmers, and I think they understand that there needs to be rules and fair play. There are certain standards, or minimum standards, that need to be met.

And lots of times, I think we have concerns in the farming communities ourselves. There are issues that we need to make sure that there is somebody there to make sure that the environment is clean, and that fair play is taking place.

But again as I said in my statement, I think what we do from there is really the critical issue. You know, kind of the approach that we have taken to addressing point sources doesn't necessarily work for the way that we deal with non-point sources.

Particularly when you are dealing with a group of people who have a lot of self-interest in making sure that they take steps, and take actions, to make sure that the environment is protected.

That is really the part that we think the focus needs to be on, and that changes could be made.

Mrs. NAPOLITANO. Thank you. Mr. Pool, during 2009 and 2010, what percent of fishermen were put out of work?

Mr. POOL. 100 percent. People talk about 40 percent. We had 100 percent unemployment, and I know hundreds and hundreds of people that still have found no employment.

Mrs. NAPOLITANO. And so your economy has suffered?

Mr. POOL. The economy has suffered tremendously.

Mrs. NAPOLITANO. Thank you, sir. Go ahead. OK. Mr. Orme, you mentioned Tribal trusts responsibilities, including water right settlements. Why is it important to settle Indian water rights?

Mr. ORME. Representative Napolitano, it is important to give certainty to all water use sectors. Certainly my experience in Arizona has been that until you determine the Native American water rights in any particular adjudication, it is really hard to know what anybody else will have, given in most cases their winter rights claims.

So it is important to settle Indian claims where you can to provide the certainty for what water is available to meet other claims within an adjudication and settlement.

Mrs. NAPOLITANO. Are Native Americans good stewards of water?

Mr. ORME. I don't represent any Native Americans myself. My irrigation districts are adjoining to several large reservations, the Gila River Indian Reservation, and the Tohono O'odham Reservation, and as far as I am aware of, those Tribes do a good job with their water resources.

Mrs. NAPOLITANO. Thank you. Mr. Keppen, in your testimony, you say that Federal agencies should work collaboratively with stakeholders to find realistic solutions that benefit both fisheries and local economies.

Do you believe the Klamath settlement agreements are an honest and cooperative effort to achieve by all affected parties realistic locally developed solutions in that area?

Mr. KEPPEN. Well, I would say yes, and primarily based on my own experience, because again I used to run an association at a time when we were suing the Tribes, and the Tribes were suing us. We were attacking each other in the papers. Just the amount of conflict and the money that was just thrown down the drain because of that——

Mrs. NAPOLITANO. And who benefitted from that?

Mr. KEPPEN. I have no answer, Congresswoman.

Mrs. NAPOLITANO. The attorneys.

Mr. KEPPEN. And so I guess relatively speaking, what I see now is improved relations between some of those parties, and for me, I am not a big fan of litigation. No offense to my fellow attorneys up here. I am not an attorney by the way like these guys.

I feel that there has just been an improved relationship. Some people are actually trying to work together collaboratively, instead of lobbying and suing each other.

Mrs. NAPOLITANO. Let's do that here in Congress.

Mr. KEPPEN. I think that it is a pretty good example.

Mrs. NAPOLITANO. We should do that here in Congress, too. Thank you, Mr. Chairman.

Mr. MCCLINTOCK. You are welcome, and last but not least, Mr. Costa.

Mr. COSTA. Thank you very much, Mr. Chairman. Again, I think it is a false choice to be putting salmon against farmers. The fact is that we need successful, sustainable ability to farm, as well as to fish.

And my problem has been that too often this is where the discussion and the debate ends up. We have a water system in California that was designed for 20 million people, and we have 38 million people today, and we are going to have 50 million people by the year 2030.

Unless we stop litigating and arguing about salmon fish versus food, versus farm workers, versus farmers, we are not going to solve the problems, and so we have to fix the problems in the Delta.

Mr. Keppen, the 2010 National Academy of Sciences report—it is a preliminary report—and the final report is not done yet, entitled, Scientific Assessment of Alternatives for Reducing Water Management Effects of Threatened and Endangered Species in the California Bay-Delta, found general conceptual support for the aspect that the biological opinions. But didn't the National Academy of Sciences criticized specific management measures as not being well supported?

Mr. KEPPEN. Yes, Congressman Costa, and I think before you arrived, we discussed this briefly.

Mr. COSTA. Then let me go on, because I don't want to repeat that.

Mr. KEPPEN. Sure.

Mr. COSTA. In listening to the river report that the Department of the Interior did in 2008, they again indicated that the reasonable and prudent alternatives were not working in the best science.

And in particular regarding the Delta Smelt Biological Opinion, the National Academy of Sciences found that there is substantial uncertainty regarding the amount of flows that should trigger reduction in exports on page 5. Isn't that correct?

Mr. KEPPEN. Yes.

Mr. COSTA. And the National Academy of Sciences found that a historical distribution of smelt in which the restrictions on exports were based no longer exist?

Mr. KEPPEN. That is my understanding, yes.

Mr. COSTA. And with respect to the salmon biological opinion, the National Academy of Sciences concluded—and this is where I guess I take issue with my colleague—that the effectiveness of reducing exports to improve salmonid survival is less certain, and that the rates of the export have a weak influence on the survival rates, and that I believe was on page 59.

The final criticism of the two biological opinions expressed by the National Academy was a lack of quantitative analytical framework that ties the two biological opinions together within the species, between both smelt and salmonid.

This type of systematic, formalized analysis, was we believe necessary to determine an objective opinion on the actions based upon the reports the report found to be a serious deficiency, Mr. Keppen. Have you seen that sort of deficient analysis employed in areas of restrictions on the project operations?

Mr. KEPPEN. Yes, Congressman. Again, I would point to Klamath. The Klamath and Central Valley Project issues are very similar, and I think both reports identify that the National Academy put together, identify the need to do a holistic sort of approach, and look at all the stressors in the watershed.

Mr. COSTA. Do you believe that when we look at the regulatory framework that agency biologists often times claim preconceived, unsubstantiated beliefs about the effects of water projects on this?

Mr. KEPPEN. You know, I do in some cases, and I think there are a lot of reports out there that have looked for some sort of a statistically significant relationship between exports and like salmon smolt survival.

And each report kind of concludes that the relationship cannot be established, but the agency biologists continue to say that it is in there, but just masked by other data.

Mr. COSTA. They just have not found it?

Mr. KEPPEN. Right. There are reports out there, and I can provide you with a list of those reports.

Mr. COSTA. I mean, we want to see the salmon recovery. It is in our interests to see the salmon recovery, just as we want to see farmers have a sustainable supply of water. I mean, those goals should not be mutually exclusive.

The Judge said in the opinion as it related to the salmon biological opinion, that there are serious questions on whether there is support in the record for the general proposition that exports reduce the survival of salmonid in the interior Delta.

Was that not correct on the consolidated salmonid case?

Mr. KEPPEN. That is my understanding, but again I have not been real, real close to that particular situation, but that is my general understanding, yes.

Mr. COSTA. And the record is that the Judge went further on to say that the record does not support a finding that the specified flows to export ratios imposed by these actions that were necessary to avoid jeopardy, and adverse the modification of any listed species, which is why in essence we are going back to the drawing board just as they did with the Columbia River to try to get this right.

Mr. KEPPEN. That is correct, and I think—you know, Mr. Semanko might want to weigh in on the issues on the Columbia, but again that is another project that comes to mind.

And to get back to your earlier question of an area where it seems that the agencies focus usually just on irrigation flows or dams, and a lot of times these other stressors aren't reviewed.

Mr. COSTA. I guess the real debate, Mr. Chairman, and my time is expired, but let me just close on this note, is that we have a difficult time coming to agreement when we talk about the most multiple stress factors, and in this case, in the Sacramento and San Joaquin River Delta System, as to trying to accurately determine which of those stress factors are associated to the loss in the case of the salmon or the smelt.

We know that they are all impacting them, but there is serious disagreement as to what degree certain stress factors over other stress factors are causing the decline.

Mr. MCCLINTOCK. Thank you. Mr. Garamendi.

Mr. GARAMENDI. Thank you, Mr. Chairman, and Mr. Costa, for really raising this issue. What was being discussed here in the last few moments is really the science, not the regulations that require the science to be done.

And I think we need to be pretty clear about exactly what we are talking about here. Clearly the science is and the Judge found it to be inadequate, and back to the scientific drawing board to see if we can get a more accurate description, or a more accurate understanding of the science.

But again the regulations that are in place protecting the species are not being called into question here. What is being called into question is the science that follows that is to deal with those regulations.

And I agree that we ought to follow the science. We ought not short-circuit the science at all, and I agree with Mr. Costa and others that there are multiple stressors in the Delta.

As I said a few moments ago, some of those are caused by the Delta farming interests themselves, and we are working to clean that up, and undoubtedly the Delta—and I live in the Delta, and farm in the Delta.

We will be hammered if we continue to dump pesticides or other bad things into the water, as we should, but again it is not the regulations. The question is about the science and the adequacy of the science.

And an issue that I would like to move to is the storage issue. Now, this is really important, and for all of the west, the storage of water is important. Many studies on storage are underway as we speak, and some projects are underway.

I believe the Los Vaqueros Reservoir will begin as soon as the rains stop, which is hopefully not soon. But nonetheless that will be done. I asked Jim a moment ago, Mr. Costa, about the Temperance Flat. I would hope that study proceeds, and we will out the issues there.

I know that there is a hydroelectric power issue there, and there are also some environmental issues, as well as the effect that it may have on the San Joaquin itself. Other storage sites and other storage reservoirs, we ought to proceed with those studies, all of them, including the underground water storage potential throughout California.

We do need storage, and we ought to proceed with those. Ultimately, we are going to have to deal with the costs of those systems and who is going to pay for it. But I would urge this Committee, in every case possible, to push the storage studies along so that we understand completely the benefits, the costs, and whatever the issues are involved in those.

Mr. COSTA. Would the gentleman yield?

Mr. GARAMENDI. Sure.

Mr. COSTA. I just want to underline your point there, because this year, with 165 percent of snowpack, and we have record runoffs. We have flooding in California. Yet, Southern California is getting under the State Water Project like 70 percent of their allocation.

My westside area was receiving 55 percent until this week, and then they moved that to 65 percent. But the ability to plan, it gets

back to a broken water system, and when you have great snow years and rain years like this year, you know that we need to do a better job on our storage, and in our water supply. I thank the gentleman for yielding.

Mr. GARAMENDI. Well, you covered that point well. I just want to wrap up on the Delta here. The Delta is in deep trouble for a variety of reasons. The aquatic species in the Delta are in deep, deep trouble. There are a variety of reasons.

It is incumbent upon all of us for the purposes of the economy, of the Delta, of the fishing economy, as well as the agricultural economy, that we proceed with considerable speed and attentiveness in including money for the studies to get the science right.

And to do the very best that we can to understand the stressors, all of them, and to mitigate those that are possible to mitigate. It is of utmost importance for everybody involved.

Again, it is not the regulatory system. That sets the parameters. It is the science underlying it that we need to really be busy about. With that, I guess I didn't ask a question, but Jimmy, thanks for your help. Excuse me, Mr. Costa, thank you for your help.

Mr. MCCLINTOCK. I believe that concludes all the time that we have allocated for questions. I would like to thank all of our witnesses for their valuable testimony. Members of the Subcommittee may have additional questions for witnesses, and we would ask that you respond to those in writing, and the hearing record will be open for 10 business days to receive those responses, and if there is no further business, then without objection, the Subcommittee stands adjourned.

[Whereupon, at 4:08 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

[A statement submitted for the record by Doug Headrick on behalf of the Santa Ana Sucker Task Force, follows:]

Statement submitted for the record by Doug Headrick, General Manager, San Bernardino Valley Municipal Water District, on behalf of the Santa Ana Sucker Task Force

Chairman McClintock and Members of the Committee, thank you for this opportunity to submit testimony for the record. My name is Doug Headrick, and I am the General Manager of the San Bernardino Valley Municipal Water District. I am contacting you today as a representative of the Santa Ana Sucker Task Force, a group of thirteen water agencies, flood control districts and cities from Southern California who have banded together in the face of regulatory overreach by the US Fish and Wildlife Service. The Task Force agencies serve almost three million Southern Californians and cross numerous Congressional districts. Member agencies of the Task Force are: San Bernardino Valley Municipal Water District, Western Municipal Water District, City of San Bernardino Municipal Water Department, City of Riverside Public Utilities Department, San Bernardino Valley Water Conservation District, East Valley Water District, City of Redlands, Yucaipa Valley Water District, Bear Valley/Crafton Water Companies, Riverside County Flood Control District, and Big Bear Municipal Water District.

The USFWS, under heavy political and legal pressure by the Center for Biological Diversity, recently set aside their own carefully defined designation of the critical habitat of the Santa Ana Sucker and has now expanded the territory into areas that guarantee dire economic consequences for our communities. Worse, the addition of these new areas is not supported by the known biology of the species. This situation is the subject of my testimony.

Background on the Santa Ana Sucker and the Task Force:

The Santa Ana Sucker is a small fish that lives in the Santa Ana River and has been listed as a Threatened Species under the Endangered Species Act since 2001. The fish has been the subject of much regional concern and has been protected for over ten years by the state of California and local agencies under a Species Management Plan. Members of our Task Force have worked with Fish and Wildlife to study the fish and monitor its progress, and many of us have spent great sums of time and money doing so. We all recognize the important role that we play in protecting the delicate ecosystems of Southern California, and we do so willingly.

In 2005, the USFWS established an area of Critical Habitat for the fish, a process which my agency and many others in the Task Force participated in and remember well. At the time, the Service proposed that a very broad region be included in the designation. Ultimately, they decided not to designate the dry upper Santa Ana River areas as critical habitat, finding that these areas were not, and I quote, "essential to the conservation of the species" and that the enormous costs to the Inland Empire's economy far outweighed any benefits to the species. Our water agencies have subsequently been successfully conserving the Santa Ana Sucker, and will continue to do so. Our efforts have included working with the California Department of Fish and Game to fund the efforts of the Santa Ana Sucker Conservation Team to recover and restore its habitats. In addition, we have clearly and repeatedly expressed to the USFWS our willingness to cooperatively design and protect habitat for the Santa Ana Sucker because we care about the health of the fish.

After the 2005 process concluded, everyone in the region considered the issue to be well-settled. My agency and many others undertook long-term planning for construction of infrastructure and water supply projects which are critical to our region. However, in December 2009, the USFWS announced that they would revise the Critical Habitat. This was done without giving any scientific or economic rationale for doing so. Certainly, nothing in the biological data showed the species to be in decline, and the USFWS has not produced any such data. A legal settlement between the USFWS and the Center for Biological Diversity directed the Service to undertake a review of the Sucker's habitat, but it did not require a habitat expansion. Moreover, the lawsuit settlement did not override existing law.

The Task Force I represent today was organized in early 2010 in response to the US Fish and Wildlife Service's announcement that it would re-visit the Critical Habitat for the Santa Ana Sucker. We were alarmed at the announcement because of the lack of justification by the Service. With the USFWS' announcement of the Final Critical Habitat Designation for the Santa Ana Sucker in December of 2010, our fears were realized because the decision totally disregards the scientific and economic realities which should have been central to the agency's decision based on the requirements of the Endangered Species Act. In short, the Service did not follow its own rules or Federal law.

Problems with the Revised Critical Habitat

Allow me to underscore the fact that none of the areas that USFWS has newly designated currently or have ever supported a population of Santa Ana suckers. The Endangered Species Act requires a very high standard for the designation of unoccupied territory, specifically: that the territory be "essential" for the species' preservation. USFWS' proposed rule ignores that requirement and also ignores its prior determination that these areas were not "essential" to the preservation of the species. By contrast, the California State Water Resources Control Board recently spent considerable time analyzing the needs of the Santa Ana Sucker before granting water rights to my agency and Western Municipal Water District of Riverside County. They found that the diversion of water from the upper reaches of the Santa Ana River, where the fish has never been in evidence, would not interfere with the public trust resource of the suckers. With the recent Critical Habitat expansion, we are worried that the millions of dollars of public money invested in securing this new water supply for the benefit of those we serve are in jeopardy.

Amazingly, the USFWS has included areas of dry riverbed in the habitat for this fish. These stretches of river are periodically wet when Southern California gets a lot of rain, but they are bone dry for an average of nine to eleven months a year. No fish currently live, nor is there any evidence that a sustainable population of Suckers ever lived, in these reaches of the Santa Ana river. Members of the Committee, I am an engineer by training, but I picked up enough biology along the way to know that fish cannot live in dry riverbeds. This represents the USFWS's greatest overreach since there is no evidence that these areas have ever been occupied by Santa Ana suckers, let alone that they are "essential" to the species' preservation.

There are some wet areas of the Santa Ana River that have been added in the revised habitat; however, they are subject to flooding and otherwise do not have the proper substrates, water temperatures or other environmental conditions needed for the Santa Ana sucker. Importantly, these creeks and the dry areas of the upper Santa Ana River are subject to periodic flooding that are an entirely normal part of Southern California's weather cycle. These floods send water and cobble stone down the river to the where the Suckers are located and fulfill its needs. A critical habitat designation is totally irrelevant since these flows are entirely natural. A habitat designation would have no meaningful impact on the volume of water or cobble involved.

Membership of the Santa Ana Sucker Task Force includes cities, water districts and other agencies that provide critical services in the region and are undertaking projects to improve the quality of life for all Southern Californians. Together, we repeatedly presented scientific and economic information to the agency and participated at every available opportunity. Unfortunately, much of this effort was in vain.

Consequences of the USFWS Decision

Members of the Committee, I would not be appearing today if it was not for the enormous water supply and economic consequences that the reopening of the Santa Ana Sucker habitat, just five years after the issue was settled, can have on the communities that I am representing here today. As you no doubt know, water is a huge issue in Southern California. In part, this is because of the impact of repeated droughts. In part, it is because Southern California's growth, 70% of which is simply the natural increase of births over deaths in our families with 2.1 million more people expected to live in the inland area between 2008–2035.

Taking a very broad view of the problem, this decision aggravates the water shortages currently being experienced in the entire state of California and the Southwest region of our nation. Restrictions on drawing water from the Delta have a widespread effect, and one of the most effective methods of compensating for reduced Delta water supplies is the creation of reliable local water supplies.

The expanded Critical Habitat for the Santa Ana Sucker directly opposes our efforts to capture stormwater, recharge our basins and reduce our reliance on imported water. Member agencies of the Task Force want to undertake water recycling projects, desalination efforts and flood control projects which will expand our supplies of local water and recharge our depleted groundwater basins. We know that these projects will save money for our customers and make our communities drought-proof while reducing pressure on the Sacramento—San Joaquin Delta. The Critical Habitat designation will prohibit important projects from going forward. Here, it is important to understand that the dry, ephemeral reaches of the upper Santa Ana River are where those of us concerned about water supplies have worked for years to capture and conserve water that our periodic rainfall would normally send to the Pacific Ocean. For a century, this dry riverbed has been the site of spreading basins where some of our mountain runoff is captured, allowing it to seep into an underground aquifer, equivalent in size to Lake Shasta. If this area becomes habitat, access to this historical local supply of water will be lost.

Meanwhile, several years ago Congress financed the Seven-Oaks Dam on the Santa Ana River to provide downstream protection from what the Army Corps of Engineers called the greatest risk for catastrophic flooding west of the Mississippi River. This opened the possibility of storing some mountain runoff behind the dam, further increasing local water supplies. Together with monies from our local agencies, Congress authorized spending to alter the dam's design for that purpose. The California State Water Resources Control Board later spent considerable time analyzing the needs of the Sucker and granted rights to this "new" water to our local agencies. They found that capturing this water would not harm the Sucker since it came from areas where the fish has never existed. Also, they found that it would not harm the Sucker since natural water and cobble moving flows below the dam were sufficient to satisfy its needs. Should the habitat expansion be granted, our rights and access to this water would be nullified...violating Congress's clear intention.

Loss of the water from these two efforts, plus several others by local agencies working in the normally dry, ephemeral upper reaches of the Santa Ana River added to the Sucker habitat, would mean the loss of up to 125,800 acre feet of water a year to the Inland Empire. If it could be replaced, the 25 year cost would be $2.87 billion. If local taxpayers could put aside money today to buy this water, using a 3% interest rate that is logical in today's economy, the cost would be $1.87 billion. Fish & Wildlife used several tricks to have their economists lower this number, such as using an unrealistic 7% rate. Still, they ended up with a $694 million present

day cost to local taxpayers. All this for the inclusion of a dry habitat zone that has nothing truly to do with helping the fish.

Worse by far, however, is the fact that it is highly unlikely that the 125,800 acre feet of local water that would be lost could be replaced at any cost. Thus, in March 2011, with California's snow pack at 165% of normal, the State Water Project estimated that it will only be able to supply its regional water agencies with 70% of their current water allocations. In recent years those shares were 50% in 2010, 40% in 2009, 35% in 2008 and 60% in 2007. If we need more water from the State Water Project, we will very likely not be able to get it.

California law mandates that local water agencies must certify a 20 year supply of water before any major residential, retail, office or industrial project can be built. The San Bernardino and Riverside region, with a current unemployment rate of over 13%, desperately needs economic development. When that law is combined with the restricted flow of water to Southern California because of the Delta Smelt situation and the restriction of the Inland Empire's local water supply with the Santa Ana Sucker, we come close to having the Endangered Species Act control growth and economic activity in Southern California. Despite that chilling result, and the fact that this issue was repeatedly raised with Fish & Wildlife, their economic analysis of the proposed expansion of the Sucker habitat did not even evaluate this issue. Yet, the impact would run into the billions and billions of dollars.

Next steps for the Task Force:

Right now, our Task Force is undertaking a thorough review of the ruling that the designation should be expanded into areas that will harm our economy, but do nothing for the Santa Ana Sucker. After that review is completed, the Task Force will file a formal notice with the Service outlining the deficiencies in their decision. From the point of that filing, the USFWS will have 60 days to either make changes to the Critical Habitat designation or leave it the same. The Task Force remains hopeful that the agency will consider all of the relevantscientific and economic information during this next phase of the process. In the meantime, I ask the Committee to please undertake an active role in oversight of the USFWS and its use of the Endangered Species Act as a regulatory tool.

[A statement submitted for the record by David Modeer, General Manager, Central Arizona Project, follows:]

Statement submitted for the record by David Modeer, General Manager, Central Arizona Project

As General Manager of the Central Arizona Project (CAP), I thank Chairman McClintock, Ranking Member Napolitano, and other members of the Committee for the opportunity to submit for the record written testimony for the Oversight Hearing on "Creating Abundant Water and Power Supplies and Job Growth by Restoring Common Sense to Federal Regulations." Our goal at CAP is to provide a reliable and sustainable supply of Colorado River water to cities, industries, farms, and Tribal users in a service area that includes over 80 percent of the state's population. We have successfully achieved this goal for the past 25 years.

Background

The Central Arizona Project, constructed by the Bureau of Reclamation (BOR) for the State of Arizona, is a multi-purpose water resource development and management project that delivers Colorado River water into central and southern Arizona. The largest supplier of renewable water in Arizona, the CAP delivers an average of over 1.5 million acre-feet of Arizona's 2.8 million acre-foot Colorado River entitlement each year to municipal and industrial users, agricultural irrigation districts, and Indian communities. The CAP meets approximately 50 percent of municipal demand within its service area, including 45 percent of the City of Phoenix's total water demand and nearly 80 percent of the City of Tucson's water demand by the year 2020. In addition, 47 percent of the long-term CAP entitlement is dedicated to Indian Tribal use, while 41 percent of current CAP deliveries support non-Indian agricultural production.

These supplies of renewable water are integral to the economy of the State of Arizona and to the economies of the Navajo Nation, the Hopi Tribe, and other Native American communities. CAP has also helped the State of Arizona meet its water management and regulatory objectives of reducing groundwater use and ensuring availability of groundwater as a supplemental water supply during future droughts.

CAP infrastructure includes a 336-mile-long delivery system with 14 pumping plants and one combination pumping/generating facility; 10 siphons that carry water under riverbeds and washes; three tunnels; over 45 turnouts that connect the CAP aqueduct with consumers' systems; a large storage reservoir; and a state-of-the-art control center. The Central Arizona Water Conservation District (CAWCD) was established in 1971 as the state agency that manages and operates the CAP system, collects revenues from ratepayers and, since substantial project completion in 1993, repays the federal government for the reimbursable costs of construction.

The Colorado River Basin Project Act allowed the federal government to participate in the non-federal Navajo Generating Station (NGS), near Page, Arizona, to provide power for pumping CAP water as an alternative to building additional dams on the Colorado River. Construction of NGS was the result of an environmental compromise brokered by then-Secretary of the Interior Stewart Udall. In addition to providing CAP pumping energy, NGS also provides electricity to retail customers in Arizona, Nevada and California. BOR's share of NGS' annual output is 24.3 percent, or 546,750 kilowatts per year for the benefit of CAP.

NGS was constructed by the Salt River Project Agricultural Improvement and Power District of Arizona, now part of the Salt River Project (SRP). In addition to BOR and SRP, other participants in NGS are NVEnergy (formerly Nevada Power Co.), Tucson Electric Power Co., and Los Angeles Department of Water and Power.

CAP maintains an ongoing, constructive dialogue with BOR and other federal agencies, including the Environmental Protection Agency, to discuss issues of mutual interest and concern. CAP also works closely with its customers regarding their needs and concerns. Our ongoing focus includes collaborative efforts to:

- Manage water resources sustainably in partnership with CAP customers, BOR, the Colorado River states, and others to assure long-term, affordable supplies of water;
- Maintain access to critical energy supplies, including working with the NGS participants and others to reduce air emissions and explore clean-energy options for the future;
- Work with Tribes and others, as appropriate, to fulfill provisions of Indian water rights settlements; and
- Collaborate with other agencies on data- and information-sharing on water quality issues facing the Lower Colorado River.

Critical Regulatory Issues—Water and Energy

Energy Needs: To deliver water to its customers, CAP moves over 500 billion gallons of Colorado River water over 300 miles and nearly 3,000 feet uphill. Moving water across this distance and up this elevation requires approximately 2.8 million megawatt hours of electricity, making CAP the largest end user of electricity in Arizona. Nearly all of CAP's power is derived from the coal-fired Navajo Generating Station near Lake Powell; the plant is essentially the sole source of power for pumping CAP water.

Regulatory Issues: NGS is near numerous national parks, monuments, and wilderness areas, and controlling plant emissions has been and still remains a priority for CAP and the plant participants. Pursuing that commitment, in the1990's NGS participants invested over $400 million in scrubbers to reduce sulfur dioxide emissions. In 2008, the plant began voluntary installation of additional environmental controls to reduce smog-forming nitrogen oxide (NO_x), with completion expected by the end of 2011. The low-NO_x burners with separated over-fire air (LNB/SOFA) will cost approximately $45.2 million for installation on all three units at NGS. This price tag translates into expected increases in CAP energy rates of about 1 percent.

Despite these ongoing investments in air quality improvements, NGS is now the focus of additional proposed regulatory requirements. The U.S. Environmental Protection Agency (EPA) is in the process of setting new rules to control NO_x emissions at coal-burning power plants, including NGS, under the Regional Haze Rule of the Clean Air Act.

Potential Regulatory Impacts: While EPA is looking at low-NO_x burners such as those currently being installed at NGS, the agency is also considering a different control system known as Selective Catalytic Reduction (SCR). In comparison to the low-NO_x technology, the SCR system (including baghouses), has a potential price tag of over $1 billion, as much as 20 times the cost of low-NO_x burners. If SCR is required at NGS, CAP energy rates could climb 33 percent higher than 2010 rates (or even higher if financing of less than 20 years is required). These higher energy costs would affect water rates for the majority of Arizona's population. Agricultural water users, both Indian and non-Indian, would be particularly hurt by these higher rates. *(For more details on this analysis, see the attached letter from CAP to EPA*

dated November 22, 2010; for additional background, please also see the attached letter from CAP to EPA dated December 18, 2009).

Impacts from such regulatory requirements extend beyond the increased costs for energy and water. As authorized by the Congress, NGS power not used for CAP pumping is sold to help repay CAP construction costs and to help fund Arizona Indian water rights settlements. These amounts are not trivial. Revenues from the sale of surplus NGS power now contribute about $22 million per year toward the $57 million in annual repayment obligations for the CAP. In the future, revenues from the sale of surplus NGS power are expected to contribute $50 million or more per year toward CAP repayments and toward Indian water rights settlements.

The extremely high costs of the SCR/baghouse option could jeopardize continued operation of the NGS facility, with severe economic impacts to CAP users and to the Navajo Nation and the Hopi Tribe. Because a number of critical uncertainties face the Navajo plant, including the renewal of land and water leases and future federal air quality regulations, a near-term requirement to install SCR at Navajo could raise the specter of plant closure. Rather than risk a huge investment in retrofitting the plant with SCR technology prior to the resolution of these uncertainties, NGS participants could decide simply to close the plant and meet their energy needs through other means. As a consumer of NGS power rather than a retail marketer CAP, however, would be catastrophically impacted by closure of NGS, as would be Arizona Indian tribes.

- Should the NGS facility cease operations, CAP would have to acquire a substitute source of pumping power at market rates. Using several forecasts, CAWCD estimates that, CAP pumping energy costs could increase by 50 to 300 percent (rising from $65 per acre foot to $95—$180 per acre foot) by 2017.
- NGS employs 545 full-time employees, nearly 80 percent of whom are Navajo. The Kayenta Mine, which supplies coal to the plant, employs another 422 tribal members. In 2010, the power plant and mining operations contributed $137 million in revenue and wages to the Navajo Nation and its tribal members and $12 million annually (88 percent of the Tribe's annual operating budget) to the Hopi Tribe.
- Arizona tribes that have accepted delivery of CAP water in lieu of pursuing their claims to other water rights could find their newly-developed agricultural operations uneconomical.

Collaboration and Information: The CAP, along with other interested stakeholders, has participated since January 2011 in a series of collaborative dialogues to identify reasonable solutions that would: 1) meet the energy needs of CAP so that the project can fulfill its mission of providing affordable and reliable water supplies to Arizona and Tribal communities; 2) result in continued reductions in regional haze; 3) uphold provisions of the 2004 Arizona Water Settlements Act; and 4) expand clean energy opportunities, including use of renewable energy. To date, these discussions continue but have not resulted in a consensus solution.

In addition, the Department of the Interior, working with the National Renewable Energy Laboratory, has proposed to undertake a study of energy infrastructure development within the Colorado Plateau region of the Hopi and Navajo Reservations and possible options for use of renewable energy to meet CAP pumping energy requirements and other needs. The CAP supports initiation of this study. Pumping of CAP water requires large amounts of baseload power to meet the project's 24/7 operational requirements. Despite many efforts by CAP to identify alternative sources of energy to meet its needs, no options exist now or in the immediate future of sufficient scale to supply those baseload needs. This proposed study could provide critical information and analysis to assist the CAP in evaluating and planning for future energy needs.

Improving Water Reliability and Sustaining Water Quality

While facing numerous challenges as it strives to maintain a viable energy supply, CAP has actively invested in technologies and processes to improve water supply reliability, increase system efficiency and reduce system losses. These efforts include construction and operation of additional storage along the Lower Colorado River system to capture previously non-storable water ordered but not delivered to users as a result of changes in irrigation schedules. Through the 2010 completion of the Brock Reservoir along the All American Canal, funded by CAP along with the Metropolitan Water District of Southern California and the Southern Nevada Water Authority, more than 70,000 acre-feet of water per year will be saved, improving operational efficiency and reducing the impact of any periodic water shortages during droughts. Building upon analysis from a 2007 Drought Impacts Study, CAP also has developed plans to recover water stored underground for use in times of Colorado River supply shortages.

In 2007, the seven Colorado River Basin States and the Bureau of Reclamation completed an agreement, the Shortage Sharing Guidelines, identifying steps to be taken should a shortage situation arise, including provisions to coordinate operations and storage at Lake Powell and Lake Mead. Water professionals throughout Arizona and the Basin states have spent many years developing infrastructure, programs, and practices to make the water supply system more resilient to changes in variable water levels. Examples include making efficiency improvements to the Colorado River delivery system; developing ways to reuse water and increase supplies; and treating agricultural drainage water for reuse. Careful CAP system design limits annual evaporation to 4.4 percent from the aqueduct.

As a service to its municipal and industrial customers and the millions of people who ultimately drink the water, CAP employs a comprehensive water quality testing program.

These accomplishments underscore CAP's commitment to sustainable water management that meets the needs of Arizona, Tribes, and the Nation. I welcome the opportunity to discuss these issues with the Subcommittee and invite you and other members of the Subcommittee to visit the Central Arizona Project at an appropriate time.

Attachments

1. Letter to Mr. Jared Blumenfeld, Regional Administrator, Region 9, U.S. Environmental Protection Agency, dated November 22, 2010
2. Letter to Ms. Colleen McKaughan, Associate Director, Air Division Region IX, U.S. Environmental Protection Agency, dated December 18, 2009

[NOTE: Attachments have been retained in the Committee's official files.]