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Testimony Before the
Committee on Energy and Natural Resources
United States Senate

Legislative Hearing
On
S. 2563 – "Water Supply Infrastructure and Drought Resilience Act of 2018"
S. 2560 – "Reclamation Title Transfer Act of 2018"
S. 2539 – Reauthorization of Colorado River System Conservation Program

March 22, 2018

Dear Chairwoman Murkowski and Ranking Member Cantwell:

My name is Patrick O'Toole, and I serve as the President of the Family Farm Alliance ("Alliance"). The Alliance advocates for family farmers, ranchers, irrigation districts, and allied industries in seventeen Western states. The Alliance is focused on one mission – To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers.

The Family Farm Alliance appreciates the opportunity to testify on these three bills today. The bulk of our testimony will focus on the "*Water Supply Infrastructure and Drought Resilience Act of 2018"* and the *"Reclamation Title Transfer Act of 2018"*, which contain elements that our organization has been advocating for over the past decade. We encourage the Committee to move these important bills – with some suggested minor modifications – forward to enactment. I will also provide brief commentary on the bill that would reauthorize the Colorado River System Conservation Program.

Personal Background and Experience with Water Development

I have served on the Family Farm Alliance's Board of Directors since 1998 and was named as the organization's President in 2005. I am also a former member of Wyoming's House of Representatives. I presently serve on the Advisory Committee for AGree, a national agricultural policy group, and work closely with both the Intermountain Waterfowl Joint Venture and Partners for Conservation.

My family has a strong background in irrigated agriculture and our 125-year old ranch (Ladder Ranch) located near Savery, Wyoming produces cattle, sheep and hay. My family and Ladder Ranch were the recipients of the distinguished 2014 Wyoming Leopold Environmental Stewardship Award.

Our ranch straddles the Wyoming-Colorado border and has long afforded me the opportunity to view some unique water issues first hand. I have testified before Congressional committees several times, where I have highlighted the permitting challenges I have encountered in building the Little Snake Supplemental Irrigation Supply Project (High Savery Project) in Wyoming. That project was built in less than two years, but it took more than 14 years to permit. That reservoir is now delivering water that benefits multiple uses on the Little Snake River.

Overview

In the world of Western water, a massive flood event or devastating drought is sure to get policy makers focused on the need to update and create more effective water management policy. The recent, multi-year drought in California and the arid West ramped up Congressional interest in federal legislation to allow Western water providers to better address drought as well as improve preparations for future dry times. One year ago, the heaviest snows and rains in a decade overwhelmed parts of the Western U.S. Now, a year later, many water users are nervously looking to the skies, praying for much needed precipitation amid the extraordinarily dry, spring-like weather. This further underscores the critical importance of having modernized water storage and delivery infrastructure in place to optimize our water resources management.

Many communities of the West – as well as the farms and ranches they are intertwined with – owe their very existence, in large part, to the certainty provided by water stored and delivered by the Bureau of Reclamation (Reclamation) and other state and local water storage projects. The federal government has an enduring role in water supply infrastructure development and management that, consistent with state water laws, includes working with local water managers on both a policy and operational level and, in partnership with them, providing support for their efforts to secure a stable and sustainable water supply.

The Water Supply Infrastructure & Drought Resilience Act

Title I – Water Supply Infrastructure

Subtitle A – Water Supply Permitting Coordination

This subtitle provides a critical first step towards addressing current regulatory and bureaucratic challenges that often delay or even halt the development of new water supply enhancement projects in the Western United States. These provisions seek to streamline the current multi-agency permitting processes that can delay the construction of new or expanded surface water storage projects by creating a "one-stop permitting shop" process through Reclamation. This bill sets a schedule and time lines for agencies to consult and cooperate to complete environmental compliance. This bill also allows third parties to pay the costs of such permit processing. Congress provided similar authorities to the Army Corps of Engineers in the 2014 Water Resources Reform and Development Act (WRRDA 2014), P.L. 113-121, a law that was passed in both the House and Senate on a bipartisan basis and was signed into law by President Obama.

The Alliance believes the "one-stop permitting shop" approach would expedite projects through what is typically an unmanageable and inefficient permitting process and can help to reduce the permitting costs to project applicants.

This subtitle would direct the Secretary of the Interior (through Reclamation) to serve as a central hub for all federal permits, approvals, and decisions required related to new water storage projects. This includes permits for Clean Water Act (CWA), National Environmental Policy Act (NEPA), and Endangered Species Act (ESA) compliance, among the many others. In carrying out this task, Reclamation is directed to identify all federal agencies with permitting responsibilities or authority, notify them of pending applications, and set a schedule by which all cooperating agencies must complete and submit their reviews and permits. Cooperating agencies are required to adhere to the coordinated schedule and use one unifying document for all environmental reviews. This provision is intended to significantly reduce the time, cost, and inefficiencies associated with the existing multi-track, multi-agency NEPA analyses. Currently, each reviewing agency compiles its own data and reviews it separately in a vacuum.

This subtitle also takes significant steps to strengthen the voice of Western states in the water storage project review process by allowing willing states to participate as cooperating agencies. By allowing states to be involved at their discretion, the review process could include state developed science, data, and technical materials. This subtitle also requires that, consistent with

existing law, all relevant project data be made publicly available online. Finally, in order to help make multi-purpose surface storage projects more viable in an era of tightened federal budgets, this section of the bill includes a mechanism in which non-federal public entities are allowed to contribute financially to help defray the costs of the "one-stop shop" permitting review process.

Importance of the Opt-Out Provision

We are encouraged that the bill provides an "opt-out" provision that would allow local project sponsors to proceed on a different project implementation path that has historically provided successful outcomes with another federal agency in the lead role. Meeting the challenge of expanding and modernizing the West's aging water infrastructure will require highly qualified professionals serving in both the public and private sectors. Very rarely are there “one size fits all" templates that apply to management of Western water resources challenges.

In many cases, local water agencies have long-time relationships with local and regional Reclamation engineers and managers that have led to successfully completed projects, such as the ongoing collaborative work in the Yakima Basin in Washington State, where successful water and environmental projects are being completed with Reclamation functioning as the lead federal agency.

In other cases, local entities have developed close working relationships with other federal water agencies such as the Army Corps of Engineers. In these cases, local entities should be able to continue to work with the federal agency they successfully worked with in the past for projects of this nature. To cover this range of possibilities, the "opt-out" section in the bill provides flexibility for local project sponsors to either l) engage with Reclamation in the facilitated permitting process articulated in this bill; or 2) opt-out, and proceed on a project implementation path that has historically provided successful outcomes with another federal agency such as the Army Corps in the lead role.

Either way, this subtitle could provide necessary improvements in the effectiveness and efficiency of the federal permitting process. This is necessary to provide additional water supply storage in a manner that fully complies with the requirements of NEPA, ESA, and other federal environmental laws.

Recommendation: Add Cost Estimates

The Alliance believes this subtitle could be improved by adding provisions that require the Secretary of the Interior to submit to the non-federal entity an estimate of the total cost of the federal administrative permitting process for the proposed projects and to provide a scheduled update on the actual administrative costs with an appropriate explanation of any major cost differences.

Recommendation: Add Non-Federal Projects

This subtitle should include language with a specific reference to non-federal state and local water

supply projects that could be integrated with the operation of federally owned facilities. We want to ensure Reclamation is the lead agency in the case of permitting a non-federally built storage project that has a direct federal nexus with a Reclamation project – i.e. Sites Reservoir (California)– where it will be integrated into the operation of the Central Valley Project (as proposed by the local Joint Power Authority) but remain a non-federally developed and owned facility. We would be happy to work with Committee staff to prepare specific amendment language that will address this concern.

Subtitle B – Modification of Existing Programs

This section makes a number of amendments to Reclamation's WaterSMART program. Many Alliance members are regional or local authorities that include entities with water or power delivery authority eligible for the WaterSMART program. Under current law, entities like joint power authorities that are not vested with water and power delivery authority themselves, but are composed of individuals that have such authority, seem to be ineligible for WaterSMART.

We support the bill's intent to increase eligibility for these types of entities. However, Reclamation's WaterSMART program continues to leverage small (maximum $5 million) cost-shared grants with local and state funding for water management improvements and conservation projects. This assists many local water providers – including Family Farm Alliance members – in making timely investments in their aging water delivery systems. The demand for WaterSMART program participation already far exceeds the dollars that have historically been appropriated to this program. Unfortunately, the bill intends to increase the eligibility for WaterSMART grants while at the same time holding the authorized spending levels static. This may negatively impact the program's effectiveness.

Recommendation: Larger Grants for Integrated Projects

We support expanding Reclamation's Water SMART grants to include even larger (up to $20 million) competitive cost-shared grants for water supply management projects integrated into a regional watershed plan. This could help cost share larger water conveyance and conservation infrastructure.

Recommendation: Add USDA Program Coordination

We also note that, by better coordinating federal conservation programs at the U.S. Department of Agriculture (such as the Environmental Quality Incentives Program and the Regional Conservation Partnership Program) with WaterSMART programs at Reclamation, such investments could become much more effective in constructing on- and off-farm water management improvement infrastructure.

Subtitle C – Bureau of Reclamation Transparency

Repairing and modernizing the West's aging infrastructure is a challenge critical to Reclamation and the water users served by Reclamation's aging facilities. Alliance leadership has worked extensively with Reclamation and the Congress over the past two decades in seeking to find

solutions with the White House Office of Management and Budget to discuss approaches to help finance aging federal infrastructure. These options include providing loan incentives and, perhaps, setting up a construction loan account associated with the Reclamation Fund.

Subtitle C of the bill requires the Secretary of the Interior to submit to Congress a report on the efforts of Reclamation to manage its infrastructure assets. This section would require Reclamation to publicly report on its repair needs every other year. The Alliance certainly supports the transparency and reporting requirements intended with this legislation.

Recommendation: Remove Reporting Requirements for Transferred Works

We do believe that this bill would have unintended consequences for our member Reclamation project water users. Some of our members believe that transferred works (federally-owned facilities where the operation, maintenance and replacement of these facilities has been transferred to local non-federal governmental entities, to be funded 100% at their own expense) should not be subjected to the reporting requirements of this bill.

The bill would also require a report to Congress that would describe the efforts of Reclamation to manage these facilities, standardize and streamline data reporting and processes across regions, and expand on the information otherwise provided in Reclamation's current Asset Management Reports. This provision could cause significant increased liability for nonfederal water contractors. It places Reclamation in a position of having to limit or even cease water delivery operations of a federally owned facility if such ratings were applied and the maintenance/rehabilitation activity was delayed or not implemented at all due to lack of resources.

Recommendation: Longer Term Planning Horizon

A large portion of the costs of maintaining, replacing, and rehabilitating these federal water facilities (both federally reserved and transferred works) mostly falls on the non-federal project water and power contractors. By publicly portraying these facilities as somehow not current on maintenance or replacement, these reports could actually accelerate the work on these projects to a point that may not be currently affordable to the non-federal entities on the hook for paying, in advance, these costs. The lack of any federally backed financing tools is a key contributor to the lack of affordability of such expedited projects to the local project sponsors.

We believe that a better approach would be for Congress to require that Reclamation work collaboratively and transparently with their project water and power contractors to establish planned maintenance, replacement and rehabilitation work over a ten or fifteen-year framework that could be reported to Congress on a regular basis. Also, the Alliance believes Congress should create a long-term low interest loan program similar to the Water Infrastructure Finance and Innovation Act (WIFIA) created by WRRDA 2014 for Reclamation water users to access in financing part of these large rehabilitation projects. This way, project water and power contractors can plan for long-term financing for their share of the costs of the work to be performed in a much more business-like and organized manner.

The Family Farm Alliance and other Western water interests stand poised to work to help create an improved Transparency Subtitle our family farmers and ranchers will fully embrace.

Title II – Management

Sec. 201 – Flood Control Rule Curve Adjustment

This Section would establish a pilot project to adjust flood control rule curves for Reclamation dams that meet the criteria of eligible projects and allow for certain non-federal entities to fund adjustments to these operational documents. Some of our members report that reviewing and adjusting Corps flood control curves is a steep challenge. Water users who have been working with the Corps in some cases have found it a difficult process, with the Corps very cautious about making such changes. We fully support the intent of this section. It remains to be seen how these provisions will help in getting the Corps to be more open to modifications of flood curves to enhance water storage at affected facilities.

Sec. 202 – Aquifer Recharge

This Section provides new authorities to allow greater flexibility in using Reclamation facilities and project water for aquifer recharge where it complies with state water law. We cannot emphasize enough the importance of ensuring that all activities promoted by this Section are consistent with state water laws. In Idaho, for example, recharge is conducted pursuant to decreed and/or licensed recharge water rights owned by the State Water Board and/or private recharge entities. With a few minor exceptions, recharge is conducted using these specific water rights when they are in priority.

Title III – Water Supply Certainty

Subtitle A – Water Rights Protection Act (WRPA)

Sections 301-304 would prohibit the Department of the Interior (Interior) and U.S. Department of Agriculture (USDA) from conditioning any permit, lease, or other use agreement on the transfer of a water right to the U.S. and directs federal policy to be consistent with state water law for surface water and groundwater resources. The Alliance has long advocated that solutions to conflicts over the allocation and use of Western water resources must begin with recognition of the traditional deference to state water allocation systems and laws. We have previously testified in support of the WRPA. The WRPA would protect communities, businesses, recreational opportunities, farmers and ranchers as well as other individuals that rely on privately held state-based water rights for their livelihood from federal takings. It would do so by prohibiting federal agencies from extorting water rights from non-federal entities through the use of permits, leases, and other land management arrangements, for which it would otherwise have to pay just compensation under the 5th Amendment of the Constitution.

We support this section because our farmers and ranchers rely on their vested water rights to secure operating loans in order to irrigate and produce crops and water livestock. Federal agencies should

not be able to leverage those private water rights against farming and ranching families who have long depended upon federal permits and leases to support actions like grazing.

Subtitle B – Permits for Water Transfers

The Supreme Court recently declined to review a George W. Bush-era rule exempting water transfers from Clean Water Act permits, leaving in place a lower-court decision that reinstated the policy. EPA issued the Water Transfers Rule in 2008 that excludes inter-basin water transfers from permitting requirements. Such systems are common in drinking water, irrigation, flood control and power generation infrastructure throughout the country. The rule formalized EPA's longstanding position that water transferred from one body of water to another via a pipe, tunnel or pumping station doesn't require a CWA National Pollutant Discharge Elimination System (NPDES) permit as long as there was not an industrial, municipal or commercial use along the way.

We support Section 311 of the bill, which codifies the existing CWA NPDES exclusion for the conveyance of waters of the U.S. when the transferred water is not subject to intervening industrial, municipal or commercial use. This would effectively limit any potential new level of regulation, permitting and certain litigation that could be put into place by another future Administration that could effectively hamstring the economies of states like Arizona, California, Colorado, and other Western states, where millions of acre-feet of water are delivered through inter-basin transfers every year.

Subtitle C – Endangered Fish Recovery Programs

Sections 321-322 would reauthorize the Upper Colorado Fish Recovery Program (Recovery Program) for an additional five years through the year 2023 and require a report on the program's achievements and expenditures. Recovery Program partners are recovering four species of endangered fish in the Upper Basin of the Colorado River and its tributaries in Colorado, Utah, and Wyoming, all while protecting continued water use and development in the Upper Basin to meet human needs in compliance with interstate compacts and applicable federal and state laws. The Recovery Program is a public private partnership that works together to bring these fish back from the brink of extinction. This program provides streamlined ESA compliance so that water development can proceed as fish populations recover. Water development is important to Upper Basin citizens, but it can change river flows and temperature, and block fish migration. The Recovery Program uses science and partnerships to manage those threats and support fish recovery in a way that minimizes impacts to water users, including many members of the Family Farm Alliance. We strongly support this Section.

S. 2560 – Reclamation Title Transfer Act of 2018

This important bill addresses the Reclamation Title Transfer Process and authorizes Reclamation to administratively carry out certain title transfers. The Alliance believes transferring the title to federally owned Reclamation irrigation projects to the non-federal operating entities is one of several positive means of strengthening control of water resources at the local level. In addition, these transfers can help to reduce federal costs and liability. They also allow for a better allocation of federal resources. Operational decisions are timelier, and many times are more cost effective

when made at the local level. Further, maintenance and rehabilitation of our aging federally owned facilities are more effectively financed and constructed by the local agencies currently responsible for these activities. Title transfer allows for these operation and maintenance benefits to thrive, as title ownership of these facilities is placed with the local beneficiaries and the irrigation districts involved in managing these projects for their benefit. This allows for a broader portfolio of financing alternatives for cost effective reinvestment in these facilities to be made available at the local level.

Despite these many benefits, local water agencies are at times discouraged from pursuing title transfer because the process is so expensive and slow. Environmental analyses can be time-consuming, even for uncomplicated projects that will continue to be operated in the same manner as they always have been. NEPA and the procedures required to address the transfer of real property, as well as cultural and historic preservation issues are often very inefficient, time consuming and expensive. Moreover, every title transfer currently requires an act of Congress to accomplish, regardless of whether the project covers 10 acres or 100,000 acres.

One other barrier for many title transfers in the past has been the continued use of federal project power at cost-based contracted rates to operate Reclamation projects after a title transfer. Many Reclamation projects were developed to include hydroelectric or other power sources that run pumps and other facilities at a low cost, thus ensuring that these water supply development projects have successfully and economically operated throughout their history. In many cases, these projects continue to require power at these project rates in order to remain economically viable for the farms and ranches dependent on the water supply. Many future title transfers will depend on the continuation of project power provided at current cost-based contracted rates.

As currently written, this bill would not provide further project power benefits in those instances where a project is completely transferred to a local entity. We fear this may provide a real disincentive for local interests to pursue title transfer. We look forward to working with this Committee, water users and power interests to determine if there is a better path forward to resolve this challenge.

We support the bill's provisions that ensure that Congress retain oversight of this program. It requires describing to Congress the actions taken to implement the Act and requires that a list of conveyances made or initiated under this Act be included in Reclamation's annual budget submission to Congress.

We appreciate the priority the Committee is placing on this important issue. There are many benefits to local entities and to the federal government associated with title transfer that are yet to be measured. As outlined above, we know there are irrigation districts successfully operating and maintaining transferred works in the West that are interested in acquiring title to these Reclamation owned facilities. Experience throughout the West demonstrates that when control and ownership of projects is assumed by local interests, the projects are run more cost effectively and efficiently, with far fewer items of deferred maintenance and less bureaucratic red-tape. In addition, the federal government holds title to these facilities only because federal funds were used to help construct them, and have, in many instances, long since been repaid.

S. 2539 – Colorado River System Conservation Program

Currently, the Colorado River Basin is again facing another drought year. If dry conditions continue, diminishing reservoir levels in Lakes Powell and Mead will have extremely negative consequences for water and power users throughout the watershed, including urban areas outside of the Basin that rely on Colorado River trans-basin diversions. Predicted near-term Colorado River water supply scenarios are already dire enough that drought contingency planning continues in the Colorado River Basin. These efforts may seek to emphasize demand reduction as one of the primary tools to stave off critical water shortages.

This bill would amend the Energy and Water Development and Related Agencies Appropriations Act, 2015, to reauthorize certain projects to increase Colorado River System water until the year 2022.

The Alliance in 2015 crafted a white paper articulating our principles for smart, effective management of water resources in the Colorado River Basin to help decision-makers in the Basin deal with the harsh realities of current and future water shortages due to drought and over-allocation of water to growing water demands. The driver behind the development of this paper was growing concern expressed by some of our members regarding the then-emerging System Conservation Pilot Program in the Upper and Lower Basins.

We understand that some water will inevitably move away from agricultural use in the Basin as long-term transitional strategies are developed. This is regrettable, since numerous studies and forecasts suggest that we will need to double our food and fiber output in the next 40 years to keep up with global hunger. Agriculture is also the only strong foundation for many rural communities in the Western U.S. and is vital to the economic, social and environmental health of those communities. Our members share a desire to keep irrigation water in its agricultural place of use in the rural West to the maximum extent practicable in order to ensure long-term agricultural and rural sustainability.

According to a 2015 economic report prepared by Pacific Northwest Project, the "Irrigated Agriculture Industry" predominately consists of three major sectors: agricultural production, agricultural services, and the food processing sectors. These sectors are the economic engine of irrigated agriculture. For the 17 states comprising the Western U.S. region in 2013, the annual direct household income derived from this industry is estimated to be about $70 billion. Taking into account the total direct, indirect and induced impacts of Western irrigated agriculture, the total household income impacts were estimated to be about $172 billion annually.

The direct net benefits provided by irrigated agriculture represent the opportunity costs of economic tradeoffs made in water resource allocation decisions. Opportunity costs are the values (benefits) of what you give up to pursue some other alternative. But there are other potential costs for decision makers to consider when taking into account broader economic implications from Western irrigated agriculture. These could be termed externality benefits or, if foregone, the "silent lost opportunity costs" inherent to changes to Western irrigated agriculture that are indirectly tied to the consumer spending economy. In other words, an affordable food supply provides large

blocks of disposable income to the consumer spending economy, as well as the abundance of high-quality food sources provided by Western irrigated agriculure.

While these economic policy considerations are driving many of the questions some have regarding System Conservation activities, the impacts are much different in the Upper Basin vs. the Lower Basin of the Colorado River. The Alliance recomends that the federal government continue work with the Basin states and all stakeholders in finding the proper mix of conservation of water use, demand management, and water storage in the Colorado River Basin.

Conclusion

Even though we experienced a very wet winter and spring last year, this year's dry winter will attest that there are no guarantees that the West will not experience even more intense multiple droughts in the future. In order to avoid disaster and to ensure that all reasonable water demands are met in the future, the West must begin to manage water as if every year was going to be a drought year. This will require everyone in the West to adopt a new paradigm: one that promotes wise management of our limited and valuable water resource and that protects carryover storage for future use in dry periods. This new paradigm will also mean additional investment in technology, conservation and new water storage and management infrastructure to deal with the uncertainties that lay before us. The "Water Supply Infrastructure and Drought Resilience Act of 2018" is an important step in the right direction.

The water infrastructure challenges our Nation and the West is currently facing are daunting, and they will require innovative solutions. The "Reclamation Title Transfer Act of 2018" provides a means of improving opportunities for locally-driven solutions. The infrastructure investments made by prior generations have benefited this country for over a hundred of years. Now it is this generation's responsibility to invest in infrastructure and invest for future generations.

Thank you again for this opportunity to testify before the Committee, and I stand ready to answer any questions you may have.