

Monthly Briefing

Congress Departs for Summer Recess *Key Water Business Remains Unfinished*

Congress left town earlier this month for a seven-week recess, leaving much unfinished business that awaits them when they return in September. While the House passed an appropriations bill and a Senate committee advanced drought legislation important to many Western producers, much work remains.

Come September 6, Congress will need to address the FY2017 spending bills, a possible energy conference report, and controversial measures to fight the Zika virus and address the lead crisis in Flint, Michigan.

Underlying all of this is the growing need to pass a stopgap continuing resolution (CR) to keep the federal government open after September 30.

Progress on Appropriations

So far this year, the House has passed five of the 12 annual spending bills. With the new fiscal year set to begin on Oct. 1, lawmakers will have to pass a stopgap funding bill in September. Conservatives have pressed for a six-month CR to avoid a lame-duck omnibus spending bill. Appropriators and moderates say lawmakers should finish their spending work before adjourning for the year rather than leave agencies in a fund-



Family Farm Alliance Advisory Committee Member Jeff Sutton (left) testifies before a House subcommittee oversight hearing on California water earlier this month. Other witnesses, including Alliance Advisory Committee Member Ara Azhderian (far right) look on. For more, see Page 4.
Photo Source: House Committee on Natural Resources

ing limbo for months until a new Congress takes over.

The House recently passed its version of the FY2017 Interior, Environment and Related Agencies spending bill funding the Environmental Protection Agency (EPA) and most Department of the Interior agencies, but it remains controversial and the Senate has not taken up their version of the spending bill. *See related story, Page 6).*

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Progress on Appropriations (Continued from Pg. 1)

In contrast, the Senate passed its \$37.5 billion version of the Energy and Water Development (E&W) Appropriations bill in May, but the House bill failed after 130 Republicans rejected the measure over a gay and transgender rights amendment.

“The House may bring the FY2017 E&W spending bill back to the floor in September, likely under a closed rule that would limit amendments,” said Mark Limbaugh, the Family Farm Alliance’s representative in Washington, D.C.

The E&W bill funds the Bureau of Reclamation, the U.S. Army Corps of Engineers and the Energy Department.

Energy Reform Legislation

Discussions will continue over the recess by Senate and House committee staff and Members on energy reform legislation (S. 2012) after Senate Democrats finally agreed to a formal conference committee with the House after weeks of hesitation over controversial provisions in the House version of the bill. Both the Senate and House versions of the legislation include a natural resources title along with specific energy policy and program authorizations. There is still disagreement over whether or not controversial provisions such as California drought language in the House bill (mostly considered “veto bait” by Senate Democrats) will be included in conference negotiations.

House Natural Resources Committee Chairman Rob Bishop (R-UTAH) said there is no agreement to avoid provisions that President Obama has threatened to veto in the eventual conference committee.

“I was not privy to any conversations when somebody made a deal that said this stuff will not be in or will be in,” Chairman Bishop said. “A conference is a conference. You handle it as a conference.”

Mr. Bishop has consistently stated his position that the bill needs to include measures on California’s drought and on wildfire management.

The Water Resources Development Act (WRDA) also may come up in September in either or both chambers. Both the House and Senate earlier this year reported out very different versions of WRDA from their respective committees of jurisdiction.

Western Drought Legislation

Earlier this month, the full Senate Energy and Natural Resources Committee held a brief 30-minute markup to consider 40 separate bills, 39 of which were non-controversial public lands bills that were approved by voice vote. The only bill which received a roll call vote was the “Western Water Supply and Planning Enhancement Act of 2016” (S. 2902), which was passed by a party-line vote of 12-10.

The bill was modified by an amended replacement to the original reservoir operation improvement section. The original text of this section would have directed the Interior Secretary to assure Arizona could keep conserved Lake Mead water. S. 2902 was introduced by Sen. Jeff Flake (R-ARIZONA) and as of July 14th, had five Republican cosponsors from Western states.

“The western states have been in a prolonged drought now

for several years, making it even harder to reach a resolution,” said Committee Chair Lisa Murkowski (R-AK). “I know Senator Flake has made a number of modifications to his bill – including dropping a provision on Lake Mead that California and Colorado were concerned with – and I hope

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“Western Water Supply and Planning Enhancement Act of 2016” (S. 2902)

According to Sen. Flake’s office, specific provisions of his S. 2902 would:

- Direct the re-evaluation of flood control operations to western storage reservoirs in order to use up-to-date forecasting methods and hydrology to enhance water storage;
- Direct a study by the National Academy of Sciences and an implementation plan by the Department of Interior (DOI) on how to best control water-intensive invasive species like tamarisk, also known as salt cedar;
- Encourage voluntary efforts to conserve water in order to protect Lake Mead from falling into shortage by building on an existing pilot program;
- Apply a streamlined permitting process for forest and wildland restoration efforts to help protect watersheds in critical water supply areas; and
- Ensure that DOI and the Department of Agriculture (USDA) respect state-issued water rights and abide by state groundwater laws when managing groundwater under federal lands. This language was originally introduced in April 2015 as the “Water Rights Protection Act” (S. 982) by Sens. Barrasso, Flake, McCain, Risch, and Heller, and is strongly supported by the Family Farm Alliance.

Additional provisions contained within S. 2902 are directed at the Bureau of Reclamation (Reclamation), and are intended to improve transparency of Reclamation maintenance activities, better coordinate water supply permitting activities, and streamline development of infrastructure projects. Another section of the bill would hold the federal government accountable for addressing the maintenance backlog of aging Indian irrigation projects.

Western Drought Bill Moves in Senate *(Cont'd from Pg. 2)*

that will help it garner strong support.”

Senator Flake at the hearing reported that he and Sen. John McCain (R-ARIZONA) convened meetings with numerous stakeholders in Arizona to discuss what the priorities were, in terms of combating the drought. Those priorities evolved to include Colorado River system conservation, management of national forest headwater areas, reservoir operation revisions, and management of non-native brush, like tamarisk (*see inset box, Page 2*).

Ranking Member Maria Cantwell in her statement (D-WASHINGTON) briefly commented on S. 2902, stating that she opposed the logging and water rights language, encouraging her Democratic colleagues to vote against the bill over “veto bait” provisions that have already been negotiated out of energy policy reform legislation.

“We can't solve water issues by starting a new round of water wars, or relying on old ways of doing business,” said Senator Cantwell. “So we need to modernize our policies at the federal level and work together, as our colleagues demonstrated we can do, in addressing these water challenges.”

Sen. Cantwell did express support for the Senate bill's

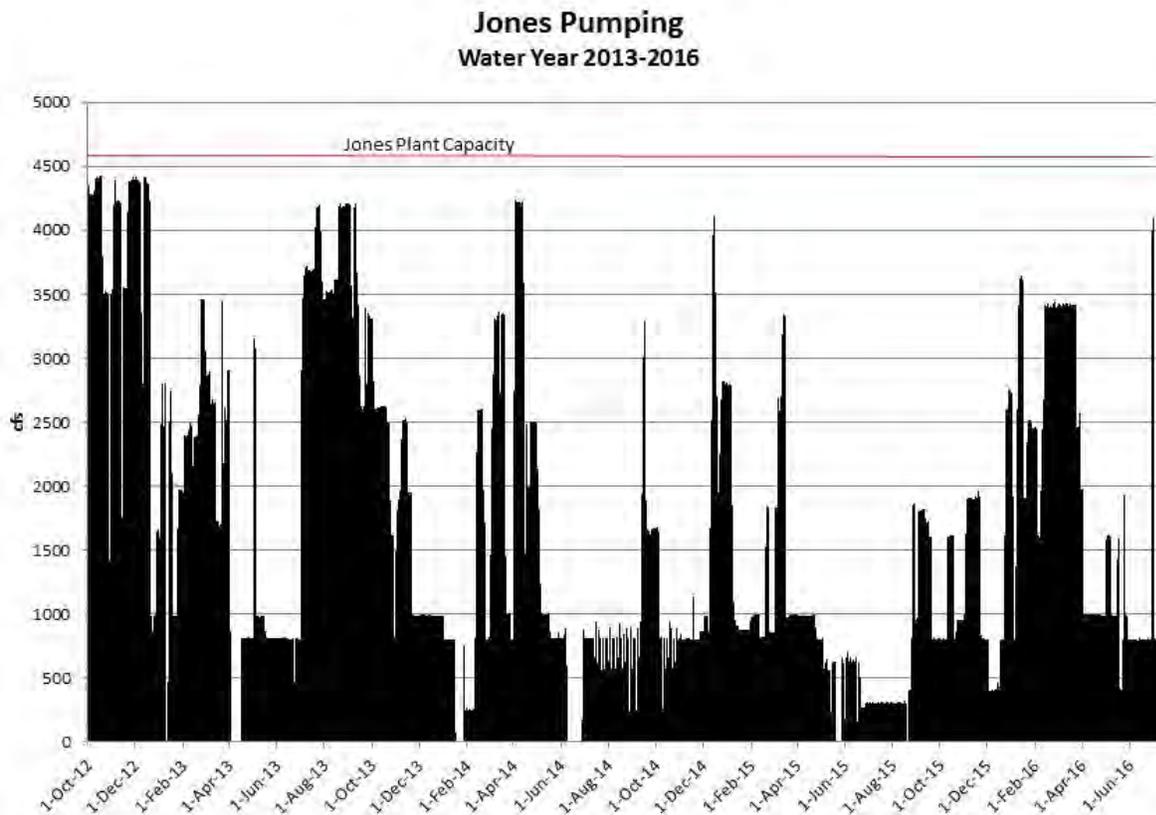
reservoir and drought provisions, citing the need for legislation to address water allocation as climate change takes its toll on the western United States.

“We are hopeful that the Western drought bill is still alive in energy talks,” said Family Farm Alliance executive director Dan Keppen. “But, the California delegation must get on the same page for any deal to be made, with this bill, or in the appropriations process.”

California Water Oversight Hearing

The House of Representatives Committee on Natural Resources Subcommittee on Water and Power conducted an oversight hearing earlier this month on federal agency management of water in California's Central Valley. Family Farm Alliance Advisory Committee members Ara Azhderian (San Luis & Delta-Mendota Water Authority) and Jeff Sutton (Tehama-Colusa Canal Authority) testified on behalf of their organizations at the hearing, along with Renn Lohofener (U.S. Fish and Wildlife Service), Barry Thom (National Ma-

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Broken Central Valley Project (CVP). This figure shows the amount of water that water users south of the Delta have been allowed to pump since October 2012. The C. W. “Bill” Jones Pumping Plant lifts water from the Sacramento-San Joaquin Delta into the Delta-Mendota Canal. The plant is essential for supplying agricultural, urban, and wildlife water to parts of the Delta and the CVP. Source: San Luis & Delta-Mendota Water Authority

California Water Hearing (Continued from Pg. 3)

rine Fisheries Service), David Murillo (Bureau of Reclamation) and Bob Borck, a commercial fisherman from Northern California.

After four years of drought and two years of zero water allocations for many farms and communities served by the Central Valley Project (CVP), 2016 El Nino conditions created an opportunity for recovery for businesses and small communities on the brink of devastation.

Shasta Reservoir and Folsom Lake, the CVP’s two major reservoirs in the Sacramento River watershed, both enjoy above average storage, and there is sufficient water for the Bureau of Reclamation to meet the commitment made earlier this year to supply 100 percent water allocations to farmers in the Sacramento Valley, the San Joaquin River Exchange Contractors, and wildlife refuges in the San Joaquin Valley.

However, the United States National Marine Fisheries Service (NMFS) and US Fish and Wildlife Service (USFWS) prior to the hearing proposed new efforts to recover species, impacting CVP operations and putting at risk Reclamation’s ability to deliver water previously allocated (see figure, Page 3).

At the hearing, several subcommittee members pointed out the conflict between the USFWS demand for more outflow for Delta smelt and the NMFS desire to keep more water in Shasta for winter-run chinook salmon, both species protected by the federal Endangered Species Act (ESA).

The federal agency witnesses all said that the 2016 temperature plan for salmon, and the Delta smelt ‘strategy,’ is intended as a joint effort to address the needs of both species without conflict. When asked by committee members about having a single joint biological opinion (BO) for the Delta, developed in a coordinated fashion by both fishery agencies, both agency witnesses and the water user representatives said this would be a good goal to work toward.

The general theme of the water user witnesses and Subcommittee Republicans and Rep. Costa was that Reclamation and the fishery agencies have been following the same approach – more water equals more fish – for years without success and must change course. Mr. Azhderian emphasized the need for a more transparent and collaborative approach to addressing environmental needs and stressors. Mr. Sutton also hit on that point, adding that the fishery agencies rely almost exclusively on ‘turning the water knob’ instead of addressing broader Delta problems.

“I fear we are headed for a future where both Delta smelt and agriculture are extinct in California,” said Mr. Sutton.

Rep. Costa in a public statement issued after the hearing said he “could not agree more with Mr. Sutton.”

“If we do not work together, put the politics aside, and come to a consensus soon, then California’s broken water system will never be fixed,” said Mr. Costa. “We could find ourselves without the vibrant salmon fisheries that the Pacific Coast is known for, without fishermen, without produc-

tive agricultural land, and without the largest and most productive agriculture economy in the United States.”

California has already lost \$2.7 billion at the farm gate, and thousands of jobs have been lost because of the effects of the drought and the failure to manage the federal and state projects effectively.

“It is my hope that my colleagues will put aside their political differences because fixing California’s water system is dependent upon it,” said Rep. Costa.

Alliance Engagement in Drought Legislation

Representatives from the Family Farm Alliance have testified three times in the past year before the Senate Energy and Natural Resources (ENR) Committee on California and Western drought matters. The Alliance also worked closely with Western Growers Association and the California Farm Bureau Federation to develop drought legislation support letters with over 130 Western agriculture and water organizations that were transmitted to the Senate ENR Committee leadership.

As Congress reviews federal legislation dealing with drought, the Alliance believes achieving genuine, lasting solutions to drought and other water shortages also requires a more productive and proactive federal partnership role in Western water matters. This is a role that focuses on research and development of new water supply and use technologies; and the full integration, coordination and maximum sustainable use of water resources in partnership with Western states and local water users.

“This role would require the adoption of federal water resource policies that are driven from the ground up – not from the top down,” said Alliance President Patrick O’Toole (WYOMING). “All federal water resources planning and management efforts must acknowledge irrigated agriculture as an asset to our still-growing nation and the global economy.”

Similarly in California, improving the survivability of salmon and smelt will require a comprehensive approach to address the full set of factors affecting different life-stages of those fish. The Alliance has supported legislation that backs this approach.

The House recently approved a bill by Rep. Jeff Denham (R-CALIFORNIA), which would end the Central Valley Project Improvement Act’s goal of doubling the number of striped bass living in and around the Delta. Striped bass are voracious predators of juvenile salmon and delta smelt. Further, the Alliance signed on to a letter, supporting Senator Feinstein’s amendment to the Commerce-Justice-Science Appropriations bill for Fiscal Year 2017 to require the Commerce Department to produce a report that lists specific actions the Administrator will implement over the next five years to promote the recovery of the Sacramento River winter-run Chinook salmon.

The Alliance also recently signed on to a letter as part of the California Allied Grower Group’s effort to urge the California Congressional delegation to come to an agreement on a legislative fix to the state’s water challenges.

“I fear we are headed for a future where both Delta smelt and agriculture are extinct in California.”

**Jeff Sutton, General Manager
Tehama-Colusa Canal Authority**

Supreme Court Special Master in *TX v NM* Releases Report

The Special Master selected by the U.S. Supreme Court to make recommended decisions on a lawsuit involving the Rio Grande Project earlier this month issued a report in the case of *Texas v. New Mexico*.

The state of Texas filed a lawsuit in the United States Supreme Court against the states of New Mexico and Colorado alleging that New Mexico is violating the Rio Grande Compact, which governs the distribution of Rio Grande water among the three states. New Mexico denies this allegation. In November 2014, the High Court referred the case to a Special Master, A. Gregory Grimsal.

According to attorney Steve Hernandez, western water law specialist and counsel for New Mexico's Elephant Butte Irrigation District (EBID), the Special Master ruled on four motions.

"First, the Special Master denied the motion by the state of New Mexico to dismiss the case," said Mr. Hernandez. "The case will proceed forward, and Texas will seek to prove the amount of water taken and the damages the state of New Mexico should pay."

The second motion ruled upon was the United States' motion to be an intervener into the case and also present a case against New Mexico officials for not protecting the Project Supply. This motion was also granted.

In deciding the third and fourth motions, the Special Master denied both EBID and a Texas water district the right to intervene in the case as a party. However, Mr. Hernandez noted that Mr. Grimsal made it very clear in his report that he encouraged and would welcome both entities as an *amicus* (friend of the court) to advise the Special Master as the case proceeds forward.

While the report is not final until the Supreme Court affirms it, the Special proceeding forward with a scheduling conference on August 11 to map out how the parties are going to proceed to trial.

"We still have an opportunity within the next 30 days to bring forth further explanation to the Special Master of why EBID still should be granted Intervenor status and we will be pursuing that," said Mr. Hernandez.

When Texas initiated this lawsuit, EBID aggressively started to look for a way for non-EBID members to obtain

Project Supply to offset their taking of water from the Project through their well pumping. The district's Depletion Reduction and Offset Program, or DROP, has been in development for over a year.

"The program is a tool for managing groundwater use in the Lower Rio Grande. It provides municipal and industrial groundwater users a way to offset their groundwater use by entering into a forbearance agreement," says Dr. Lisa Henne, water policy specialist and counsel for EBID. "An EBID member agrees to forgo his water use for a set period of time to allow that groundwater to be used by someone else."

The program is designed to be completely voluntary with the overall goal of reducing groundwater pumping. "The bottom line is that somebody has to pump less groundwater," says Ms. Henne.



Elephant Butte Dam. Photo Source: U.S. Bureau of Reclamation

The DROP program proposal is currently in the hands of the Bureau of Reclamation, which has collected the parameters of the policy from EBID and is in the process of working with their regional office to justify the need for and obtain authority to begin negotiating a new contract.

"The project is authorized for agricultural water use and you can't change that use without Reclamation implementing a conversion contract," said Dr. Henne. "It's not as simple as saying 'Oh, you can have it.'"

Gary Esslinger, longtime manager of Elephant Butte Irrigation District, was encouraged by the Special Master's report.

Esslinger says the district has come a long way in his 38 years at EBID.

"There have been monumental changes that just haven't happened in other parts of the nation," he said. "We were the first to pay off the United States construction obligation and receive title back to the drainage and distribution system by Congressional Act. Nobody else can say that."

The latest ruling by the Special Master regarding the seniority and protection of what EBID manages and delivers to its members and the protection provided for EBID members pumping groundwater is more good news for the district.

"EBID is in a strong position to keep the water flowing to its members," said Mr. Esslinger.

House Passes FY 17 Interior-Environment Spending Bill

Amendment prohibits the use of funds to carry out controversial EPA report

The House before the summer recess passed their FY2017 Interior, Environment and Related Agencies \$32.1 billion spending bill that would cut the Environmental Protection Agency's (EPA's) budget next year and includes numerous contentious policy riders limiting the Obama Administration on key environmental initiatives, from limiting greenhouse gas regulation to prescriptive California drought relief to blocking "waters of the US" (WOTUS) rule implementation.

The Interior Appropriations bill sets the budget and policy for the Forest Service and Department of the Interior (except the Bureau of Reclamation), who collectively own or manage roughly half of the western United States. It passed 231-196, largely along party lines.

The bill also funds the EPA, and it proposes deeper EPA spending cuts beyond the House Appropriations Committee's original version, which called for lowering EPA's funding in FY2017 by about \$164 million from this year's \$8.1 billion level. The House bill would cut an additional \$110 million out of the agency's operating budget to programs like coal mine reclamation and forest products research.

"This is the first Interior-EPA spending bill to pass the House in many years," said Mark Limbaugh, the Family Farm Alliance's representative in Washington, D.C. "Controversial amendments and policy riders have blocked progress in the past. This time around, House GOP leaders limited what amendments made it to the floor."

Amendments that passed also included additional measures to prevent implementation of the administration's National Ocean Policy, an issue that Alliance Executive Director Dan Keppen testified on before the House Water and Power Subcommittee in May.

"This ocean policy sets forth yet another level of federal management and oversight intended to improve the way inland, ocean and coastal activities are managed," said Mr. Keppen. "Unfortunately, this has the potential to impose negative impacts – intended or not - across a spectrum of sectors, including Western agricultural producers and irrigation organizations."

The House—passed bill also protects private water rights from federal water grabs in federal permitting processes, funds more effective wildland fire prevention, and supports removal of the lesser prairie chicken from the threatened list and prevents the species from being re-listed in light of the robust, state management already in place to conserve the bird.

"The West and all of America have scored a major victory with the passage of this Interior appropriations bill, the first of its kind to pass in seven years," said Rep. Cynthia Lummis (R-WYOMNG). "America and the West have good reason to be proud of the House's work through the late hours of several nights to pass this bill and send it to the Senate."

The legislation also includes provisions added to the bill by U.S. Congressman David G. Valadao (R-CALIFORNIA)

during Full Committee markup last month. Stemming from his legislation, H.R. 2898, the *Western Water and American Food Security Act*, the Valadao drought provisions within the Interior and Environment Appropriations bill aim to provide relief to Californians suffering from severe drought conditions, exacerbated by excessive federal regulations.

"(The Committee's) vote marks the third appropriations bill that has included solutions to California's water crisis," said Congressman Valadao. "Regardless of attempts made by Democrats to evade addressing our water crisis under the guise of arbitrary procedural requests, I will continue to pursue every single legislative avenue available until my constituents have the water they so desperately need."

The House appropriations bill also included an amend-



ment prohibiting the use of funds to carry out the draft EPA-USGS Technical Report entitled "*Protecting Aquatic Life from Effects of Hydrologic Alteration*". Rep. Paul Gosar (R-ARIZONA) filed this amendment in part because of a formal comment letter submitted to the agencies and other comments his office saw from the Family Farm Alliance and other Western water, power and agricultural interests. The draft report describes the relationship between hydrologic condition and water quality, and gives examples of what states have done to address flow concerns using current Clean Water Act authorities.

The Alliance has very serious concerns about the draft report's constructive applicability, especially in the Western United States.

"The combination of these concerns and the agencies' advocacy of legal strategies in the draft report could embolden some regulators and special interest groups to seek flow requirements on water projects even if doing so has no support in federal or state law," said Alliance executive director Dan Keppen.

Rep. Gosar was pleased to see the House join him in taking a stand against EPA.

"Congress must block this unlawful guidance that aims to expand the scope of the Clean Water Act and federal control over waters currently under the jurisdiction of states," he said.

Democratic opposition in both the Senate and the White House still poses a potentially insurmountable obstacle to enacting any version of the House-passed Interior-Environment spending bill. The Obama Administration has threatened to veto the House passed bill and the full Senate has yet to act on its own version of the appropriations bill.

Agencies to Improve Water Conservation Collaboration

The White House earlier this month announced improvements in collaboration between the Departments of the Interior and Agriculture on water conservation programs to help alleviate drought impacts in the Colorado River Basin and elsewhere in the drought-parched West. The agreement allows money from the Bureau of Reclamation's WaterSMART program and USDA's Natural Resources Conservation Service (NRCS) to be directed toward projects in a more coordinated manner.

Under the deal, the Bureau of Reclamation (Reclamation) will work with irrigation districts while NRCS will help individual farmers within those districts to coordinate on water conservation projects that are integrated in their approaches and objectives to conserving water supplies.

The agencies also announced more than \$47 million to improve water conservation on private working lands, making available \$15 million through NRCS's Environmental Quality Incentives Program and \$32.6 million through WaterSMART's water and energy conservation grants program to support 76 projects.

Working with Partners for Conservation, Alliance board members penned guest editorials in Colorado and Arizona in support of the Administration's announcement. Alliance President Pat O'Toole's commentary ran in the Montrose (COLORADO) *Daily Press*. While noting support for the improved partnership between NRCS and Reclamation - an idea that was originally advanced by the George W. Bush Administration's "Bridging the Headgates" initiative - Mr. O'Toole also noted that this idea alone is not going to solve the challenges facing Western water users.

"Coordinated programs like EQIP and WaterSMART can help stretch water supplies, but water conservation alone has its limits in certain situations," wrote Mr. O'Toole. "Developing strategic new water storage is necessary insurance against shortages."

Mr. O'Toole also suggested that urban growth expansion should be contingent upon sustainable water supplies.

"Using Western irrigated agricultural water as the 'reservoir' of water for municipal growth is not sustainable in the long run and can damage rural agricultural communities," he wrote.

Alliance President Wins Prestigious Conservation Award

Family Farm Alliance President Patrick ("Pat") O' Toole will be the recipient of the 2016 Kurt Bucholz Conservation Award. Pat and his wife Sharon, together with their family, manage the Ladder Ranch in the Little Snake Valley on the Wyoming/Colorado border. Pat manages the rangeland of the Ladder Ranch to produce healthy livestock with optimal genetics, while also ensuring the health of the landscape, watershed and streams.

Pat is a true proponent of Wyoming conservation efforts and has drawn on the knowledge that he has gained as a steward of the land, to be a steward of policy. He was a member in the Wyoming House of Representatives and sat on the Select Water Committee and President's Western Water Policy Commission. Pat has testified in front of national committees including U.S. House Resource Committee and the U.S. Senate Energy Committee on issues impacting the agricultural industry.

Currently, Pat presides over the Family Farm Alliance where he speaks about water use and irrigation issues. Pat commented on being chosen as the Bucholz Award recipient, and on the work that he has done, and continues to do in the area of water conservation. "Receiving the Bucholz Award is a great honor for me and my family," Pat said. "It has been

said 'that water is the new gold.' It is more than that. Water is life. I have had the great fortune to work with many of Wyoming's Water Buffalo, including my friend Kurt Bucholz. Our challenge is to treat our water as the valuable resource it is for Wyoming's future."

The Bucholz Conservation Award is given in memory of the late Dr. Kurt Bucholz DVM, an early supporter of the WSGLT and rancher from Carbon County. The Bucholz Award winner encompasses the values and stewardship goals that Kurt exemplified in his life. Kurt had a unique understanding of water and land issues and worked to protect the historic water rights that are fundamental to the North Platte Valley. Laura Bucholz commented on this year's award. "I am happy to present the award to someone who is such a strong advocate for conservation on a local, and state level."

The Bucholz award will be presented at the WSGLT's 15th Annual Barbeque at the C-Bar-B Ranch outside of Buffalo, on August 27th. Pat will be presented with a bronze statue sculpted by the talented Wyoming artist, Jerry Palen.

Editor's Note: This article originally appeared in "Home on the Range" and is reprinted with permission of the Wyoming Stock Growers Land Trust.

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