

# Monthly Briefing

*A Summary of the Alliance's Recent and Upcoming Activities and Important Water News*

## Testifying Twice

Alliance's Keppen Speaks To Two Hearings In One D.C. Trip

The Family Farm Alliance testified before two Congressional committees in Washington (D.C.) earlier this month, marking the 15<sup>th</sup> time since 2005 that the organization has been invited to appear before Congress.

Dan Keppen, executive director of the Alliance, was en route to Washington on June 7 to participate in a hear-

ing the following day before the Senate Water and Power Subcommittee, when he received a phone call from the office Rep. Greg Walden (OREGON), his local representative in Congress.

**WHILE ON LAYOVER** in Los Angeles, Mr. Keppen worked out the details to appear before a second hearing on June 10 with staff members

from the offices of Rep. Walden and the ranking Republican of the House Select Committee on Energy Independence and Global Warming, Rep. James Sensenbrenner (WISCONSIN).

"It ended up being a 2-for-1 week," Mr. Keppen told his local Klamath Falls (OREGON) newspaper.

### Keppen Testifies On Canal Safety Bill

On July 8 the Senate Water and Power Subcommittee conducted a hearing on four pieces of water legislation.

Family Farm Alliance Executive Director Dan Keppen (OREGON) was invited to testify on S. 2842, a bill introduced by Senator Harry Reid (NEVADA) earlier this year, designed to

*(Continued on Page 2)*



Dan Keppen

### Alliance's Climate Study Is Panel Focus

A climate change report published by the Family Farm Alliance in late 2007 formed the basis for testimony delivered by the Alliance on July 10 before the House Select Committee on Energy Independence and Global Warming.

Alliance Executive Dan Keppen (OREGON) testified before the Select Committee at a

*(Continued on Page 3)*

## Monthly Briefing's Inside Stories For July

- **EPA Water Transfer Rule Challenged By Environmentalists, Page 5**
- **Alliance Joins Coalition Letter On Farm Bill AWEP, Page 6**
- **Family Farm Alliance's Annual Meeting Will Be March 4-6 In Las Vegas, Page 8**
- **Critical New Mexico Domestic Well Decision Is Handed Down, Page 8**

# Canal Safety Bill: Facilities Vital To Farmers

(Continued from Page 1)

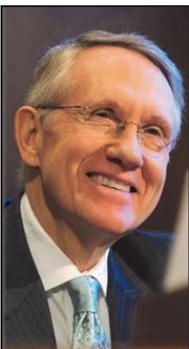
make aging federal-owned canals and levees safer across the West.

**IN MR. KEPPEN'S TESTIMONY** before the Subcommittee, he emphasized the importance of canal facilities, which are integral to the ability of farmers in the west to provide food to consumers. He also

'The focus instead should be on those facilities that pose an actual risk to urbanized areas'

—DAN KEPPEN, *Family Farm Alliance*

noted the severe problems that could be faced were a facility to fail in an increasingly urbanized environment. Mr. Keppen thanked Senator Reid for drawing attention to this important issue, but expressed the organization's concerns that the bill's approach as written is too broad.



Senator  
Harry Reid

"This bill mandates additional inspections and new maintenance standards for all Bureau of Reclamation facilities when the focus instead should be on those facilities that pose an actual risk to urbanized areas," Mr. Keppen told the Subcommittee. "Although S. 2842 would authorize financial assistance to non-federal entities responsible for the maintenance of federally-owned facilities, it is not clear how that assistance would be realized."

With those concerns stated, Mr. Keppen said that the bill could be amended so that Reclamation guidelines for analyzing projects could be updated to include considerations for urbanization and other effects that were not in play when some Western canal facilities were originally designed many decades ago.

"With some clarifying changes and direction to prioritize a financing program already signed into law, Senator Reid's bill could provide an important first step toward solving our aging infrastructure problems," Mr. Keppen testified. "We thank Senator Reid for his leadership on this."

**THE FINANCING PROGRAM** noted by Mr. Keppen is a loan guarantee program created by Congress to help local agencies meet their financial obligations for the repair and rehabilitation of federal water supply facilities.

The Rural Water Supply Act of 2006 authorized a loan guarantee program within Reclamation that would leverage a small amount of appropriated dollars into a large amount of private lender financing available to qualified Reclamation-contractor water districts with good credit.

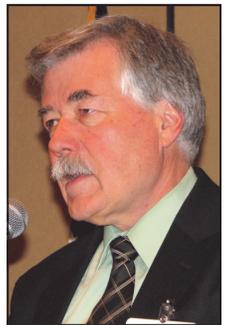
Implementation of this program has been stymied by the Office of Management and Budget (OMB), which has concluded that Reclamation can carry out the loan program only if it is willing to siphon large amounts of funding away from other programs and needs within its budget.

"OMB's conclusions are driven by a desire to prevent implementation of the program," Mr. Keppen testified. "It is unfortunate that further legislation is required on this matter, since we do not believe that this is what Congress intended."

**RECLAMATION** Commissioner Robert Johnson also testified on S. 2842, and conveyed the Department of the Interior's opposition to the bill.

Interior supports the intent of the bill, but has concerns about new costs and how the proposed program would mesh with existing operations and maintenance programs.

"Reclamation already has a number of comprehensive programs for assessing the status and condition of our infrastructure," Commissioner Johnson testified.



Commissioner  
Robert Johnson

(Continued on Page 3)

## Link To The Testimony

The complete written statements of all witnesses can be found here:  
[http://energy.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=c5d07676-a9ca-2593-485f-eee24ff5c9b2](http://energy.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=c5d07676-a9ca-2593-485f-eee24ff5c9b2).

# Climate Change: Alliance's Report Is Focus

(Continued from Page 1)

hearing entitled, "Global Warming Effects on Extreme Weather". His testimony drew from the Alli-

'Climate change policies for irrigated agriculture in the future need to address adaptive approaches that prepare for the worst case scenarios predicted for Western watersheds'

—DAN KEPPEM, *Family Farm Alliance*

ance report entitled, "Water Supply in a Changing Climate: The Perspective of Family Farmers and Ranchers in the Irrigated West".

"In a nutshell, we emphasized that, while much of the debate surrounding what to do about climate change has centered on mitigation for greenhouse gas emissions, we believe that climate change policies for irrigated agriculture in the future need to address adaptive approaches that prepare for the worst case scenarios predicted for Western watersheds," Mr. Keppen said after the hearing. "We also urged that the Select Committee members consider advancing a House version of the SECURE Water Act."

**THAT LATTER BILL** – introduced in the Senate last year by Senator Jeff Bingaman (NEW MEXICO) – is a comprehensive water resources bill that includes water science initiatives; water efficiency programs; and an attempt to better understand and adapt to the water-related impacts of global climate change.

The SECURE Water Act contains some provisions that are very close to recommendations provided by Alliance President Patrick O'Toole (WYOMING) in 2007 testimony given before the Senate Energy and Natural Resources Committee.

"**THE COMMITTEE HEARING** was well-attended, and it provided a great forum to introduce a new audience to our climate change report," said Joe Raeder, the Alliance's Washington (D.C.) representative. Rep. James Sensenbrenner (WISCONSIN), Rep. Greg Walden (OREGON), and Rep. John Shadegg (ARIZONA) all made references to the Alliance testimony in their opening statements.

Rep. Sensenbrenner, ranking Republican on the House Select Committee, agreed with the Alliance's recommendation that adaptation should be a high priority in confronting climate change.

"One of our witnesses today, Dan Keppen of the Family Farm Alliance, says farmers in the West are already preparing to adapt to a warmer climate," said Mr. Sensenbrenner. "His testimony will also point out the need for a balance of both water conservation and supply enhancement, a streamlined regulatory process that helps the development of new infrastructure, and a prioritization of research needs. I agree."

(Continued on Page 4)

## Canal Safety Bill:

(Continued from Page 2)

Beginning in 1902, the Bureau of Reclamation constructed a large majority of the water infrastructure that now exists in the 17 Western states. Much of this infrastructure is now 50-100 years old, approaching the end of its design life and is in need of substantial rehabilitation or replacement. The original development cost of this infrastructure was over \$20 billion. Reclamation estimates that the replacement value of its water infrastructure is over \$100 billion.

**THE ALLIANCE LEADERSHIP** at this year's Annual Meeting and Conference identified the challenge of repairing aging Western water infrastructure as a top issue in which the organization could engage.

"We have worked extensively with Congress in recent months, seeking to address at least partial solutions to the challenges associated with fixing aging infrastructure," said Alliance President Pat O'Toole.

A breach in an aging irrigation system in northern Nevada washed out a road, damaged an access bridge and took out part of a spillway on June 11. The latest canal crisis could further place more priority in Congress to move Senator Reid's bill, originally crafted in response to an earlier canal breach that occurred last January and flooded hundreds of homes in Fernley (NEVADA).

## Climate Change

(Continued from Page 3)

During the questioning session, Rep. Jay Inslee (WASHINGTON) urged the Alliance to get involved with carbon cap-and-trade negotiations, and expressed his concern that agriculture not be left behind as these policies and laws emerge.

Committee Chairman Ed Markey (MASSACHUSETTS) asked for a 20-second recommendation of what the federal government could do to address Alliance concerns.

“THE TIME has come for the United States to adopt an overriding national goal of remaining self-sufficient in food production,” Mr. Keppen replied.

“Policy decisions on a wide range of issues ranging from taxation to the management of natural resources should then be evaluated to be sure they are consistent with that goal.”

Most of the witnesses provided an academic perspective and discussed the effects of climate change on addressing the impacts of more frequent and intense heat waves, water availability and management and flood damages and risk.

The other witnesses included: Angela Licata (Deputy Commissioner, New York City Bureau of Environmental Planning and Analysis); Dr. Jimmy O. Adegoke (Associate Professor University of Missouri); Heather Cooley (Pacific Institute); and Dr. Jay S. Golden, (Arizona State University).

### Link To The Testimony

To view written testimony submitted by all of the witnesses, go to [http://globalwarming.house.gov/pubs/?id=0048#main\\_content](http://globalwarming.house.gov/pubs/?id=0048#main_content).

## A Great Big

# Thank You

## To Our New And Renewing Members!

## RECENT DONOR SUPPORT

**JUNE 2008**

**CHAMPION** (\$5,000 or more)

Washington State Potato Commission

**ADVOCATE** (\$1,000 - \$5,000)

Nampa & Meridian Irrigation District

**DEFENDER** (\$500 - \$1,000)

Doug Mellon Farms; Oregon Water Resources Congress

**PARTNER** (\$250 - \$500)

B.E. Giovannetti & Sons

**SUPPORTER** (\$100 - \$250)

Larry French

The Family Farm Alliance is grateful for the generous support that continues to be provided by members and donors from throughout the West.

To learn how you can become a member, please visit our newly-redesigned website, [www.familyfarmalliance.org](http://www.familyfarmalliance.org) or call Executive Director Dan Keppen at (541) 850-9007.



## We Couldn't Do It Without You!

Please visit our website

[www.familyfarmalliance.org](http://www.familyfarmalliance.org)

---

## Environmentalists File Lawsuits

# EPA Water Transfer Rule Is Challenged

Over the last month, environmentalists have filed suit in the 1<sup>st</sup>, 2<sup>nd</sup> and 11<sup>th</sup> Circuit Courts of Appeals and the U.S. District Courts for the Southern District of New York Florida seeking to overturn EPA's recently issued water transfer rule.

EPA issued the final water transfer rule on June 9 and exempted water transfers from having to obtain a permit under the Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) program. Environmental groups are pushing to have all water transfers subject to federal permitting requirements, including stringent effluent limitations.

According to Earthjustice "[unregulated water transfers] could spread toxic algae blooms, introduce invasive species, chemicals, and other pollutants."

**WHETHER THE RULE** successfully survives this challenge will have significant implications for states, water agencies, local communities, and industries across the country.

EPA promulgated the final rule in response to increasing litigation and uncertainty surrounding the regulation of water transfers in the wake of the 2004 U.S. Supreme Court decision in *South Florida Water Management District (SFWMD) v. Miccosukee Tribe of Indians*, 541 U.S. 95 (2004). In *Miccosukee*, the Court addressed the issue of whether a water transfer involved an "addition" of a pollutant to a navigable water within the meaning of the CWA, thereby prompting the need for a NPDES permit.

That case was remanded for further fact-finding to determine whether the water bodies were "meaningfully distinct," although that issue was never fully resolved.

The final rule codifies EPA's long-standing interpretation of the CWA that Congress intended water resources management agencies and state non-NPDES authorities to govern the propriety of water transfers, not the federal CWA permitting program. The final rule expressly exempts water transfers from NPDES permits, as such transfers do not result in the "addition" of a pollutant. Under the rule, a water transfer is defined as "an activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use."

**WATER TRANSFERS ARE ESSENTIAL** for providing drinking water supplies, flood control, hydropower, environmental restoration, and irrigation needs.

"The extension of NPDES jurisdiction to water transfers encroaches on the traditional role of states to allocate water resources, commandeers states' water rights, threatens the important balance of cooperative federalism, imposes unnecessary administrative burdens and treatment costs on water managers and users, and diverts resources away from important restoration priorities," said Brent Fewell, counsel for a Washington (D.C.) law firm.

August 11, 2008, is the deadline for those who wish to file a motion for leave to intervene as intervenor-defendants. There will also be an opportunity for *amici curiae* ("friends of the court") to participate at a later, unspecified date. If you are interested in joining a coalition to help support the defense of this rule, please contact Brent Fewell at (202) 955-1891 (bfewell@hunton.com) or Brooks Smith at (804) 787-8086 (bsmith@hunton.com).

---

# Alliance Joins Coalition Letter On Farm Bill AWEP

The Family Farm Alliance is one of nearly two dozen national water, conservation and commodity groups that recently signed onto a letter sent to the U.S. Department of Agriculture (USDA) intended to provide direction on rule-making associated with a new Farm Bill program.

Among other suggestions, the letter forwards coalition belief that off stream storage water impoundments are an eligible Agricultural Watershed Enhancement Program (AWEP) activity when they contribute to enhancing water quality and water quantity and offer improved protection to fishery resources in a watershed or region of existing agricultural production.

**IN BOTH THE HOUSE AND SENATE** versions of the Farm Bill, off stream storage for the purposes of protecting fishery resources is referenced.

Family Farm Alliance directors during the organization's 2007 Annual Meeting and Conference identified the 2007 Farm Bill as a priority legislative issue.

Included in the Bush Administration's proposal for reauthorizing the Farm Bill was the creation of the RWEF.

The program, as proposed by the administration, aimed to coordinate funding for large-scale water conservation projects to improve water quality and conservation through partnerships with: state governments, non-governmental organizations, local units of government, water districts, and producer organizations.

The goal was for projects to benefit "working agricultural land" and fish and wildlife habitats.

**THE ALLIANCE WAS ONE** of the first partners in a RWEF coalition that has grown to include nearly two dozen national agricultural, environmental, municipal and commodity groups.

"We worked closely with Congressional committee staffers to advance our concerns in a way that would not conflict with other existing groundwater and surface water conservation programs," said Alliance Advisory Committee Chair Richard M. Moss.

RWEF – now re-named the AWEP – made it into the final Farm Bill. The U.S. Department of agriculture is authorized to carry out AWEP using the funds of the Commodity Credit Corporation.

"As the Natural Resource Conservation Service looks towards writing the rules of the AWEP implementation, our coalition has urged the agency to craft a program that encourages and promotes partnership based, regional water quality and conservation projects," said Mr. Moss.

**THE ALLIANCE ADVISORY COMMITTEE,**

during its last two conference calls, has discussed how AWEP could fund projects of interest to Western irrigators. One example would be to help fund water quality programs for agricultural coalitions in California, where the state has no money to assist growers.

If you have other ideas, please contact the Alliance at (541) 850-9007 or by e-mail at [dankeppen@clearwire.net](mailto:dankeppen@clearwire.net).

## How to Contact the Alliance!

**By Phone:**  
**(541) 850-9007**

**By Regular Mail:**  
**P.O. Box 216, Klamath Falls, OR 97601**

**Executive Director Dan Keppen's E-Mail:**  
**[DanKeppen@clearwire.net](mailto:DanKeppen@clearwire.net)**

**Or Visit Us On-Line:**  
**[www.familyfarmalliance.org](http://www.familyfarmalliance.org)**

# 15 Times In 3 Years

**That's How Often Alliance Leaders  
Have Testified Before Congress  
on Vital Western Water Issues**

**Shouldn't You, Your Family, Friends  
and Suppliers be Part of the West's  
Leading Grassroots Water Organization?**

**Visit our Website: [www.familyfarmalliance.org](http://www.familyfarmalliance.org)**

Or call Executive Director Dan Keppen:  
(541) 850-9007



# Alliance Sets Annual Meeting

Conference Will Take Place March 4-6, 2009, At Monte Carlo

A familiar venue will be the site of the Family Farm Alliance's 21<sup>st</sup> Annual Meeting and Conference next year in Las Vegas (NEVADA).

The Alliance has entered into a contract with the Monte Carlo Resort and Casino to host the session, which will take place March 5-6, preceded by meetings of the organization's Board of Directors and Advisory Committee on March 4.

"We investigated several options but selected the Monte Carlo because

its room rates are affordable and it is located close to the airport and right on the Strip," said Alliance Executive Director Dan Keppen (OREGON).

Alliance leaders are also pleased with the relationships that have been developed at a staff level at the Monte Carlo, particularly with audio-visual facilities.

**THE ALLIANCE** has held its Annual Meeting and Conference in Las Vegas for two decades, largely because of the city's many attrac-

tions, its central location and excellent and competitive air service.

"We are interested in what the Alliance's membership thinks about the Annual Meeting location," Mr. Keppen said.

"Later this year, we will develop a survey and canvas our membership for ideas on the 2010 Annual Meeting and Conference, including soliciting input on possibly moving the event to another location in the West."

## THE ALLIANCE AND NEW FOOD BOOK

### President's Quip Is On Cover

Family Farm Alliance President Patrick O'Toole's praise for a new book celebrating American food traditions earned him a spot on the back cover.

Mr. O'Toole, a rancher from Wyoming, was one of three individuals whose comments on *Renewing America's Food Traditions: Savoring the Continent's Most Endangered Foods* were included on the book sleeve.

*Renewing America's Food Traditions* is a beautifully illustrated and dramatic call to recognize, celebrate, and conserve the great diversity of foods that gives North America its distinctive culinary identity and reflects our multicultural heritage.

The book, published by Chelsea Green Publishing in Vermont, highlights the success stories of food recovery, habitat restoration, and market revitalization that chefs, farmers, ranchers, fishermen, and foresters have recently achieved.

"**WE ARE THREATENED** with the loss of productive agricultural lands and farmers, and the productive species that feed our bodies and souls," Mr. O'Toole notes on the book cover. "This book shows the importance of food as the essential bond between what we eat and who we are. A must read for everyone who cares about food and the land from whence it comes."

The comments of Mr. O'Toole, noted on the cover as "rancher and president of the Family Farm Alliance", are included with similar praise offered by Betty Fussell (author of *The Story of Corn and Raising Steaks*) and David Mas Masumoto (California farmer and author of *Epitaph for a Peach*).

## Critical Domestic Well Decision Handed Down By New Mexico Court

A New Mexico district court has ruled in favor of water districts regarding domestic wells.

In the past, by statute, domestic wells in that state were automatically granted by the state engineer upon application regardless of whether there was unappropriated water available or not.

"Problems on the Pecos River involving Texas under the Pecos Compact were basically caused by pumping of hundreds of unregulated wells along the Pecos," said Steve Hernandez, attorney for New Mexico farm water users.

"**IN RECENT YEARS** this has been a particular problem for Carlsbad Irrigation District, where domestic wells were granted along the Black River," Mr. Hernandez said. "The pumping that followed has made it extremely difficult for the district to deliver its water."

"The judge was quite clear in his recent decision that the statute violated the constitutional provision in New Mexico's water code that adopts the priority system," said Hernandez.

For the last two years there have been attempts to amend the New Mexico statute but any legislation was blocked by real estate developer groups.