

# Monthly Briefing

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

## The Delta Smelt Case Federal Court Decision Puts A Tiny Fish Before Farmers

By DAN KEPPEN

*Family Farm Alliance Executive Director*

**A** FEDERAL JUDGE in Fresno (CALIFORNIA) last month ordered a dramatic curtailment of pumping water to the San Joaquin Valley and Southern California – an unprecedented decision aimed at protecting a tiny fish in the Sacramento-San Joaquin Delta, but one that will have widespread economic and political repercussions from Redding to San Diego.

San Joaquin Valley farmers receiving water from the Sacramento-San Joaquin Delta could see their 2008 supplies cut by as much as 50% or a reduction in deliveries by as much as 500,000 acre-feet, one of the largest single court-ordered reductions in California water history.

“There is widespread concern among the growers,” said Gary W. Sawyers (CALIFORNIA), an attorney who works for agricultural water users in the San Joaquin Valley. “People are searching for answers, and right now, those answers are elusive. Water users need to focus both on surviving next year and creating a long-term strategy.”

**‘There is  
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the growers’**

—GARY W. SAWYERS

**U.S. DISTRICT JUDGE** Oliver Wanger’s recent decision centers around the Delta smelt,

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# Delta Smelt Ruling's Grave Concern

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which is listed as a "threatened species" under the Endangered Species Act (ESA).

Environmental groups, including the Natural Resources Defense Council, had filed a lawsuit, charging that the biological opinion (BO) that was issued to allow State Water Project (SWP) and Central Valley Project (CVP) operations was legally insufficient. Judge Wanger earlier this year agreed.

**SINCE A NEW BO** will take at least a year to prepare, Judge Wanger conducted a two-week hearing to determine what interim measures would be implemented to protect the smelt in the meantime. Judge Wanger on August 31 issued a decision from the bench that has the potential to radically alter how much smelt water is needed.

Attorneys representing the various parties in the case have been directed to draft individual orders, and one of those will likely be used as a basis for Judge Wanger's final written order. That order should be completed some time next month. In the meantime, attorneys and water managers are scrambling, trying to make sense of the ruling, and patching together solutions that will both allow farmers to survive in 2008 and adapt for the future.

**THERE IS GRAVE CONCERN** about what all of this means.

"Although Judge Wanger declined to adopt the draconian measures advocated by the environmental community, he imposed significant water requirements for the smelt that will reduce supplies to the state and federal water projects in virtually all year types," said Sawyers. "Every farmer in the three million acres receiving water through the Delta pumps and 25 million residents in the Bay and Los Angeles are at immediate risk resulting from less water flowing to their farms, homes and businesses next year."

Annual water requirements for permanent crops in the CVP south of Delta farming region total 500,000 acre-feet or more. The court-mandated reduction in CVP deliveries to farmers means less water for many other fruit and vegetable crops. Those crops could

potentially be followed to meet the water needs of permanent crops. Water agencies will have to scramble to find water from willing sellers, potentially creating a bidding war.

**"THIS RULING REALLY CAUSES** a double whammy," said Sandy Denn (CALIFORNIA), a rice farmer from the Sacramento Valley. "Even if water is available next year from our part of the state, it can't be transferred through the Delta if the pumps are curtailed."

The judge's decision is disappointing because scientists say that the pumps only account for 5-15% of the causes that are affecting the smelt population. Other factors representing a greater effect on the smelt numbers are loss of food supplies and the introduction of foreign plant and fish species that have dramatically altered the environment.

**"WE KNEW THE JUDGE** was going to take away some of our water but we were holding out hope that he would have given more time to the scientists to continue working toward a science-based solution," said Dan Nelson (CALIFORNIA), executive director of the San Luis & Delta Mendota Water Authority. The authority is a group of 32 water districts that supplies water to farmers covering over two million acres.

**THE FAMILY FARM ALLIANCE** Board of Directors earlier this month passed a resolution expressing its strong support for those impacted by the August 31, 2007 preliminary injunction in *Natural Resources Defense Council, et al. v. Kempthorne* and offering its assistance to the agricultural water interests so affected ([please see related story, Page 3](#)).

In Sacramento, Judge Wanger's decision will focus attention on lawmakers to act on proposals to approve reservoirs and build a new fish-friendly, Delta plumbing system.

Governor Schwarzenegger this summer had already elevated efforts to raise public support for his \$5.9 billion water storage program.

"Many fights are yet to be had, and much will be written about this ruling in the coming days," said Mr. Sawyers. "We can expect to see a lot of activity in the next few months."

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# Alliance Board Resolves To Help Central Valley's Irrigators

In response to a preliminary injunction issued on August 31 by the Federal District Court for the Eastern District of California (*please see related story, Pages 1-2*), Family Farm Alliance directors earlier this month approved a resolution to support Central Valley irrigators impacted by the decision.

"We are prepared to assist those affected by the court's order to the best of our abilities," said Family Farm Alliance Executive Director Dan Keppen (OREGON).

"**THE ALLIANCE**, as a coalition of farm interests from throughout Western irrigated agriculture, has addressed similar issues in the past," added Alliance President Patrick O'Toole (WYOMING). "We may be able to assist those impacted by the Court's order and address the fundamental issues that gave rise to it."

In *Natural Resources Defense Council, et al. v. Kempthorne* Judge Oliver Wanger issued an order that will require state and federal water project managers to significantly reduce the amount of water pumped from

the Sacramento-San Joaquin River Delta to protect the Delta smelt, a species listed under the Endangered Species Act (ESA). The pumping restrictions ordered by the Court could have devastating effects on irrigated agriculture and all those associated with it throughout California.

"The Court's order once again demonstrates the significant defects in the ESA," said William Kennedy (OREGON), Alliance Chairman of the Board. "This latest decision continues the ongoing pattern of imposing unreasonable restrictions on irrigators to pursue unachievable environmental goals."

**THE RESOLUTION** directs Mr. Keppen to deliver copies of the resolution to agricultural organizations impacted by Judge Wanger's order with an expression of the Alliance's willingness and availability to assist them. "There currently is no better example of an issue that conforms to the Alliance's goal of protecting and preserving Western irrigated agriculture," said Mr. O'Toole.



**BEST BEST & KRIEGER** covers the broad spectrum of legal needs for its agriculture clients. Our firm is widely recognized for its expertise in environmental and water issues, including ESA, water rights and quality, and federal reclamation and grazing laws. Our attorneys also assist our agricultural clients with matters such as land use, valuation and purchases; crop damages; business transactions and regulations; governance and succession planning; and organic crop certification and pesticide regulations.

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# Climate Change

It Will Impact Western Agriculture; Alliance's New Report Recommends Realistic Measures to Safeguard our Food Supply

**A**t a time when Western water supplies are already inadequate to meet the demands of agriculture, future energy needs, urban growth and environmental enhancement, climate change is expected to further reduce those supplies, according to a new report by the Family Farm Alliance (Alliance).

Water experts recommend that, with dire long-term hydrologic forecasts predicted for the West, maintaining the status quo simply isn't sustainable. To meet the needs of cities and the environment without sacrificing Western irrigated agriculture, there must be more water stored and made available to farms and cities.

**THE ALLIANCE CLIMATE CHANGE** report, released earlier this month, is entitled "Water Supply in a Changing Climate: The Perspective of Family Farmers and Ranchers in the Irrigated West". *(Please see related story, Page 7)*

**'We must immediately begin to address the critical challenges we face'**

**—RICHARD M. MOSS**

"Working with farmers has made us incredibly sensitive to the big picture ramifications facing the future of Western agriculture, and the critical role reliable water supplies play in that big picture," said Richard M. MOSS (CALIFORNIA), Chairman of the Alliance Advisory Committee that contributed to the report. "We must immediately begin to address the critical challenges we face."

Despite the highly variable and uncertain nature inherent with climate change predictions, the Alliance report concludes that, in the West,



Family Farm Alliance / J. Randall McFarland

Snow over California's high Sierra Nevada: Will there be less of it with climate change?

there will be less water stored in the biggest "reservoir" – the snowpack. More water in the form of rainfall and runoff will come at farmers and ranchers earlier in the season, when it may not be useful and may even present a threat.

**IRRIGATORS AND AGRICULTURAL** consultants who contributed to the Alliance report have identified several impacts to crops and livestock – both good and bad – that climate change may generate in the coming decades.

The report summarizes anticipated overall hydrologic impacts in the form of the "triple threat":

- Increased evaporation of snowpack and surface water.
- Increased crop evapotranspiration and consumptive use.
- Decreased groundwater recharge and surface runoff. The net result in summer

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# Plan For Climate Change, Alliance Says

*(Continued from Page 1)*

months will mean less water to work with and higher water needs.

The report identifies the positive steps irrigators are taking to address water shortages caused by climate change and other stressors.

For example, along the Columbia River, irrigators are developing water exchange programs to increase supply reliability while improving salmon habitat. And in California's Sacramento Valley, producers and local governments are working to develop a regional water management program that will help address not only water quantity challenges, but also water quality and environmental issues. Those same growers 15 years ago were key players in a state-managed drought water bank that temporarily transferred local water to southern California to meet other statewide needs.

**"EVEN WITH PROACTIVE** measures like these, Western water supplies are already inadequate to meet the demands of agriculture, future energy needs, urban growth and environmental enhancement," said Patrick O'Toole, a Wyoming rancher and president of the Alliance. "Global climate change, we're told, will further reduce those supplies. We must begin to plan for that now, and not wait until we are forced to make decisions during a crisis."

O'Toole was invited to testify on this matter before the U.S. Senate Energy and Natural Resources Committee in June 2007.

**THE ALLIANCE REPORT CALLS** on the federal government to work in partnership with the states and local water managers to prioritize research needs and quantify projected West-wide hydrologic impacts.

"Our country has tremendous, but limited, resources available to fix our problems, so we must prioritize and sequence our actions," said Dan Keppen (OREGON), Alliance Executive Director.

The report highlights the need for state and local water management agencies to take the lead on

developing and implementing a balanced suite of conservation and supply enhancement actions. The federal government can help by streamlining the regulatory process to facilitate development of new infrastructure by these agencies.

**"WE ARE FACING** unstoppable population growth, diminishing snowpack, increased water consumption to support domestic energy, and increased environmental demands," said Mr. O'Toole. "It is simply ludicrous to believe that conservation alone will supply enough water for the tens of millions of new residents expected to arrive in Western cities during the coming decades."

The Alliance report notes that the U.S. recently became a net importer of food, and the safety of that food is becoming increasingly suspect. As food production moves offshore, a large part of our

**A PDF version of the report can be downloaded at the Family Farm Alliance website:**  
**[www.familyfarmalliance.org](http://www.familyfarmalliance.org)**

security is moving with it. The Alliance report urges Congress and the Bush Administration to make self-sufficiency in food production a national priority.

The report further recommends that, at all levels of government and in our communities, we must find ways to protect farmland.

**A CONSISTENT THEME** in the report is that climate change will simply further strain fresh water supplies in the American West. It provides realistic and critical steps needed to plan for plan for that now, rather than being forced to make decisions during a crisis.

"Relying on agriculture to be a shock absorber to soften or eliminate the impending water shortage is not planning," said Mr. O'Toole. "It is a choice to put our heads in the sand and hope for the best. It is a decision that could worsen the overall impact of climate change on our nation's economy and security."

## EPA Releases Reports On Water-Related Climate Change Effects

Last month, the Environmental Protection Agency's National Center for Environmental Assessment (NCEA) released three draft reports that examine the effects of climate change on watersheds and aquatic ecosystems.

The reports give an indication of climate change considerations that may affect publicly owned treatment works (POTWs) in the future:

- Climate and Land Use Change Effects on Ecological Resources in Three Watersheds: A Synthesis Report provides watershed planners and managers with improved capabilities to consider climate and land use change, and provides summaries and comparisons from case studies of various watersheds conducted by NCEA's Global Change Research Program.
- Climate Change Effects on Stream and River Biological Indicators: A Preliminary Analysis describes how biological indicators of ecosystem health may respond to climate change, and concludes that data from current sampling methods may be used to detect climate change impacts.
- Effects of Climate Change on Aquatic Invasive Species and Implications for Management examines state-level invasive species management plans and their capability to incorporate changing environmental conditions, particularly climate change, and concludes that more research and data collection are needed for optimal invasive species management considering climate change.

The three reports are available on the NCEA website <http://cfpub.epa.gov/ncea/>.

## Important Reclamation Workshop Is Set for Portland This Month

The U.S. Bureau of Reclamation ("Reclamation") has scheduled a "Managing for Excellence" ("M4E") public meeting in Portland (OREGON) on September 25-26.

"In my view, this may be the most important of all the M4E workshops hosted by Reclamation," said Alliance Executive Director Dan Keppen (OREGON). "The deliverables that will be discussed at this meeting may be only a step or two away from becoming Reclamation policy. I urge irrigation district managers and other water customers served by the Bureau to consider attending."

**RECLAMATION'S** *Managing for Excellence* Project will identify and address the specific 21st Century challenges Reclamation must meet to fulfill its mission to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the public interest.

This process provides an important opportunity for Western water users – many of whom are customers that help pay for Reclamation services – to find further ways to improve transparency in Reclamation decision-making, provide improved accountability, and make the organization as efficient as possible.

"**ALLIANCE MEMBERS** believe that streamlined federal regulation and decision-making are the keys to sound Western water policy," said Mr. Keppen. "It appears that Reclamation is seriously trying to address our goal of improving Reclamation's long-term management and transparency. The upcoming meeting in Portland may provide one of the last opportunities for water and power customers to directly address their concerns with Reclamation leadership."

The meeting is scheduled to be held at the Holiday Inn Portland Airport Hotel, where reservations are available by calling (888) 465-4329. To register for the Portland event, please see <http://www.usbr.gov/excellence/portlandpw.html>.

# Reclamation Has Two New Regional Directors

**B**ureau of Reclamation Commissioner Robert W. Johnson earlier this month announced the selection of two Reclamation Regional Directors, Lorri Gray, current Lower Colorado River-Multi-Species Conservation Program (MSCP) Manager, and Larry Walkoviak, current Deputy Regional Director of Reclamation's Lower Colorado Region.

Ms. Gray will serve in Boulder City (NEVADA) as Regional Director in Reclamation's Lower Colorado Region and Mr. Walkoviak will serve in Salt Lake City (UTAH) as Reclamation's Upper Colorado Region Director.

"The skills that both Larry and Lorri have demonstrated throughout their careers are central to the management of these two regions in Reclamation. Both regions are dealing with issues of national significance and I am confident that these individuals will continue the work of their predecessors without missing a beat," said Mr. Johnson.

Ms. Gray has 24 years of federal service, all with Reclamation's Lower Colorado Region. She has held



Lorri Gray

several management positions, and also represented the Region on the Commissioner's staff in Washington (D.C.).

Mr. Walkoviak was appointed Deputy Regional Director of Reclamation's Lower Colorado Region in August 2005. In more than 32 years of federal service, all with the Bureau, Mr. Walkoviak has served in several managerial positions. Mr. Walkoviak will assume his position on the retirement of Rick Gold, now Regional Director.

Both Gray and Walkoviak are familiar faces to Family Farm Alliance members, particularly those in the Southwest.

"The Lower Colorado Regional Office is respected by water and power customers for the open and accountable manner in which it does business," said Alliance Executive Director Dan Keppen (OREGON). "Lorri and Larry in their new leadership positions will be able to continue and expand on that tradition. We wish them the best of luck."



Larry Walkoviak

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# Two Sides To Every Story

## Former Deputy Assistant Interior Secretary Julie MacDonald Responds to Allegations

By DAN KEPPEN

*Family Farm Alliance Executive Director*

**T**here are many interests in Washington and the national media that are dedicated to laying blame on the Bush Administration and, by association, Western farmers and water users, no matter what the facts say.

The mainstream media's apparent ready acceptance of arguments generated by environmental activists is a growing concern to family farmers and ranchers, especially when one-sided media coverage is seen as influencing environmental policy that has very real ramifications for agriculture.

**THE RECENT EXAMPLE** of "trial by media" concerns the tragic and unfair public pillorying of Julie MacDonald, the former deputy assistant secretary for fish and wildlife and parks at the U.S. Department of the Interior.

All year long, environmental groups and their allies in Congress have kept the pressure on senior officials at the U.S. Department of the Interior over alleged heavy-handed management of Endangered Species Act (ESA) administrative issues.

Ms. MacDonald was subjected to particularly withering fire for allegedly altering scientific field reports to minimize protections for imperiled species and disclosing confidential information to private groups seeking to affect policy decisions.

**SHE RESIGNED** from the Department in May after an Inspector General's (IG) report appeared to support allegations made by environmental activists. Those allegations included charges that she had unreasonably interfered with scientific findings relative to ESA issues; that she had conducted

herself outside the chain of command by interacting directly with field personnel; and, in doing so, she had been heavy-handed with staff.

Having reviewed the ESA decisions in which MacDonald involved herself, Interior has determined that eight additional decisions – most in states along the Pacific Coast – must now be reviewed, and perhaps, reversed or modified.

**URBAN NEWSPAPERS** from around the country essentially broadcast the claims made by environmental groups like the Center for Biological Diversity, painting an unflattering portrait of MacDonald.

Politicians – critics of the Bush Administration – joined the fray, and on July 31, the House Natural Resources Committee ("Committee") conducted an oversight hearing entitled "Crisis of Confidence: The Political Influence of the Bush Administration on Agency Science and Decision-Making." The IG's report on MacDonald was a key topic of discussion at the hearing, which also provided a forum to debate allegations that Vice President Dick Cheney somehow exerted political influence to help farmers at the expense of fish in the Klamath River watershed.

**THROUGH ALL OF THIS**, Julie MacDonald has remained silent, which has allowed the charges levied by her critics to go unchallenged. As a result, those charges are now routinely repeated in media coverage (which the report was "leaked" to, without a response from Ms. MacDonald), and now are routinely reported as facts. But recently, we are beginning to see others tell the other side of Julie MacDonald's story.

At the July 31 congressional oversight hearing, government witnesses involved with the IG

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# Julie MacDonald: Two Sides To Every Story

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investigations were grilled on the MacDonald matter. Mary Kendall, Deputy Inspector General for Interior, testified that the Interior investigation determined that MacDonald did inject herself personally in a number of ESA issues, particularly those that had the potential to impact her home state, California, such as the splittail minnow.

## Plan On Attending The Alliance's Annual Meeting

A great way to learn about the West's many water issues is to plan right now on attending the 20<sup>th</sup> annual Family Farm Alliance Annual Meeting and Conference.

**February 27-29, 2008**

It will again be held at the Monte Carlo Resort and Casino in Las Vegas. Watch for registration information later this year.

“Overall, the impact of Ms. MacDonald’s conduct on the Department of the Interior has been considerable,” said Kendall. “It has cast a vast cloud over the Department’s scientific integrity.”

**HOWEVER, REP. CATHY McMORRIS** RODGERS (R-WASHINGTON) and Rep. Chris Cannon (R-UTAH) provided initial suggestions that, perhaps, the entire MacDonald story had not yet been heard on this matter.

“The American people deserve to know more about this situation,” said Mrs. McMorris Rodgers. “I’m sure the public doesn’t know that this grandmother never had a chance to refute the allegations levied against her and that there could be many sides of the story. She has been unfairly called a future “convict” by a senior member of this Committee already, but there’s no basis for such irresponsible talk, especially when the Inspector General found that she did nothing illegal.”

**FOR THE FIRST TIME**, the public discovered that Ms. MacDonald had submitted a written response to the Interior Department allegations. After the hearing, it became apparent that questions lingered in the minds of some regarding Ms.

MacDonald’s ability to address the charges made against her, and how her input was factored into the IG report. And finally, five weeks later, at least one newspaper stepped forward to tell the rest of the story.

The Colorado Springs *Gazette* on September 6 presented an editorial that summarizes her response to the IG and even includes a link to the IG report and her very thorough response: [http://www.gazette.com/opinion/macdonald\\_26957\\_article.html/report\\_esa.html](http://www.gazette.com/opinion/macdonald_26957_article.html/report_esa.html).

The *Gazette* piece is balanced and complete. It is relevant to the paper’s readers because many of them could be impacted by the proposed de-listing of the Preble’s meadow jumping mouse, protected under the ESA, which falls under Interior Department purview.

**IN A NUTSHELL**, the *Gazette* concludes “she’s been railroaded”.

The *Gazette* editorial is an eye-opener, and introduces some key facts that previous reporters apparently missed:

- Ms. Macdonald says was never solicited by the IG for an opportunity to rebut its report.
- IG’s report insinuated that MacDonald altered range estimates for a protected bird, the southwest willow flycatcher, because a critical habitat designation might impact her “ranch” in California. But Ms. MacDonald’s property — which is not a sprawling “ranch,” but 80 acres of row crops — is nearly 300 miles from flycatcher habitat.
- Ms. MacDonald said the law requires that the best available science be used, but she found the U.S. Fish and Wildlife Service “did not always consider all the data and often ‘cherry picked’ for sources and reviewers which supported their position.”

Sadly, the *Gazette* observes that the record may be impossible to set straight. And it asks a question that everyone who jumped on the “bash Julie MacDonald” bandwagon should be pondering:

Where does Julie MacDonald go to get her reputation back?

# Saluting And Thanking The Alliance's Members

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