



April 2, 2024

Attn: Shannon Estenoz
Assistant Secretary for Fish and Wildlife and Parks
Department of the Interior
1849 C Street NW
Washington, DC 20240

Transmitted via Federal eRulemaking Portal

**RE: FWS-HQ-NWRS-2022-1016
Proposed Regulations to Ensure BIDEH of the Refuge System are Maintained**

Dear Assistant Secretary Estenoz:

On behalf of the Family Farm Alliance (Alliance), I appreciate the opportunity to comment on the U.S. Fish and Wildlife Service's (Service) proposed new regulations intended to ensure that the biological integrity, diversity, and environmental health (BIDEH) of the National Wildlife Refuge System (Refuge System) are maintained, and where appropriate, restored and enhanced, in accordance with the National Wildlife Refuge System Improvement Act of 1997. In addition, the Service is proposing updates to the existing BIDEH policy. We urge that the Service not adopt the proposed rule / policies for the reasons articulated in this letter.

Of utmost concern is that the notice of rulemaking recites reductions in wildlife populations and climate change but does not link the specific policy changes to these underlying concerns.¹ In fact, when the healthy relationship between Western waterfowl populations and irrigated agriculture is fully considered and understood, it would appear that the Service should be encouraging increased

¹ The preamble to the proposed rule states that refuges "have begun to experience the effects of climate change while continuing to contend with the myriad of other anthropogenic stressors affecting fish, wildlife, plants, and their habitats. Climate change is transforming historical species composition and ecological function of habitats, creating new challenges to traditional wildlife management strategies that were based on stable, stationary baseline conditions.... the Service has determined that this proposed rule and policy revision is warranted to clarify Refuge System policies and practices; better prepare refuges to confront future impacts from climate change and other anthropogenic change; and provide the opportunity for public input on the Service's interpretation of the Improvement Act's BIDEH mandate, including its application in the context of predator control, conservation translocations, genetically engineered organisms, invasive species, pesticide use, agricultural practices, and mosquito control."

partnership-driven collaboration that seeks to replicate these successes elsewhere, instead of advancing the types of anti-farming arguments that we regularly see coming from litigious, well-funded environmental organizations. The fact that some of the most litigious anti-farming and ranching organizations² are supportive of this regulation speaks volumes. One group has vocally advocated phasing out 22,000 acres of farming in the Tule Lake and Lower Klamath National Wildlife Refuges.³

For generations, American family farmers and ranchers have grown food and fiber for the world, and these farmers will have to muster more innovation to meet the critical challenge of producing even more to meet projected future increases in world (and U.S.) demand for these commodities. It is our view that such innovation in agriculture must be encouraged by the Federal government, rather than stifled with new, top-down federal policies and regulations that create uncertainty for irrigated farms and ranches in the rural West.

About the Family Farm Alliance

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

Background

There are over 560 national wildlife refuges in the United States, encompassing more than 897 million land acres.⁴ with the involved land either having been reserved from the public domain or acquired from private ownership by purchase or condemnation, and most are located in western states with irrigated agricultural lands. Each has its own specific history and circumstances. Farming and grazing are common on refuge lands and integrated with other management practices by refuge managers.

The statutes and executive orders establishing each refuge also provide management policies. For example, by statute, a group of refuges where I reside – the Klamath Basin of Oregon and California - “shall be administered by the Secretary of the Interior for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith.” (Public Law 88-567) Highly productive land within these refuges was originally

² e.g., Western Watershed Project 2/28/24 letter to Shannon Estenoz, (“We applaud the recognition that agriculture is incompatible with wildlife conservation on refuges in most cases.”); 2/2/2024 News Release, Center for Biological Diversity (“conventional agricultural practices” are “one of the most egregious threats to wildlife on refuges”) .

³ <https://waterwatch.org/programs/klamath-basin/>

⁴ https://www.fws.gov/sites/default/files/documents/2022_annual_report_of_lands_with_data_tables.pdf

designated for homesteading. Congress later chose to stop the homesteading to preserve the unoccupied state of land then being farmed but directed that Interior “continue the present pattern of leasing” specified land and “maximize” revenue from the leasing, and lease revenue (rent) is used for compensatory payments to local governments including three counties.

In 1997, recognizing the multitude of circumstances and management practices on wildlife refuges, enacted the National Wildlife Refuge System Improvement Act (Improvement Act) (Public Law 105-57). The Improvement Act requires refuge managers to prepare comprehensive conservation plans (CCP) for refuges or refuge complexes. The Improvement Act also provides a uniform procedure to authorize “uses” of refuges land that are not specified in statutes or executive orders creating the reservation. These uses may include hunting, wildlife viewing, grazing, farming, or myriad other activities. Where an activity is not among the legal purposes of a refuge, it can be authorized if it is “compatible” with the purpose or purposes of the refuge. A use is compatible if, “based on sound professional judgment, [the use] will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose(s) of the national wildlife refuge.” (50 C.F.R. § 25.12) Refuge managers have made many thousands of compatibility determinations under a process detailed in federal regulations. (50 C.F.R. 26.41)

Overview of the Proposed Regulation

The Service claims these proposed regulatory and policy revisions would support conservation throughout the Refuge System in response to both longstanding and contemporary conservation challenges, including the “universal and profound effects of climate change” on refuge species and ecosystems. Together, these proposals are intended to uphold BIDEH across the Refuge System by providing refuge managers with a consistent approach for evaluating and implementing management actions to protect vulnerable species, restore and connect habitats, promote natural processes, sustain vital ecological functions, increase resilience, and adapt to climate change. The proposed regulation, an update of a policy issued during the last week of the Clinton Administration, targets, and points to the elimination of longstanding and widespread agricultural practices on public lands in the national wildlife refuge system. The regulation would establish a policy to **prohibit** farming and grazing unless new, extra-statutory criteria are satisfied.

Concerns with Proposed Regulation

The regulation proposed on February 1, 2024, includes several new policy approaches that directly affect agriculture. These include 1) *Use of genetically engineered organisms*; 2) *Invasive species management*; 3) *Pesticide use*; and 4) *Agricultural uses*. These new requirements would change the rules for selected activities. For example, in the case of agricultural uses, the Improvement Act stipulates that agricultural activities can be authorized if compatible with refuge purposes, but the new rule would presumptively prohibit agriculture unless it is “determined necessary” to accomplish refuge purposes. Thus, the proposed rule / policies would impermissibly establish a presumption against allowing certain activities of refuge lands nationwide rather than follow the requirements of the Improvement Act, which provides that the Service may allow activities that

are not specific refuge purposes, on a case-by-case basis, for each refuge, if the activity is determined to be a compatible use.

Additionally, the proposed rule could threaten important activities on privately-owned agricultural lands adjacent to or near federal refuge lands, in contradiction to the statutory requirement that the Secretary of Interior, “in administering the [Refuge] System, shall. . .ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which the units of the system are located.”⁵

Specifically, subparagraph (c)(5) the proposed rule includes sweeping new authority to empower the Service to “address threats” to refuges “by pursuing appropriate actions, including when such threats to refuge resources arise outside refuge boundaries.”⁶ The Alliance is concerned that the Service’s discretion of what a “threat” to refuge resources is, how far “outside refuge boundaries” could be interpreted, and what “appropriate actions” could mean to irrigation and agricultural activities near and adjacent to refuge boundaries.

The Service’s proposed policy update to its refuge Service Manual includes a new vague, legal standard that directs refuge managers to use their “sound professional judgment” to “ensure that management actions benefit wildlife conservation by contributing to, and not diminishing BIDEH.”⁷

Included with a host of proposed management directives is proposed paragraph (c)(4), which empowers refuge manager to “acquire, transfer, or lease water rights” and “to pursue and secure critical water assets to support the myriad of migratory birds, fish, and other wildlife that rely on refuge habitats.”

These statements are concerning in light of provisions in Service Manual paragraph 3.15 that direct managers to “regularly monitor land use proposals, changes to adjacent lands and external activities for their potential impacts to the BIDEH of ecosystems that includes refuges,” but that if the refuge manager deems appropriate, can “take action within the legal authorities available to the Service.”⁸ The policy proposals appear to invite litigation rather than promote cooperation with local, state and private agricultural landowners.

Many aspects of the proposed rule / policies are highly subjective or vague. The proposed rule thus proposes sweeping, self-granted power that is undefined and we believe would invite conflict and litigation that would not serve the public interest. It is not good policy or appropriate to promulgate these broad statements and objectives as rules with legal effect. The proposed rule is anchored in the BIDEH policy, which itself derives from broad directives in the Improvement Act. The rule

⁵ The National Wildlife Refuge System Administration Act, 16 U.S.C. §668dd(a)(4)(E).

⁶ 89 Fed.Reg. 7351 (Feb. 2, 2024) (amending 50 C.F.R. subchapter C, part 29).

⁷ 89 Fed.Reg. 7347 (Feb. 2, 2024) (amending 50 C.F.R. subchapter C, part 29)

⁸ U.S. Fish and Wildlife Service Manual Part 601 FW 3.15.

appears to be an obvious departure from the process for approving compatible uses in favor of a blanket policy that is hostile to agriculture.

Perhaps our biggest concern with the proposed regulation is that the notice of rulemaking recites reductions in wildlife populations and climate change but does not link the specific policy changes to these underlying concerns. While the proposed rule discusses important global concerns regarding impacts to species and ecosystems, there is no clear logic explaining why the specific elements of proposed rule would address or resolve these issues or improve the conditions of concern. In the absence of this discussion, a primary purpose of our letter is to demonstrate the important role that Western irrigated agriculture plays in providing habitat to Western wildlife, in particular waterfowl.

The Intermountain West Joint Venture Water 4 Initiative

The Family Farm Alliance works closely with the Intermountain West Joint Venture (IWJV), a leader in utilizing science and technology advancements to link agriculture, hydrology, and wildlife habitat conservation. The IWJV's Water 4 Initiative is focused on the importance of maintaining agricultural land for habitat conservation and landscape resiliency within western states. Integrating agriculture, science, technology, and ecology can lead to improved understanding of key linkages related to the importance of agricultural irrigation and the need to invest in modernizing irrigation infrastructure. Such investments also have collateral benefits for landscape resiliency including groundwater recharge, habitat enhancement, and conservation of fish and wildlife.

We agree with IWJV that there is a unique opportunity to address long term food security through investments in agricultural infrastructure that in turn have benefits for wildlife conservation.

The Importance of Agriculture to Migratory Birds in the West

Agriculture and human settlement have long been tied to ecologically important wetland and riparian resources and the water they provide. For over one hundred years, this pattern has concentrated private land ownership in the West's river bottoms and valleys, areas that are surrounded by publicly-owned sagebrush rangelands and forests. Meadow hydrology today is influenced by water law in the west of the United States that structures timing of irrigation and flooding in early to late spring when water is first made available to growers and again in mid-summer when fields are re-flooded to promote regrowth after hay cutting:

“Waterbird reliance on agricultural wetlands is well documented, and while natural systems exhibit greater ecosystem benefit, seasonal waterbird utilization provides an important habitat niche compatible with existing water-use practices.”⁹

⁹ [Working Science for Working Landscapes](#) (see discussion section of original research [paper](#))

In order to monitor changes in the resiliency of these networks, IWJV scientist Patrick Donnelly partnered with scientists from the University of Montana, the U.S. Geological Survey, and the U.S. Fish and Wildlife Service's Migratory Bird Program to look at surface water changes over 35 years in 26 key waterbird landscapes in the Intermountain West. Donnelly's work noted that agricultural and wetland relationships were very complex. Notably, the study found that approximately 7% of irrigated lands linked to flood irrigation and water storage practices supported 61% of all wetland inundation in snowmelt watersheds¹⁰. In monsoonal watersheds, small earthen dams, meant to capture surface runoff for livestock watering, were a major component of wetland resources (67%) that supported networks of isolated wetlands surrounding endorheic¹¹ lakes.

Emerging science is greatly expanding our understanding of wetland resources and the impacts that climate change and human water uses are having on finite wetland habitats on public and private lands in the West. The data has also elevated the role that flood-irrigated agricultural lands in natural floodplains are playing a key role in maintaining migratory bird populations in water-limited landscapes. These habitats are immensely valuable to migratory birds. Recent research shows that roughly 80% of the habitat use by sandhill cranes, white-faced ibis, cinnamon teal, and northern pintails in the Intermountain West is on privately owned, flood-irrigated wet meadows. To wit:

- *"Sustaining network resilience will require conservation strategies to balance water allocations preserving agriculture and wetlands on private lands that accounted for 67–96% of habitat use."*¹²
- *"Flood-irrigated agriculture, an important foraging resource for ibis (Moulton et al. 2013), was associated with approximately 88% of sites."*¹³
- *"Moreover, 29.8% of stopover use points occurred in wet agriculture, the most used (cinnamon teal) habitat type across all ecoregions in our study."*¹⁴
- *"We documented the majority of foraging birds in flood-irrigated and wheel-line sprinkler-irrigated agricultural fields (76%) and natural wetlands (13%), which were limited in our study area (3% of land cover)... Most agricultural fields (>85%) used by foraging ibis were flood-irrigated and all had standing water or recent moisture at the time of use."*¹⁵

¹⁰ Wetland trends from the IWJV: [Maintaining Resiliency of Continental Waterbird Flyways](#) (see [paper](#))

¹¹ An endorheic lake or basin has no outflow to an external body of water such as a river or ocean, and only loses water through evaporation or seepage into the ground.

¹² From the paper abstract: [The Call of the Cranes: What Sandhill Crane Migration Can Tell Us About Water Availability in the West](#) (see original research [paper](#))

¹³ ["White-Faced Ibis and Water in the West: Indicating the Path to Resiliency in an Arid Region"](#) (Page 6 of original [technical report](#))

¹⁴ From discussion: [Migration Stopover Ecology of Cinnamon Teal](#) (*Research under review*).

¹⁵ From discussion: [Importance of flood irrigation for foraging colonial waterbirds](#)

The IWJV's goal, informed by human dimensions research, is to help landowners continue to mimic natural hydrology through flood irrigation in floodplain systems. Cutting-edge IWJV science shows that critically important flood-irrigated landscapes within the Intermountain West comprise a wetland network supported by agriculture and necessary for the survival of migratory birds.

A pre-print version of Patrick Donnelly's next publication - *Beneficial 'inefficiencies' of western ranching: Flood-irrigated hay production sustains wetland systems by mimicking historic hydrologic processes* – affirms that grass-hay flood irrigation at large scales, in part, mimics floodplain processes sustaining wetlands and groundwater recharge¹⁶. Despite representing only 2.5% of irrigated lands, grass-hay operations supported a majority (58%) of temporary wetlands, a rare and declining habitat for wildlife in the Intermountain West. This novel understanding of grass-hay agroecology highlights the vital role of working ranches in the resilience and stewardship of riparian systems.

Finally, based on the upcoming paper's finding on flood-irrigated grass hay, Mr. Donnelly analyzed managed public wildlife refuge/wildlife area wetlands. This provided a glimpse at the managed surface water on the landscape (irrigation resulting in surface water wetland habitat + managed public wetlands) in which private and landowners and refuge managers have the ability to manage the timing, flooding duration, and water levels:

- Flood-Irrigated Grass-Hay: 818,156 acres¹⁷
- Managed Public Wetlands: 193,646 acres (IWJV analysis)

That shows that 81% of the managed surface water wetland habitat in the Intermountain West over the last seven years is a result of irrigated agriculture. The wildlife refuges provide certain habitats – summer flooded semi-permanent wetlands, fall-flooded seasonal wetlands – that are different from the irrigated grass-hay habitats, so we truly need all these habitats.

There's also evidence that points to the fact that many wildlife refuges in the Intermountain West traditionally relied upon agricultural irrigation return flows (e.g., tailwater) as a key component of their water supplies. For example, the narrative at the beginning of the Great Salt Lake Wetland Habitat Needs report¹⁸ observes that, when canals flowed, the refuges had water supplies, when irrigated agricultural lands were developed and irrigation ceased, those water supplies went away.

¹⁶ <https://www.biorxiv.org/content/10.1101/2023.12.10.571036v1.full>

¹⁷ Id.

¹⁸ Great Salt Lake Wetland Habitat: A Needs Report Based on Interviews with the Managers. November 2020. Prepared by Janice Gardner and Sarah Woodbury, Wild Utah Project.

Here's the bottom line. Based on the bird utilization of flood-irrigated agricultural lands, the reality that irrigated agriculture accounts for 81% of the managed surface water wetland habitat, and the history of some key wildlife refuges being dependent on return flows from irrigated agriculture (which is lost without agricultural irrigation), it's clear that irrigated agriculture is playing a very important role in sustaining wetland-dependent migratory bird habitat across the Flyways.

The importance of maintaining Western agricultural land for habitat conservation and landscape resiliency

The proposed regulation imbeds a message that we often hear from certain litigious environmental activist groups. While irrigation has increased agricultural productivity in the arid American West, these critics often focus only on how it has altered the natural landscape. However, irrigation projects also provide important benefits to wetlands. In California's Sacramento Valley, rice production provides vitally important surrogate habitat and food for waterfowl and other species. In the Klamath Basin of California and Oregon, cereal grains and other wildlife-friendly agricultural production is critical to meeting the needs of Pacific Flyway waterfowl. In addition, irrigated corn, wheat, and alfalfa croplands in the McNary and the Columbia National Wildlife Refuges in central and eastern Washington provide a valuable source for ducks, geese and other waterfowl.

IWJV has begun to quantify the exact number of agricultural acres that need to be enhanced/protected in the Klamath Basin in California and Oregon (among other locations) to provide habitat to sustain water bird and waterfowl populations. This has critical implications for the broader agricultural community in the Pacific Flyway. If habitat is not maintained in the Klamath Basin, migrating birds will likely move south, to California's Central Valley, earlier in the season. This earlier migration means birds may arrive before rice is harvested, resulting in potentially devastating impacts to rice production. This is just one example showing the importance of understanding landscape systems as a whole and the ripple effects that can occur through habitat loss.

In Northern Colorado, a study by Colorado State University (CSU) researchers found that 92 percent of wetlands were visually connected to the irrigation infrastructure. Though land conversion and water diversions have led to dramatic reductions in historic wetland acreage in some places, it is clear from the CSU study that current agricultural landscapes create wetlands that rely on irrigation water¹⁹.

Americans should appreciate the fact that Western farming and ranching operations provide valuable open space. In the Southern Rockies, for example, 43 percent of the private land that is located adjacent to public lands has a public grazing lease. The approximately 24,000 grazing

¹⁹ Sueltenfuss, Cooper, Knight, and Waskom, "The creation and maintenance of wetland ecosystems from irrigation canal and reservoir seepage in a semi-arid landscape," Colorado State University, 2012.

leases on BLM and Forest Service lands are connected to more than 230 million acres²⁰ of private land that ranchers utilize for sheep and cattle grazing during the rest of the year. What would happen to wildlife and open space if public-land grazing were to end and the private lands were developed? Private lands provide most winter and riparian habitat for many wildlife species. Public lands, being less productive, cannot sustain healthy wildlife populations once the private lands rimming their boundaries are developed and reappear as housing subdivisions²¹.

Conclusion

We urge that the Service not adopt the proposed regulations. Our members and others in the regulated community see increased Federal top-down regulations and controls being proposed and put in place, while proven, collaborative partnership-driven approaches to find lasting solutions to vexing water problems appear to have been put on the back burner. Our producers find it difficult to understand why agricultural production finds itself continually under attack when farmers and ranchers continue to provide the food and fiber to feed and clothe the Nation and the world. We are troubled why the Service and other federal agencies are “biting the hand” that produces the food.

While inflation and the cost of living being the top concern of Americans, our own government’s policies are putting the squeeze on some of the world’s best producers of safe, affordable food. We are already losing American farmers²², against the current backdrop of shrinking significantly inflated food costs, global food supply challenges, and a looming global famine. Rather than advance the harmful agendas of anti-farming and ranching activists, the importance of Western American agricultural production should be carefully and thoughtfully evaluated.

Now is the time to focus on the critical importance of maintaining our country’s food security and locally sourced foods. Rising food prices and global hunger are linked to the war in Ukraine, extreme climate events, and other global stressors.

Thank you for this opportunity to comment. Farmers, ranchers, and some conservation groups know that the best water solutions are unique and come from the local, watershed, and state levels. They know we need policies that encourage agricultural producers, NGOs, and state and federal

²⁰ Congressional Research Service Report, “*Statistics on Livestock Grazing on Federal Lands: FY 2002-2016*” (August, 2017) <https://crsreports.congress.gov/product/pdf/R/R44932/3>

²¹ Gary P. Nabhan, Richard L. Knight, and Susan Charnley, “The Biodiversity that Nature Reserves Can’t Capture: How Western Ranches, Tribal Grazing Lands and Private Forests Sustain Ecosystems and Their Diverse Species” in *Saving the Wide Open Spaces*, 2011

²² The USDA’s recently released five-year Census of Agriculture showed the biggest five-year decline in number of farmers since at least 2000. Agriculture Secretary Tom Vilsack recently said this highlights the need to do more to help medium-sized and small operations.

agencies to work together in a strategic, coordinated fashion. They understand that species recovery and economic growth and activity do not have to be mutually exclusive.

Western irrigated agriculture is a strategic and irreplaceable national resource important to both our food security and our economy. It must be appreciated, valued, and protected by the federal government in the 21st Century.

If you have any questions about this letter, please do not hesitate to contact me at 541-892-6244.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Keppen', with a stylized flourish at the end.

Dan Keppen
Executive Director