

**Testimony of Patrick O'Toole
Wyoming Rancher**

**Before the Subcommittee on Interior
Committee on Oversight and Government Reform
United States House of Representatives**

**Field Hearing
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Good morning, my name is Pat O'Toole and I want to thank you, Chairwoman Lummis and the Members of the Subcommittee for the opportunity to testify at today's field hearing in regards to the rules and regulations proposed by the Department of Labor on the H2A program and the need for employees to tend sheep, bees and other livestock. While my comments today will focus primarily on these matters, I've included in my written testimony some observations about recent federal administrative actions taken in other areas that impact my operations and my way of life. Recent federal agency rulemaking in the water resources arena is a paramount concern.

Concerns with Department of Labor Proposed Rules

While I have grave concerns with many of the Department of Labor proposals put forth, I will concentrate on the impact these proposed rules will have on conservation practices, the health of the landscape and wildlife, the attempt by the Labor Department to supersede the traditional land and resource management agencies, and the terrible impact on rural families and rural communities that will result from the rules as proposed.

Our family prides itself on conservation practices within our ranching operation. Our ranch, the Ladder Ranch was the 2014 Wyoming Stock Growers/Sand County Foundation Leopold Award winner, in recognition of the importance we place upon maintaining and improving natural resources, while operating a viable ranching business. Our family, like many, are descendants of folks who headed West in response to Lincoln's charge and the Homestead Act.

Much of our success rests upon grazing practices, including a large rotation of animals in a transhumance system. This means the sheep and the cows trail to summer Forest permits where they graze in a rotational manner, seldom even bedding in the same place at night. They are tended by conscientious and experienced herders, who keep them from impacting riparian areas, make sure they are grazing on fresh feed, and protect them from ever-present predators. These practices are the very means by which we provide protection and habitat for species such as the Greater Sage Grouse. We have Grouse in abundance all across our range.

In the fall, the sheep are trailed back to private and public lands near the ranch headquarters, where they are sorted and the bunches put together for the winter. Later, we trail north to the Red

Desert, where they are tended by the herders, in a large rotation. The distance from the summer country to the winter country is about 150 miles. In the spring, the migration route is reversed, as we shear and lamb. The lambing is an intense process, with constant attendance by herders and family members.

All of this depends on our hard-working reliable employees, who all come from Peru on H2A visas. We employ about ten shepherders in the winter months, when the herds are larger and don't have lambs, and about 15 in the summer months. We have tried to hire American shepherders, including a gentleman this spring who had just been released from disability payments for schizophrenia. He lasted three weeks. Domestic workers are not available.

Raising food and fiber on private, public and state lands also requires an intricate set of relationships with the range conservationists and others in the BLM and Forest Service, extension agents and researchers from the Land Grant Universities, species managers from the U.S. Fish and Wildlife Service, and even engineers from the Bureau of Reclamation as we manage our water resources. These are relationships that are built over years, requiring a depth of knowledge about the land, the livestock and the wildlife. Problems are solved on the ground, with relationships serving as a basis. Relationships leading to trust and cooperation grow up over time, and cannot be dictated from afar.

The Department of Labor proposes to take away the platform that underpins current resource management in the West, and to override or make impossible the current regulatory matrix set forth by these other federal agencies. It also proposes to usurp the role of the states by removing the state Workforce Services participation in the current system. This power grab has no basis in improving workers' situations and is done without input from employers, workers or legislative oversight.

No one, including the University of Wyoming, who has analyzed these proposals comes to any conclusion other than the demise of the range sheep industry. The impacts are multiple. The country would lose an industry which supports multi-generational families, which have overcome years of challenges to remain in business today. Ranches steadily support businesses in rural communities, year in and year out. They are customers for gas stations, grocery stores, feed stores, garages—the list goes on. They are taxpayers who serve on local school boards, conservation districts, health care districts, the County Commissions—they are part of the underpinning of the rural communities.

In addition, ranches which depend on H2A workers are in the actual business of raising food and fiber. Agriculturalists are being told they need to double the food supply in the next 30 years, yet these proposed rules are sadly typical of actions being taken all across the board. These actions can have the effect of dismantling every sector of food production in the nation.

It is hard to understand why the Department of Labor would impose such a social experiment that will inevitably fail, and would achieve no good end. It is an attempt to override the role of

the States, other agencies, and would inevitably lead to dismantling range agriculture and its attendant benefits, including actual jobs for H2A employees.

I do not argue that the H2A program needs updating, but a wholesale attack on range livestock production is not the approach that will be productive. I have worked with the Meridian Institute, a group which “helps people solve complex and controversial problems, make informed decisions, and implement solutions that improve lives, the economy, and the environment.” I propose that the Meridian Institute, base in Colorado, moderate a discussion that includes all affected parties to craft a reasonable solution regarding agricultural workers.

Concerns with Recent Federal Agency Administrative Actions on Water

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. 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 over the very water supplies originally developed for irrigated farms and ranches in the rural West.

For example, irrigators throughout the Western U.S. voiced strong opposition to a recent proposed U.S. Forest Service groundwater management directive which would have asserted federal control over groundwater far beyond the agency’s statutory authority. Fortunately, with your strong leadership, Madam Chair, and others on this Committee, the Forest Service recently withdrew this harmful proposal. Unfortunately in recent years, similar actions such as conditioned federal permits, leveraged water rights, and by-pass flow requirements by the Forest Service suggest a move towards federal overreach, ignoring state water laws and processes, and violating private property rights.

These proposals are not limited to the U.S. Department of Agriculture. For most of the past six years, Western farmers and ranchers have feared that new guidelines intended to clarify Environmental Protection Agency (EPA) and Corps of Engineers (Corps) administration of the Clean Water Act (CWA) and the White House Council on Environmental Quality (CEQ) efforts to create new criteria to guide planning efforts for federal water investments could, if fact, actually bring water project development to a halt. Those fears remain. The process originally proposed by CEQ to implement Principles and Requirements for Federal Investments in Water Resources is daunting, subjective and uncertain, and the costs and delays it would impose could preclude many planning and development efforts. We do not want to see a program that becomes mired in a process that ultimately delays implementation of critical projects. Those projects – especially those that enhance water supplies – already are very time-intensive and costly, and any additional delay for planning and studies will only add to the time frame for providing water supply relief.

I have similar concerns regarding the new “Waters of the U.S.” rule proposed by EPA and the Corps, intended to clarify administration of the CWA jurisdictional issues, which are very uncertain, particularly in areas where Western farmers and ranchers store, move and apply water for irrigation. This uncertainty brings with it the risk of additional regulations, time-consuming and potentially expensive procedures, expanded opportunities for litigation, and a shift from local and state water management towards increased federal agency regulation and oversight. I do appreciate that the new Clean Water Act rule would theoretically preserve current CWA exemptions enjoyed by the agricultural community such as the agricultural return flow exemption and the agricultural ditch and drain operations exemption. However, I fear that the new rule’s approach to defining other water features is so expansive and vague that it will be used by opponents of new storage projects to halt further water development in the West. Our farmers and ranchers simply do not need another layer of difficulty added to a profession that is already saddled with significant challenges.

In short, ranchers like me 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. I find it difficult to understand why agricultural production finds itself continually under attack when farmers and ranchers continue to provide the affordable food and fiber to feed and clothe the Nation and the world. I am troubled why federal agencies appear to be “biting the hand” that produces the food.

I thank you for elevating our concerns regarding the H2A rules. Unfortunately, this is just the latest example in a sweeping range of processes and actions that can, individually or collectively, have very real negative impacts to Western irrigated agriculture, including the potential for disruption in water supplies and increased production costs.

I can only hope that the leaders in the Obama Administration seriously reconsider the cumulative impacts of the resulting regulatory measures before adding additional chapters to what farmers and ranchers already see as a very large rulebook.