

**Supplemental Materials of James D. Ogsbury  
Executive Director, Western Governors' Association**

**Before the  
United States Senate  
Committee on Energy and Natural Resources**

**Roundtable on Issues Related to Public Lands in the Western United States**

**March 8, 2019**

Chairman Murkowski, Ranking Member Manchin, and members of the Committee, Western Governors appreciate the opportunity to provide testimony on matters related to public lands in the West. My name is Jim Ogsbury, and I am the Executive Director of the Western Governors' Association (WGA), an independent, bipartisan organization representing the Governors of 19 western states and 3 U.S. territories in the Pacific Ocean.

The materials appended here supplement my oral statement and reflect Western Governors' policy on a wide range of public lands issues over which the Committee has jurisdiction. I hope they are a useful reference both for this roundtable and as the Committee considers matters affecting public lands in the western United States and state-federal relations over the course of this session of Congress:

- WGA Policy Resolution 2017-01, *Building a Stronger State-Federal Relationship*;
- WGA Policy Resolution 2016-04, *Federal-State Land Exchanges and Purchases*;
- WGA Policy Resolution 2016-10, *National Parks and the West*;
- WGA Policy Resolution 2017-02, *States' Share of Royalties and Leasing Revenues from Federal Lands and Minerals and States' Role in Associated Federal Policy*;
- WGA Policy Resolution 2017-03, *Tax-Exempt Federal Lands and Secure Rural Schools*;
- WGA Policy Resolution 2017-10, *National Forest and Rangeland Management*;
- WGA Policy Resolution 2018-02, *Public Lands Grazing*;
- WGA Policy Resolution 2018-04, *Energy in the West*;
- WGA Policy Resolution 2018-08, *Water Resource Management in the West*;
- WGA Policy Resolution 2018-09, *National Minerals Policy*; and
- WGA Policy Resolution 2018-12, *Water Quality in the West*.



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## **Western Governors' Association Policy Resolution 2017-01**

### ***Building a Stronger State-Federal Relationship***

#### **A. PREAMBLE**

The Governors of the West are proud of their unique role in governing and serving the citizens of this great nation. They recognize that the position they occupy – the chief elected official of a sovereign state – imposes upon them enormous responsibility and confers upon them tremendous opportunity. Moreover, the faithful discharge of their obligations is central to the success of the Great American Experiment.

It was, after all, the states that confederated to form a more perfect union by creating a national government of limited and defined powers. The grant of specific responsibilities for irreducibly common interests – such as national defense and interstate commerce – was brilliantly designed to make the whole stronger than the sum of its parts.

The genius of American democracy is predicated on the separation of powers among branches of government (*viz.* the legislative, executive and judiciary) and the division of power between the federal and state governments (federalism). Under the American version of federalism, the powers of the federal government are narrow, enumerated and defined. The powers of the states, on the other hand, are vast and indefinite. States are responsible for executing all powers of governance not specifically bestowed to the federal government by the U.S. Constitution. This principle is memorialized in the Tenth Amendment, which states in its entirety, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

This reservation of power to the states respects the differences between regions and peoples. It recognizes a right to self-determination at a local level. It rejects the notion that one size fits all, and it provides for a rich tapestry of local cultures, economies and environments.

Because of the Constitutional recognition of state sovereignty, the states have been appropriately regarded as laboratories of democracy. States regularly engage in a kind of cooperative competition in the marketplace of ideas. Western Governors are leaders in innovative governance who employ their influence and executive authority to promote initiatives for improvement of their states' economies, environments and quality of life.

Despite the foregoing, the balance of power has, over the years, shifted toward the federal government and away from the states. The growth in the size, cost and scope of the federal government attests to this new reality. Increasingly prescriptive regulations infringe on state authority, tie the hands of states and local governments, dampen innovation and impair on-the-ground problem-solving. Failures of the federal government to consult with states reflect a lesser appreciation for local knowledge, preferences and competencies.

The inauguration of a new Administration presents a historic opportunity to realign the state-federal relationship. Western Governors are excited to work in true partnership with the federal government. By operating as authentic collaborators on the development and execution of policy, the states and federal government can demonstrably improve their service to the public. Western Governors are optimistic that the new Administration will be eager to unleash the power and creativity of states for the common advantage of our country. By working cooperatively with the states, the Administration can create a legacy of renewed federalism, resulting in a nation that is stronger, more resilient and more united. Such an outcome will redound to the credit of the Administration and inure to the benefit of the American people.

## **B. BACKGROUND**

1. The relationship between state government authority and federal government authority is complex and multi-dimensional. There are various contexts in which the authorities of these respective levels of U.S. government manifest and intersect. For example:
  - a) **Exclusive Federal Authority** – There are powers that are specifically enumerated by the U.S. Constitution as exclusively within the purview of the federal government.<sup>1</sup>
  - b) **State Primacy** – States derive independent rights and responsibilities under the U.S. Constitution. All powers not specifically delegated to the federal government are reserved for the states; in this instance, the legal authority of states overrides that of that federal government.<sup>2</sup>

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<sup>1</sup> The structure of the government established under the U.S. Constitution is premised upon a system of checks and balances: Article VI (Supremacy Clause); Article I, Section 8 (Congressional); Article II, Section 1 (Executive Branch); Article III, Section 2 (Judicial Branch). State law can be preempted two ways. If Congress evidences an intent to fully occupy a given “field,” then state law falling within the field is preempted. If Congress has not fully displaced state regulation over the matter, then state law is preempted to the extent it *actually* conflicts with federal law.

<sup>2</sup> Amendment 10 of the U.S. Constitution: “*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.*”

Governors have responsibilities for the condition of land, air, forest, wildlife and water resources, as well as energy and minerals development, within their state's borders.

- c) **Shared State-Federal Authority** – In some cases, state and/or federal authority can apply, given a particular fact pattern.<sup>3</sup> Federal preemption of state law is a concern under this scenario. According to the Council on State Governments, the federal government enacted only 29 statutes that pre-empted state law before 1900. Since 1900, however, there have been more than 500 instances of federal preemption of state law.
- d) **State Authority “Delegated” from Federal Agencies by Federal Statute** – The U.S. Congress has, by statute, provided for the delegation to states of authority over certain federal program responsibilities. Many statutory regimes – federal environmental programs, for example – contemplate establishment of federal standards, with delegated authority (permissive) available to states that wish to implement those standards.

According to the Environmental Council of the States (ECOS), states have chosen to accept responsibility for 96 percent of the primary federal environmental programs that are available for delegation to states. States currently execute the vast majority of natural resource regulatory tasks, including 96 percent of the enforcement and compliance actions and collection of more than 94 percent of the environmental quality data currently held by the U.S. Environmental Protection Agency (EPA).

- e) **Other** – Where the federal government has a statutory, historical or “moral” obligation to states.<sup>4</sup>

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<sup>3</sup> The federal government has authority to regulate federal property under Article IV of the Constitution. That authority, however, is limited. General regulatory authority (including regulation of wildlife and land use) is held by the states, unless Congress passes a specific law that conflicts with a state's exercise of authority. This is discussed in detail in U.S. Supreme Court case, [Kleppe v. New Mexico](#).

<sup>4</sup> These historic agreements include, but are not limited to: Payments in Lieu of Taxes; shared revenues authorized by the Secure Rural Schools Act; Oregon and California Railroad Revested Lands payments; shared mineral royalties at the historic level of 50% and renewable energy leasing revenues from development on U.S. Forest Service lands, Bureau of Land Management lands and waters off the coasts of the western states; Abandoned Mine Lands grants to states consistent with 2006 Amendments to the Surface Mining Control and Reclamation Act; legally binding agreements and timetables with states to clean up radioactive waste that was generated in connection with nuclear weapons production and that remains on lands managed by the Department of Energy in the West.

2. Over time, the strength of the federal-state partnership in resource management has diminished. Federal agencies are increasingly challenging state decisions, imposing additional federal regulation or oversight and requiring documentation that can be unnecessary and duplicative. In many cases, these federal actions encroach on state legal prerogatives, especially in natural resource management. In addition, these federal actions neglect state expertise and diminish the statutorily-defined role of states in exercising their authority to manage delegated environmental protection programs.
3. The current fiscal environment exacerbates tensions between states and federal agencies. For example, states have a particular interest in improving the active management of federal forest lands. The so-called “fire borrowing” practice employed by the U.S. Forest Service and the Department of the Interior to fund wildfire suppression activities is negatively affecting restoration and wildfire mitigation work in western forests. Changes are needed, as the current funding situation has allowed severe wildfires to burn through crippling amounts of the very funds that should instead be used to prevent and reduce wildfire impacts, costs, and safety risks to firefighters and the public. This also has impacts on local fire protection districts, which often bear the brunt of costs associated with first response to wildfire, and state budgets that are also burdened by the costs of wildfire response. Fire borrowing represents an unacceptable set of outcomes for taxpayers and at-risk communities, and does not reflect responsible stewardship of federal land. In addition, states increasingly are required to expend their limited resources to operate regulatory programs over which they have less and less control. A 2015 report by the White House Office of Management and Budget on the costs of federal regulation and the impact of unfunded mandates notes that federal mandates cost states, cities and the general public between \$57 and \$85 billion every year.
4. States are willing and prepared to more effectively partner with the federal government on the management of natural resources within their borders.
5. The U.S. Advisory Commission on Intergovernmental Relations – established in 1959 and dissolved in 1996 – was the federal government's major platform for addressing broad intergovernmental issues beyond narrow considerations of individual programs and activities.
6. The current Executive Order on Federalism (E.O. 13132) was issued by then-President William Clinton in 1999. That E.O. has not been revisited since and it may be time to consider a new E.O.

## C. GOVERNORS' POLICY STATEMENT

### 1. Review of the Federal-State-Local Relationship

- a) It is time for thoughtful federal-state-local government review of the federal Executive Order on Federalism to identify areas in the policy that can be clarified and improved to increase cooperation and efficiency.
- b) Governors support reestablishment of the U.S. Advisory Commission on Intergovernmental Relations. It is imperative that the President show his commitment to the Constitutional separation of powers by establishing a platform at the highest level to address federalism concerns.

### 2. Avoiding Preemption of States

- a) In the absence of Constitutional delegation of authority to the federal government, state authority should be presumed sovereign. Accordingly, federal departments and agencies should, to the extent permitted by law, construe, in regulations and otherwise, a federal statute to preempt state law only when the statute contains an express preemption provision or there is some other firm evidence compelling the conclusion that Congress intended preemption of state law, consistent with established judicial precedent.
- b) When Congress, acting under authority granted to it by the Constitution, does preempt state environmental laws, federal legislation should:
  - i. Accommodate state actions taken before its enactment;
  - ii. Permit states that have developed stricter standards to continue to enforce them;
  - iii. Permit states that have developed substantially similar standards to continue to adhere to them without change and, where applicable, without consideration to land ownership.

### 3. Defining Meaningful State-Federal Consultation

- a) Each Executive department and agency should be required to have a clear and accountable process to provide each state – through its Governor as the top elected official of the state and other representatives of state and local governments as he or she may designate – with *early, meaningful* and *substantive*

input in the development of regulatory policies that have federalism implications. This includes the development, prioritization and implementation of federal environmental statutes, policies, rules, programs, reviews, budgets and strategic planning.

- b) Consistent with C(2) and C(3)(a), federal agencies should consult with states in a meaningful way, and on a timely basis.
  - i. **Predicate Involvement:** Federal agencies should take into account state data and expertise in development and analysis of underlying science serving as the legal basis for federal regulatory action. States merit greater representation on all relevant committees and panels (such as the EPA Science Advisory Board and related issue panels) advising federal agencies on scientific, technological, social and economic issues that inform federal regulatory processes.
  - ii. **Pre-Publication / Federal Decision-making Stage:** Federal agencies should engage in early (pre-rulemaking) consultation with Governors and state regulators. This should include substantive consultation with states during development of rules or decisions and a review by states of the proposal before a formal rulemaking is launched (i.e., before such proposals are sent to the White House Office of Management and Budget).
  - iii. **Post-Publication / Pre-Finalization Stage:** As they receive additional information from state agencies and non-governmental entities, Governors and designated state officials should have the opportunity to engage with federal agencies on an ongoing basis to seek refinements to proposed federal regulatory actions prior to finalization.

#### 4. State Authority “Delegated” from Federal Agencies Pursuant to Federal Statute

Where states are delegated authority by federal agencies pursuant to legislation:

- a) Federal agencies should treat states as co-regulators, taking into account state views, expertise and science in the development of any federal action impacting state authority.

- b) Federal agencies should grant states the maximum administrative discretion possible. Any federal oversight of such state should not unnecessarily intrude on state and local discretion. Where states take proactive actions, those efforts should be recognized and credited in the federal regulatory process.
- c) When a state is meeting the minimum requirements of a delegated program, the role of a federal department or agency should be limited to the provision of funding, technical assistance and research support. States should be free to develop implementation and enforcement approaches within their respective jurisdictions without intervention by the federal government.
- d) New federal rules and regulations should, to the extent possible, be consistent with existing rules and regulations. The issuing agency should identify elements and requirements common to both the proposed and existing regulations and provide states an opportunity to develop plans addressing the requirements of both in a coordinated fashion. This will achieve economies of scale, saving both time and money.
- e) When a federal department or agency proposes to take adjudicatory actions that impact authority delegated to states, notice should be provided to affected Governors' offices, and co-regulating states should have the opportunity to participate in the proceedings. Where legally permissible, that right should extend to federal agencies' settlement negotiations impacting state environmental and natural resource management prerogatives. Where their roles and responsibilities are impacted, states should be meaningfully consulted during settlement negotiations, including negotiations aimed at avoiding, rather than resolving, litigation (such as negotiations following a notice of intent to sue under the Endangered Species Act, but prior to a formal complaint being filed to initiate legal action).
- f) States' expertise should be recognized by federal agencies and robustly represented on boards and in other mechanisms upon which agencies rely for development of science to support regulatory action.

**5. Other Opportunities for Positive Engagement by the Federal Government with Western States**

- a) **Federalism Reviews** – Federal agencies are required by federal Executive Order 13132 to consider and quantify consequences of federal actions on states. In practice, the current process falls short of its stated goals. Governors call on the President to revisit the executive order to, among other things:



- i. Specifically involve Western Governors on issues (e.g., public lands, water and species issues) that disproportionately impact the West;
  - ii. Work with Governors to develop specific criteria and consultation processes: 1) for the initiation of federalism assessments and 2) that guide the performance of every federal Department and agency federalism assessment;
  - iii. Require federal Departments and agencies to meet the criteria developed under C(5)(a)(ii), rather than simply require the consideration of federalism implications;
  - iv. Provide states, through Governors, an opportunity to comment on federalism assessments before any covered federal action is submitted to the Office of Management and Budget for approval.
- b) **Federal and State Land-Use Planning** – Governors possess primary decision-making authority for management of state resources. Accordingly, it is essential that they have an opportunity to review new, revised and amended federal land management plans for consistency with existing state plans. Governors and their staffs have specific knowledge and experience that can help federal agencies craft effective and beneficial plans. A substantive role in federal agencies’ planning processes is vital for Western Governors:
- i. Federal landscape-level planning presents new issues for Governors to consider as they attempt to ensure consistency between state and federal requirements. Agencies should provide Governors sufficient time to ensure a full and complete state review. This is particularly true when agency plans affect multiple planning areas or resources;
  - ii. Agencies should seek to align the review of multiple plans affecting the same resource. This is particularly true for threatened or endangered species that have vast western ranges;
  - iii. When reviewing proposed federal land management plans for consistency with state plans, Governors should be afforded the discretion to determine which state plans are pertinent to the review, including state-endorsed land use plans such as State Wildlife Action Plans, conservation district plans, county plans and multi-state agreements;
  - iv. Governors must retain a right to appeal any rejection of recommendations resulting from a Governor’s consistency review.

- c) **Honoring Historic Agreements** – The federal government should honor its historic agreements with states and counties in the West to compensate them for state and local impacts associated with federal land use and nontaxable lands within their borders that are federally-owned.
- d) **Responsible Federal Land Management** – The federal government should be a responsible landowner and neighbor and should work diligently to improve the health of federally-owned lands in the West. Lack of funding and conflicting policies have resulted in large wildfires and the spread of invasive species from federally owned forests and grasslands, negatively impacting adjacent state and privately-owned lands, as well as state-managed natural resources (soils, air and water).
- e) **Recognizing State Contributions to Federal Land Management** – The U.S. Congress and appropriate federal departments and agencies should provide opportunities for expanded cooperation, particularly where states are working to help their federal partners to improve management of federal lands within their states’ borders through the contribution of state expertise, manpower and financial resources.
- f) **Avoiding Unfunded Mandates** – The U.S. Congress and federal departments and agencies should avoid the imposition of unfunded federal mandates on states. The federal government increasingly requires states to carry out policy initiatives without providing the funding necessary to pay for implementation. State governments cannot function as full partners if the federal government requires them to devote their limited resources to compliance with unfunded federal mandates.
- g) **Other Considerations in Designing an Effective State-Federal Relationship** – Other important considerations in the design of a stronger state-federal relationship include:
  - i. The U.S. Congress and federal departments and agencies should respect the authority of states to determine the allocation of administrative and financial responsibilities within states in accordance with state constitutions and statutes. Federal action should not encroach on this authority.
  - ii. Federal assistance funds, including funds that will be passed through to local governments, should flow through states according to state laws and procedures.

- iii. States should be given flexibility to transfer a limited amount of funds from one grant program to another, and to administer related grants in a coordinated manner.
- iv. Federal funds should provide maximum state flexibility without specific set-asides.
- v. States should be given broad flexibility in establishing federally-mandated advisory groups, including the ability to combine advisory groups for related programs.
- vi. Governors should be given the authority to require coordination among state executive branch agencies, or between levels or units of government, as a condition of the allocation or pass-through of funds.
- vii. Federal government monitoring should be outcome-oriented.
- viii. Federal reporting requirements should be minimized.
- ix. The federal government should not dictate state or local government organization.

**D. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.

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## Western Governors' Association Policy Resolution 2016-04

### *Federal-State Land Exchanges and Purchases*

#### A. BACKGROUND

1. Congress granted lands to states as they were admitted to the Union to be held in trust for support of public schools and other endowed institutions. Federal land ownership in western states is prolific. Over time, the federal government has created conservation areas such as national monuments, wildlife refuges, wildlife conservation areas (i.e., sage grouse focal areas) and wilderness study areas on public lands that surround or affect many of these trust lands. Tribal reservations and military withdrawals have also created state enclaves within federal land holdings. In at least one case, a state has not received all of its land conveyances from the federal government pursuant to its respective statehood act.
2. The manner in which Congress granted lands to western states, as well as other forms of land disposition to railroads or other entities, created a “checkerboard” pattern of federal, state, county, and private land ownership across many areas of the West. Federal and state land managers, land users, the environmental community and the public all agree that the “checkerboard” land ownership pattern is a major hindrance to effective and ecologically sound management of both federal and state lands.
3. In addition to complicating and often increasing costs related to resource management issues including wildfire, federal land ownership in a checkerboard land ownership pattern increases the potential that a federal “nexus” may exist when a project proponent seeks to operate within a state. The requirement to undertake federal processes and procedures can be onerous and provide an economic disincentive for industry, even when the majority of the project is on state or deeded lands. This disincentive leads to decreased trust revenues as well as decreased state and local taxes.
4. Currently, there are three methods of resolving the checkerboard land tenure issue in the West: (1) land exchanges under existing legislation, such as the Federal Lands Policy and Management Act (FLPMA); (2) the direct federal purchase of non-federal lands within federal management areas under the Federal Lands Transfer Facilitation Act (FLTFA); and (3) individual acts of Congress. However, all three are lengthy, expensive, and inefficient.

5. Federal land exchanges – whether with states or private interests – are conducted under the FLPMA and the National Environmental Policy Act (NEPA). FLPMA requires that land exchanges be of equal value as determined by appraisal and that the public interest is “well served by making [the land] exchange.” The complex regulatory requirements associated with FLPMA exchanges and NEPA requirements create unintentional barriers to federal-state land exchanges.
6. Generally, the estimated values of lands proposed for exchange are established through appraisals, which must be done in accordance with federal standards and other requirements. If the federal land value is estimated to be less than \$150,000, an appraiser’s statement of value (a professional assessment that is based on more limited information than is included in a full appraisal) can be used.
7. The FLTFA allows the Department of the Interior agencies and the Forest Service to use the proceeds from sales of surplus federal lands to acquire inholdings in national parks, national wildlife refuges, national forests and other designated areas, including the National Landscape Conservation System. FLTFA was passed in 2000 with a 10-year sunset. The act was reauthorized for one year in 2010, but was not extended at the July, 2011 expiration.
8. The Western States Land Commissioners’ Association (WSLCA) has drafted proposed legislation to solve part of the land tenure problems based on a process known as “in lieu” selections. In lieu selections are established by 43 U.S.C 851-852 and allow western land grant states to select federal lands in lieu of land originally granted to the states that became unavailable due to preexisting conveyances or federal special purpose designations. Under the WSCLA proposal, states would have the right to relinquish state trust lands within federal conservation designations to the United States, and select replacements lands from unappropriated federal public lands within the states.

**B. GOVERNORS' POLICY STATEMENT**

1. Western Governors call on the administration to avoid land transfers and sales that may result in diminished use or financial capacity of adjacent state or deeded lands.
2. To improve management of both federal and state lands in areas where there is checker-boarded ownership or state lands and/or minerals are within the boundaries of a federal management area or in areas where the federal government owes a state land conveyances pursuant to a statehood act, Western Governors call on Congress to simplify and expedite the federal-state land exchange, sale and conveyance processes.

3. Western Governors request Congress amend the FLPMA to add language to:
  - a. Update, accounting for inflation, the existing \$150,000 threshold for using an expedited exchange process since the \$150,000 threshold was adopted in 1986;
  - b. Allow use of a statement of value to replace the appraisal process in federal-state exchanges of similar rural lands; and
  - c. Presume any agreed federal-state land exchange as in public interest unless clear countervailing factors are present (federal-private exchanges are not included in this presumption).
4. Western Governors request that Congress reauthorize the FLTFA with priority to be given to acquisition of state inholdings.
5. Western Governors encourage Congress to introduce and pass legislation that incorporates the proposed federal-state land selection improvements proposed by the WSLCA.

**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

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## Western Governors' Association Policy Resolution 2016-10

### *National Parks and the West*

#### A. BACKGROUND

1. The National Park Service (NPS) was created on August 25, 1916. The “Organic Act” states that the fundamental purpose of the NPS “is to conserve the scenery and the natural and historic objectives and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”
2. The NPS System includes Historical Parks or Sites, National Monuments, National Parks, Battlefields or Military Parks, Preserves, Recreation Areas, Seashores, Parkways, Lakeshores, and Reserves. The NPS also helps administer affiliated sites, the National Register of Historic Places, National Heritage Areas, National Wild and Scenic Rivers, National Historic Landmarks, and National Trails.
3. NPS System units preserve scenic, historic, cultural, recreational and natural (i.e., wildlife, water, vegetation, etc.) values for the enjoyment, education, and inspiration of millions of visitors.
4. Across the United States, the NPS System covers more than 84 million acres and comprises 409 locations.
5. The NPS System receives over 273 million visitors annually who support more than 240,000 mostly local jobs and contribute about \$27 billion to the U.S. economy. NPS System units function as the backbone of many rural economies throughout the West.
6. The West has a unique history and special role in the establishment of our Nation’s system of NPS units.
  - a. The Nation’s first thirteen recognized national parks are all located in the West and many other “crown jewels” of the NPS System are found in Western States.

- b. Western States and U.S. Flag Islands in the Pacific are home to 201 national parks, with over 110 million visitors annually contributing more than \$7.7 billion to the states' economy through visits to unique and iconic treasures found in our mountains, deserts, and coastlines.
  - c. National Parks help to safeguard natural and cultural heritage throughout the West, including 220 National Natural Landmarks, 588 National Historic Landmarks, 62,357 archaeological sites, and 14 World Heritage Sites, and supporting 421 threatened and endangered plant and animal species throughout the United States.
7. The NPS celebrates its Centennial in 2016 and has launched the "Find Your Park" and "Every Kid in a Park" initiatives to connect people with our National Parks, state parks, local parks, trails, museums, historic sites, and the many ways that the American public can connect with history and culture, enjoy nature, and make new discoveries.

## **B. GOVERNORS' POLICY STATEMENT**

1. Western Governors understand that not every state, territory, or Flag Island approaches public land ownership and management in the same way. However, Western Governors recognize the role of our system of National Parks, in economic development, development of social values, positive health benefits, and recreational opportunities, which benefit our citizens, the region, nation, and world.
2. Western Governors join the NPS as it celebrates the 100<sup>th</sup> birthday of the NPS in 2016 and support the NPS's Centennial goal to connect with and nurture the next generation of park visitors, supporters, and advocates, including encouraging individuals and families to take advantage of our Nation's natural wonders and iconic sites as part of the "Find Your Park" and "Every Kid in a Park" initiatives.
3. Western Governors support efforts to protect the intellectual property of iconic NPS features, venues and landmarks so as to ensure and maintain their economic, cultural and historic values.
4. Consistent with existing WGA policy (Policy Resolution 2014-12, *Federal Agreements with Western States*), Western Governors recommend the federal government continue efforts to take action to avoid problems caused by the potential of federal budget impasses and the shutdown of federal lands, particularly NPS units within the states, and major tourist attractions in the West.



**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution and to support the "Find Your Park" and "Every Kid in a Park" initiatives.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

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## **Western Governors' Association Policy Resolution 2017-02**

### ***States' Share of Royalties and Leasing Revenues from Federal Lands and Minerals and States' Role in Associated Federal Policy***

#### **A. BACKGROUND**

1. The settlement of the Western United States was very different from the earlier settlement of the Eastern half of the country. As a result, land ownership in the West consists of a patchwork of federal, state, tribal and privately owned and managed lands and minerals. Over 591 million acres of federally-owned land and over 659 million acres of federally-owned mineral estate are within the boundaries of the Western states. Many of these federal lands in Western states have significant value.
2. The federal government sells or leases a variety of resources (minerals, gravel, oil and gas, coal, geothermal, renewable energy generating sites, timber, grazing rights, etc.) found on these federal lands to the private sector and collects substantial fees, taxes, royalties and lease payments for these rights.
3. Recognizing the costs to states and counties from the presence of tax exempt federal lands within their borders, Congress created a number of agreements and programs to compensate the states and local governments for the loss of tax revenue, the costs of providing infrastructure and services, and the costs of protecting wildlife and natural resources in communities adjacent to federal lands.
4. Historic agreements and programs, codified in federal law, include but are not limited to:
  - Twenty Five Percent Fund Act of 1908.
  - Bankhead Jones Tenant Act.
  - Mineral Leasing Act of 1920.
  - Taylor Grazing Act.
  - Geothermal Steam Leasing Act.
  - Renewable energy leasing revenues from development on Forest Service lands, Bureau of Land Management lands, and waters off the coasts of the Western states.
  - Federal Oil and Gas Royalty Management Act of 1982.

- Abandoned Mine Lands grants to states consistent with 2006 Amendments to the Surface Mining Control and Reclamation Act.
5. As a result of federal efforts to address the federal budget deficit, state funding for these historic federal agreements and programs have been targets of cutbacks during the annual appropriation process and sequestration.
  6. These agreements and programs are not proper subjects for cutbacks and sequestration. For example, royalty payments owed to states are not federal expenditures. Federal land management agencies simply administer the distribution of those revenues to states. The federal government has no discretion over this money. Payment to the states is the only authorized use for these revenues.
  7. In addition, federal processes and regulations can create uncertainty regarding sales and leases of these federal resources or slow the pace of sales and leases of these federal resources, adversely affecting states' receipt of their share of these essential revenues.
  8. The Department of the Interior (DOI) and other federal agencies are currently examining and revising regulations and policies governing federal management of land and minerals. In particular, DOI is undertaking an effort to modify mineral lease regulations for coal, oil and gas. This effort has impacted the pace of mineral leasing on federal lands, delayed mineral leasing efforts that were ongoing, and created uncertainty about future leasing efforts.
  9. Despite the states' substantial interest in the revenues associated with these programs and agreements, the federal government has often limited the states from participating in the decisions affecting these revenues. For example, in rulemaking related to oil and gas and in the federal coal program, previous avenues for state involvement were eliminated and prospective state involvement has been limited to participation as a general stakeholder.

## **B. GOVERNORS' POLICY STATEMENT**

1. The federal government must honor its statutory obligations to share royalty and lease payments with states and counties in the West to compensate them from the impacts associated with federal land use and nontaxable lands within their borders.
2. Shared revenues and payments to states and counties under these programs should not be treated as federal expenditures or income, subject to sequestration. The federal government has no option except to transfer these pass-through funds to qualifying states. The federal government may not make payment of these funds to any other program or entity.

3. Governors support legislation that clarifies the unique nature of these programs and that assures states will receive full payment of statutorily-guaranteed shares of receipts, even under circumstances where federal budgets are sequestered.
4. Governors support legislation, regulatory changes, and agency practices that provide transparency and certainty, ensure fair value for the American public, and more efficiently administer the sales and leases of the resources on these federal lands.
5. Governors support early, meaningful and substantial state involvement in the development, prioritization, and implementation of federal environmental statutes, policies, rules, programs, reviews, budget proposals, budget processes and strategic planning. The U.S. Congress and appropriate federal agencies should provide expanded opportunities for such involvement.
6. States should be provided meaningful opportunities to cooperate on decisions related to these historic programs and agreements in a manner commensurate with their special status as recipients of the resulting revenues. In particular, Governors support efforts to provide the states with a forum to advise DOI on federal mineral leasing royalty policy. This includes reestablishment of the Royalty Policy Committee.

**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

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**WESTERN  
GOVERNORS'  
ASSOCIATION**

## **Western Governors' Association Policy Resolution 2017-03**

### ***Tax-Exempt Federal Lands and Secure Rural Schools***

#### **A. BACKGROUND**

1. The land ownership pattern in the West is a patchwork of federal, state, tribal and privately owned and managed lands.
2. This ownership pattern results in part from the withdrawal of lands by the federal government for various federal purposes, including national parks, national forests, lands administered by the Bureau of Land Management, national wildlife refuges, national monuments, and military bases.
3. The federally-owned lands are exempt from property taxes, and recognizing the costs to states and counties from the presence of tax-exempt federal lands within their borders, in 1976 Congress enacted Public Law 94-565 to create the Payments in Lieu of Taxes (PILT) program.
4. Congress also enacted the Twenty Five Percent Fund Act of 1908 to share receipts from timber sales on U.S. Forest Service lands. Because of a dramatic decline in the amount of timber the U.S. Forest Service offered for sale starting in the late 1980s, Congress enacted the Secure Rural Schools and Community Self-Determination Act (Public Law 106-393) as an alternative mechanism to compensate states and counties for timber sold on federal lands. Congress recognized that communities adjacent to federal lands still need to provide infrastructure and services (schools, roads, emergency response, etc.) for residents and visitors, including land managers, as well as to protect wildlife and natural resources despite the loss of shared timber sales receipts. Attempting to provide SRS funding levels through the 1908 law alone would require a 400 percent increase in logging on federal lands using 2015 U.S. Forest Service receipts – an unachievable short-term outcome given current capacity planning and executing sales, appropriating sufficient funds, and local mill infrastructure.
5. In recent years, funding for both of these historic federal-state-county agreements and programs has not kept pace with inflation, has been the target of budget cutbacks and has been subjected to sequestration under the Budget Control Act.

6. Sustained and predictable payments to local government under these programs is vital to ensure continued support for federal ownership and management of lands within western states.

**B. GOVERNORS' POLICY STATEMENT**

1. Western Governors believe that the federal government must honor its historic PILT agreement with states and counties in the West to compensate them for tax-exempt federal lands within their borders.
2. Western Governors believe it is incumbent that the federal government ensure counties and states continue to receive predictable and adequate payments under the Secure Rural Schools program. These payments are vital to providing state and county public goods and services, such as roads, emergency response, and wildlife and natural resources protection in communities adjacent to federal lands.
3. Western Governors encourage continuation of three important programs under the Secure Rural Schools program: 1) active management and restoration of federal forests; 2) revenue sharing; and 3) collaborative processes (Title II & III) which facilitate gathering input from the general public, local government and other local community stakeholders to inform federal land management decisions.
4. Payments to states and counties under these programs should not be subject to federal sequestration. Western Governors support legislation that clarifies the unique nature of these programs.

**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

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## Western Governors' Association Policy Resolution 2017-10

### *National Forest and Rangeland Management*

#### A. BACKGROUND

1. The American West encompasses a huge landmass representing 2.4 million square miles or over two-thirds of the entire country. Over 112 million people live in these states and they reside in large, densely populated cities, smaller cities and towns and in rural areas.
2. Perhaps more than any other region, terrain, forces of nature, and land ownership patterns in the West underscore the purpose and vital need for a more active federal role in forest management. Western states include more than 75 percent of our national forest and grassland system. These public lands serve as critical economic drivers, and they provide numerous conservation benefits, water supply, and recreational opportunities for Western communities and the nation.
3. States have a particular interest in improving the active management of federal forest lands. State governments have trust authority over water, wildlife and forest resources, along with primary authority and expertise to protect community health and safety. Poorly managed forests can have significant and broad impacts on the landscapes and communities of the West, including negative impacts to air quality and public health, degradation of rivers and streams and associated water quality (including drinking water), reduced forage for domestic livestock, impaired habitats for wildlife and fish, and the loss of forest products and associated jobs.
4. Relative to decades past and other forest landowners, forest managers today operate under a constrained decision space as they work to address contemporary issues such as climate change, invasive pests and diseases, habitat diversity, fuel build-ups and fire risk, and legacy impacts. Adding to this challenge are concerns about the economic and social vitality of rural communities that experience impacts from reduced timber supply and compromised forest health. Displaced workers, declines in school enrollment, aging demographics, property loss, business closures and revenue impacts due to wildfire, and high unemployment are not uncommon to these communities.
5. States are managers as well, and many Western states own extensive public land holdings that require forest products infrastructure to achieve community vitality and land management goals, including ecological restoration objectives and healthy and resilient forests.

6. The U.S. Forest Service business model has historically been based on a combination of federal appropriations that were supplemented with revenue from resource sales and fees. Until the early 1990s, the Forest Service was a net contributor to the Federal Treasury. Over the past 20 years, timber sales have dramatically declined.
7. In addition, the last decade has seen several large, very expensive wildfires, which have increased the U.S. Forest Service wildfire suppression costs from 13 percent of the agency's FY 1991 budget to nearly 50 percent over the last several fiscal years. Consequently, under the current agency budgeting framework, forest management, hazardous fuels reduction, habitat improvement, and outdoor recreation programs have been negatively impacted across national forests and Department of Interior lands.
8. An April 2015 study by the U.S. Forest Service, the *Collaborative Forest Landscape Restoration Program 5-Year Report, FY 2010 – 2014*, found that the past century of wildfire suppression and legacy management practices have contributed to forests being overstocked and primed for larger and more intense blazes, and that changes in land use and increasing social pressures make it difficult for the agency to let fire play its natural role of clearing the forest understory in certain forest types. Active forest management has historically played a pivotal role in the growth and mortality cycle of forests to manage fuel loading, which in turn can reduce fire-fighting costs and improve habitat resilience. Today, the U.S. Forest Service estimates that roughly 90,625 square miles – an area larger than Utah – is at high or very high risk of severe wildfire and in need of treatment.
9. Insect infestation and disease have damaged many of the forests throughout the West. Severe drought conditions that are impacting western states, particularly California, have only exacerbated insect infestations and tree mortality. The impacts go well beyond fire risk, and timber and fiber production are negatively impacted, threatening the viability of the surviving forest product infrastructure. The significant decline in forest health has also created serious threats and challenges to watershed integrity, wildlife and fisheries habitats, recreational uses, businesses and tourism. All of these impacts present substantial challenges for forest-dependent communities across the West.
10. The dire forest conditions, unmet management needs, and the failure to provide lasting protections for some landscapes have brought diverse stakeholders together to find solutions. Community collaboration on forest health projects is robust in numerous places across the West forging broad agreements among diverse stakeholders on projects that encompass fuels reduction, fiber production, habitat restoration, long-term protection for critical areas, and other community objectives. It is not uncommon to find mill owners, hunters and anglers, loggers, small business owners, conservationists, and local elected leaders working together around the table.



11. Collaborative planning and project implementation across National Forests and state and private forest lands on a larger scale allows for more diverse interests to address their particular needs for a landscape or a watershed. Taking a broad look at a landscape for planning purposes minimizes the challenges associated with managing lands for the benefit of a particular species or to address a specific need. Well-planned projects that are strategically placed across a landscape can result in a higher level of benefits than those that are more randomly or opportunistically placed. Processes associated with planning and implementing a project have become so time consuming and expensive for National Forests in particular that a disincentive often exists for their managers to proceed with management actions that are needed to attain desired ecological, social, and economic objectives.
12. Collaborative efforts have shown initial successes in reaching consensus, but there is a shortage of formal mechanisms that encourage their creation in areas with conflict or reward their success within the context of public process. Further, there is little to no formal incentive for the management agencies and collaboratives to ensure collaborative work happens in a timely and efficient manner that achieves a pace and scale of management that matches the ecological, social, or economic needs of public and private forestlands and surrounding communities.
13. Despite this good work the full benefits of these collaborative efforts have not been realized on the land. Working constructively with collaborators requires resources to be productive and the federal agencies often lack the necessary staff and funding. In addition, the federal agencies have sometimes been reluctant to embrace collaboration, because they either have unclear legal authority to favor collaborative efforts or don't welcome the input.
14. Further, and even when collaborative forest health projects enjoy broad support from diverse stakeholders and the agencies, administrative objections and litigation remain a too frequent outcome. One result is that community collaborative efforts become fatigued, and future opportunities are lost. Another outcome is that Forest Service restoration projects often go through exhaustive, time-consuming analysis, driving up costs and preventing the agency from scaling up management to meet the scope of the problem.
15. Today the costs associated with planning and implementing a management project on National Forest lands are significantly more than those of the private sector. This cost, along with the time associated with drafting, analyzing, incorporating public involvement, and responding to appeals and/or litigation at the project level, lead many federal managers to focus their limited staff, funds and time on projects with the least likelihood to be challenged. This approach does not adequately address the larger socio-economic and ecological needs of our National Forests and dependent communities.

16. The 2014 Farm Bill provided the Forest Service with several new tools to accelerate forest restoration. A Governor could nominate landscapes substantially affected or threatened by insects and disease to the Secretary of Agriculture for designation as Priority Areas for expedited NEPA and administrative process and judicial review. 16 Western Governors nominated areas for this designation, the vast majority of which were approved by the Secretary of Agriculture.
17. In addition, the new Farm Bill authorities provided for a categorical exclusion (CE) for insect and disease projects on areas as large as 3,000 acres that are the product of a collaborative effort. The new CE has the potential to greatly magnify the role of collaboration and strengthen the results of those efforts, and to reduce the time and cost for forest health projects, resulting in on-the-ground restoration work that is accomplished more quickly and across a larger landscape. Not yet in wide use, the Farm Bill also added expanded "Good Neighbor" authority that enhances the ability of states to partner with the Forest Service and implement projects on federal land.
18. The shortcomings of federal forest management have also impacted local governments directly. In 1908, when Congress created the National Forest System, it also passed the National Forest Revenue Act in 1908 directing the Forest Service to share 25 percent of gross revenues with local governments. Then in 1976, Congress passed "Payments in Lieu of Taxes" (PILT) legislation providing federal payments to local governments regardless of gross revenues that result from timber harvest and other forest management activities. After revenues from the sale of timber dropped substantially, Congress passed the Secure Rural Schools and Self Determination Act (SRS) in 2000, allowing counties to choose between a payment based on historical average and the 25 percent revenue share. SRS has expired several times, and PILT has been subject to funding uncertainty as well. Western Governors support efforts to ensure counties and states continue to receive payments under the Secure Rural Schools program, and that these payments should be based upon historic federal land management receipts. These payments are vital to providing state and county public goods and services, such as roads, emergency response, and wildlife and natural resources protection in communities adjacent to federal lands.
19. There have been several efforts in Congress to reform federal forest management, and recent legislation reflects the continued frustration of Congress as it attempts to find a path forward to address this issue in a productive, bipartisan manner.

**B. GOVERNORS' POLICY STATEMENT**

1. Western Governors support sound forest management policies that maintain and promote ecologic, economic and social balance and sustainability.

2. Today, the Forest Service's forest management program is primarily a byproduct of restoration projects intended to reduce wildfire risk and/or improve forest resilience, water quality, watershed health, key wildlife habitat, and/or intrinsic value. Western Governors recognize and support these forest values, but also believe it is reasonable to expect that some portion of the federal landscape will be focused on long-term, ecologically-sound forest management — where jobs, forest products, and revenues are priorities and generated through sound stewardship.
3. Western Governors encourage the Forest Service to develop and help fund new technologies and wood based markets for some non-traditional products. USDA's Forest Products Laboratory is a hub for research and innovation. We should continue to encourage the application of their knowledge and experience in a practical way in the western United States so that some of the federally funded infrastructure that develops from such efforts could first be demonstrated on private lands. Also, since federal forests are now more focused on large landscape forest health projects, there is a good opportunity to ensure we have a broader suite of outlets, in addition to traditional sawmills and existing biomass facilities.
4. We can achieve sustainable forest management across every acre of our federal and nonfederal forestlands while including an equitable mix of uses to meet many ecological, social, and economic needs.
5. Western Governors believe that our citizens are capable of rolling up their sleeves and working together with the federal agencies to address difficult issues such as forest management, and that not enough is done to incent and reward the current collaborative work that is occurring across the West.
6. It is important to retain citizens' rights to question governmental decisions through administrative and legal means. However, there are situations where the threat of litigation is a key factor resulting in either delay of agency activity and progress or the stifling of productive collaborative work. The lack of funding and resources for federal agencies is also a significant factor. Western Governors believe an effort needs to be made to better understand the scope and scale of this problem. There may be an opportunity to further streamline appeals and litigation associated with National Forest decision making in association with other changes designed to incent collaboration and provide more certainty as to outcomes.
7. The 2014 Farm Bill authorities are significant expansions of Forest Service authority and are powerful new tools to boost forest management, promote collaboration, and limit the impacts of administrative objections and litigation. Western Governors encourage federal agencies to fully implement the tools provided in the 2014 Farm Bill.

8. Western Governors are on record as strong supporters of ending the practice of fire borrowing, and Congress should pass legislation to fund federal wildfires off-budget as many states already do, and ensure the Forest Service budget for forest restoration, recreation, road maintenance, hazardous fuels reduction, and wildlife/watershed protection is fully restored.
9. Western Governors believe clear, coordinated and consistent application of federal vegetation management practices is integral to maintaining the health of western forests, preventing dangerous and damaging fires, and maintaining grid reliability. The Governors support effective and efficient cross-jurisdictional coordination that enables utilities to undertake necessary vegetation management actions on federal transmission rights-of-way – and to do so without fear of strict liability imposition for necessary vegetation management actions taken adjacent to transmission rights-of-way.
10. Western Governors are well-suited to engage in a productive and bipartisan dialogue on the broader topic of federal forest management reform, engaging westerners and examining on the ground realities across western landscapes. Western states are land owners and managers and well understand the challenges associated with forest management under changing social, economic and environmental conditions.
11. A meaningful and successful discussion of forestry reform in the West will require a transparent and inclusive process that engages those diverse interests who have a direct stake in forest management outcomes. The impacts of forest management are felt most directly by those who live, work and recreate in and adjacent to those forests, so the discussion needs to begin there. This is perhaps where Western Governors can provide the most productive bipartisan contribution to this national discussion. Our nation’s forests belong to all Americans, and in the end and through their elected representation all Americans will determine the scope and success of any efforts to reform forest management.
12. There is significant dissatisfaction in the West among many stakeholders with the current level of National Forest management. There is a general sense that the current level of forest management is not meeting anyone’s needs, whether it’s putting logs on trucks, protecting water quality, addressing fire risk, protecting key habitats and landscapes, providing for recreation, or other important community needs. Successful forest management reform will achieve a balance among all of these important objectives, and provide the opportunity for certainty such that diverse interests will be encouraged to work together to achieve shared outcomes.
13. It is time to reconsider the business model of the U.S. Forest Service. Western Governors believe it may be possible to reform the Forest Service business model in a manner that reduces project planning costs, sources funds from non-federal partners and recognizes that the agency no longer generates large revenues from commodity programs.

14. Any discussion of forest management reform must include consideration of the financial relationship between the Federal and local governments, the existence of PILT, and the limited tax base for counties with significant federal ownership.
15. Western Governors support the recommendations identified over the course of the WGA National Forest and Rangeland Management Initiative, and incorporate the recommendations into this resolution by reference.

**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution including funding, subject to the appropriation process, based on a prioritization of needs.
2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.

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## Western Governors' Association Policy Resolution 2018-02

### *Public Lands Grazing*

#### **A. BACKGROUND**

1. Range livestock operations were established decades ago, with many operations using forage on private, state and federal lands. These family-based operations are important contributors to the customs, cultures and rural economies of the West.
2. These operations also maintain open spaces and important habitat conditions (e.g., year-round water sources) benefiting wildlife and recreation. Water rights, which are granted by the states for livestock grazing, will not benefit other uses if the agricultural operation ceases to maintain the beneficial use.
3. Ranching operations provide valuable, active management of public lands including responsible grazing, maintenance of fences and other infrastructure, managing fuel loads, engaging in wildland fire monitoring and suppression, and cooperative management of noxious and invasive weeds.
4. Ranching operations and public land grazing provide needed food for a growing population.
5. Federal land management agencies' actions in recent years have resulted in reductions or removal of domestic livestock from federal lands.
6. The U.S. Forest Service (USFS) and Bureau of Land Management (BLM) have permanently closed, left vacant without reissuing a grazing permit, and converted into forage reserves or "grass banks" some grazing allotments in recent years. In many instances, the allotments are technically available based upon forage availability, but permits are not issued for reasons including unmaintained range improvements and uncompleted National Environmental Policy Act (NEPA) documentation by USFS or BLM.
7. USFS and BLM continue to receive pressure to close domestic sheep grazing allotments due to concerns about disease in bighorn sheep.
8. Restrictions and closures have dramatic negative economic impacts on ranchers and ranch dependent communities. Ranchers who have used the same federal grazing allotments for generations are abruptly forced to find new forage for their livestock when allotments are restricted or closed.
9. Restrictions and temporary closures, when implemented to mitigate natural events like drought, wildfires and wildlife impacts, should be factored into ongoing, regular reviews and renewals of individual livestock allotments, individual livestock operators' use of the allotments or the total amount of grazing allotments available for ranchers.
10. Inconsistent interpretation of operational policies across the West by local and regional federal land managers compounds difficulties in managing livestock grazing on public lands.

For example, federal policy on acceptable types of supplemental feed, feed placement, and watering of livestock is interpreted without regard for localized range conditions or the economics of local ranching operations. Failure to adapt policies to local conditions affects the ability of livestock grazing permittees to properly manage their livestock herds while achieving permit standards, goals, and objectives.

## **B. GOVERNORS' POLICY STATEMENT**

1. Western Governors support the continued responsible use of federal lands for grazing.
2. We support sound, science-based management decisions for federal lands – including adaptive management – and believe these decisions should be based upon flexible policies that take into account local ecological conditions and state planning decisions for wildlife and other human needs.
3. Federal and state land managers should identify opportunities to improve flexibility and integration of grazing management and targeted grazing as tools to achieve restoration and land management goals, including wildlife habitat improvements, drought and wildfire mitigation and resilience, water quality and watershed health, soil health management, promotion of perennial plant health, and control of invasive species such as cheatgrass. They should also promote grazing allotment flexibility on federal lands, within USFS and BLM permitting systems and across ownership boundaries, to respond to changing range conditions and environmental considerations.
4. Livestock grazing on federal lands is compatible with recreation and wildlife management and fulfills the multiple use and sustained yield mission of both the USFS and BLM. Policies, analyses, or planning decisions that lead to closing allotments must be based on documented threats and causal factors consistent with state policies and programs as well as federal multiple use missions.
5. Decisions to reduce or suspend grazing should only be made assisted by an appropriate quantitative assessment of long- and short-term trends in range conditions on specific allotments. If, after consultation with the state, the federal agency decides to reduce, suspend, close, or modify an allotment due to documented harmful wildlife impacts, an alternative allotment, properly authorized pursuant to NEPA, must be made available to the displaced operator prior to adjustment of the original allotment. In order to fully implement this policy, the BLM and USFS must have alternative allotments properly authorized under relevant planning documents. This ensures that suspensions or modification of grazing permits will not result in a net loss of Animal Unit Months (AUMs) and that appropriate alternative allotments are available.
6. Grazing permit renewal decisions should be assisted by current site-specific, quantitative data. Federal agencies should engage in meaningful consultation, coordination and cooperation with livestock grazing permittees prior to initiation and throughout the entire permit renewal process.
7. Federal land management agencies' decisions to reduce or close allotments should only be based upon completion of a full and complete administrative review and analysis, including a complete review under the provisions of NEPA. The decision process must include opportunities for states, livestock grazing permittees and other stakeholders to provide

input. Allotments should not be closed due to a pending NEPA review without allowing authorized use of the allotment pending a final decision, or the use of an equivalent amount of forage at reasonably equivalent cost to the operator.

8. Federal range specialists should have an understanding of the economics and management of ranching operations dependent upon federal lands, and should receive the necessary training to comprehensively monitor rangelands, conduct objective analysis, and write sound environmental documents.
9. Clear directives and accountability throughout all levels of the USFS and BLM should be required so that interpretation and implementation is practical and predictable from office to office and individual to individual, and informed by an understanding of localized range and ecological conditions, and economic health of ranch operations.
10. Federal land management agencies should give interested state agencies an opportunity to fully participate in or provide input to grazing permit actions – prior to their initiation – including: generalized review of livestock operations on federal lands; any assessment of grazing conditions as part of a federal planning process; and individual allotment reviews. Grazing permit decisions should not be finalized until after this opportunity for meaningful consultation with the states, local governments, and the affected permittees.

**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution including any necessary funding, subject to the appropriation process, based on a prioritization of needs.
2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.

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## Western Governors' Association Policy Resolution 2018-04

### *Energy in the West*

#### **A. BACKGROUND**

1. Energy policy and the development of sustainable energy resources are major priorities for every Western Governor.
2. Western Governors recognize that approaches to energy use and development vary among our states, territories, and flag islands. However, the Governors remain committed to the development of policies and utilization of state energy endowments that result in the maximum benefit for their citizens, the region, and the nation.
3. Western energy production is indispensable to meeting national energy demands. The West is the energy breadbasket of the United States:
  - a. Western states have all high-yield geothermal energy capacity in the continental United States.
  - b. Western states supply the majority of non-federal United States petroleum.
  - c. Western states are at the forefront of unconventional natural gas production.
  - d. The Pacific Northwest produces the largest output of hydropower in the nation.
  - e. Western states have the largest contiguous areas of wind power resources in the nation.
  - f. The Southwest has some of the highest-identified solar energy resource areas in the United States.
  - g. Western states produce the largest portion of coal in the United States, which is the fuel that constitutes the largest share of the national electricity generation mix.
  - h. The West has the largest contiguous areas of high-yield biomass energy resource potential in the nation.
  - i. Western states have nuclear power generation facilities and produce all domestic uranium.
4. Western states, Pacific territories, and flag islands have the resources to drive job creation and economic development through broad growth in the energy industry.

5. The Merchant Marine Act of 1920 has prevented certain noncontiguous states, territories, and flag islands from being supplied with domestically produced energy commodities.

**B. GOVERNORS' POLICY STATEMENT**

1. Western Governors recognize the following as energy policy priorities for the West:
  - a. Secure the United States' energy supply and systems, and safeguard against risks to cybersecurity and physical security.
  - b. Ensure energy is clean, affordable, and reliable by providing a balanced portfolio of renewable, non-traditional, and traditional resources.
  - c. Increase energy efficiency associated with electricity, natural gas, and other energy sources and uses to enhance energy affordability and to effectively meet environmental goals.
  - d. Advance efficient environmental review, siting, and permitting processes that facilitate energy development and the improvement and construction of necessary electric grid (transmission and distribution) and pipeline infrastructure, while ensuring environmental and natural resource protection.
  - e. Improve the United States' electric grid's reliability and resiliency.
  - f. Protect western wildlife, natural resources, and the environment, including clean air and clean water, and strive to reduce greenhouse gas emissions.
  - g. Make the West a leader in energy education, technology development, research, and innovation.
  - h. Utilize an all-of-the-above approach to energy development and use in the West, while protecting the environment, wildlife, and natural resources.
2. Western Governors support increasing the development and use of energy storage, alternative transportation fuels, and alternative vehicles.
3. Western Governors call on the federal government to lift a barrier to domestic free trade between the contiguous United States and the noncontiguous states, territories and U.S. flag islands by the Merchant Marine Act of 1920 by allowing those jurisdictions to receive energy commodities produced in the mainland but transported by foreign vessels, should those jurisdictions, and the jurisdictions whose ports are being used to ship these materials, desire it.
4. Redundant federal regulation of energy development, transport, and use is not required where sufficient state, territorial, or flag island regulations exist. Existing state authority should not be replaced or impeded by Congress or federal agencies.

**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. The Governors also direct WGA staff to consult with the Western Interstate Energy Board to recommend updates to the 10-Year Energy Vision that provide detail on the Governors' energy policy objectives outlined in this resolution.
3. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

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## Policy Resolution 2018-08

### Water Resource Management in the West

#### **A. BACKGROUND**

1. Water is a crucial resource for communities, industries, habitats, farms, and western states. Clean, reliable water supplies are essential to maintain and improve quality of life. The scarce nature of water in much of the West makes it particularly important to our states.
2. States are the primary authority for allocating, administering, protecting, and developing water resources, and they are primarily responsible for water supply planning within their boundaries. States have the ultimate say in the management of their water resources and are best suited to speak to the unique nature of western water law and hydrology.
3. Many communities in the West anticipate challenges in meeting future water demands. Supplies are nearly fully allocated in many basins across the West, and increased demand from population growth, economic development, and extreme weather and fire events places added stress on those limited water resources. Sustainability of our natural resources, specifically water, is imperative to the foundations upon which the West was developed. Growth and development can only continue upon our recognition of continued state stewardship of our unique resources and corresponding responsibilities.
4. Strong state, regional and national economies require reliable deliveries of good-quality water, which in turn depend on adequate infrastructure for water and wastewater. Investments in water infrastructure also provide jobs and a foundation for long-term economic growth in communities throughout the West. Repairs to aging infrastructure are costly and often subject to postponement.
5. Western Governors recognize the essential role of partnership with federal agencies in western water management and hope to continue the tradition of collaboration between the states and federal agencies.
6. Tribal governments and western states also share common water resource management challenges. The Western Governors Association and Western States Water Council have had a long and productive partnership with tribes, working to resolve water rights claims.

#### **B. GOVERNORS' POLICY STATEMENT**

1. **State Primacy in Water Management:** As the preeminent authority on water management within their boundaries, states have the right to develop, use, control and distribute the surface water and groundwater located within their boundaries, subject to international treaties and interstate agreements and judicial decrees.
  - a. **Federal Recognition of State Authority:** The federal government has long recognized the right to use water as determined under the laws of the various states; Western

Governors value their partnerships with federal agencies as they operate under this established legal framework.

While the Western Governors acknowledge the important role of federal laws such as the Clean Water Act (CWA), the Endangered Species Act (ESA), and the Safe Drinking Water Act (SDWA), nothing in any act of Congress or Executive Branch regulatory action should be construed as affecting or intending to affect states' primacy over the allocation and administration of their water resources.

Authorization of water resources development legislation, proposed federal surplus water rulemakings, and/or storage reallocation studies should recognize natural flows and defer to the states' legal right to allocate, develop, use, control, and distribute their waters, including but not limited to state storage and use requirements.

- b. **Managing State Waters for Environmental Purposes:** States and federal agencies should coordinate efforts to avoid, to the extent possible, the listing of water-dependent species under the ESA. When ESA listings cannot be avoided, parties should promote the use of existing state tools, such as state conservation plans and in-stream flow protections, to conserve and recover species.
2. **Infrastructure Needs:** Aging infrastructure for existing water and wastewater facilities and the need for additional water projects cannot be ignored. Infrastructure investments are essential to our nation's continued economic prosperity and environmental protection, and they assist states in meeting federally-mandated standards.
- a. **Federal Support for Infrastructure Investment:** Congress should provide adequate support for the CWA and SDWA State Revolving Funds. Further, Congress should fully utilize the receipts accruing to the Reclamation Fund for their intended purpose in the continuing conservation, development and wise use of western resources to meet western water-related needs, including the construction of Congressionally-authorized Bureau of Reclamation rural water projects and facilities that are part of a Congressionally-authorized Indian water rights settlement.

Congress should authorize water resources development legislation on a regular schedule and appropriate funding so all projects and studies authorized in such legislation can be completed in a timely manner.

Congress also should consider facilitating greater investment in water infrastructure, utilizing such tools as loan guarantees, revolving funds, infrastructure banks and water trust funds.

Capital budgeting and asset management principles should be used to determine funding priorities based on long-term sustainability and not annual incremental spending choices. It should be accompanied by dedicated sources of funding with appropriate financing, cost-sharing, pricing and cost recovery policies.

- b. **Alternatives to Direct Federal Investment:** Federal and state policymakers should also consider other tools to promote investment in water infrastructure and reduce financing costs, including: public-private partnerships, bond insurance, risk pooling, and credit enhancements.

Congress should remove the state volume caps for private activity bonds used for water and wastewater projects, provide guaranteed tax-exempt status for bonds issued by state or local agencies to finance water infrastructure, provide loan guarantees, and otherwise support and encourage alternatives to direct federal investment of limited general funds.

- c. **Hydropower:** Congress and the Administration should authorize and implement appropriate hydropower projects and programs through efficient permitting processes that enhance renewable electric generation capacity and promote economic development, while ensuring protection of important environmental resources and indigenous people's rights.
  - d. **Infrastructure Planning and Permitting:** Infrastructure planning and permitting guidelines, rules and regulations should be coordinated, streamlined and sufficiently flexible to: (1) allow for timely decision-making in the design, financing and construction of needed infrastructure; (2) account for regional differences; (3) balance economic and environmental considerations; and (4) minimize the cost of compliance.
3. **Western States Require Innovative and Integrated Water Management:** Western Governors believe effective solutions to water resource challenges require an integrated approach among states and with federal, tribal and local partners. Federal investments should assist states in implementing state water plans designed to provide water for municipal, rural, agricultural, industrial and habitat needs, and should provide financial and technical support for development of watershed and river basin water management plans when requested by states.

Integrated water management planning should also account for flood control, water quality protection, and regional water supply systems. Water resource planning must preserve state authority to manage water through policies which recognize state law and financial, environmental and social values of water to citizens of western states today and in the future.

- a. **Water Transfers:** Western Governors recognize the potential benefits of market-based water transfers, meaning voluntary sales or leases of water rights. The Governors support water transfers that avoid or mitigate damages to agricultural economies and communities while preventing injury to other water rights, water quality, and the environment.
- b. **Energy Development:** Western Governors recognize that energy development and electricity generation may create new water demands. Western Governors recommend increased coordination across the energy and water management communities, and support ongoing work to assess the interconnection of energy and water through the Regional Transmission Expansion Planning Project for the Western Interconnection and similar efforts.
- c. **Conservation and Efficiency:** Because of diminished water resources and declining and inconsistent snowpack, Western Governors encourage adoption of strategies to sustain water resources and extend existing water supplies further through water conservation, water reuse and recycling, desalination and reclamation of brackish

waters, and reductions in *per capita* water use. The Governors encourage the use of and research into promising water-saving strategies.

- d. **Local Watershed Planning:** Western Governors encourage federal agencies and Congress to provide resources such as technical support to states and local watershed groups. States may empower these watershed groups to address local water issues associated with water quality, growth and land management to complement state water needs.
  - e. **Intergovernmental Collaboration and Conflict Resolution:** Western Governors support the negotiated settlement of interstate water disputes, Indian and Hawaiian water rights claims, and other federal water needs and claims, the settlement of which are in the best interest of western states.
  - f. **State-Federal Coordination:** Western Governors recognize the important role of federal agencies in water resource management in the western states. Governors appreciate the efforts of federal agencies to coordinate water-related activities, particularly through the Western States Water Council, and support the continuation of these key state-federal partnerships.
4. **Western States Need Reliable Water Resource Information:** Basic information on the status, trends and projections of water resource availability is essential to sound water management.
- a. **Basic Water Data:** Western Governors support the U.S. Geological Survey's Groundwater and Streamflow Information Program, the Natural Resources Conservation Service's Snow Survey and Water Supply Forecasting Program, the National Oceanic and Atmospheric Administration's weather and hydrology-related data collection, monitoring, and drought information programs, and the National Aeronautics and Space Administration's National Land Imaging (Landsat) Program with its thermal infrared sensor. Western Governors support federal efforts to coordinate water data gathering and information programs across multiple agencies.
  - b. **Extreme Weather Events Planning:** Western Governors recognize the significant potential impacts of extreme weather events and variability in water supplies. Western Governors urge Congress and the Administration to work closely with states and other resource managers to improve predictive and adaptive capabilities for extreme weather variability and related impacts. We specifically urge the federal government to place a priority on improving the sub-seasonal and seasonal precipitation forecasting capabilities that could support water management decision-making.
  - c. **Water Data Exchange:** The Western Governors' Association and the Western States Water Council have worked together to create the Water Data Exchange, an online portal that will enable states to share their water data with each other, federal agencies, and the public via a common platform. The Governors encourage the use of state water data in planning for both the public and private sectors.
5. **Drought Preparedness and Response:** As exceptional levels of drought persist across the West, Governors are leading on drought preparedness and response through the Western Governors' Drought Forum. The Drought Forum provides a

framework for leaders from states, businesses, non-profits, communities, research organizations and federal agencies to share best practices and identify policy options for drought management. The Governors have identified several areas in need of additional attention from Drought Forum partners, including:

- a. **Data and Analysis:** Basic data on snowpack, streamflow and soil moisture is essential to understanding drought. Though a great deal of information already exists, enhanced drought data collection and real-time analysis at a higher resolution is essential. Governors support state and federal efforts to maintain adequate collection of drought and water data, enhance data networks where appropriate, and facilitate better use of existing information.

The Governors appreciate the collaborative efforts on drought provided through NOAA's National Weather Service River Forecast Centers and Weather Forecast Offices, and the Office of Atmospheric Research's labs and programs, such as the National Integrated Drought Information System (NIDIS).

- b. **Produced, Reused, and Brackish Water:** Technology exists to use produced, reused, recycled and brackish water -sources traditionally considered to be marginal or wastewater. Adoption of this technology has been limited by inadequate data, regulatory obstacles, financial barriers, public attitudes and logistical uncertainties. Governors support regulatory streamlining and policy options to encourage use of produced, brackish, and reused water where appropriate.
- c. **Forest Health and Soil Stewardship:** Better land management practices for forests and farmland may help improve availability and soil moisture retention. Wildfires can cause sediment runoff in water systems, leading to problems for reservoir management and water quality. Governors support policies and practices that encourage healthy and resilient forests and soils in order to make the most of existing water supplies.
- d. **Water Use Efficiency and Conservation:** Public awareness of drought has directed increasing attention to water conservation strategies, both in-home and on-farm. Governors encourage municipal, industrial and agricultural water conservation strategies as drought management strategy.
- e. **Infrastructure and Investment:** Water infrastructure to store and convey water is crucial to drought management, but maintenance and expansion of that infrastructure is often difficult to fund. Governors support efforts to make the most of existing infrastructure, while seeking creative solutions to add more infrastructure with limited resources.
- f. **Working within Institutional Frameworks to Manage Drought:** Legal frameworks and regulatory regimes can sometimes limit the ability of state, local and federal agencies to respond quickly to drought conditions. Governors believe that innovative, flexible policy solutions, such as streamlined processing of temporary water transfers, should be considered when managing drought.



- g. **Communication and Collaboration:** Communication among state officials, federal agency representatives, water providers, agricultural users and citizens is a crucial component of effective drought response. The Western Governors' Drought Forum will continue to provide a framework for sharing best practices through its online resource library, informational webinars, and strategy-sharing meetings for the duration of this resolution.

**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution including funding, subject to the appropriation process, based on a prioritization of needs.
2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.

*Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult [www.westgov.org/policies](http://www.westgov.org/policies) for the most current copy of a resolution and a list of all current WGA policy resolutions.*



## Policy Resolution 2018-09

### National Minerals Policy

#### A. BACKGROUND

1. Federal lands account for as much as 86 percent of the land area in certain western states. These same states account for 75 percent of our nation's metals production. Few countries are as blessed with the abundance of minerals and metals as is the United States.
2. The Mining and Minerals Policy Act of 1970 formally recognized the importance of mining and domestic minerals production as a policy of the United States, including "the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries," "the orderly and economic development of mineral resources ... to help assure satisfaction of industrial, security and environmental needs," "mining, mineral and metallurgical research," "... including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable resources; the study and development of methods for the disposal, control and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen adverse impacts of mineral extraction."
3. Access to domestic minerals is increasingly important to decrease our reliance on foreign sources. Twenty-five years ago, the United States was dependent on foreign sources for 45 nonfuel mineral materials. The U.S. imported 100 percent of the Nation's requirements for 8 of these and imported more than 50 percent of the Nation's needs for another 19. By 2014, U.S. import dependence for nonfuel mineral materials had risen significantly from 45 to 65 commodities. The United States imported 100 percent of the Nation's requirements for 19 of these, imported more than 50 percent of the Nation's needs for another 24.
4. A major factor contributing to the U.S. reliance on foreign sources of minerals is a duplicative and inefficient mine permitting system that discourages development of domestic resources. While processes have improved, it can take seven to 10 years in the United States to navigate this cumbersome federal process to bring a mine into production. The same process takes approximately two years in countries that have comparable environmental standards such as Canada and Australia.
5. Ensuring timely access to domestic minerals will strengthen our economy and keep us competitive globally as demand for minerals continues to grow, especially for manufacturing and construction. Our antiquated and duplicative permitting process discourages investment and jeopardizes the growth of downstream industries, related jobs and technological innovation that all depend on a secure and reliable mineral supply chain. Permitting delays also impede the United States' ability to meet growing demand for consumer products from smart phones and hybrid car batteries to renewable energy technologies like wind turbines and solar panels – all of which require minerals and metals in their manufacture.
6. The Mining Law has provided the framework for developing hardrock minerals on the public lands. It has been supplemented by a large body of federal, state, tribal and local

environmental and reclamation laws and regulations (including regulations promulgated by the federal land management agencies) to assure protection of the environment, wildlife and cultural resources during mineral exploration and development and to ensure reclamation of lands after active mining ceases.

The National Academy of Sciences' National Research Council, after a comprehensive review of these laws and regulations at the direction of the Congress, concluded that existing laws and regulations are "complicated but generally effective." It also identified "specific issues or 'gaps' in existing..." regulations intended to protect the environment."

7. Hardrock mining operations on both public and private lands in the western states are subject to Federal environmental laws under both the U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers. In most states, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act are administered by state environmental agencies with oversight by the EPA. Hardrock mining operations are also subject to regulatory programs for the protection of plants and wildlife, including the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald Eagle Protection Act.
8. Furthermore, the modern hardrock mining industry is extensively regulated by the federal government on U.S. Bureau of Land Management- and U.S. Forest Service-administered lands. These regulations include review of the mining plan of operations, comprehensive permit, design, operations, closure, reclamation requirements, corrective action and financial assurance requirements, to ensure that the mining operations will not result in unnecessary or undue degradation of public lands.
9. The western states also extensively regulate hardrock mining operations on both private and public lands (state and federal), and uniformly impose permit and stringent design and operating standards, as well as financial assurances to ensure that hardrock mining operations are conducted in a manner that is protective of human health and the environment, and that, at closure, the mined lands are returned to a safe, stable condition for productive post-mining use.
10. Under the federal Mining Law, no royalties are owed to the federal or state governments for hardrock minerals extracted from federal public lands. However, such mining operations, which are most often located in rural areas lacking economic opportunities, can result in significant high-wage employment, royalties from private and state lands, increased state and local tax revenues and development of infrastructure necessary to support communities.

**B. GOVERNORS' POLICY STATEMENT**

1. Now is the time to build on the 1970 Mining and Minerals Policy Act with legislation and policies that will unlock our mineral potential to ensure access to the metals that are critical to U.S. economic and national security – providing vital base materials for electronics, telecommunications, satellites, aircraft, manufacturing and alternative energy technologies (particularly wind and solar).
2. Western Governors recognize that the minerals mining industry is an important component to both local and national economies. Reliable supplies of minerals and metals play a critical role in meeting our economic and national security needs.

3. WGA commends efforts by the United States Geological Survey and state geological surveys to identify potential, critical minerals deposits for alternative energy technologies and other consumer products vital to modern society.
4. The Congress, in consultation with the states, should develop a National Minerals Policy that truly enables mineral exploration and development in a manner that balances the nation's industrial and security needs with adequate protection of natural resources and the environment. Without reducing environmental or other protections afforded by current laws and regulations, any policy must address the length of the mine permitting process to ensure we can develop and provide the domestic resources that are critical to our national and economic security. Any policy should also take into account the potential long-term effects (including potential environmental effects) of mining operations and should maintain policies and procedures in place to mitigate any long-term effects.
5. A National Minerals Policy should address permitting delays, patenting, maintenance fees, an equitable government revenue mechanism, and the development of a clean-up fund and program for reclaiming abandoned hard rock mines. Relevant stakeholders, including the mining industry, should continue to work with Congress to determine the elements of a royalty system that is workable and fair.
6. New financial assurance requirements imposed upon the hardrock mining industry under CERCLA Section 108(b) would duplicate or supplant existing and proven state financial assurance regulations in this area. This is of particular concern to the western states, because CERCLA is a non-delegable federal program that provides no opportunity for implementation through state environmental agencies. The western states have developed deep experience in mine permitting, regulation, and closure. Federal preemption of state bonding programs will threaten these effective state programs.
7. The U.S. Department of the Interior and the U.S. Department of Agriculture should take an active role, working with western states, in the development of a National Minerals Policy that recognizes the importance of a domestic supply of minerals for our country.

**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.

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## Policy Resolution 2018-12

### Water Quality in the West

#### A. BACKGROUND

1. Clean water is essential to strong economies and quality of life. In most of the West, water is a scarce resource that must be managed with sensitivity to social, environmental, and economic values and needs. Because of their unique understanding of these needs, states are in the best position to manage the water within their borders.
2. States have federally-recognized authority to manage and allocate water within their boundaries. The Clean Water Act (CWA) Section 101(g) expressly says that “the authority of each state to allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act.”
3. States and the Environmental Protection Agency (EPA) work together as co-regulators under the CWA and the Safe Drinking Water Act (SDWA). Congress has delegated to states, by statute, the authority to obtain approval to implement certain federal program responsibilities. When a state has been approved to implement a program and the state is meeting minimum program requirements, the role of federal agencies like EPA should be funding, technical assistance, and research support. States should be free to develop, implement, and enforce those requirements using an approach that makes sense in their specific jurisdiction, subject to the minimum requirements of the federal acts.
4. The CWA was last reauthorized in 1987; attempts to reauthorize the Act since then have failed. Current federal regulations, guidance, and programs pertaining to the CWA do not always recognize the specific conditions and needs of most of the West, where water is scarce and even wastewater becomes a valuable resource to both humans and the environment. The West includes a variety of waters; small ephemeral washes, large perennial rivers, effluent-dependent streams, and wild and scenic rivers. In addition to natural rivers, streams and lakes, there are numerous man-made reservoirs, waterways and water conveyance structures. States need more flexibility to determine how to best manage these varying resources.

#### B. GOVERNORS' POLICY STATEMENT

##### Clean Water Act (CWA)

1. **State Authority and Implementation of CWA:** States have jurisdiction over water resource allocation decisions and are responsible for how to balance state water resource needs within CWA objectives. New regulations, rulemaking, and guidance should recognize this state authority.
  - a) **CWA Jurisdiction:** Western Governors urge EPA and the Corps to engage the states as co-regulators and ensure that state water managers have a robust and meaningful voice in the development of any rule regarding CWA jurisdiction, particularly in the early stages of development before irreversible momentum precludes effective state participation.

- b) **Total Maximum Daily Loads (TMDLs)/Adaptive Management:** States should have the flexibility to adopt water quality standards and set total maximum daily loads (TMDLs) that are tailored to the specific characteristics of Western water bodies, including variances for unique state and local conditions.
  - c) **Anti-degradation:** CWA Section 303 gives states the primary responsibility to establish water quality standards (WQS) subject to EPA oversight. Given the states' primary role in establishing WQS, EPA should directly involve the states in the rulemaking process for any proposed changes to its existing regulations. Before imposing new anti-degradation policies or implementation requirements, EPA should document the need for new requirements and strive to ensure that new requirements do not interfere with sound existing practices.
  - d) **Groundwater:** States have exclusive authority over the allocation and administration of rights to use groundwater located within their borders and are primarily responsible for allocating, protecting, managing, and otherwise controlling the resource. The regulatory reach of the CWA was not intended to, and should not, be applied to the management and protection of groundwater resources. The federal government should not develop a groundwater quality strategy; instead, it must recognize and respect state primacy, reflect a true state-federal partnership, and comply with current federal statutory authorities.
2. **Permitting:** Actions taken by EPA in its CWA permitting processes should not impinge upon state authority over water management or the states' responsibility to implement CWA provisions.
- a) **State Water Quality Certification:** Section 401 of the CWA requires applicants for a federal license to secure state certification that potential discharges from their activities will not violate state water quality standards. Section 401 is operating as it should, and states' mandatory conditioning authority should be retained without amendment.
  - b) **General Permits:** Reauthorization of the CWA must reconcile the continuing administrative need for general permits with their site-specific permitting requirements under the CWA. EPA should promulgate rules and guidance that better support the use of general permits where it is more effective to permit groups of dischargers rather than individual dischargers.
  - c) **Water Transfers:** Water transfers that do not involve the addition of a pollutant have not been subject to the permitting requirements of the CWA's National Pollutant Discharge Elimination System (NPDES). States already have authority to address the water quality issues associated with transfers. Western Governors believe that transporting water through constructed conveyances to supply beneficial uses should not trigger NPDES permit requirements simply because the source and receiving water contain different chemical concentrations and physical constituents. Western Governors support EPA's current Water Transfers Rule, which exempts water transfers between waters of the United States from NPDES permitting requirements.
  - d) **Pesticides:** Western Governors generally support the primary role of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in regulating agriculture and public

health related pesticide applications to waters of the U.S. and will seek state-based solutions that complement rather than duplicate FIFRA in protecting water supplies.

3. **Nonpoint Source Pollution:** Nonpoint source pollution requires state watershed-oriented water quality management plans, and federal agencies should collaborate with states to carry out the objectives of these plans. The CWA should not supersede other ongoing federal, state, and local nonpoint source programs. Federal water policies must recognize that state programs enhanced by federal efforts could provide a firm foundation for a national nonpoint source policy that maintains the non-regulatory and voluntary nature of the program. In general, the use of point source solutions to control nonpoint source pollution is also ill-advised.

a) **Forest Roads:** Stormwater runoff from forest roads has been managed as a nonpoint source of pollution under EPA regulation and state law since enactment of the CWA. Western Governors support solutions that are consistent with the long-established treatment of forest roads as nonpoint sources, provided that forest roads are treated equally across ownership within each state.

b) **Nutrient Pollution:** Nitrogen and phosphorus (nutrient) pollution is a significant cause of water quality impairment across the nation, and continued cooperation between states and EPA is needed. However, nutrients produced by non-point sources fall outside of NPDES jurisdiction and should not be treated like other pollutants that have clear and consistent thresholds over a broad range of aquatic systems and conditions.

States should be allowed sufficient flexibility to utilize their own incentives and authorities to establish standards and control strategies to address nutrient pollution, rather than being forced to abide by one-size-fits-all federal numeric criteria. Successful tools currently in use by states include best management practices, nutrient trading, controlling other water quality parameters, and other innovative approaches.

4. **CWA Reauthorization:** The Western Governors support reauthorization of the CWA, provided that it recognizes the unique hydrology and legal framework in Western states. Further, any CWA reauthorization should include a new statement of purpose to encourage the reuse of treated wastewater to reduce water pollution and efficiently manage water resources.

5. **Good Samaritan Legislation:** Congress should enact a program to protect volunteering remediating parties who conduct authorized remediation of abandoned hardrock mines from becoming legally responsible under the CWA and/or the Comprehensive Environmental Response, Compensation, and Liability Act for any continuing discharges after completion of a remediation project, provided that the remediating party – or “Good Samaritan” – does not otherwise have liability for that abandoned mine or inactive mine site.

6. **Stormwater (Wet Weather) Pollution:** In the West, stormwater discharges to ephemeral streams in arid regions pose substantially different environmental risks than do the same discharges to perennial surface waters. The Western Governors emphasize the importance of state primacy in water management, including management of ephemeral streams. State water agencies are well-equipped to provide tailored approaches that reflect the unique management needs of ephemeral streams.

7. **State-Tribal Coordination:** Western Governors endorse government-to-government cooperation among the states, tribes and EPA in support of effective and consistent CWA implementation. While retaining the ability of the Governors to take a leadership role in coordination with the tribes, EPA should promote effective consultation, coordination, and dispute resolution among the governments, with emphasis on lands where tribes have treatment-as-state status under Section 518 of the CWA.

### **Safe Drinking Water Act (SDWA)**

8. **Federal Assistance in Meeting SDWA Standards:** Western Governors believe that the SDWA and its standards for drinking water contaminants have been instrumental in ensuring safe drinking water supplies for the nation. It is essential that the federal government, through EPA, provide adequate support to the states and water systems to meet federal requirements. Assistance is particularly needed for small and rural systems, which often lack the resources needed to comply with federal treatment standards.
9. **Drinking Water Standards:** Contaminants such as arsenic, chromium, perchlorate, and fluoride often occur naturally in the West. Western Governors support EPA technical assistance and research to improve both the efficiency and affordability of treatment technologies for these contaminants. In any drinking water standards that the EPA may revise or propose for these and other contaminants, including disinfection byproducts, EPA should consider the disproportionate impact that such standards may have on Western states and give special consideration to feasible technology based on the resources and needs of smaller water systems.
10. **Risk Assessments:** Analysis of the costs of treatment for drinking water contaminants should carefully determine the total costs of capital improvements, operation, and maintenance when determining feasible technology that can be applied by small systems. These costs should be balanced against the anticipated human health benefits before implementing or revising drinking water standards.
11. **Emerging Contaminants/Pharmaceuticals:** The possible health and environmental impacts of emerging contaminants and pharmaceuticals are of concern to Western Governors. Although states have existing authorities to address possible risks associated with emerging contaminants and pharmaceuticals, there is a need for more reliable science showing impacts on human health as more information regarding these contaminants becomes available.
12. **Hydraulic Fracturing:** States currently employ a range of effective programmatic elements and regulations to ensure that hydraulic fracturing does not impair water quality, including but not limited to requirements pertaining to well permitting, well construction, the handling of exploration and production waste fluids, the closure of wells, and the abandonment of well sites.

Federal efforts to study the potential impacts of hydraulic fracturing on water quality should leverage state knowledge, expertise, policies, and regulations. Such efforts should also be limited in scope, based upon sound science, and driven by the states. Western Governors oppose efforts that would diminish the primary and exclusive authority of states over the allocation of water resources necessary for hydraulic fracturing.



## **Compliance with Federal Water Quality and Drinking Water Requirements**

13. **State Revolving Funds:** Western Governors support EPA's Clean Water State Revolving Fund (SRF) and Drinking Water SRF as important tools that help states and local communities address related water infrastructure needs and comply with federal water quality and drinking water requirements. Western Governors also urge Congress and the Administration to ensure that the SRF Programs provide greater flexibility and fewer restrictions on state SRF management.
14. **Restoring and Maintaining Lakes and Healthy Watersheds:** Historically, the Section 314 Clean Lakes Program and the Section 319 Nonpoint Source Management Program provided states with critical tools to restore and maintain water quality in lakes and watersheds. Western Governors urge the Administration and Congress to support these programs. Such support should not come at the expense of other federal watershed protection programs.
15. **EPA Support and Technical Assistance:** The federal government, through EPA, should provide states and local entities with adequate support and technical assistance to help them comply with federal water quality and drinking water requirements. EPA should also collaborate with and allow states to identify and establish priority areas, timelines, and focus on programs that provide the largest public health and environmental benefits.
16. **EPA Grant Funding for Primary Service - Rural Water Programs:** Some rural communities still lack basic water and sanitary services needed to assure safe, secure sources of water for drinking and other domestic needs. Adequate federal support, including but not limited to the Rural Utilities Service programs of the Department of Agriculture and SRFs through EPA, are necessary to augment state resources.

## **Water Quality Monitoring and Data Collection**

17. **Water Data Needs:** Western water management is highly dependent upon the availability of data regarding both the quality and quantity of surface and ground waters. EPA should provide support to the states in developing innovative monitoring and assessment methods, including making use of biological assessments, sensors and remote sensing, as well as demonstrating the value to the states of the national probabilistic aquatic resource surveys.

## **B. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

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