



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS State of the State Addresses

On January 12, Nebraska Governor Pete Ricketts delivered his State of the State address, praising the unicameral legislature for consistently passing a balanced budget on time, and highlighting efforts to make government more efficient and effective. “The Department of Environmental Quality launched online applications for storm water permits and new general air construction permits, significantly reducing wait times.” He also noted the State’s reduced revenue, and the potential tax reforms on agricultural lands based on methods used by neighboring states, including Kansas, North Dakota and South Dakota.

On January 18, Alaska Governor Bill Walker called for a sustainable fiscal plan accounting for reduced revenues. He praised the Transboundary Working Group and Lt. Governor Mallot for their work on an agreement to allow Alaskans to have more say in the permitting of Canadian projects that impact Alaska waters. He thanked the British Columbia government “...for recognizing their responsibility to clean up the old Tulsequah Chief Mine. Water does not recognize political borders. I am committed to protecting our waters and the rich resources they support.”

Governor Walker noted recent victories for state sovereignty, including a favorable Supreme Court ruling in *Sturgeon v. Frost* (see WSW #2185) and a significant win in the Mosquito Fork case regarding frivolous government claims (see WSW #2191). Governor Walker also noted efforts to address the impacts of a changing climate: “Alaskans have known for some time that our landscape is changing at an accelerating pace. Alaska is the only Arctic state in the nation – and we are ground zero for climate impacts. We must maintain the integrity of our lands, air and water for future generations. My Administration is developing a framework to engage Alaskans in this effort to protect our way of life. We will seek out local and traditional knowledge. We will seek out industry input. We will seek to involve every sector to help us meet this challenge. It is one of the greatest challenges of our era. We look forward to working with you to create a legacy of timely response.”

On January 24, California Governor Jerry Brown highlighted several of the State’s recent accomplishments, including passing a water bond. He pointed to infrastructure investment as an area where California and Washington, DC, can work together, stating, “We have roads and tunnels and railroads and even a dam that the President could help us with. And that will create good-paying American jobs.”

Governor Brown also emphasized California’s role as a world leader in the fight against climate change: “...[O]ur state is known the world over for the actions we have taken to encourage renewable energy and combat climate change. Whatever they do in Washington, they can’t change the facts. And these are the facts: the climate is changing, the temperatures are rising and so are the oceans. Natural habitats everywhere are under increasing stress. The world knows this. One hundred and ninety-four countries signed the Paris Agreement to control greenhouse gases. Our own voluntary agreement to accomplish the same goal – the “Under Two M.O.U.” – has 165 signatories, representing a billion people. We cannot fall back and give in to the climate deniers. The science is clear. The danger is real. We can do much on our own and we can join with others – other states and provinces and even countries, to stop the dangerous rise in climate pollution. And we will.”

On January 24, Montana Governor Steve Bullock addressed the state legislature, judges, and tribal leaders. He celebrated recent infrastructure improvements, including putting people to work “...in 70 communities to deliver clean drinking water and upgrade sewage treatment plants.” He stated that his proposed budget includes money for additional improvements. He pointed out that environmental protection and economic development, particularly for Montana’s outdoor economy, are not mutually exclusive endeavors. The state’s energy resources can be used responsibly to provide good paying jobs while “safeguarding our quality of life – especially our clean air, clean water, and the tens of thousands of jobs that rely on them.”

Governor Bullock noted that he has a responsibility to address climate change as a governor and as a dad “We know climate change is happening because we experience it. And even if you have doubts, the financial

markets are reacting, and our energy companies are planning around it. You often hear a false choice – that we can either address climate change or continue to produce power from fossil fuels – but not both. I reject this choice. We hold the largest coal reserves in the country, and Montana coal production has been higher under my Administration than any previous one in the last three decades.... We also have some of the best wind and solar resources in the country.... As an exporter of energy, our energy path is partially dependent on choices and decisions made beyond our borders. That's why I'm directing members of my cabinet to travel to Western states to talk with our neighbors about the diversity of resources we have to serve their needs – let's add the value and create the jobs here, giving our neighbors more of the electricity that they want."

On January 25, Utah Governor Gary Herbert praised Utah's growing economy and the exceptional state of the State. He also noted the changes anticipated under the Trump Administration "[I]f there is one message that is clear from the new administration it is that power will be returned to the people and to the states. I am confident that the new administration and Congress, working with the states, will enact major reforms that will enable us as a state to gain greater control and management over education, transportation, healthcare, natural resources, and our public lands. There is a renewed appreciation for the Tenth Amendment and a realization that the states are truly the laboratories of democracy, the place where real solutions are developed to improve people's lives. It is at the state level where innovation, tailored to the unique local demographics, is actually taking place. Utah is at the forefront of that innovation and that effort."

Forest and Rangeland Management

On January 23-24, Oregon hosted the fourth workshop on Forest and Rangeland Management, part of WGA Chair and Montana Governor Steve Bullock's initiative to examine forest management programs and investigate collaborative forest landscape restoration.

Governor Kate Brown addressed attendees, highlighting the role of collaboration is not only preserving natural resources, but also sustaining rural and timber economies in Oregon. She noted the formation of the Blue Mountain Forest Partners collaborative has created progress in the timber sale program and reinstated active forest management. U.S. Forest Service Deputy Chief Leslie Weldon also provided a keynote address.

Roundtable topics included: (1) setting the stage for the conversation; (2) increasing resilience for communities and the environment – dealing with legacy effects and adapting to a changing climate; (3) getting

more out of collaboration; (4) changing agency culture; and (5) supporting and diversifying rural economies. The workshop also included a case study on implementing an all-hands, all-lands approach. The series of workshops play a central role in collecting information that will position Western Governors to promote congressional efforts to improve forest management authorities. See <http://www.westgov.org/initiatives/forest-and-rangeland-initiative/workshops>.

LITIGATION UPDATE Corps/CWA 404/Wetlands

On January 24, the U.S. District Court for Minnesota issued its ruling in *Hawkes Co., Inc. et al. v. Corps of Engineers* (Corps) (#13-107), holding that the Corp's revised jurisdictional determination is unlawful as arbitrary, capricious, and an abuse of discretion. The court enjoining the Corps from exercising jurisdiction over the wetlands under the Clean Water Act (CWA).

In 2010, the plaintiffs applied to the Corps for a CWA §404 permit to mine peat from a wetland on their property for stable golf greens. In 2012, the Corps issued a jurisdictional determination (JD) that the property contained "Waters of the United States" because the wetlands had a "significant nexus" to the Red River of the North, located 120 miles away. To continue with the permitting process, the Corps required the respondents to submit numerous property assessments that would cost upwards of \$100,000. The plaintiffs appealed the JD administratively and then sought judicial review. On May 31, 2016, the U.S. Supreme Court ruled that the JD was a final agency action subject to judicial review (WSW #2194).

On remand, the District Court found that the information and documentation in the revised JD was insufficient to establish more than a speculative or insubstantial nexus between the wetlands and the Red River. The lack of site-specific water quality data, or evidence of water flow from precipitation runoff or groundwater flow connecting the wetlands to the river, rendered the Corps' determination that a significant physical, chemical or biological nexus exists as "arbitrary and capricious." Rather than remanding the matter to the Corps to establish site-specific evidence, the District Court declined to give the Corps a "third bite at the apple" that would force the Plaintiffs back through "a never ending loop from which aggrieved parties would never receive justice."

POSITIONS

The State of Utah is looking for a full-time Water Rights Regional Engineer and a full-time Water Resources Engineer, based in Salt Lake City, UT. For more information, see <http://statejobs.utah.gov/jobseeker/> or contact Human Resources at 801-538-7318.

The WESTERN STATES WATER COUNCIL is an organization of representatives appointed by the Governors of Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.