



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **WESTERN GOVERNORS State-Federal Relations**

On February 27, Governors Butch Otter (R-ID), Susana Martinez (D-NM), and Gary Herbert (R-UT) testified before the House Committee on Oversight and Government Reform. The hearing, titled "Federalism Implications of Treating States as Stakeholders," examined the roles of states and state-federal relationships in the federal decision-making and implementation processes.

The Committee referenced last year's creation of the Speaker's Task Force on Intergovernmental Affairs, chaired by Rep. Rob Bishop, that has studied how federalism transcends political lines, the effects of federal rules and regulations on states, and ways burdens shared among states, tribes, and local governments may be re-allocated to improve quality of life. The Committee also acknowledged Executive Order 13132 and the fact that agencies frequently fail their obligation to consult with state and local officials early in their rulemaking processes, even where federal policy will preempt state law.

Governor Otter highlighted positive examples of federalism, from public lands, forest health, and streamlined environmental reviews to insurance and education. He noted that there is still room for improvement, and that all too often the states have been treated as little more than a box to check rather than a partner with sovereign interests and creative solutions to meet the needs of the people they serve.

Governor Martinez discussed the inefficient federal processes that lead to backlogs, costly permitting delays, and loss of revenue and other benefits. She noted that "...our nation's incredible geographic and human diversity makes finding a cookie cutter solution next to impossible." The states have innovative ways of solving problems when given the flexibility to do so, and state-federal relationships deliver better results to the people they represent when they work together constructively and collaboratively as true partners.

Governor Herbert pointed out that federalism isn't merely a Constitutional requirement or an academic

concept, it is a better way to set policy and improve lives. Despite widespread boilerplate statutory language that implies federal agencies should consult with states as one of many stakeholders, they are sovereign governments and partners who should be involved at the beginning of and throughout the policy-making process. Nor should federal agencies be enabled to ignore the input of states and their local experience and knowledge. While the states currently enjoy good relationships with many federal agencies, the culture of federal cooperation with states should be the way things are always done, regardless of who is in power.

The Western Governors' Association (WGA) submitted written testimony, emphasizing that the sovereign states are not simply stakeholders like other interested groups and organizations. "States not only created the federal government, but they reserved to themselves the greater measure of authority over public affairs." They are co-regulators with specialized knowledge of their states' environments, legal frameworks, culture, and economies. The testimony references WGA's Policy Resolution 2017-01, Building a Stronger State-Federal Relationship. See <https://oversight.house.gov/hearing/federalism-implications-treater-states-stakeholders/>.

### **ADMINISTRATION**

#### **Department of the Interior - Reorganization**

On February 23, the Department of the Interior (DOI) provided the Western Governors a revised regional office boundary map, with regional boundaries more closely aligned with state borders rather than following watersheds and ecosystems. DOI also provided responses to frequently asked questions about the reorganization. WGA's Executive Director, Jim Ogsbury, expressed appreciation for DOI's responses and said: "The governors support the Department's goal of operating more efficiently and effectively by moving more decision making to the field and share their goal of improving coordination among federal, state and local agencies. We look forward to additional conversations with the Department on how to further refine the plan." See WSW #2284; <http://westgov.org/news/western-governors-gratified-by-interior-decision-to-move-toward-state-bound>.

## FY2019 Budget

On February 12, the President submitted the proposed FY2019 Budget request to Congress. The budget requests \$19B for the Department of Agriculture (a 16% decrease from the FY2017 enacted level); \$11.3B for the Department of the Interior (a 16% decrease); \$5.4B for the Environmental Protection Agency (a 34% decrease); \$19.B for the National Aeronautics and Space Administration (a 2% increase); and \$4.8B for the U.S. Army Corps of Engineers (a 20% decrease).

Later that day, Mick Mulvaney, Director of the Office of Management and Budget, submitted an addendum, accounting for higher spending caps under the Bipartisan Budget Act (BBA) (Pub. L. 115-123). Notably, it would provide an additional \$397M to the State and Tribal Assistance Grants account for the Clean Water and Drinking Water State Revolving Funds to support investment in wastewater and storm water infrastructure.

## CONGRESS

### Water Infrastructure

On February 14, the House Natural Resources' Subcommittee on Water, Power and Oceans held an oversight hearing on "The State of the Nation's Water and Power Infrastructure." The Subcommittee's hearing memorandum states that "...it is indisputable that surface storage continues to serve a key role in making the West what it is today...." It addressed impediments to properly maintaining aging infrastructure and constructing new multi-purpose surface water storage dams and reservoirs, such as cumbersome permitting processes, uncertain federal appropriations, and the difficulties of title transfers. Witnesses included Daren Bakst, Research Fellow, The Heritage Foundation's Institute for Economic Freedom; Charles Freeman, District Manager, Kennewick Irrigation District in Washington; Jonathan Nelson, Policy Director, Community Water Center in Visalia, California; and Jim Watson, General Manager, Sites Project Authority in Willows, California.

Bakst discussed the impacts of regulatory barriers on western states, particularly the burdens of the National Environmental Policy Act, with examples drawn from projects in North Dakota, Colorado, Idaho and Nevada. He also pointed to the failures of the Endangered Species Act, illustrating the impacts to water deliveries in California and Montana. He noted the important difference between protecting species and protecting a flawed statute. He also talked about the impacts of the Environmental Protection Agency's retroactive vetoes under Clean Water Act §404 and the expansion and inconsistent application of authority under vague definitions of navigable waters, making it costly and difficult to complete energy and water projects.

Freeman described the challenges water managers face in their efforts to supply water, including aging infrastructure, changing precipitation patterns, and growing demand. He noted the comprehensive water infrastructure system that allows most Americans access to safe, reliable, and affordable supplies of water. He pointed out the significant return on investments in infrastructure managed by the Bureau of Reclamation and the U.S. Army Corps of Engineers. He recommended changes to federal title transfers and project operations that would enable greater flexibility, efficiency, and responsiveness for water suppliers.

Nelson shared his perspective on safe and reliable drinking water for vulnerable communities. He talked about the U.S. Department of Agriculture's Rural Development Water Program and Emergency Community Water Assistance Grants, the Safe Drinking Water Act's State Revolving Funds, and Reclamation's role in water delivery. He spoke of challenges due to funding shortages, arbitrary definitions of "rural" and "public water system," and lack of funds for operation and maintenance of drinking water treatment systems.

Watson said: "California needs long-term, smart surface water storage solutions that will help capture and store excess runoff and provide multiple benefits under just about any hydrologic or environmental conditions." The water is needed to build more resilient and sustainable urban and rural economies, and to ensure the health and sustainability of the environment. He described the non-federal Sites Project, developed as a partnership between the Bureau of Reclamation, the State of California, and diverse stakeholders, to be cooperatively integrated into the operations of the Central Valley Project and the California State Water Project. "To help address the long-term water supply needs of our region, the State of California and the West, we need Congress to consider these new, taxpayer friendly federal assistance tools to help local agencies like ours to better manage and develop new, more drought resilient water supplies."

## MEETINGS

### ABA 36<sup>th</sup> Water Law Conference

The 36<sup>th</sup> Annual ABA Water Law Conference will take place at the Hilton Bonnet Creek Hotel in Orlando, Florida on April 17-18. Topics will include federal reserved rights in light of the 9<sup>th</sup> Circuit's decision in *Agua Caliente v. Coachella Valley Water District*; mandating "natural flows" in managed systems; the Endangered Species Act and property takings; legal and social issues with water reuse; and the federal role in interstate water disputes and impediments to alternative resolutions. The group hotel rate ends on March 19. See <https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=280694689>.

**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.**